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DECISION



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

FILE: B-203151

DATE: September 8, 1981

MATTER OF: Barbara J. Satorius

DIGEST: Employee who rented an automobile in her own name while on a househunting trip in Colorado is entitled to be reimbursed 6-1/2 percent state and local sales tax paid in connection with rental. The incidence of the tax is on the employee as lessee and fact that the Government is obligated to reimburse the employee for her car rental expenses and thereby assumes the economic burden of the total costs, including the tax, does not thereby make it a tax upon the United States. The Government is not the "purchaser" and may not assert its immunity from state and local sales tax levied upon the rental of cars.

The issue in the present case is whether Ms. Barbara J. Satorius, an employee of the Federal Highway Administration, is entitled to be reimbursed the amount of the state and local sales tax she paid as part of the charges for renting an automobile while on a househunting trip. For the following reasons, Ms. Satorius is entitled to be reimbursed.

On December 23, 1980, Ms. Barbara J. Satorius was authorized a househunting trip incident to a permanent change of station from Kansas City, Missouri to Cheyenne, Wyoming. Ms. Satorius flew from Kansas City to Denver where she rented an automobile and drove to Cheyenne. The bill for the rental car included the 6-1/2 percent Colorado state and local sales tax. The certifying officer disallowed Ms. Satorius' claim for reimbursement for the state and local sales tax charged.

That disallowance was based on the Government's constitutional immunity from state and local taxation. Though Ms. Satorius is listed as the renter the Federal Highway Administration suggests that because she was acting within the authority of an approved travel order the legal incidence of the tax falls on the Government.

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We have long held that in order to be exempt from state and local taxation, the Government must show that the legal incidence of the particular tax involved falls directly on the Government. See, 55 Comp. Gen. 1278 (1976) and B-167150, April 3, 1972 and cases cited therein. Where the legal incidence of a tax is on the vendor of the goods or services to the United States, the constitutional principle under which the Government is immune from state and local taxation is inapplicable. See 49 Comp. Gen. 204 (1969) and cases cited therein. Where the tax is on the purchaser, unless the Government or an agent on its behalf is purchasing the goods or services for the Government's benefit, the Government may not assert its constitutional exemption from paying a state or local tax. For example, 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, even though the Government is obligated to reimburse the buyer for the total costs of the item. Alabama v. King and Boozer, 314 U.S. 1 (1941).

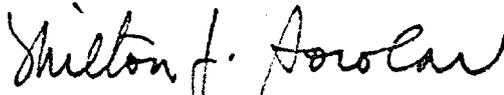
We have reviewed the provisions of the Colorado Sales and Use Tax. Colo. Rev. Stat. § 39-26-101 et seq. (1973) as well as the County and Municipal Sales Tax, Colo. Rev. Stat. § 29-2-101 et seq. It is clear from sections 29-1-106 and 39-26-106 and the applicable case law that the Colorado sales tax is a vendee tax. See State, Department of Revenue v. Modern Trailer Sales Inc., 486 P. 2d 1064 (Colo. 1971); and J.A. Tobin Construction Co. v. Weed, 407 P. 2d 350 (Colo. 1965). Therefore, the Government is exempt from paying this tax only if it, rather than the employee, is considered to be the lessee of the car.

In the present situation, the car was neither rented by, nor in the name of the United States. Rather, the car was rented by Ms. Satorius in her own name and the tax attached to that rental. The Government was never a party to this transaction and there was not a direct contractual obligation by the Government to the rental

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agency. See 55 Comp. Gen. 1278, 1280. In the absence of a specific State statute exempting rentals to Federal employees from the tax, Ms. Satorious was liable to pay for it. The fact that the Government upon authorizing a househunting trip and approving the use of a rental car for Ms. Satorious became obligated to reimburse her for all of her reasonable expenses does not affect her liability for this tax. In this regard, we have held that when the Government is obligated to reimburse an employee for the costs of a rental car and thereby assumes the economic burden of that cost, including the tax, the payment of those costs does not make the sales tax a tax upon the United States. B-167150, April 3, 1972. Thus, under these circumstances the Government is not considered to be the purchaser and may not assert its immunity from the payment of a state and local sales tax levied upon the rental of cars.

Accordingly, Ms. Barbara J. Satorious is entitled to be reimbursed the amount of the state and local sales tax she paid as part of the charge for renting an automobile.


Acting Comptroller General
of the United States