

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control 810 Department or Agency REVENUE

Rule Nos. 810-6-5-26

Rule Title: Utility Privilege or License Tax

 New; XX 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

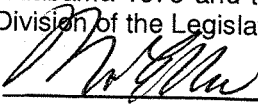
Does the proposed rule have any economic impact?

 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 

Date 7/20/11

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

Control No. 810 Department or Agency REVENUE

Rule No: 810-6-5-.26

Rule Title: Utility Privilege or License Tax

 New X Amend Repeal Adopt by Reference

This rule has no economic impact.

This rule has an economic impact, as explained below:

1. **NEED/EXPECTED BENEFIT OF RULE:** A problem has been identified with the department's interpretation of which amount reported on the tax return filed for the same calendar month of the prior year should be used as the current estimated payment on a utility privilege license tax return or a utility excise tax return. Under the provisions of Section 40-21-85, Code of Alabama 1975, Utility Privilege License Tax, a taxpayer whose average monthly utility privilege tax liability was at least \$10,000 for the preceding calendar year is required to remit estimated payments for the current month's liability in an amount at least equal to the "actual tax liability" for the same calendar month of the preceding year. Section 40-21-101 specifies that the Utility Service Use Tax is supplemental to and complementary with the utility gross receipts tax. The "actual tax liability" has previously been interpreted to be the amount of the actual payment made to the department on the prior year's return. This has resulted in the reporting of unrealistic estimates, causing unpredictable fluctuations in the revenue collections. The proposed amendment would require that the estimated payment equal the actual tax liability for the same calendar month of the preceding year, determined by the application of rates against gross sales net of any collection allowance, but without any consideration of the prior or current estimated payments reported on that return. This is accomplished in the rule by amending subsection (g)1.(iii) to instruct the taxpayer to report the amount from line 7 on the utility privilege license tax return filed for the same month of the preceding year and subsection (g)2.(iii) to instruct the taxpayer to report line 5 on the utility excise tax return filed for the same month of the preceding year.

2. **COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:**

It utilizes the Department's existing manuals and mailing or e-mail distribution lists to disseminate the information.

3. **EFFECT OF THIS RULE ON COMPETITION:** N/A

4. **EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:** N/A

5. **EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA**

WHERE THE RULE IS TO BE IMPLEMENTED: N/A

6. SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:

The Department has the revenue 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:

N/A

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON: N/A

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:

N/A

10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED: N/A

11. OTHER COMMENTS: N/A

APA-2
11/96

ALABAMA DEPARTMENT OF REVENUE
Sales, Use & Business Tax Division

NOTICE OF INTENDED ACTION

RULE NO. & TITLE:

810-6-5-.26

Utility Privilege or License Tax

INTENDED ACTION:

Amend the above rule

SUBSTANCE OF PROPOSED ACTION:

Under the provisions of Section 40-21-85, Code of Alabama 1975, Utility Privilege License Tax, a taxpayer whose average monthly utility privilege tax liability was at least \$10,000 for the preceding calendar year is required to remit estimated payments for the current month's liability in an amount at least equal to the actual tax liability for the same calendar month of the preceding year. Section 40-21-101 specifies that the Utility Service Use Tax is supplemental to and complementary with the utility gross receipts tax. The amount of the estimated payment required for utility privilege license tax and utility excise tax has previously been interpreted to be the amount of the actual payment made to the department on the prior year's return. The proposed amendment would require that the estimated payment equal the tax liability for the same calendar month of the preceding year, determined by the application of rates against gross sales net of any collection allowance, but without any consideration of the prior or current estimated payments reported on that return. This is accomplished by amending paragraph (8)(g)1.(iii) to instruct the taxpayer to report the amount from line 7 on the utility privilege license tax return filed for the same month of the preceding year and paragraph (8)(g)2.(iii) to instruct the taxpayer to report line 5 on the utility excise tax return filed for the same month of the preceding year.

RULE NO. & TITLE:

810-6-5-.26.01

Mobile Communication Services Tax

INTENDED ACTION:

Amend the above rule

SUBSTANCE OF PROPOSED ACTION:

Under the provisions of Section 40-21-123, Code of Alabama 1975, which specifically incorporates the administrative procedures set forth in Section 40-21-85, a taxpayer whose average monthly mobile communication services tax liability was at least \$10,000 for the preceding calendar year is required to remit estimated payments for the current month's liability in an amount at least equal to the actual tax liability for the same calendar month of the preceding year. The amount of the estimated payment required for mobile communication services tax has previously been interpreted to be the amount of the actual payment made to the department on the prior year's return. The proposed amendment would require that the estimated payment equal the tax liability for the same calendar month of the preceding year, determined by the application of rates against taxable receipts, net any applicable collection allowance, without any consideration of the prior or current estimated payments reported on that return. This is accomplished by amending paragraph (18)(a)(3) to instruct the taxpayer to report the amount from line 4 on the mobile communication services tax return filed for the same month of the preceding year.

RULE NO. & TITLE:

810-6-5-.26.02

Utility Tax Direct Pay Permit

INTENDED ACTION: Amend the above rule

SUBSTANCE OF PROPOSED ACTION: Under the provisions of Section 40-21-85, Code of Alabama 1975, Utility Privilege License Tax, a taxpayer whose average monthly utility privilege tax liability was at least \$10,000 for the preceding calendar year is required to remit estimated payments for the current month's liability in an amount at least equal to the actual tax liability for the same calendar month of the preceding year. The amount of the estimated payment required for utility privilege license tax has previously been interpreted to be the amount of the actual payment made to the department on the prior year's return. The proposed amendment would require that the estimated payment equal the tax liability for the same calendar month of the preceding year, determined by the application of rates against taxable purchases, without any consideration of the prior or current estimated payments reported on that return. This is accomplished by amending paragraph (4)(c) to instruct the taxpayer to report the amount from line 5 on the utility privilege license tax return filed by the direct pay permit holder for the same month of the preceding year.

RULE NO. & TITLE:
810-6-5-.27.01 Nursing Facility Tax

INTENDED ACTION: Amend the above rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule to comply with Act 2011-614 which changed the monthly return (statement) and payment due date from the tenth day of the month next succeeding the month in which the tax accrues to the twentieth day of the month, effective for the filing period of September 1, 2011.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at 10:00 a.m. on Thursday, September 8, 2011, in the Office of the Legal Division, Room 3114, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at www.revenue.alabama.gov/rulehear.html.

All interested parties may present their views in writing to the Deputy Commissioner of the Alabama Department of Revenue, Room 4112, 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, September 8, 2011

CONTACT PERSON AT AGENCY:

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



Michael E. Mason, Deputy Commissioner
Alabama Department of Revenue

810-6-5-.26. Utility Privilege or License Tax.

(1) Unless otherwise defined herein, the definitions of terms set forth in Code of Alabama 1975, Section 40-21-80, are incorporated by reference herein.

(2) Section 40 21 82, Code of Alabama 1975, levies a privilege or license tax against every utility in the State of Alabama on account of the furnishing of utility services by said utilities.

(a) The amount of tax levied on the furnishing of electricity, domestic water, and natural gas services shall be determined by the application of rates against gross sales or gross receipts, as the case may be, and shall be computed monthly in accordance with the following table:

<u>If monthly gross sales or gross receipts respecting a person are:</u>	<u>The tax is:</u>
Not over \$40,000	4% of such gross sales or gross receipts
Over \$40,000 but not over \$60,000	\$1,600 plus 3% of excess over \$40,000
Over \$60,000	\$2,200 plus 2% of excess over \$60,000

(b) For periods prior to April 1, 2002, the amount of tax levied on the furnishing of telegraph and telephone services shall be determined by the application of rates against gross sales or gross receipts, as the case may be, and shall be computed monthly in accordance with the following table:

<u>If monthly gross sales or gross receipts respecting a person are:</u>	<u>The tax is:</u>
Not over \$60,000	6.7% of such gross sales or gross receipts
Over \$60,000	\$4,020 plus 3.7% of excess over \$60,000

1. Beginning with bills dated on or after April 1, 2002, Act #2001-1090 amended Section 40-21-82(b) which provides that the amount of tax levied on the furnishing of telegraph and telephone services shall be computed at the rate of 6% on all gross sales or gross receipts.

2. Act #2001-1090 further provides that on or after February 1, 2002, the utility furnishing such telegraph or telephone services shall be entitled to deduct and retain from the gross amount of tax billed by the utility 9/10 of 1% of the amount of such tax billed in consideration of the costs incurred by the utility in collecting and remitting the tax levied by subsection 40-21-82(b). However, on and following October 1, 2002, the amount deducted and retained by such utility shall be 1/4 of 1% of the gross amount of such tax billed.

(3) Telephone and Telegraph Services

(a) The gross sales or gross receipts from the furnishing of telegraph and telephone services are taxable pursuant to Section 40-21-82(b).

(b) The term "telephone services" is defined in Section 40-21-80(11), and specifically

includes the following which shall be included in the measure of the tax levied in Section 40-21-82(b):

1. Local telephone service;
2. Intrastate toll telephone service;
3. Private communications service;
4. Teletypewriter, and computer exchange service;
5. Telephone services sold by motels and hotels to their customers or to others, telephone services sold by colleges and universities to their students or to others, and telephone services sold by hospitals to their patients or to others;
6. Beginning with bills dated on or after February 1, 2002, interstate telephone service which originates or terminates within this state but does not both originate and terminate in this state and is charged to a service address in this state. (Act #2001-1090)

(c) The term "telephone services" shall not include the following and as such shall not be included in the measure of the tax levied in Section 40-21-82(b):

1. Telephone services provided through any pay telephone;
2. Any excise, franchise, or similar tax or like fee or assessment levied by the United States, by the state of Alabama, or by any political subdivision of the state of Alabama upon the purchase, sale, use, or consumption of any telephone services provided it is collected by the seller from the purchaser and is separately billed to the purchaser;
3. The furnishing of any telephone services for resale including access charges paid by an interexchange carrier. Any utility making a sale of telephone services for resale shall obtain from the purchaser a copy or record of the purchaser's utility tax license issued to the purchaser by the Department pursuant to Section 40-21-84 or a copy of a utility tax certificate of exemption (Form STE-3) issued to the purchaser by the Department pursuant to Section 40-21-88, Code of Alabama 1975, and Rule 810-6-5-.26.05;
4. Charges for customer premises equipment, including such equipment that is leased or rented by the customer from any source;
5. Cable television service, paging services, specialized mobile radio, or mobile telecommunications service;

6. Services which are ancillary to the provision of telephone service but are not directly related to the transmission of voice, data, or information such as directory advertising and installation and repair of equipment and inside wiring;
7. Internet access charges;
8. Prior to February 1, 2002, charges made for telephone calls and telegraphic messages originating within this state to a point outside of this state, or originating outside of this state to a point within this state, provided the charges were clearly indicated on a statement given to the customer;
9. The use or consumption of telephone service by an incorporated municipality in providing a fire alarm system;
10. Telephone service or telegraph service used or consumed by a utility regularly engaged in furnishing such service to persons.
11. The furnishing of utility services through the use of a prepaid telephone calling card.

(d) Beginning with bills dated on or after May 5, 2004, charges for nontaxable services combined or bundled with and not separately stated from taxable charges for telephone or telegraph services are subject to taxation, unless the exempt charges can be reasonably identified in the books and records kept in the regular course of business by the utility provider.

(e) The provisions of subsection (d) do not create any right for the customer to require that either the utility or the department allocate or attribute the bundled charge to the different portions of the transaction in order to reduce or minimize the amount of tax charged to the customer.

(4) Domestic Water

(a) The gross sales or gross receipts from the furnishing of domestic water are taxable pursuant to Section 40-21-82(a).

(b) "Domestic water" shall mean all water except water that is sold to persons for use or consumption in industrial processes and not primarily for human consumption. Water used in industrial processes shall mean water used by any person in the manufacturing, processing, compounding, mining or quarrying of tangible personal property for sale. Where water is used for both human consumption and industrial processing and more than 50 percent of the total water purchased is used in industrial processing, the gross receipts from the sale of the water would not be taxable. Where less than 50 percent is used for industrial processing and more than 50 percent is used for human consumption, the total gross receipts from the sale of water would be taxable.

(c) The use or consumption of domestic water by an incorporated municipality in extinguishing fires, explosions, or conflagrations is not taxable. (Section 40-21-83(8))

(d) Water used or consumed by a water board created under Sections 11-50-310, et seq., Code of Alabama 1975 as amended, which is engaged in furnishing water to persons is not taxable.

(e) Water used or consumed by a municipal utility department or an independent municipal utility board which is engaged in furnishing water to persons is not taxable. Water furnished by a municipal utility department or an independent municipal utility board to other departments or agencies of the same municipality is taxable.

(f) Water used or consumed by private water systems engaged in furnishing water to persons is not taxable.

(g) The sale of water by a board (created under Sections 11-50-310, et seq., Code of Alabama 1975 as amended) to an incorporated municipality is taxable except water used in extinguishing fires, explosions, or conflagrations.

(h) Domestic water used or consumed by any person in or for the direct production, generation, processing, storage, delivery, or transmission of domestic water, electricity, and natural gas is not taxable. (Section 40-21-83(4))

(5) Electricity and Natural Gas

(a) The gross sales or gross receipts from the furnishing of electricity and natural gas are taxable pursuant to Section 40-21-82(a).

(b) The use or consumption of electricity by an incorporated municipality or a board or corporation organized under the authority of any incorporated municipality in furnishing or providing street lighting or traffic control systems is not taxable. (Section 40-21-83(8))

(c) Electricity and natural gas used or consumed by any person in or for the direct production, generation, processing, storage, delivery, or transmission of electricity, natural gas, or domestic water are not taxable. (Section 40-21-83(4))

(d) The furnishing of electricity to a manufacturer or compounder for use in an electrolytic or electrothermal manufacturing or compounding process, natural gas which becomes a component of tangible personal property manufactured or compounded (but not as fuel or energy), and natural gas used by a manufacturer or compounder to chemically convert raw materials prior to the use of such converted raw materials in an electrolytic or electrothermal manufacturing or compounding process are not taxable.

(e) Electricity and natural gas used or consumed by an electric board or gas board created under Sections 11-50-310, et seq., Code of Alabama 1975 as amended, which is engaged in furnishing such utility services to persons are not taxable.

(f) Electricity and natural gas used or consumed by a municipal utility department or an independent municipal utility board which is engaged in furnishing such utility services to persons are not taxable. Electricity and natural gas furnished by a municipal utility department or an independent municipal utility board to other departments or agencies of the same municipality are taxable.

(g) Electricity and natural gas used or consumed by private utilities engaged in furnishing such utility services to persons are not taxable.

(h) The sale of electricity by a board created under Section 11-50-310, et seq., Code of Alabama 1975 as amended, to an incorporated municipality is taxable except electricity used in furnishing or providing street lighting or traffic control systems.

(i) The sale of natural gas by a board created under Section 11-50-310, et seq., to an incorporated municipality is taxable.

(j) "Electrolysis" is the passage of an electric current through a conducting solution or molten salt (either is a type of electrolyte) which then dissociates. Various substances are prepared commercially by electrolysis; for example, chlorine (from salt), hydrogen (from water), and aluminum (from alumina). An "electrolyte" chemically, is a conductor in which the electric current is a movement of ions. Electrolysis is also used in the medical profession. "Electrothermal" means heat produced by electricity. Electric furnaces are used for making large quantities of high grade steel; they are especially used in making high grade alloy steels.

(k) A person, firm, or corporation that transports natural gas purchased by their customer from a third party is not liable for utility tax on their gross receipts from furnishing such transportation services.

(l) Electricity or natural gas used or consumed as fuel or energy in and for the heating of poultry houses is not taxable. (Section 40-21-83(9))

(6) Alabama Economic Incentive Enhancement Act of 2007

(a) An entity locating in Alabama subsequent to December 31, 2006 and qualifying for the tax abatements created by Act # 2007-199 under new Chapter 9D of Title 40 of Code of Alabama 1975 known as the "Alabama Economic Incentive Enhancement Act of 2007", shall be allowed an exclusion for a period of ten years from the utility tax levied in Section 40-21-82(a) on purchases of electricity, natural gas, and domestic water. Entities qualifying for this exemption shall obtain a State Utility Tax Certificate of Exemption (Form STE-3) by applying for the certificate on forms provided by the Department. (See Rule 810-6-5-.26.05 entitled Utility Gross Receipts Tax or Mobile Communication Services Tax Certificate of Exemption (Form STE-3) - Responsibilities of the Certificate Holder - Burden of Proof - Liability for Taxes Later Determined to be Due.)

(b) Pursuant to Section 40-9B-3(8), the beginning date of the ten year period exclusion shall commence from:

1. The date of initial issuance by a county, city, or public authority of bonds to finance any costs of the property, or
2. If no bonds are ever issued, the later of:
 - i. The date on which title to such property was acquired by or vested in such county, city, or public authority, or
 - ii. The date on which such property is or becomes owned, for federal income tax purposes, by the qualifying entity
3. Or, the date the property (facility) is placed in service.

(c) The existing utility tax exemption specified in paragraph (4)(b) of this Rule on total purchases of water where more than 50 percent of the water is used in industrial processing does not limit the exemption to a specified number of years. An entity qualifying under Chapter 9D of Title 40 may qualify for this existing exemption.

(d) The exclusion from utility tax provided in paragraph (6)(a) of this rule and the provisions thereof shall apply equally to the Utility Service Use Tax levied on electricity, natural gas, and domestic water.

(7) Consolidation by a Single Entity of Multiple Monthly Bills from Any One Utility Service Provider of Electricity, Domestic Water, or Natural Gas Services

(a) The taxes levied in Sections 40-21-82 and 40-21-102 are structured such that, when a person who is furnished electricity, domestic water, or natural gas services is receiving more than one bill from any one utility for such services, respective of a month, and the aggregate of the purchase price of utility services furnished by the utility exceeds forty thousand dollars (\$40,000) for the month, the tax calculated on the separate billings may exceed the tax due.

1. When a person purchasing utility services and receiving more than one bill each month from any one utility for such services has paid to the utility more tax on the billings than is due on the aggregate of the purchase price of utility services furnished for the month by the utility, the person may apply for a refund of the overpayment in accordance with the procedures outlined in Section 40-2A-7(c), Code of Alabama 1975, including the joint petition requirement contained in Section 40-2A-7(c)(1).
2. When a person purchasing utility services and receiving more than one bill each month from any one utility for such services desires to pay the utility

privilege license tax computed upon the aggregate of the purchase price of utility services furnished for the month by the utility, the person may apply for a permit from the Department of Revenue, purchase the utility services without the payment of the tax to the utility, and remit the tax directly to the Department in accordance with the procedures outlined in Rule 810-6-5-.26.02. Utility Tax Direct Pay Permit.

(b) For the purposes of the taxing statutes in Title 40, Code of Alabama, 1975, a single member limited liability company is classified in the same manner as it is for federal income tax purposes. Unless the single member limited liability company has made the election to be treated as a corporation under the Internal Revenue Service's "check-the-box" regulations, it is disregarded as an entity separate from its owner. A person who is the single member of one or more limited liability companies that are classified as disregarded entities may consolidate the purchases of utility services made by the companies from any one utility with the purchases made by the person from that utility, respective of a month, and compute the utility tax on the aggregate as though the purchases made by the limited liability companies were made directly by the single member, as outlined in paragraph (a) 2. Prior to consolidation, documentation must be provided to the Department to clearly establish ownership of each limited liability company and its status for federal income tax purposes. (Code of Alabama, 1975, Section 10-12-8(b).)

(8) General Provisions

(a) Where a discount is deductible from the gross charge for a utility service if payment is made within a prescribed period, the tax applies to the amount actually paid.

(b) Receipts from (i) standard collection charges, which are flat-amount administrative fees charged to cover the cost of sending a customer a delinquent billing letter; (ii) reconnect fees, which are fees charged for reconnecting a utility service after someone has moved from one location to another or after service has been disconnected because of nonpayment for services; (iii) collection fees, which are fees charged when a utility must send a collector to a utility customer to attempt to collect payment on a utility service billing prior to disconnecting service; and (iv) charges or fees added for failure to timely pay utility bills, whether the charge or fee is a flat amount or is based upon a percentage of the bill which was not timely paid, do not constitute gross sales or gross receipts from furnishing utility services and, therefore, are not taxable. (State of Alabama v. Muscle Shoals Electric Board (Admin. Law Div. Docket No. S. 93-286, decided November 4, 1993) and State Department of Revenue v. Mobile Gas 621 So.2d 1333 (Ala.Civ.App. 1993))

(c) Any person engaged or continuing in the business of furnishing taxable and nontaxable utility services to a customer shall pay the tax required on the taxable services furnished when his or her books are kept so as to show separately the taxable utility services furnished and the nontaxable utility services furnished. When the books are not so kept, the person furnishing the utility services shall pay tax on the total gross receipts of all utility services furnished. This would require separate meters for taxable and

nontaxable services furnished; estimates will not be acceptable. (Shellcast Corp. v. White, 477 So.2d 422 (Ala. 1985))

(d) In case a customer of a utility claims an exemption, the applicability of which there is some doubt, either the utility or the customer may request from the Department a determination of the validity of the claim for the exemption.

(e) The tax levied in Section 40-21-82 shall apply to all utility services furnished for use by the State of Alabama, the counties within the State of Alabama, and any other person or entity previously exempt from all taxation. The tax levied under this section shall apply to utility services furnished for use by incorporated municipalities of the State of Alabama except the exemptions noted in previous paragraphs. The tax levied under this section shall not apply to utility services furnished to the Federal Government and its agencies. Utility services furnished to national banks are taxable.

(f) Any person regularly engaging in any business for which a privilege tax is imposed by Section 40-21-82 shall apply for and obtain from the Department a license to engage in and to conduct such business on forms furnished by the Department. The application for a utility tax license shall require the following information:

1. Applicant's Federal Employer Identification Number,
2. Applicant's legal name, trade name, and complete mailing address,
3. Number of businesses in Alabama and exact location of each (exact location shall include city, county, and street address; if location is on highway or rural route, exact location shall include details sufficient to allow Department personnel to find the place of business),
4. Indication of the kind and class of business (i.e. domestic water, natural gas, electricity, telephone services, and/or telegraph services,
5. Indication of the legal form of ownership (sole proprietorship, partnership, corporation, multi-member limited liability company, single-member limited liability company, limited liability partnership, etc.),
6. If the applicant is a corporation, a copy of the certified certificate of incorporation, amended certificate of incorporation, certificate of authority, or articles of incorporation; if the applicant is a limited liability company or a limited liability partnership, a copy of the certified articles of organization,
7. Name, title, home address, and social security number of the sole proprietor, each partner, each corporate officer, or each member (for a partner or member that is a corporation or limited liability entity, the federal employer identification number shall be requested in lieu of a social security number)

8. Name of former owner of business, if any,
9. Beginning date of business,
10. Business and home phone numbers, and
11. Signature and title of the sole proprietor, each partner, an elected corporate officer, or a member and the date of the signature.

(g) The taxes levied under Sections 40-21-82 and 40-21-102 shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax accrues. Every person, firm, or corporation on whom these taxes are levied shall prepare and forward to the Department within the time fixed and prescribed by law a return for each calendar month using forms prepared and furnished by the Department, and shall pay to the Department the amount of tax shown to be due. See Rule 810-1-6-.12 entitled Taxes Required to be Filed Electronically. Each taxpayer shall file only one return for all units of businesses operated within the state. Any taxpayer liable for utility tax whose average monthly tax liability was \$10,000 or greater during the preceding calendar year shall make estimated payments to the Department on or before the twentieth day of the month in which the liability occurred. Such estimated payments must be at least equal to the taxpayer's actual tax liability for the same calendar month of the preceding year. (Section 40-21-85) **Beginning with the October 2011 return due November 20, 2011, the term "actual tax liability" as used herein shall not include the estimated amounts reported on the return from the previous year.**

1. Utility Privilege License Tax returns shall require the following information:
 - (i) Taxpayer's utility privilege license tax account number, legal name, and complete address,
 - (ii) Period covered by the return and due date of the return,
 - (iii) Estimated tax due for the current month, if applicable, **must be at least equal to line 7 (Total Utility Tax Due) of the return for the same calendar month of the previous year.**
 - (iv) A breakdown, by utility service type, of total receipts, exempt receipts, and taxable receipts from furnishing utility services,
 - (v) A breakdown, by applicable tax rate, of the number of persons from whom taxable receipts were received, the amount of such receipts, and the tax due thereon,
 - (vi) Total tax due,
 - (vii) Estimated tax paid on previous month's return, if applicable,

- (viii) Tax due after deducting credit for previous month's estimate,
- (ix) Grand total tax due (total tax due plus current month's estimate, if applicable),
- (x) Penalties and interest due, if applicable,
- (xi) Credits claimed, if any,
- (xii) Total amount remitted,
- (xiii) An indication if payment of tax is made through electronic funds transfer (EFT), and
- (xiv) Taxpayer's signature, title, and date signed. Pursuant to department Rule 810-1-6-.01 entitled Signature Requirements of Tax Returns and Other Documents of All Types Filed by Electronic Methods, the taxpayer's signature and date requirements are met upon the submission of an electronic return filed in accordance with Rule 810-1-6-.12 entitled Taxes Required to be Filed Electronically.

2. Utility Excise Tax returns shall require the following information:

- (i) Taxpayer's utility excise tax account number, legal name, and complete address,
- (ii) Period covered by the return and due date of the return,
- (iii) Estimated tax due for the current month, if applicable, **must be at least equal to line 5 (Total Tax Due) of the return for the same calendar month of the previous year,**
- (iv) A breakdown, by vendor, of taxable purchases and the tax due thereon,
- (v) Total tax due on all taxable purchases,
- (vi) Estimated tax paid on previous month's return, if applicable,
- (vii) Total tax due after deducting credit for previous month's estimate,
- (viii) Grand total tax due (total tax due plus current month's estimate, if applicable),
- (ix) Penalties and interest due, if applicable,
- (x) Credits claimed, if any,

(xi) Total amount remitted,

(xii) An indication if payment of tax is made through electronic funds transfer (EFT), and

(xiii) Taxpayer's signature, title, and date signed. Pursuant to department Rule 810-1-6-.01 entitled Signature Requirements of Tax Returns and Other Documents of All Types Filed by Electronic Methods, the taxpayer's signature and date requirements are met upon the submission of an electronic return filed in accordance with Rule 810-1-6-.12 entitled Taxes Required to be Filed Electronically.

(h) Every person engaged in the business of furnishing utility services shall add the tax levied in Section 40-21-82 to the gross receipts from furnishing such services and include the tax as a part of the total price billed to the purchaser of the services. (Section 40-21-86)

(i) A utility service provider is not required to collect utility tax from a purchaser who claims an exemption from the tax and, as documentation of the exemption claim, furnishes the utility service provider a properly executed utility tax certificate of exemption (Form STE-3) issued by the Department pursuant to Rule 810-6-5-.26.05. The utility service provider who relies in good faith on the Form STE-3 and reasonably believes the tax exemption claim is legal shall not be held liable for utility tax later determined by the Department to be due on the sale for which the certificate was received. Instead, the Department will collect or recover the utility tax due from the party or parties who made the illegal tax-free purchase with the Form STE-3 and the person or persons who benefited from the illegal use of the Form STE-3. (Section 40-21-88).

(j) The utility gross receipts tax shall be administered and the tax shall be collected in accordance with the uniform procedures set forth in Title 40 along with the procedures outlined in Sections 40-23-8 through 40-23-12, 40-23-25, and 40-23-27 through 40-23-31, Code of Alabama 1975, as amended, together with the applicable definitions contained in Section 40-23-1, Code of Alabama 1975, as amended. No discount is allowed for prompt payment of the utility gross receipts tax. However, Act #2001-1090 amended Section 40-21-82(b) which provides that a utility furnishing telephone and telegraph services is entitled to a collection allowance effective February 1, 2002 as stipulated in paragraph (2)(b) of this rule. (Section 40-21-85)

(k) Insofar as applicable, the provisions of this rule shall apply equally to the Utility Service Use Tax. In the event that a seller making sales of utility services for storage, use, or other consumption in this state, not exempted under the provisions of Section 40-21-103, is exempted from collection of the tax herein levied by any provisions of the Constitution or laws of the United States of

America, then the purchaser of the utility services shall pay the tax directly to the Department each month pursuant to this rule.

Author: Deborah Lee, Ginger Buchanan
Authority: Sections 40-2A-7(a)(5), 40-9B-3(8), 40-21-80, 40-21-82, 40-21-82.1, 40-21-83, 40-21-84, 40-21-85, 40-21-86, 40-21-88, 40-21-102, 40-21-103, 40-21-105, 40-21-106, 40-23-31, 40-23-100, 40-23-102, 40-23-103, 10-12-8(b), Code of Alabama 1975, Act No. 2001-1090 and Act No. 2007-199.
History: Adopted July 14, 1969.
Amended September 18, 1969.
Amended March 9, 1970.
Amended June 18, 1971.
Readopted through APA effective October 1, 1982.
Amended: Filed February 5, 1988, effective March 11, 1988.
Amended: Filed November 18, 1993, effective December 23, 1993.
Amended: Filed April 15, 1994, effective May 20, 1994.
Amended: Filed December 1, 1995, effective January 5, 1996.
Amended: Filed February 26, 1996, effective April 1, 1996.
Amended: Filed November 23, 1998, effective December 28, 1998.
Amended: Filed March 2, 2000, effective April 6, 2000.
Emergency Amendment: Filed January 25, 2002, expires May 25, 2002.
Permanent Amendment: Filed April 19, 2002, effective May 24, 2002.
Amended: Filed August 31, 2004, effective October 5, 2004.
Amended: Filed November 9, 2007, effective October 5, 2004.
Amended: Filed March 2, 2009, effective April 6, 2009.

APPENDIX B - CHAPTER 810-6-5

Attachment 810-6-5-.26

Authority: §§40-2A-7(a)(5), 40-21-85, 40-21-101, Code of Alabama 1975
History: Utility Privilege License Tax Return ST:UPL-4 (Rev. 8/02)



ALABAMA DEPARTMENT OF REVENUE
SALES, USE & BUSINESS TAX DIVISION
PO BOX 327755, MONTGOMERY AL 36132-7755

ST:UPL-4
Revised 8/02

SC

UTILITY PRIVILEGE LICENSE TAX RETURN

ACCOUNT NUMBER

REPORT FOR THE MONTH OF

DUE DATE

INSTRUCTIONS

Returns filed after the due date are subject to a "failure to timely file" penalty equal to the greater of 10% of the tax required to be paid on the return or \$50.00. Tax payments received after the due date are subject to a "failure to timely pay" penalty equal to 10% of the delinquent tax. If the tax is not timely paid, interest is also due at the same rate established by the Secretary of the Treasury under authority of 26 USC 6621.

CHECK THIS BOX IF PAYMENT MADE THROUGH ELECTRONIC FUNDS TRANSFER (EFT)

ITEM 1 should only be completed by taxpayers whose average monthly tax liability was \$10,000 or more for the last calendar year.

1. ESTIMATE FOR CURRENT MONTH OF _____ 20____

ESTIMATE OF TAX DUE (at least equal to the actual tax liability for the same calendar month of the preceding year) _____

	TOTAL	EXEMPT	TAXABLE
2. (a) Receipts from sales of electricity			
(b) Receipts from sales of natural gas			
(c) Receipts from sales of domestic water			
(d) Receipts from sales of local and intrastate telephone services			
(e) Receipts from sales of interstate telephone services			
(f) Receipts from sales of telegraph services			
3. Total receipts			

SCHEDULE FOR COMPUTATION OF TAX

	NO. OF ACCTS.	TAXABLE RECEIPTS	TAX DUE
4. If monthly taxable receipts from furnishing electricity, natural gas or domestic water respecting each person are: The tax is:			
(a) Not over \$40,000 4% of taxable amount			
(b) Over \$40,000 but not over \$60,000 \$1,600 plus 3% of excess over \$40,000			
(c) Over \$60,000 \$2,200 plus 2% of excess over \$60,000			
5. (a) Telephone/telegraph tax due (6% of taxable telephone and telegraph receipts)			
(b) LESS COLLECTION ALLOWANCE (1/4 of 1% of Line 5a)			
6. TOTAL TELEPHONE/TELEGRAPH TAX DUE (Line 5a minus 5b)			
7. TOTAL UTILITY TAX DUE - Total of Lines 4 a, b, c, and 6			
8. LESS PAYMENT OF ESTIMATE MADE ON PREVIOUS MONTH'S REPORT (applies only to taxpayers required to make estimated payments)			
9. BALANCE DUE (Line 7 minus Line 8)			
10. TOTAL TAX DUE (Total of Lines 7 and 9)			
11. ADD PENALTY AND INTEREST (See Instructions)			
12. LESS CREDIT FOR PREVIOUS OVERPAYMENT			
13. TOTAL AMOUNT REMITTED			

RVSTN3 (08-21-2002)

FOR OFFICIAL USE ONLY	
Balance of Tax	
Interest	
Penalty	
Total	

SIGNATURE: _____

TITLE: _____

DATE: _____

MAIL RETURN AND REMITTANCE TO THE ADDRESS AT TOP OF FORM

CONTROL NUMBER

APPENDIX C - CHAPTER 810-6-5

Attachment 810-6-5-26

Authority: §§40-2A-7(a)(5), 40-21-85, 40-21-101, Code of Alabama 1975
History: Utility Excise Tax Return ST:UPL-6 (Rev. 8/02)



ALABAMA DEPARTMENT OF REVENUE
 SALES, USE & BUSINESS TAX DIVISION
 PO BOX 327755, MONTGOMERY AL 36132-7755

ST:UPL-6
 Revised 8/02

SC

UTILITY EXCISE TAX RETURN

ACCOUNT NUMBER

REPORT FOR THE MONTH OF

DUE DATE

INSTRUCTIONS

Returns filed after the due date are subject to a "failure to timely file" penalty equal to the greater of 10% of the tax required to be paid on the return or \$50.00. Tax payments received after the due date are subject to a "failure to timely pay" penalty equal to 10% of the delinquent tax. If the tax is not timely paid, interest is also due at the same rate established by the Secretary of the Treasury under authority of 26 USC 6621.

CHECK THIS BOX IF PAYMENT MADE THROUGH ELECTRONIC FUNDS TRANSFER (EFT)

ITEM 1 should only be completed by taxpayers whose average monthly tax liability was \$10,000 or more for the last calendar year.

1. ESTIMATE FOR CURRENT MONTH OF _____ 20_____
 ESTIMATE OF TAX DUE (at least equal to the actual tax liability for the same calendar month of the preceding year) _____

2A. If taxable purchases of electricity, natural gas or domestic water from _____ are:
 The tax is:
 (a) Not over \$40,000 _____ 4% of taxable purchases _____ TAXABLE PURCHASES TAX DUE
 (b) Over \$40,000 but not over \$60,000 _____ \$1,600 plus 3% of excess over \$40,000 _____
 (c) Over \$60,000 _____ \$2,200 plus 2% of excess over \$60,000 _____

B. If taxable purchases of electricity, natural gas or domestic water from _____ are:
 The tax is:
 (a) Not over \$40,000 _____ 4% of taxable purchases _____ TAXABLE PURCHASES TAX DUE
 (b) Over \$40,000 but not over \$60,000 _____ \$1,600 plus 3% of excess over \$40,000 _____
 (c) Over \$60,000 _____ \$2,200 plus 2% of excess over \$60,000 _____

C. If taxable purchases of electricity, natural gas or domestic water from _____ are:
 The tax is:
 (a) Not over \$40,000 _____ 4% of taxable purchases _____ TAXABLE PURCHASES TAX DUE
 (b) Over \$40,000 but not over \$60,000 _____ \$1,600 plus 3% of excess over \$40,000 _____
 (c) Over \$60,000 _____ \$2,200 plus 2% of excess over \$60,000 _____

3. 6% tax on purchases of interstate telephone and telegraph services from _____
 TAXABLE PURCHASES TAX DUE

4. 6% tax on purchases of local and intrastate telephone and telegraph services from _____
 TAXABLE PURCHASES TAX DUE

5. TOTAL TAX DUE - Total of Items 2, 3 and 4 _____
 6. LESS PAYMENT OF ESTIMATE MADE ON PREVIOUS MONTH'S REPORT _____
 (applies only to taxpayers required to make estimated payments)
 7. BALANCE DUE (Line 5 minus Line 6) _____
 8. TOTAL TAX DUE (Total of Lines 1 and 7) _____
 9. ADD PENALTY AND INTEREST (See Instructions) _____
 10. LESS CREDIT FOR PREVIOUS OVERPAYMENT _____
 11. TOTAL AMOUNT REMITTED _____

RVSTN2 (08-28-2002)

FOR OFFICIAL USE ONLY		
Balance of Tax		
Interest		
Penalty		
Total		

SIGNATURE: _____
 TITLE: _____
 DATE: _____

MAIL RETURN AND REMITTANCE TO THE ADDRESS AT TOP OF FORM

CONTROL NUMBER
