

## Using the University of Minnesota's Exempt Sales Tax Status

August 7, 2017

### Exempt Sales Tax Status of the University of Minnesota

#### **Generally – Exempt Status Applies to Purchases, Not Sales**

The University of Minnesota (University) is exempt from Minnesota sales and use tax on most purchases pursuant to Minnesota Statutes § 297A.70, subdivision 2. This law expressly names the University as exempt from sales tax on purchases and lists exclusions from this exempt status. Taxable sales made by the University are not exempt from sales tax under this law.

#### **Exclusions and Taxable Items**

The following items are excluded from the University's exempt sales tax status in Minnesota:

- Lodging
- Prepared food
- Candy
- Soft drinks
- Alcoholic beverages
- Motor vehicles

The University generally must pay Minnesota sales tax on purchases of the above items. Additionally, the University also must pay the:

- Minnesota tax imposed on solid waste disposal services, and
- Federal excise tax imposed on airfare.

#### **Direct Payment by University Required**

To benefit from the University's exempt status, payment must be made **DIRECTLY** by the University; this means payment must be made using either a University Procurement Card (PCard) or a University issued check. The exemption **CANNOT** be used when an employee pays for items out of pocket (cash, personal check, or personal credit or debit card), even when the University will reimburse the employee. Nor can the exemption be used when paying with gift cards or gift certificates.

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**Inappropriate Use of University's Exempt Status**

There are many ways the University's exempt sales tax status may be used inappropriately, including, but not limited to, the following:

**Using University's Exempt Status for Personal Purchases**

University employees may not use the University's exempt status to make personal purchases. The University's exempt status is not an employee benefit. The University's exemption only applies to purchases made by the University.

**Not Paying Tax on Items Excluded from Exemption**

Each University employee making University purchases is responsible for ensuring that tax is paid on items excluded from the University's exemption. When the University's Certificate of Exemption, Minnesota Department of Revenue Form ST3 (ST3), is presented to a seller, the seller will typically apply the exempt status to all items, regardless of the note listing excluded items that appears on the University's ST3. The University employee should review all transactions at the time of sale to confirm that items excluded from the University's exempt status have been taxed. It is a violation of the sales tax laws to apply the University's exempt status to items excluded from the exemption and University employees are responsible for following the sales tax laws.

One method of ensuring that tax is appropriately paid on food items excluded from the University's exemption is for the buyer to separate food items from nonfood items. Inform the seller that the University is not exempt from any tax that applies to the food items. The seller can then identify food items that are taxable and charge the applicable tax. This may require paying for two separate orders: the nonfood order that is exempt from sales tax and the food order that is subject to sales tax.

**Not Using PCard or University Check for Payment but Still Treating Purchase as Exempt**

When a University employee elects to use a personal credit card, personal check or cash rather than a PCard or University check to make a University purchase and the University's exempt status is applied to the purchase, both University policy and sales tax laws are violated. The Administrative Procedure entitled [\*Purchasing Goods and Services\*](#), which is part of the *Purchasing Goods and Services Policy*, states "Employees should not invoke the University's tax-exempt status when making an out of pocket purchase." The sales tax laws require that the purchase be made directly by the University to apply the University's exempt status, and when a personal credit card, personal check or cash is used, the purchase is not made directly by the University.

This scenario might arise when a University employee wants to use a personal credit card to make University purchases so the employee can accumulate additional points offered on the personal credit card. The employee submits the ST3 to the seller so that the University's exempt status is applied. In this scenario, the employee not only violates University policy, but also violates the sales tax laws.

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**Consequences of Inappropriate Use of Exempt Status**

If an individual inappropriately uses the University’s exempt status to make a purchase exempt from sales tax, the Minnesota Department of Revenue may impose a penalty of \$100 for each inappropriate transaction. The penalty is assessed on the individual, not the University. Depending on the facts and circumstances, the Minnesota Department of Revenue may also assert criminal charges.

Misuse of the PCard is addressed in the Administrative Policy entitled [\*Using the University Procurement Card\*](#). This policy states, “Individuals who fail to comply with this policy and all associated procedures may result in card suspension, cancellation, and disciplinary action up to and including termination of employment.” Depending on the facts related to the inappropriate use of the University’s PCard or exempt status, the consequences in this provision could apply.

The University may elect to impose disciplinary action, up to and including termination of employment, on employees who use the University’s exempt sales tax status inappropriately.

**Additional Considerations**

**U Market Primary Source**

*All units, across the University of Minnesota system, are encouraged to adopt U Market as their primary method of supply purchasing.* U Market appropriately pays sales tax to vendors on purchases of items excluded from the University’s exemption. The burden of determining whether something is subject to sales tax is borne by U Market, making it easy for the University purchaser.

**Extra Care When Using Membership Accounts at Retailers**

When U Market is not used, and an employee elects to make purchases from a retailer that requires buyers to establish a membership account, extra care is required to ensure compliance with sales tax laws. A University employee that sets up a membership account is responsible for complying with the sales tax laws that apply to the University, including paying tax on items excluded from the University’s exemption. Additionally, the University employee is responsible for ensuring that the University’s exemption is not applied to any personal purchases the employee makes under the membership account.

**Reimbursement of Tax**

To best use University funds, University employees should buy items exempt from sales tax when possible. This requires using a University PCard or University check. When an employee makes an out of pocket purchase using a personal credit card, personal check or cash to make a University purchase, the University’s exemption does not apply. The Administrative Procedure entitled [\*Purchasing Goods and Services\*](#), which is part of the *Purchasing Goods and Services Policy*, states that sales tax associated with pre-approved out of pocket purchases will be reimbursed to the employee.

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Situations may arise where it is not possible to use a University PCard or check to make a University purchase. The University's exemption should not be invoked on such purchases. Additionally, the applicable tax should be included in the employee reimbursement for pre-approved out of pocket purchases. Likewise, any reimbursement for items excluded from the University's exempt status should include the applicable tax.

### **Administrative Burden of Self-Assessing Use Tax**

The University has the option of self-assessing use tax when a seller does not charge tax on taxable items. However, this adds considerable administrative burden to a transaction. Buyers should work with sellers to pay the appropriate sales tax at the time of the transaction when possible to avoid unnecessary administrative follow-up. Use tax can be self-assessed by working with Accounting Services and using Form UM 1763, *Use Tax – Centralized Annual Reporting*, found in the Forms Library under [Finance Forms](#).

### **Contact Tax Management Office**

If you have questions relating to this TMOG, please contact the Tax Management Office at [taxhelp@umn.edu](mailto:taxhelp@umn.edu) or 612-624-1053.