

Issue

Businesses provide portable toilets to contractors, other businesses and events that need additional restroom facilities. The toilets may be provided on a long-term or short-term basis. The necessary servicing of the toilet is generally provided as a part of the contract and this typically consists of regular and routine removal and disposal of the waste and the replacement of chemicals and toilet paper. Additional charges may be made for items such as delivery and transportation back to the owner's location.

Are businesses providing portable toilets engaged in the rental of tangible personal property or are they providing the service of waste removal?

Analysis and Determination

Miss. Code Ann. Section 27-65-23 levies a tax on the gross income received from the rental or leasing of tangible personal property. Miss. Code Ann. Section 27-65-3 (i) defines gross income to include "the total charges for service or the total receipts (actual or accrual) derived from trades, business or commerce by reason of the investment of capital in the business engaged in, including the sale or rental of tangible personal property, compensation for labor and services performed, and including the receipts from the sales of property retained as toll, without any deduction for rebates, cost of property sold, cost of materials used, labor costs, interest paid, losses or any expense whatever."

Title 35, Part IV, Subpart 05, Chapter 03, Mississippi Administrative Code defines rental or leasing to mean any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. The rule further provides that a rental or lease does not include tangible personal property provided with an operator, however, an operator or crew must do more than maintain, inspect or set-up the property.

The providing of portable toilets is considered the lease or rental of tangible personal property since the property provided is a required and necessary element of the contract or agreement between the business and its customer. Additionally, the possession or control of the portable toilet is transferred to the customer.

The business cannot provide any waste removal services without the actual portable toilet units first being provided to the customer. The fact that the businesses' employees must clean and maintain the portable toilets and remove waste from the portable toilets does not constitute providing an operator for the property nor does it constitute a non-taxable service.

Additional charges for servicing the toilets, whether such services are optional or mandatory, are made in conjunction with, or as a part of the rental of the portable toilets and are included in the

taxable gross income of the business as defined above. These taxable charges, include, but are not limited to:

1. The lease or rental charge for the portable toilet
2. Charges for the periodic cleaning and sanitation of the toilet
3. Charges for waste removal
4. Charges for hauling, setting up, and removing the portable toilet

Any business regularly engaged in the rental or lease of portable toilets to third parties may purchase the portable toilets exempt from sales tax. The business may also purchase toilet paper, hand soap or sanitizer, or paper towels exempt from tax as these items are provided with the portable toilet, regardless of whether or not these items are included in the rental charge or billed separately. However, the purchases of cleaning supplies, cleaning solutions, or chemicals used to clean or deodorize the toilets or for use in removing waste are considered supply items to the business and may not be purchased exempt. The business must pay tax on the purchase of these items.

Statutes and Rules: Miss. Code Ann. Sections 27-65-3 and 27-65-23
Title 35, Part IV, Subpart 05, Chapter 03, Mississippi Administrative Code

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