

CHAPTER 4. FEDERAL, STATE AND FOREIGN TAXES

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CHAPTER 4. FEDERAL, STATE AND FOREIGN TAXES4.1 OVERVIEW.

4.1.1 This chapter provides policy on the payment and reporting of Federal Excise Tax and State and Local Tax. It prescribes the policy on the required forms and electronic submission to the Department of Treasury (Treasury) for reporting tax remittance.

4.2 POLICY.

4.2.1 This chapter prescribes NASA policy for remitting and reporting, State, Local and Foreign Taxes.

4.3 AUTHORITIES AND REFERENCES.

4.3.3 Federal Acquisition Regulation (FAR), Subpart 29.2 Federal Excise Taxes, Subpart Part 29.3 State and Local Taxes.

4.3.4 FAR, Part 31, Contract Cost Principles and Procedures.

4.3.5 National Aeronautics and Space Administration supplement to the Federal Acquisition Regulation (NASA FAR). Version 04.0, effective November 1, 2004.

4.3.6 37 Comptroller General Procedures (Comp. Gen.) 772 (1959), 32 Comp. Gen. 423 (1953), 24 Comp. Gen. 150 (1945). These decisions states, when the tax is levied on the seller, the Federal Government must pay the tax as part of the purchase price, unless the taxing authority provides otherwise.

4.3.7 Comp. Gen. B-134654, Feb 11, 1958. Results from this report set forth cases where federal, state, territorial, municipal and other local taxes (excise, sales, use, compensating, occupational, gross income, gross receipts, et cetera) are levied or based on (or payable by the contractor in respect of) the charges listed in the attached catalog, amounts will be added to such charges equivalent to such taxes. In the event such additional charges are made, the government is to pay such increases in charges equal to such taxes FAR Part 31.

4.3.8 Comp. Gen. B-128346, Aug 8, 1956. Comptroller General decision results state, where there is a valid and binding contract covering the furnishing of supplies or services at fixed unit prices, and the contract contains no provision for the adjustment of such prices in the event of the imposition on the contractor of state taxes applicable thereto, there is no authority for the payment of any taxes over and above the unit price stipulated in the contract

4.3.9 21 Comp. Gen. 719 (1942). This reports states that unless specifically stated otherwise in the contract, it is presumed that state and local taxes are included in the contract price

4.4 ROLES AND RESPONSIBILITIES.

- 4.4.1 Headquarters Office of the General Counsel. The Headquarters Office of the General Counsel is the designated legal counsel for all external contacts on tax issues, including communications with the Department of Justice, other Federal agencies, and any taxing authority.
- 4.4.2 NASA Shared Services Center (NSSC). NSSC provides IRS Form 1099-MISC, in addition to receipts, to payees that have received certain payments.

4.5 FEDERAL EXCISE TAXES.

- 4.5.1 Federal Excise Taxes (FET). NASA must pay FET on fuel purchases except for exemptions provided by the Internal Revenue Code shown in FAR, part 29. If a contract does not specify that the contract price excludes FET, assume the contract price includes the tax and pay only the contract price (14 Comp. Gen. 44 (1934) and 17 Comp. Gen. 1039 (1938)). If the contract specifically excludes the tax, FET should be added to the contract price by the contractor and billed on the invoice as a separately identified item.
- 4.5.2 NASA Federal Tax Exemptions. The Assistant Administrator for Procurement has obtained a permit from the Bureau of Alcohol, Tobacco, and Firearms (Treasury) enabling NASA and its contractors to purchase spirits (e.g., specially denatured spirits) tax-free for nonbeverage Government use. Centers can obtain copies of the permit from the Headquarters Office of Procurement.
- A. Federal Excise Tax on Motor Gasoline. The Tax Reform Act of 1986 eliminated tax-free sales to exempt entities and organizations. The tax-exempt entities are defined as state (including National Guard) and local governments, the American Red Cross, and nonprofit educational organizations. Tax-exempt entities must pay the tax and file for a refund. Department of Defense entities are not tax-exempt. Disbursing offices must pay the FET on gasoline fuel, but cannot file for a refund.
- 4.5.3 State and Local Taxes.
- A. When the tax is levied on the seller, the Federal Government must pay the tax as part of the purchase price, unless the taxing authority provides otherwise (37 Comp Gen 772 (1959); 32 Comp Gen 423 (1953); and 24 Comp Gen 150 (1945)). Where the government has, by contract, agreed to reimburse the contractor for taxes paid to a state or municipality, such payments are proper (Comp Gen B-134654, Feb 11, 1958 and FAR part 31). Where there is a valid and binding contract covering the furnishing of supplies or services at fixed unit prices, and the contract contains no provision for the adjustment of such prices in the event of the imposition on the contractor of state taxes applicable thereto, there is no authority for the payment of any taxes over and above the unit price stipulated in the contract (Comp. Gen. B-128346, Aug 8, 1956). Unless specifically stated otherwise in the contract, it is presumed that state and local taxes are

included in the contract price (21 Comp. Gen. 719 (1942)). State statutes indicate whether the tax is levied on the seller or the purchaser. Some states accept SF 1094, U.S. Tax Exemption Certificate; others require payment of the tax at time of purchase and provide a means for seeking refunds of the tax. The contracting officer will contact the local state taxing authority to verify if they accept tax exemption certificates. A blanket-type tax exemption certificate may be used to obtain the U.S. Government's exemption from state or local taxes in the case of continuing or numerous purchases from contractors. Generally, NASA Centers shall assert the government's immunity or exemption from taxes whenever it is available.

- B. Taxes of \$10 or less. When the total state or local tax on any one tax bill or purchase is \$10 or less, the tax should be paid unless the item can be obtained tax free without issuing SF 1094, U.S. Tax Exemption Form. When a tax exceeds \$10 for a state or local taxing authority, a tax exemption certificate, SF 1094 - Exemption Certificate prepared.
- C. Standard Form (SF) 1094. SF 1094, U.S. Tax Exemption Form will be used where exemptions, adjustments or refunds of state or local sales taxes are allowable on commodities or services purchased for the exclusive use of NASA. A separate form will be issued for each kind of tax (state or local) for which exemption is claimed.
1. The SF 1094 must be fully completed by filling in the blocks provided for the agency name, quantity delivered, amount of tax, whether excluded or included, identification card number, and, where applicable, the license plate or official number of the vehicle for which fuel or oil is delivered. When multiple deliveries are made under a contract, a separate form may be issued for each invoice covering partial deliveries made or the form may be furnished upon completion of the contract. In some cases, such as the purchase of motor fuel and lubricating oil, if considered more practical, the Deputy Chief Financial Officer (Finance) may issue the forms when the invoices are paid. Cross-reference will be made between invoices and the related exemption forms. The itemized statement of the tax in a supplier's invoice may be accepted as the correct amount of the tax in the absence of any facts to the contrary (15 Comp. Gen. 988 (A-69303)).
 2. SF 1094 will not be used for: 1) purchases subject only to Federal taxes, 2) purchases on which the tax is \$10 or less, 3) purchases for the operation or maintenance of personally-owned motor vehicles for which mileage has been authorized, 4) purchases for subsistence, if per diem has been authorized, or 5) purchases by employees in official travel status, which were for official use, but were not paid for at time of purchase.
- D. Invoices shall be submitted to the appropriate State and Local taxing authority for refund of taxes paid. The amount collected shall be deposited for credit to the appropriations from which the invoices were

paid or to the miscellaneous receipt account 803220, Miscellaneous Recoveries and Refunds, Not Otherwise Classified, if the appropriation account cannot be readily identified.

4.5.4 Payments in Lieu of Taxes.

- A. Charges by state or local governments for services levied on Federal Government entities or their contractors, which are not imposed on residents or non-federal, tax-exempt entities, where the cost of the service is borne by the general tax revenues, are in the nature of a tax to which the United States is immune. The placement of the Federal Government in a separate category from other tax-exempt entities for imposing a charge for services is unreasonable and discriminatory classification on the part of a state or local government and the payment of the charge is unauthorized (50 Comp. Gen. 343 (1970)).
- B. A reasonable charge by a political subdivision based on the "quantum" of direct service furnished, and which is applied equally to all property tax-exempt entities, need not be considered a tax against the United States, even though the services are furnished to the tax payers without a direct charge, provided the political subdivision is not required by law to furnish the service involved without a direct charge to all located within its boundaries (50 Comp. Gen. 343 (1970)).
- C. Payments are permitted in lieu of taxes to municipalities that have lost tax revenue by transfer of plants to governmental agencies, only when authorized by the Congress. Payments in lieu of taxes are not authorized if the property transferred was never on municipality tax rolls and municipal services had never been furnished (36 Comp. Gen. 592 (1957)).

4.5.5 State and local tax exemptions.

- A. Evidence of exemption. Evidence needed to establish exemption from State or local taxes depends on the grounds for the exemption claimed, the parties to the transaction, and the requirements of the taxing jurisdiction. Such evidence may include the following:
 - 1. A copy of the contract or relevant portion.
 - 2. Copies of purchase orders, shipping documents, credit-card-imprinted sales slips, paid or acknowledged invoices, or similar documents that identify an agency or instrumentality of the United States as the buyer.
 - 3. A U.S. Tax Exemption Form (SF1094).
 - 4. A State or local form indicating that the supplies or services are for the exclusive use of the United States.

5. Any other State or locally required document for establishing general or specific exemption.
 6. Shipping documents indicating that shipments are in interstate or foreign commerce.
- B. Furnishing proof of exemption. If a reasonable basis to sustain a claimed exemption exists, the seller will be furnished evidence of exemption, as follows:
1. Under a contract containing the clause at 52.229-3, Federal, State, and Local Taxes, or at 52.229-4, Federal, State, and Local Taxes (State and Local Adjustments), in accordance with the terms of those clauses.
 2. Under a cost-reimbursement contract, if requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer.
 3. Under a contract or purchase order that contains no tax provision, if the following occurs:
 - a. Requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer; and
 - b. Either the contract price does not include the tax or, if the transaction or property is tax exempt, the contractor consents to a reduction in the contract price.
- 4.5.6 Foreign Taxes. U. S. Government purchases in a foreign country generally are not exempt from taxes and custom duties when imposed by the foreign country. The Status of Forces or government tax agreements may provide exceptions. See the FAR, part 29.402.
- 4.5.7 Environmental Assessments. If a local government levies an environmental assessment and it represents a fee, payment is authorized. If, however, the assessment appears to be a tax and its legality is questionable (31 U.S.C. § 3529), payment is not authorized. Payment under protest should not be made. Legal advice should be obtained from the Center office of counsel regarding payment of assessments by state and local governments.
- 4.5.8 Statement for Recipients of Miscellaneous Income, TD Form 1099-MISC:
- A. General. At the end of each calendar year, disbursing offices are required to report to the IRS certain payments. These are payments made to noncorporate contractors for services and to corporations providing medical and health care services, totaling \$600 or more per contractor or royalties of \$10 or more in any calendar year (26 U.S.C. § 6041 and FAR 52.204.3).

- B. NASA Centers must provide these recipients with a TD Form 1099-MISC. This form must be provided to payees by January 31 following the year of payment. The IRS provides instructions and specific requirements on the preparation and submission of the TD Form 1099-MISC.