

2 FAM 270

TAX EXEMPTIONS ACCORDED FOREIGN REPRESENTATIVES IN THE UNITED STATES

(TL: GEN-107; 04-30-1968)

2 FAM 271 PROPERTY OWNED BY FOREIGN GOVERNMENTS

2 FAM 271.1 Real Property in the District of Columbia

(TL:GEN-107; 04-30-1968)

Under District of Columbia Law, property in the District owned by foreign governments and used for embassy or legation purposes is exempt from general taxes and special taxes on assessments. The property must actually be used for embassy or legation purposes in order to gain the exemption and not merely be held as a vacant lot. Real property in the District of Columbia is assessed on July 1 of each fiscal year and taxes which have been assessed on that date cannot be remitted for any portion of the fiscal year, unless such property is exempted by treaty provision. Treaty provisions are also taken into consideration with respect to foreign government-owned property used for functions other than embassy or legation purposes. The payment of water rent is required in all cases, as this is not regarded as a tax but the sale of a commodity.

2 FAM 271.2 Real Property Outside District of Columbia

(TL:GEN-107; 04-30-1968)

The taxation of real property owned by foreign governments and used for consular or other purposes in the various States is a local matter and, accordingly, each case requires separate consideration. Some localities accord exemption to property owned by a foreign government on the basis of reciprocity, while others accord exemption only on the basis of specific treaty provisions to that effect. Should a case arise in regard to the taxation of real property owned by a foreign government in one of the several States, the Department would communicate with appropriate authorities of the State concerned and request that, as a matter of international comity, treatment be extended similar to that accorded by the foreign government concerned to our property abroad.

2 FAM 271.3 Automobiles in District of Columbia

(TL:GEN-107; 04-30-1968)

Registration fees and taxes are not imposed on automobiles owned by foreign governments which are used by diplomatic and consular offices in the District of Columbia. Free license plates are issued for such cars.

No taxes are imposed for registration of automobiles owned by foreign governments and used by agencies other than diplomatic or consular offices, but registration fees are charged for license plates.

2 FAM 272 PROPERTY OWNED BY FOREIGN REPRESENTATIVES

2 FAM 272.1 Property in District of Columbia

(TL:GEN-107; 04-30-1968)

The personally owned property of a foreign diplomatic or consular officer, or employee, whether used for official purposes or for residence, is subject to taxation in the District of Columbia. A house owned by such officials, but rented out, is also subject to taxation, since the tax on real property is imposed upon the owner of the property and not upon the tenant.

2 FAM 272.2 Personal Property Taxes

2 FAM 272.2-1 District of Columbia

(TL:GEN-107; 04-30-1968)

At the present time, the only personal property tax in the District is that which is levied upon individuals or firms engaged in business. There is no tax assessed against the personal or household effects of the ordinary householder. However, should a property owner rent out furnished premises the owner would be liable for the furnishing thereof, since this would constitute being "engaged in business" within the scope of the present District of Columbia Revenue Act. Should a diplomatic officer or employee lease furnished premises to another individual, the diplomatic officer or employee would be subject to the tax on the furnishings of the leased property, since it is the view of the District of Columbia Government that exemption from taxation ceases when the privileged individual engages in business.

2 FAM 272.2-2 Maryland

(TL:GEN-107; 04-30-1968)

The revenue law of the State of Maryland regarding personal property taxes appear to be approximately the same in effect as those in the District of Columbia, i.e., no tax on ordinary personal and household effects unless the owner thereof is engaged in business which requires the use of certain personal property. Should a member of the diplomatic mission be engaged in an outside business venture, the member would be exempt from the payment of the tax levied on the personal property.

2 FAM 272.2-3 Virginia

(TL:GEN-107; 04-30-1968)

In Virginia there is a personal property tax on automobiles but on the basis of information received from the State Tax Commissioner it is indicated that while there is no specific statutory exemption for members of diplomatic missions, Virginia is inclined to take the view that foreign diplomatic officers, as well as alien employees (who are not permanent residents of the United States) of the foreign embassies and legations, are entitled to exemption. Other foreign government personnel resident in Virginia would apparently be subject to this tax, unless exempted therefrom by treaty provisions.

2 FAM 272.3 Automobile Taxes and Fees in the District of Columbia

(TL:GEN-107; 04-30-1968)

The following taxes and fees on automobiles are in effect in the District of Columbia:

- a. Fees for registration.
- b. Fees for drivers' licenses.
- c. Excise tax on automobile titles.

Diplomatic officers and consular officers attached to the diplomatic missions and residing in the District of Columbia are exempt from all the taxes and fees mentioned in items a through c. Unless exempted by treaty provision, clerks and employees are required to pay the fees indicated in items a and b, but they (nationals of appointing country and not servants) are exempt from the taxes set forth in item c.

Automobiles bearing District of Columbia tags are permitted to enter or pass through the several States without obtaining additional tags or paying any special taxes or fees.

2 FAM 272.4 Automobile Taxes and Fees in the Various States

(TL:GEN-107; 04-30-1968)

It is the practice of some of the States to grant exemption from charges for registration and license plates to consular officers on the basis of reciprocity. The fees and taxes for automobiles and other property to be charged foreign consuls in the several States of the United States, in the absence of applicable treaty provisions, are subject to regulation by each State in which a consular office is located.

Information concerning all the States is not readily available; however, the State of New York has informed the Department that foreign consular officers in that State are exempt from registration fees in accordance with section 11(6)(b) of the Vehicle and Traffic Law, which reads in part as follows:

"The provisions of this article with respect to the payment of registration fees shall not apply...to motor vehicles owned by professional foreign consuls-general, consuls, who are nationals of the State appointing them and who are assigned to foreign consulates in the State of New York, provided that American professional consular officers of equal rank who are citizens of the United States and who exercise their official functions at American consulates in such foreign country, are granted reciprocal exemption...."

2 FAM 273 FEDERAL TAXES

2 FAM 273.1 Social Security Tax

(TL:GEN-107; 04-30-1968)

All foreign diplomatic and consular officers and employees assigned to the United States and paid by foreign governments are excluded from the benefits of, and exempt from the taxes levied under, the Social Security system. U.S. nationals employed in the United States by foreign governments pay social security taxes as self-employed persons.

2 FAM 273.2 Federal Excise Taxes (Direct)

2 FAM 273.2-1 Definition

(TL:GEN-107; 04-30-1968)

This category of excise taxes includes taxes on telephone (chapter 33 of the internal revenue code), transportation of persons (chapter 34 of the Code), and documentary stamp tax relating to certain foreign insurance policies.

2 FAM 273.2-2 Exemptions

a. Diplomatic

Foreign ambassadors, ministers, and other duly accredited diplomatic representatives of foreign governments, together with the members of their families living with them and members of their staffs, including attaches, secretaries, and clerks (but not servants), who are not citizens of the United States, nor permanent residents of the United States in an immigrant status, and who are nationals of the country of the diplomatic mission where employed, are not required to pay Federal excise taxes, the legal incidence of which would otherwise fall upon them regardless of whether the transaction is official or personal.

b. Consular

Consular officers of foreign governments and other officers (other than members of diplomatic missions), as well as agencies and commissions of foreign governments, are not required to pay Federal excise taxes, the legal incidence of which would otherwise fall upon them with respect to transactions arising in the performance of their official functions for which payment is made by the foreign government itself. This exemption is not dependent on treaty provisions and applies irrespective of whether there is a treaty in force between the United States and the foreign government relative to its consular officers or other officers, agencies, or commissions. A number of treaties are in force between the United States and foreign governments which confer tax exemptions upon consular officers with regard to personal transactions. In general, consular officers are exempted by these treaties from Federal excise taxes, the legal incidence of which would otherwise fall upon them without regard to whether the transaction is official or personal, but subject to the condition that the consular officers are not citizens of the United States and are not engaged in professional, business, trade, manufacture, or commerce within the United States.

2 FAM 273.3 Manufacturers' Excise Tax (Indirect)

2 FAM 273.3-1 Definition

(TL:GEN-107; 04-30-1968)

Manufacturers' excise taxes are imposed on sales by the manufacturer of many articles, including firearms, automobiles, tires and tubes, gasoline and lubricating oil, and certain sporting goods.

2 FAM 273.3-2 Exemptions

a. Diplomatic

The categories of diplomatic representatives and their staffs, as listed in section 2 FAM 273.2-2, are also exempt from the payment of manufacturers' excise taxes, regardless of whether the articles are for official or personal use. However, to obtain exemption from the manufacturers' tax, diplomatic officers and members of their staffs must purchase such articles direct from the manufacturer or factory branch and not from a dealer or retailer.

b. Consular

The exemption from manufacturers' excise taxes does not extend to consular officers and other foreign representatives, even under treaty provisions according tax exemption, since the Treasury Department holds that such provisions relate only to "direct" taxes, i.e., taxes the legal incidence of which falls upon the consular or other representative.

2 FAM 273.4 Gasoline and Oil Tax

(TL:GEN-107; 04-30-1968)

The Federal tax on gasoline and lubricating oil is a manufacturers' excise tax. Exemptions may be obtained only when persons entitled to such exemption purchase the gasoline and oil from a manufacturer, producer, or importer. Diplomatic officers and consular officers attached to the diplomatic missions in the District of Columbia are also exempt from the District tax on gasoline when it is purchased from a producer or importer. There is no District tax on gasoline when it is purchased from a producer or importer. There is no District tax on lubricating oil. A number of the States grant exemption from State gasoline taxes to diplomatic and consular officers on the basis of reciprocity.

2 FAM 273.5 Estate Tax

(TL:GEN-107; 04-30-1968)

Upon the death of a foreign diplomatic representative duly accredited to the United States, who at that time was neither domiciled in nor a citizen of the United States, the Federal excise tax is not applied to personal property used by the foreign diplomatic representative in the conduct of the representative's official mission and reasonably required for that purpose. This exemption, however, does not extend to personal property not so used (such as bonds, shares of corporate stock, and other investment property) or to real property situated in the United States, nor does it extend to the estates of deceased consular officers.

2 FAM 273.6 Income Tax

(TL:GEN-107; 04-30-1968)

The wages, fees, or salary of an employee of a foreign government, including a consular or other officer, or a nondiplomatic representative, or an employee of an international organization, received as compensation for official service to such government or international organization are exempt from Federal income tax provided that:

- a. Such employee is not a U.S. citizen.
- b. The foreign government whose employee is claiming exemption grants an equivalent exemption to employees of the U.S. Government performing similar services in such foreign country.
- c. Such employee is not an alien who has been admitted into the United States as a permanent resident and who, in this connection, has filed a waiver of all rights, privileges, and immunities under section 247(b) of the Immigration and Nationality Act.

2 FAM 273.7 Radio Tax

(TL:GEN-107; 04-30-1968)

There is no Federal installation or licensing tax levied on radio or television receivers in the United States.

2 FAM 273.8 Sales Tax

(TL:GEN-107; 04-30-1968)

At the present time there is not Federal sales tax, although many of the States and cities in the United States impose a tax on the retail and/or wholesale sale of commodities and services (see section 2 FAM 274.1).

2 FAM 274 LOCAL TAXES

2 FAM 274.1 Sales Taxes

2 FAM 274.1-1 District of Columbia

(TL:GEN-107; 04-30-1968)

Section 704 of the District of Columbia Sales and Use Tax Regulations reads as follows:

"Where the purchaser of tangible personal property is a member of a foreign diplomatic corps and presents an identification card issued by the State Department, exempting such person from excise taxes, such card shall be authority for the vendor not to add reimbursement for the sales tax to the sales price of the property. However, the vendor must show on the record of the sale the name of the purchaser, the date of sale and the amount thereof."

District of Columbia sales tax cards are issued at the request of the diplomatic mission to all diplomatic officers and employees of diplomatic missions (except servants), who (1) are not engaged in any other occupation for gain in the United States, (2) are not citizens or permanent residents of the United States, and (3) are nationals of the diplomatic mission where employed. Foreign government agencies and international organizations are also exempted from the payment of the District of Columbia sales and use tax in connection with the purchase of official supplies.

2 FAM 274.1-2 Maryland

(TL:GEN-107; 04-30-1968)

The State of Maryland imposes a sales and use tax on commodities and services. The exemption provision of the Act reads:

"EXEMPTIONS - 326(f): Sales which are not within the taxing power of this State under the power of the Constitution of the United States."

Diplomatic officers of foreign embassies who reside in Maryland, and certain employees of embassies with whose governments applicable treaties are in force, are granted exemption from the Maryland sales tax. Foreign consular personnel are also exempt under treaty provision.

2 FAM 274.1-3 Virginia

(TL:GEN-107; 04-30-1968)

The State of Virginia has imposed a retail sales and use tax and a motor vehicle sales and use tax, both effective as of September 1, 1966. Exemption from the retail sales and use tax has been granted by the State to foreign diplomatic officers who reside in Virginia. Nondiplomatic employees of the foreign diplomatic missions and foreign consular personnel are exempt only on the basis of applicable treaty provisions.

No exemption is presently accorded from the motor vehicle sales and use tax, which applies at the time title to the car is obtained. However, the Department of State is permitting foreign diplomatic officers who reside in the State of Virginia to register their automobiles in the District of Columbia, thereby receiving gratis District of Columbia (DPL) license plates. It is, of course, possible that this policy may at some future date be questioned by the State of Virginia.

2 FAM 274.1-4 New York

(TL:GEN-107; 04-30-1968)

Exemption cards are issued by the State of New York to foreign diplomatic officers and their wives upon application made on letterhead of the embassy concerned. Official foreign government agencies are issued exemption certificates. Foreign consular personnel are exempt under treaty provisions only.

2 FAM 274.2 Estate and Inheritance Tax

(TL:GEN-107; 04-30-1968)

The District of Columbia holds that there can be no exemption from payment of the local inheritance tax in view of the fact that this type of tax is levied upon the beneficiary of the estate of the deceased diplomat and not upon the diplomat or the diplomat's estate.

2 FAM 274.3 Dog Licenses

(TL:GEN-107; 04-30-1968)

By order dated July 8, 1921, the Collector of Taxes of the District of Columbia is authorized to issue dog licenses to foreign diplomatic officers without charge.

2 FAM 274.4 Capitation Tax

(TL:GEN-107; 04-30-1968)

The State of Virginia grants exemption from its capitation tax to foreign diplomatic officers and alien (non-resident alien) employees of the foreign diplomatic missions. Other foreign government personnel residing in the State are exempt only on the basis of a treaty provision.

2 FAM 274.5 Property Tax

(TL:GEN-107; 04-30-1968)

See section 2 FAM 271 and 2 FAM 272

2 FAM 274.6 Automobile Tax

(TL:GEN-107; 04-30-1968)

See sections 2 FAM 271.3, 2 FAM 272.2-3, 2 FAM 272.3, 2 FAM 272.4, and 2 FAM 273.4.

2 FAM 275 THROUGH 279 UNASSIGNED