

**M e m o r a n d u m****580.0270**

To: Mr. H. F. Freeman  
Executive Secretary

Date: August 24, 1970

From: T. P. Putnam  
Assistant Chief Counsel

Subject: NATO Status of Forces Agreement

A question has arisen as to the application of the tax to the use in this state of an automobile purchased outside this state by a member of the Air Force of another country who is serving in this state as an exchange duty officer under the NATO Status of Forces Agreement.

The officer in question has sought a refund of the tax paid based upon Article X, § 1, of the Agreement, which provides, in relevant part:

“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, the claim for refund should be denied.

First, the legal incidence of the applicable tax, the California use tax, does not depend upon the residence or domicile of the taxpayer in this state. Rather, as Section 6201 of the Revenue and Taxation Code provides, the tax is imposed “on the storage, use, or other consumption in this state of [the] tangible personal property.”

Second, the difference between a use tax, which is an excise tax, and a tax “on any tangible 395 U.S. 169.] 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.

It has been our consistent interpretation of the paragraph in question that it does not operate to exempt from the California use tax the use of tangible personal property in this state by personnel associated with NATO. We most recently advised a taxpayer, another member of this Air Force, of our opinion on this subject on June 5, 1969.