

ALABAMA DEPARTMENT OF REVENUE - SALES AND USE TAX RULES
Code of Alabama 1975, Sections 40-23-31 and 40-23-83

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)