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MISCELLANEOUS--STATE SALES TAXES DECISION TO THE HERTZ CORPORATION CONCERNING APPLICABILITY OF THE ARIZONA GROSS RECEIPTS TAX TO THE RENTAL OF MOTOR VEHICLES BY THE UNITED STATES. SINCE THE LEGAL INCIDENCE OF THE ARIZONA GROSS RECEIPTS TAX IS ON THE VENDOR OR FIRM FURNISHING A SERVICE, THE U.S. WOULD NOT BE CONSTITUTIONALLY IMMUNE FROM SUCH A TAX IN THE ABSENCE OF AN EXEMPTION UNDER THE STATE LAW. THEREFORE IN LEASING MOTOR VEHICLES IN ARIZONA THE LIABILITY FOR THE STATE TAX IS DEPENDENT UPON THE TERMS OF THE RENTAL AGREEMENT.

TO THE HERTZ CORPORATION:

YOUR LETTER OF JANUARY 26, 1970, CONCERNS THE APPLICABILITY OF THE ARIZONA GROSS RECEIPTS TAX TO THE RENTAL OF MOTOR VEHICLES BY THE UNITED STATES.

WE HAVE HELD IN PRIOR CASES INVOLVING STATE SALES TAXES THAT THE UNITED STATES HAS NO RIGHT TO PURCHASE OR LEASE ITEMS WITHIN THE TERRITORIAL JURISDICTION OF THE STATE ON A TAX-FREE BASIS WHEN THE LEGAL INCIDENCE OF THE TAX IS ON THE VENDOR RATHER THAN THE VENDEE. SEE ALABAMA V. KING AND BOOZER, 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). HOWEVER, WHEN THE LEGAL INCIDENCE OF THE TAX IS ON THE VENDEE, THE UNITED STATES IS ENTITLED UNDER ITS CONSTITUTIONAL PRIVILEGE TO MAKE PURCHASES OR TO LEASE FREE FROM STATE TAXES.

IT IS CLEAR FROM A READING OF SECTION 42-1309 OF THE ARIZONA REVISED STATUTES ANNOTATED THAT THE GROSS RECEIPTS TAX IN QUESTION IS A TAX ON THE PRIVILEGE OF ENGAGING IN CERTAIN BUSINESS ACTIVITIES WITHIN NEW MEXICO, THE AMOUNT OF THE TAX BEING MEASURED BY THE GROSS RECEIPTS OF THE PERSON ENGAGING IN BUSINESS. MOREOVER, WE HAVE FOUND NOTHING IN THE TAX LAWS REQUIRING A VENDOR OR A PERSON FURNISHING SERVICES TO COLLECT THE AMOUNT OF THE TAX FROM THE VENDEE OR THE PERSON BEING FURNISHED THE SERVICE. THUS, THE LEGAL INCIDENCE OF THE TAX HERE INVOLVED IS ON THE VENDOR OR PERSON FURNISHING A SERVICE. HENCE, THE UNITED STATES WOULD NOT BE CONSTITUTIONALLY IMMUNE FROM SUCH TAX ABSENT AN EXEMPTION PROVISION IN THE STATE LAW.

SECTION 42-1321.B1 EXEMPTS RECEIPTS FROM SALES MADE DIRECTLY TO THE UNITED STATES GOVERNMENT BY A MANUFACTURER, MODIFIER, ASSEMBLER, OR REPAIRER. SECTION 42-1321C ALLOWS A DEDUCTION OF FIFTY PERCENT OF THE ANNUAL PRIVILEGE TAX LEVIED UPON ANY SALE OF TANGIBLE PERSONAL PROPERTY MADE DIRECTLY TO THE UNITED STATES, ITS DEPARTMENTS AND AGENCIES WHICH IS NOT EXEMPT UNDER THE PROVISIONS OF SUBSECTION B. HOWEVER, THESE EXEMPTIONS DO NOT APPLY TO A BUSINESS LEASING TO THE UNITED STATES. THEREFORE, THE PROCEEDS FROM CAR RENTALS TO THE FEDERAL GOVERNMENT ARE TAXABLE IN ARIZONA. WHETHER THE UNITED STATES WOULD BE REQUIRED

TO PAY THE TAX WOULD DEPEND UPON THE TERMS OF THE RENTAL AGREEMENT. THUS, THE UNITED STATES IS NOT CONSTITUTIONALLY IMMUNE FROM THE ECONOMIC BURDEN OF THE STATE TAX INVOLVED HERE IF BY CONTRACT OR OTHERWISE IT IS LIABLE TO THE VENDOR OR LESSOR FOR THE AMOUNT OF THE TAX.