

Transmittal Sheet For Notice Of Intended Action

Control: 810 Department or Agency: Revenue

Rule Nos: 810-6-3-.77

Rule Title: Exemption For Certain Purchases By Contractors And Subcontractors In Conjunction With Construction Contracts With Certain Governmental Entities .

New; Amended; Repealed; Adopt by Reference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 relate to or effect any matter of litigation which the agency is a party to concerning the subject matter of the proposed rule? No

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 Services Agency .

Signature of certifying officer

Date 09/20/2021



REC'D & FILED
SEP 20 2021
LEGISLATIVE SVC AGENCY

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

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-6-3-.77

Exemption For Certain Purchases By Contractors And Subcontractors In Conjunction With Construction Contracts With Certain Governmental Entities.

INTENDED ACTION

Amended

SUBSTANCE OF

PROPOSED ACTION:

This rule is being amended to include statutory updates from Acts 2021-298 and 2021-372 related to exempt purchases by contractors and subcontractors for contracts with governmental entities.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be conducted at 01:30 PM on Tuesday, November 09, 2021 via web-conference. To participate in the upcoming web-conference public hearing please contact the Tax Policy and Governmental Affairs Division at Taxpolicy@revenue.alabama.gov or 334-242-1380 to obtain the appropriate sign-in information for a specific public hearing date. Copies of the rule(s) can be obtained at <http://www.revenue.alabama.gov/tax-policy/>.

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 may present their views during the web-conference.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Tuesday, November 09, 2021

CONTACT PERSON AT AGENCY:

Meagan Barrett

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



Mary Martin Mitchell, Secretary
Alabama Department of Revenue

810-6-3-.77 Exemption For Certain Purchases By Contractors And Subcontractors In Conjunction With Construction Contracts With Certain Governmental Entities.

(1) On and after January 1, 2014, the sale to, or the storage, use, or consumption by, any contractor or subcontractor of any tangible personal property to be incorporated into realty pursuant to a contract entered into on or after January 1, 2014, with a governmental entity is exempt from all state, county, and municipal sales and use taxes.

For ~~the purpose of~~ this rule, a governmental entity is defined as:

- (a) The State of Alabama.
- (b) A county or incorporated municipality of the State of Alabama.
- (c) An educational institution of the State of Alabama, or a county or incorporated municipality of the State of Alabama.
- (d) An industrial or economic development board or authority that is exempt from the payment of Alabama sales and use taxes.
- (e) Other governmental entities that are exempt from the payment of Alabama sales and use taxes excluding those agencies as provided in sections (2) and (3) below.
- (f) On and after January 1, 2019, the term governmental entity includes any public water or sewer authority, district, system, or board that otherwise is exempt from sales and use tax. The sale to, or the storage, use, or consumption by, any contractor or subcontractor of any tangible personal property to be incorporated into realty pursuant to a contract entered into on or after January 1, 2019, with any public water or sewer authority, district, system, or board that otherwise is exempt from sales and use tax is exempt from all state, county, and municipal sales and use taxes.
- (g) On or after January 1, 2020, the term governmental entity includes any airport authority established pursuant to Chapter 3 of Title 4 of the Code of Ala. 1975, that otherwise is exempt from sales and use tax. The sale to, or the storage, use, or consumption by, any contractor or subcontractor of any tangible personal property to be incorporated into realty pursuant to a contract entered into on or after January 1, 2020, with an airport authority that otherwise is exempt from sales and use tax is exempt from all state, county, and municipal sales and use taxes.
- (h) On and after January 1, 2022, the purchase of construction materials for use on construction projects for governmental entities; to include any

contract for the construction of highways, roads, or bridge projects is exempt from all state, county, and municipal sales and use taxes.

(2) **Purchases Not Exempt.** The exemptions outlined in section (1) does not apply to any of the following:

(a) Purchases of tangible personal property by a contractor or subcontractor for storage, use, or consumption in conjunction with performing a contract with a governmental entity that is not itself exempt from Alabama sales and use taxes.

(b) Purchases of tangible personal property by a contractor or subcontractor that are not incorporated into realty pursuant to the contract.

(c) Purchases of tangible personal property for contracts with the federal government.

~~(d) Purchases of tangible personal property made for any contracts for the construction of any highway, road or bridge for, or on behalf of, any governmental entity as outlined above.~~

~~(e) (d)~~ Purchases of tangible personal property made pursuant to any contract entered into prior to applicable date set forth in section (1) ~~or~~ (1)(f), (1)(g), or (1)(h) above, as applicable.

(3) **Exclusion from Governmental Entity Exemption.** The exemption outlined in section (1) does not apply to the sale to, or the storage, use, or consumption by, any contractor or subcontractor of any tangible personal property to be incorporated into realty pursuant to a contract with a state other than the State of Alabama, a county or incorporated municipality of a state other than the State of Alabama, an industrial development board created pursuant to the Constitution or general or local laws of a state other than the State of Alabama, an educational institution of a state other than the State of Alabama, or an educational institution of a county or incorporated municipality of a state other than the State of Alabama.

(4) **Application Requirements.** In order to qualify for the sales and use tax exemption referenced in section (1), the governmental entity must complete an application (Form ST: EXC-01) for a sales and use tax certificate of exemption (Form STC-1) for each tax-exempt project. Contractors and subcontractors licensed by the State Licensing Board for General Contractors, must also apply per project to the Department of Revenue for a sales and use tax certificate of exemption (Form STC-1). Upon review and approval of the application, the department shall issue the applicant a Form STC-1 which shall be used by the certificate holder to claim the exemption when making qualifying tax-exempt purchases for the project listed on the certificate. Before

approving or denying the application, the Department of Revenue may require the applicant to submit additional documentation that the property to be purchased tax-exempt with the certificate will be incorporated into realty pursuant to contracts with one of the governmental entities enumerated in section (1) or to subcontracts arising from contracts with one of the governmental entities enumerated in section (1). If the department denies the application, the applicant may appeal the denial in accordance with §40-2A-8, Code of Ala. 1975.

(5) **Record Retention Requirement.** A contractor or subcontractor who obtains a Form STC-1 must comply with all of the provisions of ~~the as amended,~~ §40-23-9, Code of Ala. 1975, and must maintain records sufficient to document the tax-exempt status of qualifying purchases. Further, the contractor or subcontractor who presents Form STC-1 to a vendor for purchases of tangible personal property without the payment of sales or use tax must make an electronic report of all exempt purchases to the Department of Revenue on their assigned consumer use tax return (Form 2610). The report of exempt purchases shall be a prerequisite to the renewal of a certificate of exemption. Failure to report the exempt purchases will result in an assessment against the contractor or subcontractor for sales and use taxes on any items purchased with the certificate of exemption.

(6) **Violation Penalties.** Any contractor or subcontractor who intentionally uses a certificate of exemption (STC-1) in violation of §40-9-14.1, Code of Ala. 1975, will be:

(a) ~~l~~liable for the actual sales and use tax due;

(b) ~~s~~subject to a civil penalty levied by the department in the amount of not less than a minimum of two thousand dollars (\$2,000) or two times any state and local sales or use tax due for the tangible personal property, whichever is the greater; ~~and.~~

(c) ~~m~~may be barred from the use of any certificate of exemption (STC-1) on any project for up to two years based on the contractor's or subcontractor's willful misuse of a certificate of exemption. Contractors and subcontractors may appeal any such decisions in accordance with §40-2A-8, Code of Ala. 1975.

(7) **Determination of Qualification According to Date.** (a) The date of the sale to, or the purchase, withdrawal, storage, use or consumption by, the contractor must be used to determine if an otherwise qualifying transaction or event qualifies for the exemption. Jobs or projects entered into prior to the applicable dates noted in section ~~(1) and (1)(f)-(1) of~~ (1)(f), (1)(g), or (1)(h) above shall not qualify for the exemption regardless of the transaction date.

(8) (b) For the purpose of this rule, the term “entered into” means the date that a contractor or subcontractor signs a contract with a governmental entity defined in section (1).

Authors: Michelle Mayberry, Traci Floyd, Ginger L. Buchanan, Lee Ann Rouse

Authority: §§40-2A-7(a)(5), 40-2A-8, 40-23-9, 40-23-31, 40-23-83, Code of Ala. 1975.

History: New Rule: Filed February 20, 2001; effective March 27, 2001.
Amended: Filed May 6, 2005; effective June 10, 2005.
Amended: Filed November 20, 2013; effective December 25, 2013.
Amended: Filed January 11, 2019; effective February 25, 2019.
Amended: Filed September 20, 2021; effective