

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

**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)