### 6511.11p - State and Local Taxes

The doctrine of sovereign immunity and the Supremacy Clause of the Constitution (U.S. Constitution, Article VI, clause 2) prohibit states from taxing the Federal government or its activities (*McCulloch vs. Maryland*, 17 U.S. (4 Wheat.) 316 (1819)). The Supreme Court’s early interpretation was aimed at the preservation of the Federal system (Government Accountability Office’s publication, “Principles of Federal Appropriations Law”, Volume I, Chapter 4,
sec. 15a).

In the simplest situation, Federal tax immunity applies to attempts to tax directly the property or activities of a Federal department or agency. Evidence of tax-exempt status because of the Federal government’s immunity may take various forms, depending on the circumstances. For example, use of a government credit card or purchase order identifies the purchaser as an agent, agency, or instrumentality of the United States. Other forms are listed in the Federal Acquisition Regulation (FAR), Title 48, Code of Federal Regulations, section 29.305. Many taxing authorities have their own forms for claiming tax exempt status. When other evidence is not available or is inapplicable, immunity is often established by use of a “tax exemption certificate” such as Standard Form 1094, *“U.S. Tax Exemption Certificate”*, which is usually processed individually. Use of Standard Form 1094 is prescribed by and illustrated in the FAR (48 CFR 29.302(b), 53.229, and 53.301-1094). An essential element for Forest Service offices to claim tax exempt status is the Forest Service’s employer identification number, provided in exhibit 01, as follows:

**6511.11p – Exhibit 01**

**Forest Service’s Employer Identification Number**

**Forest Service’s employer identification number**

**is required on all claims for tax exempt status**

**72-0564834**

In some jurisdictions, tax exempt status can be established by providing a “tax-exempt number” obtained from the taxing authority. Where this procedure exists, it is governed by state regulation. Where available, this can be a simple and cost-effective way of invoking the Government’s tax immunity in situations where the amounts involved do not justify obtaining an official tax exemption certificate.

State taxation issues center on three distinct types of taxing schemes, as follows:

1. Taxes linked to business transactions involving the Federal government, typically sales and use taxes.

2. State and local taxes frequently encountered by Federal government employees while performing government business, and

3. Property-oriented taxes linked to ownership or use of various types of real and personal property located within a state’s geographical boundaries.

a. The U.S. Supreme Court has held that the imposition of a possessory use tax on the occupancy rights of a tenant occupying government-furnished housing (GFH) is a valid exercise of the taxing power of a state and its political subdivisions (United States v. County of San Diego, 965 F.2d 691 (9th Cir. 1992)). The rent levels set for GFH are based on a survey of rents charged for open market rental properties. Rent for private property includes an amount to cover the private landlord’s property taxes. Under OMB Circular A-45, the real property tax paid by a private landlord is represented by a portion of the monthly contract rent. Since the private landlord’s property tax charge is not excluded from the contract rent in determining the base rental rate for comparability purposes, the GFH rental charge already reflects the real estate tax for comparable private rental property. The occupant of Forest Service GFH pays rent into the Quarters Maintenance Fund, and a portion of each payment is for property taxes. When the employee pays the possessory use tax to the taxing authority and requests a refund, Forest Service refunds the possessory use tax from the Quarters Maintenance Fund (FSH 6509.11k, ch. 40).

b. Possessory use taxes charged by a taxing authority to Forest Service permittees (for example, recreation residence permit holders) are the permittees’ personal expense. Forest Service provides a list of permittees to the taxing authority when requested, but that is the full extent of the Agency’s involvement in the matter.

These 3 types of taxing schemes are the subject of additional detailed guidance set forth in the Government Accountability Office’s publication, *“Principles of Appropriations Law”*, Volume I, Chapter 4, sec. 15a, available on the following website: <http://www.gao.gov/legal/redbook.html>**.**