OFFICIAL OPINION NO. 62

December 2, 1959

Mr. Joda G. Newsom, Chairman
State Board of Tax Commissioners
404 State House
Indianapolis 4, Indiana

Dear Mr. Newsom:

This is in reply to your letter requesting my Official Opinion in answer to the following question:

> "Referring to Attorney General's opinion No. 3 dated January 31, 1956, and to Chapter 169 of the Acts of 1953, as amended, The State Board of Tax Commissioners requests your official opinion on the following question.
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> " 'Should Mobile Homes, as defined in Section 2, Chapter 169, Acts 1953, be considered as personal property when owned by a service man who is a non-resident of Indiana and is on duty in Indiana pursuant to orders of the Armed Services Command, and such property be thereby exempt from assessment for taxation purposes?' "

The Attorney General's opinion to which your letter of inquiry makes reference, being 1956 O. A. G., No. 3, p. 8, at p. 11, among other things held as follows:

> "1. Except for personal property used in or arising from a trade or business, the personal property of a serviceman, located in Indiana, whose permanent residence is outside of Indiana, shall not be deemed to be located or present in or to have a situs for taxation in the State of Indiana and hence would not be subject to assessment for taxation in Indiana, solely by reason of such serviceman being present in Indiana under military orders."

The said 1956 Attorney General's opinion was based upon the decision of the United States Supreme Court in the case of Dameron v. Brodhead (1953), 345 U. S. 322, 73 S. Ct. 721,

97 L. Ed. 1041, which construed Section 514 of the Soldiers' and Sailors' Relief Act. The said section of the Soldiers' and Sailors' Relief Act, which initially generates the problem posed by your inquiry, is 54 Stat. 1178, as amended, 56 Stat. 777, 58 Stat. 722, as found in 50 U. S. C. A. Appendix, Section 574, which provides as follows:

> "(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." (Our emphasis)

The question presented by your letter of inquiry assumes that the owner, or owners, of the mobile homes involved are servicemen who are not residents of Indiana but who are physically present in Indiana involuntarily, on duty pursuant to orders of the Armed Services Command. Therefore, applying the above-quoted section of the Soldiers' and Sailors' Relief Act, mobile homes of such persons would not be subject to taxation in Indiana if such constitute personal property, unless they are used in or arise from a trade or business over which the State of Indiana otherwise has jurisdiction.

The distinction between real and personal property has been the subject matter of many decisions arising from various fact patterns dating well back into the early history of the law. It is generally the rule that real property refers to real estate i.e., lands and includes buildings and improvements situated upon such lands which become a part thereof by means of a permanent foundation or which may not be severed from the land without diminishing the value of the land itself. With respect to taxation, the Indiana Acts of 1919, Ch. 59, Section 4, as found in Burns' (1951 Repl.), Section 64-104, defines the terms "real property" and "personal property" as follows:

> *"For the purposes of taxation, real property shall include all lands and lots within the state and all buildings and fixtures thereon and appurtenances thereto, except as otherwise expressly provided by law;* and whenever, distinct from the ownership of the surface thereof, by deed, contract, reservation in any conveyance or otherwise, an estate is created in such land or the mines or minerals therein, any and all such sub-

> surface interests or rights shall be deemed real estate and each such subsurface estate shall be separately listed and taxed as such. *All property of any nature or kind other than that above in this section specified shall be deemed personal property,* and shall be listed and taxed as such, except in cases otherwise expressly provided for in this act." (Our emphasis)

From the above statutory definition, mobile homes are not includible within the classification of "all lands and lots within the state and all buildings and fixtures thereon and appurtenances thereto," so that mobile homes must be classed within that part of the definition which includes "all property of any nature or kind other than that above in this section specified" which the statute terms "personal property," unless there is some other statutory provision classifying mobile homes other than as personal property.

The only statute which could conceivably be used as the basis for classifying mobile homes other than as personal property is the Acts of 1953, Ch. 169, as found in Burns' (1959 Supp.), Section 64-3301 *et seq.*, the act to which your letter refers, the title of which is:

> "An act concerning taxation, providing a method of assessment and payment of taxes on mobile homes."

It is true that Section 1 of this act as found in Burns' (1959 Supp.), Section 64-3301 does provide as follows:

> "It is the purpose of this act to provide for the *assessment of mobile homes at a rate* of assessment similar *to the rate* of assessment used for the assessment of other dwellings and sleeping places." (Our emphasis)

Commenting upon this identical language, in 1958 O. A. G. No. 16, pp. 69, 73, it was stated that this section "indicates that the intention is not to treat mobile homes as personalty" (as to which a different evaluation standard is provided by statute), said reference having been intended as being applicable solely to the manner of determining the "rate of assessment" to be used in evaluating mobile homes for tax purposes.

However, I do not believe that the above-quoted Section 1 is sufficient justification for classifying mobile homes as other than "personal property" for the following reason: The section states only that in determining the rate of assessment or basis of valuation of such mobile homes that such shall be similar to the rate of assessment used for the assessment of other dwellings and sleeping places. Referring to the Acts of 1953, Ch. 169, Sec. 4, as amended, as found in Burns' (1959 Supp.), Section 64-3304, it will be seen that the Legislature provided, with respect to the taxation of mobile homes, as follows:

> "* * * Provided, the assessed valuation of said mobile home *shall not exceed thirty-three and one-third percent* [33⅓] *of the reproduction cost* less a reasonable sum for depreciation and obsolescence as provided in the rules and regulations prescribed by the state board of tax commissioners. * * *" (Our emphasis)

This measure or standard by which to determine the assessed valuation conforms generally to the Reassessment Act of 1949, being the Acts of 1949, Ch. 225, Burns' (1951 Repl.), see note following Section 64-1019, which said statute with respect to the assessment of real estate and improvements provides that "the rate of assessment on lands shall not exceed thirty-three and one-third per cent of the market or sale value as of March 1, 1949, and the rate of assessment on improvements *shall not exceed thirty-three and one-third per cent of the average reproduction cost* of improvements based on construction costs as of March 1, 1949." (Our emphasis)* This similarity in the standards as prescribed by the said 1953 and 1949 Acts to be used in measuring the value of the property taxed is apparently the basis for the Legislature providing that mobile homes shall be assessed at a rate of assessment similar to the rate of assessment used for the

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* The above reference to the Acts of 1949, Ch. 225 is for the purpose of showing what standards for evaluating dwellings, sleeping places and improvements were in effect at the time the Acts of 1953, Ch. 169 was enacted. Although the assessment values resulting from the reassessment provided by the said 1949 act still prevail, the Acts of 1949, Ch. 225 has since been expressly repealed by the Acts of 1959, Ch. 316, Sec. 12.

assessment of other dwellings and sleeping places. Therefore, the effect of Burns' 64-3301, *supra,* is to provide that the *rate of assessment* of mobile homes for tax purposes shall approximate the *rate of assessment* applicable to improvements on lands but not to transform the character of mobile homes from personal to real property.

Furthermore, there is nothing else in the statute authorizing the taxation of mobile homes as provided by the Acts of 1953, Ch. 169, Burns' (1959 Supp.), Section 64-3301 *et seq.*, which could be used conceivably to justify the classification of mobile homes other than as personal property. It must be remembered that we are here dealing with *"mobile"* homes, which terminology negates the idea of permanency as in the case of real estate and buildings and improvements situated thereon. Further, the said act concerning the taxation of mobile homes expressly recognizes in Section 8 thereof, Acts of 1953, Ch. 169, Sec. 8, as found in Burns' (1959 Supp.), Section 64-3308, that such mobile homes may be susceptible to the possibility of a tax being assessed or claimed thereon by more than one state; and although the United States Supreme Court in the case of Dameron v. Brodhead, *supra,* has specifically held that the Soldiers' and Sailors' Relief Act applies irrespective of whether the state of domicile of the serviceman has imposed a property tax, nevertheless, the Indiana Statute is designed to safeguard against taxation of mobile homes by more than one state and in this and most other respects recognizes a mobile home as personal property.

In fact, the Acts of 1953, Ch. 169, Sec. 2, as found in Burns' (1959 Supp.), Section 64-3302, specifically defines the term "mobile home" as used in that act as follows:

> "A 'mobile home' is hereby defined and declared to be *any vehicle,* including the equipment sold as a part of the vehicle, *which is so constructed as to permit its being used as a conveyance upon public streets or highways* by either self propelled or non self propelled means, which is designed, constructed or reconstructed, or added to by means of an enclosed addition or room in such a manner as will permit the occupancy thereof as a dwelling or sleeping place for one [1] or more persons, and which is both used and occupied as a dwelling or sleeping place *having no foundation other*

than wheels, jacks, skirting, or other temporary support." (Our emphasis)

Since the above definition extends even so far as to include self propelled vehicles which may otherwise qualify under the definition there stated, it seems clear that such mobile homes as may be self propelled would clearly constitute a motor vehicle which is specifically includible under the Federal Soldiers' and Sailors' Relief Act as being "personal property" to which the Federal Act applies. Further, all other kinds of mobile homes which may be includible within the above-quoted statutory definition would clearly possess the characteristics of personal rather than real property.

Therefore, I find no justification for concluding that mobile homes should be classified for taxation purposes other than as personal property, except as heretofore explained. Consequently, it is my further opinion that mobile homes should be classified as personal property and when owned by a serviceman who is a nonresident of Indiana on duty in Indiana pursuant to orders of the Armed Services Command, such mobile home is exempt from taxation by the State of Indiana even though physically located in this state, pursuant to the Soldiers' and Sailors' Relief Act, the exemption therein provided being applicable to such property unless it is used in or arises from a trade or business otherwise subject to the jurisdiction of Indiana.

OFFICIAL OPINION NO. 63

December 4, 1959

Honorable L. Parker Baker
State Representative
Hamilton County
R. R. #1
Cicero, Indiana

Dear Representative Baker:

In your recent letter concerning certain provisions in Sec. 4 of the Township Planning and Zoning Act, the same being Ch. 46 of the Acts of the General Assembly of Indiana, 1959,