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## UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

Released

B-178517-o.m., Apr. 22, 1974

APR 20 1973

APR 20

REGISTRATION AND  
CLASSIFICATION DIVISION  
DA 2-2487347-TEM-1

The Comptroller General

Herewith is the claim of the City of Rochester, New York, for payments in lieu of taxes for each fiscal year during the period July 1, 1962 through June 30, 1970, totaling \$1,147,000.00, based on 40 U.S.C. 521, 1964 Ed. which was repealed as of January 1, 1971, on the Naval Industrial Reserve Ordnance Plant located at Lincoln Avenue in Rochester, New York, which is owned by the United States and operated by the Eastman Kodak Company for the Department of the Navy.

40 U.S.C. 521 states its purpose was to make temporary provision for making payments in lieu of taxes with respect to certain real property transferred by the Reconstruction Finance Corporation and its subsidiaries to other Government departments.

40 U.S.C. 522(b) defines the term "real property" as (1) any interest in land, and (2) any improvement made thereon prior to any transfer thereof occurring on or after January 1, 1946, from the Reconstruction Finance Corporation to any other Government department if for the purpose of taxation such interest or improvement is characterized as real property under the applicable law of the state in which such land is located.

40 U.S.C. 522(d) states the terms "real property tax" and "real property taxes" do not include any special assessment levied upon real property after the date of a transfer of such real property occurring on or after January 1, 1946, from the Reconstruction Finance Corporation to any other Government department.

Doubt exists as to whether the amounts claimed by the City of Rochester for Street Cleaning, Roadway Snow Plowing, and Sidewalk Snow Plowing are proper for payment or are special assessments as defined in 40 U.S.C. 522(d) and thus not payable.

Also, the City of Rochester is claiming payments in lieu of taxes for two parcels of land. At the time the last payment in lieu of real property taxes was made to the City for this property for the fiscal year July 1, 1960 through June 30, 1961, payment was made for just the largest parcel of land. Doubt, therefore, exists as to whether the second parcel of land is property which was transferred from the

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struction Finance Corporation for which payment in lieu of taxes  
40 U.S.C. 521 would be proper. Moreover, since the statute  
has been repealed, doubt exists as to whether any payment is author-  
ized at this time.

The original claim from the City of Rochester also included the  
amount of \$56,396.93 claimed for the fiscal year beginning July 1, 1961  
ending June 30, 1962. As the claim was first received in the General  
Accounting Office on July 31, 1972, that portion of the claim prior to  
July 31, 1962, appears to be barred by 31 U.S.C. 71a, which requires that  
claims cognizable by the General Accounting Office be received in  
the Office within ten full years after the date such claim first accrued  
and is forever barred. Doubt exists as to what portion of the claim, if  
any, accrued during the period July 1, 1962 to July 30, 1962 which would  
not be barred by 31 U.S.C. 719.

In view of the foregoing, uncertainty exists as to the proper amount  
payable, if any, in settlement of the claim. Thus the matter is submitted  
to your consideration and instructions.

H. J. Shahan

Chief, Payment Claims Branch

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Indorsement

Transportation and Claims Division

Returned. As indicated in your submission, Title VII of the  
Federal Property and Administrative Services Act of 1949, 40 U.S.C. 521-524  
was repealed as of January 1, 1971, by section 2 of Public Law 91-466, 84  
Stat. 990, approved October 17, 1970. This repealing statute did not in-  
clude a saving clause.

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The general rule is that where a statute is repealed and there is no saving clause, it is considered as if it had never existed except in cases where a vested right has been acquired under the repealed law. 34 Comp. Gen. 367 (1950); 34 Comp. Gen. 149 (1954). Prior to its repeal, 49 U.S.C. 523, provided: (1964)

§ 523. Payments in lieu of taxes to State and local taxing authorities

"Where real property has been transferred on or after January 1, 1946, from the Reconstruction Finance Corporation to any Government department, and the title to such real property has been held by the United States continuously since such transfer, then on each date occurring on or after January 1, 1955, and prior to January 1, 1971, on which real property taxes levied by any State or local taxing authority with respect to any period become due, the Government department which has custody and control of such real property shall pay to the appropriate State and local taxing authorities an amount equal to the amount of the real property tax which would be payable to each such State or local taxing authority on such date if legal title to such real property had been held by a private citizen on such date and during all periods to which such date relates." (Emphasis added.)

It is our opinion that under this provision the right to any payment in lieu of taxes vested when the taxes became due. Cf. 34 Comp. Gen. 149, 2074., and the references therein cited.

The larger parcel of land, designated in the file as Real Estate tax account No. 90812-12, and for which amounts in lieu of taxes were paid through June 30, 1961, is stated to have been transferred from the Reconstruction Finance Corporation to the Department of the Navy in February 1949. The Navy Department has held it continuously since such transfer. See Memorandum dated June 27, 1972, signed by G. M. Gans, Department of the Navy, Naval Ordnance Systems Command, Washington, D.C.

The Rochester City Charter, passed and adopted by the State legislature pursuant to the City Home Rule Law, established July 1, of each year, as the beginning of the fiscal year. Section 6-78 of the City Charter states:

§ 6-78. Lien of taxes and assessments

"All annual taxes and all local assessments heretofore or hereafter levied by the City of Rochester or by its officers, and all

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water rates and expenses of installing, maintaining and/or repairing water meters heretofore or hereafter charged or assessed by the City of Rochester or by its officers, together with interest, fees, and penalties, are and shall be and remain, until actually paid or satisfied or set aside by the Council or a court of competent jurisdiction, a lien upon the land, tenements or real estate on which or in respect to which the same have been made, from 12:00 midnight on the 30th day of June next following the passage of the ordinances of the Council levying the same in the case of annual taxes, and from the time of the confirmation by the Council of the rolls containing the same become due in the case of water rates and the expenses of installing, maintaining and/or repairing water meters; and are and shall be a lien on the property assessed, prior and superior to all other liens and encumbrances. In case an annual tax or local assessment is levied upon a parcel of land and two (2) or more persons are or become the owners thereof, or it is situate in more than one (1) district, the Council may apportion such tax or assessment upon such parcel of land in such manner as the Assessors may certify to be just, and thereupon such tax or assessment becomes separate liens upon the respective parts of such parcel of land and in the respective amounts designated by the Council." (Emphasis added.)

Section 6-111 of the City Charter states:

"6-111 Collection of taxes by City Treasurer.

"For each fiscal year, the City Treasurer shall, on the first business day of July in each year, proceed to collect taxes from the several persons named in the annual tax rolls and shall give public notice by advertisement in the official papers that all persons named in the tax rolls are required to pay their taxes to him on or after the first business day of July and before the 15th day of the following June and stating the amounts to be added if payment is not made as herein required. Taxes shall be due and payable in four (4) installments, on the first day of July, the first day of September, the first business day of January and the first day of March after the levy thereof.

"The aforesaid installments of said city tax shall be substantially equal in amount except as hereafter provided. Direct assessments, delinquent assessments and installments thereof, water rents, and other charges inserted for collection in the tax rolls for each fiscal year shall be collected

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with the first of such installments. All direct assessments, delinquent assessments and installments thereof, water rents and other charges, inserted in the tax rolls for collection in July of any fiscal year shall be subject to the penalties provided for delayed payment of such installments. The City Treasurer may, in his discretion, receive part payments on such installments and any or all installments due at a future date may be paid at the time of the payment of any prior installment." (Emphasis added.)

Under the above-quoted Charter provisions real property taxes, required to be collected "for each fiscal year" become a lien on real property as of the beginning of such fiscal year. The quoted provisions provide that the taxes must be paid on or after the first day of the fiscal year (July 1) and before the following June 15th of such fiscal year. The taxes, however, are due and payable in four substantially equal installments (July 1, September 1, January 1, and March 1) in such fiscal year but may be paid in full at the time of payment of any installment.

Since the City's claim was first received in the General Accounting Office on July 31, 1972, that portion of the claim for taxes due and payable prior to July 31, 1962, is barred by 31 U.S.C. 71a, which requires that all claims cognizable by the General Accounting Office be received within ten full years after the date such claim first accrued or be forever barred. Accordingly, the City's claim for payments in lieu of taxes for each fiscal year during the period July 1, 1962, through June 30, 1970, may be allowed only as to taxes due and payable on or after August 1, 1962, through June 30, 1970. That is to say, payments in lieu of taxes may be paid to the City starting with the payment that was due September 1, 1962, and ending with the payment due March 1, 1970.

As to the amounts claimed by the City for street cleaning, roadway snow plowing, and sidewalk snow plowing, the record discloses that these charges are based on lineal feet of frontage rather than upon the assessed valuation of the property. Thus these charges are in the nature of front foot benefit charges and appear to constitute special assessments. The statute providing for payments in lieu of taxes not only makes no provision for payment of such charges but, in effect, specifically prohibits the payment of special assessments (see 40 U.S.C. 522(d)). Accordingly, such charges may not be allowed as part of the payments-in-lieu of taxes to the City.

As to the smaller parcel of land, tax account No. 90812-11, the City of Rochester by letter dated July 30, 1973, to this Office, furnished copies of deeds which show that on August 28, 1946, the R.F.C. deeded the parcel to Bourjois, Inc., 35 West 34th Street, New York City, N.Y., which deed was recorded on August 30, 1946. On December 31, 1952, that organization deeded the parcel to the United States of America and

Assessment for local improvements  
Government immunity  
State

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TAXES  
State

Payments in lieu of

the deed was recorded on February 13, 1953. This deed resulted from a Declaration of Taking filed October 16, 1952, in the United States District Court for the Western District of New York. Since this parcel was not transferred to the United States from the R.F.C. and since the parcel was not held continuously by the United States, the terms of the statute, 40 U.S.C. 523, have not been met and therefore any payment in lieu of taxes on account of that parcel would not be proper. This was recognized in the letter dated August 20, 1973, to this Office from the City of Rochester, which among other things withdrew all claims relating to tax account No. 90812-11.

Paul G. Dambling  
Paul G. Dambling  
General Counsel

TAXES  
State

Payments in lieu of taxes

STATUTES OF LIMITATION

Claims

General Accounting Office  
Effect of time limitation  
Claim barred

TAXES

State

Payments in lieu of taxes

STATUTES OF LIMITATION

Claims

General Accounting Office  
Effect of time limitation  
Claim barred

LEGISLATION

Repeal or modification  
Effect

**TAXES**

**State**

**Government immunity**

**Assessment for local improvements**

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**TAXES**

**State**

**Payments in lieu of**

The deed was recorded on February 13, 1935. It provided for a declaration of taking of land for public use. The deed was recorded on February 13, 1935. It provided for a declaration of taking of land for public use. The deed was recorded on February 13, 1935. It provided for a declaration of taking of land for public use.

Paul G. Dembling  
Paul G. Dembling  
General Counsel

**TAXES**

**State**

**Payments in lieu of taxes**

**STATUTES OF LIMITATION**

**Claims**

**General Accounting Office**

**Effect of time limitation**

**Claim barred**

**TAXES**

**State**

**Payments in lieu of taxes**

**STATUTES OF LIMITATION**

**Claims**

**General Accounting Office**

**Effect of time limitation**

**Claim barred**

**LEGISLATION**

**Repeal or modification**

**Effect**