

5350

DECISION



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

D. Weiskoff

CP

FILE: B-189377

DATE: February 13, 1978

MATTER OF: Gerald M. Houts - Sales Tax on Purchase
of Mobile Home

DIGEST: Transferred civilian employee of the Army Corps of Engineers seeks reimbursement of Ohio sales tax paid on purchase of a mobile home at new duty station. Under Ohio Revised Code sales tax paid by claimant on purchase of mobile home is excise tax on the sales transaction, with ultimate burden of tax imposed on consumer. Therefore, under paragraph 2-6.2d, Federal Travel Regulations, reimbursement of tax paid may be authorized as transfer tax.

This action is in response to a request from Carl H. Robinson, Chief, Real Estate Division, Department of the Army, Corps of Engineers, Huntington, West Virginia, for an advance decision whether he may properly certify for payment the voucher of Mr. Gerald M. Houts, an employee of the Corps of Engineers. Mr. Houts seeks reimbursement of the Ohio State sales tax which he paid on the purchase of a mobile home at his new official station incident to his transfer from North Branch of Kokosing Lake, Frederickstown, Ohio, to Scioto Basin Office, Circleville, Ohio. The amount of the sales tax is \$480.

Paragraph 2-6.2d of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973), allows reimbursement of "mortgage and transfer taxes" incurred in the sale or purchase of a residence, including a mobile home. The issue in this case is whether the State sales tax constitutes a transfer tax for the purpose of FTR paragraph 2-6.2d. Our Office has held that the label given to a state tax is not determinative of whether the tax should be construed as a transfer tax. Matter of Earl H. Yale, B-187337, March 29, 1977; Matter of Clyde W. Myers, B-187056, November 24, 1976. Rather, the essential nature of the tax, as stated in the statute imposing the tax and construed by local authorities, should be examined to determine whether the state tax is in fact, a tax on the transfer. The characterization given to a particular tax by the appropriate state or local authorities is controlling. See 54 Comp. Gen. 93 (1974); Earl H. Yale, B-187337, March 29, 1977; B-178453, June 14, 1973.

B-189377


Ohio Revised Code Annotated (RCA), section 5739.02 (Supp. 1976), provides, with certain exceptions, that for the purpose of raising revenues for the needs of the State:

" * * * 7A /n excise tax is hereby levied on each retail sale made in this state. * * *"

The RCA, section 5739.03 (1973), expressly states that the tax imposed by section 5739.02 shall be collected by the vendor from the consumer at the time of the sale. Furthermore, a certificate of title shall not be issued for any motor vehicle, including a mobile home, except upon payment of the sales tax. RCA section 4505.06 (Supp. 1976).

It is clear from the plain language of the statute that the Ohio sales tax is not a tax on property or a tax on the privilege of doing business, but is an excise tax, the ultimate burden of which falls on the consumer. Its payment can be said to be a necessary incident to the purchase of a mobile home for use as a residence, as well as a prerequisite to the exercise of full rights of ownership in the property. In view thereof, the Ohio sales tax is tantamount to a transfer tax for the purpose of FTR paragraph 2-6.2d and may be properly reimbursed. See 54 Comp. Gen. 93 (1974); Earl H. Yale, B-187337, March 29, 1977; Clyde W. Myers, B-187056, November 24, 1976; B-178485, October 23, 1977; B-178453, June 14, 1973; B-170954, November 19, 1970.

Accordingly, Mr. Houk's voucher may be certified for payment if otherwise proper.


Deputy Comptroller General.
of the United States