

STATE OF MICHIGAN



JOHN ENGLER, Governor

**DEPARTMENT OF TREASURY**

TREASURY BUILDING, LANSING, MICHIGAN 48922

MARK A. MURRAY, State Treasurer

**REVENUE ADMINISTRATIVE BULLETIN 2000 - 3**

**Approved:** June 12, 2000

**SALES AND USE TAX DIRECT PAYMENT REQUIREMENTS**

**RAB 2000 - 3.** This bulletin describes use tax direct payment authorization, MCL 205.98; MSA 7.555(8), and the corresponding sales tax provision provided for in MCL 205.54a(1)(o); MSA 7.525.

**ISSUES**

- I. What is direct payment authorization?
- II. What conditions must a taxpayer meet before the Commissioner of Revenue may in his or her discretion authorize the taxpayer to self-accrue and directly remit use tax due on taxable purchases or leases of tangible personal property or services?
- III. How does a taxpayer request direct payment authorization?
- IV. If direct payment is authorized, how will the Department implement the program?
- V. What are the requirements concerning assignment, cancellation or revocation of direct payment authorization?

**CONCLUSIONS**

- I. Direct payment is the Department's authorization permitting taxpayers to self-accrue and directly remit to the Department use tax due on purchases or leases of tangible personal property or services as provided for in MCL 205.98; MSA 7.555(8).
- II. The Department may authorize a direct payment only if all of the following conditions are met:
  1. The authorization is used for the purchase or lease of tangible personal property or services.
  2. The authorization is necessary for either of the following reasons:
    - a) It is impractical at the time of acquisition to determine the manner in which the property or services will be used.
    - b) Direct payment will facilitate improved compliance with the sales and use tax laws of this state.
  3. The person requesting authorization maintains in a form acceptable to the Department accurate and complete records of all purchases or leases and uses of property or services purchased pursuant to the direct payment authorization. The Department requires that records are kept which support the taxable and exempt use of the purchases, leases, or services that are purchased pursuant to the direct payment authorization.

- III. A request for direct payment authorization must be in writing and submitted to the Administrator of the Sales, Use and Withholding Taxes Division at the following address:

Michigan Department of Treasury  
Sale, Use and Withholding Taxes Division  
Treasury Building  
430 W. Allegan Street  
Lansing, Michigan 48922

In addition to the applicant's name, address and account number, the request **must contain** a statement of how the applicant meets each of the three conditions described in MCL 205.98(1)(a) to (c) (see Conclusion II above). The request must be signed by the business owner, a responsible corporate officer, or, for other kinds of business organizations, a person with similar authority. A request signed by a person who lacks proper authority will be rejected.

- IV. If an applicant's request is granted, direct payment authorization will be provided to the applicant in the form of a letter signed by the Administrator of the Sales, Use and Withholding Taxes Division. In the authorization letter, the Department will assign an identification number to each authorization. The letter will also state that direct payment authorization is granted to the taxpayer named in the letter and will list items, if any, that are excluded from the direct payment authorization. It will also describe how a claim under direct pay is to be made to a person who sells or leases tangible personal property or services at the time of purchase or lease, including the requirement that a copy of the authorization letter must be provided to the person. Once a copy of an authorization letter is provided to a seller or lessor of property or services, additional copies are not required to accompany subsequent direct pay claims concerning that seller or lessor. A sample authorization letter is attached to this bulletin.

- V. The requirements concerning assignment, cancellation or revocation of direct payment authorization include the following:

1. Direct payment authorization may be cancelled without cause by the holder of an authorization letter or the department upon 30 days advance written notice. However, if the holder of an authorization letter fails to comply with the provisions or conditions set forth in MCL 205.98, this bulletin, or in the authorization letter, direct payment authorization will be automatically cancelled without prior written notice by the Department.
2. Direct payment authorization may not be transferred or assigned to a third party or to a new business entity created in a corporate restructuring.
3. If the holder of an authorization letter transfers any portion of his or her business activity to a new business entity, the new business entity must have its own direct payment authorization and its own authorization number in effect within 60 days of the date of transfer. During the 60-day period, the new business entity may use the holder's authorization letter.
4. If a person's direct payment authorization letter is cancelled or revoked, the person shall immediately provide written notice of the cancellation or revocation to each vendor from whom the person has made a purchase or leased property or services using the authorization letter.

## LAW & ANALYSIS

The Department has discretion under the Use Tax Act to determine necessary record-keeping procedures MCL 205.104; MSA 7.555 (14). 1999 PA 117 amended the Use Tax Act by adding a new section 8 (MCL 205.98) which allows the Commissioner of Revenue to authorize taxpayers to self-accrue and directly remit use tax due on taxable purchases or leases of tangible personal property or services. The direct payment method is utilized to ease both the Department's administrative burden of enforcement and taxpayers' compliance burdens. The Department will utilize its discretion when it determines that this method of self-accruing and remitting use tax is necessary to accurately and efficiently report the tax due.

The direct payment authorization provided for in section 8 is a record keeping and remittance procedure. It is not an exemption and does not reduce a taxpayer's liability.

The new legislation incorporates into statute the Department's longstanding policy allowing a taxpayer to self-accrue and directly remit use tax due on certain transactions. Section 8 authorizes the Commissioner to do so only if the taxpayer complies with all of the conditions set forth in section MCL 205.98(1)(a) to (c). In addition, direct payment authorization is granted and accepted under the following conditions:

1. Any purchase or lease of tangible personal property or services not specifically excluded in the authorization letter is covered by the letter. A taxpayer agrees not to contest liability for use tax on taxable purchases that are not specifically excluded in the authorization letter by asserting that liability for tax rests with the seller.
2. The Department will hold a seller responsible for sales or use tax on a purchase or lease that is specifically listed in the authorization letter as being ineligible for direct payment authorization.
3. Tax on a purchase or lease of tangible personal property or services to which direct payment authorization applies is considered due and payable on the next sales and use tax return due following the earliest of:
  - a) The date the property or service was first used by the taxpayer.
  - b) The date the taxpayer made a determination of taxability for a particular purchase or lease.
  - c) The date the taxpayer should reasonably have made a determination of taxability for a particular purchase or lease.

PA 117 also authorizes the Department to identify items that are not eligible for direct payment authorization. Companion legislation, enacted as 1999 PA 116, amended the General Sales Tax Act by adding the corresponding sales tax provision (see MCL 205.54a(1)(o)).