DEPARTMENTS OF THE ARMY AND THE AIR FORCE
NATIONAL GUARD BUREAU
US PROPERTY AND FISCAL OFFICER FOR CALIFORNIA
POST OFFICE BOX 8104
SAN LUIS OBISPO, CALIFORNIA 93403-8104

CAJS-US-PC 16 April 2003

MEMORANDUM FOR All Government Purchase Cardholders and Billing Officials

SUBJECT: GOVERNMENT PURCHASE CARD POLICY MEMORANDUM #3 - Government Purchase Card State of California Tax Exemption

1. References:

a. USPFO for California Standard Operating Procedure for use of the Government Purchase Card (GPC), dated 1 February 2003.

b. State of California, State Board of Equalization letter, dated January 26, 1999, Sales and Use Tax Regulation 1614 (enclosed).

2. The following is the USPFO for California policy on the payment of California sales tax when using the Visa Government Purchase Card to make purchases with vendors. When purchasing items by phone or over the counter, the Cardholder should inform the merchant that the purchase is for official U.S. Government purposes and therefore is not subject to state or local sales tax. The card will be printed with "For Official U.S. Government Purchases Only" and "U.S. Government Tax Exempt."

3. The State of California, State Board of Equalization has granted the U.S. Government sales tax exemption when making purchases with the Visa Government Purchase Card in accordance with California Sales and Use Tax Regulation 1614. Further, the State of California does not require the Federal Government to provide tax exemption certificates to retailers (vendors) when a Government Purchase Card is used as the method of purchase.

4. Government Purchase Cardholders should always advise the vendor when making a GPC purchase that the purchase is exempt from sales tax. In addition, the Cardholder should be prepared to provide a copy of the enclosed letter and Sales and Use Tax Regulation 1614 when questioned by a vendor on why sales tax cannot be paid. If the vendor refuses to comply with the regulation, the Cardholder must cancel the purchase and make the purchase at another vendor who does not charge sales tax.

5. If a Cardholder is inadvertently charged sales tax, they must return to the vendor to obtain a credit on their Government Purchase Card account. Failure to obtain a credit during the following month's billing cycle will result in suspension of card privileges until credit is obtained or justification is provided describing why the credit cannot be obtained. Cardholders may be held personally liable for sales taxes charged to their card if there is no action to obtain credit or documentation describing reasons why the vendor will not provide a credit.

6. For situations not addressed by this policy, please contact LTC Eric H. McDonald, Supervisory Contract Specialist, at DSN 630-6251 or (805) 594-6251.

Encl

JOHN R. ALEXANDER
Colonel, NGB
USPFO for California

CF (w/encl):
CAJS-US-CM
CAJS-US-IR
CAJS-HR

STATE OF CALIFORNIA
STATE BOARD OF EQUALIZATION
450 N STREET, MIC:43 SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0043)
TELEPHONE: (916) 445-1441
FACSIMILE: (916) 445-2388

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

E. L. SORENSEN, JR.
Executive Director

January 26, 1999

Ms. 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 response to your letter dated December 10, 1998, regarding a new credit card program implemented by the United States Government.

In your letter, you explained that on November 30, 1998, the United States Government implemented a new credit card program that replaced its purchase cards (I.M.P.A.C.), travel cards (American Express), and fleet cards (Wright Express) with one consolidated program. This new program is called "GSA SmartPay" and is effective for five years with five one-year options. Instead of a single provider of card based services, the Federal Government has awarded multiple contracts. Cards will now be issued by Citibank, First National Bank of Chicago, NationsBank, Mellon Bank and U.S. Bank. You further indicated all cards will have unique prefixes and account numbers, government-designed artwork, and wording that denotes the card is for use by the United States of America.

You ask for support of the GSA SmartPay card program by continuing to extend tax exemption status for Federal Government credit card purchases, where applicable. You also ask that California continue to recognize that credit card purchases made and paid directly by the Federal Government are tax exempt and confirm such in writing. Finally, you ask that we review and rescind any requirement for the Federal Government to provide a tax exemption certificate when a Federal Government credit card is used as the method of purchase.

California Sales and Use Tax Regulation 1614, "Sales to the United States and Its Instrumentalities," copy enclosed, states in subdivision (a)(1) that sales tax does not apply to sales of tangible personal property to the United States or its unincorporated agencies and instrumentalities. Subdivision (g) of the regulation provides that a United States Government purchase order or remittance advice provided to a retailer is sufficient documentation to support an exempt sale to the United States Government. Additionally, the Board has previously held that qualifying credit card receipts and corresponding retailer invoices will be sufficient documentation to support exempt sales to Federal Government under the Federal Government credit card program.

The Board continues to support the Federal Government credit card program. As such and in accordance with existing statutes and regulations, purchases of tangible personal property using Federal Government credit cards are exempt from California sales tax if the purchases are billed directly to the Federal Government. Purchases billed directly to federal employees are not exempt from California sales tax regardless of whether the employee is subsequently reimbursed by the Federal Government.

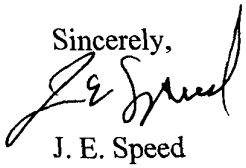
We have examined the enclosures which accompanied your letter and which explain the GSA SmartPay Program and the characteristics of the various cards to be used under the program. Some cards are described as "centrally billed" while others are described as "individually billed." It is further explained that "centrally billed" charges are billed directly to and paid directly by the Federal Government and "individually billed" charges are billed to and paid by the Federal employee, who is then reimbursed by the Federal Government. Accordingly, sales made under those cards described as "centrally billed" would be exempt from California sales tax; while sales under those cards described as "individually billed" would be subject to California sales tax.

The State of California does not require the Federal Government to provide a tax exemption certificate to retailers when a Federal Government credit card is used as a method of purchase. Sales to the Federal Government are exempt by statute and to support an exempt sale to the Federal Government, a retailer need only retain the credit card receipt which should clearly show an imprint of a qualifying Federal Government credit card and the retail invoice.

However, it is our understanding there may be some credit cards issued under the new SmartPay Program that are both "centrally billed" and "individually billed." The method of billing may depend on either the agency of the Federal Government and/or the type of property or services being purchased. The information included with your letter did not address such credit cards. We are, therefore, not in a position to provide an opinion on how such credit cards may be treated under California Sales and Use Tax Laws.

I hope this information is helpful. If you have any questions regarding this matter, please let me know.

Sincerely,



J. E. Speed
Deputy Director
Sales and Use Tax Department

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Enclosure

State of California

BOARD OF EQUALIZATION

SALES AND USE TAX REGULATIONS

Regulation 1614. SALES TO THE UNITED STATES AND ITS INSTRUMENTALITIES.

References: Sections 6381, 6381.5, Revenue and Taxation Code.
Construction contractors generally, see Regulation 1521
Motion pictures produced for United States Government, see Regulation 1529.
Leases and rentals in general, see Regulation 1660
For Banks generally, see Regulation 1567

(a) GENERALLY. Sales tax does not apply to sales to:

(1) The United States or its unincorporated agencies and instrumentalities.

(2) Any incorporated agency or instrumentality of the United States wholly owned by either the United States, or by a corporation wholly owned by the United States.

(3) The American National Red Cross, its chapters and branches.

(4) Incorporated federal instrumentalities not wholly owned by the United States, unless federal law permits taxing the instrumentality. Examples of incorporated federal instrumentalities exempt from tax are federal reserve banks, federal credit unions, federal land banks, and federal home loan banks.

Application of the use tax to the storage, use, or other consumption of tangible personal property by agencies or instrumentalities of the United States is prohibited unless federal law permits taxing the agency or instrumentality.

Where payment for tangible personal property sold or consumed in this state is made partly by the United States or its instrumentalities and partly by nonexempt persons, the payment is exempt to the extent of the United States' or its instrumentality's share provided it is made directly to the vendor by the United States or its instrumentality. If the nonexempt party makes full payment and then seeks reimbursement from the United States or its instrumentality, the entire amount is taxable even though the United States or its instrumentality may reimburse him in full or in part.

(b) ARMY AND AIR FORCE EXCHANGE SERVICES, NAVY EXCHANGES, COAST GUARD EXCHANGES, OPEN MESSES, AND OFFICERS' MESSES. Army and air force exchange services, navy exchanges, coast guard exchanges, open messes, and officers' messes, established pursuant to regulations of the appropriate branch of the armed services are instrumentalities of the United States, and tax does not apply to sales to these organizations.

Tax applies to sales to persons in the armed services of the United States, notwithstanding the circumstance that the merchandise may be billed through any army or air force exchange service, navy exchange, coast guard exchange, or similar organization.

(c) COMPANY AND OTHER UNIT FUNDS. Tax does not apply to sales to the armed services of merchandise purchased with unit and similar funds (company, troop, hospital, recreation, welfare, etc.) where the expenditures are made in accordance with appropriate regulations of the armed services for the general benefit of armed services personnel.

(d) CIVILIAN WELFARE FUNDS. Civilian welfare funds are established and administered under armed services regulations under which post restaurants are also administered. Both are nonappropriated fund activities and are unincorporated governmental instrumentalities. Accordingly, sales tax does not apply to sales made to such organizations properly conducted and operated at military installations in this state in accordance with appropriate regulations.

Any seller to such organizations claiming a transaction as exempt from sales tax must obtain from the purchaser a certificate similar to the following:

This is to certify that the _____
(NAME OF FUND)

located at _____ is a nonappropriated fund
(NAME OF INSTALLATION)

activity located at a military installation of the United States in the State of California and is conducted and operated in accordance with armed services regulations established for such activities. As such, sales to this nonappropriated civilian welfare fund are exempt from California state and state-administered local sales taxes.

_____
SIGNATURE OF COMMANDING OFFICER OR REPRESENTATIVE

_____
PRINT OR TYPE NAME

_____
RANK

_____
DATE

(e) THE SELECTIVE SERVICE SYSTEM. Tax does not apply to receipts from sales to State Procurement Officers for selective service authorized by selective service regulations.

(f) MEDICARE PROGRAM. Tax does not apply to the sale of items to a person insured pursuant to Part A of the Medicare Act as such sales are considered exempt sales to the United States.

Tax applies to the sale of an item to a person insured pursuant to Part B of the Medicare Act even though the person assigns the claim for reimbursement to the retailer and the retailer files the claim with, and is paid by, a carrier administering medicare claims under contract with the United States.

(g) SUPPORTING DOCUMENTS. Any seller claiming a transaction as exempt from tax under Section 6381 must obtain from the purchaser, and retain, a government purchase order or a government remittance advice to support his claim.

History: *Effective as follows: Use Tax July 1, 1935; Sales Tax August 1, 1933, except Subdivisions (2) and (3) of Division (a), and Division (b) which became effective May 22, 1943.*
Adopted as of January 1, 1945, as a restatement of previous rulings.
Amended August 2, 1965, applicable on and after August 1, 1965.
Amended and renumbered February 17, 1970, effective March 22, 1970.
Amended August 17, 1976, effective September 19, 1976. Added a reference, noted change in incidence of sales tax, that tax on banks is legal only where permitted by federal law, and that State law prohibits use tax on banks and deleted leases as taxable items.
Amended December 7, 1978, effective January 28, 1979. Amends subsection (a) and added new subsection (b) to provide that sales tax does not apply to sales other than leases to the United States or its instrumentalities, and added new subsection (c) to impose sales tax on sales to various corporations. The old subsection (b) and (c) and (d) thru (f) renumbered (d) thru (h) and added a new subsection (i).
Amended December 7, 1978, effective January 28, 1979. Deleted first paragraph after Section (a) (3) which was included in error, and in Section (i) correct the phase "on leases in effect" to "or leases in effect".
Amended February 6, 1980, effective March 29, 1980. In (a) (3) deleted last sentence in first paragraph; in (b) added conditions for exemption; in (f) added lines for printed or typed name, and date; added (h), and relettered remaining subsections. Amended May 9, 1984, effective August 29, 1984. Added new (a) (4); deleted former (b) and (c) and relettered succeeding subdivisions; deleted reference to leases from (b), (c), and (e) and deleted former (j).

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.