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Notice 05-23

Notice to All Utility Companies

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%.

Previous correspondence sent to you from the Tax Commission indicated that all non-residential customers should be charged the 7% retail rate of tax unless they have provided you with a direct pay permit or a letter from the Tax Commission authorizing the reduced 1 ½% rate. Statute provides that a taxpayer must keep records as necessary to determine the amount of tax for which he is liable. The Tax Commission's requirement for a direct pay permit or letter is simply made as a means for each utility to adequately document its exempt or reduced rate sales. 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. Additionally, any person qualifying for the reduced 1 ½% rate who does not hold a direct pay permit, such as a dry cleaners, **will not** be subject to a higher rate of tax if they do not provide you with a letter from the Tax Commission. To assist you with collecting and remitting the correct rate of tax, and documenting such, please refer to the following guidelines:

- 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.
- Persons operating businesses subject to a reduced rate as provided for by statute should provide their utility companies with a letter from the Tax Commission in order to document their status.
- Exempt organizations, such as the Federal government, may obtain a letter from the State Tax Commission authorizing their vendors not to charge tax.

You may obtain these letters from your customers now, or you may choose to wait and obtain if needed during an audit. The Tax Commission will not assess you tax on any exempt or reduced rate sales just because you don't have a letter on file before an audit. Every effort will be made to determine if the sales tax is computed correctly according to statutory provisions before any adjustment will be made in the course of an audit. All direct pay permits can be verified on our website at www.mstc.state.ms.us. This feature will allow you to check any permits you are given to make sure they are valid. If you choose to obtain letters from your other industrial rate customers, I would suggest you ask for an updated letter every 3 -5 years.

The Tax Commission has agreed to allow utility companies, direct pay permit holders and other industrial rate customers an extension of time to implement the necessary changes. These changes should be completed by January 1, 2006. However, any direct pay 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.

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