
MODEL DIRECT PAYMENT PERMIT REGULATION

Adopted July 28, 2000

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 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].

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.ⁱ

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.ⁱⁱ 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

ⁱ 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.

ⁱⁱ 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.

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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.

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.