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SOLDIERS' AND SAILORS' CIVIL RELIEF ACT—50 USC, SECTION 501 ET SEQ., SECTION 574—HOUSE TRAILERS—OWNED AND OCCUPIED BY MEMBERS OF ARMED FORCES—NOT RESIDENTS OF OHIO—LIVING IN STATE PURSUANT TO MILITARY OR NAVAL ORDERS—EXEMPT FROM TAX LEVIED BY SECTION 6292-2 G. C.—PROVISO, TAX, IF ANY, ON HOUSE TRAILERS PAID IN STATE OF RESIDENCE OR DOMICILE.

SYLLABUS :

Under Section 574 of the Soldiers' and Sailors' Civil Relief Act, 50 U. S. C., Section 501, et seq., house trailers owned and occupied by members of the armed forces, who are not residents of Ohio and are living in this state pursuant to military or naval orders, are exempt from the tax levied by Section 6292-2, General Code, provided the tax or taxes, if any, pertaining to house trailers in the state of residence or domicile, have been paid.

Columbus, Ohio, June 29, 1951

Hon. Mathias H. Heck, Prosecuting Attorney,
Montgomery County, Dayton, Ohio

Dear Sir :

I have before me your request for my opinion, reading as follows :

“We have received a request from the County Auditor of this county in the following manner :

“Your opinion is respectfully requested on the question of whether section 6292-2 (Tax levy upon house trailers) is appli-

cable to those persons in the armed forces of the United States or are they exempt under the Soldiers and Sailors Act, section 574, copy of which is hereby attached.'

"Due to the fact this is of state wide importance, we are requesting your consideration."

Section 574 of the Soldiers' and Sailors' Civil Relief Act, 50 U. S. C., Sec. 501, et seq.; 54 Stat., 1179, as added in 56 Stat., 777, and amended in 58 Stat., 722 reads as follows:

"574. Residence for tax purposes:

"(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) 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, Territory, possession, or

District of Columbia of which the person is a resident or in which he is domiciled has been paid. (Oct. 17, 1940, ch 888, Sec. 514, as added October 6, 1942, ch. 581, Sec. 17, 56 Stat. 777, and amended July 3, 1944, ch. 397, Sec. 1, 58 Stat. 722.)”

As indicated in the purpose section of the Soldiers' and Sailors' Civil Relief Act, that measure was enacted “to suspend enforcement of civil liabilities, in certain cases, or persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation * * *.” This Act is still effective and its benefits remain extended to all prsonnel of the armed forces falling within its purview.

The pertinent portions of the statute imposing the tax liability must be examined to determine its application to property owned by persons benefited by the federal statute. Section 6292-2, General Code, reads in part as follows:

“A tax is hereby levied upon house trailers for the purpose of supplementing the general revenue funds of the local subdivisions in which the house trailer is located at the time the tax becomes due in accordance with the provisions of this section. The year for which said tax is levied shall commence on April 1 and end on March 31 following. Such tax shall be collected by and paid to the county auditor of the county in which the house trailer is located at the time the owner thereof makes application for registration as herein provided. * * *

“* * * The tax so levied shall become due and payable immediately upon the occupancy for human habitation of the house trailer * * *.”

From the first paragraph of the above quotation, it can be seen that a house trailer is the specific object of the levying provision of the statute. However, it should be noted that the imposition of the tax is conditioned upon the house trailer's being put to a particular use, viz., occupied for human habitation. Until such occupancy occurs, there is no liability for the tax.

No citation of authority is needed to support the well recognized rule of statutory application that such laws of the United States, duly enacted within its powers and authority, are the supreme law of the land and that every state is bound thereby, notwithstanding anything in the laws of a state to the contrary. Your inquiry, therefore, raises the question of

whether this state taxing statute falls within the exemption provided by the federal statute.

The tax imposed on house trailers under the provisions of Section 6292-2, General Code, appears to be in the nature of an excise tax. While difficult to define precisely, an excise tax has been held not to be a tax on property as such but a tax on certain kinds of property having reference to their origin and intended use. *Patton v. Brady, Executrix*, 184 U. S., 608, at p. 619. It is to be distinguished from a property tax which is imposed directly on the property itself. Since the liability for this tax does not attach directly to the house trailer itself by reason only of the fact that it is property, and has no incidence until the house trailer is occupied or used for human habitation, this measure should be classified as an excise tax. This statute is similar to a regulation requiring automobiles using the public highways to be licensed. Not until the motor vehicle is used in a certain manner, viz., driven upon the public highways, does the privilege tax attach. Such a measure has been construed and has generally been considered an excise tax. *Wilson v. State*, 143 Tenn., 55; *Ard v. The People*, 66 Colo., 480.

The Soldiers' and Sailors' Civil Relief Act considers this type of tax in Part 2(b) of Section 574 when it states 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 resident or in which he is domiciled has been paid."

The provisions of this portion of the statute are directed to "motor vehicles" and specific exemption is provided for excises on such vehicles. The term "motor vehicle" is not defined in Title 50 of the United States Code but its meaning is set forth in Title 49 on Transportation. That portion of 49 U. S. C., Section 303(a), 52 Stat., 1237, as amended in 54 Stat., 920, reads in part as follows:

"(13) The term 'motor vehicle' means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property * * *."

Inasmuch as "house trailer" is nowhere defined in the federal statutes, it is a fair assumption that it was intended to be included within the

meaning of the term "trailer" as used in the above definition. Therefore, it would necessarily follow that an excise tax imposed on house trailers would be exempted under the pertinent provisions of the Soldiers' and Sailors' Civil Relief Act.

Notice must be taken of the fact that the federal statute requires that the tax on "motor vehicles" in the state of residence or domicile must have been paid before the exemption from the tax can be allowed. If the state of domicile has not imposed a tax on house trailers, no compliance with this provision would be required. On the other hand, if states other than Ohio have levied a tax or taxes pertaining to house trailers, the intent of the federal statute appears to require compliance with such tax measures before the exemption can be allowed.

In view of the above, it is therefore my opinion that, under Section 574 of the Soldiers' and Sailors' Civil Relief Act, 50 U. S. C., Section 501, et seq., house trailers owned and occupied by members of the armed forces, who are not residents of Ohio and are living in this state pursuant to military or naval orders, are exempt from the tax levied by Section 6292-2, General Code, provided the tax or taxes, if any, pertaining to house trailers in the state of residence or domicile, have been paid.

Respectfully,

C. WILLIAM O'NEILL
Attorney General