



COMMONWEALTH OF VIRGINIA

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November 16, 2009

The Honorable L. Scott Lingamfelter
Member, House of Delegates
5420 Lomax Way
Woodbridge, Virginia 22193

Dear Delegate Lingamfelter:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You ask whether a constitutional amendment is required to provide a personal property tax exemption for the nonmilitary spouse of a nonresident military servicemember for a motor vehicle that is jointly titled in both names. You also ask whether a constitutional amendment is necessary to provide such an exemption for a vehicle leased by the nonmilitary spouse and the nonresident servicemember.

Response

It is my opinion that a constitutional amendment is not required to authorize the federal exemption for a jointly owned motor vehicle of a nonresident military servicemember and his nonmilitary spouse. It further is my opinion that a constitutional amendment is not required for a vehicle that is leased jointly by such servicemember and his spouse because they are not considered to be the owners of a leased vehicle.

Background

You relate that servicemembers are advised to title motor vehicles jointly with their spouses to avoid probate issues in the event of the servicemember's death. You note that this practice permits easier renewal of annual registrations. In addition, you advise that most servicemembers purchase vehicles on credit and title them jointly with their nonmilitary spouses. Once titled jointly, you note that numerous families discover that financial institutions will not remove the name of the nonmilitary spouse from the title as long as a lien exists and is noted on the vehicle's title. As a result, the vehicle is not titled solely in the servicemember's name, and the servicemember is unable to take advantage of the personal property tax exemption in Virginia.

Applicable Law and Discussion

Under 50 U.S.C. app. § 571(c)(1) of the Servicemembers Civil Relief Act of 2003¹ (“Servicemembers Act”) “[t]he personal property 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.” Attorneys General consistently have concluded that a Virginia locality cannot tax motor vehicles owned by nondomiciliary servicemembers who are stationed by the military in the Commonwealth.² Further, 50 U.S.C. app. § 561(e) of the Servicemembers Act provides that it applies to all forms of “property described in subsection (a)^[3] owned individually by a servicemember or jointly by a servicemember and a dependent or dependents.” I note that a primary reason for Congress enacting § 561(e) was to “add an additional subsection clearly stating that this section applies to joint ownership of all forms of personal and real property by a servicemember and his or her dependents.”⁴ Furthermore, Congress has stated the purpose of § 561(e):

This would relieve servicemembers from having to title property solely in their own name to ensure the protections of this section in a state where they live pursuant to military orders but are not state residents. Titling property solely in the servicemember’s name for tax purposes also may create probate difficulties for servicemembers or their heirs if property is not jointly titled upon death. However, the most common difficulty is in the area of automobile titling. Separate titling of automobiles by servicemembers to avail themselves of the protections of the current provision, when they would prefer joint titling, undercuts the overall SSCRA policy objective of protecting the civil legal rights of servicemembers and their dependents.^[5]

The Supremacy Clause of the Constitution of the United States provides that federal laws and treaties “shall be the supreme Law of the Land.”⁶ By virtue of this clause, federal law supersedes conflicting state law.⁷ The preemption of state law by federal law may occur by express statutory language or other clear indication that Congress intended to legislate exclusively in the area.⁸ Even if Congress does not intend the enactment of a federal statutory scheme to preempt state law completely, congressional enactments in the same field override state laws with which they conflict.⁹ It is necessary

¹ See Pub. L. No. 108-109, 117 Stat. 2835.

² Op. Va. Att’y Gen: 1983-1984 at 393, 393; 1965-1966 at 196 (interpreting 50 U.S.C. app. § 574, predecessor to 50 U.S.C. app. § 571(c)(1)); *see also* 1981-1982 Op. Va. Att’y Gen. 370 (interpreting 50 U.S.C. app. § 574 and concluding that mobile home belonging to nondomiciliary serviceman is not subject to personal property tax).

³ Subsection (a) of § 561 lists a servicemember’s “personal property (including motor vehicles).”

⁴ See H.R. REP. NO. 108-81, at 42, *as reprinted in* 2004 U.S.C.C.A.N. 2367, 2385.

⁵ *Id.*

⁶ U.S. Const. art. VI, cl. 2.

⁷ See *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 210-11 (1824); *see also* *Savage v. Jones*, 225 U.S. 501, 533 (1912) (noting that state law that conflicts with federal law must yield to federal law).

⁸ See *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977); Op. Va. Att’y Gen.: 1984-1985 at 280, 282; 1973-1974 at 284, 285.

⁹ See *Jones*, 430 U.S. at 525-26 (citing U.S. CONST. art. VI).

“to determine whether, under the circumstances of this particular case, [the State’s] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”¹⁰ This inquiry requires consideration of the relationship between state and federal laws as they are interpreted and applied, not merely as they are written.¹¹

Congress has expressed that its purpose in enacting the Servicemembers Act is “to provide for, strengthen, and expedite the national defense through protection extended by this Act ... to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation.”¹² Therefore, it is my opinion that the federal exemption, as expressed in 50 U.S.C. app. §§ 561(e) and 571(c)(1) of the Servicemembers Act, preempts the laws of the Commonwealth related to taxation of motor vehicles owned by nonresident servicemembers and their nonmilitary spouses.

You also ask about vehicles jointly leased by a nonresident servicemember and his nonmilitary spouse. Under the definitions set forth in § 46.2-100 of the *Virginia Code*, the lessor of a motor vehicle is deemed to be the owner of a leased motor vehicle, and as such, is liable for the payment of personal property tax thereon. A prior opinion setting forth this conclusion remains valid.¹³ Therefore, a constitutional amendment is not required since the lessor, *i.e.*, the owner of a leased vehicle, is not the servicemember or his nonmilitary spouse.

Conclusion

Accordingly, it is my opinion that a constitutional amendment is not required to authorize the federal exemption for a jointly owned motor vehicle of a nonresident military servicemember and his nonmilitary spouse. It further is my opinion that a constitutional amendment is not required for a vehicle that is leased jointly by such servicemember and his spouse because they are not considered to be the owners of a leased vehicle.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'W C Mims', with a stylized flourish at the end.

William C. Mims

1:213; 1:941/09-077

¹⁰ *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); *accord* *De Canas v. Bica*, 424 U.S. 351, 363 (1976); *Perez v. Campbell*, 402 U.S. 637, 649 (1971).

¹¹ *De Canas*, 424 U.S. at 363-65; *Swift & Co. v. Wickham*, 230 F. Supp. 398, 408 (S.D.N.Y. 1964), *appeal dismissed*, 382 U.S. 111 (1965), *aff'd on further consideration*, 364 F.2d 241 (2d Cir. 1966), *cert. denied*, 385 U.S. 1036 (1967).

¹² 50 U.S.C.S. app. § 502(1) (LexisNexis Supp. 2009).

¹³ 1967-1968 Op. Va. Att’y Gen. 274, 274 (interpreting § 46.1-1, predecessor to § 46.2-100). “Lessor (owner): The person or entity offering the use of a vehicle for twelve months or more in exchange for compensation.” Va. Dep’t of Motor Vehicles, *Leasing a Vehicle*, <http://www.dmv.virginia.gov/webdoc/citizen/vehicles/leased.asp> (last visited Nov. 9, 2009). “The leased vehicle will be titled in the name of the lessor (owner).” *Id.*