

APA-1
11/96

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-8-1-.24

Rule Title: Credit Policy Regarding Wholesale Oil/Import License Fee on Biodiesel Sold to a Licensed Supplier When Delivered to a Terminal

New; Amend; Repeal; 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 might result from the absence of the proposed rule? N/A

Are all 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 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.

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 Reference Service.

Signature of certifying officer *Michael D. ...*

Date 1/20/16

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10/96

**ECONOMIC IMPACT STATEMENT
FOR APA RULE
(Section 41-22-23(f))**

Control No. 810 Department or Agency REVENUE

Rule No: 810-8-1-.24

Rule Title: Credit Policy Regarding Wholesale Oil/Import License Fee on Biodiesel Sold to a Licensed Supplier When Delivered to a Terminal

 New X Amend Repeal Adopt by Reference

- NO
 YES

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. NEED/EXPECTED BENEFIT OF RULE:
2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:
3. EFFECT OF THIS RULE ON COMPETITION:
4. EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:
5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:
6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:
7. THE SHORT-TERM/LONG-TERM ECONOMIC IMPACT OF THIS RULE ON AFFECTED PERSONS, INCLUDING ANALYSIS OF PERSONS WHO WILL BEAR THE COSTS AND THOSE WHO WILL BENEFIT FROM THE RULE:

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:
11. OTHER COMMENTS:

810-8-1-.24 Credit Policy Regarding Wholesale Oil/Import License Fee on Biodiesel Sold to a Licensed Supplier When Delivered to a Terminal.

(1) Section 40-17-174(e), Code of Alabama 1975, provides an exemption from the wholesale oil license fee for biodiesel sold to a licensed supplier when delivered to a terminal. The wholesale oil license fee is levied upon the selling of diesel fuel across the rack at the terminal and upon the import of the diesel fuel unless the permissive supplier, as defined in Section 40-17-322(37), Code of Alabama 1975, collects the import fee. Since the wholesale oil/import license fee is due on all diesel fuel that crosses the rack at the terminal in Alabama and on all diesel fuel imported into Alabama, the licensed supplier can take a credit on the annual wholesale oil/import license fee return for the gallons of biodiesel received by the licensed supplier at the terminal for which the licensed supplier has paid the wholesale oil/import license fee.

(2) Request for credit of the gallons of biodiesel sold to the licensed supplier at the terminal shall be made on forms furnished by the Department of Revenue. The licensed supplier is responsible for maintaining a copy of the original purchase invoices and any other information that the Department may deem necessary. The purchase invoice must show the following:

- (a) Date of Sale,
- (b) Name and Address of entity from whom the biodiesel was purchased,
- (c) Type of fuel as "biodiesel",
- (d) Number of Gallons,
- (e) Invoice Number, and
- (f) Amount charged for the wholesale oil/import license fee.

(3) The statute of limitations for claiming this credit for the wholesale oil/import license fee is within 2 years from the date of payment of the tax.

(4) The licensed importer can exclude the gallons of biodiesel sold directly to the licensed supplier when the biodiesel fuel is delivered to the terminal from the gallons listed on the Wholesale Oil/Import License Fee Annual Return as Gallons Imported into Alabama by the Importer.

(5) This rule shall be effective October 1, 2014.

Author: Bonita Calhoun
Authority: Sections 40-2A-7(a)(5) and 40-17-174, Code of Alabama 1975.
History: Repealed: Filed April 29, 1996, effective June 3, 1996.
New Rule: Filed July 10, 2003, effective August 14, 2003.
Repealed: Filed June 29, 2012, effective August 3, 2012.
New rule: Filed January 3, 2014, effective February 7, 2014.

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11/96

**ALABAMA DEPARTMENT OF REVENUE
Business License Tax Division**

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-8-1-.24 Credit Policy Regarding Wholesale Oil/Import License Fee on Biodiesel Sold to a Licensed Supplier When Delivered to a Terminal

INTENDED ACTION: Amend rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule to correct the reference to the incorrect Code Section caused by an amendment to the original Act.

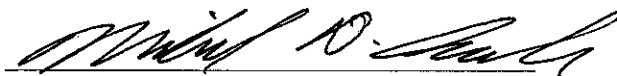
TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at **2:00 p.m. on Thursday, March 10, 2016, Room 1203, First Floor**, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at <http://revenue.alabama.gov/analysis/upcoming-rule-hearings.cfm>

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 during the thirty-five (35) day period following publication of the notice or by appearing at the hearing.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:
Thursday, March 10, 2016

CONTACT PERSON AT AGENCY:

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



Michael D. Gamble, Secretary
Alabama Department of Revenue

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810-6-5-.02.02 Informational Report for Entities Having a Statutory Exemption from the Payment of Sales, Use, and Lodgings Taxes. (NEW RULE)

(1) The term "state sales tax" as used in this rule shall mean the privilege or license tax levied in Section 40-23-2, Code of Alabama 1975, upon the sale of tangible personal property in Alabama.

(2) The term "state use tax" as used in this rule shall mean the excise tax levied in Sections 40-23-61 and 40-23-63, Code of Alabama 1975, upon the storage, use, or other consumption of tangible personal property in Alabama.

(3) The term "state lodgings tax" as used in this rule shall mean the transient occupancy tax levied in Section 40-26-1, Code of Alabama 1975, upon all charges made for the use of rooms, lodgings or other accommodations in Alabama.

(4) Entities, including but not limited to those cited in Title 40, Chapter 9, other than governmental entities, which have a statutory exemption from the payment of Alabama sales, use, or lodgings taxes, shall be required to obtain a sales and use tax certificate of exemption to be renewed on an annual basis by applying for same on a form provided by the Department. Upon receipt of a properly completed application and approval of same by the Department, the entity will be issued a state sales and use tax certificate of exemption (Form STE-1) which can be copied, completed, and provided to vendors as documentation for tax-exempt purchases. A form STE-1 will not be issued to entities who have a sales tax license issued pursuant to Section 40-23-6, Code of Alabama 1975. (See Rule 810-6-5-.02.01, entitled *State Sales and Use Tax Certificate of Exemption for Entities Having a Statutory Exemption from the Payment of Sales, Use, and Lodgings Taxes*.)

(5) A certificate of exemption shall be valid for one year from the date of issuance and shall be renewed annually each subsequent year before the end of the month in which the certificate expires. Any entity that fails to obtain or renew a certificate of exemption prior to its expiration will no longer be allowed to make tax exempt purchases or be provided tax-exempt rooms, lodgings or other accommodations until such time as the application for renewal is made, and the certificate is reinstated.

(6) All entities required to obtain a certificate of exemption as described herein, shall be required to file an annual informational report with the Department.

(a) Such informational reports shall be a prerequisite for the renewal of certificates of exemption.

(b) Any entity that does not comply with the reporting requirements may be barred from the use of any certificate of exemption for up to six months for the first offense and one year for the second offense. On the third offense, such entity shall be barred from the use of any certificate of exemption until such time as the entity is authorized to obtain a certificate of exemption pursuant to a joint resolution by the

Alabama Legislature. Pursuant to this provision, such entity will not be able to renew the certificate until the time period for which they are barred from such use has expired. However, this provision does not void any properly issued certificate during the period for which it was issued.

(7) The Department may assess any person or company with state and local sales, use, and lodgings tax for any transaction conducted with a certificate of exemption not properly accounted for and reported in accordance with the provisions of this rule.

(8) Any entity required to file an annual informational report as a prerequisite for the renewal of a certificate of exemption shall prepare and forward to the Department, within the time prescribed, the Annual Report of Exempt Purchases for each fiscal year (October 1 through September 30) using forms prescribed by the Department.

(9) For entities having a Certificate of Exemption issued by the Department effective on or after January 1, 2016, and required to meet the annual filing requirement, the first report required to be filed will be for the calendar quarter ending:

(a) September 30, 2016, due by October 31, 2016, or

(b) December 31, 2016, due by January 15, 2017.

(c) Thereafter, annual informational reports will be required to be filed by October 31, 2017, and each October 31 thereafter for the previous period October 1 through September 30. The Annual Report of Exempt Purchases shall require the following information:

1. Exemption certificate number, federal employer identification number, legal name, trade or business name, and complete address,

2. Fiscal year covered by the report (October 1 through September 30),

3. Whether the certificate holder is a for-profit or non-profit entity,

4. Certificate holders NTEE (National Taxonomy of Exempt Entities) Code on file with the IRS, or equivalent if for-profit,

5. Revenue reported on line 12 of the most recent IRS Form 990, Return of Organization Exempt from Income Tax if certificate holder is a non-profit entity, or total gross receipts, as reported on the most recent federal income tax return, times the Alabama sales apportionment factor if certificate holder is a for-profit entity. For-profit entities not required to complete an unconsolidated federal income tax return or Alabama apportionment schedule must prepare the appropriate pro-forma return and/or schedule for this calculation,

6. Expenses reported on line 18 of the most recent IRS Form 990, Return or

Organization Exempt from Income Tax if certificate holder is a non-profit entity, or total expenditures, as reported on the most recent federal income tax return, times the Alabama sales apportionment factor if certificate holder is a for-profit entity. For-profit entities not required to complete an unconsolidated federal income tax return or Alabama apportionment schedule must prepare the appropriate pro-forma return and/or schedule for this calculation,

7. A breakdown, by applicable tax rate, of the total purchase price of tangible personal property purchased or consumed in Alabama during the tax reporting period for which the exemption certificate was valid,

8. Total amount of charges resulting from the use of rooms, lodgings or other accommodations in Alabama for which the exemption certificate was used to obtain tax-exempt lodgings, and

9. Signature, printed name, title, telephone number of certificate holder or certificate holder's duly authorized representative, and the date signed.

(10) Informational reports shall be filed electronically through the Department's electronic filing system, My Alabama Taxes.

Author: Ginger Buchanan

Authority: Sections 40-2A-7(a)(5), 40-23-31 and 40-23-120, Code of Alabama 1975

History: