

DECISION



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

50703

97274

FILE: B-183094

DATE: MAY 27 1975

MATTER OF: Assessment against Government property

DIGEST: Systems development charge levied against National Environmental Research Center by city of Corvallis, Oregon, cannot be paid since in absence of congressional authorization, property of United States is exempt from taxation by State or political subdivision and based on method of calculation of charge we must conclude that charge is tax.

This decision to Marcus W. Pugh, a certifying officer of the Environmental Protection Agency (EPA), is in response to his letter requesting a decision as to whether a voucher covering a Systems Development Charge (SDC) levied against the National Environmental Research Center (NERC), by the city of Corvallis, Oregon, qualifies as a claim for payment. NERC is an EPA laboratory site on South West 35th Street in Corvallis.

Mr. Pugh explains that EPA feels that this SDC constitutes a tax levy against the U.S. Government since the money will be used to defray the costs of extending streets, water systems and sewer mains at some future date to be decided by the city of Corvallis. However, the city of Corvallis declares the charge is not a tax, but a service charge to pay for the cost of the facilities extended to the property.

It is well settled that, in the absence of congressional authorization, the property of the United States is exempt from taxation by a State or political subdivision. A special assessment is a tax within the meaning of the foregoing rule. However, it has also been held that a charge made by a State or a political subdivision for a service rendered or convenience provided is not a tax. That is to say, fair and reasonable compensation for a service rendered or a facility used is not a tax. See 49 Comp. Gen. 72 (1969) and cases cited therein.

While payment of a claim for an amount representing the fair and reasonable value of services actually received by the United States may be authorized on a quantum meruit basis, the method of

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computation must be based purely upon the value of the services rendered to the Government and not in the manner as a tax. In the above cited decision we held that a special assessment made against Government property on a benefit basis--computed in the same way as the amounts (tax) levied against non-Federal property--was a tax that could not be collected from the United States by calling it an invoice or statement for services.

The record indicates that the systems development charge is a fee levied on certain new structures that are of a semipermanent or permanent nature and is based on such matters as land area, structure value and size. As indicated above the proceeds are placed in a reserve fund and ultimately used for such projects as street extensions, water systems and sewer mains.

The calculation of this charge as outlined by the city does not appear to be based on the actual value of services rendered to the Government and we must therefore conclude that such charge is a tax. Accordingly, the invoice as presented may not be certified for payment.

R.F. KELLER

Deputy Comptroller General
of the United States