

APA-1

Transmittal Sheet For Notice Of Intended Action

Control: 810

Department or Agency: Revenue

Rule Nos: 810-6-3-.65

Rule Title: Sales Tax Holiday for "Back-to-School"

New; Amended; Repealed; Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that result from the absence of the proposed rule? N/A

Are all the facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have any economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer 

Date 06/15/2017

APA-6
10/96

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

Control No. 810 Department or Agency REVENUE

Rule No: 810-6-3-.65

Rule Title: Sales Tax Holiday for "Back-to-School"

 New X Amend Repeal Adopt by Reference

- NO This rule has no economic impact.
 YES This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:
2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:
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:
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

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-6-3-.65 Sales Tax Holiday for "Back-to-School"

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule in order to change the date of the sales tax holiday from the first full weekend in August to the third full weekend in July, as provided for in Act 2017 -120.

RULE NO. & TITLE

810-6-5-.13 Persons, Firms, and Corporations Subject to Lodgings Tax

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule to clarify that meeting rooms, ball rooms, etc., that are not intended for overnight sleeping purposes are exempt from lodgings tax and to clarify that admission fees for events open to the public, sales of tangible personal property, and rentals of equipment in such meeting rooms are taxable under the applicable taxing statutes.

RULE NO. & TITLE

810-6-3-.28 Gas, Motor Fuels and Lubricants.

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule in order to update how liquefied natural gas and compressed natural gas used as motor fuels are treated and provide that these fuels are subject to sales and use tax when not otherwise subject to motor fuels tax in accordance with Act 2017-229.

RULE NO. & TITLE

810-6-3-.36 Liquefied Petroleum Gas, Liquefied Natural Gas, and Compressed
Natural Gas

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule in order to correct code reference and clarify the exemption of liquefied natural gas and compressed natural gas when used as a motor fuel for agricultural purposes in accordance with Act 2017-229.

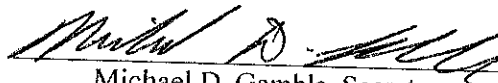
TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at **2:00 p.m. on Thursday, August 10, 2017, Room 1203, First Floor**, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at <http://www.revenue.alabama.gov/analysis/rules.cfm>.

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:
Thursday, August 10, 2017

CONTACT PERSON AT AGENCY:

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


Michael D. Gamble, Secretary
Alabama Department of Revenue

810-6-3-.65. Sales Tax Holiday for "Back-to-School".

(1) ~~Beginning at 12:01 a.m. on Friday August 4, 2006, and ending at twelve midnight on Sunday August 6, 2006, a sales tax holiday is enacted pursuant to Act No. 2006-574, whereby no state sales or use tax is due on "covered items" as defined herein. For each year thereafter, the sales tax holiday begins at 12:01 a.m. on the first Friday in August and ends at twelve midnight the following Sunday. In accordance with Section 40-23-211, Code of Alabama 1975, the Back-to-School Sales Tax Holidays will be held each year on the third full weekend of July beginning at 12:01 a.m. on Friday and ending at twelve midnight on the following Sunday, whereby no state sales or use tax will be due on "covered items" as defined herein.~~ This annual period during which purchases of covered items are exempt from state sales and use taxes is referred to as the "Back-to-School" Sales Tax Holiday.

(2) ~~Pursuant to Act No. 2006-574, any~~ Any county or municipality may, by resolution or ordinance adopted at least 30 days prior to the **first third** full weekend of **August July**, provide for the exemption of "covered items" from county or municipal sales or use taxes during the same time period, under the same terms, conditions, and definitions as provided in this rule for the state sales tax holiday. A county or municipality is prohibited from providing for a sales and use tax exemption during any period other than a state sales tax holiday. A participating county or municipality shall submit a certified copy of their adopted resolution or ordinance providing for the sales tax holiday, and any subsequent amendments thereof, to the Alabama Department of Revenue at least 30 days prior to the effective date of the resolution or ordinance. The Department will compile this information into a list of all counties and municipalities participating in the "Back-to-School" Sales Tax Holiday and issue a current publication of the list on its website.

(3) "Covered items" means: Articles of clothing with a sales price of one hundred dollars (\$100), or less, per article of clothing. The exemption applies regardless of how many items are sold on the same invoice to a customer. "Clothing" means all human wearing apparel suitable for general use including sandals, shoes and sneakers. Clothing shall not include the following listed items which are excluded from the exemption:

- (a) Belt buckles sold separately;
- (b) Costume masks sold separately;
- (c) Patches and emblems sold separately;
- (d) Sewing equipment and supplies including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles;
- (e) Sewing materials that become part of "clothing" including, but not limited to, buttons, fabric, lace, thread, yarn, and zippers;

(f) In addition to (a) through (e) above, clothing shall not include clothing accessories or equipment, protective equipment, or sport or recreational equipment, as defined in 1., 2., and 3. below, and which are therefore taxable:

1. "Clothing accessories or equipment" means incidental items worn on the person or in conjunction with "clothing." The following list includes examples of "clothing accessories or equipment" and is not intended to be an all-inclusive list:

- (i) briefcases;
- (ii) cosmetics;
- (iii) hair notions, including, but not limited to, barrettes, hair bows, and hair nets;
- (iv) handbags;
- (v) handkerchiefs;
- (vi) jewelry;
- (vii) sun glasses, non-prescription;
- (viii) umbrellas;
- (ix) wallets;
- (x) watches; and
- (xi) wigs and hair pieces.

2. "Protective equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use. The following list includes examples of "protective equipment" and is not intended to be an all-inclusive list:

- (i) breathing masks;
- (ii) clean room apparel and equipment;
- (iii) ear and hearing protectors;
- (iv) face shields;
- (v) hard hats;
- (vi) helmets;

- (vii) paint or dust respirators;
- (viii) protective gloves;
- (ix) safety glasses and goggles;
- (x) safety belts;
- (xi) tool belts; and
- (xii) welders gloves and masks.

3. "Sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. The following list includes examples of "sport or recreational equipment" and is not intended to be an all-inclusive list:

- (i) ballet and tap shoes;
- (ii) cleated or spiked athletic shoes;
- (iii) gloves, including, but not limited to, baseball, bowling, boxing, hockey, and golf; goggles;
- (iv) hand and elbow guards;
- (v) life preservers and vests;
- (vi) mouth guards;
- (vii) roller and ice skates;
- (viii) shin guards;
- (ix) shoulder pads;
- (x) ski boots;
- (xi) waders; and
- (xii) wetsuits and fins.

(4) "Covered items" means: A single purchase, with a sales price of seven hundred fifty dollars (\$750), or less, of computers, computer software, and school computer supplies. "Computer," "computer software," and "school computer supplies" shall not include furniture and any systems, devices, software, peripherals designed or intended primarily for recreational use, or video games of a non-educational nature. These items are defined as follows:

(a) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions also known as a central processing unit (CPU). For purposes of the exemption during the sales tax holiday, a computer may include a laptop, desktop, or tower computer system which consists of a CPU, display monitor, keyboard, mouse, and speakers sold as a computer package. The computer package will qualify for the exemption if the dollar amount of the sale is at or below seven hundred fifty dollars (\$750). However, display monitors, keyboards, mouse devices, speakers and other computer parts or devices designed for use in conjunction with a personal computer not sold as part of a package will not qualify for the exemption.

(b) "Computer software" means a set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task.

(c) "School computer supply" means an item commonly used by a student in a course of study in which a computer is used. The following is an all-inclusive list of school computer supplies:

1. Computer storage media; diskettes, compact disks;
2. Handheld electronic schedulers, except devices that are cellular phones;
3. Personal digital assistants, except devices that are cellular phones;
4. Computer printers; and
5. Printer supplies for computers; printer paper, printer ink.

(5) "Covered items" means: Noncommercial purchases of school supplies, school art supplies, and school instructional material, up to a sales price of fifty dollars (\$50) per item. These items are defined as follows:

(a) "School supply" is an item commonly used by a student in a course of study. The following is an all-inclusive list:

1. Binders;
2. Book bags;
3. Calculators;
4. Cellophane tape;
5. Blackboard chalk;
6. Compasses;
7. Composition books;

8. Crayons;
9. Erasers;
10. Folders, expandable, pocket, plastic, and manila;
11. Glue, paste, and paste sticks;
12. Highlighters;
13. Index cards;
14. Index card boxes;
15. Legal pads;
16. Lunch boxes;
17. Markers;
18. Notebooks;
19. Paper, loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;
20. Pencil boxes and other school supply boxes;
21. Pencil sharpeners;
22. Pencils;
23. Pens;
24. Protractors;
25. Rulers;
26. Scissors; and
27. Writing tablets.

(b) "School art supply" is an item commonly used by a student in a course of study for artwork. The following is an all-inclusive list:

1. Clay and glazes;
2. Paints, acrylic, tempora, and oil;
3. Paintbrushes for artwork;
4. Sketch and drawing pads; and

5. Watercolors.

(c) "School instructional material" is written material commonly used by a student in a course of study as a reference and to learn the subject being taught. The following is an all inclusive list:

1. Reference maps and globes;

2. Required textbooks on an official school book list with a sales price of more than thirty dollars (\$30) and less than fifty dollars (\$50).

(6) "Covered items" means: Noncommercial purchases of books with a sales price of not more than thirty dollars (\$30) per book. The term book shall mean a set of printed sheets bound together and published in a volume with an ISBN number, but does not include magazines, newspapers, periodicals, or any other document printed or offered for sale in a non-bound form.

(7) Covered items are exempt only if the individual item is priced at or below the established threshold for the exemption. Exemption for only a portion of an individual item is not allowed. The following example illustrates the application of the rule to the exemption:

(a) A customer purchases a pair of pants costing \$120.00. Tax is due on the entire \$120.00. The exemption does not apply to the first \$100.00 of the price of an item of clothing selling for more than \$100.00.

(8) Splitting of items normally sold together. To qualify for the exemption, items normally sold in pairs shall not be separated, and articles that are normally sold as a single unit must continue to be sold in that manner. The following examples illustrate the application of the rule to the exemption:

(a) A pair of shoes sells for \$200.00. The pair of shoes cannot be split in order to sell each shoe for \$100.00 to qualify for the exemption.

(b) A suit is normally priced at \$300.00. The suit cannot be split into a coat and slacks so that one of the articles may be sold for \$100.00 or less to qualify for the exemption. However, articles that are normally sold as separate articles, such as a sport coat and slacks, may continue to be sold as separate articles and qualify for the exemption.

(c) A packaged gift set consisting of a wallet (ineligible item) and tie (eligible item) would not qualify for the exemption.

(9) "Buy one, get one free" and other similar offers. If a dealer offers "buy one, get one free" or "two for the price of one" on covered items, the purchase shall qualify for the exemption when all other conditions of the exemption are met. However, if a dealer offers a "buy one, get one for a reduced price" the two prices cannot be averaged to qualify both items for the exemption. The following examples illustrate the application of the rule to the exemption:

(a) A dealer offers "buy one, get one free" on a pair of shoes. The first pair

of shoes has a sale price of \$99.00 and the second pair is free. Both pairs of shoes will qualify for the exemption because the first pair of shoes does not exceed the \$100.00 exemption limitation.

(b) A coat is purchased for \$120.00 and a second coat is purchased for half price (\$60.00) at the time the first coat is purchased. The second coat will qualify for the exemption, but the tax will be due on the first coat. In this example, the sales price of the items may not be averaged in order to qualify for the exemption.

(10) Discounts, coupons, and rebates. A discount by the seller reduces the sales price of the item and the discounted sales price determines whether the sales price is within the sales tax holiday price threshold. A coupon that reduces the sales price is treated as a discount if the seller is not reimbursed for the coupon amount by a third-party. If a discount applies to the total amount paid by a purchaser rather than to the sales price of a particular item and the purchaser has purchased both eligible property and taxable property, the seller should allocate the discount based on the total sales prices of the taxable property compared to the total sales prices of all property sold in that same transaction. The application of the exemption to discounts, coupons and rebates extended on a covered item during the exemption period is illustrated by the following examples:

(a) If a dealer sells a pair of jeans with a sales price of \$110.00 and offers to discount the item 10 percent at the time of sale, the exemption would apply because the actual sales price of the jeans is \$99.00.

(b) If a customer buys a \$400.00 suit and a \$55.00 shirt, and the retailer is offering a 10 percent discount, after applying the 10 percent discount, the final sales price of the suit is \$360.00, and the sales price of the shirt is \$49.50. The suit is taxable (its price is over \$100.00) and the shirt is exempt (its price is less than \$100.00).

(c) If a dealer offers a reduction in sales price of \$100.00 through a store coupon for a computer with a sales price of \$850.00, the exemption would apply to the purchase because the dealer's actual sales price to the customer is \$750.00.

(d) If a customer gives to a dealer a manufacturer's coupon for \$100.00 for a computer with a sales price of \$850.00, the exemption would not apply.

(e) Rebates generally occur after the sale, thus the amount of the rebate does not affect the sales price of the purchased item. For example, if a pair of jeans was purchased for \$110.00 with a manufacturer's rebate for \$10.00, the exemption would not apply because the sales price is in excess of \$100.00.

(11) Exchanges. The application of the exemption to an exchange of a covered item purchased during the exemption period is illustrated by the following examples:

(a) A customer purchases a covered item during the exemption period, but later exchanges the item for a different size, color, or other feature, and the original sale is not cancelled. No additional tax is due even though the exchange is made after the exemption period.

(b) A customer purchases a covered item during the exemption period. After

the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item and the original sale is cancelled. Sales tax is due on the total sales price of the newly purchased item.

(c) A customer purchases a covered item before the exemption period. During the exemption period the customer returns the item and receives credit on the purchase of a different covered item and the original sale is cancelled. Sales tax is not due on the sale of the new item if the new item is purchased during the exemption period.

(12) Layaway sales. A layaway sale is a transaction in which articles are set aside for future delivery to a purchaser who makes a deposit, agrees to pay the balance of the sales price over a period of time, and, at the end of the payment period, receives the merchandise. A sale of a covered item under a layaway sale will qualify for the exemption when final payment on the layaway order is made by, and the item is given to, the purchaser during the exemption period; or when title to the covered item transfers to the purchaser and delivery is made to the purchaser during the exemption period. A sale made by completion of transfer of title after the exemption period shall not qualify for the exemption.

(13) Rain checks. A rain check allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock. Covered items purchased during the exemption period with the use of a rain check will qualify for the exemption regardless of when the rain check was issued. Issuance of a rain check during the exemption period will not qualify a covered item for the exemption if the item is actually purchased after the exemption period.

(14) Mail, telephone, e-mail, and Internet sales. The sale of a covered item qualifies for exemption when sold through the mail, telephone, e-mail or Internet when the item is paid for and delivered to the customer during the exemption period; or when title to the covered item transfers to the purchaser and delivery is made to the purchaser during the exemption period. Pursuant to Section 40-23-1(a)(5), Code of Alabama 1975, the sale of an item is not closed or completed until the time and place where delivery occurs to the purchaser after the act of transportation ends and the item comes to rest in this state for use or consumption. Covered items that are pre-ordered and delivered to the customer during the exemption period qualify for the exemption.

(15) Gift certificates and gift cards. Covered items purchased during the exemption period using a gift certificate or gift card will qualify for the exemption, regardless of when the gift certificate or gift card was purchased. Covered items purchased after the exemption period using a gift certificate or gift card are taxable even if the gift certificate or gift card was purchased during the exemption period. A gift certificate or gift card cannot be used to reduce the selling price of a covered item in order for the item to qualify for the exemption.

(16) Returns. For a 60 day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This 60 day period is set solely for the purpose of designating a time period during which the customer must

provide documentation that shows that sales tax was paid on returned merchandise. The 60 day period is not intended to change a seller's policy on the time period during which the seller will accept returns.

(17) Different time zones. The time zone of the purchaser's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and a seller is located in another.

(18) Records. The retailer is not required to obtain an exemption certificate on sales of covered items during the exemption period. However, the retailer's records should clearly identify the type of item sold, the date on which the item was sold, the sales price of all items and, if applicable, any tax charged.

(19) Reporting Exempt Sales. No special reporting procedures are necessary to report exempt sales on covered items made during the exemption period. Exempt sales are to be included in the Gross Sales Amount and in the Deductions amount reported on the state and local returns. Taxable sales and exempt transactions should be reported as currently required by law.

(20) Transportation Charges.

(a) Where delivery is made by common carrier or the U.S. Postal Service, the transportation charge if billed as a separate item and paid directly or indirectly by the purchaser, is excluded from the sales price of the covered item. Transportation charges made by any other means are included as part of the sales price of the covered item, whether or not separately stated. Transportation charges are not separately stated if included with other charges and billed as "shipping and handling" or "postage and handling."

(b) "Shipping and handling" or "postage and handling" charges are included as part of the sales price of the covered item, whether or not separately stated. If multiple items are shipped on a single invoice, to determine if any covered items qualify for the exemption for purposes of determining a sales tax holiday price threshold, the shipping and handling charge or postage and handling charge must be proportionately allocated to each item ordered, and separately identified on the invoice.

~~(21) This rule shall become effective July 1, 2006.~~

Author: Debra Lee **and Ginger Buchanan**.
Authority: Sections 40-2A-7(a)(5), 40-23-31, and 40-23-83, Code of Alabama 1975.
History: New Rule: Filed October 4, 2006, effective November 8, 2006.
Amended: Filed December 19, 2012, effective January 23, 2013.