

M e m o r a n d u m**580.0260**

To: Headquarters – Petitions Unit (HO)

Date: June 5, 1969

From: Tax Counsel (TPP:GJJ) - Headquarters

Subject: Use Tax exemptions – NATO Status of Forces Agreement

This is in response to your request of May 20, 1969, that we review the claim for refund of use tax filed by Mr. G--- B---

Mr. B---, a member of the German Air Force, purchased a 1958 DeSoto Station Wagon, and he paid to this state \$10 in use tax as a result of this purchase. Mr. B--- now claims a refund of this tax based upon Article X, Paragraph 1, of the NATO Status of Forces Agreement which provides, in relevant part, that:

“Where the legal incidence of any form of taxation in the receiving State depends upon residence or domicile, periods during which a member of a force or civilian component is in the territory of that State by reason solely of his being a member of such force or civilian component shall not be considered as periods of residence therein, or as creating a change of residence or domicile, for the purposes of such taxation. Members of a force or civilian component shall be exempt from taxation in the receiving State...on any tangible movable property the presence of which in the receiving State is due solely to their temporary presence there.”

In our opinion, Mr. B---’s claim for refund should be denied. The difference between a use tax, which is an excise tax, and a tax “on any tangible movable property,” which is a property tax, is well established. [See Sullivan v. U.S., 37 L.W. 4444.] If it had been the intention of the signators of the agreement referred to, to exempt military personnel serving in foreign forces from such taxes as the use tax, we assume that they would have used language which would have made this intention clear.

GJJ:dj