



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: U.S. Forest Service -- Payment of County
Landfill Fees

File: B-243043

Date: August 27, 1991

DIGEST

The Forest Service may pay county landfill user fees as a reasonable service charge, analogous to other utility services provided the government, since the charge is based on levels of service provided and appears nondiscriminatory.

DECISION

A certifying officer with the U.S. Forest Service, San Francisco, California, requests an advance decision on whether the Service can pay county landfill fees for garbage disposal. For the reasons indicated below, we hold that the Forest Service may pay the fees.

Background

On June 29, 1989, the Board of Supervisors of the County of Nevada, California adopted a resolution implementing fees for solid waste disposal at a county-owned and operated landfill. The Nevada County Sanitation Department, which supervises the operation of the landfill, determined that the Forest Service owed user fees for waste generated at two separate facilities (in the amounts of \$6,552.00 and \$1,638.00). The county filed a claim with the Service on September 11, 1990 for a total of \$8,190.00 in solid waste disposal user fees that the Tahoe office of the Service has refused to pay.

The certifying officer questions the propriety of paying the bills on the grounds that the landfill fees are imposed in a discriminatory manner because certain users other than government entities are subsidized by property tax revenues. The officer takes the position that the landfill fees represent a direct tax upon the United States rather than a reasonable service charge, and thus may not be paid.

Opinion

It is an unquestioned principle of constitutional law that the United States and its instrumentalities are immune from direct taxation by state and local governments. McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819), cited in B-239608, Dec. 14, 1990. However, a charge made by a state or a political subdivision of a state for a service rendered or convenience provided is not a tax. 50 Comp. Gen. 343, 344 (1970). A federal agency may generally pay service charges such as those for municipal water or sewer service, provided the charges are demonstrably representative of the fair and reasonable value received by the United States for the services rendered. 66 Comp. Gen. 385, 386 (1987). See also discussion of tax versus service charge in 65 Comp. Gen. 879 (1986) and 29 Comp. Gen. 120 (1929). Here, the county charges public bodies such as the federal government a fee for landfill use based on a flat rate multiplied by the quantity of garbage disposed of. The charges directly relate to the levels of service rendered by the county. Thus, the charges for landfill services, which are analogous to water or sewer charges, are service charges rather than taxes.

Furthermore, we have held that in the context of utility services, where rates are established by a legislature or public service commission which has been delegated this power, such rates are controlling unless the rates are "manifestly unjust, unreasonable, or discriminatory" and "should be paid by federal agency users." 67 Comp. Gen. 220, 222 (1988) (citations omitted). See also 50 Comp. Gen. 343 (1970).^{1/}

In the present situation, the county board of supervisors established the rates for landfill use under the authority of California Government Code section 25823 (Deering 1974). As

^{1/} Although public utilities as a rule cannot discriminate unjustly in their rates to consumers similarly situated or of the same class for the same service, it is also true that rate-making authorities may decide that a substantial inequality in economic circumstances justifies a reasonable inequality of rates. "Accordingly, discrimination by a public utility in setting its rates is not unlawful when based upon a classification corresponding to economic differences among its customers or upon differences in the kind or amount of service furnished or other reasonable basis." 67 Comp. Gen. 220, 222 (1988). In that case we held that a lifeline surcharge could be paid representing lost revenues to utility companies who were providing services at reduced rates to eligible low-income elderly customers. The utility company charged their other users, including the federal government, for the costs of supporting lifeline services.

pointed out by the certifying officer, certain users are subsidized from county property tax revenue.^{2/} Nonetheless, the federal government is charged on the same basis as other public entities in the county. An attachment to the resolution on the county's share of landfill costs includes calculations of revenues generated from direct billing of all government entities at the same rate the Forest Service is being charged. Additionally, the Forest Service's charge represents only a small portion of the total amount due the county from other government entities. It is also not clear what effect, if any, the property tax subsidy has on the landfill fees paid by the federal government and other public institutions. There is, however, no attempt by the county to discriminate specifically against the federal government.

Because the County's landfill charge appears nondiscriminatory and represents a fair approximation of the benefits received by the Forest Service, the County's claim may be certified for payment.

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^{2/} The fees collected in the county's 1989-1990 fiscal year include a large one-time increase in parcel charges to enable the county to bring the local landfill into compliance with various legal requirements regulating the use and operation of landfills. In order to decrease the impact that the increase in parcel charges "will have on those citizens who are living on fixed incomes and who are unable to afford the increase without serious personal impacts" the county allocated property tax revenues to be used to subsidize a portion of the landfill user costs for such people. Some businesses in the county were also subsidized from property tax revenues, but with a much larger dollar amount.