



STATE OF LOUISIANA
DEPARTMENT OF REVENUE

M. J. "MIKE" FOSTER, JR.
GOVERNOR

JOHN NEELY KENNEDY
SECRETARY

March 23, 1999

Mr. Rebecca A. Koses
Contracting Officer
Services Acquisition Center
U.S. General Services Administration
1941 Jefferson Davis Highway
Arlington, VA 22202-4502

Dear Ms. Koses:

This is in reply to your letter of December 10, 1998, advising the department about some new general purpose credits cards that are now used by agencies and employees of the United States Government under the GSA SmartPay program. You ask that the Louisiana Department of Revenue recognize that the purchases made with the use of these cards are non-taxable purchases of the United States Government, and that the Department of Revenue not require that sales tax exemption certificates be furnished to vendors in connection with these purchases.

The Department of Revenue has and, of course, will continue to recognize that state sales and use taxes cannot be applied to direct purchases of the United States Government and its agencies. In order for the exemption to apply, the otherwise taxable property or services must be sold and billed directly to the United States Government, the United States Government must be directly responsible to the vendor for payment, and the U.S. Government must actually pay the vendor with government funds. Purchases made by a credit card that is issued in the name of a federal agency only, where the purchases on the account are billed directly to and paid for directly by the federal agency named on the account, will be considered non-taxable purchases of the United States Government. Since Louisiana law does not provide an exemption on business-related purchases made in their own names by government employees, the Louisiana state sales or use tax is due on purchases by a federal employee with his/her own funds, with his/her personal credit card, or with an employee-billed card issued under the GSA SmartPay program, even if his/her federal agency employer subsequently reimburses the purchases.

You have asked that a Louisiana sales or use tax exemption be recognized, where applicable, on purchases made with the SmartPay cards, and that the Louisiana Department of Revenue not require that sales or use tax exemption certificates be furnished to merchants. While we share your goal of eliminating as much paper furnishing and retention as reasonably possible, the elimination of all paper sales tax exemption documentation would seem not to be possible under the current methods of billing the SmartPay cards.

We understand, from information furnished to the department by the Federation of Tax Administrators, that credit cards issued under the SmartPay program are both agency billed and individually billed. Cards that are agency billed can be distinguished from those that are

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individually billed by the first four digits of the card numbers on certain cards, and by the 6th digit of the card numbers on other cards. Cards issued by Nations Bank to Department of Interior employees involve a complicated exception to the digit position scheme, in that on individual cards the card issuer will sort the purchases by category, and direct-bill some of the purchases to the Department of the Interior, and individually bill other purchases to Department of Interior employees. We understand that under this system the Department of the Interior will be directly billed for office supplies and other procurements, and its employees will be individually billed for lodging and restaurant food. Cards issued to the Bureau of Reclamation within the Department of the Interior are agency billed on all purchases, including hotel and restaurant charges. Cards issued to the Bureau of Reclamation are indistinguishable by their appearance from cards issued to other Department of the Interior bureaus. We at the Department of Revenue believe that the furnishing and retention of paper documentation of tax exemption would be less burdensome than the effort that would be required of vendors to determine the taxable status of transactions on the basis of the SmartPay card numbering system. Accordingly, we cannot comply with your request that paper documentation be eliminated from SmartPay credit card transactions with federal agencies and federal employees.

State sales and use tax exemption can be claimed and allowed on purchases made with the use of credit cards that are billed directly to the United States Government. Agencies that use these cards will be responsible for documenting with vendors the agency-billed status of individual transactions. We hope that U.S. Government agencies will be diligent in furnishing documentation of sales /use tax exempt status to their Louisiana vendors on purchases made with agency-billed credit cards. Without proper documentation in their records, Louisiana vendors will remain contingently liable for the remittance of the tax until the documentation is obtained.

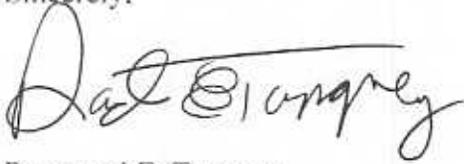
Federal agencies can furnish department form LGST-100, or include essentially identical language on other writing furnished to vendors, to document tax exemption on their direct-billed purchases. I anticipate that this form will be amended in the near future to include more precise language about credit card billing. A copy of the current form is attached. If the SmartPay card program were ever amended in the future, so that all purchases by the use of the cards would be directly billed to agencies of the United States Government, Louisiana sales and use tax exemption documentation could be considerably streamlined.

Also attached is a copy of a policy statement issued by the department concerning the payment of hotel taxes by employees of federal and Louisiana governments on official travel status. The department provides an avenue under that policy for exemption, under certain conditions, from the payment of state lodging taxes by employees who are documented as on official travel status. When the conditions set forth in the policy statement are met, and the documentation required in the policy is furnished, an exemption can be claimed on hotel charges that eligible employers are subsequently to reimburse their employees in actual dollar amount.

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If ever we can be of additional help, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray E. Tangney". The signature is written in a cursive style with a horizontal line above the first few letters.

Raymond E. Tangney
Director
Sales Tax Division
(225) 925-7335

Attachments



Exemption Certificate

For use by departments and instrumentalities of the federal government
Louisiana General Sales Tax, Revised Statute 47:301 et seq.

Date _____

The undersigned hereby certifies that he is _____
Title

of the _____
Department or instrumentality

of the federal government, and that he is authorized to execute this certificate, and that the article or articles specified in the accompanying order, or listed on the reverse side of this certificate, are purchased from the vendor listed below by this department or instrumentality for its exclusive use:

Name of company

Address City, state, ZIP

It is agreed that if articles purchased tax free under this exemption certificate are used otherwise, or are sold to employees or others, such fact will be reported and the tax paid by me to the Department of Revenue and Taxation of the state of Louisiana, and that fraudulent use of this certificate will subject the user thereof to the penalties imposed by Title 47 of Louisiana Revised Statutes of 1950.

Signature of officer

Title



STATE OF LOUISIANA
DEPARTMENT OF REVENUE

M. J. "MIKE" FOSTER, JR.
Governor

JOHN NEELY KENNEDY
Secretary

**Louisiana State Sales Taxability of Hotel Room Rentals
to Governments and Government Employees**

(This directive is applicable to the taxes on hotel rooms that are collected by the Department of Revenue, but is not necessarily applicable to the local taxes that are levied and collected by political subdivisions of the state.)

R.S. 47:301(8)(c) excludes the State of Louisiana and most political subdivisions of the state from the definition of the term "person" for purposes of liability for payment of the state sales and use tax. States are prohibited by federal law and applicable jurisprudence from levying a tax directly on the government of the United States. A hotel room will be considered as having been engaged directly by an agency of the federal, Louisiana, or local government if all of the following conditions are met:

- a. The hotel services are engaged directly by and in the name of the government agency.
- b. The government agency is directly liable to the hotel at the time the room is engaged for payment of the agreed purchase price.
- c. The government agency directly pays the hotel with a government agency remittance. Payment with a credit card issued only in the name of the government agency, and billed by the card issuer directly to the government agency, will be considered a government agency remittance. Payment by a credit card that bears the name of the government employee holder of the card will not be considered a government agency remittance for purpose of availability of the sales tax exemption, even if the card also bears the name of the card holder's government employer.

Neither R.S. 47:301(8), nor the immunity of the federal government from state taxation, authorizes or requires that an exemption from state sales taxation be granted on purchases by government employees. We will require that the appropriate rate of state sales or use tax be paid on purchases of hotel room services, vehicle parking, and other taxable transactions made in their names by employees, officials, and representatives of a government agency. However, when an employee of the United States government or of the state of Louisiana or its political subdivisions can show, through the documentation outlined below, that his/her actions in engaging a hotel room are on direct orders from his government employer, and that the expenses that he incurs in engaging the room are accounted to and reimbursed by his employer, the department will consider the sale of the lodging services to the employee to be the legal equivalent of a sale to his/her government employer, regardless of the form of payment to the hotel. Required documentation will include both item nos. ① and ②, indicated below, or item no. ③:

- ① written government travel orders, presented on recognizable government letterhead or forms, signed by an authorized representative of the employer other than the employee engaging the hotel services, directing the employee on travel status to engage a room on specific days at a specific hotel or at a hotel within the employee's defined travel area, **and**

- ② an exemption certificate signed by the employee or his employer attesting to the fact that the employee's actual expenses for the lodging are accounted to his employer and reimbursed to the employee by the employer in the actual amount incurred. The employee can utilize the exemption certificate form published by the department for this purpose, or can present the form that federal agencies have prepared for use nationwide, provided that the signed form contains the statement that the employee's expenses are reimbursed by the government employer in the actual amount incurred.

-OR-

- ③ When the written government travel orders specified in item no. ① are not available, the employee engaging the hotel room can document his/her eligibility for the governmental exemption by presenting an exemption certificate signed by the employee and his government employer attesting to the fact that the employee's actual expenses for the lodging are accounted to his employer and reimbursed to the employee by the employer in the actual amount incurred. The employee can utilize the exemption certificate form published by the department for this purpose, or can present the form that federal agencies have prepared for use nationwide, provided that the form is signed by both the employee and another representative of the employer, and the signed form contains the statement that the employee's expenses are reimbursed by the government employer in the actual amount incurred.

In order for a hotel to allow the sales tax exemption under the above procedures, the employee must present the above documentation at the time the hotel room is occupied, and the hotel must retain copies of the documentation as support for the deductions to be taken on its sales tax returns. Failure of the employee to present the documentation or to allow copying of the documentation will mean that the charges for the occupancy of the hotel rooms will be taxable.

Exemptions can be allowed only on rooms engaged directly by agencies of the United States government, of the State of Louisiana and its political subdivisions, and by employees of these governments who present the documentation explained above. An exemption is not allowable on hotel room charges incurred by other states, their political subdivisions, or their employees.

02-13-98



State of Louisiana
Department of Revenue

**Certificate of Governmental Exemption
from the Payment of Hotel Lodging Taxes**

for use by employees of the government of the United States and the State of Louisiana and its political subdivisions in documenting eligibility for exemption from payment of state sales taxes on hotel lodging charges that are directly reimbursable by their government employers

This certifies that _____
Name and title of employee

is an employee of _____
Name of government employer

whose address and telephone number are _____
Street

City, State, ZIP Telephone

and that the lodging charges incurred by the employee at the _____
Name of hotel

during the period _____
Dates of employee's stay

are necessitated by the employee's conduct of the official business of this government agency. The employee's lodging expenses are required to be accounted for to his government agency employer and are reimbursable by the employer to the employee in the actual amount incurred. This government agency, therefore, claims exemption from the payment of lodging taxes on the charges for the occupancy of the employee's hotel room.

Name and title of employee Signature Date

Name and title of other employee representative Signature Date

This form is usable only in documenting eligibility for exemption from the payment of state sales tax on charges for room occupancy. The state sales tax must be paid on other taxable purchases from the hotel, including meals, laundry, dry cleaning, and vehicle parking. When this form bears the signature of only the employee, the form must be accompanied by a copy of the employee's written travel orders, in which the government employer directs a stay at the specific hotel accepting the form, or alternatively, at any hotel within a narrowly defined geographic area. The hotel must retain this certificate and a photocopy of the travel orders to document the exemption. **This form is not valid to document exemption from the payment of local room occupancy taxes.**