

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

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Dear Senator Premire:

Reference is made to your letter dated October 3, 1972, requesting our comments on a letter received by you from Mr. John B. Machanic concerning the levy of State sales tax on materials used in construction of federally funded tax exempt institutional buildings.

Concerning the payment of State sales taxes generally by the United States, our Office has held that the question of whether the United States is required to pay for an item procured in a State at a price inclusive of the sales tax imposed by that State rests upon a determination of whether the incidence of the tax is on the vendor or on the vendee. Where the incidence of the tax is on the vendor, the United States has no right--apart from State law or State statutory regulations promulgated thereunder by State authorities--to purchase (or lease) items within the territorial jurisdiction of the State on a tax free basis. See Alabama v. King and Booker, 314 U.S. 1 (1941); 24 Comp. Gen. 150 (1944); 32 Comp. Gen. 423 (1953); id. 577 (1953); 33 Comp. Gen. 453 (1954); and 41 Comp. Gen. 719 (1962). On the other hand where the incidence of the tax is on the vendee, the United States in purchasing or leasing items for official use is entitled under its constitutional prerogative to make purchases or to lease free from State taxes and to recover any amount of such taxes which may have been paid by it.

Further it has been held that a State sales tax, the legal incidence which falls on the vendee (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. See Alabama v. King and Booker, supra; and United States v. Boyd, 378 U.S. 39 (1964). Cf. Kern-Limerick, Inc. v. Scurlock, 347 U.S. 110 (1954).

Under Wisconsin law (section 77.54(9a) Wisconsin Statutes, 1969), sales to entities organized and operated exclusively for religious, charitable, scientific or educational purposes would apparently be exempt from the State sales tax. Also, under the same law (section 77.55) sales to the United States or any of its agencies or instrumentalities would be exempt from the State sales tax. However, the same exemption would not apply to sales made to Government contractors or apparently to sales made to contractors performing work in Wisconsin for tax-exempt institutions, because neither the Government nor the tax-exempt institution would be the "purchaser" in such circumstances, unless the contractor involved was

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Government  
Federal States

acting only as purchasing agent for the Government or the tax-exempt institution. See Alabama v. King and Boozer, *supra*; and United States v. Boyd, *supra*; cf. Kern-Lumarick, Inc. v. Scurlock; *MDXA*.

Insofar as Federal grant funds are concerned, we have held that grant funds paid over to a grantee become funds of the grantee (to be used for purposes of the grants) and are not subject to the various restrictions or limitations imposed by our decisions or Federal statutes on the expenditure by Federal agencies of appropriations, in the absence of a condition in the grant specifically prescribing to the contrary. See 28 Comp. Gen. 54 (1948) and 43 Comp. Gen. 697 (1964). Further in 37 Comp. Gen. 85 (1957) we held--quoting from the syllabus--

"Federal funds which are granted to the States for cooperative agricultural experiment work become State funds subject only to State restrictions and the States in disbursing the grants may not be considered agents of the United States; therefore, no objection is made to the payment from such Federal grant funds of nondiscriminatory State sales taxes on services and supplies procured by the States, as purchasers, to carry out the purposes of the grant. 14 Comp. Gen. 747, overruled.

"Payment of State sales taxes on purchases made by the States for agricultural extension and experiment work for which the State receives Federal grants is not to be regarded as a diversion of funds for a purpose not authorized in the grant but rather is to be regarded as incident to the purpose of the grant. 14 Comp. Gen. 747, overruled."

In light of the foregoing we would have no basis to question the levying of a State sales tax on purchases made by a contractor under a contract financed by a grantee from Federal grant funds.

We trust that the foregoing will be of assistance to you in replying to your constituent.

APPROPRIATIONS  
Funds which are identified as Federal funds, etc.

Sincerely yours,

TAXES  
State  
Sales  
Miscellaneous

R.F. KELLEY  
Deputy Comptroller General  
of the United States

The Honorable William Proxmire  
United States Senate

