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ARIZONA ATTORNEY GENERAL

October 4, 1972

DEPARTMENT OF LAW LETTER OPINION NO. 72-37-L (R-73)

REQUESTED BY: THE HONORABLE RICHARD J. RILEY
Cochise County Attorney

- QUESTIONS:
1. Does a person registering to vote become subject to Arizona income tax?
 2. If so, would military personnel who register to vote also become subject to the Arizona income tax?
 3. Do persons registering to vote become subject to the auto lieu tax, and are they required to register their vehicles in Arizona?
 4. If so, would the same ruling apply to military personnel?
 5. Would a serviceman registering to vote in Arizona waive the benefits under the Sailors and Soldiers Civil Relief Act which apply to nonresident military personnel?
 6. Would persons registering to vote become subject to Arizona's personal property tax?

- ANSWERS:
1. Yes.
 2. Yes.
 3. Yes.
 4. Yes.
 5. See body of opinion.
 6. Yes.

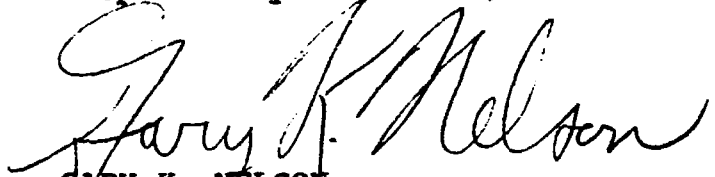
A person registering to vote in Arizona becomes subject to Arizona income tax law. A.R.S. § 43-102 imposes a tax upon the net income of every resident of the state. Under A.R.S. § 43-101(p) resident includes every individual who is in this state for other than a temporary or transitory purpose.

With regard to whether a service man registering to vote in Arizona waives the benefits under the Soldiers and Sailors Relief Act which apply to nonresident military personnel, while each statute must be examined in the light of its legislative and judicial history, it follows from what has been said above that service men registering to vote in Arizona would lose benefits applicable only to nonresident military personnel during the period of their residence in Arizona thereafter.

It is our opinion that persons registering to vote would become subject to Arizona personal property tax. While such persons in military service would not be subject to personal property taxes levied by the State of Arizona if they were in the state solely by reason of military orders, their registration to vote in local elections has indicated their own independent intent to remain in the state. Consequently, the provisions of 50 U.S.C. App. 574 would not be applicable, and such persons would be subject to Arizona personal property taxes.

Although the court reached a contrary conclusion in Woodroffe v. Park Forest, 107 F.Supp. 906, that case is distinguishable from this situation because the election officials had assured Captain Woodroffe that the only requirement for voting in the election was to live in the district for one year and that he would not jeopardize his Pennsylvania domiciliary status by voting in the election. Thus, the element of intent was missing in that case. As the United States Supreme Court noted in Sullivan v. United States, 395 U.S. 169, 89 S.Ct. 1648, 23 L.Ed.2d 182, the major concern of Congress in enacting the Soldiers and Sailors Relief Act was to avoid multiple taxation of soldiers by reason of their military service. Where a soldier has indicated his intent to change his residence by voting in local elections, the new state of residence certainly has the same right to tax him as his prior state of residence. Such taxation by the new state of residence does not result in the multiple tax burdens that Congress was anxious to protect military personnel against.

Respectfully submitted,


GARY K. NELSON
The Attorney General

A.R.S. § 16-101, pertaining to qualifications to vote, provides that every resident of the state is qualified to register to vote if he will have been a resident of the state fifty days and of the county in which he claims the right to vote thirty days next preceding the election.

Although it is not clear that the word "resident" in A.R.S. § 16-101 has the same meaning as it does in A.R.S. § 43-101, exercise of political rights is one of the circumstances usually relied on in establishing the requisite intent. One of the marked evidences of residence is that the person claiming residence identifies himself and all his interest with his new place of abode and exercises the rights and performs the duties of a citizen. Byers v. United States, 141 F.Supp. 927. Thus, the interest that a person shows in community affairs by registering to vote in local elections, indicates that he is in the community for more than a temporary or transitory purpose.

Under the provisions of 50 United States Code App. § 574 a person is not deemed to have acquired residence in a state simply because he is there by reason of military orders. Under the Arizona statutes residence is a matter of intent. Even though military personnel are moved about by order, they may acquire a new residence within the meaning of this term as it is used in the Arizona Income Tax Act. Such a new residence may be acquired by a person in military service if the circumstances show an intent on his part to abandon his old residence and adopt a new one. Ellis v. Southeast Construction Company, 158 F.Supp. 798. Exercising a right to vote in local elections is certainly an indication of such an intent. A person who votes in local elections thereby shows an interest in the community which indicates that he is there for more than a temporary or transient purpose. Accordingly, military personnel who register to vote in local elections become subject to the Arizona income tax.

When a person registers to vote in local elections he indicates that it is his intent to be a resident of Arizona. Thus, he is no longer in the state solely by reason of military orders. He is now in Arizona because of the additional reason that he has elected to make Arizona his residence. Accordingly, a person who registers to vote in local elections is subject to the auto lieu tax and is required to register his vehicles in Arizona, regardless of whether or not he is in the military service.