



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

ms. Armen
GGM
12/1/80
14430
AMERICAN REVOLUTION Bicentennial
1776-1976

OFFICE OF GENERAL COUNSEL

IN REPLY
REFER TO:

B-194982

July 21, 1980

Mr. Dennis Hubscher
Authorized Certifying Officer
Office of the Secretary
Department of the Interior
Washington, D. C. 20240

Dear Mr. Hubscher:

When you requested the Comptroller General's opinion on the propriety of certifying Xerox Corporation invoices reflecting California State sales and use taxes on leases we informally advised you that the Justice Department was considering bringing suit to determine whether the tax collected under California Civil Code section 1656.1 (Deering Supp. 1980) is constitutionally applicable to Federal leases of tangible personal property in California. We advised you that this Office would defer any action until the conclusion of that litigation.

That litigation concluded recently with enforcement of a permanent injunction restraining the assessment and collection of the tax on Federal leases. No. CV79-03359-R (C. D. Calif. December 20, 1979), motion to stay enforcement denied, March 19, 1980. This order amounts to a decision that the tax is unconstitutional, and the ban on taxing Federal leases will remain in effect throughout any appeals of this decision. Accordingly, from this point forward, unless the Supreme Court reverses the District Court's decision or the California legislature again amends the sales tax collection statute, it is improper for you to certify any amount on an invoice for the rental of tangible personal property which separately states or otherwise reflects the addition of California sales tax imposed on the United States.

It would also be improper at this time for you to pay amounts designated as sales tax on the Xerox Corporation invoices submitted with your request (\$25.80 on the invoice dated January 8, 1979 and \$15.67 on the invoice dated April 17, 1979). Now that the assessment of this tax has been declared unconstitutional, no authority exists for such payment.

011495

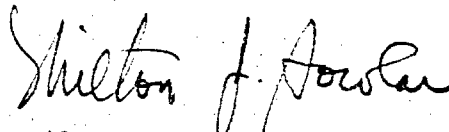
00037
CNG 00155

B-194982

As you may know, the Justice Department is currently asking all Federal entities that paid tax to determine the amount of sales tax paid from January 1, 1979, to the present, including taxes paid by contractors which have not been reimbursed by the Government. This is in preparation for a refund suit against the State. We suggest that you include the amounts on these and any other invoices on which tax was withheld on your declaration to the Justice Department, along with an explanation.

We are returning the invoices you sent us along with a copy of the Department of Justice's letter to us on this subject. We hope this answers any questions you may have regarding the status of California State sales and use taxes.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Socolar".

Milton J. Socolar
General Counsel

Enclosures