

CHAPTER 6

FEDERAL, STATE, LOCAL, AND FOREIGN TAXES

0601 TAXES

060101. General

A. Tax Information Sources. The Federal Government's right to tax exemptions depends on the applicability of federal, state, and local tax laws; tax agreements with foreign countries; items being acquired; the nature of the tax; and the type of transaction. See Federal Acquisition Regulation (FAR) part 29, for general tax applications on United States purchases, right to exemptions, and the methods of claiming exemptions. Specific information not obtainable locally may be obtained from taxing authorities or through the cognizant DFAS Center

B. Exemptions From Certain Federal Taxes

1. Pursuant to 26 U.S.C. 4293, the Federal Government is exempt from federal taxes on communications services and facilities furnished to and paid for by the government. This does not include facilities furnished to a government contractor. Exemption can be made with or without the use of an exemption certificate. The installation contracting office is responsible for preparing tax exemption certificates.

2. Pursuant to 26 U.S.C. 4483(b), the Federal Government is exempt from the federal highway vehicle users tax imposed in 26 U.S.C. 4481. The exemption applies whether the vehicle is owned or leased by the Federal Government.

C. Sales of Commodities or Facilities. Tax collections are required on commodities or facilities sold that are not for the exclusive use of the United States. When tax-free items or services purchased by the United States are sold to others, collect costs plus required taxes. The selling activity identifies customers and items or services subject to tax and includes any applicable taxes in billing documentation or statements. Taxes remitted are sent to the taxing authority.

0602 FEDERAL

060201. Federal Excise Tax (FET)

A. Except for exemptions provided by the Internal Revenue Code shown in FAR, part 29, the government must pay taxes on fuel purchases. 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.

B. Either tax exemptions or tax refunds are available for DoD purchases of jet fuel, aviation gasoline, marine diesel fuel, and off-highway use of gasoline and road diesel fuels. Whether an exemption is available or a refund application is required depends on where in the distribution chain the purchase was made and the IRS status of the seller of the fuel.

C. The Defense Fuel Supply Center, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6221, is responsible for any needed application for tax refunds in its bulk fuels or into-plane programs. The Military Services or activities are responsible for any needed application for tax refunds for any other fuel purchases. File for refunds on Department of Treasury (TD) Form 843, Claim for Refund and Request for Abatement.

D. **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. DoD entities are not tax-exempt. Disbursing offices must pay the FET on gasoline fuel, but cannot file for a refund.

E. Quarterly Federal Excise Tax Return

1. Reports are prepared and submitted quarterly unless notified differently by the District Director, Internal Revenue Service. A return is made on TD Form 720, Quarterly Federal Excise Tax Return, for the first calendar quarter when a tax liability is incurred and each later calendar quarter until a final return is filed. Final returns are filed when the requirement ceases and are marked "FINAL."

2. TD Form 720 contains a list of the commodities and services subject to the tax and the tax rate. This form also serves as the return for all excise taxes for which quarterly reporting is required.

3. Credit collections for FET are made to applicable deposit fund accounts. Deposit excise taxes collected per the most current instructions received from the Internal Revenue Service (IRS). These instructions require deposit of taxes semimonthly. Make such deposits, when required, with a commercial bank authorized to receive Federal tax deposits or with the servicing Federal Reserve Bank or Branch. To make a deposit, prepare SF 1049, Public Voucher for Refund and TD Form 8109, Federal Tax Deposit, received from the IRS. Report taxes deposited quarterly on TD Form 720. Contact your local District Director of Internal Revenue for deposit and tax forms.

4. Show the schedule of collection numbers, dates, and amounts for the collections made on the SF 1049.

5. Report the amounts of FET collected and deposited for the sale of

commodities or services other than for the exclusive use of the U. S. Government.

6. Preparation of TD 720

a. The disbursing office prepares TD Form 720. Instructions for preparing this form are in a separate pamphlet, Instructions for TD Form 720. Obtain forms and pamphlets from your local IRS office.

b. The TD Form 720 is due on or before April 30, July 31, October 31, and January 31. Penalties and interest may be assessed for failure to deposit excise taxes per IRS instructions (26 CFR 49.6302(C)-1). Such penalties may be waived by the IRS if the activity can establish reasonable cause for failure to comply.

c. Submit the original TD Form 720 and a copy of the related SF 1049 covering the amount of taxes collected to the appropriate IRS Center.

d. Attach copies of SF 1049 prepared when semimonthly deposits were submitted per paragraph 060201-E3.

0603 STATE AND LOCAL TAXES

060301. 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, DoD Components shall assert the government's immunity or exemption from taxes whenever it is available.

B. Credit Cards for Service Station Purchases. If a service station will not accept the government's tax exemption at time of purchase, the tax will appear on the invoice. The

disbursing office may pay the state or the local tax due on a credit card invoice when the state or local tax is a small amount of \$10 or less if it is more cost-effective than preparing a tax exemption certificate. (See GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, Appendix 4, Section E (1990)). When a tax exceeds \$10 for either a state or local taxing authority, the office issuing the credit cards must prepare a tax exemption certificate, SF 1094 - Exemption Certificate.

C. Bulk Purchases of Fuel. The rules for credit card purchases also apply for state and local taxes on bulk purchases of diesel fuels and gasoline (See paragraph 060301-B).

D. Disposition of State or Local Taxes. Deposit the amounts collected on individual sales during a month to the applicable suspense account. Make payments to the state or political subdivision the same as federal taxes, using SF 1049. Remit on or before the fifteenth day after the month collection was made. When the remittance represents taxes on sale of gasoline or other motor fuels, transmit per example:

Department of the Air Force
Headquarters 999 Bomb Wing
Boon AFB SC 12345-0001

SUBJECT: Motor Vehicle Fuel Tax

TO: South Carolina State Tax Commission,
Capitol Building
Charleston, SC 12346-0001

This remittance of \$150 provides for taxes levied by the State of South Carolina under authority of 4 U.S.C. 104, collected upon sales of gasoline and other motor vehicle fuels made by or through the (exchange--commissary), located on Boon Air Force Base, not sold for the exclusive use of the United States during the preceding month, ending at midnight, March 31, 1990, the amount of which is 500 gallons.

JAMES OVERSTAKE, Colonel, USAF
Commander

0604 CUSTOMS

060401. United States Customs Duties on Foreign Purchases

A. Duty Free Purchases. Emergency purchases of war materials abroad can be made by the Military Services (19 U. S. C. 1202, Schedule 8, Part 3). This material will be admitted free of duty. Supplies (as opposed to equipment) for government-operated vessels or aircraft may be withdrawn from any customs-bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone free of duty and internal

revenue tax as provided in 19 U.S.C. 1309(a). See DFARS 225.604.

B. Payment of Custom Duties. On importations that are not duty free, charge the customs duties to the same appropriation as the purchase. This will be done even though the importation and the purchase may be in different fiscal years (26 Comp Gen 610 (1947)). Prepare vouchers to show the check will be paid to and addressed to the Collector or Deputy Collector at the port of entry.

060402. Customs Exemptions for American Imports and Purchases in Canada for Joint Defense Program

A. General. U. S. Government imports and purchases from other countries are exempt from Canadian import duties and taxes when used for Joint Defense projects in Canada.

B. Refund or Remission of Taxes. Goods purchased in Canada by or for the U. S. by the Canadian Commercial Corporation are governed by concessions when U. S. funds expended are intended for joint Canadian--United States projects in Canada or when the goods will become and remain U. S. property. The concessions permit refund or remission of:

1. Sales tax paid on goods other than those for resale to members of the United States Armed Forces or civilian personnel for private use.

2. Excise taxes, including the stamp tax on checks. Items for resale to members of the United States Armed Forces or civilian personnel for private use are not exempt from stamp taxes or purchase taxes.

3. Excise taxes paid or ordinarily payable on:

a. Cable, telegraph, and long distance telephone messages when charges are not made to individuals but are made direct to the U.S. Government.

b. Transportation requests, warrants or tickets, and seats, berths, or other sleeping accommodations when charges are not made to individuals but are made direct to the U.S. Government.

4. Customs duty paid on import goods when used, directly consumed, processed, or attached to items or goods manufactured in Canada and sold to the U. S. Government for use with joint Canadian--United States projects.

C. Notation on Payment Vouchers. Vouchers for Canadian purchases or services will show: "United States Government Funds--exempt from Canadian excise tax, refer to Order-in-Council PC 3108." Paying and Collecting will type the notation on checks. This statement will assist the Canadian Department of National Revenue in giving the exemption.

0605 MISCELLANEOUS060501. 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 nonfederal, 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)).

060502. 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.

060503. Taxes on Arms and Ammunition. Appropriated funds will not be used for tax payments on the sale or transfer of firearms, pistols, revolvers, shells, or cartridges. For additional information of these taxes see 10 U.S.C. 2385 and the FAR, part 29.2.

060504. Environmental Assessments. If an environmental assessment is levied by a local government 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 your office of counsel regarding payment of assessments by state and local governments.

060505. TD Form 1099-MISC, Statement for Recipients of Miscellaneous Income

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).

Disbursing offices 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.

B. Payments Subject to Information Reporting

1. Payments to noncorporate contractors for salaries, wages, commissions, fees, rent (unless paid to a real estate agent), royalties, awards, prizes, interest penalties and additional interest penalties under the Prompt Payment Act, and other forms of compensation

2. Payments to a corporation engaged in providing medical or health care services unless the payment is made to a hospital or extended care facility that is exempt from taxation under 26 U.S.C. 501(a).

C. Payments Not Subject to Information Return Reporting

1. Payments of bills for merchandise.
2. Payments subject to TD W-2, Wage and Tax Statement withholding procedures.
3. Payments of rent made to a real estate agent.
4. Payments to persons in the military or civil services of the United States as an allowance or reimbursement for traveling or associated expenses.
5. Payments made to employees for service performed in Puerto Rico.
6. Payments made as an award to an informer or similar payments.
7. Payments made to a nonmedical or nonhealth care corporation when “INC.” or “Incorporated” is an obvious part of the business title (26 CFR, section 1.6041-3(c)).
8. Payments made to a government agency, political subdivision, or instrumentality thereof.

D. Backup Withholding

1. Requirements for Taxpayer Identification Number (TIN). The IRS requires (26 U.S.C. Section 6109 and IRS notice 398) a recipient of income to give the payer of that income the TIN for use in filing information returns. The TIN is the individual’s social security number or employer identification number. A Privacy Act statement must be provided to an individual when requesting the reporting of a Social Security number. If the TIN is not readily available from contractual or other documents, the contracting officer will contact the payee to

obtain the TIN (FAR 4.203). Individuals or entities that refuse to provide a TIN should be advised of the requirement for backup withholding at a 31 percent rate and potential fine of \$50 for failure to furnish the TIN (see instructions for TD Form 1096, Annual Summary and Transmittal of U.S. Information Returns, and IRS Notice 398)

2. DoD activities must perform backup withholding when one condition from each paragraph 060505-D.2.a and b is present.

a. Taxpayer Identification Number

(1) The payee fails to provide a TIN to the DoD activity. The TIN may be a social security number or an employer identification number.

(2) The IRS informs the disbursing office that the payee provided an incorrect TIN.

(3) The payee provides a TIN consisting of other than nine numerals.

b. Other

(1) Reportable payments to the payee total \$600 or more during the calendar year.

(2) An information return was required concerning the payee for the preceding calendar year.

(3) Backup withholding was required from the payee for the preceding year.

3. Assessment of Tax. After reasonable efforts to obtain the TIN have been unsuccessful, withholding of Federal Income Tax at the rate of 31 percent should be accomplished and the balance of the payment forwarded to the payee. Tax should be assessed on the entire payment that causes the \$600 limit to be exceeded and any subsequent payments to that person or corporation until a TIN is provided.

4. The tax withheld should be deposited to the appropriate deposit account. Recording of backup withholding should be accomplished on schedule A (TD Form 941, Employer's Quarterly Federal Tax Return) and reported on TD Form 941.

0606 REPORTING

060601. TD Form 1096, Annual Summary and Transmittal of United States Information Returns

A. Payment of \$600 or more to any individual or to any medical or health care corporation or royalties of \$10 or more in any calendar year must be reported to the IRS. Reporting of the payment or royalty is required in order to provide the IRS with a cross-reference database of recipients' miscellaneous income.

B. Forms Required

1. A TD Form 1096 must be used to transmit and summarize payment information. It serves as a cover sheet for one or more individual reports. See IRS publication instructions for TD Form 1096 for detailed guidance. TD Forms 1096 may be obtained through your local publication distribution office.

2. A separate TD Form 1099-MISC must be completed for each individual or corporation concerned. TD Forms 1099-MISC with a TIN must be bundled separately from TD Forms 1099-MISC without a TIN. Both bundles may be covered by one TD Form 1096 with the number of forms without a TIN shown in the "without taxpayer identification number" box. TD Forms 1099-MISC may be obtained through your local publication distribution office.

C. Distribution of Report. TD Forms 1096 and 1099-MISC should be filed by February 28 following the year of payment with the appropriate IRS center listed in the instructions for TD Form 1096.