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B-148667, May 15, 1962

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TO AUTHORIZED CERTIFYING OFFICER, BUREAU OF FINANCE, POST OFFICE DEPARTMENT:

YOUR LETTER OF APRIL 12, 1962, TRANSMITTED A FILE PERTAINING TO THE "CITY GROSS RECEIPTS TAX" WHICH THE LACLEDE GAS COMPANY, ST. LOUIS, MISSOURI, IS INCLUDING IN ITS BILLS FOR GAS FURNISHED TO POST OFFICES AND REQUESTED OUR OPINION AS TO THE PROPRIETY OF CERTIFYING SUCH BILLS FOR PAYMENT.

OUR OFFICE HAS RENDERED NUMEROUS DECISIONS CONCERNING THE PROPRIETY OF PAYING STATE AND LOCAL TAXES OF VARIOUS TYPES. THESE DECISIONS UNIFORMLY HOLD THAT WHERE THE LEGAL INCIDENCE OF A STATE OR LOCAL TAX IS ON THE VENDOR AND NOT ON THE VENDEE, THE CONSTITUTIONAL PRINCIPLE UNDER WHICH THE FEDERAL GOVERNMENT IS IMMUNE TO STATE AND LOCAL TAXATION IS NOT FOR APPLICATION. 37 COMP. GEN. 772; 33 ID, 453; 32 ID. 423; 24 ID. 150. MOREOVER, IN 32 COMP. GEN. 577, WE HELD THAT WHERE A CITY FRANCHISE TAX WAS ASSESSED AGAINST A PUBLIC UTILITY COMPANY AND A PUBLIC UTILITIES COMMISSION DETERMINED THAT TAX TO BE AN OPERATING EXPENSE OF THE COMPANY AND AUTHORIZED THE COMPANY TO RECOVER SUCH EXPENSE BY INCLUDING IT AS A SEPARATE ITEM IN ITS INVOICES TO ITS CUSTOMERS, THE TAX WAS PROPERLY CHARGEABLE TO AND PAYABLE BY THE GOVERNMENT AS AN AUTHORIZED INCREASE IN RATES, EVEN THOUGH THE GOVERNMENT HAD A SPECIFIC CONTRACT WITH THE UTILITY SETTING FORTH A DIFFERENT RATE.

THE FILE TRANSMITTED TO OUR OFFICE WITH YOUR LETTER INDICATES THAT THE LEGAL INCIDENCE OF THE TAX HERE IN QUESTION IS ON THE UTILITY COMPANY AND NOT ON THE GOVERNMENT. THE FILE FURTHER INDICATES THAT NO FORMAL CONTRACT AS SUCH EXISTS BETWEEN YOUR DEPARTMENT AND THE LACLEDE GAS COMPANY, EXCEPT THAT YOU ARE SUBJECT TO THE RATES AUTHORIZED AND REGULATIONS PROMULGATED BY THE PUBLIC SERVICE COMMISSION ONLY INSOFAR AS THOSE RATES AND REGULATIONS ARE NOT CONTRARY TO FEDERAL LAW. ALSO, THE FILE INCLUDES A COPY OF A REPORT AND ORDER OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI WHICH RECOGNIZES THE TAX IN QUESTION TO BE AN OPERATING EXPENSE OF THE LACLEDE GAS COMPANY WHICH SHOULD BE TREATED AS AN ITEM APART FROM SYSTEM OPERATING EXPENSES, AND AUTHORIZES THE COMPANY TO RECOVER SAID TAX BY ADDING TO ITS MONTHLY BILLS TO ITS CUSTOMERS, AS A SEPARATE ITEM,"A CHARGE EQUAL TO THE PROPORTIONATE PART OF ANY * * * CHARGE OR TAX IMPOSED UPON THE COMPANY BY LOCAL TAXING AUTHORITIES ON THE BASIS OF GROSS RECEIPTS, NEW RECEIPTS, OR REVENUES FROM SALES BY THE COMPANY * * *.' THE AUTHORITY OF THE PUBLIC SERVICE COMMISSION OF MISSOURI TO RENDER SUCH AN ORDER AND THE PROPRIETY OF SO HANDLING CITY TAXES, WERE UPHELD BY THE SUPREME COURT OF MISSOURI ON MARCH 10, 1958, IN THE CASE OF STATE V. PUBLIC SERVICE COMMISSION, 310 S.W.2D 925.

THE PRESENT CASE APPEARS TO CONFORM FULLY WITH THE PRINCIPLES STATED IN THE

CITED DECISIONS. HENCE, YOU ARE ADVISED THAT THE BILLS FROM LACLEDE GAS COMPANY, WHICH INCLUDE A SEPARATE ITEM FOR CITY GROSS RECEIPTS TAX IN ACCORDANCE WITH THE REPORT AND ORDER OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI, MAY BE CERTIFIED FOR PAYMENT, IF OTHERWISE CORRECT. THE TWO SAMPLE BILLS TRANSMITTED WITH YOUR LETTER ARE RETURNED HEREWITH.