

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date February 17, 1966

To Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation

From Richard S. Cohen, Asst. Atty. General Dept. " " "

Subject Application of Motor Vehicle Excise Taxes to Nonresident Servicemen

FACTS:

It has long been the position of the State Tax Assessor that payment of the motor vehicle excise tax in Maine is a prerequisite to registration of a motor vehicle in Maine, and therefore if a nonresident serviceman chooses to register his motor vehicle in Maine he is compelled to pay not only the registration fee but also the motor vehicle excise tax which is a prerequisite necessary to registration.

ISSUE:

Whether or not the Soldiers' and Sailors' Relief Act precludes municipalities in the State of Maine from levying the motor vehicle excise tax upon motor vehicles to be registered in Maine by nonresident servicemen?

ANSWER:

No; the Soldiers' and Sailors' Relief Act does not preclude Maine municipalities from levying the motor vehicle excise tax upon motor vehicles to be registered in Maine by nonresident servicemen.

LAW:

1. Annual excise tax. An excise tax shall be levied annually with respect to each calendar year in the following cases:

C. Motor vehicles. For the privilege of operating a motor vehicle upon the public ways, each motor vehicle, other than a stock race car, to be so operated shall be subject to such excise tax as follows: A sum equal to 23 mills on each dollar of

the motor's list price for the first or current year of model, 16½ mills for the 2nd year, 17½ mills for the 3rd year, 9 mills for the 4th year, 3½ mills for the 5th year and 3 mills for the 6th and succeeding years. The minimum tax for a motor vehicle other than bicycle with motor attached shall be \$5, for bicycle with motor attached, \$2.50. The excise tax on a stock race car shall be \$5. The maximum tax on and after the 7th year of model for a passenger vehicle, including a so-called station wagon, but not a bus, shall be \$15. 1959, c. 194; c. 378, § 63; 1963, c. 349, § 2.

36 N.R.S.A. § 1482 (1) (C)

B. If the motor vehicle is owned by a nonresident person, the excise tax shall be paid in the place where he is temporarily or occasionally residing, or, if there is no such residing place, to the State.

36 N.R.S.A. § 1484 (3) (B)

§109. --Excise: personal property and real property. No motor vehicle or house trailer shall be registered under this Title until the excise tax or personal property tax or real estate tax has been paid in accordance with Title 36, sections 131, 1482 and 1484.

1959, c. 308, § 3; 1963, c. 304, § 1.
29 N.R.S.A. § 109.

§1303. General penalty. Whoever violates or fails to comply with any provision of this Title, or any rules or regulations established thereunder, when no other penalty is specifically provided, shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment for not more than 90 days, or by both.

R.S. 1954, c. 22, § 164; 1957, c. 250, § 6.
29 N.R.S.A. § 2303.

Ernest H. Johnson, State Tax Assessor

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REASONS:

In determining whether or not the immunity from taxation granted under the Soldiers' and Sailors' Relief Act encompasses the excise tax set out in 36 M.R.S.A. §1482, as applicable to non-resident servicemen registering their motor vehicles with the State of Maine, we first must look at the construction of the Maine taxing provision and the manner in which it is set up in relation to the motor vehicle registration statute. 36 M.R.S.A. §§ 1482, 1484, state in effect that an excise tax shall be levied annually for the privilege of operating a motor vehicle upon the public ways. 29 M.R.S.A. §109, referring to registration of motor vehicles in the State of Maine, states that no motor vehicle . . . shall be registered under this title until the excise tax . . . has been paid in accordance with Title 36, Sections 531, 1482, and 1484." Taking these sections into consideration, it now must be determined as to whether in applying the holding in the case of *California v. Buzard* Supreme Court of the United States, No. 40--October Term, 1965 municipalities in the State of Maine are precluded from levying an excise tax on nonresident servicemen who choose to register their motor vehicles under Maine law.

Section 514 of the Soldiers' and Sailors' Relief Act of 1940, as amended, provides a nonresident serviceman present in a state in compliance with military orders with a broad immunity from that state's personal property and income taxation. Section 514 (2) (B) of the Act further provides that:

"The term taxation shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, that the license, fee or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid."

This portion of the statute, above quoted, was interpreted by the United States Supreme Court, in the *Buzard* case, to mean that the immunity portion of the Soldiers' and Sailors' Relief Act would encompass excise taxes levied by host states only in the situation whereby the nonresident serviceman has paid the "license, fee or excise of the State of which he is a resident or is domiciled in." The Court goes on to say that "the serviceman who has not registered his car and obtained license plates under the laws "of" his home state, whatever the reason, may be required by the host state to register and license the car under its laws."

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The Court goes on to say that subsection (2) (B) of the Federal Act "refers only to those taxes which are essential to the functioning of the host state's licensing and registration laws in their application to the motor vehicles of nonresident servicemen The test is whether the inclusion would deny the State power to enforce the nonrevenue provisions of state motor vehicle legislation." (Emphasis supplied).

Further the Court indicates that California has made it clear that the California 2% tax is not imposed as a tax essential to the registration and licensing of the serviceman's vehicle. Because of the makeup of the pertinent California statutes regarding motor vehicle registration, registration of a motor vehicle is allowed by the statute without first complying with the tax provision of the California Revenue and Taxation Code.

In the State of Maine, it is specifically stated in the motor vehicle registration statute that "No motor vehicles . . . shall be registered . . . until the . . . excise tax has been paid" This, in effect, must lead one to the conclusion, since there is no judicial determination by the Supreme Judicial Court to the contrary, that the nonrevenue provisions of our state motor vehicle statute cannot be properly enforced unless there is compliance with the terms of 36 M.R.S.A. §1482.

Although it could be contended that the Maine motor vehicle excise tax is in reality nothing more than an ad valorem tax based on the value of the personal property, in this case a motor vehicle, it is incumbent upon the Maine Supreme Judicial Court to first say that such a tax is not necessary for enforcement of the nonrevenue provisions of the motor vehicle registration law, and until the Court finds this to be true or in the alternative legislature reconstructs the law so that payment of this tax is not a necessary prerequisite to registration of all motor vehicles in this State, then the State of Maine through its municipalities would certainly have the authority and it would certainly be its duty to levy such tax in light of the interpretation herein given the decision of the United States Supreme Court in the case of California v. Buzard.

For the foregoing reasons Maine municipalities should continue to levy the excise tax pursuant to 36 M.R.S.A. §1482 as applicable to nonresident servicemen choosing to register their motor vehicles under the laws of the State of Maine.

RSC:epd