

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

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.

(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;

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810-6-4-22. (Continued)

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.

(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)