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Notice 05-22

Notice to All Direct Pay Permit Holders

Senate Bill 2706, as passed during the 2005 Regular Session of the Mississippi Legislature, amended Section 27-65-93, Mississippi Code of 1972, to provide that a direct pay permit shall be used to purchase utilities taxed under Section 27-65-19, Mississippi Code of 1972. This bill was effective July 1, 2005, but the Commission has allowed a delayed implementation until January 1, 2006 for those taxpayers needing additional time to work out the details. ***The only purpose for the amendment to Section 27-65-93 was to allow utility sales taxes to be paid by a direct pay permit. The amendment did not affect the types of businesses eligible for a reduced tax rate, nor did it change requirements for documentation needed to substantiate an exempt or reduced rate sale.***

There has been much discussion and confusion surrounding this law change. Previously, tax due from the sale of electricity, natural gas, water or any other utility taxed under Section 27-65-19 could not be paid under a direct pay permit. Manufacturers are allowed the reduced rate on all industrial usage, but must pay the regular retail rate of seven percent (7%) on all non-industrial usage, such as office space. Procedure has been to allow manufacturers to pay 1 ½% tax on all utility purchases to the vendor and remit any additional tax due on non-industrial usage directly to the Tax Commission on their use tax return. The additional tax due was the difference between the 7% rate and the 1 ½% rate.

This law change has in no way affected which taxpayers can qualify for the reduced rate on utilities. Tax is due at the rate of seven percent (7%) on commercial use of electricity and natural gas and at the rate of one and one-half percent (1 ½%) on electricity and natural gas used by a manufacturer, custom process or public service company for industrial purposes. The only change is to allow direct pay permit holders to pay the tax in total directly to the state, whether the tax due is at 1 ½% or at 7%. Effective with the law change, all direct pay permit holders must provide their permit number to all of its utility providers, with the exception of telecommunications providers, and begin self-assessing and paying the tax due on its use tax returns. However, the Tax Commission cannot police all usage of a direct pay permit, and any direct pay permit holder that qualifies for a reduced rate and who does not provide their permit number to the utility **will not** be subject to a higher rate of tax.

- Manufacturers who have their industrial space separately metered are allowed to pay the 1 ½% rate to their utility company without providing a direct pay permit or letter from the State Tax Commission
- Direct pay permit holders whose industrial and non-industrial areas are on the same meter should provide their direct pay permit to their utility company and remit the appropriate tax directly to the State Tax Commission. Failure to do so could result in the utility company or permit holder having a liability in the event of an audit if the incorrect tax is charged.
- Direct pay permit holders who have no industrial usage may continue to pay sales tax at the regular retail rate directly to their utility company.

The Tax Commission agreed to allow utility companies and direct pay permit holders an extension of time to implement the necessary changes and to allow permit holders time to provide their utility companies a copy of their permit. These changes should be completed by January 1, 2006. However, any permit holder desiring to begin paying on its utility purchases earlier than the January 1, 2006 date may do so at any time after providing the utility with a copy of its permit. The tax is to be reported at rate code 63 for purchases that are taxable at 1 1/2% and rate code 76 for purchases that are taxable at 7%. The tax due at these two rate codes is not subject to the 2% vendor's discount.

If you have any questions, please contact the Sales and Use Tax Bureau at 601-923-7015.

Sincerely,



Meg Bartlett, Director
Sales and Use Tax Bureau