

Communications Tax Exemption for Government Entities

The following information is provided as an educational tool for your use in understanding the exemption process from the communications excise tax assessed by a telephone company. FSLG receives inquiries concerning the process to follow and this information should be helpful in answering your customers' questions.

Internal Revenue Code Section 4253(i) provides an exemption from the communications excise tax for the government of any state, or any political subdivision thereof, or the District of Columbia.

Section 4253(k)(1) states that in order to claim an exemption under subsection (c), (h), (i), or (j), a person shall provide to the provider of communications services a statement (in such form and manner as the Secretary may provide) certifying that such person is entitled to the exemption.

Treasury Regulation 49.4253-11 states that a separate exemption certificate (as required by §§49.4253-3 [copy attached] and 49.4253-4) shall be furnished for each message paid for as a separate item, but that, where periodic payments are made, a blanket certificate (for a period not to exceed four calendar quarters) may be accepted as evidence of the right to exemption. An agent of a telegraph, telephone, radio, or cable company should not accept an exemption certificate unless satisfied, on the basis of proper credentials or otherwise, that the person who signed it is the person (government entity) who it is represented to be and that the exemption claimed is allowable under the law. Exemption certificates should be retained with the record of the services rendered for inspection by internal revenue officers as provided in section 6001 and the regulations in Subpart G of this part.

The Internal Revenue Service does not provide any certificate certifying that any entity is entitled to an exemption under Code Section 4253. In the past, this service had been provided by an Excise Tax Industry Specialist, but this was discontinued. Also, the regulations do not provide for an official IRS certificate signed by an IRS official.

Many telephone companies have their own certificate which they use and retain in their files. All certificates alluded to under IRC 4253(k)(1) should have the last paragraph from the sample certificate below.

The situation may be unclear with a quasi-governmental agency. For example, IRS has ruled that state or local community action organizations, such as local Head Start programs, are not exempt and local community recreational programs are not exempt. On the other hand, voluntary fire departments are exempt. All the facts and circumstances must be considered in determining whether the entity is a government for this purpose. See Revenue Ruling 82-30.

To determine that a sale to, or use by, an organization is for the exclusive use of a state or local government, it must be established that the organization is either (a) controlled, directly or indirectly, by an agency of a state or local government, or (b) is performing a traditional governmental function on a nonprofit basis. See Revenue Rulings 70-214 (1970-1 C.B. 230), 71-485 (1971-2 C.B. 371), and 74-253 (1974-1 C.B. 316).

Ordinarily, an organization will not be considered to be performing a traditional governmental function, for purposes of the exemption, unless it is performing an essential governmental function that state or local governments generally have performed directly, and that would have to be carried on by the state or local government, if the organization did not exist.

The term “traditional governmental function” does not include activities of an organization merely because they are of the type that could appropriately be carried on by a state or local government, if it chose to do so, or merely because they supplement existing government activities. The separate exemptions provided for hospitals (section 4253(h)) and schools (sections 4041(g)(4), 4221(a)(5), and 4253(j)) make clear that the state and local government exemptions were not intended to apply to every organization that performs an important social or charitable function that is also sometimes performed by government.

SAMPLE CERTIFICATE (not an official IRS form)

**CERTIFICATE OF EXEMPTION FROM FEDERAL EXCISE TAX ON CHARGES
FOR COMMUNICATION SERVICES PAID FROM FUNDS OF:**

**THE UNITED STATES
STATES, TERRITORIES, OR THEIR POLITICAL SUBDIVISIONS**

The undersigned claims exemption from the tax imposed by Section 4251 of the Internal Revenue Code on all telephone service billed or to be billed the undersigned, for the account or billing number identified.

The undersigned certifies that such exemption is allowable by law for the reason that such service is being and will be furnished to and charges will be paid from funds of _____, as a political subdivision of the _____ . Exemption is claimed under Section 4253(i) of the Internal Revenue Code.

The undersigned agrees to notify the provider of services in writing when the basis for tax exemption indicated above changes or ceases to exist. The undersigned certifies that the exemption claimed is allowable under applicable laws and understands that the fraudulent use of this certificate for the purpose of

securing this exemption will subject each and all guilty parties to a fine of not more than \$100,000 (\$500,000 for corporations) or to imprisonment for not more than five years or both, together with the costs of prosecution (IRC Section 7201).

Billing/Account Number _____

Billing Name _____

Address _____

Signature _____

Title _____

Date _____