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## Practice Notes

# Massachusetts Appellate Tax Board Rules that the SCRA Prohibits Local Taxes on Leased Vehicles

*By Mr. Matthew A. Morris*

The Servicemembers' Civil Relief Act<sup>1</sup> (SCRA) "postpones or suspends certain civil obligations to enable Service members to devote their full attention to duty and relieve stress on their families."<sup>2</sup> This includes various financial safeguards for active-duty Service members, including protections against default judgments in civil cases, provisions to prevent foreclosures, and mechanisms to reduce interest rates on pre-service loans.<sup>3</sup> The SCRA also provides

that "[t]he personal property of a [Service member] or the spouse of a [Service member] shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the [Service member] is serving in compliance with military orders."<sup>4</sup>

Despite the broad reach of the SCRA, active-duty Service members still need to rely on state and local governments to recognize and honor the protections provided. Before the recent

Massachusetts Appellate Tax Board (ATB) case, *LtCol Jonathan L. Riggs v. Board of Assessors of the Town of Bedford (Riggs)*,<sup>5</sup> the consensus among state and local governments in Massachusetts and nationwide was that the SCRA's protection against local excise taxes applied only to vehicles *owned* by an active-duty Service member or their spouse and did not apply to *leased* vehicles.<sup>6</sup> Lieutenant Colonel (LtCol) Jonathan L. Riggs, an active-duty Marine officer, disagreed with this interpretation and retained us as his counsel to represent him pro bono before the ATB in his dispute with the Town of Bedford, Massachusetts.

The questions presented to the ATB in *Riggs* were (1) whether a lessee of a vehicle has standing to pursue an appeal from a local assessor's decision to deny an application for abatement of excise tax and (2) whether the SCRA's protection against local excise taxes extends to a motor vehicle leased by an active-duty Service member. The ATB found in favor of LtCol Riggs on both questions, which set a new precedent for excise tax cases under the SCRA in Massachusetts and provided much-needed guidance for local tax cases outside of the Commonwealth. To the best of our knowledge, *Riggs* is the first and only case in the country to specifically provide that the SCRA's protections apply to vehicles leased by active-duty Service members.

## Factual Background

LtCol Riggs is a West Virginia resident who was serving a temporary assignment as an active-duty Marine officer at the 1st Battalion, 25th Marines at Fort Devens, Massachusetts.<sup>7</sup> On or about 29 August 2017, LtCol Riggs leased a Chevrolet Silverado from GM Financial (GM) through Best Chevrolet, Inc. in Hingham, Massachusetts.<sup>8</sup> The Town of Bedford (Bedford) subsequently charged GM a \$350 motor vehicle excise tax related to the Silverado.<sup>9</sup> GM passed this cost through to LtCol Riggs, sending him a bill for \$350.<sup>10</sup> LtCol Riggs paid the bill, notified the Bedford Assessor and GM that he should be exempt from paying the tax under the SCRA, and requested a tax refund.<sup>11</sup>

In December 2018, LtCol Riggs' counsel sent a letter to Bedford's associate assessor, which summarized the position

that LtCol Riggs should be exempt from the tax under the SCRA.<sup>12</sup> After the assessor denied the application for abatement, Riggs appealed Bedford's denial in a Petition under Formal Procedure to the ATB.<sup>13</sup> In March 2021, Riggs, through counsel, filed a motion for summary judgment with the ATB.<sup>14</sup> On 12 October 2021, the ATB allowed the motion for summary judgment and issued a decision for LtCol Riggs, granting an abatement of the excise tax.<sup>15</sup> On 9 March 2023, the ATB promulgated its Findings of Fact and Report in support of its decision.<sup>16</sup>

## Analysis

LtCol Riggs asked the ATB to consider a question of first impression on both a statewide and national level: "Does the SCRA protect against the imposition of local property tax on a motor vehicle leased by an active-duty Service member on active-duty orders in Massachusetts and domiciled in another state?"<sup>17</sup> We maintained that this question must be answered affirmatively because the language of the personal property tax relief provisions in the SCRA broadly applies to "[t]he personal property of a Service member or the spouse of a Service member"<sup>18</sup> and because the SCRA broadly defines "taxation" as "licenses, fees, or excises imposed *with respect to motor vehicles* and their use."<sup>19</sup>

Riggs argued that the Bedford excise tax "falls squarely within the scope of the property tax exemption of the SCRA" because (a) "it is an excise imposed concerning a motor vehicle of a nondomiciliary Service member" and (b) there is no limiting language in the statute that supports the interpretation that leased vehicles are ineligible for the property tax exemption.<sup>20</sup> Riggs further argued that "[l]easing a vehicle as opposed to owning the vehicle outright is a distinction without a difference in this case because LtCol Riggs will ultimately bear the burden of the excise tax when GM charges him back for the taxes that GM paid on his behalf."<sup>21</sup>

In support of Riggs' position that the SCRA should protect against the imposition of local property taxes on leased vehicles, we cited two U.S. Supreme Court cases: In *California v. Buzard*, the Court held that "[t]he very purpose of [the

SCRA] in broadly freeing the nonresident [Service member] from the obligation to pay property and income taxes was to relieve him of the burden of supporting the governments of the states where he was present solely in compliance with military orders."<sup>22</sup> In *Dameron v. Brodhead*, the Court held that the SCRA's protections against the imposition of local excise taxes on property owned by active-duty Service members were not limited to instances of multiple taxation but instead were broadly intended to "free[] [Service members] from both income and property taxes imposed by any state by their presence there as a result of military orders."<sup>23</sup>

In our letter to Bedford's associate assessor, which was incorporated into the motion for summary judgment, we argued that the "consistent theme of these cases is that it is the Service member's state of original residence—and not the state in which the Service member is temporarily stationed—that has the 'sole right of taxation' with respect to property or income of an active-duty Service member."<sup>24</sup>

The ATB divided its analysis into two discrete but interrelated questions: (1) Does LtCol Riggs have standing to challenge the tax, and (2) Does the SCRA protect against local excise taxes on vehicles leased by active-duty Service members outside their home states? Although the ATB framed these as two distinct issues, whether LtCol Riggs has standing to challenge the tax is inextricably connected to the substantive protections under the SCRA. The ATB addressed both questions by focusing on the out-of-pocket impact on the Service member rather than the technical distinction between the lessor and lessee.

## *LtCol Riggs Has Standing as a "Person Aggrieved"*

In its response to the motion for summary judgment, Bedford argued that LtCol Riggs lacked standing to challenge the tax because he was the lessee of the vehicle rather than the lessor.<sup>25</sup> Bedford contended that GM, as the assessed taxpayer, is the only party with standing to bring this appeal and that LtCol Riggs was not an appropriate "aggrieved party" to appeal an abatement denial under Massachusetts General Laws, chapter 59, section 64.<sup>26</sup>

LtCol Riggs responded to Bedford's jurisdictional argument by asserting that he "derives standing from the [SCRA] and the Supremacy Clause in Article VI of the [U.S.] Constitution" and that he has standing under Massachusetts law as a "person aggrieved" because his "pecuniary interests are or may be adversely affected."<sup>27</sup> LtCol Riggs argued that even though he was not the vehicle owner, "his pecuniary interests were adversely affected because the incidence of the tax ultimately fell upon him."<sup>28</sup>

The ATB agreed with LtCol Riggs on the standing issue, ruling that he has standing to appeal the abatement denial because the incidence of the tax ultimately fell upon him.<sup>29</sup> In reaching its conclusion in favor of LtCol Riggs on the standing issue, the ATB cited the Supreme Court's holding in *First Agricultural National Bank v. State Tax Commission* that "a sales tax which, by its terms, must be passed on to the purchaser imposes the legal incidence of the tax upon the purchaser."<sup>30</sup> In *First Agricultural Bank*, the Court determined that the ultimate question is "On whom does the incidence of the tax fall?" regardless of how a state court characterizes the tax.<sup>31</sup>

Both the Supreme Court and the ATB were careful to clarify that the inquiry regarding the incidence of the tax is for the limited purpose of determining Federal immunity from state taxation.<sup>32</sup> Accordingly, this inquiry should not affect whether a taxpayer has standing to appeal personal property or real estate tax as a "person aggrieved"<sup>33</sup> in a case that arises purely under Massachusetts law.<sup>34</sup>

### ***The SCRA Protects Against Local Excise Taxes on Vehicles Leased by Active-Duty Service Members Outside Their Home States***

On the issue of whether the SCRA should be broadly interpreted to afford protections to vehicles leased by active-duty Service members, Bedford argued that the two cited Supreme Court cases, *Buzard* and *Dameron*, are inapposite because they relate to situations in which the Service member owned, not leased, the assessed personal property.<sup>35</sup> Bedford acknowledged that there was not a single case that directly addressed whether the SCRA applied to leased vehicles, but it cited a Question and Answer (Q&A)-format article by U.S. Navy Judge Advocate

General's Corps Captain (Retired) Samuel Wright, entitled *The SCRA Protects You from Having to Pay Personal Property Tax on the Vehicle that You Own, but Not a Vehicle You Lease*.<sup>36</sup> In this article, Captain Wright advised an active-duty U.S. Navy lieutenant, temporarily on assignment in Virginia, to "purchase an automobile instead of leasing it" because the SCRA protects against the imposition of local taxes on personal property, and a leased vehicle is not technically the Service member's personal property.<sup>37</sup>

In LtCol Riggs' Reply to Bedford's Opposition to Motion for Summary Judgment, we asked "why the U.S. Supreme Court would hold that the purpose of the statute is to 'relieve [a Service member] of the burden of supporting the governments of the states where he was present solely in compliance with military orders' while simultaneously prohibiting lessee Service members from the benefits of this interpretation."<sup>38</sup> In response to Bedford's citation of Captain Wright's article, we argued that a practical guide in a Q&A format should not dictate the outcome of this case because it is directed to whether a Service member should purchase or lease a vehicle rather than the more complex inquiry of whether the SCRA should be interpreted to apply to leased vehicles.<sup>39</sup>

The ATB agreed with LtCol Riggs that the SCRA "is specifically designed to limit the power of states to enact a tax on individuals or entities that would otherwise be subject to state tax."<sup>40</sup> The ATB ruled that "the imposition of the excise violated Federal law providing specific rules for the treatment of the property of Service members who are stationed outside of their state of residence."<sup>41</sup> Like its analysis of the standing issue, the ATB's analysis of the SCRA's protections focused on the tax's broad impact on affected Service members rather than the technical definition of the assessed taxpayer. Accordingly, the ATB allowed LtCol Riggs' motion for summary judgment, issued a favorable decision, and granted a complete abatement of the excise tax.<sup>42</sup>

### **Recommendations to Active-Duty Service Members**

Based on the ATB's decision in *Riggs*, we offer the following recommendations to

active-duty Service members and their representatives:

1. For active-duty Service members considering whether to purchase or lease a vehicle outside of their residence: We agree with Captain Wright that purchasing the vehicle should result in an uncontroversial exemption from local taxes in the Service member's temporary residence. However, many non-tax reasons exist for which a Service member may prefer to lease a vehicle rather than purchase it. For example, Service members who could be deployed overseas on short notice would probably choose the flexibility of a short-term lease to purchasing a vehicle outright. Accordingly, we would never advise a Service member to buy a vehicle they would otherwise prefer to lease purely based on local tax protection under the SCRA. For those Service members who would like to lease and share our conviction that the SCRA should protect against local taxes on leased vehicles outside the Service members' home states—and are comfortable with the potential time and expense associated with a tax dispute—we recommend that they discuss the possibility of a local tax exemption with their local assessor and the lessor before signing the lease.

2. For active-duty Service members who have already been billed and paid local taxes outside their home states to the lessor: We recommend that these Service members send letters to their lessors and local assessors requesting an abatement of local excise taxes. We also advise that these Service members consider citing *Riggs* as authority for their position. Although LtCol Riggs does not bind local tax assessors and appellate tax boards outside of Massachusetts as precedent, this case serves as an insightful roadmap for how other jurisdictions should apply local tax exemptions under the SCRA.

It is impossible to predict whether this case will directly impact local tax assessors' and appellate tax boards' interpretations of the SCRA outside of Massachusetts. In the absence of specific case law in this area, however, *Riggs* provides a basis for an exemption to which any Service member stationed outside their home state should be entitled.

## Conclusion

Although the amount of the tax at issue, in this case, was relatively small, LtCol Riggs was always convinced that the SCRA should protect him from paying any excise taxes to the Town of Bedford and refused to give up on his challenge. As a direct result of LtCol Riggs' confidence in the merits of his position and refusal to yield to the assessment, the ATB has now provided Service members with long-awaited clarity on the SCRA's protection against local taxes on leased vehicles.

The ATB's ruling clarifies that active-duty Service members stationed in Massachusetts and domiciled elsewhere are not responsible for excise taxes assessed on motor vehicles *owned or leased* by those Service members. Because the scope of the SCRA's protection to local taxes on leased vehicles was a question of first impression, Service members stationed outside of Massachusetts should consider citing *Riggs* in support of their position that assessors outside of the Service members' home states are prohibited from imposing property taxes on leased vehicles. **TAL**

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*At the time the ATB case was decided (March 2023), Mr. Morris was a Tax Partner at Sherin and Lodgen LLP, a law firm based in Boston, Massachusetts. Mr. Morris is now Director of Tax Controversy for a national retail company.*

*The author thanks his colleague, attorney Julia Royce, for her valuable contributions to this article. The briefs for this case are unavailable on Westlaw, but Ms. Royce can provide copies on request via email to jroyce@sherin.com.*

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## Notes

1. Soldiers' and Sailors' Civil Relief Act Amendments of 2003, Pub. L. No. 108-189, 117 Stat. 2835 (codified as amended at 50 U.S.C. §§ 501-96).
2. See  *Servicemembers' Civil Relief Act*, OFF. OF COMPTROLLER OF CURRENCY, <https://www.occ.treas.gov/topics/consumers-and-communities/consumer-protection/servicemembers-civil-relief-act/index-servicemembers-civil-relief-act.html> (last visited Oct. 10, 2024).
3. 50 U.S.C. § 3931 (2016) (protection against default judgments in civil cases); 50 U.S.C. § 3937 (2016) (six percent cap for interest on obligations incurred before service date); 50 U.S.C. § 3953 (2023) (protection against foreclosure).
4. 50 USC § 4001(d)(1) (2022).

5. LTC Jonathan L. Riggs v. Bd. of Assessors of the Twn. of Bedford, No. F337365, 2023 WL 2603776 (Mass. App. Tax. Bd. Mar. 9, 2023).
6. See MASS. DEP'T OF REV., LOCAL TAX BENEFITS: VETERANS AND ACTIVE SERVICEMEMBERS § 3.2.1 (2009) ("This exemption applies just to property owned by the servicemember. If the servicemember leases a vehicle, the owner/lessor is billed for the excise and the terms of the lease govern whether that cost is passed along to the servicemember/lessee."); *Motor Vehicle Excise Information*, SEC'Y OF THE COMMONWEALTH OF MASS., <https://www.sec.state.ma.us/divisions/cis/tax/motor-excise.htm> (last visited Oct. 10, 2024) ("Leased vehicles are also not eligible for this exemption . . ."); *Active Duty Military Motor Vehicle Exemption*, CRAVEN CTY. N.C., <https://www.cravencountync.gov/2270/Active-Duty-Military-Motor-Vehicle-Exemp> (last visited Oct. 10, 2024) ("Exemptions cannot be claimed on leased vehicles *unless* they have a tax situs on a military base in an area of exclusive Federal jurisdiction."). The view that the SCRA does not protect against the imposition of local taxes on leased vehicles is shared by Captain (Retired) Samuel Wright, U.S. Navy Judge Advocate General's Corps. See Captain Samuel F. Wright, *The SCRA Protects You from Having to Pay Personal Property Tax on Vehicle that You Own, But Not a Vehicle You Lease*, SERV. MEMBERS L. CTR. L.R. 20055, June 2020.
7. *Riggs*, 2023 WL 2603776, at \*1.
8. *Id.*
9. *Id.*
10. *Id.*
11. See *id.*
12. This statement is based on the author's professional experiences as LtCol Riggs' counsel in this matter [hereinafter Professional Experiences].
13. *Riggs*, 2023 WL 2603776, at \*1.
14. Professional Experiences, *supra* note 12.
15. *Id.*
16. *Id.*
17. See Appellant LtCol Jonathan L. Riggs' Reply to Appellee's Opposition to Motion for Summary Judgment, at 4, LTC Jonathan L. Riggs v. Bd. of Assessors of the Twn. of Bedford, No. F337365, 2023 WL 2603776 (Mass. App. Tax. Bd. Mar. 9, 2023) (on file with author).
18. See Appellant LtCol Jonathan L. Riggs' Motion for Summary Judgment, Exhibit A, at 2 (letter to Bedford associate assessor dated Dec. 4, 2018) (quoting 50 U.S.C. § 4001(d)(1)) (emphasis added), LTC Jonathan L. Riggs v. Bd. of Assessors of the Twn. of Bedford, No. F337365, 2023 WL 2603776 (Mass. App. Tax. Bd. Mar. 9, 2023) (on file with author).
19. *Id.* (quoting 50 U.S.C. § 4001(g)(2) (2022)) (emphasis added).
20. *Id.*
21. *Id.* at 2-3.
22. *California v. Buzard*, 382 U.S. 386, 393 (1966).
23. *Dameron v. Brodhead*, 345 U.S. 322, 326 (1953).
24. Appellant LtCol Riggs' Motion for Summary Judgment, Exhibit A, at 2 (letter to Bedford associate assessor dated Dec. 4, 2018) (quoting *Dameron*, 345 U.S. at 326), LTC Jonathan L. Riggs v. Bd. of Assessors of the Twn. of Bedford, No. F337365, 2023 WL

- 2603776 (Mass. App. Tax. Bd. Mar. 9, 2023) (on file with author).
25. See Bedford's Opposition to Lt. Col. Riggs' Motion for Summary Judgment, at 3, LTC Jonathan L. Riggs v. Bd. of Assessors of the Twn. of Bedford, No. F337365, 2023 WL 2603776 (Mass. App. Tax. Bd. Mar. 9, 2023) (on file with author).
26. *Id.* at 3; MASS. GEN. LAWS ch. 59, § 64 (2016).
27. Appellant LtCol Jonathan L. Riggs' Reply to Appellee's Opposition to Motion for Summary Judgment, at 2-3, LTC Jonathan L. Riggs v. Bd. of Assessors of the Twn. of Bedford, No. F337365, 2023 WL 2603776 (Mass. App. Tax. Bd. Mar. 9, 2023) (on file with author).
28. *Id.* at 3.
29. See LTC Jonathan L. Riggs v. Bd. of Assessors of the Twn. of Bedford, No. F337365, 2023 WL 2603776, at \*2 (Mass. App. Tax. Bd. Mar. 9, 2023).
30. *First Agric. Nat'l Bank of Berkshire Cnty. v. State Tax Comm'n*, 392 U.S. 339, 347 (1968).
31. *Id.* at 347-48 (reversing the Massachusetts Supreme Judicial Court's decision in *First Agric. Nat'l Bank of Berkshire Cnty. v. State Tax Comm'n*, 229 N.E.2d 245 (Mass. 1967) that the bank, as purchaser, was not entitled to relief because the incidence of the sales tax falls upon vendors).
32. See *Riggs*, 2023 WL 2603776 at \*3 (discussing 229 N.E.2d 245).
33. See MASS. GEN. LAWS ch. 59, § 64 (2016).
34. See *Riggs*, 2023 WL 2603776 at \*3 ("We see no reason, however, for changing our conclusion on the incidence of the sales tax in a situation where Federal immunity from State taxation is not involved.") (quoting Supreme Council of Royal Arcanum v. State Tax Comm'n, 260 N.E. 2d 822, 824 (Mass. 1970)).
35. Professional Experiences, *supra* note 12.
36. *Id.*; see Wright, *supra* note 6, at 5 ("Section 4001(d) (1) does not exempt the leasing company from the obligation to pay the personal property tax, nor does it exempt you from the obligation to reimburse the leasing company for the personal property tax the company pays.").
37. See Wright, *supra* note 6, at 5.
38. Appellant LtCol Jonathan L. Riggs' Reply to Appellee's Opposition to Motion for Summary Judgment, at 2-3 (citing *California v. Buzard*, 382 U.S. 386, 393 (1966)), LTC Jonathan L. Riggs v. Bd. of Assessors of the Twn. of Bedford, No. F337365, 2023 WL 2603776 (Mass. App. Tax. Bd. Mar. 9, 2023) (on file with author).
39. *Id.* at 4.
40. LTC Jonathan L. Riggs v. Bd. of Assessors of the Twn. of Bedford, No. F337365, 2023 WL 2603776, at \*4 (Mass. App. Tax. Bd. Mar. 9, 2023).
41. *Id.* at \*2.
42. See *id.*