

LAW REVIEW¹ 26064

October 2026

SCRA: No State or Local Taxes on Personal Property Just Because You Physically Reside There.

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

4.5—Protection from State/local tax authorities.

10.2—Other Supreme Court cases.

In 1997, the Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated the “Law Review” column in *The Officer*, ROA’s monthly magazine. In 2000, we added the “Law Review” articles to our website, www.roa.org. Starting in September 2001, when 19 terrorists killed almost 3,000 Americans in

¹ I invite the reader’s attention to [Law Center | ROA](#). You will find more than 2,000 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouses’ Protection Act (USFSPA), the title 38 chapters that provide for veterans’ benefits administered by the Department of Veterans Affairs (VA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 80% of the articles, but we are always looking for “other than Sam” articles by other lawyers.

² BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General’s Corps officer and retired in 2007. I am a life member of ROA. I have dealt with USERRA and the Veterans’ Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 44 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. §§ 4301-35). I have also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. As of 5/1/2026, I have come out of retirement and have affiliated with Maher Legal Services in an “of counsel” role. You can reach me by e-mail at samuel@maherlegalservices.com or by telephone at (708) 468-8155.

that terrible Tuesday morning, ROA started adding new articles each month. ROA now has more than 2,300 articles on its website, along with a detailed subject index, to facilitate finding articles about specific topics.³

In April 2009, ROA published Law Review 09017. Because this is an important topic, and because 17 years have passed since we published the article, we are republishing the article now.

LAW REVIEW 09017

April 2009

Supreme Court Upholds Constitutionality of the SSCRA.

By Captain Samuel F. Wright, JAGC, USN (Ret.)

4.5—Protection from State/Local Tax Authorities

10.2—Other Supreme Court Cases

***Dameron v. Brodhead*, 345 U.S. 322 (1953).**

Claiborne Dameron was an Air Force officer on active duty in the late 1940s. Throughout 1948, he was stationed at Lowry Field, near Denver. He lived in an off-base apartment in Denver and commuted to the base.

His household goods (furniture, etc.) were valued at \$460. The City of Denver imposed a personal property tax of \$23.51 on those goods. Dameron paid the tax under protest and then sued for a refund in Colorado state court.

³ I am the author of more than 80% of the published “Law Review” articles, but I am 75 and will not be around forever to author and update these articles. We are always looking for “other than Sam” articles by other lawyers.

The state trial court ruled in his favor, but Denver appealed and the Colorado Supreme Court reversed. *Cass v. Dameron*, 125 Colo. 477, 244 P.2d 1082 (1952). Although the amount of money involved (\$23.51) was trivial, even in 1948 dollars, the U.S. Supreme Court granted certiorari.

At the time, the Soldiers' and Sailors' Civil Relief Act (SSCRA) provided that a member of the Armed Forces on active duty shall not be considered to be a resident or domiciliary of a place where he or she physically resided pursuant to military orders, and that the service member is protected from having to pay state income tax on his or her military salary to the state where he or she physically resides but is not domiciled. The SSCRA provision also provided that the personal (moveable) property of such a service member shall not be considered to have a situs in the state where the member physically resides but is not domiciled.

Mr. Dameron was a domiciliary (legal resident) of the Parish of West Baton Rouge, Louisiana, the place where he had lived before he entered active duty. He found it necessary to rent an apartment in the Denver area only because the Air Force had assigned him to duty at Lowry Field. He voted by absentee ballot in Louisiana. He did not vote or register to vote in Colorado and did not consider Colorado to be his residence.

Denver claimed first that the SSCRA provision did not preclude it from imposing its personal property tax on Mr. Dameron's household goods. The City also argued that the SSCRA was unconstitutional as far as it forbade Denver to tax these household goods. The U.S. Supreme Court forcefully rejected both contentions.

Denver asserted that the SSCRA provision was enacted to protect the service member from double taxation, by the member's home state as well as the state where he or she was stationed. Denver pointed out that the State of Louisiana and its political subdivisions had not sought to tax Mr. Dameron's household goods. Denver claimed that the SSCRA provision did not apply as it was not necessary in that instance to protect Mr. Dameron from double taxation.

The Supreme Court held that the SSCRA provision was both broad and clear. It provided that the service member's personal property was not considered to have a situs in the state where the member physically resided solely due to military orders. Only the member's home state (Louisiana in this instance) was permitted to tax the member's personal property. The fact that the home state had chosen not to tax the property in question did not authorize (according to the Supreme Court) the physical-presence state and locality to tax that property.

Turning to the constitutional argument, the Court held:

The constitutionality of federal legislation exempting servicemen from the substantial burdens of seriate taxation by the states in which they may be required to be present by virtue of their service, cannot be doubted. Generally similar relief has been accorded to other types of federal operations or functions. And we [the Supreme Court] have upheld the validity of such enactments. ...

Nor do we see any distinction between those cases and this. ... We have, in fact, generally recognized the especial burdens of

required service with the armed forces in discussing the compensating benefits Congress provides. Petitioner's [Dameron's] duties are directly related to an activity which the Constitution delegated to the National Government [national defense]. ... Since this is so, congressional exercise of a 'necessary and proper' supplementary power such as this statute [the SSCRA] must be upheld.

Dameron v. Brodhead, 345 U.S. 322, 324-25 (1953).

More recently, the Supreme Court has upheld the constitutionality of the "Solomon Amendment," providing that academic institutions that receive federal funds must give military recruiters the same access to students that other employment recruiters enjoy. *Rumsfeld v. Forum for Academic and Institutional Rights Inc.*, 547 U.S. 47 (2006). The statute at issue there was conditioned upon the receipt of federal funds, but the Supreme Court opinion indicates that the constitutionality would have been upheld even if Congress had imposed the access requirement directly, without regard to the institution's receipt or non-receipt of federal funds.

Please see my Law Review 0612 (May 2006), titled "Supreme Court Gets It Right." That article and all previous ROA Law Review articles are available at [Law Reviews | ROA](#).

In 2003, Congress enacted the Servicemembers Civil Relief Act (SCRA), a long-overdue rewrite of the SSCRA, which can be traced back to 1917. The 2003 enactment broadens and strengthens the protections enjoyed by those who serve in our nation's armed forces, including specifically the protections against state and local tax authorities.

The SSCRA and SCRA, as well as the Uniformed Services Employment and Reemployment Rights Act (USERRA) and its predecessors, have long imposed substantial burdens on state and local governments as well as private persons and entities, including creditors, potential plaintiffs, employers, etc. The burdens placed on these private persons and entities can be significant but are small compared to the immense burdens (including substantial risk of loss of life or limb) voluntarily undertaken by the brave young men and women who enlist in the armed forces, including the Reserve Components.

I have a message for employers, creditors, and others who may contemplate challenging the constitutionality of USERRA or the SCRA. In the immortal words of National Basketball Association great Shaquille O’Neal, “Don’t even think about it.” If you mount such a challenge, you will lose, and you will incur the wrath of patriotic Americans.

Update: December 2015

As explained in Law Review 15115, the editors of the United States Code (U.S.C.) recently eliminated the “Appendix” of title 50 of the Code, and the Servicemembers Civil Relief Act (SCRA) can now be found in title 50 at sections 3901 and following.

End of reprint of Law Review 09017.

Under section 4001 of the SCRA,⁴ a member of the uniformed services on active duty does not automatically gain or lose a domicile (legal

⁴ 50 U.S.C. § 4001.

residence) through presence in or absence from a state or jurisdiction pursuant to military orders. If the service member is not domiciled in the state or jurisdiction where he or she physically resides, due to military orders, that state and its political subdivisions (cities, counties, etc.) are precluded from taxing the service member's military income and his or her personal (moveable) property (vehicle, furniture, etc.). I have placed the entire text of section 4001 at the end of this article.

The SCRA text that is in effect today is not significantly different from the SSCRA text that the Supreme Court construed in 1953, in the *Dameron* case. When Congress enacted the SCRA in 2003, it effectively reaffirmed *Dameron*.

Although 73 years have passed since the Supreme Court established this important principle, some local governments are still trying to tax the personal property (especially vehicles) of active duty service members. When this happens, the United States Department of Justice (DOJ) sues the local government and prevails easily. The best way to bring such a violation to the attention of DOJ is through a military legal assistance office.

California v. Buzard, 382 U.S. 386 (1966).

Captain Lyman E. Buzard, USAF was on active duty and stationed in California. He was domiciled in the State of Washington. While on temporary duty in Alabama, he purchased an Oldsmobile and obtained and displayed Alabama license tags on the vehicle. He drove the vehicle to his California duty station and used it there. He was cited for driving a vehicle in California without California license plates.

He sought to register the vehicle in California and to obtain California license plates, but the California authorities told him that he must pay a fee—2% of the market value of the vehicle. He refused to pay that fee and claimed that the SSCRA meant that California could not require him to pay the fee because he was not domiciled in California and was in the state only because his military duties required his presence there.

Buzard was convicted by the California trial court, and the conviction was affirmed by the intermediate appellate court. The California Supreme Court reversed the conviction.⁵ California asked the United States Supreme Court for certiorari (discretionary review), and the Supreme Court granted certiorari. The United States Supreme Court unanimously affirmed the decision of the California Supreme Court.

In its unanimous decision, the Supreme Court held:

The conclusion that Congress lacked information about the California practice does not preclude a determination that it meant to include such taxes, levied only for revenue, as "licenses, fees, or excises." But in deciding that question in the absence of affirmative indication of congressional meaning, we must consider the overall purpose of § 514 as well as the words of subsection (2)(b). Taxes like the California 2% "license fee" serve primarily a revenue interest, narrower in purpose but no different in kind from taxes raised to defray the general expenses of government. It is from the burden of taxes serving such ends that nonresident servicemen were to be freed, in the main, without regard to whether their home States imposed or sought to collect such taxes from them. *Dameron v. Brodhead*, *supra*. In recent

⁵ *Buzard v. State*, 61 Cal. 2d 833, 395 P.2d 593.

amendments, Congress has reconfirmed this basic purpose. We do not think that subsection (2)(b) should be read as impinging upon it. Rather, reading the Act, as we must, "with an eye friendly to those who dropped their affairs to answer their country's call," *Le Maistre v. Leffers*, 333 U.S. 1, 6, we conclude that subsection (2)(b) refers only to those taxes which are essential to the functioning of the host State's licensing and registration laws in their application to the motor vehicles of nonresident servicemen. Whether the 2% tax is within the reach of the federal immunity is thus not to be tested, as California argues, by whether its inclusion frustrates the administration of California's tax policies. The test, rather, is whether the inclusion would deny the State power to enforce the nonrevenue provisions of state motor vehicle legislation.

Whatever may be the case under the registration and licensing statutes of other States, California authorities have made it clear that the California 2% tax is not imposed as a tax essential to the registration and licensing of the serviceman's motor vehicle. Not only did the California Supreme Court regard the statutes as permitting registration without payment of the tax, but the District Court of Appeal, in another case growing out of this controversy, expressly held that "the registration statute has an entirely different purpose from the license fee statutes, and it is clearly severable from them." *Buzard v. Justice Court*, 198 Cal. App. 2d 814, 817, 18 Cal. Rptr. 348, 349-350. The California Supreme Court also held, in effect, that invalidity of the "license fee" as applied was a valid defense to prosecution under Vehicle Code § 4000. In these circumstances, and since the record is reasonably to be read as showing that Captain Buzard would have

registered his Oldsmobile but for the demand for payment of the 2% tax, the California Supreme Court's reversal of his conviction is *Affirmed*.⁶

Sullivan v. United States, 395 U.S. 169 (1969).

In some cases, an active-duty service member who is stationed in a state but not domiciled there will purchase a vehicle or other item of tangible personal property. In 1969, the Supreme Court held that the SSCRA (now SCRA) does not preclude the state from imposing a one-time sales tax or use tax. The Court unanimously held:

As enacted in 1942, § 514 of the Soldiers' and Sailors' Civil Relief Act provided that for purposes of any state "taxation in respect of any person, or of his [personal] property, income, or gross income," he shall not be deemed to have lost his residence or domicile in his home State or acquired a residence in any other State "solely by reason of being absent [from home] in compliance with military or naval orders." Clarifying language was added in 1944 to provide that for purposes of taxation in respect of personal property, the "personal property shall not be deemed to be located or present in or to have a situs for taxation in such State." Also in 1944 Congress enacted a special subsection for automobiles: servicemen are exempt from "licenses, fees, or excises imposed in respect of motor vehicles or the use thereof" if they have paid such levies in their home States. Finally, in 1962, Congress added the provision that § 514 applies to property in any tax jurisdiction other than the serviceman's home State,

⁶ *California v. Buzard*, 382 U.S. 386, 395-396 (1966).

"regardless of where the owner may be serving" in compliance with military orders."

We think it clear from the face of § 514 that state taxation of *sales* to servicemen is not proscribed. A tax on the privilege of selling or buying property has long been recognized as distinct from a tax on the property itself. And while § 514 refers to taxes "in respect of" rather than "on" personal property, we think it an overly strained construction to say that taxation of the sales transaction is the same as taxation "in respect of" the personal property transferred. Nor does it matter to the imposition of the sales tax that the property "shall not be deemed to be located or present in or to have a situs for taxation" in Connecticut. The incidence of the sales tax is not the property itself or its presence within the State. Rather it is the transfer of title for consideration, a legal act which can be accomplished without the property ever entering the State. Had Congress intended to include sales taxes within the coverage of § 514, it surely would not have employed language so poorly suited to that purpose as "taxation in respect of the personal property."⁷

***United States v. Arlington County*, 326 F.2d 929 (4th Cir. 1963).**

Harold S. Bottomley, Jr. was an active-duty officer in the United States Navy. In the late 1950s, he was domiciled in New Jersey, but he physically resided with his family and his personal property in Arlington, Virginia because the Navy had assigned him to duties in the DC metropolitan area. On 1/4/1959, Bottomley was assigned to sea duty outside Virginia and New Jersey.

⁷ *Sullivan v. United States*, 395 U.S. 169, 173-176 (1969).

Bottomley left his family and his personal property in the Arlington home for 18 months, while he was on sea duty, and then he moved with his family and his personal property to his new duty station in California. Arlington County argued that the personal property lost its exempt character when Bottomley moved out of Virginia on 1/4/1959, and the District Court agreed with that argument.

The United States and Bottomley appealed to the United States Court of Appeals for the 4th Circuit, which reversed the District Court judgment and held:

- The County contends that his personal property ceased to be exempt from taxation when he was transferred pursuant to military orders to a post outside Virginia, but elected to leave his family and personal property in Arlington County for approximately a year and a half after the transfer. The district court agreed, and in so doing we think it read into the Act a limitation which is not there. In its opinion the court said:
- “Under (these) circumstances the personal property in question did not remain in Virginia by virtue of Captain Bottomley's military orders, and it is subject to the same personal property taxes as other personal property located in Virginia as of January 1, 1960.”

As we read the Act it says that the serviceman shall not be deemed to have lost his residence or domicile in his 'home' state if he is absent therefrom solely in compliance with military orders. The Act then adds: with respect to taxation of such person's personal property that property shall not be deemed to be present in or to

have a situs for taxation in such state; i.e., in a state in which he is deemed not to reside or be domiciled.

To put the matter in another way, the Act does not say that the serviceman shall not be deemed to have acquired a domicile in the host state because he was there by virtue of military orders-- it says he shall not be deemed to have lost his domicile in his 'home' state, and the Act further states that the same condition shall exist with respect to his personalty. Thus we think the Act makes it clear that the Congress intended to exempt the serviceman from taxation on his personal property except by his 'home' state. This is the rational conclusion to be drawn from *Dameron v. Brodhead*, 345 U.S. 322, 73 S.Ct. 721, 97 L.Ed. 1041 (1953), where the Supreme Court rejected an attempt by the host state to tax a serviceman's personalty because his 'home' state did not. The argument there being that the purpose of the Act was to prevent multiple taxation and since the 'home' state did not tax, the host state was free to do so. In rejecting the argument the Court said:

“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.” 345 U.S. at 326, 73 S.Ct. at 724, 97 L.Ed. 1041 (Emphasis added.)

On October 9, 1962, while this case was pending, the Congress amended the Act to provide that regardless of where the owner may

be serving, his personal property may not be taxed except in his home state. Legislative history states that the change was made in order to clarify the original intent of the Act that only the 'home' state should have the right to tax. We do not need the change to read the Act as prohibiting the tax in question. The judgment is, therefore, reversed with directions to the court to enter judgment in conformity with this opinion.⁸

***United States v. Illinois*, 387 F. Supp. 638 (E.D. Ill. 1975).**

Chanute Air Force Base (AFB) operated as a training facility in Champaign County, Illinois from 1917 until 1993. In the early 1970s, many of the active-duty personnel assigned to the base lived in mobile homes near the base. Some of those mobile home residents were Illinois domiciliaries, but most were domiciled in other states and were residing in Illinois only because their military duties required that they reside within a reasonable commuting distance of their duties at Chanute.

The Illinois Legislature enacted the Illinois Mobile Home Tax (IMHT). Unlike traditional personal property tax schemes, the IMHT provided for the tax to be computed based upon the size (number of square feet) rather than the value of the item taxed. The IMHT imposed this annual tax on all mobile home residents in Illinois, including active-duty service members who were domiciled in other states but physically residing in Illinois to be close to their military assignments.

On 10/13/1974, the United States (through the Department of Justice) sued Illinois, asserting that imposing this tax on active-duty service

⁸ *United States v. Arlington County*, 326 F.2d 929, 933 (4th Cir. 1963).

members who physically resided in Illinois only because their military duties required their presence in the state violated the SSCRA. The United States sought declaratory and injunctive relief against the State of Illinois and the local tax authorities on behalf of these service members.

The case was assigned to Judge Henry Seiler Wise, the Chief Judge of the Eastern District of Illinois. Judge Wise granted the declaratory and injunctive relief that the United States sought and explained his decision as follows:

Section 514 of the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. § 574, was enacted by Congress to protect members of the armed forces from multiple taxation of their income and personal property in cases where servicemen were stationed outside of their states of legal domicile. The act provides, in pertinent part:

- (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 . . . any other State . . . while, and solely by reason of being, so absent. For the purposes of taxation in respect of the *personal property*. . . of any [serviceman] by any State . . . of which such person is not a resident or in which he is not domiciled, . . . [his] *personal property shall not be deemed to be located or present in or to have a situs for taxation in such State*. . . . Where the owner of

personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, *this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders. . . .*"

50 U.S.C. App. § 574(1).

This language is clear and unambiguous. The act reserves the right to tax a serviceman "in respect of personal property" to his state of legal residence by withdrawing the jurisdictional basis for such taxation from the State in which the serviceman is stationed.

The Supreme Court has directed that the Soldiers' and Sailors' Civil Relief Act be liberally construed "to protect those who have been obliged to drop their own affairs [and] take up the burdens of the nation." *Boone v. Lightner*, 319 U.S. 561, 575, 63 S. Ct. 1223, 1231, 87 L. Ed. 1587 (1943).

In *Dameron v. Brodhead*, 345 U.S. 322, 73 S. Ct. 721, 97 L. Ed. 1041 (1953), the Court rejected the contention that § 514 applied only where the serviceman was in fact being taxed on his personal property by his State of domicile:

There is no suggestion [within § 514] that the state of original residence must have imposed a property tax. . . . 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.*" 345 U.S. at 326, 73 S. Ct. at 723-724.

And in *California v. Buzard*, 382 U.S. 386, 86 S. Ct. 478, 15 L. Ed. 2d 436 (1966), the Supreme Court again explained the Congressional intent behind § 514:

The very purpose of § 514 in broadly freeing the nonresident 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." 382 U.S. at 393, 86 S. Ct. at 483.

Although *Buzard* dealt with the narrow issue of whether a California two per cent license fee was permissible under § 514(2)(b), the Court emphasized that its test for the fee's validity derived from "the overall purpose of § 514 as well as the words of subsection (2)(b). Taxes like the California 2% 'license fee' serve primarily *a revenue interest*, narrower in purpose but no different in kind from taxes raised to defray the general expenses of government. It is from the burden of taxes serving such ends that nonresident servicemen were to be freed" 382 U.S. at 395, 86 S. Ct. at 484.

Thus the Court took into account whether or not the tax was created for the purpose of raising revenue in determining its validity under § 514.

In *Sullivan v. United States*, 395 U.S. 169, 89 S. Ct. 1648, 23 L. Ed. 2d 182 (1969), the Supreme Court drew the line on the scope of protection afforded nonresident servicemen under § 514 by upholding the Connecticut sales and use taxes. The Court held that the sales tax was not a tax "in respect of" personal property; rather, it was viewed as a tax upon a single transaction. The use tax was similarly upheld because it was not an annually recurring tax. The Court reasoned that the wording of § 514 and the legislative history of the provision were "irreconcilable with the proposition that Congress thought the Act would apply to a tax which, like the sales or use tax, (did) not apply annually to all personal property within the State but (was) imposed only once and then only when there (had) been a retail sales transaction." 395 U.S. at 177, 89 S. Ct. at 1653.

From the reach of these decisions, it is imperative that this Court examine the Illinois Mobile Home Privilege Tax most closely to determine whether or not its characteristics place it within the prohibitions of § 514.⁹

***United States v. Onslow County Board of Education*, 728 F.2d 628 (4th Cir. 1984).**

Onslow County, North Carolina includes Camp Lejeune and the adjacent Marine Corps Air Station. Some of the military families resided on the

⁹ *United States v. Illinois*, 387 F. Supp. 638, 641-42 (E.D. Ill. 1975).

military bases, and some resided in off-base houses and apartments. The school district received federal “impact aid” to help defray the cost of educating these military children, but the district was concerned that the amount of impact aid had been reduced.

Accordingly, the school board adopted an ordinance requiring that all “nondomiciliary students” enrolled in the district’s schools be charged tuition. The great majority (92%) of the “nondomiciliary students” were the children of military personnel assigned to Camp Lejeune and the air station.

The United States sued the school district to enjoin the collection of tuition, and the District Court granted the requested injunction. The school district appealed to the United States Court of Appeals for the Fourth Circuit, the federal intermediate appellate court that sits in Richmond, Virginia and hears appeals from district courts in Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

The 4th Circuit cited *Dameron v. Brodhead*, 345 U.S. 322 (1953) in affirming the District Court's injunction. The 4th Circuit concluded its decision as follows:

We do not doubt the [School] Board’s genuine concern over providing quality education for all school-children in Onslow County. Federally connected children and their parents in the military, however, have been caught in a political and fiscal crossfire between the federal, state, and local governments, a battle not of their making. The federal Constitution will not abide this attempt by the Onslow County Board of Education to balance

its school budgets at the expense of those who have undertaken to serve our country in arms.¹⁰

Fatt v. Utah State Tax Commission, 884 P.2d 1233 (Utah 1994).

Benny Fatt was born and raised on the Navajo Reservation in Monument Valley, Utah. He enlisted in the Navy and served on active duty for four years, after which he returned to his home on the reservation. The Utah State Tax Commission insisted that Fatt owed Utah state income tax for the salary that he earned from the Navy in those four years. The Utah Supreme Court firmly and unanimously rejected that argument, as follows:

- Petitioner Benny Fatt petitions this court for a writ of review of a Utah State Tax Commission decision assessing Utah income tax on the pay he received while serving in the United States Navy.

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The parties stipulated to the following facts: Benny Fatt is a member of the Navajo Tribe and lives on the Navajo Reservation in Monument Valley, Utah. He was born and has lived his entire life on the reservation except for four years when he served in the United States Navy in Long Beach, California. He did not abandon his domicile on the reservation while serving in the Navy, and he always intended to return to his home there when his tour of duty was completed. His sole income during his naval service was wages paid to him by the Navy.

Fatt did not file a Utah income tax return to report his naval income for 1989. The Tax Commission determined that his wages were

¹⁰¹⁰ *United States v. Onslow County Board of Education*, 728 F.2d 628, 642 (4th Cir. 1984).

taxable and sent him a deficiency notice for Utah income tax in the amount of \$ 599.36, plus penalty and interest. He petitioned for redetermination of the assessment, and the matter went to formal hearing. The Tax Commission upheld its previous determination that his off-reservation income was taxable by the State. Fatt seeks review.

We afford no deference to the Tax Commission's conclusions of law, reviewing them for correctness only. Utah Code Ann. § 59-1-610(1)(b) (Supp. 1993).

The Tax Commission concedes that it could not impose income tax on any wages Fatt might earn on the reservation. *See McClanahan v. Arizona Tax Comm'n*, 411 U.S. 164, 93 S. Ct. 1257, 36 L. Ed. 2d 129 (1973). There, the Supreme Court held that Indians on the reservation are not subject to state taxation except by virtue of express authority conferred upon the state by an act of Congress. However, the Tax Commission points out, "Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State." *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49, 93 S. Ct. 1267, 1270, 36 L. Ed. 2d 114, 119 (1973); Felix S. Cohen, *Handbook of Federal Indian Law* 416 (Rennard Strickland et al. eds., 1982 ed.).

The Tax Commission maintains that Fatt was "a resident of [both] the *State of Utah* and the Navajo Nation while he was serving in the U.S. Navy" and when he left the reservation he lost his immunity from state taxation. Consequently, the Commission argues, his off-

reservation income could be taxed the same as any other Utah resident's income.

Fatt counters that his naval wages are protected from taxation by the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. § 574 app. (1988), which states in pertinent part:

(1) For the purposes of taxation in respect 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.

(Emphasis added.)

This section preserves the home domicile of members of the armed services even though they may be living in another state. *Sullivan v. United States*, 395 U.S. 169, 173-74, 89 S. Ct. 1648, 1651, 23 L. Ed. 2d 182, 186-87 (1969); see Utah Admin. R. 865-9-21(E) (1994). Section 574 "merely states that the taxable domicile of servicemen shall not be changed by military assignments." *Dameron v. Brodhead*, 345 U.S. 322, 325, 73 S. Ct. 721, 723, 97 L. Ed. 1041, 1045 (1952).

Consequently, the section forecloses the host state from taxing the personal property of members of the armed services. *California v.*

Buzard, 382 U.S. 386, 393, 86 S. Ct. 478, 483, 15 L. Ed. 2d 436, 441-42 (1966).

While section 574 is silent as to whether members of the armed services lose the immunity from taxation which they enjoyed in their home state, we think it is a logical and necessary corollary to retaining their domicile that their tax status there remains undisturbed as well. Anything less than that does not preserve, for purposes of taxation, the status quo of persons entering the armed services. It appears that such preservation is the overriding principle in section 574.

Thus, persons entering the service carry with them the same tax immunity which they previously enjoyed in their home state. We reject the Tax Commission's contention that Fatt's income should be treated the same as income he might have earned off the reservation in nonmilitary employment. That interpretation of the Act would result in Fatt's bearing a burden he would not have borne had he not left the reservation to serve his country. We refuse to give section 574 this narrow reading, which would partially erode the beneficence intended by Congress in its passage of the Act by exposing Fatt's wages to additional tax liability.

This interpretation of the Soldiers' and Sailors' Civil Relief Act comports with general guidelines which have been enunciated by other courts. The Act is to be interpreted liberally and in favor of those in the armed services. *United States v. State of Illinois*, 387 F. Supp. 638, 641 (E.D. Ill. 1975). A court must read the Act "with an eye friendly to those who dropped their affairs to answer their

country's call." *Buzard*, 382 U.S. at 387 (quoting *Le Maistre v. Leffers*, 333 U.S. 1, 6, 68 S. Ct. 371, 373, 92 L. Ed. 429, 433 (1948)).

The judiciary should resolve all reasonable doubts under the Act in favor of military personnel, *Godwin v. Gerling*, 362 Mo. 19, 30, 239 S.W.2d 352, 359 (1951), and construe the Act in light of its "paternal policy" and consistent with its "broad spirit of gratitude." *Patrikes v. J.C.H. Serv. Stations, Inc.*, 180 Misc. 917, 41 N.Y.S.2d 158, 166 (N.Y. City Ct. 1943) (quoting *Benedict v. Higgins*, 165 A.D. 611, 151 N.Y.S. 42, 44 (1915)). Additionally, we have concurred in stating, "The underlying purpose of servicemen's legislation has been to enlarge, not to restrict or cut down the rights and protection afforded those in the military service." *Day v. Jones*, 112 Utah 286, 293, 187 P.2d 181, 184 (1947).

The conclusion we have reached also accords with the general principle that doubtful expressions in legislation are to be resolved in favor of Indians. *McClanahan*, 411 U.S. 164 at 174; see *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766, 105 S. Ct. 2399, 2403, 85 L. Ed. 2d 753, 759 (1985) (confirming that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.").

As the United States Supreme Court has articulated, federal law should be construed generously in favor of Indian sovereignty and federal policy encourages tribal independence. *Cotton Petroleum Corp.*, 490 U.S. at 177; see *White Mt. Apache Tribe v. Bracker*, 448 U.S. 136, 143-44, 100 S. Ct. 2578, 2583-84, 65 L. Ed. 2d 665, 673 (1980); see also Philip P. Frickey, *Congressional Intent, Practical Reasoning, and the Dynamic Nature of Federal Indian Law*, 78 Cal.

L. Rev. 1137, 1141 (1990) ("According to conventional wisdom, the essential point of the canons [of statutory construction] is to encourage narrow construction against invasions of Indian interests and broad construction favoring Indian rights.").

Finally, the Tax Commission contends that Fatt's wages are taxable under the "derived directly test" adopted in *Squire v. Capoeman*, 351 U.S. 1, 9, 76 S. Ct. 611, 616, 100 L. Ed. 883, 890 (1956). It asserts that this test looks at the source of the income earned by an Indian, and inasmuch as Fatt's income stems from the Navy, it is taxable because it is not derived directly from the reservation.

In reality, this test is concerned with the federal taxability of Indian trust lands allocated under the General Allotment Act of 1887, *Squire*, 351 U.S. at 3, and it focuses on the taxability of the income "directly" derived from the land itself. *Saunooke v. United States*, 806 F.2d 1053, 1056 (Fed. Cir. 1986). For example, timber or crops from reservation lands are nontaxable, but the operation of a motel or a restaurant on the land is taxable. *See id.*; *see also Dillon v. United States*, 792 F.2d 849, 856 (9th Cir. 1986). Because the "derived directly test" is useful only in that narrow circumstance, it is inapplicable to the instant case.

In light of the apparent congressional intent in section 574 of the Soldiers' and Sailors' Civil Relief Act and the rules of construction favoring members of the armed services and Indian sovereignty generally, we conclude that the Tax Commission lacks taxing

jurisdiction over the income Fatt earned while in the Navy. We reverse the Tax Commission's assessment.¹¹

The SCRA contains a provision that expressly adopts the result that the Utah Supreme Court reached.

On 12/19/2003, President George W. Bush signed into law the Servicemembers Civil Relief Act (SCRA).¹² The SCRA was a long-overdue update of the Soldiers' and Sailors' Civil Relief Act (SSCRA), which was originally enacted in 1918, during World War I.

The SCRA contains a provision that explicitly adopts the position taken by the Utah Supreme Court in *Fatt v. Utah State Tax Commission*. The SCRA provision is as follows: "An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located."¹³

Tait v. Town of Montville, Connecticut

Lieutenant Commander (LCDR) Rhondie N. Tait is on active duty in the commissioned corps of the United States Public Health Service (PHS), and she served in Connecticut for five years. During that time, she, and her husband, a 90% service-connected disabled veteran of the Marine Corps, physically resided in Connecticut only because LCDR Tait's PHS duties required her presence in the State. LCDR Tait and her husband were domiciled elsewhere, not in Connecticut.

¹¹ *Fatt v. Utah State Tax Commission*, 884 P.2d 1233, 1233-1236 (Utah 1994).

¹² Public Law 108-189, 117 Stat. 2835 (Dec. 19, 2003). The SCRA is presently codified at sections 3901 through 4043 of title 50 of the United States Code. See Law Review 116 (March 2004).

¹³ 50 U.S.C. § 4001(f). See also Law Review 15118 (December 2015).

The tax-assessor of the Town of Montville properly granted LCDR Tait and her husband an exemption from the personal property tax on their vehicle, but then the assessor sought to retroactively cancel the exemption and to collect back taxes and interest. The assessor was apparently confused by the conflict between federal law (the SCRA) and Connecticut law.

The SCRA explicitly applies to all eight of our nation's uniformed services, and that includes the six armed forces¹⁴ plus the two uniformed services that are not armed forces. The Connecticut law refers only to the armed forces. Of course, the federal law must prevail under the Supremacy Clause of the United States Constitution.¹⁵

Through the joint efforts of the military legal assistance office at New London, Connecticut, the Service Members and Veterans Initiative of the United States Department of Justice, and the law firm Maher Legal Services, the Town of Montville was persuaded to revoke the tax bill illegally sent to LCDR Tait, to agree not to violate the SCRA in the future, and to pay attorneys' fees.¹⁶

Department of Justice – Service Members and Veterans Initiative

The United States Department of Justice's Servicemembers and Veterans Initiative is a guidance resource for current and former members of the military, military family members, legal practitioners

¹⁴ The six armed forces are the Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard. 10 U.S.C. § 101(a)(4). The eight uniformed services are the six armed forces plus the commissioned corps of the Public Health Service and the commissioned corps of the National Oceanic & Atmospheric Administration. 10 U.S.C. § 101(a)(5). In other words, all armed forces are uniformed services, but not all uniformed services are armed forces.

¹⁵ United States Constitution, Article VI, Clause 2.

¹⁶ See Law Review 26042 (August 2026) for a detailed discussion of this important case.

who serve the military community, and the general public. Here, service members, veterans, and their family members will find information about the federal laws that protect their rights.¹⁷

Please note that where you vote directly affects your domicile for tax purposes.

In Law Review 21073 (November 2021), Second Lieutenant (now Captain) Lauren Walker and I wrote:

Q: Another client who has consulted me is Lance Corporal Mary Smith. Like Jones, Smith graduated high school, enlisted in the Marine Corps, and left home to report to boot camp in 2019. She was born and raised in Miami, Florida and lived with her parents and siblings in a home in Miami until she departed in July 2019. She is domiciled in Florida, one of the States that has no State income tax. Smith is on active duty and stationed here at 29 Palms. Her local boyfriend is running for the California Legislature in 2022. Smith wants to register to vote here in California so that she can vote for her boyfriend. Can Smith register to vote and vote in California and still maintain her domicile in Florida?

A: No. Every human being, and every service member, has one and only one domicile. Smith cannot be a Californian for voting purposes and a Floridian for tax purposes. If Smith registers to vote or votes in California, she thereby gives up her precious Florida domicile and her SCRA protection from having to pay State income tax. Maryland’s high court has held: “Evidence that a

¹⁷ <https://www.justice.gov/servicemembers/topics>.

person registered to vote or voted is admissible and ordinarily persuasive when the question of domicile is at issue.”¹⁸

Lance Corporal Smith would be well advised to continue voting by absentee ballot in Miami and not to vote or register to vote in California. If she remains on active duty for a full career, maintaining her Florida domicile can save her tens of thousands of dollars in State income tax.

Q: Where can I find a lawyer or law firm that fully understands laws like the Servicemembers Civil Relief Act (SCRA)?

A: As of 5/1/2026, I have come out of retirement and have joined Maher Legal Services in an “of counsel” role. This firm has a great team, headed by attorneys John Maher and Kevin Mikolashek, both of whom have served as Army judge advocates for many years. These attorneys and this firm have a great record, and I am proud to join their team.

Here is a link to the Maher Legal Services website:

<https://www.lawyersdefendingwarriors.com/about>.

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¹⁸ *Comptroller of the Treasury v. Lenderking*, 303 A.2d 402, 405 (Md. 1973); see also *Suglove v. Okla. Tax Comm’n*, 605 P.2d 1315 (Okla. 1979).

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Here is the entire text of section 4001 of title 50 of the United States Code:

(a) Residence or domicile

(1) In general

A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(2) Spouses

A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders.

(3) Election

For any taxable year of the marriage, a servicemember and the spouse of such servicemember may elect to use for purposes of taxation, regardless of the date on which the marriage of the servicemember and the spouse occurred, any of the following:

(A)

The residence or domicile of the servicemember.

(B)

The residence or domicile of the spouse.

(C)

The permanent duty station of the servicemember.

(b) Military service compensation

Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction.

(a) Residence or domicile

(1) In general

A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.

(2) Spouses

A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders.

(3) Election

For any taxable year of the marriage, a servicemember and the spouse of such servicemember may elect to use for purposes of taxation, regardless of the date on which the marriage of the servicemember and the spouse occurred, any of the following:

(A)

The residence or domicile of the servicemember.

(B)

The residence or domicile of the spouse.

(C)

The permanent duty station of the servicemember.

(b) Military service compensation

Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

(c) Income of a military spouse

Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.

(d) Personal property**(1) Relief from personal property taxes**

The personal property of a servicemember or the spouse of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.

(2) Exception for property within member's domicile or residence

This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's or the spouse's domicile or residence.

(3) Exception for property used in trade or business

This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) Relationship to law of State of domicile

Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

(e) Increase of tax liability

A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.

(f) Federal Indian reservations

An Indian servicemember whose legal residence or domicile is a Federal Indian reservation shall be taxed by the laws applicable to Federal Indian reservations and not the State where the reservation is located.

(g) Definitions

For purposes of this section:

(1) Personal property

The term “personal property” means intangible and tangible property (including motor vehicles).

(2) Taxation

The term “taxation” includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember’s State of domicile or residence.

(3) Tax jurisdiction

The term “tax jurisdiction” means a State or a political subdivision of a State of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders.

This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) Relationship to law of State of domicile

Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

50 U.S.C. § 4001 (emphasis added). *See also* Law Review 20055 (June 2020).