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**MEMORANDUM - REVISED**

**TO:** WM Colleagues

**FROM:** Ruth Gilliam, Director Accounting Operations

 Cindi Fellows, ARMICS and Tax Compliance Officer

**SUBJECT:** Sales and Use Tax Update (Tax Bulletin 16-3)

**DATE:** July 8, 2016 **– REVISED DATE August 16, 2016**

Effective April 22, 2016, The Department of Taxation changed its policy regarding the application of the Retail Sales and Use Tax to catering and other services related to purchases of food and meals by State & Local governmental entities.

This memo is intended to provide guidance to the campus regarding this change in tax policy as it affects our day–to-day activities.

According to the new policy, state and local governmental entities may now use their respective exemption certificate (Form ST-12) to purchase prepared foods, catering and related services provided in connection with the sale of food ***exempt of the sales and use tax if the College meets the following criteria***.

* The applicable prepared foods, catering and/or related service furthers a function, mission, service or purpose of the College.
* The charge for the food, meals or catering is billed to and paid for by the College rather than using cash or an individual’s account. (Note: Items paid for by Agency Funds, often referred to as 8 Accounts, are not eligible for this exemption.)
* The College determines to whom, when and how the meals or food is served and consumed.

**How does this affect WM Activities?**

**Catered Events:**

All catered events, including those catered by Sodexo, **are exempt** from sales and use taxes as long as the event supports the mission of the College as defined in the CAPP topic 20310 *Expenditures*

 (<http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20310.pdf>). College purchases must be considered **essential to the operation of the College** and in support of the College’s mission. Catered events of this type **can** be paid using State Funds and are tax exempt under this rule.

College-Sponsored event expenses that **do not** support the College mission, including retirement parties, employee going away parties, and birthday or holiday celebrations.  Catered events of this type **cannot** be paid for using State Funds and are **not tax** **exempt** under this rule.

**Individual Meals Purchased when on Travel Status**

Meals consumed by individuals while on travel status at restaurants **are not part** of this tax exclusion.  Employees traveling to in-state conferences or purchasing and paying for a business meal at the restaurant customarily seek reimbursement of the meal at a later time.  Because the meal is **not** billed directly to the College and the College **does not** determine to whom, when and how the meal will be consumed, the College employee will be subject to sales and use tax on the meal purchase.

**Business Meals Purchased at Restaurants by Groups:**

Business Meals are part of the College’s mission therefore a business meal, including business meals with job candidates **would qualify** for the exemption.  The exemption will apply only, if the meal is **direct** billed or paid with the Small Purchase Charge Card (SPCC).  If the meal is paid by personal credit card; then the meal is not exempt from sales and use tax. *For* ***BUSINESS MEALS****, the Sales and Use Tax paid for by using a personal credit card* ***WILL BE*** *a reimbursable expense to the employee using Local Funds (if available). E&G funds should only be used if no other appropriate fund source is available.*

**Prepared Meals Purchased at Grocery Stores:**

Prepared Meals Purchased for later consumption **qualify** for the tax exclusion.  Purchases made at grocery stores for prepared food items to be consumed at the College charged to the SPCC or **direct** billed to the College are tax exempt under this bulletin.  If the meal purchased at the grocery store is paid for by personal credit card; then the meal is not exempt from sales and use tax.   *For* ***PURCHASED MEALS****, the Sales and Use Tax paid for by using a personal credit card* ***WILL BE*** *a reimbursable expense to the employee using Local Funds (if available). E&G funds should only be used if no other appropriate fund source is available.*

**Conference Services Activities:**

W&M Conference Services will work with its individual customers to identify if they qualify for this tax exemption.  The customer hosting the catered event must qualify for their exemption based on its legal entity status.  The customer must be either a state and local governmental entity, a nonprofit organization, or a nonprofit church to qualify under this exemption.  **If the customer is not a qualifying entity, then its catered event is subject to sales and use tax, even if the event is held at the College.**

**Student Organizations Activities:**

Student organizations should not use the College’s tax ID number to conduct business.  ***Student organizations’ purchases are not exempt under the College’s umbrella***.  Student organizations must obtain their own exemption certificates to be eligible.

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| Examples |
| Example 1: The College of William and Mary holds an annual banquet to honor its employees and purchases catering services from a local restaurant. The lump sum catering charge on the invoice includes charges for the catered food, charges for servers, and charges to set up and break down tables.  The College pays the invoice using a check drawn from the College’s official account. 1. The employee banquet furthers the mission of the College,
2. The catering charges are paid for by the College,
3. The College has determined whom, when and how the meals will be distributed.

As such, the College may use the exemption certificate (Form ST-12) to purchase the catered meals and services from the vendor resulting in an exemption from the sales and use tax. |
| Example 2: A coach for the tennis team purchases pizzas for the team using his SPCC. The total paid to the vendor includes sales and use tax charges.  1. The team meal furthers the mission of the College
2. The College pays the invoice using the SPCC official College’s account.
3. As a representative of the College, the coach has determined whom, when and how the meals will be distributed.

As such, the College may use the exemption certificate (Form ST-12) to purchase the pizzas from the vendor resulting on an exemption from the sales and us tax.\*If the coach uses a personal credit card to pay for the purchase, then the vendor is not mandated to provide sales tax relief.  Why? Criteria #2 is not met under this scenario.  The coach may be reimbursed for the cost of the meal AND for the sales tax. The reimbursement for sales tax should use Local Funds (if available). |
| Example 3: Faculty member takes a candidate to lunch on the interview day.  The Faculty member uses his personal credit card to pay for the lunch. The faculty member will be reimbursed for the costs of the lunch through the Accounts Payable Office. The charges for the lunch are subject to the sales and use tax.  1. The recruitment lunch furthers the mission of the College
2. The state College does not directly pay the invoice.
3. The College (the faculty member) determined whom, when and how the meals will be distributed.

Since Criteria #2 is not met, the vendor is not required to provide sales and use tax relief since the faculty member did not use a SPCC or direct bill the meal.  The faculty member may be reimbursed for the cost of the meal AND sales tax. The reimbursement for sales tax should use Local Funds (if available). |
| Example 4: An employee traveling to an in-state conference purchases his meals using an Individual Liability credit card (IL). The credit card charges are billed directly to the employee, but the College will reimburse the employee at a later date. 1. The employee conference participation furthers the mission of the College
2. The state College does not directly pay for the purchase; the purchase is paid by the employee.
3. The College did not determined whom, when and how the meals will be distributed; the individual employee did.

Since Criteria #2 & 3 is not met, the vendor is not required to provide sales and use tax relief.  Since the College uses the per diem system for reimbursement; the payment of sales taxes to vendors will not affect the reimbursement amount as long as the employee request a per diem reimbursement.  |
| Example 5:  A department administrator goes to the grocery store to purchase a banquet tray and other prepared food items for a meeting at the department.  The department administrator uses Form ST-12 to receive an exemption from sales and use taxes on the groceries.  The grocery store will send a direct bill to the College at the end of the month.   1. The department meeting participation furthers the mission of the College
2. The state College directly pays for the invoice.
3. The College determined whom, when and how the meals will be distributed.

Prepared Meals purchased from grocery stores (e.g., deli trays) for use by the College are exempt from sales and use tax. |

**How do I ensure my purchase is exempt from sales and use taxes?**

For a purchase to be exempt from sales and use taxes, departments and other business units are encouraged to use their SPCC or Direct Bill the purchase.  The purchase is not exempt from sales and use taxes when using personal credit cards, which means that sales and use taxes **may not** be reimbursable.

**What do I provide the Vendor?**

Once you have determined that your meal activity is exempt from sales and use taxes, you must provide the vendor with the Commonwealth of Virginia Sales and Use Tax Certificate of Exemption (Form ST-12).  You may obtain the form from the Tax Department, by sending an email request to Cindi Fellows at clfellows@wm.edu.

**What happens if the vendor is not have a direct billing contract with the College?**

We recommend you use the SPCC card to pay for meals. Direct billing agreements **should be** limited only to those instances where SPCC is not an option.

**The bulletin references an April 22 effective date, so should we apply it retroactively?**

The most likely scenario is that the vendor has already remitted the sales and use tax to the Commonwealth, therefore requesting a reimbursement is not plausible. At this time, we recommend moving forward with the application of the rule starting with the original date on this memo and its distribution.

**Is this exemption applicable to Agency Funds (commonly known as 8 Accounts)?**

This exemption is **not** applicable to Agency Funds activities.

**Are there going to be instances in whereas the sales tax paid by an employee is not reimbursable?**

Any sales tax paid on meals purchased during non-travel activities that meets #1 (mission) and #3 (college determination) requirements and could have been paid for by SPCC or direct billing but a personal credit card was used instead, **may not** be **reimbursable**.

**When is the sales tax reimbursable?**

Any sales tax paid for meal purchases during travel status are reimbursable.

**The following table provides contact information for the different areas impacted by the process change**.

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| **Sales & Use Tax Questions** | **SPCC Questions (Procurement)** | **Sales & Use Tax Exemption Forms****(Tax)** | **Vendor Payment Request Form (Vendor) Questions** |
| Cindi Fellows | Marra Austin | Cindi Fellows | Ruth Gilliam |
| clfellows@wm.edu | maaustin@wm.edu | clfellows@wm.edu | rgilliam@wm.edu |
| 757-221-2497 | 757-221-7636 | 757-221-2497 | 757-221-4573 |

Any further questions, may be directed Cindi Fellows at extension 1-2497 or to Ruth Gilliam at extension 1-4573.

For more information, see [Tax Bulletin 16-3 "Important Information Regarding Meals and Catering Purchased by Nonprofit Organizations, Churches, and Governmental Entities"](http://www.tax.virginia.gov/sites/tax.virginia.gov/files/TB_16_3_Nonprofit_Meals_Bulletin.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=) on the Virginia Department of Taxation website.