

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 entities that are exempt from the payment of Alabama sales and use taxes excluding those agencies as provided in sections (2) and (3) below.
- (f) On and after January 1, 2019, the term government entity includes any public water or sewer authority, district, system, or board that otherwise is exempt from sales and use tax. 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, 2019, with any public water or sewer authority, district, system, or board that otherwise is exempt from sales and use tax is exempt from all state, county, and municipal sales and use taxes.

(2) The exemption outlined in section (1) does 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.
- (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 applicable date set forth in section (1) or (1)(f) above, as applicable.

(3) The exemption outlined in section (1) does 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 must 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, must 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 §40-2A-8, Code of Ala. 1975.

(5) A contractor or subcontractor who obtains a Form STC-1 must comply with all of the provisions of the Code of Ala. 1975, as amended, §40-23-9, Code of Ala. 1975, and must 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 an electronic report of all exempt purchases to the Department of Revenue on their assigned consumer use tax return (Form 2610). 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.

(6) Any contractor or subcontractor who intentionally uses a certificate of exemption (STC-1) in violation of §40-9-14.1, Code of Ala. 1975, will 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 §40-2A-8, Code of Ala. 1975.

(7) The date of the sale to, or the purchase, withdrawal, storage, use or consumption by, the contractor must be used to determine if an otherwise qualifying transaction or event qualifies for the exemption. Jobs or projects entered into prior to the applicable dates noted in section (1) and (1)(f) above shall not qualify for the exemption regardless of the transaction date.

(8) For the purpose of this rule, the term "entered into" means the date that a contractor or subcontractor signs a contract with a governmental entity defined in section (1).

Authors: Michele Mayberry, Traci Floyd, Ginger L. Buchanan

Authority: §§40-2A-7(a)(5), 40-2A-8, 40-23-9, 40-23-31 and 40-23-83, Code of Ala. 1975.

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