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OFFICIAL OPINION NO. 44

December 30, 1971

Mr. Joseph R. Root, Commissioner
Bureau of Motor Vehicles
401 State Office Building
Indianapolis, Indiana 46204

Dear Commissioner Root:

This is in response to your request for my Official Opinion concerning certain exemptions from the Indiana Motor Vehicle License Excise Tax, more specifically in regard to the following questions:

1. Must non-resident members of the military, who maintain residence in another state, but register their *passenger* motor vehicles in Indiana, pay the excise tax as a pre-condition to registering those passenger vehicles?
2. Are organizations that are declared to be instrumentalities of the United States Government exempt from such excise tax?
3. Are not-for-profit religious or charitable institutions and organizations in Indiana exempt from paying the excise tax on passenger cars owned by them and registered in the State of Indiana?

ANALYSIS

The Indiana License Excise Tax [Acts of 1969, Ch. 423, Sec. 1-15, as found in Burns' (1971 Supp.), Section 47-3602 through 47-3615, and IC 1971 6-6-5, *et seq.*] is imposed upon "any vehicle subject to annual registration as a condition of its operation on the public highways pursuant to the motor vehicle registration laws of the state of Indiana * * *"

The Act also provides that the tax "shall be in lieu of the *ad valorem property tax levied for state and local purposes*, but in addition to any registration fees imposed upon such vehicles." Burns' 47-3602, *supra*.

The Acts of 1953, Ch. 151, as found in Burns' (1965 Repl.), Section 47-2620(a) and IC 1971, 9-1-4-21, requires residents of another state, who reside in and use a motor vehicle in this state for 60 or more days in one calendar year, to register their vehicles in Indiana.

The Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. Sec. 574 provides, in part, as follows:

“* * * For the purposes of taxation in respect of the *personal* property, income or gross income of any such person by any state * * * of which such person is not a resident or in which he is not domiciled * * * *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.*

* * *

“(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 * * * of which the person is a resident or in which he is domiciled has been paid.” (50 U.S.C. §574)

The United States Supreme Court has ruled the Soldiers' and Sailors' Civil Relief Act does not exempt servicemen from the requirement that they register their vehicles and pay the registration fee either in the state in which they are serving, or in their home state. *California v. Buzzard* (1966), 382 U.S. 386. Such circumstances may arise in Indiana. A serviceman may be required to register in Indiana when his home state's license plate has expired and the 60-day requirement compels him to register the vehicle in Indiana. Or, a serviceman may voluntarily elect to register the vehicle here as a matter of convenience. The Supreme Court of the United States in *California v. Buzzard*, *supra*, was confronted with just such a situation.

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After refusing to pay a "license fee" of 2% of the vehicle's value, a serviceman was convicted for driving an unregistered vehicle in California. Sustaining the defense that the California exaction of the "license fee" was in contravention of the Soldiers' and Sailors' Civil Relief Act, *supra*, the Court declared the following:

"To assure that servicemen comply with the registration and licensing laws of some state, whether of their home State or the host State, we construe the phrase, 'license, fee, or excise *required* by the state * * *' as equivalent to 'license fee or excise of the state * * *'" (My emphasis)

In concluding that the "license, fee, or excise" which a state may exact, under the proviso of the Relief Act, must be for the purposes of enforcing registration, not for the exacting of revenue, the Court in Buzzard stated that:

"It is plain at the outset that California may collect a 2% tax only if it is a 'license, fee, or excise,' on a motor vehicle or a jeep. The very purpose of Sec. 514 [Soldiers' and Sailors' Relief Act] in broadly freeing the non-resident servicemen from the obligation to pay property and income taxes was to relieve him of the burden of supporting the governments of the states where he was present solely in compliance with military orders."

The effect of the holding in the Buzzard case is explained in the dicta contained in *Sullivan v. United States* (1968), 395 U.S. 181. There the Supreme Court, in the discussion of the 1944 and 1962 amendments to the Soldiers' and Sailors' Civil Relief Act, stated that the general immunity from state and local taxation granted to servicemen by Sec. 1 of Sec. 514, was extended by the 1944 amendment to include even motor vehicle registration fees. However, that extended immunity admits of one qualification. A state may impose its registration fee to enforce registration when, and only when, *the fee or license has not been paid by the serviceman in his home state.*

But the Court was quick to point out that the revenue tax measures which are indistinguishable in effect from *ad valorem* property taxes do not qualify as "licenses, fees, or excises on motor vehicles" which the states may enforce when similar taxes are not paid by the serviceman in his home state.

Such is the case in Indiana. The General Assembly itself provided that the tax "shall be in lieu of the *ad valorem* property tax levied for state and local purposes," therefore bringing into effect the exemption granted by the Soldiers' and Sailors' Relief Act.

Your second question posed is whether or not any instrumentality of the United States Government is also exempted from such tax. Such entities in question would include Federal Land Banks, and/or the American Red Cross.

The Excise Tax law at Burns' 47-3601, *supra*, requires that the tax be paid on any vehicle subject to annual registration in Indiana, unless the vehicle is one which falls within one of the specified exemptions of the statute. One such exemption is that found in Burns' 47-3601(a)(1), *supra*, which reads as follows:

"(1) Vehicles owned or leased and operated by the governments of the United States, of the state of Indiana and of its political subdivisions."

Title 12 U.S.C.A. Sec. 931 contains the following language:

"Every Federal land bank and every Federal land bank association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes on real estate held, purchased, or taken by said bank or association under the provisions of Sec. 761 and 781 of this title * * *"

The American Red Cross has been declared by the United States Supreme Court to be an instrumentality of the United States Government. The Supreme Court of the United States,

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in Department of Employment vs. United States (1966), 385 U.S. 355, stated unanimously:

“On the merits, we hold that the Red Cross is an instrumentality of the United States for purposes of immunity from state taxation levied on its operations, and that this immunity has not been waived by congressional enactment.”

Therefore, an instrumentality of the United States Government, such as Federal Land Banks or the American Red Cross, is exempt from the Indiana Excise Tax. Such instrumentalities, like servicemen, are immune only from the excise tax, since it is a revenue-raising measure. They are *not* exempt from the automobile registration fee which is necessary for the enforcement of the Indiana Vehicle Registration Code.

Your third question is addressed to the possible exemption of not-for-profit religious or charitable institutions and organizations.

Although Indiana's automobile excise tax is clearly a tax in lieu of the earlier *ad valorem* property tax on motor vehicles, the new tax is not merely a different manner of assessing and collecting the same levy from the same base and the same taxpayers.

The excise tax is a separate tax extracted from the general revenue statutes of the State of Indiana which generally impose taxes upon real and personal property. The excise tax is not governed by the same exemptions that apply to those general revenue taxes. Even though provisions of federal law may override the tax in some instances, any exemption governed entirely by Indiana law must be found within the Excise Tax Act itself.

The earlier property tax imposed by Acts of 1961, Ch. 319, Sec. 201, as found in Burns' (1961 Repl.), Section 64-401 and IC 1971 6-1-21-1, which was assessed according to the provisions of Burns' 64-301, *supra*, and was subject to specified exemptions contained in the general property tax statute. That statute contains specific exemptions from the tax applying to not-for-profit, charitable, religious and educational institutions or organizations.

However, in attempting to determine the intention of the Legislature in regard to the new excise tax, one must place the emphasis on the language contained in the Act. It must be assumed that the General Assembly intended, when it enacted the excise tax law, to do just exactly what it did. It deleted in the new law some exemptions which existed under the property tax law and limited other exemptions that may have been present under the earlier property tax.

Vehicles owned by not-for-profit, charitable organizations, were specifically exempt under the Property Tax Act. Their specific exemption is conspicuously absent from the excise tax law, and one must attribute that fact to the deliberate legislative intention to delete it.

CONCLUSION

It is, therefore, my official opinion that:

1. Indiana's automobile excise tax is a revenue-raising tax separate from and in addition to the registration fee, and is not in that sense necessary to the enforcement of Indiana's Vehicle Registration Code. The tax may not, therefore, be exacted from non-resident military servicemen stationed in Indiana, even though they must register their vehicles in Indiana and even though they voluntarily choose to register here rather than in their home state.

2. Any federal government instrumentality so deemed as such is immune only from the excise tax in Indiana inasmuch as this excise tax is a revenue-raising measure; but such federal instrumentalities are not exempt from paying the automobile registration fee which is necessary for the enforcement of the Indiana Vehicle Registration Code.

3. Since the exemptions of the automobile excise tax are specifically listed in the body of the Act itself, Burns' 47-3601, *supra*, the Indiana General Assembly obviously intended that those exemptions enumerated shall be the only exemptions provided, absent the presence of any overriding federal statute. Therefore, the Indiana General Assembly does not permit an exemption for not-for-profit charitable organizations, and the excise tax may be imposed upon the passenger vehicles owned by those organizations that are required to be registered in the State of Indiana.