

APA-6
10/96

**ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))**

Control No. 810 Department or Agency REVENUE

Rule No: 810-6-5-.09

Rule Title: Leasing and Rental of Tangible Personal Property

 New X Amend Repeal Adopt by Reference

- NO
 YES

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. **NEED/EXPECTED BENEFIT OF RULE:**
Brick and Mortar video rental stores are closing all over the state and opting for streaming video services. Streaming videos, music, and similar programs are taking the place of traditional rentals, eroding the tax base for these items. Streaming services fall within the definition of tangible personal property and our rule needs to clarify that these items are taxable in the same way that hard copies are taxable.
2. **COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:**
This amendment and clarification will state clearly that tangible personal property leased or rented is taxable regardless of the mode of transmission.
3. **EFFECT OF THIS RULE ON COMPETITION:**
4. **EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:**
5. **EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:**
6. **SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:**

7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:
Increase in rental tax revenue allocated to the General Fund
8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:
11. OTHER COMMENTS:

**ALABAMA DEPARTMENT OF REVENUE
Sales and Use Tax Division**

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-6-5-.09 Leasing and Rental of Tangible Personal Property

INTENDED ACTION: Amend rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule to clarify that streaming services and other digital transmissions are subject to rental tax and to include multifunctioning cable television boxes.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at **1:30 p.m. on Tuesday, April 11, 2017, Room 1203, First Floor**, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at <http://www.revenue.alabama.gov/analysis/rules.cfm>.

All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time following publication of the notice up until the conclusion of the hearing. Interested parties may also appear at the hearing to present their views.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Tuesday, April 11, 2017

CONTACT PERSON AT AGENCY:

Timothy Sanders
Alabama Department of Revenue
4131 Gordon Persons Building
Montgomery, Alabama 36132
(334) 242-1380



Michael D. Gamble, Secretary
Alabama Department of Revenue\

810-6-5-.09 Leasing and Rental of Tangible Personal Property.

(1) The term "rental tax" as used in this rule shall mean the privilege or license tax levied in Section 40-12-222, Code of Alabama 1975.

(2) Unless otherwise defined in this rule, the definitions of terms contained in Section 40-12-220, Code of Alabama 1975, are incorporated by reference herein.

(3) Rental tax is levied on each person, firm, or corporation engaged in the business of leasing or renting tangible personal property in an amount equal to 4 percent of the gross proceeds of the business except the rate of 2 percent shall apply to the gross proceeds from the leasing or rental of linens and garments, and the rate of 1 ½ percent shall apply to the gross proceeds from the leasing or rental of automotive vehicles, truck trailers, semitrailers, and house trailers. (Section 40-12-222, Code of Alabama 1975)

(4) In accordance with Section 40-12-220(8), Code of Alabama 1975, tangible personal property includes "Personal property which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses."

(a) Digital transmissions, such as "on demand" movies, television programs, streaming video, streaming audio, and other similar programs that are made available to customers, regardless of the method of transmission, whether rented by subscription for a definite or indefinite period, or on an on-demand basis for a definite or indefinite period, are considered tangible personal property as described in (4) above and subject to the rental tax.

(b) Cable or satellite television providers, on-line movie and digital music providers, app stores and other similar providers of digital transmissions as described in (4) (a) above are engaged in the business of leasing tangible personal property and shall be subject to the rental tax.

(c) The rental tax shall be based on the gross receipts derived from charges for digital transmissions which are used in Alabama. For this purpose, a digital transmission is considered used in Alabama if the customer's service address is within Alabama.

(d) Monthly video programming subscriptions, regardless of manner delivered, whereby the customer must view pre-set linear programming, on the providers pre-set schedule, shall not be subject to the rental tax regardless of the number of programming channels available, provided such charges are separately stated on the invoice, and the nonlinear programming associated with the subscription is of nominal value.

(e) Cable television boxes that are used solely to access basic cable services are not subject to the rental tax. Multi-purpose cable boxes that function

as digital video recorders (DVR) and/or perform other functions in addition to accessing basic cable are subject to the rental tax. Other accessories to include, but not limited to, remote controls, modems, internet routers, etc. not related solely to delivery of basic cable service are subject to the rental tax.

(4)(5) Persons leasing or renting tangible personal property in Alabama shall apply for and obtain a rental tax license from the department on forms furnished by the department. (Section 40-12-221, **Code of Alabama 1975**)

(5)(6) Unless the taxpayer qualifies to file and pay rental tax on a calendar quarter or calendar year basis, rental tax is due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax accrues. See Rule 810-6-5-.30.01 Filing and Paying State Rental Tax and State-Administered County and Municipal Rental Taxes on a Quarterly or Annual Basis. Every lessor on whom the tax is levied shall prepare and forward to the department within the time prescribed by law, on forms prepared and furnished by the department, a rental tax return for each calendar tax reporting period and shall compute the tax due and shall pay to the department the amount of tax shown to be due. Rental tax returns shall require the following information:

- (a) Taxpayer's tax account number, legal name, and complete address,
- (b) Period covered by the return and due date of the return,
- (c) A breakdown, by applicable tax rate, of the gross proceeds from the rental or leasing of automotive vehicles, truck trailers, semi-trailers, and house trailers; the gross proceeds from the rental or leasing of linens and garments; and the gross proceeds from the rental or leasing of all other tangible personal property,
- (d) A breakdown, by otherwise applicable tax rates, of total deductions claimed,
- (e) Measure of tax by applicable tax rate,
- (f) Gross tax due by applicable tax rate,
- (g) Total gross amount of tax due,
- (h) Penalties and interest due, if applicable,
- (i) Credits claimed, if any,
- (j) Total amount due,
- (k) Total amount remitted

(l) An indication if payment of tax is made through electronic funds transfer (EFT), and

(m) Taxpayer's signature, title, and date signed.

~~(6)~~(7) The gross proceeds from the following transactions are exempted or excluded from the computation of rental tax:

(a) The transactions enumerated in Section 40-12-223, Code of Alabama 1975.

(b) The detention by the user of freight cars, oxygen and acetylene tanks, and similar property for which detention a demurrage or per diem charge is made against the user of the property. (Section 40-12-220(5), Code of Alabama 1975)

(c) The leasing or rental of oxygen or durable medical equipment by a participating provider to a recipient of benefits under the Medicare or Medicaid program under orders from a duly licensed physician. The term "durable medical equipment" means equipment which can stand repeated use, is used to serve a purpose for medical reasons, and is appropriate and suitable for use in the home. (Section 40-9-30, Code of Alabama 1975)

(d) Effective August 1, 2014, in addition to any other exemptions provided herein, any item used for the treatment of illness or injury or to replace all or part of a limb or internal body part rented or leased by or on behalf of an individual pursuant to a valid prescription and covered by and billed to Medicare, Medicaid, or a health benefit plan shall be exempt from state, county, and municipal rental and leasing taxes. This exemption includes, but is not limited to, any of the following:

1. Durable medical equipment, including repair parts and the disposable or single patient use supplies required for the use of the equipment,

2. Prosthetic and orthotic devices, and

3. Medical supplies as defined and covered under the Medicare program, including, but not limited to, items such as catheters, catheter supplies, ostomy bags and supplies related to ostomy care, specialized wound care products, and similar items that are covered by and billed to Medicare, Medicaid, or a health benefit plan. (Section 40-9-30, Code of Alabama 1975)

~~(7)~~ (8) When a lessor in Alabama (i) leases tangible personal property to a lessee in another state, (ii) the property is to be used in the other state, and (iii) the lessor's records in this state show that the property is leased in the other state; the gross proceeds derived from the property leased in the other state are not taxable in this state.

~~(8)~~ **(9)** When a lessor (i) is located outside Alabama, (ii) leases tangible personal property to a lessee within Alabama and (iii) the leased property is used in Alabama; the total gross proceeds from the lease of tangible personal property in this state are subject to rental tax.

~~(9)~~ **(10)** Any person in this state leasing or renting any automotive vehicle, truck trailer, semitrailer, or house trailer is liable for rental tax on the gross proceeds derived from the leases or rentals, although the automotive vehicle, truck trailer, semitrailer, or house trailer may be turned into the lessor in another state. Where any automotive vehicle, truck trailer, semitrailer, or house trailer is leased in another state and turned in to the lessor in this state, the rental receipts therefrom would not be subject to the tax.

~~(10)~~ **(11)** Where a lessor leases or rents a truck, truck trailer, or semitrailer to a motor carrier in this state, the total gross receipts from the rental of the truck, truck trailer, or semitrailer would be subject to the tax, although the truck, truck trailer, or semitrailer may occasionally travel in interstate commerce in other states. Where the lessor leases a truck, truck trailer, or semitrailer to a motor carrier outside this state, the receipts therefrom would not be subject to the tax although the truck, truck trailer, or semitrailer may occasionally travel in this state in interstate commerce.

~~(11)~~ **(12)** The gross receipts derived from leases or rentals of tangible personal property are not subject to rental tax when the 4 percent amusement tax levied in Section 40-23-2(2), Code of Alabama 1975, applies to the same gross receipts. Items, the gross receipts from which are taxable under the amusement tax levy, include, but are not limited to, the rental of skates or shoes at skating rinks and bowling alleys, the rental of golf carts and clubs rented by places open to the public, coin-operated music machines located in public places, and coin-operated rides in shopping centers.

~~(12)~~ **(13)** The sale of tangible personal property to any person engaged in the business of leasing or renting the same tangible personal property to others in transactions subject to the rental tax is a wholesale sale and not subject to sales or use tax. This exclusion from sales and use tax also applies to replacement and repair parts purchased by the lessor for use in repairing tangible personal property leased or rented by the lessor. Where the lessor sells tangible personal property previously purchased at wholesale for the purpose of renting or leasing the property, regardless of whether the sale is to the person to whom the property had been leased or rented or to some other person, sales tax is due on the gross receipts derived from the sale.

~~(13)~~ **(14)** Where the lessor purchases tangible personal property for leasing or rental to others, at wholesale, tax exempt, and thereafter diverts the property to his or her own use, sales tax is due on the fair and reasonable market value of the property at the time of withdrawal.

~~(14)~~ **(15)** Any person, who claims the rental tax exemption in Section 40-12-223(4), Code of Alabama 1975, and thereafter diverts the property to his or her

own use, is liable for rental tax on the amount of rental payments he or she pays to the lessor for the period during which the property is diverted and used.

~~(15)~~ **(16)** The Rental Tax Law permits lessors of tangible personal property to pass on to lessees such licenses or privilege taxes by adding such taxes to the leasing price or other enumerated charges with all such amounts constituting the gross proceeds subject to the privilege or license tax. The amendment further clarifies that any license or privilege tax passed on to the lessee by adding such tax to the leasing price or otherwise passed on to the lessee, shall be included in the monthly taxable gross proceeds, subject to the rental tax. This amendment to the law did not change the fact that Alabama rental tax is levied against the lessor and is not a consumer tax. If rental tax is billed or passed on to the lessee or added as an additional cost of the lease, the additional amount is to be included as a part of the taxable gross proceeds from the lease. A lessor may not pass on such amounts to the lessee on leases of tangible personal property to the State of Alabama, or a municipality or county of the State, unless the flat amount includes both the tax and the leasing fee.

~~(16)~~ **(17)** The rental tax shall be administered and collected in accordance with the uniform procedures set forth in Title 40, Code of Alabama 1975, and the provisions of Section 40-12-224, Code of Alabama 1975. These sections do not provide for a discount for prompt payment of rental tax.

(18) The amendments as enumerated in (4)(a) through (4)(e) to this rule, regarding digital transmissions, shall be effective for taxable transactions occurring on or after July 1, 2017.

Author: **Ginger Buchanan** Dan Bass
Authority: Sections 40-2A-7(a)(5), 40-23-31, 40-9-30, 40-12-220, 40-12-221, 40-12-222, 40-12-223, 40-12-224, Code of Alabama 1975
History: Effective October 1, 1982.
Amended: Filed May 6, 1992.
Amended: Filed September 7, 1993, effective October 12, 1993.
Amended: Filed February 26, 1996, effective April 1, 1996.
Amended: Filed September 15, 1998, effective October 20, 1998.
Amended: Filed November 21, 2001, effective December 26, 2001.
Amended: Filed October 30, 2014, effective December 4, 2014.