

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-6-1-60

Rule Title: Opticians, Optometrists, and Ophthalmologists

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? Yes

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 [Signature]

Date 7/21/14

APA-6
10/96

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

Control No. 810 Department or Agency REVENUE

Rule No: 810-6-1-.60

Rule Title: Opticians, Optometrists, and Ophthalmologists

 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:**
Tax due on sales of ophthalmic materials by ophthalmologists will now be on par with tax due on sales of these same materials by optometrists and opticians as required by Act 2013-333, codified in 40-23-1(d).
2. **COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:**
To comply with law amended in 2013 legislative session
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 HERE THE RULE IS TO BE IMPLEMENTED:**
n/a
6. **SOURCE OF REVENUE TO BE USED FOR IMPLEMENTING AND ENFORCING THIS RULE:**
human resources currently paid from the General Fund
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:**

Increase in sales tax due to professionals collecting sales tax on sales.

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

810-6-1-.52 Direct Mail Advertising, Printer's Liability

INTENDED ACTION: Amend rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule to clarify the taxability of the sale of printed material when as part of the sales agreement the printer is required to mail the printed matter to addresses within and without the State of Alabama.

RULE NO. & TITLE

810-6-1-.60 Opticians, Optometrists, and Ophthalmologists.

INTENDED ACTION: Amend rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule to comply with the provisions of Act 2013-333, which passed during the 2014 Legislative Session.

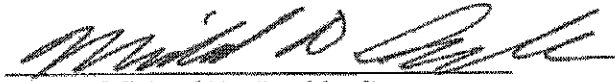
TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at 3:30 p.m. on Wednesday, September 10, 2014, Room 1203, First Floor, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at ww.revenue.alabama.gov/rulehear.html.

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:
Wednesday, September 10, 2014

CONTACT PERSON AT AGENCY:

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

A handwritten signature in black ink, appearing to read "Michael D. Gamble", written over a horizontal line.

Michael D. Gamble, Secretary
Alabama Department of Revenue

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810-6-1-60 Opticians, Optometrists, and Ophthalmologists.

(1) The dispensing or transferring of ophthalmic materials, including lenses, frames, eyeglasses, contact lenses, and other therapeutic optic devices, by opticians, ~~or optometrists, or ophthalmologists~~ are retail sales subject to sales tax. Such sales are taxable when sold to the ultimate consumer regardless of whether the optician, ~~or optometrist~~ or ophthalmologist manufactured the materials for sale or purchased them for resale. ~~The measure of tax on these sales shall be the gross receipts or gross proceeds therefrom without any deduction for the cost of the property sold, the cost of materials used, labor, service cost, or any other expenses whatsoever.~~ (Section 40-23-1(d))

(2) When a licensed optometrist or ophthalmologist exercises professional skills in examining the eyes of a patient and prescribes eyeglasses, contact lenses, or some other ophthalmic material which the optometrist or ophthalmologist dispenses or transfers to that patient, the optometrist or ophthalmologist may separately state the charges for the ophthalmic materials and the charges for the professional services, including dispensing fees or fitting fees, on the invoice to the patient and collect sales tax only on the separately stated charges for the ophthalmic materials which were dispensed or transferred to the patient, provided the optometrist or ophthalmologist also maintains records which clearly reflect the separate sources of receipts. In the absence of separately stated charges for materials and professional services on the invoices to patients and the maintenance of documentation in the records of the business, the tax shall apply to the total amount billed to the patient. (Section 40-23-1(d))

~~(3) The dispensing or transferring of ophthalmic materials including lenses, frames, eyeglasses, contact lenses, and other therapeutic optic devices to patients by licensed ophthalmologists as a part of their professional service is not subject to sales tax. Such licensed ophthalmologists are considered the ultimate consumers of the ophthalmic materials. The sale of the ophthalmic materials to licensed ophthalmologists by a supplier thereof is a retail sale subject to sales tax and the supplier is responsible for collecting the sales tax from the licensed ophthalmologist. The term "supplier" shall include but not be limited to optical laboratories, ophthalmic material wholesalers, or anyone selling ophthalmic materials to ophthalmologists. When the ophthalmic materials are purchased by a consumer covered by a third party benefit plan, including Medicare, the sales tax shall be applicable to the amount that the ophthalmologist, optometrist, or optician is reimbursed by the third party benefit plan plus the amount that the consumer pays to the ophthalmologist, optometrist, or optician at the time of the sale.~~(Section 40-23-1(d))

Author: Ginger Buchanan Dan DeVaughn
Authority: Sections 40-2A-7(a)(5), 40-23-1(d) and 40-23-31, Code of Alabama 1975.
History: Adopted November 5, 1959.
Amended June 12, 1978.

Amended April 1, 1981.

Amended August 10, 1982.

Readopted through APA effective October 1, 1982.

Amended April 3, 1987.

Amended November 5, 1996, effective December 10, 1996.