



Department of  
Taxation

## **ST 2003-01 - Direct Payment Authority Program - March, 2016**

*This Information Release supersedes Information Release ST 2003-01 – December, 2004.*

Ohio Revised Code (R.C.) 5739.031 allows the Tax Commissioner to issue a direct payment permit that authorizes the permit holder to pay sales and use taxes directly to the state and waives the collection of such tax by the vendor or seller. "Direct payment authority" is a privilege, which can be granted to a business to promote the efficient administration of Ohio's sales and use tax laws.

Effective May 2015, the Department of Taxation ("Department") implemented an improved "direct payment authority" sales and use tax program. This program has several key features:

- Each direct payment permit holder will enter into an agreement that sets forth compliance and record keeping requirements, revocation procedures and an expectation that the permit holder will make every reasonable effort to determine the taxability of purchases accurately to avoid underpayment or overpayment of tax.
- Periodically (typically every four (4) years), the Department will review and validate the business' continuing need for the direct payment permit and their compliance with the procedures as outlined within the direct payment agreement.
- A complete listing of all direct payment permit holders is included within the ["Active Vendor Licenses"](#) file on the Department's website and is updated weekly.
- Direct payment authority will be granted to each taxpayer that has entered into an agreement with the tax credit authority under R.C. 122.175, pertaining to an eligible computer data center.

The following question and answer format provides general information, describes the application process, sets forth compliance requirements, and explains how direct payment authority can be relinquished or revoked.

### **General Information**

Q1. What is direct payment authority?

- R.C. 5739.031 authorizes the Tax Commissioner to allow direct payment permit holders to forego paying state and local sales and use tax at the time they make certain purchases. These direct payment permit holders must accrue and pay the state and local sales and use tax directly to the Department.

Q2. Who is a “direct payment permit holder”?

- A direct payment permit holder is a taxpayer whom the Tax Commissioner has authorized to make direct payment of state and local sales and use tax to the Department on certain taxable purchases rather than paying the tax to the seller.

Q3. What is Ohio “use tax”?

- Chapter 5741 imposes on all Ohio businesses the requirement to pay Ohio “use tax” when the business purchases taxable goods and/or services from a seller/service provider that does not collect the Ohio and local sales tax. Use tax is also due when the proper amount of sales tax has not been paid to an in-state vendor, seller or service provider. The use tax applies to purchases of the same goods and services that are subject to the sales tax.

Q4. Who is eligible for direct payment authority?

- A manufacturer, contractor or other consumer that purchases goods or services under circumstances normally making it impossible at the time of the purchase to determine if the goods or services are exempt from taxation,  
**Or**
- A consumer (i) whose number of purchase transactions of goods and services exceed five thousand annually or (ii) whose Ohio state sales and use tax paid on these purchases exceeds \$250,000 annually.

Q5. Why does the Department list all direct payment permit holders on its website?

- The Department frequently receives requests from vendors to confirm that a taxpayer has direct payment authority. Placing the list on the website allows vendors to self-serve and obtain this information more quickly.
- R.C. 5703.21 permits the Department to disclose the following information:
  - The name and address of the business,
  - The business’s direct payment permit number, and
  - The effective date of the direct payment authority.

## **Application Process**

Q1. How does a business apply for direct payment authority?

- A business desiring direct payment authority must complete an application form [http://www.tax.ohio.gov/portals/0/forms/sales and use/Generic/ST ST900 FI.pdf](http://www.tax.ohio.gov/portals/0/forms/sales_and_use/Generic/ST_ST900_FI.pdf).

Q2. What information must be provided for the direct payment authority to be granted and is a written direct payment agreement required?

- The business must execute a written direct payment agreement with the Department, in which the business must state it understands and agrees to fulfill the duties and responsibilities commensurate with direct payment authority.
- The business must also provide a written description of the business’s accounting system and demonstrate how the accounting system will record and reflect the proper amount of sales and use tax due.

- A detailed diagram/schematic of the operations must be provided.
- Information necessary to complete the Taxpayer Information Report and Responsible Party Questionnaire, in particular the names and home addresses of the corporate officers/responsible parties must be provided. If an audit results in an assessment, this information may be used to generate a responsible party assessment against the responsible party or parties.

Q3. What review procedure does the Department follow after the business submits the application form?

- This Department's Audit Division will review all applications and will assist qualified applicants in completing a direct payment agreement. Within 120 days of receiving the application, the Department will notify the applicant of the approval or the denial of direct payment authority, or may schedule a conference with the applicant to obtain more information. If a conference is necessary, then the Department will notify the applicant of approval or denial within sixty days after the conference.

Q4. How will I know if the Department has granted/denied direct payment authority to me?

- You will be notified by the Department in writing.

Q5. If the Tax Commissioner decides not to grant my business direct payment authority, can I appeal?

- No. The Ohio Revised Code does not provide for any appeal.

## **Compliance Requirements**

Q1. What are a direct payment permit holder's responsibilities and duties?

- A direct payment permit holder must furnish either (i) a copy of the direct payment authorization or (ii) the name and address of the direct payment permit holder, the direct payment permit number (8 digit number beginning with 98), and the date the Tax Commissioner issued the direct payment authority, to each supplier or seller from whom the direct payment permit holder purchases tangible personal property or services, subject to exclusions within the direct payment agreement.
- A direct payment permit holder does not have to provide any exemption certificates to its suppliers and does not have to pay any Ohio sales and use tax to its suppliers who receive either (i) a copy of the direct payment authority or (ii) the name and address of the direct payment permit holder, the direct payment permit number, and the date the Tax Commissioner issued the direct payment authority.
- R.C. 5739.01(B)(5) explains that the Ohio sales and use tax does not apply to construction contracts. The law states that a construction contract is the transfer of property for the repair, modernization, or new construction of real property under a construction contract. Because such contracts are not subject to Ohio sales and use tax, a direct payment permit holder must not claim, nor should a construction contractor accept, direct payment authority for any construction contract work performed in connection with real property,

unless certified by the contractee that the property will retain its tangible status as a business fixture after installation.

- If a direct payment permit holder has a contract with a construction contractor and certifies that a portion of a construction contract relates to personal property which remains as personal property after installation, then R.C. 5739.03(C) allows the direct payment permit holder to claim, and the construction contractor to accept, the direct payment authority with respect to the certified tangible personal property portion of the contract.

Q2. What are a supplier's/seller's responsibilities when a business informs the supplier/seller that the business has direct payment authority?

- If the direct payment permit holder provides to the supplier/seller either (i) a copy of the direct payment authority or (ii) the name and address of the direct payment permit holder, the direct payment permit number, and the date the Tax Commissioner issued the direct payment authority, then the supplier/seller should not collect any Ohio or local sales and use tax from the customer. However, the supplier/seller must maintain adequate records which detail the amount involved and the identity of the holder of the direct payment authority (see (i) and (ii) above). The supplier/seller is not required to confirm with the Department that the customer possesses direct payment authority.

Q3. What are the record keeping requirements for a direct payment permit holder?

- A direct payment permit holder must maintain all records that are necessary for a determination of the correct tax liability. The direct payment permit holder must make the required records available to the Department upon request as required under R.C. 5739.031(D).
- Required records include, but are not limited to, purchase invoices, bills of lading, asset ledgers, project folders and authorizations, depreciation schedules, transfer journals, accounts payable ledgers, and any other such primary and secondary records and documents created in the course of business. The permit holder must maintain records in an electronic format and, when under audit, provide the electronic records to the Department. Additionally, the permit holder agrees to complete the audit using statistical sampling for expenses.
- A taxpayer granted a direct payment authority must maintain a record keeping system in a manner that allows the Department to efficiently and effectively identify the values upon which tax is reported and the amount of tax reported thereon. In addition, whenever a taxpayer has a direct payment authority covering more than one facility, the taxpayer must keep its records in a manner that allows the Department to identify the purchases and tax reported for each facility.

Q4. How and when does a taxpayer file a direct payment use tax return?

- Depending upon the extent of the direct payment permit holder's purchases, some direct payment permit holders file monthly returns while others file quarterly returns. When a business receives its direct payment authority, the Department will inform the business if it is a monthly or quarterly filer.

- All returns are to be received by the twenty-third of the month following the close of the filing period (either monthly or quarterly).
- A direct payment permit holder remits the tax due with the return. Some direct payment permit holders are required to make payment by electronic funds transfer (see R.C. 5739.032). The Department will notify those direct payment permit holders who must pay by electronic funds transfer.

Q5. How do I pay local sales and use taxes?

- Whenever the direct payment permit holder files its return, the direct payment permit holder must calculate and remit the local sales and use tax based upon the rate imposed by the local tax jurisdiction where the direct payment permit holder receives the tangible personal property or service. If the direct payment permit holder subsequently moves tangible personal property to another part of the state having a higher combined state and local sales and use tax rate, then the direct payment permit holder must pay the additional local sales and use tax.

Q6. Are some transactions excluded from being reported under a direct payment authority return?

- A direct payment permit holder may elect not to claim its direct payment authority status in connection with the purchase of certain types of transactions. Examples of such transactions include purchases of taxable lodging, meals, and beverages, the washing and waxing of motor vehicles, purchases of telecommunications services, and purchases made with a purchasing card. The transactions for which the permit holder elects not to use the direct payment authority must be indicated in the direct payment agreement.

Q7. What is the direct payment permit holder required to do if the name, structure or operations of the business changes?

- If only the business name changes, the direct payment permit holder must notify the Department's Audit Division (by certified mail) of the name change within thirty days after the effective date of the change.
- If there is a change in the legal entity (e.g., a business converts from a partnership to a corporation) but the taxpayer's business and operations remain the same, the new entity must submit a written request to the Department's Audit Division for a continuation of direct payment authority status. This request must be sent to the Department (by certified mail) thirty days in advance of the status change and must set forth the name of the old entity and the name of the new entity, the effective date of the change and the permit number issued to the non-surviving entity. Generally, the Department will issue new direct payment authority and a new permit number to the surviving entity. The new entity will also need to sign a new agreement.
- If the new entity receives new direct payment authority with a new permit number, the new entity must provide its supplier/sellers with notification of the new permit number. Of course, the new entity must report its taxable purchases under its new direct payment permit number.
- If the operations change (including, but not limited to, new line of operations, change in accounting systems, change in responsible party, or any other change causing the method

of reporting to change), the permit holder is responsible for updating the direct payment agreement to reflect the new information and forwarding it to the Department thirty (30) days in advance of said change.

Q8. What happens if you audit my business and you determine I did not pay the correct amount of tax?

- If too much tax was paid through the direct payment account, the Department shall refund the overpayment plus any applicable interest.
- If too little tax was paid, the balance of any tax due plus applicable penalty and interest must be paid in full.
- If tax was paid erroneously to the vendor/seller, a comprehensive refund claim must be filed with the Department within the statute of limitations. The refund claim is subject to review and verification by the Department. Applicable interest will be included with a final approved claim.

Q9. What are additional requirements under R.C. 122.175?

- During the term of an agreement under R.C. 122.175, each taxpayer subject to the agreement shall submit to the Tax Commissioner a return that shows the amount of computer data center equipment purchased for use at the eligible computer data center, the amount of tangible personal property and taxable services other than computer data center equipment purchased for use at the eligible computer data center, the amount of tax under R.C. 5739 or 5741 that would be due in the absence of the agreement under this under R.C. 122.175, the exemption percentage for computer data center equipment specified in the agreement, and the amount of tax due under R.C. 5739 or 5741 as a result of the agreement under R.C. 122.175. Each such taxpayer shall pay the tax shown on the return to be due in the manner and at the times as may be further prescribed by the Tax Commissioner. Each such taxpayer shall include a copy of the director of development services' certificate of verification issued under division (E)(6) of R.C. 122.175. Failure to submit a copy of the certificate with the return will not invalidate the claim for exemption if the taxpayer submits a copy of the certificate to the Tax Commissioner within sixty days after the Tax Commissioner requests it.

### **Relinquishing or Revoking Direct Payment Permit Authority**

Q1. What is the difference between “relinquishing” and “revoking” a direct payment permit?

- A direct payment permit holder can relinquish (give back) a direct payment permit by informing the Department’s Audit Division (by certified mail) of the effective date of cancellation. Any cancellation shall be effective as of the last day of the reporting period in which the cancellation is requested.
- The Tax Commissioner may revoke (cancel) the direct payment permit if, upon audit, it is determined that, for the audit period, less than ninety (90%) percent of the tax owed was paid unless the Tax Commissioner determines there is a legitimate legal dispute over the imposition of the tax. The Tax Commissioner may also revoke direct payment authority for

other reasons including, but not limited to: not providing electronic records, not providing responsible party information, not filing returns accurately and on a timely basis, not remitting the tax due, not updating the procedures as required, and not completing audits using statistical sampling for expenses when determined reasonable. Generally, the business will then have to wait at least three (3) years before applying for another direct payment permit.

Q2. What must I do if my Direct Payment Authority is relinquished?

- Send a notification by certified mail to the Ohio Department of Taxation, Audit Division, P.O. Box 183014, Columbus, Ohio, 43218-3014. Cancellation is effective as of the last day of the reporting period in which the written notice is given.
- Written notification shall be sent by the business to all vendors and sellers from whom purchases of tangible personal property or services are made, prior to or at the time of the first purchase after such cancellation. Such notice must be sent by first class mail and the permit holder must maintain evidence of such notification for subsequent examination by the Tax Commissioner. Failure to notify vendors or sellers from whom purchases of tangible personal property or services shall be considered as a refusal to pay the tax by the person required to issue such notice.

Q3. What must I do if my Direct Payment Authority is revoked?

- In the event the direct payment authority is revoked and the permit holder continues to do business, provisions of R.C. 5739.03, 5741.04, and 5741.12 shall immediately apply to all purchases made subsequent to such revocation.
- Written notification shall be sent by the business to all vendors and sellers from whom purchases of tangible personal property or services are made prior to or at the time of the first purchase after such cancellation. Such notice must be sent by first class mail and the permit holder must maintain evidence of such notification for subsequent examination by the Tax Commissioner. Failure to notify vendors or sellers from whom purchases of tangible personal property or services shall be considered as a refusal to pay the tax by the person required to issue such notice.

If you have additional questions, contact the Audit Division at 1-614-466-8099.

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