



Memorandum

Jim Barga

Date : December 6, 1990

From : Ken McManigal

Subject: Soldiers' and Sailors' Civil Relief Act

This is in response to your inquiry concerning the application of section 574 (50 USCA §574) to past years, specifically, whether the section can be invoked in the current year for a year or years prior to the current year in which personal property of a serviceman or servicewoman was assessed/taxed and the serviceman or servicewoman did not raise the section as a bar to the assessment(s)/tax(es) but paid the tax(es).

Attached in this regard are copies of section 574, with annotations, and section 336, Validity, Purpose, and Construction, of 54 Am Jur 2d, Military And Civil Defense. Section 574 states, in part:


"... For the purposes of taxation in respect of the personal property... of any such person by any State, ...or political subdivision..., 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 a situs for taxation in such State,... or political subdivision,...."

Thus, section 574 is a prohibition against taxation of personal property where the requirements of the section are met, and section 336 of 54 Am Jur 2d construes it the same way:

"... The statute prevents a state from imposing a tax on a serviceman's personal property within the state, irrespective of whether or not the state of his original residence has imposed a like tax...."

Review of the annotated cases following section 574 discloses that the cases pertain to "same year" assessments/taxes, that is, as soon as the state or local government attempted to assess/tax the serviceman's personal property, section 574 was raised and the action filed. Thus, there does not appear to be a decided case on the facts which you have presented. Given the purpose and language of section 574, however, we are of the opinion that

assessment/taxation of personal property is precluded where the requirements of section 574 are met, that section 574 may thus be successfully asserted for a past year or years, and that refund of personal property taxes paid by such a serviceperson for a past year or years is proper.


JKM:jd
3579H

Attachments

cc: Mr. John Hagerty
Mr. Verne Walton
Mr. Bill Minor