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Mr. DeLoach, CWO, 11/25/76

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE:

B-187086

DATE: NOV 24 1976

MATTER OF:

**Clyde W. Myers - Relocation Expenses -
Sales Tax on Mobile Home Purchase**

DIGEST:

Civilian employee of Army Corps of Engineers in transfer of official duty station seeks reimbursement of \$122 representing Alabama sales tax paid by him in purchase of mobile home at new duty station. Under Code of Alabama, title 51, section 786(3), sales tax paid by claimant on purchase of his mobile home is excise or sales tax on act of transferring title and rights of ownership, not property tax upon mobile home, with ultimate burden of tax passed on to consumer. Therefore, under paragraph 2-6.2d, Federal Travel Regulations, and 2 Joint Travel Regulations para. C8352d, reimbursement of tax paid may be authorized as transfer tax.

This action is in response to a request by Mr. James K. Lynn, Disbursing Officer, Corps of Engineers, Savannah District, Department of the Army, for our decision as to whether he has the authority to authorize reimbursement of the Alabama state sales tax paid by Mr. Clyde W. Myers, an employee of the agency, on the purchase of a mobile home in connection with his transfer of official duty station.

The record discloses that by Travel Order No. 528, dated September 12, 1973, Mr. Myers was transferred from Texarkana, Texas, to West Point, Georgia. Incident to this transfer, Mr. Myers purchased a mobile home in Alabama in the vicinity of his new duty station and paid an additional sum of \$122 on such purchase representing the Alabama state sales tax. The sole question is whether Mr. Myers is entitled to reimbursement of the sales tax which he paid.

At the time of Mr. Myers' transfer, payment of travel and relocation expenses of civilian Government employees was governed by the Federal Travel Regulations (FPMR 101-7) (May 1973), and volume 2 of the Joint Travel Regulations (JTR). Paragraph 2-6.2d of Federal Travel Regulations and paragraph C8352d of volume 2,

B-187056

JTR, allow reimbursement of "mortgage and transfer taxes" incurred in the sale and purchase of residences, including mobile homes, incident to a transfer of official duty stations. The question, in essence, is whether the sales tax paid by Mr. Myers in the purchase of his mobile home is a "transfer tax" within the meaning of the regulations.

In our decision B-171878 August 8, 1974, published at 54 Comp. Gen. 93, it was concluded that in determining whether a state tax is to be viewed as a transfer tax and hence reimbursable, we will look to the local interpretation of the tax law in question, rather than viewing the tax from the perspective of its impact on the employee. In this connection, pertinent provisions of the Code of Alabama, Recompiled, 1973 Cumulative Pocket Part, title 51, entitled "Revenue," provide as follows:

"§ 786(3). Tax levied on gross receipts. --

There is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against the person or [on] account of the business activities and in the amount to be determined by the application of rates against gross sales, or gross receipts, as the case may be, as follows:

* * * * *

"(d) Upon every person, firm or corporation engaged or continuing within this state in the business of selling at retail any automotive vehicle or truck trailer, semitrailer or house trailer, an amount equal to one and one-half percent of the gross proceeds of sale of said automotive vehicle or truck trailer, semitrailer or house trailer * * *."

In this regard section 786 (25) of the Alabama Code provides, in pertinent part, as follows:

"Tax to be added to purchase price; refund unlawful; penalty: tax a direct tax on retail consumer. --

Every person, firm, corporation, association, or co-partnership engaged in or continuing within this state in the business for

B-187056

which a license or privilege tax is required by this article shall add to the sales price and collect from the purchaser on all sales upon the gross receipts or gross proceeds of which there is levied by this article a sales tax * * *. All taxes paid in pursuance to this article or any other statute enacted in this connection shall conclusively be presumed to be a direct tax on the retail consumer, precollected for the purpose of convenience and facility only."

The interpretation given to section 786(3) by the Alabama courts is, in essence, that the Alabama sales tax is a consumer's tax in the sense that the ultimate burden of the tax must be passed on to the consumer. As to taxable sales, the burden is upon the seller to collect from the purchaser the amount of tax due on a sale and the State looks to the seller for the tax. Hill v. State, 281 So. 2d 440 (Ala. App. 1973), and Merriwether v. State, 252 Ala. 590, 42 So. 2d 465 (1949). In the landmark decision King & Boozer v. State (United States, Intervener), 241 Ala. 557, 3 So. 2d 572, certiorari granted, 314 U. S. 1 (1941), the Supreme Court of Alabama stated, in pertinent part, at page 578, as follows:

"The nature of the tax is not determined by the name given to it, or by the use of some particular form of words, but by the substance and realistic impact of the tax; and while the tax here involved is denominated in section II as a privilege or license tax upon every person engaged in the business of selling tangible personal property at retail, determined by a stated percentage of gross proceeds of sales, section XXVI makes it unlawful for any person to fail or refuse to add to the sale price and collect from the purchaser the amount due on the tax. The ultimate burden of the tax is thus passed on to the consumer, and in truth and in fact the tax can well be denominated a consumers' tax. * * *"

Subsequently the Supreme Court of the United States agreed with this interpretation. Alabama v. King & Boozer, 314 U. S. 1 (1941).

B-187058

As stated earlier, paragraph 2-6.2d of the Federal Travel Regulations and paragraph C8352d of Volume 2, JTR, provide for the allowance of expenses for reimbursement of mortgage and transfer taxes. This, in effect, is a reimbursement for an excise tax on the act of transferring the title and rights of ownership, not a property tax upon the article itself. It should be noted that the Alabama tax here involved is not a property tax, but is an excise or sales tax for revenue purposes. Its payment may be said to be a necessary incident to the purchase of the mobile home for use as a residence, as well as a prerequisite to the exercise of rights of ownership in the property. In view thereof, the tax paid by Mr. Myers in purchasing the mobile home at his new duty station is similar to a transfer or mortgage tax and thus a proper object for reimbursement under the regulatory provisions. B-178453, June 14, 1973, and B-170954, November 19, 1970.

In light of the foregoing, the item in the amount of \$122 claimed by Mr. Myers, representing the Alabama state sales tax on the purchase of the mobile home at his new duty station, may be certified for payment if otherwise proper.

R.F. KILMER
Deputy Comptroller General
of the United States