Text as published on gao.gov, https://www.gao.gov/products/b-170899, archived 2026-07-10. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-170899, Nov. 16, 1970

Number: B-170899

Date: 1970-11-16

B-170899, NOV. 16, 1970

CONTRACTS - RENTAL OF EQUIPMENT - CALIFORNIA SALES OR USE TAXES AUTHORIZING PAYMENT OF CALIFORNIA SALES TAXES TO UNIVAC DIVISION OF SPERRY RAND ON RENTAL OF EQUIPMENT BY ARMY ON THE BASIS OF THE GSA SPECIAL NOTICE NO. 10 ISSUED ON MAY 15, 1969, WHICH PERMIT PAYMENT PENDING FINAL ADJUDICATION OF MATTER IN ACCORDANCE WITH AGREEMENT THAT IN EVENT GOVERNMENT IS SUCCESSFUL IN ESTABLISHING A LESSER AMOUNT OF TAX LIABILITY THE CONTRACTOR WILL REFUND THE AMOUNT.

TO MR. JOHN H. BRANSBY:

REFERENCE IS MADE TO YOUR LETTER, WITH ENCLOSURES, OF SEPTEMBER 24, 1970, REQUESTING OUR DECISION AS TO THE PROPRIETY OF PAYMENT OF THE CLAIM OF THE UNIVAC DIVISION OF SPERRY RAND FOR $1,509.06 REPRESENTING THE AMOUNT OF SALES OR USE TAXES DUE TO THE STATE OF CALIFORNIA ON THE RENTAL OF EQUIPMENT FOR THE YEARS 1968 AND 1969.

WHETHER THE UNITED STATES IS REQUIRED TO PAY FOR AN ITEM AT A PRICE INCLUSIVE OF SALES OR USE TAX RESTS UPON A DETERMINATION OF WHETHER THE INCIDENCE OF THE TAX IS ON THE VENDOR OR THE VENDEE. WHEN THE INCIDENCE OF THE TAX IS ON THE VENDOR, THE UNITED STATES HAS NO RIGHT TO PURCHASE OR LEASE ITEMS ON A TAX-FREE BASIS. HOWEVER, WHERE THE INCIDENCE OF THE TAX IS ON THE VENDEE, THE UNITED STATES IS ENTITLED UNDER ITS CONSTITUTIONAL PREROGATIVES TO MAKE PURCHASES OR LEASE FREE FROM STATE TAXES.

WHETHER THE UNITED STATES IS CONSTITUTIONALLY IMMUNE FROM THE PAYMENT OF CALIFORNIA SALES AND USE TAXES ON THE RENTAL OF ITEMS IS A MATTER WHICH IS CURRENTLY BEING LITIGATED. PENDING RECEIPT OF A FINAL JUDICIAL DECISION, AND IN ORDER TO RELIEVE THE ADMINISTRATIVE DIFFICULTIES ARISING FROM THIS SITUATION, THE GENERAL SERVICES ADMINISTRATION ISSUED ON MAY 15, 1969, SPECIAL NOTICE NO. 10 TO ORDERING OFFICES, A COPY OF WHICH WAS ENCLOSED WITH YOUR LETTER, PROVIDING THAT CERTAIN CONTRACTORS MAY BE PAID FOR ANY AND ALL CALIFORNIA SALES TAXES LEVIED ON RENTALS IN RETURN FOR AN AGREEMENT BY THE CONTRACTORS THAT IN THE EVENT THE GOVERNMENT IS SUCCESSFUL IN ESTABLISHING ANY LESSER AMOUNT OF TAX LIABILITY THAN THAT PAID BY THE CONTRACTORS THAT THE CONTRACTORS WILL REFUND THE APPROPRIATE AMOUNTS TO THE GOVERNMENT. UNIVAC DIVISION OF SPERRY RAND, IS LISTED IN THE NOTICE AS ONE OF THE CORPORATIONS HAVING SIGNED SUCH AGREEMENT. SINCE THE GOVERNMENT'S INTERESTS APPEAR TO BE FULLY PROTECTED, WE WILL HAVE NO OBJECTION TO YOUR FOLLOWING THE PROCEDURES SET FORTH IN SPECIAL NOTICE NO. 10.

ACCORDINGLY, WE ARE RETURNING TO YOU THE UNIVAC INVOICES, WHICH WERE ENCLOSED WITH YOUR LETTER, AND WHICH MAY BE CERTIFIED FOR PAYMENT IF OTHERWISE CORRECT.