APA-1

Transmittal Sheet For
Notice Of Intended Action

Control: 810 Department or Agency: Revenue

Rule Nos: 810-6-1-.37

Rule Title: Computer Hardware and Software

___ New; _x_ Amended; ___ Repealed; ___ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?	No
Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?	Yes
Is there another, less restrictive method of regulation available that could adequately protect the public?	No
Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?	No
Is the increase in cost, if any, more harmful to the public than the harm that result from the absence of the proposed rule ?	N/A
Are all the facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?	Yes
Does the proposed rule relate to or effect any matter of litigation which the agency is a party to concerning the subject matter of the purposed rule ?	No

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Does the proposed rule have any economic impact?	No

If the proposed rule has an economic impact , the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

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Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975 and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency .

Signature of certifying officer _____

Date 08/20/2019

APA-2

ALABAMA DEPARTMENT OF REVENUE
Sales and Use Tax

NOTICE OF INTENDED ACTION

RULE NO. & TITLE	
810-6-1-.05	Auctioneer
810-6-1-.06	Automobile Painting
810-6-1-.116	Parts And Materials Used To Repair Or Recondition Dealers' Automobiles
INTENDED ACTION	Amend
SUBSTANCE OF PROPOSED ACTION:	In compliance of the Red Tape Reduction Act 2013-088, the above rules have been reviewed and grammatical updates, sentence structure, and citation changes have been made.
RULE NO. & TITLE	
810-6-1-.07	Automobile Parts Installed For Customer
INTENDED ACTION	Amend
SUBSTANCE OF PROPOSED ACTION:	In compliance with the Red Tape Reduction Act 2013-088, Rule 810-6-1-.07, 810-6-1-.08 and 810-6-1-.09 were reviewed and have been consolidated as Rule 810-6-1-.07. Additionally, the rule has been reviewed and grammatical and citation updates have been made.
RULE NO. & TITLE	
810-6-1-.08	Automobile Repair Shops
810-6-1-.09	Automobile Repair Shops And Garages
INTENDED ACTION	Repeal
SUBSTANCE OF PROPOSED ACTION:	In compliance with the Red Tape Reduction Act 2013-088, Rule 810-6-1-.07, 810-6-1-.08 and 810-6-1-.09 were reviewed and have been consolidated as Rule 810-6-1-.07.
RULE NO. & TITLE	
810-6-1-.37	Computer Hardware and Software
INTENDED ACTION	Amend
SUBSTANCE OF PROPOSED ACTION:	The Alabama Supreme Court recently upheld a lower court decision finding that a series of transactions involving the sale of computer software and related equipment was subject to sales tax. The case, Ex parte Russell County Community Hospital, LLC, Case No. 1180204, was

decided on May 17, 2019. In reaching its decision, the Court examined the taxability of the conveyance of computer software versus the taxability of programming and other services that may accompany the conveyance. After reviewing the decision, the Alabama Department of Revenue has concluded that the Court's decision and reasoning are consistent with existing law regarding the taxability of computer software. Further, the decision is consistent with the department's long-stated administrative stance that separately stated or invoiced services that may attend the conveyance of computer software are not subject to the state's sales or use tax levies. The department is amending its rule to ensure that the terminology used to demonstrate this distinction is consistent with that used by the Court in the Ex parte Russell County decision.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at **01:45 PM on Tuesday, October 08, 2019, Room 1203, First Floor,** Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at http://www.revenue.alabama.gov/tax-policy/.

All interested parties may present their views in writing to the **Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132** at any time following publication of the notice up until the conclusion of the hearing. Interested parties may also appear at the hearing to present their views.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:
Tuesday, October 08, 2019

CONTACT PERSON AT AGENCY:
Meagan Barrett

Alabama Department of Revenue
4131 Gordon Persons Building
Montgomery, Alabama 36132
(334) 242-1380



Michael D. Gamble, Secretary
Alabama Department of Revenue

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 ~~s~~S~~ales~~ Tax or ~~u~~Use ~~t~~Tax. The rental of computer hardware is subject to ~~r~~Rental ~~t~~Tax.

(2) The term "computer software" ~~as used in this regulation shall mean~~ is defined as:

(a) ~~a~~ 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)~~

(b) ~~The term "canned computer software" as used in this regulation shall mean~~ sSoftware 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.~~

(3) The term "licensure" includes the rental or leasing of computer software.

(4) ~~Canned c~~Computer software is tangible personal property~~; and, on and after March 1, 1997,~~. tThe retail sale or licensure ~~rental~~ of ~~canned~~ computer software is subject to ~~the s~~S~~s~~ales Tax, ~~u~~Use Tax, or ~~r~~Rental ~~t~~Tax, whether ~~such~~ the transaction ~~was~~ is ~~a~~effected by a transfer of title, ~~or of~~ possession~~, 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 ~~s~~Sales Tax or ~~u~~Use ~~t~~Tax regardless of its function or form of transmission to the purchaser or licensee. ~~The measure of tax upon which the s~~S~~s~~ales Tax, ~~u~~Use Tax, or ~~r~~Rental ~~t~~Tax is ~~to be~~ computed ~~is~~ on the total amount received from the sale or ~~rental~~ licensure 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 for the development and modification of software applications specific to the needs of the custumer. It does not include any software sold or licensed to the customer

as part of the development or modification. The cost of the software programing should be ~~represented by~~ separately stated **on the invoice to the customer apart from the cost of the purchased or licensed software. ~~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 in custom software programming only to the extent of the modification. Custom~~ When separately stated, the** 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 **separately stated** charge for professional services**. ~~and~~ t**The manner or medium of transfer is considered incidental to the sale of the service.

(6) The provider of ~~custom~~ software programming ~~would~~ owe**s ~~s~~**Sales **Tax ~~and/~~**or ~~u~~Use ~~t~~Tax on the cost of the tangible medium for transferring the ~~custom~~ software programming to the customer. ~~Such~~ ~~t~~Tangible mediums ~~would~~ include**s ~~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**s** contracts sold in connection with the sale or ~~rental~~ **licensure** of ~~canned~~ software and ~~can~~ include**s** 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~~ **licensure** 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~~ t**The fees for consultation or support services, error corrections, and training services **that** are separately stated **are not subject to tax, provided ~~and such~~ that a** separate statement is not used as a means of avoiding imposition of tax upon the actual gross 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 **Sales Tax, Use Tax, or Rental Tax** ~~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 **Sales Tax, Use Tax, or Rental Tax** ~~tax~~. The provider of the ~~custom~~ software programming is the consumer of any tangible personal property used in producing operating manuals and ~~would~~ owe**s ~~s~~**Sales **Tax** or ~~u~~Use ~~t~~Tax on the cost of these items.

Author: Donna Joyner **and Ginger Buchanan**

~~Statutory~~ Authority: **~~Code of Ala. 1975,~~** §§40-2A-7(a)**(5)**, 40-12-224, 40-23-2(1), 40-23-31, **and** 40-23-83 **Code of Ala. 1975**.
Wal-Mart Stores, Inc. v. City of Mobile 696 So. 2d 290 (1996)
Ex parte Russell County Community Hospital, LLC, d/b/a Jack Hughston Memorial Hospital v. Alabama Department of Revenue, No. 1180204 (Ala. S.Ct. May 17, 2019).

History: Filed August 22, 1989; December 22, 1989.
Amended: Filed January 17, 1997; effective February 21, 1997.
Amended: Filed July 17, 1997; effective August 21, 1997.
Amended: August 20, 2019; Effective