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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-179618

November 13, 1973

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Captain D. L. Odvody
Accounting and Finance Officer
Through the Directorate of Accounting Operations
Air Force Accounting and Finance Center
3800 York Street
Denver, Colorado 80205

Dear Captain Odvody:

We refer to your letter of August 3, 1973 (and enclosures), forwarded here by letter of August 31, 1973 (Attn Of: TCW), from Headquarters, Air Force Accounting and Finance Center, requesting an advance decision as to whether an assessment by Miami County, Indiana, against Grissom Air Force Base for maintenance of the Cline Drainage Ditch may properly be paid.

Your letter and the accompanying documents indicate that two assessments have been paid in connection with the Cline Ditch. In 1966, $77,457.77 was assessed and paid for construction, and in 1967 an assessment of $1,189.04 for periodic maintenance was paid. The assessments in question here are for periodic maintenance for the years 1968, 1969, and 1970, totalling $3,572.12.

It is well settled that, in the absence of congressional authorization, the property of the United States is exempt from taxation by a State or political subdivision. A special assessment is a tax within the meaning of the foregoing rule. However, it has also been held that a charge made by a State or a political subdivision for a service rendered or convenience provided is not a tax. That is to say, fair and reasonable compensation for a service rendered or a facility used is not a tax. See 49 Comp. Gen. 72 (1969) and cases cited therein.

In a case involving the rehabilitation of a drainage ditch which served Government property, we held that a special assessment made against the Government property on a benefit basis--computed in the same way as the amounts (tax) levied against non-Federal property--was a tax that could not be collected from the United States by calling it an invoice or statement for services. We stated in that case that while the Government had received a service for which it might properly make payment, the method by

[Propriety of Assessment for Maintenance of Drainage Ditch]

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which the charge for that service was computed did not appear to bear any particular relationship to the service rendered. However, we further held that while payment of the claim as presented would not be authorized, we saw no objection to the presentation on a quantum meruit basis of a claim for an amount representing the fair and reasonable value of the services actually received by the United States. See 49 Comp. Gen. 72 (1969), copy enclosed.

We have also taken the position that a claim such as the instant one is not required to be presented on a quantity of use basis but only demands that the amount claimed represents the fair and reasonable value of the services actually rendered to the Government. Further, the claimant must show exactly how it arrived at the amounts claimed and only when it is shown that the specified and outlined method of computation is based purely upon the value of the services rendered to the Government may any payment be made.

As to the instant case, the Indiana statute authorizing drainage assessments provides that the percentage of the estimated cost of maintenance assessed to each landowner is to be based "upon the benefit to each tract of land resulting from the improvement," but does not indicate a basis for computing the amount of the benefit. Burns Indiana Statutes §27-2154 (1970). In the present case, while the Government may have received a service for which it may properly make payment, there is no indication of the method by which the assessment was computed.

Accordingly, in light of the foregoing this Office cannot authorize payment of the claim on the basis of the present record. The voucher and accompanying papers forwarded with your letter will be retained here.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States