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B-147615 December 14, 1961

Number: B-147615

Date: 1961-12-14

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Lieutenant Colonel A. G. Perry Chief, Transportation Division Finance Center, U.S. Army Indianapolis 49, Indiana

Dear Colonel Perry:

There has been referred to us for reply your letter of August 4, 1961, FINCS FB-1, addressed to our Transportation Division requesting a determination as to the propriety of payment of carrier's bills which include charges by reason of a two percent New Mexico State tax on shipments, moving under Government bills of lading wholly within the State of New Mexico. You indicate this question arose in connection with a shipment of household effects transported under Government bill of lading A-8149087 dated June 5, 1961, from Albuquerque to Clovis, New Mexico, for which Benton Van and Storage billed and was paid $304.98 including an item of $5.98 on account of "2% NM State Tax" on voucher 029196 in your July 1961 account.

This office is authorized and required to render a binding decision to a disbursing officer only on a question specifically involved in a voucher which is properly before him for payment. 25 Comp. Dec. 653; 22 Comp. Gen. 588.; Par. 11-1 to 9, Army Regulations 37-103 May 26, 1960. Since voucher 029196 has already been paid a binding decision on such matter may not be rendered at your request. Nor has any decision of the Comptroller General specifically considering the effect of the New Mexico Emergency School Tax Act on Government shipments been brought to our attention:

However, similar matters have been considered here and it has been held generally that where the incidence of a business privilege tax is on the vendor or supplier to the Government, and no exception is provided in the statute as to sales to the United States, the constitutional privilege under which the Federal Government is immune to State taxation is not applicable. 24 Comp. Gen. 150; 33 id. 453. Also, where provision is made by contract or tariff for passing on to the ultimate consumer the economic burden of such tax, such burden properly may be passed on as an element of the cost even though the user is the United States. 24 Comp. Gen. 150; 32 id. 423, 577; 22 id. 453. The involved two percent New Mexico Emergency School Tax Act is a business privilege tax, and while provision is made in chapter 72-16-5 of the New Mexico Statutes 1953 (1961 Supplement) for exemption from the tax of certain sales to the United States, no such exemption applicable to transportation services to the Government appears to have been provided since March 31, 1961. Also item 415 of the New Mexico Motor Carriers' Association, Inc., Motor Freight Tariff No. 15, MF- N.M.C.C. No. 15, the tariff applicable to the service involved in voucher 029196 provides:

"All rates and charges named in this tariff are subject to the New Mexico School Tax and Municipal Sales Taxes that may apply, unless services for the shipper or consignee are specifically exempted from such tax."

Accordingly, we perceive no objection to payment of items on carrier's bills on account of the two percent New Mexico tax as to intrastate shipments made subsequent to March 31, 1961, provided as well, that shipments made subsequent to March 31, 1961, provided as well, that the contract or tariff under which the services were rendered provide for passing on to the user of the service the amount of the tax. It will be noted that the New Mexico tax does not appear to be applicable to interstate transportation and nothing herein should be considered as indicating such a tax would be valid or payable.

Sincerely yours,

M.J. Nevins Assistant General Counsel