

APA-1
11/96

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control 810 Department or Agency REVENUE

Rule Nos. 810-6-3-66

Rule Title: Sales Tax Holiday for Severe Weather Preparedness

XX New; ___ Amend; ___ Repeal; ___ 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 might result from the absence of the proposed rule?

N/A

Are all 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?

Yes

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 5/22/2012

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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-.66

Rule Title: Sales Tax Holiday for Severe Weather Preparedness

New 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:**
To provide for the provisions of Act No. 2012-256 to exempt certain covered items from the state sales and use tax during the first full weekend of July 2012, and, during the last full weekend in February in each subsequent year; to authorize any city or county to exempt such covered items from local sales and use taxes during the same period; and to prohibit a county or municipality from providing for a sales and use tax exemption during any period other than concurrently with a state sales tax holiday.
2. **COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:**
It utilizes the Department's existing manuals and mailing or e-mail distribution lists to disseminate the information
3. **EFFECT OF THIS RULE ON COMPETITION:**
N/A
4. **EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:**
N/A
5. **EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:**
N/A
6. **SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:**

The Department has the revenue 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:
Act 2012-256 provides for a period of time, one weekend annually, during which retail sales of the covered items are exempt from state sales and use tax. The amount of tax revenue foregone is undeterminable.
8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:
N/A
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:
N/A
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:
N/A
11. OTHER COMMENTS:
N/A

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ALABAMA DEPARTMENT OF REVENUE
Sales & Use Tax Division

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-6-3-.66 Sales Tax Holiday for Severe Weather Preparedness

INTENDED ACTION: Adopt a new rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to promulgate the above rule to comply with the provisions of Act No. 2012-256 which exempts certain covered items from the state sales and use tax during the first full weekend of July 2012 and during the last full weekend in February in each subsequent year. This rule authorizes any city or county to exempt such covered items from local sales and use taxes during the same period and to prohibit a county or municipality from providing for a sales and use tax exemption during any period other than concurrently with a state sales tax holiday.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at 10:00 a.m. on Wednesday, July 11, 2012, in the Office of the Legal Division, Room 3114, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at www.revenue.alabama.gov/rulehear.html.

All interested parties may present their views in writing to the **Deputy Commissioner of the Alabama Department of Revenue, Room 4112, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time during the thirty-five (35) day period following publication of the notice or by appearing at the hearing.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:
Wednesday, July 11, 2012

CONTACT PERSON AT AGENCY:

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

A handwritten signature in black ink, appearing to read 'Mason', written over a horizontal line.

Michael E. Mason, Deputy Commissioner
Alabama Department of Revenue

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810-6-3-.66 Sales Tax Holiday for Severe Weather Preparedness **(NEW RULE)**

(1) Beginning at 12:01 a.m. on Friday, July 6, 2012, and ending at twelve midnight on Sunday, July 8, 2012, a sales tax holiday is enacted pursuant to Act No. 2012-256, 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 Friday of the last full weekend in February and ends at twelve midnight the following Sunday. This sales tax holiday is referred to as the Severe Weather Preparedness Sales Tax Holiday.

(2) Pursuant to Act No. 2012-256, any county or municipality may, by resolution or ordinance adopted at least 14 days prior to July 6, 2012 and at least 30 days prior to the last full weekend of February in subsequent years, 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 concurrently with 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 14 days prior to the 2012 holiday and at least 30 days prior to the holiday in subsequent years. The Department will compile this information into a list of all counties and municipalities participating in the Severe Weather Preparedness Sales Tax Holiday and issue a current publication of the list on its website.

- (3) "Covered items" include the following selling for \$60 or less per item:
- (a) Any package of AAA-cell, AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding coin batteries and automobile and boat batteries;
 - (b) Any cellular phone battery or cellular phone charger;
 - (c) Any portable self-powered or battery-powered radio, two-way radio, weatherband radio, or NOAA weather radio;
 - (d) Any portable self-powered light source, including battery-powered flashlights, lanterns, or emergency glow sticks;
 - (e) Any tarpaulin, plastic sheeting, plastic drop cloths or other flexible, waterproof sheeting;
 - (f) Any ground anchor system, such as bungee cords or rope, or tie-down kit;
 - (g) Any duct tape;

(h) Any plywood, window film or other materials specifically designed to protect window openings;

(i) Any non-electric food storage cooler or water storage container;

(j) Any non-electric can opener;

(k) Any artificial ice, blue ice, ice packs, or reusable ice;

(l) Any self-contained first aid kit;

(m) Any fire extinguisher, smoke detector or carbon monoxide detector; and,

(n) Any gas or diesel fuel tank or container.

(4) "Covered items" also includes any portable generator and power cords used to provide light or communications or preserve food in the event of a power outage selling for \$1,000 or less per item.

(5) 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 generator for \$1800. Tax is due on the entire \$1800. The exemption does not apply to the first \$1000 of the price of a generator selling for more than \$1000.

(6) 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.

(7) "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.

(8) 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 offers to sell a portable radio with a sales price of \$70 at a discount of 20 percent at the time of sale, the exemption would apply because the actual sales price of the radio is \$56.

(b) If a dealer offers a reduction in sales price of \$100.00 through a store coupon for a portable generator with a sales price of \$1100.00, the exemption would apply to the purchase because the dealer's actual sales price to the customer is \$1000.00.

(c) If a customer gives to a dealer a manufacturer's coupon for \$100.00 for a portable generator with a sales price of \$1100.00, the exemption would not apply.

(d) 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 portable generator was purchased for \$1,100.00 with a manufacturer's rebate for \$100.00, the exemption would not apply because the sales price is in excess of \$1,000.00.

(9) 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 similar item of a different size, color, or other feature at the same price 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.

(10) 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.

(11) 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.

(12) 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), 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.

(13) 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.

(14) 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.

(15) 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.

(16) 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.

(17) 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.

(18) 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.

(19) This rule shall become effective immediately.

Author: Debbie Lee

Authority: Sections 40-2A-7(a)(5), 40-23-31, 40-23-83, Code of Alabama 1975; Act 2012-256

History: **Emergency Rule filed May 2, 2012, expiring August 29, 2012.**