Text as published on gao.gov, https://www.gao.gov/products/b-168593, archived 2026-07-10. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-168593, Jan 13, 1971

Number: B-168593

Date: 1971-01-13

B-168593, JAN 13, 1971

LOCAL TAXATION OF FEDERAL GOVERNMENT - LEASE TRANSACTIONS DENYING IN SUBSTANTIAL PART RECLAIM SUBMITTED BY AVIS RENT-A-CAR SYSTEM, INC., FOR BALANCES DUE ON INVOICES REPRESENTING DEDUCTIONS MADE BY NASA FOR TAXES ITEMIZED ON EACH INVOICE INCIDENT TO CAR LEASE TRANSACTION ENTERED INTO BY NASA WITH AVIS IN VIRGINIA, KENTUCKY, AND CALIFORNIA. THE CLAIM OF AVIS FOR REIMBURSEMENT FOR STATE TAXES PAID BY THAT COMPANY ON CAR RENTAL TRANSACTIONS IS DENIED EXCEPT WHERE, AS INDICATED BELOW THE LEGAL INCIDENCE OF THE TAX IS ON THE VENDOR. IN CALIFORNIA THE QUESTION OF IMMUNITY OF THE U.S. FROM TAXES ON THE RENTAL OF ITEMS IS CURRENTLY BEFORE THE COURTS; IN VIRGINIA, THE FEDERAL GOVERNMENT IS SPECIFICALLY EXEMPTED FROM SUCH TAXES; AND IN KENTUCKY, THERE IS NO EXEMPTION, AND UNDER THE ABOVE CITED RULE, THE U.S. IS NOT IMMUNE FROM PAYMENT OF KENTUCKY SALES TAXES ON CAR RENTAL TRANSACTIONS. THE CLAIM OF AVIS FOR REIMBURSEMENT OF ADDITIONAL COST PAID BY AVIS UNDER LAW AT THE TIME OF THE PURCHASE OF THE VEHICLE IS DENIED SINCE THE TAX PAID ON THE ORIGINAL PURCHASE AS BILLED IN THE RENTAL AGREEMENT EQUALS THE TAX WHICH WOULD BE PAID ON THE RENTAL TRANSACTION ABSENT THE EXEMPTION PROVIDED BY STATE LAW. THIS WOULD APPEAR TO BE AN ATTEMPT TO RENDER THE GOVERNMENT LIABLE FOR AN AMOUNT OF TAX FROM WHICH IT HAS BEEN EXEMPTED.

TO MR. EDWARD HOWE:

THIS IS IN RESPONSE TO YOUR LETTER OF DECEMBER 4, 1969, REQUESTING OUR DECISION AS TO THE PROPRIETY OF PAYING A RECLAIM SUBMITTED BY AVIS RENT A CAR SYSTEM, INC. (AVIS), DATED SEPTEMBER 15, 1969, FOR BALANCES DUE ON NINE INVOICES REPRESENTING DEDUCTIONS MADE BY NASA FOR TAXES ITEMIZED ON EACH INVOICE. THE INVOICES REPRESENT CAR LEASE TRANSACTIONS ENTERED INTO BY NASA AND AVIS IN THE STATES OF VIRGINIA, KENTUCKY, AND CALIFORNIA.

YOU STATE THAT IT HAS BEEN THE POLICY AT THE LANGLEY CENTER TO DEDUCT ALL TAX CHARGES AND USER CHARGES ON CAR RENTAL INVOICES, WHICH ACTION YOU BELIEVE IS CONSISTENT WITH THE PEROGATIVE OF THE GOVERNMENT.

AVIS, IN PRESENTING THE RECLAIMS, CONTENDS THAT THE GOVERNMENT IS BOUND BY THE RENTAL AGREEMENT TO REIMBURSE AVIS EITHER FOR (1) STATE TAXES PAID BY THAT COMPANY ON THE CAR RENTAL TRANSACTION, OR (2) ADDITIONAL COSTS PAID BY AVIS UNDER LAW AT THE TIME OF THE PURCHASE OF THE VEHICLE.

THE RENTAL AGREEMENT PROVIDES, IN PERTINENT PART, AS FOLLOWS:

"THAT RENTER ALSO ACKNOWLEDGES PERSONAL LIABILITY TO PAY LESSOR ON DEMAND THE CHARGE FOR STATE AND LOCAL TAXES *** AS APPLICABLE BEING EITHER (A) TAXES IMPOSED BY LAW UPON THE RENTAL TRANSACTION OR (B) REIMBURSEMENT TO LESSOR FOR

ADDITIONAL COSTS PAID BY LESSOR UNDER LAW IN RESPECT OF THE PURCHASE OR LEASE OF SAID VEHICLE."

NORMALLY, IN THESE CASES, THE TAX FOR WHICH CLAIM IS BEING MADE IS THAT IMPOSED BY STATE LAW ON THE RENTAL TRANSACTION. IN NUMEROUS SUCH CASES WE HAVE HELD 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 SUCH A TAX IS ON THE VENDOR RATHER THAN THE VENDEE. SEE ALABAMA V KING AND BOOZER, 314 U.S. 1 (1941); 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. CALIFORNIA, VIRGINIA, AND KENTUCKY (THE STATES REPRESENTED ON THE INVOICES IN QUESTION), PRESENTLY IMPOSE A STATE TAX ON CAR RENTAL TRANSACTIONS. SEE REV. & TAX C.A. SEC 6001, ET SEQ.; VIRGINIA RETAIL SALES AND USE TAX ACT, SEC 58-441, ET SEQ.; KENTUCKY REV. STATS. CHAP. 139.

WHETHER THE UNITED STATES IS CONSTITUTIONALLY IMMUNE FROM THE PAYMENT OF CALIFORNIA SALES AND USE TAXES ON THE RENTAL OF ITEMS IS A MATTER CURRENTLY BEFORE THE COURTS OF CALIFORNIA. THE VIRGINIA CODE, WHILE IMPOSING A TAX ON RENTAL TRANSACTIONS, SPECIFICALLY EXEMPTS SUCH TRANSACTIONS INVOLVING LOCAL, STATE, AND FEDERAL GOVERNMENT AGENCIES. SEE SEC 58-441.6(P). IN KENTUCKY, THERE IS NO SUCH EXEMPTION AND, UNDER THE ABOVE-CITED RULE, THE UNITED STATES WOULD NOT BE IMMUNE FROM THE PAYMENT OF THE KENTUCKY SALES TAX ON CAR RENTAL TRANSACTIONS, SINCE THE LEGAL INCIDENCE OF THE TAX FALLS ON THE VENDOR (AVIS).

HOWEVER, AVIS PRESENTS ITS CLAIM UNDER (B) ABOVE, AS REPRESENTING "REIMBURSEMENT TO LESSOR FOR ADDITIONAL COSTS PAID BY LESSOR UNDER LAW IN RESPECT OF THE PURCHASE *** OF SAID VEHICLE."

UNDER USUAL BUSINESS PRACTICES, IT WOULD SEEM APPROPRIATE TO CONSIDER SUCH "ADDITIONAL COSTS" AS PART OF THE GENERAL "OVERHEAD" EXPENSES OF BUSINESS, WHICH COSTS USUALLY ARE RECOVERED ON A PRO RATA BASIS FROM ALL CUSTOMERS AS PART OF THE ESTABLISHED CHARGE TO USERS OR CONSUMERS OF THE SERVICE OR PRODUCT OFFERED. IT HAS BEEN INFORMALLY ASCERTAINED THAT THE "REIMBURSEMENT" CHARGE IN QUESTION IS ASSESSED ONLY IN THOSE STATES WHERE AN EXEMPTION IS PROVIDED BY STATE LAW FROM PAYMENT OF THE STATE TAX ON RENTAL TRANSACTIONS. THEREFORE, ONLY FEDERAL, LOCAL AND STATE AUTHORITIES ARE BEING CHARGED THE REIMBURSEMENT COSTS IN QUESTION. IT IS, THEREFORE, CONCEIVABLE THAT THE FEDERAL GOVERNMENT COULD BEAR THE ENTIRE BURDEN OF SUCH "REIMBURSEMENT."

FURTHER, SINCE THE TAX PAID BY AVIS ON THE ORIGINAL PURCHASE OF THE RENT- A-CAR AUTO APPARENTLY EQUALS THE TAX WHICH WOULD BE PAID ON THE RENTAL TRANSACTION ABSENT THE EXEMPTION PROVIDED BY STATE LAW, THIS PRACTICE WOULD APPEAR TO BE AN ATTEMPT TO DO INDIRECTLY WHAT CANNOT BE DONE DIRECTLY, I.E., RENDER THE GOVERNMENT LIABLE FOR THE AMOUNT OF THE TAX FROM WHICH IT HAS BEEN EXEMPTED BY STATE LAW. THE NET EFFECT OF THIS PRACTICE IS TO VITIATE THE GOVERNMENT'S VESTED RIGHT TO THE EXEMPTION AND THE MONETARY BENEFITS ACCRUING TO THE GOVERNMENT UNDER THE STATE PROVIDED EXEMPTION. IT IS WELL ESTABLISHED THAT OFFICERS AND AGENTS OF THE GOVERNMENT HAVE NO AUTHORITY TO GIVE AWAY THE MONEY OR PROPERTY OF THE UNITED STATES, EITHER DIRECTLY OR BY THE RELEASE OF VESTED RIGHTS. SIMPSON V UNITED STATES, 172 U.S. 372 (1898); 40 COMP. GEN. 309, 311 (1960). IN SUM, THE ADDITIONAL CHARGE IN QUESTION APPEARS TO BE MERELY A MEANS OF INCREASING AVIS' PROFIT MARGIN ON FEDERAL RENT-A-CAR TRANSACTIONS AT THE GOVERNMENT'S EXPENSE IN A WAY CONTRARY TO THE VESTED RIGHTS OF THE UNITED STATES IN THOSE STATES EXEMPTING SUCH TRANSACTIONS FROM STATE TAXATION.

IN LIGHT OF THE ABOVE, YOU ARE ADVISED THAT YOU MAY NOT CERTIFY VOUCHERS FOR PAYMENT OF THE "ADDITIONAL COSTS" REPRESENTING SALES TAX ON THE PURCHASE OF THE VEHICLE CLAIMED BY AVIS UNDER THE RENT-A-CAR AGREEMENTS ENTERED INTO IN THE STATES OF VIRGINIA, KENTUCKY, AND CALIFORNIA. NOTED ABOVE, THE GOVERNMENT, UNDER PREVIOUS DECISIONS OF THIS OFFICE, IS LIABLE FOR THE STATE SALES AND USE TAXES ON RENTAL TRANSACTIONS IN THE STATE OF KENTUCKY, SINCE THAT JURISDICTION DOES NOT EXEMPT FROM THE TAX RENTAL TRANSACTIONS INVOLVING THE UNITED STATES AS A PARTY. THE SAME REASONING WOULD APPLY TO CALIFORNIA, IF THE COURTS OF THAT STATE DETERMINE THAT THE LEGAL INCIDENCE OF THE RENTAL AGREEMENT TAX IS ON THE VENDOR, RATHER THAN THE VENDEE. AS TO VIRGINIA, IT IS CLEAR THAT THE GOVERNMENT IS NOT LIABLE FOR THE STATE TAX ON THE CAR RENTAL, SINCE THAT STATE EXEMPTS SUCH TRANSACTIONS INVOLVING THE UNITED STATES.