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OFFICE OF THE ATTORNEY GENERAL



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JAN 29 1986

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Motor Vehicles -- Licenses and
Registration -- Ad Valorem Tax
-- Liens

Motor vehicles on which ad valorem tax lien has not attached purchased by non-resident military personnel stationed in Alabama not subject to ad valorem tax. Motor vehicle subject to a tax lien when purchased by such personnel, tax due if Alabama license plates are purchased, but motor vehicle no longer subject to ad valorem tax so long as owned by such military personnel.

Dear Mr. Head:

In your letter addressed to Charles A. Graddick, Attorney General of the State of Alabama, you request an opinion respecting the following:

1. When a member of the military stationed in Alabama, whose legal residence is in another State buys a used vehicle with an unexpired tag, does the military exemption begin the day of its purchase or does he owe all the back tax when the current tag does expire? Or does he owe from the previous October up to the purchase date?

2. If a used vehicle is purchased out-of-State by a licensed motor vehicle dealer and is brought into the State and placed in the dealer's stock, does the ad valorem tax lien attach the day the vehicle comes into the State or on the date the dealer sells the vehicle?

Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, codified at Title 50 U.S.C. §574, provides, in pertinent part, 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, . . . such person shall not be deemed to have lost a residence or domicile in any State, . . . 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, . . . 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, . . . 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 situs for taxation in such State, . . .

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(2) When used in this section, (a) the term "personal property" shall include tangible and intangible personal 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.

(Emphasis in the original).

In the case of Dameron v. Brodhead, 345 U.S. 322, 73 S.Ct. 721, 97 L.Ed 1041, 32 ALR.2d 612 (1953), the United States Supreme Court held that the above statute prohibits a State from imposing a property tax on the personal property of non-resident personnel in military service irrespective of whether the military person's state of domicile has imposed a like tax.

Citing Dameron, supra, this office, in Quarterly Report of the Attorney General, Volume 81, page 16, held that motor vehicles of non-resident personnel stationed in Alabama in compliance with military or naval orders are not subject to Alabama ad valorem tax even though Alabama license tags for such vehicles are purchased, so long as the military person has paid the license tax required by the State of which the person is a resident.

When a person in Alabama solely as a result of military or naval orders purchases a motor vehicle in Alabama on which an ad valorem tax lien has already attached, this office has held that the ad valorem tax must be paid if an Alabama license plate for such motor vehicle is purchased. Quarterly Report of the Attorney General, Volume 122, page 28. If the motor vehicle purchased by such military personnel from an Alabama dealer is new, then it is not subject to a tax lien at the time of purchase. See: Section 40-12-253(e), Code of Alabama 1975. No lien for Alabama ad valorem tax will attach to such motor vehicle so long as it remains owned by such non-resident military personnel even though Alabama license plates are purchased. See: 50 U.S.C. 514, supra. However, in those instances where a used car is purchased from other than a licensed dealer, a tax lien has attached. When an ad valorem tax lien has attached on a used motor vehicle, such lien remains on such automobile until satisfied by payment of the tax due. This remains true even though such automobile passes through a dealer's inventory during the tax year. See: Quarterly Report of the Attorney General, Volume 104, page 41.

Thus when such non-resident military personnel purchases a motor vehicle in Alabama on which an ad valorem tax lien has already attached, it is my opinion that the tax due must be paid if such personnel elects to purchase Alabama motor vehicle license plates. However, such motor vehicle would not be subject to any ad valorem tax in Alabama for subsequent tax years so long as it remains in the ownership of such military personnel.

Your second question may be answered by reference to §40-12-253(e), Code of Alabama 1975, which provides:

Motor vehicles shall not be included in any assessment (for ad valorem tax) made by any person, firm or corporation under the provisions of Subdivision (4) of §40-11-1, and such motor vehicles shall not be considered an escape property by reason of the failure to include the same in any tax return as of October 1; all motor vehicles shall be assessed and the taxes thereon shall be collected solely as herein provided.

Subdivision (4) of §40-11-1, Code of Alabama 1975 provides in pertinent part:

The subjects of taxation, except as exempted by law, shall be as follows: (4) all stock of goods, wares and merchandise, the assessment to be on the average amount on hand during the preceding year, . . .

Section 40-9-1(23), Code of Alabama 1975 provides:

The following property and persons shall be exempt from ad valorem taxation and none other: (23) all stocks of goods, wares and merchandise described in Subdivision (4) of §40-11-1, as amended.

Therefore, it is clear that §40-12-253(e) exempts motor vehicles from ad valorem tax if listed as being in the inventory of a licensed dealer under the provisions of §40-11-1(4), and that §40-9-1(23) exempts from ad valorem tax that property listed in §40-11-1(4).

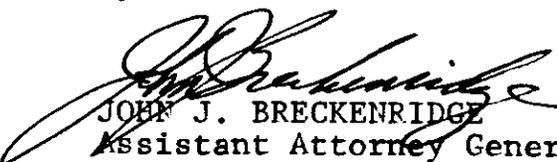
Thus, it is my opinion that, since a used vehicle which was purchased out-of-state would not be subject to Alabama ad valorem tax until it was brought into the State, and since such motor vehicle entered into and became a part of a licensed motor vehicle dealer's stock when it was brought into Alabama, such motor vehicle would be exempt from ad valorem tax, being a part of the inventory of a licensed motor vehicle dealer. The tax lien for ad valorem tax on such vehicle would not attach until it was withdrawn from the inventory of the licensed motor vehicle dealer and sold. Thus the date the lien for ad valorem tax would attach pursuant to §40-1-3, Code of Alabama 1975 for a motor vehicle which was purchased out-of-state and brought into the State and immediately placed into a licensed motor vehicle dealer's stock, would be the date the motor vehicle was withdrawn from the inventory of the licensed motor vehicle dealer and sold.

I hope that the above fully answers your questions and if I can be any further service to you in this matter, please do not hesitate to contact me.

Sincerely,

CHARLES A. GRADDICK
Attorney General

By -


JOHN J. BRECKENRIDGE
Assistant Attorney General

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