

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-97(31)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970324A

On March 24, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from the Office of Foreign Missions, 866 United Nations Plaza, Ste. 265, New York, NY 10017.

The issue raised by Petitioner, the Office of Foreign Missions, is for purposes of sales tax whether a United States Department of State (hereinafter the "USDOS") Mission Tax Exemption Card may be used to establish a foreign mission's tax exempt status on hotel occupancy where payment is made by check of the mission, credit card of the mission or a credit card in the name of the mission's national government.

Petitioner submits the following facts as the basis for this Advisory Opinion.

A USDOS Tax Exemption Card is issued only for the official purposes and the sole benefit of the mission identified on the face of the card. Each mission may designate two employees to make official purchases for the mission. Only the designated agent specified on the card is authorized to use the card. The Tax Exemption Card may not be used by other mission employees. Additionally, the agent may not use such a card for personal purchases. All purchases must be made in the name of the mission and paid for by mission check or credit card.

Mission exemption from hotel taxes is limited to official mission use. These include conference room rental, catering services and visiting delegations of national officials of the mission's home country. The mission must make the reservations and pay for the accommodations by mission check or credit card using official funds of the mission. In the case of visiting delegations of national officials, payment may be made by credit cards held by the delegations in the name of their home country's government, using funds of the home country's government.

Petitioner furnished samples of the Tax Exemption Card issued by the Department of State to certain foreign government mission personnel and offices. The cards are valid nationwide. The cards are used at the point of sale for exemption from State and local sales, restaurant, lodging, and similar taxes normally charged to the customer. The card is not transferable and only the person whose photograph appears on the front side of the card may use it to make official purchases for the mission. The reverse side of the card has information on the use of the card. For example, a card may provide that the card may be used for all sales taxes including hotel room taxes or for sales taxes on purchases over \$200.00 including hotel room taxes.

Applicable Laws and Regulations

Section 529.1 of the Sales and Use Tax Regulations provides, in part, as follows:

(a) Except as otherwise provided in this Title, any sale by or to any person or organization described in this Part or any amusement charge to such a person or organization where it is the purchaser, or any use or occupancy by any such person or organization is not subject to the sales or use tax imposed by article 28 or authorized by article 29 of the Tax Law. Any sale, amusement charge, use or occupancy by or to any person or organization who or which does not qualify for exemption pursuant to the provisions of this Part may qualify for exemption as described in other provisions of this Title.

(b) Any person or organization other than:

* * *

(6) diplomatic missions, diplomatic personnel and foreign government-owned enterprises and agencies as described in section 529.5 of this Part; must establish with the Taxpayer Assistance Bureau its exempt status before it is entitled to any of the exemptions mentioned above. Diplomatic missions, diplomatic personnel and foreign government-owned enterprises and agencies described in section 529.5 of this Part must establish their entitlement to any such exemptions with the United States Department of State or, in the case of certain employees of the Coordination Council for North American Affairs, with the American Institute in Taiwan. The burden of proving that a person or organization is entitled to exemption rests with the person or organization.

Section 529.5 of the Sales and Use Tax Regulations provides, in part:

(a) Diplomatic missions. Permanent missions to the United Nations and foreign embassies and consulates are hereinafter referred to as diplomatic missions.

(b) Diplomatic personnel. Foreign embassy and consular officials, certain foreign embassy and consular employees, certain officers and employees of the United Nations, of international organizations and of permanent missions to the United Nations and certain employees of the Coordination Council for North American Affairs are hereinafter referred to as diplomatic personnel.

(c) Exemption federally determined. Diplomatic missions and diplomatic personnel are exempt from sales and use taxes when they are the purchaser, consumer or user of tangible personal property or services or when they are the occupant of hotel rooms or a patron at a place of amusement, club, roof garden, cabaret or

similar place only to the extent of the exemption granted to them by the United States Department of State or pursuant to the authority granted to the American Institute in Taiwan.

(d) Nature and extent of exemption generally. (1) Diplomatic missions and diplomatic personnel seeking exemption from State and local sales and use taxes should apply to the United States Department of State or, in the case of employees of the Coordination Council for North American Affairs, to the American Institute in Taiwan for the appropriate tax exemption card or other proper documentation evidencing their entitlement to and the extent of their exemption.

(2) The United States Department of State or the American Institute in Taiwan will issue the appropriate tax exemption card or other proper documentation to diplomatic missions and diplomatic personnel evidencing their entitlement to and the extent of their exemption.

(3) Tax exemption cards and other documentation evidencing entitlement to exemption issued to diplomatic missions and diplomatic personnel by the United States Department of State or the American Institute in Taiwan will specifically identify the extent of the exemption to be allowed. In general:

(i) A tax exemption card with a blue stripe will entitle the individual authorized thereon to exemption at time of purchase from all sales and use taxes, including hotel room taxes.

(ii) A tax exemption card with a green stripe will entitle the individual authorized thereupon to exemption at time of purchase from all sales and use taxes except hotel room taxes.

(iii) A tax exemption card with a red stripe will entitle the individual authorized thereon to exemption at time of purchase from sales and use taxes, including hotel room taxes, on purchases greater than the amount specified on the card (e.g., \$50, \$100, \$150, \$200, etc.).

(iv) Tax exemption cards may not be used by diplomatic missions and diplomatic personnel to purchase motor fuel or diesel motor fuel exempt from State and local sales and use taxes and motor fuel or diesel motor fuel tax at the time of purchase. Diplomatic missions and diplomatic personnel entitled to exemption from such taxes will receive exemption as described in subdivision (i) of this section.

(4) Diplomatic missions and diplomatic personnel who are not holders of tax exemption cards but who are otherwise determined by the United States Department of State or American Institute in Taiwan to be eligible for exemption from sales and use taxes

imposed upon purchase of certain tangible personal property or services shall pay tax at the time of purchase and apply directly to the New York State Department of Taxation and Finance for a refund of such taxes paid. See subdivision (k) of this section concerning refund procedures.

(e) Purchases of tangible personal property and services by diplomatic missions and diplomatic personnel. (1) Except as otherwise specifically provided in subdivision (i) of this section with respect to the purchase of motor fuel and diesel motor fuel and in subdivision (j) with respect to the purchase of utility services, the following rules are applicable to purchases of tangible personal property and services by diplomatic missions and diplomatic personnel.

(2) Diplomatic missions and diplomatic personnel must be the direct purchaser, occupant or patron of record and payer of record in order to exercise their entitlement to exemption from sales and use taxes. Direct purchaser, occupant or patron of record for purposes of this section means:

(i) the holder of a valid tax exemption card issued by the United States Department of State; or the American Institute in Taiwan and whose photograph appears on such card; or

(ii) the holder of such other proper documentation evidencing entitlement to exemption as provided by the United States Department of State if any such other documentation is so provided, and does not include any agent or employee of either such cardholder or holder of other proper documentation.

A diplomatic mission or the diplomatic personnel is the direct payer of record where payment is made by the holder of such card or other proper documentation or by the diplomatic mission to which the holder is attached, if any, or from the mission's funds, directly to the vendor.

Opinion

Pursuant to Section 529.1 and 529.5 of the Sales and Use Tax Regulations, where a foreign mission receives a valid USDOS tax exemption card which provides exemption from sales and use taxes, including hotel room taxes, the mission may rent hotel rooms exempt from payment of tax subject to the limitations on the back of the card, provided that the mission is the direct occupant of record of the hotel rooms, and the direct payer of record. Payment should be made by the mission, or from the mission's funds, directly to the hotel. In the instant case, for purposes of the exemption, a mission which has been issued a valid USDOS tax exemption card will be considered the direct payer of record where payment is made by check of the mission, credit card of the mission or a credit card in the name of the mission's national government. Given that the exemption

is federally determined (see Section 529.5(c)), a mission's use of its own credit card to make approved exempt purchases is considered to be a direct payment by the mission so long as the USDOS permits such mission to make such purchases with credit cards.

It is further noted that for hotel occupancy or when a qualified mission makes a purchase of property or services, the mission is required to give the hotel operator or vendor a properly completed Certificate of Sales Tax Exemption for Diplomatic Missions and Personnel, Form DTF-950 or DTF-951. Form DTF-950 is for use (with a valid tax exemption card) when a cash or cash equivalent (check, traveler's check, money order, etc.) purchase is made or for any exempt purchase made by the holder of a valid USDOS tax exemption card with a red stripe. Form DTF-951 is a Blanket Purchase Certificate for use when the method of payment is by a charge to an in-house or third party charge account. It may not be used to make an exempt cash purchase, and may not be used by a holder of a USDOS tax exemption card with a red stripe. The vendor or hotel operator must record the following information on every invoice of every sale covered by the exemption document: name and address of the purchaser, tax exemption number of purchaser, and the date of sale. The purchaser (in this case, the person whose picture appears on the USDOS Mission Tax Exemption Card) must sign each invoice at the time of sale in the presence of the vendor or hotel operator. Vendors or hotel operators must keep copies of invoices, sales slips, statements, and any other original sales documents, along with all related exemption certificates for at least three years after the due date of the last return to which they relate or the date when the return was filed, if later. Every vendor or hotel operator must also maintain a method of associating exempt sales transactions with the certificates on file. See Tax Exemptions For Diplomats, Diplomatic Missions and Related Diplomatic Personnel, Notice N-86-25.

DATED: May 28, 1997

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.