

810-6-2-.90.01 Seller's Responsibility to Collect and Pay State Sales Tax and Seller's Use Tax. **(NEW RULE)**

(1) Under certain conditions, an out-of-state seller engaged within this state in the business of selling at retail tangible personal property is required to register with the Department for a sales tax license and collect and remit sales tax on all sales made within the state as provided for by Chapter 23, Article 1 of Title 40, Code of Alabama 1975. Sales taxes collected must be reported and paid in accordance with the provisions of Rule 810-6-4-.19, State Sales Tax Returns Required from All Retail Vendors and Annual Schedule of Locations Required from All Retail Vendors with Multiple Locations.

(2) A transaction on which the sales tax imposed is collected by a licensed seller is exempt from use tax and is not subject to the following provisions of this rule. (Section 40-23-62(1))

(3) Otherwise, a seller engaged in making retail sales of tangible personal property for storage, use or other consumption in this state is required to register with the Department and collect and remit use tax, as provided for by Chapter 23, Article 2 of Title 40, when the seller has "substantial nexus" with the state. Substantial nexus is a connection between a seller and the state, created by the seller's business activities in the state, which is substantial enough to cause the seller to be subject to come under the jurisdictional taxing authority of the state.

(4) Section 40-23-68 sets forth the conditions under which a seller must collect and remit use tax on retail sales of property for storage, use or other consumption in the state. These conditions include any contact with this state that would allow this state to require the seller to collect and remit the tax due under the provisions of the Constitution and laws of the United States. These conditions include, but are limited to:

(a) Delivery within the State of Alabama by means of vehicle owned by the selling entity;

(b) Maintains, occupies, or uses, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business;

(c) Employs or retains under contract any representative, agent, salesman, canvasser, solicitor or installer operating in this state under the authority of the person or its subsidiary for the purpose of selling, delivering, or the taking of orders for the sale of tangible personal property or any services taxable under this chapter or otherwise solicits and receives purchases or orders by any agent or salesman;

(d) Solicits, pursuant to a contract with a broadcaster or publisher located in this state, orders for tangible personal property by means of advertising which is disseminated primarily to consumers located in this state and only secondarily to bordering jurisdiction;

(e) Solicits orders for tangible personal property by mail if the solicitations are substantial and recurring and if the retailer benefits from any banking, financing, debt collection, telecommunication, or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities. Notwithstanding the previous sentence, a seller who contracts with a provider of call center services shall not be deemed to benefit from telecommunication activities occurring in this state or from the location in this state of authorized installation, servicing, or repair facilities merely as a result of contracting for and receiving only call center services from a call center located in this state. The preceding sentence shall only apply for call centers, as authorized or specified in Division 3 of Article 17 of Chapter 10 of Title 41, and placed in service in this state on or before October 1, 2003;

(f) Has, under a franchise or licensing arrangement or contract, a franchisee or licensee operating under its trade name;

(g) Solicits, pursuant to a contract with a cable television operator located in this state, orders for tangible personal property by means of advertising which is transmitted or distributed over a cable television system in this state;

(h) Distributes catalogs or other advertising matter and by reason thereof receives and accepts orders from residents, within the state of Alabama.

(5) Notwithstanding paragraph (4)(h) above, a seller is not required to collect use tax where his only connection with this state is sending catalogs through the mail to customers in this state and filling orders by shipping goods to the customers by mail or common carrier. (National Bellas Hess, Inc. v. Department of Revenue of the State of Illinois, 386 U.S. 753 (1967); Quill Corporation v. North Dakota, 504 U. S. 298 (1992)).

(6) A seller may have substantial nexus with this state due to the business activities conducted in the state by the seller's affiliates as set forth in Section 40-23-190, Conditions for Remote Entity Nexus. A seller has substantial nexus with this state for the collection of use tax if:

(a) The seller and an in-state business maintaining one or more locations within this state are related parties; and

(b) The seller and the in-state business use an identical or substantially similar name, tradename, trademark, or goodwill, to develop, promote, or maintain sales, or the in-state business and the seller pay for each other's services in whole or in part contingent upon the volume or value of sales, or the in-state business and the seller share a common business plan or substantially coordinate their business plans, or

the in-state business provides services to, or that inure to the benefit of, the business related to developing, promoting, or maintaining the in-state market.

(7) Two entities are related parties under this section if one of the entities meets at least one of the following tests with respect to the other entity:

(a) One or both entities is a corporation, and one entity and any party related to that entity in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Section 318 of the Internal Revenue Code owns directly, indirectly, beneficially, or constructively at least 50 percent of the value of the corporation's outstanding stock;

(b) One or both entities is a limited liability company, partnership, estate, or trust and any member, partner, or beneficiary, and the limited liability company, partnership, estate, or trust and its members, partners, or beneficiaries own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the profits, or capital, or stock, or value of the other entity or both entities; or

(c) An individual stockholder and the members of the stockholder's family, as defined in Section 318 of the Internal Revenue Code, owns directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of both entities' outstanding stock. (Section 40-23-190)

(8) Every seller required to collect the use tax shall register with the Department and give the name and address of each agent operating in this state, the location of any and all distribution or sales houses or offices or other places of business in this state, and such other information as the Department may require with respect to matters pertinent to the enforcement of the Alabama Use Tax Law. Use taxes collected must be reported and paid in accordance with the provisions of Rule 810-6-5-.19.01, State Use Tax Returns.

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Authority: Sections 40-2A-7(a)(5), 40-23-2, 40-23-61 thru 40-23-68, 40-23-83, and 40-23-190, Code of Alabama 1975.

History: