Final Report of the Hearing Officers
regarding the
Proposed Model Direct Payment Permit Regulation

The hearing officers, René Blocker and Harley Duncan, submit this Final Report recommending that the Multistate Tax Commission consider adoption of the proposed Model Direct Payment Permit Regulation as finally and formally approved by the Task Force on EDI Audit and Legal Issues ("Task Force"). (See below, pages 2-4 for text of the proposal.) The hearing officers also recommend that the Task Force's Explanation and Commentary be included in the publication of the model regulation, as an appendix for information purposes only. See Exhibit B.

The Initial Report (January 2000) set forth in detail the comments received as part of the public hearing process and included discussion of the various issues raised. The hearing officers decided to reserve making any recommendations to the Executive Committee until after the Task Force had completed its process of approving the proposal, particularly since the model regulation is their work product. It was noted that the proposal as reflected in the Initial Report was not likely to change and that the hearing officers would have recommended the model regulation's adoption at that time but for the choice to await final approval by the EDI Task Force.

In anticipation of this Final Report recommending adoption of the Model Direct Pay Permit Regulation, the Executive Committee gave prior approval to the conduct of a Bylaw 7 survey of the affected Member States. A Bylaw 7 survey will be sent to each affected Member State together with a copy of this Final Report. If a majority of the surveyed States agree to consider the proposal for adoption in their States, the full Commission will vote, at its next meeting after the survey, on whether to adopt the proposal as a Multistate Tax Commission recommendation to the States. It should be clarified for the benefit of the public and non-Member States, that adoption of a uniformity proposal by the Commission does not require any State to adopt the recommended provision. Each State decides independently whether to pursue adoption of a Commission recommendation through that State's administrative or legislative process.

This Final Report reflects the responses of the EDI Task Force to the Initial Report. The model regulation as approved by the Task Force and recommended for adoption by the hearing officers follows.

MODEL DIRECT PAYMENT PERMIT REGULATION

A. "Direct payment permit" means a permit issued by [taxing authority] that allows a holder of such permit to accrue and pay state and local taxes under [statute] directly to the [taxing authority].

B. Application for Permit. Applicants for a direct payment permit must apply in writing to the [chief tax administrator]. The application shall be on a form required by the [chief tax administrator] or in a letter containing the applicant's name, address, the location of the place or places of business for which the applicant intends to make direct payment of tax, the sales and use tax account number(s) for which direct payment will be made, and any other information that the [taxing authority] may require.

C. Qualification Process and Requirements.

(1) Applicants for a direct payment permit shall demonstrate the applicant's ability to comply with the [taxing authority] sales and use tax laws and reporting and payment requirements. The applicant must provide a description of the accounting system(s) which will be used by the applicant and demonstrate that the accounting system(s) will reflect the proper amount of tax due.

(2) Applicants must establish a business purpose for seeking a direct payment permit and must demonstrate how direct payment will benefit tax compliance. For example, the utilization of direct payment authority should accomplish one or more of the following:

(a) Reduce the administrative work of determining taxability; collecting, verifying, calculating and/or remitting the tax;
(b) Provide for improved compliance with the tax laws of the [taxing jurisdiction];
(c) Provide for accurate compliance in circumstances where determination of taxability of the item is difficult or impractical at the time of purchase;
(d) Provide for more accurate calculation of the tax where new or electronic business processes such as electronic data interchange, evaluated receipts settlement, or procurement cards are utilized;
(e) Provide for more accurate determination and calculation of tax where significant automation and/or centralization of purchasing and/or accounting processes have occurred and applicant must comply with the laws and regulations of multiple state and local jurisdictions.

(3) The [chief tax administrator] or his/her designee shall review all permit applications. The review of applications shall be conducted in a timely manner so that applicants receive notification of authorization or denial within [30-120] days of the date the [chief tax administrator] or designee receives the application; however if additional documentation or discussion is required, the [chief tax administrator] or designee shall notify the taxpayer or, at taxpayer's

request, schedule a conference with the applicant prior to the end of the [30-120]-day period.

D. Recordkeeping Requirements. A direct payment permit holder shall maintain all records that are necessary to a determination of the correct tax liability under [insert appropriate citations to state tax statutes]. All required records must be made available on request by the [taxing authority] or its authorized representatives as provided for in [insert appropriate citations to state tax statutes].

[Insert elements of state law which require certain records to be retained (e.g., books of account, invoices, sales receipts), or specific tax elements or transactions (e.g., credits) for which particular records may be required.]

E. Reporting of Tax. Each holder of a valid direct payment permit shall, on a form approved by the [taxing authority], accrue and pay directly to the [taxing authority] the taxes due under [statute] for all transactions subject to tax for which a direct payment permit applies. Taxes for which the direct payment permit is used shall be considered due and payable on the sales and use tax return next due following the date on which a determination of taxability is, or in the exercise of reasonable care should be, made for a given transaction, unless otherwise provided by written agreement between the taxpayer and the [taxing authority].

F. Certain Transactions Not Permitted. A holder of a direct pay permit shall not use such permit in connection with the following transactions:

(1) purchases of taxable meals or beverages;

(2) purchases of taxable lodging or services related thereto;

(3) purchases of admissions to places of amusement, entertainment or athletic events, or the privilege of use of amusement devices;

(4) purchases of motor vehicles, or other tangible personal property required to be licensed or titled with a taxing authority, taxed under [taxing authority] statutes [list applicable sections];

(5) purchases of any of the following enumerated services listed in [tax authority] statutes. [List applicable sections. May include services such as telecommunications and utilities.]; and

(6) Such other purchases as may be agreed to between the holder of the direct payment permit and the [taxing authority].

G. Permit Holder's Duties. The holder of a direct payment permit shall furnish a copy of the direct payment permit or other acceptable evidence, if allowed by statute, that the holder has been granted a direct payment permit, including the number of the permit and the date issued, to each vendor from whom the holder purchases tangible

towards the common goal of producing a simple, concise provision acceptable to both tax administrators and taxpayers. Prior to finalizing the model regulation, the EDI Task Force reviewed and discussed the Initial Report relating the comments received during the public hearing process. The Task Force subsequently submitted a memorandum responding to the two major issues raised in the Initial Report: vendor discounts and calculating local taxes, but recommended no changes to the language of the model regulation. See Exhibit C.

The issue of whether vendor discounts should be available under a direct pay permit was raised as a potential problem because at least one state apparently has been in litigation over the issue. The State of Virginia suggested that language be included in the model regulation to clarify that vendor discounts would not be available to holders of direct pay permits on the state portion of use tax remitted under such permits. The EDI Task Force determined that the model regulation should remain silent on this issue, noting that this is one of the various policy issues each state must consider in administering the direct pay process.

Likewise with respect to determining the applicable local taxes, the EDI Task Force made no change to the model regulation itself. Washington State suggested including optional language in Section I of the model regulation under which local use tax would be calculated based on the location of first taxable use and local sales tax would be calculated based on where the sale actually occurred. The EDI Task Force decided to leave intact its recommended standard under which local sales and use tax is calculated on the basis of first taxable use. However, the Task Force did amend the Explanation and Commentary to the model regulation to include the optional language suggested by Washington. That section of the Explanation and Commentary now reads:

> This section addresses the responsibility of the direct payment permit holder to accrue and pay applicable local sales or use taxes on purchases of tangible personal property made pursuant to this regulation. It further states that local tax is imposed by the jurisdiction in which the first taxable use occurs. While this is a recommended standard, it is not currently true in all taxing jurisdictions. For example, some taxing authorities may be required to calculate local sales tax at the rate imposed in the jurisdiction in which the sale occurred and calculate local use tax at the rate imposed by the jurisdiction in which the first taxable use occurs. These are examples only, and each taxing authority will address local tax implications related to tangible personal property and services.

personal property or services. Persons who hold a direct payment permit shall not be required to issue a separate exemption certificate and shall not be required to pay the tax as prescribed in [state taxing statutes related to billing of sales or use tax by vendor].

The holder of a direct payment permit shall have responsibility for accruing and paying tax directly to [taxing authority] on all taxable transactions not taxed at the time of sale. In certain circumstances, it may be necessary for the permit holder to pay tax directly to the vendor. Where tax is paid directly to the vendor and [taxing authority] and permit holder agree, the holder may maintain accounting records in sufficient detail to show in summary, and in respect to each transaction, the amount of sales or use taxes paid to vendors in each reporting period.

H. Vendor's Responsibilities. Receipt of the direct payment permit or other acceptable evidence that the holder has been granted a direct payment permit, shall relieve the vendor of the responsibility of collecting the sales tax on sales made to a direct payment permit holder on qualifying transactions. Vendors and sellers who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of the purchaser may be ascertained. Receipts from such sales shall not be subject to the tax levied in [state taxing statutes related to billing of sales or use tax by vendor].

I. Local Taxes [if imposed]. A direct pay permit holder that makes taxable purchases of tangible personal property or services shall report and pay applicable local sales or use tax on those purchases. The local sales or use tax shall be calculated at the rate imposed by the jurisdiction in which the first taxable use occurs.

J. Revocation of Permit. A direct payment permit is not transferable, and the use of a direct pay permit may not be assigned to a third party. Direct payment permits may be revoked by the [chief tax administrator] at any time whenever the [chief tax administrator] determines that the person holding the permit has not complied with the provisions of this regulation or that the revocation would be in the best interests of the [taxing authority]. Such revocation shall follow the administrative procedures as provided for in [insert appropriate citations to state tax statutes].

The above model regulation, drafted specifically by the Electronic Business Processes Work Group of the EDI Task Force, is intended to establish a uniform standard among the states for the administration of taxpayers' direct pay permit requests. As explained in the hearing officers' Initial Report (January 2000), the proposal reflects the thorough research, analysis and deliberation of state and industry representatives working

The hearing officers do not find the Task Force's decision on these issues to be unreasonable. The model regulation is likely to be adapted in some measure by States needing to address specifically local issues raised by granting direct pay authority. The discussion of the potential vendor discount problem in both the Initial and Final Reports should alert States to consider dealing with the issue in their direct pay process. Additionally, inclusion in the Explanation and Commentary of Washington's optional sourcing language for local sales and use taxes provides explicit guidance to the States on this issue.

The hearing officers believe that the EDI Task Force has produced a fair and reasonable model regulation. The comments received during the public hearing generally were in favor of the proposal and no comments were submitted in opposition to the proposal. Moreover, the Task Force made an effort to respond adequately to all of the issues raised and to address those issues directly in the model regulation or commentary, where appropriate. This proposal has been reviewed, researched, analyzed and discussed thoroughly by business and State representatives through both the Task Force drafting process and the MTC public hearing process. The hearing officers, therefore, recommend adoption of the Model Direct Payment Permit Regulation, Exhibit A, and additionally, recommend including the Task Force's Explanation and Commentary, Exhibit B, as an informational appendix.

Final Report of the Hearing Officers
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EXHIBIT A

Model Direct Payment Permit Regulation

MODEL DIRECT PAYMENT PERMIT REGULATION

A. "Direct payment permit" means a permit issued by [taxing authority] that allows a holder of such permit to accrue and pay state and local taxes under [statute] directly to the [taxing authority].

B. Application for Permit. Applicants for a direct payment permit must apply in writing to the [chief tax administrator]. The application shall be on a form required by the [chief tax administrator] or in a letter containing the applicant's name, address, the location of the place or places of business for which the applicant intends to make direct payment of tax, the sales and use tax account number(s) for which direct payment will be made, and any other information that the [taxing authority] may require.

C. Qualification Process and Requirements.

(1) Applicants for a direct payment permit shall demonstrate the applicant's ability to comply with the [taxing authority] sales and use tax laws and reporting and payment requirements. The applicant must provide a description of the accounting system(s) which will be used by the applicant and demonstrate that the accounting system(s) will reflect the proper amount of tax due.

(2) Applicants must establish a business purpose for seeking a direct payment permit and must demonstrate how direct payment will benefit tax compliance. For example, the utilization of direct payment authority should accomplish one or more of the following:

(a) Reduce the administrative work of determining taxability; collecting, verifying, calculating and/or remitting the tax;
(b) Provide for improved compliance with the tax laws of the [taxing jurisdiction];
(c) Provide for accurate compliance in circumstances where determination of taxability of the item is difficult or impractical at the time of purchase;
(d) Provide for more accurate calculation of the tax where new or electronic business processes such as electronic data interchange, evaluated receipts settlement, or procurement cards are utilized;
(e) Provide for more accurate determination and calculation of tax where significant automation and/or centralization of purchasing and/or accounting processes have occurred and applicant must

comply with the laws and regulations of multiple state and local jurisdictions.

(3) The [chief tax administrator] or his/her designee shall review all permit applications. The review of applications shall be conducted in a timely manner so that applicants receive notification of authorization or denial within [30-120] days of the date the [chief tax administrator] or designee receives the application; however if additional documentation or discussion is required, the [chief tax administrator] or designee shall schedule a conference with the applicant prior to the end of the [30-120]-day period.

D. Recordkeeping Requirements. A direct payment permit holder shall maintain all records that are necessary to a determination of the correct tax liability under [insert appropriate citations to state tax statutes]. All required records must be made available on request by the [taxing authority] or its authorized representatives as provided for in [insert appropriate citations to state tax statutes].

[Insert elements of state law which require certain records to be retained (e.g., books of account, invoices, sales receipts), or specific tax elements or transactions (e.g., credits) for which particular records may be required.]

E. Reporting of Tax. Each holder of a valid direct payment permit shall, on a form approved by the [taxing authority], accrue and pay directly to the [taxing authority] the taxes due under [statute] for all transactions subject to tax for which a direct payment permit applies. Taxes for which the direct payment permit is used shall be considered due and payable on the sales and use tax return next due following the date on which a determination of taxability is, or in the exercise of reasonable care should be, made for a given transaction, unless otherwise provided by written agreement between the taxpayer and the [taxing authority].

F. Certain Transactions Not Permitted. A holder of a direct pay permit shall not use such permit in connection with the following transactions:

(1) purchases of taxable meals or beverages;
(2) purchases of taxable lodging or services related thereto;
(3) purchases of admissions to places of amusement, entertainment or athletic events, or the privilege of use of amusement devices;
(4) purchases of motor vehicles, or other tangible personal property required to be licensed or titled with a taxing authority, taxed under [taxing authority] statutes [list applicable sections];
(5) purchases of any of the following enumerated services listed in [tax authority] statutes. [List applicable sections. May include services such as telecommunications and utilities.]; and
(6) Such other purchases as may be agreed to between the

holder of the direct payment permit and the [taxing authority].

G. Permit Holder's Duties. The holder of a direct payment permit shall furnish a copy of the direct payment permit or other acceptable evidence, if allowed by statute, that the holder has been granted a direct payment permit, including the number of the permit and the date issued, to each vendor from whom the holder purchases tangible personal property or services. Persons who hold a direct payment permit shall not be required to issue a separate exemption certificate and shall not be required to pay the tax as prescribed in [state taxing statutes related to billing of sales or use tax by vendor].

The holder of a direct payment permit shall have responsibility for accruing and paying tax directly to [taxing authority] on all taxable transactions not taxed at the time of sale. If [taxing authority] and permit holder agree, the holder may maintain accounting records in sufficient detail to show in summary, and in respect to each transaction, the amount of sales or use taxes paid to vendors in each reporting period.

H. Vendor's Responsibilities. Receipt of the direct payment permit or other acceptable evidence that the holder has been granted a direct payment permit, shall relieve the vendor of the responsibility of collecting the sales tax on sales made to a direct payment permit holder on qualifying transactions. Vendors and sellers who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of the purchaser may be ascertained. Receipts from such sales shall not be subject to the tax levied in [state taxing statutes related to billing of sales or use tax by vendor].

I. Local Taxes [if imposed]. A direct pay permit holder that makes taxable purchases of tangible personal property or services shall report and pay applicable local sales or use tax on those purchases. The local sales or use tax shall be calculated at the rate imposed by the jurisdiction in which the first taxable use occurs.

J. Revocation of Permit. A direct payment permit is not transferable, and the use of a direct pay permit may not be assigned to a third party. Direct payment permits may be revoked by the [chief tax administrator] at any time whenever the [chief tax administrator] determines that the person holding the permit has not complied with the provisions of this regulation or that the revocation would be in the best interests of the [taxing authority]. The notice of revocation must be in writing and effective as of the end of the direct payment permit holder's normal reporting period. In the case of a business restructuring, where the taxpayer's business remains the same and effective ownership is unchanged, the direct payment permit holder shall be allowed a period of [60-120 days] to apply for direct payment status for the new entity. During such period, the previous permit shall remain in effect.

Any person whose direct payment permit is either voluntarily forfeited or revoked by action of the [taxing authority] shall return the permit to the [taxing authority] and immediately notify all vendors from whom purchases of taxable items are made advising them that the direct payment certificate issued to them pursuant to the direct payment permit is no longer valid. Failure to give notification is a violation of [statute].

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EXHIBIT B

Explanation and Commentary

Appendix I: Explanation and Commentary

The following Explanation and Commentary has not been recommended for adoption by the Multistate Tax Commission as part of the Model Direct Payment Permit Regulation. It is provided for reference purposes only.

Model Direct Payment Permit Regulation
EXPLANATION AND COMMENTARY

Purpose. The purpose of this regulation is to define the requirements imposed on taxpayers seeking direct payment status. It is also the purpose of this regulation to focus on the business needs of the taxpayer in determining whether direct pay authority should be granted rather than relying on traditional qualification requirements currently in place in many states.

Section A defines "direct payment permit" for purposes of this regulation. The holder of a direct payment permit may make purchases of taxable items for use in its business and defer the taxes imposed until such time as taxability is determined. The permit holder is responsible for accruing and paying state and local taxes directly to the taxing authority based on the requirements of this regulation.

Section B. Application for Permit.
This section establishes the process the taxpayer must follow when applying for a direct payment permit and identifies the basic information that must be submitted to the taxing authority. It further provides the taxing authority discretion to require additional information that may be necessary to initiate the application process.

Section C. Qualification Process and Requirements.
This section defines the general requirements a taxpayer must meet to qualify for a direct payment permit.

Subsection C (1) requires that a taxpayer demonstrate its ability to comply with the applicable sales and use tax laws and generally be in good standing with the taxing authority. The taxpayer must provide an explanation of the accounting procedures that will be used to determine the taxability of purchases and to ensure that any tax due is correctly accrued and remitted. The taxpayer must maintain records that clearly distinguish between taxable and nontaxable purchases and must demonstrate that the internal controls used will ensure accurate and reliable processing and reporting of the tax liability.[1]

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[1] When entering into sales and use tax compliance agreements, taxpayers and taxing authorities would agree upon a single factor tax rate for the reporting of state and local taxes due for a specified period rather than making a determination of tax due on a per transaction basis.

Subsection C (2) focuses on the business needs of the taxpayer in determining whether direct pay authority should be granted. Advanced business processes, such as evaluated receipts settlement (ERS), have allowed businesses to streamline their purchasing and payment processes, but have increased the administrative work of complying with state and local tax laws. This section requires the taxpayer to demonstrate how direct payment authority will benefit tax compliance.

Subsection C (3) provides that the review of all applications for direct payment status be conducted in a timely manner, normally within 30-120 days of receipt of the application. It further states that the taxing authority notify the applicant during the review period if additional information is required to ensure final notification of authorization or denial is provided to the taxpayer on or before the end of the review period.

Section D. Recordkeeping Requirements.
This section outlines the recordkeeping requirements of the taxpayer and is consistent with the Model Recordkeeping and Retention Regulation developed by the Task Force.[2] The taxpayer has an obligation to retain all records necessary to the correct determination of the tax liability and to make such records available to the taxing authority upon request. Each taxing authority may list specific types of records or specific tax elements or transactions for which particular records may be required.

Section E. Reporting of Tax.
This section addresses the sales and use tax reporting and payment requirements placed on each holder of a direct payment permit and states that the permit holder is responsible for accruing and reporting tax on all taxable transactions for which a direct payment permit applies. It further states that a taxpayer must exercise reasonable care when determining the point at which tax is due for a given transaction. The term "reasonable" should be defined by each state implementing a direct payment program.

Section F. Certain Transactions Not Permitted.
This section identifies transactions for which the direct payment permit may not be issued and for which the permit holder must pay tax directly to the vendor at the time of purchase. Types of transactions not permitted typically include travel and entertainment, motor vehicles, and taxable services, but may include other categories of transactions as designated by the taxing authority. Nothing in this section should be interpreted to override existing tax law or statutes.

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[2] See Model Recordkeeping and Retention Regulation, A Report of the Steering Committee, Task Force on EDI Audit and Legal Issues for Tax Administration, published March 1996.

Section G. Permit Holder's Duties.
This section defines the duties of the taxpayer who has been granted direct payment status by the taxing authority. It states that the permit holder will not be required to pay tax to the vendor on qualifying transactions as long as evidence is provided to the vendor of the permit holder's direct payment status. This may be a copy of the direct payment certificate or other evidence as prescribed by the taxing authority.

This section further states that the permit holder has final responsibility for accruing and paying tax directly to the taxing authority on all taxable transactions not taxed at the time of sale. The permit holder is generally required to issue the direct payment permit to all vendors required to collect tax (except as noted in section F). In some instances, the taxing authority may agree to allow the permit holder to maintain sufficient documentation to show in summary and detail the amount of sales or use taxes paid to vendors in each reporting period.

Section H. Vendor's Responsibilities.
This section defines the responsibility of the vendor when making sales to a direct payment permit holder and states that the vendor is relieved of the responsibility of collecting tax on qualifying transactions as long as sufficient detail level information is maintained which supports the tax free sale.

Section I. Local Taxes [if imposed].
This section addresses the responsibility of the direct payment permit holder to accrue and pay applicable local sales or use taxes on purchases of tangible personal property made pursuant to this regulation. It further states that local tax is imposed by the jurisdiction in which the first taxable use occurs. While this is a recommended standard, it is not currently true in all taxing jurisdictions. For example, some taxing authorities may be required to calculate local sales tax at the rate imposed in the jurisdiction in which the sale occurred and calculate local use tax at the rate imposed by the jurisdiction in which the first taxable use occurs. These are examples only, and each taxing authority will address local tax implications related to tangible personal property and services.

Section J. Revocation of Permit.
This section provides that direct payment permits are not transferable or assignable, and identifies circumstances for which the taxing authority may revoke direct payment authority. It further defines the responsibility of the permit holder to its vendors upon cancellation or forfeiture of direct payment authority. In cases of business restructuring where ownership and business activities remain unchanged, a direct payment permit will remain in effect for a period of time as determined by the taxing authority to allow the new entity to apply for direct payment status.

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EXHIBIT C

Task Force Response to Hearing Officers

FEDERATION OF TAX ADMINISTRATORS
444 NORTH CAPITOL STREET, NW
WASHINGTON, DC 20001
(202) 624-5890

Task Force on EDI Audit and Legal Issues for Tax Administration

MEMORANDUM

To: Rene Blocker & Harley Duncan, Hearing Officers

From: Stephanie Rosenbusch, FTA

Re: Task Force Response to Hearing Officers regarding the Proposed Model Direct Payment Permit Regulation

Date: March 4, 2000

This memorandum is intended to respond to the January 5, 2000 Hearing Officer report regarding the Proposed Model Direct Payment Permit Regulation.

Background

The Task Force on EDI Audit and Legal Issues for Tax Administration (Task Force) was formed to coordinate efforts between the business community and tax administrators in analyzing and addressing issues that electronic data interchange and related new business practices pose for proper tax administration. Under the direction of the Task Force, the Electronic Business Processes Work Group has examined the tax management and compliance issues associated with direct payment authority and expanding its use to assist taxpayers with their sales and use tax compliance responsibility.

Despite the growing interest in direct pay, there has not been a systematic review of the standards and application of the concept in state tax administration. The lack of consistency in eligibility among tax jurisdictions may make it impossible for a taxpayer to obtain direct pay status for some locations in which it does business and cause it to maintain separate recordkeeping for its operations.

To address the concerns of the taxpayer community, the Task Force developed a Model Direct Payment Permit Regulation which provides simplified, consistent rules for tax authorities to follow when considering whether to grant direct pay authority. This regulation is intended as a *recommended guideline* only. The Task Force also completed an introductory report on direct pay authority and practices as well as an explanation/commentary intended to accompany the model regulation. The report, regulation and commentary when read as a whole provides a complete understanding of how direct pay authority may benefit the tax compliance process.

Task Force Response
On August 13, 1999, the Task Force submitted a revised Model Direct Pay Regulation and Explanation and Commentary to the Multistate Tax Commission. The revisions were made in response to the written comments offered by the Washington State Department of Revenue at the July 16, 1999 MTC Public Hearing on this issue. Subsequent to this revision, the Task Force was provided with additional comments from the states of Virginia and Washington. These comments and Task Force responses follow.

Virginia Department of Revenue Comment:
Under current Virginia tax policy, direct payment permit holders are not entitled to a dealer's discount on the state portion of use tax remitted under a direct payment permit return, Form ST-6. We believe this policy should be included in the regulation for clarification, as the department is currently in litigation with respect to this issue.

Task Force Response - No change:
The Task Force agrees that the regulation should remain silent on the issue of vendor discounts. Each taxing authority will need to address the various tax policy provisions which may affect direct pay authority.

Washington State Comment:
I. Local Taxes [if imposed]: Recommend the model regulation be amended to reflect the statutory requirements governing the application of local sales and use taxes in some states, including Washington. Suggested text follows.
A direct pay permit holder that makes taxable purchases of tangible personal property or services shall report and pay applicable local sales or use tax on those purchases. Taxing authorities shall determine the method of calculation of tax by one of two methods: either A) the local sales or use tax shall be calculated at the rate imposed by the jurisdiction in which the first taxable use occurs. Or B) the local sales tax shall be calculated at the rate imposed in the jurisdiction in which the sale occurred and the use tax shall be calculated at the rate imposed by the jurisdiction in which the first taxable use occurs.

Task Force Response - No change to Model Regulation; amend Explanation and Commentary:
The Model Regulation is a recommended standard only. Certain taxing authorities will be required to amend this section of the regulation to remain consistent with existing state law. The Explanation and Commentary suggests that each taxing jurisdiction will need to address local tax implications related to tangible personal property and services. However, the Task Force believes the Explanation and Commentary should provide additional guidance in this area. Section I of the Explanation and Commentary should read as follows (changes underlined).

Section I. Local Taxes [if imposed].

This section addresses the responsibility of the direct payment permit holder to accrue and pay applicable local sales or use taxes on purchases of tangible personal property made pursuant to this regulation. It further states that local tax is imposed by the jurisdiction in which the first taxable use occurs. While this is a recommended standard, it is not currently true in all taxing jurisdictions. For example, some taxing authorities may be required to calculate local sales tax at the rate imposed in the jurisdiction in which the sale occurred and calculate local use tax at the rate imposed by the jurisdiction in which the first taxable use occurs. These are examples only, and each taxing authority will address local tax implications related to tangible personal property and services.