PUBLIC DRAFT

Circulated for Public Comments
Comments Due by: **July 1, 2015**

SC REVENUE RULING #15-X (DRAFT - 6/10/15)

SUBJECT: Sales to Government Employees, Foreign Diplomats, and Other Similar Employees While on Official Business
(Sales, Use, and Accommodations Taxes)

SUPERSEDES: SC Revenue Ruling #13-2

REFERENCES: S. C. Code Ann. Section 12-36-910 (2014)
S. C. Code Ann. Section 12-36-920 (Supp. 2014)
S. C. Code Ann. Section 12-36-2120 (2014)
S. C. Code Ann. Section 12-36-1110 (2014)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

OVERVIEW

The State of South Carolina imposes a 6% sales tax on the gross proceeds of sales of every person engaged in the business of selling tangible personal property at retail, a 7% sales tax on charges for any sleeping accommodations of less than 90 continuous days to the same person, a 6% sales tax on "additional guest charges" added to a room charge for room service, laundering and dry cleaning services, in-room movies, telephone service, and rentals of meeting rooms; and a maximum sales tax of $300 on the sale of certain items, such as motor vehicles. (See Code Sections 12-36-910, 12-36-920, 12-36-1110, and 12-36-2110.)

Specific exemptions in South Carolina law exempt certain government and business related sales from South Carolina tax. Specifically, Code Section 12-36-2120 contains sales, use and accommodations tax exemptions for the following:

1. Federal Government. Code Section 12-36-2120(2) exempts tangible personal property sold to the federal government. This exemption applies to sales to instrumentalities of the federal government, such as the American Red Cross[1] and a federally chartered credit union.[2] Other federal agencies and instrumentalities include the Department of Defense, Army, Navy, Air Force, United States hospitals, and federal housing authorities.

[1] See *Department of Employment, et.al. v. United States*, 385 U.S. 355 (1966), and SC Information Letter #89-34.
[2] See South Carolina Attorney General Opinion #S-OAG-59.

2. Foreign Diplomats. Code Section 12-36-2120(1) exempts sales of tangible personal property that South Carolina is prohibited from taxing by the Constitution or laws of the United States or South Carolina. Tax exemption privileges for foreign diplomats, consular officers, and staff members are generally based on two treaties: the *Vienna Convention on Diplomatic Relations* and *Vienna Convention on Consular Relations*. These treaties have been ratified by the United States and are the supreme law of the land under Article VI of the U.S. Constitution. Not all foreign missions and their personnel are entitled to tax exemption; tax exemption privileges are based on reciprocity and are only granted to a foreign official in the United States if United States and Consular personnel receive the equivalent privileges in that country.

3. Nonprofit Organizations. Code Section 12-36-2120(41) exempts items sold by organizations exempt from ad valorem property taxation under Section 12-37-220A(3) and (4) and B(5), (6), (7), (8), (12), (16), (19), (22), and (24), if the net proceeds are used exclusively for exempt purposes and no benefit inures to any individual. Code Section 12-36-2120(47) exempts tangible personal property sold to charitable hospitals predominately serving children exempt under Section 12-37-220, where care is provided without charge to the patient.[3]

While it is clear that South Carolina is not permitted to impose a tax directly on the federal government, questions often arise when a government employee is making work related purchases. Similar questions arise about the taxation of sales, accommodations, food, gas taxes, and other similar taxes when a foreign diplomat stationed in the United States, or a state employee or nonprofit employee is making purchases in South Carolina. In general, the applicability of the sales and use tax with such employees depends upon whether the government or nonprofit organization is making the purchase or the employee.

This advisory opinion provides guidance concerning the taxability of sales to: (1) employees of the federal government, including instrumentalities of the federal government, such as the American Red Cross or federal credit unions, (2) foreign diplomats (including Taipei officials), or (3) other similar employees, such as employees of nonprofit organizations or state governments and colleges.

Note: This document addresses South Carolina's state sales and use taxes and local sales and use taxes that are collected by the Department on behalf of local governments. The local sales and use taxes imposed by South Carolina counties that are collected by the Department generally do not apply to sales which are exempt from the State sales and use tax (sales of unprepared food may be subject to local sales and use taxes in certain counties). Other local sales and use taxes that are collected directly by the county or municipality, such as a local hospitality tax on the sale of prepared meals and beverages or local accommodations tax, are not addressed in this document.

[3] For additional information on the exemption for nonprofit organizations, see SC Revenue Ruling #12-3 and SC Revenue Procedure #03-6 or subsequently issued advisory opinions.

I. FEDERAL GOVERNMENT

A. Taxation of Sale. The taxability of a transaction involving the federal government depends upon whether the sale is made to the federal employee or the federal government. If the sale is not taxable, the Department does **not** require a tax exempt form, such as the ST-8, "Exemption Certificate (Single Sale Only)," be provided to the retailer to receive the exemption. Retailers should document the tax exemption information on the invoice or transaction receipt.

1. Taxable Sale – A Sale between Retailer and Federal Employee. If the federal employee is billed directly for the purchase and reimbursed by the U.S. Government, the sale is subject to South Carolina sales and use tax, unless the sale is otherwise exempt (*e.g.*, sale of a newspaper).

2. Exempt Sale – A Sale between Retailer and Federal Government. A sale to a federal government employee conducting official business is exempt from tax if:
   a. the federal government is billed directly,
   b. the federal employee uses a credit card that is billed directly to the federal government (see discussion below), or
   c. the federal employee pays with a federal government check.

General Service Administration ("GSA") SmartPay Cards. The General Services Administration ("GSA"), through the GSA SmartPay® program, has contracted with Citibank, JPMorgan Chase, and US Bank to provide charge card services to Federal government agencies and organizations for conducting official business. For most agencies/organizations, the program will be effective through November 29, 2018.

The GSA SmartPay® program consists of three business lines (Purchase, Fleet, and Travel). These charge cards can be identified by their unique prefixes and account numbers, government designed artwork, and wording that indicates that the card is for official purchases for the U.S. Government. Card designs and account numbering structures can be accessed at **www.gsa.gov/gsasmartpay** and are also provided in Exhibit A.

The four SmartPay cards currently used and the taxability of purchases made with each card is summarized below. The taxability is dependent on the billing method – is the card "centrally" billed, [4] or "individually" billed,[5] or a combination billing.

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[4] Centrally Billed Card. A charge card account in which all charges are billed directly to the federal government and paid directly by the federal government to the issuing bank. This card is the sole responsibility of the U.S. Government.

[5] Individually Billed Card. A charge card account in which all charges are paid directly by the cardholder/federal employee to the issuing bank; the federal employee is then reimbursed by the government. This card is the sole responsibility of the employee *(i.e.*, the federal government is not responsible if the cardholder fails to pay).

1. Purchase Charge Card. This card is used for purchasing supplies and services to support U.S. Government operations. It is a centrally billed account. Accordingly, official purchases made with these cards are **exempt** from South Carolina sales and use taxes.

2. Fleet Charge Card. This card is used for government vehicle fuel and maintenance requirements. It is a centrally billed account. Accordingly, official purchases made with these cards are **exempt** from South Carolina sales and use taxes.

3. Travel Charge Card. This card is used for official government travel and travel related expenses. It may be a centrally billed account or an individually billed account; the 6th digit identifies whether the account is centrally or individually billed.

   Centrally Billed. If the first four digits and the sixth digit are one of the following, then the account is centrally billed and official purchases made with these cards are **exempt** from South Carolina sales and use taxes.
   Visa #4486 and #4614 and the sixth digit is 0, 6, 7, 8 or 9;
   Mastercard #5565 and #5568 and the sixth digit is 0, 6, 7, 8 or 9.

   Individually Billed. If the first four digits and the sixth digit are one of the following, then the account is individually billed and official purchases made with these cards are **subject to** South Carolina sales and use taxes.
   Visa #4486 and #4614 and the sixth digit is 1, 2, 3 or 4;
   Mastercard #5565 and #5568 and the sixth digit is 1, 2, 3 or 4.

4. Integrated Charge Card – Currently used only by the Department of Interior. This card combines two or more of the above business lines (*i.e.*, includes fleet, travel, and/or purchase functionality and offers a single card for all purchases).
   Refer to Exhibit A for a list of the account numbers and type of billing for the "integrated" card used by the Department of Interior. If the numbering sequence specific to the agency indicates the integrated card account is individually billed, then such purchases will be **subject to** South Carolina sales and use taxes.

B. American Red Cross Employee. The taxability of a transaction involving the American Red Cross depends upon whether the sale is made to the employee or the Red Cross. If the sale is not taxable, the Department does **not** require a tax exempt form, such as the ST-8, "Exemption Certificate (Single Sale Only)", be provided to the retailer to receive the exemption. Retailers should document the tax exemption information on the invoice or transaction receipt.

1. Taxable Sale – A Sale between Retailer and American Red Cross Employee. If the employee is billed directly and reimbursed by the American Red Cross, the sale is subject to South Carolina sales and use tax.

2. Exempt Sale – A Sale between Retailer and American Red Cross. A sale to a Red Cross employee conducting official business is exempt from tax if:
   a. the Red Cross is billed directly,
   b. the employee uses a credit card that is billed directly to the Red Cross, or
   c. the employee pays with a Red Cross check.

C. Federal Credit Union Employee. The taxability of a transaction involving the federal credit union depends upon whether the sale is made to the employee or the federal credit union. If the sale is not taxable, the Department does **not** require a tax exempt form, such as the ST-8, "Exemption Certificate (Single Sale Only)", be provided to the retailer. Retailers should document the tax exemption information on the invoice or transaction receipt.

1. Taxable Sale – A Sale between Retailer and Federal Credit Union Employee. If the employee is billed directly and reimbursed by the federal credit union, the sale is subject to South Carolina sales and use tax.

2. Exempt Sale – A Sale between Retailer and Federal Credit Union. A sale to a federal credit union employee conducting official business is exempt from tax if:
   a. the credit union is billed directly,
   b. the employee uses a credit card that is billed directly to the credit union, or
   c. the employee pays with the credit unions check.

   Note: This exemption does **not** apply to an employee who works for an association that represents various federal credit unions if the association pays the charges since the association is not a federal credit union.

II. FOREIGN DIPLOMAT

Part A – General Rules

Taxation of Sale. Pursuant to Code Section 12-36-2120(1), sales to foreign diplomats are exempt from tax in accordance with the type of card issued by, and the level of exemption authorized by, the United States Department of State's Office of Foreign Mission. The Office of Foreign Mission issues "Diplomatic Tax Exemption Cards" to eligible foreign diplomatic and consular missions and in most cases to their personnel and eligible family members located in the United States. Such cards are used to authorize the exemption of state and local sales tax, restaurant/meal tax, lodging/accommodation tax, and similar taxes in South Carolina. See Exhibit B for samples of the tax exemption cards and the tax exemption provisions of each card. **Note:** The tax exemption card, however, is not valid for exemption from taxes on telephones, other utilities, or gasoline purchases. For purchases of vehicles, the Office of Foreign Missions must approve the sales tax exemption.

In instances where the diplomatic mission or agent is denied the tax exemption by the Office of Foreign Missions, the vendor should collect any tax that is normally imposed at the time of purchase. Questions concerning South Carolina sales and use tax requirements should be directed to the Department of Revenue. Questions regarding the eligibility of diplomatic or consular officers for sales and use tax exemption should be directed to the Office of Foreign Missions at **OFMTaxCustoms@state.gov** or the number on the card.

Diplomatic Tax Exemption Cards. The Diplomatic Tax Exemption Cards feature one of four images of animals (owl, buffalo, eagle, or deer) that are native to North America. Each image provides the retailer with (1) a visual cue of tax exemption privileges and (2) an indication of whether the card is intended for official or personal purchases.

1. "Mission" Tax Exemption Card (Contains an owl or buffalo image.) This card is used by foreign diplomatic and consular missions to exempt official purchases necessary for the operation of the diplomatic or consular mission from South Carolina state and local sales and use taxes, accommodations taxes, and similar taxes. Other features of the card are:

   - Cards with an "owl" image allow a full tax exemption on all purchases, including hotel stays and restaurant meals, but not including vehicle purchases.

   - Cards with a "buffalo" image subject the cardholder/mission to some degree of restriction from certain purchases or amounts as identified on the face of the card.

   - The person whose photo appears on the card is the mission's point of contact and is the person responsible for ensuring appropriate use of the card. The individual does **not** need to be present when purchases are made.

   - All purchases must be paid for with a check, credit card, or wire transfer transaction in the name of the mission. The exemption is not allowed if payment is by cash or personal check.

2. "Personal" Tax Exemption Card (Contains an eagle or deer image.) This card is used by foreign diplomatic or consular mission members to exempt their personal purchases in South Carolina from South Carolina state and local sales and use taxes, accommodations taxes, and similar taxes. Other features of the cards are:

   - Cards with an "eagle" image allow a full tax exemption on all purchases, including hotel stays and restaurant meals, but not including vehicle purchases.

   - Cards with a "deer" image subject the cardholder/mission to some degree of restriction from certain purchases or amounts as identified on the face of the card.

   - This card can be used only by the individual named and pictured on the card. It is not transferable to another person, family member or friend.

- There is no restriction on the type of payment when using this card.

- This card does not exempt purchases via the Internet or mail-order catalog from applicable state and local taxes.

Part B – Special Rules for Taipei

Taxation of Sale. The American Institute in Taiwan issues tax exemption cards to the Taipei Economic and Cultural Representative Office (TECRO), the Taipei Economic and Cultural Offices (TECOs), their eligible personnel, and their qualifying dependents. These cards authorize exemptions from state and local sales tax, restaurant/meal tax, lodging/accommodations tax, and similar taxes in South Carolina. See Exhibit C for samples of the tax exemption cards and the tax exemption provisions of each card.

Note: The tax exemption card, however, is not valid for exemption from taxes on telephones, other utilities, gasoline purchases, or purchases of vehicles. In instances where the purchaser is denied the tax exemption by the American Institute in Taiwan, the vendor should collect any tax that is normally imposed at the time of purchase. Questions concerning South Carolina sales and use tax requirements should be directed to the Department of Revenue. Vendors should verify the card's validity at **https://ofmapps.state.gov/tecv/** or by calling the phone number on the back of the tax exemption card. Questions regarding the eligibility for the sales and use tax exemption should be directed to the American Institute in Taiwan at 703-525-8474.

Taipei Tax Exemption Cards. The Taipei Tax Exemption Cards feature one of two images of animals (owl or eagle) that are native to North America. Each image provides the retailer with (1) a visual cue of tax exemption privileges and (2) an indication of whether the card is intended for official or personal purchases.

1. Taipei Official Tax Exemption Card (Contains an owl image.) This card is used by the Economic and Cultural Representative Office or a Taipei Economic and Cultural Office to exempt official purchases necessary for its operation from South Carolina state and local sales and use taxes, accommodations taxes, and similar taxes. Other features of the card are:

    - The card with the "owl" image allows a full tax exemption on all purchases, including hotel stays and restaurant meals, but not including vehicle purchases.

    - The person whose photo appears on the card is the office's point of contact and is the person responsible for ensuring appropriate use of the card. The individual does **not** need to be present when purchases are made.

- All purchases must be paid for with a check, credit card, or wire transfer transaction in the name of the Taipei Economic and Cultural Representative Office or a Taipei Economic and Cultural Office. The exemption is not allowed if payment is by cash or personal check.

2. "Personal" Tax Exemption Card (Contains an eagle image). This card is used by eligible personnel and their dependents to exempt their personal purchases in South Carolina from South Carolina state and local sales and use taxes, accommodations taxes, and similar taxes. Other features of the card are:

   - This card can be used only by the individual named and pictured on the card. It is not transferable to another person, family member or friend.

   - There is no restriction on the type of payment when using this card.

   - The card does not exempt purchases via the Internet or mail-order catalog from applicable state and local taxes.

III. TAXATION OF SALES TO STATE EMPLOYEES OR NONPROFIT ORGANIZATION EMPLOYEES

A. State or Local Government Employees. Sales to any state or local government employee are subject to accommodations tax regardless of whether the state or local government or the employee pays for the charges. Sales and use taxes generally apply on purchases of tangible property, unless an exemption applies to the specific purchase (*e.g.*, purchase of a newspaper).

B. School District, College and University Employees. Sales to any college or university employee are subject to accommodations tax regardless of whether the state or local government or the employee pays for the charges. Sales and use taxes generally apply on purchases of tangible property, unless an exemption applies to the specific purchase (*e.g.*, purchase of a textbook).

C. Nonprofit Organization Employee. Only sales to an employee of a charitable hospital predominately serving children exempt under Code Section 12-37-220, where care is provided without charge to the patient as provided in Code Section 12-36-2120(47) are exempt from sales tax if: (1) the qualifying hospital is billed directly for the transaction, (2) the qualifying hospital employee uses a credit card that is billed directly to the hospital, or (3) the nonprofit employee pays with a hospital check.

   Sales to employees of all other nonprofit organizations are subject to sales tax regardless of whether the nonprofit organization or the employee pays for the charges, unless an exemption applies to the specific purchase (e.g., purchase of a newspaper). See SC Revenue Procedure #03-6 – Exemption Certificates – Sales by Certain Nonprofit Organizations for information on sales by certain nonprofit organizations.

EXHIBIT A - Federal Government Employees

This chart summarizes the taxability[6] of sales transactions with the Federal Government or federal employees using the GSA SmartPay® program, the unique prefixes and account numbers on each card, and a brief description of the government designed artwork and wording on the card. See next page for a sample of the types of credit cards in use.

	Purchase Card	**Fleet Card**	**Travel Card**	**Integrated Card – Used only by the Dept. of Interior as of 11/08**
1st four numbers on the card	MasterCard 5565 or 5568	MasterCard 5565 or 5568	MasterCard 5565 or 5568	MasterCard 5565 or 5568
		Visa 4486, 4614, or 4716	6th digit indicates billing method (see below)	
	Visa 4486, 4614,or 4716	Voyager 8699	Visa 4486 or 4614	
		Wright Express 5565	6th digit indicates billing method (see below)	
Card Design	Red with computer keyboard and U.S. flag and "U.S. Government Tax Exempt"	Green with a road and U.S. flag	Blue with a jet and U.S. flag	Beige with an eagle and U.S. flag
Billing Method	Centrally billed	Centrally billed	Centrally billed if 6th digit is 0, 6, 7, 8, or 9. Individually billed if 6th digit is 1, 2, 3, or 4.	All fleet and purchase type transactions are centrally billed; Travel type transactions are centrally billed if the 6th digit is 6, 7, 8, or 9, otherwise individually billed.
Tax Exemption Applicability	Exempt from sales and use tax	Exempt from sales and use tax	Depends on billing method above; centrally billed are exempt; individually billed are taxable	Purchase and fleet transactions are exempt; Travel transactions centrally billed are exempt; individually billed are taxable

[6] Code Section 12-36-2120(2). When the sale is between the retailer and the Federal Government (*i.e.*, the Federal Government is billed directly, the employee uses a credit card account that bills the Federal Government, or the employee pays with a federal government check) the sale is exempt from South Carolina sales and use tax. When the sale is between the retailer and the federal employee (*i.e.*, the federal employee is billed directly and reimbursed by the Federal Government) the sale is subject to South Carolina sales and use tax. See SC Revenue Ruling #88-8.

Sample - SmartPay 2 Charge Cards
Used by Federal Government Employees

Fleet Card	Purchase Card
Travel Card	**Integrated Card – Used by Dept. of Interior Only**

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EXHIBIT B – Foreign Diplomats

U.S. DEPARTMENT OF STATE – OFFICE OF FOREIGN MISSION DIPLOMATIC TAX EXEMPTION CARDS – SAMPLE CARDS

1: Mission Tax Exemption Cards

Diplomatic Tax Exemption Cards that are labeled as **"Mission Tax Exemption — Official Purchases Only"** are used by foreign diplomatic and consular missions to obtain exemption from sales, occupancy, restaurant/meal, and other similar taxes imposed on their official purchases in the United States necessary for the operation of the diplomatic or consular mission. This card will have an owl or buffalo symbol indicating the specific type of tax exemption. The person whose photo appears on such cards is the diplomatic or consular mission's point of contact and is the person responsible for ensuring the appropriate use of the card. This individual does **not** need to be present when purchases are made. **Note:** All purchases authorized for mission tax exemption must be paid for with a check or credit card bearing the name of the associated diplomatic or consular mission.

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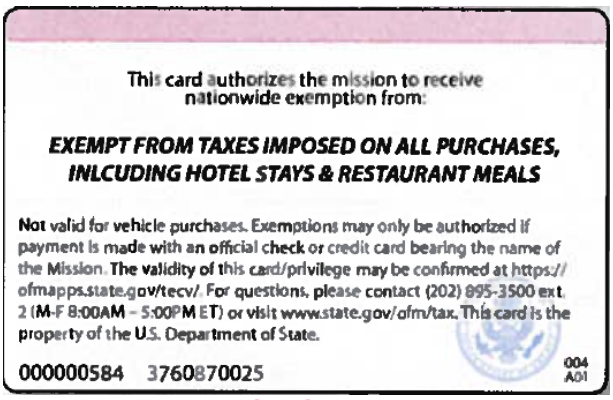

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OWL — Cards with this image are intended to be used solely in connection with **official** purchases; the cardholder/mission is eligible for exemption from sales, occupancy, restaurant/meal, and other similarly imposed taxes without restriction. Hotel stays for the purpose of tourism, medical treatment, or leisure travel are **not** considered necessary for the mission's operations and functions.

BUFFALO — Cards with this image are intended to be used solely in connection with **official** purchases; the cardholder/mission is subject to some degree of restriction on exemption from sales, occupancy, restaurant/meal, and other similarly imposed taxes. Hotel stays for the purpose of tourism, medical treatment, or leisure travel are not considered necessary for the mission's operations and functions.

2: Personal Tax Exemption Cards

Diplomatic Tax Exemption Cards that are labeled as **"Personal Tax Exemption"** are used by eligible foreign diplomatic and consular mission members to obtain exemption from sales, occupancy, restaurant/meal, and other similar taxes imposed on their **personal** purchases in the United States. This card will have an eagle or deer symbol indicating the specific type of tax exemption of the cardholder. The card is intended to be used solely for the benefit of the individual identified and pictured on the card. The use of a personal Diplomatic Tax Exemption Card is not transferable and cannot be loaned to a family member or friend, regardless of his/her eligibility for exemption from taxation. There is no restriction on the form of payment associated with using a personal Diplomatic Tax Exemption Card.

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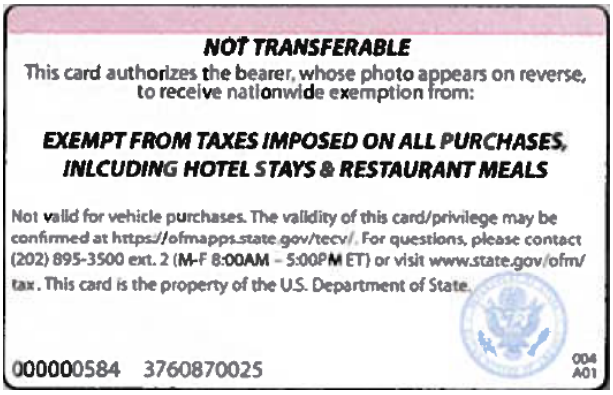

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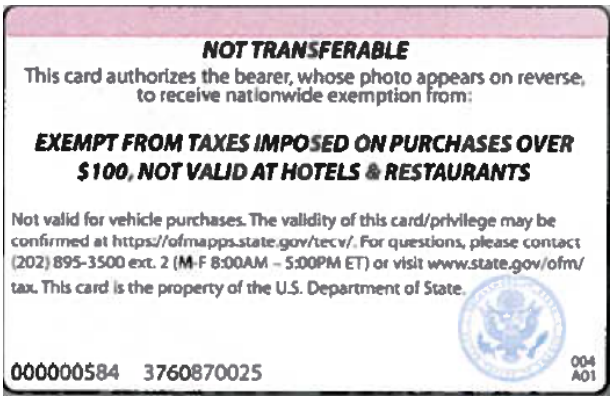

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EAGLE—Cards with this image are intended to be used solely in connection with **personal** purchases; the cardholder is eligible for exemption from sales, occupancy, restaurant/meal, and other similarly imposed taxes without restriction.

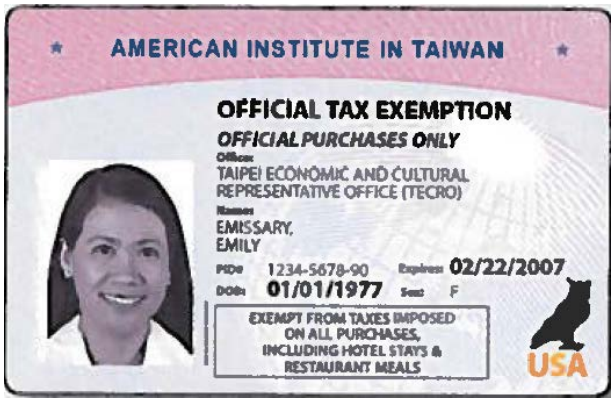
DEER—Cards with this image are intended to be used solely in connection with **personal** purchases; the cardholder is subject to some degree of restriction on exemption from sales, occupancy, restaurant/meal, and other similarly imposed taxes.

EXHIBIT C – Taipei Exemption Cards

AMERICAN INSTITUTE IN TAIWAN
TAX EXEMPTION CARDS – SAMPLE CARDS

1: Official Tax Exemption Cards Used by Taipei Economic and Cultural Representative Office and Taipei Economic and Cultural Offices

Tax Exemption Cards that are labeled as **"Official Tax Exemption – Official Purchases Only"** are used by the Taipei Economic and Cultural Representative Office or the Taipei Economic and Cultural Offices to obtain exemption from sales, occupancy, restaurant/meal, and other similar taxes imposed on purchases in the United States necessary for the office's operations and functions. Hotel stays for the purpose of tourism, medical treatment, or leisure travel are **not** considered necessary for official operation or functions. This card will have an owl symbol indicating the specific type of tax exemption. The person whose photo appears on such cards is the point of contact. This individual does **not** need to be present when purchases are made. Note: All purchases authorized for the official tax exemption must be paid for with a check, credit card, or wire transfer in the name of the foreign government, the Taipei Economic and Cultural Representative Office, or the Taipei Economic and Cultural Offices.



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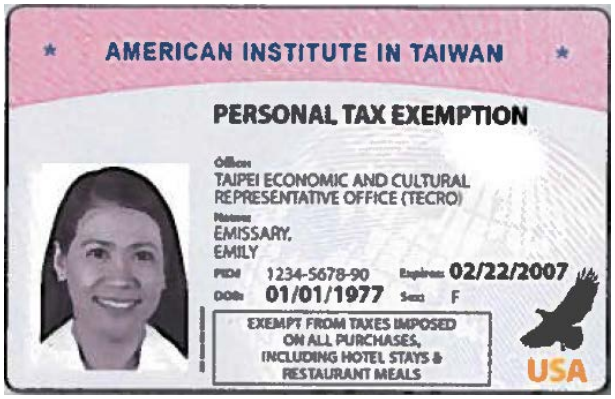
OWL — Cards with this image are intended to be used solely in connection with **official** purchases; the cardholder/office is eligible for exemption from sales, occupancy, restaurant/meal, and other similarly imposed taxes <u>without restriction</u>.

2: Personal Tax Exemption Cards

Tax Exemption Cards that are labeled as **"Personal Tax Exemption"** are used by eligible personnel and their dependents to obtain exemption from sales, occupancy, restaurant/meal, and other similar taxes imposed on their personal purchases in the United States. This card will have an eagle symbol. The card is intended to be used solely for the benefit of the individual identified and pictured on the card. The use of a personal Tax Exemption Card is not transferable and cannot be loaned to a family member or friend, regardless of his/her eligibility for exemption from taxation. There is no restriction on the form of payment associated with using a personal Tax Exemption Card.



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EAGLE—Cards with this image are intended to be used solely in connection with **personal** purchases; the cardholder is eligible for exemption from sales, occupancy, restaurant/meal, and other similarly imposed taxes <u>without restriction</u>.