810-1-6-.01. Signature Requirements of Tax Returns and Other Documents of All Types Filed by Electronic Methods.

For the Alabama Department of Revenue to identify a taxpayer who files a tax return or submits other documents by electronic means, the identity of the taxpayer must be established by an electronic identifier (signature). The electronic identifier must be sufficiently unique to provide the Department with reasonable assurances of the correct identity of the taxpayer and must be compatible with the electronic filing systems in use by the Department. The Department shall determine which electronic procedures or methods are to be used in the electronic signature validation process. (Adopted through APA effective June 17, 1999)

810-1-6-.02. Scope of the Rules.

This chapter sets forth the rules to be used by the Alabama Department of Revenue in conjunction with a department-sponsored paperless filing and payment system for the electronic filing and payment of the taxes enumerated in Rule 810-1-6-.05. The Department is authorized to accept tax returns filed in electronic commerce pursuant to Chapter 30 of Title 40 of the Code of Alabama 1975. The electronic payment of taxes filed under this program shall be made in accordance with the rules of the department governing electronic funds transfer found in Chapter 810-13-1. (Authority: Sections 40-2A-7(a)(5), 40-30-1, 40-30-2, 40-30-3, 40-30-4, 40-30-5 and 40-30-6, Code of Alabama 1975). (Adopted through APA effective October 4, 2001, amended November 4, 2009)

810-1-6-.03. Definitions.

(1) The definitions of terms contained in Code of Alabama 1975, Section 40-30-3, are incorporated into this chapter by reference.

(2) The term "system" as used in this chapter shall mean the department-sponsored paperless filing and payment system for the electronic filing and payment of the taxes enumerated in Rule 810-1-6-.05. (Authority: Sections 40-2A-7(a)(5), 40-30-1, 40-30-2, 40-30-3, 40-30-4, 40-30-5 and 40-30-6, Code of Alabama 1975) (Adopted through APA effective October 4, 2001, amended November 4, 2009)

810-1-6-.04. Electronic Filing and Payment of Taxes to be Provided Through the Paperless Filing and Payment System.

(1) Under the authority of Chapter 30 of Title 40, Code of Alabama 1975, the department shall sponsor a paperless filing and payment system for the purpose of providing taxpayers with the capability to electronically file and pay the taxes enumerated in Rule 810-1-6-.05. The system will provide two electronic filing and payment options: to file and/or pay via the Internet or using the toll-free interactive voice response/touchtone

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telephone system (IVR). The paperless filing and payment system is the only means available to taxpayers for electronically filing returns for the taxes enumerated in Rule 810-1-6-.05(1).

(2) The system shall have an e-file/e-pay application and an e-pay only application. The e-file/e-pay application shall provide the taxpayer with the capability of electronically filing a return and paying the tax due by electronic funds transfer using Automated Clearing House (ACH) debit method, except as noted in section (4). An ACH debit method taxpayer who is not required to pay the tax due by electronic funds transfer can utilize the system to electronically file a return and choose to make payment by check rather than authorizing an electronic payment. However, payment by check option is not available for electronically filed Income Tax Withholding and Non-State Administered Local Tax returns. A taxpayer with prior approval from the department to pay by ACH credit method can utilize the system to electronically file a return without authorizing electronic payment through the system. The e-pay only application shall provide the taxpayer with the capability of making an ACH debit method payment or additional payment for returns, outstanding invoices, assessments, and other taxes and fees due the department. The e-pay only application cannot be utilized to make a payment for tax types for which a taxpayer has approval from the department to pay by ACH credit method or to make a payment to a non-state administered locality.

(3) The submission of a tax return and/or the initiation of an ACH debit method payment via the paperless filing and payment system by the taxpayer or by the taxpayer's authorized representative shall qualify as electronic signature of the person with the responsibility for filing the tax return. The taxpayer is responsible for the accuracy of the tax return information submitted to the department regardless of whether the return is filed by the taxpayer or by the authorized representative. A taxpayer filing returns or making payments for a business or corporate tax may utilize the View History feature of the paperless filing and payment system to review all of his returns and payments submitted through the system for a period of at least one year.

(4) International ACH Transactions.

(a) Effective September 18, 2009, the National Automated Clearing House Association (NACHA) *Operating Rules* were amended to require all internationally funded payments sent via the ACH network to be identified as International ACH Transactions (IATs). All IAT entries must carry sufficient information to comply with the requirements of the U. S. Treasury Department's Office of Foreign Assets Control (OFAC).

(b) In order to remain in compliance with the rules, the Department of Revenue may prohibit the initiation of an ACH debit method payment by a taxpayer through the paperless filing and payment system when the transaction is an International ACH Transaction as defined by NACHA guidelines. A taxpayer who is prohibited from initiating an ACH debit method payment through the system must make tax payments of $750 or more by ACH credit method. ACH credit payment method requires pre-registration and

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department approval. Tax payments made through ACH credit method must be initiated through the taxpayer's financial institution separate from the filing of the return. (Authority: Sections 40-2A-7(a)(5), 40-30-1, 40-30-2, 40-30-3, 40-30-4, 40-30-5 and 40-30-6, Code of Alabama 1975) (Adopted through APA effective October 4, 2001, amended November 4, 2009)

810-1-6-.05. Tax Types Covered and Requirements for Tax Returns.

(1) The paperless filing and payment system's e-file/e-pay application shall provide the taxpayer with the capability of electronically filing returns and making payments for the taxes listed below from the taxpayer's personal computer or telephone, with the exception that returns cannot be filed by telephone for Utility Privilege License Tax Direct Pay Permit, Utility Excise Tax, Contractor's Gross Receipts Tax, Non State-Administered County and Municipal Tax, and A-3 State Withholding Tax Annual Return. A complete tax return filed via the system will consist of data transmitted electronically and shall contain the same information as the corresponding tax return filed entirely on paper, as outlined in the rules shown below.

Tax Type	Rule
State Sales Tax	810-6-4-.19
State Sellers Use Tax	810-6-5-.19.01
State Consumers Use Tax	810-6-5-.19.01
State Rental Tax	810-6-5-.09
State Lodgings Tax	810-6-5-.22
Utility Privilege License Tax	810-6-5-.26
Utility Excise Tax	810-6-5-.26
Mobile Telecommunications Service	810-6-5-.26.01
Contractor's Gross Receipts Tax	810-6-5-.03
Pharmaceutical Providers Tax	810-6-5-.27
Alabama Nursing Facility Tax	810-6-5-.27.01
A-6 State Withholding Tax Monthly Return	810-3-74-.01
A-1 State Withholding Tax Quarterly Return	810-3-74-.01
A-3 State Withholding Tax Annual Return	810-3-75-.03
State-administered County & Municipal Sales, Use, Rental, & Lodgings Tax	810-6-5-.31
Nonstate-administered County & Municipal Sales, Use, Rental & Lodgings Tax (as provided by Local Ordinance or Resolution)	Guidelines issued by the Standard Tax Form Committee created pursuant to § 11-51-210

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(2) The paperless filing and payment system's e-pay only application shall provide the taxpayer with the capability of initiating an electronic funds transfer ACH debit method in payment of a tax liability for the tax types listed in paragraph (1) and for the tax types listed below, the returns for which are not available to be electronically filed through the system.

TAX TYPE

Aviation Fuel Tax
Business Privilege Tax
Financial Institution Excise Tax Freight Line RR Tax
Gas Tax County
Gasoline Tax
Hazardous Waste Fee
Horse Wagering Fee
Hydro Electric KWH Tax
Income Tax – Corporate
Income Tax - Individual
Lubricating Oil Tax
Motor Carrier Mileage Tax
Motor Fuel Tax
Pari-Mutuel Pool Tax
Playing Cards Tax
Sales Tax – Casual
Scrap Tire Fee
Severance – Coal Tax
Severance – Forest Products Tax
Severance – Local Solid Mineral Tax
Severance – Oil & Gas Tax
Severance – Uniform Natural Minerals Use
Storage Tank Trust Tax
Solid Waste Disposal Fee
Tennessee Valley Authority Electric
Tobacco Tax
Utility License Tax – 2.2% Utility

(Authority: Sections 40-2A-7(a)(5), 40-30-1, 40-30-2, 40-30-3, 40-30-4, 40-30-5 and 40-30-6, Code of Alabama 1975) (Adopted through APA effective October 4, 2001, amended November 4, 2009)

810-1-6-.06. Electronic Payment Requirements and Determining Timely Payment.

Tax payments initiated via the paperless filing and payment system for the taxes enumerated in Rule 810- 1-6-.05 shall be made in accordance with the rules of the department in Chapter 810-13-1, Payment of Taxes Through Electronic Funds Transfer. Timely payment of taxes initiated through electronic funds transfer will be determined pursuant to the provisions of that Chapter. (Authority: Sections 40-2A-7(a)(5), 40-30-1, 40-30-2, 40-30-3, 40-30-4, 40-30-5 and 40-30-6, Code of Alabama 1975) (Adopted through APA effective October 4, 2001, amended November 4, 2009)

810-1-6-.07. Determining Timely Filing of Electronic Returns.

The due date for filing electronic returns for the taxes enumerated in Rule 810-1-6-.05 shall be the same due date for filing the corresponding tax returns on paper. The date and time the taxpayer completes the filing of the tax return utilizing the paperless filing and payment system as documented on the confirmation page or spoken through the IVR system shall be the date and time used to determine timely filing of the electronic return. (Authority: Sections 40-2A-7(a)(5), 40-30-1, 40-30-2, 40-30-3, 40-30-4, 40-30-5 and 40-30-6, Code of Alabama 1975) (Adopted through APA effective October 4, 2001, amended November 4, 2009)

810-1-6-.12. Taxes Required to be Filed Electronically.

(1) Section 40-23-7, Code of Alabama 1975, as amended, requires persons to report certain taxes on a form prescribed by the department and to pay the amount of taxes shown due. Pursuant to Chapter 30 of Title 40, the department is authorized to accept tax returns reported on an electronic form filed electronically.

(2) Effective October 1, 2003 the following taxes are required to be filed electronically: State Sales, Use, Rental or Leasing, Lodgings, Utility Gross Receipts, Utility Service Use, Mobile Telecommunications Service, Contractor's Gross Receipts, Pharmaceutical Providers, Alabama Nursing Home Privilege and State Administered Local Sales, Use, Rental or Leasing, and Lodgings Taxes.

(3) Persons subject to the above listed taxes, who are unable to utilize the electronic filing system available over the Internet are required to utilize the department's Telephone Voice Response system to file these taxes.

(4) Certain circumstances may require a waiver from the Commissioner to file in another department approved manner. These circumstances include:

(a) No Computer,

(b) No Internet Access,

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(c) Incompatible Computer Hardware,

(d) No Access to a Telephone,

(e) Any special circumstance (i.e. physical disability) deemed worthy of a waiver by the Commissioner of Revenue.

1. A waiver request must be submitted in writing and include the business name and address, account number and reason(s) why a method other than the prescribed method is necessary.

(5) For the taxes listed above, the return will be considered timely filed when due for these taxes if filed electronically the last day before the return and payment are considered delinquent. (Sections 40-2A-7(a)(5), 40-23-7, 40-23-31, 40-23-83, 40-30-2, 40-26B-5, 40-26B-24, 40-26-19, 40-21-105, and 11-3-11.3(f), Code of Alabama 1975) (Adopted through APA effective September 22, 2003)

810-1-6-.13. Requirements for Third-Party Bulk Filers.

(1) The term "third-party bulk filer", as used in this rule, means a person who is registered to file and pay the taxes enumerated in Rule 810-1-6-.05 on behalf of multiple taxpayers.

(2) A person shall not act as a third-party bulk filer unless the person is registered with the Department for the purpose of electronically filing ADOR returns and payments.

(3) A person may apply to the Department, on a form prescribed by the Department, for registration as a third-party bulk filer under this rule, and the Department will approve the application if the properly completed application indicates that the person will comply with this rule. However, approval of the application does not grant the third-party bulk filer authority to act as an agent of the Department.

(4) Persons approved as third-party bulk filers are required to:

(a) Submit returns and payments for those taxes required to be filed electronically, in a timely manner using the electronic filing systems made available by the Department for taxpayers having a valid account with the Department.

(b) Submit a separate electronic payment for each return, account, or filing period.

(c) Maintain on file the client's power of attorney allowing the third-party to file returns and/or pay Alabama taxes on behalf of the client and, upon request, provide a copy to the Department. The power of attorney must also indicate the authorization for the third-party to receive information about filings or payments directly from the Department.

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810-1-6-.13. (Continued)

(d) Electronically provide the Department, on a monthly basis, an updated client list containing at least the name, current mailing address, account number, and telephone number for those clients for whom they are authorized to file. The mailing address listed for the client must be the client's actual street or post office box address and not the third-party bulk filer's address.

1. Initial client list must show all clients.

2. Subsequent updates should show only additions and deletions.

(5) Third-party bulk filers are prohibited from including any information in marketing materials, sales materials, or advertisements that could reasonably be understood to mean that the Department endorses or approves any third-party bulk filer.

(6) If the Department determines that a third-party bulk filer is not substantially complying with the Department's electronic filing requirements, the Department may revoke the registration of the third-party bulk filer and notify the clients of the revocation. (Authority: Sections 40-2A-7(a)(5), 40-2A-7(a)(1), 40-23-31, 40-23-83, 40-23-111, 40-30-2, Code of Alabama 1975) (Adopted through APA effective October 5, 2004, amended February 10, 2009)

810-6-1-.01. <u>Accountants</u>.

Accountants use books, supplies and equipment which are taxable to them at the time of purchase. Accountants also subscribe to and receive tax reporting services which are not subject to tax, the property received in such tax reporting services being incidental to the service received. Note, however, that books and other publications sold by the tax service companies, which become the permanent property of the accountants, are subject to the tax. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982.)

810-6-1-.02. <u>Advertising Agencies</u>.

Advertising agencies perform a service in formulating ideas and programs for advertising purposes. All materials purchased by an advertising agency including, but not limited to, brochures, drawing supplies, photographic supplies, and office supplies are consumed by the agency in performing the service and are subject to the tax at the time of purchase. The subsequent transfers of brochures and other materials to the agencies' clients are not classed as retail sales subject to the tax. Amended to conform to the decision of the Alabama Court of Civil Appeals in the case <u>State of Alabama v. Douglas M. Harrison, d/b/a Douglas M. Harrison Advertising</u>. (Adopted May 26, 1961, amended November 3, 1980, readopted through APA effective October 1, 1982.)

810-6-1-.03. Air Bag Materials.

Materials, raw rubber, etc., withdrawn from stock by a tire manufacturer for use in manufacturing air bags or water bags to be used by the manufacturer are to be included in the gross proceeds of sales of the manufacturer. (Sections 40-23-1(a)(6) and 40-23-1(a)(10)) (Issued January, 1951, readopted through APA effective October 1, 1982.)

810-6-1-.04. Radio and Television Antennas and Television Satellite Dishes.

(1) Sales at retail of radio and television antennas, television satellite dishes, and parts and attachments therefor are subject to sales or use tax, whichever is applicable.

(a) Where an antenna or satellite dish, along with parts and attachments therefor, is sold for a lump sum amount which includes both the antenna or satellite dish and the cost of erection or installation, such lump sum amount shall be used as the measure of the tax to be paid to the State. In instances where separate contracts are made for the sale of the antenna or satellite dish and other property and for the erection or installation, the tax should be measured by the sales price only, provided that the billing to the customer and the books of the seller clearly show the receipts from sales and from erection and installation.

(b) In instances where dealers in radio and television receiving sets sell antennas or satellite dishes with parts and attachments therefor which they do not themselves furnish or install, but which are furnished and installed for them by an outside supplier, the sale of antennas or satellite dishes and other property sold in connection therewith are made at wholesale, tax free, by the outside supplier to the dealer who has made the retail sale. The dealer in these instances must collect and remit tax to the State in accordance with the rule stated in subparagraph (a).

(c) Where dealers and suppliers make over-the-counter sales of antennas or satellite dishes and parts and attachments therefor to customers not for resale, such sales to consumers are subject to sales tax which is to be collected by the seller and paid to the State.

(d) The dealers and suppliers who make the sales described in subparagraphs (a), (b), and (c) above purchase at wholesale, tax free, the antennas or satellite dishes and parts and attachments therefor which are resold by them. (Section 40-23-1(a)(10))

(2) Sales of radio and television antennas, television satellite dishes, and parts and attachments therefor, qualify for the reduced 1 ½ percent machine rate of sales or use tax when sold to radio and television stations or broadcasting companies for use in their business of producing and propagating radio or television signals. Kline Iron & Steel Corp. v. State of Alabama (Circuit Court of Montgomery County, Civil Action No.s CV-78-1250-P and CV-78-1251-P, April 26, 1979) (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982, amended October 3, 1987)

810-6-1-.05. Auctioneer.

(1) An auctioneer is engaged in a business which is subject to sales tax where as a course of business he makes sales at retail of his own tangible personal property or makes sales at retail of tangible personal property owned by others which is consigned to him for sale.

(2) For the purpose of administering the sales tax law, it is deemed that the auctioneer will have the property on consignment when he receives payment for the property sold, issues his bill of sale or invoice, and pays the owner for the property sold with his check or other remittance. An auctioneer does not become liable for sales tax when selling tangible personal property not owned by him where the owner has commissioned the auctioneer to make such sales in the name of the owner and for him in the operation of a business licensed under the sales tax law.

(3) The sales tax will apply upon the gross receipts derived from sales of all tangible personal property sold by persons regularly engaged in conducting auction sales, regardless of how such tangible personal property may have been acquired or by whom it may be owned, except the sale of tangible personal property which normally would not be subject to tax such as a wholesale sale. (Section 40-23-1(a)(6)) (Adopted March 9, 1961, amended June 2, 1961, amended August 16, 1974, readopted through APA effective October 1, 1982)

810-6-1-.06. Automobile Painting.

(1) The painting of automobiles is a service by the painter. Receipts from such painting are not taxable. The paint, supplies, etc., used or consumed by the painter are taxable when sold to him.

(2) Refer to Rule entitled "Parts and Materials Used to Repair or Recondition Dealers' Automobiles" with reference to painting of automobiles of dealers, which automobiles are a part of the dealers' stock in trade for sale. (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-1-.07. Automobile Parts Installed for Customer.

(1) The repairman sells at retail parts used in making repairs to the customer's automobile which are passed substantially intact (as purchased by him) to the customer. Illustrations of such parts are pistons, piston rings, fan belts, gears, batteries, and tires.

(2) On the other hand, the repairman does not sell at retail, but consumes such materials and supplies as paints or lubricants furnished by him as an incident to rendering a service. These materials and supplies are purchased at retail by the repairman. (Doby v. State, 174 So.233, Merriwether v. State, 42 So. 2d, 465.)

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810-6-1-.07. (Continued)

(3) Refer to the rule entitled "Parts and Materials Used to Repair or Recondition Dealers' Automobiles, with reference to parts used by repairmen on automobiles of dealers, which automobiles are part of the dealers' stock in trade for sale. (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-1-.08. Automobile Repair Shops.

(1) Automobile repairmen must report and pay tax on all sales of automobile parts, accessories, tires, tubes, and batteries which are passed to the automobile owner for his use. When the repairman does not itemize parts, in his billing, any amount charged for labor or service and included in the lump sum billing is to be included in the taxable amount.

(2) Supplies consumed by the repairman, such as paint, solder, upholstery tacks, also tools and machinery used, are taxable on their sale to or use by the repairman, with tax to be collected from the repairman by his supplier, or to be paid to this Department as use tax if the supplier is not licensed under the sales tax law or registered under the use tax law. Doby v. State, 174 So.233, Cody v. State, 177 So.146.

(3) Refer to regulation 810-6-1-.116 entitled "Parts and Materials Used to Repair or Recondition Dealers' Automobiles" with reference to parts and materials used by repairmen on automobiles of dealers, which automobiles are a part of the dealer's stock in trade for sale. (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-1-.08.01. Automotive Supply Jobbers, Sales by.

(1) Automotive supply jobbers shall comply with the provisions of Title 40 relative to maintaining the records necessary to determine the amount of sales or use taxes for which they are liable including the requirement that their records show separately the gross proceeds of wholesale sales and the gross proceeds of retail sales. Automotive supply jobbers shall also comply with the provisions of Sales and Use Tax Rule 810-6-4-.10 Keeping Records of Sales for Resale. (Sections 40-2A-7(a), 40-23-9, and 40-23-83)

(2) Automotive supply jobbers shall collect sales or use tax on sales to all customers who do not have a valid sales tax license number or certificate of exemption number. Invoices which do not show the purchaser's name, but are made out to "cash" shall always be considered to be retail sales invoices. (Sections 40-23-26 and 40-23-67)

(3) If the purchaser has a sales tax license number, the jobber may sell to the purchaser tax exempt, provided the purchaser is buying the items for resale. Even though

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a purchaser has a sales tax license number, the jobber is not relieved of the responsibility of collecting tax on the items which the purchaser uses. It is the jobber's responsibility to know the nature of the customer's business so that the jobber will know when to collect tax on items purchased for use.

(4) Sales of automotive parts to licensed automobile dealers with repair shops or service departments are at wholesale, tax-free. Sales of automotive parts to licensed automobile dealers without repair shops or service departments are taxable unless the dealer qualifies for the exemption contained in Section 40-23-1(a)(9)k for parts purchased for use in repairing or reconditioning automobiles that are a part of the dealer's stock of goods for sale. See Rule 810-6-1-.116 Parts and Materials Used to Repair or Recondition Dealers' Automobiles.

(5) Sales of materials to licensed automobile dealers are taxable unless the dealer qualifies for the exemption contained in Section 40-23-1(a)(9)k for materials purchased for use in repairing or reconditioning automobiles that are a part of the dealer's stock of goods for sale. See Rule 810-6-1-.116 Parts and Materials Used to Repair or Recondition Dealers' Automobiles. The term "materials" as used in this section includes paint, solder, flux, body lead, wax, underseal, and tire blacking which become a part of the reconditioned automobile. The term "materials" as used in this section does not include items which do not become a part of the reconditioned automobile such as sandpaper, thinner used for cleaning purposes, masking tape, rags, brushes, tools, and soap.

(6) The automotive supply jobber shall collect sales or use tax on sales of supplies unless the customer is purchasing the supplies for resale. Supplies include but are not limited to cleaning compounds, chamois, rags, drill bits, shop files, welding gases and supplies, metal bars and rods, masking tape, fire extinguisher fluid, hydraulic jack oil, friction tape, signs, white sidewall cleaner, brooms, mops, window cleaner, rivets, tacks, cotter pins, repair parts for shop equipment, degreaser, bolts, nuts, washers, screws, oil measures, wiping cloths, drop light cords, auto body soap, hand soap, vixen files, light bulbs, rubbing compound, floor oil absorbent compounds, brushes of all kinds, tar remover, and polishing cloths.

(7) The automotive supply jobber shall collect sales or use tax on sales of power tools, heavy tools, and equipment and replacement parts unless the customer is purchasing the tools, equipment, or replacement parts for resale. Power tools, heavy tools, and equipment and replacement parts include but are not limited to floor jacks, air compressors and parts, washing equipment and parts, painting equipment and parts, electric sanders, air hose and chucks, drop cords, and welding equipment and parts.

(8) The automotive supply jobber shall collect sales or use tax on sales of hand tools unless the customer is purchasing the tools, equipment, or replacement parts for resale. Sales of hand tools to licensed resellers who do not stock such tools for resale are taxable.

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810-6-1-.08.01. (Continued)

(9) The automotive supply jobber shall collect sales or use tax on sales to automobile painters or repair shops of items which lose their identity, such as paint, solder, and solvents.

(10) The measure of sales or use tax due on taxable sales of any new, used, or rebuilt automotive part, except batteries, is the net trade difference, that is the selling price less credit for the used part taken in trade. The measure of sales or use tax due on taxable sales of batteries is the total sales price of the battery without any deduction or credit for the value of the used part taken in trade (See Rules 810-6-1-.12 and 810-6-1-.180 for definitions of automotive vehicle and trailer). (Section 40-23-2(1))

(11) When automotive supply jobbers perform labor in connection with a sale of repair parts, invoices covering the transaction shall clearly show the amounts charged for each part and amounts charged for labor. Where invoices do not show parts and labor separately, sales tax is due on the total amount of the invoice.

(12) When automotive supply jobbers provide tire recapping service to a customer, they shall collect sales or use tax from the customer measured by the total amount billed for the recapping service. Materials used by the automotive supply jobber in performing the recapping service are not taxable when purchased or withdrawn by the jobber. The machines used directly in the recapping process by the automotive supply jobber are taxable at the reduced machine rate when purchased or withdrawn by the jobber. Machines and equipment not used directly in the recapping process and all materials and supplies which do not become a component part of the finished product are taxable at the general rate when purchased or withdrawn by the jobber. (Adopted through APA effective March 10, 1998)

810-6-1-.09. <u>Automobile Repair Shops and Garages</u>.

(1) Sales of tangible personal property, such as automobile parts, automobile accessories, tires, batteries, etc., by automobile repair shops and garages to purchasers for use and not for resale, either separately or in connection with automobile repair work, are subject to the sales tax. Charges for labor and service performed in connection with such repair work or installations are to be included in the measure of the tax, if not separately billed to customers.

(2) When labor and service are separately billed from the sale of parts, etc., the tax does not apply to the labor and service rendered.

(3) Books must be kept in such a manner as to clearly reflect the separate sources of receipts. This tax will apply to the total gross receipts of any automobile repairers who fail to make such separation of charges on bills tendered to their customers.

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810-6-1-.09. (Continued)

Materials and supplies used by automobile repair shops and garages in rendering services but which are not resold as merchandise are subject to sales tax when purchased by repairmen from the supply dealer. (Section 40-23-1(a)(6)) (Readopted through APA effective October 1, 1982)

810-6-1-.10. Automobile Seat Covers, Top Linings, Vinyl Tops.

(1) Upholstery repairs performed on automobile seats, top linings, and vinyl tops will be considered as repair jobs. The upholsterer must collect and report sales tax on his sales of items which do not lose their identity, such as cloth, leather, vinyl, foam rubber, and springs. If he makes a separate agreement to sell the materials and to perform the labor and service required, the separate amount received for labor and/or service will not be subject to the tax.

(2) Materials which pass to the upholsterer's customer but which lose their identity when used by the upholsterer or which are inconsequential in amount (such as tacks, glue, thread, binding twine, webbing, gimp tape, welting, padding, stain, and varnish) are considered to have been used or consumed by the upholsterer and are taxable at the time of purchase by him.

(3) Materials which are used or consumed by the upholsterer and which do not pass on to the customer are supplies and taxable when purchased by the upholsterer.

(4) Any custom items that are fabricated and sold, with or without installation, such as, but not limited to, auto seat slip covers, boat covers, and car covers will be subject to sales tax on the full sales price without any deduction for labor or service. If stated separately a reasonable installation fee may be excluded from the measure of the tax. See regulation 810-6-1-.182 entitled "Upholstery Shops". (Adopted March 9, 1961, amended November 1, 1963, amended November 3, 1980, amended February 10, 1982, readopted through APA effective October 1, 1982)

810-6-1-.12. Automotive Vehicles.

(1) The term "automotive vehicles" as used in the Sales and Use Tax Laws shall mean and include, but shall not be limited to automobiles, trucks, buses, tractors (crawler and pneumatic tired types), motorcycles, motorscooters, automotive industrial trucks, Ross Carriers, lift trucks, locomotive cranes, airplanes, tugs, motorboats with built-in motors, boats with outboard type motors attached thereto by attachments intended to be permanent rather than readily removable and which motors are controlled with remote controls built on or into the hull of said boat.

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810-6-1-.12. (Continued)

(2) In addition to the vehicles listed above, Sections 40-23-1(a)12 and 40-23-60(12), Code of Alabama 1975, defined "automotive vehicles" to include power shovels, drag lines, crawler cranes, ditchers and similar machines which are self- propelled, but which are not primarily used as instruments of conveyance. Equipment of this class is to be considered as falling within the automotive vehicle class treated for sales or use tax purposes the same as automobiles, trucks, buses, or tractors; provided, however, self-propelled machines which qualify as farm machines (see Rule 810-6-4-.07 Farm Machines, Machinery, and Equipment) or mining machines (see Rule 810-6-2-.43 Machines Used in Mining, Quarrying, Manufacturing, Compounding, and Processing) are taxed at the rate of tax prescribed for equipment in those respective classes. (Sections 40-23-1(a)12, 40-23-60(12), 40-23-2(4), and 40-23-61(c)) (Adopted March 9, 1961, amended November 14, 1966, readopted through APA effective October 1, 1982, amended December 6, 1990)

810-6-1-.12.01. Courtesy Deliveries of Automotive Vehicles by Alabama Dealers for Out-of-State Dealers.

(1) A courtesy delivery for an out-of-state automobile dealer occurs when the out-of-state dealer sells an automobile to a customer and arranges for the vehicle to be shipped to an in-state dealer for delivery to a designated person in Alabama. The in-state dealer performs the customary dealer preparation on the vehicle and receives reimbursement for these services. The out-of-state dealer, not the in-state dealer, invoices the customer for the sale of the vehicle.

(2) An Alabama dealer who makes a courtesy delivery of an automotive vehicle in Alabama for an out-of-state dealer is not the seller of the vehicle and would not be liable for Alabama sales tax on the transaction. Such courtesy deliveries should not be included in the measure of sales tax reported by the Alabama dealer.

(3) The out-of-state seller for whom a courtesy delivery is made by an Alabama dealer is the seller of the automotive vehicle.

(4) The out-of-state seller referenced in (3) above is not liable to collect and remit sellers use tax on sales of automotive vehicles required to be registered or licensed with the judge of probate of any county in Alabama. Instead, the purchaser of the automotive vehicle must remit the tax levied in Section 40-23-102, Code of Alabama 1975, to the county licensing official in accordance with Section 40-23-104. (Sections 40-23-102 and 40-23-104) (Adopted through APA effective July 7, 1989, amended November 5, 1996)

810-6-1-.13. Awnings.

(1) Generally an awning attached to a building as a permanent fixture is a part of the building and comes within the provisions of the building materials provision of Section 40-23-1(a)(10).

(2) It is the ruling of the Department that lightly attached cloth awnings do not fall into the building materials category and are to be taxed at the sale thereof from the awning dealer to the property owner. (Ruling by Commissioner Edwards, July 19, 1951, readopted through APA effective October 1, 1982)

810-6-1-.14. Awnings, Metal.

(1) A metal or other permanent type of awning attached to a building with screws or bolts or otherwise securely attached becomes a part of the building. The materials from which such awnings are made come within the building materials class. When the materials are purchased prefabricated, tax is due to the supplier by the person making the installation, or direct to the State as use tax if purchased out-of- state from a seller not registered with the Department under the Use Tax Law.

(2) In recent court decisions the courts of this State have held that the manufacturing contractor provision of the Sales Tax Law does not apply when a contractor manufactures an item to specifications for a special job. To come within Section 40-23-1(a)(12)b the item manufactured must be standard, that is, it can be used on any job. See: Rule 810-6-1-.29 Materials Manufactured by Contractors. (Amended August 16, 1974, readopted through APA effective October 1, 1982)

810-6-1-.22. Barter, Exchange, Trade-In.

(1) Except as outlined in paragraph (2), the money value allowed for property received and exchanged for other property constitutes payment or partial payment of the purchase price and must be included in the measure of the sales or use tax.

(2) Exceptions to the general rule are:

(a) The agreed value placed on automotive vehicles, truck trailers, semitrailers, or house trailers taken in trade on sales of other automotive vehicles, truck trailers, semitrailers, or house trailers. On so called "trade-ups" this allowance shall not exceed the sales price of the vehicles sold by the dealer. (Sections 40-23-2(4) and 40-23-61(c))

(b) Exchanges of cottonseed for cottonseed meal at or by gins. (Sections 40-23-4(6) and 40-23-62(9))

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810-6-1-.22. (Continued)

(c) The agreed value placed on any used part including tires of an automotive vehicle, truck trailer, semitrailer, or house trailer taken in trade as a credit or part payment on the sale of a new, used or rebuilt part or tire, for an automotive vehicle, truck trailer, semitrailer or house trailer; provided, however, this provision shall not include batteries. (Section 40-23-2(1))

(d) The agreed value placed on any machine, machinery, or equipment used in planting, cultivating, and harvesting farm products or used in connection with the production of agricultural produce or products, livestock or poultry on farms taken in trade on the sale of other farm machines, machinery, or equipment. (Section 40-23-37)

(3) Property received as a "trade-in" or received in barter or exchange for other property is subject to tax, when resold, at the full resale price. (Amended June 12, 1978, amended August 8, 1982, readopted through APA effective October 1, 1982, amended April 3, 1987, amended July 9, 1998)

810-6-1-.23. Beer Tax.

Whether billed separately to the purchaser or included in a lump sum selling price; state, county, and municipal excise taxes on beer may not be excluded from the measure of sales or use tax. (Sections 40-23-1(a)(6) and 40-23-1(a)(8)) (Adopted August 15, 1974, amended October 29, 1976, amended June 12, 1978, amended August 10, 1982, readopted through APA effective October 1, 1982, amended April 3, 1987, amended May 22, 1993)

810-6-1-.24. Bingo.

(1) A bingo parlor is defined as a place of amusement; therefore, the gross receipts derived therefrom are subject to sales tax. State of Alabama v. Roosevelt Crayton, d/b/a Jody's Sporting Goods, 344 So. 2d 771 (Ala. Civ. App.), cert. denied, 344 So. 2d 775 (Ala. 1977).

(2) Effective June 1, 1990, Section 40-23-4(a)(43), Code of Alabama 1975, exempts certain bingo games and operations from the sales tax levied in Section 40-23-2(2). This exemption, however, does not apply to any gross receipts from sales of tangible personal property such as concessions, novelties, food, or beverages.

(3) The exemption referenced in paragraph (2) above only applies in those counties which have duly enacted constitutional amendments legalizing bingo games and operations. Said exemption is further limited to bingo games and operations conducted by organizations which have qualified for exemption under the provisions of 26 USC Section 501(c)(3), (4), (7), (8), (10), or (19) or which are defined in 26 USC Section 501(d).

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(4) To qualify for the exemption contained in Section 40-23-4(a)(43) an organization must comply with the distribution requirements of applicable local laws including any threshold limits with respect to charitable donations from bingo receipts.

(5) Organizations claiming to qualify for the exemption referenced in paragraph (2) above must provide the Revenue Department with documented evidence that they qualify for exemption with the Internal Revenue Service and that they are in compliance with the distribution requirements of applicable local laws. (Adopted June 12, 1978, readopted through APA effective October 1, 1982, amended December 6, 1990)

810-6-1-.27 Building Materials.

(1) The courts of this state and other states have generally held that contractors and builders do not sell the building materials they use and that sales to them are taxable under sales and use tax laws. The courts have stated:

(a) "It would seem that the business done by building contractors generally has been considered to be rendering service rather than selling materials at retail to the owner of the building or land. As to what amounts to a sale at retail within sales tax acts the statutes and the courts seem to endeavor to lay the tax on the last sale before the use or consumption of the goods or articles sold". (State Board of Equalization v. Stanolind Oil and Gas Company, Wyoming).

(b) "A contractor who buys building material is not one who buys and sells - a trader. He is not a dealer, or one who habitually and constantly, as a business, deals in and sells any given commodity. He does not sell lime and cement and nails and lumber. Sales to contractors are sales to consumers." (State v. J. Watts Kearny & Sons, Louisiana).

(c) "Under the contracts before us in the case, plaintiffs agreed to build sewers and buildings requiring the use of sand, gravel, cement and steel. They were the persons using these materials, even though after their metamorphosis they became part of a structure whose title vested in the Sanitary District of Chicago. Under these circumstances it would be unreasonable to characterize the transfer of the materials incorporated in the completed structures as a sale." (Herlihy Mid-Continent Company v. Nudelman, Illinois)

(2) Building materials when purchased by builders, contractors or landowners for use in adding to, repairing, or altering real property are subject to either the sales or use tax at the time of purchase by such builder, contractor, or landowner. Building materials as used in the sales or use tax laws includes any material used in making repairs, alterations, or additions to real property. "Builders", "contractors", and "landowners", mean and include any person, firm, association, or corporation making repairs, alterations or additions to real property. The term "building materials" includes such tangible personal property as lumber,

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timber, nails, screws, bolts, structural steel, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, electrical fixtures, built-in cabinets, sheetmetal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in fans, heating systems, flooring, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, windows, window frames, water meters, gas meters, well pumps and any and all other tangible personal property which becomes a part of real property.

(3) None of the kinds of property designated as "building material" is to be classified as machines or parts or attachments for machines except such items as can be identified at the time of purchase as a part or an attachment for a machine used in manufacturing, designed and manufactured for such use, customarily so used, and necessary to the operation of the completed machine. Such bulk items as lumber, random or stock length structural steel, brick, paint, and common nails do not come within the classification. Such items as prefabricated processing tanks, steam boilers, and steel when purchased prefabricated to special design for a machine part do come within the machine rate. When the landowner or contractor purchases the materials from which he may make a boiler or tank, he must pay tax to the seller or direct to the state, as the case may be. (Lone Star Cement Corporation v. State, 175 So. 399; Layne Central Company v. Curry, 8 So.2d 829; State v. Wilputte Coke-Oven Corporation, 37 So.2d 197). (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-1-.28. Building Materials Defined.

(1) The term "building materials", as used in the Alabama sales and use tax laws, means all tangible personal property, including any device or appliance used by builders, contractors, or landowners in making improvements, additions, alterations or repair to real property in such a way that such tangible personal property becomes identified with a part of realty.

(2) A device or appliance becomes a fixture and a part of the real property to which it is connected when it is built into or is attached to a structure in such a way that its removal would substantially damage or deface such structure.

(3) Where the removal of the device or appliance would not substantially damage or deface the structure to which it is connected the following factors shall be considered:

(a) Actual connection with or attachment to real property. To become a part of real property, the device or appliance must have some physical connections such as: by bolts, screws, nails, cement piping, or cable; by contact, where by reason of great weight

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810-6-1-.28. (Continued)

or bulk, no additional attachment is required; by contact, where the device or appliance is necessary to make complete or useable something which is real property; by attachment to another device or appliance which has become a part of real property.

(b) Appropriateness to the use or purpose of the real property to which connected. The use or purpose of the device or appliance must become an element of the use or purpose of the real property to which it is connected.

(4) This rule is not intended to apply to cook stoves, refrigerators, washing machines, and portable heaters, acquired for the personal use of householders or tenants which may be removed without material damage to the buildings in which they are used. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-1-.29. Building Materials Manufactured by Contractors.

(1) Section 40-23-1(b) provides that the use of building materials in the performance of a contract by a person who manufactures them is equivalent to making a retail sale of such materials and that such use must be reported by such person as subject to sales tax to be measured by the reasonable and fair market value at the time and place where used.

(2) Where the contractor-manufacturer also sells the same kind of materials to others for installation by them, the reasonable and fair market value would be the same as the sales price. Where no such sales are made by the contractor-manufacturer, the sales price of the same kind of materials when sold by other manufacturers during the same period and under the same circumstances would be the reasonable and fair market value.

(3) Where no sales price can be found to be used as the measure of the tax, the following formula should be used:

(a) Manufactured cost of materials, plus transportation to job site, plus proportionate part of general overhead, selling cost, and profit equals reasonable and fair market value of materials.

(4) Section 40-23-1(b) applies to fabricated or manufactured items of tangible personal property permanently attached to real property when the components are prefabricated into a standard item at the shop, plant, or mill of the manufacturing contractor. This subsection does not apply when the materials are cut and fitted on the job site for attachment as construction progresses or to items prefabricated to job specifications at the shop, plant, or mill of the manufacturing contractor.

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(5) The courts of this State have held that the manufacturing contractor provision of the Sales Tax Law does not apply when a contractor manufactures an item to specifications for a special job. To come within Section 40-23-1(b), the item manufactured must be standard, that is, it can be used on any job.

(6) Where the contractor is the manufacturer or compounder of ready-mix concrete or asphalt plant mix used in the performance of a contract, whether the ready-mix concrete or asphalt plant mix is manufactured or compounded at the job site or at a fixed or permanent plant location, the tax applies only to the cost of the ingredients that become a component part of the ready-mix concrete or the asphalt plant mix. (Section 40-23-1(b)) (Amended August 16, 1974, readopted through APA effective October 1, 1982, amended July 7, 1989)

810-6-1-.30 <u>Carpeting and Other Floor Coverings</u>.

(1) The term "floor coverings" as used in this rule shall include carpet, carpet tile, rugs, mats, carpet padding, linoleum and vinyl roll floor covering, linoleum tile, vinyl tile, and similar materials. Floor coverings may be installed as the initial finished floor covering in new construction or as an addition to, or a replacement for, an existing floor covering. Floor coverings may be installed in a manner so as to become a permanent attachment to realty or may be laid on finished floors in a manner that it remains tangible personal property.

(2) Persons who contract to furnish and install floor coverings, which are shaped to fit a particular room or area and which are attached to the supporting floor with cement, tacks, or by some other method making a permanent attachment to real property, are contractors and the floor coverings they use in performing the contract are considered to be building materials. Sales of floor coverings to persons who use them in performing contracts to make additions or improvements to realty are retail sales subject to sales or use tax. See Rule 810-6-1-.46 entitled Contractor's Liability (Sections 40-23-1(a)(10) and 40-23-60(5), <u>Code of Alabama 1975</u>)

(3) Persons who are both selling floor coverings which they do not attach to realty as well as contracting with customers to furnish and install floor coverings that become a part of realty shall purchase all floor coverings at wholesale and thereafter collect and remit sales or use tax to the Department of Revenue on their retail sales of floor coverings which they do not attach to realty for the customer and compute and pay sales tax to the Department of Revenue on the floor coverings which they withdraw from inventory for use in performing "furnish and install" contracts. State and local sales taxes are due on withdrawals at the time and place of the withdrawal of the materials from inventory and shall be computed on the cost of the materials to the person making the withdrawal. Sales tax is due on withdrawals from instate inventory regardless of whether the floor covering materials are withdrawn for use in performing contracts inside or outside Alabama. The sales taxes applicable to withdrawals are those taxes applicable in the

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810-6-1-.30. (Continued)

jurisdiction where the withdrawal occurs not where the materials are attached to realty. See Rule 810-6-1-.56 entitled Dual Business and Rule 810-6-1-.196 entitled Withdrawals from Inventory. (Sections 40-23-1(a)(10) and 40-23-60(5), Code of Alabama 1975)

(4) Sales of floor coverings to the federal government, the State of Alabama, counties and municipalities of the State of Alabama, their instrumentalities, or other exempt entities are not taxable when the floor covering sold to the exempt entity is installed by the exempt entity or by someone other than the seller who is hired by the exempt entity. See Rule 810-6-1-.46 entitled Contractor's Liability regarding the application of sales or use tax to floor coverings both sold and installed by the seller. (Sections 40-23-4(a)(11), 40-23-4(a)(15), 40-23-4(a)(17), 40-23-62(2), 40-23-62(13), and 40-23-62(16), Code of Alabama 1975)

(5) Sales of floor coverings which are not attached to realty but which are simply laid on finished floors are retail sales to the building owner or occupant. The seller shall collect sales or use tax on retail sales to nonexempt entities measured by the total gross proceeds of the sale without any deduction for services incidental to the sale such as trimming, joining, binding, or delivering. (Sections 40-23-1(a)(6), 40-23-1(a)(8), 40-23-26, 40-23-60(10), and 40-23-67, Code of Alabama 1975)

(6) Floor covering samples sold to dealers to be used by the dealer for demonstration or display purposes, and not for resale in the regular course of business, are retail sales subject to sales or use tax. All samples bound in sample books and all samples having holes with metal fasteners inserted shall be considered "not purchased for resale" by the dealer unless the dealer is in the business of reselling floor covering samples. Dealers who do purchase floor covering samples for resale in the regular course of business may purchase the samples tax-free and use them for demonstration or display purposes prior to selling them. (Sections 40-23-1(a)(10) and 40-23-60(5), Code of Alabama 1975) (Adopted May 26, 1961, amended June 12, 1978, readopted through APA effective October 1, 1982, amended December 28, 1998, amended March 27, 2001)

810-6-1-.31. Carrying Charges, Finance Charges.

(1) When the seller has an established price for the goods he sells, that price is the amount to be included in gross proceeds of sales even though the established price may include an amount to cover a carrying charge.

(2) When the seller has an established cash price, and when selling on an extended payment basis adds a separate charge for financing, the additional charge is not included in the gross proceeds of sales.

(3) In no event may finance or carrying charges be deducted from gross proceeds of sales when not shown as a separate item in the seller's billing to his customer. (Section 40-23-1(a)(6)) (Readopted through APA effective October 1, 1982)

810-6-1-.32. Casings Sold to Meat Processors.

The terms "wholesale sale" or "sale at wholesale" shall include a sale to meat packers, manufacturers, compounders or processors of meat products of all casings used in molding or forming wieners and vienna sausages even though such casings may be recovered for reuse. (Section 40-23-1(a)(9)h) (Adopted September 26, 1966, readopted through APA effective October 1, 1982)

810-6-1-.33. Casual Sales.

(1) Other than the exception noted in (3) below, casual or isolated sales by persons not engaged in the business of selling are not required to be reported to the Department of Revenue by the provisions of the Sales Tax Law.

(2) Other than the exception noted in (3) below, tangible personal property purchased outside Alabama from a person not engaged in the business of selling is not subject to use tax when brought into this state for use, storage, or consumption.

(3) Casual sales of automotive vehicles, motorboats, truck trailers, trailers, semitrailers, travel trailers, and manufactured homes are subject to sales or use taxes pursuant to the provisions of Section 40-23-100, et. seq., Code of Alabama 1975. See Sales and Use Tax Rule 810-6-5-.11.05. (Readopted through APA effective October 1, 1982, amended February 23, 1988, amended October 30, 1993, amended October 4, 1994)

810-6-1-.33.01. Application of Casual Sales Tax and Use Tax to Automotive Vehicles, Motorboats, Truck Trailers, Trailers, Semitrailers, Travel Trailers, and Manufactured Homes Purchased from the U.S. Government, the State of Alabama, or Counties or Incorporated Municipalities of the State of Alabama.

(1) The definition of the term "manufactured home" set forth in Code of Alabama 1975, Section 40-12-255(n) is incorporated by reference herein.

(2) The definitions of terms set forth in Code of Alabama 1975, Section 40-23-100, are incorporated by reference herein.

(3) The casual sales taxes and the use taxes levied in Sections 40-23-101(a) and 40-23-102(a), respectively, are applicable to automotive vehicles, motorboats, truck trailers, trailers, semitrailers, and travel trailers purchased directly from the U.S. Government, the State of Alabama, or counties and incorporated municipalities of the State of Alabama. These taxes must be collected from the purchaser by the county licensing official before the automotive vehicle, motorboat, or trailer is registered or licensed. (Sections 40-23-101(a), 40-23-102(a), and 40-23-104)

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(4) The casual sales taxes and the use taxes levied in Sections 40-23-101(b) and 40-23-102(b), respectively, are applicable to manufactured homes purchased directly from the U.S. Government, the State of Alabama, or counties and incorporated municipalities of the State of Alabama. These taxes must be collected from the purchaser by the county licensing official before the decal, which is provided for in Section 40-7-1, is issued to evidence payment of ad valorem tax due and before any homestead exemption is granted for a manufactured home. In those instances where an annual registration fee is due in lieu of ad valorem tax, the county licensing official must collect any sales or use tax due before the decal, which is provided for in Section 40-12-255(a), is issued to evidence payment of the annual registration fee. (Sections 40-23-101(b), 40-23-102(b), and 40-23-104)

(5) Manufactured homes which constitute real property are not subject to the taxes levied in Sections 40-23-101(b) and 40-23-102(b) when purchased from the U.S. Government, the State of Alabama, counties or incorporated municipalities of the State of Alabama, or anyone else. (Sections 40-23-101, 40-23-102 and 40-23-104) (Adopted through APA effective February 19, 1993, amended October 4, 1994)

810-6-1-.33.02. <u>State Casual Sales and Use Tax Returns</u>.

(1) The term "Department" as used in this regulation shall mean the Department of Revenue of the State of Alabama.

(2) The definition of the term "licensing official" contained in <u>Code of Alabama 1975</u>, Section 40-23-100(2) is incorporated by reference herein.

(3) The term "state casual sales and use tax" as used in this regulation shall mean the state taxes levied in Sections 40-23-101 and 40-23-102, <u>Code of Alabama 1975</u>.

(4) State casual sales and use tax collected by licensing officials shall be remitted to the Department in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax is collected. Every licensing official liable to collect and remit the state casual sales and use tax shall prepare and forward to the Department, within the time prescribed by law, a state casual sales and use tax return for each calendar month using forms furnished by the Department and shall pay to the Department the amount of tax shown to be due. Casual Sales and Use Tax returns shall require the following information:

(a) Licensing official's tax account number, name, and complete address,

(b) Period covered by the return,

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810-6-1-.33.02. (Continued)

(c) Amount of casual sales and use tax collected on automotive vehicles, truck trailers, trailers, semitrailers, travel trailers, and manufactured homes,

(d) Administrative fee for timely payment,

(e) Penalties and interest due, if applicable,

(f) Net amount after deducting administrative fee from or adding applicable penalties and interest to Item (c),

(g) Amount of casual sales and use tax collected on motor boats,

(h) Administrative fee for timely payment,

(i) Penalties and interest due, if applicable,

(j) Net amount after deducting administrative fee from or adding applicable penalties and interest to Item (g),

(k) Total amount remitted,

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

(m) Signature of the licensing official and the date signed.

(Adopted through APA effective April 1, 1996)

810-6-1-.34. <u>Caterers</u>.

(1) The total gross proceeds of sales by caterers of food and drinks are subject to sales tax without any deduction because of the cost of preparing and serving food and drinks and without any deduction because of the cost of the ingredients thereof.

(2) There is not, however, any sales tax due with respect to the receipts of a caterer from preparing and serving food and drinks the ingredients of which are not furnished by him. (Readopted through APA effective October 1, 1982)

810-6-1-.35. Chemicals Used in Treating Crude Oil.

Subject to the criteria outlined in Sales and Use Tax Rule 810-6-1-.80 entitled Ingredient or Component of Product Manufactured or Compounded for Sale, chemicals used in treating crude oil which become an integral part thereof and are sold therewith, are purchased at wholesale, tax free, for such purposes. (Sections 40-23-1(a)(9)b and 40-23-60(4)b) (Readopted through APA effective October 1, 1982, amended December 10, 1997)

810-6-1-.36. Commercial Fish Feed.

(1) Sales of commercial fish feed including concentrates, supplements and other feed ingredients when such substances are used as ingredients in mixing and preparing feed for fish raised to be sold on a commercial basis are exempt from the sales and use taxes. (Section 40-23-4(a)(21))

(2) The gross proceeds of the sales of all antibiotics, hormones, and hormone preparations, drugs, medicines, and other medications including serums and vaccines, vitamins, minerals, or other nutrients for use in the production and growing of fish by whomsoever sold are exempt from sales and use taxes. (Sections 40-23-4(a)(29) and 40-23-62(29)) (Adopted December 15, 1969, amended March 18, 1970, readopted through APA effective October 1, 1982, amended April 3, 1987, amended July 9, 1998)

810-6-1-.37. Computer Hardware and Software.

(1) Computers and related equipment, also known as computer hardware, consist of components and accessories that make up the physical computer assembly. The retail sale of computer hardware is subject to sales or use tax. The rental of computer hardware is subject to rental tax.

(2) The term “computer software” as used in this regulation shall mean a sequence of automatic data-processing equipment instructions necessary to solve a problem, and includes both system and application programs and subdivisions, such as assemblers, compilers, routines, generators and utilities.

(3) The term “canned computer software” as used in this regulation shall mean software programs prepared, held, or existing for general or repeated use, including software programs developed in-house and subsequently held or offered for sale or lease. Canned computer software includes all software, except custom software programming, regardless of its function and regardless of whether it is transferred to the purchaser in physical form, via telephone lines, or by another alternative form of transmission.

(4) Canned computer software is tangible personal property; and, on and after March 1, 1997, the retail sale or rental of canned computer software is subject to the sales,

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use, or rental tax, whether such transaction was affected by a transfer of title, or of possession or of both, or a license to use or consume. Unless specifically stated otherwise, the licensing of canned computer software is considered a retail sale, and not a rental, and is subject to sales or use tax. The measure of tax upon which the sales, use, or rental tax is to be computed is the total amount received from the sale or rental of canned computer software to the customer. Wal-Mart Stores, Inc. v. City of Mobile and County of Mobile, Alabama Supreme Court, decided September 13, 1996, substitute opinion released November 27, 1996.

(5) The term "custom software programming" as used in this regulation shall mean software programs created specifically for one user and prepared to the special order of that user. The term "custom software programming" also includes programs that contain pre-existing routines, utilities, or other program components that are integrated in a unique way to the specifications of a specific purchaser. Custom software programming also includes those services represented by separately stated charges for modifications to a canned computer software program when such modifications are prepared to the special order of the customer. Modification to a canned computer software program to meet the customer's needs is custom software programming only to the extent of the modification. Custom software programming is not subject to tax regardless of the manner or medium of transfer to the customer since the charge for the custom software programming is a charge for professional services and the manner or medium of transfer is considered incidental to the sale of the service.

(6) The provider of custom software programming would owe sales or use tax on the cost of the tangible medium for transferring the custom software programming to the customer. Such tangible mediums would include tapes, cards, discs, compact discs, and any other tangible personal property used in transferring custom software programming to the customer.

(7) The term "software maintenance agreement/contract" as used in this regulation shall mean contracts sold in connection with the sale or rental of canned software and can include any, all, or a combination of the following: technical consultation (support) services either by telephone or on-site visits, corrections of errors or malfunctions (bugs) in the canned software, provisions for enhancements (software upgrades) to the canned software, revisions to operating manuals for the canned software, and training services. If the maintenance contract is required as a condition of the sale or rental of canned software, the gross sales price or gross rental price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for the canned software. If the maintenance contract is optional to the purchaser of the canned software, then only the portion of the contract fee representing enhancements or upgrades and new operating manuals is subject to tax provided the fees for consultation or support services, error corrections, and training services are separately stated and such separate statement is not used as a means of avoiding imposition of tax upon the actual gross

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receipts from the furnishing of upgrades or manuals. If these fees are not separately stated, the entire charge for the maintenance contract is subject to tax. If the maintenance contract is optional to the lessee of the canned software, the rental tax will not apply to the gross receipts derived therefrom.

(8) Maintenance contracts sold in connection with custom software programming, whether required or optional, or whether or not separately stated, are not subject to tax. The provider of the custom software programming is the consumer of any tangible personal property used in producing operating manuals and would owe sales or use tax on the cost of these items. (Section 40-23-2(1)) (Adopted July 2, 1975, amended June 12, 1978, readopted through APA effective October 1, 1982, amended January 29, 1990, amended February 21, 1997, amended August 21, 1997)

810-6-1-.38. Consigned Property.

Sellers of property held on consignment are required to include the gross proceeds of sales of such property in sales tax returns filed under the Sales Tax Law. (Section 40-23-1(a)(6)) (Readopted through APA effective October 1, 1982)

810-6-1-.45. Contractors Furnishing and Erecting Building Materials Under Contract With the United States.

(1) Sections 40-23-4(a)(17) and 40-23-62(2) specifically exempt the United States government from paying sales or use tax on its purchases of tangible personal property. These exemptions, however, do not apply to purchases by a contractor where the contractor has a construction contract with the United States government to furnish all materials and labor for use in the performance of the contract. The contractor is the consumer of all the materials which the contractor purchases and uses in the performance of the construction contract and which become a part of real property. The United States Supreme Court in State of Alabama v. King & Boozer, 314 U.S. 1, 62 S.Ct. 43 (1941), and in Curry v. U.S., et al., 314 U.S. 1, 62 S.Ct. 48, held that the Alabama sales and use taxes on building materials used by building contractors for the United States government were due by such contractors even though the costs of such taxes were passed on to the United States government. The court held that these taxes were levied on the contractors and not on the United States. (Sections 40-23-1(a)(10) and 40-23-60(5)) (Sections 40-2A-7(a(5), 40-23-1(a)(10), 40-23-4(a)(17), 40-23-31, 40-23-60(5), 40-23-62(2), 40-23-83, and Act 2013-205, Code of Alabama 1975) (Readopted through APA effective October 1, 1982, amended March 27, 2001, amended June 10, 2005, amended December 25, 2013)

810-6-1-.46. Contractor's Liability.

(1) Contractors or builders must pay either to the seller or directly to the Department of Revenue sales or use tax on the following:

(a) All of the materials, equipment, tools, and supplies which they use or consume in the operation of their business and

(b) All building materials attached by them to real property except property qualifying for a specific exemption. See Rule 810-6-1-.27 entitled Building Materials.

(2) Prior to January 1, 2014, contractors or builders may not claim any immunity or exemption from the sales or use tax laws on account of property purchased and used in connection with contracts with the state, county, or city governments. (Lone Star Cement Corporation v. State, Curry v. U.S. et al., 314 U.S. 1, 62 S.Ct. 48 and State v. King & Boozer, 314 U.S. 1, 62 S.Ct. 43 (1941)). (Sections 40-23-1(a)(10) and 40-23-60(5))

(3) 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 awarded on or after January 1, 2014, with a governmental entity, as defined in Rule 810-6-3-.77 entitled Exemption of Certain Purchases by Contractors and Subcontractors in conjunction with Construction Contracts with Certain Governmental Entities, is exempt from all state, county, and municipal sales and use taxes provided the contractor or subcontractor has complied with all provisions of said rule.

(4) Courts in this State have held that the contractor provision provided in Section 40-23-1(a)(10) applies if the following criteria are met: (i) the taxpayer must be a contractor; (ii) the materials must be building materials; and (iii) the materials must become a part of the real estate. See *Department of Revenue v. James A. Head & Co.,* 306 So.2d 5 (Ala. Civ. App.1974), cert. denied 306 So.2d 12 (1975).

(5) It has also been determined that the taxpayer was a contractor even though actual installation was performed by a third party:

(a) …the 'contractor' provision also applied to those materials provided by the taxpayer, but installed by the electrical contractors, citing *Montgomery Woodworks*. "The Court's holding in *Montgomery Woodworks* illustrates, however, that actual installation by the taxpayer is not required." *Hunter Security, Inc. v. State of Alabama,* Docket S. 05-1309, 5.

(b) "Therefore, the failure of the taxpayer to actually install the cabinets after they have been fabricated does not prevent the taxpayer from being a 'contractor' within the meaning of §40-23-1(a)(10)." *State of Alabama v. Montgomery Woodworks, Inc*., 389 So.2d 512 (Ala. Civ. App. 1980)
(40-2A-7(a)(5), 40-23-1(a)(10), 40-23-31, 40-23-60(5), 40-23-83, and 40-9-14.1, Code of Alabama 1975) (Readopted through APA effective October 1, 1982, amended March 27, 2001, amended June 10, 2005, amended December 25, 2013, amended February 10, 2016)

810-6-1-.46.01. Bleacher Systems, Lockers, Backstops, and Other Fixtures Installed

<u>in Gymnasiums</u>.

(1) Materials or fixtures which are purchased by contractors and are intended to become permanently affixed or attached to gymnasiums, or other realty, are "building materials" and are taxable at the time of purchase by the contractor. (See Rules 810-6-1-.27 and 810-6-1-.28) (Sections 40-23-1(a)(10) and 40-23-60(5))

(a) Prior to January 1, 2014, these purchases are taxable even when the materials are used by the contractor in furnish and install contracts with tax-exempt governmental entities and tax-exempt educational institutions. A contractor that sells the materials to a tax-exempt entity under one contract and affixes the materials to realty under a second contract with the same tax-exempt entity is liable for sales or use tax; the fact that the materials are sold and installed under separate contracts does not qualify the contractor's purchase of materials for the sales or use tax exemptions found in Sections 40-23-4(a)(11), 40-23-4(a)(15), 40-23-4(a)(17), 40-23-62(2), 40-23-62(13), and 40-23-62(16). (State of Alabama v. Algernon Blair Industrial Contractors, Inc., 362 So. 2d 248 (Ala. Civ. App. 1978) and Alabama Precast Products, Inc. v. Charles A. Boswell, 357 So. 2d 985 (Ala. 1978)). On and after January 1, 2014, however, purchases by contractors which do not qualify for the exemptions in Sections 40-23-4(a)(11), 40-23-4(a)(15), 40-23-4(a)(17), 40-23-62(2), 40-23-62(13), and 40-23-62(16) may qualify for the sales and use tax exemption outlined in paragraph (1)(b) below. (Rule 810-6-3-.69.02)

(b) On and after January 1, 2014, the sale of materials or fixtures to, or the storage, use, or consumption of materials or fixtures by, any contractor or subcontractor to be permanently affixed or attached to gymnasiums or other realty pursuant to a contract awarded on or after January 1, 2014, with a governmental entity, as defined in Rule 810-6-3-.77 entitled Exemption of Certain Purchases by Contractors and Subcontractors in Conjunction with Construction Contracts with Certain Governmental Entities, is exempt from state, county, and municipal sales and use taxes provided the contractor or subcontractor has complied with all provisions of said rule.

(2) Criteria used in determining whether materials furnished and installed in gymnasiums, or other realty, become additions to real property include but are not limited to the following: the materials are physically attached to the realty with bolts; the materials when attached are intended to be permanent and are easily identified with a part of the realty; and the materials are appropriate to the realty to which they are attached--that is the materials or fixtures perform a function appropriate to the real property and such function is necessary or convenient to the normal and appropriate uses of the real property. Examples of these items include but are not limited to the following: wall-attached telescopic bleacher systems, reverse-fold telescopic bleacher systems, lockers, and basketball backstops.

(3) Materials which (i) are not intended to become permanently affixed or attached to gymnasiums, or other realty, (ii) are intended to be mobile, and (iii) do, in fact, retain their identity as tangible personal property; qualify for the sales or use tax exemptions found in Sections 40-23-4(a)(11), 40-23-4(a)(15), 40-23-4(a)(17), 40-23-62(2), 40-23-62(13), and 40-23-62(16) when sold to tax-exempt governmental entities or tax-exempt educational institutions. These items are subject to sales or use tax when sold to

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810-6-1-.46.01. (Continued)

nonexempt entities. Criteria used in determining whether materials remain tangible personal property include but are not limited to the following: the materials are not intended to become permanently affixed to realty; the materials can be easily moved from one location to another, and can even be stored out of sight or moved from building to building. An example of an item of this nature includes, but is not limited to, a mobile telescopic bleacher system. (Sections 40-23-1(a)(10) and 40-23-60(5)) (Sections 40-2A-7(a)(5), 40-23-31, 40-23-83, 40-23-1(a)(10) 40-23-60(5), and Act 2013-205, Code of Alabama 1975) (Adopted through APA effective January 27, 1998, amended March 27, 2001, amended June 10, 2005, amended December 25, 2013)

810-6-1-.47. Coupons, Receipts from Redemption.

A retail dealer's total receipts in cash, goods, or by credit from the redemption of coupons issued by manufacturers or distributors are to be included in the measure of tax to be paid where the coupons are accepted by him in exchange for, or as part payment for tangible personal property. (Section 40-23-1(a)(6)) (Readopted through APA effective October 1, 1982)

810-6-1-.50. Dentists, Dental Laboratories, and Dental Supply Houses.

(1) Dentists or dental laboratories primarily render professional services and incidentally use tangible personal property in connection therewith. The courts have ruled that dentists are not selling dentures and other prosthetic devices when they transfer such items to their patients, and in-state or out-of-state dental laboratories are not making retail sales when they transfer the finished dental appliances to dentists. Consequently, gross receipts of dentists or dental laboratories derived from these sources are not subject to the sales tax. Rather, dentists and dental laboratories are using or consuming the items incidental to performing their professional services, and are required to pay state and local sales or use tax at the time of purchase on all tangible personal property purchased at retail for use in the practice of their profession. Dentists and dental laboratories purchasing machinery, equipment, fixtures, supplies and other tangible personal property from out-of-state dental supply houses and other vendors who fail to collect and remit Alabama tax on such items sold at retail, would subsequently owe use tax when they use or consume the personal property in Alabama as part of their professional services. (Haden v. McCarty, 152 So.2d 141 (Ala. 1963), and Hamm v. Proctor, 198 So.2d 782 (Ala. 1967)).

(2) Dental supply houses within or without Alabama engaged in the business of selling tangible personal property such as platinum, gold, silver or cement for fillings, artificial teeth or other such materials to dentists or dental laboratories for use in the performance of such professional services are making sales at retail within the Sales and Use Tax Laws. This is true whether dental supply houses sell materials to a dentist whose services are rendered directly to a patient, or to a dental laboratory that uses them in producing plates, bridge-work, artificial teeth or prosthetic devices on prescription of a dentist, who then uses the latter items in connection with rendering dental services. Dental

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810-6-1-.50. (Continued)

supply houses likewise make retail sales of dental chairs, motors, instruments, drilling machines, fixtures and other such items of tangible personal property for use by dentists or dental laboratories. Dental supply houses within Alabama and those located outside Alabama that have nexus with Alabama and its municipalities and counties are required to collect and remit the state and local sales or use tax on their retail sales. (Adopted May 18, 1967, readopted through APA effective October 1, 1982, amended January 10, 1985, amended May 7, 1997, amended September 26, 2006)

810-6-1-.51. Deposit on Bottles.

(1) Where a retailer sells bottled drinks and the sales price includes the deposit on the bottles and sales tax is charged on the total sales price, the amount of the deposit which is refunded on the return of the empty bottles is not subject to sales tax and may be deducted from the gross proceeds of sales where the retailer refunds the deposit on the bottles and also refunds the sales tax previously collected on the deposit for the bottles.

(2) Where such retailer refunds the deposit on the bottles and at the same time does not refund the sales tax previously collected on the deposit for the bottles, he may not deduct from the gross proceeds of sales the amount of the deposit so refunded and the full sales price of the bottled drinks is to be included in the gross proceeds of sales and the tax collected must be remitted to the State. (Adopted July 31, 1963, readopted through APA effective October 1, 1982)

810-6-1-.52. Direct Mail Advertising, Printer's Liability.

(1) Alabama sales or use tax is due as follows on sales of printed matter by printers who are required, as part of the sales agreement, to mail the printed matter to addresses located within Alabama that appear on a list furnished to or provided by the printer:

(a) The printer is located outside Alabama. The mailing list contains addresses located within Alabama and addresses located outside Alabama. Use tax is due on the printed matter sent to addresses within Alabama.

(b) The printer is located within Alabama. The mailing list contains addresses located within Alabama and addresses located outside Alabama. Sales tax is due on the printed matter sent to addresses within Alabama. Sales tax is not due on the printed matter addressed to locations outside Alabama since these sales qualify for exemption as sales in interstate commerce.

(2) The postage paid by the printer to the U. S. Postal Service would not be included in the measure of tax if billed by the printer to the customer as a separate charge and paid by the customer. (Sections 40-23-2(4) and 40-23-1(a)(5), Code of Alabama 1975) (Adopted June 12, 1978, readopted through APA effective October 1, 1982, amended January 10, 1985, amended April 3, 1987, amended January 29, 1990, December 4, 2014)

810-6-1-.53. Cash Discounts.

Cash discounts when allowed and taken are not to be included in gross proceeds of sales. (Section 40-23-1(a)(6)) (Readopted through APA effective October 1, 1982)

810-6-1-.54. Discounts Based on Volume Sales.

Discounts allowed and claimed on the basis of volume sales are deductible from gross sales for sales tax purposes. Such discounts are allowable either on sales as they are made or on accumulated sales totals. (Section 40-23-1(a)(6)) (Readopted through APA effective October 1, 1982)

810-6-1-.55. Doctors, Medical.

(1) Medical doctors are the consumers of supplies, office furniture, office fixtures and special tools and equipment which they use in the practice of their profession. Sales of these items to doctors are taxable retail sales. (Section 40-23-1(a)(10))

(2) Drugs as defined in Section 40-23-4.1(a), Code of Alabama 1975, are exempt when sold to or by medical doctors. (Readopted through APA effective October 1, 1982, amended January 29, 1990)

810-6-1-.56. Dual Business.

(1) The term “dual business” as used in this rule shall mean a business which both makes retail sales of tangible personal property to the public on a recurring basis and withdraws tangible personal property for use from the same stock of goods.

(2) Dual businesses in Alabama shall obtain a sales tax license and purchase all of the items they sell and withdraw for use at wholesale, tax-exempt. These businesses shall collect sales tax on their retail sales to nonexempt customers and compute sales tax on items which they withdraw from stock for use. The taxes collected on their sales to nonexempt customers and the taxes computed on their withdrawals shall be reported on their sales tax returns and remitted to the Department of Revenue. State and local sales taxes are due on withdrawals at the time and place of the withdrawal from inventory and shall be computed on the cost of the property to the business making the withdrawal. The sales taxes applicable to withdrawals are those taxes applicable in the jurisdiction where the withdrawal occurs. (Sections 40-23-1(a)(9), 40-23-1(a)(10), and 40-23-6, Code of Alabama 1975)

(3) To qualify as a dual business, the business must have a substantial number of retail sales. Contractors, plumbers, repairmen, and others who make isolated or accommodation sales and who have not set themselves up as being engaged in selling do not qualify as a dual business. Where only isolated sales are made, tax should be paid on

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810-6-1-.56. (Continued)

all of the taxable property purchased with no sales tax return being required of the seller making such isolated or "accommodation" sales. (Section 40-23-1(a)(10), Code of Alabama 1975)

(4) A dual business operation shall maintain records sufficient to allow a determination of the proper sales taxes due on sales and withdrawals. (Sections 40-2A-7(a)(1) and 40-23-9, Code of Alabama 1975) (Readopted through APA effective October 1, 1982, amended December 28, 1998)

810-6-1-.58. Electrical Supplies and Equipment Sold to Contractors and Manufacturers.

(1) Electrical supplies including wire, cable, clamps, outlet fixtures, conduits, and switches, are building materials which come under the building materials provisions of Sections 40-23-1(a)(10) and 40-23-60(5). Except as outlined in paragraph (2), electrical supplies are taxable at the general rate of sales or use tax upon the sale to, or use by, the person affixing them to real property, whether that person is a contractor, builder, manufacturer, or any other property owner. (Sections 40-23-1(a)(10), 40-23-2(1), 40-23-60(5), and 40-23-61(a))

(2) Whether sold to a contractor or directly to the manufacturer, electrical equipment used by manufacturers is taxable at the reduced machine rate of sales or use tax when it is (i) made or manufactured for use on, (ii) necessary to the operation of, and (iii) customarily used as a part of or an attachment to a machine used in manufacturing.

(a) The expressions “made or manufactured for use on,” “necessary to the operation of,” and “customarily used” are understood to mean that the part or attachment must be purchased substantially in the form in which it will be used by the manufacturer except for the usual and customary adjustments; that it is a standard part or attachment customarily used; and, further, that the machine or machinery on which it is used would not do the work for which designed if it were not so used. This includes all parts and attachments without which the machine would not do any work. In addition, it includes parts and attachments designed to increase the efficiency of the machine.

(b) Items of electrical equipment including starters, switches, and circuit breakers which become a part of or an attachment to a machine used in manufacturing are taxed at the reduced machine rate of sales or use tax. This equipment must either be attached directly to the machine or be immediately adjacent to the machine in order to qualify for the reduced machine rate. (Sections 40-23-2(3) and 40-23-61(b))

(3) Switchboards, control boards and cabinets controlling the general electrical supply system are not considered to be parts or attachments of machines used in manufacturing. The general rule is that the switch which is the direct control for the machine takes the machine rate and all equipment to that point is taxable at the general rate. (Sections 40-23-2(1) and 40-23-61(a)) (Readopted through APA effective October 1, 1982, amended March 10, 1998)

810-6-1-.59. Welding Rods and Fluxes.

(1) Subject to the criteria outlined in Sales and Use Tax Rule 810-6-1-.80 entitled Ingredient or Component of Product Manufactured or Compounded for Sale, welding rods and fluxes purchased by manufacturers and compounders that become a component part of the product manufactured or compounded for sale are purchased at wholesale, tax free. The fluxes must be of the type that have alloying elements that are picked up in the molten pool of metal weld deposit, so that the materials in the flux become a part of the welded structure. (Sections 40-23-1(a)(9)b and 40-23-60(4)b)

(2) The purchase of welding rods and fluxes for repair work or construction work is subject to the 4 percent sales and/or use taxes, whichever may apply. (Adopted September 18, 1964, readopted through APA effective October 1, 1982, amended January 10, 1985, amended December 10, 1997)

810-6-1-.60. Opticians, Optometrists, and Ophthalmologists.

(1) The dispensing or transferring of ophthalmic materials, including lenses, frames, eyeglasses, contact lenses, and other therapeutic optic devices, by opticians, optometrists, or ophthalmologists are retail sales subject to sales tax. Such sales are taxable when sold to the ultimate consumer regardless of whether the optician, optometrist or ophthalmologist manufactured the materials for sale or purchased them for resale.

(2) When a licensed optometrist or ophthalmologist exercises professional skills in examining the eyes of a patient and prescribes eyeglasses, contact lenses, or some other ophthalmic material which the optometrist or ophthalmologist dispenses or transfers to that patient, the optometrist or ophthalmologist may separately state the charges for the ophthalmic materials and the charges for the professional services, including dispensing fees or fitting fees, on the invoice to the patient and collect sales tax only on the separately stated charges for the ophthalmic materials which were dispensed or transferred to the patient, provided the optometrist or ophthalmologist also maintains records which clearly reflect the separate sources of receipts. In the absence of separately stated charges for materials and professional services on the invoices to patients and the maintenance of documentation in the records of the business, the tax shall apply to the total amount billed to the patient. (Section 40-23-1(d))

(3) When the ophthalmic materials are purchased by a consumer covered by a third party benefit plan, including Medicare, the sales tax shall be applicable to the amount that the ophthalmologist, optometrist, or optician is reimbursed by the third party benefit plan plus the amount that the consumer pays to the ophthalmologist, optometrist, or optician at the time of the sale. (Section 40-23-1(d)) (Adopted November 5, 1959, amended June 12, 1978, amended April 1, 1981, amended August 10, 1982, readopted through APA effective October 1, 1982, amended April 3, 1987, amended December 10, 1996, amended December 4, 2014)

810-6-1-.61. Engravers.

Sales of materials to engravers are at wholesale, tax free, when such materials become a component of the engravings, etc., produced for sale. The machines used by the engraver manufacturing the engravings, etc. are taxable at the machine rate. The supplies, materials and equipment not becoming a component of the product sold or not constituting machines used in manufacturing are subject to the sales or use tax, whichever may apply. (Sections 40-23-1(a)(9)b) and 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-1-.62. Engravers, Sales of Materials are at Wholesale, Tax Free When Such Materials Become a Component of the Engraving.

Sales of materials to engravers are at wholesale, tax free, when such materials become a component of the engravings, etc., produced for sale. The machines used by the engraver manufacturing the engravings, etc., are taxable at the machine rate. The supplies, materials, and equipment not becoming a component of the product sold or not constituting machines used in manufacturing are subject to the sales or use tax, whichever may apply. (Sections 40-23-1(a)(9)b) and 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-1-.63. Federal Admission Taxes.

The federal taxes required to be paid on single admissions, season tickets, and rental of boxes are not to be included in the measure of Alabama sales tax where such federal taxes are shown as a separate item properly identified on the tickets or receipts given to the person paying such admissions or rentals or purchasing such tickets. (Readopted through APA effective October 1, 1982)

810-6-1-.64. Federal Excise Taxes, Manufacturers.

(1) A manufacturer's federal excise tax may not be excluded from the measure of sales or use tax.

(2) Manufacturer's federal excise taxes become another overhead business expense to the retailer which he can take into consideration, together with other business expenses, in determining his selling price. (Sections 40-23-1(a)(6) and 40-23-1(a)(8)) (Readopted through APA effective October 1, 1982, amended October 3, 1987, amended May 22, 1993)

810-6-1-.65. Federal Excise Taxes, Retailers.

(1) A federal excise tax which a retailer must collect from his customer as a tax and remit directly to the federal government may be excluded from the measure of sales or use tax only if it is measured by the value of the articles sold at retail and it is billed to the customer as a separate item. (AGO Evans, July 31, 1992)

(2) If the retailer bills his customer a lump sum price, including the retail federal excise tax, the sales or use tax applies to the total selling price. (Sections 40-23-1(a)(6) and 40-23-1(a)(8)) (Readopted through APA effective October 1, 1982, amended October 3, 1987, amended May 22, 1993)

810-6-1-.66. Fencing.

(1) Fencing materials of all kinds including fence posts, fence wire, and fence accessories are building materials, the sales of which are at retail and subject to tax when made to the person who will attach the fencing materials to real property. Where the person who makes the installation is the manufacturer of the materials used, such manufacturer owes sales tax to be measured by the fair market value of the materials laid down at the job site. The manufacturer is required by the Sales Tax Law to report his use of such materials and pay tax thereon as if he had made a retail sale of the materials. Any fencing materials installed by the manufacturer not manufactured by him are taxed in the usual manner.

(2) In case a vendor or manufacturer of fencing materials is both selling such materials to others for installation by them and furnishing and installing the materials under contract all purchases of fencing materials are at wholesale, tax free. Thereafter both sales to others and withdrawals for use under installation contracts are to be reported as taxable sales to the Department of Revenue. (Section 40-23-1(a)(10)) (Adopted May 26, 1961, readopted through APA effective October 1, 1982)

810-6-1-.67. Florists, Telegraphic Orders.

When florists sell through a telegraphic delivery association the following rules will apply:

(a) Alabama florists are liable for sales tax measured by total receipts resulting from orders taken by them for transmittal to a second florist who makes delivery either within or without Alabama. Any expense of making the sale is to be included in the measure of the tax regardless of whether or not the expense is billed as a separate item.

(b) Sales tax does not apply to amounts received by Alabama florists who make deliveries in this state pursuant to telegraphed or telephoned instructions received from florists either within or without Alabama. (Adopted March 9, 1961, amended July 30, 1962, readopted through APA effective October 1, 1982, amended July 9, 1998)

810-6-1-.69. Containers, Components of Containers, Labels, Pallets, and Shipping Supplies.

(1) The term "label" as used in Sections 40-23-1(a)(9)b, 40-23-1(a)(9)c, 40-23-60(4)b, and 40-23-60(4)c, Code of Alabama 1975, and in this rule shall mean a tag or sticker of any material imprinted with information. The term "label" includes price stickers, address stickers, and shipping tags as well as those tags or stickers which identify or describe the property to which they are attached.

(2) The term "components of containers" as used in this rule shall include partitions, cellophane, tissue paper, excelsior, gummed tape, scotch tape, glue, steel straps, twine, string, wire staples, wax paper, and wrapping paper which are used in and on containers to shape, form, preserve, stabilize, or protect the contents of the containers and which accompany the container and the container's contents upon shipment and delivery to the customer.

(3) The term "container" as used in this rule shall mean articles in or on which tangible personal property is placed for shipment and delivery to the purchaser. Containers include bags, barrels, baskets, bottles, boxes, cans, cartons, cores, crates, cups, cylinders, drums, kegs, pails, plates, reels, sacks, and spools.

(4) Containers purchased by manufacturers or compounders for use in packaging products manufactured or compounded by them for sale, including the components of the containers, are not subject to sales or use tax where the containers are passed on to the purchaser of the products contained therein with no intention on the part of either the purchaser or the seller to return the containers or have them returned for reuse. (Sections 40-23-1(a)(9)b and 40-23-60(4)b)

(a) This exclusion for manufacturers and compounders may apply to both inner and outer containers. Accordingly, when manufacturers or compounders place their manufactured or compounded products in cans or bottles and place the cans or bottles in fiber boxes for shipment to the customer; the cans or bottles and the fiber box qualify for the exclusion if both are intended for one-time use. Alabama-Georgia Syrup Co. v. State, 253 Ala. 49, 42 So. 2d 796 (1949).

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(b) Containers, when purchased by manufacturers or compounders for use in purchasing and storing product ingredients prior to using them as ingredients in the manufacturing or compounding process and not purchased for use as one-time-use containers for shipping the manufactured or compounded product to customers, do not qualify for the exclusion. Alabama-Georgia Syrup Co. v. State, 253 Ala. 49, 42 So. 2d 796 (1949).

(5) Containers purchased by retailers for use in packaging products for sale, including the components of the containers, are not subject to sales or use tax where the containers are passed on to the purchaser of the products contained therein with no intention on the part of either the purchaser or the seller to return the containers or have them returned for reuse. (Sections 40-23-1(a)(9)c and 40-23-60(4)c)

(6) Containers and other packaging materials or supplies which are used or consumed in rendering nontaxable services are taxable when purchased by the person who performs the service even when the containers, materials, or supplies are transferred to the purchaser's customer. For example, the operator of a laundry or dry-cleaning establishment is the user or consumer of laundry bags, garment bags, and other packaging materials or supplies and must remit sales or use tax on purchases of these items even though the bags, materials, or supplies may be transferred to the operator's customer.

(7) Unless excluded by statute, containers, including the components of the containers, which are intended to be returned or repurchased for reuse are subject to sales or use tax. Sales of the following items are specifically excluded from sales or use tax regardless of whether there is an intent on the part of the purchaser or the purchaser's customer to return the containers or have them returned for reuse:

(a) Sales of containers to persons engaged in selling, supplying, or furnishing baby chicks to growers where the containers are for use in the delivery of the baby chicks to the grower. (Sections 40-23-1(a)(9)f and 40-23-60(4)f)

(b) Sales of egg crates and egg cartons to egg producers for use in the delivery of eggs to distributors or packers. (Sections 40-23-1-(a)(9)f and 40-23-60(4)f)

(c) Sales of bagging and ties for use in preparing cotton for market. (Sections 40-23-1(a)(9)g and 40-23-60(4)g)

(d) Sales of wrapping paper and other wrapping materials to producers, processors, packers, or wholesale or retail sellers of poultry or poultry products for use in preparing poultry or poultry products for delivery, shipment, or sale. This exemption includes (i) pallets used in shipping poultry and eggs, (ii) paper, and (iii) other materials used to line boxes or other containers in which poultry or poultry products are packed together with any other materials including ice placed in the containers for the delivery, shipment, or sale of poultry or poultry products. (Sections 40-23-4(a)(20) and 40-23- 62(21)

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(8) Labels are purchased at wholesale, tax-free when (i) the label is purchased by a manufacturer or compounder and affixed to the tangible personal property or product which the manufacturer or compounder manufactures or compounds for sale or to the furnished container thereof or (ii) the label is purchased to be affixed to one-time-use containers that are purchased without contents and sold or furnished to the purchaser's customer along with the contents placed therein or thereon for sale. (Sections 40-23-1(a)(9)b, 40-23-1(a)9c, 40-23-60(4)b, and 40-23-60(4)c)

(9) Pallets purchased without contents by persons who sell or furnish the pallets along with the contents placed on the pallets for sale are excluded from sales or use tax where the pallets are passed on to the purchaser of the products contained thereon with no intention on the part of either the purchaser or the seller to return the pallets or have them returned for reuse. (Sections 40-23-1(a)(9)d and 40-23-60(4)d).

(10) Crowns, caps, and tops sold to manufacturers or compounders for use upon containers in which the manufacturer or compounder markets its products are excluded from sales or use tax when the crowns, caps, or tops are intended for one-time use only. (Sections 40-23-1(a)(9)e and 40-23-60(4)e)

(11) Except for supplies which qualify for the exemptions contained in Sections 40-23-4(a)(10), 40-23-4(a)(40), 40-23-4(a)(42)c, 40-23-62(12), 40-23-62(32), and 40-23-62(34)c, shipping supplies such as nails, lumber, metal straps, dunnage, and plates which are used for fastening or securing manufactured or compounded products into railroad cars, trucks, aircraft, or vessels for shipment are taxable at the time of purchase.

(12) Purchases by retailers, wholesalers, and others of sales tickets, cash register receipt paper, invoice forms, bill of lading forms, and other forms for use in receipting, billing, invoicing, or shipping are taxable.

(13) The following are examples of items sold by suppliers to certain retailers or service providers with notations as to whether the item qualifies as a nontaxable one-time-use container:

(a) RETAIL FOOD STORES (GROCERY & MEAT MARKETS):

Adding Machine Tape	T	Meat Interleaver	NT
Bags and Sacks	NT	Paper Cans	NT
Bag Holders	T	Paper Cutters	T
Brooms - Use	T	Parchment	NT
Broom Holders & Display Racks	T	Patty Paper	NT
Butcher Paper	NT	Plastic Film	NT
Cashier Pads	T	Pork Loin Wrap	NT
Cellophane Bags	NT	Prepackaging Trays	NT

(Continued)

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Cellophane, Sheets or Roll	NT	Pressure Sensitive Tape	NT
Cellophane Cutters	T	Price Markers	T
Egg Cartons	NT	Produce Bags	NT
Food Pails and Tubs	NT	Roll Paper	NT
Greaseproof Paper	NT	Sausage Boxes and Liners	NT
Grocery Bags	NT	Signboard	T
Gum Tape	NT	Skewers	T(1)
Gum Tape Dispensers	T	Steak Interleaver	NT
Heat Sealing Equipment	T	Sugar Bags	NT
Ice Cream Bags	NT	Sweeping Compound	T
Labels	NT	Ti-Paks and Twistems	NT
Locker Paper	NT	Trays	NT
Marking Pencils	T	Twine	NT
Meat Boards	NT	Window Display Bags	NT

(1) Nontaxable only if accompanies sale and cannot be reused.

(b) FOOD AND BEVERAGE SERVERS:

(Restaurants, Drive-ins, Cafeterias, Concession Stands, Bars, Lounges, and Night Clubs)

Adding Machine Tape	T	Paper Trays	NT
Aluminum Foil	T	Paper Linen Caps	T
Aluminum Plates	NT	Paper Liners for Food Trays	NT
Barbeque Bags	NT	Patty Paper	NT
Bibs	NT(2)	Place Mats	NT(1)
Burger Cups	NT	Printing Charge on Special Print Orders	T
Burger Cup Holders	T	Sandwich Bags	NT
Butter Chips	NT	Sandwich and Drink Trays	NT
Chop Holders	T	Skewers	T
Coasters	T	Souffle Cups	NT
Cocktail Forks and Spoons	T(1)	Steak Markers	NT(1)
Coffee Stirrers	NT(2)	Straws	NT(2)
Crab Shells	NT(1)	Sundae Dishes	NT(1)
Creamer Caps	T	Table Covers	T
Cups and Lids	NT	Table Wiping Towels	T
Cup Carriers	NT(1)	Tableware, Plastic and Spoons	NT(2)
Cup Dispensers	T	Tissue, 12 x 12 M.G.	NT(1)
Doilies	T	Toilet Tissue	T
Eclair Cases	NT	Toothpicks and Frills	T
Guest Checks	T		

(Continued)

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Hot Dog Trays	NT	Towelettes, Moist	NT(2)
Kone Bottles	NT	Towels	T
Napkins	NT(2)	Tray Covers	T
Napkin Dispensers	T	Waxed Paper	NT(1)
Paper Bags	NT	Wooden Forks and Spoons	NT(2)
Paper Cans and Pails	NT(1)	Wooden Dishes	NT(1)
Paper Plates	NT	Wooden Skewers	NT(2)

(1) Nontaxable only if accompanies sale and cannot be reused.

(2) Amended to conform to the decision of the *Alabama Court of Civil Appeals in the case State Department of Revenue v. Kelly's Food Concepts of Alabama, LLP*

(c) LAUNDRY AND DRY-CLEANING SUPPLIES:

Bridal Gown Boxes	T	Shirt Bags	T
Coat Retainers	T	Shirt Bands	T
Collar Supports	T	Shirt Boards	T
Garment Bags	T	Shirt Boxes	T
Garment Roll Film	T	Shirt Pax	T
Garment Roll Film Dispenser Racks	T	Shirt Shells	T
Hanger Shields and Guards	T	Storage Bags	T
Hangers	T	Sweater Bags	T
Laundry Boxes	T	Tape	T
Laundry and Launderette Bags	T	Trouser Guards	T
Laundry Shells	T	Twine	T
Paper Cutters	T	Wrapping Paper	T

(d) RETAIL BAKERY AND CANDY SHOPS:

Adding Machine Tape	T	Jiffy Bags	NT
Aluminum Foil	NT(1)	Labels	NT
Aluminum Pie and Cake Plates	NT(1)	Marking Pencils	T
Bakery Bags	NT	Pan Liners	NT(1)
Bakery Boxes	NT	Paper Cans	NT
Bakery Tissue	NT	Paper Caps	T
Baking Cups	NT(1)	Paper Cutters	T
Bread Bags	NT	Paper Pie Plates	NT(1)
Cake Circles	NT(1)	Parchment	NT
		Ribbon	NT

(Continued)

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Candy Bags	NT	Sales Books	T
Candy Cups	NT	Sandwich Bags	NT
Cellophane	NT	Sandwich Wrap	NT
Cellophane Bags	NT	Shredded Cellophane	NT
Doilies	NT(1)	Signboard	T
Eclair Cups	NT(1)	Sweeping Compound	T
Food Pails and Tubs	NT(1)	Toothpicks and Frills	T
Gift Wrap	NT	Transparent Tape	NT(2)
Glassine Bags	NT	Twine	NT
Grocery Bags	NT	Wax Paper	NT
Gum Tape	NT(2)	Window Bags	NT
Gum Tape Dispensers	T	Wrapping Paper	NT
Heat Sealing Equipment	T		

(1) Nontaxable only if accompanies sale and cannot be reused.

(2) If used as part of package.

(e) DRUG, VARIETY, AND SUNDRY STORES:
(See also Food and Beverage Servers)

Adding Machine Tape	T	Notion Bags	NT
Gift Wrapping Paper	NT	Paper Cutters	T
Grocery Bags	NT	Prescription Bags	NT
Guest Checks	T	Ribbon and Accessories	NT
Gum Tape	NT	Sanitary Napkin Bags	
Gum Tape Dispensers	T	(resale)	NT
Prescription Medicine Bottles	NT(1)	Shopping Bags	NT
Prescription Medicine Boxes	NT(1)	Signboard	T
Prescription Medicine Jars	NT(1)	Twine	NT
Millinery Bags	NT	Wrapping Paper	NT

(1) Nontaxable only if accompanies sale and cannot be reused.

(2) If used as part of package.

(f) FLORISTS AND NURSERIES: (1)

Cellophane	NT	Polyethylene & Paper	
Cellophane Bags	NT	Cutters	T
Cellophane Tape	NT	Pressure Sensitive Tape	NT
Florist Tissue	NT	Ribbon and Accessories	NT
Flower Boxes	NT	Shredded Cellophane	NT
Flower Pots	NT		

(Continued)

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Gift Papers and Foil	NT	Ti-Paks and Twistems	NT
Gummed Tape	NT	Twine	NT
Gummed Tape Dispensers	T	Wrapping Paper	NT
Paper Bags	NT	Wrapping Tissue	NT
Polyethylene Rolls and Bags	NT		

(g) RETAIL DEPARTMENT STORES & SPECIALTY STORES:
(Includes Book and Stationery Stores, Gift Shops, Hardware Stores, etc.)

Curtained Rod Bags	NT	Notion Bags	NT
Garment Bags	NT	Paper Cutters	T
Garment Bag Boxes	NT	Record Bags	NT
Gift Boxes	NT	Ribbon and Accessories	NT
Gift Wrap	NT	Sales Books	T
Grocery Bags	NT	Shirt Bags	NT
Gum Tape	NT	Shoe Bags	NT
Gum Tape Dispensers	T	Shopping Bags	NT
Ice Bags	NT	Shredded Cellophane	NT
Jiffy Bags	NT	Shredded Tissue	NT
Labels	NT	Signboard	T
Lampshade Bags	NT	Transparent Tape	NT
Marking Pencils	T	Twine	NT
Millinery Bags	NT	Wrapping Paper	NT
Millinery Boxes	NT	Wrapping Tissue	NT
Nail Bags	NT		

(h) MEAT AND POULTRY PACKERS, FOOD LOCKERS AND DAIRIES: (1)

Butcher Paper	NT	Ice Cream Cans and Cartons	NT
Butter Tubs	NT	Ice Cream Pails	NT
Butter Wraps	NT	Ice Cream Sticks	NT
Cellophane and Plastic Films	NT	Marking Pencils	T
Cellophane Tape	NT	Meat Boards	NT
Chic Pax	NT	Parchment	NT
Chic Tainer Trays	NT	Poly Bags	NT
Cone Bottles	NT	Pork Loin Wrap	NT
Creamer Caps	NT	Poultry Bags	NT
Cups and Tubs	NT	Sacks	NT
Egg Cartons	NT	Sausage Boxes and Liners	NT
Freezer and Locker Paper	NT	Spoons, Forks and Knives	T

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Freezer Tape	NT	Straws	T
Grocery Bags	NT	Ti-Paks and Twistems	NT
Gum Tape	NT	Twine	NT
Gum Tape Dispenser	T	Waxed Paper	NT
Ham Wraps	NT	Wrapping Paper	NT
Ice Cream Bags	NT		

(1) If the sales are made to a food locker business - it must be determined if the products are used in rendering a service, or if they are in the actual retail meat business. If they are wrapping meat for customers to be stored in their individual lockers - this is a service and the items are taxable.

(i) FARMS, ASSEMBLERS OF FARM PRODUCTS:

Box Liners	NT	Hay Baling Ties or Twine	NT(1)
Butter Tubs	NT	Labels	NT
Car Liners	T	Marking Pencils	T
Cellophane	NT	Poly Bags	NT
Cellophane Bags	NT	Poly Sheets and Rolls	NT
Cellophane Tape	NT	Potato Bags	NT
Chic Pak	NT	Poultry Bags	NT
Chic Tainer Trays	NT	Prepackage Trays	NT
Containers for Packaging Bees or Worms for Sale	NT(1)	Shredded Paper and Cellophane	NT
Egg Cartons	NT	Tomato Cartons	NT
Flour and Meal Bags	NT	Twine	NT
Fruit Baskets	NT(1)	Window Bags	NT
Grocery Bags	NT	Wrapping Paper	NT
Gum Tape	NT	Wrapping Tissue	NT
Gum Tape Dispensers	T		

(1) Nontaxable if accompanies sale and cannot be reused.

(Sections 40-2A-7(a)(5), 40-23-1(a)(9)d, 40-23-1(a)(9)e, 40-23-1(a)(9)(f), 40-23-1(a)(9)g, 40-23-4(a)(10), 40-23-4(a)(20), 40-23-4(a)(40), 40-23-4(a)(42)c, 40-23-31,40-23-60(4)d, 40-23-60(4)e, 40-23-60(4)f, 40-23-60(4)g, 40-23-62(12), 40-23-62(21), 40-23-62(32), 40-23-62(34)c, 40-23-83 and 40-23-31, Code of Alabama 1975) (Adopted March 9, 1961, amended July 27, 1964, Readopted through APA effective October 1, 1982, amended July 30, 1998, amended March 5, 2015)

810-6-1-.72. Gases: Acetylene, Oxygen, Hydrogen.

(1) All sales to consumers such as dentists, doctors, private hospitals, manufacturers, refiners, repairmen, welders, or junk dealers of acetylene, oxygen, hydrogen, and other gases for use in rendering professional medical services or in manufacturing, processing, or repairing are subject to sales or use tax. (Sections 40-23-1(a)(10) and 40-23-60(5))

(2) Sales of these gases to manufacturers or compounders where the gas enters into and becomes an ingredient or component part of the product manufactured or compounded for sale are at wholesale, tax-free. For example, sales of oxygen to manufacturers of steel where the oxygen becomes an ingredient or component part of the product manufactured for sale are nontaxable wholesale sales. (State v. United States Steel Corporation, 206 So.2d 358) See Rule 810-6-1-.80 entitled Ingredient or Component of Product Manufactured or Compounded for Sale. (Sections 40-23-1(a)(9)b and 40-23-60(4)b)

(3) Sales of these gases to dealers for resale are not taxable. (Sections 40-23-1(a)(9)a and 40-23-60(4)a) (Readopted through APA effective October 1, 1982, amended July 9, 1998

810-6-1-.73. Gases: Propane and Butane.

Sales at retail of propane and butane gases or any similar gas are subject to sales or use tax, whichever may apply. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-1-.75. Gratuities and Tips.

(1) The terms "gratuity" and “tip” as used in this rule shall mean a monetary amount paid by a customer in a bar, restaurant, or similar establishment usually in return for or in anticipation of some service. While a gratuity or tip is generally thought of as a voluntary monetary gift, in practice some retailers add a mandatory gratuity to the customer’s bill.

(2) Sales tax does not apply to voluntary gratuities or tips, whether in cash or otherwise added by the customer to the bill, when given directly to the retailer’s employee by the customer or given to the retailer who receives no benefit from the gratuity or tip and merely acts as a conduit to channel the gratuity or tip in total to the retailer’s employee.

(3) Sales tax applies to mandatory charges designated as gratuities, minimum service charges, or other minimum charges billed to customers by retailers, whether listed separately on the customer’s bill or included as part of the selling price of the food, meal, or drinks, when the retailer receives a benefit from the added charges such as using all

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or a portion of the mandatory charges to supplement the wages or salaries of the retailer's employees. (State v. International Trade Club, Inc., 351 So. 2d 895 (Ala. Civ. App. 1977)) (Sections 40-23-1(a)(6) and 40-23-1(a)(8), Code of Alabama 1975)

(4) A mandatory charge designated as a gratuity, minimum service charge, or other minimum charge is not taxable when the retailer collects the charge from the customer in lieu of voluntary gratuities or tips and merely acts as a conduit to channel the charge in total to his or her employees. Added charges of this nature are simply substitutes for cash tips and the retailer receives no benefit from the charge. (State v. International Trade Club, Inc., 351 So. 2d 895 (Ala. Civ. App. 1977)) (Adopted November 3, 1980, readopted through APA October 1, 1982, amended January 10, 1985, amended October 20, 1998)

810-6-1-.76. Hospitals, Infirmaries, Sanitariums, and Like Institutions - Private.

(1) Private hospitals, infirmaries, sanitariums, and like institutions are required to pay sales tax or use taxes, whichever may apply, on their purchases of tangible personal property. (Sections 40-23-2 and 40-23-61, Code of Alabama 1975)

(2) Private hospitals, infirmaries, sanitariums and like institutions are primarily engaged in the business of rendering services. They are not required to collect and remit sales tax on their gross receipts from meals, bandages, dressings, drugs, x-ray photographs, or other tangible personal property when the items are used in rendering hospital services. This is true irrespective of whether or not the tangible personal property is billed separately to their patients. Private hospitals, infirmaries, sanitariums, and like institutions are deemed to be the purchasers for use or consumption of the tangible personal property; and, the sellers of these items are required to collect sales or use tax on sales of the property to the institutions. Provided, however, purchases by private hospitals, infirmaries, sanitariums, and like institutions of drugs as defined in Section 40-23-4.1(a), Code of Alabama 1975, are specifically exempt from sales and use tax. (Sections 40-23-2, 40-23-4.1, and 40-23-61)

(3) When private hospitals, infirmaries, sanitariums, and like institutions furnish meals to nurses, attendants and patients as a part of their services rendered, the institutions are deemed to be the users or consumers of the food and beverages used in the preparation of these meals. Sales or use tax is due on the purchase of the food and beverages by the institution in the manner outlined in paragraph (2) unless the institution also operates a cafeteria which serves the public. (Sections 40-23-2 and 40-23-61)

(4) Privately-owned hospitals, infirmaries, sanitariums, and like institutions that operate cafeterias serving meals to the public must purchase all foodstuffs and beverages at wholesale, tax free, and collect the sales tax on sales of meals to their customers and remit the tax to the Department of Revenue. These institutions must also compute and

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810-6-1-.76. (Continued)

pay tax to the Department of Revenue on the cost of foodstuffs withdrawn from stock and used to feed patients. (Sections 40-23-1(6) and 40-23-1(10)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982, amended January 29, 1990, amended October 20, 1998)

810-6-1-.77.01. Ice, Sales of.

(1) Sales of ice to purchasers who have a sales tax license number are sales at wholesale not subject to sales or use tax, provided the purchaser is buying the ice for resale. (Sections 40-23-1(a)(9)a and 40-23-60(4)a)

(2) Sales of ice to purchasers for use as an ingredient of iced drinks manufactured or compounded for sale are sales at wholesale not subject to sales or use tax. (Sections 40-23-1(a)(9)b and 40-23-60(4)b)

(3) Sales of ice to transportation companies or others for use in icing railroad cars or refrigeration trucks are subject to sales or use tax. (Sections 40-23-1(a)(10) and 40-23-60(5)) (Readopted through APA effective October 1, 1982, amended March 10, 1998)

810-6-1-.79.03. Industrial Uniforms, Sales or Replacement of.

When a lessee is required under a contract with the lessor to reimburse the lessor for the depreciated value of any item lost or not returned by the lessee, the transaction is not a retail sale; therefore, no sales tax is due. (See State of Alabama v. Industrial Uniform Services, Inc.) (Adopted June 12, 1978, readopted through APA effective October 1, 1982).

810-6-1-.80. Ingredient or Component of Product Manufactured or Compounded for Sale.

(1) Subject to the qualifications outlined in paragraph (2), tangible personal property which is purchased by a manufacturer or compounder and which enters into and becomes an ingredient or component part of the final product manufactured or compounded for sale may be purchased at wholesale, tax free, for both sales and use tax purposes, regardless of whether the property is used with the intent that it becomes an ingredient or component part of the finished product. The burden of proving that materials become an ingredient or component part of the finished product shall be carried by the manufacturer or compounder. (Sections 40-23-1(a)(9)b and 40-23-60(4)b)

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(2) In order to qualify for the wholesale sale exclusion contained in Sections 40-23-1(a)(9)b and 40-23-60(4)b, the tangible personal property purchased by the manufacturer or compounder must be present in the final product and must not be deducted as depreciation or as a Section 179 expense deduction as allowed under Section 40-18-35(a)(17), on the manufacturer's or compounder's Alabama income tax return. (Section 40-23-1(a)(9)b and 40-23-60(4)b), (Adopted October 1, 1959; readopted through APA effective October 1, 1982; amended February 4, 1985, amended December 10, 1997)

810-6-1-.80.01. <u>Oils Used in Aluminum Rolling Process</u>.

Oils used in the hot or cold aluminum rolling processes have been determined to remain on and become an ingredient or component part of the rolled aluminum and, therefore, subject to the criteria outlined in Sales and Use Tax Rule 810-6-1-.80 entitled Ingredient or Component of Product Manufactured or Compounded for Sale may be purchased by the processor at wholesale, free of sales or use tax. (Sections 40-23-1(a)(9)b and 40-23-60(4)b) (Adopted through APA effective January 29, 1990, amended December 10, 1997)

810-6-1-.80.02. <u>Materials Purchased by Manufacturers and Compounders for Use as Rust Preventatives or Protective Coatings</u>.

Materials, including grease and other petroleum products, purchased by manufacturers or compounders for use as a rust preventative or a protective coating for metal products while in storage or in shipment are exempt from sales or use tax when they remain on the final product manufactured or compounded for sale. (Sections 40-23-1(a)(9)b and 40-23-60(4)b) (Adopted through APA effective January 27, 1998)

810-6-1-.81. <u>Installation Charges</u>.

(1) Where the quoted or advertised price is a lump sum for both property and installation or where billing and other records do not show separate charges for property and for installation, the measure of the tax is the total amount received by the seller.

(2) Where the seller has a standard retail sales price for his products and where the standard sales price is used both when making across-the-counter sales and when selling and installing the property, he may make a separate and additional charge for making the installation which, when shown separately in his billings and on his books, will not be subject to the sales tax. (Section 40-23-1(a)(6)) (Readopted through APA effective October 1, 1982)

810-6-1-.81.01. Interior Decorators and Interior Designers.

(1) Interior decorators and interior designers making retail sales of tangible personal property in Alabama must apply for and obtain a sales tax license. Further, these interior decorators must collect sales tax from their clients on their retail sales of tangible personal property and remit the tax to the Department of Revenue. Out-of-state interior decorators and interior designers, who do not have a place of business in Alabama but for whose business sufficient nexus exists, must register to collect sellers use tax on their Alabama sales and collect and remit sellers use tax to the Department of Revenue on those sales. (Sections 40-23-6 and 40-23-66)

(2) Fees charged by interior decorators or interior designers in conjunction with sales of tangible personal property are a part of the gross proceeds of sales and must be included in the measure of sales or use tax charged to and collected from their clients. Fees charged by interior decorators or interior designers are taxable even if they are billed to clients as an amount separate from the cost of tangible personal property on a cost plus basis. (Sections 40-23-1(a)(6), 40-23-1(a)(8), and 40-23-60(10))

(3) Sales or use tax does not apply to fees charged by interior decorators or interior designers solely for consultation or designing services when no sale of tangible personal property occurs in conjunction with those services.

(4) In those instances where interior decorators or interior designers receive a fixed sum fee which is not in any way contingent upon the sale of tangible personal property and, subsequently, sell tangible personal property in a completely unrelated transaction, the fixed sum fee is not a part of the selling price of the tangible personal property and is not subject to sales or use tax.

(5) Interior decorators or interior designers who contract to furnish and install tangible personal property which becomes a part of realty are the users or consumers of such property and owe sales or use tax on the cost of the property so used or consumed. Property withdrawn from inventory by an interior decorator or interior designer for use in performing contracts for additions or improvements to realty must be reported as taxable withdrawals and the sales tax thereon remitted directly to the Department of Revenue. The measure of tax on withdrawals is the cost of the property to the interior decorator or interior designer who withdraws the property. Except as enumerated in Rule 810-6-3-.77, interior decorators or interior designers making additions or improvements to realty may not claim immunity or exemption from sales or use tax on account of property purchased and used in connection with contracts with the federal, state, county, or city governments. The fact that a governmental agency has advised the interior decorator or interior designer not to include tax on the invitation to bid or purchase order would not relieve the interior decorator or interior designer from liability for sales or use tax on the cost of materials used in fulfilling a contract with that agency for making additions or improvements to realty. (Sections 40-23-1(a)(10) and 40-23-60(5)) (Sections 40-2A-7(a)(5), 40-23-1(a)(6), 40-23-1(a)(8), 40-23-(a)(10), 40-23-6, 40-23-31, 40-23-60(5), 40-23-60(10), 40-23-66 40-23-83, and 40-9-33, Code of Alabama 1975) (Adopted through APA effective April 26, 1991, amended March 27, 2001, amended June 10, 2005)

810-6-1-.84. Labor or Service Charges.

(1) The term "new or different" as used in this rule shall mean new or different insofar as the ultimate purchaser is concerned. The fact that work may be performed at various stages before an item is ready for use by the ultimate purchaser does not mean that the item is not a new item.

(2) Sales or use tax applies to labor or service charges billed to customers in conjunction with sales of tangible personal property and repairs to tangible personal property as follows:

(a) Labor or service charges, whether included in the total charge for the product or billed as a separate item, are taxable if the labor or service (i) is incidental to making, producing, or fabricating a new or different item of tangible personal property or otherwise preparing the tangible personal property for sale and (ii) is performed prior to transfer of title to the purchaser. (Sections 40-23-1(a)(6), 40-23-1(a)(8), and 40-23-60(10), Code of Alabama 1975)

(b) Labor or service charges are not taxable when billed for labor or services expended in repairing or altering existing tangible personal property belonging to another in order to restore the property to its original condition or usefulness without producing new parts. When repair work includes the sale of repair parts in conjunction with repairs to existing tangible personal property belonging to another, only the sales price of the repair parts is taxable provided the charges for the repair parts and the charges for the repair labor or repair services are billed separately on the invoice to the customer. If the repairman fabricates repair parts which are used in conjunction with repairs to existing tangible personal property belonging to another, the total charge for the parts, including any labor or service charges incurred in making, producing, or fabricating the parts, is taxable even if the fabrication labor or service charges are billed to the customer as a separate item. (Sections 40-23-1(a)(6), 40-23-1(a)(8), and 40-23-60(10), Code of Alabama 1975) (Readopted through APA effective October 1, 1982, amended December 28, 1998)

810-6-1-.85. Laundries, Dry-Cleaning Establishments.

(1) Laundries and dry cleaning establishments in washing, dry cleaning, dying, pressing and otherwise reconditioning clothing, curtains, drapes, linens, rugs and other articles are performing a service which is not subject to the sales tax.

(2) The materials, supplies, and equipment used or consumed in rendering laundry and dry cleaning services are subject to sales or use tax, whichever may apply. The tax due is to be paid by the laundry or dry cleaning establishment to the supplier where the supplier is required to collect the tax or directly to the Department of Revenue as use tax where the supplier does not collect the tax.

(3) In case the laundry or dry cleaning establishment makes sales of tangible personal property at retail as well as renders services such sales are subject to sales tax. The goods acquired for resale at retail are purchased at wholesale tax free. (Adopted May 26, 1961, readopted through APA effective October 1, 1982)

810-6-1-.88. Lawyers.

Lawyers use law books, supplies, and equipment, which books, etc., are taxable. (Section 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-1-.89. Lease Sales - Retention of Title.

Transfers of property constitute sales when made under lease-sale or retention-of-title contracts where these contracts contemplate transfer of ownership when all of the agreed upon payments have been made. (Section 40-23-1(a)(5)) (Readopted through APA effective October 1, 1982)

810-6-1-.89.02. Licensed Dealers, Sales to.

(1) Sales to Dealers at Wholesale. Sales of tangible personal property are sales at wholesale, not subject to tax, when made to a licensed dealer to be put into the stock of goods offered for sale by the dealer, not withstanding the fact that the dealer may occasionally or habitually withdraw from stock some part of the inventory for use or consumption in connection with the business or for the personal use or consumption of the dealer. Such withdrawals shall be reported on the licensed dealer's sales tax return and the sales tax thereon computed and remitted to the Department of Revenue. The sales tax on withdrawals shall be computed on the cost to the dealer of the property withdrawn. See Rule 810-6-1-.196 Withdrawals from Inventory. (Sections 40-23-1(a)(6), 40-23-1(a)(8), 40-23-1(a)(9)a, and 40-23-1(a)(10))

(2) Sales to Dealers at Retail. Sales of tangible personal property to a licensed dealer for his own use or consumption rather than for resale purposes are sales at retail and are subject to tax. (Sections 40-23-1(a)(10) and 40-23-2) (Readopted through APA effective October 1, 1982, amended January 27, 1998)

810-6-1-.90. Machine Shops.

(1) Sales of property manufactured or fabricated by machine shops and custom foundries are subject to sales or use tax, except when the sale is for resale or otherwise specifically exempted.

(2) In doing repair work, the machine shop operator consumes materials such as paint, solder, babbitt, and lumber which lose their identity in the repairing process. The machine shop operator is also considered to be the consumer of items such as cotter keys, nails, washers, stove bolts and nuts, bits of metal, and sheets of metal used in patching, mending, or reinforcing weakened parts. The machine shop operator shall not collect sales or use tax from the customer on amounts billed to the customer for the cost of these materials which the operator consumes in performing repair work; instead, the operator shall remit sales or use tax to the supplier at the time of the operator's purchase of the materials.

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810-6-1-.90. (Continued)

(3) Where in making repairs the machine shop operator fabricates or manufactures a recognizable part or attachment for the article being repaired (as contrasted to patching, mending, or reinforcing weakened parts), the operator shall bill the parts or attachments separately and collect sales or use tax only on the sales price of the part or attachment. If the machine shop operator fails to separately state the charges for parts and attachments and the charges for services, the operator shall collect sales or use tax on the total amount of the charges billed to the customer. Under no circumstances, however, shall the machine shop operator deduct labor or other costs which go into the fabrication or manufacture of a recognizable part or attachment from the selling price of the part or attachment. (Sections 40-23-1(a)(6) and 40-23-60(10), Code of Alabama 1975) (Readopted through APA effective October 1, 1982, amended July 30, 1998)

810-6-1-.91. Made-to-Order and Custom Sales.

Where persons contract to manufacture, compound, process or fabricate their materials into articles of tangible personal property according to the special order of their customers, the total receipts from the sales of such articles are subject to the sales or use tax, whichever may apply. The seller may not deduct any of his costs, nor can he deduct any of his charges for labor or services, which are an item of the production or fabrication costs of the article, to arrive at the taxable amount. Articles commonly made to order are curtains, draperies, tents, awnings, clothing, and slipcovers. The person making sales of made-to-order and custom made articles purchases the materials which become a component or ingredient of their products at wholesale, tax free. The equipment, tools and supplies used or consumed in the production of such articles and not becoming a part thereof are subject to tax, except that machines used in such production are specifically taxed at one and one-half percent rather than the general rate of four percent. (Section 40-23-1(a)(6)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-1-.93. Materials From Which Patterns are Manufactured.

Pattern makers who make patterns which they sell to others for use, purchase at wholesale tax free the materials from which such patterns are made. (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-1-.94. Materials Used in Plating.

(1) Materials purchased by a person, firm, or corporation for use in further processing or manufacturing tangible personal property not owned by the person, firm, or corporation but owned by a manufacturer or a compounder are exempt from the sales and/or use tax when the tangible personal property is to be ultimately sold at retail.

(2) The materials used in plating tangible personal property not belonging to the plating company are subject to the sales and/or use tax when the plating company customers used the product which was plated for the customer and there was no retail sale of the product. The materials used in this category are not purchased by or used by the manufacturer or compounder who manufactures or compounds a product for sale; therefore, the purchase of the materials does not fall within the meaning of the term "wholesale" as found in Section 40-23-1(a)(9), Code of Alabama 1975. (Adopted July 2, 1975, amended June 12, 1978, readopted through APA effective October 1, 1982)

810-6-1-.95. Materials Used in Repairing.

(1) Materials used in repairing, for tax purposes, fall into the following classes:

(a) Materials which pass to the repairman's customer and which do not lose their identity when used by the repairman and which are a substantial part of the repair job (such as auto repair parts, radio tubes, and condensers) are sold at retail by the repairman. He must collect and report sales tax on such sales, including tax on the service incidental thereto. He may, however, if making a separate agreement to sell the repair parts and to perform the labor and service required, collect and remit the tax only upon the price of the parts if his records and his invoices clearly show a separation of the amounts received from sales and parts and from rendering service.

(b) Materials which pass to the repairman's customer but which lose their identity when used by the repairman or which are inconsequential in amount, such as paint, solder, and tacks, are considered to have been used or consumed by the repairman and are taxable at the time of sale to him.

(c) Materials which are used or consumed by the repairman and which do not pass on to his customer are supplies and taxable when sold to the repairman. (Section 40-23-1(a)(10))

(d) Materials which fall in classes (b) or (c) are purchased at wholesale for use by a repairman who, in addition to using such materials as a repairman, sells the same kinds of materials for use by others. These materials become subject to the sales tax upon their withdrawal for use by the repairman under the withdrawal feature of Section 40-23-1(6), (8), and (10). Note however, that a repairman is not to be considered a vendor of these classes of materials unless he carries a stock of them and sells outright therefrom a

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810-6-1-.95. (Continued)

substantial amount. If the repairman makes only isolated sales or "accommodation" sales of these materials he is not to be considered as a seller of them under the sales tax law, in which case his supplier must collect the tax.

(2) In all instances, materials are taxable when sold to repairmen for use in making repairs where such materials lose their identity as a result of such use, for instance, solder used in welding, paint used in automobile refinishing, thread used in mending clothing. In all instances where the shape or composition of the repair material is materially changed, such altered or changed material is considered to have been used or consumed by the repairman and, for that reason, subject to tax when sold to him. No tax on this material is to be collected by the repairman from his customer.

(3) In instances where repair materials and repair parts are passed to the repairman's customer without change, except necessary and customary minor adjustments, such parts or materials may be purchased at wholesale by the repairman licensed under the Sales Tax Law. The repairman is then required to collect sales tax from his customer. (Readopted through APA effective October 1, 1982, amended October 8, 1985)

810-6-1-.97. <u>Materials Used on Road and Bridge Projects</u>.

(1) Sales of sand, gravel, or other building materials by landowners or other suppliers who regularly sell or offer to sell these materials are subject to sales tax when made to contractors for the State of Alabama or the counties or municipalities of the State for use by the contractors in building roads or bridges. This rule applies in all instances where the contractor is obligated by the terms of the contract to furnish, to pay for, and to lay down the materials, including sales of materials which have been selected by and on which an option has been taken by the state or the counties or municipalities of the State. The supplier shall collect the tax from the contractor and remit the amount due to the Department of Revenue. (Sections 40-23-1(a)(10) and 40-23-60(5))

(2) Where an isolated sale of sand, gravel, or similar material is made to a contractor by a landowner who is not engaged in the business of selling such material, the isolated sale will not be required to be reported to the Department and neither sales tax nor use tax will be due from the landowner or from the contractor on the transaction. (Sections 40-2A-7(a)(5), 40-23-1(a)(10), 40-23-31, 40-23-60(5), and 40-23-83, <u>Code of Alabama 1975</u>) (Readopted through APA effective October 1, 1982, amended March 27, 2001, amended June 10, 2005, amended December 25, 2013)

810-6-1-.98. Mattress Renovation.

(1) A mattress renovator both renders service and sells tangible personal property where he rebuilds or renovates a mattress for his customer by reworking the materials in the customer's mattress, the identity of which is maintained throughout the operation, and by adding thereto whatever new materials are required to complete the job in a satisfactory matter. Under these circumstances, the mattress renovator may make separate contracts to render the service required and to sell the tangible personal property used (ticking, cotton, springs, tufts, etc.) in which case the receipts from rendering service are not subject to sales tax where the invoice rendered to the customer and the records of the renovator show separately sales of tangible personal property and charges for performing services. Provided, however, where work of this nature is done for a lump sum without separation of charges for tangible personal property and for services, the sales tax shall apply to the lump sum amount.

(2) In instances where the identity of the customer's mattress is not preserved with the mattress delivered to the customer having been made from whatever materials were available, the mattress returned to the customer is considered a new article, the measure of the tax being the amount paid by the customer including the value of the customer's old mattress. The mattress renovator purchases at wholesale tax free the materials he uses in renovating or rebuilding his customer's mattress. (Section 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-1-.99. Meals Served by Boarding Houses.

Food furnished by operators of boarding houses is not considered to be sold at retail when the charge for such food is a lump sum covering meals for a week or for a month and when such food is not offered for sale to the general public. The supplier of food stuff is required to collect the tax from the operator at the time of the sale to him. The boarding house operator is considered to be rendering a service rather than making sales and is regarded as the consumer of the materials he purchases. This rule does not apply to meals furnished by schools and colleges. (See Rule 810-6-2-.50.) (Adopted October 1, 1959, readopted through APA October 1, 1982, amended January 10, 1985)

810-6-1-.100. Meals, Snacks, Drinks, and Beverages Served in Alabama by Railroads, Airlines, and other Transportation Companies.

(1) Sales of meals, snacks, drinks, and beverages to passengers by railroads, airlines, steamships, and other transportation companies within this state are subject to sales tax, provided the meals, snacks, drinks, or beverages are served to the passengers while still in Alabama. (Sections 40-23-1(a)(10) and 40-23-2(1), Code of Alabama 1975)

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810-6-1-.100. (Continued)

(2) Meals, snacks, drinks, and beverages served in Alabama by a transportation company as a part of its transportation service are retail sales subject to sales tax when the transportation company includes in the ticket price an amount to cover the selling price of the meal, snack, drink, or beverage. The amount for the meal included in the selling price of the ticket is the measure of tax. (State v. Hertz Skycenter, Inc., 294 Ala. 336, 317 So. 2d 324 (1975) and State v. Delta Air Lines, 356 So. 2d 1205 (Ala. Civ. App. 1978). (Amended October 29, 1976, amended June 12, 1978, readopted through APA effective October 1, 1982, amended July 30, 1998)

810-6-1-.101. Meals Served to School Children in the School Buildings.

Lunches sold within school buildings, not for profit, to school children are exempted from the sales tax. This exemption is construed to mean sales of lunches to pupils of kindergartens, grammar, and high schools, either public or private. (Readopted through APA effective October 1, 1982)

810-6-1-.102. Meals Sold to the Public.

Sales of prepared foods and drinks of all kinds for consumption on or off the premises of the seller are subject to the sales tax, which tax must be collected and remitted by the seller, except as otherwise stated in Sales and Use Tax Rules 810-6-1-.99 Meals served by Boarding Houses, 810-6-2-.51 Meals Sold by Schools and 810-6-1-.100 Meals, Snacks, Drinks, and Beverages Served in Alabama by Railroads, Airlines, and other Transportation Companies. (Section 40-23-2(1), Code of Alabama 1975) (Readopted through APA effective October 1, 1982, amended July 30, 1998)

810-6-1-.104. Microfilming of Records.

The microfilming of records is a service transaction with the material cost being incidental to the transaction. Sales and/or use tax will be due on films, equipment, and other supplies purchased for use in microfilming records. (Legal Division Opinion February 10, 1978) (Adopted June 12, 1978, readopted through APA effective October 1, 1982)

810-6-1-.105. Modular Buildings.

(1) The Alabama Supreme Court has interpreted the language relative to modular buildings in Sections 40-23-1(a)(10) and 40-23-60(5), Code of Alabama 1975, as "designed to make the sale of materials going into the construction of such buildings subject to the tax and to exempt the sale of the building itself" from sales or use tax. This interpretation places "modular building components on a par with conventional building materials" and makes "the sale of all building materials, modular or otherwise, sales at retail." The attachment of the building components or units to realty and the subsequent sale of the components or units as a completed building is not treated as a taxable transaction. In making this interpretation, the Supreme Court ruled that use tax is due on modular building units manufactured by an out-of-state manufacturer and sold by the manufacturer to a contractor who attached the units to realty in Alabama. The measure of the use tax is the manufacturer's selling price of the modular units. (Boswell v. Alcoa Construction Systems, Inc., 368 So. 2d 18 (S.Ct.1979))

(2) Sales tax is due on modular building components or units manufactured in Alabama as follows:

(a) An instate builder or manufacturer of modular building components or units who builds or manufactures the components or units for resale in the form of tangible personal property to persons who affix them to realty, shall obtain a sales tax license and purchase all building materials, fixtures and other equipment becoming part of the modular building components or units without payment of sales or use tax to the suppliers. The builder or manufacturer of the modular building components or units shall (i) collect sales tax on any retail sales of the components or units sold in Alabama measured by the selling price of the components or units and (ii) report and pay the sales tax to the Department of Revenue on those retail sales.

(b) In the event an instate builder or manufacturer of modular building components or units, who has obtained a sales tax license pursuant to paragraph (2)(a), also contracts to affix modular building components or units to realty either inside or outside Alabama, the builder or manufacturer shall be liable for sales tax computed on the cost price of the materials withdrawn from inventory and used to build or manufacture the components or units which the builder or manufacturer affixes to realty pursuant to the contract.

(3) Use tax is due on modular building components or units as follows:

(a) Out-of-state builders or manufacturers of modular building components or units, who do not have a place of business in Alabama but for whose business sufficient nexus exists, shall (i) register to collect sellers use tax on their Alabama sales of modular building components or units which are sold in the form of tangible personal property to persons who affix them to realty and (ii) report and pay the tax to the Department of Revenue on their Alabama sales. The measure of the sellers use tax is the selling price of the components or units. Purchases of modular building components or units from out-of-

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state builders or manufacturers who are not registered to collect sellers use tax are subject to consumers use tax. Consumers use tax should be computed and paid by the purchaser measured by the purchase price of the components or units. (Section 40-23-60(5))

(b) An out-of-state builder or manufacturer of modular building components or units, who contracts to affix modular building components or units to realty inside Alabama, is liable for consumers use tax computed on the cost price of the materials incorporated into the components or units which the builder or manufacturer affixes to realty in Alabama pursuant to the contract. Credit for legally imposed sales and use taxes paid to any other state or its subdivisions will be allowed against the Alabama use tax due as outlined in Rule 810-6-5-.04. (Sections 40-23-60(5) and 40-27-1, Article V.1, Code of Alabama 1975) (Adopted August 15, 1974, readopted through APA effective October 1, 1982, amended October 20, 1998)

810-6-1-.106. Monuments, Memorial Stones, Grave Markers, and other Decorative or Commemorative Objects.

(1) Monuments, memorial stones, grave markers, or other similar decorative or commemorative objects, collectively referred to in this rule as monuments, are building materials. Sales of monuments to the person who installs or erects them to realty are retail sales. The person who installs or erects monuments to realty is a contractor.

(2) A monument dealer or builder who contracts to furnish and install or erect monuments is a contractor and shall pay sales or use tax to the supplier on the cost of the monuments purchased for use in performing contracts or on the cost of the materials which become a component part of monuments which the dealer/builder manufactures for use in performing contracts. In the event the supplier is an unregistered out-of-state supplier, the monument dealer/builder shall compute and pay consumers use tax on the monuments or monument materials purchased from the unregistered supplier. (Sections 40-23-1(a)(10) and 40-23-60(5))

(3) A monument dealer or builder who sells monuments uninstalled is a retailer and shall apply for and obtain a sales tax license or, if an out-of-state business with nexus in Alabama, register to collect sellers use tax. The licensed or registered monument retailer shall purchase at wholesale, tax-free all monuments purchased for resale and all materials which become a component of monuments which the retailer manufactures for sale. The monument retailer shall collect and remit sales or sellers use tax on the retail selling price of all monuments sold without any deduction for labor used in manufacturing, cutting, engraving, or marking the monuments. (Sections 40-23-1(a)(6), 40-23-1(a)(8), 40-23-1(a)(10), 40-23-26, 40-23-60(5), 40-23-60(10), and 40-23-67)

(4) A monument dealer or builder in Alabama who is in the dual business of both selling monuments uninstalled and contracting to furnish and install or erect monuments

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810-6-1-.106. (Continued)

shall obtain a sales tax license. The dual business monument dealer/builder shall purchase at wholesale, tax-free all monuments and all materials becoming a component of monuments which the dealer/builder manufactures. The dual business monument dealer/builder shall collect sales tax from the customer and remit the tax to the Department of Revenue on all retail sales of uninstalled monuments and shall compute and pay sales tax on all monuments or components of monuments withdrawn from inventory for use in performing contracts to furnish and install or erect monuments. The measure of tax to be collected on sales of uninstalled monuments is the selling price of the monument sold without any deduction for labor used in manufacturing, cutting, engraving, or marking the monument. The measure of tax on monuments or monument materials withdrawn from inventory for use in performing contracts is the cost of these items to the dealer/builder who withdraws them. (Sections 40-23-1(a)(8) and 40-23-1(a)(10)) (Adopted November 3, 1980, readopted through APA effective October 1, 1982, amended July 9, 1998)

810-6-1-.107. <u>Movie Theaters</u>.

(1) Movie theater operators owe sales or use tax on all of the equipment, furniture, fixtures, and supplies used by them in operating their businesses. Movie film and advertising materials, including trailers and posters, are subject to tax to be measured by the purchase price when this property is bought outright and not rented. (Sections 40-23-2(1) and 40-23-61(a), <u>Code of Alabama 1975</u>)

(2) The lessor of film or films is not required to report and pay rental tax on the gross receipts derived from the leasing or rental of the film or films, when the lessee charges admission for viewing the film or films. (Sections 40-23-2(2) and 40-12-223(1), <u>Code of Alabama 1975</u>) (Adopted March 9, 1961, amended June 12, 1978, readopted through APA effective October 1, 1982, amended July 30, 1998)

810-6-1.107.02. <u>Motor Freight Lines, Sales to</u>.

Any sale of property to motor freight lines is subject to the sales tax where the property is delivered in Alabama by a seller doing business in Alabama. This is true even though the purchase order may have been given out-of-state to an out-of-state branch of the seller and even though payment is made out-of-state. (Readopted through APA effective October 1, 1982)

810-6-1-.109. <u>Name Plates</u>.

Name plates attached by the manufacturer to the manufacturer's products for identification purposes are purchased at wholesale as a component part of the property manufactured for sale. (Section 40-23-1(a)(9)c) (Readopted through APA effective October 1, 1982, amended October 1, 2014)

810-6-1-.110. Newspapers.

(1) A newspaper is printed matter which is distributed to the public generally. It is in sheet form, is published at regular or short intervals, and contains information of current events and news of general interest. In addition, a newspaper carries advertising and by editorial comment, advocates the opinions of its publishers.

(2) A publication is a newspaper if it has qualified under postal regulations for second class postal rates, is required by postal regulations to publish the names and addresses of its owners and editors, and is qualified as a medium for publishing legal notices.

(3) Company news sheets containing, primarily, information of company interest only, distributed by the company to its employees and its clients and owners are not newspapers and are not exempted from the sales or use taxes. This type of material is subject to tax measured by its purchase price. When purchased in Alabama, the printer will be required to collect the tax from the company. When purchased outside of Alabama, the tax will be required to be paid direct to the Department of Revenue by the company making the purchase.

(4) Postage charges over and above the regular price for the publication, separately billed, for mailing to individual readers will not be required to be included in the measure of the tax. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-1-.110.01. Newspapers, Sales of.

(1) Sales of newspapers are subject to sales tax except when made at wholesale to dealers licensed in accordance with the provisions of Section 40-23-6, Code of Alabama 1975, as amended, or when made to the United States, the State of Alabama, or the counties or cities of the state.

(2) Sales of newspapers made by publishers and licensed dealers to unlicensed independent newsboys will be, in all instances, subject to tax as retail sales, the tax to be measured by the gross proceeds of such sales.

(3) The word "newsboys" as used herein shall be understood to mean street hawkers and newspaper route persons of all ages.

(4) Newsboys who are itinerant vendors who have not filed with the Department of Revenue the bond required by the provisions of Section 40-23-24, Code of Alabama 1975, as amended, will not be licensed as dealers under said act. (Amended January 25, 1977, to comply with decision rendered by the Court of Civil Appeals in State v. The Advertiser Company). (Readopted through APA effective October 1, 1982)

810-6-1-.111. Occasional Sale.

Property acquired for use or consumption may be sold tax free at a private sale completely disassociated from any retail business which may be operated by the seller. (Attorney General Opinion Price, May 12, 1937) (Readopted through APA effective October 1, 1982)

810-6-1-.112. Signs.

(1) Signs are to be considered subject to tax on the full sales price when such signs are standard, prefabricated by the seller or his supplier and delivered as a complete unit to the point where set up.

(2) When the signs are custom built into a building or otherwise affixed to real property, they come within the building materials provision with the tax being due from the person who erects the sign to his supplier on the cost of materials used to construct the sign, in which case no tax would be due from the person installing the sign on his service in attaching the materials to the building and/or real property. The same rule will apply when a builder constructs an outdoor advertising sign that will become affixed to real property from the ground up using lumber, nails, sheetmetal, etc.

(3) In the instances whereby the sign company subcontracts the installation or subcontracts a portion of the construction of the sign, taxation of the materials will be as described above in paragraph (2), with tax being due on the cost of the materials used by the contractor and/or subcontractor that builds the custom-made signs.

(4) In recent court decisions in this State, the courts have held that the contractor provision provided in Section 40-23-1(a)(10) applies if the following criteria are met: (i) the taxpayer must be a contractor; (ii) the materials must be building materials; and (iii) the materials must become a part of the real estate. See *Department of Revenue v. James A. Head & Co.,* 306 So.2d 5 (Ala. Civ. App.1974), cert. denied 306 So.2d 12 (1975).

(5) It has also been determined that the taxpayer was a contractor even though actual installation was performed by a third party:

(a) "…the 'contractor' provision also applied to those materials provided by the taxpayer but installed by the electrical contractors, citing Montgomery Woodworks ("The court holding in Montgomery Woodworks illustrates, however that actual installation by the taxpayer is not required." *Hunter Security at 5.) Hunter Security, Inc. v. State of Alabama,* Docket S. 05-1309.

(b) "Therefore, the failure of the taxpayer to actually install the cabinets after they have been fabricated does not prevent the taxpayer from being a 'contractor' within the meaning of §40-23-1(a)(10)." *State of Alabama v. Montgomery Woodworks, Inc*., 389 So.2d 512 (Ala. Civ. App. 1980)

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810-6-1-.112. (Continued)

(6) In some instances the sign dealer will be in a dual business, both selling and building signs. When both parts of the business are substantial rather than incidental, the dealer should be set up to purchase all material at wholesale, tax free, and pay tax directly to the Department of Revenue on sales and withdrawals. See Rule 810-6-1-.56, Dual Business. See, also, 810-6-1-.29, Building Materials Manufactured by Contractors.

(7) The providing of billboard advertising is a service; and, the receipts therefrom are not subject to sales tax. The provider of billboard advertising services must pay sales or use tax on purchases of supplies, materials, and equipment used in the operation of the business. (Section 40-23-1(a)(6)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982, amended December 6, 1990, amended October 1, 2014)

810-6-1-.113. <u>Outside Signs, Furnished</u>.

Outside signs furnished by a manufacturer to his customers, when such signs are furnished without cost to the customers, are subject to the sales or use tax when purchased by the manufacturer. These signs are not purchased to be resold, nor are they purchased as a component of the property manufactured for sale by the manufacturers. (Section 40-23-1(a)(9)) (Readopted through APA effective October 1, 1982)

810-6-1-.114. <u>Painters</u>.

(1) Persons doing any kind of painting where the only tangible personal property supplied by them is the paint which they apply and the equipment, brushes, and supplies used in such application are primarily rendering a service and not making retail sales. The receipts from such painting are not subject to the sales tax. All of the paint, tools, brushes, equipment and supplies purchased by the painters are subject to sales tax or use tax, whichever applies, at the time of sale to the painter.

(2) Note however, that where painters sell painted signs, furniture, or articles which they have manufactured or purchased for painting for resale purposes, such sales are subject to sales tax. The paint and other materials used as a component part of articles to be sold are purchased tax free at wholesale.

(3) Where painters are both consuming paints, etc., in rendering services and consuming from the same stock the same kind of property and manufacturing property for sale, where the use and manufacturing is continuous and a substantial part of the total business, and where suitable records are kept revealing costs of all materials used in contract painting and cost of materials used in manufacturing, the painter using the materials for both purposes will be allowed to purchase all of the dual purpose materials at wholesale tax free and pay sales tax on the basis of gross receipts from property sold at retail plus the total cost of all materials used, consumed, or furnished by him in his contract painting business.

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810-6-1-.114. (Continued)

(4) Where the painter is in such dual business and his records are not kept to reveal his sales and the cost of property used in contract painting, he shall be required to pay sales or use tax on all of his purchases and, in addition, will be required to report and pay sales tax on all of his sales of property at retail.

(5) Such consumable supplies as brushes, thinners, paint removers, hand tools, sand paper, etc., are, in any event, taxable when purchased by the painter. (Section 40-23-1(a)(6)) (Readopted through APA effective October 1, 1982)

810-6-1-.116. Parts and Materials Used to Repair or Recondition Dealers' Automobiles.

(1) When a licensed dealer in automotive vehicles makes purchases of parts and materials to repair or recondition vehicles held in his inventory for sale, the purchases are tax free if the parts or materials become a part of the vehicle that will later be sold and taxed on the total sales price.

(2) When a licensed dealer in automotive vehicles repairs or reconditions vehicles for individuals as well as vehicles that are a part of his own inventory for sale, all of the dealer's purchases of parts or materials are at wholesale, tax free. Provided suitable records are maintained to distinguish between parts or materials used on his own vehicles and those of others, only the parts and materials used in repairing or reconditioning the vehicles of others are taxable. Such parts used in repairing the vehicles of others are taxable when sold to the customer and such materials used in reconditioning the vehicles of others are taxable when withdrawn and used by the dealer-repairman.

(3) The term "materials" as used herein shall mean items such as paint, body lead, solder, and wax which become a part of a reconditioned automobile. Supply items not becoming a part of a reconditioned automobile such as sandpaper, thinner used for cleaning purposes, masking tape, and rags are taxable retail sales when purchased by the dealer. The term "parts" as used herein shall mean items which are passed on substantially intact by the dealer such as seat covers, gears, fan belts, pistons, batteries, and tires. The term "parts" does not include materials as defined above and does not include supplies such as those listed above. (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982, amended October 8, 1985)

810-6-1-.117. Pawnbrokers.

Pawnbrokers are required to file sales tax returns covering all property sold by them, including in the taxable retail sales reported sales of property forfeited to them by reason of the pawner's failure to redeem. (Section 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-1-.118. Peddlers, Truckers.

(1) Peddlers and/or truckers making retail sales of tangible personal property must apply for and obtain a sales tax license. Further, such peddlers and truckers must collect sales tax from their customers on their retail sales of tangible personal property and remit same to the Department of Revenue. (Section 40-23-6)

(2) Peddlers and truckers are to be licensed under the sales tax law only when they have an established place of business or when they have a well established and continuous business confined to a certain area or route. Peddlers and truckers having no fixed place of business may, as a condition precedent to obtaining a sales tax license under the Sales Tax Law, be required to furnish the bond provided for in Section 40-23-24, Code of Alabama 1975 as amended. (Section 40-23-24)

(3) Sales to a trucker purchasing lumber for resale from a lumber manufacturer, when said trucker does not have a sales tax license, are sales at retail subject to tax unless the trucker has registered with the Department of Revenue and has received a certificate of such registration pursuant to Code of Alabama 1975, Section 40-23-1(c). (Readopted through APA effective October 1, 1982, amended September 25, 1992)

810-6-1-.119. Photographs, Photostats, Blueprints, etc.

(1) The gross proceeds accruing from retail sales of photographs, blueprints and other similar articles are subject to sales or use tax, without any deduction for any part of the cost of production, whether delivered in final printed form or delivered in digital form via telephone lines, over the Internet, by e-mail, or by another alternative form of transmission. The transfer of digital images of these items from a seller to a purchaser for a price constitutes the sale of tangible personal property. The form in which tangible property is delivered by the seller to the purchaser is of no consequence. (Sections 40-23-2(1) and 40-23-61(a)) (Robert Smith FlipFlopFoto v. State of Alabama (Admin. Law Div. Docket No. S. 05-1240, Final Order entered April 30, 2007))

(a) In cases where negatives belonging to the customer are developed, the charge for developing the negatives is not subject to sales or use tax if a separate charge is made to the customer.

(b) In cases where an airplane is chartered for use in making aerial photographs, the charge for use of the airplane is not subject to sales or use tax if a separate charge is made to the customer.

(c) In cases where individuals deliver pictures to photographers or photographic studios for tinting or coloring, the receipts from such tinting or coloring are not subject to tax, since such receipts result from services rendered and do not result from sales of tangible personal property. (Section 40-23-2(1))

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(2) Any fee for sitting, consultation or any other activity that is done in preparation of the final product, even when separately stated, is a part of the labor or service cost and cannot be deducted from the gross proceeds accruing from retail sales. Therefore, gross proceeds, as referenced in paragraph (1) include, but are not limited to consultation fees, sitting fees, and all other fees when such fees are charged in conjunction with the sale of photographs, blueprints, and other items sold by the retailer as provided in paragraph (1). Any reasonable and customary retainer fee separately stated on the photographer's contract that is both nonrefundable and may not be credited toward any purchase of photographs is not taxable. The separate fee is unrelated to the production of the finished photographs.

(a) Example 1. Photographer charges $3,500 for a contract to provide a photographic session. This amount is billed either as a lump sum or broken down on the invoice showing $3,000 due for consulting, sitting or other fees and $500 for a disc or access to digital photos. Regardless of whether the pictures are purchased on a disk or accessed digitally, the full amount of $3,500 is subject to sales or use tax.

(b) Example 2. Photographer charges $3,500 for a contract to provide a photographic session. The amount is provided as a lump sum or it is broken down on the invoice showing $3,000 due for consulting, sitting, or other fees and $500 for a disc or access to digital photos. The contracting party decides to cancel the photo session and not purchase any photos. There are no sales or use taxes due because there is no sale of tangible personal property.

(c) Example 3. Photographer charges $3,500 for a contract for a photographic session. This amount is billed either as a lump sum or broken down on the invoice showing $3,000 due for consulting, sitting, or other fees and $500 for a disc or access to digital photos. After the session, the photographer edits the photographs and then mails the disc, album, and/or the printed photographs ordered by the customer to the in-state or out-of-state address provided by the customer. The customer and others can also later order additional photographs from the photographer's online gallery. The photographer also mails those additional photographs to the in-state or out-of-state address provided by the customer.

1. Prepaid fees constitute a part of taxable gross proceeds because they are for the photographer's labor in planning, shooting, and editing the photographs, which are required and necessary steps in producing the finished, tangible products being sold by the photographer.

2. The prepaid contract amount is taxable only if the photographer subsequently sells a disc, album, and/or printed photographs to a customer in Alabama. That is, if a customer cancels before the scheduled session date, any prepaid fees collected by the photographer would not be subject to sales tax because no sale of tangible personal property occurred.

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3. The above does not apply, however, to any reasonable and customary retainer fee separately stated on the photographer's contract that is both nonrefundable and may not be credited toward any purchase of photographs. The separate fee is unrelated to the production of the finished photographs.

(d) Example 4. Photographer books a client one year prior to his/her scheduled photo session. The contract is broken down showing $3000 for consulting, sitting or other fees, $250 for a disc of images, and a $250 print credit. After the session, the client instructs the photographer to mail the disc of images to a location outside of Alabama and to send $250 worth of prints to a location in Alabama.

1. The $250 disc mailed out of state would constitute a nontaxable sale closed outside of Alabama provided it is separately stated on the invoice and the photographer has proof that the disc was placed in interstate commerce. The $250 worth of prints mailed to a location in Alabama would be taxable in Alabama.

2. The $3000 for consulting, sitting or other fees are fully taxable and are considered the photographer’s labor in producing the finished photographs. If the consulting, sitting or other fees include a separately stated reasonable and customary retainer fee as described in Example 3, the reasonable and customary retainer fee would not be taxable. The photographer's labor was necessary to produce the items sold in Alabama. Therefore, the entire labor fees would be taxable, even if the photographer also sold additional photographs, in whatever form, outside of Alabama.

3. In summary, except for any separately stated reasonable and customary retainer fee, the photographer's prepaid fee for taking, editing, and otherwise preparing the discs, albums, or printed photographs for sale is for the photographer's labor associated with those activities, and is a part of taxable gross proceeds. Consequently, in the above example, while the $250 disc delivered outside of Alabama would be nontaxable, the photographer would owe Alabama sales tax on the $3,250 balance, less the amount designated as a reasonable and customary retainer, if applicable. If the photographer subsequently sells additional discs, albums, or photographs that were not included in the contract, the proceeds from those sales would be taxable if delivered in Alabama and nontaxable if delivered outside of Alabama. (Jaclyn L. Robinson v. State of Alabama (Admin. Law Div. Docket No. S. 13-807, Opinion and Preliminary Order entered September 8, 2014, Final Order entered October 8, 2014))

(3) The materials which become a physical part of the photographic prints, photostats, blueprints, etc., are purchased tax free at wholesale by the seller of the photographic print, photostat, blueprint, etc. (Sections 40-23-1(a)(9)b and 40-23-60-(4)b

(4) The materials and chemicals used or consumed by the seller of photographic prints, blueprints, etc., but not becoming a component thereof, are purchased at retail by the seller and are subject to the sales or use tax, whichever may apply at the time of such purchase. (Sections 40-23-1(a)(10) and 40-23-60-(5))

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(5) The mechanical equipment used in the production of photographic negatives, photographic prints, photostats, and blueprints including cameras are taxed at the reduced machine rate of sales or use tax. (Sections 40-23-2(3) and 40-23-61-(b))

(6) Photographic prints, blueprints, or other images sold to an advertising agency for use in the performance of a contract are purchased at retail by the advertising agency and are subject to the sales or use tax, whichever may apply at the time of such purchase. (See Rule 810-6-1-.02, entitled Advertising Agencies.) (Sections 40-2A-7(a)(5), 40-23-31, 40-23-83, 40-23-1(a)(10), 40-23-2(1), 40-23-2(3), 40-23-61(a), 40-23-1(a)(9)b, 40-23-2(3), 40-23-60(4)b, 40-23-60(5), 40-23-61(a), 40-23-61(b), Code of Alabama 1975) (Amended November 3, 1980, readopted through APA effective October 1, 1982, amended March 10, 1998, amended February 15, 2008, amended January 4, 2016)

810-6-1-.123. Pig and Scrap Iron.

When a manufacturer of iron pipe withdraws pig and scrap iron from his raw materials stock to be used by him in casting machine parts for his use, he must add the cost of such materials into his gross proceeds of sales. (Issued January, 1951, readopted through APA effective October 1, 1982)

810-6-1-.124. Pipe Fittings.

Ordinarily pipe fittings are used by builders, contractors, or landowners as building materials which are taxed in accordance with the building material provision found in the definition of retail sales. In some instances, however, pipe fittings are used as standard parts or attachments for machines used in manufacturing, in which case they are entitled to the special machine rate of tax. See rule 810-6-2-.57 entitled Parts and Attachments For Machines Used in Manufacturing. (Sections 40-23-1(a)(10), 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-1-.125. Places of Amusement or Entertainment.

(1) The total receipts accruing from the operation of places of amusement or entertainment are subject to the sales tax. Taxable gross receipts from places of amusement shall include receipts from admissions, service charges, amusement devices, musical devices, amounts paid to participate or engage in specific activities, and receipts from parking facilities when made available at the place of amusement for the convenience of patrons. Taxable gross receipts shall also include advertising receipts received from promotional sponsors where the sponsor purchases the right to give away general

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admission tickets or passes to a specific activity. Receipts received from third party advertisers relating to advertising space on billboards, scoreboards, fences, programs or tickets, or to radio or television time not in conjunction with the right to give away general admission tickets or passes would not be subject to sales tax. (State of Alabama v. Huntsville Baseball Club, Inc. and Birmingham Baseball Club, Inc. (Admin. Law Div. Docket No. S. 92-208 & S. 92-170, decided January 18, 1995))

(2) Sales tax shall be collected as a separate item from the consumer at the amusement rate of tax based on the price of admission to the place of amusement. Where the tax is not stated and collected separately, the total amount of the admission price shall be used as the measure of the tax. A deduction for the sales tax included in the price of admission will be allowed in computing the tax due whenever the business has permanently displayed a sign showing the admission price and the amount or amounts of tax due within the view of persons paying the admission, or where the tickets used in connection with the transactions have plainly printed on the face the admission price and, as a separate item, the amount of sales tax due. Likewise, sales tax shall not be backed-out of amounts received from amusement or musical devices where the business has failed to permanently display a sign showing the price and the amount of sales tax due. The federal amusement tax collected as a separate item shall not be included in the measure of the sales tax. (Section 40-23-26)

(3) Places of amusement or entertainment where the public is charged a fee to see, hear, attend, participate or engage in any kind of display, program, activity, or event offered, include, but are not limited to, the following:

(a) Live or recorded performances, whether by individual ticket or by season tickets:

1. ballet performances;
2. circuses;
3. ice-skating shows;
4. motion pictures;
5. musical concerts;
6. opera performances;
7. outdoor theaters; and
8. theaters (movies and plays)

(b) Exhibitions or displays:

1. animal shows (contests, exhibitions);
2. antique shows;
3. arts and crafts, and art shows (fairs);
4. auto, boat or gun shows;
5. museums (that display art objects, antique autos, etc.); and
6. zoos

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(c) Spectator sports:

1. automobile races;
2. drag strip operations;
3. horse shows (horse riding exhibitions);
4. motorcycle races;
5. rodeos;
6. sporting events such as football, baseball, basketball, hockey, and soccer games; and
7. wrestling or boxing;

(d) Participatory sports or games:

1. arcades where amusement devices such as pinball machines or video games are played;
2. bowling games;
3. go-cart races;
4. golf courses;
5. golf driving ranges;
6. Internet cafes where amusement devices such as game consoles and computer stations are assembled for game play and have computer network access or Internet access to the video or computer games. (The Docking Station, LLC v. State of Alabama (Admin. Law Div. Docket S. 07-124, Final Order decided May 1, 2007));
7. miniature golf courses;
8. para-sail boats;
9. pool (billiard) games;
10. skate board tracks;
11. skating rinks;
12. swimming pools; and
13. water slides;

(e) Fairs or carnivals:

1. amusement parks;
2. carnivals;
3. fairs;
4. games of skill, at a circus, carnival, etc.
5. shooting galleries (ranges); and
6. side shows;

(f) Other:

1. boat rides or sight-seeing tours for pleasure (marine life viewing, sunset sailboat cruises, dinner cruises, etc.);

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2. cover charges (for admission to dance halls, nightclubs, discos, etc. that provide dancing, music, or other entertainment); and
3. rides for pleasure in helicopters, hot-air balloons, trains, etc.

(4) With the exception of athletic events conducted by educational institutions other than primary or secondary schools, no sales tax is due on receipts accruing from admissions from places of amusement or entertainment conducted by the State of Alabama, a county or city of the State or any instrumentality thereof. (City of Anniston v. State of Alabama, 91 So.2d 211)

(5) Public primary and secondary schools shall collect sales tax on admissions to athletic contests which they conduct; but, instead of remitting the tax collected to the Department of Revenue, the tax shall be retained by the school and used by the school for school purposes.

(6) Private or nonpublic primary and secondary schools shall collect and remit sales tax to the Department of Revenue on their gross receipts from athletic contests which they conduct. Effective July 1, 2006, pursuant to Act #2006-602, private or nonpublic primary and secondary schools shall continue to collect sales tax on admissions to athletic contests which they conduct; but, instead of remitting the tax collected to the Department of Revenue, the tax shall be retained by the school and used by the school for school purposes. (Section 40-23-2(2))

(7) The sales tax levied in Section 40-23-2(2) does not apply to admissions to any football playoff conducted by or under the auspices of the Alabama High School Athletic Association. Taxes on admissions to these football playoffs shall continue to be collected; but, rather than being remitted to the Department of Revenue, the taxes collected shall be retained by the collecting schools and used for school purposes. Effective July 1, 2006, pursuant to Act #2006-602, this exemption and retention of the sales tax collected shall apply to any athletic event conducted by or under the auspices of the Alabama High School Athletic Association.

(8) Sales tax is due at the general rate of tax on the gross proceeds of retail sales of food, drink, souvenirs and other tangible personal property sold at retail at places of amusement or entertainment, except for sales made by counties and cities of the State of Alabama as provided in Rule 810-6-2-.92.02 entitled State, County and City, Sales Made By; and public and nonpublic primary or secondary schools and groups affiliated with these schools such as parent-teacher organizations and booster clubs as provided in Rule 810-6-2-.88.04 entitled Exemption for Certain Sales by Elementary and Secondary Schools, School Sponsored Clubs and Organizations, and School Affiliated Groups. (Section 40-23-2(1)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982, amended June 5, 1992, amended September 29, 1994, amended July 9, 1998, amended December 13, 2006, amended February 15, 2008)

810-6-1-.125.01. Amusement Tax Due on Fees Collected by Golf Courses open to the Public.

(1) The term "golf course open to the public" as used in this regulation shall mean any golf course, except those owned and operated by the State of Alabama or a county or incorporated municipality of the State of Alabama, which allows the public to use one or more of its facilities for a fee. However, the following policies or activities shall not cause an otherwise private golf course to be classified as a golf course open to the public:

(a) reciprocal play agreements with other golf courses that are also not open to the public.

(b) play by guests of a member (whether or not accompanied by the member).

(c) hosting a tournament in compliance with the provisions of Section 40-23-4(a)(39), as amended.

(d) periodically holding invitational or charitable tournaments.

(e) the sale of condominium units the purchase of which carries with it the privilege of using the golf course facilities.

(2) Golf courses open to the public are liable for and shall collect and remit the amusement tax levied in Section 40-23-2(2) on fees paid by their customers including but not limited to the following fees as of the effective date of this regulation:

membership dues	tennis court fees
initiation fees	swimming pool fees
golf cart fees	driving range fees
greens fees	locker fees

(3) The gross proceeds from the sales of condominium units by golf courses open to the public do not constitute gross receipts from places of amusement and, therefore, are not to be included in the measure of tax levied in Section 40-23-2(2).

(4) Golf courses owned and operated by the State of Alabama or a county or incorporated municipality of the State of Alabama are exempt from the amusement levy contained in Section 40-23-2(2). (City of Anniston v. State, 265 Ala. 303, 91 So.2d 211 (1956))

(5) Retail sales of tangible personal property by golf courses owned and operated by counties or incorporated municipalities of the State of Alabama are exempt from sales tax. Retail sales of tangible personal property by all other golf courses, public or private, are taxable.

(6) The provisions of this rule shall become effective October 1, 1993. (Adopted through APA effective October 12, 1993)

810-6-1-.126. Pole Line Construction.

Materials used in the construction of pole lines for the transmission of electric power and telephone, telegraph, radio, and television signals are building materials. These materials are purchased at retail subject to sales or use tax, whichever may apply, by the persons who erect the pole lines into place by attachment to real property. These materials include poles, lines, lightning arresters, circuit breakers, switch gear, all pole accessories and also include all the materials and equipment used in the construction of substations. This class of materials is subject to tax at the four percent rate with the exception of transformers and amplifiers which are taxable at the machine rate of one and one-half percent. (Sections 40-23-1(a)(10), 40-23-2(3)) (Adopted May 26, 1961, effective July 1, 1963, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-1-.128. Postal Uniforms.

(1) Effective November 14, 1983, the U. S. Postal Service's procedures regarding uniform purchases for postal employees require vendor invoices to be made out directly to the Postmaster who, upon approval of the purchase by the employee, forwards the invoices to the Postal Data Center for certification and payment. Postal Service employees make no payment and handle none of the money at any time. (Postal Bulletin No. 21425 dated October 6, 1983, and Postal Bulletin No. 21547 dated January 2, 1986)

(2) Postal Uniform purchases handled in accordance with the procedures outlined above are sales to the U. S. Postal Service and, therefore, are not subject to Alabama sales or use tax. (Section 40-23-4(a)(17)) (Adopted June 12, 1978, readopted through APA effective October 1, 1982, amended April 3, 1987)

810-6-1-.129. Premiums and Gifts.

A sale of tangible personal property is taxable when made to a person who will use the property as a prize or a premium or will give the property away as a gift. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-1-.130. Printers.

(1) Gross receipts accruing from the retail sales of printed matter of all kinds are subject to the sales tax. (Also see rule 810-6-1-.137 entitled Raw Materials & Supplies Purchased by Manufacturers and Compounders.

(2) Sales to consumers of printed matter such as catalogs, books, letterheads, invoice forms, envelopes, folders, advertising circulars, and the like by printers or others engaged in selling printed matter are subject to the sales tax. A printer may not deduct from the selling price of such tangible personal property charges for the labor or service of

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performing the printing even though such labor or service charges may be billed to the customer separately from the charge for the stock. Such labor or service is embodied in and becomes a part of the tangible personal property sold.

(3) Where printers purchase from the United States Post Office stamped cards and envelopes and print thereon various legends for customers, the printers must pay sales tax measured by their gross proceeds of sales of the printed cards or envelopes to their customers. Such cards and envelopes constitute tangible personal property and, if they are not resold by such customers, the sales by the printers are at retail. Such printers will not be required to pay sales tax on the amount of the postage where stated separately in billing to customers.

(4) No tax arises from the service of printing or from the service of typesetting performed by the printer for a customer or for another printer where there is no transfer of ownership of tangible personal property from the printer to his customer. (Section 40-23-1(a)(6))

(5) Sales of materials to printers are at wholesale, tax free, when such materials become a component of the printed matter produced for sale. The machines used in the printing come within the machine levy and are taxed at the one and one-half percent rate. The supplies, materials, and equipment not becoming a component of the product sold or not constituting a machine used in manufacturing are subject to the sales or use tax, whichever may apply, at the general rate of four percent.

(6) Newspaper advertising supplements or circulars inserted in newspapers usually fall in the following categories:

(a) A buyer enters into a contract with a printer for the printing of advertising circulars, catalogs, etc., and directs the printer to deliver the printed material to a newspaper or several newspapers, or directs that they be delivered to another location, sometimes the buyer's place of business. The buyer then enters into a second contract with the newspaper for distribution of the inserts. That portion of advertising supplements or inserts retained by the buyer for distribution to buyer's customers, that do not become part of newspapers manufactured for sale, will be subject to sales tax. However, those advertising supplements or inserts that are delivered to the purchasers or newspaper companies to be inserted into and become part of the newspaper are purchased at wholesale, tax free. Ralph P. Eagerton, Jr. v. Dixie Color Printing Corporation.

(b) Newspaper advertising supplements and inserts which are inserted into newspapers and sold as part and parcel of the newspaper, the retail sales of which are subject to the sales tax, no sales tax arises where such advertising supplements or inserts are

1. printed by the publishers of the newspaper and inserted into and sold as part and parcel of the newspaper published by such publishers, or

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2. printed by another printer for the newspaper publisher and paid for by the newspaper publisher for insertion into and sold as part and parcel of the newspaper. (Adopted March 9, 1961, amended November 1, 1963, amended August 16, 1974, amended June 12, 1978, readopted through APA effective October 1, 1982, amended January 10, 1985, amended March 28, 2016)

810-6-1-.131. <u>Withdrawals of Products Manufactured, Compounded, or Processed for Sale</u>.

(1) Except as noted in paragraphs (2) and (3) below, manufacturers, compounders, and processors shall include in taxable sales reported for sales tax purposes the costs of materials purchased at wholesale which have become ingredients or components of products manufactured or compounded for sale by them but which are withdrawn from stock for their own use or consumption.

(2) Neither the withdrawal, use, or consumption of a manufactured product by the manufacturer thereof in quality control testing performed by employees or independent contractors of the manufacturer nor a gift by the manufacturer of a manufactured product, withdrawn from the manufacturer's inventory, to an entity listed in 26 U.S.C. Sections 170(b) or (c), is subject to sales tax. (Sections 40-23-1(a)(6), 40-23-1(a)(10) and 40-23-1(e))

(3) Refinery, residue, or fuel gas, whether in a liquid or gaseous state, that has been generated by, or is otherwise a by-product of, a petroleum-refining process, which gas is then utilized in the process to generate heat or is otherwise utilized in the distillation or refining of petroleum products is not taxable under the withdrawal provisions of the sales or use tax statutes. (Sections 40-23-1(a)(6), 40-23-1(a)(8) and 40-23-60(5)) (Readopted through APA effective October 1, 1982, amended January 5, 1996, amended December 23, 1999)

810-6-1-.132. <u>Proofs, Wholesale, Tax Free</u>.

Sales of materials to the processors of the proofs are at wholesale, tax free, when such materials become a component part of the proofs produced for sale. (Section 40-23-1(a)(9)b) (Readopted through APA effective October 1, 1982)

810-6-1-.133. Pump Installed for a County or Municipality by a Contractor.

(1) A contractor who installs a pump for a county or incorporated municipality of the State of Alabama is required to pay tax on his or her purchase of the pump. The pump is in the same category as any other building materials which become affixed to realty. When title to a pump installed under contract passes from the contractor to the landowner, it has ceased to be personal property and has become real property. (Sections 40-23-1(a)(10) and 40-23-60(5))

(2) On and after January 1, 2014, the sale of a pump to, or the storage, use, or consumption of a pump by, any contractor or subcontractor to be incorporated into realty pursuant to a contract with any county or incorporated municipality of the State of Alabama awarded on or after January 1, 2014, is exempt from state, county, and municipal sales and use taxes provided the contractor or subcontractor has complied with Rule 810-6-3-.77 entitled Exemption of Certain Purchases by Contractors and Subcontractors in conjunction with Construction Contracts with Certain Governmental Entities. (Act No. 2013-205) (Sections 40-2A-7(a)(5), 40-23-1(a)(10), 40-23-31, 40-23-60(5), 40-23-83, Code of Alabama 1975) (Readopted through APA effective October 1, 1982, amended March 27, 2001, amended June 10, 2005, amended December 25, 2013)

810-6-1-.134. Pumps.

Well pumps when installed become realty along with well casing, pumphouse, well connections, etc. The person who installs the pump is the purchaser at retail who must pay sales tax or use tax, as the case may be. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-1-.137. Raw Materials and Supplies Purchased by Manufacturers and Compounders.

(1) Subject to the criteria outlined in Sales and Use Tax Rule 810-6-1-.80 entitled Ingredient or Component of Product Manufactured or Compounded for Sale, ingredients or materials which are purchased by manufacturers or compounders and which become a part of the property manufactured or compounded for sale are purchased at wholesale, tax free, by such manufacturers or compounders. (Sections 40-23-1(a)(9)b and 40-23-60(4)b)

(2) One-time-use containers used by manufacturers and compounders to package their products and which become the property of the purchaser of the products are purchased at wholesale, tax free, by the manufacturers and compounders. Returnable containers are purchased at retail and are subject to tax. (Sections 40-23-1(a)(9)c and 40-23-60(4)c)

(3) Labels purchased by manufacturers and compounders, affixed to one-time-use containers, and sold along with the contents of the containers by said manufacturers and compounders are purchased at wholesale, tax free, by the manufacturers and

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compounders. The term "label" is understood to mean a tag or sticker of any material imprinted with information and said term includes price stickers, address stickers, and shipping tags as well as those tags or stickers which identify or describe the property to which they are attached. (Sections 40-23-1(a)(9)c and 40-23-60(4)c) (Readopted through APA effective October 1, 1982, amended January 29, 1990, amended September 25, 1992, amended December 10, 1997)

810-6-1-.138. <u>Rebuilding of Tracks, Idlers, and Rollers</u>.

(1) The rebuilding of tracks, idlers, and rollers belonging to others is a service and the receipts from this service by the repairman-dealer are not subject to sales or use tax. The repairman-dealer shall pay sales or use tax to the supplier on purchases of materials used in rebuilding tracks, idlers, and rollers belonging to others.

(2) Sales of rebuilt tracks, idlers, and rollers by the repairman-dealer are subject to sales or use tax. The repairman-dealer shall compute sales or use tax on the total sales price and collect the tax from the person to whom the rebuilt item is sold. (Sections 40-23-1(a)(6) and 40-23-60(10))

(3) Where a repairman-dealer (i) rebuilds tracks, idlers, and rollers that are part of the repairman-dealer's own stock of goods for sale and (ii) rebuilds tracks, idlers, and rollers belonging to others, the following shall apply:

(a) Sales or use tax shall be paid by the repairman-dealer to the supplier on all purchases of materials used in rebuilding the tracks, idlers, and rollers unless the repairman-dealer elects to claim the exemption provided by Section 40-23-1(a)(9)k for materials purchased or withdrawn for use in rebuilding tracks, idlers, and rollers which are part of the repairman-dealer's stock of goods for sale.

(b) If the repairman-dealer elects to claim the exemption in Section 40-23-1(a)(9)k, all materials becoming a part of the rebuilt tracks, idlers, and rollers shall be purchased at wholesale tax-free by the repairman-dealer and the repairman-dealer shall maintain suitable records to distinguish between the materials used in rebuilding the tracks, idlers, and rollers offered for sale by the repairman-dealer and the materials used by the repairman-dealer in rebuilding the tracks, idlers, and rollers of others. If suitable records are maintained, the repairman-dealer shall collect and remit sales tax on sales of rebuilt tracks, idlers, and rollers in accordance with paragraph (2) and shall compute and pay sales tax on the cost of the materials withdrawn and used in rebuilding tracks, idlers, and rollers belonging to others.

(c) In the event suitable records are not kept by the repairman-dealer to determine which materials are used in rebuilding tracks, idlers, and rollers offered for sale by the repairman-dealer, then all materials used by the repairman-dealer shall become a taxable withdrawal by the repairman-dealer. The sales tax due on withdrawals by the repairman- dealer shall be computed on the purchase price or cost to the repairman-dealer of the materials withdrawn for use. (Section 40-23-1(a)(10))

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810-6-1-.138. (Continued)

(4) Where any used track, idler, or roller which is a part of an automotive vehicle, truck trailer, semi trailer, or house trailer is taken in trade, or in a series of trades, as a credit or part payment on the sale of a new or rebuilt track, idler, or roller, the sales or use tax shall be paid on the net difference, that is, the price of the new or used track, idler, or roller sold less the credit for the used track, idler, or roller taken in trade. See Rule 810-6-1-.22 entitled Barter, Exchange, Trade-In. (Section 40-23-2(1)) (Adopted July 16, 1964, amended July 6, 1977, amended August 10, 1982, readopted through APA effective October 1, 1982, amended July 9, 1998)

810-6-1-.140. Recordings Purchased for Use with Musical Devices.

Recordings purchased for use in operating musical devices are subject to sales or use taxes whichever may apply. When such recordings have served their purpose in connection with the operation of musical devices and are sold at retail as used recordings as a regular course of business by the machine operators, such sales are subject to sales tax. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-1-141. Repairs, Outside or Sublet.

(1) The operator of a repair shop who sublets a part or all of a repair job purchases at wholesale tax free the repair parts installed by the outside or subrepairman. The shop operator shall bill such repair parts to his customers separately from any charges for labor and services and report and pay sales tax only on the retail sales price of such parts. Provided however, where repair parts are not separately billed, sales tax shall be paid on the total charge for the job.

(2) When the subrepairman uses or consumes materials and supplies, such as solder, paint, paint thinners, bits of wire, and cement, these materials are subject to tax at the time of purchase by the subrepairman, the tax to be paid to the supplier. Provided where the subrepairman also is engaged in the business of selling at retail such supplies and materials, they are purchased by him at wholesale and are subject to the tax when withdrawn from stock for use or consumption, the tax to be paid direct to the Department of Revenue by the subrepairmen. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-1-.142. Repairs to Equipment.

Where a repairman in Alabama repairs equipment, materials which pass to the repairman's customer but which lose their identity when used by the repairman or which are inconsequential in amount such as, paint, solder, and tacks are considered to have been used or consumed by the repairman and are taxable at the time of the sale to him. (Readopted through APA effective October 1, 1982)

810-6-1-.143. Repairs to Real Property.

(1) The term "repairs to real property" as used in this rule includes, but is not limited to, the repairing, remodeling, restoring, or altering of buildings of all kinds and descriptions, plumbing systems, electric supply systems, water supply systems, central heating and air conditioning systems, roads, streets, railroads, and railways.

(2) Sales or use taxes are due on sales of materials to repairmen, builders, contractors, or other persons who use the materials in making repairs to real property. (Sections 40-23-1(a)(10) and 40-23-60(5), Code of Alabama 1975) (Readopted through APA effective October 1, 1982, amended December 28, 1998)

810-6-1-.144. Repairs to Tires and Tubes.

(1) Tire repairmen shall collect and remit sales tax on total charges for recaps, retreads, and the major repairs; such as sectional, reinforcement, and spot repairs. Materials used in recapping, retreading, and major repairing are purchased at wholesale, tax free. Machines used directly in recapping, retreading, and major repairing are taxed at the special one and one-half percent rate levied on machines.

(2) Tire repairmen shall not collect sales tax on charges for tube and minor tire repairs. Materials used in making tube and minor tire repairs are taxable to the repairmen. Machines used solely in making tube and minor tire repairs are taxable to the repairmen at the general rate of 4 percent.

(3) (a) Where the repairman uses repair materials for tube and minor tire repairs only, he shall pay tax thereon to his supplier; or, if purchased outside of Alabama from a supplier who does not collect Alabama tax, he shall pay the tax direct to the Department of Revenue as use tax.

(b) Where the repairman does recapping, retreading, and major repairing as well as tube and minor tire repair, he may purchase at wholesale all materials used in tire and tube repairing; then shall pay sales tax direct to the Department of Revenue on the cost price of materials withdrawn for use in tube and minor tire repairing.

(4) All hand tools used in recapping, retreading, and major and minor tire repairing are subject to sales tax. All supplies used or consumed by tire repairmen and which do not pass on to their customers are taxable when purchased by them.

(5) Sales by repairmen of repaired, retreaded, and recapped tires owned by them are subject to tax measured by the total sales price without any deduction for labor or cost of materials. (Readopted through APA effective October 1, 1982, amended April 3, 1987)

810-6-1-.144.03. Resale, Sales for.

All buyers of property for resale purposes are entitled to purchase at wholesale, tax free, the property they resell as regular course of business when they have secured the sales tax license required by law. This rule also applies to retailers located outside Alabama when they have secured the sales tax license required by law in the state in which they are located. (Section 40-23-6) (Adopted August 10, 1982, readopted through APA effective October 1, 1982)

810-6-1-.145. Meals Furnished to Employees by Restaurants.

Restaurants, cafes, and other eating establishments are liable for sales tax on meals furnished to their employees as part of a compensation plan. The measure of tax is the value of food withdrawn and consumed by the employees.(State v. Morrison Cafeterias Consolidated, Inc., 487 So.2d 898 (Ala. 1985)) (Sections 40-23-1(a)(6) and 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982, amended April 3, 1987, amended March 10, 1998)

810-6-1-.147. Returned Merchandise.

(1) When property is returned by the purchaser and the seller refunds the full amount paid, there is no sale and the sales price of such returned property is not to be included in the gross proceeds of sales.

(2) When property is returned and a part, but not all, of the sales price is refunded, the full sales price is to be included in the gross proceeds of sales. This would include but not be limited to property returned and a restocking fee is charged before refunding the balance of the purchase price. (State v. Leary and Owens Equipment Company).

(3) When the sale is on credit and less than the amount paid is refunded, the measure of the tax is the total amount of the sale. (Section 40-23-1(a)(6)) (Adopted March 9, 1961, amended Nov. 3, 1980, readopted through APA effective October 1, 1982)

810-6-1-.148. Rural Electrification Authority (R.E.A.).

Cooperatives set up under authority of United States Rural Electrification Laws are not instrumentalities of any governmental body. All purchases are subject to the sales and use tax, whichever may apply, except when otherwise specifically exempted. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-1-.150. Sale.

The term "sale" or "sales" includes installment and credit sales and the exchange of property as well as the sale thereof for money, every closed transaction constituting a sale. Each transaction whereby property is transferred from one owner to another constitutes a sale under the sales tax law except in instances where the property is transferred as a gift or where possession without ownership is given on a rental or lease basis with no intention to transfer ownership at the end of the rent or lease period. (Section 40-23-1(a)(5)) (Readopted through APA effective October 1, 1982)

810-6-1-.150.05. Sand, Gravel, and other Building Materials, Sales of.

(1) The seller is making taxable sales of such building materials as sand, gravel, earth, crushed stone, and asphalt which are merely dumped or deposited by him on a job site or in a storage area. In this case the measure of the tax is the total amount received by the supplier without any deduction for the expense of loading, dumping, or hauling or any other expense whatsoever.

(2) On the other hand, sand, gravel, earth, crushed stone, and asphalt or like materials are purchased at retail subject to a tax measured by the purchase price where such materials are spread and placed by the purchaser under a contract to furnish and to apply the materials in such a way that they become a part of real property. Where this is the case, the purchaser is acting as a contractor rather than as a retailer and there is no sale at retail by him to the landowner.

(3) In case the supplier is both selling materials at retail and contracting to furnish and apply them, the rule of dual businesses will apply with the supplier purchasing all materials at wholesale, tax free, and thereafter reporting and paying tax to the Department of Revenue on both sales at retail and on withdrawals for use under contracts to furnish and apply. (Section 40-23-1(a)(10)) (Adopted May 26, 1961, readopted through APA effective October 1, 1982)

810-6-1-.166. Shoe Repairs.

(1) A shoe repair shop renders a service and also sells tangible personal property. A job which does not involve a sale of tangible personal property but merely represents the rendering of service does not require the payment of sales tax. In any transaction where tangible personal property is sold sales tax applies to the full purchase price without any deduction for labor or service.

(2) If the tangible personal property is sold and the labor or service is furnished in separate transactions, each transaction being billed separately, then the tax applies to the sales price of the tangible personal property and not to the labor or service.

(3) Materials and supplies used by shoe repairmen in rendering services, but which are not resold as merchandise are subject to sales tax when purchased by the repairmen from the supply dealer. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-1-.167. Structural Steel.

Structural steel is a building material and, for that reason, is usually subject to tax at the general rate at the time of its sale to the builder, contractor, or landowner who purchases it to add to or alter real property. This is in accordance with the building material provision found in the definition of "retail sale". In some instances, however, steel fabricators bill out machine parts as structural steel, in which case, where the facts show that the steel purchased is a part or attachment for a machine used in mining, quarrying, manufacturing, processing, or compounding, the machine rate will apply. (Sections 40-23-1(a)(10), 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-1-.168. Table Wine Tax.

Whether billed separately to the purchaser or included in a lump sum selling price; the table wine tax levied pursuant to Code of Alabama 1975, Section 28-7-16, may not be excluded from the measure of sales or use tax. (Sections 40-23-1(a)(6) and (40-23-1(a)(8)) (Adopted November 3, 1980, amended March 16, 1981, readopted through APA effective October 1, 1982, amended January 10, 1985, amended May 22, 1993)

810-6-1-.170. Theatrical Productions, Symphonies, etc.

(1) The gross proceeds from sales of admissions to any theatrical production, symphonic or other orchestral concert, ballet or opera production when such concert or production is presented by any society, association, guild, or workshop group, organized within this state, whose members or some of whose members regularly and actively participate in such concert or production for the purpose of providing a creative outlet for the cultural and educational interests of such members, and of promoting such interests for the betterment of the community by presenting such productions to the general public for an admission charge is exempt from the sales tax.

(2) In order to be exempt from the tax, some of the members of the society, association, guild, or workshop group must take an active part in the concert or production such as director, musician, or actor. (Section 40-23-4(a)(24)) (Readopted through APA effective October 1, 1982)

810-6-1-.172. Taxability of Cross Ties and Timbers.

(1) Purchases of cross ties and timbers, treated or untreated, by railroad companies and others for use in Alabama are subject to sales or use tax on the following basis:

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810-6-1-.172. (Continued)

(a) Where untreated cross ties or timbers are purchased from outside this state and also creosoted outside this state and subsequently brought into this state for use, the measure of the use tax shall be the cost of the untreated ties or timbers plus the cost of creosoting. (Section 40-23-60(5), Code of Alabama 1975)

(b) Where untreated cross ties or timbers are purchased from outside this state and brought into this state and creosoted within this state prior to their use, the measure of the use tax shall be the cost of the untreated ties and timbers since the materials used in creosoting the ties or timbers are taxable when purchased or withdrawn by the person performing the service. (Section 40-23-60(5))

(c) Where untreated cross ties or timbers are purchased within Alabama for shipment in interstate commerce without paying the Alabama sales tax and where the cross ties or timbers are shipped outside this state for creosoting and subsequently shipped into and used within this state, the purchase is subject to the use tax as measured by the full price of the finished product brought into this state. (Section 40-23-60(5))

(d) Where the Alabama sales tax is paid on the purchases of untreated cross ties or timbers and the cross ties or timbers are subsequently creosoted either within this state or outside this state, the purchaser would owe no additional Alabama sales or use tax on the cross ties or timbers. (Section 40-23-1(a)(6))

(e) Cross ties and timbers are taxable when sold under bulk contract with the purchaser inspecting and approving the material at the plant or yard of the seller and the seller segregating and allotting the approved material to the purchaser for future shipment according to subsequently issued shipping instructions. This material is to be reported by the seller as subject to tax in accordance with the provisions of Section 40-23-8. (Sections 40-23-2(1) and 40-23-8))

(f) Cross ties and timbers are classified as building materials and are taxed at the general rate of sales or use tax except when used as a roadway for quarrying or mining equipment in which event the sales of cross ties and timbers are subject to the reduced mining or quarrying rate of sales or use tax. (Sections 40-23-2(1), 40-23-61(a), 40-23-2(3), and 40-23-61(b))

(2) Cross ties and timbers sold F.O.B. an Alabama shipping point on a purchase order requiring the seller to ship to an out-of-state destination are sales in interstate commerce and are not subject to sales tax regardless of whether shipment is made by the use of purchaser's transportation facilities when the purchaser is a common carrier. (Sections 40-23-1(a)(5) and 40-23-4(a)(17)) (Readopted through APA effective October 1, 1982, amended October 20, 1998)

810-6-1-.173. Tin Shops.

(1) Tin shops are usually found to be engaged in contracting, selling, manufacturing, and repairing. Because of the complex nature of these businesses, they ordinarily will be set up to purchase all of their materials at wholesale, tax free, with tax to be paid direct to the Department of Revenue as sales tax on use and sales.

(2) As contractors making additions to real property, tax should be paid on the cost price of materials which are used in the form received from the suppliers. Where the property installed is manufactured by the tin shop operators in their shops, sales tax is to be paid measured by the reasonable and fair market value of the property. (See rule entitled Building Materials Manufactured by Contractors.)

(3) As vendors making direct sales, sales tax is due measured by the sales price of the property sold.

(4) As repairmen, the sales tax is due on the cost of materials and supplies used or the sales price of the property transferred in the transactions, as the case may be. (See rule 810-6-1-.95 entitled Materials Used in Repairing, for ruling with regard to use and sale of materials used in repairing.) (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-1-.174. Tobacco tax.

Whether billed separately to the purchaser or included in a lump sum selling price; state, county, and municipal tobacco excise taxes may not be excluded from the measure of sales or use tax. (Sections 40-23-1(a)(6) and 40-23-1(a)(8)) (Adopted August 5, 1963, amended October 29, 1976, readopted through APA effective October 1, 1982, amended May 22, 1993)

810-6-1-.175. Top Soil, Fill Dirt, Sand and Gravel.

(1) Sales of top soil, fill dirt, sand, and gravel are subject to sales tax, the tax to be measured by the amounts received from such sales including charges for transportation furnished by the seller. These materials are sold in every instance where they are supplied to tenants, landowners, builders, or contractors for a consideration, for use in making additions or alterations to real property. Suppliers may not, for tax purposes, claim to furnish these materials free where charges are made for services such as hauling, loading and handling. The measure of the tax is the amount received by the supplier without any deduction for labor or services which go into producing and delivering the materials regardless of the fact that such transportation, labor, or service may be billed as separate items.

(2) This rule applies only where the materials are furnished, and does not apply where a charge for hauling is made by a person who contracts to haul materials which he does not furnish. (Sections 40-23-1(a)(6), 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-1-.176. Trade Stamps and Trade Coupons.

When making a sale of tangible personal property where as an incident thereto trade stamps or trade coupons are issued free to the purchaser, the seller shall collect and remit sales tax measured by the total amount paid by the purchaser. The seller shall not deduct from the total amount paid by the purchaser any amount on account of the value of the stamps or coupons issued nor, where the trade stamps or trade coupons have a fixed redemption value and are issued free based on a fixed ratio of stamp or coupon value to the sales price, shall the seller be required to add the value of the trade stamps or trade coupons issued to the total amount paid by the purchaser before computing, collecting, and remitting the sales tax. (Section 40-23-1(a)(6), Code of Alabama 1975) (Readopted through APA effective October 1, 1982, amended July 30, 1998)

810-6-1-.177. Trading Stamps.

(1) This rule is intended to apply to those transactions where trading stamps are exchanged for articles of merchandise called premiums. These exchanges are usually referred to as trading stamp redemptions.

(2) The exchange of a premium for trading stamps is deemed to be a sale at retail. This exchange is subject to the sales tax. The amount of tax is to be measured by the fair retail market value of the premium. Where the trading stamps have been given a fixed value, the measure of the tax shall not be less than the fixed value of the trading stamps used in exchange. If, however, the fair retail market value of the premium is more than the fixed value of the trading stamps required for its redemption, the measure of the tax shall be the fair market value, rather than the fixed value of the stamps. The premiums used to redeem trading stamps are purchased at wholesale, tax free. (Section 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-1-.178. Transportation Charges.

(1) Where a seller delivers tangible personal property in his own equipment or in equipment leased by him, the transportation charges shall be considered a part of the selling price subject to sales or use tax. Said transportation charges are taxable even if billed separately.

(2) Where delivery of tangible personal property is made by common carrier or the U. S. Postal Service, the transportation charges shall not be subject to sales or use tax if billed as a separate item and paid directly or indirectly by the purchaser. To be excluded from the measure of tax, these transportation charges must be separate and identifiable from other charges. Transportation charges are not separate and identifiable if included with other charges and billed as "shipping and handling" or "postage and handling". Indirect payment of the transportation charges shall include those instances where the seller prepays the freight to the common carrier or U. S. Postal Service and is reimbursed by the purchaser.

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810-6-1-.178. (Continued)

(3) Where a seller contracts to sell and deliver tangible personal property to some designated place and makes arrangements for delivery of the property by means other than a common carrier or the U. S. Postal Service, the transportation charges shall be considered a part of the selling price subject to sales or use tax. Said transportation charges are taxable even if billed separately. (Sections 40-23-1(a)(5) and 40-23-1(a)(6)) (Amended August 16, 1974, amended October 29, 1976, readopted through APA effective October 1, 1982, amended April 3, 1987)

810-6-1-.179. Transportation Costs, Sellers.

In no event may a seller deduct costs of bringing property to his place of business or costs of delivering property from factory to his customer when such factory to customer transportation is paid by the seller either to a transportation company, the manufacturer, or by way of credit to this customer for transportation costs paid by the customer and deducted from seller's invoice. (Section 40-23-1(a)(6)) (Readopted through APA effective October 1, 1982)

810-6-1-.180. Truck Trailers and Semitrailers.

The term "semitrailers" in the Sales and Use Tax Laws shall include semitrailers designed and intended for use in connection with trucks and highway tractors ordinarily used for highway hauling; also luggage, boat, utility, camper, and travel semitrailers designed primarily to be drawn by passenger automobiles. A semitrailer may be pulled by any type automotive vehicle and be taxed at the automotive rate of 2%. A trailer must be pulled by a truck or truck tractor to be taxed at the automotive rate. (Section 40-23-2(4)) (Adopted March 9, 1961, amended March 23, 1962, amended December 15, 1969, readopted through APA effective October 1, 1982, amended January 24, 1989)

810-6-1-.181. Undertakers and Morticians.

(1) Sales of tangible personal property to undertakers and morticians are retail sales and subject to sales or use tax at the time of purchase. If the undertaker or mortician purchases tangible personal property from out-of-state vendors on which the tax has not been paid to the vendor, the undertaker or mortician will be required to pay consumers use tax directly to the Department.

(2) Where an undertaker manufactures vaults for his own use, he would be required to pay tax to his supplier on all the ingredients that become part of the vaults. If he is in a dual business of manufacturing vaults for his own use and for sale to others, he would be required to be licensed by this Department, buy all of his ingredients at wholesale

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810-6-1-.181. (Continued)

tax exempt, and pay tax to this Department on the sale of vaults and the withdrawal of vaults for his own use. The measure of the tax on the withdrawal of vaults for his own use would be the cost of materials and ingredients that become part of the manufactured vault. (Section 40-23-1(a)(10)) (Adopted January 20, 1966, readopted through APA effective October 1, 1982, amended June 5, 1992)

810-6-1-.182. Upholstery Shops.

(1) An upholstery shop renders service and sells tangible personal property. Materials which pass to the upholsterer's customer and which do not lose their identity when used by the upholsterer and which are a substantial part of the repair job (such as cloth, leather or vinyl, foam rubber, and springs) are sold at retail by the upholsterer. He must collect and report sales tax on such sales, including tax on the services that are incidental thereto. He may, however, if he makes a separate agreement to sell the materials and to perform the labor and service required, collect and remit the tax only upon the price of the materials if his records and invoices clearly show a separation of the amount received from the sale of materials and from rendering service. These materials are purchased at wholesale, tax free, by the upholsterer.

(2) Materials which pass to the upholsterer's customer but which lose their identity when used by the upholsterer or which are inconsequential in amount (such as tacks, glue, thread, binding twine, webbing, gimp tape, welting, padding, stain, and varnish) are considered to have been used or consumed by the upholsterer and are taxable at the time of purchase by him.

(3) Materials which are used or consumed by the upholsterer and which do not pass on to the customer are supplies and taxable when purchased by the upholsterer. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-1-.183. Used and Secondhand Property.

Sales of used property are subject to the sales tax, also see Sales and Use Tax Rule 810-6-1-.33 entitled Casual Sales. (Section 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-1-.183.02. Sales of Tangible Personal Property Through Vending Machines.

(1) Sales tax is due on sales of tangible personal property sold through vending machines operated by coins, currency, credit cards, slugs, tokens, or other media of exchange. The retail operator of vending machines shall report and pay sales tax on the operator's total gross receipts from sales through vending machines without any deduction for commissions or rental charges paid to a person on whose property the machines are located. Sales tax may be removed from the retail vending machine operator's total gross receipts from vending machine sales before computing sales tax due. (State of Alabama v. Automatic Sales, 277 Ala. 63, 167 So.2d 146 (1964)) (Sections 40-23-1(a)(6), 40-23-1(a)(8), 40-23-2(1), and 40-23-2(5), Code of Alabama 1975)

(2) Sales of tangible property through vending machines are taxable as follows:

(a) Vending machine sales of food and food products for human consumption, coffee, milk, milk products, and substitutes for these products are taxable at 3 percent of the retail sales price. Items which qualify for this special rate include, but are not limited to, sandwiches, candy, potato chips, and crackers. (Section 40-23-2(5))

(b) All other tangible personal property sold through vending machines is taxable at 4 percent of the retail sales price. Items which are taxable at the 4 percent general rate include, but are not limited, to softdrinks, fruit juices, bottled water, cigarettes, health and beauty aids, and chewing gum. (Section 40-23-2(1))

(3) Except as noted in (a) below, the wholesale supplier of property sold through vending machines sells the property at wholesale and is not required to collect sales tax from the retail operator provided the operator is a retailer licensed pursuant to Section 40-23-6, Code of Alabama 1975. The licensed retail operator is required to report and pay the sales tax due on vending machine sales. The wholesale supplier shall charge tax to all customers who do not have a sales tax license number or who are not otherwise exempted by law. The measure of tax is the amount received by the supplier for the sale of the property. (Section 40-23-1(a)(9)a)

(a) Where a licensed or unlicensed retail operator purchases property for resale through vending machines and retains title to the property in the vending machines, the wholesale supplier and the retail operator may agree that the wholesale supplier will service the machines, collect the receipts from the machines, and collect and pay sales tax to the Department of Revenue on the vending machine sales. The payment of all applicable sales tax to the Department of Revenue by the wholesale supplier shall discharge both the supplier and the licensed or unlicensed retail operator from any additional sales tax liability with respect to sales through the vending machines covered by the agreement. The payment of a rental fee on the machines by the retail operator to the wholesale supplier shall not affect the validity of the agreement.

(4) A wholesale supplier of property sold through vending machines shall maintain records which show the sales tax license number of every purchaser who

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810-6-1-.183.02. (Continued)

purchases property at wholesale. These records may be maintained on a ledger or other suitable book, in a separate card index, on each individual invoice, or in a computerized record keeping system. Each wholesale invoice shall show the complete name and address of the wholesale purchaser. Invoices made out to "cash" shall always be considered retail sales invoices. (Section 40-23-9)

(5) A wholesale supplier who places vending machines on location, retains title to the property in the vending machines, pays the location owner a certain percentage of the gross sales as a rental charge for conducting business in the space occupied by the vending machines, services the machines, and collects the receipts is the retail operator of the vending machines and is required to report and pay the sales tax due on the sales through the machines. (Sections 40-23-2(1) and 40-23-2(5))

(6) The provision in paragraph (2)(a) regarding the proper measure of tax to be used in computing the 3 percent sales tax applicable to vending machine sales of food and food products for human consumption, coffee, milk, milk products, and substitutes for these products shall be effective January 1, 2000. (Adopted through APA effective December 23, 1999)

810-6-1-.184. <u>Seller Sells Tax Free at the Seller's Risk</u>.

(1) Other than the exceptions noted in paragraphs (2), (3), (4), and (5) below, the seller is liable for sales or use tax on any sales for which the seller fails to collect the appropriate sales or use tax due. It is the seller's duty under the Sales and Use Tax Laws to know the general and customary business of the customer and to collect the amount of tax due. The seller is not, however, expected to follow each article of goods sold to its final use; therefore, the seller is not to be held accountable for an isolated transaction made by the customer or for an isolated use of property by the customer. Where a seller sells to a customer who both uses and sells from the same stock of goods, the seller may sell, tax free, at wholesale all of the goods so used and resold. (Sections 40-23-26 and 40-23-67, <u>Code of Alabama 1975</u>)

(2) A seller, who acts in good faith and reasonably believes a tax exempt purchase is legal, is not liable for sales or use tax later determined to be due on a sale for which the purchaser provides the seller with a State Sales and Use Tax Certificate of Exemption (Form STE-1). (See Sales and Use Tax Rule 810-6-5-.02 <u>State Sales and Use Tax Certificate of Exemption (Form STE-1) - Responsibilities of the Certificate Holder - Burden of Proof - Liability for Taxes Later Determined to be Due.</u>) (Section 40-23-120)

(3) A seller who secures a properly completed and duly signed certificate pursuant to Section 40-23-4(a)(10) or Section 40-23-62(12), <u>Code of Alabama 1975</u>, and has no knowledge that such certificate is false when it is filed is not liable for sales or use

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810-6-1-.184. (Continued)

tax on a sale later determined to be taxable. (See Sales and Use Tax Rule 810-6-3-.67.04 Certificate of Exemption - Fuel and/or Supplies Purchased for Use or Consumption Aboard Vessels Engaged in Foreign or International Commerce or in Interstate Commerce.) (Sections 40-23-4(a)(10) and 40-23-62(12))

(4) A seller who secures from the purchaser a Form ST:EXC-1, or a variation thereof approved by the Revenue Department, is not liable for sales or use tax later determined to be due on sales of tangible personal property which the purchaser claims are exempt pursuant to Sections 40-23-4(a)(2), (4), or (22) or 40-23-62(5), (7), or (23). (See Rule 810-6-3-.20.01 Exemption Certification Form Respecting Fertilizers, Insecticides, Fungicides, and Seedlings (Form ST:EXC-1).) (Section 40-23-4.3)

(5) A seller, who acts in good faith and reasonably believes a tax exempt purchase is legal, is not liable for sales or use tax later determined to be due on a sale for which the purchaser provides the seller with a Sales and Use Tax Certificate of Exemption for an Industrial or Research Enterprise Project (Form STE-2). (See Sales and Use Tax Rule 810-6-4-.24.01 Sales and Use Tax Certificate of Exemption for an Industrial or Research Enterprise Project (Form STE-2) - Responsibilities of the Certificate Holder - Burden of Proof - Liability for Taxes Later Determined to be Due.) (Section 40-23-120) (Readopted through APA effective October 1, 1982, amended January 29, 1990, amended March 24, 1993, amended December 10, 1996, amended June 9, 1999)

810-6-1-.185. Venetian Blinds.

Venetian blinds and similar window furnishings are subject to tax on the full sales price. This type of property remains personal property even though it is attached to a building. Where venetian blinds are sold at an installed price, tax is to be measured by the total invoiced amount. Also see regulation 810-6-1-.84 entitled Labor Service and regulation 810-6-1-.81 entitled Installation Charges. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-1-.186. Veterinarians.

(1) Veterinarians use and consume medicines, equipment, and supplies in the rendering of professional services. When used by veterinarians who are not licensed to collect sales tax on their retail sales, these medicines, equipment and supplies are taxable at the time of purchase by the veterinarian.

(2) Veterinarians in many instances make retail sales of medicines, vaccines, and other supplies. Veterinarians who make retail sales shall apply for and obtain a sales tax license. Further, these veterinarians shall collect sales tax from their customers and remit the tax to the Department of Revenue.

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810-6-1-.186. (Continued)

(3) Veterinarians who have obtained a sales tax license shall purchase all medicines, equipment, and supplies from veterinarian supply houses tax-free. Those items purchased tax-free and used or consumed by the veterinarian shall be reported as a withdrawal by the veterinarian and the sales tax thereon remitted directly to the Department of Revenue. The tax on withdrawals shall be computed on the cost of the item purchased tax-free from the veterinarian supply house. The veterinarian shall collect sales tax from the customer on those items purchased tax-free from veterinarian supply houses and resold by the veterinarian. The tax on retail sales by veterinarians shall be computed on the selling price to the customer.

(4) With respect to purchases from suppliers other than veterinarian supply houses, veterinarians who have obtained a sales tax license shall pay tax to the supplier on items purchased for use or consumption and not for resale. Examples of such items include, but are not limited to, equipment, office supplies, and office furniture. Items purchased for resale from suppliers other than veterinarian supply houses shall be purchased tax-free and the veterinarian shall compute and pay sales tax on withdrawals and collect and remit sales tax on retail sales to customers.

(5) The sale, use, storage, or consumption of all antibiotics, drugs, serums, vaccines, and other medications used in the commercial production and growing of fish, livestock, and poultry is exempt from sales and use tax. This exemption does not apply to medications for dogs, cats, or any other animal which does not qualify as fish, livestock, or poultry. When antibiotics, drugs, serums, vaccines, and other medications are used for both taxable and exempt purposes, the veterinarian must maintain adequate records to substantiate the exempt usage; otherwise tax shall be due on all antibiotics, drugs, serums, vaccines, and other medications regardless of how used. (Sections 40-23-4(a)(29) and 40-23-62(29)) (Amended November 3, 1980, readopted through APA effective October 1, 1982, amended January 19, 1998)

810-6-1-.186.03. <u>Warehousemen, Sales Made by</u>.

(1) Receipts of warehousemen from their services in storing, handling, packing, crating, delousing, etc., property for others are not subject to the sales tax. Any materials used incidental to the rendering of such services are taxable at the sale to the warehousemen.

(2) When, however, warehousemen buy and sell property as a regular course of business, such sales, if not otherwise exempted, are subject to the sales tax, including sales of goods held on consignment and including transactions in which the warehouseman acts as a broker selling goods not actually owned by him or in his possession at the time he accepts the order.

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810-6-1-.186.03. (Continued)

(3) Sales by warehousemen of property forfeited to them in the operation of their warehousing business are subject to tax where such sales are made as a regular course of business. Where such sales are infrequently made they will be considered casual sales not required to be reported in sales tax returns filed with this Department. (Section 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-1-.186.04. Warehousemen, Sales to.

(1) All property purchased for use in operating places of storage is subject to sales or use tax, whichever may apply, including all tickets, labels, receipt forms, heating or cooling equipment, fire protection equipment, pest control supplies and equipment, compressors, containers, and crating materials, and any and all other supplies, materials, or equipment purchased for use incidental to the storing or warehousing of property of any kind or character.

(2) Note, however, that warehousemen may also be engaged in the business of selling, processing, or manufacturing for sale, in which event the supplies and equipment used in such activities will be taxable or not in accordance with the rules applying to the use of property for such purposes. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-1-.186.05. Warranty, Extended or Service Contract.

(1) When a dealer sells an extended warranty or service contract to a customer, no sales tax is due.

(2) Except as noted in (3) below, sales or use tax is due on the purchase of, or withdrawal from inventory of, parts used in performing repairs or services pursuant to an extended warranty or service contract. Tax is to be computed on the cost of the parts to the dealer.

(3) Sales or use tax is not due on the purchase of, or withdrawal from inventory of, parts by dealers to be used in performing repairs or services free-of-charge for a customer under the terms of a manufacturer's extended warranty or service contract sold to the customer by the dealer. Such warranties are granted to the customer by the manufacturer, the manufacturer warrants or guarantees the replacement of defective parts at no cost to the customer, and the manufacturer provides full credit to the dealer performing the repair for the parts purchased or withdrawn. Department of Revenue v. Equipment Sales Corporation (Docket No. S. 92-286) (Sections 40-23-4(a)(18) and 40-23-62(19)) (Adopted June 12, 1978, readopted through APA effective October 1, 1982, amended October 4, 1994)

810-6-1-.187. Warranty Contracts - Replacements of Articles.

Where an unsatisfactory article is returned to the seller for replacement or repair under a warranty contract between the seller and his customer and the new article is given in exchange or defective parts are replaced at a reduced price, the amount of sales tax on such exchange or replacement shall be measured by the reduced price plus the fair and reasonable market value of any unsatisfactory article or part kept by the seller. In instances where there is no charge for the article given in exchange or for the replacement parts no tax is due. (Section 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-1-.188. Watch and Jewelry Repair Shops.

(1) Watch and jewelry repairmen render services in repairing, cleaning or servicing articles which belong to other persons. They also engage in the business of selling tangible personal property for use or consumption, such as watches, clocks, watch cases, watch parts, etc.

(2) Where the watch or jewelry repairman renders nothing but a service, sales tax does not apply to the transaction. In the cases where he furnishes tangible personal property, such as the above mentioned, then sales tax does apply to the full sales price of such tangible personal property without deduction for labor or service charges. If the tangible personal property is sold and the labor or services furnished in separate transactions, each transaction being billed separately, then the tax applies to the sales price of the tangible personal property and not to the labor or service.

(3) Materials and supplies used by watch and jewelry repairmen in rendering services but which are not resold as merchandise are subject to sales tax when purchased by the repairman from the supply dealer. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-1-.189. Wheel Weights.

The balancing of wheels of automobiles is a service by the balancer. Receipts from such wheel balancing are not taxable. The weights used by a balancer are consumed by him and are taxable when sold to him. (Adopted November 1, 1963, readopted through APA effective October 1, 1982)

810-6-1-.190. Whiskey tax.

(1) Code of Alabama 1975, as amended, levies a total tax of 56 percent upon the selling price of all spirituous and vinous liquors sold by the Alabama ABC Board. Section 28-3-203 levies a 13 percent tax; Sections 28-3-200, 28-3-201, 28-3-202, and 28-3-205 each levy a 10 percent tax; and Section 28-3-204 levies a 3 percent tax for the total 56 percent tax.

(2) Each of the above Code Sections provides that the tax shall be collected by the Board from the purchaser at the time the purchase price is paid, it being the intention that the said tax shall be passed on to the purchaser. Therefore, the tax is not a part of the purchase price paid to the ABC Board and should not be included in the measure of the state sales tax due on retail sales by the Board.

(3) The operator of a bar, tavern, or restaurant who sells alcoholic drinks purchases the liquors from the ABC Board at wholesale and pays the 56 percent liquor tax to the Board based on the selling price. The sales tax is not due on such purchases, since they are purchases for resale. Subsequent sales of drinks by the bar, tavern, or restaurant operator are subject to the state sales tax. The measure of the tax is the total amount received for the drinks. The tax paid to the ABC Board in such cases becomes another overhead business expense to the retailer which he can take into consideration, together with other business expenses, in determining the selling price of each drink. He cannot collect the liquor tax from his purchaser as a tax; therefore, the total selling price is subject to state sales tax at the general rate. (Adopted November 3, 1980, readopted through APA effective October 1, 1982, amended July 7, 1989)

810-6-1-.194. Wrapping Paper.

(1) Wrapping paper is sold at wholesale, tax free when sold to manufacturers or compounders for use by them in the form of containers to be furnished by them with the products which they manufacture or compound for sale and when there is no intention on the part of the manufacturers, compounders or their customers for the containers to be returned for reuse. (Section 40-23-1(a)(9)c)

(2) Wrapping paper is sold at wholesale, tax free when sold to retailers for use by them in the form of containers to be furnished with the product they have for sale when there is no intention on the part of the retailer or his customer for the container to be returned for reuse. (Section 40-23-1(a)(9)c)

(3) The term "wrapping paper" as used in this rule does not include the material used to line transportation equipment for the protection of products during shipment. Such material is subject to tax when sold to the user. (Section 40-23-1(a)(10)) (Adopted March 9, 1961, amended November 1, 1963, amended July 27, 1964, readopted through APA effective October 1, 1982)

810-6-1-.195. X-ray Machines, Heart Catheterization Machines, Computerized Tomography Machines and Consumable Supplies Used Therein.

(1) X-ray machines, heart catheterization machines, and computerized tomography machines (CT scan machines) process tangible personal property and, therefore, qualify for the reduced machine rate of sales or use tax. Machine parts, attachments, and replacement parts which are made or manufactured for use on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used also qualify for the reduced machine rate of sales or use tax. (Section 40-23-2(3))

(2) Film, chemicals, and other consumable supplies used in x-ray machines, heart catheterization machines, and computerized tomography machines are taxable at the general rate of sales or use tax. (Section 40-23-2(1)) (Adopted through APA effective July 7, 1989)

810-6-1-.196. Withdrawals from Inventory.

(1) Except as noted in paragraphs (2), (3), and (4) below, all withdrawals of tangible personal property from inventory are taxable under the withdrawal provisions of the sales tax statute unless the property has been previously withdrawn from the inventory and the sales tax has been paid because of the previous withdrawal or unless the property withdrawn enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale and not for the personal and private use or consumption of the person withdrawing same. (Ex parte Sizemore, 605 So. 2d 1221 (Ala. 1992)) (Sections 40-23-1(a)(6), 40-23-1(a)(8), 40-23-1(a)(10), and 40-23-60(5), Code of Alabama 1975)

(2) The transactions in (a) and (b) below shall not be deemed or considered to constitute a transaction subject to sales tax. Qualified charitable entities listed in 26 U.S.C. Sections 170(b) or (c) are defined in (c) below.

(a) Pursuant to Section 40-23-1(e), the withdrawal, use, or consumption of a manufactured product by the manufacturer thereof in quality control testing performed by employees or independent contractors of the manufacturer, nor a gift by the manufacturer of a manufactured product, withdrawn from the manufacturer's inventory, to an entity listed in 26 U.S.C. Sections 170(b) or (c).

(b) Pursuant to Section 40-23-23-1(f), effective July 1, 2006, a gift by a retailer of a product or products withdrawn from the retailer’s inventory to a qualified charitable entity listed in 26 U.S.C. Sections 170(b) or (c), where the aggregate retail value of any single gift is equal to or less than $10,000.00.

(c) Qualified charitable entities listed in 26 U.S.C. Sections 170(b) or (c) include, but are not limited to the following:

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1. a church, or a convention or association of churches;

2. an educational organization which normally maintains a regular faculty, curriculum, and enrolled body of students;

3. a hospital or a medical research organization which provides medical or hospital care, medical education, or medical research as their primary purpose or function;

4. an organization which normally receives a substantial part of its support from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated for the benefit of a college or university referenced in 2. above;

5. a governmental unit that is a State or a possession of the United States and any political subdivision of any of the foregoing, the United States, or the District of Columbia, which uses the gift exclusively for public purposes;

6. a corporation, trust, or community chest, fund, or foundation created or organized in the United States or in any possession thereof or under the laws thereof, and organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, and which normally receives a substantial part of its support from governmental units referenced in 5. above or from direct or indirect contributions from the general public;

7. a private foundation described in 26USC170(b)(1)(E); and

8. an organization described in 26USC509(a)(2).

(3) Sales of equipment, accessories, fixtures, and other similar tangible personal property used in connection with a sale of commercial mobile services as defined in Section 40-23-1(a)(6) or in connection with satellite television services, at a price below cost, are not taxable as a withdrawal. Instead, sales of this nature are retail sales and are taxable measured only by the seller's stated retail selling price. (Sections 40-23-1(a)(6) and 40-23-1(a)(10))

(4) Refinery, residue, or fuel gas, whether in a liquid or gaseous state, that has been generated by, or is otherwise a by-product of, a petroleum-refining process, which gas is then utilized in the process to generate heat or is otherwise utilized in the distillation or refining of petroleum products is not taxable under the withdrawal provisions of the sales or use tax statutes. (Sections 40-23-1(a)(6), 40-23-1(a)(8), and 40-23-60(5))

(5) The sales tax due on taxable withdrawals shall be computed and paid by the person, firm, or corporation withdrawing the property. The measure of the sales tax due on taxable withdrawals is the price paid for the property by the person, firm, or corporation

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withdrawing same. Alabama sales tax becomes due at the time and place of the withdrawal of tangible personal property from inventory. Alabama sales tax is due on tangible personal property withdrawn from inventory in Alabama regardless of where the property so withdrawn is used or consumed.

(6) Withdrawals of building materials by a contractor who makes retail sales of building materials and who also withdraws building materials from the same stock of goods for use in fulfilling a contract for making additions, alterations, or improvements to realty are taxable to the person, firm, or corporation making the withdrawals. The measure of sales tax due on these withdrawals is the price paid for the building materials by the person, firm, or corporation withdrawing same. Alabama sales tax becomes due on these withdrawals of building materials at the time and place of the withdrawals. Alabama sales tax is due on building materials withdrawn from stock in Alabama for use in fulfilling contracts both inside and outside the state of Alabama. (Sections 40-23- 1(a)(6), 40-23-1(a)(8) and 40-23-1(a)(10)) (Adopted through APA effective May 22, 1993, amended January 5, 1996, amended December 23, 1999, amended September 28, 2007)

810-6-1-.197. <u>Sales Taxes Paid by Certain Camps</u>.

(1) The term "camp" as used in this rule shall mean a facility providing lodgings, meals, and educational and recreational opportunities primarily for the benefit of children, students, and nonprofit organizations, and not members of the general public. The term "camp" as used in this rule shall not include any facility that does not qualify for the lodgings tax exemptions contained in Sections 40-26-1(b)(ii) or 40-26-1(b)(iii), <u>Code of Alabama 1975</u>.

(2) The term "department" as used in this rule shall mean the Alabama Department of Revenue.

(3) The definitions of terms contained in Section 40-26-1(c), are incorporated into this rule by reference.

(4) The furnishing of food, food items, T-shirts, caps, gym bags, and similar items by a camp, without a separate charge therefor, to children or students, members of a child or student's family, members and guests of nonprofit organizations, or other persons in conjunction with lodgings, meals, and educational or recreational opportunities provided for a lump sum payment shall not be considered a sale at retail. The furnishing of these items and activities is considered to be rendering a service rather than making a retail sale and the camp is considered to be the consumer of the items furnished. Unless the camp provides a valid sales tax account number or certificate of exemption, the vendor selling these items to the camp shall collect state and applicable county and municipal sales or use taxes from the camp at the time of purchase and remit the taxes collected to the department.

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810-6-1-.197. (Continued)

(5) Sales of food, food items, T-shirts, caps, gym bags, and similar items by a camp that purchases these items and regularly displays and offers them for sale through a gift shop, snack shop, or similar place to children or students, members of a child or student's family, members and guests of nonprofit organizations, or other persons for a separate charge that is in addition to any lump sum charge for lodgings, meals, and educational or recreational opportunities shall be considered sales at retail and are subject to state and applicable county and municipal sales tax. A camp making retail sales of this nature shall obtain a sales tax license and comply with Sales and Use Tax Rule 810-6-1-.56 entitled Dual Business. (Sections 40-23-1(a)(9), 40-23-1(a)(10), and 40-23-6, Code of Alabama 1975)

(6) A camp that does not maintain a stock or inventory of food, food items, T-shirts, caps, gym bags, and similar items from which it regularly makes retail sales as outlined in paragraph (5) and makes only isolated or accommodation sales of these items which it acquired for use in conjunction with providing services as outlined in paragraph (4) is not engaged in making retail sales and does not qualify as a dual business. Where only isolated or accommodation sales of this nature are made, the camp shall pay state and applicable county and municipal sales or use tax to its vendors on all of its purchases of the items and is not required to obtain a sales tax license.

(7) The sales tax on amusements levied in Section 40-23-2(2), does not apply to a camp's receipts from providing lodgings, meals, and educational or recreational opportunities for a lump sum payment. (Adopted through APA effective September 27, 1999)

810-6-2-.01. Abrasives - Shot, Grit, Etc.

Shot, grit, stars, sand, and other abrasives of like kind are taxed as parts or attachments to machines when used in machines manufacturing or processing tangible personal property. Such abrasive, when used in maintenance of equipment or when used for purposes other than manufacturing or processing tangible personal property are taxed at the general rate. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.02. Accessories on New Automobiles, Applicable Tax Levy.

(1) Accessories which are purchased from the dealer after title and possession of the automotive vehicle have passed to the purchaser are taxed at the usual 4% rate.

(2) As a practical application of this rule, the dealer's sales invoice will be accepted as the basis for determining the tax rate applicable unless there is conclusive evidence that the invoice does not reveal the true facts. (Sections 40-23-2(1) and 40-23-2(4)) (Adopted March 9, 1961, amended November 1, 1963, amended September 26, 1966, readopted through APA effective October 1, 1982)

810-6-2-.02.05. Agricultural Publications.

No exemption is granted for agricultural publications in the Sales Tax Law. (Readopted through APA effective October 1, 1982)

810-6-2-.03. Annealing Pots.

Steel pots or tubs used to contain small metal parts or fittings while being heat treated in an annealing furnace as a step in the manufacture thereof are taxed at the special machine rate of 1 1/2%. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.04. Automotive Demonstrator, Levy of Tax.

(1) Any dealer licensed pursuant to Section 40-23-6, Code of Alabama 1975, who withdraws from his or her stock in trade any automotive vehicle, truck trailer, semi-trailer, or house trailer for use by the dealer or by the dealer's employee or agent in the operation of the business, shall pay, in lieu of the sales tax, a fee of five dollars ($5.00) per year or part of year on each automotive vehicle, truck trailer, semi-trailer, or house trailer so withdrawn. Each year or part thereof shall begin with the date or anniversary date of the withdrawal and run for the 12 succeeding months during which the automotive vehicle, truck trailer, semitrailer, or house trailer remains the property of the dealer. This fee is to be reported on the dealers' sales tax returns covering the tax reporting period in which the withdrawal is made. When the vehicle is returned to the stock of the dealer and sold, the sale is subject to the tax. (Section 40-23-2(4))

(2) The use described in the preceding paragraph does not include the withdrawal of automotive vehicles, truck trailers, semitrailers, or house trailers by a dealer for rental or leasing purposes where the dealer is engaged in business both of selling and leasing such property. If a dealer withdraws from stock a vehicle or trailer for leasing purposes, the withdrawal is exempt from sales tax if the lease of the vehicle or trailer is taxable pursuant to Section 40-12-222, Code of Alabama 1975.

(3) Where the dealer follows the practice of having his or her salesmen purchase the vehicles which they use as demonstrators, the sales to the salesmen are subject to sales tax measured on the sales price thereof less any allowance made for used vehicles taken in trade. The sale of the used vehicle so taken in trade is subject to sales tax when resold.

(4) The withdrawal of an automotive vehicle from inventory by a licensed dealer for the purpose of providing the vehicle to a school for use in a drivers education program constitutes use by the dealer in the operation of the dealer's business and, therefore, is subject to the five dollar ($5.00) fee outlined in paragraph (1) above. (Section 40-23-2(4)) (Adopted March 9, 1961, amended November 1, 1963, amended August 16, 1974, amended June 12, 1978, amended October 16, 1978, readopted through APA effective October 1, 1982, amended January 29, 1990, amended October 20, 1998)

810-6-2-.06. Baking Pans.

Baking pans used in the production of bakery products for sale are taxable at the machine rate of 1 1/2% of the gross proceeds of the sale. (Readopted through APA effective October 1, 1982)

810-6-2-.07. Barbers and Beauticians.

(1) Barber and beauty shop operators primarily render personal services. They are the purchasers for use or consumption of such tangible personal property as is used or consumed incidentally in the rendering of such personal service.

(2) Barber and beauty shops are not however, relieved from collecting and reporting tax on sales of tangible personal property for use or consumption, such as, package cosmetics, hair tonics, lotions and like articles when sold apart from the rendering of personal services. (Section 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-2-.08. Belting.

Belting purchased for use on a particular machine used in manufacturing is taxed at the special machine rate of 1 1/2% even though such belting may not be purchased to the exact length required. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.09. Boiler Tubes.

Boiler tubes used in repairing boilers used to furnish heat or power used in manufacturing are taxed at 1 1/2% as parts for machines used in manufacturing. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.09.02. Sales of Textbooks, Other Books, and School Supplies by Schools.

(1) The term “elementary or secondary school” as used in this rule shall mean a school where the curriculum consists of one or more of grade levels K through 12. This term shall not include nurseries and day care centers nor shall it include private schools at which the courses of study are limited to specialized subjects such as dance, horseback riding, music, cooking, sewing, or religion.

(2) The sales and use tax statutes contain no exemption for sales of textbooks, other books, and school supplies. Accordingly, unless the sales or use tax statutes contain a specific exemption for the seller or purchaser, sales or use tax is due on retail sales of these items at the general rate of tax. (Sections 40-23-2(1) and 40-23-61(a), Code of Alabama 1975)

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810-6-2-.09.02. (Continued)

(3) Sales of textbooks, other books, and school supplies made by a school (not including an institution of higher learning) owned and operated by a county or a municipality of the State of Alabama are not subject to sales or use tax. (City of Anniston v. State, 265 Ala. 303, 91 So. 2d 211 (1956))

(4) Sales of textbooks, other books, and school supplies made by a privately-owned and operated elementary or secondary school or by an elementary or secondary school owned and operated by the State of Alabama are exempt from sales or use tax when the net proceeds from the sales are used solely for the benefit of the elementary or secondary school. See Sales and Use Tax Rule 810-6-2-.88.04 entitled Exemption for Certain Sales by Elementary and Secondary Schools, School Sponsored Clubs and Organizations, and School Affiliated Groups. (Section 40-9-31, Code of Alabama 1975)

(5) Except as outlined in paragraph (4), sales of textbooks, other books, and school supplies made by a privately owned and operated school or college or by a school or college owned and operated by the State of Alabama are subject to sales or use tax. (Sections 40-23-2(1) and 40-23-61(a), Code of Alabama 1975) (Readopted through APA effective October 1, 1982, amended June 9, 1999)

810-6-2-.10. Coal Loading Machines.

Coal loading machines used in mines are taxed at the special machine rate of 1 1/2%. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.11. Coal Cutting Machines.

Coal cutting machines are taxed at the special rate of 1 1/2%. (Section 40-23-2(3)) (Readopted through APA effective October 1982)

810-6-2-.12. Coke, Petroleum.

Petroleum coke and pitch used in the manufacture of aluminum from alumina are subject to tax at the special machine rate where such petroleum coke and pitch are made into linings for pots where alumina is reduced to aluminum or are made into anodes for such pots. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.12.05. Community Action Agencies.

Sales of tangible personal property to organizations which are nonprofit corporations including those that are federally funded are subject to state and local sales tax. (Community Action Agency of Huntsville, Madison County, Inc., v. State of Alabama) (Adopted August 10, 1982, readopted through APA effective October 1, 1982)

810-6-2-.12.06. Compressors, Tar Buckets, Portable Signs.

Compressors, tar buckets, and portable signs mounted on wheels are not considered trailers. A trailer is defined as a vehicle without motive power designed to carry persons or property wholly on its own structure and to be drawn by a motor vehicle. Since portable compressors, portable tar buckets, and portable signs are not designed for ordinary highway hauling purposes, they are subject to tax at the rate of 4 percent. (Adopted through APA effective January 10, 1985)

810-6-2-.13. Compositions.

(1) Gross proceeds accruing from the retail sales of compositions, paste-ups, or layouts sold to printers, publishers, or others are subject to the sales tax at the machine rate of 1 1/2%.

(2) Subject to the criteria outlined in Sales and Use Tax Rule 810-6-1-.80 entitled Ingredient or Component of Product Manufactured or Compounded for Sale, sales of materials to the manufacturer of the compositions are at wholesale, tax free, when such materials become a component of the compositions, etc., produced for sale. The machines used by the composition manufacturer in manufacturing the compositions are taxable at the machine rate of 1 ½%. The supplies, materials and equipment not becoming a component of the product sold, or not constituting machines used in manufacturing are subject to the sales or use tax, whichever may apply, at the general rate of 4%. (Sections 40-23-1(a)(9)b and 40-23-60(4)b)

(3) Where a printer or publisher manufactures compositions for their own use, sales or use tax, whichever may apply shall be due on the purchase price of the materials becoming a component of the compositions at the machine rate of 1 1/2%. (Section 40-23-2(3)) (Adopted June 20, 1966, readopted through APA effective October 1, 1982, amended December 10, 1997)

810-6-2-.14. Cotton Gins.

(1) Cotton gin machinery and equipment used in separating lint from seed, in cleaning and conditioning lint, in baling lint, the engines or motors furnishing the power for such separating, cleaning, conditioning and baling, and the equipment used to carry the cotton lint and seed, from step to step in the ginning process are taxed at the special machine rate of 1 1/2%. The equipment which carries the seed cotton directly into the first processing machine and the blower which discharges the seed from the gin are considered to be attachments to the processing machines and therefore, are also taxed at the special rate.

(2) The special rate does not, however, apply to conveyor equipment used in unloading seed cotton and putting it into storage and does not apply to moving cotton seed

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810-6-2-.14. (Continued)

from the gin to storage and from storage into transport equipment. Other equipment and materials which are taxed at the general 4% rate are scales of all description and building materials used in the construction of the gin house and storage facilities. (Sections 40-23-2(3) and 40-23-2(1)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.15. Crossties Used in Mining.

Crossties and switchties used in the construction and maintenance of tracks used in bringing minerals to the surface of the earth are taxed at the special machine rate of 1 ½%. This provision does not, however, extend to crossties and switchties used in the construction or maintenance of tracks used in transporting minerals from the mine after the mining operation has been completed and it does not extend to timbers used in erecting structures in or about mines or used in supporting mine roofs. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.15.03. Double Wide Mobile Homes.

Mobile homes whether they be of the double wide variety or the standard variety are in fact mobile homes. Mobile homes, including double wide mobile homes, do not qualify as modular buildings. (Section 40-23-2(4)) (Adopted August 10, 1982, readopted through APA effective October 1, 1982)

810-6-2-.15.05. Dry Docks.

A dry dock is subject to the sales or use tax, whichever applies. A dry dock is not a vessel, nor is it a barge, exempted from the sales or use tax. (Section 40-23-4(a)(12)) (Readopted through APA effective October 1, 1982)

810-6-2-.16. Dust Collecting Equipment.

Dust collectors made up of ducts, collectors, filters, and other parts are not of themselves machines used in manufacturing. They may, however, by attachment to a machine used in manufacturing take the special one and half percent rate. The special rate would not in any event apply with respect to sheet metal or other building materials used to construct duct work or other parts of dust collection systems where such materials become a part of the building in which the system is located. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-2-.17. Electric Motors.

Electric motors used to drive machines used in mining, processing or manufacturing are taxed at the special machine rate of 1 1/2%. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.18. Electric Mine Locomotives.

Locomotives receiving power from an electric trolley used to bring coal to the surface of a mine are taxed under the machine levy at 1 1/2%. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.19. Electric Motors, When Furnishing Power for Machines Used in Manufacturing, Compounding, Processing, Mining or Quarrying and Plant Maintenance.

Electric motors used to furnish power for machines used in manufacturing, compounding, processing, mining, or quarrying are taxed at the machine rate of 1 1/2%. Electric motors used to power equipment used primarily in plant maintenance are subject to the tax at the general rate of 4%. (Sections 40-23-2(1) and 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.22. Engravers and the Machine Rate.

Gross receipts accruing from the retail sales of photo engravings, plates, cuts, and other like articles sold to printers are subject to the sales tax at the machine rate of 1 1/2% where sold for use as parts or attachments of machines used in manufacturing. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.22.05. Federal Tax on Hazardous Chemicals.

It is the position of the Department based on an opinion by the Legal Division of the Department of Revenue that the federal tax is to be included in the measure of the tax when computing sales and/or use tax on retail sales of hazardous chemicals. The federal tax is a "cost of doing business" tax levied upon the sale or use of certain chemicals sold by a manufacturer, producer or importer thereof. Section 4662C, Title 26, U.S.C.A. reads as follows: "If any person manufactures, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under §4661 in the same manner as if such chemical were sold by such person." Therefore, if the tax is on the cost of doing business by the provider of the chemical, then the federal tax would be included in the measure of the base used for computing the sales and/or use tax payable to the state. (Section 40-23-1(a)(10)) (Adopted August 10, 1982, readopted through APA effective October 1,1982)

810-6-2-.25. Refractories, Rates Applicable to.

(1) The term "refractories" as used in this rule shall mean fire clay, firebrick, magnesite, steel, and other special purpose heat resistant materials.

(2) Refractories, which are not in the nature of building materials and which are designed and manufactured for use as parts or attachments for machines used in manufacturing, compounding, or processing tangible personal property, are taxable at the reduced machine rate of sales or use tax when purchased for use as a part or attachment to manufacturing machinery. (Sections 40-23-2(3) and 40-23-61(b))

(3) Refractories purchased for use in lining blast furnaces, kilns, boilers, cupolas, ladles, or other machines used to manufacture, compound, or process tangible personal property are taxable at the reduced machine rate of sales or use tax. (Sections 40-23-2(3) and 40-23-61(b))

(4) Refractories purchased for purposes other than becoming parts or attachments to machines used in manufacturing, compounding, or processing tangible personal property are taxable at the general rate of sales or use tax. (Sections 40-23-2(1) and 40-23-61(a)) (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982, amended July 9, 1998)

810-6-2-.27. Gold, Coin and Bullion.

(1) Sales of gold in coin, bullion, nugget, flake or other form to purchasers within the State are subject to the retail sales or use tax. In any form other than as a mineral in place, not yet extracted, gold is tangible personal property subject to the usual rules of taxation. Therefore, exemption is allowed only if the sale is for resale in the regular course of business or if the gold becomes an ingredient or a component of a new article for sale. Sales to purchasers for investment or speculation are fully taxable and are treated as sales of coins, stamps, paintings, antiques or other valuables purchased by collectors. When applicable, the tax is measured by the full selling price without deductions for brokerage fees, service fees or premiums included in the gross price.

(2) Following are a few guidelines for the taxation of gold:

(a) Gold purchased and delivered outside the State is subject to use tax at the time it is brought into the State.

(b) Sales of gold to persons who take only a document of ownership covering gold remaining outside of the State are exempt from sales and use tax.

(c) Sales to persons who use gold in the rendition of professional or commercial services such as dentists or dental laboratories are taxable.

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(d) Agents, including gold jobbers and brokers, who sell gold at retail in their own name must collect retail sales tax thereon. (Section 40-23-2(1)) (Adopted July 2, 1975, readopted through APA effective October 1, 1982)

810-6-2-.28. Gravel Screens.

Gravel screens used in substantially the form in which they are purchased as parts of a mechanically powered gravel or sand washer and grader are taxed at the special machine rate of 1 1/2%. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.29. Hand Tools Not Exempted as Machines.

(1) The word "machine" as used in the Sales and Use Tax Laws is not understood to mean and include the hand implements used by laborers and craftsmen, commonly referred to as "hand tools" which are manually powered and controlled.

(2) Implements, hand operated, which are powered by electricity, steam or compressed air which is delivered to implements through wires, pipes, or hoses are considered to come within the levy of the tax at 1 1/2% where such implements are used in mining, quarrying, manufacturing, processing or compounding. (Sections 40-23-1(a)(10) and 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.30. Hose - Water, Steam, or Air.

Hose when used as an attachment for a machine used in manufacturing, compounding, processing, mining or quarrying is taxed at the machine rate of 1 1/2%. Hose used for general purposes or for maintenance is taxed at the general rate of 4%. (Sections 40-23-2(1) and 40-23-2(3)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.31. Hospitals, Infirmaries, Sanitariums, and Like Institutions - State, City, and County.

(1) State, city, and county owned and operated hospitals, infirmaries, sanitariums, and like institutions are exempt from the payment of sales or use tax on their purchases of tangible personal property. (Sections 40-23-4(11) and 40-23-62(13))

(2) State, city, and county owned and operated hospitals, infirmaries, sanitariums, and like institutions are primarily engaged in the business of rendering services. They are not required to collect and remit sales tax on their gross receipts from

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meals, bandages, dressings, drugs, x-ray photographs, or other tangible personal property when such items are used in rendering hospital services. This is true irrespective of whether or not such tangible personal property is billed separately to their patients. State, city, and county owned and operated hospitals, infirmaries, sanitariums, and like institutions are deemed to be the purchasers for use or consumption of such tangible personal property; and, the sellers of these items are not required to collect sales or use tax on sales of such property to said institutions since such purchases are specifically exempt from sales and use tax pursuant to Sections 40-23-4(11) and 40-23-62(13), Code of Alabama 1975.

(3) When state, city, or county owned and operated hospitals, infirmaries, sanitariums, and like institutions furnish meals to nurses, attendants, and patients as a part of their services rendered, such institutions are deemed to be the users or consumers of the food and beverages used in the preparation of these meals. Purchases of food and beverages for use or consumption by these institutions are exempt from sales and use tax. (Sections 40-23-4(11) and 40-23-62(13))

(4) When state owned and operated hospitals, infirmaries, sanitariums, and like institutions operate cafeterias that serve meals to the public, such institutions will be required to collect and remit sales tax on sales of meals and beverages to their customers. Foodstuffs and beverages withdrawn by such state owned and operated institutions and used or consumed in furnishing meals as outlined in paragraph (3) are not subject to sales tax. (Section 40-23-2(1))

(5) When city and county owned and operated hospitals, infirmaries, sanitariums, and like institutions operate cafeterias that serve meals to the public, such institutions are not required to collect and remit sales tax on sales of meals to their customers. (City of Anniston v. State of Alabama, 91 So.2d 211) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982, amended January 29, 1990)

810-6-2-.32. House Trailers and Mobile Homes.

(1) The gross proceeds of sales of house trailers or mobile homes are taxable at the reduced automotive rate of sales or use tax. Where any house trailer or mobile home is taken in trade as a credit or part payment on the sale of a new or used house trailer or mobile home, the measure of sales or use tax shall be the price of the new or used house trailer or mobile home sold less credit for the house trailer or mobile home taken in trade. (Sections 40-23-2(4) and 40-23-61(c), Code of Alabama 1975)

(2) The reduced automotive rate of sales or use tax also applies to parts, attachments, or accessories for house trailers or mobile homes purchased from the dealer as a unit along with the house trailer or mobile home. Parts, attachments, or accessories

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purchased from the dealer after title and possession of the house trailer or mobile home has passed to the purchaser are taxable at the general rate of sales or use tax. The dealer's sales invoice shall be the basis for determining the applicable tax rate unless there is conclusive evidence that the invoice does not reveal the true facts. (Sections 40-23-2(1) and 40-23-61(a), Code of Alabama 1975)

(3) Where a dealer purchases parts and materials or withdraws parts and materials from a stock of goods for use in repairing or reconditioning house trailers or mobile homes which (i) are owned by the dealer, (ii) are offered for sale by the dealer, and (iii) are not for the dealer's own use or consumption, the parts and materials would be exempt from sales or use tax when purchased or withdrawn from the dealer's stock of goods. (Sections 40-23-1(a)(9)k and 40-23-60(4)j, Code of Alabama 1975)

(4) Mobile home set-up materials and supplies are taxable at the reduced automotive rate of sales or use tax. These items qualify for the reduced rate regardless of who sells them or to whom they are sold provided the facts substantiate that they were used to set-up a house trailer or mobile home. The term "mobile home set-up materials and supplies" shall include steps; blocks; anchoring materials such as cable, straps, and buckles; and pipe. The term shall not include tape or other similar supply items which lose their identity or are not passed on substantially intact to the owner of the mobile home. The term "mobile home set-up materials and supplies" shall not include hand tools or electrical tools used to set-up a mobile home and not becoming a part of the mobile home dwelling. (Sections 40-23-2(4) and 40-23-61(c), Code of Alabama 1975) (Adopted July 2, 1975, amended November 3, 1980, readopted through APA effective October 1, 1982, amended January 24, 1989, amended January 29, 1990, amended December 28, 1998)

810-6-2-.32.05. Hydraulic Oils.

Retail sales of hydraulic oils are subject to the sales tax at a rate of 4 percent except hydraulic oil used as part of a machine used in quarrying, mining, manufacturing, processing, and compounding tangible personal property which is taxed at 1 1/2 percent. (Sections 40-23-2(1) and 40-23-2(3)) (Adopted August 10, 1982, readopted through APA effective October 1, 1982)

810-6-2-.33. Ice Plants.

(1) The following are taxed at 1 1/2% rate levied on machines used in manufacturing when used by ice manufacturers: pumps, motors, compressors, pipes, valves, gauges, water filters, ice crushing and shaving machines and other machines and the machinery used directly in the ice making process beginning with the point where the water enters into the process through the point where the ice is removed from the cans in which it is made or, if the ice is to be sold as crushed or shaved ice, through the point

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where the ice is crushed or shaved. Refrigerants used in the manufacturing process are also taxed at the machine rate.

(2) Property taxed at 4% rate includes: ice hooks, hand saws, ice picks, containers (not furnished), tarpaulins, power saws, scoring machines, transportation equipment, ice tickets, office supplies and equipment, scales, chemicals of all kinds, fuel oil, other oils not classified and taxed as lubricants, advertising materials, mechanical conveyors having no part in the manufacturing process, etc. (Sections 40-23-2(3), 40-23-2(1)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.34. Improvised Attachments for Machines Used in Manufacturing.

The materials, from which parts and attachments for machines used in manufacturing, compounding, processing, mining or quarrying are improvised, are taxed at the special 1 1/2% rate when such improvised parts or attachments are necessary to the operation of such machines and are customarily so used. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.36. Kerosene Used in Making Molds.

Sales to foundrymen of kerosene to be used in making molds and cores are taxed at the general rate of 4%. (Sections 40-23-1(a)(10) and 40-23-2(1)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.36.02. Lawnmowers.

(1) Push type and self-propelled lawn mowers, roto-tillers, and garden tractors do not come within the automotive section of law levying a lower rate of tax, they are taxable at the rate of 4%. (Section 40-23-2(1))

(2) Self-propelled riding lawn mowers and garden tractors do come within the automotive section and are taxable at the rate of 2%. (Section 40-23-2(4)) (Adopted August 15, 1974, readopted through APA effective October 1, 1982, amended January 24, 1989)

810-6-2-.36.05. Lay-away Sales.

(1) The Sales Tax Law defines a sale as follows: "installment and credit sales and the exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale." It has been held that Alabama sales tax applies only to sales that are "closed" within the state and that, for tax purposes, sales are closed when title to the goods are passed to the purchaser.

(2) The time that title to the goods passes as designated by the layaway contract is determinative of the time that sales tax is due. If there is no layaway contract or the contract is silent as to the time title transfers, amounts received in payment of the sales price of property held by the seller until the total amount of the sales price is paid to him are not taxable until the total sales price, including the service charge, has been paid and the property delivered to the purchaser.

(3) If the customer fails to complete payments under the layaway agreement and obtains from the retail merchant a refund of those payments, excluding the service charge, and title has not passed, the retail merchant is entitled to a credit for any sales tax previously paid to the Department upon the transaction regardless of the amount refunded to the customer. In an incompleted layaway transaction there can be no "return" since the customer never obtains delivery of the goods. (Adopted October 1, 1959, readopted through APA October 1, 1982, amended January 10, 1985)

810-6-2-.37. Lumber and Timbers Used in Mine Tipple.

Sales of lumber and timbers to mine operators for use in constructing or repairing structures such as tipples, bridges, or trestles used in supporting mining and processing equipment and tracks are subject to tax at the general rate of 4%. This rule does not apply to machines and machinery supported by such structures, nor does it apply to crossties and switchties all of which are covered in other rules. (Section 40-23-1(a)(10)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.38. Lumber and Timbers Used in Mining.

Sales of lumber and timbers to mine operators for use in the building and maintenance of structures and for use in supporting mine roofs are subject to sales tax at the general rate of 4%. (Section 40-23-1(a)(10)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.39. Machine Shop Equipment.

Machine shop equipment used for maintenance and repair purposes is taxable at the general rate of 4%. Machines used both in maintenance and repair work and in the production of manufactured articles are taxed at the special machine rate of 1 1/2% when use in production is substantial. Tax is due at the general rate, however, when use in production is an incidental or inconsequential use as compared to use in maintenance and repair. (Sections 40-23-1(a)(10) and 40-23-2(3)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.41. Machines Furnished and Installed by Building Contractors.

(1) The 1 1/2% tax rate shall apply where a building contractor purchases for installation under a building contract machines and parts or attachments for machines which are to be used in mining, quarrying, manufacturing, compounding or processing. The parts or attachments to come under the special 1 1/2% rate must be made or manufactured for such use and customarily so used.

(2) On the other hand, building materials when used as such cannot come within the special 1 1/2% levy when purchased by a contractor or by a manufacturer regardless of whether or not the structure made therefrom may be used in mining, quarrying, manufacturing, compounding or processing. (Sections 40-23-2(3), 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-2-.41.01 Sales of Electrical Generators.

Retail sales of stand alone, commercial and portable electrical generators that manufacture alternating current electricity are taxable at the reduced machine rate. (Sections 40-23-2(3) and 40-23-61(b)) (Adopted through APA effective July 9, 1998)

810-6-2-.42. Machines or Machinery Not Used in Manufacturing.

Materials or equipment which might constitute a machine or machinery when not used for mining, quarrying, manufacturing, compounding or processing are taxed at the general rate of 4%. (Section 40-23-2(1)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.43. Self-Propelled Draglines Used in Mining.

A self-propelled dragline purchased for use in mining tangible personal property is taxable at the reduced machine rate of sales or use tax. Replacement parts and attachments for self-propelled draglines used in mining tangible personal property are also taxable at the reduced machine rate of sales or use tax when (i) made or manufactured for use on or in the operation of the dragline, (ii) necessary to the operation of the dragline, and (iii) customarily so used. State v. Twin Seam Mining Co., Inc., 274 Ala. 3, 145 So 2d 177 (1962) (Sections 40-23-2(3) and 40-23-61(b), Code of Alabama 1975) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982, amended July 30, 1998)

810-6-2-.46. Manufacturer's Use of Patterns.

(1) Patterns purchased by a manufacturer for use as a part or attachment to a machine used in manufacturing tangible personal property are subject to the sales and/or use tax at the machine rate of 1 1/2%.

(2) Pattern materials purchased by a manufacturer for use in making patterns that will become a part or attachment for a machine used in manufacturing tangible personal property are subject to the sales and/or use tax at the machine rate of 1 1/2%.

(3) The patterns or materials used in making patterns are taxable to the manufacturer at the time of purchase even though the patterns may pass to the manufacturer's customer after use by the manufacturer in making castings. (Section 40-23-2(3)) (Adopted October 29, 1976, readopted through APA effective October 1, 1982)

810-6-2-.46.01. Marine Dealers, Sales By.

The proper rates of state sales tax to be paid on sales of boats, motors, trailers, and other items associated with the marine industry are as follows:

(a) Boat trailers sold alone are taxable at 2 percent of the net difference paid.

(b) Boat motors sold alone are taxable at the general rate of 4 percent of the total selling price.

(c) Nonautomotive boats sold alone are taxable at the general rate of 4 percent of the total selling price.

(d) When a boat without a motor is sold with a trailer, the total selling price of the boat is taxable at the general rate and the trailer is taxable at the automotive rate on the net trade difference (total selling price of the trailer less credit allowed for a qualifying

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automotive unit traded-in) provided the boat and trailer prices are separately stated on the dealer's invoice. To qualify for the trade-in allowance, the unit traded-in for the trailer must qualify as an automotive unit. If the boat and trailer prices are not separately stated on the invoice, the total selling price of the boat and trailer is taxable at the general rate with no deduction allowed for a trade-in.

(e) Boat, motor and trailer sold as a unit is taxable at 2 percent of the net difference paid if it qualifies as an automotive vehicle.

(f) If a dealer removes a motor from a customer's unit classified as an automotive vehicle, accepts it as part payment of another motor, and installs the new motor; the tax is computed at 4 percent of the net difference paid. A motor sold with a motor traded that is not part of an automotive vehicle at the time of the sale is taxable at 4 percent of the total selling price.

(g) Coast Guard required equipment and accessories such as, but not limited to, life jackets and fire extinguishers included in the price of boat, motor and trailer, are taxable at 2 percent of the net difference paid. Skis, ropes, etc., are taxable at the general rate of 4 percent.

(h) Depth finders, trolling motors, and other permanently attached accessories sold with unit at time of original purchase are taxable at 2 percent of the net difference paid provided the unit qualifies as a motorboat with built-in motor, or boat with outboard type motor attached thereto by attachments intended to be permanent rather than readily removable, and which motor is controlled with remote controls built on or into the hull of said boat.

(i) Boat, motor and trailer sold by dealer for an individual is subject to the tax in the same manner and at the same rate as a boat, motor and trailer owned and sold by the dealer.

(j) Boat, motor and trailer sold with trade-in allowed (example: new unit $10,000.00, credit for unit traded $5,000.00, net difference $5,000.00) would be taxable at 2 percent of net difference paid provided both units qualify as an automotive vehicle as outlined in (h).

(k) Sail boat sold alone is taxable at 4 percent of total selling price.

(l) Sail boat sold with auxiliary motor permanently attached so that it qualifies as an automotive vehicle as outlined in (h) is taxable at 2 percent of the net difference paid.

(m) Aluminum fishing boat sold alone is taxable at the general rate of 4 percent of total selling price. (Sections 40-23-2(1) and 40-23-2(4)) (Adopted through APA effective January 10, 1985, amended January 24, 1989, amended July 9, 1998)

810-6-2-.47. Material Handling Equipment.

(1) Equipment used for transporting materials to the plant of a manufacturer, processor, or compounder or used for transporting finished products from such plants is taxed at the general 4% rate.

(2) The movement of materials or products purely for transportation purposes is not manufacturing, processing or compounding. In Alabama- Georgia Syrup Company v. State, 42 So.2d 796, the Supreme Court of Alabama stated with reference to platform trucks used for moving the company's products in the process of blending and packing. "We do not think that platform trucks are machines within the meaning of the exemption. They are obviously used in transportation from one point in the plant to another and not in compounding and manufacturing of tangible personal property."

(3) The general rule with reference to transportation equipment is that it is taxable at the general rate of 4% up to the point where the materials go into process, the equipment feeding the first processing machine being taxed under the machine levy at 1 1/2%.

(4) Equipment for transporting the finished product is subject to tax at the general 4% rate, the last equipment to come under the machine levy being that equipment which discharges the finished product from the last machine used in the process. (Section 40-23-2(3)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.48. Materials From Which Patterns are Manufactured, Tax Rates Applicable.

(1) Pattern materials used by foundrymen in making patterns to be used in casting are taxed at the special machine rate of 1 1/2%.

(2) Sales of patterns are taxed at the special machine rate of 1 1/2% when made to a foundryman to be used by him in making molds for castings.

(3) Sales of supplies and hand tools used in making patterns are subject to the tax at the 4% rate. (Sections 40-23-2(3), 40-23-1(a)(10)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.49. Mats Purchased for Use in Newspaper Advertising.

Mats purchased by advertisers to be furnished to newspaper publishers for use in producing plates used in printing newspapers are taxed at the special machine rate of 1 1/2%. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.50. Meals Furnished Along With Rooms by Schools and Colleges.

Where both lodgings and meals are furnished to students by institutions of higher learning, both public and private, the meals are subject to sales tax. If both lodgings and meals are furnished for a lump sum, the full amount is to be used as the measure of the tax. Where lodgings and the meals are furnished for separate amounts and the billings and records of the institution show such charges separately, only the charge for meals is to be used as the measure of the tax. (Attorney General's Opinion 12-19-60) (Section 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-2-.51. Meals Sold by Schools.

(1) Sales to children of lunches, when not for profit, in kindergartens, grammar schools, junior high schools, and high schools, both private and public, are specifically exempted from sales tax.

(2) Sales of meals made by all colleges, universities or other institutions of higher learning, both privately and publicly owned and operated, are by specific provisions of the Sales Tax Law subject to sales tax.

(3) Sales of meals made by schools (not including institutions of higher learning) owned and operated by the counties and municipalities of the State of Alabama are not subject to the sales tax. (City of Anniston v. State of Alabama, 91 So. 2d 211.)

(4) With the exception of the sales of meals described in the paragraphs above, sales of meals made by privately owned and operated schools and colleges and sales of meals made by schools and colleges owned and operated by the State of Alabama are subject to the tax. (Section 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-2-.51.05. Members of Armed Services Stationed in Alabama Subject to Sales and Use Taxes.

(1) Members of the armed services of the United States stationed in Alabama have no immunity from sales taxes imposed upon sales of tangible personal property to them by Alabama vendors.

(2) Property is not subject to Alabama use tax where purchased outside Alabama for use in this state by members of the armed services of the United States who are residents of another state, but who are stationed in this state, except that Alabama use tax is due on automobiles where purchased outside Alabama for use in this state where a sales or use tax on such vehicles is levied by but has not been paid to the state of residence of the purchaser. Members of the armed services stationed in states other than Alabama who purchase automotive vehicles outside of Alabama for use outside Alabama

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but will title and register said vehicle in Alabama will not be subject to the use tax. (Title 50, U.S. Code, Section 754(2).) (Sections 40-23-2(4) and 40-23-102) (Amended June 12, 1978, readopted through APA effective October 1, 1982)

810-6-2-.51.07. Metal Cleaning Chemicals.

Manufacturers of metal products are taxed on the use of all chemicals and oils which they use as cleaning materials, except oils classified and taxed as lubricating oils. (Section 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-2-.52. Molding Machines.

Mechanically operated devices used in making molds from sand for use in manufacturing are taxed at the special machine rate of 1 1/2%. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.52.03. Music Machines.

Gross receipts from the operation of musical devices (juke boxes) are taxable. The Supreme Court of Alabama held in the case Birmingham Vending Company v. State of Alabama, 38 So.2d 876, that both the machine owner and the proprietor of the place of business where the machine was operated are jointly and individually liable for the total amount of sales tax due on the gross receipts from such machines, where the machine owner supplied the machine and recordings, and where the proprietor of the location controlled the playing of the machine and both the owner and the proprietor shared in the income. The court held that this was a joint venture with either of the parties to the venture being liable for the payment of the tax due. (Section 40-23-2(2)) (Readopted through APA effective October 1, 1982)

810-6-2-.52.05. National and State Banks.

(1) Sales of tangible personal property to any national or state bank are taxable unless the bank is purchasing the property for resale. (Sections 40-23-2 and 40-23-61, Code of Alabama 1975 and 12 U.S.C. Section 548)

(2) National or state banks that are in the business of selling tangible personal property shall collect sales or use tax on their retail sales. Examples of retail sales by banks include sales by bank-operated cafeterias and sales of personalized checks or coin banks to bank customers. (Sections 40-23-2 and 40-23-61, Code of Alabama 1975 and 12 U.S.C. Section 548) (Adopted February 13, 1970, readopted through APA effective October 1, 1982; amended April 3, 1987, amended June 9, 1999)

810-6-2-.53. Negatives.

(1) Gross receipts accruing from the retail sales of black and white negatives or color separations sold to printers to produce plates for offset printing are subject to the sales tax at the machine rate of 1 1/2% where sold for use as parts or attachments of machines used in manufacturing plates.

(2) Sales of materials to processors producing negatives are at wholesale, tax free, where such materials become a component of the negatives produced for sale.

(3) Where a printer or publisher develops negatives for his own use, sales or use tax, whichever may apply, shall be due on the purchase price of the materials becoming a component of the negatives at the machine rate of 1 1/2% where the negatives are used as an attachment for machines used in manufacturing plates. (Sections 40-23-2(3) and 40-23-1(a)(9)g) (Adopted June 20, 1966, readopted through APA effective October 1, 1982)

810-6-2-.54. Packaging Equipment.

Mechanical equipment used in measuring, weighing, or packaging by manufacturers, compounders, or processors is taxed at the special machine rate of 1 1/2% when such equipment is a part of the production line used to put the product in condition for sale. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.56. Pan Glaze.

Pan glaze used by bakers as a coating for pans and trays used in baking is a supply item subject to tax. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-2-.56.01. Used Equipment.

Used equipment is subject to the sales and use taxes on the same basis that new equipment is subject to tax. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982, amended November 3, 1998)

810-6-2-.57. Parts and Attachments For Machines Used in Manufacturing.

Materials purchased by a manufacturer, compounder, processor, miner, or quarryman for attachment to, or to be made a part of, a machine used in manufacturing, compounding, processing, mining or quarrying is entitled to the reduced machine rate of sales or use tax regardless of whether or not such materials at the time of purchase are recognizable as

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810-6-2-.57. (Continued)

parts and attachments for machines, provided, however, that the parts and attachments made from such materials are designed and manufactured for use, customarily so used and necessary to the operation of the completed machine. Such materials would include, but would not be limited to tool steel, steel plate, steel angles, shafting, packing, pipe, pipe fittings, pipe fitting supplies, valves, steam hose, fire clay, bulk lining materials, bulk insulation materials and pipe and tank coverings. Also recording instruments and similar attachments which are not generally classified as parts and attachments to manufacturing machines would qualify as parts and attachments when attached directly to a manufacturing machine. The reduced machine rate does not, however, extend to the materials used in erecting buildings or other structures even though such buildings or structures may house or support machines used in manufacturing, compounding, processing, mining, or quarrying. (Sections 40-23-2(3) and 40-23-61(b)) (Readopted through APA effective October 1, 1982, amended November 3, 1998)

810-6-2-.58. Patterns Purchased for Use.

Patterns which become parts or attachments of molding machines used in manufacturing are taxed at the special machine rate of 1 1/2%. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.59. Patterns Used by Operators of Foundries.

Foundry operators use patterns to form the molds in which their products are cast. These patterns are subject to tax at the special machine rate of 1 1/2% when purchased by the foundry operators. In those cases where the foundryman fabricates the pattern used by him, the materials used in such fabrication are taxed at the special rate. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.62. Pipe Threading Machines.

Pipe threading machines used for construction purposes by a contractor or other builder are taxed at the 4% general rate. (Sections 40-23-1(a)(10) and 40-23-2(1)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.63. Piping.

Piping leading to and from storage tanks and piping bringing gas or water into a plant does not come within the levy on machines used in manufacturing. The general rate of 4% applies. (Section 40-23-2(1)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982.)

810-6-2-.64. Piping in Manufacturing Plant.

(1) Piping furnished and installed by a contractor along with pump houses and well connections is subject to use tax when intended for use by a paper manufacturer to supply his plant with the water necessary to the manufacturing of paper. The Supreme Court of Alabama held that the pipe and other materials used were building materials which are made taxable at the general tax rate by the building materials provision found in the definition of "sale at retail." (Layne Central Company v. Curry, 8 So.2d 839).

(2) Please note that the Supreme Court has in the Wilputte Coke Oven case made a distinction between "building materials" and recognizable parts and attachments for machines. See rule 810-6-2-.41 Machines Furnished and Installed by Building Contractors. (Sections 40-23-1(a)(10) and 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.65. Plates, Printers.

(1) Plates purchased by a printer for use as a part or attachment for a machine used in printing tangible personal property are subject to the sales and/or use tax at the machine rate of 1 1/2%.

(2) Materials purchased by a printer for use in making plates that become a part or attachment to a machine used in printing tangible personal property are subject to the sales and/or use tax at the machine rate of 1 1/2%.

(3) The plates or materials used in making plates are taxable to the printer at the time of purchase even though the plates may pass to the printer's customer after use by the printer.

(4) An example would be a person needing business cards with his picture shown thereon. The printer does not have the facilities to make the type plate needed; therefore, he purchases the plate needed to print the cards from a person in the business of making plates. (Section 40-23-2(3)) (Adopted October 29, 1976, readopted through APA effective October 1, 1982)

810-6-2-.66. Platform Trucks.

In Alabama-Georgia Syrup Company v. State of Alabama, 42 So.2d 796, the Alabama Supreme Court held that platform trucks "used for moving the company's products in the process of blending and packing the syrup in the plant" are not exempted by the machine exemption "under old sales tax law". The court stated: "We do not think that platform trucks are machines within the meaning of the exemption. They are obviously used in transportation from one point in the plant to another and not in compounding and manufacturing of tangible personal property." (Sections 40-23-2(1) and 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.66.05. Portable Power Saws.

(1) The Sales and/or Use Tax Laws levy a tax of 1 1/2% on the net difference paid for any machine, machinery, or equipment used in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms.

(2) The machines and machinery including chain saws used in production and harvesting of timber grown on tree farms, including pulpwood are taxed at 1 1/2%. Chain saws used for clearing land, cutting firewood, or other nonagricultural uses are taxed at 4%. (Sections 40-23-37, 40-23-2(1) and 40-23-2(3)) (Adopted March 9, 1961, amended July 27, 1964, amended June 12, 1978, readopted through APA effective October 1, 1982)

810-6-2-.67. Power Cables.

Power cables supplying power to working areas in mines and quarries are subject to the tax at the 4% rate. (Section 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-2-.68. Power Lines.

Electric power lines carrying electric power into a plant of a manufacturer, compounder or processor are taxed at the general rate of 4%. (Section 40-23-2(3)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.69. Printers, Applicable Tax Rate.

Sales of materials to printers are at wholesale, tax free, when such materials become a component of the printed matter produced for sale. The machines used in the printing come within the machine levy and are taxed at the 1 1/2% rate. The supplies, materials, and equipment not becoming a component of the product sold or not constituting a machine used in manufacturing are subject to the sales or use tax, whichever may apply, at the general rate of 4%. (Readopted through APA effective October 1, 1982)

810-6-2-.71. Proofs.

Gross receipts accruing from the retail sales of proofs sold to printers, publishers or others, which are used to make negatives to produce plates for offset printing, are subject to the sales tax at the machine rate of 1 1/2%. The machines used by the processor in the processing of proofs are taxable at the machine rate of 1 1/2%. The supplies, materials, and equipment not becoming a component of the product sold, or not constituting machines used in processing are subject to the sales or use tax, whichever may apply at

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810-6-2-.71. (Continued)

the general rate of 4%. Where a printer or publisher processes proofs for their own use, sales or use tax shall be due on the purchase price of the materials becoming a component of the proofs at the machine rate of 1 1/2% where the proofs are used to make negatives to produce plates for offset printing. (Section 40-23-2(3)) (Adopted June 20, 1966, readopted through APA effective October 1, 1982)

810-6-2-.72. Pumps, Mines.

Pumps when used in mining are taxed at the special machine rate of 1 1/2%. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.73. Rail Bonds Used in Mining.

Rail bonds used in the construction and maintenance of mine tracks used in bringing minerals to the surface of the earth are taxed at the special machine rate of 1 1/2%. This provision does not, however, extend to rail bonds used in the construction and maintenance of trucks used in transporting materials from the mine after the mining operation has been completed. (Sections 40-23-2(3), 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-2-.74. Railroad Companies-Machines.

Machines when sold to, or for use by, railroad companies in maintaining, repairing or reconditioning their equipment are subject to the sales or use tax at the general rate of 4%. (Section 40-23-2(1)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.74.05. Railroad Rails.

(1) Railroad rails are taxable at the general rate of 4% when used as a roadway for transportation equipment or for general purposes not described in the next paragraph.

(2) Railroad rails are taxed at the special machine rate of 1 1/2% when used as a roadway for quarrying or mining equipment in quarries or mines or when used on or in the operation of machines used in manufacturing, compounding or processing. (Sections 40-23-2(1) and 40-23-2(3)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.75. Rails Used in Mining.

Mine rails used in the construction and maintenance of tracks used in removing minerals from the earth are taxed at the special machine rate of 1 1/2%. This provision does not, however, extend to rails used in the construction or maintenance of tracks used in transporting minerals after the mining operation has been completed. (Sections 40-23-2(3) and 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-2-.78. Repairs, Machine.

(1) When repairs require service only or service with the use of an inconsequential amount of materials, the amount received is not subject to tax.

(2) When materials and service are used in repairing machines taxed at the special machine rate and when there is no separation in the billing, both materials and services are to be included in gross proceeds of sales at the special rate.

(3) When materials and service are used in repairing machines taxed at the special machine rate with service and materials shown separately, the materials only are subject to the tax.

(4) Materials are taxable at the general rate in any event when sold to repairmen for use in making repairs when such materials lose their identity as the result of such use; for instance, paint, solder, lumber, and sheet metal.

(5) When both materials and services are used in repairing machines taxed at the general rate and when there is no separation in the billing, both materials and services are to be included in the measure of tax to be paid. Both are taxed at the general rate. When the materials are shown separately on the invoice, the materials only are taxable.

(6) Also see rule 810-6-1-.95 entitled Materials Used in Repairing.

(Section 40-23-2(3)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.79. Repairs of Electric Motors and Electric Generators.

(1) Parts and attachments furnished by repairmen in reconditioning or repairing electric motors and electric generators are sold by the repairmen to the owners of the motors and generators. The repairman's sales of repair parts, such as ball bearings, brushes and wire used in rewinding, are subject to the sales tax. These parts and attachments are purchased at wholesale tax free by the repairman.

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810-6-2-.79. (Continued)

(2) Materials which lose their identity because of use by a repairman in repairing or reconditioning electric motors and electric generators, such as solder, babbitt, varnish, and insulation paste are subject to sales or use tax when purchased by the repairman. The tax shall be paid to the repairman's supplier or direct to the Department of Revenue as the circumstances require. Provided, however, where a repairman is engaged in the business of selling such repair materials, as well as using them, he may purchase at wholesale all repair materials which he both sells and uses in making repairs and pay direct to the Department of Revenue as sales tax the amount due on both sales and withdrawals from stock for use.

(3) The repairman's charges for labor used in installing parts and materials are not to be included in the measure of tax to be collected from his customers and paid to this state where such charges for labor are separately invoiced by the repairman to his customers and where the books and records of the repairman are kept in such a manner as to clearly reflect receipts from making installations and rendering services.

(4) In those instances where repair parts are used in repairing or rebuilding a motor or generator used in such a way that it would be taxed at the special machine rate, such repair parts are also taxed at the special rate. (Section 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-2-.79.03. <u>Repossessed Used Vehicles, Sales of</u>.

Resales of automotive vehicles repossessed by the seller or for him by a finance company are taxable measured by the gross proceeds of the resales thereof less credit for any automotive vehicle accepted as part-payment of the sales price of the vehicle so resold. (Section 40-23-2(4)) (Readopted through APA effective October 1, 1982)

810-6-2-.79.04. <u>Restaurants, Equipment and Supplies</u>.

(1) Restaurants and cafeterias are considered to be processors and compounders of food products for sale; therefore, they are entitled to purchase machines used in processing and compounding at the reduced rate of 1 1/2 percent.

(2) The machines falling in this category include, but are not limited to, meat slicers, burger patty makers, ice machines, coffee makers, shredders, electric mixers, electric food cutters, french fry machines and ranges.

(3) Items not falling in this category, such as refrigeration units, pots, pans, stainless steel work tables, hand tools, and similar items are taxable at the general rate of 4 percent.

(4) See Rule entitled <u>Furnished Containers</u>, 810-6-1-.69 for information regarding application of tax on purchases of paper products. (Sections 40-23-2(1) and 40-23-2(3)) (Adopted August 10, 1982, readopted through APA effective October 1, 1982)

810-6-2-.79.05. Rural Electrification Authority (R.E.A.).

Cooperatives set up under authority of United States Rural Electrification Laws are not instrumentalities of any governmental body. All purchases are subject to the sales or use tax, whichever may apply, except when otherwise specifically exempted. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-2-.87. Sand Handling and Sand Conditioning Equipment.

Machines and equipment used by manufacturers for conditioning and transporting, while in process, sand for use in mold making are taxed at the special machine rate of 1 1/2%. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.88. Sawdust Removal Equipment.

(1) Equipment manufactured for and customarily used in removing sawdust from saws in saw mills is taxed at the special machine rate of 1 1/2% when such equipment is a part or attachment of the sawing mechanism.

(2) The same rule applies to equipment manufactured for and customarily used to remove waste material from planers, edgers, and other manufacturing machines.

(3) Note, however, the removal or disposal of waste materials is not of itself a manufacturing process. The waste removal equipment must be an attachment of a machine which is covered by the levy on machines used in manufacturing in order for it to take the special rate of 1 1/2%. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.88.02. School Buses.

A school bus purchased by an individual for use under direction of and control of a board of education is subject to tax. (Section 40-23-1(a)(10)) (Readopted through APA effective October 1, 1982)

810-6-2-.88.03. Schools and Colleges Owned by the State, Counties or Cities, Sales Made By.

(1) Except as outlined in paragraph (2), retail sales of tangible personal property made by all schools and colleges owned and operated by the State of Alabama are subject to sales tax.

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810-6-2-.88.03. (Continued)

(2) Sales by elementary or secondary schools owned and operated by the State of Alabama are exempt from sales tax when the net proceeds from the sales are used solely for the benefit of the elementary or secondary school.

(3) Sales made by all colleges, universities, or other institutions of higher learning, both privately and publicly owned and operated, are by specific provisions of the Sales Tax Law subject to sales tax.

(4) If a student activity fee is collected from each student as a lump sum not broken down and covers the yearbook which is then supplied without further charge, the distribution of the yearbooks to the students is a service of the school not subject to tax.

(5) Gross proceeds of sales made by schools (not including institutions of higher learning) owned and operated by the counties and municipalities of the State are not subject to sales tax.

(6) Gross receipts from athletic contests conducted by or under the auspices of state-, city-, and county-operated educational institutions, other than primary or secondary schools, are subject to sales tax. Such institutions must collect the sales tax on their gross receipts from athletic contests and remit the tax to the Department of Revenue. State-, city-, and county-operated primary and secondary schools shall collect the sales tax on their gross receipts from athletic contests including receipts from any football playoff conducted by or under the auspices of the Alabama High School Athletic Association; but, instead of remitting the tax collected to the Department of Revenue, the tax shall be retained by the collecting school and used by the school for school purposes. Effective July 1, 2006, pursuant to Act #2006-602, this exemption and retention of the sales tax collected shall apply to any athletic event conducted by or under the auspices of the Alabama High School Athletic Association. With the exception of athletic events conducted by educational institutions other than primary or secondary schools, no sales tax is due on receipts accruing from admissions or fees from other amusements or entertainment conducted by schools and colleges owned and operated by the State of Alabama, a county or city of the State of Alabama. (Section 40-23-2(2)) (Amended July 2, 1975, readopted through APA effective October 1, 1982, amended June 5, 1992, amended September 29, 1994, amended November 5, 1996, amended December 13, 2006)

810-6-2-.88.04. <u>Exemption for Certain Sales by Elementary and Secondary Schools, School Sponsored Clubs and Organizations, and School Affiliated Groups</u>.

(1) The term "elementary or secondary school" as used in Act No. 96-653 and in this regulation shall mean both public and private schools where the curriculum consists of one or more of grade levels K through 12. The term "elementary or secondary school" shall not include nurseries and day care centers nor shall it include private schools at which the courses of study are limited to specialized subjects such as dance, horseback riding, music, cooking, or sewing.

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810-6-2-.88.04. (Continued)

(2) Provided the net proceeds from the sales are used solely for the benefit of the elementary or secondary school, sales and use taxes do not apply to sales by the following:

(a) elementary or secondary schools,

(b) nonprofit elementary or secondary school-sponsored clubs and organizations, or

(c) nonprofit elementary or secondary school affiliated groups, such as parent-teacher organizations and booster clubs whose membership may be composed of individuals other than students.

(3) The exemption outlined in paragraph (2) above also applies to sales resulting from agreements or contracts entered into with resident or nonresident organizations to participate in fund-raising campaigns for a percentage of the gross receipts where students act as agents or salespersons for the organizations by selling or taking orders for the sale of tangible personal property. Neither the school, club, organization, or group enumerated in paragraph (2) nor the resident or nonresident organization with whom the school, club, organization, or group contracts is required to collect or remit sales or use tax on the tangible personal property sold for fund-raising purposes. (Adopted through APA effective November 5, 1996)

810-6-2-.89. Scrap Metal Shredder.

A scrap metal shredder that will take such items as junk automobile bodies and through a series of magnetically operated devices separate the metal from the nonmetal items, shred the metal, and hydraulically compress it into blocks of certain sizes to specifications so that it can be measured when loading the furnace is taxed at the machine rate of 1 1/2%. (Section 40-23-2(3)) (Adopted June 12, 1978, readopted through APA effective October 1, 1982)

810-6-2-.90.01. Seller's Responsibility to Collect and Pay State Sales Tax and Seller's Use Tax.

(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.

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810-6-2-.90.01. (Continued)

(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 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 not 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;

(5) 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

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810-6-2-.90.01. (Continued)

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

(6) 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)

(7) 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. **(**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. Effective August 24, 2012.)

810-6-2-.90.02. Simplified Sellers Use Tax Remittance Program.

(1) Unless otherwise defined herein, the definitions of terms set forth in Section 40-23-191, Code of Alabama 1975, are incorporated by reference herein.

(2) The term “Eligible Seller” shall mean an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or other legal entity that sells tangible personal property or a service, but

(a) Does not have a physical presence in this state; or

(b) Is not otherwise required to register with the Department pursuant to Sections 41-4-116 or 40-23-190, Code of Alabama 1975.

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810-6-2-.90.02. (Continued)

(3) The term "locality" shall mean a county, municipality, or other local governmental taxing authority which levies a local sales and/or use tax.

(4) The term "most recent federal census" shall mean the decennial population count conducted by the U. S. Census Bureau.

(5) The term "municipality" shall mean any incorporated city or town located in the state.

(6) The term "otherwise delivered" shall mean delivery by a method other than in equipment owned or leased by the seller. Delivery in the seller's own vehicle or in equipment leased by the seller establishes a physical presence and disqualifies the seller from participation in the program.

(7) The term "program" shall mean the Simplified Sellers Use Tax Remittance Program.

(8) The term "program account number" shall mean the simplified sellers use tax account number assigned by the department upon approving an application for participation in the program.

(9) The term "simplified sellers use tax return" shall mean the monthly report of tax due from eligible sellers participating in the program.

(10) The term "state" shall mean the State of Alabama.

(11) Pursuant to Code of Alabama 1975, Section 40-23-191, et. seq., the Simplified Sellers Use Tax Remittance Program is designed to allow an eligible seller who participates in the program to collect, report, and remit a statewide eight percent (8%) tax on sales made into Alabama. Participation in the program is voluntary and only those eligible sellers accepted into the program shall collect and remit the simplified sellers use tax. The collection and remittance of simplified sellers use tax relieves the eligible seller and the purchaser from any additional state or local sales and use taxes on the transaction.

(a) No eligible seller shall be required to collect the tax at a rate greater than eight percent (8%), regardless of the combined actual tax rate that may otherwise be applicable.

(b) No sales for which the simplified sellers use tax is collected shall be subject to any additional sales or use taxes from any locality levying a sales or use tax with respect to the purchase or use of the property, regardless of the actual tax rate that might have otherwise been applicable.

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810-6-2-.90.02. (Continued)

(c) The participating eligible seller shall collect the tax on all purchases shipped or otherwise delivered into the state unless the purchaser furnishes the eligible seller with a valid exemption certificate, sales tax license, or direct pay permit issued by the department.

(12) A participating eligible seller shall provide the purchaser with an invoice showing that the simplified sellers use tax was collected and is to be remitted on the purchaser's behalf. The invoice shall include the eligible seller's program account number.

(a) The following is intended to provide an example of the statement required by law to appear on the customer's invoice and statement:

Seller has collected the simplified sellers use tax on this transaction(s) and the tax will be remitted on the customer's behalf to the Alabama Department of Revenue. Seller's program account number is SSU-RXXXXXXXXX.

(13) In order to participate in the program, an eligible seller shall complete the required application and provide other information as necessary to certify that the seller

(a) Meets the definition of an eligible seller,

(b) Agrees to collect, report, and remit the simplified sellers use tax for all sales shipped or otherwise delivered into the state while participating in the program,

(c) Agrees to provide the department with information related to sales to Alabama customers as required by law or requested by the department, and

(d) Agrees to comply with all program reporting requirements established under program procedures.

(14) A participating eligible seller shall be removed from the program if:

(a) The eligible seller substantially fails to collect, report, and remit the simplified sellers use tax.

(b) The eligible seller fails to submit required reports on a timely basis.

(c) It is determined that the seller is no longer an eligible seller, as defined by Section 40-23-191.

(d) There is any other finding by the department that the participant is not in compliance with the terms authorizing participation in the program.

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810-6-2-.90.02. (Continued)

(15) Any participating eligible seller who fails to report that he or she is no longer eligible to participate in the program or falsely certifies eligibility on any report or application shall be subject to the negligence and/or fraud penalties in accordance with Section 40-2A-11.

(16) Eligible sellers approved for participation in the program shall file monthly a simplified sellers use tax return reporting all sales shipped or otherwise delivered into the state.

(a) The return shall be due on or before the 20th day of the month next succeeding the month in which tax accrues.

(b) The return shall be due even in months where no tax liability is incurred.

(c) Returns and payments are required to be submitted via the Department's electronic online filing and payment system, My Alabama Taxes (MAT).

(d) Returns required to be submitted shall only include statewide totals of the simplified sellers use tax collected and remitted and shall not require information related to the location of purchasers or amounts of sales into a specific city or county.

(e) Returns and payments submitted after the due date will be subject to penalties and interest in the same manner as those applied to other tax returns due the department and in accordance with the provisions of Code of Alabama 1975, Sections 40-2A-11 and 40-1-44, respectively.

(17) Eligible sellers participating in the program shall be entitled to a discount of two percent (2%) of the simplified sellers use tax collected and timely reported and remitted to the department. No discount shall be allowed for any taxes which are not timely reported and remitted to the department pursuant to the program.

(18) The proceeds of the simplified sellers use tax paid shall be appropriated to the department, which shall retain the amount necessary to fund the administrative costs of implementing and operating the program and to cover the amounts paid for refunds authorized in Section 40-23-196. The balance of the amounts collected shall be distributed as follows:

(a) Fifty percent (50%) to the state treasury and allocated seventy-five percent (75%) to the General Fund and twenty-five percent (25%) to the Education Trust Fund.

(b) Twenty-five percent (25%) to each county in the state on a prorated basis according to population as determined in the most recent federal census prior to the distribution.

(Continued)

810-6-2-.90.02. (Continued)

(c) Twenty-five percent (25%) to each municipality in the state on a prorated basis according to the population as determined in the most recent federal census prior to the distribution.

(19) The distribution of the proceeds from the simplified sellers use tax paid to counties and municipalities shall be made electronically and shall be deposited in the most current banking account for each county and municipality on file with the department. These proceeds shall be paid to counties and municipalities quarterly, in January, April, July, and October of each year for proceeds received during each preceding calendar quarter.

(20) Eligible sellers shall maintain records of all sales shipped or otherwise delivered into Alabama, including copies of invoices showing the purchaser's name, address, purchase amount, and the amount of simplified sellers use tax collected. Such records shall be made available for review and inspection upon request by the department.

(21) Eligible sellers participating in the program shall not be subject to audit or review by any Alabama locality. The Alabama Department of Revenue holds the sole authority for audit and review of eligible sellers participating in the program. (Sections 40-2A-7(a)(5), 40-23-191 and 40-23-195, Code of Alabama 1975. Effective October 22, 2015, Amended April, 23, 2016)

810-6-2-.90.03. Requirements for Certain Out-of-State Sellers Making Significant Sales into Alabama.

(1) Notwithstanding the provisions of Rule 810-6-2-.90.01, entitled Seller's Responsibility to Collect and Pay State Sales Tax and Seller's Use Tax, out-of-state sellers who lack an Alabama physical presence but who are making retail sales of tangible personal property into the state have a substantial economic presence **in** Alabama for sales and use tax purposes and are required to register for a license with the Department and to collect and remit tax pursuant to Section 40-23-67, Code of Alabama 1975, when,

(a) Seller's retail sales of tangible personal property sold into the state exceed $250,000 per year based on the previous calendar year's sales; and

(b) Seller conducts one or more of the activities described in Section 40-23-68, Code of Alabama 1975;

(2) Sellers may satisfy the requirements described in (1) above by one of the following methods:

(Continued)

810-6-2-.90.03 (Continued)

(a) Using the collecting, reporting and remitting provisions of Article 2, Chapter 23 of Title 40, Code of Alabama 1975, or

(b) Using the collecting, reporting and remitting provisions created by the Simplified Sellers Use Tax Remittance Act codified at §§ 40-23-191 through 40-23-199, Code of Alabama 1975.

(3) This rule shall apply to all transactions occurring on or after January 1, 2016. (Sections 40-2A-7(a)(5), 40-23-83, 40-23-67, 40-23-68, 40-23-191 through 40-23-199, Code of Alabama 1975. Effective October 22, 2015.)

810-6-2-.91. Soda Fountains and Ice Cream Cabinets.

Soda fountains and ice cream cabinets are taxed by the Sales and Use Tax Laws at the general rate. The machine rate does not apply. (Section 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-2-.92. Soft Drink Bottlers.

Soft drink bottlers are engaged in manufacturing and compounding and, therefore, shall pay sales or use tax at the machine rate on the machines purchased used directly in manufacturing and compounding. They shall also purchase at wholesale, tax free, the ingredients of the drink which they compound. Supplies consumed in manufacturing or compounding are subject to tax at the general rate when purchased by the bottlers. (Sections 40-23-1(a)(9)b, 40-23-2(3), 40-23-2(1), 40-23-60(4)b, 40-23-61(a), and 40-23-61)

(a) Examples of machines used at the machine rate:

1. Bottle filling machines

2. Capping machines

3. Refrigeration equipment, when used to cool the product when in the compounding process

4. Filtering equipment, used for filtering water used in the product

5. Bottle washers and soakers

6. Sterilizers

7. Water heaters

(b) Examples of supplies and equipment which are subject to tax at the general rate:

1. Returnable or reusable bottles

2. Flats

3. Soap

4. Hand trucks

5. Office equipment

6. Office supplies

7. Advertising materials

(Readopted through APA effective October 1, 1982, amended January 27, 1998)

810-6-2-.92.02. State, County and City, Sales made by.

(1) The counties and cities of the State of Alabama and the agencies and the instrumentalities thereof are not required by the provisions of the Sales Tax Law to collect or to pay the Department of Revenue sales tax because of sales of tangible personal property made by them, except those institutions of higher learning operated by the cities and the counties must pay sales tax on sales made by them.

(2) The Sales Tax Law by specific provisions requires state-, city-, and county-operated educational institutions, other than primary or secondary schools, to collect and remit to the Department of Revenue the tax levied on admissions to athletic contests. State-, city-, and county-operated primary and secondary schools shall collect the sales tax levied on admissions to athletic contests including admissions to any football playoff conducted by or under the auspices of the Alabama High School Athletic Association; but, instead of remitting the tax collected to the Department of Revenue, the tax shall be retained by the collecting school and used by the school for school purposes. Effective July 1, 2006, pursuant to Act #2006-602, this exemption and retention of the sales tax collected shall apply to any athletic event conducted by or under the auspices of the Alabama High School Athletic Association. (Section 40-23-2(2))

(3) The Sales Tax Law also requires the State of Alabama and all of its agencies or instrumentalities to collect and remit to the Department of Revenue the sales tax levied on sales of tangible personal property. (Section 40-23-2(1)) (Readopted through APA effective October 1, 1982, amended June 5, 1992, amended September 29, 1994, amended December 13, 2006)

810-6-2-.93. Steel Plate.

Steel plate is taxable at the 1 1/2% machine rate when made into a tank at the site when the tank becomes a part of machinery used in manufacturing or processing. (Section 40-23-2(3)) (Adopted March 9, 1961, amended November 1, 1963, amended July 1, 1963, amended August 10, 1982, readopted through APA effective October 1, 1982)

810-6-2-.94. Storage Tanks.

(1) Storage tanks in or at manufacturing plants are subject to tax at the general rate of 4%. Piping leading to and from the storage tanks is also taxed at the 4% rate.

(2) Tanks which are connected into a processing system for the purpose of maintaining a suitable flow of materials through the connecting processing equipment are entitled to the special rate of 1 1/2%. (Sections 40-23-2(1) and 40-23-2(3)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.95. Supplies and Materials.

In maintaining and making repairs of machines and equipment used in mining, replacement parts specifically manufactured for use on such machines are taxed at the special machine rate of 1 1/2% when the machines themselves are entitled to the special rate. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.96. Switchboards.

Switchboards and other electrical equipment used in controlling the flow of electric power into manufacturing plants and mines are taxed at the general rate of 4%. (Section 40-23-2(1)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.97. Tanks Used in Manufacturing.

Tanks which are part of a chain of processing operations are taxed at the special machine rate of 1 1/2% when such tanks are purchased prefabricated and require no more than installation at the site. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.98. Equipment Used by Television, Cable TV, and Radio Stations.

(1) Amplifiers used in broadcasting by television, cable tv, and radio stations are machines used in processing tangible personal property. State of Alabama v. The Television Corporation, 271 Ala. 692, 127 So.2d 603, Mountain Brook Cablevision, Inc. v. State of Alabama, CV-82-1469-TH (Cir. Ct. Montgomery County February 25, 1983) and Cablevision Company, Inc. v. State of Alabama CV-82-1470-TH (Cir. Ct. Montgomery County February 25, 1983). (See Curry v. Alabama Power Company, 243 Alabama 53, 8 So.2d 521, holding that electricity is tangible personal property within the meaning of that term as used in the sales and use tax statutes.)

(2) When used in broadcasting by television, cable tv, and radio stations, equipment, which amplifies, modifies, or otherwise controls electrical currents and signals imposed on electrical current and the attendant electromagnetic waves, qualifies as a machine used in processing tangible personal property and is subject to the reduced machine rate of tax. Examples of this equipment include, but are not limited to, traps, receivers, video sequencers, filters, data scanners, taps, character generators, equalizers, modulators and modules, power supplies and standby power supplies, attenuators, and converters (wherever located). (Sections 40-23-2(3) and 40-23-61(b), Code of Alabama 1975)

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810-6-2-.98. (Continued)

(3) Transmission cable and all other tangible personal property not classified as machines or parts and attachments for machines used in processing tangible personal property are taxable at the general rate. (Sections 40-23-2(1) and 40-23-61(a)) (Adopted October 1, 1959, readopted through APA effective October 1, 1982, amended January 10, 1985, amended October 29, 1993, amended July 30, 1998)

810-6-2-.99. Tool Steel.

Tool steel is taxed at the special machine rate of 1 1/2% when used as a part or an attachment for a machine used in mining or quarrying even though it may require some fabrication by the mine or quarry operator to adapt it for use on his equipment. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.100. Track Accessories Used in Mining.

Track accessories including spikes, bolts, plates, and switch parts becoming a part of mine tracks used in removing minerals from the earth are taxed at the special machine rate of 1 1/2%. This provision does not, however, extend to track accessories used in the construction or maintenance of tracks used in transporting minerals from the mine after the mining operation has been completed. (Sections 40-23-2(1) and 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-2-.101. Transformers.

Transformers used in the generation, manufacture, or distribution of electricity by public utilities are machines used in manufacturing and processing tangible personal property and, therefore, are taxed at the reduced machine rate. (Curry v. Alabama Power Company, 8 So.2d 521) Following this decision by the court, the Department has ruled that all transformers used by producers or distributors of electricity and transformers used by other manufacturers, processors, or compounders as a part of their manufacturing, processing, or compounding equipment are entitled to the reduced machine rate of sales and use tax. Power capacitors and voltage regulators qualify for the reduced machine rate hen used in the generation, manufacture, or distribution of electricity by public utilities or by other manufacturers, processors, or compounders as a part of their manufacturing, processing, or compounding equipment. (Sections 40-23-2(3) and 40-23-61b)) (Readopted through APA effective October 1, 1982, amended October 29, 1993)

810-6-2-.102. Trolley, Materials, Mine.

Trolley equipment used in supplying electric power to mine locomotives used in bringing minerals to the surface of the earth are taxed at the special machine rate of 1 1/2%. This provision, however, does not extend to electric cable, switch gear, and other equipment used to deliver electric current to trolley lines or to other mining machines or machinery. (Sections 40-23-2(3) and 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-2-.103. Truck Bodies, Rates of Tax.

A truck body, not a part of an automotive vehicle at the time it is purchased, is taxable at the general 4% rate except in those instances where a truck chassis and a truck body are purchased out of Alabama in separate transactions but are assembled into a unit for importation into this State, in which event, the unit is taxable at the automotive rate of 2%. (Sections 40-23-2(1), 40-23-2(4)) (Adopted March 9, 1961, amended July 1, 1963, amended November 1, 1963, readopted through APA effective October 1, 1982, amended January 24, 1989)

810-6-2-.104. Used Automotive Vehicles.

A used automotive vehicle is one which has been put to the use for which it was intended. All sales of used automotive vehicles are taxed at the automotive rate regardless of how acquired. The sales tax applies on sales of used automotive vehicles in the same way it applies on new automotive vehicles. (Section 40-23-2(4)) (Readopted through APA effective October 1, 1982)

810-6-2-.104.02. Used Vehicles Acquired in Trades, Sales of.

Used automotive vehicles, used truck trailers and semi-trailers when taken in trade are subject to sales tax at the automotive rate when resold. (Section 40-23-2(4)) (Readopted through APA effective October 1, 1982)

810-6-2-.105. Wire Rope.

Wire rope is subject to sales or use tax at the 4% general rate when used on locomotive cranes or other material handling equipment which is not entitled to the special machine rate of 1 1/2%. (Sections 40-23-2(1) and 40-23-2(3)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982)

810-6-2-.106. Wire Rope Used on Machines.

Wire rope is taxed at the special machine rate of 1 1/2% when used as an attachment for a machine used in mining, manufacturing or quarrying. (Section 40-23-2(3)) (Readopted through APA effective October 1,1982)

810-6-2-.107. Wholesale Sales.

(1) Record of sales at wholesale to be kept. In the court case State of Alabama v. Levey, 29 So.2d 129, the Alabama Supreme Court held that suitable records of wholesale sales must be kept in accordance with the provisions of the Sales and Use Tax Laws in order to claim nontaxability for such sales.

(2) "We pointed out that the taxpayer kept no proper record to indicate these sales or differentiate them from the remainder of the gross sales shown on his general ledger. He, himself, said this and testified his charge tickets, which had been destroyed, were his only records to distinguish such sales. Other evidence was of like import."

(3) "We have construed the pertinent provisions of Title 51, noted above, as requiring the keeping of accurate records of such exempt sales if they are to escape taxation; and noncompliance gives authority to the tax department to disregard such a claim of exemption and, on a proper showing of liability to levy the tax on the gross, as for retail sales, as the provisions of the statute contemplate." (Section 40-23-2(1)) (Readopted through APA effective October 1,1982)

810-6-2-.108. Paper Manufacturers, Tax Rates Applicable to.

(1) Purchases of machines by paper manufacturers to be used in manufacturing, processing, or compounding tangible personal property and purchases by paper manufacturers of the parts, attachments, or replacements for these machines which are (i) made or manufactured for use on or in the operation of the machines, (ii) necessary to the operation of the machines, and (iii) customarily so used are taxable at the reduced machine rates of sales and use tax levied in Sections 40-23-2(3) and 40-23-61(b). Examples of tangible personal property that are taxable at the reduced machine rate when purchased by paper manufacturers are:

(a) machine clothing - felts, screen plates, and wire

(b) tanks to be used in manufacturing

(c) recording instruments attached directly to manufacturing machinery

(d) pipes, valves, pipe fittings, and pipe fitting supplies attached to manufacturing machinery (all other pipes, valves, pipe fittings, and pipe fitting supplies are

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taxable at the general rate except for those which are used in a water treatment plant and, therefore, qualify for the pollution control exemption in Sections 40-23-4(a)(16) and 40-23-62(18))

(e) all machinery and equipment used to generate electricity including boilers, engines, condensers, generators, transformers, and attachments thereto (machinery and equipment used solely for the transmission of electricity is taxable at the general rate)

(f) electrical equipment used as direct controls of manufacturing machines

(g) all transformers, wherever used

(h) insulating material, both bulk and preformed, which is applied to manufacturing machinery

(i) shafting, whether purchased prefabricated to exact size or unfinished to be cut and machined by the purchaser, when used on manufacturing machinery

(j) packing, whether purchased prefabricated or in bulk form, when purchased for use on manufacturing machinery

(k) steam hose purchased for use as a part or attachment to manufacturing machinery

(l) steel, steel plate, steel angles, bushing, bronze, steel shapes, and tool steel from which machine parts or attachments are fabricated

(m) fire clay and bulk lining materials

(n) equipment used in measuring, weighing, and packaging product when it is a part of the production line machinery and is used to put the product in condition for sale

(o) computers directly linked to manufacturing machinery and used to control or monitor manufacturing machinery

(p) machinery used during the manufacturing process to test or measure materials entering the product.

(2) Tangible personal property purchased by paper manufacturers is taxable at the general rate of sales or use tax levied in Sections 40-23-2(1) and 40-23-61(a) unless it qualifies for the reduced automotive, manufacturing machine, or farm machine rate of tax or for a specific statutory exemption or exclusion. Property purchased for use in general plant maintenance, administration, general management, or marketing is taxable at the

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810-6-2-.108. (Continued)

general rate. The following items are taxable at the general rate of sales or use tax when purchased by paper manufacturers with certain exceptions as noted:

(a) steam hose used for cleaning purposes including bulk purchases of steam hose of the kind which may be used either for cleaning the plant and plant equipment or for use as an attachment to manufacturing machinery (unless the purchaser can document that all of the steam hose purchased in bulk was used on manufacturing machinery)

(b) bulk or preformed insulating material not becoming an attachment to manufacturing machinery

(c) machinery and equipment used solely to transmit electricity from the powerhouse to motor control centers on manufacturing machinery (these items transmit electricity rather than manufacture electricity)

(d) all wire, fixtures, and other materials used in lighting

(e) baling wire pulp for internal use

(f) skid and anchor plates

(g) steel strapping, when not furnished as part of a one-time-use container

(h) gummed tape, when not furnished as part of a one-time-use container

(i) wooden skids

(j) pulpwood saws and saw parts (taxable at the reduced farm machine rate when purchased for use in harvesting timber)

(k) yard switcher repair parts

(l) safety shoes

(m) lumber

(n) magazine subscriptions

(o) repair parts for electric trucks

(p) office supplies

(q) laboratory supplies

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(r) cafeteria equipment

(s) charts used on recording instruments that are attached directly to manufacturing machinery

(t) tractor repair parts

(u) paints

(v) auto, truck, and trailer repair parts

(w) hand-operated hoists and parts

(x) portable air compressors and parts

(y) tools

(z) first aid supplies, fire protection supplies and equipment, safety supplies and equipment

(aa) welding machines and parts

(bb) fuel oil

(cc) Dowicide (not taxable when it becomes an ingredient or component part of the paper manufacturer's manufactured product)

(dd) Nopco K. F. foam killer (exempt when used primarily for air or water pollution control purposes)

(ee) seedlings and plants

(ff) repair parts for gas-driven and electric lift trucks (new units taxable at the reduced automotive rate)

(gg) building materials including brick, structural steel, concrete, lumber rails, paint, insulation materials, plumbing fixtures, and all other materials becoming a part of a structure

(hh) pipes, valves, pipe fittings, and pipe fitting supplies including those which are used in drinking water lines and fire protection lines (pipes, valves, pipe fittings, and pipe fitting supplies which are attached to manufacturing machinery are taxable at the reduced machine rate; those which are used in a water treatment plant qualify for the pollution control exemption in Sections 40-23-4(a)(16) and 40-23-62(18))

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810-6-2-.108. (Continued)

(ii) construction supplies including welding rods, acetylene, oxygen, screws, nuts, bolts, and rivets.

(3) The rates of sales and use tax applicable to purchases of used machinery and equipment by paper manufacturers are the same as the rates applicable to purchases of new equipment.

(4) Exemptions and exclusions which commonly apply to paper manufacturers include the wholesale exclusion for purchases of materials becoming an ingredient or component part of a manufactured product and the one-time-use containers or container components in which the manufacturer's product is furnished, the exemption for oils and greases otherwise taxed as lubricants, and the exemption for certain railroad cars, vessels, and barges of over five tons load displacement. (Sections 40-23-1(a)(9)b, 40-23-1(a)(9)c, 40-23-4(a)(1), 40-23-4(a)(12), 40-23-60(4)b, 40-23-60(4)c, 40-23-62(4), and 40-23-62(17)) (Adopted through APA effective November 3, 1998)

810-6-3-.01. <u>Exemptions for Agricultural Products Sold by the Producer</u>.

(1) There are two exemptions in the sales and use tax statutes relative to agricultural products sold by the producer - one is found in Sections 40-23-4(a)(5) and 40-23-62(8), <u>Code of Alabama 1975,</u> and the other in Section 40-23-4(a)(44). A sale of agricultural products that does not qualify for one of these exemptions may still qualify for the other.

(2) Sections 40-23-4(a)(5) and 40-23-62(8) exempt sales of products of the farm, dairy, grove, or garden from sales and use tax when the products (i) are sold by the producer, by members of the producer's immediate family, or by persons employed by the producer to assist in the production of the products and (ii) have not been processed, except to the extent that the products are customarily processed by operators of farms, dairies, groves or gardens in preparing products for market.

(a) This exemption does not apply to agricultural products sold by the producer through a store which the producer operates. (<u>Curry v. Reeves</u>, 240 Ala. 14, 195 So. 428)

(b) Unlike the exemption outlined in paragraph (3) below, this exemption is not limited to products that are planted, cultivated, and harvested by the producer. Examples of products that may qualify for this exemption but not the exemption in paragraph (3) include but are not limited to milk, eggs, catfish, minnows, bees, honey, rabbits, and hamsters produced on farms.

(3) Section 40-23-4(a)44 exempts fruit or other agricultural products from sales and use tax when sold by the person or corporation that planted, cultivated, and harvested

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810-6-3-.01. (Continued)

the products. Unlike the exemption outlined in paragraph (2) above, this exemption is not lost to the producer who sells qualifying agricultural products through a store operated by the producer.

(4) Sales of agricultural products which otherwise qualify for one or both of the exemptions outlined in paragraphs (2) and (3) above do not lose their exempt status if the products retain their raw, unprocessed form when prepared by the producer for marketing or merchandising. An agricultural product is no longer in its raw, unprocessed form if it is cooked, boiled, roasted, or mixed or compounded with ingredients other than additional exempt agricultural products.

(a) Examples of prepared agricultural products which do not lose their exempt status when they otherwise qualify for either or both of the exemptions outlined in paragraphs (2) and (3) are:

1. raw pecans when cracked or shelled
2. raw shelled peanuts
3. raw shelled peas, beans, or butterbeans
4. raw shucked corn
5. raw washed fruits or vegetables.

(b) Examples of processed agricultural products which do not qualify for the exemptions outlined in paragraphs (2) and (3) above are:

1. apple cider
2. boiled or roasted peanuts
3. candy
4. cane or sorghum syrup
5. fruit pies
6. ice cream
7. jellies and jams
8. peanut butter
9. pickled peaches
10. pickles
11. roasted pecans.

(Readopted through APA effective October 1, 1982, amended May 22, 1993, amended July 30, 1998)

810-6-3-.01.01 Agriculture, Definition of.

(1) For purposes of interpreting references in the sales and use tax statutes to agriculture and agricultural purposes, the term "agriculture" is defined to be the art or science of cultivating the ground, and raising and harvesting crops, including also feeding, breeding, and management of livestock and poultry; tillage; husbandry, farming.

(2) The following items or areas fall within the definition of agriculture:

tree farming
raising horticultural products in commercial greenhouses and nurseries
fruit and nut trees (whether or not in groves or orchards)
vegetable gardens (whether or not on farms)
livestock farming
dairy farming
commercial fish ponds
commercial sod farms
poultry and egg farming

(3) The following items or areas do not fall within the definition of agriculture:

lawns, shrubbery, and flower beds around residential and business property
golf courses, baseball or football fields
highway, railroad, or utility right-of-way
shade trees (other than fruit or nut trees)
house plants
commercial pest control services

(Adopted through APA effective May 22, 1993)

810-6-3-.01.02. Livestock, Definition of.

(1) In accordance with the guidelines for interpretation outlined in Brundidge Milling Co. v. State, 45 Ala. App. 208, 228 So. 2d 475 (1969); the term "livestock" as used in Title 40, Chapter 23 of Code of Alabama 1975 and in the sales and use tax regulations shall mean cattle, swine, sheep, goats, and members of the equidae family of mammals such as horses, mules, and donkeys.

(2) Animals other than those enumerated above do not fall within the term "livestock." (Adopted through APA effective July 20, 1994)

810-6-3-.02. Alabama State Bar.

The Alabama State Bar is an instrumentality of the state (Section 34-3-105, Code of Alabama 1975) and is not subject to sales or use taxes on the property purchased for use in carrying on any activity they are authorized to engage in by law. (Section 40-23-4(a)(11)) (Adopted February 6, 1968, readopted through APA effective October 1, 1982)

810-6-3-.03. American National Red Cross.

The American National Red Cross is an agency of the United States; its purchases are exempt from the sales and use tax. (Section 40-23-4(a)(17)) (Readopted through APA effective October 1, 1982)

810-6-3-.03.02. Automotive Vehicles, Certificate of Exemption/Out-Of-State Delivery Form.

(1) Whenever a dealer in automotive vehicles, truck trailers, semitrailers, or house trailers sells an automotive vehicle, truck trailer, semitrailer, or house trailer and delivers it outside Alabama, or outside the city and/or county in which the dealer is located, any claim of exemption from sales tax on the sale because of delivery outside Alabama or the city or county in which the sale was made, shall be supported by an affidavit of the dealer and the buyer and by an affidavit of the person making delivery of the vehicle, trailer, semitrailer, or house trailer using a form furnished by the Department of Revenue. This form shall be entitled "Certificate of Exemption – Out of State/City/County Delivery" and shall require the following information:

(a) The date of the sale.

(b) The invoice number.

(c) The dealer's sales tax registration number, name, and address.

(d) The purchaser's name and address.

(e) A description of the automotive vehicle, truck trailer, semitrailer, or house trailer to include the make, model, year, vehicle identification number (VIN), an indication as to whether the vehicle is new or used, the total sales price of the vehicle, the trade-in allowance, and the net amount paid for the vehicle.

(f) An indication as to the state in which the vehicle will be titled or registered.

(g) A certification by the undersigned seller and buyer, or their representatives, that the vehicle described on the form has been sold and will be delivered outside Alabama, the city and/or county in which the dealer is located, and that the information provided on the form is true and correct.

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(h) The state, county, and city if applicable, where the vehicle, trailer, semitrailer, or house trailer was delivered.

(i) The name of the person making the out-of-state or out-of- city/county delivery and an indication as to whether that person is the seller or an employee of the seller.

(j) The name of the person to whom the out-of-state or out-of- city/county delivery was made and the date and place of delivery.

(k) A certification by the person making the delivery of the vehicle, trailer, semitrailer, or house trailer that he or she has personally delivered the vehicle, trailer, semitrailer, or house trailer described in (e) to the person and place indicated in (j).

(2) No sale of any automotive vehicle, truck trailer, semitrailer, or house trailer will be recognized as having been delivered outside Alabama or outside the city and/or county in which the dealer is located unless there has been specific compliance with this rule.

(3) This rule shall not apply to a sale of an automobile, motorcycle, truck, truck trailer, or semitrailer to a person who takes delivery of the vehicle, trailer, or semitrailer inside Alabama and removes it from Alabama within 72 hours for first use and registration or titling outside Alabama. See Rule 810-6-3-.42.03 entitled Sales of Certain Automotive Vehicles to Nonresidents for First Use and Registration or Titling Outside Alabama for the requirements necessary to document a sale which qualifies for the 72-hour drive-out exclusion contained in Section 40-23-2(4), Code of Alabama 1975. (Amended August 16, 1974, amended November 3, 1980, readopted through APA October 1, 1982, amended June 2, 1988, amended July 30, 1998, amended July 7, 2006)

810-6-3-.04. Baby Chicks and Poults.

Sales of baby chicks and poults are specifically exempted from sales tax. (Section 40-23-4(a)(3)) (Readopted through APA effective October 1, 1982)

810-6-3-.06.04. Boxing and Wrestling Matches Staged by National Guard.

Boxing and wrestling matches staged by the National Guard in National Guard Armories or on property adjacent thereto controlled by the National Guard are exempted from sales tax where such matches are held in accordance with the provisions of Section 31-2-56, Code of Alabama 1975. (Amended June 12, 1978, readopted through APA effective November 27, 1985)

810-6-3-.07. Canteens of Alabama National Guard.

(1) Canteens and exchanges of the Alabama National Guard and the Alabama Naval Militia are not required to collect or pay sales tax where:

(a) Established and operated in accordance with rules and regulations issued by the Adjutant General and approved by the Governor, and where,

(b) Owned, operated, and run exclusively by National Guard or Naval Militia units for the convenience and benefit of the active and retired members of the National Guard and Naval Militia, and pursuant to Act # 2006-195, all other active and retired members of the United States Armed Forces (Section 31-2-81), and where,

(c) Profits of such canteens or exchanges go to the units and not to the persons operating them.

(2) The canteens and exchanges established and operated as described above are not subject to sales tax on purchases for use in such operations. (Section 40-23-4(a)(11)) (Sections 40-2A-7(a)(5), 40-23-4(a)(11), 31-2-81 and 40-23-31, Code of Alabama 1975, Readopted through APA effective October 1, 1982, amended November 22, 2006)

810-6-3-.07.05 Charitable Organizations and Institutions.

Charitable and nonprofit organizations and institutions have no special exemption from the sales and use taxes. Further, they are required to comply with all the provisions of these laws, relating to the filing of returns, making payments of taxes required to be collected, etc. with the exception of those listed below which are exempt from payment of all sales and use taxes by special acts of the Legislature.

ACT NO.	ORGANIZATION	EFFECTIVE DATE
94-363	AIDS Action Council of Huntsville	April 12, 1994
94-363	AIDS Alabama, Inc. (formerly AIDS Task Force of Alabama, Inc.)	April 12, 1994
79-663	Alabama Aviation Hall of Fame Board	July 30, 1979
2012-544	Alabama Association of Rescue Squads, Incorporated	August 1, 2012
2012-544	Alabama Association of Volunteer Fire Departments	August 1, 2012
123	Alabama Chapter Cystic Fibrosis Research Foundation	October 1, 1965
81-812	Alabama Federation of Women's Clubs	May 27, 1981
93-484	Alabama Goodwill Industries, Inc.	May 13, 1993
81-790	Alabama Goodwill Industries, Inc. of Birmingham	May 27, 1981
670	Alabama Goodwill Industries, State Headquarters Only	May 1, 1978
1204	Alabama Heart Association	September 18, 1973
670	Alabama Lions Sight Conservation Association, Inc. (formerly Alabama Sight Conservation Association) State Headquarters Only	May 1, 1978
2012-513	Alabama Marine Corps League	August 1, 2012
259	Alabama Masonic Home	September 7, 1964
77	Alabama National Fair and Agricultural Exposition, Inc. (formerly South Alabama State Fair Association)	August 7, 1978
83-408	Alabama Shakespeare Festival Theatre Finance Authority (Corporation dissolved May 19, 2009)	January 27, 1983 to May 19, 2009
1102	Alabama Sheriffs' Youth Ranches (formerly Alabama Sheriffs Boys Ranch)	September 12, 1969
1204	Alabama Society of the Daughters of the American Revolution	September 18, 1973
84-664	Alabama Sports Foundation (formerly Birmingham Football Foundation)	May 31, 1984
2080	Alabama University of, Huntsville Foundation	October 1, 1971

(Continued)

810-6-3-.07.05. (Continued)

ACT NO.	ORGANIZATION	EFFECTIVE DATE
95-724	American Bowling Congress or any predecessor organization or entity (exemption limited to state, county, and municipal sales or use taxes applicable to its entry fees)	October 1, 1995
761	American Cancer Society - Alabama Division	September 9, 1967
670	American Legion, State Headquarters Only	May 1, 1978
670	American Veterans World War II, Korea, and Vietnam, State Headquarters Only	May 1, 1978
97-868	American Youth Soccer Organization, Region 498 (exemption is limited to county and municipal sales and use taxes in Madison County)	December 1, 1997
97-709	Anniston Fellowship House, Inc.	August 1, 1997
1591	Baptist, Freewill, Children's Home	September 20, 1970
2006-556	Barber Vintage Motorsports Museum (exemption limited to state, county, and municipal sales and use taxes with respect to tangible personal property purchased solely for display as a museum exhibit primarily within the confines of the museum property)	July 1, 2006
2006-389	BayFest, Incorporated (exemption is limited to municipal sales and use taxes and gross receipts taxes in Class 2 municipalities. A Class 2 municipality is a city with a population of not less than 175,000 and not more than 299,999 inhabitants.)	October 1, 1999
2006-250	Big Oak Ranch, Incorporated, Administrative Office in Springville, Alabama	June 1, 2006
94-363	Birmingham AIDS Outreach, Inc.	April 12, 1994
1944	Birmingham Building Trades Tower	September 20, 1971
96-745	Birmingham Civil Rights Institute, Inc.	July 1, 1996
261	Boy Scouts of America	September 7, 1966
97-420	Bridge, Incorporated, The	August 1, 1997
1944	Building and Construction Trades Group, Inc. (formerly Birmingham Building Trades Tower)	September 20, 1971
47	Catholic Maritime Club of Mobile, Inc.	October 1, 1961
2004-507	Centre for the Living Arts, Inc., The (exemption limited to municipal sales and use taxes in Class 2 municipalities. A Class 2 municipality is a city with a population of not less than 175,000 and not more than 299,999 inhabitants.)	May 17, 2004

(Continued)

810-6-3-.07.05. (Continued)

ACT NO.	ORGANIZATION	EFFECTIVE DATE
1591	Childhaven, Inc.	September 20, 1971
149	Chilton County Rescue Squad	September 21, 1975
2006-615	Christian Service Centers of Covington Baptist Association, Incorporated	
89-829	Christian Service Mission, Inc. (exemption limited to sales of food pursuant to the food distribution program conducted by Christian Service Mission, Inc., in cooperation with World Share, Inc.)	May 17, 1989
95-376	Citizenship Trust	July 24, 1995
261	Community Chest, All and United Appeal Funds and all charitable, civic, and eleemosynary organizations and institutions for whom they solicit funds	September 7, 1966
2001-961	Community Fire Development, Incorporated (exemption is limited to county and municipal sales and use taxes in Jefferson County)	December 1, 2001
97-421	Councils; State, Regional, and affiliated Community; created pursuant to Chapter 9A of Title 38 to administer the Individual and Family Support Program for persons with developmental disabilities and their families (exemption is limited to county and municipal sales and use taxes)	August 1, 1997
85-749	County Public Hospital Associations and any of their branches, agencies, lessees, or successors organized pursuant to Section 10-3A-1, et seq., Code of Alabama 1975, which operate or maintain hospitals for purposes other than pecuniary gain or individual profit	December 31, 1985
94-596	County Public Hospital Associations, or any Alabama nonprofit membership corporation if one or more of its members is a county public hospital association, and any of their branches, agencies, lessees, or successors organized pursuant to Section 10-3A-1, et seq., Code of Alabama 1975, which operate or maintain hospitals for purposes other than pecuniary gain and not for individual profit	December 31, 1993
96-344	Crenshaw Baptist Hospital (exemption is limited to county and municipal sales or use taxes in Crenshaw County)	June 1, 1996
154	Diabetes Trust Fund, Inc. (Corporation dissolved April 22, 2009.)	September 1, 1974 to April 22, 2009

(Continued)

810-6-3-.07.05. (Continued)

ACT NO.	ORGANIZATION	EFFECTIVE DATE
670	Disabled American Veterans, State Headquarters Only	May 1, 1978
97-709	DoDa Parade	August 1, 1997
2010-749	Eagles' Wings, Incorporated (Principal address is Northport, Alabama, Tuscaloosa County.)	July 1, 2010
77	Eastern Star, Grand Chapter and All Orders	August 7, 1978
1202	Elks Memorial Center	September 17, 1971
1204	Episcopal Foundation of Jefferson County	September 18, 1973
1102	Eufaula Heritage Association	September 12, 1969
88-543	Eye Foundation, Inc., and its branches and agencies	May 5, 1988
2012-544	Fire associations, county volunteer	August 1, 2012
1204	Fire Departments, All Volunteer in Alabama	September 18, 1973
2012-544	Fire districts, all local that are not under the auspices of their county commission	August 1, 2012
96-466	Franklin Memorial Clinic, Inc. (Exemption is limited to municipal gross receipts taxes)	July 1, 1996
94-246	Friends of Magnolia Cemetery, Inc., The (exemption is limited to county and municipal sales or use taxes in Mobile County)	May 1, 1994
84-187	George Lindsey Celebrity Benefit, Inc. (Corporation dissolved March 24, 1989)	April 24, 1984 to March 24, 1989
261	Girl Scouts of America	September 7, 1966
93-484	Goodwill Industries of Central Alabama, Inc.	May 13, 1993
93-484	Goodwill Industries/Easter Seals of the Gulf Coast, Inc. (formerly Goodwill Industries of Mobile Area, Inc.)	May 13, 1993

(Continued)

810-6-3-.07.05. (Continued)

ACT NO.	ORGANIZATION	EFFECTIVE DATE
94-119	Greater Gulf State Fair, Inc. And all persons, firms, or corporations that do business with the Greater Gulf State Fair, Inc. on its fairgrounds in Mobile County during its annual fair (exemption relates to Mobile County and is limited to county and municipal sales or use taxes)	April 1, 1994
95-394	Habitat for Humanity Organizations	September 1, 1995
94-363	Health Services Center, Inc. (formerly AIDS Services Center, Inc.)	April 12, 1994
1250	Helping Hand Club of Anniston	September 13, 1969
1944	Holy Comforter House, Inc. Of Gadsden	September 20, 1971
2005-305 and 2010-219	HudsonAlpha Institute for Biotechnology (formerly Hudson-Alpha Institute for Biotechnology)	August 2, 2005
97-709	Huntsville Emergency Medical Services, Inc.	August 1, 1997
97-868	Huntsville-Madison County Senior Center, Inc. (exemption is limited to county and municipal sales and use taxes in Madison County)	December 1, 1997
97-709	Jacksonville Christian Outreach Center, Inc.	August 1, 1997
94-363	Jefferson County AIDS in Minorities	April 12, 1994
47	Jewish Community Center	October 1, 1961
87-549	King's Home, Inc., (formerly King's Ranch, Inc.)	July 22, 1987
47	Knights of Pythias Lodges	October 1, 1961
123	Lakeshore Foundation (formerly Jefferson Tuberculosis Sanatorium)	October 1, 1965
94-94	L'Arche-Mobile, Inc. (exemption is limited to county and municipal sales or use taxes)	April 1, 1994
94-363	Lee County AIDS Outreach, Inc.	April 12, 1994
97-517	Lee County Cattlemen's Association Rodeo (exemption is limited to county and municipal sales taxes levied upon admission to the rodeo)	August 1, 1997
97-709	Lee County Humane Society	August 1, 1997
97-943	Little Sisters of the Poor	December 1, 1997
97-868	Madison Baseball Association (exemption is limited to county and municipal sales and use taxes in Madison County)	December 1, 1997

(Continued)

810-6-3-.07.05. (Continued)

ACT NO.	ORGANIZATION	EFFECTIVE DATE
97-868	Madison Dolphins Swim Team (exemption is limited to county and municipal sales and use taxes in Madison County)	December 1, 1997
94-212	Magic Moments, Inc.	May 1, 1994
	March of Dimes (The National Foundation's Field Offices)	Prior 1971
1591	Methodist Homes for the Aging	September 20, 1971
1591	Methodist, United, Children's Home	September 20, 1971
94-218	Mission of Hope Ministries, Inc. (formerly Mission of Hope, Inc.), (exemption is limited to county and municipal sales or use taxes)	May 1, 1994
94-119	Mobile Arts and Sport Association (exemption relates to Mobile County and is limited to county and municipal sales or use taxes)	April 1, 1994
98-126	Mobile Optimist Club, Christmas trees sold from the tree lot of the (exemption applies only in Mobile County and is limited to county and municipal sales and use taxes and gross receipts taxes)	June 1, 1998
2008-243	Mobile Regional Senior Community Center Foundation, Incorporated (exemption is limited to county and municipal sales and use taxes in Mobile County on purchases of goods donated to or used for the direct benefit of the Mobile Regional Senior Community Center or the City of Mobile, except the exemption does not apply to sales and use taxes owed and collected under the Education First Amendment, Amendment No. 706 to the Constitution of Alabama of 1901, as amended.)	April 24, 2008
96-750	Monrovia Parks and Recreation Association (exemption is limited to county and municipal sales and use taxes in Madison County)	July 1, 1996
94-363	Montgomery AIDS Outreach, Inc.	April 12, 1994
84-406	National Conference of State Legislatures and the Council of State Governments	May 23, 1984
864	New Hope Industries of Dothan	September 3, 1965
96-426	North Alabama Christian Children's Home (formerly Christian Children Homes, Inc.)	July 1, 1996
1102	North Alabama T. B. Associations	September 12, 1969
1204	Presbyterian Apartments, Inc., The	September 18, 1973

(Continued)

810-6-3-.07.05. (Continued)

ACT NO.	ORGANIZATION	EFFECTIVE DATE
1591	Presbyterian Home for Children	September 20, 1971
95-586	Rainbow Omega, Inc.	September 1, 1995
2000-576	Religious organizations conducting fund raising activities in Mobile County (exemption is limited to county and municipal gross receipts taxes in Mobile County imposed upon gross receipts from fund raising activities of religious organizations that qualify as an exempt organization under Section 501(c)(3) or Title 26, U.S.C.)	August 1, 2000
2012-544	Rescue associations, all county volunteer	August 1, 2012
91-324	Rescue service organizations operating within Alabama which are exempt from federal income taxes under the Internal Revenue Code of 1986, Section 501(c)(3) and which are members of the Alabama Rescue Services Association Incorporated	July 24, 1991
2012-544	Rescue squads, all volunteer that are members of the Alabama Association of Rescue Squads	August 1, 2012
95-692	Rescue units; volunteer, nonprofit; operating within Alabama which do not meet the criteria in Section 40-23-5(o) but are licensed by the State Board of Health	October 1, 1995
2006-383	Russell County Historical Commission (exemption is limited to county and municipal sales and use tax in Russell County on any purchases for the construction, maintenance, or repair of any location or facility operated by the commission)	July 1, 2006
297	Salvation Army	August 28, 1963
47	Seamens Home of Mobile, Inc.	October 1, 1961
90-566	Selma-Dallas County Historic Preservation Society	April 19, 1990
98-380	Service Guild of Birmingham, Incorporated, Early Intervention Program	July 1, 1998
84-739	Shrine	June 11, 1984
1204	Shrine Circus, The Annual	September 18, 1973
2000-642	Society of St. Vincent DePaul (exemption is limited to county and municipal sales and use taxes in Mobile County)	August 1, 2000

(Continued)

810-6-3-.07.05. (Continued)

ACT NO.	ORGANIZATION	EFFECTIVE DATE
94-363	South Alabama CARES (Community AIDS Resource Education and Support), Inc. (formerly Mobile AIDS Support Services)	April 12, 1994
77	Southeastern Livestock Exposition	August 7, 1978
84-187	Special Olympics Alabama, Inc. (fomerly The Alabama Special Olympics) or any predecessor	April 24, 1984
84-292	Tennessee Valley Exhibit Commission of Alabama (formerly Tennessee Valley Authority Exhibit Commission)	May 14, 1984
90-566	Valley Grande Community Center, Inc. (formerly Valegrande Community Center)	April 19, 1990
670	Veterans of Foreign Wars, State Headquarters Only	May 1, 1978
97-868	Wesco Girls Softball Team (exemption is limited to county and municipal sales and use taxes in Madison County)	December 1, 1997
94-363	West Alabama AIDS Outreach	April 12, 1994
95-394	West Alabama Youth Services, Inc. (WAYS)	September 1, 1995
97-709	Wings of Life, Inc.	August 1, 1997
94-363	Wiregrass AIDS Outreach, Inc. (Corporation dissolved December 16, 1996)	April 12, 1994 to December 16, 1996
97-709	Wiregrass Children's Home, Inc.	August 1, 1997
753	Young Men's Christian Association (YMCA)	September 23, 1957
47	Young Men's Hebrew Association (YMHA)	October 1, 1961
73	Young Women's Christian Association (YWCA)	October 1, 1959
49	Young Women's Christian Organization (YWCO)	July 2, 1962
97-868	Youth Development Association, Inc. (exemption is limited to county and municipal sales and use taxes in Madison County)	December 1, 1997

(Sections 40-2A-7(a)(5), 40-23-31 and 40-23-83, Code of Alabama 1975. Readopted through APA effective October 1, 1982, amended January 10, 1985, amended February 23, 1988, amended July 7, 1989, amended January 29, 1990, amended December 6, 1990, amended June 5, 1992, amended October 12, 1993, amended October 4, 1994, amended January 5, 1996, amended November 5, 1996, amended October 1, 1997, amended March 10, 1998, amended October 20, 1998, amended February 8, 2001, amended August 12, 2011, amended January 23, 2013)

810-6-3-.08. Chicken Litter.

The gross proceeds of sales of sawdust, wood shavings, wood chips, and other like materials sold for use as chicken litter by poultry producers and poultry processors are exempt from sales and use taxes. Sections 40-23-4(a)(28) and 40-23-62(28) (Readopted through APA effective October 1, 1982, amended July 9, 1998)

810-6-3-.09. Chinchillas, Hamsters, Mice, and Rabbits.

(1) Chinchillas, hamsters, mice and rabbits are not livestock and sales of such animals are subject to sales or use tax unless they are products of a farm and sold by the producer or for him by a member of his family or by a person employed to assist in the production thereof. (Sections 40-23-2(1), 40-23-4(a)(5), 40-23-61(a), and 40-23-62(8))

(2) Sales of chinchillas, hamsters, mice, and rabbits by the producer do not qualify for the exemption contained in Section 40-23-4(a)(44) for sales of agricultural products by the person or corporation that planted, cultivated, and harvested such agricultural products.

(3) Since the above animals are not classified as livestock, their feed is not exempt from sales and use tax.

(4) The term "farm" as used herein is understood to mean a place in a rural area on premises which include cultivated areas that is operated by a person that is commonly known as a farmer or a person who cultivates or manages a portion of land. (Adopted March 9, 1961, amended November 1, 1963, amended June 12, 1978, readopted through APA effective October 1, 1982, amended May 22, 1993)

810-6-3-.11. Cottonseed Meal.

Cottonseed meal is exempt from sales and use tax when sold for use as a feedstuff for livestock or poultry. It is not exempt as a fertilizer when sold in pure form unmixed with other ingredients. See Rule 810-6-3-.12, Cottonseed Meal Exchanged for Cottonseed. (Sections 40-23-4(a)(2), 40-23-4(a)(4), 40-23-62(5) and 40-23-62(7)) (Readopted through APA effective October 1, 1982, amended March 24, 1993)

810-6-3-.12. Cotton Seed Meal Exchanged for Cotton Seed.

Cotton seed meal exchanged for cotton seed in a transaction taking place at a cotton gin is not subject to sales or use tax. The exchange may be either between the owner of the seed and the ginner or between the owner of the seed and a third party who takes possession of the seed at the gin. Where the cotton seed is delivered at the gin to the ginner or to the third party, the transaction may be completed by acceptance of the cotton seed meal at a warehouse or other storage place not at the gin without loss of the exemption. Where the cotton seed meal given in exchange is of greater value than the cotton seed received, the ginner or third party shall collect and pay to the State of Alabama sales tax measured by the amount received in payment of the difference. (Section 40-23-4(a)(6)) (Readopted through APA effective October 1, 1982)

810-6-3-.12.02. Credit Unions, Federal and State Chartered, Sales by.

(1) Sales of tangible personal property by a federally chartered credit union are exempt from sales tax. A federally chartered credit union is an instrumentality of the Federal Government and, therefore, exempt from tax.

(2) Sales of tangible personal property by a state chartered credit union are subject to the sales tax. (Adopted June 12, 1978, readopted through APA effective October 1, 1982)

810-6-3-.13. Defense Plant Corporation.

(1) The Defense Plant Corporation is an instrumentality of the United States. Sales to this corporation or its agents acting for it are not subject to the sales tax.

(2) The purchase order of the agents of this corporation, when making purchases for the use and benefit of the corporation, must plainly state that the purchases are being made by the agent "acting for and on behalf of the corporation." (Section 40-23-4(a)(17)) (Readopted through APA effective October 1, 1982)

810-6-3-.14. County Departments of Human Resources.

Sales to county departments of human resources are sales to counties and are exempted from sales and use tax. (Sections 40-23-4(a)(11) and 40-23-62(13)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982, amended March 10, 1998)

810-6-3-.15. Federal Charge Card Program, Exemption Certification.

(1) Sales of tangible personal property to the United States government, its departments, or its agencies are exempt from state, county, and municipal sales and use tax provided the sales are billed directly to the United States government and paid for by the United States government with government funds.

(2) Charges for rooms, lodgings, or other accommodations furnished to the United States government, its departments, or its agencies are exempt from state, county, and municipal lodgings tax provided the charges are billed directly to the United States government and paid for by the United States government with government funds. (Department Rule 810-6-5-.13.)

(3) The United States General Services Administration (GSA) sponsors a federal charge card program, SmartPay, providing charge card services to federal governmental agencies and departments for the conduct of official business. Sales of tangible personal property and charges for renting or furnishing rooms, lodgings, or accommodations that are paid by federal charge cards are exempt from state and local sales, use and lodgings tax when the charge card account is billed directly to and paid directly by the United States government. Sales of tangible personal property and charges for renting or furnishing rooms, lodgings, or accommodations that are paid by federal charge cards are subject to state and local sales, use or lodgings tax when the federal employee pays the charge card account with their own funds and receives reimbursement from the United States government.

(4) A vendor or lodgings provider making sales of tangible personal property or renting or furnishing rooms, lodgings, or accommodations where payment is made by a federal charge card that is billed to and paid directly by the federal government shall retain a copy of the invoice and a completed exemption certification in the following form, Form ST-GSA, to substantiate that the transaction is exempt from sales, use or lodgings tax.

ALABAMA DEPARTMENT OF REVENUE
SALES, USE & BUSINESS TAX DIVISION
EXEMPTION CERTIFICATION RESPECTING CERTAIN PURCHASES OF
TANGIBLE PERSONAL PROPERTY OR LODGINGS
MADE THROUGH THE FEDERAL CHARGE CARD PROGRAM

Business Name: _____

Address: _____

_____

THIS PART TO BE COMPLETED BY THE CARDHOLDER:

I hereby certify that the purchase of tangible personal property or purchase of lodgings and accommodations that is being made under this exemption certification is for the official use of the Federal Government, is a debt of the Federal Government, and the charges will be paid with a federal charge card that is centrally billed to and paid by the Federal Government.

(Continued)

810-6-3-.15. (Continued)

Federal Charge Card Type (Purchase, Fleet, Travel, or Integrated): _____

Federal Charge Card Account Number: _____

Federal Agency/Department: _____

Agency/Department Telephone Number: _____

Date(s) of Occupancy (if applicable): _____

Signature of Federal Employee: _____ Date: _____

Name of Federal Employee: _____ Title: _____

(5) In lieu of utilizing the exemption certification form, written documentation of the same information as required on the certification may be retained by the vendor or provider of lodgings and accommodations to substantiate that the transaction is exempt from tax. (Sections 40-2A-7(a)(5), 40-23-4(17), 40-23-62(2), 40-26-19, Code of Alabama 1975) (Adopted through APA effective January 5, 2010)

810-6-3-.16. <u>Federal and State Chartered Credit Unions</u>.

The sale to, or use by, a Federal or state chartered credit union of tangible personal property in this state is not subject to sales or use taxes. (Section 40-23-4(a)(17)) (Adopted March 9, 1961, amended July 27, 1964, readopted through APA effective October 1, 1982)

810-6-3-.17. <u>Federal Production Credit Associations</u>.

Sales of property to federal production credit associations for use in conducting the activities of such associations as authorized by federal statutes are not subject to the sales tax; provided, however, this exemption does not apply with respect to any federal production credit association after the stock held in it by the production credit corporation has been retired. (Section 40-23-4(a)(17)) (Readopted through APA effective October 1, 1982)

810-6-3-.18. Federal Savings and Loan Associations.

(1) Alabama sales or Alabama use taxes, whichever may apply, are due on property sold to federal savings and loan associations.

(2) The only limitation placed upon the taxation of a federal savings and loan association is that the tax imposed on the federal institution shall not be greater than that imposed on other similar local mutual or cooperative thrift and home financing institutions. (Section 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-3-.19. Feed for Livestock and Poultry.

(1) Sales of feed for livestock and poultry (not including prepared food for dogs and cats) are exempt from sales and use taxes. (Sections 40-23-4(a)(4) and 40-23-62(7))

(2) The following items qualify for exemption when sold for consumption by livestock or poultry:

(a) Stale bread, table waste, and other foodstuffs which have become unsuitable for sale for human consumption

(b) Salt and salt blocks

(c) Bone meal and oyster shells

(d) Blackstrap molasses

(3) Bees are members of the insect family and are not livestock; therefore, sales of food, including sugar, for consumption by bees are not exempt from sales or use tax. (Section 40-23-1(a)(10))

(4) The gross proceeds of the sales of all antibiotics, hormones and hormone preparations, drugs, medicines, and other medications including serums and vaccines, vitamins, minerals, or other nutrients for use in the production and growing of livestock and poultry by whomsoever sold are exempt from the sales and use taxes. (Sections 40-23-4(a)(29) and 40-23-62(29)) (Adopted March 9, 1961, amended November 1, 1963, amended March 18, 1970, readopted through APA effective October 1, 1982, amended April 3, 1987, amended July 9, 1998)

810-6-3-.20. Fertilizer.

(1) Sales of fertilizer when used for agricultural purposes are exempt from sales and use tax. (Sections 40-23-4(a)(2) and 40-23-62(5))

(Continued)

810-6-3-.20. (Continued)

(2) The word "fertilizer" as used in the exemption sections referenced above means any material (not including cottonseed meal when unmixed with other material) which results in an increase in plant growth when added to the basic natural substances in which plants are grown. Basic natural substances, including sand, clay, top soil, and water are not to be considered to fall within the meaning of the word "fertilizer" as used in those sections. (Sections 40-23-4(a)(2) and 40-23-62(5))

(3) Ammonium nitrate when used as an explosive, and not for agricultural purposes as a fertilizer, is taxable when sold to the consumer or user. (Sections 40-23-2(1) and 40-23-61(a)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982, amended March 24, 1993)

810-6-3-.20.01. <u>Exemption Certification Form Respecting Fertilizers, Insecticides, Fungicides, and Seedlings (Form ST:EXC-1)</u>.

(1) When a retail purchaser purchases tangible personal property which is exempt from sales tax pursuant to Section 40-23-4(a)(2), (4), or (22) or use tax pursuant to Section 40-23-62(5), (7), or (23); the filing by said purchaser of a certificate in the following form shall relieve the seller of any obligation to collect sales or use tax on the items purchased in conjunction therewith:

ALABAMA DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION
EXEMPTION CERTIFICATION RESPECTING FERTILIZERS,
INSECTICIDES, FUNGICIDES, AND SEEDLINGS

Purchaser's Name:_____ _____
Address:_____
City: _____ State: _____ Zip Code:_____
SCS Farm Number (if available):_____

I, the undersigned, hereby certify that the items of tangible personal property purchased from (name of retailer)_____ will be used for the exempt agricultural purposes described in subdivision (2), (4), or (22) of Section 40-23-4(a) or subdivisions (5), (7), or (23) of Section 40-23-62, <u>Code of Alabama 1975</u>, as amended, and therefore may be purchased without payment of sales or use tax under Alabama law. I am aware that liability for payment of any sales or use tax ultimately determined to be applicable with respect to the items so purchased will be the exclusive responsibility of the undersigned.

Signature: _____ Date: _____

(2) The form outlined in paragraph (1) shall be referred to as Form ST:EXC-1 Exemption Certification Respecting Fertilizers, Insecticides, Fungicides, and Seedlings and the following procedures should be followed in conjunction with the execution of said form:

(Continued)

810-6-3-.20.01. (Continued)

(a) all of the information requested on the form should be completed;

(b) the seller should furnish a copy of the completed certificate, with sales receipt attached, to the purchaser; and

(c) the seller should retain the original certificate and a copy of the sales receipt for a three-year period.

(3) The items enumerated in Section 40-23-4(a)(2), (4), and (22) and Section 40-23-62(5), (7), and (23) are exempt from sales and use tax when used for agricultural purposes regardless of whether Form ST:EXC-1 is executed in conjunction with purchases of such items. Liability for sales or use tax on such items will later arise only if the Revenue Department determines that the item purchased, in fact, was not used for agricultural purposes. In the absence of a properly executed Form ST:EXC-1, the seller is liable for sales or use tax later determined to be due in the event the "agricultural use" exemption claim is disallowed; however, by having the purchaser execute a Form ST:EXC-1 the seller can place upon the purchaser the exclusive responsibility for payment of any sales or use taxes later determined to be due. Whenever a seller feels that the purchaser's exemption claim is invalid, the seller should collect sales or use tax from the purchaser or have the purchaser execute a Form ST:EXC-1.

(4) The seller is not required to secure a Form ST:EXC-1 for each sale of exempt items to a farmer with an SCS farm number when said seller knows the items purchased will be used for exempt agricultural purposes. Instead, the seller may have the farmer complete an annual exemption certification form and keep the certificate on file and available for review by the Revenue Department along with other business records. The purchaser's SCS farm number can be used as a reference number on each sales invoice covered by the annual certification form. Such annual exemption certification forms should be reexecuted every 12 months.

(5) Form ST:EXC-1 may be incorporated into the sales invoice if it contains substantially the same information as provided for on the certification form. This may be done by (I) including the certification form on the sales invoice at the time of printing or (ii) by designing and using a rubber stamp to add the information to the sales invoice. Other methods which accomplish the same result as the exemption certification form may also be used. (Section 40-23-4.3) (Adopted through APA effective March 24, 1993)

810-6-3-.21. <u>Fish and Minnow Sales by Producers</u>.

(1) Sales of domesticated fish and minnows produced on farms are exempted from sales and use tax when such sales are made by the producer, a member of his immediate family, or for him by a person employed to assist in the production thereof. (Sections 40-23-4(a)(5) and 40-23-62(8))

(Continued)

810-6-3-.21. (Continued)

(2) Fish and minnows are considered products of a farm only when they are raised from captive, domesticated stock owned by the producer or raised from fry to fingerlings acquired from commercial or publicly owned hatcheries. The exemption does not apply either with respect to sales of fish or minnows which originated as wild life in flowing streams, natural or artificial lakes or ponds, or with respect to retail sales of fish or minnows made by fish market operators, bait dealers, or other vendors who have purchased such fish or minnows for resale purposes.

(3) Sales of domesticated fish and minnows produced on farms do not qualify for the exemption contained in Section 40-23-4(a)(44) for sales of agricultural products by the person or corporation that planted, cultivated, and harvested such agricultural products. (Readopted through APA effective October 1, 1982, amended May 22, 1993)

810-6-3-.22. Florist, Sales of Nursery Stock and Floral Products By.

(1) Sales of nursery stock and floral products by the florist who planted, cultivated, and harvested said items are exempt from sales and use tax. Sales of nursery stock and floral products not planted, cultivated, or harvested by the seller are taxable. (Sections 40-23-2(1), 40-23-4(a)(44),and 40-23-61(a))

(2) A florist who claims the exemption outlined in paragraph (1) must keep sufficient records to document such claims; and, in the absence of sufficient documentation, shall be liable for the sales or use tax due on all sales for which exemption claims cannot be verified by the Revenue Department. (Adopted March 9, 1961, amended January 20, 1966, readopted through APA effective October 1, 1982, amended May 22, 1993)

810-6-3-.23. Fluid, Milk.

(1) Sales of milk and milk products made by milk processors and distributors are subject to sales and use tax. The only exemption for milk and milk products is the producer's exemption. (See Rule 810-6-3-.01, Agricultural Products) (Sections 40-23-2(1), 40-23-4(a)(5), 40-23-61(a) and 40-23-62(8))

(2) The exemption contained in Section 40-23-4(a)(44) for sales of agricultural products by the person or corporation that planted, cultivated, and harvested such agricultural products does not apply to sales of milk and milk products by the producer, processor, or distributor. (Readopted through APA effective October 1, 1982, amended May 22, 1993)

810-6-3-.23.01. Food Banks.

(1) The term "food bank" as used in this rule shall mean any entity located within Alabama that is an affiliated food bank of the "America's Second Harvest - The Nation's Food Bank Network" or their subsidiary distribution organizations (SDOs).

(2) The term "subsidiary distribution organization (SDOs)" as used in this rule shall mean smaller food banks or larger agencies allied with affiliated food banks that are private, nonprofit, charitable organizations providing important community services. Although some are agencies, all SDOs distribute part of their food to other charities for direct distribution to clients.

(3) The food banks and SDOs listed in paragraphs (4) and (5) below located within the State of Alabama are exempt from the payment and collection of state, county and municipal sales and use taxes. This exemption is effective June 14, 2007. (Act No. 2007-453)

(4) The following list includes the current food banks that are exempt as specified in paragraph (3) above:

(a) Bay Area Food Bank, Theodore, AL
(b) Food Bank of North Alabama, Huntsville, AL
(c) Montgomery Area Food Bank, Montgomery, AL
(d) United Way Community Food Bank, Birmingham, AL

(5) The following list includes the current SDOs that are exempt as specified in paragraph (3) above:

(a) Food Bank of East Alabama, Auburn, AL
(b) Food Bank of Northwest Alabama, Muscle Shoals, AL
(c) Selma Area Food Bank, Selma, AL
(d) West Alabama Food Bank, Tuscaloosa, AL
(e) Wiregrass Area United Way Food Bank, Dothan, AL

(Section 40-2A-7(a)(5), Code of Alabama 1975 and Act 2007-453, effective December 14, 2007)

810-6-3-.24. Sales to Foreign Governments, Diplomatic and Consular Officials.

(1) Unless otherwise provided herein, sales to a foreign government or to its agents for use of a foreign government are subject to the sales tax unless they are immune because of a treaty between the foreign government and the United States. The Alabama tax should be collected on such sales in the absence of proof that the foreign power is immune because of such a treaty. (Section 40-23-4(a)(17))

(Continued)

810-6-3-.24. (Continued)

(2) Sales and use tax does not apply to sales of tangible personal property to foreign diplomatic and consular officials, to the extent that such persons have been identified by the U.S. Department of State or American Institute in Taiwan (AIT) as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. (U.S. Constitution, Article VI, and Code of Alabama 1975, Sections 40-23-4(a)(17) and 40-23-62(2))

(3) Lodgings tax does not apply to rooms, lodgings, or accommodations rented or furnished to foreign diplomatic and consular officials, to the extent that such persons have been identified by the U.S. Department of State or AIT as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. (U.S. Constitution, Article VI)

(4) Pursuant to U. S. law, the Taipei Economic and Cultural Representative Office in the United States (TECRO), the Taipei Economic and Cultural Offices (TECOs), their designated employees, and their qualifying dependents are entitled to tax exemption privileges. Accordingly, the American Institute in Taiwan (AIT) issues tax exemption cards that incorporate the same features and design elements as the Office of Foreign Mission's tax exemption cards. Other than the exception noted in (5) below, persons identified as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States are issued a tax exemption card by the U.S. Department of State or AIT which identifies the bearer as exempt from tax and specifies the extent of the exemption. Tax exemption cards may be personal tax exemption cards, mission tax exemption cards, or official tax exemption cards.

(a) Personal tax exemption cards bear the photograph and identification of a duly accredited consulate, embassy employee, or dependent who is entitled to tax exemption privileges as stated on the card and are for the personal use of the bearer whose picture appears on the front of the card. The cards are not transferable and cannot be loaned to any other person, regardless of that person's eligibility for exemption from taxation. There is no restriction on the form of payment that can be used with this type of card.

(b) Mission tax exemption cards and official tax exemption cards bear the photograph and identification of a consulate, or embassy employee who is the official purchasing agent for that office and are for use by foreign missions (including TECRO and TECO) to obtain exemption from taxes on purchases in the United States that are necessary for the mission and function of the foreign consulate or embassy. The individual pictured is the point of contact and need not be present at the purchase. However, all purchases must be paid for with a check, credit card, or wire transfer transaction in the name of the foreign government or mission, TECRO, or TECO. The cards may not be used for personal purchases of tangible personal property or personal rentals of rooms, lodgings, or accommodations.

(Continued)

810-6-3-.24. (Continued)

(5) Tax exemptions allowed on vehicle purchases by all diplomatic missions and members in the United States must be approved or denied by the U.S. Department of State, Office of Foreign Missions, before the transaction is completed. Prior to completing the transaction, vendors selling vehicles pursuant to a diplomatic tax exemption must follow these procedures:

(a) The purchaser should present a mission tax exemption card, a personal tax exemption card, or a protocol identification card to the seller. Members of the United Nations (UN), Organization of American States (OAS), World Bank (WB), and the International Monetary Fund (IMF) requesting a diplomatic exemption on the purchase of a vehicle must present their personal tax exemption card.

(b) The vendor must contact the U.S. Department of State, Office of Foreign Missions, at (305) 442-4943 or by e-mail at OFMMICustomerService@state.gov for a determination on the tax-exempt status of the purchaser.

(c) The U.S. Department of State, Office of Foreign Missions, will determine the tax-exempt status of the purchaser and provide a letter to the vendor setting forth that determination.

(6) Sales, use, and lodgings taxes apply to the following:

(a) Sales of tangible personal property to, and the rental or furnishing of rooms, lodgings, or accommodations to, foreign diplomatic and consular officials who do not hold a tax exemption card issued by the U.S. Department of State or the American Institute in Taiwan (AIT).

(b) Sales of tangible personal property to, and the rental or furnishing of rooms, lodgings, or accommodations to, persons holding tax exemption cards where their total purchases in a single transaction do not exceed the minimum level of exemption as specified on the tax exemption card. With respect to minimum purchase requirements, the total of all items purchased in a single transaction must equal or exceed the minimum purchase level shown on the card. For example, if a foreign official has a card with a minimum purchase requirement of $150, the official is required to pay sales or use tax on a bill of $145. However, the same official would be exempt from all sales or use taxes on a bill of $175. Also, if two foreign officials are traveling together but they have separate rooms and separate bills, they cannot combine the room bills under one total in order to qualify for a lodgings tax exemption.

(c) Sales of tangible personal property to, and the rental or furnishing of rooms, lodgings, or accommodations to, nationals of the United States even though such persons may perform consular functions for foreign governments.

(Continued)

810-6-3-.24. (Continued)

(6) Sellers making sales to, or renting or furnishing rooms, lodgings, or accommodations to, foreign diplomatic and consular officials shall retain a copy of the invoice or other written evidence of the transaction to support any deductions claimed on their sales, use, or lodgings tax returns for tax-exempt sales or room rentals to foreign diplomatic and consular officials. These invoices shall show the name of the purchaser, the name of the mission, the tax exemption number, the expiration date of the tax exemption card, and the minimum level of exemption specified on the tax exemption card. When a personal tax exemption card is presented, the seller may ask the purchaser for an additional form of identification such as the purchaser's drivers license or his or her diplomatic or consular identification card, which many holders of personal tax exemption cards are also issued. (Section 40-23-1(a)(10)) (Amended June 12, 1978, readopted through APA effective October 1, 1982, amended August 5, 2015)

810-6-3-.24.01. Foreign Diplomatic and Consular Officials. (REPEALED)

Repealed.

(Sections 40-2A-7(a)(1), 40-23-9, and 40-23-83) (Sections 40-2A-7(a)(5), 40-2A-7(a)(1), 40-23-4(a)(17), 40-23-9, 40-23-62 and 40-23-83) (Adopted through APA effective November 3, 1998, amended December 9, 2003, repealed August 5, 2015)

810-6-3-.25. Fuel Oil Used in Firing Kilns.

(1) The term "kiln" as used in Code of Alabama 1975, Sections 40-23-4(a)(14) and 40-23-62(15) and in this regulation shall mean an oven, stove, chamber, or other device or enclosure to provide thermal processing of nonmetallic articles or substances in a controlled temperature environment or atmosphere, often by direct convection or radiation heat transfer. A "kiln" is used in the high temperature treatment of nonmetallic materials and generally operates at sufficiently high temperatures to require that its walls be constructed of refractory materials. The term "kiln" as used in the aforementioned Code sections and in this regulation shall not include a furnace, oven, chamber, or other device or enclosure used in the melting, fusing, or manufacture of metal. Examples of devices which qualify as "kilns" are brick kilns, lime kilns, dry kilns (for lumber), and cement kilns. Examples of devices which do not qualify as "kilns" are blast furnaces, basic oxygen furnaces, and open hearth furnaces used in steel manufacturing. (State of Alabama v. American Brass, Inc., Court of Civil Appeals, decided November 5, 1993)

(2) Sales of fuel oil purchased as fuel for kilns used in manufacturing establishments are exempt from sales and use tax. (Sections 40-23-4(a)(14) and 40-23-62(15))

(Continued)

810-6-3-.25. (Continued)

(3) Where a manufacturer uses fuel oil for both taxable and nontaxable purposes, the supplier of fuel oil must collect and pay the state sales tax on all of the fuel oil he delivers to a storage facility from which withdrawals are made for a taxable use regardless of the fact that some part of the fuel oil withdrawn is for an exempted use. In these instances where a manufacturer maintains separate facilities for storing fuel oil for taxable and nontaxable uses, the supplier is authorized to deliver tax free to the facility maintained for storing fuel oil for a nontaxable use. The supplier is burdened with the responsibility of knowing the usual and customary use made of the fuel oil delivered to his customers. (Adopted March 9, 1961, amended September 18, 1964, amended July 2, 1975, readopted through APA effective October 1, 1982, amended May 4, 1994)

810-6-3-.26. Gas Districts.

(1) Any gas district organized under the provisions of Section 11-50-390/417 would not be required to report and pay any state or county sales and use taxes on and after September 1, 1965.

(2) Gas districts would not be required to pay municipal privilege license tax on and after January 1, 1966. (Quarterly Report-Attorney General-Volume No. 124, P. 23 - September 19, 1966.) (Adopted January 20, 1966, amended February 6, 1968, readopted through APA effective October 1, 1982)

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

Gasoline, motor fuel and lubricants otherwise taxed, are exempted from sales and use taxes as follows:

(a) Gasoline and substitutes therefor (not including diesel fuel, tractor fuel, distillate, liquefied gas, kerosene, fuel oil, crude oil, and other liquid fuel oil and gases commonly used for heating, lighting or industrial purposes), lubricating oil and greases, and substitutes therefor commonly used in lubricating or oiling the moving parts of machines or machinery are exempted from sales and use taxes regardless of use.

(b) Diesel fuel, tractor fuel, distillate, liquefied gas, kerosene, fuel oil, crude oil, and other liquid fuel oil and gases commonly used for heating or lighting or industrial purposes are exempted from sales and use taxes when otherwise taxed by the motor fuels excise tax statutes of this state. (Sections 40-23-4(a)(1), 40-23-62(4)) (Readopted through APA effective October 1, 1982, amended April 1, 1996)

810-6-3-.29. Grass Sod.

(1) The gross receipts from sales of grass sod of all kinds and character when in the original state of production or condition of preparation for sale, when such sales are made by the producer or members of his family or for him by those employed by him in the production thereof, are exempt from sales and use tax. This exemption does not apply to sales of grass sod by a person engaged in the business of selling plants, seedlings, nursery stock, or floral products. (Section 40-23-4(a)(31))

(2) Sales of grass sod by the person or corporation that planted, cultivated, and harvested the sod are exempt from sales and use tax. Unlike the exemption outlined in paragraph (1) above, this exemption is not lost to the producer who also sells plants, seedlings, nursery stock, or floral products. (Section 40-23-4(a)(44))

(3) A seller who claims the exemption outlined in paragraph (2) must keep sufficient records to document such claims; and, in the absence of sufficient documentation, shall be liable for the sales or use tax due on all sales for which exemption claims cannot be verified by the Revenue Department. (Adopted October 29, 1976, readopted through APA effective October 1, 1982, amended May 22, 1993)

810-6-3-.31. Herbicides.

(1) The gross proceeds of sales of herbicides for agricultural uses by whomsoever sold are exempt from use tax.

(2) The term "herbicide" means any substance or mixture of substances intended to prevent, destroy, repel or retard the growth of weeds or plants. It shall include pre-emergence herbicides, post-emergence herbicides, lay-by herbicides, pasture herbicides, defoliant herbicides, and desiccant herbicides. (Sections 40-23-4(a)(25) and 40-23-62(25)) (Adopted January 1, 1966, readopted through APA effective October 1, 1982, amended March 24, 1993)

810-6-3-.32. Historical Preservation Authorities.

(1) A historical preservation authority organized pursuant to Article 5 of Chapter10 of Title 41, Code of Alabama 1975, as amended, is exempt from the payment of sales and use tax on any tangible personal property purchased by the authority provided the purchases are made in the name of the authority, the authority's credit is obligated, and the purchases are paid for with funds belonging to the authority. (Section 41-10-147, Code of Alabama 1975)

(Continued)

810-6-3-.32. (Continued)

(2) The exemption in Section 41-10-147 does not apply to a contractor where the contractor has a construction contract with a historical preservation authority to furnish all materials and labor for use in the performance of the contract. The contractor is the consumer thereof of all materials used in the performance of the construction contract which becomes part of real property. (Sections 40-23-1(a)(10) and 40-23-60(5))

(3) Notwithstanding any of the exemptions outlined above, an individual, partnership, or corporation organized for profit that is or will be treated for federal income tax purposes as the owner of property to which a historical preservation authority has title to, or a possessory right in, is liable for sales or use taxes as if the for-profit entity held title to the property unless the individual, partnership, or corporation would be entitled to use the property pursuant to a lease or other agreement entered into before May 21, 1992, or would be entitled to use the property at some future time pursuant to an inducement agreement entered into or adopted before May 21, 1992. For-profit entities, however, may qualify for abatements of certain sales and use taxes pursuant to Chapter 9B of Title 40 of the Code of Alabama 1975. Section 40-9B-7 only pertains to private users of private use property. Private user is defined in 40-9B-3. Therefore, Section 40-9B-7 does not change the tax exempt status of a non-profit entity for sales and use tax purposes. (Section 40-9B-7, Code of Alabama 1975) (Sections 40-2A-7(a)(5), 40-9B-7, 40-3-1(a)(10), 40-23-31, 40-23-60(5), 40-23-83, 41-10-147, Code of Alabama 1975) (Adopted November 3, 1980, readopted through APA effective October 1, 1982, amended May 22, 1993, amended March 27, 2001, amended June 10, 2005, amended August 4, 2009, amended December 25, 2013)

810-6-3-.33. Industrial Development Board.

(1) An industrial development board created by an incorporated municipality within the State of Alabama pursuant to Article 4 of Chapter 54 of Title 11, Code of Alabama 1975, as amended, is exempt from sales and use tax on any tangible personal property purchased by the board or its duly authorized agent, provided the purchases are made in the name of the board, the board's credit is obligated and said purchases are paid for by the board with funds belonging to the board. The term "funds belonging to the board" shall normally be construed to mean those funds not exceeding the amount of the long term revenue bonds and any temporary borrowing evidenced by revenue bonds or notes maturing not later than 18 months from date of issue. (Section 11-54-96, Code of Alabama 1975)

(2) (a) The exemption in Section 11-54-96 does not apply to a contractor where the contractor has a construction contract with an industrial development board to furnish all materials and labor for use in the performance of the contract. The contractor is the consumer thereof of all the materials used in the performance of the construction contract which becomes part of real property. A contractor may purchase items of machinery or equipment not becoming part of the realty, tax exempt, where such items are intended for resale to the board in the form of tangible personal property. (Sections 40-23-1(a)(10) and 40-23-60(5), Code of Alabama 1975)

(Continued)

810-6-3-.33. (Continued)

(b) 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 awarded after October 1, 2000 but prior to July 1, 2004, with an industrial development board organized pursuant to Article 4 of Chapter 54 of Title 11, Code of Alabama 1975, is exempt from all state, county, and municipal sales and use taxes provided the contractor or subcontractor has complied with Rule 810-6-3-.77 entitled Exemption of Certain Purchases by Contractors and Subcontractors in conjunction with Construction Contracts with Certain Governmental Entities, Public Corporations, and Educational Institutions. (Section 40-9-33, Code of Alabama 1975, repealed by Act 2004-638, effective July 1, 2004)

(3) Notwithstanding any of the exemptions outlined above, an individual, partnership, or corporation organized for profit that is or will be treated for federal income tax purposes as the owner of property to which an industrial development board has title to, or a possessory right in, is liable for sales and use taxes as if the for-profit entity held title to the property unless the individual, partnership, or corporation would be entitled to use the property pursuant to a lease or other agreement entered into before May 21, 1992, or would be entitled to use the property at some future time pursuant to an inducement agreement entered into or adopted before May 21, 1992. For-profit entities, however, may qualify for abatements of certain sales and use taxes pursuant to Chapter 9B of Title 40 of the Code of Alabama 1975. Section 40-9B-7 only pertains to private users of private use property. Private user is defined in Section 40-9B-3. Therefore, Section 40-9B-7 does not change the tax exempt status of a non-profit entity for sales and use tax purposes. (Sections 40-2A-7(a)(5), 11-54-96, 40-9B-4, 40-9B-5, 40-9B-6, 40- B-7, 40-23-1(a)(10), 40-23-31, 40-23-60(5), 40-23-83, and 40-9-33, Code of Alabama 1975) (Adopted February 6, 1968, amended October 10, 1974, amended August 24, 1982, amended September 29, 1982, readopted through APA effective October 1, 1982, amended May 22, 1993, amended March 27, 2001, amended June 10, 2005, amended August 4, 2009)

810-6-3-.34. Insecticides and Fungicides.

(1) The term "insecticides" means any substance or mixture of substances which are used for the preventing, destroying, repelling, or mitigating of any insects. The term "insect" means flies, mites, spiders, ticks, nematodes, and destructive worms and grubs as well as those small invertebrate animals strictly falling within the scientific class Insecta. (AGO Graddick, August 29, 1979). The term "fungicides" means any substance or mixture of substances which are used for preventing, destroying, or mitigating any fungi.

(2) Sales of insecticides and fungicides when used for agricultural purposes are exempt from sales and use tax.

(3) Sales of insecticides and fungicides when used by persons properly permitted by the Department of Agriculture and Industries or any applicable local or state governmental authority for structural pest control work are exempt from sales and use tax. (Sections 40-23-4(a)(4) and 40-23-62(7)) (Adopted March 9, 1961, amended November 1, 1963, amended January 20, 1966, amended June 12, 1978, readopted through APA effective October 1, 1982, amended March 24, 1993, amended October 12, 1993)

810-6-3-.35. Interstate Shipments Subject to Sales Tax.

Sales tax is due by the seller in Alabama who accepts an order which he fills by having an out-of-state supplier ship the goods ordered, F.O.B. supplier's out-of-state shipping point, to the buyer in Alabama and the seller's supplier renders his invoice to the seller in Alabama and the seller in turn invoices his customer. (Graybar Electric v. Curry, 189 So. 186.) Sales tax is due by a seller in Alabama who accepts an order which he fills by having the goods shipped to buyer, F.O.B. shipping point, his warehouse or stock of goods located outside Alabama. (Graybar Electric v. Curry, 189 So. 186.) (Sections 40-23-1(a)(5) and 40-23-4(a)(17)) (Readopted through APA effective October 1, 1982)

810-6-3-.35.01. Interstate Commerce.

Where a resident contractor purchases materials from an Alabama dealer with the provision that the materials be delivered outside of Alabama by the seller for the contractor's use outside of Alabama, the sale is in interstate commerce and is exempt from the tax. (Section 40-23-4(a)(17)) (Amended June 12, 1978, readopted through APA effective October 1, 1982)

810-6-3-.35.02. Interstate Commerce, Sales in.

(1) Sales are considered to be made outside Alabama and cannot be taxed by the Alabama Sales Tax Law where:

(a) The seller is required by the sales agreement to deliver the goods outside the state in the seller’s equipment, or

(b) The seller delivers the goods to a common carrier or to the United States Postal Service for transportation outside the state regardless of any F.O.B. point, or

(c) The seller is required by the sales agreement to deliver the goods outside the state by the use of an independent trucker hired by the seller.

(2) Property is not sold outside Alabama, and therefore is subject to Alabama Sales Tax, when the buyer takes actual possession of the goods in this state or when an agent of the buyer accepts delivery for the buyer to make delivery outside the state at the buyer's direction. However, when the buyer contracts with a common carrier or the United States Postal Service to accept goods in this state for delivery outside this state at the buyer’s direction, the sale is not subject to Alabama Sales Tax since the common carrier or United States Postal Service is the agent of the seller regardless of who selects the method of transportation. (Sections 40-23-1(a)(5) and 40-23-4(a)(17)) (Readopted through APA effective October 1, 1982, amended effective June 9, 1995, amended March 10, 1998)

810-6-3-.36. Liquefied Petroleum Gas.

(1) Liquefied petroleum gas sold to be used for agricultural purposes is exempt from sales tax.

(2) Liquefied petroleum gas sold to hatcheries for use as fuel for heaters used to maintain a constant temperature in incubators qualifies for the exemption outlined in (1) above. This exemption applies to a hatchery whose sole function is the hatching and raising of poultry even if the hatchery is not located on a traditional farm.

(3) Liquefied petroleum gas sold for use in the commercial production of greenhouse and nursery products qualifies for the exemption outlined in (1) above. (AGO Graddick February 6, 1979) Noncommercial greenhouses or hothouses when not being operated as part of a farming operation are not entitled to this exemption.

(4) The ginning of cotton occurs after harvesting is completed and, since the agricultural aspect ends with harvesting, cotton gins are nonagricultural processing operations and do not qualify for the exemption outlined in (1) above. Sales of liquefied petroleum gas to cotton gins located on traditional farms and operated by the farmer do not qualify for this exemption.

(5) The drying of grain by grain dealers not located on traditional farms occurs after the harvesting is completed and, since the agricultural aspect ends with harvesting, such operations are nonagricultural processing in nature and do not qualify for the exemption outlined in (1) above. (Section 40-23-4(a)(33)) (Readopted through APA effective October 1, 1982, amended July 7, 1989)

810-6-3-.36.01. <u>Liquefied Petroleum Gas, Exempt from Sales Tax</u>.

The sale of liquefied petroleum gas sold for use as motor fuel is exempt from sales tax provided the purchaser has secured the required permit which is issued by the Liquefied Petroleum Gas Board and displays the decal issued by the Board on the vehicle. (Section 40-23-4(a)(1)) (Adopted August 10, 1982, readopted through APA effective October 1, 1982)

810-6-3-.37. <u>Livestock</u>.

All sales of livestock are exempted from sales tax. (Section 40-23-4(a)(5)) (Readopted through APA effective October 1, 1982)

810-6-3-.37.01. Meals Furnished Along With Rooms by Schools and Colleges.

Where both lodgings and meals are furnished to students by institutions of higher learning, both public and private, the meals are subject to sales tax. If both lodgings and meals are furnished for a lump sum, the full amount is to be used as the measure of the tax. Where lodgings and the meals are furnished for separate amounts and the billings and records of the institutions show such charges separately, only the charge for meals is to be used as the measure of the tax (Attorney General's Opinion 12-19-60) (Section 40-23-2(1)) (Readopted through APA effective October 1, 1982)

810-6-3-.37.02. Exemption From Lodgings Tax For Film Production Companies Approved by The Alabama Film Office. (REPEALED)

(Adopted through APA effective April 29, 2002, amended February 23, 2006, Repealed February 10, 2012.)

810-6-3-.37.03. Exemption for Certain Items Furnished to Medicaid Recipients.

(1) Eyeglasses, durable medical equipment, prosthetic and orthotic devices, and medical supplies as defined and covered under the Medicare program furnished to Medicaid recipients are exempt from sales, use, or rental and leasing tax when billed directly to and paid for directly by Medicaid. Such sales are sales to the State of Alabama and are specifically exempt from tax pursuant to Sections 40-23-4(a)(11) and 40-23-62(13), Code of Alabama 1975. Payment for these items may be as the result of a contract between Medicaid and a manufacturer who provides the item, bills Medicaid directly under the terms of the contract, and receives payment directly from Medicaid; or, payment may be as the result of contracts with various suppliers, such as home health providers, who furnish the item, bill Medicaid directly pursuant to the terms established by the Medicaid program, and receive payment directly from Medicaid. In both instances payment is made directly by Medicaid; the Medicaid recipient does not make payment and then receive reimbursement from Medicaid. (Sections 40-23-4-(a)(11) and 40-23-62(13))

(2) The sales and use tax exemption outlined in Section (1) above does not apply in instances where an item is sold directly to and paid for by a Medicaid recipient. Should the nature of the present Medicaid program change, the sales and use tax exemption outlined in Section (1) would not apply to eyeglasses or durable medical equipment purchased and paid for by a Medicaid recipient who later receives reimbursement from Medicaid nor would the exemption apply with respect to that portion of a co-pay purchase paid for directly by the Medicaid recipient. (Sections 40-23-2 and 40-23-61)

(3) Drugs as defined in Section 40-23-4.1(a), Code of Alabama 1975, are specifically exempt from sales and use tax; and, sales thereof to Medicaid recipients are exempt regardless of who is billed for the drugs or who makes payment for said drugs.

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810-6-3-.37.03. (Continued)

(4) Hospitals and nursing homes purchasing tangible personal property for use in furnishing services to Medicaid recipients are not exempt from sales or use tax. Hospitals and nursing homes are primarily engaged in the business of rendering services. They are not liable for sales tax with respect to their gross receipts for meals, drugs, or other tangible personal property used in rendering hospital or nursing home services. Hospitals and nursing homes are deemed to be the purchasers for use or consumption of such tangible personal property, and the sellers of these items to hospitals and nursing homes are required to collect sales or use tax on sales of such property to private hospitals and nursing homes. Provided, however, purchases by private hospitals and nursing homes of drugs as defined in Section 40-23-4.1(a), Code of Alabama 1975, are specifically exempt from sales and use tax. Prescription drugs sold separate and apart from services rendered by a hospital or nursing home are also exempt from sales and use tax pursuant to Section 40-23-4.1, Code of Alabama 1975. See Sales and Use Tax Rules 810-6-3-.47.01 entitled Prescription Drugs, and 810-6-5-.09 entitled Leasing and Rental of Tangible Personal Property. (Adopted March 18, 1970, amended November 9, 1970, amended September 20, 1974, amended August 10, 1982, readopted through APA effective October 1, 1982, amended January 29, 1990, amended December 4, 2014)

810-6-3-.38. Medical Clinic Boards.

(1) A medical clinic board created pursuant to Chapter 58 of Title 11, Code of Alabama 1975, is exempt from sales or use tax on any tangible personal property purchased by the board or its duly authorized agents, provided the purchases are made in the name of the board, the board's credit is obligated, and the purchases are paid for by the board with funds belonging to the board.

(2) (a) The exemption referenced in paragraph (1) above does not apply to a contractor where the contractor has a construction contract with a medical clinic board to furnish all materials and labor for use in the performance of the contract. The contractor is the consumer thereof of all the materials used in the performance of the construction contract which becomes part of real property. A contractor may purchase items of machinery or equipment not becoming part of the realty, tax exempt, where such items are intended for resale to the board in the form of tangible personal property. (Sections 40-23-1(a)(10) and 40-23-60(5), Code of Alabama 1975)

(b) 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 awarded after October 1, 2000 but prior to July 1, 2004, with a medical clinic board organized pursuant to Chapter 58 of Title 11, Code of Alabama 1975, is exempt from all state, county, and municipal sales and use taxes provided the contractor or subcontractor has complied with Rule 810-6-3- .77 entitled Exemption of Certain Purchases by Contractors and Subcontractors in conjunction with Construction Contracts with Certain Governmental Entities, Public Corporations, and Educational Institutions. (Section 40-9-33, Code of Alabama 1975, repealed by Act 2004 638, effective July 1, 2004)

(3) Notwithstanding any of the exemptions outlined above, an individual, partnership, or corporation organized for profit that is or will be treated for federal income tax purposes as the owner of property to which a medical clinic board has title to, or a possessory right in, is liable for sales and use taxes as if the for-profit entity held title to the property unless the individual, partnership, or corporation would be entitled to use the property pursuant to a lease or other agreement entered into before May 21, 1992, or would be entitled to use the property at some future time pursuant to an inducement agreement entered into or adopted before May 21, 1992. For-profit entities, however, may qualify for abatements of certain sales and use taxes pursuant to Chapter 9B of Title 40 of the Code of Alabama 1975. Section 40-9B-7 only pertains to private users of private use property. Private user is defined in Section 40-9B-3. Therefore, Section 40-9B-7 does not change the tax exempt status of a non-profit entity for sales and use tax purposes. (Sections 40-2A-7(a)(5), 40-9B-7, 40-9-33, 40-23-1(a)(10), 40-23-31, 40-23-60(5), and 40-23-83, Code of Alabama 1975) (Adopted August 15, 1974, amended August 24, 1982, readopted through APA effective October 1, 1982, amended May 22, 1993, amended March 27, 2001, amended June 10, 2005, amended August 4, 2009)

810-6-3-.39.02. Motor Freight Lines, Sales to.

Any sale of property to motor freight lines is subject to the sales tax where the property is delivered in Alabama by a seller doing business in Alabama. This is true even though the purchase order may have been given out of state to an out-of-state branch of the seller and even though payment is made out-of-state. (See 810-6-1-.107.02) (Readopted through APA effective October 1, 1982)

810-6-3-.40. Municipal Housing Authority.

Sales of property to a municipal housing authority for use by such authority in construction, repair, or maintenance of its property are sales to an agency of a city and exempted from the sales tax. (Section 40-23-4(a)(11)) (Readopted through APA effective October 1, 1982)

810-6-3-.41. Exemption for Municipal Special Health Care Facilities.

(1) Chapter 62 of Title 11, Code of Alabama 1975, as amended, provides for the incorporation and operation of municipal special health care facility authorities.

(2) Section 11-62-18(d) exempts from sales and use tax any purchase of tangible personal property used in the construction and equipment of a special health care facility if the purchase is pursuant to any contractual arrangement between an authority and a user for the acquisition of a facility for sale or lease to the user or for financing the acquisition of a facility by loan from the authority. These purchases are exempt regardless of whether they are made by the authority, the user, or any contractor or agent of either.

(3) To qualify for the sales and use tax exemption outlined in Section 11-62-18(d), the property purchased must become a part of the facility or the equipment of the facility or must constitute supplies or other items necessary for the day to day operation of the facility. Purchases of tangible personal property by an authority's or user's contractor or agent for use by the contractor or agent, when such property does not become a part of the facility or the equipment of the facility or does not constitute supplies or other items necessary for the day to day operation of the facility, are subject to sales or use tax. Examples of nonexempt items are diesel fuel and repair parts for construction equipment, hand tools, and consumable supply items used by the contractor or agent.

(4) Notwithstanding the exemption outlined above, an individual, partnership, or corporation organized for profit that is or will be treated for federal income tax purposes as the owner of property to which a municipal special health care facility authority has title to, or a possessory right in, is liable for sales and use taxes as if the for-profit entity held title to the property unless the individual, partnership, or corporation would be entitled to use the property pursuant to a lease or other agreement entered into before May 21, 1992, or would be entitled to use the property at some future time pursuant to an inducement agreement entered into or adopted before May 21, 1992. For-profit entities, however, may

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810-6-3-.41. (Continued)

qualify for abatements of certain sales and use taxes pursuant to Chapter 9B of Title 40 of the Code of Alabama 1975. Section 40-9B-7 only pertains to private users of private use property. Private user is defined in 40-9B-3. Therefore, Section 40-9B-7 does not change the tax exempt status of a non-profit entity for sales and use tax purposes. (Sections 40-2A-7(a)(5), 40-9B-7, 40-23-31, 11-62-18 and 40-23-83, Code of Alabama 1975) (Adopted October 3, 1987, amended May 22, 1993, amended April 7, 1994, amended March 27, 2001, amended June 30, 2005, amended August 4, 2009)

810-6-3-.41.01. Exemption for Certain Health Care Authorities.

(1) The term "health care authority" as used in this rule shall mean any public corporation organized pursuant to Article 11 of Chapter 21 of Title 22, Code of Alabama 1975, and any public hospital corporation reincorporated pursuant to Article 11 of Chapter 21 of Title 22, Code of Alabama 1975.

(2) The sale, purchase, use, storage, or consumption of tangible personal property used in the construction and equipment of any health care facilities for a health-care authority, regardless of whether the sale is to the health care authority, its contractor, its subcontractors, or its agent, is exempt from state, county, and municipal sales and use taxes. (Section 22-21-333)

(3) The exemption in Section 22-21-333 applies to purchases of materials and equipment used in the construction of a new facility and in the construction of an addition to an existing facility. (AGO, Sessions, March 26, 1996)

(4) To qualify for the exemption in Section 22-21-333, the property purchased must become a part of the facility or the equipment of the facility or must constitute supplies or other items necessary for the day to day operation of the facility. Purchases of tangible personal property by the health care authority's contractor, subcontractors, or agent, when the property does not become a part of the facility or the equipment of the facility or does not constitute supplies or other items necessary for the day to day operation of the facility, are taxable. Examples of nonexempt items are diesel fuel and repair parts for construction equipment, hand tools, and consumable supply items used by the contractor, subcontractor, or agent.

(5) Notwithstanding the exemption outlined above, an individual, partnership, or corporation organized for profit that is or will be treated for federal income tax purposes as the owner of property to which a health care authority has title to, or a possessory right in, is liable for sales or use taxes as if the for-profit entity held title to the property unless the individual, partnership, or corporation would be entitled to use the property pursuant to a lease or other agreement entered into before May 21, 1992, or would be entitled to use the property at some future time pursuant to an inducement agreement entered into or adopted before May 21, 1992. For-profit entities, however, may qualify for abatements of certain

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810-6-3-.41.01. (Continued)

sales and use taxes pursuant to Chapter 9B of Title 40 of the Code of Alabama 1975. Section 40-9B-7 only pertains to private users of private use property. Private user is defined in Section 40-9B-3. Therefore, Section 40-9B-7 does not change the tax exempt status of a non-profit entity for sales and use tax purposes. (Sections 40-2A-7(a)(5), 11-62-18, 40-9B-7, 40-23-31, and 40-23-83, Code of Alabama 1975) (Adopted through APA effective November 3, 1998, amended March 27, 2001, amended June 30, 2005, amended August 4, 2009)

810-6-3-.41.02. Exemption for Improvement Districts.

(1) The definitions of the terms "appointing government," "improvements," and "public person" contained in Section 11-99A-2, Code of Alabama 1975, are incorporated into this rule by reference.

(2) The term "improvement district" as used in this rule shall mean a district created pursuant to Chapter 99A of Title 11 of the Code of Alabama 1975.

(3) Subject to any limitation or restriction imposed by the appointing government pursuant to Section 11-99A-20(c) and the restrictions outlined in paragraphs (5) and (6) below; all sales of tangible personal property to, and all sales of tangible personal property by, an improvement district are exempt from all state, county, and municipal sales and use taxes and gross receipts taxes in the nature of a sales tax. (Section 11-99A-20(a))

(4) Subject to any limitation or restriction imposed by the appointing government pursuant to Section 11-99A-20(c) and the restrictions outlined in paragraphs (5) and (6) below; the purchase, acquisition, and installation of tangible personal property for improvements by an improvement district are exempt from all state, county, and municipal sales and use taxes and gross receipts taxes in the nature of a sales tax regardless of whether the purchases of the materials are made by the improvement district or by a contractor or subcontractor for use in the acquisition, construction, or installation of improvements for an improvement district. (Sections 11-99A-20(b) and 11-99A-20(c))

(5) The sales and use tax exemptions outlined in Section 11-99A-20 shall not apply to any purchase, acquisition, or installation that would not be exempt if purchased, acquired, or installed directly by the appointing government. (Section 11-99A-20(b))

(6) The sales and use tax exemptions outlined in Section 11-99A-20 shall not be used for the acquisition, equipping, or construction of property to be owned by any person other than a utility company, the improvement district, or another public person. (Section 11-99A-2(6))

(7) Any contractor or subcontractor who is making tax-exempt purchases pursuant to Section 11-99A-20(b) may apply for and obtain a sales and use tax Certificate

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810-6-3-.41.02. (Continued)

of Exemption (Form STE-1). A contractor or subcontractor applying for a Form STE-1 shall attach to its application a certification, under oath, from the Chairman of the Board of the improvement district outlining the terms of the improvement district's agreement with the appointing government with respect to any limitations, restrictions, or rescissions to the sales and use tax exemptions otherwise applicable to purchases by the improvement district, contractor, or subcontractor. The Form STE-1 issued to the contractor or subcontractor will be project specific and shall be provided by the contractor or subcontractor to its vendors to document the tax-exempt status of its purchases of materials for the improvement project indicated on the Form STE-1. A contractor or subcontractor who will be making tax-exempt purchases for more than one qualifying improvement project shall obtain a separate Form STE-1 for each project. A contractor or subcontractor who obtains a Form STE-1 shall comply with all of the provisions of Sales and Use Tax Rule 810-6-5-.02 entitled State Sales and Use Tax Certificate of Exemption (Form STE-1) - Responsibilities of the Certificate Holder - Burden of Proof - Liability for Taxes Later Determined to be Due.

(8) Effective October 1, 2000, 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 awarded prior to July 1, 2004, with an improvement district organized pursuant to Chapter 99A of Title 11, Code of Alabama 1975, is exempt from all state, county, and municipal sales and use taxes provided the contractor or subcontractor has complied with Rule 810-6-3-.77 entitled Exemption of Certain Purchases by Contractors and Subcontractors in conjunction with Construction Contracts with Certain Governmental Entities, Public Corporations, and Educational Institutions. This exemption, which is in addition to the one found in Section 11-99A-20, does not exempt any purchases by contractors or subcontractors that are not also exempt pursuant to Section 11-99A-20.

(9) In accordance with Act No. 2004-638, 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 awarded, or any portion of a contract which is revised, renegotiated, or otherwise altered, on and after July 1, 2004, to the extent that such revision, renegotiation, or alteration requires the purchase of additional tangible personal property is subject to all state, county and municipal sales and use taxes. Items purchased after June 30, 2004, pursuant to a contract awarded prior to July 1, 2004, will continue to be exempt for the remainder of the contract to the extent that any post June 30, 2004, revision or amendment does not require the purchase of additional tangible personal property. (Sections 40-2A-7(a)(5), 11-99A-2, 11-99A-20, 40-23-31 and 40-23-83, Code of Alabama 1975) (Adopted through APA effective December 23, 1999, amended March 27, 2001, amended June 2, 2005)

810-6-3-.42. National Farm Loan Associations.

National farm loan associations are instrumentalities of the United States and are not subject to sales or use taxes on the property purchased by them for use in carrying on any activity they are authorized to engage in by Federal Law. (Authority: 12 U.S.C.A. 931.) (Section 40-23-4(a)(17)) (Readopted through APA effective October 1, 1982)

810-6-3-.42.02. <u>Nonresidents, Sales to</u>.

(1) Other than the exceptions noted in (2) and (3) below, sales to nonresidents are sales at retail subject to the tax even though such purchasers claim that the property purchased is for use outside of Alabama, except where the seller delivers the property outside Alabama or to the U.S. Postal Service or to a common carrier for transportation outside Alabama. (Sections 40-23-1(a)(5), 40-23-4(a)(17) and 40-23-62(2))

(2) Sales of automobiles, motorcycles, trucks, truck trailers, or semitrailers that (i) will be registered or titled outside Alabama and (ii) are exported or removed from Alabama within 72 hours by the purchaser or the purchaser's agent for first use outside Alabama are not subject to Alabama sales tax when the sales tax laws of the state in which the purchaser will title or register the vehicle allows an Alabama resident to purchase a motor vehicle for first titling and registering in Alabama without the payment of tax to that state. To be exempt from Alabama sales tax, the information relative to the exempt sale must be documented on forms approved by the Revenue Department. (See Sales and Use Tax Rule 810-6-3-.42.03 entitled Sales of Certain Automotive Vehicles to Nonresidents for First Use and Registration or Titling Outside Alabama.) Sales of other vehicles such as mobile homes, motor bikes, all terrain vehicles, motor homes, travel trailers, and boats do not qualify for this export exemption provision and are subject to Alabama sales tax unless the seller can provide factual evidence that the vehicle was delivered outside Alabama or delivered to a common carrier for transportation outside Alabama. (Section 40-23-2(4))

(3) The purchase of a new truck with a gross weight not exceeding 8,000 pounds or a new passenger vehicle by a nonresident of the United States is exempt from sales or use tax when (i) the truck or passenger vehicle is manufactured in Alabama, (ii) the truck or passenger vehicle is delivered to the purchaser in Alabama by the manufacturer or an affiliated corporation, (iii) at the time of purchase the purchaser intends to export the truck or passenger vehicle to and permanently license the truck or passenger vehicle in a foreign country within 90 days after the date of delivery, and (iv) the purchaser obtains a temporary metal license plate and a temporary registration certificate from the probate judge or license commissioner of the county in which the manufacturer is located.

(4) Effective January 1, 2016, sales of automobiles, motorcycles, trucks, truck trailers, or semitrailers that (i) will be registered or titled outside Alabama and (ii) are exported or removed from Alabama within 72 hours by the purchaser or the purchaser's agent for first use outside Alabama are subject to the Alabama state sales tax rate of two percent (2%) unless the sales tax laws of the state in which the purchaser will title or register the vehicle allows an Alabama resident to purchase a motor vehicle for first titling and registering in Alabama without the payment of tax to that state. However, in no case shall the amount of Alabama state sales tax due on a motor vehicle that will be registered or titled for use in another state exceed the amount of sales tax that would otherwise have been due in the state where the vehicle will be registered or titled for first use.

(a) The tax collected on sales outlined in paragraph (4) above shall be Alabama sales tax and shall exclude county and municipal sales tax.

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810-6-3-.42.02. (Continued)

(5) A list of states that do not allow a reciprocal drive-out provision for Alabama residents purchasing automotive vehicles for first titling and registration in Alabama may be viewed on the Department's website at: http://www.revenue.alabama.gov/salestax/. Such list will be published by December 1, 2015, and will be updated each December 1 thereafter. Sellers that have relied on list information that is later determined to be incorrect shall not be held liable for the non-collection of the state automotive sales tax.
(Sections 40-2A-7(a)(5), 40-23-39(b), 40-23-2(4), 40-23-31, Code of Alabama 1975 and Act 2015-503) (Readopted through APA effective October 1, 1982, amended January 24, 1989, amended March 10, 1998, amended February 10, 2016)

810-6-3-.42.03. Sales of Certain Automotive Vehicles to Nonresidents for First Use and Registration or Titling Outside Alabama.

(1) Effective January 1, 2016, sales of automobiles, motorcycles, trucks, truck trailers, or semitrailers that will be registered or titled outside Alabama, that are exported or removed from Alabama within 72 hours by the purchaser or purchaser's agent for first use outside Alabama are not subject to Alabama sales tax provided (i) the state sales tax laws of the state in which the purchaser will title or register the vehicle allows an Alabama resident to purchase a motor vehicle for first titling and registering in Alabama without the payment of tax to that state and (ii) the exempt sale is documented on the following form:

STATE OF ALABAMA

AUTOMOTIVE VEHICLE DRIVE OUT CERTIFICATE FOR NONRESIDENTS

THIS FORM MUST BE EXECUTED BY BOTH THE SELLER AND THE PURCHASER OR PURCHASER'S AGENT AT THE TIME OF THE SALE. FORMS EXECUTED SUBSEQUENT TO THE TIME OF THE SALE ARE INVALID.

SELLER'S NAME AND ADDRESS:	PURCHASER'S NAME, ADDRESS, AND PHONE NO.:
Name _____	Name _____
Street _____	Street _____
City _____ State ____	City _____ State _____
Zip Code _____	Zip Code _____
	PHONE NO.(__)

Invoice No. _____ Automotive Vehicle Make _____ Model No. _____

Date of Sale: _____ VIN _____

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810-6-3-.42.03. (Continued)

Time of Sale: _____ A.M.

_____ P.M.

The facts set forth in this document are true and correct to the best knowledge and belief of the below-signed seller and purchaser or purchaser's agent.

The automobile, motorcycle, truck, truck trailer, or semitrailer referenced above will be exported or removed by the purchaser or purchaser's agent from Alabama within 72 hours from the time of sale to the State of _____ for first use and registration or titling in accordance with the laws of that state.

Signature of the Seller: _____ Signature of Purchaser or Purchaser's Agent: _____

NOTICE: This form does not apply to and may not be used in conjunction with the sale of mobile homes, all terrain vehicles, motor homes, travel trailers, or boats. The 72 hour drive out provision does not apply to sales of these automotive vehicles. This form does not apply to and may not be used for sales to non-residents when the laws of the state in which the non-resident will title or register the vehicle does not allow an Alabama resident to purchase a motor vehicle without the payment of tax to that state. The tax to be collected on such sales is the two percent (2%) Alabama sales tax. However, in no case shall the amount of Alabama state sales tax due on a motor vehicle that will be registered or titled for use in another state exceed the amount of sales tax that would otherwise have been due in the state where the vehicle will be registered or titled for first use.

FAILURE TO PROPERLY COMPLETE AND MAINTAIN THIS CERTIFICATE IN THE SELLER'S FILES WILL RESULT IN THE SELLER BEING HELD LIABLE FOR THE ALABAMA SALES TAX.

(2) The certificate outlined in (1) above must be executed by both the seller and the purchaser or the purchaser's agent at the time of the sale. A certificate executed subsequent to the time of the sale shall be invalid and the Alabama sales tax shall be due from the seller on the sale for which the invalidated certificate was prepared.

(3) The certificate outlined in (1) above, properly completed, must be retained in the seller's records with a copy of the corresponding sales invoice. Both the certificate and the invoice shall be available for inspection or examination by the Department of Revenue or any authorized agent during normal business hours. The seller will be liable for the Alabama sales tax on any sale for which the export exemption has been claimed but for which a properly executed certificate and sales invoice are not maintained in the seller's records.

(4) A Certificate of Exemption - Out of State Delivery is not required for sales which qualify for the export exemption contained in Section 40-23-2(4) and for which the certificate outlined in (1) above is properly executed and maintained.

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810-6-3-.42.03. (Continued)

(5) Sales of other vehicles such as mobile homes, motor bikes, all terrain vehicles, motor homes, travel trailers, and boats do not qualify for the export exemption provision and are taxable unless the seller can provide factual evidence that the vehicle was delivered outside Alabama or to a common carrier for transportation outside Alabama.

(6) In the event the laws of the state in which the purchaser will title or register the vehicle do not allow an Alabama resident to purchase a motor vehicle for first titling and registering in Alabama without the payment of tax to that state, the sale of the automotive vehicle to the nonresident will be subject to the Alabama state automotive sales tax rate. The tax collected will be state tax and will exclude county and municipal sales tax.

(7) A list of states that do not allow a reciprocal drive-out provision for Alabama residents purchasing automotive vehicles for first titling and registration in Alabama may be viewed on the Department's website at: http://www.revenue.alabama.gov/salestax/. Such list will be published by December 1, 2015, and will be updated each December 1 thereafter. Sellers that have relied on list information that is later determined to be incorrect shall not be held liable for the non-collection of the state automotive sales tax. (Sections 40-2A-7(a)(5), 40-23-2(4) and 40-23-31, Code of Alabama 1975) (Adopted through APA effective January 24, 1989, amended February 10, 2016)

810-6-3-.43. Nurserymen-Sales of Plants, Seedlings, Nursery Stock and Floral Products.

(1) The gross proceeds of the sales of seedlings, plants, shoots and slips which are to be used for planting vegetable gardens or truck farms and other agricultural purposes are exempt from sales and use tax. (Section 40-23-4(a)(22))

(2) Sales of nursery stock and floral products by the nurseryman who planted, cultivated, and harvested said items are exempt from sales and use tax. Sales of nursery stock and floral products not planted, cultivated, or harvested by the seller are taxable (Sections 40-23-2(1), 40-23-4(a)(44), and 40-23-61(a))

(3) A nurseryman who claims the exemption outlined in paragraph (2) must keep sufficient records to document such claims; and, in the absence of sufficient documentation, shall be liable for the sales or use tax due on all sales for which exemption claims cannot be verified by the Revenue Department.

(4) The planting of trees, floral products, and shrubbery or other nursery stock on the real property of a customer pursuant to a contract to furnish such items and plant same does not constitute a retail sale by the person performing the contract; instead, the person is performing a contract for making additions, alterations, or improvements to realty and is deemed to be the user or consumer of the items which are planted. Accordingly, nurserymen who maintain an inventory of trees, floral products, and shrubbery or other nursery stock from which they make retail sales to customers and from which they also

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810-6-3-.43. (Continued)

withdraw items for use in performing contracts for making additions, alterations, or improvements to realty shall purchase all such items tax-free and, in turn, remit sales tax collected from the customer on retail sales of items from inventory and compute and pay sales tax on items withdrawn from inventory for use or consumption in the performance of contracts. Nurserymen or landscapers who maintain no inventory and make no retail sales of trees, floral products, or shrubbery or other nursery stock shall remit the appropriate sales or use tax to the vendor at the time they purchase such items for use in performing contracts for making additions, alterations, or improvements to realty. Purchases or withdrawals of trees, floral products, and shrubbery or other nursery stock which qualify for the exemptions outlined in paragraphs (1) and (2) above are exempt from sales and use tax. (Sections 40-23-1(a)(6), 40-23-1(a)(8), 40-23-1(a)(10), 40-23-2(1), and 40-23-61(a)) (Adopted March 9, 1961, amended January 20, 1966, readopted through APA effective October 1, 1982, amended May 22, 1993, amended July 25, 1994)

810-6-3-.44. <u>Parakeets, Parrots, Canaries</u>.

(1) Sales at retail of parakeets, parrots or canaries are subject to sales or use tax when made by dealers. Sales of these birds are not subject to tax, however, when they are products of a farm and are sold by the producer or for him by a member of his family or by a person employed to assist in the production thereof. A person other than a dealer making a casual sale of a pet, or the offspring of that pet, is not required to collect and remit sales or use tax on such sale. (Sections 40-23-2(1), 40-23-4(a)(5), 40-23-61(a), and 40-23-62(8))

(2) Sales of parakeets, parrots, and canaries by the producer do not qualify for the exemption contained in Section 40-23-4(a)(44) for sales of agricultural products by the person or corporation that planted, cultivated, and harvested such agricultural product. (Readopted through APA effective October 1, 1982, amended May 22, 1993)

810-6-3-.45. <u>Peat Moss</u>.

When purchased for agricultural use as a soil conditioner or plant food, peat or peat moss is exempt from the sales or use tax, as the case may be, by the fertilizer exemptions found in Sections 40-23-4(a)(2) and 40-23-62(5). (<u>State v. Flowerwood Nursery, Inc</u>., 55 So.2d 130) (Readopted through APA effective October 1, 1982, amended March 24, 1993)

810-6-3-.46. Air and Water Pollution Control Exemption.

(1) The term "pollution control facilities" shall mean any system, method, construction, device, or appliance appurtenant thereto acquired for the primary purpose of eliminating, preventing, or reducing air and water pollution, or acquired for the primary purpose of treating, pretreating, modifying, or disposing of any potential solid, liquid, or gaseous pollutant which, if released without such treatment, pretreatment, modification, or disposal, might be harmful, detrimental, or offensive to the public and the public interest.

(2) The term "air pollution" shall mean the presence in the outdoor atmosphere of one or more air contaminants or combinations of contaminants in such quantities and of such characteristics, location, and duration which are injurious to the public and the public interest, or which unreasonably interfere with the comfortable enjoyment of life or property or to the conduct of business within affected areas.

(3) The term "air contaminant" shall mean dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(4) The term "air contamination source" shall mean any source at, from, or by reason of which there is admitted into the atmosphere any air contaminant regardless of who owns or operates the building, premises, or other property in, at, or on which source is located, or the facility, equipment, or other property by which the emission is caused or from which the emission comes.

(5) The term "water pollution" shall mean the discharge or deposit of sewage, industrial wastes, or other wastes of such condition, manner, or quantity as may cause ground or surface water to be contaminated, unclean, or impure to such an extent to make said waters detrimental to the public and the public interest.

(6) Sections 40-23-4(a)(16) and 40-23-62(18), Code of Alabama 1975, exempt from sales and use tax the sale, storage, use, or consumption of (i) all devices or facilities, including all identifiable components of the devices or facilities and all materials used in the devices or facilities, which are acquired primarily for the control, reduction, or elimination of air or water pollution and (ii) all identifiable components of or materials used or intended for use in structures built primarily for the control, reduction, or elimination of air or water pollution.

(7) Noise pollution control devices are not exempt from the sales or use tax.

(8) To qualify for the pollution control exemption the primary purpose for acquiring tangible personal property purchased, stored, used, or consumed shall be the control, reduction, or elimination of air or water pollution. Property acquired for the primary purpose of controlling, reducing, or eliminating air or water pollution, qualifies for the exemption even though a secondary or incidental purpose may be its use in the production of goods or services. Property which is acquired primarily for the production of goods or services and is integral to a profit-motivated business purpose or activity does not qualify

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810-6-3-.46. (Continued)

for the pollution control exemption even when the property controls, reduces, or eliminates air or water pollution. (Chemical Waste Management, Inc. v. State, 512 So. 2d 115 (Ala. Civ. App. 1987)) (Adopted March 9, 1970, amended August 16, 1974, readopted through APA effective October 1, 1982, amended July 30, 1998, Amended March 14, 2001)

810-6-3-.46.02. Post Office, Sales to the.

(1) The post office is a quasi-independent governmental agency and is, therefore, exempt from state taxation. The U. S. Postal Service as it exists today was created under the Postal Reorganization Act, Public Law No. 91-375, August 12, 1970, 84 Stat. 719. Section 10(a) of this Act provides that "The United States Postal Service shall be operated as a basic and fundamental service provided to the people by the government of the United States, authorized by the constitution, created by act of Congress and supported by the people."

(2) Section 201 of said Act provides: "There is established as an independent establishment of the Executive Branch of the Government of the United States, the United States Postal Service."

(3) It can be seen from reading the above quotations that the United States Postal Service remains a part of the Executive Branch of the Government of the United States. Therefore, sales of items to the post office would be exempt from state sales and use taxes. (Adopted June 12, 1978, readopted through APA effective October 1, 1982)

810-6-3-.47. Poultry Products.

Baby chicks, broilers, eggs, and other poultry products are exempted when sold by the producer, members of his family, or persons employed by him to aid in the production thereof, and when produced in a rural area on premises which include cultivated areas used in connection with the production. (State v. Southland Hatchery, Spring term, 1950, 3 Div. 553.) (Section 40-23-4(a)(5)) (Readopted through APA effective October 1, 1982)

810-6-3-.47.01. Prescription Drugs.

(1) Drugs as defined in Section 40-23-4.1(a), Code of Alabama 1975, are exempt from sales and use tax.

(2) The exemption referenced in Section (1) above applies to drugs purchased by hospitals, infirmaries, sanitariums, nursing homes, medical clinics, and physicians for use or consumption in rendering medical services to patients, as well as to drugs sold outright to patients by pharmacies on a doctor's prescription.

(3) Sales of drugs which meet the definition contained in Section 40-23-4.1(a), Code of Alabama 1975, are exempt regardless of whether they are diagnostic in nature or they are used in preventing, treating, or mitigating diseases.

(4) Items such as aspirin, vitamins, and shampoo that do not ordinarily require a physician's prescription are exempt from sales or use tax when prescribed by a physician and the prescription is filled by a licensed pharmacist. (Section 40-23-4.1) (Adopted August 15, 1974, amended August 10, 1982, readopted through APA effective October 1, 1982, amended April 3, 1987, amended January 29, 1990)

810-6-3-.47.02. Private Schools, Sales to.

(1) Sales to private schools are specifically exempted from sales and use taxes.

(2) The term "private school" shall mean privately owned educational institutions operating within the State of Alabama offering conventional and traditional courses of study, such as those offered by public schools, colleges or universities within the State of Alabama.

(3) The term does not mean and shall not include institutions at which the courses of study are limited to specialized subjects as dancing, riding, music, cooking, sewing, and welding.

(4) The term "private school" shall, however, mean and include schools of business instruction where, in addition to such specialized courses as typing, there are also offered general courses in conventional academic subjects such as grammar, spelling, and mathematics. This term shall also include kindergartens at which pre-grammar-school-age children are given initial instructions in the arts of reading, writing and the use of numbers.

(5) The term "private school" does not include nurseries, day care centers, or home schools. Where nurseries or day care centers and kindergartens are operated together, it is necessary that separate purchase records be kept to substantiate the exemption for the kindergarten. In the absence of separate records, the total purchases will be subject to the tax. (Adopted March 9, 1961, amended November 1, 1963, amended August 16, 1974, readopted through APA effective October 1, 1982, amended October 1, 2014)

810-6-3-.47.03. Property to State, City, or County for Use by Public Schools, Sales of.

Sales of tangible personal property are exempted from sales and use taxes when made to state, county or city school boards or to other instrumentalities or agencies of the state or cities or counties of the state for use in the operation of public schools. (Section 40-23-4(a)(11)) (Readopted through APA effective October 1, 1982)

810-6-3-.47.04. Public Schools, Sales to.

Tangible personal property is exempted from sales and use taxes when purchased for the sole use and benefit of, and for use under control of a state, county, or city school from any funds under the control of such school where a purchase order is issued therefor by the principal of an elementary or high school or by an official authorized to make purchases for an institution of higher learning. The purchase order so issued must contain the following:

(a) The name and address of the school or institution.

(b) An itemized list of the property being purchased.

(c) A certificate to the effect that:

1. The property purchased will be under the control of and for the sole use and benefit of the school or institution named,

2. The person making the certificate and signing the purchase order is the principal of the school or official authorized to make purchases for an institution of higher learning. (Readopted through APA effective October 1, 1982)

810-6-3-.47.05. Public Schools - Athletic Equipment, Sales to.

(1) Sales of athletic equipment to public schools is exempted from sales tax where such sales are made in accordance with the provisions of Sales and Use Tax rule 810-6-3-.47.04 Sales to Public Schools.

(2) In those instances where athletic equipment is purchased by a private person or private organization for use by a school, private or public, the sales thereof for such use is subject to tax. (Section 40-23-4(a)(11)) (Readopted through APA effective October 1, 1982)

810-6-3-.47.06. Public Schools, Public School Principals or Teachers, Etc., Sales to..

(1) Sales of tangible personal property to public schools or for use therein shall not be subject to tax under the following circumstances:

(a) Where the property is sold pursuant to the purchase order issued by the State of Alabama or a county or city of the state or any instrumentality thereof.

(b) Where the property is sold pursuant to a certificate as provided for by Sales and Use Tax rule 810-6-3-.47.04 entitled Sales to Public Schools.

(c) Where the property is sold for use in school lunchrooms in preparing meals to be sold to school children in school buildings, not for profit.

(d) Where the property sold is for resale in the school to students for consumption on the school premises or for use in the preparation of lessons and where the sales are made under the supervision and control of the school principal and with no profit to any individual.

(e) Where purchases of items for resale through fund raising projects are made by organizations such as Beta Clubs, Hi-Y Clubs, band clubs, athletic clubs, civic clubs, and class organizations under the control and supervision of the administrative head of the school. (State of Alabama v. Monk and Associates, Inc.)

(2) Vendors making sales to public school principals or teachers must treat as subject to sales tax any sales of property for the private and personal use of any individual except as noted above.

(3) Vendors making sales to students for their personal use cannot claim exemption even though such sales may be made through the school principal or a teacher or an organized group affiliated with the institution.

(4) The records to be maintained by vendors making sales to public school principals in order to establish an exemption under this rule shall include a copy of the vendor's invoice giving the name of the school, the name of the principal, and a description of the goods; provided, it will not be necessary to have the principal sign the purchase order where delivery is made to a school lunchroom or to a school supply store regularly making purchases of property exempted under this rule. It is further provided that a signed purchase order alone will not guarantee exemption to a vendor where the goods sold would not customarily be used for educational purposes. In instances of such sales, the vendor must be prepared to prove that the goods were used in connection with a recognized and approved public school program under the supervision and control of the school officials.

(5) Examples of vendors' sales which would not be subject to sales tax:

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810-6-3-.47.06. (Continued)

(a) Sales of food or supplies to school lunchrooms.

(b) Sales of cold drinks, milk, ice cream, and school supplies to an established school supply store operated under the supervision and control of the school principal.

(c) Sales of classroom supplies to a principal or teacher pursuant to properly executed purchase orders signed by the administrative head of the school.

(d) Sales of fuel delivered to a public school for school use.

(6) Examples of vendors' sales which would be subject to sales tax:

(a) Sale of desk set to a principal for his personal use.

(b) Sales of class rings to students, either directly to the students or through a teacher or school organization.

(c) Sales of school photographs either directly to students or to students through a teacher or a school organization.

(d) Sales of sweaters and jackets to students either directly to students or to students through a teacher or a school organization.

(7) Such property listed in paragraph 6(b) through 6(d) is not school property and is not used for school purposes, but becomes solely the property of the student who ultimately pays for the item. (Hibbett Sporting Goods, Inc. v. State of Alabama.) (Section 40-23-4(a)(11)) (Amended October 29, 1976, readopted through APA effective October 1, 1982)

810-6-3-.48. Repairs to Equipment, When not Subject to Tax.

(1) Materials which pass to the repairman's customer, and which do not lose their identity, such as auto repair parts, radio tubes, and condensers, are sold at retail by the repairman. He must report and pay sales tax on such sales provided delivery is made to the customer in Alabama. If the repairman delivers the repaired equipment to the customer or the equipment is delivered by common carrier to a point outside the State of Alabama, the sale is in interstate commerce not subject to Alabama sales tax. See Rule 810-6-1-.142.

(2) This rule is amended to conform to the decision rendered by the Court of Civil Appeals in State of Alabama v. Communication Equipment and Contracting Company, Inc. (Section 40-23-4(a)(17)) (Adopted March 9, 1961, amended February 6, 1968, amended November 13, 1970, amended October 29, 1976, readopted through APA effective October 1, 1982)

810-6-3-.48.05. Exemption For Certain Purchases by Film Production Companies Approved by The Alabama Film Office. (REPEALED)

(Adopted through APA effective April 29, 2002, amended February 23, 2006, Repealed February 10, 2012.)

810-6-3-.51. Municipal Sales and Use Taxes and Gross Receipts Taxes. (Repealed)

(1) The Department of Revenue is the collecting agency for many municipalities in Alabama levying a true sales and use tax or a gross receipts tax.

(2) Where a municipality levies a true sales and use tax under the provisions of Section 11-51-200, Code of Alabama 1975 as amended, the sellers located in the municipality are required to collect the municipal sales tax on retail sales of tangible personal property in the same manner as the state sales tax as the tax is a consumer tax. If the sale is made and as a part of the sales agreement the seller is required to deliver the item purchased outside the taxing jurisdiction of the municipality, the sale is exempt from the tax. If the seller whose place of business is located outside the municipality has salesmen soliciting orders within the municipality, the seller is required to collect and remit the sellers use tax on retail sales of tangible personal property in the same manner as an out-of-state seller who has salesmen soliciting orders in Alabama and who files a state sellers use tax return. It does not matter how delivery is made.

(3) The gross receipts tax which the department is required to collect under the provisions of Section 11-51-180, Code of Alabama 1975 as amended, is more commonly referred to as sales tax. This tax is levied upon the seller for the privilege of making retail sales of tangible personal property in the municipality levying the tax. If a sale and delivery of tangible personal property is made within the municipality, the tax is due. If the sale is made and as part of the sales agreement the seller is required to deliver the item purchased outside the taxing jurisdiction of the municipality, the tax is not due. If a seller who is located outside the municipality levying the tax has salesmen soliciting orders within the municipality, the seller is required to remit tax on retail sales of tangible personal property provided the seller delivers the item in his or her own equipment or by common carrier F.O.B. destination, title passing in the taxing jurisdiction of the municipality. If the sale is made F.O.B. point of origin, title passing outside the taxing jurisdiction of the municipality, the gross receipts tax is not due.

(4) A municipality that levies a gross receipts tax does not levy a use tax. Therefore, purchaser does not owe use tax on purchases if in a gross receipts jurisdiction.

(5) The repeal of this rule will become effective January 1, 2014. (Adopted August 15, 1974, readopted through APA effective October 1, 1982, amended January 10, 1985, amended May 4, 1994, amended October 20, 1998, amended September 5, 2013, operative January 1, 2014.) (See new rule 810-6-5-.04.02 Seller's Responsibility to Collect County and Municipal Sales and Use Taxes.)

810-6-3-.52. State Sales, Use, and Lodgings Tax Exemption for Qualified Production Companies.

(1) Purpose. This rule sets forth guidelines and procedures to be used by the Department of Revenue in the administration of Act 2009-144, as codified in Article 3, Chapter 7A of Title 41 of the Code of Alabama 1975.

(2) Definitions. For purposes of this rule, and to the extent not inconsistent with the Rules of the Alabama Film Office, these terms shall be defined as follows:

(a) Department: The Alabama Department of Revenue.

(b) Office: The Alabama Film Office.

(c) Qualified Production Company: This term shall have the same meaning as ascribed to it in Code of Alabama 1975, Section 41-7A-42.

(d) Report: Statement of a CPA issued upon the completion of the Final Incentive Audit that provides a summary of the Production Expenditures Expended in Alabama. (Required by Alabama Department of Commerce/Alabama Film Office Incentives Rule 281-3-1-.02(1)(w)).

(e) State-Certified Production: This term shall have the same meaning as ascribed to it in Code of Alabama 1975, Section 41-7A-42.

(3) Act 2009-144, as codified in Article 3, Chapter 7A of Title 41 provides for an exemption of state sales, use, and lodgings taxes levied pursuant to Sections 40-23-2, 40-23-61, and 40-26-1, respectively, of the Code of Alabama 1975 for Qualified Production Companies that incur, in the aggregate, $150,000 or more in connection with one or more State-Certified Productions within a consecutive 12 month period.

(4) The Qualified Production Company must submit an application to the Office for approval. (See Alabama Department of Commerce/Alabama Film Office Incentives Rule 281-3-1-.04 for requirements and procedures)

(5) Once approved, the Office shall issue an approval letter to the Qualified Production Company and to the Department notifying both that the Qualified Production has been approved. The approval letter shall provide the total amount of Incentives approved and a breakdown of the Incentives awarded by State sales, use and lodgings tax and by Rebate. Upon receipt of the approval letter, the Department will issue a state sales, use, and lodgings tax exemption certificate to the Qualified Production Company. This exemption certificate shall be used by the Qualified Production Company to claim the exemption from the state portion of sales, use and lodgings tax when making qualifying purchases and/or accommodations. Local sales, use and lodgings tax are not exempt and shall be paid to the vendor at the time of purchase or at the time the accommodations are provided. The exemption is effective on the date the exemption certificate is issued by the Department.

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(6) Upon completion of production activities within the State of Alabama on the State-Certified Production, the Qualified Production Company shall return the state sales, use, and lodgings tax exemption certificate to the Department.

(7) The Report is required to be filed with the Office as provided for in Alabama Department of Commerce/Alabama Film Office Incentives Rule 281-3-1-.06, and shall identify, on a city-by-city and county-by-county basis, the amount of total incentives used in the way of exemptions from state sales, use and lodgings taxes, in addition to specifically identifying the amount of the total Production Expenditures eligible for the Rebate.

(8) If a Qualified Production Company fails to timely submit the Report to the Office as provided for in Rule 281-3-1-.06, the Qualified Production Company shall become liable for the state sales, use, and lodgings taxes that would otherwise have been paid.

(9) If the Qualified Production Company, which is producing a State-Certified Production, incurs Production Expenditures in an amount less than $150,000, then the Qualified Production Company shall be liable for the state sales, use, and lodgings taxes that would have been paid had the exemption not been granted; provided, however, that if the Qualified Production Company pays the state sales, use, and lodgings taxes due within 60 days of the date the Report was submitted, the Qualified Production Company shall incur no penalties. (Sections 40-2A-7(a)(5) and 41-7A-40 through 48, Code of Alabama 1975. Adopted through APA, effective March 3, 2014.)

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. 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 county or municipality may, by resolution or ordinance adopted at least 30 days prior to the first full weekend of August, 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,

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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;

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(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;

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(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.

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(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;

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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;

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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.

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(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.

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(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

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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.

(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

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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.

(Sections 40-2A-7(a)(5), 40-23-31, 40-23-83, Code of Alabama 1975. Emergency Rule Adopted May 15, 2006, effective July 1, 2006, expires October 28, 2006; permanent rule filed October 4, 2006, effective November 22, 2006, amended January 23, 2013)

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

(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:

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(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.

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(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.

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(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.

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810-6-3-.66. (Continued)

(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.

(Sections 40-2A-7(a)(5), 40-23-31, 40-23-83, Code of Alabama 1975; Act 2012-256. Emergency Rule filed May 2, 2012, Permanent Rule effective September 13, 2012)

810-6-3-.67. Sheriff's Purchases.

Purchases by a sheriff of food to be used in feeding prisoners are exempt from sales tax. (Section 40-23-4(a)(11)) (Readopted through APA effective October 1, 1982)

810-6-3-.67.02. Ships, Sale of.

(1) The gross proceeds of the sale or sales of vessels barges and commercial fishing vessels of over five tons load displacement are exempt from sales and use tax when sold by the manufacturer or builder thereof. (Sections 40-23-4(a)(12) and 40-23-62(17))

(2) The gross proceeds of the sale or sales of materials, equipment and machinery which, at any time, enter into and become a component part of ships, vessels, towing vessels or barges; or drilling ships, rigs or barges; or seismic or geophysical vessels; other watercraft or commercial fishing vessels of over five tons load displacement are exempt from sales or use tax regardless of where they are constructed or built. (Sections 40-23-4(a)(13) and 40-23-62(14))

(3) The Court of Civil Appeals in the case State of Alabama v. Sprinkle Net Shop, Inc., 351 So.2d 608 (1977), held that nets, trawl boards, cables, and related equipment sold to commercial fishing vessels become component parts of such commercial fishing vessels. Sales of the aforementioned items to commercial fishing vessels of over five tons load displacement are exempt regardless of where the vessel was constructed or built. This exemption is not limited to new vessels but also applies to the replacement of the same items on the old vessels of over five tons load displacement. (Sections 40-23-4(a)(12), 40-23-4(a)(13), 40-23-62(14), and 40-23-62(17)) (Adopted June 12, 1978, readopted through APA effective October 1, 1982, amended February 23, 1988, amended June 5, 1992)

810-6-3-.67.03 Ships, Sales to.

(1) Sales and use taxes do not apply to the sale, storage, use, or consumption of fuel and supplies aboard ships, vessels, towing vessels, or barges, or drilling ships, rigs or barges, or seismic or geophysical vessels, or other watercraft engaged in foreign or international commerce or interstate commerce. (Sections 40-23-4(a)(10) and 40-23-62(12))

(2) The following guidelines shall be used in determining if a vessel is engaged in foreign, international, or interstate commerce:

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810-6-3-.67.03. (Continued)

(a) Vessels engaged in transporting cargo between Alabama ports and ports in foreign countries or possessions or territories of the United States or between Alabama ports and ports in other states are engaged in foreign, international, or interstate commerce. Engaging in foreign, international, or interstate commerce shall not require that the vessel involved deliver cargo to or receive cargo from an Alabama port.

(b) Vessels carrying passengers for hire, and no cargo, between Alabama ports and ports in foreign countries or possessions or territories of the United States or between Alabama ports and ports in other states shall be engaged in foreign, international, or interstate commerce, as the case may be, if, and only if, (I) the vessel in question is a vessel of at least 100 gross tons and (ii) the vessel in question has an unexpired certificate of inspection issued by the United States Coast Guard or by the proper foreign country for a foreign vessel, which certificate is recognized as acceptable under United States law.

(c) Seismic or geophysical vessels which are engaged either in seismic or geophysical tests or evaluations exclusively in offshore federal waters or in traveling to or from conducting such tests or evaluations shall be engaged in international or foreign commerce.

(d) Vessels which are engaged in foreign, international, or interstate commerce shall be deemed to remain in such commerce while awaiting or under repair in an Alabama port if such vessel returns after completion of the repairs to engaging in foreign, international, or interstate commerce. (Sections 40-23-4(a)(10) and 40-23-62(12))

(3) The merchant or seller of fuel and supplies which qualify for the exemption outlined in (1) above may accomplish proof of the applicability of the exemption by securing the duly signed certificate of the vessel owner, operator, or captain, or their respective agent that the fuel and supplies purchased are for use or consumption aboard vessels engaged in foreign, international, or interstate commerce. Persons filing false certificates are liable to the Revenue Department for all taxes, together with penalties and interest thereon, levied on sales applicable to such false certificates. (Sections 40-23-4(a)(10) and 40-23-62(12))

(4) The exemption outlined in (1) above does not apply to the sale of materials and supplies for use in fulfilling a contract for the painting, repairing or reconditioning of vessels, barges, ships, other watercraft or commercial fishing vessels of five tons load displacement or less, but does apply to the sale of materials and supplies to any person for use in fulfilling a contract for the painting, repairing or reconditioning of vessels, barges, ships, other watercraft and commercial fishing vessels of over five tons load displacement.

(5) The gross proceeds of sales of fuel for use or consumption aboard commercial fishing vessels are exempt from sales and use tax. This exemption does not apply to supplies used or consumed aboard commercial fishing vessels. Commercial

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810-6-3-.67.03. (Continued)

fishing vessels shall mean vessels which are regularly and exclusively engaged in the business of commercial fishing, shrimping, crabbing, oystering, or any other type of activity resulting in the gathering of fish or crustaceans for sale at wholesale or retail. (Sections 40-23-4(a)(27) and 40-23-62(27))

(6) The gross proceeds of sales of fuel and supplies for use or consumption aboard boats, ships, or towing vessels when used exclusively in transporting persons or property between a point in Alabama and a point or points in offshore federal waters for the exploration for or production of oil, gas, sulphur, or other minerals in offshore federal waters are exempt from sales and use tax. (Sections 40-23-4(a)(42) and 40-23-62(34)) Adopted March 9, 1961, amended November 1, 1963, amended September 26, 1966, amended July 2, 1975, amended June 12, 1978, readopted through APA effective October 1, 1982, amended February 23, 1988, amended June 5, 1992)

810-6-3-.67.04. Certificate of Exemption - Fuel and/or Supplies Purchased for Use or Consumption Aboard Vessels Engaged in Foreign or International Commerce or in Interstate Commerce.

(1) Whenever a merchant or seller makes a sale of fuel or supplies for use or consumption aboard vessels engaged in foreign or international commerce or in interstate commerce, any claim of exemption from Alabama sales or use tax on such sale because of such usage or consumption shall be supported by a certificate executed in the following form:

CERTIFICATE OF EXEMPTION - FUEL AND/OR SUPPLIES PURCHASED FOR USE OR CONSUMPTION ABOARD VESSELS ENGAGED IN FOREIGN OR INTERNATIONAL COMMERCE OR IN INTERSTATE COMMERCE.

PROPERTY PURCHASED:

INVOICE NO.	QUANTITY	ITEM	DESCRIPTION	AMOUNT

CERTIFICATE OF PURCHASER:

I, the undersigned vessel owner, operator, captain, or representative thereof, hereby certify the above described property is being purchased for use or consumption aboard vessels engaged in foreign or international commerce or in interstate commerce pursuant to the provisions of Code of Alabama 1975, Sections 40-23-4(a)(10) and 40-23-62(12).

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810-6-3-.67.04. (Continued)

I also certify I am aware that Sections 40-23-4(a)(10) and 40-23-62(12) provide that any person filing a false certificate shall be guilty of a misdemeanor and, upon their conviction, shall be fined not less than $25.00 nor more than $500.00. I further certify I am aware that any person filing a false certificate shall be liable to the Alabama Revenue Department for all taxes imposed upon the merchant or seller, together with any interest and penalties thereon, by reason of the sales of fuel and/or supplies applicable to such false certificate.

SIGNATURE: _____

TITLE: _____

VESSEL: _____

DATE: _____

PURCHASER'S BUSINESS MAILING ADDRESS:

_____

_____

_____

CERTIFICATE OF MERCHANT OR SELLER:

I, the undersigned merchant or seller, hereby certify that the above described fuel and/or supplies are being sold exempt from sales or use tax for use or consumption aboard Vessels engaged in foreign or international commerce or in interstate commerce and that the above duly signed certificate of the purchaser was secured at the time of such sale.

SIGNATURE: _____

TITLE: _____

DATE: _____

(2) A merchant or seller who secures a properly completed and duly signed certificate in the form outlined in (1) above shall not be liable for Alabama sales or use tax due on a sale later determined by the Revenue Department not to qualify for the exemption contained in Sections 40-23-4(a)(10) and 40-23-62(12) provided said merchant or seller had no knowledge that the certificate was false when filed with him by the purchaser. Instead, the person filing the false certificate shall be liable to the Revenue Department for all sales or use tax, together with any interest and penalties thereon, imposed on the sale of fuel and/or supplies applicable to the false certificate. (Sections 40-2A-7(a)(5), (40-23-4(a)(10) and 40-23-62(12), Code of Alabama 1975) (Adopted February 23, 1988, amended March 27, 2015)

810-6-3-.68.01. Load Displacement of Vessels, Barges, Ships, Other Watercraft, and Commercial Fishing Vessels - Definition and Method of Determination.

(1) The term "load displacement" as used in Code of Alabama 1975, Sections 40-23-2(1), 40-23-4(a)(10), 40-23-4(a)(12), 40-23-4(a)(13), 40-23-61(a), 40-23-62(12), 40-23-62-(14), and 40-23-62(17) refers to the weight of the volume of water displaced by a vessel, barge, ship, other watercraft, or commercial fishing vessel when fully loaded and shall be measured in long tons (1 ton = 2,240 lbs.).

(2) The load displacement measurement of vessels, barges, ships, other watercraft, and commercial fishing vessels as registered with the U.S. Coast Guard and licensed by the Alabama Department of Conservation and Natural Resources will be valid for purposes of administering the sales and use tax provisions enumerated in paragraph (1). (Readopted through APA effective September 25, 1992)

810-6-3-.69.02. Exemption for United States, State, County, City, and Other Exempt Entities from the Payment of Sales Tax, and Purchases Made Through the Use of Purchasing Agents.

(1) The United States Government, the State of Alabama, counties and incorporated municipalities of the state, and various other entities within the state are specifically exempt from paying sales and use tax on their purchases of tangible personal property. These exempt entities may appoint purchasing agents to act on their behalf for making tax-exempt purchases. In such situations the department will recognize that a agency relationship exists, provided that a written contract between the owner and the contractor-agent has been entered which clearly establishes that: (i) the appointment was made prior to the purchase of materials; (ii) the purchasing agent has the authority to bind the exempt entity contractually for the purchase of tangible personal property necessary to carry out the entity's contractual obligations; (iii) title to all materials and supplies purchased pursuant to such appointment shall immediately vest in the exempt entity at the point of delivery; and (iv) the agent is required to notify all vendors and suppliers of the agency relationship and make it clear to such vendors and suppliers that the obligation for payment is that of the exempt entity and not the contractor-agent. All purchase orders and remittance devices furnished to the vendors shall clearly reflect the agency relationship. The tax-exempt entity may enjoy its tax-exempt status when utilizing a purchasing agent, provided that the purchase is paid for by the tax-exempt entity with funds belonging to the tax-exempt entity and the proper documentation as listed above exists to confirm the agency relationship. The appointment of the contractor as purchasing agent of the tax-exempt entity may be made by execution of the department Form ST:PAA-1, Purchasing Agent Appointment. (Sections 40-23-4(a)(11) and 40-23-62(13))

(2) A contractor is the consumer of all the materials which are used by the contractor in the performance of the construction contract and which become a part of real property. Accordingly, in the absence of an agency agreement as set forth in paragraph (1) above, purchases by a contractor or subcontractor of tangible personal property which it

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810-6-3-.69.02. (Continued)

will use in the performance of a contract with the United States Government, the State of Alabama, county or incorporated municipality of the state, or an entity with a specific exemption, for making additions, alterations, or improvements to realty belonging to the government, state, county, municipality, or entity are not purchases by the government, state, county, municipality, or entity and do not qualify for the sales and use tax exemptions in Sections 40-23-4(a)(11) and 40-23-62(13). (Sections 40-23-1(a)(10) and 40-23-60(5))

(a) A contractor that sells building materials to a tax exempt entity under one contract and affixes the materials to realty under a second contract with the tax exempt entity is liable for sales or use tax; the fact that the materials are sold and installed under separate contracts does not qualify the contractor's purchase of the materials for the sales or use tax exemptions in Sections 40-23-4(a)(11) and 40-23-62(13). A contractor may not purchase materials tax exempt for resale to the tax exempt entity and then affix the same materials to realty for the tax exempt entity. (State v. Algernon Blair Industrial Contractors, Inc., 362 So.2d 248 (Ala.Civ.App. 1978), cert. denied 362 So.2d 253)

(b) A contractor may purchase items of tangible personal property tax free when the items are purchased for resale to a tax exempt governmental entity in the form of tangible personal property and are not affixed to realty by the contractor pursuant to a contract with the tax exempt entity.

(3) On and after October 1, 2000, 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 the State of Alabama or a county or incorporated municipality of the State of Alabama awarded prior to July 1, 2004, is exempt from state, county, and municipal sales and use taxes provided the contractor or subcontractor has complied with Rule 810-6-3-.77, entitled Exemption for Certain Purchases by Contractors and Subcontractors in conjunction with Construction Contracts with Certain Governmental Entities, Public Corporations, and Educational Institutions. (Section 40-9-33)

(4) On and after July 1, 2004, 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 the United States government, the State of Alabama or a county or incorporated municipality of the State of Alabama is subject to all state, county, and municipal sales and use taxes for any contract awarded, or any portion of a contract which is revised, renegotiated, or otherwise altered on and after July 1, 2004, to the extent that such revision, renegotiation, or alteration requires the purchase of additional tangible personal property. If the “change order” or other revision does not require the purchase of additional tangible personal property, however, the change will not cause the contract to lose its exempt status. Items purchased after June 30, 2004, pursuant to a contract awarded prior to July 1, 2004, will continue to be exempt for the remainder of the contract. (Sections 40-2A-7(a)(5), 40-23-31, 40-23-83, 40-23-4(a)(10), 40-23-4(a)(11), 40-23-62(13), 40-23-1(a)(10), 40-23-60(5), and 40-9-33, Code of Alabama 1975) (Readopted through APA effective October 1, 1982, amended November 12, 1997, amended March 27, 2001, amended June 10, 2005, amended January 5, 2010)

810-6-3-.72. Tung Meal.

When purchased for agricultural use as a soil conditioner or plant food, tung meal is exempt from sales and use tax pursuant to the fertilizer exemptions found in Sections 40-23-4(a)(2) and 40-23-62(5)). (Readopted through APA effective October 1, 1982, amended March 24, 1993)

810-6-3-.72.02. United States, Sales to.

Where construction materials or other tangible personal property is ordered by, sold directly to, and paid for by the Federal Government, its departments, or its agencies, such sales are not subject to the Alabama sales tax. In such case the determining factors are whether or not the property is ordered and paid for by and delivered to the Federal Government, its departments, or its agencies. See also rule 810-6-1-.45 entitled Contractors. (Section 40-23-4(a)(17)) (Readopted through APA effective October 1, 1982)

810-6-3-.72.05. Vitamins, Minerals, and Dietary Supplements.

Vitamins, minerals, and dietary supplements are exempt from sales and use tax when dispensed by prescription by physicians licensed to practice medicine, chiropractors, orthodontists, or podiatrists in the performance of their professional services. (Section 40-9-27, Code of Alabama 1975) (Adopted through APA effective October 8, 1985, amended July 30, 1998)

810-6-3-.73. Warranty Parts - Manufacturer's Warranty.

When dealers or distributors use parts taken from stocks owned by them in making repairs without charge for such parts to the owner of the property repaired pursuant to warranty agreements entered into by manufacturers, such use does not constitute taxable sales to the manufacturers, distributors, or to the dealers. (Section 40-23-4(a)(18)) (Adopted March 9, 1961, amended October 18, 1961, readopted through APA effective October 1, 1982)

810-6-3-.75. Septic Tanks.

(1) Septic tanks are pollution control devices and qualify for the pollution control exemption. (AGO Baxley, June 1, 1978)

(2) Field lines and gravel, tile, or other materials on which field lines are placed, likewise, qualify for the pollution control exemption. (Section 40-23-4(a)(16)) (Adopted through APA effective July 7, 1989)

810-6-3-.76. Property Purchased for Export and Sales Tax Refunds on Certain Purchases of Tangible Personal Property in Alabama for Export to and Use in a

Foreign Country.

(1) The definitions set forth in Code of Alabama 1975, Section 40-23-1(a), are incorporated herein by reference.

(2) Sales are not subject to Alabama sales tax when the sales agreement requires the seller or the seller's agent to deliver the purchased property to the Port of Mobile marked for export and, in fact, delivery is made to the Port of Mobile and the property is exported. (Section 40-23-39). (Juan Hernandez, Caribbean Shipping, Inc. v. State of Alabama (Admin. Law Div. Docket No. S. 05-708 Final Order entered December 7, 2005))

(3) Alabama sales tax applies to sales of tangible personal property when the purchaser or the purchaser's agent takes delivery in Alabama for subsequent export and use of that property in a foreign country unless the following criteria are met:

(a) the purchaser's records reflect that it was the intent of the purchaser to use the property in a foreign country at the time of purchase and that, in fact, the property was exported from Alabama, and when ocean transportation is required and scheduled service to the desired port overseas is available through the port of Mobile, the Port of Mobile is used for shipment, and

(b) the purchaser provides to the vendor a duly executed Certificate of Exemption – Merchandise Purchased for Export to a Foreign Country (Form STE-4)

(4) Purchasers who are entitled to make qualifying purchases at wholesale, tax free, shall obtain a sales and use tax Certificate of Exemption – Merchandise Purchased for Export to a Foreign County (Form STE-4), by making application on a form provided by the Department. When the properly completed application is received and approved by the Department, the applicant will be issued a state sales and use tax Certificate of Exemption-Merchandise Purchased for Export to a Foreign Country (Form STE-4), which may be copied, completed, and provided to vendors as documentation for tax-exempt purchases for export. The Form STE-4 may be used only by the person to whom it is issued.

(a) Certificate holders regularly engaged in making tax-exempt purchases of the kind and nature for which the Form STE-4 has been issued may furnish a properly executed certificate to the seller specifying that all tangible personal property subsequently purchased will be for the purpose shown on the certificate and thus be relieved of the burden of executing a separate certificate for each individual tax-exempt purchase as long as there is no change in the character of their operations and the purchaser's intent is to export the tangible personal property being purchased.

(b) Certificate holders must maintain a list of all vendors to whom they furnish a copy of their exemption certificate. This list should be retained in their records available for

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inspection by the Department during regular business hours and should provide the name, address, and type of business of each vendor to whom a copy of the certificate has been furnished.

(c) Certificate holders must return their certificate to the Department if the business ceases export activity.

(d) Certificate holders must notify the Department immediately in writing of any change in name or address.

(e) The burden of proof that a sale is exempt is upon the person making the sale unless the seller takes from the purchaser a properly executed Form STE-4. Any such sale for which an exemption has been claimed but which is not supported by a Form STE-4 may be deemed a sale at retail by the Department and the seller held liable for the tax thereon.

(f) Any person selling tangible personal property tax free who relies on a properly executed Form STE-4 shall not be held liable for sales or use tax subsequently determined by the Department to be due on the sale for which the certificate was received. Instead, the Department will assess and collect the tax, along with applicable penalties and interest from the parties who made the illegal tax-free purchase with the Form STE-4 and the person or persons who benefited from the illegal use of the Form STE-4. (Sections 40-23-120 and 40-23-121)

(g) The state sales and use tax certificate of exemption for property purchased for export (Form STE-4) is the only exemption certificate or exemption number which relieves the seller, when acting in good faith and exercising reasonable care, of liability for any sales or use tax later determined by the Department to be due on a sale for which an exemption for export was originally claimed. (Section 40-23-39(a))

(5) With respect to purchases which qualify for the exemption outlined in paragraph (3), in the absence of the purchaser providing the properly executed Form STE-4, the seller at retail must collect and remit sales tax to the Department and then, when the purchaser documents to the Department that the purchases qualify for the exemption, the purchaser may obtain a refund of the sales tax paid thereon.

(6) Refunds of sales taxes made pursuant to paragraphs (3) and (5) shall be made in accordance with the procedures outlined in Section 40-2A-7(c), Code of Alabama 1975, including the joint petition requirement contained in Section 40-2A-7(c)(1).

(7) The purchase of a new truck with a gross weight not exceeding 8,000 pounds or a new passenger vehicle by a nonresident of the United States is exempt from sales or use tax when (i) the truck or passenger vehicle is manufactured in Alabama, (ii) the truck or passenger vehicle is delivered to the purchaser in Alabama by the manufacturer or an

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affiliated corporation, (iii) at the time of purchase the purchaser intends to export the truck or passenger vehicle to and permanently license the truck or passenger vehicle in a foreign country within 90 days after the date of delivery, and (iv) the purchaser obtains a temporary metal license plate and a temporary registration certificate from the probate judge or license commissioner of the county in which the manufacturer is located. (Section 40-23-39(b)) (Sections 40-2A-7(a)(5), 40-23-4(a)(17), 40-23-31, 40-23-39, 40-23-62(2), and 40-23-83, Code of Alabama 1975) (Adopted through APA effective November 5, 1996, amended March 10, 1998, amended September 9, 2005, amended August 5, 2015)

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 agencies that are exempt from the payment of Alabama sales and use taxes excluding those agencies as provided in sections (2) and (3) below.

(2) The exemption outlined in section (1) shall 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.

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(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) Purchases of tangible personal property made pursuant to any contract entered into prior to January 1, 2014.

(3) The exemption outlined in section (1) shall 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) In order to qualify for the sales and use tax exemption referenced in section (1), the governmental entity shall 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, shall 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 Section 40-2A-8, Code of Alabama 1975.

(5) A contractor or subcontractor who obtains a Form STC-1 shall comply with all of the provisions of the Code of Alabama 1975, as amended, Section 40-23-9 and shall 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 a report of all exempt purchases to the Department of Revenue in a manner prescribed by the department. 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.

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(6) Any contractor or subcontractor who intentionally uses a certificate of exemption (STC-1) in violation of Act 2013-205 shall be (a) liable for the actual sales and use tax due, (b) 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) 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 Section 40-2A-8, Code of Alabama 1975.

(7) The date of the sale to, or the purchase, withdrawal, storage, use or consumption by, the contractor shall be used to determine if an otherwise qualifying transaction or event qualifies for the exemption. Jobs or projects entered into prior to, January 1, 2014 shall not qualify for the exemption regardless of the transaction date.

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

(9) The amendatory language in this rule shall become operative on January 1, 2014. (Sections 40-2A-7(a)(5), 40-2A-8, 40-23-31, 40-23-83, Code of Alabama 1975, and Act 2013-205) (Adopted through APA effective March 27, 2001, amended June 10, 2005, amended December 25, 2013)

810-6-3-.78. Sales of Aircraft Manufactured, Sold and Delivered in Alabama.

(1) In accordance with Section 40-23-4(a)(37), Code of Alabama 1975, sales of aircraft manufactured, sold and delivered in Alabama that are not permanently domiciled in Alabama and are removed from Alabama are not subject to Alabama sales tax.

(2) An aircraft manufactured, sold and delivered in Alabama shall be considered not permanently domiciled in Alabama if either of the following non-exclusive conditions is true:

(a) The hanger, airstrip, or other housing unit which the aircraft is intended to leave from and return to in the regular course of use is located outside of Alabama, or

(b) The buyer is an air carrier, foreign air carrier or intrastate air carrier, as defined by Section 40101 of Title 49 of the United States Code, 49 USC, Section 40101, and operating pursuant to Part 121 or Part 129, or conducting scheduled or unscheduled services pursuant to Part 135; and the buyer's headquarters is not in Alabama on the date of purchase of the aircraft.

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(3) An aircraft manufactured, sold and delivered in Alabama shall be considered removed from Alabama if the first flight of the aircraft after delivery, excluding any intrastate flights for post-delivery maintenance or modification work or for training in Alabama, is planned for a destination outside of Alabama, provided that the foregoing is not the exclusive method for showing removal of an aircraft from Alabama. (Sections 40-2A-7(a)(5) and 40-23-4(a)(37), Code of Alabama 1975) (Adopted effective August 21, 2015)

810-6-4-.01. Accounts Charged Off (Bad Debts) and Repossessions.

(1) The term "bad debt or uncollectible account" as used in this rule shall mean any portion of the sales price of a taxable item which the retailer cannot collect. Bad debts include, but are not limited to, worthless checks, worthless credit card payments, and uncollectible credit accounts. Bad debts, for sales and use tax purposes, do not include finance charges, interest, or any other nontaxable charges associated with the original sales contract, or expenses incurred in attempting to collect any debt, debts sold or assigned to third parties for collection, or repossessed property.

(2) The term "repossessions" as used in this rule shall mean the repossession of taxable items from the purchaser by the retailer because of the purchaser's default in the payment of the amount owed.

(3) The term "credit sale" shall include all sales in which the terms of the sale provide for deferred payments of the purchase price. Credit sales include installment sales, conditional sales contracts, and revolving credit accounts.

(4) Sections 40-23-8 and 40-23-68(e), Code of Alabama 1975, require that any person taxable under the law having cash and credit sales may report the cash sales, and the retailer shall include in each report all credit collections made during the preceding tax reporting period and shall pay the taxes due on the cash sales and the credit collections at the time of filing the tax report, but in no event shall the gross proceeds of credit sales be included in the measure of tax to be paid until collections of the credit sales have been made.

(5) In the event a retailer reports and pays the sales or use tax on credit accounts which are later determined to be uncollectible, the retailer may take a credit on a subsequent tax report or obtain a refund for any tax paid with respect to the taxable amount of the unpaid balance due on the uncollectible credit accounts within three years following the date on which the accounts were charged off as uncollectible for federal income tax purposes.

(6) If a retailer recovers in whole, or in part, amounts previously claimed as bad debt credits or refunds, the amount collected shall be included in the first tax report filed after the collection occurred. (Sections 40-23-8 and 40-23-68(e))

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(7) If taxable items upon which sales or use tax has been paid by the retailer are repossessed, the retailer is allowed a credit or deduction for that portion of the actual purchase price remaining unpaid. The deduction must not include any nontaxable charges which were a part of the original sales contract. Any payments made by the purchaser prior to repossession must be applied ratably against the various charges in the original sales contract. (Adopted November 3, 1980, amended August 10, 1982, readopted through APA effective October 1, 1982, amended September 25, 1992, amended October 20, 1998)

810-6-4-.02.05. Consigned Property.

Sellers of property held on consignment are required to include the gross proceeds of sales of such property in sales tax returns filed under the Sales Tax Law. (Section 40-23-1(a)(6)) (Readopted through APA effective October 1, 1982)

810-6-4-.03. Discounts Allowed on Payments of Sales Tax Made Before Delinquency.

(1) Executive Order Number 2 issued by Governor John Patterson on January 8, 1960, authorized, empowered, and directed the Department of Revenue to allow a sales tax discount not to exceed five percent of the first one hundred dollars ($100) of sales taxes levied and two percent of the sales taxes levied over one hundred dollars ($100) per month. This discount was applicable for sales taxes collected on or after October 1, 1959 through May 31, 1996 for taxes paid before delinquency.

(2) In accordance with Section 40-23-36, Code of Alabama 1975, Executive Order Number 20 issued by Governor Fob James, Jr. on May 31, 1996, authorized, empowered, and directed the Department of Revenue to allow a sales tax discount for sales taxes due and payable to the State of Alabama by persons licensed under Section 40-23-6, Code of Alabama 1975, for sales taxes collected on or after June 1, 1996. This discount could not exceed five percent of the first one hundred dollars ($100) of sales taxes levied and two percent of the sales taxes levied over one hundred dollars ($100) per month and, further, was limited to a total maximum discount of nine hundred dollars ($900) per month to any license holder and was limited to that amount for each retail license holder regardless of the number of retail locations of that license holder within the state. No discount was authorized or allowed upon any taxes which were not paid before delinquency. This discount was applicable for sales taxes collected on or after June 1, 1996 through April 30, 2001.

(3) Beginning with calendar year 1999, effective January 1, 1999, Section 40-23-7(d), Code of Alabama 1975, allows certain taxpayers to file sales tax returns with the Alabama Department of Revenue on a calendar quarter or calendar year basis rather than on a monthly basis. The sales tax discount for license holders who file monthly, quarterly,

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or annually shall not exceed five percent of the first one hundred dollars ($100) of sales taxes levied and two percent of the sales taxes levied over one hundred dollars ($100) per month, per calendar quarter or per calendar year, respectively, and further, for sales taxes collected through April 30, 2001, was limited to a total maximum discount of nine hundred dollars ($900) per month to any license holder, and for sales taxes collected on or after May 1, 2001, is limited to a total maximum discount of four hundred dollars ($400) per month to any license holder, and limited to that amount for each retail license holder regardless of the number of retail locations of that license holder within the state. No discount is authorized or allowed upon any taxes which are not paid before delinquency.

(4) In accordance with Section 40-23-36, Code of Alabama 1975, Executive Order Number 53 issued by Governor Don Siegelman on May 22, 2001, authorizes, empowers, and directs the Department of Revenue to allow a sales tax discount for sales taxes due and payable to the State of Alabama by persons licensed under Section 40-23-6, Code of Alabama 1975, for sales taxes collected on or after May 1, 2001. This discount shall not exceed five percent of the first one hundred dollars ($100) of sales taxes levied and two percent of the sales taxes levied over one hundred dollars ($100) per month and, further, is limited to a total maximum discount of four hundred dollars ($400) per month to any license holder and is limited to that amount for each retail license holder regardless of the number of retail locations of that license holder within the state. No discount is authorized or allowed upon any taxes which are not paid before delinquency.

(5) The discount outlined in paragraphs (1), (2), (3) and (4) above applies to state sales tax and also to all county and municipal sales taxes administered by the Alabama Department of Revenue. The rate, maximum, and effective date of the discount for each county and municipal sales tax due and payable to the Alabama Department of Revenue shall be the same as those provided with respect to the discount for state sales tax. (Sections 11-3-11.3, 11-51-180, et seq.; 11-51-200, et seq.; and 40-12-4, et seq., Code of Alabama 1975) (Readopted through APA effective October 1, 1982, amended October 8, 1996, amended October 20, 1998, amended effective October 4, 2001)

810-6-4-.04. Extension of Time for Filing Return.

The Department "for good cause" may extend the time , not to exceed 30 days, for filing sales and use tax returns. The Supreme Court of Alabama in State v. Louis Pizitz Dry Goods Company, 11 So.2d 342, held that the request for such an extension must be received by the Department prior to the date the return became delinquent in order to have the extension granted. No discount for timely payment will be allowed on sales or use tax paid after the statutory due date but within the extended time and interest must be added to the tax. (Sections 40-23-7 and 40-23-74) (Adopted October 1, 1959, amended November 3, 1980, readopted through APA effective October 1, 1982, amended January 10, 1985, amended March 24, 1993)

810-6-4-.06. Failure of Seller to Collect Tax.

Failure to collect the tax due is unlawful. Both the Sales and Use Tax Laws require the seller to collect the tax due. Provisions of these laws make it unlawful to fail to collect the tax making such failure a misdemeanor punishable by fine or by imprisonment or both. The Sales and Use Tax Laws further provide, however, that the failure, refusal, or inability of the seller to collect the tax does not relieve him of his liability to the state for the taxes due on his sales. In the court case Tanner v. State, 190 So. 292, the Alabama Court of Appeals upheld the conviction of Tanner, who had failed or refused to add the sales tax due to the sales price of merchandise sold by him. (Section 40-23-26) (Readopted through APA Effective October 1, 1982)

810-6-4-.07. Farm Machines, Machinery, and Equipment.

(1) Sales at retail of any machine, machinery, or equipment which is used in planting, cultivating, and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, and sales at retail of any parts of, or attachments and replacements for, any such machine, machinery, or equipment which (i) are made or manufactured for use on or in the operation of the machine, machinery, or equipment, and (ii) are necessary to and customarily used in the operation of the machine, machinery, or equipment are taxable at the reduced farm machine rate of sales or use tax. (Sections 40-23-37 and 40-23-63, Code of Alabama 1975)

(2) The reduced farm machine rate does not apply to sales of parts, attachments, and replacements for any automotive vehicle or trailer designed primarily for public highway use, except farm trailers used primarily in the production and harvesting of agricultural commodities. (Sections 40-23-37 and 40-23-63)

(3) The term “machine, machinery, and equipment” is understood to mean items such as tractors, detachable plows, harrows, planters, cultivators, fertilizer spreaders, plow stocks, turning plows, seed drills, and sprayers. The general rate of sales or use tax applies to all hand tools. A power chain saw sold for use by a pulpwood dealer in cutting trees for sale in the dealer’s regular course of business qualifies for the reduced farm machine rate of sales or use tax. A power chain saw sold for nonfarm use is taxable at the general rate of sales or use tax. See Rule 810-6-2-.66.05 Portable Power Saws.

(4) Where any used machine, machinery, or equipment which is used in planting, cultivating, and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock, and poultry on farms is taken in trade or in a series of trades as credit or part payment on a sale of the new or used machine, machinery, or equipment, the measure of sales or use tax shall be the price of the new or used machine, machinery, or equipment sold, less the credit for the used machine, machinery, or equipment taken in trade. (Sections 40-23-37 and 40-23-63)

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(5) The dealers' sales invoices will be accepted as the basis for determining the tax rate applicable unless there is conclusive evidence that the invoice does not reveal the true facts. (Adopted September 26, 1966, amended August 16, 1974, amended November 3, 1980, readopted through APA effective October 1, 1982, amended December 28, 1998)

810-6-4-.07.05 Federal Excise Tax on Certain Trucks and Trailers, Retailers.

(1) Effective April 1, 1983, the federal government levied a 12 percent retail excise tax on retail sales of certain trucks and trailers (26 USC Sec. 4051). This tax is a tax which the retailer is required to collect from his customer and remit to the federal government and is measured by the value of the articles sold at retail.

(2) A retailer who collects this tax from his customer and remits same directly to the federal government may exclude the federal excise tax from the measure of sales or use tax provided he bills the federal excise tax to his customer as a separate item. (AGO Evans, July 31, 1992) (Sections 40-23-1(a)(6) and 40-23-1(a)(8)) (Adopted October 3, 1987, amended May 22, 1993)

810-6-4-.10. Keeping Records of Sales for Resale, (Formerly Regulation L).

Any seller within or without this state engaged in making sales at both retail and wholesale who claims as exempt from the Sales or Use Tax Act a sale to a licensed retail merchant, licensed dealer, licensed jobber, or other licensed person as a sale for resale must show on the invoice of such sales and the copy thereof (which copy must be retained in the seller's office) the name and address and the sales tax account number of such licensed retailer, dealer, jobber, or other person; and in the event that the name and address and such sales tax account number are not shown as herein provided, the Department of Revenue will treat such sale as a prima facie taxable retail sale. Provided, however, that it shall not be necessary to enter the sales tax account number on each invoice of such sale for resale if the sales tax account number is placed one time on the seller's books, ledger, loose leaf binder, or similar written record to which are posted such sales deducted as sales for resale; or, if a card index file showing the name and address and sales tax account number of the buyer is maintained by the seller, the name and address of the buyer on the invoice or other written memorandum made at the time of the sale can be identified by the Department of Revenue from the face of such invoice or other written memorandum at the time of the sale with such buyer's name and address and sales tax account number on such card index file. (Section 40-23-2(1)) (Adopted March 8, 1948, amended November 3, 1980, readopted through APA effective October 1, 1982)

810-6-4-.11. Leased Departments, Filing Tax Returns for.

(1) Where a store leases departments to other persons who (i) operate the departments, (ii) keep their own books, and (iii) make their own collections on accounts; a separate sales tax return shall be filed by each person operating a leased department. Persons who lease departments and file their own returns shall obtain the sales tax license required pursuant to Section 40-23-6, Code of Alabama 1975.

(2) Where the store leases departments to other persons who operate the departments and the store keeps the books and makes collections on accounts for the persons who lease the departments, the store may, as agent for the lessees, file returns for the leased departments and pay the taxes due. The lessees, however, shall not be relieved of liability for the tax until the amount due has been paid.

(3) Where the store files returns as agent for leased departments, it may either file separate returns for each department leased or may file a consolidated return for both its business and the leased departments. Persons who lease departments and for whom the store files separate returns shall obtain the sales tax license required pursuant to Section 40-23-6. If the store files a consolidated return for its business and for each leased department, sufficient records shall be maintained to allow a determination of the respective sales and use tax liability for its business and each of the leased departments. (Sections 40-2A-7(a)(1), 40-23-6, 40-23-7, and 40-23-9, Code of Alabama 1975) (Readopted through APA effective October 1, 1982, amended July 30, 1998)

810-6-4-.13. Permit Issued to Electric Cooperatives, Telephone Companies and Others.

(1) The term "Department" as used in this regulation shall mean the Department of Revenue of the State of Alabama.

(2) Where the Department finds that it is practically impossible at the time of purchase for an electric cooperative, telephone company, or anyone engaged in a similar type of business, or their vendors, to determine with any degree of certainty the applicability of state-administered city and county use taxes to purchases of tangible personal property and where it would facilitate and expedite the collection of the taxes to permit the purchaser to purchase tangible personal property without the payment to the vendor of the applicable state-administered city and county use taxes; the electric cooperative, telephone company, or anyone engaged in a similar business, upon application therefor, may be permitted to purchase tangible personal property without payment to the vendor of state-administered city and county use taxes subject to the following conditions:

(a) The permit holder shall purchase all tangible personal property without payment of state-administered city and county use taxes to the seller, and shall report and pay all state-administered city and county use taxes directly to the Department.

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(b) The permit holder shall report state-administered city and county use taxes upon forms approved by the Department and shall pay the taxes directly to the Department on or before the twentieth day of the month following the tax reporting period during which the tangible personal property was used for a taxable purpose.

(c) The permit holder shall be required to keep the books and records necessary to determine the use tax liability, which records shall be subject to examination by the Department.

(d) The permit does not extend to construction contracts. The contractor is the consumer of building materials used in the performance of construction contracts, and must pay any applicable city and county taxes to the seller at the time of purchasing the materials. If an applicable use tax is not paid to the seller, the contractor is required to pay the tax directly to the Department.

(e) The permit shall not be transferable and may be canceled upon notice by registered mail to the permit holder.

(f) The permit applies only to city and county use taxes collected by the Department.

(3) An application for the permit shall be made on forms furnished by the Department and shall require the following information:

(a) Applicant's Federal Employer Identification Number,

(b) Applicant's legal name and complete mailing address,

(c) Business address(es) in Alabama including city, county, and street address or, if location is on a highway or rural route, including details sufficient to allow Department personnel to find the place of business,

(d) Indication of the nature of business,

(e) Business phone number,

(f) Desired effective date of permit, and

(g) Signature and title of sole proprietor, each partner, or an elected corporate officer and the date of each signature.

(4) The permit shall contain the following information:

(a) Taxpayer's direct pay permit number, legal name, and complete address,

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(b) Permit holder's principal business location in Alabama,

(c) Nature of the permit holder's business,

(d) Effective date of the permit,

(e) Statement of the conditions to which the permit is subject

(f) Legal name of the applicant for the direct pay permit, the date the application was filed, and the date the Department approved the application,

(g) Signature on behalf of the Department and the date signed, and

(h) Attesting signature of the Departmental Secretary.

(Adopted July 2, 1975, amended November 3, 1980, readopted through APA effective October 1, 1982, amended June 6, 1996, amended October 20, 1998)

810-6-4-.14. <u>Sales and Use Tax Direct Pay Permit</u>.

(1) Where the Department finds that it is practically impossible at the time of purchase for a manufacturer, transportation company, or persons engaged in the business of mining, quarrying, compounding, or processing tangible personal property, or their vendors, to determine with any degree of certainty the applicability of sales or use tax upon purchases of tangible personal property and where it would facilitate and expedite the collection of the taxes to permit the manufacturer, transportation company, or person engaged in the business of mining, quarrying, compounding or processing tangible personal property to purchase tangible personal property without payment to the vendor of the sales or use tax upon, or with respect to, the property, the manufacturer, transportation company, or person engaged in the business of mining, quarrying, compounding or processing tangible personal property upon application therefor may be permitted to purchase tangible personal property without payment to the vendor of Alabama sales or use tax subject to the following conditions:

(a) The permit holder shall purchase all tangible personal property without payment of sales or use tax to the seller, and shall report and pay all sales and use tax directly to the Department of Revenue.

(b) The permit holder shall report the sales and use tax upon forms approved by the Department and shall pay the taxes directly to the State Department of Revenue. Unless the permit holder qualifies to file and pay sales and use taxes on a calendar quarter or calendar year basis, sales and use taxes must be reported and paid monthly on or

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before the twentieth day of the month following the month during which the tangible personal property was used for a taxable purpose. See Rule 810-6-5-.30 Filing and Paying State

Sales and Use Taxes and State-Administered County and Municipal Sales and Use Taxes on a Quarterly or Annual Basis. (Sections 11-51-211(a)(1), 11-51-211(a)(2), 40-23-7, and 40-23-68, Code of Alabama 1975)

(c) The permit holder shall be required to keep the books and records necessary to determine the permit holder's tax liability, which records shall be subject to examination by the Department.

(d) Upon demand of the Department, the permit holder shall execute a bond or indemnity agreement securing the payment of the taxes to the Department in an amount not exceeding estimated sales tax liability for three months and estimated use tax liability for six months.

(e) The permit does not extend to construction contracts. The contractor is the consumer of building materials used in the performance of construction contracts, and must pay the sales tax to the seller at the time of purchasing tangible personal property from vendors in Alabama, and use tax to the seller on purchases of tangible personal property from the vendors located outside of Alabama. If the use tax is not paid to the seller, the contractor is required to pay the tax directly to the Department of Revenue.

(f) The permit shall not be transferable and may be canceled upon notice by registered mail to the permit holder.

(2) The application for a sales and use tax direct pay permit shall require the following information:

(a) Applicant's Federal Employer Identification Number,

(b) Applicant's legal name and complete mailing address,

(c) Business address(es) in Alabama including city, county, and street address or, if location is on highway or rural route, including details sufficient to allow Department personnel to find the place of business,

(d) Indication of the nature of business (e.g. steel manufacturing, auto manufacturer, etc.),

(e) Business phone number,

(f) Desired effective date of permit, and

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(g) Signature and title of sole proprietor, each partner, or an elected corporate officer and the date of each signature.

(3) Sales and use tax direct pay permits issued by the Department of Revenue shall contain the following information:

(a) Taxpayer's direct pay permit number, legal name, and complete address,

(b) Permit holder's principal business location,

(c) Nature of the permit holder's business,

(d) Effective date of the permit,

(e) Statement of the conditions to which the permit is subject,

(f) Legal name of the applicant for the direct pay permit, the date the application was filed, and the date the Department of Revenue approved the application,

(g) Signature on behalf of the Department of Revenue and the date signed, and

(h) Attesting signature of the Departmental Secretary.

(4) Sales tax direct pay permit returns shall require the following information:

(a) Taxpayer's sales tax direct pay permit account number, legal name, and complete address,

(b) Period covered by the return and due date of the return,

(c) Estimated tax due for the current month, if applicable,

(d) A breakdown, by applicable tax rate, of total gross purchases of tangible personal property from Alabama vendors,

(e) Credit allowed for automotive vehicles traded in, if applicable,

(f) A breakdown, by otherwise applicable tax rates, of total deductions claimed,

(g) Measure of tax by applicable tax rate,

(h) Gross tax due by applicable tax rate,

(i) Total gross amount of tax due,

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(j) Estimated tax paid on previous month's return, if applicable,

(k) Tax due after deducting credit for previous month's estimate,

(l) Total tax due (tax due plus current month's estimate), if applicable,

(m) Penalties and interest due, if applicable,

(n) Credits claimed,

(o) Total amount due,

(p) Total amount remitted,

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

(r) Taxpayer's signature and the date signed.

(5) Only purchases from Alabama vendors shall be reported by the permit holder on the return outlined in paragraph (4). Purchases by direct pay permit holders from out-of-state vendors shall be reported separately on consumer use tax returns. (Amended August 16, 1974, readopted through APA effective October 1, 1982, amended June 5, 1992, amended April 1, 1996, amended October 20, 1998)

810-6-4-.15. <u>Permit to Pay Sales and Use Taxes on Motor Fuels Direct to the Department of Revenue</u>.

(1) The term "Department" as used in this regulation shall mean the Department of Revenue of the State of Alabama.

(2) The definition of the term "motor fuel" contained in <u>Code of Alabama 1975</u>, Section 40-17-1, is incorporated by reference herein.

(3) Except as outlined in paragraphs (4) and (10) below, instate sellers must collect and remit sales tax on retail sales of motor fuels which are not subject to the motor fuels excise tax and do not qualify for a sales tax exemption; and, out-of-state sellers, who do not have a place of business in Alabama but for whose business sufficient nexus exists, must collect and remit seller's use tax on retail sales of motor fuels which are not subject to the motor fuels excise tax and do not qualify for a use tax exemption.

(4) Where the Department finds that it is practically impossible at the time of purchase for the purchaser or the purchaser's vendors, to determine with any degree of

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certainty the applicability of sales or use tax to purchases of motor fuels and where it would facilitate and expedite the collection of the taxes to permit the purchaser to purchase all motor fuels without payment of sales or use tax to the vendor, a user of motor fuels may obtain a permit which will allow the holder to purchase all motor fuels free of sales and use taxes and to report and pay the applicable tax directly to the Department. An application for the permit shall be made on forms furnished by the Department and shall require the following information:

(a) Applicant's Federal Employer Identification Number,

(b) Applicant's legal name and complete mailing address,

(c) Business address(es) in Alabama including city, county, and street address or, if location is on a highway or rural route, including details sufficient to allow Department personnel to find the place of business,

(d) Indication of the nature of business,

(e) Business phone number,

(f) Desired effective date of permit, and

(g) Signature and title of sole proprietor, each partner, or an elected corporate officer and the date of each signature.

(5) The permit holder shall be required to pay sales or use tax directly to the Department on motor fuels purchased without payment of sales or use tax to the vendor when the motor fuel is subsequently used in a manner that (i) is exempt from the motor fuels excise tax and (ii) does not qualify for a sales and use tax exemption.

(6) A permit holder, who purchases motor fuels with motor fuels excise tax paid and subsequently uses the motor fuel in a manner which qualifies the user for a refund of the motor fuels excise tax pursuant to Sections 40-17-2(c) and 40-17-220(g), shall report and pay the applicable sales or use tax to the Department. Sales or use tax accrues at the time the motor fuel is used, provided the motor fuel does not qualify for a sales or use tax exemption.

(7) The permit holder shall maintain books and records which clearly disclose the total amounts of motor fuels purchased and the use of motor fuels for taxable and nontaxable purposes.

(8) The permit referenced in paragraph (4) above shall be restricted to purchases of motor fuels only, shall be entitled Sales and Use Tax Motor Fuel Permit, and shall contain the following information:

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(a) Taxpayer's direct pay permit number, legal name, and complete address,

(b) Statement of the conditions to which the permit is subject,

(c) Effective date of the permit,

(d) Signature on behalf of the Department of Revenue and the date signed, and

(e) Attesting signature of the Departmental Secretary.

(9) Permit holders shall file returns on forms furnished by the Department and pay the sales or use taxes due on or before the twentieth day of the month next succeeding the tax reporting period in which the motor fuel is used in a manner subject to sales or use tax. Motor Fuels Sales Tax Direct Pay Permit Returns shall require the following information:

(a) The holder's direct pay permit account number, legal name, and complete address,

(b) Period covered by the return and due date of the return,

(c) Estimated tax due for the current month, if applicable,

(d) total gallons of motor fuel used during the period covered by the return which are not subject to the motor fuels tax,

(e) Cost of the fuel not subject to the motor fuels tax,

(f) Sales tax due on the motor fuel,

(g) Estimated tax paid on previous month's return, if applicable,

(h) Tax due after deducting credit for previous month's estimate,

(i) Total tax due (tax shown due in item (h) plus current month's estimate, if applicable),

(j) Penalties and interest due, if applicable,

(k) Credits claimed,

(l) Total amount due,

(m) Total amount remitted,

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

(o) Taxpayer's signature and the date signed.

(10) The holder of a Sales and Use Tax Direct Pay Permit shall not be issued a separate Sales and Use Tax Motor Fuel Permit. Instead, all purchases of motor fuels and the payment of applicable sales or use taxes due thereon by holders of Sales and Use Tax Direct Pay Permits shall be made in accordance with the provisions of Sales and Use Tax Rule 810-6-4-.14 Sales and Use Tax Direct Pay Permit. (Readopted through APA effective October 1, 1982, amended June 5, 1992, amended April 1, 1996, amended October 20, 1998)

810-6-4-.17.05. <u>Processing, Definition</u>.

The word "processing" as used in the Sales and Use Tax Law is understood to have the following meaning: "Processing" means to subject to some special process or treatment. To heat, as fruit with steam under pressure so as to cook or sterilize. To subject, especially raw material, to a process of manufacture, development, preparation for the market, etc.; to convert into marketable form, as livestock by slaughtering, grain by milling, cotton by spinning, milk by pasteurizing, fruits and vegetables by sorting and repacking. To make usable, marketable, or the like, waste matter or inferior, defective, decomposed substance or product by a process, often chemical process, as to process rancid butter, rayon waste, coal dust, beet sugar. (Section 40-23-2(3)) (Readopted through APA effective October 1, 1982)

810-6-4-.19. <u>State Sales Tax Returns Required From All Retail Vendors and Annual Schedule of Locations Required from all Retail Vendors with Multiple Locations</u>.

(1) All retail vendors required by law to collect, report, and remit sales taxes are required to observe the following rules in reporting and remitting state sales taxes:

(a) Each retail vendor shall prepare and forward to the Department of Revenue within the time prescribed by law, on forms prepared and furnished by the Department of Revenue, a state sales tax return for each calendar tax reporting period and shall compute and pay to the Department of Revenue the tax due. The returns shall require the following information:

1. Taxpayer's sales tax account number, legal name, and complete address,
2. Period covered by the return and due date of the return,
3. Estimated tax due for the current month, if applicable,

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4. A breakdown, by applicable tax rate, of gross sales, gross receipts from places of amusement or entertainment, withdrawals, and collections during the tax reporting period on credit sales previously claimed as a deduction,

5. Totals, by applicable tax rate, of the items enumerated in 4. above,

6. A breakdown, by otherwise applicable tax rates, of total deductions claimed,

7. Measure of tax by applicable tax rate,

8. Gross tax due by applicable tax rate,

9. Number of automotive vehicles withdrawn for use as demonstrators and tax due thereon,

10. Total gross amount of tax due,

11. A computation of any applicable discount for prompt payment,

12. Estimated tax paid on previous month's return, if applicable,

13. Tax due after deducting applicable discount and/or credit for previous month's estimate,

14. Total tax due (tax due plus current month's estimate, if applicable),

15. Penalties and interest due, if applicable,

16. Credits claimed, if any,

17. Total amount due,

18. Total amount remitted,

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

20. Taxpayer's signature and date signed.

(b) Each retail vendor shall file only one state sales tax return per tax reporting period for all retail units of business operated within the State.

(c) Each retail vendor with more than one business location shall furnish annually a schedule fully and completely disclosing:

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1. The number of places of business operated.

2. The location of each place of business operated.

3. The gross sales of each such place of business.

4. The amount of deductible sales of each place of business.

5. Such other pertinent information as the Department of Revenue deems necessary to break down retail sales information by county of origin and by industry in a reliable and valid manner. This annual schedule shall be submitted to the Department of Revenue on forms prepared and furnished by the Department of Revenue.

(d) Unless the retail vendor qualifies to file and pay state sales tax on a calendar quarter or calendar year basis, state sales 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 Filing and Paying State Sales and Use Taxes and State-Administered County and Municipal Sales and Use Taxes on a Quarterly or Annual Basis. (Section 40-23-7, Code of Alabama 1975) (Adopted October 1, 1959, readopted through APA effective October 1, 1982, amended April 22, 1985, amended April 1, 1996, amended October 20, 1998)

810-6-4-.20. Seller Must Pay and Collect Tax Due.

It is the mandatory duty of the seller, the taxpayer, to pay the tax lawfully due under the Sales Tax Law and a like mandatory duty to add the amount thereof to the sales price and to collect same from the customer. (Doby v. State, 174 So. 233, Meriwether v. State, 42 So.2d 465.)

(2) No retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the sales price of the property sold or that, if added, it or any part thereof will be refunded. Under the provisions of this section, however, a retailer may advertise the sale of tangible personal property by (i) stating the sales price alone without reference to the tax, (ii) stating separately the sales price and the amount of tax to be collected thereon, or (iii) stating the sales price “plus tax” or “exclusive of tax” provided the retailer in the case of all such sales shall maintain his records to show separately the actual price of such sales and the amount of the tax paid thereon and provided such retailer, if requested, shall furnish the consumer with a sales slip or other like evidence of the sale showing the tax separately computed thereon.

(3) Whenever practical, each retailer shall add the sales tax as a separate line item to the selling price. The initial invoice, bill, charge ticket, sales slip, or receipt shall

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separately state the amount of the tax being charged. If not separately stated, it will be presumed that sales tax was not charged to the customer or collected. In such cases, the measure will be the gross receipts.

(a) In those instances where it is practically impossible to furnish a customer with an invoice, bill, charge ticket, sales slip, or receipt, the retailer shall conspicuously post a sign indicating that the charge for the item being purchased includes the price of the item and the total percentage of sales tax being collected. The sign shall be of sufficient size to allow a person of normal vision to read it from a distance of 20 feet and shall be posted in plain view.

(b) Each retailer who makes tax-included sales in which tax is an unspecified part of the customer charge shall post a sign pursuant to paragraph (a) using the following example:

Charge for items purchased includes price of item and 8% sales tax.

This requirement is effective upon adoption under the Administrative Procedures Act. (Sections 40-2A-7(a)(5), 40-23-2(1), 40-23-9, 40-23-26, and 40-23-31, Code of Alabama 1975) (Readopted through APA effective October 1, 1982, amended June 10, 2005)

810-6-4-.21. Reporting and Paying Sales or Sellers Use Tax on Collections of Accounts Receivable on the Seller's Books at the Time of a Rate Increase.

(1) The correct rate of tax due on credit sales made prior to the effective date of a rate increase is the old rate in effect prior to the rate change.

(2) Tax due on collections on credit sales subject to the old rate of tax may be reported and paid by the seller as follows. The seller shall make a written declaration of the amount of accounts receivable on the seller's books as of the close of business the day before the effective date of the rate increase. This letter of declaration should be attached to the seller's next tax return. The seller will then be allowed to report and pay tax on all collections on accounts receivable at the old rate until the declared balance is consumed. A copy of the declaration letter should be attached to each subsequent return on which the old rate is applied to collections on accounts receivable. The seller should note on the attached letter the unused balance carried forward from the previous tax reporting period, the amount of the balance being used on the current return, and the remaining unused

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balance carried forward to the return for the next tax reporting period. Once the declared balance is exhausted, all collections on credit sales must be reported and paid at the new rate.

(3) The declaration and computation of tax at the old rate only applies to collections on accounts receivable. All cash sales are subject to the new rate of tax as of the effective date of the rate increase and must be reported and paid at the new rate. Section 40-23-8, Code of Alabama 1975. (Adopted through APA effective December 6, 1990, amended October 20, 1998)

810-6-4-.21.01. Determining the Applicable Tax Levy or Tax Rate when an Existing Sales or Use Tax Levy is Replaced or Amended.

(1) The term "local sales or use taxes" as used in this rule shall include county or municipal sales and use taxes and county or municipal gross receipts taxes in the nature of a sales tax.

(2) When the rates of local sales or use taxes change, or an existing local sales and use tax levy is repealed and replaced by a new tax levy, or both; the time that a sale or purchase occurs shall determine the applicable tax rate, or the applicable tax levy, or both. A sale or purchase occurs at the time and place when and where title is transferred by the seller or seller's agent to the purchaser or the purchaser's agent. Sales or purchases occurring before the effective date of a rate change or before the effective date of a new tax levy which replaces an older tax levy are subject to the old rate or old tax levy, or both. Sales or purchases occurring on or after the effective date of a rate change or on or after the effective date of a new tax levy which replaces an older tax levy are subject to the new rate or the new tax levy, or both. (Section 40-23-1(a)(5), Code of Alabama 1975)

(3) For purposes of determining transfer of title, property is delivered by the seller or the seller's agent to the buyer or buyer's agent by:

(a) The buyer or the buyer's agent taking possession of the property at the seller's place of business,

(b) The seller making delivery to the buyer or the buyer's agent by use of a conveyance owned by the seller, or

(c) The seller's agent making delivery to the buyer or the buyer's agent.

(4) A common carrier or the U.S. Postal Service shall be deemed the seller's agent regardless of any F.O.B. point and regardless of who selects the method of transportation, and regardless of by whom or the method by which freight, postage, or any other transportation charge is paid. (Section 40-23-1(a)(5))

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810-6-4-.21.01. (Continued)

(5) Unless the new state sales and use tax levy statutorily provides otherwise, the applicability of a new state sales and use tax levy which replaces an existing state levy shall be determined in the same manner as outlined above for determining the applicable local sales and use tax levy.

(6) See Rule 810-6-4-.21 entitled Reporting and Paying Sales or Seller's Use Tax on Collections of Accounts Receivable on the Seller's Books at the Time of a Rate Increase. (Adopted through APA effective December 28, 1998)

810-6-4-.22. Abatement of the Sales and Use Tax Liability on Private Use Industrial Development Property.

(1) Unless otherwise defined herein, the definitions of terms set forth in Code of Alabama 1975, Section 40-9B-3, are incorporated by reference herein.

(2) As used in this rule, the term "project" means a private use industrial development property or a major addition to a private use industrial development property.

(3) As used in this rule, the term "public body" means a public authority, county, or municipal government.

(4) A private user who is liable for sales and use taxes pursuant to Section 40-9B-7 may be granted an abatement of these taxes by a public body subject to the geographical or jurisdictional limitations outlined in Section 40-9B-5 and to the extent authorized in Section 40-9B-4.

(5) Effective August 1, 1998, purchases of tangible personal property to be incorporated into a project for which the private user has been granted a valid abatement of construction-related sales and use taxes pursuant to Chapter 9B of Title 40 are exempt from state and noneducational local sales or use taxes whether the purchase is made by (i) a contractor or a subcontractor who will incorporate the property into the project or (ii) the private user of the project. The contractor or subcontractor is no longer required to purchase the property in the name of the private user or as agent for the private user; have the property billed or invoiced to the private user; and have the property paid for with funds belonging to the private user in order to purchase the property exempt from sales and use taxes. The exemption on purchases by contractors or subcontractors shall not apply to any purchases which would not also be exempt if purchased by a private user who has been granted a valid abatement pursuant to Chapter 9B of Title 40. Contractors, subcontractors, and private users making tax-exempt purchases pursuant to an abatement granted under Chapter 9B of Title 40 shall comply with the provisions of Sales and Use Tax Rules 810-6-4-.24 and 810-6-4-.24.01.

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(6) With respect to purchases by contractors or subcontractors of tangible personal property to be incorporated into a project for which a valid abatement was granted prior to August 1, 1998, the new exemption for direct purchases by contractors and subcontractors outlined in paragraph (5) shall apply only to those purchases which occur on or after August 1, 1998. Purchases occurring prior to August 1, 1998, are exempt only if the purchase is made in the name of the private user or as agent for the private user, the purchase is billed or invoiced to the private user, and the purchase is paid for with funds belonging to the private user. The criteria contained in Section 40-23-1(a)(5) for determining when transactions are closed or sales are completed shall be used to determine when purchases by contractors and subcontractors occur.

(7) It shall not be necessary for a private user to vest title to industrial development property in a public body in order to be granted an abatement of sales and use tax. A private user is not required to purchase property in the name of a public body; have the property billed or invoiced to the public body; and have the property paid for with funds belonging to the public body in order to purchase property exempt from sales and use taxes pursuant to an abatement.

(8) An abatement of sales and use taxes may be granted without the issuance of bonds by a public body.

(9) An abatement of sales and use taxes (a) shall commence on the date in which the applicable public body grants that abatement, (b) shall apply to all property which shall not have been acquired by the private user, contractor, or subcontractor as of the commencement date, and (c) shall expire on the date the entire project is placed in service.

(10) Section 40-9B-6(c) provides that the private user who is granted an abatement shall file with the Revenue Department within 90 days after the granting of the abatement a copy of the agreement required by Section 40-9B-6(b).

(11) An abatement of sales and use taxes may be granted only with respect to a project that has not previously been placed in service by the private user who is applying for the abatement or by a person who is a related party.

(12) A change of ownership or assignment of interest in property shall not qualify the property for a new or additional abatement beyond the previous abatement. The new user may be allowed to receive the remainder of abatements previously granted to the original user.

(13) With respect to the abatement of sales and use taxes incurred in connection with a major addition, the addition must constitute an amount at least equal to 30 percent of the original cost to the industrial development property or two million dollars ($2,000,000), whichever is less.

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(14) Capitalized repairs, rebuilds, maintenance, and replacement equipment shall not qualify as a major addition. Replacement equipment includes equipment that performs the same function as the equipment it replaces even though the new equipment performs the function better or faster, but does not include equipment that performs one or more additional functions in addition to performing the same function as the equipment it replaces.

(15) Only additions to existing industrial development property may be considered as a major addition. The renovation or remodeling of existing facilities shall not constitute a major addition and, therefore, does not qualify for an abatement of sales and use taxes. (Adopted through APA effective May 22, 1993, amended October 20, 1998)

810-6-4-.23. Application for the Abatement of the Sales and Use Tax Liability of the Private User of Private Use Property to which a Public Authority, County, or Municipal Government Has Title or a Possessory Right.

(1) Unless otherwise defined herein, the definitions of terms set forth in Code of Alabama 1975, Section 40-9B-3, are incorporated by reference herein.

(2) As used in this regulation, the term "public body" means a public authority, county, or municipal government.

(3) An application for an abatement of sales and use taxes may be made by any person who proposes to become a private user of industrial development property or of a major addition. Such application shall be made to the appropriate public body as outlined in Code of Alabama 1975, Section 40-9B-5, and shall be made in advance of commencing the acquisition, construction, or equipping of the project. Notwithstanding the foregoing, a private user who commences the acquisition, construction, or equipping of a project prior to making an application for abatement may nevertheless make said application (such application shall be made to the appropriate public body as outlined in Section 40-9B-5, Code of Alabama 1975, (1992 Cum. Supp.)) subsequent to the aforementioned commencement and, if the abatement is granted, receive an abatement of sales and use tax liabilities incurred during the period beginning with the date of execution and delivery by a public body of an abatement agreement and ending with the date the entire project is placed in service. Sales and use tax liabilities incurred prior to the effective date of the abatement cannot be abated.

(4) An application for an abatement of sales and use taxes may be made to the appropriate public body on an application form provided by the Alabama Department of Revenue. The application furnished by the Alabama Department of Revenue shall require the following information:

(a) the type(s) of taxes for which an abatement is being requested,

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(b) applicant's SIC Code,

(c) an indication as to whether the project is a new project or a major addition,

(d) if applicable, an indication as to whether the major addition equals the lesser of $2,000,000 or 30 percent of the original cost of existing industrial development property,

(e) if the applicant is applying for an abatement for a major addition and indicates that 30 percent of original cost of the existing industrial development property is lesser than $2,000,000; the original cost of the existing industrial development property,

(f) project applicant's legal name, trade name, and complete address,

(g) the city and county in which the project is located,

(h) the date the applicant's company was organized,

(i) the name and phone number of a contact person,

(j) a description of the project,

(k) estimated dates of when construction will begin, when construction will be completed, and when the property will be placed in service,

(l) estimates of the number of employees to be hired initially and in each of the succeeding three years,

(m) estimates of the annual payroll of new employees initially and in each of the succeeding three years,

(n) an estimate of the cost of real property broken down by estimates of the cost of land, new building(s), and existing building(s),

(o) an estimate of the cost of materials to become a part of realty,

(p) an estimate of the cost of personal property broken down by estimates of the cost of manufacturing machinery and the cost of all other personal property,

(q) an indication as to whether bonds have been issued for the project,

(r) if bonds have been issued for the project, the date the bonds were issued,

(s) if bonds have not been issued for the project, an indication as to whether bonds will be issued,

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(t) if bonds will be issued for the project, the projected date of the bond issue, and

(u) applicant's signature and title and the date of the signature.

(5) The application form referenced in paragraph (4) shall instruct the applicant to attach to the application as complete a listing as possible of property and cost on which an abatement is requested to facilitate a cost/benefit analysis by the public body to which the application is submitted. (Adopted through APA effective May 23, 1993, amended December 10, 1996)

810-6-4-.24. Copy of Abatement Agreement to be Filed with the Revenue Department and the Procedures Governing the Use of Direct Pay Permits or Exemption Certificates by Private Users and Contractors.

(1) Unless otherwise defined herein, the definitions of terms set forth in Code of Alabama 1975, Section 40-9B-3, are incorporated herein.

(2) As used in this rule, the term "public body" means a public authority, county, or municipal government.

(3) As used in this rule, the term "Department" means the Department of Revenue of the State of Alabama.

(4) An abatement of sales and use taxes granted by a public body as authorized by Section 40-9B-4 and in accordance with the geographical or jurisdictional limitations outlined in Section 40-9B-5 shall be embodied in an Abatement Agreement between the public body and the private user. The Abatement Agreement shall contain all the information required pursuant to Section 40-9B-6(b) and a copy of this agreement must be filed with the Department within 90 days after the granting of the tax abatement.

(5) Except as noted in paragraph (7), a private user, contractor, or subcontractor who will purchase, store, use, or consume tangible personal property which it will incorporate into a private use industrial development property or a major addition for which a valid abatement has been granted pursuant to Chapter 9B of Title 40 shall submit to the Department an application for a Sales and Use Tax Certificate of Exemption for an Industrial or Research Enterprise Project. Upon receipt and approval of the application, the Department shall issue the certificate of exemption (Form STE-2) to the qualifying applicant. Applicants who are issued Form STE-2 shall comply with all provisions of Sales and Use Tax Rule 810-6-4-.24.01. All exemption certificates issued by the Department will be limited to use on purchases of tangible personal property which qualify for the abatement and will bear an expiration date which shall be the same as the estimated date of completion contained within the Abatement Agreement. The expiration date may be

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810-6-4-.24. (Continued)

extended beyond the estimated date of completion referenced in the Abatement Agreement provided the project for which the abatement was granted has not been placed in service. A request for an extension of the expiration date of a Form STE-2 issued to the private user of a project, the contractor, or a subcontractor on the project may only be made by the private user; provided that the prime contractor for the project may request the extension of the expiration date where (i) the private user has not obtained a Form STE-2 and (ii) the private user of the project confirms that the project has not been placed in service by countersigning the prime contractor's request for the extension. Certificate holders shall be responsible for reporting and remitting nonabatable sales and use taxes, including county and municipal sales and use taxes levied for educational purposes or for capital improvements for education, due on all purchases for which they use the certificate to purchase tangible personal property without payment of the tax to the vendor or supplier.

(6) A certificate of exemption (Form STE-2) shall be "project specific." Accordingly, contractors or subcontractors making tax-exempt purchases in conjunction with more than one project for which abatements have been granted shall apply for and obtain a separate Form STE-2 for each qualifying project. Each Form STE-2 shall be used only to make tax-exempt purchases for the project specified on the certificate.

(7) In lieu of obtaining a Form STE-2, private users who hold a Sales and Use Tax Direct Pay Permit may elect to continue making all purchases pursuant to the terms of the direct pay permit and continue to file direct pay permit returns in accordance with Sales and Use Tax Rule 810-6-4-.14. Purchases which qualify for the abatement shall be reported on these returns and deducted from total purchases before state and noneducational county and municipal taxes are computed. County and municipal sales and use taxes which are levied for educational purposes or for capital improvements for education shall be computed and paid with the private user's local direct pay permit returns. The election by the private user to use an existing direct pay permit in lieu of obtaining a Form STE-2, does not preclude a contractor or subcontractor who will also be making tax-exempt purchases in conjunction with the project from obtaining a Form STE-2. (Adopted through APA effective May 22, 1993, amended December 10, 1996, amended October 20, 1998)

810-6-4-.24.01. Sales and Use Tax Certificate of Exemption for an Industrial or Research Enterprise Project (Form STE-2) - Responsibilities of the Certificate Holder - Burden of Proof - Liability for Taxes Later Determined to be Due.

(1) Unless otherwise defined herein, the definitions of terms set forth on Code of Alabama 1975, Section 40-9B-3, are incorporated by reference herein.

(2) The term "Department" as used in this rule shall mean the Department of Revenue of the State of Alabama.

(3) As used in this rule, the term “project” means a private use industrial development property or a major addition to a private use industrial development property.

(4) The sales and use tax certificate of exemption (Form STE-2) referenced in Sales and Use Tax Rule 810-6-4-.24 may be issued by the Department to (i) a private user who has been granted an abatement of sales and use taxes in accordance with Chapter 9B of Title 40, (ii) a contractor or subcontractor who will purchase, store, use, or consume tangible personal property to be incorporated into a project for which the private user has been granted a valid abatement pursuant to Chapter 9B of Title 40, or (iii) both. The certificate of exemption shall be used only by the person or entity to whom it is issued; therefore, each eligible party desiring to make tax-exempt purchases pursuant to an abatement of construction-related sales and use taxes granted under authority of Chapter 9B of Title 40 shall make a separate application for an exemption certificate. Upon receipt and approval of a properly completed application, the Department will issue the qualified applicant a Form STE-2 which the certificate holder shall copy, complete, and provide to its vendors as documentation for the tax exempt status of the certificate holder’s qualifying purchases of tangible personal property.

(5) A prime contractor applying for a Form STE-2 shall submit, with the application, written confirmation from the private user that the applicant will be making purchases of tangible personal property to be incorporated into the project referenced on the application. A contractor or subcontractor applying for a Form STE-2 shall submit, with the application, written confirmation from the private user or the prime contractor that the applicant will be making purchases of tangible personal property to be incorporated into the project referenced on the application.

(6) The application referenced in paragraph (4) shall require the following information:

(a) Applicant's Federal Employer Identification Number,

(b) Applicant's legal name and complete mailing address,

(c) Address of the project site,

(d) Business phone number,

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810-6-4-.24.01. (Continued)

(e) Date the abatement was granted,

(f) Estimated completion date of the project for which the abatement has been granted, and

(g) Signature and title of sole proprietor, each partner, or an elected corporate officer and the date of the signature.

(7) The Department, upon approving an application for a Form STE-2, will provide the applicant with a Form STE-2 containing the following information:

(a) Project number,

(b) Restrictions to the scope of the certificate holder's exempt status,

(c) Effective date of the exemption certificate,

(d) Expiration date of the exemption certificate,

(e) Statement of the duties and responsibilities of the vendor to whom a certificate is provided by the certificate holder,

(f) Statement, to be declared by the certificate holder under penalties of false swearing, as to the validity of the exemption claim,

(g) Certificate holder's name and address,

(h) Date of approval or issuance by the Department, and

(i) Signature of approval by the Department.

(8) At the time of providing a copy of a Form STE-2 to a vendor from whom a tax-exempt purchase is being made, the following information shall be provided by the certificate holder on the certificate copy which the certificate holder gives to the vendor:

(a) Name and address of the vendor to whom the certificate copy is provided,

(b) Date the certificate is provided, and

(c) Certificate holder's signature and title.

(9) A certificate holder regularly making tax exempt purchases of the kind and nature for which the Form STE-2 has been issued may furnish a properly executed certificate to the seller specifying that all tangible personal property subsequently

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810-6-4-.24.01. (Continued)

purchased will be for the purpose shown on the certificate and thus be relieved of the burden of executing a separate certificate for each individual tax-exempt purchase as long as the tangible personal property purchased qualifies for the abatement.

(10) The certificate holder shall maintain a list of all vendors to whom a copy of the exemption certificate is furnished. This list should be retained in the certificate holder's records available for inspection by the Department during regular business hours and should provide the name, address, and type of business of each vendor to whom a copy of the certificate has been furnished.

(11) When the project for which the abatement has been granted is placed in service, the certificate holder shall return the certificate to the Department.

(12) The certificate holder shall notify the Department immediately in writing of any change in name or mailing address.

(13) The burden of proof that a sale is exempt is upon the person making the sale unless the seller takes from the certificate holder a properly executed Form STE-2. Any sale for which an exemption has been claimed but which is not supported by a Form STE-2 shall be deemed a sale at retail by the Department and the seller held liable for the tax thereon. A seller who sells tangible personal property tax-exempt based upon the presentment of a Form STE-2 by the purchaser shall reference the Project Number shown on the Form STE-2 on the invoice or billing to the certificate holder.

(14) Any person, firm, or corporation selling tangible personal property tax free who relies on a Form STE-2 and reasonably believes the tax exemption claim is legal shall not be held liable for sales or use tax subsequently determined by the Department to be due on the sale for which the certificate was received. Instead, the Department will collect or recover the tax due from the party or parties who made the illegal tax-free purchase with the Form STE-2 and the person or persons who benefitted from the illegal use of the Form STE-2. (Sections 40-23-120 and 40-23-121)

(15) With the exception of the certificates which are provided for in Sections 40-23-4(a)(10), 40-23-62(12), and 40-23-4.3, Code of Alabama 1975, and Form STE-1 provided for in Sales and Use Tax Rule 810-6-5-.02 pursuant to Section 40-23-120, Form STE-2 is the only exemption certificate or exemption number which relieves the seller, when acting in good faith and exercising reasonable care, of liability for any sales or use tax later determined by the Department to be due on a sale for which an exemption was originally claimed.

(16) The authority granted to the Department in Section 40-23-121 shall include but is not limited to the power to examine the certificate holder's records; assess the certificate holder for tax, penalty, and interest; and file tax liens. (Adopted through APA effective December 10, 1996, amended October 20, 1998)

810-6-4-.25. Taxability of the Private User of Private Use Property to which a Public Authority, County, or Municipal Government Has Title or a Possessory Right.

(1) The term "de minimis deviations" as used in Chapter 9B of Title 40 of the Code of Alabama 1975 and in this rule shall mean, with reference to the amount of capital expenditures for private use property, not exceeding 10 percent in the aggregate of the amount set forth in the inducement or lease or other agreement. In respect thereof, and with reference to the description of the private use property set forth in the inducement or lease or other agreement in respect thereof, such modification thereto as did not or would not change the predominant activity carried on at the private use property.

(a) Predominant Activity - If the trade or business to be conducted by a private user at a given site is predominantly (i.e., more than 50% of the project investment) in the nature of an industrial or research enterprise, then all of the property to be acquired at the site will constitute industrial development property eligible for abatements under Chapter 9B of Title 40. If the predominant activity is not in the nature of an industrial or research enterprise, then only that portion, if any, of the property which will be so used will constitute industrial development property eligible for abatements.

(2) The term "title" as used in Chapter 9B of Title 40 and in this rule shall mean, with respect to property, legal title or ownership.

(3) Unless otherwise defined herein, the definitions of terms set forth in Code of Alabama 1975, Section 40-9B-3, are incorporated by reference herein.

(4) The private user of private use property is liable for sales and use taxes as outlined in Section 40-9B-7(a)(2).

(5) The taxability provision outlined in Section 40-9B-7(a)(2) shall not apply if the private user was entitled to use, or would be entitled to use, the private use property as outlined in Section 40-9B-7(d). This exception applies only to the property and the amount of capital expenditures set out in the inducement, subject to de minimis deviations.

(6) The taxability provision outlined in Section 40-9B-7(a)(2) shall not apply to private use property for which there exists an independent statutory source of exemption or abatement from sales and use taxes (other than a source based solely on title to the property being in a public authority or a county or municipal government).

(7) Once property becomes private use property the property shall not lose its status as private use property because of a change in accounting procedures or a change from a capital lease to an operating lease. (Adopted through APA effective May 22, 1993, amended October 20, 1998)

810-6-5-.02. State Sales and Use Tax Certificate of Exemption (Form STE-1) - Issued For Wholesalers, Manufacturers and Other Product Based Exemptions.

(1) The term "Department" as used in this regulation shall mean the Department of Revenue of the State of Alabama.

(2) Persons, firms, and corporations who are not required to have a sales tax license pursuant to Section 40-23-6, Code of Alabama 1975, and who are entitled to make certain purchases at wholesale, tax free, may obtain a sales and use tax certificate of exemption by applying for same on a form provided by the Department. Upon receipt of a properly completed application and approval of same by the Department, the applicant will be issued a state sales and use tax certificate of exemption (Form STE-1) which can be copied, completed, and provided to vendors as documentation for tax exempt purchases. A form STE-1 will not be issued to persons, firms, or corporations who have a sales tax license issued pursuant to Section 40-23-6, Code of Alabama 1975, or who do not have a place of business within the State of Alabama.

(3) Persons or companies, including but not limited to those cited in Title 40, Chapter 9, other than governmental entities, which have a statutory exemption from the payment of Alabama sales, use, or lodgings taxes, shall be required to obtain a sales and use tax certificate of exemption to be renewed on an annual basis by applying for same on a form provided by the Department. Please see Sales and Use Tax Rule 810-6-5-.02.01, entitled *State Sales and Use Tax Certificate of Exemption for Entities Having a Statutory Exemption from the Payment of Sales, Use, and Lodgings Taxes*, for additional information.

(4) An application for a sales and use tax certificate of exemption shall require the following information:

(a) Applicant's Federal Employer Identification Number,

(b) Applicant's business telephone number,

(c) Applicant's legal name, trade name, and complete mailing address,

(d) Number of businesses in Alabama and exact location of each (exact location shall include city, county, and street address; if location is on highway or rural route, exact location shall include details sufficient to allow Department personnel to find the place of business),

(e) Indication of the kind and class of business (i.e. wholesaler, manufacturer, etc.),

(f) Type of products manufactured or sold,

(g) Reason the exemption is claimed,

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(h) Indication of the legal form of ownership (sole proprietorship, partnership, corporation, LLC, etc.),

(i) Copy of certificate of incorporation or articles of incorporation, if applicable,

(j) Name, title, home address, and social security number of sole proprietor, each partner, or each corporate officer, and

(k) Signature of sole proprietor, each partner, or an elected corporate officer.

(5) The Department, upon approving an application for a sales and use tax certificate of exemption, will provide the applicant with a Form STE-1 containing the following information:

(a) Certificate holder's exemption number,

(b) Restrictions, if any, to the scope of the certificate holder's exempt status,

(c) Nature of the certificate holder's business,

(d) Statement of the duties and responsibilities of the vendor to whom a certificate is provided by the holder,

(e) Statement, to be declared by the certificate holder under penalties of false swearing, as to the validity of the exemption claim,

(f) Certificate holder's name and address,

(g) Date of approval or issuance by the Department, and

(h) Signature of approval by the Department.

(6) At the time of providing a copy of a Form STE-1 to a vendor from whom a tax-exempt purchase is being made, the following information shall be provided by the certificate holder on the certificate copy which the holder gives to the vendor:

(a) Name and address of the vendor to whom the certificate copy is provided,

(b) Date the certificate is provided,

(c) Basis for the certificate holder's exemption claim, and

(d) Certificate holder's signature and title.

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(7) Certificate holders regularly engaged in making tax exempt purchases of the kind and nature for which the Form STE-1 has been issued may furnish a properly executed certificate to the seller specifying that all tangible personal property subsequently purchased will be for the purpose shown on the certificate and thus be relieved of the burden of executing a separate certificate for each individual tax exempt purchase as long as there is no change in the character of their operations and the tangible personal property purchased is of the kind usually purchased for the purpose indicated.

(8) Certificate holders must maintain a list of all vendors to whom they furnish a copy of their exemption certificate. This list should be retained in their records available for inspection by the Department during regular business hours and should provide the name, address, and type of business of each vendor to whom a copy of the certificate has been furnished.

(9) Certificate holders must return their certificate to the Department if the business for which the certificate was issued is closed or if they engage in retail sales for which a sales tax license is required.

(10) Certificate holders must notify the Department immediately in writing of any change in name or address.

(11) Sales of tangible personal property to any person, firm, or corporation not required to have a sales tax license are subject to sales or use tax until the contrary is established. The burden of proof that a sale is exempt is upon the person making the sale unless the seller takes from the purchaser a properly executed Form STE-1. Any such sale for which an exemption has been claimed but which is not supported by a Form STE-1 may be deemed a sale at retail by the Department and the seller held liable for the tax thereon.

(12) Any person, firm, or corporation selling tangible personal property tax free who relies on a Form STE-1 and reasonably believes the tax exemption claim is legal shall not be held liable for sales or use tax subsequently determined by the Department to be due on the sale for which the certificate was received. Instead, the Department will collect or recover the tax due from the party or parties who made the illegal tax-free purchase with the Form STE-1 and the person or persons who benefited from the illegal use of the Form STE-1. (Sections 40-23-120 and 40-23-121)

(13) With the exception of the certificates which are provided for in Sections 40-23-4(a)(10), 40-23-62(12), and 40-23-4.3, Code of Alabama 1975, Form STC-1 provided for in Sales and Use Tax Rule 810-6-3-77, and Form STE-2 provided for in Sales and Use Tax Rule 810-6-4-.24.01 pursuant to Section 40-23-120, the state sales and use tax certificate of exemption (Form STE-1) is the only exemption certificate or exemption number which relieves the seller, when acting in good faith and exercising reasonable care, of liability for any sales or use tax later determined by the Department to be due on a sale for which an exemption was originally claimed.

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(14) Section 40-23-121 authorizes the Department to use its powers and responsibilities in accordance with the general laws of this state to effect collection of any tax due from a purchaser resulting from the purchaser's unauthorized use of a state sales and use tax certificate of exemption (Form STE-1). This act will be enforced by the Department in the same manner as the state Sales or Use Tax Law, as the case may be, is enforced, including but not limited to the power to examine purchasers' records; assess tax, penalty, and interest; and file tax liens. (Sections 40-2A-7(a)(5), 40-23-31, 40-23-120, Code of Alabama 1975, and Act 2015-534) (Adopted July 6, 1977, amended November 3, 1980, readopted through APA effective October 1, 1982, amended January 29, 1990, amended June 6, 1996, amended December 10, 1996, amended February 10, 2016)

810-6-5-.02.01. State Sales and Use Tax Certificate of Exemption For Entities Having a Statutory Exemption from the Payment of Sales, Use, and Lodgings Taxes.

(1) The term "Department" as used in this rule shall mean the Department of Revenue of the State of Alabama.

(2) The term “Governmental Entity” as used in this rule shall mean the Federal Government, the State of Alabama, Alabama public schools, Alabama public universities, healthcare authorities, Alabama counties and municipalities, and public corporation incorporated under any of the provisions of Chapter 50 or 50A of Title 11, Chapter 5 of Title 37, or Chapter 7 of Title 39.

(3) The terms “Person” or “Company” as used in this rule shall have the same meaning as prescribed in Section 40-23-1, Code of Alabama 1975.

(4) Persons or companies, including but not limited to those cited in Title 40, Chapter 9, other than governmental entities, which have a statutory exemption from the payment of Alabama sales, use, or lodgings taxes, shall be required to obtain a sales and use tax certificate of exemption to be renewed on an annual basis by applying for same on a form provided by the Department. Within thirty (30) days of receipt of a properly documented and completed application (Form ST: EX-A1-SE), the applicant will be issued a state sales and use tax certificate of exemption (Form STE-1) or a letter of denial of such application. The certificate of exemption (Form STE-1) can be copied, completed, and provided to vendors as documentation for tax exempt purchases. The denial of a properly documented and completed application for a certificate of exemption under the provisions of this rule shall be subject to the appeal rights provided for in Section 40-2A-8, Code of Alabama 1975.

(5) Certificates of exemption shall be valid for one year from the date of issuance and shall be renewed annually each subsequent year before the end of the month in which the certificate expires. Any person or company that fails to obtain or renew a certificate of exemption prior to its expiration, will no longer be allowed to make tax exempt purchases or rent tax exempt accommodations until such time as the application for renewal is made and the certificate is reinstated.

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(6) All persons or companies required to obtain a certificate of exemption as described herein, are required to file an informational report with the Department in a manner prescribed in Departmental Rule 810-6-5-.02.02.

(a) Such required informational reports shall be a prerequisite for the renewal of certificates of exemption.

(b) Any person or company that does not comply with the reporting requirements may be barred from the use of any certificate of exemption until such time as the required informational report is filed with the Department, not to exceed six months for the first offense and one year for the second offense. On the third offense, such person or company shall be barred from the use of any certificate of exemption until such time as the person or company is authorized to obtain a certificate of exemption pursuant to a joint resolution by the Alabama legislature.

(7) The Department may assess any person or company with state and local sales, use, and lodgings tax for any transaction conducted with a certificate of exemption not properly accounted for and reported in accordance with the provisions of this rule.

(8) Any person or company that intentionally uses a certificate of exemption in violation of its intended purpose shall, in addition to the actual sales, use and/or lodgings tax liability due, be subject to a civil penalty levied by the Department in an amount of not less than two-thousand dollars ($2,000) or two times any state and local sales, use and/or lodgings tax due for the transactions, whichever is greater, and based on the person or company's willful misuse of the certificate of exemption, may be barred from the use of any certificate of exemption for up to two years.

(9) The Department, upon approving an application for a sales and use tax certificate of exemption, will provide the applicant with a Form STE-1 containing the following information:

(a) Certificate holder's exemption number,

(b) Restrictions, if any, to the scope of the certificate holder's exempt status,

(c) Nature of the certificate holder's business,

(d) Statement of the duties and responsibilities of the vendor to whom a certificate is provided by the holder,

(e) Statement, to be declared by the certificate holder under penalties of false swearing, as to the validity of the exemption claim,

(f) Certificate holder's name and address,

(g) Date of approval or issuance by the Department, and

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(h) Signature of approval by the Department.

(10) At the time of providing a copy of a Form STE-1 to a vendor from whom a tax-exempt purchase is being made, the following information shall be provided by the certificate holder on the certificate copy which the holder gives to the vendor:

(a) Name and address of the vendor to whom the certificate copy is provided,

(b) Date the certificate is provided,

(c) Basis for the certificate holder's exemption claim, and

(d) Signature and title of the authorized representative for the certificate holder.

(11) Certificate holders regularly engaged in making tax exempt purchases of the kind and nature for which the Form STE-1 has been issued may furnish a properly executed certificate to the seller or lodgings provider specifying that all tangible personal property or lodgings subsequently purchased will be for the purpose shown on the certificate and thus be relieved of the burden of executing a separate certificate for each individual tax exempt purchase as long as there is no change in the character of their operations and the tangible personal property or lodgings purchased is of the kind usually purchased for the purpose indicated.

(12) Certificate holders must maintain a list of all vendors to whom they furnish a copy of their exemption certificate. This list should be retained in their records available for inspection by the Department during regular business hours and should provide the name, address, and type of business of each vendor to whom a copy of the certificate has been furnished.

(13) Certificate holders must return their certificate to the Department if the business for which the certificate was issued is closed.

(14) Certificate holders must notify the Department immediately in writing of any change in name or address.

(15) Sales of tangible personal property to any person, firm, or corporation not required to have a sales tax license are subject to sales or use tax until the contrary is established. The burden of proof that a sale is exempt is upon the person making the sale unless the seller takes from the purchaser a properly executed Form STE-1. Any such sale for which an exemption has been claimed but which is not supported by a Form STE-1 may be deemed a sale at retail by the Department and the seller held liable for the tax thereon. (Sections 40-2A-7(a)(5), 40-23-31 and 40-23-120, Code of Alabama 1975) (Effective February 10, 2016, amended August 11, 2016)

810-6-5-.02.02. Informational Report for Entities Having a Statutory Exemption from the Payment of Sales, Use, and Lodgings Taxes.

(1) The term "state sales tax" as used in this rule shall mean the privilege or license tax levied in Section 40-23-2, Code of Alabama 1975, upon the sale of tangible personal property in Alabama.

(2) The term "state use tax" as used in this rule shall mean the excise tax levied in Sections 40-23-61 and 40-23-63, Code of Alabama 1975, upon the storage, use, or other consumption of tangible personal property in Alabama.

(3) The term "state lodgings tax" as used in this rule shall mean the transient occupancy tax levied in Section 40-26-1, Code of Alabama 1975, upon all charges made for the use of rooms, lodgings, or other accommodations in Alabama.

(4) Persons or companies, including but not limited to those cited in Title 40, Chapter 9, other than governmental entities, which have a statutory exemption from the payment of Alabama sales, use, or lodgings taxes, shall be required to obtain a sales and use tax certificate of exemption to be renewed on an annual basis by applying for same on a form provided by the Department. Upon receipt of a properly completed application and approval of same by the Department, the applicant will be issued a state sales and use tax certificate of exemption (Form STE-1) which can be copied, completed, and provided to vendors as documentation for tax-exempt purchases. A form STE-1 will not be issued to persons, firms, or corporations who have a sales tax license issued pursuant to Section 40-23-6, Code of Alabama 1975. (See Rule 810-6-5-.02.01, entitled *State Sales and Use Tax Certificate of Exemption for Entities Having a Statutory Exemption from the Payment of Sales, Use and Lodgings Taxes*.)

(5) A certificate of exemption shall be valid for one year from the date of issuance and shall be renewed annually each subsequent year before the end of the month in which the certificate expires. Any person or company that fails to obtain or renew a certificate of exemption prior to its expiration will no longer be allowed to make tax exempt purchases or be provided tax-exempt rooms, lodgings or other accommodations until such time as the application for renewal is made, and the certificate is reinstated.

(6) All persons or companies required to obtain a certificate of exemption as described herein, shall be required to file an informational report with the Department.

(a) Such informational reports shall be a prerequisite for the renewal of certificates of exemption.

(b) Any person or company that does not comply with the reporting requirements may be barred from the use of any certificate of exemption until such time as the required informational report is filed with the Department, not to exceed six months for the first offense and not to exceed one year for the second offense. On the third offense, such

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810-6-5-.02.02. (Continued)

person or company shall be barred from the use of any certificate of exemption until such time as the person or company is authorized to obtain a certificate of exemption pursuant to a joint resolution by the Alabama legislature. Pursuant to this provision, such person or company will not be able to renew the certificate until the time period for which they are barred from such use has expired. However, this provision dos not void any properly issued certificate during the period for which it was issued.

(7) The Department may assess any person or company with state and local sales, use, and lodgings tax for any transaction conducted with a certificate of exemption not properly accounted for and reported in accordance with the provisions of this rule.

(8) Any person or company required to file an informational report as a prerequisite for the renewal of a certificate of exemption shall prepare and forward to the Department, within the time prescribed, the Report of Exempt Purchases for the fiscal year (October 1 through September 30) using forms prescribed by the Department.

(9) For persons or companies having a Certificate of Exemption issued by the Department effective on or after January 1, 2016, and required to meet the filing requirement, the first report required to be filed will be for the fiscal year ended September 30, 2017.

(a) Thereafter, informational reports will be required to be filed by October 31, 2021, and each quadrennial October 31st thereafter for the prior year period from October 1 through September 30. The Report of Exempt Purchases shall require the following information:

1. Exemption certificate number, federal employer identification number, legal name, trade or business name, and complete address,

2. Fiscal year covered by the report (October 1 through September 30),

3. Whether the certificate holder is a for-profit or non-profit entity,

4. Certificate holders NTEE (National Taxonomy of Exempt Entities) Code on file with the IRS, or equivalent if for-profit,

5. Revenue reported on line 12 of IRS Form 990, Return of Organization Exempt from Income Tax, if certificate holder is a non-profit entity required to file Form 990, or total gross receipts, as reported on federal income tax return, times the Alabama apportionment factor if certificate holder is a for profit entity. For-profit entities not required to complete an unconsolidated federal income tax return or Alabama apportionment schedule must prepare the appropriate pro-forma return and/or schedule for this calculation. If a certificate holder is a non-profit entity and is not required to file Form 990, such entity shall disclose its gross receipts for its most recent accounting year,

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6. Expenses reported on line 18 of IRS Form 990, Return or Organization Exempt from Income Tax, if certificate holder is a non-profit entity required to file Form 990, or total expenditures, as reported on federal income tax return, times the Alabama apportionment factor if certificate holder is a for profit entity. For-profit entities not required to complete an unconsolidated federal income tax return or Alabama apportionment schedule must prepare the appropriate pro-forma return and/or schedule for this calculation. If the certificate holder is a non-profit entity and is not required to file Form 990, such entity shall disclose its total expenditures for its most recent accounting period,

7. A breakdown, by applicable tax rate, of the total purchase price of tangible personal property purchased or consumed in Alabama during the tax reporting period for which the exemption certificate was valid,

8. Total amount of charges resulting from the use of rooms, lodgings, or other accommodations in Alabama for which the exemption certificate was used to obtain tax-exempt lodgings, and

9. Signature, printed name, title, telephone number of certificate holder or certificate holder's duly authorized representative and the date signed.

(10) Informational reports shall be filed electronically through the Department's electronic filing system, My Alabama Taxes. (Sections 40-2A-7(a)(5), 40-23-31 and 40-23-120, Code of Alabama 1975, effective June 4, 2016.)

810-6-5-.03. Contractors Gross Receipts Tax.

(1) Code of Alabama 1975, Section 40-23-50, levies a privilege or license tax upon every person, firm, or corporation engaged or continuing within this state in the business of contracting to construct, reconstruct, or build any public highway, road, bridge, or street, an amount equal to 5 percent of the gross receipts of any such business.

(2) The term "reconstruct" as used in this rule means to construct again or repair an existing public highway, road, bridge, street, or tunnel.

(3) The contractors gross receipts tax referenced in (1) above applies to any contract between a contractor or contract assignee and the State of Alabama or between a contractor and any city, town, or county if the State of Alabama is a joint party with the city, town, or county to construct, reconstruct, or build any public highway, road, bridge, street, or tunnel and includes but is not limited to contracts for:

(a) Earthwork,

(b) Bases,

(Continued)

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(c) Surfacing,

(d) Pavements,

(e) Structures,

(f) Incidentals, which become a part of the highway, road, bridge, street, or tunnel,

(g) Traffic control devices,

(h) Highway lighting,

(i) Materials,

(j) Bridge scouring and painting,

(k) Installation or repair of overhead signs and/or structure footings, and

(l) Sign rehabilitation.

(4) The contractors gross receipts tax referenced in (1) above applies to all payments made to a contractor or contract assignee by the State of Alabama whether the payments are made pursuant to a contract, purchase order, supplemental agreement, change request or other arrangement to construct, reconstruct, or build any public highway, road, bridge, street, or tunnel.

(5) The contractors gross receipts tax referenced in (1) above does not apply to the following:

(a) Contracts between a contractor or contract assignee and the federal government,

(b) That portion of the gross receipts received by the contractor or contract assignee constituting additional amounts paid to the contractor or contract assignee under contractual escalation provisions allowing for an increase in the contract price for escalations in the cost of fuels, materials, and/or labor,

(c) Gross receipts received by a contractor or contract assignee from contracts with the State of Alabama to construct, reconstruct, or build rest areas or welcome stations,

(d) Contracts between a contractor or contract assignee and any city, town, or county when the State of Alabama is not a party to the contract, and

(Continued)

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(e) Contracts that do not include or require the construction, reconstruction, or building of a public highway, road, bridge, street, or tunnel. (Misener Marine Construction, Inc. v. Eagerton, 423 So.2d 161 (1982))

(6) The contractors gross receipts tax shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which a payment subject to this tax is received by the contractor or contract assignee. Every person, firm, or corporation on whom the tax is levied shall prepare and forward to the Department of Revenue within the time fixed and prescribed by law, a contractors gross receipts tax return for each calendar month and shall compute the tax due and shall pay to the Department of Revenue the amount of tax shown to be due. Contractors gross receipts tax returns shall require the following information:

(a) Taxpayer's contractors gross receipts tax account number and legal name,

(b) Period covered by the return and due date of the return,

(c) A project schedule showing each taxable project number for which a payment was received by the taxpayer from the Alabama Transportation Department, the total amounts of the payments received on each taxable project, any escalation payments included in the gross amounts received, and the taxable amount received for each taxable project,

(d) Total taxable receipts from all contracts, purchase orders, supplemental agreements, and change requests,

(e) Gross tax on total taxable receipts,

(f) Applicable discount for prompt payment,

(g) Penalties and interest due, if applicable,

(h) Credits claimed, if any,

(i) Total amount due, and

(j) Total amount remitted.

(Adopted September 20, 1963, amended April 12, 1973, amended October 29, 1976, readopted through APA effective October 1, 1982, amended January 10, 1985, amended July 7, 1989, amended April 1, 1996, amended February 23, 2006)

810-6-5-.03.01. Discounts Allowed on Payments of Contractors Gross Receipts Tax Made Before Delinquency.

(1) Section 40-23-50(c), Code of Alabama 1975, provides that the sales tax discount authorized by Section 40-23-36 shall also apply to contractors gross receipts taxes due and payable to the State of Alabama.

(2) Executive Order Number 2 issued by Governor John Patterson on January 8, 1960, authorized, empowered, and directed the Department of Revenue to allow a discount for contractors gross receipts taxes due and payable to the State of Alabama not to exceed five percent of the first one hundred dollars ($100) of contractors gross receipts taxes levied and two percent of the contractors gross receipts taxes levied over one hundred ($100) per month. This discount was applicable to taxes due and payable on payments made to contractors by the Alabama Department of Transportation on or after October 1, 1959 through May 31, 1996 for taxes paid before delinquency.

(3) Executive Order Number 20 issued by Governor Fob James, Jr. on May 31, 1996, authorized, empowered, and directed the Department of Revenue to allow a discount for contractors gross receipts taxes due and payable to the State of Alabama. This discount could not exceed five percent of the first one hundred dollars ($100) of contractors gross receipts taxes levied and two percent of the contractors gross receipts taxes levied over one hundred dollars ($100) and, further, was limited to a total maximum discount of nine hundred dollars ($900) per month to any contractor and limited to that amount for each contractor regardless of the number of projects upon which that contractor was required to report and pay the contractors gross receipts tax. No discount was authorized or allowed upon any taxes which were not paid before delinquency. This discount was applicable to taxes due and payable on payments made to contractors by the Alabama Department of Transportation on or after June 1, 1996 through April 30, 2001.

(4) Executive Order Number 53 issued by Governor Don Siegelman on May 22, 2001, authorizes, empowers, and directs the Department of Revenue to allow a discount for contractors gross receipts taxes due and payable to the State of Alabama. This discount shall not exceed five percent of the first one hundred dollars ($100) of contractors gross receipts taxes levied and two percent of the contractors gross receipts taxes levied over one hundred dollars ($100) and, further, is limited to a total maximum discount of four hundred dollars ($400) per month to any contractor and shall be limited to that amount for each contractor regardless of the number of projects upon which that contractor must report and pay the contractors gross receipts tax. No discount is authorized or allowed upon any taxes which are not paid before delinquency. This discount is applicable to taxes due and payable on payments made to contractors by the Alabama Department of Transportation on or after May 1, 2001. (Adopted through APA effective October 8, 1996, amended October 4, 2001)

810-6-5-.04. Credit for Taxes in Other States.

(1) Code of Alabama 1975, Section 40-27-1, Article V. 1, provides that "each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision."

(2) Notwithstanding Code of Alabama 1975, Sections 40-23-65 and 40-23-106, credit for legally imposed sales and use taxes paid to any other state or its subdivisions will be allowed against Alabama use tax due even if that state does not allow credit for sales and use taxes paid to Alabama or its subdivisions.

(3) The total credit allowed cannot exceed the taxes due the state of Alabama or its subdivisions. Any amount of tax paid to another state or its subdivisions which exceeds the amount of tax due Alabama with respect to the same property may then be credited against any local taxes due with respect to the same property. If the legally imposed taxes paid to another state or its subdivisions exceed the taxes due Alabama and its subdivisions, no further credit shall be allowed. The excess of taxes paid on a purchase cannot be credited against taxes due Alabama and its subdivisions on another purchase.
No credit will be allowed for taxes paid in error which were not legally due another state or its subdivisions.

(4) The following example is provided to illustrate how credit shall be allowed for legally imposed taxes paid to other states and their subdivisions:

Purchase Price of Item A:	$4,000 (no tax paid to another state or its subdivisions)
Purchase Price of Item B:	$6,000 (7% total tax paid to another state and its subdivisions)
Total Purchases:	$10,000

Assume that the local use taxes levied by Alabama subdivisions and applicable to Items A and B total 2 percent. (Local tax rates in Alabama vary.)

State of Alabama Use Tax Due on Items A and B:	$400 (4% x $10,000)
Use Tax Due Subdivisions of Alabama on Items A and B:	$200 (2% x $10,000)
Maximum Available Credit:	$420 (7% x $6,000)
Alabama State Use Tax Eligible for Offset:	$240 (4% x $6,000)
Local Use Taxes of Alabama Subdivisions Eligible for Offset:	$120 (2% x $6,000)

(Continued)

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Actual Allowable Credit (Total State
and Local Taxes Eligible for Offset): $360

State Use Tax Due Alabama after allowance of allowable credit:
$160 ([4% x $10,000] less $240 = $160)

Local Use Tax Due Alabama Subdivisions after allowance for allowable credit:
$ 80 ([2% x $10,000] less $120 = $ 80)

(a) In this example, 4 percent Alabama use tax totaling $400 is due on the total purchases of $10,000. The taxpayer is entitled to credit for up to $420 in legally imposed taxes paid to another state and its subdivisions with respect to Item B; however, the actual allowable credit cannot exceed total taxes due Alabama and its subdivisions with respect to Item B.

(b) The taxpayer must pay Alabama state use tax of $160 ($400 tax due on all purchases less credit of $240 for taxes paid to another state and its subdivisions since the credit can only be applied to Alabama tax due on Item B). The balance of $180 shall be applied against local use taxes due Alabama subdivisions with respect to Item B.

(c) The taxpayer must pay local use tax to Alabama subdivisions of $80 ($200 local tax due on all purchases less credit for $120. The $60 in taxes paid to another state and its subdivisions with respect to Item B in excess of total taxes due Alabama and its subdivisions on Item B cannot be used as a credit against taxes due Alabama and its subdivisions with respect to Item A). (Section 40-27-1, Article v.1) (Adopted March 9, 1961, amended January 20, 1966, amended February 6, 1968, amended May 27, 1968, amended June 5, 1969, amended January 26, 1970, amended August 16, 1974, amended June 12, 1978, amended August 18, 1978, amended November 3, 1980, readopted through APA effective October 1, 1982, amended February 23, 1988, amended April 1, 1996, amended March 10, 1998)

810-6-5-.04.01. Reciprocity for Municipal and County Sales, Gross Receipts, Use, and Rental Taxes.

(1) The definition of the term "gross receipts tax in the nature of a sales tax" as used in this rule shall be the same as the definition contained in Section 40-2A-3(8), Code of Alabama 1975.

(2) If a sales tax, gross receipts tax in the nature of a sales tax, use tax, or rental tax levied by or on behalf of an Alabama municipality is paid under a requirement of law, the property which is the subject of the tax, when imported for use, storage, or consumption into another Alabama municipality, is not subject to the sales tax, use tax, or rental tax, regardless of rate, which is required by the second municipality under any municipal ordinance or any act of the Legislature. (Section 40-23-2.1(a), Code of Alabama 1975)

(3) If a sales tax, gross receipts tax in the nature of a sales tax, use tax, or rental tax levied by or on behalf of an Alabama county is paid under a requirement of law, the property which is the subject of the tax, when imported for use, storage, or consumption into another Alabama county, is not subject to the sales tax, use tax, or rental tax, regardless of rate, which is required by the second county under any county ordinance, resolution, or any act of the Legislature. (Section 40-23-2.1(b))

(4) Reciprocity for local sales tax, gross receipts tax in the nature of a sales tax, use tax, and rental tax applies on a "city to city" and "county to county" basis. Payment of a municipal sales, gross receipts, use, or rental tax will not preclude payment of a county sales, gross receipts, use, or rental tax nor will payment of a county sales, gross receipts, use, or rental tax preclude payment of a municipal sales, gross receipts, use, or rental tax. (Section 40-23-2.1(c))

(5) The reciprocity outlined in (2),(3), and (4) above applies to all municipalities and counties of the State of Alabama.

(6) When a county or municipal sales tax, gross receipts tax in the nature of a sales tax, use tax, or rental tax is paid to a county or municipality in good faith based on a reasonable interpretation of the ordinance, resolution, or act levying the tax but not under a requirement of law; any refund of the erroneously paid taxes to the taxpayer by the improper locality and any collection of the taxes due from the taxpayer by the proper locality shall be made in accordance with the provisions of Section 40-23-2.1(c) and, unless otherwise provided in Section 40-23-2.1(c), the provisions of Chapter 2A of Title 40. Petitions for refund of any portion of county or municipal tax erroneously paid to an improper county or municipality which is in excess of the correct amount of tax due the proper county or municipality shall be filed in accordance with the provisions contained in Section 40-2A-7(c) including, but not limited to, the requirement for joint petitions for refund when the tax erroneously paid by the seller was collected from the purchaser. (Section 40-23-2.1(c)) (Adopted February 23, 1988, amended October 20, 1998)

810-6-5-.04.02 Seller's Responsibility to Collect County and Municipal Sales and Use Taxes.

(1) Scope. The provisions of this rule are limited to describing a business's obligation to collect and remit a local jurisdiction's sales or use tax, whether or not that business has a physical location in the state. The provisions of this rule have no bearing on a business's other local tax or fee obligations including specifically a local jurisdiction's business license tax. An obligation to collect and remit a local jurisdiction's sales or use tax under the provisions of this rule does not obligate the business to file a return for or pay any other local tax or fee. Likewise, this rule does not address sourcing issues associated with the determination of where tax is due or in which local jurisdiction tax is due. Sourcing issues are controlled by the passage of title from seller to customer and are not addressed herein. The provisions of this rule do not apply to the sale of automobiles, motorcycles, trucks, truck trailers or semitrailers in transactions governed by Section 40-23-2(4) or 40-23-102, Code of Alabama 1975, and Rule 810-6-3-.42.02. (Nonresidents, Sales to), 810-6-3-.42.03. (Sales of Certain Automotive Vehicles to Nonresidents for First Use and Registration or Titling Outside Alabama), or 810-6-3-.03.02. (Automotive Vehicles, Certificate of Exemption/Out-Of-State Delivery Form).

(2) Under the provisions of Sections 11-51-200 and 11-51-202, Code of Alabama 1975, as amended, the governing body of any municipality in the state may provide by ordinance for the levy of municipal sales and use taxes, parallel to the state levy of sales and use taxes. Under the provisions of Sections 11-3-11.2 and 40-12-4, Code of Alabama 1975, as amended, or any general, special or local enabling act of the Legislature, the governing body of any county in the state may provide for the levy of county sales and use taxes, parallel to the state levy of sales and use tax except in limited instances where a contrary local sales and use tax act was in effect on February 25, 1997. As used in this rule, the term "local jurisdiction" means a municipality, special tax district, police jurisdiction or county in Alabama.

(3) The threshold applicable for determining whether a seller is obligated to collect and remit the state sales or use tax associated with interstate transactions shall also be applied by sellers to determine whether the seller is obligated to collect and remit local sales or use tax by examining the contacts the seller has within each local jurisdiction where local sales or use tax is due. Except as described in the following paragraphs, any seller responsible for collecting and remitting state sales or use tax with respect to a particular retail sales transaction or taxable use must collect and remit the corresponding sales or use tax for the appropriate local jurisdiction(s) with respect to the transaction or use. A seller may only avoid the responsibility for collecting and remitting a local jurisdiction's sales or use tax when the seller lacks physical presence within the local jurisdiction that would be sufficient to create an obligation to collect and remit state sales or use tax if the sales transaction or use in question was an interstate transaction.

(4) For purposes of determining whether the seller lacks sufficient physical presence within the local jurisdiction to create an obligation to collect and remit the local jurisdiction's sales or use tax, the seller should refer to and must apply the provisions of Rule 810-6-2-.90.01 entitled "Seller's Responsibility to Collect and Pay State Sales Tax and Seller's Use Tax."

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810-6-5-.04.02. (Continued)

(5) The following are intended to provide examples of the type of activity that would or would not establish a taxable presence with a local jurisdiction. These examples do not address every business activity conducted by a seller that could establish a taxable presence and impose on the seller the requirement to collect the local tax.

(a) EXAMPLES:

1. Retailer A, a furniture store with its location in the City of Montgomery (Montgomery County), makes sales to customers in Auburn (Lee County) and delivers the furniture sold to Auburn customers into Auburn using its own delivery trucks and its own employees. Because Retailer A has a physical presence (delivery trucks and employees) in Auburn (Lee County) it is responsible for collecting and remitting the Auburn and Lee County sales taxes on its sales delivered into those localities.

2. Retailer B, a sporting goods store with its location in the City of Birmingham (Jefferson County), makes sales to customers in Gulf Shores (Baldwin County) and delivers the goods sold to Gulf Shores customers into Gulf Shores via UPS, a common carrier. Retailer B has no other contact with Gulf Shores or Baldwin County. Because Retailer B lacks a physical presence in Gulf Shores (Baldwin County) it is not responsible for collecting and remitting the Gulf Shores or Baldwin County sales tax on its sales delivered into those localities. However, the customer would be responsible for remitting any applicable use tax to Gulf Shores and Baldwin County.

3. Retailer C, a janitorial supply store with its location in the City of Mobile (Mobile County) and with salesmen soliciting sales in the City of Huntsville (Madison County), makes sales to Huntsville customers and delivers the supplies sold to Huntsville customers into Huntsville via UPS, a common carrier. Because Retailer C has a physical presence (salesmen) in Huntsville (Madison County), it is responsible for collecting and remitting the Huntsville and Madison County sales taxes on its sales delivered into those localities.

Note: State sales tax would still have to be collected and remitted in all examples.

(6) This rule shall apply to all transactions occurring on or after January 1, 2014. (Sections 40-2A-7(a)(5), 40-23-2, 40-23-68, 11-51-180, 11-51-200, Code of Alabama 1975. Adopted through APA effective November 29, 2013.)

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 are incorporated by reference herein.

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(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)

(4) 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)

(5) 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

(Continued)

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

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

(6) 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.

(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))

(c) The leasing or rental of oxygen or durable medical equipment by a 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) 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) 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

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total gross proceeds from the lease of tangible personal property in this state are subject to rental tax.

(9) 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) 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) 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) 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) 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) Any person, who claims the rental tax exemption in Section 40-12-223(4) 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.

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810-6-5-.09. (Continued)

(15) 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) The rental tax shall be administered and collected in accordance with the uniform procedures set forth in Title 40 and the provisions of Section 40-12-224. These sections do not provide for a discount for prompt payment of rental tax. (Sections 40-2A-7(a)(5), Act 2014-453, 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) (Adopted June 18, 1971, amended April 12, 1973, readopted through APA effective October 1, 1982, amended June 5, 1992, amended October 12, 1993, amended April 1, 1996, amended October 20, 1998, amended December 26, 2001, amended December 4, 2014)

810-6-5-.09.01. Leasing and Rental of Tangible Personal Property – Rule 2.

(1) Section 40-12-222, Code of Alabama 1975, as amended, levies a privilege or license tax upon every person, firm or corporation engaged or continuing within this state in the business of leasing or renting tangible personal property an amount equal to four percent of the gross proceeds of any such business, except the rate of two percent shall apply to the gross proceeds derived by the lessor for the leasing or rental of linens and garments, and one and one-half percent shall apply to the gross proceeds derived by the lessor for the leasing or rental of automotive vehicles, truck trailers, semitrailers, and house trailers.

(2) Section 40-12-220(4) of the rental tax law defines gross proceeds as the value proceeding or accruing from the leasing or rental of tangible personal property, including any license or privilege taxes passed on to a lessee by a lessor, without any deduction on account of the cost of the property so leased or rented, the cost of materials used, labor or service cost, interest paid, or any other expense whatsoever, and without any deductions on account of loss, and shall also include on the part of any person claiming exemption under subdivision (4) of Section 40-12-223 an amount equal to the amount of rental paid on any tangible personal property acquired under such exemption and thereafter diverted to the use of such person.

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810-6-5-.09.01. (Continued)

(3) The gross proceeds derived by the lessor of tangible personal property for services provided which are incidental to the lease of the property and embodied in the lease agreement are subject to rental tax, even if the charge for such service is separately stated. When, under a separate optional agreement, the lessor of tangible personal property performs independent services that are separate, distinct, and not incidental to the leasing of the property, the gross proceeds from those independent services are not derived from the lease and are not subject to rental tax. To be excluded from the amount subject to rental tax, the charges for the independent services must be separately stated.

(a) When a lessor engaged in leasing or renting tangible personal property requires maintenance of the item leased or rented as part of the leasing or rental contract, the gross proceeds derived therefrom, including charges for maintenance, will be subject to the tax. When there is a separate, optional contract for maintenance only, the rental or leasing tax will not apply to the gross proceeds derived therefrom.

(b) When a lessor engaged in leasing or renting tangible personal property is required to deliver and pick-up the leased property as part of the leasing or rental contract, the gross proceeds derived therefrom, including the delivery and pick-up charges, will be subject to the tax. When there is a separate, optional agreement for delivery and pick-up of the leased property, the rental tax will not apply to the gross proceeds derived therefrom.

(c) When a lessor engaged in leasing or renting tangible personal property is required to provide installation or setup services as part of the leasing or rental contract, the gross proceeds derived therefrom, including charges for the installation or setup, will be subject to the tax. When there is a separate, optional agreement for installation or setup of the leased property, the rental tax will not apply to the gross proceeds derived therefrom. (Thyssenkrupp Safeway, Inc. v. State of Alabama (Admin. Law Div. Docket No. S. 08-401, Final Order entered March 18, 2009))

(4) The one and one-half percent recovery fee that may be included in the rental agreement and collected by the lessor on the gross rental receipts from the rental of heavy equipment property under the provisions of Act 2009-583 is not subject to rental tax. The total amount of the recovery fee shall be retained by the lessor for the purpose of paying personal property taxes levied by all taxing jurisdictions against the heavy equipment property. For the purpose of this section, “heavy equipment property” includes self-propelled, self-powered, or pull-type equipment, including farm equipment, that is intended to be used for agricultural, construction, industrial, mining, or forestry uses, and equipment that is described under Industry Code 532412 of the 2002 North American Industry Classification System. To be excluded from the computation of rental tax, the recovery fee must be separately stated. The recovery fee shall not apply to the leasing or renting of heavy equipment to the State of Alabama, any municipality, or any county.

(5) The Court of Civil Appeals in the Steel City Crane Rental, Inc., and Osborne and Company, Inc., decision stated that the lease or rental of cranes with operators did not constitute the leasing of tangible personal property because the lessee did not have

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810-6-5-.09.01. (Continued)

possession or control of the cranes and, therefore, the gross proceeds derived therefrom are not subject to the leasing or rental tax. For tax to be due, the lessee must have possession or use of the tangible personal property. The court further stated that it is fundamental to common sense that before a person can exercise possession or use of property, he must have control thereof and the power to exercise dominion over it. Briefly, the arrangement constitutes a contract for the performance of a particular job or jobs and it is not a lease or rental.

(6) If a lessor of tangible personal property other than cranes is operating in the same manner as the taxpayer referred to above, it must be determined if there is a lease of tangible personal property or a contract to do a particular job, before assessing the tax. (Sections 40-12-220/227) (Sections 40-2A-7(a)(5), 40-12-220 through 40-12-227 and 8-25A-1, Code of Alabama 1975) (Adopted July 2, 1975, amended June 12, 1978, readopted through APA effective October 1, 1982, amended October 1, 2010)

810-6-5-.11. <u>Nonresident Vendor's Liability for Use Tax on Deliveries Made Outside Alabama</u>.

(1) A nonresident vendor making a sale to a resident of Alabama is not required to collect Alabama use tax on goods delivered to the buyer at the place of business of the vendor located outside of Alabama.

(2) Nothing herein is to be construed as relieving a nonresident vendor of responsibility for collecting and remitting Alabama use tax on goods transported by him into Alabama or caused to be transported into Alabama by such vendor by common carrier, contract hauler, or the private transportation facilities of the vendor. (Readopted through APA effective October 1, 1982)

810-6-5-.11.05. Casual Sales Tax and Use Tax on Automotive Vehicles, Motorboats, Truck Trailers, Trailers, Semitrailers, Travel Trailers, and Manufactured Homes.

(1) The definition of the term "manufactured home" set forth in Code of Alabama 1975, Section 40-12-255(n) is incorporated by reference herein.

(2) The definitions of terms set forth in Code of Alabama 1975, Section 40-23-100, are incorporated by reference herein.

(3) The taxes levied in Code of Alabama 1975, Sections 40-23-101(a) and 40-23-102(a) must be collected by the county licensing official before the automotive vehicle, motorboat, truck trailer, trailer, semitrailer, or travel trailer is registered or licensed.

(4) Licensed dealers in Alabama must collect sales tax on their retail sales of automotive vehicles, motorboats, truck trailers, trailers, semitrailers, and travel trailers and must furnish each customer with documentation on the bill of sale showing the sales price and the amounts and rates of any state, county, and city sales taxes collected at the time of purchase. County and city sales taxes collected by said licensed dealers must be identified as to which specific county and city taxes are being collected. (Section 40-23-104(b))

(5) The county licensing official must report and pay the county and city taxes collected pursuant to Sections 40-23-101(c) and 40-23-102(c) directly to the appropriate county or city taxing authority on forms provided by said local taxing authority. (Section 40-23-104(g))

(6) The taxes levied in Code of Alabama 1975, Sections 40-23-101(b) and 40-23-102(b) must be collected by the county licensing official of the county in which the manufactured home will be initially sited before the decal, which is provided for by Section 40-7-1, is issued to evidence payment of the ad valorem tax due on a manufactured home in Alabama and before any homestead exemption is granted for a manufactured home. In those instances where an annual registration fee is due in lieu of ad valorem tax, the taxes levied in Sections 40-23-101(b) and 40-23-102(b) must be collected by the county licensing official before the decal, which is provided for by Section 40-12-255(a), is issued to evidence payment of the annual registration fee. When there has been no change of ownership of a manufactured home since a prior decal was issued; the new decal, whether that decal is provided for by Section 40-7-1 or Section 40-12-255(a), can be issued without payment of the sales of use tax. (Section 40-23-104(f))

(7) Persons, firms, or corporations that purchase automotive vehicles which are taxable pursuant to Section 40-23-102, Code of Alabama 1975, must pay the proper tax to the county licensing official. If the vehicle was used in another state and proper sales or use tax was paid to the other state, no additional tax is due. When registering a vehicle pursuant to the International Registration Plan provisions of Section 32-6-56, Code of Alabama 1975, the county licensing official shall accept the vehicle's cab card as evidence that proper tax was paid provided that the cab card was issued at least 90 days prior to the

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vehicle's use and registration in Alabama. These persons, firms, and corporations, in turn, are not required to report and pay the state consumers use tax levied by Section 40-23-61(c), Code of Alabama 1975, on these same purchases. They are required, however, to report and pay state consumers use tax on out-of-state purchases of power shovels, drag lines, cranes, or any other automotive vehicles not required to be registered or licensed with the county probate judge.

(8) Persons, firms, or corporations who have been issued direct pay permits pursuant to Section 40-23-31, Code of Alabama 1975, must remit the taxes levied pursuant to Sections 40-23-101 and 102, Code of Alabama 1975, to the county licensing official. Accordingly, sales or use tax on purchases by permit holders of automotive vehicles required to be registered or licensed with the county probate judge when such vehicles are purchased from out-of-state dealers, both licensed and unlicensed, or from unlicensed in-state dealers must be remitted to the county licensing official. Tax on such purchases should not be reported by the permit holder under their direct pay permit account or state consumers use tax account. Permit holders must continue to report and pay state consumers use tax directly to the Revenue Department on purchases from out-of-state dealers of automotive vehicles not required to be registered or licensed with the county probate judge. Automotive vehicles purchased by direct pay permit holders from in-state licensed dealers should be purchased tax free and the sales tax reported directly to the Revenue Department by the permit holder under the direct pay permit account. (Sections 40-2A-7(a)(5), 40-2A-7(a)(1), 40-23-9, 40-23-100, et seq., 40-23-111, 40-23-31 and 40-23-83) (Adopted August 10, 1982, readopted through APA effective October 1, 1982, amended April 26, 1990, amended October 4, 1994, amended July 9, 2004)

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

(1) The term "lodgings tax" as used in this rule shall mean the state tax levied in Section 40-26-1(a), Code of Alabama 1975, and county and municipal taxes which parallel the state tax levy.

(2) The definition of the term "person" as used in this rule shall be the same as the definition contained in Section 40-2A-3(13), Code of Alabama 1975.

(3) The term "transient" as used in this rule means any person to whom rooms, lodgings, or other accommodations are provided for a period of less than 180 continuous days.

(4) Except as noted, lodgings tax applies to all charges made for the use of rooms, lodgings, or other accommodations, including charges for personal property used or services furnished in the rooms, lodgings, or other accommodations, by every person who is engaged in the business of renting rooms or lodgings or furnishing accommodations to

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810-6-5-.13. (Continued)

transients. The tax applies regardless of whether the person occupying such rooms or lodgings or receiving such accommodations is a resident or nonresident of the area in which such rooms or lodgings are located or in which such accommodations are furnished.

(5) The lodgings tax shall be collected by all persons engaged in the business of renting or furnishing rooms or other accommodations in any hotel, motel, rooming house, apartment house, lodge, inn, tourist cabin, tourist court, tourist home, camp, trailer court, marina, convention center, or any other place where rooms, apartments, cabins, sleeping accommodations, mobile home accommodations, recreational trailer parking accommodations, boat docking accommodations, or other accommodations are made available to travelers, tourists, or other transients.

(6) Where a separate charge is made for personal property furnished in rooms or other lodgings in addition to the charge for the use of the rooms or other lodgings, such separate and additional charge is subject to the lodgings tax.

(7) Where a separate charge is made for maid, porter or janitorial services furnished in rooms or other lodgings in addition to the charge for the use of the rooms or lodgings, such separate and additional charge is subject to the lodgings tax. Charges for laundry, dry cleaning, and telephone services are not subject to the tax.

(8) Charges made for the use of ball rooms, dining rooms, club rooms, sample rooms, conference rooms, wedding chapels, or other space located on the premises of any place where rooms or other accommodations are offered for the use of travelers, tourists or other transients, are subject to the lodgings tax. The use by civic clubs or other similar organizations of banquet halls, ball rooms, or club rooms, regularly for weekly or monthly meetings will be deemed continuous occupancy of such rooms or halls by such clubs or organizations, and the taxability of the charges therefor will be determined in accordance with paragraph (11)(a) below.

(9) The state of Alabama, counties and incorporated municipalities of the state, and educational institutions and agencies of the state and the counties or incorporated municipalities of the state are not exempt from lodgings tax. Accordingly, charges for rooms, lodgings, or other accommodations furnished to these entities are taxable whether billed directly to, and paid for directly by, the entity or paid by employees of these entities with their own funds. (AGO, Graddick, June 4, 1981) (Section 40-26-1)

(10) Other states, counties and incorporated municipalities of other states, and educational institutions and agencies of other states and counties and incorporated municipalities of other states are not exempt from lodgings tax. Accordingly, charges for rooms, lodgings, or other accommodations furnished to these entities are taxable whether billed directly to, and paid for directly by, the entity or paid by employees of these entities with their own funds. (Section 40-26-1)

(11) Exemptions from the lodgings tax are as follows:

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(a) Charges for rooms, lodgings, or accommodations supplied for a period of 180 continuous days or more in any one place are exempt from state, county, and municipal lodgings tax. Prior to December 1, 2001, the tax did not apply to charges for rooms, lodgings, or accommodations supplied for a period of 30 continuous days or more in any one place.

(b) Effective January 1, 2009, charges for rooms, lodgings or accommodations made in connection with a state-certified production which meets the requirements of Section 41-7A-45, *Code of Alabama 1975*, as amended, shall be exempt from the state lodgings tax. When the qualified production company makes application for and receives written certification of the incentive award from the Alabama Film Office, the Department will issue the appropriate certificate of exemption. The lodgings tax exemption provided in Section 41-7A-45 applies only to state lodgings tax. The qualified production company must pay applicable local lodgings taxes. See Lodgings Tax Rule 810-16-1-.01 State Sales, Use, and Lodgings Tax Exemption for Qualified Production Companies.

(c) Charges for rooms, lodgings, or other accommodations furnished to the United States government, its departments, or its agencies are exempt from state, county, and municipal lodgings tax provided the charges are billed directly to the United States government and paid for by the United States government with government funds. The charges are exempt from lodgings tax when paid by credit card provided charges to the card are billed directly to, and paid directly by, the U.S. Government and are not billed to and paid by an employee who is reimbursed by the U.S. government. Charges for rooms, lodgings, or other accommodations furnished to federal employees in conjunction with their official duties are taxable when the federal employee pays the charges with his or her own funds or with a credit card and receives reimbursement from the United States government.

(d) Federal credit unions are exempt from state, county, and municipal lodgings tax. (12 U.S.C.A. '1768) This exemption applies to charges for rooms, lodgings, or other accommodations furnished to federal credit unions provided the charges are billed directly to the federal credit union and paid for by the federal credit union with the credit unions funds. The charges are exempt from lodgings tax when paid by credit card provided charges to the card are billed directly to, and paid directly by, the federal credit union and are not billed to and paid by an employee who is reimbursed by the federal credit union. Charges for rooms, lodgings, or other accommodations furnished to federal credit union employees in conjunction with their official duties are taxable when the credit union employee pays the charges with his or her own funds or with a credit card and receives reimbursement from the federal credit union.

(e) Certain foreign diplomats and consular officials are exempt from state, county, and municipal lodgings taxes pursuant to treaties and other diplomatic agreements with the United States. (U.S. Constitution, Article VI) See Sales, Use, and Lodgings Tax Rule 810-6-3-.24.01 entitled Foreign Diplomatic and Consular Officials.

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(f) The proceeds from the sale or resale of any vacation time-sharing lease plan are exempt from lodgings tax. (Section 34-27-65, Code of Alabama 1975)

(g) Charges for rooms, lodgings, or other accommodations furnished to entities that are exempted from the payment of any and all state, county, and municipal taxes by special act of the Legislature including, but not limited to, those entities enumerated in Section 40-9-12 are exempt from lodgings tax provided the charges are billed directly to the exempt entity and paid for by the exempt entity with the exempt entity's funds. The charges are exempt from lodgings tax when paid by credit card provided charges to the card are billed directly to, and paid directly by, the exempt entity and are not billed to and paid by an employee who is reimbursed by the exempt entity. Charges for rooms, lodgings, or other accommodations furnished to employees of the exempt entity in conjunction with their official duties are taxable when the employee pays the charges with his or her own funds or with a credit card and receives reimbursement from the exempt entity.

(h) Charges for certain rooms, lodgings, or accommodations supplied by camps, conference centers, or similar facilities are exempt from lodgings tax. See Lodgings Tax Rule 810-6-5-.21 entitled Lodgings and Programs Provided for Children, Students, or Members or Guests of Nonprofit Organizations by Camps, Conference Centers, and Similar Facilities.

(12) The lodgings tax does not apply to sales of tangible personal property which are subject to the Alabama sales tax. All of the supplies, furniture and fixtures used or consumed in operating such establishments as referenced in paragraph (4) are subject to the sales or use tax, whichever may apply, at the time of purchase for such use or consumption, including beds, bedding, carpets, shades, curtains, linens, uniforms, bathroom supplies, janitor supplies, fuel for heating and cooking, air conditioning equipment, etc.

(13) The lodgings tax shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax accrues. Every person, firm, or corporation on whom the lodgings tax is levied shall prepare and forward to the Department, within the time fixed and prescribed by law, a lodgings tax return for each calendar month using the Alabama Paperless Filing and Payment System as mandated by the Department and shall pay to the Department the amount of tax shown to be due. See Lodgings Tax Rule 810-6-5-.22 entitled Lodgings Tax Returns. (Sections 40-2A-7(a)(5), 40-26-1(b), 40-26-3, 40-26-19, Code of Alabama 1975 and Act No. 2001-975. Adopted September 8, 1955, amended November 15, 1955, readopted through APA effective October 1, 1982, amended October 20, 1998, amended April 29, 2002, amended February 23, 2006, amended January 10, 2012)

810-6-5-.14. Pipeline Company - Property Transfers.

(1) Property transferred from out of state into Alabama for use, storage, or consumption is assumed to have been purchased for such use, storage, or consumption in Alabama and is subject to the Alabama use tax.

(2) The Department of Revenue will allow credit to use tax liability for new and unused materials transferred out of Alabama which were purchased out of state and on which Alabama use tax has been paid.

(3) The Department will not consider used equipment and materials transferred into Alabama to be taxable where the taxpayer's records clearly show that the property was substantially used prior to the transfer and where there is no appearance of an attempt to evade the payment of the tax by such use and transfer.

(4) No allowance will be made for outgoing transfers of equipment and materials, either new or used, the sales of which were subject to the Alabama sales tax.

(5) In determining whether or not transferred property is subject to tax, the assumption will be that the property was purchased for use in Alabama and that Alabama tax has not been paid thereon. The company will be burdened with showing by its records that the transferred property was purchased for use outside of Alabama and was so used prior to its being transferred to Alabama. The assumption that the property was purchased for use in Alabama is overcome when it is shown that there has been a real and substantial use of the property outside of this state prior to its transfer. (Section 40-23-61) (Readopted through APA effective October 1, 1982)

810-6-5-.16. Churches and Other Religious Organizations and Institutions.

(1) Except as noted in paragraphs (2) and (3), religious organizations and institutions, including churches and church hospitals, are not exempt from the payment of sales or use taxes on their purchases of tangible personal property. Further, these organizations and institutions, when engaging in the business of selling tangible personal property at retail or operating a public place of amusement or entertainment, must comply with the provisions of the sales and use tax laws relative to collecting, reporting, and paying sales or use taxes. (Sections 40-23-2, 40-23-7, 40-23-61, and 40-23-68, Code of Alabama 1975)

(2) Printed or illustrated lessons, notes, and explanations purchased by churches or other religious organizations for distribution free of charge to pupils or students in Sunday schools, Bible classes, or other educational facilities established and maintained by churches or similar religious organizations are exempt from use tax. There is no corresponding exemption from sales tax. This use tax exemption does not apply to purchases which are not distributed in the manner enumerated above or to purchases made by individuals. Sales of hymn books, Bibles, and other religious publications to

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churches, other religious organizations and institutions, or individuals are taxable at the general rate of sales or use tax. (Sections 40-23-2, 40-23-61, and 40-23-62(20), Code of Alabama 1975)

(3) Certain religious organizations and institutions are specifically exempted from the payment of sales and use taxes pursuant to special acts of the Legislature. See Rule 810-6-3-.07.05 entitled Charitable Organizations and Institutions. (Adopted March 9, 1961, amended November 1, 1963, amended August 16, 1974, readopted through APA effective October 1, 1982, amended December 28, 1998)

810-6-5-.19. Seller to Give Receipt for Tax Collected.

(1) Each retailer required or authorized to collect use tax from purchasers must give a receipt to each purchaser for the amount of tax collected. The receipt need not be in any particular form, but must show the following:

(a) The name and place of business of the retailer.

(b) The name and address of the purchaser.

(c) A description identifying the property sold to the purchaser.

(d) The date on which the property was sold.

(e) The sale price of the property.

(f) The amount of tax collected by the retailer from the purchaser.

(g) The serial number of the seller's certificate of authority to collect use tax or the number of the license issued to him under the provisions of the Sales Tax Law.

(2) A sales invoice containing the data required above, together with evidence of payment of such sales invoice, will constitute a receipt.

(3) Purchasers will be liable for payment of the tax to the Department unless they obtain and retain for inspection receipts as herein provided. (Sections 40-23-61(d) and 40-23-67) (Readopted through APA effective October 1, 1982)

810-6-5-.19.01. State Use Tax Returns.

(1) The term "state use tax" as used in this regulation shall mean the excise tax levied in Sections 40-23-61 and 40-23-63, Code of Alabama 1975, upon the storage, use, or other consumption of tangible personal property in Alabama.

(2) Unless the taxpayer qualifies to file and pay state use tax on a calendar quarter or calendar year basis, state use 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 Filing and Paying State Sales and Use Taxes and State-Administered County and Municipal Sales and Use Taxes on a Quarterly or Annual Basis. (Section 40-23-68)

(3) Every seller liable to collect and remit the state use tax shall prepare and forward to the Department, within the time prescribed by law, a state seller's use tax return for each calendar tax reporting period using forms furnished by the Department and shall pay to the Department the amount of tax shown to be due. State Seller's Use Tax returns shall require the following information:

(a) Taxpayer's tax account number, federal employer identification number, legal name, trade or business 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 total sales price of tangible personal property sold for delivery in Alabama and collections during the tax reporting period on credit sales previously claimed as a deduction,

(d) Totals, by applicable tax rate, of the items enumerated in (c) above,

(e) A breakdown, by otherwise applicable tax rates, of total deductions claimed,

(f) Measure of tax by applicable tax rate,

(g) Gross tax due by applicable tax rate,

(h) Total gross amount of tax due,

(i) Penalties and interest due, if applicable,

(j) Credit claimed,

(k) Total amount due,

(l) Total amount remitted,

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

(n) Signature of the taxpayer or the taxpayer's duly authorized agent and the date signed.

(4) In accordance with Section 40-23-77, Code of Alabama 1975, Executive Order Number 54 issued by Governor Don Siegelman on May 25, 2001, authorizes, empowers and directs the Department of Revenue to allow a monthly sellers use tax discount not to exceed zero percent (0%) of the use tax due and payable to the State of Alabama by persons licensed under Section 40-23-66, Code of Alabama 1975.

(5) Paragraph (4) above applies to state and state-administered county and municipal sellers use taxes collected by the license holder on or after June 1, 2001. For the reporting periods prior to June 1, 2001, a discount of 3 percent of the tax due was allowed for timely payment of seller's use tax.

(6) Every purchaser liable to report and pay the state use tax shall prepare and forward to the Department, within the time prescribed by law, a state consumer's use tax return for each calendar tax reporting period using forms furnished by the Department and shall pay to the Department the amount of tax shown to be due. State Consumer's Use Tax returns shall require the following information:

(a) Taxpayer's tax account number, federal employer identification number, legal name, trade or business 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 total purchase price of tangible personal property purchased outside Alabama for storage, use, or other consumption in Alabama,

(d) Totals, by applicable tax rate, of the items enumerated in (c) above,

(e) A breakdown, by otherwise applicable tax rates, of total deductions claimed,

(f) Measure of tax by applicable tax rate,

(g) Gross tax due by applicable tax rate,

(h) Total gross amount of tax due,

(i) Credit for taxes paid in another state,

(j) Penalties and interest due, if applicable,

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(k) Credit claimed,

(l) Total amount due,

(m) Total amount remitted,

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

(o) Signature of the taxpayer or the taxpayer's duly authorized agent and the date signed.

(7) No discount is allowed for timely payment of state consumer's use tax. (Adopted through APA effective April 1,1996, amended October 20, 1998, amended October 4, 2001)

810-6-5-.21 Lodgings and Programs Provided for Children, Students, or Members Or Guests of Nonprofit Organizations by Camps, Conference Centers and Similar Facilities.

(1) The definitions set forth in Code of Alabama 1975, Section 40-26-1(c), are incorporated herein by reference.

(2) The term "independent statutory exemption" as used in this regulation shall mean any statutory exemption or exclusion contained in Code of Alabama 1975 other than the exemptions contained in Code of Alabama 1975, Sections 40-26-1 (b)(ii) and 40-26-1 (b)(iii).

(3) The term "lodgings tax" as used in this regulation shall mean the tax levied in Code of Alabama 1975, Section 40-26-1 (a).

(4) The term "similar facilities" as used in Section 40-26-1(b) and in this regulation shall not include commercial hotels, motels, inns, motor courts, and motor lodges.

(5) Camps, conference centers, or similar facilities operated by nonprofit organizations primarily for the benefit of, and in connection with, recreational or educational programs for children, students, or members or guests of other nonprofit organizations are not liable for lodgings tax with respect to fees, tuition, or other charges for rooms, lodgings, or accommodations supplied to children, students, or members or guests of nonprofit organizations in conjunction with recreational or educational programs. (Section 40-26-1(b)(ii))

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(6) If during any calendar year 50 percent or more of the total gross receipts from fees, tuition, or other charges for rooms, lodgings, or accommodations are derived from sources other than recreational or educational programs for children, students, or members or guests of nonprofit organizations; a camp, conference center, or similar facility operated by a nonprofit organization will be liable for lodgings tax with respect to all receipts from furnishing rooms, lodgings, or accommodations regardless of to whom furnished, except those receipts which qualify under an independent statutory exemption, accruing from the date that rooms, lodgings, or accommodations were first furnished to persons other than children, students, or members or guests of nonprofit corporations and ending on December 31 of that same calendar year. (Section 40-26-1(b)(ii))

(7) Privately operated camps, conference centers, or similar facilities that provide lodging and recreational or educational programs exclusively for the benefit of children, students, or members or guests of nonprofit organizations are not liable for lodgings tax with respect to fees, tuition, or other charges for rooms, lodgings, or accommodations supplied to children, students, or members or guests of nonprofit organizations in conjunction with recreational or educational programs. (Section 40-26-1(b)(iii))

(8) A privately operated camp, conference center, or similar facility which during any calendar year provides rooms, lodgings, or accommodations to any persons other than children, students, or members or guests of nonprofit organizations is liable for lodgings tax with respect to all receipts from furnishing rooms, lodgings, or accommodations regardless of to whom furnished, except those receipts which qualify under an independent statutory exemption, accruing from the date that rooms, lodgings, or accommodations were first furnished to persons other than children, students, or members or guests of nonprofit corporations through December 31 of that same calendar year. (Section 40-26-1(b)(iii))

(9) The lodgings tax is applicable to charges by both nonprofit and privately operated camps, conference centers, or similar facilities for rooms, lodgings, or accommodations not provided in connection with recreational or educational programs for the benefit of children, students, or members or guests of non-profit organizations unless the charges qualify under an independent statutory exemption. (Section 40-26-1(a))

(10) The exemptions contained in Code of Alabama 1975, Sections 40-26-1 (b)(ii) and 40-26-1 (b)(iii), if otherwise available, shall not be lost if one or more members or guests of the nonprofit organization themselves pay all or a portion of the charges for rooms, lodgings, or accommodations furnished on behalf of the nonprofit organization, provided the nonprofit organization is the named sponsor of the recreational or educational program and remains liable for any such charges not paid by its members or guests. (Adopted April 1,1957, readopted through APA effective October 1, 1982, amended December 10, 1996)

810-6-5-.22. Lodgings Tax Returns.

(1) The term "Alabama Mountain Lakes area" shall mean the geographic region comprising the north Alabama counties of Blount, Cherokee, Colbert, Cullman, DeKalb, Etowah, Franklin, Jackson, Lauderdale, Lawrence, Limestone, Madison, Marion, Marshall, Morgan, and Winston.

(2) The term "Department" as used in this regulation shall mean the Department of Revenue of the State of Alabama.

(3) The term "lodgings tax" as used in this regulation shall mean the privilege or license tax levied in Section 40-26-1, Code of Alabama 1975, which provides the tax rate applicable to the taxable receipts of the business units or locations located within the counties enumerated in paragraph (1) above, and the tax rate applicable to the taxable receipts of the business units or locations in all other Alabama counties.

(4) The lodgings tax shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax accrues. Every person, firm, or corporation on whom the lodgings tax is levied shall prepare and forward to the Department, within the time fixed and prescribed by law, a lodgings tax return for each calendar month using forms furnished by the Department and shall pay to the Department the amount of tax shown to be due. See Rule 810-1-6-.12 entitled Taxes Required to be Filed Electronically.

(5) Every person, firm, or corporation subject to the lodgings tax shall file only one state lodgings tax return for all business units or locations located within Alabama. The tax shall be broken down on the return by county location of each business unit or location, with the applicable tax rate and county code. When multiple business units are located in the same county, the amounts shall be combined and reported in aggregate for that county. See also Rule 810-6-5-.13 entitled Persons, Firms, and Corporations Subject to Lodgings Tax.

(6) Lodgings 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) The County Name, County Code, and the applicable State Tax Rate for each county in which the person, firm, or corporation has business units or locations. The county codes and applicable tax rates can be obtained from the department's website, or by calling or writing the department.

(d) The total gross charges (both cash and credit), from the rental of rooms, lodgings, accommodations, and services furnished for the month, for each county location enumerated in (c) above,

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(e) The total collections made during the month on credit charges heretofore claimed as a deduction, for each county location enumerated in (c) above,

(f) The total of the items enumerated in (d) and (e) above,

(g) Total deductions for each county location enumerated in (c) above,

(h) Net amount of (f) and (g) above remaining as measure of tax for each county location,

(i) Gross amount of tax due for each county location, resulting from (h) above multiplied by the applicable state tax rate specified in (c) above,

(j) Total of the gross amount(s) of tax due for all county business locations enumerated in (i) above,

(k) Applicable discount applied to (j) above for prompt payment of tax,

(l) Penalties and interest due on the tax in (j) above, if applicable,

(m) Credits claimed, if any,

(n) Total amount due from the result of (j), (k) or (l), and (m) enumerated above,

(o) Total amount remitted, and

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

(q) Taxpayer's signature, title, and date signed. Pursuant to department Rule 810-1-6-.01 entitled Signature Requirements of Tax Returns and Other Documents of All Types Filed by Electronic Methods, the taxpayer's signature and date requirements are met upon the submission of an electronic return filed in accordance with Rule 810-1-6-.12 entitled Taxes Required to be Filed Electronically.

(7) The lodgings tax shall be administered and the tax shall be collected in accordance with the uniform procedures set forth in Title 40, Code of Alabama 1975, along with the procedures outlined in Sections 40-26-1, et seq. (Adopted through APA effective April 1, 1996, amended September 28, 2007)

810-6-5-.23. Temporary Storage and the Use Tax Law.

(1) Section 40-23-60(7), Code of Alabama 1975, defines storage to mean, "any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state".

(2) In the court case State v. Toolen, 277 Ala. 120, 167 So. 2d 546 (1964), the court states that the tax liability attaches after the act of transportation ends and the property comes to rest in this state for use or consumption unless there is a contractual intent to the contrary.

(3) In order for property to be claimed as tax free because of temporary storage for use solely outside of Alabama, records must reflect that it was the intent of the purchaser to use the property in another state at the time of its coming to rest in Alabama. Also, records must reflect that, in fact, the property was removed from Alabama.

(4) The qualified seller is required to collect tax on all retail sales in Alabama. If it is determined by the purchaser's records that temporary storage applies, the Department will process a petition for refund or allow credit for any overpayment of use tax on the subsequent use tax liability.

(5) No credits are to be allowed for property shipped out of state when such property is drawn from general stock. (Section 40-23-60(7))

(6) The temporary storage provisions outlined in this rule apply to all municipalities and counties as defined in the Local Tax Simplification Act of 1998, Act 98-192. Section 11-51-204, Code of Alabama 1975, provides that local governing bodies interpretations, rules, and regulations shall not be inconsistent with any rule and regulation which may be issued or promulgated by the Department of Revenue from time to time pursuant to the Alabama Administrative Procedure Act, for the corresponding state tax. (Adopted March 9, 1961, amended January 9, 1969, amended February 16, 1978, amended June 12, 1978, amended September 22, 1978, readopted through APA effective October 1, 1982, amended December 6, 1990, amended August 30, 2001)

810-6-5-.25. Used Property Brought into Alabama for Use by Owner.

(1) Where the owner of tangible personal property has purchased such property for use outside of Alabama and has, in fact, used it outside of Alabama, no use tax will be due by the owner because of later storage, use or consumption of it in Alabama. The proof of a real and substantial use of the property in another state shall rest upon the purchaser. (Section 40-23-61(a))

(2) Section 40-23-61(e) levies an excise tax on the storage, use or other consumption in the performance of a contract in this state of any tangible personal property, new or used, the tax to be measured by the sales price or the fair and reasonable market value of such tangible personal property when put into use in this state, whichever

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810-6-5-.25. (Continued)

is less. The rates of tax are the rates imposed on classes of property as specified in Section 40-23-61(a), (b), and (c). (Section 40-23-61(e))

(3) Credit will be allowed against the tax due Alabama for legally imposed sales or use taxes paid with respect to the same property to another state or any subdivision thereof. See Rule 810-6-5-.04, Credit for Taxes in Other States. (Section 40-27-1, Article V.1) (Adopted March 9, 1961, amended January 20, 1966, amended August 16, 1974, amended August 10, 1982, readopted through APA effective October 1, 1982, amended January 24, 1989, amended April 1, 1996)

810-6-5-.26. Utility Privilege or License Tax.

(1) Unless otherwise defined herein, the definitions of terms set forth in Code of Alabama 1975, Section 40-21-80, are incorporated by reference herein.

(2) Section 40 21 82, Code of Alabama 1975, levies a privilege or license tax against every utility in the State of Alabama on account of the furnishing of utility services by said utilities.

(a) The amount of tax levied on the furnishing of electricity, domestic water, and natural gas services shall be determined by the application of rates against gross sales or gross receipts, as the case may be, and shall be computed monthly in accordance with the following table:

If monthly gross sales or gross receipts respecting a person are:	The tax is:
Not over $40,000	4% of such gross sales or gross receipts
Over $40,000 but not over $60,000	$1,600 plus 3% of excess over $40,000
Over $60,000	$2,200 plus 2% of excess over $60,000

(b) For periods prior to April 1, 2002, the amount of tax levied on the furnishing of telegraph and telephone services shall be determined by the application of rates against gross sales or gross receipts, as the case may be, and shall be computed monthly in accordance with the following table:

If monthly gross sales or gross receipts respecting a person are:	The tax is:
Not over $60,000	6.7% of such gross sales or gross receipts
Over $60,000	$4,020 plus 3.7% of excess over $60,000

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810-6-5-.26. (Continued)

1. Beginning with bills dated on or after April 1, 2002, Act #2001-1090 amended Section 40-21-82(b) which provides that the amount of tax levied on the furnishing of telegraph and telephone services shall be computed at the rate of 6% on all gross sales or gross receipts.

2. Act #2001-1090 further provides that on or after February 1, 2002, the utility furnishing such telegraph or telephone services shall be entitled to deduct and retain from the gross amount of tax billed by the utility 9/10 of 1% of the amount of such tax billed in consideration of the costs incurred by the utility in collecting and remitting the tax levied by subsection 40-21-82(b). However, on and following October 1, 2002, the amount deducted and retained by such utility shall be 1/4 of 1% of the gross amount of such tax billed.

(3) Telephone and Telegraph Services

(a) The gross sales or gross receipts from the furnishing of telegraph and telephone services are taxable pursuant to Section 40-21-82(b).

(b) The term "telephone services" is defined in Section 40-21-80(11), and specifically includes the following which shall be included in the measure of the tax levied in Section 40-21-82(b):

1. Local telephone service;

2. Intrastate toll telephone service;

3. Private communications service;

4. Teletypewriter, and computer exchange service;

5. Telephone services sold by motels and hotels to their customers or to others, telephone services sold by colleges and universities to their students or to others, and telephone services sold by hospitals to their patients or to others;

6. Beginning with bills dated on or after February 1, 2002, interstate telephone service which originates or terminates within this state but does not both originate and terminate in this state and is charged to a service address in this state. (Act #2001-1090)

(c) The term "telephone services" shall not include the following and as such shall not be included in the measure of the tax levied in Section 40-21-82(b):

1. Telephone services provided through any pay telephone;

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2. Any excise, franchise, or similar tax or like fee or assessment levied by the United States, by the state of Alabama, or by any political subdivision of the state of Alabama upon the purchase, sale, use, or consumption of any telephone services provided it is collected by the seller from the purchaser and is separately billed to the purchaser;

3. The furnishing of any telephone services for resale including access charges paid by an interexchange carrier. Any utility making a sale of telephone services for resale shall obtain from the purchaser a copy or record of the purchaser's utility tax license issued to the purchaser by the Department pursuant to Section 40-21-84 or a copy of a utility tax certificate of exemption (Form STE-3) issued to the purchaser by the Department pursuant to Section 40-21-88, Code of Alabama 1975, and Rule 810-6-5-.26.05;

4. Charges for customer premises equipment, including such equipment that is leased or rented by the customer from any source;

5. Cable television service, paging services, specialized mobile radio, or mobile telecommunications service;

6. Services which are ancillary to the provision of telephone service but are not directly related to the transmission of voice, data, or information such as directory advertising and installation and repair of equipment and inside wiring;

7. Internet access charges;

8. Prior to February 1, 2002, charges made for telephone calls and telegraphic messages originating within this state to a point outside of this state, or originating outside of this state to a point within this state, provided the charges were clearly indicated on a statement given to the customer;

9. The use or consumption of telephone service by an incorporated municipality in providing a fire alarm system;

10. Telephone service or telegraph service used or consumed by a utility regularly engaged in furnishing such service to persons.

11. The furnishing of utility services through the use of a prepaid telephone calling card.

(d) Beginning with bills dated on or after May 5, 2004, charges for nontaxable services combined or bundled with and not separately stated from taxable charges for telephone or telegraph services are subject to taxation, unless the exempt charges can be reasonably identified in the books and records kept in the regular course of business by the utility provider.

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810-6-5-.26. (Continued)

(e) The provisions of subsection (d) do not create any right for the customer to require that either the utility or the department allocate or attribute the bundled charge to the different portions of the transaction in order to reduce or minimize the amount of tax charged to the customer.

(4) Domestic Water

(a) The gross sales or gross receipts from the furnishing of domestic water are taxable pursuant to Section 40-21-82(a).

(b) "Domestic water" shall mean all water except water that is sold to persons for use or consumption in industrial processes and not primarily for human consumption. Water used in industrial processes shall mean water used by any person in the manufacturing, processing, compounding, mining or quarrying of tangible personal property for sale. Where water is used for both human consumption and industrial processing and more than 50 percent of the total water purchased is used in industrial processing, the gross receipts from the sale of the water would not be taxable. Where less than 50 percent is used for industrial processing and more than 50 percent is used for human consumption, the total gross receipts from the sale of water would be taxable.

(c) The use or consumption of domestic water by an incorporated municipality in extinguishing fires, explosions, or conflagrations is not taxable. (Section 40-21-83(8))

(d) Water used or consumed by a water board created under Sections 11-50-310, et seq., Code of Alabama 1975 as amended, which is engaged in furnishing water to persons is not taxable.

(e) Water used or consumed by a municipal utility department or an independent municipal utility board which is engaged in furnishing water to persons is not taxable. Water furnished by a municipal utility department or an independent municipal utility board to other departments or agencies of the same municipality is taxable.

(f) Water used or consumed by private water systems engaged in furnishing water to persons is not taxable.

(g) The sale of water by a board (created under Sections 11-50-310, et seq., Code of Alabama 1975 as amended) to an incorporated municipality is taxable except water used in extinguishing fires, explosions, or conflagrations.

(h) Domestic water used or consumed by any person in or for the direct production, generation, processing, storage, delivery, or transmission of domestic water, electricity, and natural gas is not taxable. (Section 40-21-83(4))

(5) Electricity and Natural Gas

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810-6-5-.26. (Continued)

(a) The gross sales or gross receipts from the furnishing of electricity and natural gas are taxable pursuant to Section 40-21-82(a).

(b) The use or consumption of electricity by an incorporated municipality or a board or corporation organized under the authority of any incorporated municipality in furnishing or providing street lighting or traffic control systems is not taxable. (Section 40-21-83(8))

(c) Electricity and natural gas used or consumed by any person in or for the direct production, generation, processing, storage, delivery, or transmission of electricity, natural gas, or domestic water are not taxable. (Section 40-21-83(4))

(d) The furnishing of electricity to a manufacturer or compounder for use in an electrolytic or electrothermal manufacturing or compounding process, natural gas which becomes a component of tangible personal property manufactured or compounded (but not as fuel or energy), and natural gas used by a manufacturer or compounder to chemically convert raw materials prior to the use of such converted raw materials in an electrolytic or electrothermal manufacturing or compounding process are not taxable.

(e) Electricity and natural gas used or consumed by an electric board or gas board created under Sections 11-50-310, et seq., Code of Alabama 1975 as amended, which is engaged in furnishing such utility services to persons are not taxable.

(f) Electricity and natural gas used or consumed by a municipal utility department or an independent municipal utility board which is engaged in furnishing such utility services to persons are not taxable. Electricity and natural gas furnished by a municipal utility department or an independent municipal utility board to other departments or agencies of the same municipality are taxable.

(g) Electricity and natural gas used or consumed by private utilities engaged in furnishing such utility services to persons are not taxable.

(h) The sale of electricity by a board created under Section 11-50-310, et seq., Code of Alabama 1975 as amended, to an incorporated municipality is taxable except electricity used in furnishing or providing street lighting or traffic control systems.

(i) The sale of natural gas by a board created under Section 11-50-310, et seq., to an incorporated municipality is taxable.

(j) "Electrolysis" is the passage of an electric current through a conducting solution or molten salt (either is a type of electrolyte) which then dissociates. Various substances are prepared commercially by electrolysis; for example, chlorine (from salt), hydrogen (from water), and aluminum (from alumina). An "electrolyte" chemically, is a

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810-6-5-.26. (Continued)

conductor in which the electric current is a movement of ions. Electrolysis is also used in the medical profession. "Electrothermal" means heat produced by electricity. Electric furnaces are used for making large quantities of high grade steel; they are especially used in making high grade alloy steels.

(k) A person, firm, or corporation that transports natural gas purchased by their customer from a third party is not liable for utility tax on their gross receipts from furnishing such transportation services.

(l) Electricity or natural gas used or consumed as fuel or energy in and for the heating of poultry houses is not taxable. (Section 40-21-83(9))

(6) Alabama Economic Incentive Enhancement Act of 2007

(a) An entity locating in Alabama subsequent to December 31, 2006 and qualifying for the tax abatements created by Act # 2007-199 under new Chapter 9D of Title 40 of Code of Alabama 1975 known as the “Alabama Economic Incentive Enhancement Act of 2007”, shall be allowed an exclusion for a period of ten years from the utility tax levied in Section 40-21-82(a) on purchases of electricity, natural gas, and domestic water. Entities qualifying for this exemption shall obtain a State Utility Tax Certificate of Exemption (Form STE-3) by applying for the certificate on forms provided by the Department. (See Rule 810-6-5-.26.05 entitled Utility Gross Receipts Tax or Mobile Communication Services Tax Certificate of Exemption (Form STE-3) - Responsibilities of the Certificate Holder - Burden of Proof - Liability for Taxes Later Determined to be Due.)

(b) Pursuant to Section 40-9B-3(8), the beginning date of the ten year period exclusion shall commence from:

1. The date of initial issuance by a county, city, or public authority of bonds to finance any costs of the property, or

2. If no bonds are ever issued, the later of:

i. The date on which title to such property was acquired by or vested in such county, city, or public authority, or

ii. The date on which such property is or becomes owned, for federal income tax purposes, by the qualifying entity

3. Or, the date the property (facility) is placed in service.

(c) The existing utility tax exemption specified in paragraph (4)(b) of this Rule on total purchases of water where more than 50 percent of the water is used in industrial processing does not limit the exemption to a specified number of years. An entity qualifying under Chapter 9D of Title 40 may qualify for this existing exemption.

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810-6-5-.26. (Continued)

(d) The exclusion from utility tax provided in paragraph (6)(a) of this rule and the provisions thereof shall apply equally to the Utility Service Use Tax levied on electricity, natural gas, and domestic water.

(7) Consolidation by a Single Entity of Multiple Monthly Bills from Any One Utility Service Provider of Electricity, Domestic Water, or Natural Gas Services

(a) The taxes levied in Sections 40-21-82 and 40-21-102 are structured such that, when a person who is furnished electricity, domestic water, or natural gas services is receiving more than one bill from any one utility for such services, respective of a month, and the aggregate of the purchase price of utility services furnished by the utility exceeds forty thousand dollars ($40,000) for the month, the tax calculated on the separate billings may exceed the tax due.

1. When a person purchasing utility services and receiving more than one bill each month from any one utility for such services has paid to the utility more tax on the billings than is due on the aggregate of the purchase price of utility services furnished for the month by the utility, the person may apply for a refund of the overpayment in accordance with the procedures outlined in Section 40-2A-7(c), Code of Alabama 1975, including the joint petition requirement contained in Section 40-2A-7(c)(1).

2. When a person purchasing utility services and receiving more than one bill each month from any one utility for such services desires to pay the utility privilege license tax computed upon the aggregate of the purchase price of utility services furnished for the month by the utility, the person may apply for a permit from the Department of Revenue, purchase the utility services without the payment of the tax to the utility, and remit the tax directly to the Department in accordance with the procedures outlined in Rule 810-6-5-.26.02. Utility Tax Direct Pay Permit.

(b) For the purposes of the taxing statutes in Title 40, Code of Alabama~~,~~1975, a single member limited liability company is classified in the same manner as it is for federal income tax purposes. Unless the single member limited liability company has made the election to be treated as a corporation under the Internal Revenue Service's "check-the-box" regulations, it is disregarded as an entity separate from its owner. A person who is the single member of one or more limited liability companies that are classified as disregarded entities may consolidate the purchases of utility services made by the companies from any one utility with the purchases made by the person from that utility, respective of a month, and compute the utility tax on the aggregate as though the purchases made by the limited liability companies were made directly by the single member, as outlined in paragraph (a) 2. Prior to consolidation, documentation must be provided to the Department to clearly establish ownership of each limited liability company and its status for federal income tax purposes. (Code of Alabama~~,~~ 1975, Section 10-12-8(b).)

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810-6-5-.26. (Continued)

(8) General Provisions

(a) Where a discount is deductible from the gross charge for a utility service if payment is made within a prescribed period, the tax applies to the amount actually paid.

(b) Receipts from (i) standard collection charges, which are flat-amount administrative fees charged to cover the cost of sending a customer a delinquent billing letter; (ii) reconnect fees, which are fees charged for reconnecting a utility service after someone has moved from one location to another or after service has been disconnected because of nonpayment for services; (iii) collection fees, which are fees charged when a utility must send a collector to a utility customer to attempt to collect payment on a utility service billing prior to disconnecting service; and (iv) charges or fees added for failure to timely pay utility bills, whether the charge or fee is a flat amount or is based upon a percentage of the bill which was not timely paid, do not constitute gross sales or gross receipts from furnishing utility services and, therefore, are not taxable. (State of Alabama v. Muscle Shoals Electric Board (Admin. Law Div. Docket No. S. 93-286, decided November 4, 1993) and State Department of Revenue v. Mobile Gas 621 So.2d 1333 (Ala.Civ.App. 1993))

(c) Any person engaged or continuing in the business of furnishing taxable and nontaxable utility services to a customer shall pay the tax required on the taxable services furnished when his or her books are kept so as to show separately the taxable utility services furnished and the nontaxable utility services furnished. When the books are not so kept, the person furnishing the utility services shall pay tax on the total gross receipts of all utility services furnished. This would require separate meters for taxable and nontaxable services furnished; estimates will not be acceptable. (Shellcast Corp. v. White, 477 So.2d 422 (Ala. 1985))

(d) In case a customer of a utility claims an exemption, the applicability of which there is some doubt, either the utility or the customer may request from the Department a determination of the validity of the claim for the exemption.

(e) The tax levied in Section 40-21-82 shall apply to all utility services furnished for use by the State of Alabama, the counties within the State of Alabama, and any other person or entity previously exempt from all taxation. The tax levied under this section shall apply to utility services furnished for use by incorporated municipalities of the State of Alabama except the exemptions noted in previous paragraphs. The tax levied under this section shall not apply to utility services furnished to the Federal Government and its agencies. Utility services furnished to national banks are taxable.

(f) Any person regularly engaging in any business for which a privilege tax is imposed by Section 40-21-82 shall apply for and obtain from the Department a license to engage in and to conduct such business on forms furnished by the Department. The application for a utility tax license shall require the following information:

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1. Applicant's Federal Employer Identification Number,

2. Applicant's legal name, trade name, and complete mailing address,

3. Number of businesses in Alabama and exact location of each (exact location shall include city, county, and street address; if location is on highway or rural route, exact location shall include details sufficient to allow Department personnel to find the place of business),

4. Indication of the kind and class of business (i.e. domestic water, natural gas, electricity, telephone services, and/or telegraph services,

5. Indication of the legal form of ownership (sole proprietorship, partnership, corporation, multi-member limited liability company, single-member limited liability company, limited liability partnership, etc.),

6. If the applicant is a corporation, a copy of the certified certificate of incorporation, amended certificate of incorporation, certificate of authority, or articles of incorporation; if the applicant is a limited liability company or a limited liability partnership, a copy of the certified articles of organization,

7. Name, title, home address, and social security number of the sole proprietor, each partner, each corporate officer, or each member (for a partner or member that is a corporation or limited liability entity, the federal employer identification number shall be requested in lieu of a social security number)

8. Name of former owner of business, if any,

9. Beginning date of business,

10. Business and home phone numbers, and

11. Signature and title of the sole proprietor, each partner, an elected corporate officer, or a member and the date of the signature.

(g) The taxes levied under Sections 40-21-82 and 40-21-102 shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax accrues. Every person, firm, or corporation on whom these taxes are levied shall prepare and forward to the Department within the time fixed and prescribed by law a return for each calendar month using forms prepared and furnished by the Department, and shall pay to the Department the amount of tax shown to be due. See Rule 810-1-6-.12 entitled Taxes Required to be Filed Electronically. Each taxpayer shall file only one return for all units of businesses operated within the state. Any taxpayer liable for utility tax whose average monthly tax liability was $10,000 or greater

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810-6-5-.26. (Continued)

during the preceding calendar year shall make estimated payments to the Department on or before the twentieth day of the month in which the liability occurred. Such estimated payments must be at least equal to the taxpayer's actual tax liability for the same calendar month of the preceding year. (Section 40-21-85) Beginning with the October 2011 return due November 20, 2011, the term “actual tax liability” as used herein shall not include the estimated amounts reported on the return from the previous year.

1. Utility Privilege License Tax returns shall require the following information:

(i) Taxpayer's utility privilege license tax account number, legal name, and complete address,

(ii) Period covered by the return and due date of the return,

(iii) Estimated tax due for the current month, if applicable, must be at least equal to line 7 (Total Utility Tax Due) of the return for the same calendar month of the previous year,

(iv) A breakdown, by utility service type, of total receipts, exempt receipts, and taxable receipts from furnishing utility services,

(v) A breakdown, by applicable tax rate, of the number of persons from whom taxable receipts were received, the amount of such receipts, and the tax due thereon,

(vi) Total tax due,

(vii) Estimated tax paid on previous month's return, if applicable,

(viii) Tax due after deducting credit for previous month's estimate,

(ix) Grand total tax due (total tax due plus current month's estimate, if applicable),

(x) Penalties and interest due, if applicable,

(xi) Credits claimed, if any,

(xii) Total amount remitted,

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

(xiv) Taxpayer's signature, title, and date signed. Pursuant to department Rule 810-1-6-.01 entitled Signature Requirements of Tax Returns and Other Documents of All Types Filed by Electronic Methods, the taxpayer’s signature and date requirements are met upon the submission of an electronic return filed in accordance with Rule 810-1-6-.12 entitled Taxes Required to be Filed Electronically.

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2. Utility Excise Tax returns shall require the following information:

(i) Taxpayer's utility excise tax account number, legal name, and complete address,

(ii) Period covered by the return and due date of the return,

(iii) Estimated tax due for the current month, if applicable, must be at least equal to line 5 (Total Tax Due) of the return for the same calendar month of the previous year,

(iv) A breakdown, by vendor, of taxable purchases and the tax due thereon,

(v) Total tax due on all taxable purchases,

(vi) Estimated tax paid on previous month's return, if applicable,

(vii) Total tax due after deducting credit for previous month's estimate,

(viii) Grand total tax due (total tax due plus current month's estimate, if applicable),

(ix) Penalties and interest due, if applicable,

(x) Credits claimed, if any,

(xi) Total amount remitted,

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

(xiii) Taxpayer's signature, title, and date signed. Pursuant to department Rule 810-1-6-.01 entitled Signature Requirements of Tax Returns and Other Documents of All Types Filed by Electronic Methods, the taxpayer's signature and date requirements are met upon the submission of an electronic return filed in accordance with Rule 810-1-6-.12 entitled Taxes Required to be Filed Electronically.

(h) Every person engaged in the business of furnishing utility services shall add the tax levied in Section 40-21-82 to the gross receipts from furnishing such services and include the tax as a part of the total price billed to the purchaser of the services. (Section 40-21-86)

(i) A utility service provider is not required to collect utility tax from a purchaser who claims an exemption from the tax and, as documentation of the exemption claim, furnishes the utility service provider a properly executed utility tax certificate of exemption

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(Form STE-3) issued by the Department pursuant to Rule 810-6-5-.26.05. The utility service provider who relies in good faith on the Form STE-3 and reasonably believes the tax exemption claim is legal shall not be held liable for utility tax later determined by the Department to be due on the sale for which the certificate was received. Instead, the Department will collect or recover the utility tax due from the party or parties who made the illegal tax-free purchase with the Form STE-3 and the person or persons who benefited from the illegal use of the Form STE-3. (Section 40-21-88).

(j) The utility gross receipts tax shall be administered and the tax shall be collected in accordance with the uniform procedures set forth in Title 40 along with the procedures outlined in Sections 40-23-8 through 40-23-12, 40-23-25, and 40-23-27 through 40-23-31, Code of Alabama 1975, as amended, together with the applicable definitions contained in Section 40-23-1, Code of Alabama 1975, as amended. No discount is allowed for prompt payment of the utility gross receipts tax. However, Act #2001-1090 amended Section 40-21-82(b) which provides that a utility furnishing telephone and telegraph services is entitled to a collection allowance effective February 1, 2002 as stipulated in paragraph (2)(b) of this rule. (Section 40-21-85)

(k) Insofar as applicable, the provisions of this rule shall apply equally to the Utility Service Use Tax. In the event that a seller making sales of utility services for storage, use, or other consumption in this state, not exempted under the provisions of Section 40-21-103, is exempted from collection of the tax herein levied by any provisions of the Constitution or laws of the United States of America, then the purchaser of the utility services shall pay the tax directly to the Department each month pursuant to this rule. (Sections 40-2A-7(a)(5), 40-9B-3(8), 40-21-80, 40-21-82, 40-21-82.1, 40- 21-83,40-21-84, 40-21-85, 40-21-86, 40-21-88, 40-21-102, 40-21-103, 40-21-105, 40-21-106, 40-23-31, 40-23-100, 40-23-102, 40-23-103, 10-12-8(b), Code of Alabama 1975, Act No. 2001-1090 and Act No. 2007-199) (Adopted July 14, 1969, amended September 18, 1969, amended March 9, 1970, amended June 18, 1971, readopted through APA effective October 1, 1982, amended March 11, 1988, amended December 23, 1993, amended May 20, 1994, amended January 5, 1996, amended April 1, 1996, amended December 28, 1998, amended April 6, 2000, amended May 24, 2002, amended October 5, 2004, amended effective December 14, 2007, amended April 6, 2009, amended December 8, 2011)

810-6-5-.26.01. Mobile Communication Services Tax.

(1) Unless otherwise defined herein, the definitions of terms set forth in Sections 40-21-120 and 40-21-125, Code of Alabama 1975, as per Act #2001-1090, are incorporated by reference herein.

(a) Although Section 40-21-125, Code of Alabama 1975 was created as a result of Section 2 of Act #99-399, Section 2 of Act #2001-1090 erroneously refers to Section 40-21-125 as a "new section added to Code of Alabama 1975." Upon codification of this

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810-6-5-.26.01. (Continued)

section by the Code Commissioner, this section may be corrected and codified as a different code section. Until such codification and corresponding rule amendments are made, this rule implies that Section 40-21-125 contains the provisions of Section 2 of both Act #99-399 and Act #2001-1090.

(2) Section 40-21-121, Code of Alabama 1975, levies a privilege or license tax against every home service provider doing business in the State of Alabama on account of the furnishing of mobile telecommunications service to customers with a place of primary use in the State of Alabama. Effective February 1, 2002, Section 40-21-125, Code of Alabama 1975, levies a tax on mobile radio communication services at the same rate as the tax levied in Section 40-21-121. (Act #2001-1090)

(3) (a) For bills dated prior to February 1, 2002, the tax was to be determined by the application of rates against gross sales or gross receipts, as the case may have been, from the monthly charges from the furnishing of cellular telecommunication services in the State of Alabama and computed monthly in accordance with the following table:

If monthly gross sales or gross receipts respecting a person are:	The tax is:
Not over $600,000	4% of such gross sales or gross receipts
Over $600,000	$4,020 plus 3.7% of excess over $60,000

Note: Act #92-623 amended Sections 40-21-121 and 40-21-82, Code of Alabama 1975, effective October 1, 1992. Section 40-21-121 clearly stated that the rate was 4%, or, if less, the rate imposed under Section 40-21-82(b). Therefore, the tax on receipts up to $600,000 were determined under Section 40-21-121, and the tax on receipts in excess of $600,000 were determined under Section 40-21-82(b).

(b) Act #2001-1090 amended Section 40-21-121 and provides that on bills dated on or after February 1, 2002, regardless of when the services being billed were provided, the tax shall be determined by the application of rates against gross sales or gross receipts, as the case may be, from the monthly charges from the furnishing of mobile telecommunications service to customers with a place of primary use in the State of Alabama and shall be computed monthly at the rate of 6%.

(4) Every home service provider of mobile telecommunications service and mobile radio communication services subject to this tax shall add the tax to the price or charge for the taxable services and shall collect from every customer an amount equal to the prescribed percentage of the price or charge for the taxable services.

(5) Act #2001-1090 further provides that the home service provider furnishing such mobile telecommunications service shall be entitled to deduct and retain from the gross amount of tax billed by the home service provider 9/10 of 1% of the amount of such

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tax billed on or after February 1, 2002, in consideration of the costs incurred by the home service provider in collecting and remitting the tax levied by Section 40-21-121. However, on and following October 1, 2002, the amount deducted and retained by such provider shall be 1/4 of 1% of the gross amount of such tax billed.

(6) The terms "mobile telecommunications service" and "mobile radio communication services" are defined in Sections 40-21-120(1)(a) and 40-21-125, respectively, as defined in 47CFR20.3 as in effect on June 1, 1999, as per Act #2001-1090. These terms may be referred to in this rule collectively as mobile communication services. Mobile communication services include, but are not limited to, the following services which the monthly charges for such services shall be included in the measure of the tax levied in Section 40-21-121 provided these services are mobile services that (i) are provided for profit, (ii) are an interconnected service, and (iii) are available to the public:

(a) cellular telecommunications service,

(b) personal communications service,

(c) specialized mobile radio service,

(d) mobile service that is the functional equivalent of a commercial mobile radio service,

(e) one-way and two-way radio communications service,

(f) paging/beeper services.

(7) Section 40-21-122 specifically excludes the gross receipts or gross sales from the tax levied in Section 40-21-121 for the following:

(a) the furnishing of mobile telecommunications service which is otherwise taxed under the provisions of Sections 40-23-1 through 40-23-36;

(b) the furnishing of mobile telecommunications service through the use of a prepaid telephone calling card, a prepaid authorization number, or both;

(c) the furnishing of mobile communication services to the Federal Government and its agencies. However, the tax levied in Section 40-21-121 shall apply to mobile communication services furnished for use by the State of Alabama, the counties within the State of Alabama, and the incorporated municipalities of the State of Alabama;

(d) wholesale sales.

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(8) In order for a transaction to qualify for the wholesale exclusion contained in Section 40-21-122, the purchaser of the mobile communication services must furnish the home service provider with either a valid mobile communication services tax account number issued by the Department and a written statement that the services purchased are for resale, or a valid mobile communication services tax certificate of exemption (From STE-3) issued pursuant to Rule 810-6-5-.26.05. (Section 40-21-125)

(9)(a) For the period prior to February 1, 2002, the term "monthly charges" as used in this rule shall mean monthly recurring access charges and local airtime charges only.

1. Local airtime charges were those charges levied by the provider of cellular telecommunications services for usage of the cellular system and which charges were based on the period of time the customer used the cellular system during a billing period. Local airtime charges included out-collect roamer air charges but did not include in-collect roamer air charges.

2. In-collect roamer air charges meant airtime charges levied by a foreign cellular provider with respect to the use of the foreign provider's system by a local provider's customer while roaming in the foreign provider's area. Usually the local provider, as agent for the foreign provider, billed in-collect roamer air charges to its customer.

3. Out-collect roamer air charges meant airtime charges levied by a local cellular provider with respect to the use of the local provider's system by a customer of a foreign provider roaming in the local provider's area. Such charges may ultimately have been collected by the roaming customer's home provider based on billing information received from the provider whose system was utilized.

4. In situations where both the foreign provider and the local provider served Alabama markets, the local cellular provider was responsible for collecting and remitting the cellular services tax due on out-collect roamer air charges.

5. The term “monthly charges” did not include the following:

activation date charge
change phone number charge
change serial number charge
detailed billing charge
emergency service charge
feature activation charge
feature deletion charge
federal excise taxes
in-collect roamer air charge
international call charge
local land charge (a flat, per call charge)
monthly feature charge
NSF check service charge
rate plan charge
resume service charge
roamer land charge (a flat, per call charge)
roamer surcharge (a per day and/or per call charge)
roamer taxes
service programming charge

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interstate toll charge
intrastate toll charge
local directory assistance charge
long distance directory assistance charge
start of service charge
suspend service charge
voice mail charge

(b) For customer bills dated on or after February 1, 2002, Act #2001-1090 provides that the term "monthly charges" as used in this rule shall mean monthly recurring access charges and all airtime charges, regardless of when the services being billed were provided. However, as a result of the Mobile Telecommunications Sourcing Act of 2000 (Public Law 106-252), monthly charges on customer bills issued during the period of February 1, 2002 through August 1, 2002, shall not include charges which cannot be sourced to Alabama.

1. The term “monthly charges” shall not include the following charges:

activation date charge
change phone number charge
change serial number charge
detailed billing charge
emergency service charge
feature activation charge
feature deletion charge
federal excise taxes
international call charge
interstate toll charge
intrastate toll charge
local directory assistance charge
long distance directory assistance charge
monthly feature charge
NSF check service charge
rate plan charge
resume service charge
service programming charge
start of service charge
suspend service charge
voice mail charge

(10) As a result of the Mobile Telecommunications Sourcing Act of 2000, Act # 2001-1090 provides that effective for customer bills issued on or after August 2, 2002, monthly charges for mobile communication services provided to a customer and billed by or for the customer's home service provider are deemed to be provided at the customer's place of primary use. Such monthly charges are subject to the mobile communication services tax if the customer's place of primary use is located in this state.

(11) The term "home service provider" as used in this rule shall mean the facilities-based carrier or reseller with which the customer contracts for the provision of mobile communication services.

(12) The term "customer" as used in this rule shall mean the person or entity that contracts with the home service provider for mobile communication services. In the event the end user is not the contracting party, the end user of the mobile communication services will be used for purposes of determining the place of primary use. The term does not include a reseller of mobile communication services or a serving carrier under an arrangement to serve the customer outside the home service provider's licensed area.

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(13) The term "licensed service area" as used in this rule shall mean the geographic area in which the home service provider is authorized by law or contract to provide mobile communication services.

(14) The term "place of primary use" as used in this rule shall mean the street address representative of where the customer's use of the mobile communication services primarily occurs, which must be the residential street address or the primary business street address and within the licensed service area of the home service provider.

(15) term "reseller" as used in this rule shall mean a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service. The term does not include a service carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

(16) The term "serving carrier" as used in this rule shall mean a facilities-based carrier providing mobile communication services to a customer outside a home service provider's or reseller's licensed service area.

(17) Any person engaging or continuing in the business of providing mobile communication services subject to the tax levied in Section 40-21-121, shall apply for and obtain from the Department a license to engage in and conduct such business. The application for a mobile communication services license shall be made on forms furnished by the Department. (Section 40-21-124)

(a) The application for a mobile communication services tax license shall require the following information:

1. Applicant's Federal Employer Identification Number,

2. Applicant's legal name, trade name, and complete mailing address,

3. Number of businesses in Alabama and exact location of each (exact location shall include city, county, and street address; if location is on highway or rural route, exact location shall include details sufficient to allow Department personnel to find the place of business),

4. Indication of the legal form of ownership (sole proprietorship, partnership, corporation, multi-member limited liability company, single-member limited liability company, limited liability partnership, etc.),

5. If the applicant is a corporation, a copy of the certified certificate of incorporation, amended certificate of incorporation, certificate of authority, or articles of incorporation; if the applicant is a limited liability company or limited liability partnership, a copy of the certified articles of organization,

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6. Name, title, home address, and social security number of the sole proprietor, each partner, each corporate officer, or each member (for a partner or member that is a corporation or limited liability entity, the federal employer identification number shall be requested in lieu of a social security number),

7. Type of services provided,

8. Name of former owner of business, if any,

9. Beginning date of business,

10. Business and home phone numbers, and

11. Signature and title of the sole proprietor, each partner, an elected corporate officer, or a member and the date of the signature.

(18) The mobile communication services tax shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax accrues. Every home service provider of mobile communication services shall prepare and forward to the Department, within the time prescribed by law, a mobile communication services tax return for each calendar month using forms furnished by the Department and shall compute the tax due and shall pay to the Department the amount of tax shown to be due. Every person engaged in the business of providing mobile communication services shall file only one return for all business units or locations within the state. Any home service provider of these services liable for the tax whose average monthly liability was $10,000 or greater during the preceding calendar year shall make estimated payments to the Department on or before the twentieth day of the month in which the liability occurred. These estimated payments must be at least equal to the taxpayer's actual tax liability for the same calendar month of the preceding year. (Section 40-21-123) Beginning with the October 2011 return due November 20, 2011, the term “actual tax liability” as used herein shall not include the estimated amounts reported on the return from the previous year.

(a) Mobile communication services tax returns shall require the following information:

1. Taxpayer's tax account number, legal name, and complete address,

2. Period covered by the return and due date of the return,

3. Estimated tax due for the current month, if applicable must be at least equal to line 5(b) (Total Mobile Communication Services Tax Due) of the return for the same calendar month of the preceding year,

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4. Total receipts, exempt receipts, and taxable receipts from furnishing commercial mobile radio services, paging/beeper services, and other mobile services,

5. Tax due,

6. Less collection allowance,

7. Estimated tax paid on previous month's return, if applicable,

8. Tax due after deducting credit for previous month's estimate and collection allowance,

9. Total tax due (total tax due plus current month's estimate, if applicable),

10. Penalties and interest due, if applicable,

11. Credits claimed, if any,

12. Total amount remitted,

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

14. Taxpayer's signature, title, and date signed.

(19) The mobile communication services tax shall be administered and the tax shall be collected in accordance with the uniform procedures set forth in Title 40, Code of Alabama 1975, along with the procedures outlined in Sections 40-23-8 through 40-23-12, 40-23-25, and 40-23-27 through 40-23-31, Code of Alabama 1975, as amended, together with the applicable definitions contained in Section 40-23-1, Code of Alabama 1975, as amended. (Section 40-21-123)

(20) Act #2001-1090 provides that if nontaxable charges for mobile communication services are aggregated with and not separately stated from charges that are subject to taxation, the charges for nontaxable mobile communication services may be subject to taxation unless the home service provider can reasonably identify charges not subject to taxation from its books and records that are kept in the regular course of business. (Section 40-21-121(d).)

(21) A home service provider is not required to collect mobile communication services tax from a customer who claims an exemption from the tax and, as documentation of the exemption claim, furnishes the home service provider a properly executed mobile communication services tax certificate of exemption (form STE-3) issued by the Department pursuant to Rule 810-6-5-.26.05. The home service provider who relies in

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good faith on the Form STE-3 and reasonably believes the tax exemption claim is legal shall not be held liable for the tax later determined by the Department to be due on the sale for which the certificate was received. Instead, the Department will collect or recover the tax due from the party or parties who made the illegal tax-free purchase with the Form STE-3 and the person or persons who benefitted from the illegal use of the Form STE-3. (Section 40-21-125)

(22) As stipulated in paragraph (9)(b), the mobile sourcing definitions and provisions are effective after August 1, 2002. (Sections 40-2A-7(a)(5), 40-23-31, 40-21-120, 40-21-121, 40-21-122, 40-21-124, 40-21-125, Code of Alabama 1975) (Adopted through APA effective May 24, 2002, amended December 8, 2011)

810-6-5-.26.02. Utility Tax Direct Pay Permit.

(1) Absent evidence to the contrary, where any person is furnished utility services and is billed for such utility services by more than one bill, it shall be presumed that the gross sales or the gross receipts derived from the furnishing of utility services to such person are taxable at the rate applicable to receipts derived from each bill, and the tax so computed shall be added to each bill for utility services furnished. If any person purchasing utility services and receiving more than one bill from any one utility for such services desires that the tax levied by Sections 40-21-80, et seq., Code of Alabama 1975 as amended, be computed upon the aggregate of the purchase price of utility services furnished by such utility, such person may apply for a permit from the Department of Revenue and be permitted to purchase certain utility services without the payment of the tax to the utility subject to the following conditions, namely:

(a) The holder of such permit shall report such utility tax upon forms prepared and furnished by the Department of Revenue and shall pay said tax directly to the Department of Revenue on or before the twentieth day of the month following the month during which such utility services were used for a taxable purpose.

(b) The holder of such permit shall be required to keep such books and records as may be necessary to determine such tax liability, which records shall be subject to examination by the Department of Revenue.

(c) Upon demand of the Department of Revenue the holder of said permit shall execute a bond or indemnity agreement securing the payment of such tax to the Department of Revenue in an amount not exceeding estimated tax liability for six months.

(d) Said permit shall not be transferable and may be cancelled upon notice by registered mail to the holder thereof.

(2) The application for a utility tax direct pay permit shall require the following information:

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(a) Applicant's Federal Employer Identification Number,

(b) Applicant's legal name and complete mailing address,

(c) Business address(es) in Alabama including city, county, and street address or, if location is on highway or rural route, including details sufficient to allow Department personnel to find the place of business),

(d) Indication of the nature of business (e.g. steel manufacturing, auto manufacturer, etc.),

(e) Business phone number,

(f) Desired effective date of permit,

(g) The type of utility service(s) the applicant wishes to purchase without payment of the tax to the vendor and the name of the vendor(s) from whom the service(s) will be purchased, and

(h) Signature and title of sole proprietor, each partner, or an elected corporate officer and the date of each signature.

(3) Utility tax direct pay permits shall contain the following information:

(a) Taxpayer's direct pay permit number, legal name, and complete address,

(b) Permit holder's principal business location,

(c) Nature of the holder's business,

(d) Effective date of the permit,

(e) Type(s) of utility services which can be purchased without payment of utility tax and the name(s) of the vendor(s) from whom the specified utility services can be purchased without payment of utility tax to the vendor,

(f) Statement that the specified utility services purchased from the specified vendor(s) shall be reported monthly to the Department of Revenue and the applicable utility taxes paid thereon by the holder of the permit,

(g) Legal name of the applicant for the direct pay permit, the date the application was filed, and the date the Department of Revenue approved the application, and

(h) Signature on behalf of the Department of Revenue and the date signed.

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(4) Utility tax direct pay permit returns shall require the following information:

(a) Taxpayer's utility tax direct pay account number, legal name, and complete address,

(b) Period covered by the return and due date of the return,

(c) Estimated tax due for the current month, if applicable must be at least equal to line 5 (Total Tax Due) of the return for the same calendar month of the preceding year,

(d) The names of each vendor from whom utility services were purchased without payment of tax and a breakdown, by vendor, of the amount of taxable purchases of utility services and the tax due on such purchases,

(e) Estimated tax paid on previous month's return, if applicable,

(f) Tax due after deducting credit for previous month's estimate,

(g) Total tax due (tax due plus current month's estimate, if applicable),

(h) Penalties and interest due, if applicable,

(i) Credits claimed,

(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 the date signed.

(Sections 40-2A-7(a)(5) and 40-21-85 Code of Alabama 1975) (Adopted through APA effective April 1, 1996, amended December 8, 2011)

810-6-5-.26.04. Utility Tax Exclusion for Patronage Refunds Distributed to Members by Electric and Telephone Cooperatives.

(1) Monthly charges or advances which are collected from members by an electric or telephone cooperative organized pursuant to Chapter 6 of Title 37 and which are later found not to be necessary to defray expenses or to provide for other uses prescribed in Section 37-6-20 are not gross receipts from furnishing utility services and, when

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distributed to members as patronage refunds, may be excluded from taxable receipts reported by the cooperative. (State v. Pea River Electric Coop., 434 So.2d 785 (Ala. Civ. App.) and State Department of Revenue v. Mon-Cre Telephone Cooperative, Inc., et al., Alabama Court of Civil Appeals, decided August 29, 1997.)

(a) The following amounts shall be excluded from the computation of the amount of the exclusion available to the cooperative for patronage refunds issued to its members: (i) amounts advanced by members who are exempt from the utility gross receipts tax and upon whose accounts utility taxes were not paid and (ii) amounts paid by nonexempt cooperative members for charges or fees which are not subject to the utility tax. (State Department of Revenue v. Mon-Cre Telephone Cooperative, Inc., et al., Alabama Court of Civil Appeals, decided August 29, 1997.)

(b) The amount of the exclusion available to the cooperative for patronage refunds is not required to be reduced for that portion of patronage refunds attributable to revenues of the cooperative from nonmember sources including, but not limited to, interest received on the cooperative's bank accounts and revenues from pole rentals and other charges to nonmember companies using the cooperative's network. (State Department of Revenue v. Mon-Cre Telephone Cooperative, Inc., et al., Alabama Court of Civil Appeals, decided August 29, 1997.)

(2) A cooperative may recover the utility tax which it erroneously collected on excludable monthly charges or advances and remitted to the department by filing a direct petition for refund with the department or by taking a credit against current utility tax liability provided the cooperative has refunded or credited the erroneously collected tax to its members or to the members' patronage account. Petitions for refund filed by the cooperative shall be governed by the procedures contained in Code of Alabama 1975, Section 40-2A-7(c)) (Adopted through APA effective July 9, 1998)

810-6-5-.26.05. Utility Gross Receipts Tax or Mobile Communication Services Tax Certificate of Exemption (Form STE-3) - Responsibilities of the Certificate Holder - Burden of Proof - Liability for Taxes Later Determined to be Due.

(1) Unless otherwise defined herein, the definitions of terms contained in Sections 40-2A-3(13), 40-21-80, 40-21-120, 40-21-125, and 40-21-126, Code of Alabama 1975, are incorporated by reference herein.

(2) The terms "utility gross receipts tax" and "utility tax" as used in this rule shall mean the tax levied in Section 40-21-82.

(3) The term "mobile communication services tax" as used in this rule shall mean the tax applicable to mobile telecommunications service and mobile radio communication services as defined in Sections 40-21-120(1)(a) and 40-21-125, respectively, and levied in Section 40-21-121.

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(4) Persons (i) who are not required to have a utility tax license pursuant to Section 40-21-84, Code of Alabama 1975, and who are entitled to make tax-exempt purchases of utility services without payment of utility tax to the provider or (ii) persons who are not required to have a mobile communications services tax license pursuant to Section 40-21-124, Code of Alabama 1975, and who are entitled to make tax-exempt purchases of mobile communication services without payment of mobile communication services tax to the provider may obtain a utility gross receipts tax or mobile communication services tax certificate of exemption (Form STE-3) by applying for the certificate on forms provided by the Department. Upon receipt and approval of a properly completed application, the Department will issue the qualified applicant a Form STE-3 which the certificate holder may copy, complete, and provide to its vendors as documentation for the tax-exempt status of the certificate holder's qualifying purchases of utility services or mobile communication services. The Form STE-3 shall be used only by the person to whom it is issued.

(5) The application referenced in paragraph (4) shall require the following information:

(a) Applicant's Federal Employer Identification Number,

(b) Applicant's business telephone number,

(c) Applicant's legal name, trade name, and complete mailing address,

(d) Business address(es) in Alabama (including city, county, and street address or, if a location is on a highway or rural route, including details sufficient to allow Department personnel to find the place of business),

(e) Indication of the nature of the applicant's business (i.e., wholesaler, reseller, broker, etc.)

(f) The kind of services (electricity, domestic water, natural gas, telegraph, telephone, or mobile communications) to be purchased tax exempt with the exemption certificate,

(g) Reason or reasons the exemption is claimed,

(h) Indication of the legal form of ownership (sole proprietorship, partnership, corporation, multi member limited liability company, single-member limited liability company, limited liability partnership, etc.),

(i) If the applicant is a corporation, a copy of the certified certificate of incorporation, amended certificate of incorporation, certificate of authority, or articles of incorporation; if the applicant is a limited liability company or a limited liability partnership, a copy of the certified articles of organization,

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(j) Name, title, home address, and social security number of the sole proprietor, each partner, each corporate officer, or each member (for a partner or member that is a corporation or limited liability entity, the federal employer identification number shall be requested in lieu of a social security number), and

(k) Signature and title of the sole proprietor, each partner, an elected corporate officer, or a member and the date of the signature.

(6) The Department, upon approving an application for a Form STE-3, will provide the applicant with a Form STE-3 containing the following information:

(a) Certificate holder's exemption number,

(b) The type of services (electricity, domestic water, natural gas, telegraph, telephone, or mobile communications) to which the certificate of exemption applies,

(c) The reason for the certificate holder's exemption and the restrictions, if any, to the certificate holder's exemption,

(d) Nature of the certificate holders business,

(e) Statement of the duties and responsibilities of the vendor to whom a certificate is provided by the certificate holder,

(f) Statement, to be declared by the certificate holder under penalties of false swearing, as to the validity of the exemption claim,

(g) Certificate holder's name and address,

(h) Date of approval or issuance by the Department, and

(i) Signature of approval by the Department.

(7) At the time of providing a copy of a Form STE-3 to a provider from whom a tax-exempt purchase of utility services or mobile communication services is being made, the following information shall be provided by the certificate holder on the certificate copy which the certificate holder gives to the provider:

(a) Name and address of the vendor to whom the certificate copy is provided,

(b) Date the certificate is provided, and

(c) Certificate holder’s signature and title.

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(8) A certificate holder regularly making tax-exempt purchases of the kind and nature for which the Form STE-3 has been issued may furnish a properly executed certificate to the provider specifying that all utility services or mobile communication services subsequently purchased will be for the purpose shown on the certificate and thus be relieved of the burden of executing a separate certificate for each individual tax-exempt purchase as long as the services purchased qualify for exemption.

(9) The certificate holder shall maintain a list of all utility or mobile communication services providers to whom a copy of the exemption certificate is furnished. This list shall be retained in the certificate holder's records available for inspection by the Department during regular business hours and shall provide the name, address, and type of business of each utility or mobile communication services provider to whom a copy of the certificate has been furnished.

(10) The certificate holder shall return the certificate to the Department if the business for which the certificate was issued is closed or the nature of certificate holder's business changes in a manner that no longer qualifies its purchases for exemption.

(11) The certificate holder shall notify the Department immediately in writing of any change in name or mailing address.

(12) The burden of proof that a sale of utility services or mobile communication services is exempt is upon the person providing the services unless the provider of the services takes from the certificate holder a properly executed Form STE-3. Any sale of utility services or mobile communication services for which an exemption has been claimed but which is not supported by a Form STE-3 shall be deemed a taxable sale by the Department and the utility or mobile communication services provider held liable for the tax thereon unless the provider can document the exemption claim. A provider who provides utility services or mobile communication services tax-exempt based upon the presentment of a Form STE-3 by the purchaser shall reference the exemption number shown on the Form STE-3 upon the invoice or billing to the certificate holder.

(13) Any person providing utility services or mobile communication services tax-exempt who relies in good faith on a Form STE-3 and reasonably believes the tax exemption claim is legal shall not be held liable for utility tax or mobile communication services tax subsequently determined by the Department to be due on the sale for which the certificate was received. Instead, the Department will collect or recover the tax due from the party or parties who made the illegal tax-free purchase with the Form STE-3 and the person or persons who benefited from the illegal use of the Form STE-3. (Sections 40-21-88 and 40-21-125)

(14) Other than a utility tax direct pay permit issued pursuant to Utility Tax Rule 810-6-5-.26.02, Form STE-3 is the only exemption certificate or exemption number which relieves the utility provider, when acting in good faith and exercising reasonable care, of

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liability for any utility tax later determined by the Department to be due on a sale for which an exemption was originally claimed by the purchaser. (Sections 40-21-88 and 40-21-125)

(15) Form STE-3 is the only exemption certificate or exemption number which relieves the mobile communication services provider, when acting in good faith and exercising reasonable care, of liability for any mobile communication services tax later determined by the Department to be due on a sale for which an exemption was originally claimed by the purchaser. (Sections 40-21-88 and 40-21-125)

(16) The Department may use its powers and responsibilities, in accordance with the general laws of this state, to collect or recover any utility taxes or mobile communication services taxes due on purchases made illegally with any Form STE-3 from the party or parties using the Form STE-3 and the person or persons who benefited from the illegal use of the Form STE-3, if the utility provider or mobile communication services provider acted in good faith and reasonably believed the tax exemption claim was legal. Powers which may be used by the Department shall include the authority granted under Chapter 2A of Title 40, Code of Alabama 1975, to examine the certificate holder's records; assess tax, penalties, and interest against the certificate holder; and file tax liens against the certificate holder. (Sections 40-21-88 and 40-21-125) (Sections 40-21-88 and 40-21-125) (Adopted through APA effective April 6, 2000, amended May 24, 2002, amended effective December 14, 2007)

810-6-5-.27. Pharmaceutical Providers Tax.

(1) The term "pharmaceutical providers tax" as used in this regulation shall mean the privilege tax levied in Section 40-26B-2, Code of Alabama 1975, upon every provider of pharmaceutical services to citizens of Alabama.

(2) Unless otherwise defined herein, the definitions of terms set forth in Code of Alabama 1975, Section 40-26B-1, are incorporated by reference herein.

(3) Section 40-26B-2 levies a privilege tax on the business activities of every provider of pharmaceutical services to Alabama citizens except a pharmacy, or portion thereof, serving hospital inpatients or pharmacies owned or operated by the State of Alabama or an agency thereof. The rate of this tax is 10 cents for each prescription filled or refilled for an Alabama citizen with a retail price of $3.00 or more.

(4) On and after July 1, 2002, the rate of this tax is 10 cents for each prescription filled or refilled for an Alabama citizen, regardless of retail price. (Act #2002-414)

(5) Hospital inpatient pharmacies are excluded from the levy of the pharmaceutical providers tax. Accordingly, prescriptions filled or refilled by hospital inpatient pharmacies including prescriptions filled or refilled for emergency room patients

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receiving an emergency supply of medication, hospital staff personnel, and workmans' compensation patients are not taxable under Section 40-26B-2.

(6) Prescriptions filled or refilled by state mental health facilities, mental health centers organized pursuant to Code of Alabama 1975, Section 22-51-1, et seq., and county health departments are not taxable under Section 40-26B-2.

(7) The pharmaceutical providers tax does not apply to prescriptions filled or refilled for persons who are not citizens of Alabama. The provider's books and records must contain sufficient documentation to substantiate claims of tax-exempt sales to noncitizens of Alabama.

(8) When a pharmaceutical provider receives a "co-pay" amount from the patient and the balance of the selling price from an insurance company, the total amount received from both the patient and the insurance company constitutes the retail price of the prescription.

(9) Any pharmaceutical provider filling or refilling both taxable and nontaxable prescriptions shall pay the tax due on taxable prescriptions filled or refilled when said provider's books are kept so as to show separately the number of taxable and nontaxable prescriptions filled or refilled. When the books are not so kept, the pharmaceutical provider shall pay tax on all prescriptions filled or refilled.

(10) The pharmaceutical providers tax shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax accrues. Every pharmaceutical provider shall prepare and forward to the Department, within the time prescribed by law, a return for each calendar month using forms furnished by the Department. Pharmaceutical providers 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) The total number of prescriptions filled or refilled,

(d) The number of nontaxable prescriptions filled or refilled,

(e) The total number of taxable prescriptions filled or refilled,

(f) Gross tax due,

(g) Penalties due, if applicable,

(h) Interest due, if applicable,

(Continued)

810-6-5-.27. (Continued)

(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.

Every pharmaceutical provider shall file only one return for all business units or locations filling or refilling taxable prescriptions.

(11) The pharmaceutical providers tax shall be administered and the tax shall be collected in accordance with the uniform procedures set forth in Title 40, Code of Alabama 1975, along with the procedures outlined in Sections 40-26B-1, et seq. No discount is allowed for timely payment of the pharmaceutical providers tax. (Adopted through APA effective October 29, 1993, amended April 1, 1996, amended October 16, 2002)

810-6-5-.27.01. Nursing Facility Tax.

(1) The term "nursing facility tax" as used in this regulation shall mean the privilege tax levied in Section 40-26B-21, Code of Alabama 1975, upon the business activities of nursing facilities in Alabama.

(2) Unless otherwise defined herein, the definitions of terms set forth in Section 40-26B-20, Code of Alabama 1975, are incorporated by reference herein.

(3) The nursing facility tax shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax accrues. Every nursing facility shall prepare and forward to the Department, within the time prescribed by law, a nursing facility tax return for each calendar month using forms furnished by the Department and shall pay to the Department the amount of tax shown to be due. A separate nursing facility tax return shall be filed for each nursing facility location.

(4) Nursing facility 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) The number of patient days utilized for the month,

(Continued)

810-6-5-.27.01. (Continued)

(d) The number of patient days available for the month,

(e) The percent of occupancy,

(f) The number of licensed beds, if any, added since July 1, 1991, provided the monthly occupancy rate has not equaled or exceeded 85 percent since such beds were added,

(g) Number of licensed beds as of the last day of the month covered by the return excluding any licensed beds, if any, added since July 1, 1991, provided the monthly occupancy rate has not equaled or exceeded 85 percent since such beds were added,

(h) Total number of licensed beds,

(i) Tax due,

(j) Penalties due, if applicable,

(k) Interest due, if applicable,

(l) Credits claimed, if any,

(m) Total amount due,

(n) Total amount remitted,

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

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

(5) The nursing facility tax shall be administered and the tax shall be collected in accordance with the uniform procedures set forth in Title 40, Code of Alabama 1975, along with the procedures outlined in Sections 40-26B-20, et seq. No discount is allowed for timely payment of nursing facility tax. (Sections 40-2A-7(a)(5), 40-26B-23(a), and 40-26B-24(c) Code of Alabama 1975) (Adopted through APA effective April 1, 1996, amended December 8, 2011)

810-6-5-.27.02 Hospital Assessment for Medicaid.

(1) Section 40-26B-71, Code of Alabama 1975, provides for an assessment on each privately operated hospital in the state of Alabama as funding for the Alabama Medicaid program. Assessment amounts are due in equal quarterly installments by the tenth working day of each quarter of the State's fiscal years.

(2) The initial installment payment is not due until the Department of Revenue has notified the affected hospitals that the State's Hospital Funding Program has been approved by the Centers for Medicare and Medicaid Services (CMS), the 30-day verification period allowed to the hospitals has expired, and all the disproportionate share hospital payments for the fiscal year have been made.

(3) If there is a change in the rate of the assessment or the method of determining the Net Patient Revenue to be used in the assessment calculation, then the first payment due after any such change shall be considered an initial installment payment for determining the due date provided for in paragraph (2). (Sections 40-2A-7(a)(5) and 40-26B-72, Code of Alabama 1975, Act 2013-246. Approved through APA effective March 3, 2014.)

810-6-5-.28. Appliances and Devices Using Electricity as an Energy Source, General Rate Applicable Thereto.

(1) The use of raw electrical current obtained through a wall outlet as an energy source by appliances containing transformers, capacitors, voltage regulators, traps, filters, and similar components does not constitute the processing of electricity as that term is used in Code of Alabama 1975, Section 40-23-2(3) and 40-23-61(b). Such simple use of raw electrical current obtained through a wall outlet is not "processing tangible personal property" and, therefore, does not in and of itself qualify the appliance for the reduced machine rate of sales or use tax.

(2) The term "processing" is synonymous with "preparation for market" and "to convert to marketable form." when a appliance uses electricity which is prepared for market and which is in a marketable, commercially usable form before it enters the appliance via the electric cord and wall outlet plug, the fact that the direction of the flow of electrons may be altered upon entering the appliance, or that the volume of the flow of the electric current may be reduced or increased by different components, does not suffice to make it a step in "processing" electricity as used in the Code sections referenced above. Sizemore v. Franco Distributing Co., 594 So. 2d 143 (Ala. Civ. App. 1991)

(3) Video game machines; pinball machines; juke boxes; vending machines; and household electrical appliances such as radios, televisions, lamps, clocks, refrigerators, stoves, microwave ovens, toasters, etc. do not "process" electricity and, therefore, do not qualify for the reduced machine rate of sales or use tax. (Adopted through APA effective October 29, 1993)

810-6-5-.29. Oxygen and Durable Medical Equipment Dispensed to Medicare Recipients by Participating Providers.

(1) The term "durable medical equipment" shall mean 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. The term "participating provider" shall mean a supplier who accepts Medicare assignments.

(2) Sales of oxygen and durable medical equipment dispensed under orders from a duly licensed physician by a participating provider to a Medicare recipient are exempt from state and local sales and use taxes.

(3) With the exception of the purchases outlined in paragraph (2) above, purchases under Medicare Part B are taxable in the same manner as purchases under any other healthcare insurance policy.

(4) Effective August 1, 2014, in addition to any other exemptions provided in subsection (2) or (3) above, any item used for the treatment of illness or injury or to replace all or part of a limb or internal body part purchased 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 sales, use, rental and leasing taxes. This exemption includes, but is not limited to, any of the following:

(a) Durable medical equipment, including repair parts and the disposable or single patient use supplies required for the use of the equipment,

(b) Prosthetic and orthotic devices, and

(c) 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.)

(d) The provisions in paragraph (2) above were not revoked by the changes set forth in Code of Alabama 1975, Section 40-9-30(d). Sales of oxygen and durable medical equipment to Medicare patients, as outlined in paragraph (2) above, continue to be exempt even when not billed directly to Medicare. However, sales of other items to Medicare patients must follow the requirements set forth in Section 40-9-30(d), in order to be exempt from tax.

(5) Healthcare providers, including but not limited to, hospitals, physicians' offices, surgery centers, diagnostic centers, and like institutions are rendering services to their patients or clients and are deemed to be the consumer of the tangible personal property they purchase in rendering the services they perform. The sellers of these items are required to collect sales or use tax on sales of the tangible personal property to the providers.

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810-6-5-.29. (Continued)

(6) Notwithstanding the provisions of paragraph (5) above, the purchase by a healthcare provider of any item intended for use by the patient in his/her home and made in accordance with the requirements of Code of Alabama 1975, Section 40-9-30(d) and paragraph (4) above, shall be exempt from sales and use taxes when sold to insured patients pursuant to valid prescriptions. Additionally, healthcare providers will not bill sales tax for sales made in accordance with Section 40-9-30(d) and paragraph (4).

(a) The burden of proof that any item purchased by a healthcare provider was intended for use and made in accordance with the requirements of Code of Alabama 1975, Section 40-9-30(d) and paragraph (4) above, shall be carried by the healthcare provider. The healthcare provider shall maintain adequate records to properly document that any items purchased by the healthcare provider was intended for use and was in fact used in accordance with the requirements of Code of Alabama 1975, Section 40-9-30(d).

(b) Healthcare providers in a clinical setting who maintain an inventory of durable medical equipment, prosthetics, orthotics, and certain medical supplies to treat patients as needed may not know at the time of purchase whether the items will be ultimately prescribed to a patient covered by Medicare, Medicaid, or a health benefit plan. Such healthcare providers may purchase qualifying items without the payment of tax to the vendor by using a properly documented Certificate of Exemption, form ST: EX-A1, issued by the department. The healthcare provider will be responsible for accruing and remitting use tax on those items that are used to provide services to non-insured patients and/or items on which they do not maintain adequate records to determine the use and taxability.

(c) Sales or use tax will continue to be due on purchases such as bandages, supplies, equipment, and other items used in delivering care to patients.

(7) Hospitals and nursing homes that provide durable medical equipment to patients are responsible for the equipment and as such are considered the users of any durable medical equipment purchased or leased on behalf of their patients. Therefore, the exemption provided does not extend to these settings in accordance with rules promulgated by Medicare. (Sections 40-2A-7(a)(5), 40-23-31 and 40-23-83, Code of Alabama 1975) (Adopted through APA effective October 12, 1993, amended December 4, 2014, amended April 23, 2016)

810-6-5-.30. Filing and Paying State Sales and Use Taxes and State-Administered County and Municipal Sales and Use Taxes on a Quarterly or Annual Basis.

(1) The term "total state sales tax liability" as used in Section 40-23-7(d), Code of Alabama 1975, and this rule shall mean the amount of state sales tax, including applicable penalty and interest, remitted by, or levied or assessed against, the taxpayer less any discounts allowed and taken by the taxpayer pursuant to Section 40-23-36.

(2) The term "total state use tax liability" as used in Section 40-23-68(f) and this rule shall mean the amount of state use tax, including applicable penalty and interest, remitted by, or levied or assessed against, the taxpayer less any discounts allowed and taken by the taxpayer pursuant to Section 40-23-77.

(3) Beginning with calendar year 1999, a taxpayer may elect to file and pay state and state-administered county and municipal sales and use taxes on a calendar quarter basis as follows:

(a) a taxpayer whose total state sales tax liability averages less than two hundred dollars ($200) per month during the preceding calendar year may elect to file and pay state sales tax on a calendar quarter basis. (Section 40-23-7(d))

(b) a taxpayer whose total state sales tax liability averages less than two hundred dollars ($200) per month during the preceding calendar year may elect to file and pay state-administered municipal and county sales taxes on a calendar quarter basis. (Section 11-51-211(a)(1), Code of Alabama 1975)

(c) a taxpayer whose total state use tax liability averages less than two hundred dollars ($200) per month during the preceding calendar year may elect to file and pay state use tax on a calendar quarter basis. (Section 40-23-68(f))

(d) a taxpayer whose total state sales tax liability averages less than two hundred dollars ($200) per month during the preceding calendar year and whose total state use tax liability also averages less than two hundred dollars ($200) per month during the preceding calendar year may elect to file and pay state-administered municipal and county use taxes on a calendar quarter basis. A taxpayer who makes no retail sales and, therefore, files no state sales tax returns may elect to file state-administered municipal and county use taxes on a calendar quarter basis provided the taxpayer's total state use tax liability averages less than two hundred dollars ($200) per month during the preceding calendar year. A taxpayer who has no state use tax liability and, therefore, files no state use tax returns may elect to file state-administered municipal and county use taxes on a calendar quarter basis provided the taxpayer's total state sales tax liability averages less than two hundred dollars ($200) per month during the preceding calendar year. (Section 11-51-211(a)(2))

(4) A taxpayer's election to file and pay taxes quarterly shall be in writing and shall be filed with the department no later than February 20 of each year in which the taxpayer wishes to file and pay taxes quarterly. The provisions of Rule 810-1-5-.01 shall govern whether a taxpayer's written election to file quarterly returns is timely filed.

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810-6-5-.30. (Continued)

(5) Beginning with calendar year 1999, no state sales tax return, state-administered county or municipal sales tax return, or state-administered county or municipal use tax return is due until January 20 of the following year unless the total state sales tax liability during the preceding calendar year exceeds ten dollars ($10). Beginning with calendar year 1999, no state use tax return is due until January 20 of the following year unless the total state use tax liability during the preceding calendar year exceeds ten dollars ($10).

(a) If a taxpayer's state sales tax liability for the entire calendar year 1998 was ten dollars ($10) or less, the taxpayer's state sales tax, state-administered county or municipal sales tax, and state-administered county or municipal use tax returns and payments covering calendar year 1999 shall be due January 20, 2000. If the same taxpayer's state sales tax liability for calendar year 1999, when the tax return is filed and the tax paid in January 2000, is ten dollars ($10) or less; the taxpayer's state sales tax, state-administered county or municipal sales tax, and state-administered county or municipal use tax returns and payments covering calendar year 2000 shall be due January 20, 2001. However, if the same taxpayer's state sales tax liability for calendar year 1999, when the tax return is filed and the tax paid in January 2000, is in excess of ten dollars ($10); the taxpayer shall file and pay state sales tax, state-administered county or municipal sales tax, and state-administered county or municipal use tax for calendar year 2000 on a monthly basis unless the taxpayer qualifies and elects in writing to file the returns and pay the taxes on a calendar quarter basis.

(b) If a taxpayer's state use tax liability for the entire calendar year 1998 was ten dollars ($10) or less, the taxpayer's state use tax return and payment covering calendar year 1999 shall be due January 20, 2000. If the same taxpayer's state use tax liability for calendar year 1999, when the tax return is filed and the tax paid in January 2000, is ten dollars ($10) or less; the taxpayer's state use tax return and payment covering calendar year 2000 shall be due January 20, 2001. However, if the same taxpayer's state use tax liability for calendar year 1999, when the tax return is filed and the tax paid in January 2000, is in excess of ten dollars ($10); the taxpayer shall file and pay state use tax for calendar year 2000 on a monthly basis unless the taxpayer qualifies and elects in writing to file the returns and pay the taxes on a calendar quarter basis.

(6) In order to qualify for quarterly or annual filing status, the taxpayer shall have been in business for the entire preceding calendar year and shall have filed the required returns covering the entire preceding calendar year upon which the calculation of the average monthly tax liability or the annual tax liability is to be based. (Adopted through APA effective October 20, 1998)

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.

(1) The term "total state rental tax liability" as used in this rule shall mean the amount of state rental tax, including applicable penalty and interest, remitted by, or levied or assessed against, the taxpayer.

(2) Beginning with calendar year 1999, a taxpayer may elect to file and pay state rental tax and state-administered county and municipal rental taxes on a calendar quarter basis provided the taxpayer's total state rental tax liability averages less than two hundred dollars ($200) per month during the preceding calendar year. (Sections 11-3-11.3, 11-51-207(b), 40-12-224, and 40-23-7, Code of Alabama 1975)

(3) A taxpayer's election to file and pay rental taxes quarterly shall be in writing and shall be filed with the department no later than February 20 of each year in which the taxpayer wishes to file and pay the taxes quarterly. The provisions of Rule 810-1-5-.01 shall govern whether a taxpayer's written election to file quarterly returns is timely filed.

(4) Beginning with calendar year 1999, no state rental tax return or state-administered county or municipal rental tax return is due until January 20 of the following year unless the total state rental tax liability during the preceding calendar year exceeds ten dollars ($10). (Sections 11-3-11.3, 11-51-207(b), 40-12-224, and 40-23-7)

(a) If a taxpayer's state rental tax liability for the entire calendar year 1998 was ten dollars ($10) or less, the taxpayer's state rental tax and state-administered county or municipal rental tax returns and payments covering calendar year 1999 shall be due January 20, 2000. If the same taxpayer's state rental tax liability for calendar year 1999, when the tax return is filed and the tax paid in January 2000, is ten dollars ($10) or less; the taxpayer's state rental tax and state-administered county or municipal rental tax returns and payments covering calendar year 2000 shall be due January 20, 2001. However, if the same taxpayer's state rental tax liability for calendar year 1999, when the tax return is filed and the tax paid in January 2000, is in excess of ten dollars ($10); the taxpayer shall file and pay state rental tax and state-administered county or municipal rental tax for calendar year 2000 on a monthly basis unless the taxpayer qualifies and elects in writing to file the returns and pay the taxes on a calendar quarter basis.

(5) In order to qualify for quarterly or annual filing status, the taxpayer shall have been in business for the entire preceding calendar year and shall have filed the required returns covering the entire preceding calendar year upon which the calculation of the average monthly tax liability or the annual tax liability is to be based. (Adopted through APA effective October 20, 1998)

810-6-5-.31. <u>City and County Sales, Use, Rental, and Lodgings Tax Return</u>.

(1) The term "Department" as used in this rule shall mean the Department of Revenue of the State of Alabama.

(2) The term "state-administered local taxes" as used in this rule shall mean county and municipal sales, use, rental, and lodgings taxes which are administered and collected by the Department of Revenue of the State of Alabama.

(3) Every person required by law to report and pay a state-administered local tax shall prepare and forward to the Department, within the time prescribed by law, a city and county tax return for each tax reporting period on a form prescribed by the Department and pay to the Department the amount of tax shown due on the return.

(4) All state-administered local taxes shall be reported on a single form requiring the following information:

(a) Period covered by the return and the due date of the return,

(b) Taxpayer's legal name,

(c) Taxpayer's complete address,

(d) Taxpayer's tax account number,

(e) Taxpayer's aggregate chain number as assigned by the Department.

(f) A breakdown of sales tax information by locality code as follows:

1. Total gross sales, the total collections during the reporting period on credit sales previously claimed as a deduction, and the cost of property purchased at wholesale withdrawn for use or consumption, by tax rate type as follows:

(i) Automotive vehicles, truck trailers, semitrailers, and house trailers;

(ii) Farm machinery and equipment;

(iii) Machines used in mining, quarrying, manufacturing, compounding, or processing tangible personal property;

(iv) Food and food products for human consumption not including beverages other than coffee, milk, milk products, and substitutes therefor sold through vending machines; and,

(v) All other tangible personal property in the local taxing jurisdiction, and gross receipts from places of amusement.

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810-6-5-.31. (Continued)

2. Total deductions claimed by applicable tax rate,

3. Measure of tax by applicable tax rate,

4. Gross tax due by applicable tax rate,

5. Number of automotive vehicles withdrawn for use as demonstrators,

6. Total demonstrator fee due,

7. Total gross amount of tax due,

8. Discount due for prompt payment, if applicable,

9. Penalty and interest due, if applicable, and

10. Total amount due.

(g) A breakdown of rental tax information by locality code as follows:

1. The gross proceeds derived from the leasing or rental by tax rate type as follows:

(i) Automotive vehicles, truck trailers, semitrailers, and house trailers;

(ii) Linens and garments; and,

(iii) All other tangible personal property.

2. Total deductions claimed by applicable tax rate,

3. Measure of tax by applicable tax rate,

4. Gross tax due by applicable tax rate,

5. Total gross amount of tax due,

6. Penalty and interest due, if applicable, and

7. Total amount due.

(h) A breakdown of lodgings tax information by locality code as follows:

(Continued)

810-6-5-.31. (Continued)

1. Total gross charges, both cash and credit, from the rental of rooms, lodgings, accommodations, and services furnished to transients and collections on credit charges previously claimed as a deduction,

2. Total deductions,

3. Measure of tax,

4. Gross amount of tax,

5. Discount for prompt payment of tax, if applicable,

6. Penalty and interest due, if applicable, and

7. Total amount due.

(i) A breakdown of sellers use tax information by locality code as follows:

1. Total sales price and total collections during the reporting period on credit sales previously claimed as a deduction, by tax rate type as follows:

(i) Automotive vehicles, truck trailers, semitrailers, and house trailers;

(ii) Farm machinery and equipment;

(iii) Machines used in mining, quarrying, manufacturing, compounding, or processing tangible personal property; and,

(iv) All other tangible personal property sold for delivery in the local taxing jurisdiction.

2. Total deductions claimed by applicable tax rate,

3. Measure of tax by applicable tax rate,

4. Gross tax due by applicable tax rate,

5. Total gross amount of tax due,

6. Penalty and interest due, if applicable, and

7. Total amount due.

(j) A breakdown of consumers use tax information by locality code as follows:

(Continued)

810-6-5-.31. (Continued)

1. Total purchase price of tangible personal property purchased outside the local taxing jurisdiction for use, storage, or consumption in the jurisdiction, or purchased within the jurisdiction on which the sales or use tax due was not paid, by tax rate type as follows:

(i) Automotive vehicles, truck trailers, semitrailers, and house trailers;

(ii) Farm machinery and equipment;

(iii) Machines used in mining, quarrying, manufacturing, compounding, or processing tangible personal property; and,

(iv) All other tangible personal property.

2. Total deductions claimed by applicable tax rate, including a measure to allow credit for taxes paid to another state or to a political subdivision of another state under a requirement of law on out-of-state purchases,

3. Measure of tax by applicable tax rate,

4. Gross tax due by applicable tax rate,

5. Total gross amount of tax due,

6. Penalty and interest due, if applicable, and

7. Total amount due.

(k) Total amount due for all state-administered local taxes reported on the return.

(l) Credit due for a previous overpayment. Any credit taken for previous overpayment must be approved in advance by the Department.

(m) Net amount due (total amount due less approved credit due).

(n) The total amount remitted.

(o) An indication as to whether the taxes shown due on the return have been remitted through an electronic funds transfer, and

(p) The taxpayer's signature and the date the return is signed.

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810-6-5-.31. (Continued)

(5) Effective October 1, 2003, state-administered local sales, use, rental and lodgings taxes are required to be filed electronically. However, when a waiver from the requirement to file electronically has been granted by the Commissioner of Revenue, the taxpayer shall file on printed forms provided by the Department. (Rule 810-1-6-.05).

(6) Items (a) through (e) in paragraph (4) of this rule shall be pre-populated or preprinted on the return by the Department based on the information in its files. The taxpayer, however, shall be responsible for notifying the Department if the account information is incorrect. Also, the locality names, locality codes, tax types, and rate types shall be pre-populated or preprinted on the return by the Department based on the county and municipal taxes previously reported by the taxpayer. If the taxpayer is liable for any state-administered local tax for a county or municipality which is not pre-populated or preprinted on the form by the Department, the taxpayer shall add the name, locality code, tax type and rate types of the county or municipality to the return and report the tax, penalty, interest, or discount applicable to that county or municipality. The information required in items (f) through (p) in paragraph (4) shall be provided by the taxpayer.

(7) The city and county tax return outlined in this rule shall constitute the standard multiple jurisdiction tax form and the single jurisdiction tax form referenced in Section 11-51-210(a) and shall be used to report all state-administered local taxes for periods covering October 2003 forward. State-administered local taxes for periods prior to October 2003 shall be reported on forms furnished by the Department prior to the adoption of the new standard form outlined in this rule. (Sections 40-2A-7(a)(5), 11-3-11.3(b), 11-3-11.3(f), 11-51-182, 11-51-207, 11-51-208(e), 11-51-210(a), 11-51-210(c), 40-12-6, 40-12-224, 40-23-31, 40-23-83 and 40-26-19, Code of Alabama 1975) (Adopted through APA effective December 28, 1998, amended November 4, 2009)

810-6-5-.32. Hydroelectric Privilege License Tax Return.

(1) The term “department” as used in this rule shall mean the Alabama Department of Revenue.

(2) The term “hydroelectric privilege license tax” as used in this rule shall mean the license or privilege tax levied in Section 40-21-56, Code of Alabama 1975, at the rate of two-fifths (2/5) of one mill upon each kilowatt hour of hydroelectric power manufactured and sold during the preceding calendar year.

(3) The hydroelectric privilege license tax shall be reported and paid on or before September 25 of each year. Every manufacturer and seller of hydroelectric power liable for the tax shall prepare and forward to the department, within the time prescribed by law, a hydroelectric privilege license tax return using forms furnished by the department and shall pay to the department the amount of tax shown due.

(4) The hydroelectric privilege license tax return shall require the following information:

(Continued)

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(a) taxpayer's legal name,

(b) calendar year covered by the return,

(c) number of kilowatt hours of hydroelectric power manufactured and sold during the preceding calendar year,

(d) amount of tax due, and

(e) signed statement by the owner, or an officer, of the public utility giving his or her name and title together with a sworn statement under oath that he or she (i) has supervision of the public utility's records, (ii) controls the manner in which the records are kept, (iii) has knowledge that the records have been kept in good faith during the period covered by the return, and (iv) has examined the return and, to the best of his or her knowledge and belief, the information provided on the return is in exact accordance with the records and the return is a correct statement of the kilowatt hours of hydroelectric power manufactured and sold during the calendar year covered by the return. (Adopted through APA effective December 28, 1998)

810-6-5-.33. Alabama Drycleaning Environmental Response Trust Fund – Owner of an Abandoned Drycleaning Facility or Impacted Third Party.

(1) Unless otherwise defined herein, the definitions of terms set forth in Section 22-30D-3, Code of Alabama 1975, are incorporated by reference herein.

(2) The term "department" as used in this rule shall mean the Alabama Department of Environmental Management (ADEM), or any successor, department, or agency of the state.

(3) The term "registration fee" as used in this rule shall mean the Alabama Drycleaning Environmental Response Trust Fund fee created in Section 22-30D-6, Code of Alabama 1975, against every person owning any abandoned drycleaning facility who suspects contamination or discovers contamination at any abandoned drycleaning facility or against any impacted third party who has reported contamination on its real property to the department and who elects to register each contaminated site with the department and the board.

(4) Section 22-30D-6 creates a registration fee in the amount of five thousand dollars ($5000) per year per site on owners of abandoned drycleaning facilities or impacted third parties electing to register each site with the department and the board. The registration fee shall be paid to the Department of Revenue prior to receipt of any payment from the fund and is due until such time as the site is subject to no further action by ADEM.

(5) The registration fee shall be paid annually by each registered owner of an abandoned drycleaning facility or registered impacted third party to the Department of

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810-6-5-.33. (Continued)

Revenue on April 1, and shall become delinquent on the 20th day of April. No discount is allowed for timely payment of the registration fee.

(6) Registered owners of abandoned drycleaning facilities or impacted third parties shall submit the registration fee on forms furnished by the Department of Revenue. The payment forms shall require the following information:

(a) Owner of abandoned drycleaning facility or impacted third party's legal name, complete address, and account number,

(b) Owner of abandoned drycleaning facility or impacted third party's Federal Employer Identification Number,

(c) Owner of abandoned drycleaning facility or impacted third party's telephone number,

(d) Name and position of contact person,

(e) Address of abandoned drycleaning facility site or real property contamination site,

(f) Signature of individual, partner, or corporate officer,

(g) Date signed,

(h) Total trust fund fee due.

(7) Upon receipt of a registration fee from an owner of an abandoned drycleaning facility or impacted third party, the Department of Revenue shall provide a certificate of registration containing the following information:

(a) Owner of abandoned drycleaning facility or impacted third party's legal name, address, and account number,

(b) Date of approval or issuance by the Department of Revenue,

(c) Statement of the purpose of the certificate.

(8) The Alabama Drycleaning Environmental Response Trust Fund fee shall be administered and collected in accordance with the uniform revenue procedures set forth in Chapter 2A of Title 40, Code of Alabama 1975, along with the procedures outlined in Section 22-30D-6. (Adopted through APA effective June 12, 2001)

810-6-5-.34. Alabama Drycleaning Environmental Response Trust Fund – Drycleaning Facilities.

(1) Unless otherwise defined herein, the definitions of terms set forth in Section 22-30D-3, Code of Alabama 1975, are incorporated by reference herein.

(2) The term "department" as used in this rule shall mean The Alabama Department of Environmental Management (ADEM), or any successor, department, or agency of the state.

(3) The term "registration fee" as used in this rule shall mean the Alabama Drycleaning Environmental Response Trust Fund fee created in Section 22-30D-6, Code of Alabama 1975, against every owner or operator of a drycleaning facility electing to contribute to a drycleaning self-insurance program, which will cover the cost to investigate, assess, and, if necessary, remediate sites contaminated by drycleaning agents

(4) The term "gross receipts" as used in this rule shall mean all actual receipts, but excluding gross receipts derived from alterations of garments, at a drycleaning facility, valued in money, without any deduction on account of the cost of such operation, the costs of materials used, labor or service costs, interest paid, or any other expenses whatsoever and without any deduction on account of losses including gross receipts derived from wholesale drycleaning and laundering of garments, apparel, or fabrics for other drycleaning facilities not owned by the owner or operator; but excluding any gross receipts derived from the drycleaning or laundering of garments, apparel, or fabrics owned by the owner or operator.

(5) Section 22-30D-6 creates an annual registration fee against an owner or operator of an existing drycleaning facility as of May 24, 2000, against each new owner or operator of a drycleaning facility coming into existence after May 24, 2000 who acquires an existing drycleaning facility after May 24, 2000, and against each new owner or operator who establishes a new drycleaning facility after May 24, 2000, each of which elect to be covered pursuant to Section 22-30D-4. Annual registration fees are against each owner or operator, regardless of the number of drycleaning facilities owned or operated by the owner or operator. The annual registration fee amounts are due as follows:

(a) Each owner or operator of an existing drycleaning facility as of May 24, 2000 shall pay an annual registration fee equal to two percent (2%) of the gross receipts earned in Alabama during the prior calendar year, not to exceed a total registration fee of twenty-five thousand dollars ($25,000) per year.

(b) Each new owner or operator who acquires an existing drycleaning facility after May 24, 2000 shall pay for the first year the owner or operator owns or operates the acquired drycleaning facility, a registration fee equal to two percent (2%) of the gross receipts earned in Alabama by the prior owner or operator during the prior calendar year less whatever sum the prior owner or operator has paid as a registration fee for that same year, not to exceed a total registration fee of twenty-five thousand dollars ($25,000). Each new owner or operator shall pay for the second year and subsequent years, an annual registration fee equal to two percent (2%) of the gross receipts earned in Alabama during the prior calendar year, not to exceed a total registration fee of twenty-five thousand dollars ($25,000) per year.

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810-6-5-.34. (Continued)

(c) Each new owner or operator coming into existence who establishes a new drycleaning facility after May 24, 2000 shall pay a one-time registration fee in the amount of five thousand dollars ($5,000) for the first year of operation and shall pay, for the second year of operation, an annual registration fee equal to the greater of five thousand dollars ($5,000) or two percent (2%) of the gross receipts earned by the new owner or operator during the period of the first calendar year that the new owner or operator was in business, not to exceed a total registration fee of twenty-five thousand dollars ($25,000). For each year thereafter, the new owner or operator shall pay the annual registration fee provided for in paragraph (5)(a) of this rule.

(d) The registration fee shall be paid quarterly by each owner or operator to the Department of Revenue, one-fourth (1/4) on April 1, one-fourth (1/4) on July 1, one-fourth (1/4) on October 1, and one-fourth (1/4) on January 1, and shall be due on or before the nineteenth (19th) day of each said month. The registration fee shall be paid on forms furnished by the Department of Revenue. No discount is allowed for timely payment of the registration fee.

(6) Registered owners or operators of drycleaning facilities shall submit the ADEM registration form, the registration fee, and the registration fee payment form to the Department of Revenue. The registration fee payment form shall require the following information:

(a) Owner or operator's legal name, complete address, and account number,

(b) Owner or operator's Federal Employer Identification Number,

(c) Owner or operator's telephone number,

(d) Name and position of contact person,

(e) Signature of sole proprietor, partner, or corporate officer,

(f) Date signed,

(g) Statements indicating the applicable type of owner or operator of drycleaning facility,

(h) Amount of gross receipts earned in previous calendar year,

(i) Total annual trust fund fee due,

(j) Quarterly trust fund fee due,

(k) Penalties due, if applicable,

(l) Interest due, if applicable,

(Continued)

810-6-5-.34. (Continued)

(m) Total trust fund fee due for quarter.

(7) Upon receipt of a registration fee from an owner or operator of a drycleaning facility, the Department of Revenue shall provide a certificate of registration containing the following information:

(a) Owner or operator's legal name, address, and account number,

(b) Date of approval or issuance by the Department of Revenue,

(c) Statement of the purpose of the certificate.

The certificate of registration shall be conspicuously posted by the owner or operator of the drycleaning facility.

(8) The Alabama Drycleaning Environmental Response Trust Fund fee shall be administered and collected in accordance with the uniform revenue procedures set forth in Chapter 2A of Title 40, Code of Alabama 1975, along with the procedures outlined in Section 22-30D-6. (Adopted through APA effective June 12, 2001)

810-6-5-.35. Alabama Drycleaning Environmental Response Trust Fund – Wholesale Distributors of Drycleaning Agents.

(1) Unless otherwise defined herein, the definitions of terms set forth in Section 22-30D-3, Code of Alabama 1975, are incorporated by reference herein.

(2) The term "registration fee" as used in this rule shall mean the Alabama Drycleaning Environmental Response Trust Fund fee created in Section 22-30D-6, Code of Alabama 1975, against every wholesale distributor electing to contribute to a drycleaning self-insurance program which will cover the cost to investigate, assess, and, if necessary, remediate sites contaminated by drycleaning agents.

(3) The term "department" as used in this rule shall mean the Alabama Department of Environmental Management (ADEM), or any successor, department, or agency of the state.

(4) Section 22-30D-6 creates an annual registration fee in the amount of $5000 (five thousand dollars) on wholesale distributors selling drycleaning agents to drycleaning facilities in Alabama. The registration fee applies only to wholesale distributors electing to be covered pursuant to Section 22-30D-4.

(5) The registration fee shall be paid annually by each wholesale distributor to the Department of Revenue on April 1, and shall become delinquent on the 20th day of April. No discount is allowed for timely payment of the registration fee.

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810-6-5-.35. (Continued)

(6) Registered wholesale distributors shall submit the registration form provided by the department to the Department of Revenue. Registered wholesale distributors shall also submit the annual registration fee to the Department of Revenue on forms furnished by the Department of Revenue. The payment forms shall require the following information:

(a) Wholesale distributor's legal name, complete address, and account number,

(b) Wholesale distributor's Federal Employer Identification Number,

(c) Wholesale distributor's telephone number,

(d) Name and position of contact person,

(e) Signature of sole proprietor, partner, or corporate officer,

(f) Date signed,

(g) Payment due date,

(h) Annual trust fund fee due,

(i) Penalties due, if applicable,

(j) Interest due, if applicable,

(k) Total fee due.

(7) Upon receipt of a registration fee from a wholesale distributor, the Department of Revenue shall provide a certificate of registration containing the following information:

(a) Wholesale distributor's legal name, address, and account number,

(b) Date of approval or issuance by the Department of Revenue,

(c) Statement of the purpose of the certificate.

The certificate of registration shall be conspicuously posted by the wholesale distributor.

(8) The Alabama Drycleaning Environmental Response Trust Fund fee shall be administered and collected in accordance with the uniform revenue procedures set forth in Chapter 2A of Title 40, Code of Alabama 1975 along with the procedures outlined in Section 22-30D-6. (Adopted through APA effective June 12, 2001)

810-6-5-.36 Prepaid Wireless 9-1-1 Charge.

(1) The Legislature has passed Act No. 2012-293 amending Chapter 98 of Title 11, which governs the operations of the Commercial Mobile Radio Service (CMRS) Board and imposes the CMRS emergency telephone service charge, herein referred to as the "9-1-1 Charge." Under the provisions of the Act, effective September 1, 2012, new Section 5.3 is added to Chapter 98 which requires the Department of Revenue to administer and collect the 9-1-1 Charge imposed on retail sales of prepaid wireless telephone service. The CMRS Board will continue to collect the 9-1-1 Charge on postpaid service.

(2) For purposes of this rule, the following terms shall have the respective meanings ascribed by this section:

(a) The term "department" shall mean the Department of Revenue for the State of Alabama.

(b) The term "prepaid retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

(c) The term "prepaid wireless consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction.

(d) The term "prepaid wireless telephone service" means a service that meets all of the following requirements:

1. Authorizes the purchase of CMRS, either exclusively or in conjunction with other services.

2. Must be paid for in advance of the usage.

3. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis or provides for unlimited usage for a fixed period of time.

(e) The term "resale" means a sale of a prepaid wireless telecommunication service to a purchaser who acquires the service for the purpose of reselling it in the United States in the normal course of business in the form or condition in which it is purchased or as an integral part of a taxable item as defined in Section 40-23-1.

(f) The term "seller" means a person who sells prepaid wireless telecommunication services to any consumer. The term also includes those CMRS service providers who provide prepaid wireless service to their customers by either selling prepaid services at a retail location, via the Internet, telecommunication device, or otherwise.

(g) The term "9-1-1 Charge" shall mean the current CMRS emergency telephone service charge established under Section 11-98-7(b)(1). Upon its implementation, the replacement, statewide 9-1-1 Charge will be imposed under Section 11-98-5(a) as of October 1, 2013.

(Continued)

810-6-5-.36. (Continued)

(3) Unless otherwise defined herein, the definitions of terms set forth in Code of Alabama 1975, Section 11-98-1, are incorporated by reference herein.

(4) All sellers, including retailers and CMRS service providers, making sales of prepaid wireless telephone service shall collect from the consumer the 9-1-1 Charge on prepaid retail transactions occurring in this state and report the number of taxable and nontaxable transactions and the amounts of 9-1-1 Charges collected to the Department of Revenue.

(5) The 9-1-1 Charge shall be collected on each prepaid retail transaction regardless of whether the prepaid wireless telephone service is purchased in person at the business location of the seller in Alabama, by telephone, through the Internet or by any other method by a consumer in Alabama.

(6) For purposes of retail transactions occurring via the Internet, or by other telecommunication device, the Prepaid Wireless 9-1-1 Charge shall be collected on each transaction with a customer if that customer has a primary street or business address in Alabama and the customer is within the licensed service area of the CMRS provider. If the primary street or business address cannot be determined and if that customer has an area code designated as an area code for Alabama or a credit card billing address in Alabama, then the Prepaid Wireless 9-1-1 Charge shall be collected from that customer for each transaction. A flat rate of $1.75 per retail transaction will be effective August 1, 2014. The historical rates for the Prepaid Wireless 9-1-1 Charge are as follows: $.70 per retail transaction for the period of September 1, 2012 through September 30, 2013, and $1.60 per retail transaction for the period October 1, 2013 through July 31, 2014.

(7) The 9-1-1 Charge collected on prepaid wireless service will be reported by the seller on a new form entitled “Prepaid Wireless 9-1-1 Return.” Sellers shall be required to file their Prepaid Wireless 9-1-1 Returns electronically through the Department’s online filing system, My Alabama Taxes (MAT). However, a seller who is unable to file online because the seller does not have access to a computer or the Internet, or because of other special circumstances, may apply to the Commissioner for a waiver from the requirement to file electronically.

(8) The 9-1-1 Charge on prepaid wireless telephone service is the liability of the consumer and not the seller or provider, except that the seller shall be liable to collect and remit all Prepaid Wireless 9-1-1 Charges on all qualifying transactions, including all instances where the seller has failed to separately state and collect the charge from the consumer. When the Prepaid Wireless 9-1-1 Charge is billed as a separate charge, the amount shall not be included in the base for measuring any tax, fee, surcharge, or other charges that are imposed by this state, any political subdivisions of this state, or any intergovernmental agency.

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(9) An allowance or discount of 4% of the 9-1-1 Charge collected, or deemed to be collected, on sales of prepaid wireless telephone service may be deducted on the return and retained by the seller.

(10) Section 11-98-5.3 provides that the Department shall administer the 9-1-1 Charge on prepaid wireless telephone service under the same provisions and procedures applicable to the administration of state sales tax, which include the provisions in Chapter 1, Chapter 2A, and Chapter 23 of Title 40.

(11) All persons selling prepaid wireless telephone service to consumers in Alabama shall make application for an account number for reporting the 9-1-1 Charge online at www.revenue.alabama.gov or by contacting the Registration Unit.

(12) The Prepaid Wireless 9-1-1 Return and payment are due on or before the twentieth (20th) day of each calendar month for the preceding calendar month.

(13) If a return is not timely filed and/or paid, the seller shall be assessed the appropriate penalties and interest as provided in Sections 40-2A-11 and 40-1-44.

(14) Transactions excluded from the 9-1-1 Charge:

(a) The sale of prepaid wireless telephone service for resale.

(b) A sale of a minimal amount of service, sold for a single, non-itemized price as part of the purchase of a wireless communications device, the seller may elect not to apply the 9-1-1 charge to the initial transaction. For these purposes, a service allotment denominated as ten (10) minutes or less, or five dollars ($5) or less, is a minimal amount. If the seller elects to collect such charge, it shall be reported with other prepaid communication charges.

(c) The seller is required to maintain records in order to verify that transactions on which the Prepaid Wireless 9-1-1 Charge was not collected are not subject to the charge. The record may be in paper or electronic format and shall include the details of the transaction including the date of the transaction, the customer’s name and address, the reason the exemption is claimed (9-1-1 Charge account number if applicable), invoice number, and the transaction details. If the seller fails to maintain the records to substantiate that a transaction is not subject to the 9-1-1 Charge, then the transactions will be subject to the charge.

(15) The Prepaid Wireless 9-1-1 Returns shall require the following information:

(a) Seller's Prepaid Wireless account number, legal name, and complete address,

(b) Period covered by the return and due date of the return,

(Continued)

810-6-5-.36. (Continued)

(c) The number of transactions of sales of prepaid wireless service,

(d) The number of transactions not subject to the 9-1-1 charge,

(e) The number of transactions subject to the 9-1-1 charge,

(f) Amount of the 9-1-1charge due,

(g) Allowance or discount of 4% of the 9-1-1 Charge collected,

(h) Penalties due, if applicable,

(i) Interest due, if applicable,

(j) Credits claimed, if any

(k) Total amount due,

(l) Total amount remitted,

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

(n) Seller's signature, title, and date signed.

(40-2A-7(a)(5), 11-98-5.3, Code of Alabama 1975; Act 2012-293, (Effective December 24, 2012, amended December 25, 2013, amended October 20, 2014)

810-6-5-.36.01 Sales of Prepaid Wireless Service.

(1) The sale of prepaid wireless service constitutes the sale of tangible personal property subject to sales or use tax.

(2) The term “prepaid wireless service” as used in this rule shall mean, the right to use mobile telecommunications service, which must be paid for in advance and that is sold in predetermined units or dollars of which the number declines with use or the expiration of time in a known amount, and which may include rights to use non-telecommunications services or to download digital products or digital content.

(3) The definition of the term "mobile telecommunications service" contained in Section 40-21-120, Code of Alabama 1975, is incorporated by reference herein.

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810-6-5-.36.01 (Continued)

(4) Sales of prepaid telephone calling cards, prepaid authorization numbers, or both, constitute sales of tangible personal property subject to sales or use tax.

(a) The sale of prepaid wireless service that is evidenced by a physical card constitutes the sale of a prepaid telephone calling card, and

(b) The sale of prepaid wireless service that is not evidenced by a physical card constitutes the sale of a prepaid authorization number, including but not limited to, real time downloads, real time reloads, recharges, or other means that may be manually, electronically, or otherwise entered.

(5) For transactions that occurred prior to July 1, 2014, for which the consumer did not receive from the retailer either an authorization number or a physical card, neither the Department nor local tax officials may seek payment for sales tax not collected. This provision does not apply to audits that began or assessments that were entered prior to July 1, 2014. With regard to such transactions in which sales tax was collected and remitted, neither the taxpayer nor the entity remitting sales tax shall have the right to seek a refund of such tax. (Sections 40-2A-7(a)(5), 40-23-1, 40-23-31, and 40-23-60(14), Code of Alabama 1975 and Act 2014-336) (Effective March 27, 2015)

810-13-1-.10. Procedures for ACH Debit Payment Method.

(1) Introduction. Certain taxpayers are required to pay their taxes with an electronic funds transfer (EFT) pursuant to Section 41-1-20, Code of Alabama 1975. Taxpayers required to make tax payments to the Department via EFT shall use the Automated Clearing House (ACH) Debit payment method, unless otherwise approved by the Department to use the ACH Credit payment method. The ACH Debit payment method is the preferred EFT payment method by the Department. The Department bears the costs of processing ACH Debit method payments. Taxpayers who are not required to pay by EFT may voluntarily choose to pay by EFT.

(2) Definitions. For purposes of this rule, the following terms will apply:

(a) EFT or Electronic Funds Transfer means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer so as to order, instruct, or authorize a financial institution to debit or credit an account.

(b) ACH or Automated Clearing House means a nationwide system run by the Federal Reserve and designed to transfer funds electronically between financial institutions using industry accepted standards. These standards ensure network security and increased efficiency of the transactions.

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810-13-1-.10. (Continued)

(c) ACH Debit payment method means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the Department, using either the Department's telephonic or Internet e-pay systems, to charge the taxpayer's bank account and deposit the funds to the Department's bank account.

(d) ACH Credit payment method means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the taxpayer's bank to charge the taxpayer's bank account and deposit the funds to the Department's bank account. See Rule 810-13-1-.11 entitled Procedures for ACH Credit Payment Method.

(e) Paperless Filing and Payment System (system) means the Department's Internet and toll-free Telephone system developed for the purpose of allowing taxpayers to electronically file and pay the predefined taxes available in the system to the Department using the ACH debit payment method. For those state and local business taxes that can be filed through the system, the payment is made as part of the filing process. For all other taxes that cannot be filed through the system, a 'Payment Only' option is available to give taxpayers the ability to make an EFT debit method payment. The predefined taxes are provided in the Department's EFT Program Guide Booklet of ACH Debit Payment Method Procedures & Guidelines.

(f) Sign On ID and Access Code means the log in codes assigned by the Department to a business taxpayer for the purpose of accessing the Paperless Filing and Payment System. The Department provides this information in a letter that is mailed to the taxpayer. This information is confidential and taxpayers are instructed to not improperly disclose these codes. Taxpayers making payments for state individual income taxes do not need a Sign On ID and Access Code to access the Paperless Filing and Payment System to make a payment.

(3) Procedures for making ACH Debit Method Payments. No pre-registration is required with the Department's EFT Unit by a business or individual taxpayer to make EFT Debit method payments using the Department's Paperless Filing and Payment System. Business taxpayers that have a tax account number(s) assigned by the Department; business taxpayers that have filed a return(s) with the Department for which a tax account

number is not required; and individuals that file State Income Tax returns with the Department, have the ability to make an EFT Debit method payment to the Department for any of the predefined tax types available in the system. Taxpayers shall provide the system with the appropriate information needed to complete the payment transaction. A

confirmation number is provided by the system at the conclusion of a successful payment transaction. The receipt of the confirmation number will fulfill the taxpayer's obligation for initiating an ACH Debit transaction. It is the responsibility of the taxpayer to provide the system with appropriate changes to their banking information to ensure proper and timely payment is made to the Department. Taxpayers can make EFT payments for returns, and for unpaid invoices and assessments. The Billing ID is required when the payment is for an

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unpaid invoice or assessment. The Billing ID is found on the billing document provided by the Department to the taxpayer. Note: Unpaid final assessments that have been transferred to the Collection Services Division (CSD) must not be paid via EFT. Contact the CSD for payment options.

(5) Due date of EFT payment. The EFT payment is due on or before the banking day following the tax return due date, pursuant to Section 41-1-20. The taxpayer must submit the payment transaction and receive a confirmation number from the system no later than 4:00 p.m. Central Standard Time (CST) on or before the due date of the tax in order for the Department's bank to receive collectible U.S. funds by the EFT payment due date.

(6) Penalties. Pursuant to Section 41-1-21, failure to make payment in a timely manner in accordance with the provisions provided in this rule, shall subject the affected taxpayer to penalty, interest, and loss of applicable discount. The Department may assess a Failure to Timely Pay penalty for late payments pursuant to Section 40-2A-11. If the taxpayer has timely initiated the ACH debit transaction pursuant to the provisions of this rule, received a confirmation number, and shows adequate funds were available in the bank account, late payment penalties will not apply.

(7) Proof of Payment. An ACH Debit transaction may be proven by use of the confirmation number received from the Paperless Filing and Payment System when the transaction was initiated, along with bank statements or other evidence from the bank that the transaction was settled. It is the taxpayer's responsibility to work with their financial institution to obtain verification that funds were transferred from the taxpayer's bank account into the Department's bank account. A bank can supply a taxpayer with a trace number that it generates for the ACH network.

(8) Filing returns. The required returns must still be filed with the Department, either electronically, or on paper when allowed. If a paper return is filed, any EFT payment indicators on the return must be completed. If an EFT indicator is not available, the taxpayer must boldly and legibly print on the face of the return that the payment was made via EFT. Paper returns for which payment was made using EFT must be mailed to the following address:

Alabama Department of Revenue
EFT Unit
PO Box 327950
Montgomery, AL 36132-7950.

(Adopted through APA effective January 10, 1992; Repealed and Replaced effective November 19, 2007).

810-13-1-.11. Procedures for ACH Credit Payment Method.

(1) Introduction. Certain taxpayers are required to pay their taxes with an electronic funds transfer (EFT) pursuant to Section 41-1-20, Code of Alabama 1975. Taxpayers who are not required to pay by EFT may voluntarily choose to pay by EFT. The Department will allow certain taxpayers to pay by EFT through the use of the Automated Clearing House (ACH) Credit payment method. To request approval, taxpayers must complete and submit to the Department the Electronic Funds Transfer Authorization Agreement Form for ACH Credit Payment Method (form EFT:001).

(2) Definitions. For purposes of this rule, the following terms will apply:

(a) EFT or Electronic Funds Transfer means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer so as to order, instruct, or authorize a financial institution to debit or credit an account.

(b) ACH or Automated Clearing House means a nationwide system run by the Federal Reserve and designed to transfer funds electronically between financial institutions using industry accepted standards. These standards ensure network security and increased efficiency of the transactions.

(c) ACH Credit means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the taxpayer's bank to charge the taxpayer's account and deposit the funds to the Department's bank account.

(d) ACH Debit means the electronic transfer of funds cleared through the ACH system that is generated by the taxpayer instructing the Department, using the Department's telephonic or Internet Paperless Filing and Payment system, to charge the taxpayer's bank account and deposit the funds to the Department's bank account. See Rule 810-13-1-.10 entitled Procedures for ACH Debit Payment Method.

(e) Department's bank means the bank with which the Department of Revenue has a contract to assist in the receipt of taxes.

(f) ACH CCD+ addenda or ACH CCD+ record means the information in a required ACH format that needs to be transmitted to properly identify the payment. The addenda record is sent with an ACH entry and contains an 80 character "free form" field for information required by the Department to identify the payment.

(g) Collectible funds or immediately available funds means collected funds that have completed the EFT process and are available for immediate use by the State.

(3) Compliance with the Department's Requirements. It is the intent of the Department to examine each taxpayer's compliance with the requirements of this rule. If a taxpayer has elected the ACH Credit payment method, but repeatedly fails to correctly

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complete the payment transactions by not providing the Department with the required ACH CCD+ addenda, the Department may in its discretion require the taxpayer to make future payments by the ACH Debit payment method.

(4) Required CCD+ addenda record. The Department requires that all ACH Credit method transactions must utilize the National Automated Clearing House Association (NACHA) CCD+ entry with a TXP Banking Convention addenda record. The required format and specifications of the CCD+ addenda record is provided in the current version of the Department's EFT Program Guide Booklet of ACH Credit Payment Method Procedures & Guidelines.

(a) An addenda record that is improperly formatted or contains inaccurate information could result in the following:

1. A late payment and the loss of applicable discounts and the assessment of penalties and interest.

2. Revocation of the taxpayer's ACH Credit Payment status. The taxpayer will receive a warning letter for the first offense, and upon receipt of the second offense, the Department at its discretion may revoke the taxpayer's ACH Credit Payment status.

(b) The TXP Banking Convention CCD+ addenda record requires the following information:

1. Taxpayer Account Number. This field must contain the taxpayer's tax account number assigned by the Department for which payment is being made. If the payment is for a tax that does not require a Department assigned tax account number, the taxpayer is required to provide a Taxpayer Identification Number (TIN) in this field. A TIN may be a Social Security Number or a Federal Identification Number.

2. Tax Type Code. These codes are found in the program guide referenced in paragraph (4) above.

3. Tax Period End Date. Enter the year, month, and the last day of the period, in the format of YYMMDD, for which the payment type is being made. Example: 070131 for a return payment for the January 2007 period.

4. Amount Type Code: Enter T for tax due or Z for zero due.

5. Payment Amount. Enter the dollar and cents of the transaction, without the decimal.

6. Confirmation Number or Billing ID. The confirmation number and billing ID share the same field. Only one or the other, or neither is required. The Confirmation Number is required when the payment is for a return that was e-filed using the Department's

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Paperless Filing System, which provides this number. The Billing ID is required when the payment is for an unpaid invoice or assessment. The Billing ID is found on the billing document provided by the Department to the taxpayer. This field should contain spaces when payment is for any other tax liability. Note: Unpaid final assessments that have been transferred to the Collection Services Division (CSD) must not be paid via ACH Credit Method. Contact the CSD for payment options.

7. Payment Type Code. Enter R for return, I for invoice, or A for assessment, to indicate the payment type of the tax being paid.

(5) Due date of EFT payment. The EFT payment is due on or before the banking day following the tax return due date, pursuant to Section 41-1-20. An ACH credit method payment is timely when the Department's bank receives collectible U.S. funds on or before the EFT payment due date. The ACH system requires that the necessary information be in the originating bank's possession on the bank day preceding the date for completion of the transaction. Each bank generally has its own transaction deadlines and it is the responsibility of the taxpayer to insure timely payment by coordinating with their financial institution to ensure that ACH Credit payments are timely initiated and sent via the correct CCD+ addenda record. The impact of prescribed ACH time frames and nightly cycles as well as the impact of weekends and holidays must be considered.

(6) Penalties. Pursuant to Section 41-1-21, failure to make payment in a timely manner, or failure to provide such evidence of payment in a timely manner, shall subject the affected taxpayer to penalty, interest, and loss of applicable discount. The Department may assess a Failure to Timely Pay penalty for late payments pursuant to Section 40-2A-11. The taxpayer's bank is the originating bank and the taxpayer is primarily responsible for its accuracy in an ACH credit method transaction. In order to prove timely compliance, the taxpayer must have timely initiated the transaction, provided the correct information for the ACH CCD+ record, and shown there were sufficient funds in the account.

(7) Proof of Payment. If proof of payment is required, it is the taxpayer's responsibility to work with their financial institution to obtain verification that funds were transferred from the taxpayer's bank account into the Department's bank account. A bank can supply a taxpayer with a trace number that it generates for the ACH network. This trace number along with proof of the NACHA CCD+ entry showing the State of Alabama's bank routing and transit number and bank account number, plus additional evidence, such as bank statements, that the transaction has been settled, will constitute proof of payment.

(8) Filing returns. The required returns must still be filed with the Department, either electronically, or on paper when allowed. If a paper return is filed, any EFT payment indicators on the return must be completed. If an EFT indicator is not available, the taxpayer must boldly and legibly print on the face of the return that the payment was made via EFT. Paper returns for which payment was made using EFT must be mailed to the following address:

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Alabama Department of Revenue
EFT Unit
PO Box 327950
Montgomery, AL 36132-7950

(Adopted through APA effective January 10, 1992; Repealed and Replaced effective November 19, 2007).

810-14-1-.26. Release of Information Necessary to Comply With Sections 40-23-25, 40-23-82, and 40-12-224, Code of Alabama 1975.

(1) SCOPE. This regulation relates to the authority of the Department to release information necessary for sellers of a business or stock of goods to comply with Sections 40-23-25, 40-23-82, and 40-12-224, Code of Alabama 1975.

(2) DEFINITIONS. The following terms have the meanings ascribed to them for purposes of this regulation:

(a) Taxes. Unless otherwise stated, this term refers to sales, use, and leasing taxes.

(b) Purchaser. An individual, partnership or corporation which is purchasing or has purchased a business or stock of goods.

(c) Seller. An individual, partnership or corporation, which is selling or has sold a business or stock of goods.

(d) Verifiable electronic request. A request made through telecommunication channels (i.e., facsimile machines or modems) that has some means of verification as to the authority of the party requesting the information.

(3) PURPOSE. The purpose of this regulation is to establish a specific procedure whereby the purchaser or seller of a business or stock of goods may be provided with specific information regarding taxes paid or taxes due and unpaid by the seller so as to comply with Section 40-23-25, 40-23-82 or 40-12-224, Code of Alabama 1975.

(4) PROCEDURE.

(a) A seller of a business or stock of goods subject to the provisions of Section 40-23-25, 40-23-82, or 40-12-224, Code of Alabama 1975, may obtain a certificate from the Department within 30 days of the date he sold his business or stock of goods showing

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that all taxes have been paid or that no taxes are due. The certificate may be furnished to the seller upon payment of all taxes which have accrued prior to the date of the sale.

(b) A purchaser of a business or stock of goods subject to the provisions of Section 40-23-25, 40-23-82, or 40-12-224, Code of Alabama 1975, may request and obtain a certificate from the Department prior to the purchase showing that all outstanding tax, penalty, and interest has been paid over to the Department as of the date of the request.

1. Whenever a purchaser wishes to secure information in order to comply with the provisions of Sections 40-23-25, 40-23-82, and/or 40-12-224, Code of Alabama 1975, the purchaser shall provide the Department with a written or verifiable electronic request for the information.

2. Each written or verifiable electronic request made by a purchaser shall provide the following:

(i) the legal name, mailing address, phone number, and signature of the party making the request;

(ii) an affirmative statement that the requesting party is entitled to the information requested pursuant to Section 40-2A-10, Code of Alabama 1975, and that the request is necessary in order for the requesting party to comply with the provisions of Sections 40-23-25, 40-23-82, and/or 40-12-224, Code of Alabama 1975;

(iii) the legal name and address of the party from whom the purchaser is purchasing a business or stock of goods; and

(iv) if available, the state sales, state use, state rental, local sales, and/or local use tax account number(s) and the social security number or federal employer identification number of the party from whom the purchaser is purchasing a business or stock of goods.

3. The Department reserves the right to deny any request for information when it has not been adequately established to the Department's satisfaction that the requesting party has a legitimate need for the requested information. The Department may contact the seller of a business or stock of goods to establish the legitimacy of the requesting party's request for information.

(c) If the taxes are not current, the Department may issue the purchaser or seller a "Certificate of Noncompliance," which will specify the type of tax and the periods of tax which have not been paid. The Department may also send a letter of noncompliance to the purchaser or seller of the business which will contain, if known, the amount required to bring the business into compliance with the sales and use tax laws up to the anticipated date of purchase.

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(d) In the event the Department learns, or otherwise has reason to believe that a business or stock of goods has been sold and that the purchaser has not complied with the provisions of Section 40-23-25, 40-23-82, or 40-12-224, Code of Alabama 1975, the Department may make a demand for payment, and, if not paid, enter an assessment against the successor. Any demand or assessment so entered shall clearly identify the successor as such, as well as the previous business entity.

(e) Any disclosure of amounts of tax due made by the Department to a business entity that is believed to be a successor, and which is subsequently determined not to be a successor as contemplated by Sections 40-23-25, 40-23-82, and/or 40-12-224, Code of Alabama 1975, shall be deemed to have been made for the proper administration of the taxes and is an exception to the disclosure restrictions as provided at Section 40-2A-10, Code of Alabama 1975. (Adopted through APA effective January 25, 1994, amended May 7, 1996)

810-27-1-7-.01. Multistate Taxpayers: Recordkeeping a Sales, Use, or Rental Tax Transaction.

(1) In General. In addition to all other recordkeeping requirements otherwise set out in Title 40, Code of Alabama 1975, or any regulations thereunder issued from time to time, every multistate retailer, seller, vendor, or person doing business in Alabama or storing, using, or otherwise consuming in Alabama tangible personal property purchased from a retailer and every multistate lessor of tangible personal property for use in Alabama shall keep complete and adequate records as may be necessary for the Department of Revenue or its authorized representatives to determine the amount of sales, use, or rental tax for the payment or collection of which that retailer, seller, vendor, person, and lessor is liable under Title 40, Chapters 2A, 12, or 23, Code of Alabama 1975. Unless the Department of Revenue authorizes an alternative method of recordkeeping in writing, these records shall show:

(a) Gross receipts. Gross receipts from sales, or rental payments from leases, of tangible personal property (including any services that are a part of the sale or lease) made in Alabama, irrespective of whether the retailer, seller, vendor, person, or lessor regards the receipts to be taxable or nontaxable.

(b) Deductions. All deductions allowed by law and claimed in filing the return.

(c) Purchase price. Total purchase price of all tangible personal property purchased for sale or consumption or lease in Alabama.

These records must include the normal books of account ordinarily maintained by the average prudent businessman engaged in such business, together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account together with all schedules or working papers used in connection with the preparation of tax returns.

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(2) Microfilm and Microfiche Records. Records, including general books of account, such as cash books, journals, voucher registers, ledgers, and like documents may be microfilmed or microfiched, as long as such microfilmed and microfiched records are authentic, assessable, and readable and the following requirements are satisfied:

(a) Appropriate facilities are to be provided for preservation of the films or fiche for the periods required and open to examination and the taxpayers must agree to provide transcriptions of any information on microfilm or microfiche which may be required for verification of tax liability.

(b) All microfilmed and microfiched data must be indexed, cross-referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included, and must be systematically filed to permit ready access.

(c) Taxpayer must make available upon request of the Department of Revenue a reader/printer in good working order at the examination site for reading, locating, and reproducing any record concerning sales, use, or rental tax liability maintained on microfilm or microfiche.

(d) Taxpayer must set forth in writing the procedures governing the establishment of its microfilm or microfiche system and the individuals who are responsible for maintaining and operating the system with appropriate authorization from the Board of Directors, general partner(s), or owner, whichever is applicable.

(e) The microfilm or microfiche system must be complete and must be used consistently in the regularly conducted activity of the business.

(f) Taxpayer must establish procedures with appropriate documentation so that the original document can be followed through the microfilm or microfiche system.

(g) Taxpayer must establish internal procedures for microfilm or microfiche inspection and quality assurance.

(h) Taxpayers are responsible for the effective identification, processing, storage, and preservation of microfilm or microfiche, making it readily available for as long as the contents may become material in the administration of any state revenue law.

(i) Taxpayer must keep a record identifying by whom the microfilm or microfiche was produced.

(j) When displayed on a microfilm or microfiche reader (viewer) or reproduced on paper, the material must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer

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to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(k) All production of microfilm or microfiche and processing, duplication, quality control, storage, identification, and inspection thereof must meet industry standards as set forth by the American National Standards Institute, National Micrographics Association, or National Bureau of Standards.

(3) Records Prepared By Automated Data Processing Systems (ADP). An ADP tax accounting system may be used to provide the records required for the verification of tax liability. Although ADP systems will vary from one taxpayer to another, all such systems must include a method of producing legible and readable records which will provide the necessary information for verifying such tax liability. The following requirements apply to any taxpayer who maintains any such records on an ADP system:

(a) Recorded or Reconstructible Data. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed print-outs are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.

(b) General and Subsidiary Books of Account. A general ledger, with source references, shall be written out to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers shall also be written out periodically.

(c) Supporting Documents and Audit Trail. The audit trail shall be designed so that the details underlying the summary accounting data may be identified and made available to the Department of Revenue upon request. The system shall be so designed that supporting documents, such as sales invoices, purchase invoices, credit memoranda, and like documents are readily available.

(d) Program Documentation. A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

1. the application being performed;

2. the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams, or other satisfactory descriptions of the input or output procedures); and

3. the controls used to ensure accurate and reliable processing. Important changes, together with their effective dates, shall be noted in order to preserve an accurate chronological record.

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(e) Data Storage Media. Adequate record retention facilities shall be available for storing tapes and printouts, as well as all supporting documents as may be required by law.

(4) Records Retention. All records pertaining to transactions involving sales, use, or rental tax liability shall be preserved for a period of not less that six (6) years from the date the related return was filed or longer if required under Title 40, Chapter 2A, Code of Alabama 1975, and the related regulations thereunder.

(5) Examination of Records. All of the foregoing records shall be made available for examination on request by the Department of Revenue or its authorized representatives in accordance with Title 40, Chapter 2A, Code of Alabama 1975, and the related regulations thereunder.

(6) Failure of the Taxpayer to Maintain and Disclose Complete and Adequate Records. Upon failure by the taxpayer, without reasonable cause, to substantially comply with the requirements of this regulation, the Department of Revenue in accordance with Title 40, Chapter 2A, Code of Alabama 1975, and the related regulations thereunder shall:

(a) Impose and not abate or reduce in amount any penalty as may be authorized by law.

(b) Enter such other order as may be necessary to obtain compliance with this regulation in the future by any taxpayer found not to be in substantial compliance with the requirements of this regulation. (Adopted through APA effective March 24, 1995)