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STATE TAX LIABILITY OF SERVICEMEN AND THEIR DEPENDENTS

JOHN E. FLICK*

I

INTRODUCTION

In recent years, state taxing authorities, in order to meet the constantly rising costs of government, have sought additional sources of revenue.¹ As a consequence, service personnel and their dependents have become acutely aware of these quests for additional revenue, particularly as they have been affected by state income and personal property taxes.²

With the advent of World War II, millions of service personnel, because of frequent moves from state to state, became subject to the income³ and personal property⁴ tax laws of more than one state in a

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¹State Tax News, 37 Taxes 554 (1959).

²See, e.g., Georgia revenue regulations in which servicemen are singled out as a potential source of revenue. Ga. Rev. Reg. § 92-3002(i), CCH Inc., State Tax Rep. Ga. § 10-062 (1956); see Army Times, December 4, 1963, p. 4, col. 1.

³See Buck Act, 61 Stat. 641 (1940), 4 U.S.C. § 106 (1958) which provides that "No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein having jurisdiction to levy such a tax, by reason of his residency within a Federal area or receiving income from such transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State and to the same extent and with the same effect as though such area was not a Federal area"; Public Salary Act, 53 Stat. 575 (1939), 5 U.S.C. § 84a (1958), which provides that "The United States hereby consents to the taxation of compensation, received after December 31, 1938, for personal services as an officer or employee of the United States, any territory or possession or political subdivision thereof, the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, by any duly constituted taxing authority having jurisdiction to tax such compensation, if such taxation does not discriminate against such officer or employee because of the source of such compensation"; Graves v. New York ex rel. O'Keefe, 306 U.S. 466 (1939).

⁴"It has become universally recognized that tangible personal property may be taxed in the state where it has an actual situs—where it is physically located. . . . The modern rule is that the actual situs of visible tangible property and not the domicile of the owner determines the place of taxation." 50 Am. Jur. Taxation § 452 (1939); "The general rule is that the situs of intangible personal property for the purpose of property taxation is at the domicile of the owner. But where

single year.⁵ In recognition of the emergent problem of multiple taxation, and in consonance with a tradition of assisting military personnel with their legal affairs,⁶ Congress enacted section 514⁷ of the Soldiers' and Sailors' Civil Relief Act of 1940.⁸ As amended in 1944, this statute provides for the exemption of the serviceman's military pay and personal property from taxation in the state of his temporary residence.⁹ The authority of the serviceman's domiciliary state to tax has not been altered by this statute, however.¹⁰ Although section 514 brought a large measure of tax relief, it provides no protection for the serviceman's dependents and still permits multiple taxation of certain categories of his income and personal property.¹¹

Since the end of World War II, it has been necessary for the United States to maintain a large military force. Because of existing world conditions, it appears that such a force will be maintained during the foreseeable future; and that members of this force and their dependents will necessarily continue to move from state to state pursuant to military orders. It appears equally certain that state taxing authorities, in seeking every available source of revenue, will continue their efforts to tax the income and personal property of these transient servicemen and their dependents.

Against this background, the income and personal property tax laws of a selected group of states, in which large concentrations of military personnel are usually present, will be examined.¹² An effort will be made to determine the application of these laws to the serviceman and his dependents; to consider the effect of section 514 upon the ap-

intangible personal property has in fact a situs elsewhere than at the domicile of its owner, it may be taxed in the jurisdiction of the situs." 51 Am. Jur. Taxation § 463 (1939).

⁵Hearings on H.R. 7029 Before a Subcommittee of the House Committee on Military Affairs, 77th Cong. 2d Sess. 28 (1942).

⁶See Skilton, *The Soldiers' and Sailors' Civil Relief Act of 1940 and The Amendments of 1942*, 91 U. Pa. L. Rev. 177, 178 (1942), for a short history of legislation passed during the Civil War and World War I to assist servicemen with their legal problems.

⁷Section 17, 56 Stat. 777 (1942), 50 U.S.C. App. § 754 (1958), hereinafter referred to as § 514.

⁸54 Stat. 1178 (1940), 50 U.S.C. App. § 501 (1958). This act will remain in effect until terminated by subsequent act of Congress, § 14, 62 Stat. 623 (1948), as amended § 1(11), 64 Stat. 1074 (1950), 50 U.S.C. App. § 464 (1958).

⁹Section 1, 58 Stat. 722 (1944), 50 U.S.C. App. § 574 (1958).

¹⁰*Dameron v. Brodhead*, 345 U.S. 322, 326 (1953).

¹¹See discussions regarding categories of income and personal property which are not exempt from state taxation after n.34 and n.81 infra.

¹²Alabama, California, Colorado, Georgia, Kansas, Massachusetts, New York, North Carolina, Oklahoma and Virginia.

plication of these laws; and to identify areas of existing or potential conflict between the interests of the taxing state and the interests of the serviceman and his dependents.

Recommendations for changes in existing state and federal laws will be made. These recommendations will reflect an attempt to balance the interests of the taxing state against the interests of the serviceman and his dependents. The duty of the serviceman to pay taxes will be stressed to the same extent as his right to be exempt from taxation under certain circumstances.

II

APPLICATION OF STATE TAX LAWS TO SERVICEMEN AND THEIR DEPENDENTS

A. *Income Tax*

1. *Authority of the states to tax income.*

It is well recognized that a state may constitutionally tax a resident or domiciliary on income earned from sources within the state as well as on income earned from sources outside the state.¹³ It is also recognized that a state may impose a tax on the income of a nonresident derived from property owned within the state, or from any business, trade or profession carried on within the state;¹⁴ but a state does not have the constitutional authority to impose a tax on the income of a nonresident derived from business, property or services performed outside the state.¹⁵ Although the United States Supreme Court has not defined the limits of a state's authority to declare a non-domiciliary to be a *resident* for income tax purposes, it is believed that any equitable basis, such as having a place of abode within a state or spending a substantial period of time within such state will suffice.¹⁶

Since there is no constitutional bar on the ground of double taxation,¹⁷ it is apparent that in a particular case, income taxes, under the

¹³Guaranty Trust Co. v. Virginia, 305 U.S. 19 (1938); Lawrence v. State Tax Commission, 286 U.S. 276 (1931).

¹⁴New York ex rel. Whitney v. Graves, 299 U.S. 366 (1937).

¹⁵Newport Co. v. Tax Commission, 219 Wis. 293, 261 N.W. 884 (1935), cert. denied, 297 U.S. 720 (1936); People ex rel. Stafford v. Travis, 231 N.Y. 339, 132 N.E. 109 (1921); see also Hans Rees' Sons v. North Carolina, 283 U.S. 123 (1931).

¹⁶People ex rel. Ryan v. Lynch, 233 N.Y. App. Div. 884, 186 N.E. 28 (1933); see Bowring v. Bowers, 24 F.2d 918 (2d Cir. 1928), cert. denied, 277 U.S. 608 (1928).

¹⁷Guaranty Trust Co. v. Virginia, 305 U.S. 19 (1938); Shaffer v. Carter, 252 U.S. 37 (1920).

foregoing principles, can be imposed by both the state of domicile and the state wherein the income is earned.

2. *Application of state income tax laws to servicemen and their dependents living outside the state of domicile.*

From a consideration of the general limits of state taxing authority, it is appropriate to proceed to a consideration of the income tax laws of particular states as they apply to the serviceman and his dependents. Income from wages, business and intangible personal property will be considered.

In analyzing the tax laws of ten states,¹⁸ it has been found that each of these states exercises its full constitutional authority by imposing an income tax upon the entire income of every resident and upon the income of every nonresident which is derived from sources within the state.¹⁹ Since a resident can be taxed upon his entire income whether earned from sources within or without a state, it is of vital importance in the case of a serviceman and his dependents who have income from sources in different states to know whether they are considered to be residents or nonresidents for purposes of income tax.

The definition of the term *resident* varies somewhat from state to state but, except in states such as Massachusetts,²⁰ where the term resident is equated to the term domicile, it ordinarily includes persons who are domiciled in the state as well as persons who have lived within the state for a substantial period of time on other than a transitory basis. For example, the Virginia income tax statute provides that the term *resident* means every person domiciled in the state and every other person who, for more than six months of the taxable year, maintains his place of abode within the state.²¹ Thus, a serviceman or a dependent, who is not domiciled in Virginia, but who maintains a home there for more than six months would appear to come within the statutory definition.

¹⁸Alabama, California, Colorado, Georgia, Kansas, Massachusetts, New York, North Carolina, Oklahoma and Virginia.

¹⁹Ala. Code tit. 51 § 373 (1940); Cal. Rev. & Tax. § 17041; Colo. Rev. Stat. Ann. § 138-1-2 (1953); Ga. Code § 92-3101 (1933); Kan. Gen. Stat. Ann. § 79-3203 (1949); Mass. Gen. Laws Ann. ch. 62 § 5A (1958); N.Y. Tax Laws § 611, 631; N.C. Gen. Stat. § 105-133 (1958); Okla. Stat. tit. 68 § 876 (1951); Va. Code Ann. § 57-101 (1950).

²⁰Mass. Gen. Laws Ann. ch. 62 § 5A (1958).

²¹Va. Code Ann. § 58-77 (1950).

a. *The serviceman.*

(1) *Military pay.*

The states have, however, taken cognizance of Section 514 which provides two grounds for exempting the serviceman's military pay from the income tax of the state of temporary residence.²² First, it is recognized that a serviceman, because of the operation of Section 514, has neither a *domicile* nor a *residence* in such state and thus is not taxable as a resident within the meaning of the state income tax statutes; and second, his compensation from military service is considered not to be from sources within the state of temporary residence.²³ Therefore, he, as a nonresident, cannot be taxed upon it since a state does not have the authority to tax a nonresident on income not derived from sources within the state.²⁴

A problem may arise with respect to the taxation of a serviceman's military pay in the case of a serviceman who is domiciled in a community property state and stationed in another state. Under the community property laws of the state of the serviceman's domicile, the salary of a spouse is generally considered to be community property²⁵ in which the other spouse has a one half interest.²⁶ On this basis, it would appear that taxing authorities of the state wherein the serviceman and his wife are stationed, could, in accordance with the law of the state of domicile,²⁷ assert that one half of the serviceman's military pay is income of the wife and to this extent is not exempt from income tax under the provisions of section 514. If the wife is considered to be a resident for tax purposes, within the statutory definition of the state where she is residing, it would appear that such income would be taxable since residents are taxable on all income whether earned from sources within or without the state of residence.

²²E.g., Ala. Dept. Rev. Reg. § 373.5, 1 CCH, State Tax Rep. Ala. § 11-599 (1957); Cal. FTB Reg. §§ 17013-17015(h), 1 CCH Inc., State Tax Rep. Cal. § 15075 (1960); Colo. Director Rev. Reg., Addenda Art. 1, 1 CCH Inc., State Tax Rep. Colo., § 10-222 (1959); Ga. Rev. Reg. § 92-3002(c), COH Inc., State Tax Rep. Ga., § 10-061 (1956); Mass. Tax Reg. § 4, CCH Inc., State Tax Rep. Mass. § 15-803B (1958); N.Y. Tax Reg. § 632e, 1 CCH Inc., State Tax Rep. § 17-405 N.Y. (1957).

²³Section 17, 56 Stat. 777 (1942), as amended, § 1, 58 Stat. 722 (1944), 50 U.S.C. App. 574 (1958).

²⁴Cases cited note 59, supra.

²⁵1 de Funiak, Principles of Community Property 163 (1943).

²⁶Horton v. Horton, 115 Cal. App. 2d 360, 252 P.2d 397 (1953); 1 de Funiak, Principles of Community Property 302 (1943).

²⁷Vining v. Smith, 213 Miss. 850, 58 So. 2d 34 (1952); Commonwealth v. Terjen, 197 Va. 596, 90 S.E.2d 801 (1956); 1 de Funiak, Principles of Community Property 252 (1943).

If, however, the wife is considered to be a nonresident, it is arguable that even though she has one half interest in her husband's military pay, such pay, under the provisions of section 514 is not considered to be from sources within that state,²⁸ and is not, therefore, taxable.

An analysis of state tax statutes, however, leads to the conclusion that, with the exception of states where the term residence is equated to domicile, the definition of the term residence is broad enough to encompass the wife of a serviceman.²⁹ Based upon the premise that she is a resident, a strong argument can be made for the proposition that she is taxable on all income regardless of its source, including one half of her husband's military pay.

It may be that the various states have not attempted to tax one half of the serviceman's military pay under this theory because of an existing practice in community property states which permits a spouse to transfer his or her interest in income or property to the other spouse with the result that the property or income so transferred is the separate property of the recipient.³⁰ Thus, the wife of a serviceman, where they are domiciled in a community property state, could apparently avoid such a tax by entering into an agreement with her husband whereby the wife agrees that her interest in the husband's military pay is transferred to the husband. After such a transfer, the income, being entirely that of the serviceman, would be exempt under section 514. It seems clear that such an agreement would be recognized by the state wherein these persons are stationed since the established conflicts of law rule provides that the nature and extent of ownership in community property is determined in accordance with the law of the community property state wherein the taxpayers are domiciled.³¹ Although outside the scope of this paper, it is believed important to observe that an agreement such as this, between a serviceman and his wife, might well result in the avoidance of income tax by the state of temporary residence, but at the same time create other legal problems not contemplated in the agreement.³²

²⁸Section 17, 56 Stat. 777 (1942), as amended, § 1, 58 Stat. 722 (1944), 50 U.S.C. App. 574 (1958).

²⁹E.g., Va. Code Ann. § 58-77 (1950).

³⁰*Helvering v. Hickman*, 70 F.2d 985 (9th Cir. 1934); *Pacific Mutual Life Insurance Co. v. Cleverdon*, 16 Cal. 2d 788, 108 P.2d 405 (1941); *Wren v. Wren*, 100 Cal. 276, 34 Pac. 775 (1893); 1 de Funiak, *Principles of Community Property* 400 (1943).

³¹*Vining v. Smith*, 213 Miss. 850, 58 So. 2d 34 (1952); *Commonwealth v. Terjen*, 197 Va. 596, 90 S.E.2d 801 (1956); 1 de Funiak, *Principles of Community Property*, 252 (1943).

³²*See Sidebottom v. Robinson*, 216 F.2d 816 (9th Cir. 1954) regarding possible effect of wife's rights in property purchased with such separate earnings upon

Because of the undesirable consequences which may flow from such an agreement, it is important to determine whether a state has the authority to tax under this community property theory in the absence of an agreement between husband and wife. It is believed that the basic argument against such a theory of taxation is reflected in the legislative history of section 514 which indicates that *military pay* is a separate and unique classification of income, to be taxed only by the state of domicile of the serviceman, even though the technical basis for taxing such income may exist in another state.³³ Dictum in *Dameron v. Brodhead* indicates that the Supreme Court, in recognition of this Congressional intent, would probably strike down an attempt to tax military pay on this theory.³⁴

(2) *Non-Military income.*

In addition to his military pay, the serviceman frequently earns non-military wages during his off-duty time. In considering his tax liability on such income, it is to be remembered that by operation of Section 514, the serviceman is not a resident for tax purposes in any state except his state of domicile.³⁵ When present in any other state, he is, by operation of law, therefore, a nonresident for tax purposes. But since section 514 provides no exemption from taxation on non-military income, the serviceman, like any other nonresident, is liable for income tax to the state of temporary residence upon all such wages resulting from services performed within the state.³⁶ Likewise, the nonresident serviceman, like any other nonresident, is not taxable by the state of temporary residence on income which is derived from services performed outside that state.³⁷ For example, it is clear that a soldier, domiciled in Pennsylvania, living in Columbus, Georgia, pursuant to military orders, and working after hours for a private business in Phenix City, Alabama, would be liable for Alabama

death of husband; likewise, the amount of estate taxes upon husband's estate could be affected by such an agreement, *United States v. Goodyear*, 99 F.2d 523 (9th Cir. 1938), a gift of property under such an agreement may result in the imposition of a gift tax, *Commonwealth v. Terjen*, 197 Va. 596, 90 S.E. 2d 801 (1956); such an agreement could also affect the division of property in the event of divorce, 1 de Funiak, *Principles of Community Property* 643-50 (1943).

³³H.R. Rep. No. 1514, 78th Cong. 2d Sess. 1-2 (1944); S. Rep. No. 959, 78th Cong., 2d Sess. 1-2 (1944).

³⁴345 U.S. 322, 326 (1952).

³⁵Statute cited note 23, supra.

³⁶Case cited note 14, supra.

³⁷Cases cited note 15, supra.

state income tax on the income from his off-duty job but would not be liable to the State of Georgia.³⁸

Since section 514 does not exempt business income of the serviceman from taxation, it is clear that income of this nature, which is derived from the operation of a business within the state of temporary residence, is taxable by that state whereas income which the nonresident serviceman derives from a business operated outside the state of his temporary residence is not taxable by that state.³⁹ Thus, under the same principles which apply to the serviceman's non-military wages, income which the serviceman receives, for example, from the operation of a motel in the state of temporary residence is taxable by that state since it is derived from sources within the state. On the other hand, if the nonresident serviceman derives income from a motel which is located in a state other than the one in which he is temporarily residing, he is not liable for income tax by the state of temporary residence since this income is derived from sources outside that state.

Another source of income for the serviceman is from intangible personal property such as stocks, bonds and bank deposits. It is well established in most jurisdictions that the situs of such intangibles follows the domicile of the owner except where they constitute the stock in trade, or are used in connection with a business.⁴⁰ Under this exception, the intangible personal property acquires a business situs in the state where the commercial enterprise exists and is taxable by that state.

Thus, in the case of a non-domiciliary serviceman, it appears clear under the foregoing rule that income which is derived from his stocks, bonds and other intangibles, unless they are used in or become a part of a commercial enterprise, is not subject to income tax by the state of temporary residence. Since the tax basis—domicile—results in his exemption from such tax by the state of temporary residence, the serviceman need not invoke the exemption provisions of section 514 as they pertain to intangibles.

If, however, intangibles of the non-domiciliary serviceman become part of the stock in trade of a commercial enterprise within the state of temporary residence, it is clear that they would be considered to have a business situs within that state. Therefore, the income from

³⁸Ala. Code tit. 51 § 373 (1940); Ga. Code § 92-3101 (1933).

³⁹E.g., Cal. Rev. & Tax §§ 17041, 17071; N.C. Gen. Stat. §§ 105-133, 105-141 (1958).

⁴⁰*Suttles v. Illionis Glass Co.*, 206 Ga. 849, 59 S.E.2d 392 (1950); *Hunt v. Eddy*, 150 Kan. 1, 90 P.2d 1 (1939); *Goldman v. Tax Commissioner*, 230 Mass. 554, 120 N.E. 74 (1918).

them would be taxable by the state of temporary residence wherein the business situs is found to exist. Although there are no reported cases on this particular point, a literal reading of section 514 indicates that nothing in that section will prevent the state of temporary residence from taxing the personal property of a serviceman which is used in a trade or business in that state.⁴¹

b. *The Serviceman's Dependents.*

From a consideration of the serviceman's income tax liability in the state of temporary residence, it is appropriate to consider next the corresponding tax liabilities of his dependents who accompany him as he moves from state to state pursuant to military orders.

The wages of a serviceman's non-domiciliary wife or child, which are derived from services performed within the state where they are residing, as well as income from a business which they operate within the state, are clearly taxable therein. This is true since, in each case, the income is derived from sources within the state.⁴² If the non-domiciliary dependent earns wages from services performed or receives income from a business operated outside this state, income tax liability depends upon the residency status of the dependent. If considered to be a resident, the dependent is taxable on this income since residents are taxable on all income from within or without the taxing state;⁴³ but if considered a nonresident, the dependent is not taxable on this income, which in each instance, is derived from sources without the state. Residency status is, therefore, of vital importance to a non-domiciliary dependent who has income from outside the state where he is residing.

An analysis of state tax statutes and regulations of ten states⁴⁴ shows that the residency status of dependents for income tax purposes is not clear. In Colorado, for example, a resident is one who is domiciled in Colorado or one who maintains a permanent place of abode within the state and spends in the aggregate more than six months of the taxable year within the state.⁴⁵ Permanent place of abode has been held to mean the maintenance of a home or apartment in Colorado.⁴⁶ A non-

⁴¹Statute cited note 23, supra.

⁴²Case cited note 14, supra.

⁴³Cases cited note 13, supra.

⁴⁴States cited note 18, supra.

⁴⁵Colo. Director Rev. Reg. Art. 1(8), 1 CCH Inc., State Tax Rep. Colo. § 10-079 (1959).

⁴⁶Ibid.

resident is any person who is not a resident, as defined above, or who is qualified as a nonresident under a special statutory provision. The special statute provides that bona fide residents of states other than Colorado, who desire to establish a temporary residence in Colorado, may make application to the Director of Revenue for a Certificate of Non-Residence.⁴⁷ The Director may refuse to issue this certificate or revoke it after issuance if he determines that the residence of the individual involved is in fact not temporary. Although Colorado, as in the case of the other states considered, has not promulgated general regulations regarding the residency status of dependents, it would appear that the doubt can be expeditiously resolved in Colorado by having the dependent apply to the Director of Revenue for a Certificate of Non-Residence. The Director could then make an administrative determination, as required by statute, whether such person is a resident or nonresident for income tax purposes. It would seem that Colorado has devised a method for quickly resolving this knotty question of residence which might well be adopted by other states.

As previously indicated in discussing the serviceman's income tax liability in the state of temporary residence, the situs of intangibles for tax purposes is, in most jurisdictions, at the domicile of the owner.⁴⁸ In states following this rule, it seems clear that the non-domiciliary dependent, like the non-domiciliary serviceman, is not taxable on income from intangibles, other than those which have acquired a business situs in the state where the dependent is living. In Colorado, however, pertinent tax regulations seem to indicate that the situs of intangibles follows the *residence* of the owner rather than his *domicile*.⁴⁹ If, therefore, a non-domiciliary dependent is considered to be a resident of Colorado, all income from intangibles owned by the dependent, such as stock dividends and interest from bonds, would apparently be subject to Colorado income tax. The introduction of what is apparently a new tax basis for taxing the income from intangibles underscores once again the importance of determining residency status in order to correctly ascertain tax liability.⁵⁰

⁴⁷Colo. Rev. Stat. Ann. §§ 138-1-52, 138-1-55, 138-1-56, 138-1-57 (1953).

⁴⁸Cases cited note 40, *supra*.

⁴⁹Colo. Director Rev. Reg. Art. 4a, 1 CCH Inc., State Tax Rep. Colo. § 10-504 (1959); see Colo. Director Rev. Reg. Addenda Art. 1, 1 CCH Inc., State Tax Rep. Colo. § 10-222 (1959).

⁵⁰This apparent difference in the Colorado tax basis does not alter the serviceman's exemption in that state since § 514 provides that his personal property, including intangibles, when not used in a trade or business, does not acquire a situs for purposes of taxation in the state where he is serving solely because of military orders, § 17, 56 Stat. 777 (1942), as amended, § 1, 58 Stat. 722 (1944), 50 U.S.C. App. 574 (1958).

One further point merits consideration with respect to the imposition of state income tax on non-domiciliary dependents. In the event a dependent is employed by the Federal Government within a particular state, that state is empowered to tax the income which the dependent receives from the Federal Government on the basis that such income is derived from sources within the state. The authority of the states to impose a tax on such income was first recognized by the United States Supreme Court in *Graves v. New York ex rel. O'Keefe*.⁵¹ This authority to tax was subsequently codified in the Public Salary Act of 1939.⁵² Under the Buck Act, the United States has also ceded to the states jurisdiction to tax the income of persons, including dependents, residing within or receiving income from transactions or services performed in federal areas, such as military reservations.⁵³

3. *Application of state income tax laws to servicemen and their dependents in the state of domicile.*

Thus far, this study has involved the income tax liability of the serviceman and his dependents in states other than the state of domicile.

The state of domicile has the power to tax its domiciliaries on all income whether earned within or without the state.⁵⁴ Consequently, it is clear in the case of a dependent that income from any of the various sources previously discussed, such as income from wages, business or intangibles, is taxable by the state of domicile. A similar result is reached in the case of a serviceman, since under section 514, he retains a taxable status for income tax purposes in the state of domicile, including taxation of his military pay.⁵⁵

It is readily apparent, therefore, that with the exception of the military pay of the serviceman and income from intangibles, in most states, the serviceman and his dependents can conceivably be taxed upon their income by both the state of domicile and the state wherein the income is earned. Although multiple taxation is not unconstitutional,⁵⁶ the states have attempted to minimize this burden through a system of tax credits and reciprocal agreements.⁵⁷ An examination of

⁵¹306 U.S. 466 (1939).

⁵²Public Salary Act, 53 Stat. 575 (1939), 5 U.S.C. § 84a (1958).

⁵³Buck Act, 61 Stat. 641 (1940), 4 U.S.C. § 106 (1958).

⁵⁴Cases cited note 13, *supra*.

⁵⁵H.R. Rep. No. 1514, 78th Cong., 2d Sess. 1-2 (1944); S. Rep. No. 959, 78th Cong., 2d Sess. 1-2 (1944).

⁵⁶Cases cited at note 17, *supra*.

⁵⁷See table of tax credits allowable by states, 2 CHH Inc., State Tax Rep. Cal. 2745 (1960).

these agreements, however, reveals a lack of uniformity and the continuation of multiple taxation.⁵⁸

4. *Proposed legislation.*

It would appear that the burden of multiple taxation upon the serviceman, his dependents and other persons having a similar status, could be alleviated if state legislatures would uniformly adopt legislation similar to the New York statute. The New York statute provides that a domiciliary of New York will not be taxed as a resident if he maintains no permanent place of abode in the State of New York; maintains a permanent place of abode outside the State of New York; and spends not more than thirty days of the taxable year within the state.⁵⁹ Although the meaning of the term "permanent place of abode," as used in the statute, is not entirely clear, it is believed that a reasonable interpretation has been placed upon it. In the case of *Ryan v. Chapman*,⁶⁰ the court was confronted with the residency status of a husband and wife who gave up their home in New York upon the husband's entering military service. Thereafter, they resided in California in a leased home until the husband's discharge from the Army and spent no time in New York while the husband was in the service. The court held that under these circumstances both husband and wife were maintaining a permanent place of abode outside the state and were not *residents* of the State of New York for income tax purposes during the period of absence. In order to avoid any misunderstanding, however, it is believed that the provision in the New York statute, which requires proof that the domiciliary maintain a permanent place of abode outside the state, should be changed for purposes of the proposed uniform statute to require only that the domiciliary *reside* outside the state of domicile during the tax year. It is believed that this language would minimize problems of statutory interpretation which are inherent in the phrase, "permanent place of abode."

Such a statute, if adopted by all the states, would relieve the ser-

⁵⁸E.g., see CCH Inc., State Tax Rep. Va. § 10-852.10 (1959).

⁵⁹N.Y. Tax Laws § 605(a), "Resident individual. A resident individual means an individual (1) who is domiciled in the state, unless he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state . . ."

⁶⁰76 N.Y.S. 2d 341, 273 App. Div. 99 (1948); Statement of Policy, Income Tax Bureau, Part I November 30, 1959, 1 CCH Inc., State Tax Rep. § 15-075.12 N.Y. (1957).

viceman and his dependents from taxation by the state of domicile during periods of time when they are absent from the state. This type of statute is considered fair from the standpoint of the state of domicile since the long recognized basis for taxation by a government is the relation of the tax on a particular taxpayer to the opportunities, benefits, or protection which the taxing state can give to this taxpayer.⁶¹ Obviously, the serviceman and his dependents who are absent from the state of domicile do not receive benefits of this nature. It is recognized that such a uniform law, when considered together with section 514, would completely immunize many servicemen from all state income taxes. This situation could be remedied, however, by amending section 514 to permit the state of temporary residence to tax the military pay of the serviceman who is receiving the benefits of government from that state. Under this proposal, the serviceman and his dependents would not be liable for state income tax while overseas.

It is believed that enactment of the proposed uniform statute would provide a more equitable basis for taxing the serviceman and his dependents, and would, upon the amendment of section 514, lead to a more equitable distribution of tax revenue among those states having large military bases within their borders. As previously indicated, taxation by the state of temporary residence could result in multiple taxation in the case of servicemen who are moved from one state of temporary residence to another within the same tax year. In order to prevent such a situation, the proposed uniform law should provide for prorating taxes between the taxing states. Such a provision would be similar to reciprocal agreements which presently exist between some states. In addition, it is believed that such a uniform statute would also benefit other persons whose professions require their absence from the state of domicile for extended periods of time.

B. *Tangible Personal Property Tax.*

1. *Authority of the states to tax tangible personal property.*

The prevailing rule is that the actual situs of tangible personal property and not the domicile of the owner forms the legal basis for state taxation of such property.⁶² In the *Union Refrigerator Company* case, the United States Supreme Court laid down the rule that an attempt by the state of domicile of the owner to levy a personal prop-

⁶¹Standard Oil Co. v. Peck, 342 U.S. 382 (1951).

⁶²51 Am. Jur. Taxation § 452 (1944).

erty tax upon tangible personal property located wholly within another state is beyond the power of the legislature as a taking of property without due process of law.⁶³ Since this decision, the Supreme Court has applied the rule that jurisdiction to tax is founded on the actual presence of the tangible personal property within the taxing state.⁶⁴ These decisions have not been based upon a constitutional prohibition against double taxation, but on the basis that the facts necessary to give the property a situs for taxation in one state necessarily negate the requirements of a situs for taxation in another state. The cases have also indicated, by inference, however, that immunity from taxation by the state of domicile rests upon the principle that property must be permanently located outside the state of domicile or be in another jurisdiction under such circumstances as to give it a local situs there for purposes of taxation.⁶⁵ Immunity from taxation by the state of domicile apparently does not apply, therefore, to property not permanently located in another state but which is in one place today and another place tomorrow.

If the situs of privately owned personal property is in an area where the Federal Government has exclusive jurisdiction, it seems well settled that such property is immune from state taxation. The leading case on this point is *Surplus Trading Co. v. Cook*,⁶⁶ wherein the Supreme Court held that the State of Arkansas was without authority to tax privately owned personal property located on a military reservation over which the Federal Government had exclusive jurisdiction. Since Congress has not chosen to pass legislation granting the states authority to tax private personal property in such areas, as it did with respect to state income tax,⁶⁷ it is apparent that private personal property which is located in such areas is immune from state taxation.

2. *Application of state tangible personal property tax laws to servicemen and their dependents outside the state of domicile.*

Having outlined the general limits of the state taxing authority as it pertains to tangible personal property, attention will next be given to the application of specific state laws to the tangible personal

⁶³*Union Refrigerator Transit Co. v. Kentucky*, 199 U.S. 194 (1905).

⁶⁴*Lawrence v. State Tax Commissioner*, 286 U.S. 276 (1932), *Blodgett v. Sibernan*, 277 U.S. 1 (1928).

⁶⁵*Standard Oil Co. v. Peck*, 342 U.S. 382 (1951); *Northwest Airlines v. Minnesota*, 322 U.S. 292 (1944); *Johnson Oil Refining Co. v. Oklahoma ex rel. Mitchell*, 290 U.S. 158 (1933); *Union Refrigerator Transit Co. v. Kentucky*, 199 U.S. 194 (1905).

⁶⁶281 U.S. 647 (1930).

⁶⁷Statute cited note 53 *supra*.

property of the serviceman and his dependents. State taxation of household effects, motor vehicles, house trailers and personal property of the serviceman and his dependents used in business will be considered in this section.

An analysis of the tax laws of the various states considered in this study indicates no conflict with the general rule that tangible personal property is taxable by the state where it is located.⁶⁸ In the absence of federal legislation, therefore, the tangible personal property of a serviceman and his dependents would apparently acquire a taxable situs in any state where it is physically located.

a. *The Serviceman.*

With respect to the serviceman's tax liability, paragraph one, Section 514, provides that his personal property, other than that which is used in a trade or business, does not acquire a taxable situs in a state where he is present solely because of military orders.⁶⁹ In view of the interpretation placed upon this provision of section 514 in *Dameron v. Brodhead*,⁷⁰ it is clear that the state of temporary residence does not have the authority to impose a personal property tax upon household effects, motor vehicles, house trailers, and other non-commercial personal property which is owned by a non-domiciliary serviceman who is living in a state solely because of military orders.

In the *Dameron* case, the taxing authorities of the City of Denver, in assessing a personal property tax against a nonresident Air Force officer who was in Colorado solely because of military orders, argued that section 514 was enacted in order to prohibit multiple taxation; and since this officer had not paid personal property tax on his household effects to his state of domicile, he was taxable in Colorado. The Supreme Court, in striking down this tax, held that section 514 saved the sole right of taxation to the state of domicile whether or not that state exercised the right; and therefore the exemption under paragraph one of section 514 is not conditioned upon the collection of a tax by the state of domicile.⁷¹ Although this case clearly indicates that tangible personal property of the serviceman, who is in a state solely because of military orders, is exempt from personal property tax, prob-

⁶⁸E.g., Ala. Code tit. 51 § 21 (1940); Cal. Rev. & Tax. § 201; N.C. Gen. Stat. § 105-281 (1958); Okla. Stat. tit. 68 § 15 (1951); Va. Code Ann. § 58-834 (1950).

⁶⁹§ 17, 56 Stat. 777 (1942), as amended, § 1, 58 Stat. 722 (1944), 50 U.S.C. App. 574 (1958).

⁷⁰345 U.S. 322 (1953).

⁷¹Id. at 326.

lems arise when states attempt to impose a different type of tax upon automobiles and trailers.

For example, some states impose a tax on motor vehicles for the privilege of using the highways. These taxes are considered to be *excise* and not *personal property taxes*.⁷² From this premise, it is then argued that since paragraph one of section 514 only exempts the serviceman from personal property taxes, he is not exempt from excise taxes unless paragraph two of section 514 applies.⁷³ Paragraph two of section 514 provides that a serviceman shall not be exempt from fees, excises or licenses on motor vehicles by the state of temporary residence unless such taxes have been paid by the serviceman in his state of domicile.⁷⁴ In those cases, therefore, where the serviceman has not paid the required taxes in his state of domicile, these excise taxes have been assessed.⁷⁵

In the only reported case which sheds any light on this question, *Woodroffe v. Village of Park Forest*,⁷⁶ decided prior to *Dameron v. Brodhead*, the court held that an Army officer, domiciled in Pennsylvania, and stationed in Illinois, was exempt from payment of a vehicle tax imposed by the Village of Park Forest, Illinois. Unfortunately, this case is not clear as to whether the tax was considered to be one on property and thus exempt under paragraph one of section 514 or whether it was considered to be a license, fee, or excise and thus exempt under paragraph two of section 514. The court did state as one ground for its decision, however, that since the officer had bought a Pennsylvania license, the only tax required by his state of domicile, he was exempt from the Illinois tax. Thus, by implication, this case lends support to the proposition that an exemption from an *excise* tax or *fee* on an automobile, as distinguished from a general *Property tax*, is justified only where the serviceman has paid such fees and excises as his state of domicile may require.

⁷²*City of Los Angeles v. Riley*, 6 Cal. 2d 621, 59 P.2d 137 (1936); *Kelly v. City of San Diego*, 63 Cal. App. 2d 638, 147 P.2d 127 (1944); Cal. Rev. & Tax § 10751; Colo. Rev. Stat Ann. § 138-5-3(2) (1953); Ops. Att'y Gen. Colo., Nov. 23, 1959, 2 CCH, New Matter, State Tax Rep. Colo. § 200-070 (1959); Mass. Gen. Laws Ann. ch. 60A § 1 (1958); In the Matter of Baptist General Convention, 195 Okla. 258, 156 P.2d 1018 (1945).

⁷³Ops. Att'y Gen. Colo., Nov. 23, 1959, 2 CCH, New Matter, State Tax Rep. Colo. § 200-070 (1959).

⁷⁴Section 17, 56 Stat. 777 (1942), as amended, § 1, 58 Stat. 722 (1944), 50 U.S.C. App. 574 (1958).

⁷⁵Ops. Att'y Gen. Colo. Nov. 23, 1959, 2 CCH, New Matter, State Tax Rep. Colo. § 200-070 (1959). Compare *Morrill v. Hamel*, 337 Mass. 83, 148 N.E.2d 283 (1958).

⁷⁶107 F. Supp. 906 (N.D. Ill. 1952).

An opinion of the Attorney General of Colorado reflects a similar problem in connection with the taxation of house trailers. In Colorado, motor vehicles are considered to be a separate class of personal property and are subject to a "specific ownership" tax.⁷⁷ This tax is considered to be an excise tax which is assessed for the privilege of using motor vehicles on the highways of the state. In 1959, the Attorney General of Colorado ruled that the mobile home of a nonresident serviceman, being a motor vehicle within the statutory definition of that term, was subject to the specific ownership tax.⁷⁸ This ruling was based on the fact that the serviceman had not licensed his car or paid other required fees to his state of domicile and was not, therefore, exempt from this excise tax under paragraph two of section 514.⁷⁹

Although this study does not include *excise* taxes, the foregoing discussion illustrates the necessity of distinguishing between the tax bases for excise and general property taxes in order to apply section 514 properly.

The laws of several of the states considered in this study have separate provisions for the taxation of tangible personal property which is used in connection with a trade or business,⁸⁰ whereas other state laws make no distinction between tangibles used in business and other tangibles insofar as taxing them is concerned.⁸¹ In this connection, section 514 narrows the personal property exemption of the serviceman with respect to such property. It provides that personal property of the serviceman which is used in a trade or business within a state where he is temporarily residing does not lose its situs for purposes of taxation and is, therefore, taxable by such state.⁸² Although there are no reported cases interpreting this provision of section 514, a literal reading of it indicates a congressional intent to leave the serviceman in exactly the same position, for tax purposes, as any

⁷⁷Colo. Rev. Stat. Ann. § 138-5-3(2) (1953).

⁷⁸Ops. Att'y Gen. Colo., Nov. 23, 1959, 2 CCH, New Matter, State Tax Rep. Colo. § 200-070 (1959).

⁷⁹The Attorney General of Colorado has retreated from this position in those cases where the mobile homes are not being moved on the highways of Colorado but are being used as residences, Colorado Springs Free Press, January 17, 1961. The Attorney General's new position is consistent with a prior opinion from his office wherein the view was expressed that such an excise tax can be assessed only when the motor vehicle is being *used* on the highways, Ops. Att'y Gen. Colo., March 1, 1956, Report of Att'y Gen. Colo., 1955-56.

⁸⁰E.g., Ala. Code tit. 51 § 21 (1940).

⁸¹E.g., Kan. Gen. Stat. Ann. § 79-101 (1949).

⁸²Statute cited note 69, *supra*.

other person who has acquired personal property for business purposes.⁸³

A potential problem, very similar to one discussed in connection with income tax, concerns the possible taxation of personal property of a serviceman domiciled in a community property state. Under state community property laws, property which is purchased with community funds is considered to be community property⁸⁴ in which each spouse is considered to have one half interest.⁸⁵ It would appear, therefore, that even if the evidence of title in personal property indicates that the serviceman-husband is the sole owner of the property—title to an automobile, for example—the state of temporary residence could look behind such a title to see if the property was purchased with community funds.⁸⁶ If so purchased, the state of temporary residence, in applying the property law of the domicile,⁸⁷ could assess a personal property tax on one half the value of such property on the theory that it is owned by the wife. This being so, her interest would clearly fall outside the protection of section 514.⁸⁸

As was indicated in the discussion of income tax, it may be that the various states have not attempted to tax on this theory because of a practice which exists in community property states whereby a spouse is permitted to transfer his or her interest in community property to the other spouse. Once this is done, the property so transferred becomes the separate property of the recipient.⁸⁹ Thus, the wife of a serviceman, in a situation where they are domiciled in a community property state, could apparently avoid such a tax by entering into an agreement with the serviceman-husband, whereby the wife agrees that her interest in the husband's property, *e.g.*, the automobile, house-trailer, or household effects, is transferred to the husband. After such

⁸³See Ops. Att'y Gen. N.C., Feb. 12, 1951, 1 CCH Prop., State Tax Rep. § 20-202.09 (1959).

⁸⁴*Woods v. Naimy*, 69 F.2d 892 (9th Cir 1934); 11 Am. Jur. Community Property § 25 (1937).

⁸⁵*Horton v. Horton*, 115 Cal. App. 2d 360, 252 P.2d 397 (1953); 1 de Funiak, Principles of Community Property 302 (1943).

⁸⁶11 Am. Jur. Community Property § 25 (1937).

⁸⁷*Vining v. Smith*, 213 Miss. 850, 58 So. 2d 34 (1952); *Commonwealth v. Terjen*, 197 Va. 596, 90 S.E.2d 801 (1956); 1 de Funiak, Principles of Community Property 252 (1943).

⁸⁸See text after note 32 and notes 33, 34, *supra*, for a discussion of whether this theory of taxation would violate section 514.

⁸⁹*Helvering v. Hickman*, 70 F.2d 985 (9th Cir. 1934); *Pacific Mutual Life Insurance Co. v. Cleverdon*, 16 Cal. 2d 788, 108 P.2d 405 (1941); *Wren v. Wren*, 100 Cal. 276, 34 Pac. 775 (1893); 1 de Funiak, Principles of Community Property 400 (1943).

a transfer of ownership, the personal property, being completely that of the serviceman-husband, is exempt from taxation by operation of section 514. Seemingly, the state wherein the serviceman and his dependents are stationed will recognize such an agreement, since the established conflicts of law rule provides that the nature and extent of ownership in community property is determined in accordance with the law of the community property state in which the taxpayers are domiciled.⁹⁰

b. *The Serviceman's Dependents.*

Although there are very few cases involving the taxation of household effects, motor vehicles, house trailers and other items of tangible personal property owned by dependents, those authorities which do exist clearly indicate that dependents are taxable on tangible personal property which is located within the state of temporary residence.⁹¹ Although there are no reported cases, it would appear that under some state statutes tangible personal property which is owned jointly by the serviceman and his dependent could be assessed to the extent of the dependent's interest in the property.⁹² Further, the nonpayment of such taxes by the dependent could under some state statutes result in the establishment of a lien against any of the dependent's personal property located in the state.⁹³

In those cases where tangible personal property of a dependent is located on a military reservation, the state's authority to tax this property depends upon the type of jurisdiction which the Federal Government exercises over the reservation. Under the ruling in the *Surplus Trading Company* case,⁹⁴ the states have no authority to tax personal property in areas under the exclusive jurisdiction of the United States. Consistent with the holding in this case, various states exercise the authority to tax privately owned tangible personal property in areas where federal jurisdiction is less than exclusive and in

⁹⁰*Vining v. Smith*, 213 Miss. 850, 58 So. 2d 34 (1952); *Commonwealth v. Terjen*, 197 Va. 596, 90 S.E.2d 801 (1956); 1 de Funiak, *Principles of Community Property* 252 (1943). See text at note 32 supra, regarding other legal consequences which may result from such agreements.

⁹¹Ops. Att'y Gen. N.C., March 14, 1960, 2 COH New Matter, *State Tax Rep.* § 200-665 (1959); see 32 Ops. Att'y Gen. N.C. 404 (1953).

⁹²See 51 Am. Jur. *Taxation* §§ 419, 1011 (1939).

⁹³E.g., *Ryder v. Livingston*, 145 Neb. 862, 18 N.W.2d 507 (1945).

⁹⁴Case cited note 66, supra.

those areas over which the states reserved the authority to tax at the time the land was ceded to the Federal Government.⁹⁵

3. *Application of state tangible personal property tax laws to servicemen and their dependents in the state of domicile.*

From a consideration of the tax liability of the serviceman and his dependents in the state of temporary residence, it is appropriate to proceed to a consideration of their tax liability in the state of domicile.

Since section 514 does not prohibit the state of domicile from taxing a serviceman,⁹⁶ it is clear that a serviceman, stationed and living in his state of domicile, is subject to a tax on his tangible personal property located in the state.⁹⁷

Since dependents have no exemption of any kind under section 514 or any other federal statute, it is clear that their liability for tax upon tangible personal property located in the state of domicile is the same as that of the serviceman.

Where, however, the tangible personal property of the serviceman is physically located in another state where he is stationed, and is not taxable in that state because of an exemption under section 514, there is some uncertainty whether such property is taxable by the state of domicile. The primary question to be answered is whether the state of domicile has the constitutional authority to impose a tax upon tangible personal property of a serviceman which is located wholly outside its borders. There is no decided case precisely on this point. It is necessary, therefore, to look to pronouncements of the Supreme Court in closely related cases in an attempt to find an answer.

As indicated above, the Supreme Court, in the *Union Refrigerator Company* case, laid down the rule that an attempt by the state of domicile of the owner to levy a personal property tax on tangible personal property located wholly within another state is beyond the power of the legislature as a taking of property without due process of law.⁹⁸ However, this case also indicates by way of dictum that immunity from taxation by the state of domicile does not apply to property *not permanently located in another state.*

⁹⁵Ala. Code tit. 51 § 19; 53 Ops. Att'y Gen. Ala. 59 (1948); 25 Ops. Att'y Gen. Ala. 124 (1941); Ops. Att'y Gen. N.C., Feb. 12, 1951, 1 CCH Prop., State Tax Rep. § 20-202.09 N.C. (1959).

⁹⁶*Dameron v. Brodhead*, 345 U.S. 322 (1953).

⁹⁷But see *Surplus Trading Co. v. Cook*, 281 U.S. 647 (1930) regarding private personal property located in a federal area over which the Federal Government has exclusive jurisdiction.

⁹⁸*Union Refrigerator Transit Co. v. Kentucky*, 199 U.S. 194 (1905).

Turning to the serviceman's situation, it is found that section 514 provides that tangible personal property of the serviceman shall not have a "situs for taxation" in the state where he is living solely because of military orders. Thus, the better view appears to be that since by operation of section 514, his tangible personal property has no taxable situs in any other state, the state of domicile, under the qualification set forth in the *Union Refrigerator* case, has the constitutional authority to tax the tangible personal property of the serviceman, which although physically located in another state, has no taxable situs in the other state. Later cases indicate that normally it is only personal property with a *taxable situs* in another state which is exempt from levy by the domiciliary state.⁹⁹ Finally, there is strong support for this position in dictum of the Supreme Court in *Dameron v. Brodhead*. There the Court, in construing the effect of section 514 upon the authority of the non-domiciliary state to tax tangible personal property of the serviceman, noted that section 514 saved the sole right of taxation to the state of original residence.¹⁰⁰

Assuming, therefore, that the state of domicile has the constitutional authority to impose a tax upon tangible personal property of the serviceman physically located outside the state, it is also necessary to ascertain whether the particular state statute is broad enough to permit such a tax. In analyzing the tax laws of ten states, it was found that under some state statutes the tangible personal property of the serviceman must be physically present in the state of domicile on tax day or it cannot be taxed.¹⁰¹ Other state statutes, however, have been interpreted to include the tangible personal property of the serviceman, regardless of its physical location on tax day.¹⁰²

Since there is no provision of federal law which affects the situs of the dependent's personal property, it seems clear, under the laws of the states considered, that the actual location of the dependent's personal property is its situs for tax purposes.¹⁰³ If, therefore, the

⁹⁹*Standard Oil Co. v. Peck*, 342 U.S. 382 (1951); *Northwest Airlines v. Minnesota*, 322 U.S. 292 (1944); *Johnson Oil Refining Co. v. Oklahoma ex rel. Mitchell*, 290 U.S. 158 (1933).

¹⁰⁰*Dameron v. Brodhead*, 345 U.S. 322, 326 (1953). It is believed that the court, in using the words "original residence," was clearly referring to domicile.

¹⁰¹Departmental Opinion, Property Valuation Department Assessment Manual, 62, 66, Kansas, CHH Prop. State Tax Rep. § 29-701.236, Kan. (1958).

¹⁰²Letter of Advice, Att'y Gen. Ga., October 23, 1959, CCH New Matter, State Tax Rep. § 200-212, Ga. (1956); Letter of Advice, Att'y Gen. Ga., July 3, 1958, CCH New Matter, State Tax Rep. § 200-142, Ga. (1956); 34 Ops. Att'y Gen. N.C. 161 (1957).

¹⁰³Ala. Code tit. 51 § 21 (1940); Cal. Rev. & Tax. § 201; N.C. Gen. Stat. § 105-281 (1958); Okla. Stat. tit. 68 § 15 (1951); Va. Code Ann. § 58-834 (1950).

tangible personal property of a dependent is located in a state other than the state of domicile, it appears clear that the state of domicile has no authority to tax and that the property is taxable by the state where it is located.¹⁰⁴ This is in contrast to the situation of the serviceman whose personal property, by operation of section 514, has no taxable situs anywhere outside the state of domicile.

Under these circumstances, it is apparent that a dependent, in moving from state to state, could be taxed on his personal property by more than one state during the same year.

4. *Proposed legislation.*

In order to lessen the burden of multiple taxation, it is believed that uniform legislation should be enacted by the states to insure either the taxation of tangible personal property by only one state during a given year or a statute whereby the tax would be prorated among the taxing states. It is believed that such legislation would not only benefit the serviceman but also other transients having a similar problem.

If all states would adopt such a uniform statute, it is believed that a logical basis would then exist for removing the statutory exemption which the serviceman has under section 514. With the removal of this exemption, the serviceman, under the proposed uniform statute, would pay taxes on his tangible personal property in the state where his property is physically located. This, it is believed, is a logical solution since every citizen should pay taxes in the state where he is receiving the benefits of government.

C. *Intangible Personal Property Tax.*

1. *Authority of the states to tax intangible personal property.*

In analyzing the power of the states to impose income tax, one of the types of income considered was that which is derived from intangible personal property. Here, consideration is being given to a property tax on intangibles.

As previously stated, intangibles are considered to have a taxable situs at the domicile of the owner.¹⁰⁵ unless such property has acquired a business situs in another state.¹⁰⁶ It is recognized, however,

¹⁰⁴Case cited note 98, *supra*.

¹⁰⁵*Curry v. McCanless*, 307 U.S. 357 (1939).

¹⁰⁶*Id.* at 366-67.

that intangibles can be taxed by both the state of domicile and the state where the property has acquired a business situs.¹⁰⁷

2. *Application of state tax laws to intangible personal property of servicemen and their dependents stationed outside the state of domicile.*

The laws of seven of the ten states analyzed impose a property tax upon intangible personal property. Each of these states follows the general rule that the situs of such property, for purposes of taxation, is in the state of the owner's domicile.¹⁰⁸ All these states also follow the well recognized exception to the general rule which provides that any intangible used in connection with a business enterprise acquires a business situs in the state where the commercial enterprise is located and is taxable in that state regardless of the domicile of the owner.¹⁰⁹ Some states have, by statute, however, relinquished their right to tax on the basis of domicile where the intangible has acquired a business situs elsewhere.¹¹⁰

It is clear, therefore, that the non-domiciliary serviceman and his dependents are exempt from intangible personal property tax to the same extent as any other person who is not domiciled in the state where he is residing. Because this principle is apparently so well established, no cases have been found where states have attempted to impose a tax upon the intangibles of a non-domiciliary serviceman or his dependents. Under these circumstances, there is no reason for the serviceman to invoke the exemption provision of section 514 as it pertains to intangibles.

If, however, the serviceman or his dependents establish a business in the state of temporary residence, the intangibles which grow out of or are part of this business acquire a *business situs* in and are taxable by that state.¹¹¹ Section 514 does not provide an exemption.¹¹²

¹⁰⁷Utah v. Aldrich, 316 U.S. 174 (1942).

¹⁰⁸E.g., Estate of Fair, 128 Cal. 607, 61 Pac. 184 (1900); Virginia Trust Co. of Norfolk v. Virginia, 151 Va. 883, 141 S.E. 825 (1928).

¹⁰⁹E.g., State v. Kidd, 125 Ala. 413, 28 So. 480 (1900); Glen v. Buck, 272 P.2d 573 (1954).

¹¹⁰E.g., Okla. Stat. tit. 68 § 1504 (1951).

¹¹¹Case cited note 105, supra.

¹¹²56 Stat. 777 (1942), as amended, 58 Stat. 722 (1944), 50 U.S.C. App. 574 (1958).

3. *Application of state tax laws to intangible personal property of servicemen and their dependents in the state of domicile.*

Since section 514 does not prohibit the state of domicile from taxing the intangibles of the serviceman, it seems clear that both the serviceman and his dependents are taxable by the state of domicile on such property.¹¹³ This is true regardless of the taxpayer's location or the location of evidence of the intangible, such as stock certificates or commercial paper.¹¹⁴

4. *Future taxation of intangibles.*

Except for the limited category of intangibles which acquire a business situs, it is clear that intangibles are not subject to multiple taxation.

As the search for additional revenue is intensified, however, it may be that the states will depart from domicile, the traditional basis for taxing intangibles, and adopt a broader basis¹¹⁵ for determining taxable situs, such as residence of the owner.¹¹⁶

If residence is ultimately adopted as a new tax basis for intangibles, problems of multiple taxation similar to those which exist in the fields of income and tangible personal property will merit further consideration.

III

CONCLUSIONS

A. *Income Tax.*

In considering income tax upon the earnings of the serviceman and his dependents, the question arises as to whether the bases underlying the imposition of these taxes are equitable to either the taxing states or the individuals involved. It is believed not. It is believed that domicile, as a basis for imposing income tax on servicemen and their dependents, is antiquated. Thousands of these persons are part of a per-

¹¹³See 27 Ops. Att'y Gen. N.C. 162 (1943).

¹¹⁴Curry v. McCanless, 307 U.S. 357 (1939); 51 Am. Jur. Taxation §§ 463, 465 (1939).

¹¹⁵See Colo. Director Rev. Reg. Art. 4a, 1 CCH Inc., State Tax Rep. Colo. § 10-504 (1959); see Colo. Director Rev. Reg. Addenda Art. 1, 1 CCH Inc., State Tax Rep. Colo. § 10-222 (1959).

¹¹⁶It is believed that *residence* of the owner, as a tax basis for intangibles, is constitutional. See the test of the United States Supreme Court, *Scripto v. Carson*, 362 U.S. 207, 210-11 (1960); *Miller Bros. Co. v. Maryland*, 347 U.S. 340, 344-45 (1954).

manent transient force and have no appreciable contact with the state of domicile for long periods of time. During such periods of time they neither live in the state of domicile nor receive governmental benefits from that state. Under these circumstances, it is inequitable for the state of domicile to be receiving revenue based on their income. On the other hand, it is believed that the state where the serviceman and his dependents are residing and receiving the benefits of government should have the authority to tax all their income, including military pay.¹¹⁷ Further, it is believed that servicemen and their dependents should not be subject to income tax by both the state of domicile and the state wherein they are residing.

In order to rectify this inequity to the state of temporary residence and also alleviate the problem of multiple taxation for the serviceman and his dependents, it is proposed that a uniform statute be enacted by the states. Under this statute, the state of domicile would relinquish its authority to tax a domiciliary in those situations where the domiciliary maintains no permanent place of abode in the state and spends less than thirty days in the state during the tax year. Upon the enactment of such a uniform statute, it is proposed that Congress amend section 514 to permit taxation of the serviceman's military pay by the state wherein he is residing pursuant to military orders.

In view of the current posture of the law, one further recommendation is deemed appropriate. It is related to the residence status of dependents. This study has shown that the residence of dependents for income tax purposes is often difficult to ascertain under existing state statutory definitions. In order to eliminate this uncertainty, it is proposed that the states adopt a system similar to that which exists in Colorado. There, a person moving into the state can apply to the Director of Revenue for a Certificate of Nonresidence. The Director can then administratively determine whether the applicant is a resident or nonresident for purposes of taxation. It is believed that a system such as this would result in a prompt clarification of residence status and also reduce the incidence of litigation and tax penalties growing out of lack of knowledge.

B. *Tangible Personal Property Tax.*

Under existing provisions of law, the serviceman's tangible personal property, except that which is used in a trade or business, is

¹¹⁷For a provocative argument against exemption of the serviceman from state taxation, see *Washington Evening Star*, March 4, 1961, § A, p. 4, col. 6, Letter to the Editor.

not taxable by the state of temporary residence. The tangible personal property of his dependents is, however, taxable in any state where it is physically located. Dependents, in moving from state to state, can be taxed upon their tangible personal property by more than one state during a single year. Thus, there exists the problem of multiple taxation. Insofar as the serviceman is concerned, however, he is completely exempt from personal property tax upon his non-commercial property in the state of temporary residence.

In order to ease the burdens of multiple taxation upon dependents and also permit the state of temporary residence to impose an equitable tax upon tangible personal property of the serviceman, it is proposed that a uniform statute be enacted by the states whereby tangible personal property would be taxed by only one state or in the alternative could be taxed by more than one state if the tax were prorated among the taxing states. Upon the enactment of such a uniform statute, it is proposed that Congress amend section 514 to permit the state wherein the serviceman is residing to tax his tangible personal property.

C. *Intangible Personal Property Tax*

Under the prevailing rule, the situs of intangibles for purposes of taxation is at the domicile of the owner, except in the case of intangibles which have acquired a business situs in another state. Intangibles which acquire a business situs in a state other than the state of domicile can, depending upon the breadth of the state statutes involved, be taxed by both the state of domicile and the state where the business situs exists. This situation, however, is rare. Most intangibles owned by servicemen and their dependents are taxable only by the state of domicile. In addition, intangible personal property, as a source of revenue, does not occupy as important a place as other sources of revenue which have been considered. Accordingly, the problems of multiple taxation and the proper distribution of tax revenue do not occupy a position of great importance in this field of taxation.

As the search for additional revenue is intensified, however, it may be that states will broaden the basis for taxing intangibles from domicile to residence.

Until such time as intangibles become the subject of more active taxation, however, amendments to federal and state statutes are not deemed necessary.