August 3, 1943

To David H. Stevens, Assessor

From John G. Marshall, Assistant Attorney General

Question: How should the State Tax Assessor adjust accounts with municipalities receiving funds from Administrators and Federal Authorities under the Lanham Act?

Answer: Having in mind that the answer to the above question has been requested to be in the hands of the State Tax Assessor before 10 A. M. on August 3rd, 1943, because of a conference occurring at that time between the State Tax Assessor and certain municipal officers of a municipality which has received a lump sum from an Administrator of a Federal Housing Project, this opinion is limited almost entirely to the personal reaction of the writer, rather than founded upon any decision of the courts or administrative bodies.

A review of the works of McQuillan on Municipal Corporations and the 1939 Cumulative Supplement does not reveal any case in point.

A reprint from an article appearing in the American City for November 1942, by Charles S. Rhyne, executive director of the National Institute of Municipal Law Officers, quotes a section from the so-called Lanham Act:

"The Administrator shall pay from rentals annual sums in lieu of taxes to any State and/or political subdivision thereof, with respect to any real property acquired and held by him under this Act, including improvements thereon. The amount so paid for any year upon such property shall approximate the taxes which would be paid to the State and/or subdivision, as the case may be, upon such property if it were not exempt from taxation, with such allowance as may be considered by him to be appropriate for expenditure by the Government for streets, utilities, or other public services to serve such property. As used in this section the term 'State' shall include the District of Columbia."

"This provision is now Section 306 of the Lanham Act."

The article states two qualifications with respect to such payments: 1. Deductions for utilities provided for by the Federal Government; 2. The Comptroller-General has ruled that the amendment of January 21, 1942, is not retroactive, so that payments made under Public 409 may cover only the period subsequent to January 21, 1942.

"Words and Phrases" defines the phrase "in lieu of" in vol. 21, p.471, to mean "in place of." Massachusetts Bonding & Insurance Co. v. Rutley Construction Co., 287 N.Y.S. 662 at 666.

In Lamb v. Milliken, 243 Pac. 624, the words "in lieu of" were held to mean "in place of" or "in substitution for."

Although we understand that the property used by the Federal Government for housing purposes and that the so-called housing projects constructed on U. S. Government owned property would ordinarily be exempt from taxation, and undoubtedly the State Tax Assessor would be required to exempt that property from the valuation of the town or municipality, yet in a situation of this kind it would seem that the State Tax Assessor and the municipal officers could compromise on a proportional basis. For example, if the State's assessment on such property would normally represent a valuation of $500,000. and the town's valuation on the same property was $400,000. and the Administrator's contribution represented a payment equal to the currstn tax rate on $300,000., then each division of the State and municipality could proportionally reduce its valuation in arriving at a compromise in dividing the sum received from the Housing authorities or Federal Administrators.

It is noted that the Lanham Act reads that it is incumbent upon the Administrator to pay from rentals annual sums in lieu of taxes to any State and/or political subdivision thereof. This would imply that the Administrator should pay these two agencies separately. It might be well for the State Tax Assessor to consider notifying all of the Housing authorities or Federal Administrators of housing projects in the State of his official interest in keeping these two payments separate and in that way it may be possible to avoid conflicts and disputes with municipal authorities in the State.

Finally, this answer is at most only a guide in these proceedings, as time and known developments in the relation between the Federal Administrators and taxing authorities in the several States have not been crystallized into any written or decided opinion by the courts.

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