

Cite as Det. No. 93-017ER, 14 WTD 001 (1994).

BEFORE THE INTERPRETATION AND APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In The Matter of the Petition	)	<u>F I N A L</u>
For Refund	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 93-017ER
	)	
. . .	)	Notice of Motor Vehicle
	)	Excise Tax

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT and RCW 82.44.010. MOTOR VEHICLE EXCISE TAX -- UNITED STATES PUBLIC HEALTH SERVICE -- RESIDENCE. A commissioned officer of the United States Public Health Service is deemed to be a member of the active military service for purposes of the Soldiers' and Sailors' Civil Relief Act; and where such officer retains his residence in another state by voting, paying state income tax and registering his motor vehicles there; the motor vehicle excise tax of this state will not apply to those motor vehicles.

Headnote is provided as a convenience for the reader and is not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

. . .

NATURE OF ACTION:

An Officer of the Public Health Service who was assessed motor vehicle excise tax on his personal vehicles requests reconsideration of our determination that the Soldiers' and Sailors' Civil Relief Act of 1940<sup>1</sup> applies to commissioned officers of the U.S. Public Health Service only when the officer is detailed to the U.S. Army or Navy.

FACTS:

---

<sup>1</sup>Hereinafter referred to as the Act,

Coffman, A.L.J. -- The Department fully explained the facts of this case in its original Determination No. 93-17 as follows:

The taxpayer-family maintains a mailing address in Montana, votes there, and files Montana state income tax returns, although they deduct the majority of their income for state tax purposes.

The husband, hereinafter referred to as the "taxpayer," is employed by the federal government as a health care provider for the United States Public Health Service (USPHS). He has been so employed for over thirteen years. He is a commissioned officer serving in the USPHS, and serves under "contracts" or "orders," which are generally renewed annually. He states he is generally stationed in one location for three to five years, and he was in [a city outside Washington], stationed by USPHS to work with the U.S. Navy prior to being stationed in Washington state. He has been stationed at the same location in Washington since 1987. He purchased a home near that location in 1987 and has been listed in the local telephone book and Polk's cross-reference directory since that time. In 1991, he purchased a new vehicle.

He was contacted by a Department tax discovery officer (TDO) about the fact that the family's two vehicles were licensed in Montana. The TDO assessed use tax on the new vehicle but not on the family's older one, because it had been owned for more than ninety days prior to the family's move to Washington. The TDO also assessed licensing fees for both vehicles.

The taxpayer believes he is exempt from both types of tax under the Soldiers' and Sailors' Relief Act. He paid the use tax on the new vehicle on advice from the USPHS attorney who reviewed the case, although they both state they believe it is not due.<sup>2</sup> Taxpayer submitted copies of his Montana driver's license, several years' tax returns, his Montana dental license, Washington statutes exempting him from dental licensing requirements due to his position with the USPHS, copies of his USPHS orders, copies of Montana vehicle titles which also showed Montana banks as current or former lienholders, and other materials.

. . .

---

<sup>2</sup>The taxpayer is not appealing our finding that the use tax is due on the motor vehicles.

Taxpayer noted that the older vehicle was sold at about the same time the appeal was filed. It was replaced with a passenger vehicle purchased in [Washington]. This vehicle is not one of the ones on which taxes were protested in the current appeal, and we find it is subject to the same tax and licensing requirements as are the other two vehicles. However, its purchase resulted in more "confusing" information being provided to the taxpayer by the dealer, who allegedly informed the taxpayer that the military exemptions should apply to him and the vehicle could be licensed in Montana.

The taxpayer's representative stated that there is no dispute as to the facts.

The Department issued its Det. No. 93-17 on January 26, 1993.<sup>3</sup> We found that the taxpayer owed both use tax and motor vehicle excise tax on his personal motor vehicles. The taxpayer made a timely request for executive level reconsideration of the motor vehicle excise tax finding, but not the use tax finding.

This case has been considered at the Executive Level.

#### ISSUE:

Does the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. § 501 et. seq.) preclude the Department from assessing the motor vehicle excise tax on the vehicles owned by commissioned officers of the U.S. Public Health Service who claim domicile in another state and who are detailed to locations other than the U.S. Army or Navy?

#### DISCUSSION:

##### 1. Use Tax.

We found that the taxpayer owed the use tax on his personal motor vehicles unless a specific exemption applied. Further, we found that no exemption applied to the taxpayer. Specifically, we found that the Act did not prohibit the state from assessing and collecting the use tax. See: Sullivan v. United States, 395 U.S. 169 (1969). The taxpayer concedes that the use tax is due on his personal motor vehicles.

##### 2. Motor Vehicle Excise Tax.

---

<sup>3</sup>Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

The taxpayer's representative stated that absent the provisions of the Act, the motor vehicle excise tax would apply. The only issue for our consideration is one of statutory interpretation.

The Department denied relief in the original determination as to the motor vehicle excise tax based on its interpretation of 50 U.S.C. App. § 511(1) which states, in part:

The term "person in the military service", the term "persons in the military service", and the term "persons in the military service of the United States", as used in this Act [sections 501 to 591 of this Appendix] shall include the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. (Emphasis added.)

We held that where the taxpayer was not detailed for duty to the Army or Navy, the benefits of the Act did not apply. This holding was erroneous.

Our research has disclosed only one case involving the application of the Soldiers' and Sailors' Civil Relief Act to commissioned officers of the U.S. Public Health Service (USPHS).

In Wanner v. Glen Ellen Corp., 373 F.Supp. 983 (Vermont, 1974) the U.S. District Court ruled that the Act applied to a commissioned officer of the USPHS who was detailed to a U.S. Coast Guard facility. The court made this finding despite the fact that the language of § 511(1) does not specifically include officers of the USPHS detailed to the U.S. Coast Guard. The court relied on 42 U.S.C. § 213(a), which reads:

Except as provided in subsection (b) of this section, commissioned officers of the Service [USPHS] and their surviving beneficiaries shall with respect to active service performed by such officers-- . . .

(2) on detail for duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard; . . .

be entitled to all the rights, privileges, immunities, and benefits now or hereafter provided under any law of the United States in the case of commissioned officers of the Army or their surviving beneficiaries on account of active military service, except retired pay and uniform allowance. (Bracketed material added.)

The court reasoned that there was no conflict between the two provisions because "Congress effectively incorporated into section 511 of the Soldiers' and Sailors' Civil Relief Act,

Public Health service officers on detail with the Coast Guard by altering the phrase 'members of the Army' in that section to include persons occupying plaintiff's status." supra at 985-6.

The taxpayer does not rely on 42 U.S.C. § 213(a). Rather, he relies on 42 U.S.C. § 213(e) which states:

Active service of commissioned officers of the Service (USPHS) shall be deemed to be active military service in the Armed Forces of the United States for the purposes of all rights, privileges, immunities, and benefits now or hereafter provided under the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C. et seq.).

Subsection (e) was adopted in 1976 after the decision in Wanner. Using the logic adopted by the court in Wanner, it is clear to us that subsection (e) is also an amendment to the definition of military service found in § 511 of the Act. Subsection (e) extends the application of the Act more directly and succinctly than subsection (a).

Therefore, we conclude that commissioned officers of the USPHS are entitled to the protections of the Act.

Section 574(1) of the Act provides that persons on active military duty are not deemed to have lost their residence or domicile for state tax purposes "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 State, . . . solely by reason of being, so absent." Likewise, § 574(1) provides that property of persons in the active military are not deemed to have situs in a state merely because the owner is stationed there.<sup>4</sup>

The taxpayer has been a commissioned officer of the USPHS during his entire presence here. He was a Montana domiciliary when he arrived in Washington. He has retained that domicile by paying Montana state income taxes and voting in Montana. Therefore, he may not be treated as a resident of Washington for purposes of personal property taxes.

Section 574(2) of the Act provides:

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

---

<sup>4</sup>Provided that the personal property is not used in a trade or business within the state.

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.

The motor vehicle excise tax is an annual tax which is required as part of the licensing process. Therefore, it is a tax as that term is defined in § 574 of the Act.

The taxpayer has licensed his vehicles in the state of his domicile, Montana, continuously since arriving in Washington. In fact, the new vehicle was also licensed in Montana. Therefore, the taxpayer is not required to pay the motor vehicle excise tax on his vehicles while he is a commissioned officer in the USPHS.

Further, RCW 82.44.010(2)(e) excludes from the definition of a motor vehicle, "motor vehicles owned by nonresident military personnel of the armed forces of the United States stationed in the state of Washington provided personnel were also nonresident at the time of their entry into military service." The provisions of the Act determine who are members of the armed forces, and they include the taxpayer. Therefore, under Washington law the motor vehicle excise tax does not apply.

#### DECISION AND DISPOSITION:

The taxpayer's petition is granted as to the motor vehicle excise tax. The notices of motor vehicle excise tax are hereby cancelled. The taxpayer having paid these taxes is entitled to a refund. The taxpayer's file is remanded to the Taxpayer Account Administration Division's Refund Desk for the purpose of issuing the refund. In all other respects Determination No. 93-17 is affirmed.

DATED this 28th day of January, 1994.