B-178453

June 14, 1973

Mr. Lawrence T. West
Authorized Certifying Officer
Internal Revenue Service
United States Treasury Department
P.O. Box 926
Atlanta, Georgia 30301

Dear Mr. West:

This refers to your letter of March 19, 1973, reference ADFF:sb, requesting an advance decision as to the legality of a claim presented by Mr. Lewellyn E. Trimmer, an employee of the Internal Revenue Service. The item questioned appears on the voucher submitted with your letter and is in the amount of $416.48, representing the sales tax on a mobile home purchased incident to a transfer of official station from Yuma, Arizona, to Fort Pierce, Florida, effective March 7, 1972.

Subsection 4.2d of Office of Management and Budget (OMB) Circular No. A-56 allows payment of mortgage and transfer taxes on real estate transactions otherwise reimbursable under provisions of the statutory regulation. In essence, you question whether the sales tax paid by Mr. Trimmer is a transfer tax within the meaning of the regulation.

Pertinent provisions of the "Florida Revenue Act of 1949," chapter 212, and chapter 320, Florida statutes, 1971 edition, are as follows:

212.02 Definitions.--The following terms and phrases when used in this chapter, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

* * * * *

(2) "Sale" means and includes:

(a) Any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration;

* * * * *

(12) "Tangible personal property" means and includes
personal property which may be seen, weighed, measured,
or touched or is in any manner perceptible to the senses,
including electric power or energy, boats, motor vehicles
as defined in §320.01(1) * * *.

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320.01 Definitions, general.—In construing these
statutes, when applied to motor vehicles, where the con-
text permits, the word, phrase or term:

(1) "Motor vehicle" includes:

* * * * *

(b) Vehicles designed and equipped to provide
living and sleeping facilities for use as a home, residence,
or apartment and for operation over the streets and high-
ways of the state and shall consist of:

1. Mobile homes, trailer coaches, travel trailers,
and house trailers, manufactured upon a chassis or under-
carriage as an integral part thereof, without independent
motive power, drawn by a self-propelled vehicle, and

2. Camper type mobile homes mounted and transported
wholly upon the body of self-propelled vehicles.

The term "mobile homes" refers to all vehicles included
in this paragraph, and the term "trailer coach" refers
to vehicles included in subparagraph 1, of this paragraph.

* * * * *

212.05 Sales, storage, use tax.—It is hereby declared
to be the legislative intent that every person is exercising
a taxable privilege who engages in the business of selling
tangible personal property at retail in this state * * *.
For the exercise of said privilege a tax is levied on each
taxable transaction or incident and shall be due and
payable * * *.

* * * * *

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212.07 Sales, storage, use tax; tax added to purchase price; dealer not to absorb; liability of purchasers who cannot prove payment of the tax; penalties; general exemptions.—

(1) The privilege tax herein levied measured by retail sales shall be collected by the dealers from the purchaser or consumer.

The tax paid by Mr. Trimmer appears to be an excise tax on the privilege of transacting sales of tangible property, as defined in the above-cited provisions of the Florida revenue law, and not a tax on the property itself. Accordingly, it is reimbursable as a transfer tax within the meaning of subsection 4.2d of OMB Circular No. A-56. See B-174335, December 8, 1971, copy enclosed.

The voucher is returned herewith and may be certified for payment if otherwise correct.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States