

B-07/02
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TAXABILITY OF PURCHASES MADE WITH FEDERAL EMPLOYEES' CREDIT CARDS

To State Tax Administrators:

SUMMARY

This bulletin updates and clarifies information previously shared in B-15/98 and B-52/98. It explains the federal government's system of issuing credit cards for federal employees' business purchases. State tax agencies need this information to create guidance for their business taxpayers.

Both retailers and federal employees who travel or make purchases on behalf of the federal government may need assistance in determining whether or not state taxes apply to these transactions. At times, confusion may occur when a traveler erroneously assumes that any purchase made with a federally issued credit card is automatically free from state tax.

Under the Supremacy Clause of the U.S. Constitution, states are not permitted to levy a tax directly on the U.S. government. However, this immunity does not extend *per se* to federal employees, whether military or civilian. Nonetheless, some states choose not to apply certain taxes to federal employee transactions. Thus, federal employees who are traveling on business or who are otherwise making work-related purchases **may or may not be** subject to state taxes.

If a state does not tax federal employee purchases regardless of the means through which they are purchased, this is a simple matter for both the retailer and the federal employee. The only question is what proof the

state requires that the purchase is intended for the federal government (or that the purchase is related to federal employee business travel). See [the chart](#) at the end of this document for help with this question.

However, if a state does exercise its constitutional right to tax allowable federal employee purchases, this question must be answered: "How is the purchase billed?"

If the federal government pays for a purchase directly (central billing), no tax may be charged. However, if the employee is billed and later seeks reimbursement from the government for the business expense, then the tax is allowed to stand.

This question of "how is the purchase billed" often arises when a federal employee pays for a purchase with a federally contracted credit card. Currently, these cards are issued by a variety of banks under a contract with the General Services Administration (GSA). These credit cards are part of the GSA's SmartPay program, and may sometimes be called SmartPay Cards.

There are two categories of SmartPay cards:

1. Cards that are the sole responsibility of the government and that are billed directly to the government (centrally billed);
2. Cards that are the responsibility of the employee, are billed to the employee, and are the sole responsibility of the employee. (The government is not responsible if the cardholder fails to pay.)

Within these categories, there are four basic lines of federal credit cards: purchase, fleet, travel and integrated.

Purchase and fleet cards fall into the first category. They are always centrally billed, and purchases made with them may not be taxed by states. They can be used only for purchases from specific types of merchants, such as gas stations and office supply stores.

Purchase cards are blue with a red stripe across the top and contain the imprinted phrase: "For Official US Government Purchases Only." The cards also say "US Government Tax Exempt." [[See attachment.](#)]

Fleet cards are blue with a faint graphic of the flag across the top, with some cars faintly represented in the middle of the card. The card says "For Official Government Fleet Use Only."

[\[See attachment.\]](#)

Travel cards and integrated cards might be in either billing category, so additional information is necessary to determine the taxability of the transaction. Both of these cards can be used at hotels, restaurants and similar travel-related venues.

Travel cards are beige and feature a design of the U.S. Capitol and a large jet. They contain the imprinted phrase: "For Official Government Travel Only." [\[See attachment.\]](#)

Travel cards that are individually billed -- and can be taxed -- will show one of the following number sequences:

Start with 4486 and the sixth digit is 1, 2, 3 or 4

Start with 4716 and the sixth digit is 1, 2, 3 or 4 or

Start with 5568 and the sixth digit is 1, 2, 3 or 4

Integrated cards feature a blue sky with clouds, U.S. Capitol and a flag. There is a very small picture of a jet in flight in the middle. It says "For Official Government Use Only." This card is in use only at the Department of the Interior. It may also be referred to as a combined card. [\[See attachment.\]](#)

An integrated or combined card is a single card that is used for both taxable and nontaxable purchases. (The bill will go either to the government or to the employee, depending on the item purchased. The merchant's code tells the bank which account to bill.)

These account numbers begin "5568-16" and the agency's identification number (14-0001849) is on the face of the card.

1. Purchases for office supplies and related tangible goods are direct billed and may not be taxed.
2. Purchases for lodging and restaurant food are individually billed and may be taxed.
3. However, there is one exception: the Bureau of Reclamation cards are centrally billed for all purchases. If a traveler has I.D. from the Bureau of Reclamation and is using a card numbered 5568-16, that purchase should be tax-exempt.

30, 1998. The current GSA SmartPay plan will be in effect until at least November 2003 and may be extended on a year-by-year basis until 2008.

"Tax Exempt" web site

It may be helpful to understand that, when SmartCards first were introduced, GSA undertook an effort to obtain a confirmation from the state tax agencies that purchases made with its direct-billed (centrally-billed) cards are exempt from state tax. The original request and the states' responses are available on the GSA web site at http://www.gsa.gov/Portal/content/offerings_content.jsp?contentOID=11ntType=1004. **It is important to note that these statements apply only to purchases made with direct-billed cards.**

Background on legal authority

The Supremacy Clause of the U.S. Constitution forbids states to levy a tax directly on the U.S. government and its instrumentalities. An instrumentality of the government is defined as an entity that is so closely connected with the government function that, for all practical purposes, they are one and the same.

However, this immunity does not extend to all agents acting on behalf of the federal government.

To determine whether the government's immunity from state tax flows through on a transaction, the U.S. Supreme Court created the "legal incidence test." The legal incidence is upon the one who is required by law to pay. The economic incidence of taxes is upon the consumer or buyer.

Under this test, a purchase is exempt only when the legal incidence of a state tax falls on the government. To qualify as exempt, the federal government, agency or instrumentality must be charged or billed in its own name.

A transaction is not exempt if the government only has to absorb the economic incidence of the tax. In such a transaction, the government merely bears an indirect burden of the tax -- the federal government is not paying a tax, but is merely reimbursing the employee for his or her expenses. Thus, the government is simply bearing the economic burden of a tax paid by an employee or contractor.

The U.S. Supreme Court specifically addressed the matter the legal vs. economic incidence of a tax in *Alabama v. King & Boozer*, 314 U.S. 1 (1941). The Court said that a state sales tax on materials purchased by a

contractor under a federal contract is not a direct tax on the federal government, even though the government has obligated itself by a contract to bear the economic burden of the tax. Specifically, the court said that the fact that the economic incidence of a tax might fall on the federal government "is but a normal incident of the organization within the same territory of two independent taxing authorities."

More recently, in *U.S. v. New Mexico*, 455 U.S. 720 (1982), a contractor made purchases on behalf of the federal government and was reimbursed. The U.S. Supreme Court upheld the state's use (sales) tax imposed on the purchase. The court said the federal contractor was an independent entity whose limited relationship with the government was defined by the parameters of the contract between them.

When it comes to federal employees who travel on government business, states have taken two approaches to the matter of applying tax. Most states require hotels and restaurants to collect the tax from employees who use an employee-billed credit card for payment. The legal reasoning is that it is not the government but the employee who contracts with and is billed by the hotel for lodging and food. The legal incidence of the tax falls on the employee (indeed, the entire bill is the personal responsibility of the employee), and the transaction is taxable.

States that choose to exempt

Even though it is not constitutionally required, some states nonetheless have chosen to extend the government's immunity to federal workers. A federal employee can make a tax-exempt purchase of food and lodging in those states by showing sufficient proof of government employee status. This proof is critical because of the potential for abuse, especially when it comes to distinguishing personal from business travel.

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Reading this chart

Not every state has responded to this survey. The chart will be updated until information is available on all states.

Please keep in mind that local governments -- counties and cities -- often have their own hotel occupancy taxes and sometimes their own sales taxes. It is possible that a state might offer a tax exemption but a local tax would apply.

Where information on local taxes is available, it is included in the chart.

Charges tax = Charges tax on food and lodging for federal employees on business travel when employee pays and seeks reimbursement

Exempts tax = Offers one or more tax exemptions for federal employees on business travel, even when employee pays and seeks reimbursement

State	Charges tax	Exempts tax	What traveler must have to prove business travel	Information about local government policies
Alabama	X			Local governments follow the state policy
Alaska				
Arizona	X			The state and city taxes are imposed on the vendors, not the consumer. However, the consumer may be billed an amount to reimburse the vendor for the taxes the vendor must pay. Some cities have exempted the vendors from paying tax on transactions with the federal government; other cities follow the state policy and tax these transactions.
Arkansas	X			
California	X	Except car rentals, which are exempt if made under a GSA contract even if it is a reimbursable situation		While the state has no tax on lodging, local jurisdictions generally impose a transient occupancy tax.
Colorado	X			Colorado's 47 home rule cities may treat federal employees differently for some local taxes.
Connecticut	X			
Delaware		Hotel Occupancy taxes	State-issued exemption certificate	

District of Columbia				
Florida		Sales/gross receipts tax on food Hotel Occupancy taxes Sales/gross receipts tax on lodging Convention development tax	Vendors (such as hotel operators) are responsible for documenting the exempt nature of the sale. A form has been suggested by agency regulations. The state does NOT require the federal government or its agencies to obtain a Consumer's Certificate of Exemption.	
Georgia	X			
Hawaii	X			The state's general excise tax and transient accommodations tax are imposed on hotels and other businesses. While the hotel may reimburse its expense by charging the traveler, the guest is not being taxed and therefore cannot be exempted. However, the state exempts from the transient accommodations tax, rents for furnishing living accommodations for military personnel on permanent assignment to Hawaii.
Idaho				
Illinois				The state's Hotel Operators' Occupation Tax is imposed upon the hotel, not the traveler. While the hotel may reimburse its expense by charging the traveler, the guest is not being taxed and therefore cannot be exempted.
Indiana	X			

Iowa	X			Local governments follow the state policy
Kansas	X			Local governments follow the state policy
Kentucky				
Louisiana	X			Local governments follow the state policy
Maine				
Maryland	X			Local governments follow the state policy
Massachusetts	X	except there is an exemption for the Room Occupancy Excise tax for MILITARY ONLY		
Michigan	X			
Minnesota	X			
Mississippi	X			
Missouri		Sales/gross receipts tax on food Sales/gross receipts tax on lodging		Identification that the traveler is a federal employee (hotels should obtain either proof of employment, have the traveler sign a statement that he or she is representing an exempt entity or accept a federal government credit card). Federal agencies should complete an exemption application (form 1746) and receive a Missouri sales and use tax exemption letter.
Montana	X			
Nebraska	X			
Nevada				
New Hampshire		Sales/gross receipts tax on food Sales/gross receipts tax on lodging		Paying with a federal "corporate card," identification that the traveler is a federal employee, or a purchase order
New Jersey	X			
New Mexico				

New York State		Sales tax on lodging	A state-issued exemption certificate or a government purchase order	NOTE: Certain localities impose hotel occupancy taxes which are administered independently from the state sales tax.
New York City				
North Carolina	X			Local governments follow the state policy
North Dakota	X			Local governments follow the state policy
Ohio				
Oklahoma	X			The local occupancy tax may or may not be exempt, depending on how the ordinance is worded.
Oregon		No sales tax in Oregon		Hotel/motel taxes are locally administered; there is no state tax; call 503-588-6550 for information on a city's tax (League of Oregon Cities)
Pennsylvania		Hotel Occupancy taxes	Letter or similar confirmation on agency letterhead, or a state-issued exemption certificate	NOTE: Local taxes are administered by 63 counties. Philadelphia and Allegheny County exempt hotel occupancy taxes using the same requirements as the state
Rhode Island	X			Local governments follow the state policy
South Carolina	X			In most cases, the state collects taxes imposed by cities and counties. In those situations, the local tax would be treated the same as the state tax. However, local taxes collected by a local government itself may be subjected to different policies.
South Dakota	X			Local governments follow the state policy
Tennessee	X			

Texas		Hotel Occupancy taxes	Traveler must fill out a Hotel Exemption Certificate. Hotels may request a government ID, a business card, or other identification.	NOTE: Most municipalities and counties that impose a local hotel tax also exempt federal employees traveling on official business.
Utah	X			Local governments follow the state policy
Vermont	X			
Virginia	X			Local transient occupancy tax and local meals tax are administered independently from the state sales tax. Each locality establishes its own policy regarding documentation needed to qualify for any exemption it may offer.
Washington	X			
West Virginia	X			The state recommends that its local governments follow the state policy for the local hotel occupancy tax
Wisconsin		Sales/gross receipts tax on lodging	The hotel issues the invoice or billing document in the name of the governmental agency and the hotel receives one of the following: A purchase order or similar written document identifying the governmental unit as the purchaser, a properly completed exemption certificate (Form S-211) or the federal governmental unit's CES number which the hotel records on its copy of the invoice.	
Wyoming	X			Local governments follow the state policy

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