

VERMONT DEPARTMENT OF TAXES

TECHNICAL BULLETIN

TAX: Meals and Rooms; Sales and Use

TB-13

SUBJECT: Purchaser-Based Treatment of the Vermont Meals and Rooms Tax and Sales and Use Tax

ISSUED: October 13, 1998

REVISED: May 14, 2015

STATUTORY REFERENCE: 32 V.S.A. §§ 9201–9281, 9741–9746

Vermont Meals and Rooms Tax

This Technical Bulletin addresses the scope of the exemptions from the Vermont Meals and Rooms Tax. The Meals and Rooms Tax chapter of the Vermont Statutes does not have any express exemptions from the tax.¹ Exemptions do exist, however, and can be found in various other state and federal laws.

Vermont Sales and Use Tax

The State of Vermont and the United States are expressly exempted from liability for the Sales and Use Tax. 32 V.S.A. § 9743(1), (2). International and U.S. law exempts diplomatic and consular officials from the Sales and Use Tax. Accordingly, the information related to the State of Vermont, the federal government, and foreign government offices and personnel located in this technical bulletin can be applied to purchases subject to the sales and use tax. Nothing else contained in this bulletin is intended to apply to any Vermont tax other than the Meals and Rooms Tax. For information directly related to Vermont Sales and Use Tax exemptions, please see 32 V.S.A. §§ 9741–9746 and other technical bulletins.

State of Vermont

The State of Vermont is not subject to the Vermont Meals and Rooms Tax when it directly pays charges for meals and occupancy. A state cannot impose a tax upon itself because that would be a tax on its operations and, therefore, would be a direct obstruction to the exercise of its sovereign power. *See, James v. Dravo Contracting Co.*, 302 U.S. 134 (1937). Accordingly, when the State of Vermont is charged directly for meals and rooms expenses, no Meals and Rooms Tax should be charged.

Note that in order for this exemption to apply, expenses must be charged directly to the State of Vermont—indirect charges like employee reimbursement are not exempt from the tax. To qualify as exempt, the State must be charged or billed in its own name.

For purposes of the exemption from the Meals and Rooms Tax, the “State of Vermont” shall mean the state, any of its agencies, instrumentalities, public authorities, public corporations, political subdivisions, cities, towns, school districts, and Vermont state colleges (including the University of Vermont).

State of Vermont Employees

When an employee of the State of Vermont, whether acting in his or her official capacity or not, purchases an otherwise taxable meal or occupancy, the employee is not entitled to an exemption from the Meals and Rooms Tax.²

¹ Certain foods and beverages are excluded from the definition of “taxable meal” based upon where they are served or the quantity in which they are purchased but those are not exemptions based on the identity of the purchaser, and are thus not the subject of this bulletin. *See*, 32 V.S.A. § 9202.

² A party contracting with the State (e.g., an independent contractor) is bound by the same rules applicable to an employee of the State.

It is irrelevant whether the employee pays for such expenses with a state issued credit card that is billed to the employee, another credit card, personal check, or cash. If it is the employee, and not the State, who is charged, the transaction is properly subject to the Meals and Rooms Tax since the exemption runs to the State, not to an individual employee of the State.

Note that it is wholly permissible for the State of Vermont to reimburse an employee for an amount paid that includes the Meals and Rooms Tax. In such a transaction, the State bears an indirect burden of the tax—the State is not paying a tax, but is merely reimbursing the employee for his or her expenses. Thus, the State is simply bearing the economic burden of the Meals and Rooms Tax paid by that employee. *See, Alabama v. King and Boozer*, 314 U.S. 1 (1941).

Federal Government

Under the Supremacy Clause of the U.S. Constitution, no state is permitted to directly tax the federal government or any of its agencies or instrumentalities. U.S. CONST. art. IV. The State of Vermont, therefore, may not subject the federal government or any of its agencies or instrumentalities to the Vermont Meals and Rooms Tax. Sales to government agencies or instrumentalities are exempt, however, only if charged directly to the federal government. To qualify as exempt, the federal government, agency or instrumentality must be charged or billed in its own name. For purposes of the exemption from the Vermont Meals and Rooms Tax, the term “federal government” shall mean the United States of America and any of its agencies or instrumentalities.³

Federal Government Employees

Federal government employees who travel to or through Vermont on government business or who make purchases on behalf of the federal government while in Vermont are not necessarily exempt from paying the Meals and Rooms Tax. While the Supremacy Clause of the U. S. Constitution prohibits states from levying a tax directly on the U.S. government and its instrumentalities, such immunity does not extend to all employees or agents acting on behalf of the federal government. Only meals and occupancy transactions paid for directly by the U.S. government are exempt. The charge cannot be made directly to employee.

Certain federally issued credit cards are set up to be billed directly to the federal government.⁴ Purchases with those cards are therefore exempt. The types of federally-issued cards that are exempt from Vermont Meals and Rooms Tax are federal “Purchase Cards” and other cards with centrally billed accounts (CBA).⁵ The types of federally-issued cards that are *not* exempt from Vermont Meals and Rooms Tax are those with individually billed accounts (IBA). Federal “Travel Cards” can have either a CBA or IBA but only transactions made using a CBA Travel Card are exempt from the Meals and Rooms Tax.

If a federal employee pays for expenses incurred while on official business with a personal check, an IBA credit card, or cash, he or she must pay the Vermont Meals and Rooms Tax. In this instance, it is the employee who contracts with, and is billed by, the hotel or restaurant for lodging or food. Thus, the legal incidence of the tax falls on the employee, not the federal government, and the transaction is properly taxable.

³ Note that American Red Cross is exempt from Meals and Rooms Tax as a federal instrumentality. *Department of Employment v. U.S.*, 385 U.S. 355 (1966).

⁴ The types of cards are subject to change as the federal government periodically accepts bids for new contracts from various companies.

⁵ For sales and use tax only: The vendor must also obtain a complete and accurate S-3 exemption certificate when a purchase is made using a CBA or Purchase Card.

Additional information related to cards issued by the federal government can be found at the U.S. General Services Administration website at <https://smartpay.gsa.gov/about-gsa-smartpay/tax-information/>.

Foreign Government Offices and Personnel

Persons identified as exempt from taxation pursuant to treaties and other diplomatic agreements with the United States are issued a Tax Exemption Card by the United States Department of State's Office of Foreign Missions (OFM). Persons identified as exempt from taxation pursuant to the Taiwan Relations Act are issued a Tax Exemption Card by the American Institute in Taiwan (AIT).⁶ The card identifies the bearer as exempt from tax and specifies the extent of the exemption. This is the sole instance in which an individual charged and paying the Vermont Meals and Rooms Tax may be exempt.

Tax Exemption Cards issued by the OFM and AIT are generally used to obtain an exemption from Vermont Sales and Use Tax and Vermont Meals and Rooms Tax imposed on purchases of tangible personal property, hotel stays, and restaurant meals. Some cards have restrictions that are printed on the card. A card cannot be used to purchase motor vehicles, fuel, utility services, or real estate.

Tax Exemption Cards labeled as "Official Purchases Only" are used by foreign missions to obtain exemption from Sales and Use Tax and Meals and Rooms Tax that are necessary for the mission's operations and functions. All exempt purchases must be paid for with a check, credit card, or wire transfer transaction in the name of the foreign government or mission.⁷ Hotel stays for tourism, medical treatment, and leisure travel are not considered necessary for a mission's operations and are therefore not tax exempt. The individual pictured on a Mission or Official Tax Exemption Card is the point of contact and need not be present at the purchase.

Tax Exemption Cards labeled as "Personal Tax Exemption" are used by eligible personnel and their dependents to obtain exemption from Sales and Use Tax and Meals and Rooms Tax. The card is not transferable and cannot be used by another person. There is no restriction on the form of payment that can be used with a Personal Tax Exemption Card.

Vendors should be careful to provide only those exemptions specified on the card. Invoices or other evidence of sale must be retained by the vendor to support any deduction claimed on the Vermont Sales and Use Tax Return and Vermont Meals and Rooms Tax Return for sales to foreign government offices and personnel. This documentation should show the name of the purchaser, name of the mission, tax exemption number, expiration date of the card, and the exemption details specified on the card.

A vendor should verify a tax exemption card's validity at <https://ofmapps.state.gov/tecv/> or by calling the number on the back of the card.

⁶ See, 22 U.S.C. §§ 3301–3316.

⁷ The transaction may also be made in the name of the Taipei Economic and Cultural Representative Office or Taipei Economic and Cultural Office.

Non-Exempt Purchasers

The following are not exempt from the Vermont Meals and Rooms Tax:

- Social clubs, fraternal organizations, and non-profit organizations, including those listed under Section 501(c)(3) of the Internal Revenue Code, which includes private schools and private colleges, unless otherwise specifically stated in this bulletin.
- Governments of states and municipalities other than Vermont.
- Vermont credit unions.
- Nonprofit medical service corporations.
- Nonprofit hospital service corporations.

Non-profit organizations are not exempt from the Vermont Meals and Rooms Tax. Included in this category are private schools, private colleges, any school district located outside of the State of Vermont, and other non-profit organizations located within the State of Vermont (unless expressly stated otherwise in this bulletin).

Hospital service corporations, medical service corporations, and credit unions are subject to Vermont Meals and Rooms Tax, although those entities are exempt from some other Vermont taxes. 32 V.S.A. § 9247.

Reporting Vermont Meals and Rooms Tax Exemptions

Vermont Meals and Rooms Tax should be included in the vendor's gross sales figure in Column A, then deducted in Column B, of the Meals and Rooms Tax Return. The voucher that accompanies a check from the Vermont Department of Finance and Management should be kept as part of a business's records to substantiate a direct, and therefore exempt, payment from the State of Vermont. Documentation verifying a sale as exempt is required to be maintained and available for review for every exempt purchase.

Summary

Charges made directly to the State of Vermont, its agencies and instrumentalities; to the federal government, its agencies and instrumentalities; and to certain diplomatic and consular officials; are exempt from the Vermont Meals and Rooms Tax. Charges made to employees of or persons contracting with the State of Vermont or the federal government are not exempt from the tax regardless of whether they are on government business and are ultimately reimbursed for these charges.

Use of Technical Bulletins

A technical bulletin provides general information on a specific subject to the public. It does not replace the need for competent legal advice. This technical bulletin supersedes all prior Department pronouncements on this subject.

For more information, call Taxpayer Services at (802) 828-2551 or write to Business Taxes Division, P.O. Box 547, Montpelier, VT 05601-0547.



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Commissioner of Taxes



Date