

DATE: 07-18-90

CITATION: VAOPGCPREC 44-90
Vet. Aff. Op. Gen. Couns. Prec. 44-90

TEXT:

Subject: Application of North Carolina Sales Tax to Sales of Books and Supplies to VA Vocational Rehabilitation Students

(This opinion, previously issued as General Counsel Opinion 13-75, dated February 10, 1975, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

QUESTION PRESENTED:

Is the VA liable for the North Carolina State sales tax on books furnished to veterans enrolled in the VA Vocational Rehabilitation program?

COMMENTS:

Section 1509(a), title 38, United States Code, requires the VA to furnish the veterans taking training under the Vocational Rehabilitation Act with the necessary books, supplies, or equipment. That section also states that if a veteran fails to complete the course of Vocational Rehabilitation, he may be required by the Administrator to return any or all of such books, etc. It is our view, therefore, that the title to these books and other materials remains in the Government until such time as the veteran completes the course. At that time, title would pass to the veteran.

VA Regulation 10234(C) states that the VA will not reimburse a veteran who personally buys supplies. Payment for supplies is made to the training institution, or to the vendor from whom they were purchased by the Veterans Administration. As you note, the North Carolina sales tax is a privilege or license tax levied on the vendor. However, North Carolina Sales and Use Tax Regulation 48 specifically exempts sales of tangible personal property to the United States Government or any agency from sales and use tax.

In the type of situation, we have here, the students are making the purchases as agents for the VA and billing is made directly to the VA. The student is not reimbursed for the purchase; rather, the VA pays the seller directly.

Similar questions have arisen before. For example, the VA was asked to render an opinion as to whether a 3 percent South Carolina sales tax on supplies and

equipment could properly be included in the price of supplies and equipment billed to the VA by the school. As in the instant case, the school owned the bookstore and was considered a retailer. The then solicitor determined, and the South Carolina Tax Commission concurred, that purchases under the veterans' training program were not subject to the State sales tax. An identical question arose recently in Idaho. In a letter dated April 26, 1974, the VA was advised by the State Tax Commission of Idaho that where the veteran is an agent for the Government and purchases books, the State sales-use tax is not payable.

The VA is an instrumentality of the United States. As an instrumentality of the United States, it is specifically exempted from the levy of a "sales or use tax" in connection with any sales made to authorized purchasers. (See 80 Op. Sol. 278; 6/18/45.) We feel that under the Doctrine of Constitutional Immunity, the imposition of a sales tax as discussed would be invalid. (See McCulloch v. Md., 4 Law. Ed. 579.)

HELD:

The VA is not liable for the sales tax on books furnished to veterans enrolled in the VA Vocational Rehabilitation program.

VETERANS ADMINISTRATION GENERAL COUNSEL
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