

OPINION NO. 68-127**Syllabus:**

Non-resident servicemen are exempt from the \$5 permissive tax imposed by Section 4504.02, Revised Code.

To: Fred Rice, Registrar, Bureau of Motor Vehicles, Columbus, Ohio
By: William B. Saxbe, Attorney General, August 23, 1968

I have before me your request for my opinion as to whether non-resident members of the Armed Forces are exempt from the \$5 permissive tax established under Amended Substitute House Bill No. 919, which amends several sections of the Ohio Revised Code in order to provide additional revenues for counties and municipalities by authorizing a motor vehicle license tax.

The Supreme Court of the United States, in California v. Buzard, 382 U.S. 386 (1965), has held that the Soldiers' and Sailors' Civil Relief Act (50 U.S.C., App. Section 574) exempts a non-resident serviceman from state personal property taxes and also from having to pay motor vehicle licenses, fees, or excises, provided that the license fee, or excise required by his home state, if any, has been paid. The failure of a serviceman to pay his home state's motor vehicle license, fee, or excise entitles the state where he is stationed to exact vehicle license taxes qualifying as licenses, fees, or excises, but not to collect ad valorem taxes which do not qualify. From this holding, it would seem that the servicemen who has paid a like tax in his home state is exempt from the tax imposed by Section 4504.02, Revised Code, whether it be considered a property tax or whether it be considered a license, fee, or excise. However, the court also concluded that motor vehicles were included as personal property covered by the Soldiers' and Sailors' Civil Relief Act. The court further states that if the purpose of the state tax statute is to raise revenue, then the non-resident serviceman is exempt. The court continued:

"The very purpose of § 514 is broadly freeing the non-resident serviceman 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."

In interpreting the California statute, the Supreme Court determined that it was not the intention of Congress to require that servicemen pay some taxes for the use of their vehicles, either to their home state or to the state in which they were stationed, but that the intention was to assure that all servicemen register their vehicles and obtain identifying license plates for the purposes of traffic control, regulation, and general law enforcement.

The Ohio tax in question is more than a license or registration fee, it is a tax to raise revenue for counties and municipalities. It is my opinion, and you are so advised, that non-resident servicemen are exempt from the \$5 permissive tax imposed by Section 4504.02, Revised Code.