



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-172621

APR 4 1973

Mr. Joseph Podorsek
388 Jenny Drive
Newbury Park, California 91320

Dear Mr. Podorsek:

Reference is made to your letter dated February 26, 1973, requesting information as to whether a Government employee performing travel incident to his official duties is subject to State and local motel and hotel taxes.

In order to be exempt from State taxation the Government must show that the legal incidence of the particular tax involved falls directly on the Government. It has been held that a State sales tax, the legal incidence of which falls on the buyer, does not infringe the constitutional immunity of the Government where it is determined that the Government is not in fact the "purchaser" within the meaning of the tax statute. Alabama v. King and Boozer, 314 U.S. 1 (1941). When an employee of the Government secures a hotel room or other lodging while traveling on official business the Government is not ordinarily a party to the transaction. The fact that the Government is obligated to reimburse the employee for his travel expenses and thereby assumes the economic burden of the tax does not in general make it a tax upon the United States. It may therefore be said that in general employees of the Government are not legally exempt from the payment of State and local taxes levied upon motel and hotel rooms.

However, it may be noted that we are aware of five localities which permit an exemption from hotel and motel occupancy taxes when Government employees travel on Government business. Those localities are Baltimore, Maryland; Cleveland, Ohio; Los Angeles, California; New York, New York; and Virginia Beach, Virginia. Employees of this Office have been requested to use tax exemption certificates when on temporary duty at these locations.

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We hope the above information will be helpful.

Sincerely yours,

Carl P. Friend

C. P. Friend
Assistant General Counsel