
Report for Congress

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Compilation of State Laws Pertaining to Exemption From State Sales and Use Taxes for Purchases by the United States

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Summary

This report compiles and summarizes the provisions in state statutes that contain an exemption from state sales and use taxes for purchases by the federal government. Briefly, state statutes have addressed this in a variety of ways. In some cases there is simply a provision that exempts purchases that are not taxable under the Constitution and laws of the United States. Another common statutory provision specifically exempts sales to the federal government and its agents and instrumentalities from the sales and use taxes. The precise wording of these provisions may vary, but one fairly common provision of this sort applies to the federal government, its unincorporated agencies and instrumentalities and incorporated agencies wholly owned by the United States or owned by a corporation wholly owned by the United States. This phraseology eliminates questions about the application of the exemption to institutions like the privately owned national banks.

In many states, both these types of statutes exist. In some cases, the statutes may impose requirements to claim the exemption, *e.g.*, a certificate of exemption. It should also be noted that these provisions may not apply where an individual makes the purchase and is reimbursed by the federal government. This compilation has been confined to surveying the state statutes; cases and state regulations were not examined. Five states that do not have sales taxes (Alaska, Delaware, Montana, New Hampshire, and Oregon) are not included.

All states, regardless of the presence or absence of statutory provisions, are subject to the constitutional limit on state taxing power that comes into play when a state attempts to apply its sales and use taxes to federal government purchases. That constitutional limit is, of course applicable to all states, regardless of the presence or absence of any statutory provisions. The particularly significant constitutional limit on state taxing power in this context is the Supremacy Clause of the Constitution. Found in Article VI, clause 2, it provides:

Clause 2. This Constitution, and the Laws which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under Authority of the United States, shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby; anything in the Constitution or Laws of any state to the Contrary notwithstanding.

State codes examined were current through 2002 legislative sessions. This report will be updated as legislative developments warrant. For a related discussion of excise tax exemptions see CRS Report 98-228A, Federal Excise Taxes and Statutory Exemptions, March 20, 1998.

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Compilation of State Laws Pertaining to Exemption From State Sales and Use Taxes for Purchases by the United States

Introduction

This report compiles and summarizes the provisions in state statutes that contain an exemption from state sales and use taxes for purchases by the federal government. Briefly, state statutes have addressed this in a variety of ways. Some states do not address this in their statutes and are denominated NO TAX EXEMPTION in this report. In a second group of states the survey only found a provision that exempts purchases that are not taxable under the Constitution and laws of the United States. These states are listed as CONSTITUTIONAL IMMUNITY states in the following summary. A third group of states have statutory provisions which specifically exempt sales to the federal government and its agents and instrumentalities from sales and use taxes. These are listed as having an UNQUALIFIED TAX EXEMPTION in the summary. The precise wording of these provisions may vary, but one fairly common provision of this sort applies to the federal government, its unincorporated agencies and instrumentalities and incorporated agencies wholly owned by the United States or owned by a corporation wholly owned by the United States. This phraseology eliminates questions about the application of the exemption to institutions like the privately owned national banks. Finally, a fourth group has what has been labeled a QUALIFIED TAX EXEMPTION. In these states the statutory exemption may be partial, specifically detailed, or effective only when certain administrative criteria are met, *e.g.*, obtaining tax-exempt identification number. In some states more than one kind of statutory provision exists. Further, these provisions may not apply where an individual makes the purchase and is reimbursed by the federal government. Finally, the practical application of these taxes may not be reflected in the categorizations based on statutory language.

This report has been confined to surveying the state statutes and providing a brief overview of the constitutional limit on state taxing power that comes into play when the state attempts to apply its sales and use taxes to federal government purchases. Such constitutional limits apply regardless of the presence or absence of statutory provisions. State cases and regulations were not examined. Five states that do not have sales taxes (Alaska, Delaware, Montana, New Hampshire, and Oregon) are not included in this survey.

In this area, the most significant constitutional limit on state taxing power is the Supremacy Clause of the Constitution. Found in Article VI, clause 2, it provides:

Clause 2. This Constitution, and the Laws which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under Authority of the

United States, shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby; anything in the Constitution of Laws of any state to the Contrary notwithstanding.

In 1819, in *McCulloch v. Maryland*, 17 U.S. 316, the Supreme Court applied this clause in striking down a state tax applicable to the operations of a national bank. While the reach of federal immunity from state taxation has been narrowed in the modern era, it still serves as a limit on the application of state taxes to federal institutions and activities.

The scope of its present application is perhaps best capsulized in the Supreme Court's opinion in *United States v. New Mexico*, 455 U.S. 720, 735 (1982), where the Court said that to the extent the immunity was based on the activity taxed the case law limited the application of immunity to those situations where "the levy falls directly on the United States itself, or on an agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned." In this case the legal incidence of the tax fell on a government contractor, and the Court refused to accept the view that immunity should apply because the economic incidence of the tax fell on the federal government. It did sound a cautionary note, however, saying the state taxes which applied to federal contractors in a manner that discriminated against the federal government or substantially interfered with its activities would be constitutionally invalid. *Id.* at 735, n. 11.

Compilation of State Laws Pertaining to Exemptions from State Sales and Use Taxes For Purchases by the United States

Alabama: CONSTITUTIONAL IMMUNITY

Alabama Code

Section 40-23-4(a)(17): Sales Tax.

Sales non-taxable by federal law and constitutional restrictions.

Section 40-23-62(2): Use Tax.

Non-taxable under federal law and constitutional restrictions.

Arizona: QUALIFIED TAX EXEMPTION

Arizona Revised Statutes Annotated

Section 42-5061 K & 42-5061 L

Arizona imposes a transaction privilege (sales) tax. The tax is imposed upon the seller and applies to sales to the federal government; but there is a reduction in the tax base of retail sellers of 50% of the income received from sales made directly to the United States government, its departments, or agencies. There are also special provisions exempting certain sales to and by manufacturers, modifiers, assemblers, or repairers for sales to them of components for use in products sold directly to the United States and sales by them directly to the United States.

Section 42-5159: Use Tax

- (3) Tangible personal property, the storage, use or consumption of which the Constitution or laws of the United States prohibit this state from taxing.

Arkansas: UNQUALIFIED TAX EXEMPTION

Arkansas Statutes Annotated

Section 26-52-401

- (5) Sales to the United States
- (16) Sales non-taxable by United States Constitution or law.

California: UNQUALIFIED TAX EXEMPTION

West California Code

Section 6352. Revenue and Taxation

Sales non-taxable under the United States Constitution.

Section 6381. Revenue and Taxation

Sales to the United States; its unincorporated agencies and instrumentalities; any corporation wholly owned by the United States, including incorporated agencies and instrumentalities.

Colorado: UNQUALIFIED TAX IMMUNITY

Colorado Revised Statutes

Section 39-26-114(1)(a)(1): Sales Tax.

Sales to the United States government in its governmental capacity.

Section 39-26-203(1)(e): Use Tax.

To the United States government in its governmental capacity.

Connecticut: UNQUALIFIED TAX IMMUNITY

Section 12-412(1)

Sales of tangible personal property or services to the United States.

Section 12-412(2)

Sales prohibited from taxation under the laws or Constitution of the United States.

District of Columbia: UNQUALIFIED TAX IMMUNITY

District of Columbia Code

Section 47-2005

Sales to the United States or any instrumentality thereof except sales to national banks and federal savings and loans.

Materials and services sold to printing clerks of the Majority and Minority rooms of the House for use in operating such rooms and such sales made by such clerks in connection with the operation of such rooms

Sales of food, drink, or beverages, and other goods to persons for use in operating majority or minority cloakrooms of the House and such sales made by such persons in connection with the operation of such cloakrooms.

Florida: QUALIFIED TAX IMMUNITY

Florida Statutes Annotated

Section 212.06(5)(a)1

Sales the state is prohibited from taxing under the United States Constitution or laws.

Section 212.08(6)

Sales to the United States government when payment is made directly by the government entity. This exemption shall not inure to any transaction when made by a government employee when that employee is subsequently reimbursed by the government.

Georgia: QUALIFIED TAX IMMUNITY

Georgia Code Annotated

Section 48-8-3(1)

Sales to the federal government when paid for directly to the seller by warrant on appropriated government funds.

Hawaii: UNQUALIFIED TAX IMMUNITY

Hawaii Revised Statutes

Section 237-22

Sales, under the Constitution and laws of the United States, the state is prohibited from taxing.

Section 237-25

Sales to the United States (including agencies and instrumentalities, but not national banks), including intoxicating liquor, cigarettes, tobacco

products, and other tangible personal property. However, sales through vending machines are not exempt.

Idaho: CONSTITUTIONAL IMMUNITY

Idaho Code

Section 63-3622A

Sales and services which Idaho is prohibited from taxing under the Federal Constitution.

Illinois: QUALIFIED TAX IMMUNITY

Smith-Hurd, Illinois Annotated Statutes

Chapter 35, Section 105/3-5(4)

Purchases by a government body. The statute requires “an active exemption identification number issued by the Department”. (Illinois Department of Revenue).

Indiana: CONSTITUTIONAL IMMUNITY

Burns Indiana Code Annotated

Section 6-2.1-3-2

Gross income from sales to the United States government is exempt to the extent taxation prohibited by the Constitution of the United States.

Sales to the United States government are exempt from gross income tax under the Constitution of the United States.

Section 6-2.5-5-24

Sales which the state is prohibited from taxing under the Constitution or laws of the United States.

Iowa: CONSTITUTIONAL IMMUNITY

Iowa Code Annotated

Section 422.45(1)

Sales which the state is prohibited from taxing under the Constitution or laws of the United States.

Kansas : QUALIFIED TAX IMMUNITY

Kansas Statutes Annotated

Section 48-201

Sales of merchandise to any instrumentality of the United States Armed Forces for resale to members of the Armed Forces.

Kentucky: CONSTITUTIONAL IMMUNITY

Kentucky Revised Statutes

Section 139.470(1)

Sales exempt under the laws or Constitution of the United States.

Louisiana: NO TAX EXEMPTION

Louisiana Statutes Annotated

Section 47:301(14)(h)

No statutory provision was found; there is a specific exemption for leases or rentals to construct or overhaul U.S. Naval vessels. (§47:301(14)(h)).

Maine: UNQUALIFIED TAX IMMUNITY

Maine Revised Statutes Annotated

36 §1760(1)

Sales the State is prohibited from taxing under the laws or Constitution of the United States.

36 §1760(2)

Sales to the federal government, any agency or unincorporated instrumentality of the federal government and any incorporated instrumentality or agency that is wholly owned by the federal government.

Maryland: NO TAX IMMUNITY

Annotated Code of Maryland

No statutory provision found; constitutional limits apply.

Massachusetts: UNQUALIFIED TAX EXEMPTION

Massachusetts General Laws Annotated

Ch. 64H, §6(a), (d)

Sales the State is prohibited from taxing under the Federal Constitution or federal laws.

Sales to the United States.

Michigan: UNQUALIFIED TAX IMMUNITY

Michigan Compiled Laws Annotated

Section 205.54

Proceeds from sales to the United States, sales to unincorporated agencies and instrumentalities of the United States, and sales to incorporated agencies and instrumentalities of the United States that are wholly by the United States are not included in gross proceeds subject to tax.

Minnesota: UNQUALIFIED TAX IMMUNITY

Minnesota Statutes

Section 297A.25

(4) Sales which may not be taxed under the United States Constitution or laws.

(11) All sales to the United States, its agencies, and instrumentalities.

Mississippi: QUALIFIED TAX IMMUNITY

Mississippi Code

Section 27-65-105

Sales to the United States, when sold to and billed directly to and paid by the United States.

Missouri: CONSTITUTIONAL IMMUNITY

Missouri Revised Statutes

Section 144.030(1)

Where prohibited by the Constitution or laws of the United States.

Nebraska: CONSTITUTIONAL IMMUNITY

Nebraska Revised Statutes

Section 77-2704.02

Sales which the state is prohibited from taxing under the United States Constitution or laws.

Nevada: UNQUALIFIED TAX EXEMPTION

Nevada Revised Statutes

Section 372.265

Sales or use which the state is prohibited from taxing under federal Constitution or law.

Section 372.325

Sales to the United States its unincorporated agencies, and instrumentalities.

New Jersey: UNQUALIFIED TAX EXEMPTION

New Jersey Revised Statutes

Section 54-32B-8.10

Sales non-taxable under the United States Constitution.

Section 54:32B-9(a)(2)

United States (and its agencies and instrumentalities) where it is the purchaser, user, or consumer.

New Mexico: UNQUALIFIED TAX IMMUNITY

New Mexico Statutes Annotated

Section 7-9-13

Sales to the United States or any agency or instrumentality thereof.

New York: QUALIFIED TAX IMMUNITY

McKinneys New York Consolidated Law

Tax Law Section 1116(a)(2)

United States and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user, or consumer.

North Carolina: CONSTITUTIONAL IMMUNITY

North Carolina General Statutes

Section 105-164.13(17)

Sales a state cannot tax under the Constitution or laws of the United States.

North Dakota: QUALIFIED TAX IMMUNITY

North Dakota Century Code

Section 57-39.2-04

1. Sales not taxable under the United States Constitution.

6. Sales otherwise taxable under this Chapter made to the United States. The governmental unit exempted by this subsection must be issued a certification of exemption by the Commissioner and be presented to each retailer wherever this exemption is claimed.

Ohio: CONSTITUTIONAL IMMUNITY

Page's Ohio Revised Code Annotated

Title 57 Section 5739.02(B)(10)

Sales not within the taxing power of this state under the Constitution of the United States.

Oklahoma: UNQUALIFIED TAX IMMUNITY

Oklahoma Statutes

Title 68, Section 1356, Subsection 1

Sales to the United States.

Pennsylvania: UNQUALIFIED TAX IMMUNITY

Purdon's Pennsylvania Statutes Annotated

Title 72 Section 7204

(12) Sales at retail to or use by the United States.

Rhode Island: UNQUALIFIED TAX IMMUNITY

Rhode Island General Laws

Section 44-18-30(1)

Property which this state is prohibited from taxing under the Constitution of the United States.

Section 44-18-31

Sales to the United States, its agencies, and instrumentalities.

South Carolina: QUALIFIED TAX IMMUNITY

South Carolina Code Annotated

Section 12-36-2120(1)

Sales non-taxable by federal laws or Constitutional restrictions.

Section 12-36-2120(2)

Tangible personal property sold to the federal government.

South Dakota: QUALIFIED TAX IMMUNITY

South Dakota Codified Laws

Section 10-45-9

Sales on which the tax is prohibited by the Constitution or laws of the United States.

Section 10-45-10

Sales of tangible personal property and the sale, furnishing, or service of electrical energy, natural or artificial gas, and communication service to the United States.

Section 10-45.14-6

Meals sold to inpatients of hospitals if paid for by the United States.

Section 10-46-7

Use tax where prohibited by the Constitution or laws of the United States.

Tennessee: QUALIFIED TAX IMMUNITY

Tennessee Code Annotated

Section 67-6-308

Direct sales or leases of tangible personal property or services to the United States or any agency thereof created by Congress.

Texas: UNQUALIFIED TAX IMMUNITY

Vernon's Texas Code Annotated

Tax Code 151.307

Sales which the state is prohibited from taxing under the United States Constitution or laws.

Tax Code 151.309

Taxable items sold, leased or rented to or stored, used, or consumed by:

- (1) United States;
- (2) An unincorporated instrumentality of the United States;
- (3) A corporation that is an agency or instrumentality of the United States and wholly owned by the United States or by a corporation wholly owned by the United States.

Utah: NO STATUTORY EXEMPTION

Utah Code Annotated

Section 59-12-104(15)

We found no provision specifically exempting direct purchases by the United States, but 59-12-104(15) exempts purchase of certain tools and equipment by contractors and subcontractors with the United States government where the contract vests title to the tools and/or equipment in the United States.

Vermont: QUALIFIED TAX IMMUNITY

Vermont Statutes Annotated

Section T.32 §9741(1)

Sales not within the taxing power of Vermont under the United States Constitution.

Section T.32 §9743

Any sales, service, or amusements charged by or to the following is not subject to sale and use tax:

- (2) United States of America, its agencies and instrumentalities, insofar as it is immune from taxation when it is the purchaser, user, or consumer, or

when it sells services or property of a kind not ordinarily sold by private persons.

Virginia: UNQUALIFIED TAX IMMUNITY

Virginia Code

Section 58.1-609.1

- (4) Tangible personal property for use or consumption by the United States. This exclusion shall not apply to sales and leases to privately owned financial and other privately owned corporations chartered by the United States.

Washington: CONSTITUTIONAL IMMUNITY

Washington Revised Code

Section 82.08.0254: Retail Sales Tax.

Non-taxable sales under the United States Constitution or laws.

Section 82.12.0255: Use tax.

Non-taxable sales under the United States Constitution or laws.

West Virginia: UNQUALIFIED TAX IMMUNITY

West Virginia Code

Section 11-15-9(a)(3)

Sales made to the United States.

Wisconsin: UNQUALIFIED TAX IMMUNITY

Wisconsin Code

Section 77.54

- (1) Sales, use, or consumption of tangible personal property or services which the state is prohibited from taxing under the Constitution or laws of the United States.

Section 77.55

- (1)(a) Sales to the United States, its unincorporated agencies and instrumentalities;
- (b) Sales to incorporated agencies or instrumentalities wholly owned by the United States.

Wyoming: CONSTITUTIONAL IMMUNITY

Wyoming Statutes

Section 39-15-105

Sales the state is prohibited from taxing by the laws or Constitution of the United States