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THE HOUSE TRAILER TAX IMPOSED BY §4503.06 R.C. IS A PERSONAL PROPERTY TAX—MEMBERS OF THE ARMED SERVICES, WHO ARE NOT OHIO RESIDENTS AND LIVING IN TRAILERS ARE EXEMPT FROM THE TAX IN §4503.06 R.C., OPINION 2693 OAG 1961 6292-2, G.C.

SYLLABUS:

1. The tax imposed on house trailers by Section 4503.06, Revised Code, is a tax in the nature of a personal property tax rather than an excise tax.
2. By reason of Title 50 U.S.C., Appendix, Section 574, house trailers owned by members of the armed forces who are not residents of Ohio and who are living in this state pursuant to military or naval orders, are exempt from the tax levied by Section 4503.06, Revised Code.

Columbus, Ohio, May 28, 1962

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“Reference is made to recently enacted Section 4503.06 of the Revised Code, entitled, ‘Tax Levy on House Trailers’. It appears that members of the Armed Forces, who are residents of other states but on active duty in this county, maintain that they are exempt from the provisions of this tax on the basis of the exclusion provided for in Title 50 USC Appendix Section 574, ‘Residence for Tax Purposes.’ Reliance is also had on the Opinion of one of your predecessors in 1951 OAG 445. At page 184 of that Opinion, it was held that Section 6292-2, General Code, ‘appears to be in the nature of an excise tax,’ and thus the serviceman is exempt from the trailer tax.

“In considering this same Section of the Code, our Supreme Court, in *Stary vs. City of Brooklyn* (162 OS 120) finds that, ‘It is manifest that the tax prescribed by Section 6292-2 is in the nature of a property tax and not a license fee for the privilege of occupying a house trailer (page 130).

“It is to be noted that the recently enacted Section contains provisions very similar to the General Code Section in that the taxes collected are still distributed among the taxing subdivisions of the county in the same ratio as real estate tax and the tax is in lieu of any general property tax (paragraph J). Upon consideration of Revised Section 4503.03, please advise us:

“1) Whether the tax provided for in this Section is a property tax or an excise tax;

“2) Are members of the Armed Forces who are residents of other states, in active duty in this state, exempted from paying this tax by virtue of Title 50 USC Appendix Section 574.”

Division (A) of Section 4503.06, Revised Code, reads as follows:

“(A) All house trailers in this state on the first day of January, except as otherwise provided, are subject to an annual tax, payable by the owner, for the privilege of using or occupying a house trailer in this state. The tax as levied in this section is for the purpose of supplementing the general revenue funds of the local subdivision in which the house trailer has its situs pursuant to the provisions of this section.”

The term "excise tax" is defined in 38 Ohio Jurisprudence, 718, Taxation, Section 8, as follows:

"An 'excise tax' is one imposed on the performance of an act, the engaging in an occupation, or the enjoyment of a privilege, and the term, it has been said, now has come to have a broader meaning, including every form of taxation not a burden laid directly on persons or property.

"In slightly different language it is said that 'an excise tax is a tax assessed for some privilege or immunity granted to some artificial or natural person, based upon the grant of such privilege or immunity.

"A tax on occupations, or upon persons engaged in a particular occupation, is an excise tax, or tax on the right to carry on trade or to transact business, and not in any sense a tax upon property, or a poll tax."

Referring to the purpose and nature of the tax imposed by present Section 4503.06, Revised Code, 129 Ohio Laws, I stated in Opinion No. 2693, Opinions of the Attorney General for 1961, issued on December 19, 1961, as follows:

"I must confess some questions as to the intended meaning of the words of division (A) of Section 4503.06, *supra*, reading 'for the privilege of using or occupying a house trailer in this state.' One interpretation might be that all house trailers, save those specifically exempted, are subject to the tax, regardless of whether or not they are used or occupied. The theory here would be that the tax is paid for the privilege to use or occupy, not the actual using or occupying. On the other hand, division (C) of the Section refers to the 'situs of a house trailer used or occupied in this state,' thus implying that the house trailer must be used or occupied in order to have a situs. Further, the title of Amended Substitute Senate Bill No. 127, which enacted the new house trailer tax, states the purpose of the bill as follows:

"To provide for the taxation and registration of house trailers used or occupied in this state * * *."

"In view of the language of division (C) and of the title of the bill, I am constrained to conclude that only house trailers which are used or occupied should be taxed."

Former Section 6292-2, General Code, noted in your letter of request, provided a tax on house trailers. The first sentence of that section read:

"A tax is hereby levied on 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 Supreme Court in *Stary, et al v. City of Brooklyn*, 162 Ohio St., 120, in construing said Section 6292-2 held in the fourth paragraph of the syllabus:

“4. The tax required by Section 6292-2, General Code, to be paid by the occupant of a house trailer is not in the nature of a license fee for the privilege of occupying such house trailer.”

(Section 6292-2, General Code, became Section 4503.06, Revised Code, in the code revision of 1953. The section was amended effective January 1, 1962, Amended Substitute Senate Bill No. 127 of the 104th General Assembly, to provide the present house trailer tax.)

I am aware that one of my predecessors in Opinion No. 445, Opinions of the Attorney General for 1951, page 181, ruled that the tax imposed by former Section 6292-2, General Code, was in the nature of an excise tax. However, considering the ruling of the Supreme Court in *Stary v. City of Brooklyn, supra*, and my decision in Opinion No. 2693, *supra*, it would appear that Section 4503.06, Revised Code, imposes a tax upon trailers which are used or occupied; and constitutes a tax in the nature of a personal property tax, rather than an excise tax.

The second question posed by your request necessitates a consideration of whether Title 50 U.S.C. Appendix, Section 574, exempts members of the armed forces who are residents of other states from payment of the tax imposed by present Section 4503.06, Revised Code.

Title 50 U.S.C. Appendix, Section 574, provides:

“(1) For the purposes of taxation 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, posses-

sion, 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, c. 888, Sec. 514, as added Oct. 6, 1942, c. 581, Sec. 17, 56, Stat. 777; July 3, 1944, c. 397, Sec. 1, 58 Stat. 722.)” (Emphasis added)

The Supreme Court of the United States in the case of *Dameron v. Brodhead*, 345 U. S. 322, considered the application of Title 50 U.S.C., Appendix, Section 374, in regard to a tax imposed by the State of Colorado on personal property of servicemen who were resident of a foreign state which did not impose a tax on its residents. The first paragraph of the syllabus of that case reads:

“1. Where a serviceman domiciled in one state is assigned to military duty in another state, the latter state is barred by Sec. 514 of the Soldiers’ and Sailors’ Civil Relief Act of 1940, as amended, from imposing a tax on his intangible personal property temporarily located within its borders—even when the state of his domicile has not taxed such property.”

At pages 325 and 326 of the opinion in the *Dameron* case, it is stated:

“Nor do we see any distinction between those cases and this. Surely, respondent may not rely on the fact that petitioner here is not a business contractor. He is not the less engaged in a function of the Federal Government merely because his relation-

ship is not entirely economic. We have, in fact, generally recognized the especial burdens of required service with the armed forces in discussing the compensating benefits Congress provides. *Le Maistre v. Leffers*, 333 US 1, 92 L ed 429, 68 S Ct. 371; *Boone v. Lightner*, 319 US 561, 87 L ed 1587, 63 S Ct 1223. Cf *Board of County Comrs. v. Seber*, 318 US 705, 87 L ed 1094, 63 S Ct 920, Petitioner's duties are directly related to an activity which the Constitution delegated to the national government, that 'to declare War,' US Const, Art 1, Sec. 8, Cl 11, and 'to raise and support Armies.' *Id.*, cl 12. Since this is so, congressional exercise of a 'necessary and proper' supplementary power such as this statute must be upheld. *Pittman v. Home Owners' Loan Corp.* 308 US 21, 32, 33, 84 L ed 11, 16, 17, 60 S Ct. 15, 124 ALR 1263; *Federal Land Bank v. Bismarck Co.* 314 US 95, 102-104, 86 L ed 65, 71, 72, 62 S Ct 1; *Carson v. Roane-Anderson Co.* supra (342 US at 234). What has been said in no way affects the reserved powers of the states to tax. For this statute merely states that the taxable domicile of servicemen shall not be changed by military assignments. This we think is within the federal power.

"We turn, then, to the interpretation of the statute within the factual confines of this particular case.

"Respondent's theory here also has no merit. It is based on the statements of the legislative history that, for instance, the provision was 'designed to prevent multiple State taxation.' HR Rep No. 2198, 77th Cong, 2d Sess, p. 6. The short answer to the argument that it therefore only applies where multiple taxation is a real possibility is that the plain words of the statute do not say so. In fact, they are much broader: 'personal property shall not be deemed to be located or present in or to have a situs for taxation' in the state of temporary presence in any case. There is no suggestion that the state of original residence must have imposed a property tax. Since the language of the section does not establish a condition to its application, we would not be justified in doing so. For we are shown nothing that indicates that a straightforward application of the language as written would violate or affect the clear purpose of the enactment. See *United States v. Public Utilities Com.* Nos. 205 and 206, decided today (345 US 295, ante, 1020, 73 S Ct 706), and cases cited. In fact, though the evils of potential multiple taxation may have given rise to this provision, Congress appears to have chosen the broader technique of the statute carefully, freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole right of taxation to the state of original residence whether or not that state exercised the right. Congress, manifestly, thought that compulsory presence in a state should

not alter the benefits and burdens of our system of dual federalism during service with the armed forces.”

Thus, under Title 50 U.S.C., Appendix, Section 574, the personal property of nonresident members of the military or naval service shall not be deemed to be located or present in, or to have a situs for taxation in, this state, and the tax imposed by Section 4503.06, *supra*, on house trailers does not, therefore, apply to the house trailers of such persons located in Ohio.

Accordingly, in answer to your specific questions, it is my opinion and you are advised:

1. The tax imposed on house trailers by Section 4503.06, Revised Code, is a tax in the nature of a personal property tax rather than an excise tax.

2. By reason of Title 50 U.S.C., Appendix, Section 574, house trailers owned by members of the armed forces who are not residents of Ohio and who are living in this state pursuant to military or naval orders, are exempt from the tax levied by Section 4503.06, Revised Code.

Respectfully,

MARK McELROY

Attorney General