

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-6-3-77

Rule Title: Exemption for Certain Purchases by Contractors and Subcontractors in Conjunction with Construction Contracts with Certain Governmental Entities Public Corporations, and Educational Institutions

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 

Date 9/23/13

APA-6  
10/96

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

Control No. 810 Department or Agency REVENUE

Rule No: 810-6-3-.77

Rule Title: Exemption for Certain Purchases by Contractors and Subcontractors in Conjunction with Construction Contracts with Certain Governmental Entities, Public Corporations, and Educational Institutions

\_\_\_\_\_ New X Amend \_\_\_\_\_ Repeal \_\_\_\_\_ Adopt by Reference

NO

This rule has no economic impact.

YES

This rule has an economic impact, as explained below:

1. **NEED/EXPECTED BENEFIT OF RULE:**  
Amend an existing rule to (i) outline a new sales and use tax exemption created by Act 2013-305, (ii) enumerate the types of contracts to which the exemption is applicable, (iii) enumerate certain purchases to which the exemption does not apply, (iv) require contractors and subcontractors to apply for and obtain project specific sales and use tax certificates of exemption (Form STC-1) to be used to claim the exemption when making qualifying tax exempt purchases (v) provide penalties for intentional misuse of a certificate of exemption
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 uses the Department's existing manuals and mailing lists to disseminate the information.
3. **EFFECT OF THIS RULE ON COMPETITION:**  
None
4. **EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:**  
None
5. **EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:**  
None

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:  
The Legislature passed Act 2013-205 and we are required to comply.
8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE BENEFITS AND BURDEN COMPARISON:  
None
9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:  
None
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:  
None
11. OTHER COMMENTS:  
None

APA-2  
11/96

**ALABAMA DEPARTMENT OF REVENUE**  
**Sales & Use Tax Division**

**NOTICE OF INTENDED ACTION**

**RULE NO. & TITLE**

810-6-3-.77	Exemption for Certain Purchases by Contractors and Subcontractors in Conjunction with Construction Contracts with Certain Governmental Entities Public Corporations, and Educational Institutions
810-6-1-.45	Contractors Furnishing and Erecting Building Materials Under Contract With the United States
810-6-1-.46	Contractor's Liability
810-6-1-.46.01	Bleacher Systems, Lockers, Backstops, and Other Fixtures Installed in Gymnasiums
810-6-1-.97	Materials Used on Road and Bridge Projects

**INTENDED ACTION:** Amend above rule

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to amend the above rules to comply with the provisions of Act 2013-205 which exempts 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 awarded on or after January 1, 2014 with certain qualifying governmental entities who are exempt from all state, county, and municipal sales and use taxes. In addition, the department proposes to amend the title of Rule 810-6-3-.77.

**RULE NO. & TITLE**

810-6-1-.133	Pump Installed for a County or Municipality by a Contractor
810-6-3-.32	Historical Preservation Authorities

**INTENDED ACTION:** Amend above rule

**SUBSTANCE OF PROPOSED ACTION:** The department proposes to amend the above rule to delete references to earlier laws passed in 2000 which are no longer in effect.

**RULE NO. & TITLE**

810-6-5-.36	Prepaid Wireless 9-1-1 Charge
-------------	-------------------------------

**INTENDED ACTION:** Amend above rule


**SUBSTANCE OF PROPOSED ACTION:** The department proposes to amend the above rule due to the fact that the CMRS Board set a statewide emergency 9-1-1 charge of \$1.60. This new rate is effective 10/1/2013 and will include prepaid wireless transactions changing the rate per transaction from \$.70 to \$1.60.

**TIME, PLACE, MANNER OF PRESENTING VIEWS:** A public hearing will be held at **10:00 a.m. on Thursday, November 7, 2013, Room 1203, First Floor**, 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](http://www.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:**  
Thursday, November 7, 2013

**CONTACT PERSON AT AGENCY:**  
Patricia Toles  
Alabama Department of Revenue  
4131 Gordon Persons Building  
Montgomery, Alabama 36132  
(334) 242-1380

  
Michael D. Gamble, Secretary  
Alabama Department of Revenue

0914APC.INT

810-6-3-.77 Exemption for Certain Purchases by Contractors and Subcontractors in Conjunction with Construction Contracts with Certain Governmental Entities, ~~Public Corporations, and Educational Institutions.~~

(1) On and after ~~October 1, 2000~~ 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 awarded ~~prior to July 1, 2004~~ on or after January 1, 2014, with ~~any of the following a governmental entities, public corporations, and educational institutions~~ 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 United States government.~~ (b) The State of Alabama.

(c) ~~(b)~~ A county or incorporated municipality of the State of Alabama.

(d) ~~A corporation created for public purposes pursuant to a provision of the Constitution of Alabama of 1901, or a general or local law of the State of Alabama.~~

(e) ~~(c)~~ An educational institution of ~~the United States government~~, the State of Alabama, or a county or incorporated municipality of the State of Alabama.

(d) An industrial development board created pursuant to Article 4 of Chapter 54 of Title 11, Code of Alabama 1975, as amended.

(2) The exemption outlined in paragraph (1) shall 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, ~~public corporation, or educational institution~~ that is not itself exempt from state sales and use taxes.

(b) Purchases of tangible personal property by a contractor or subcontractor ~~of tangible personal property~~ that is 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 awarded, ~~revised, renegotiated, or otherwise altered on or after July 1, 2004~~ prior

~~to January 1, 2014. Items purchased after June 30, 2004, pursuant to a contract awarded prior to July 1, 2004, will continue to be exempt for the remainder of the contract, to the extent that any post June 30, 2004, revision or amendment does not require the purchase of additional tangible personal property. (Section 40-9-33, Code of Alabama 1975)~~

(3) The exemption outlined in paragraph (1) shall 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 public corporation 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 paragraph (1), the governmental entity shall complete an application (Form ST: EXC-01) for a sales and use tax certificate of exemption (Form STC-1) for each tax-exempt project. ~~e~~Contractors and subcontractors ~~who do not qualify as a "dual business" pursuant to Sales and Use Tax Rule 810-6-1-.56 licensed by the State Licensing Board for General Contractors,~~ shall also apply per project to the Department of Revenue for a sales and use tax certificate of exemption (Form STEC-1). ~~(See Sales and Use Tax Rule 810-6-5-.02)~~ Upon review and approval of the application, the department shall issue the applicant a Form STEC-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 ~~or more~~ of the governmental entities, ~~public corporations, or educational institutions~~ enumerated in paragraph (1) or to subcontracts arising from contracts with one ~~or more~~ of the governmental entities, ~~public corporations, or educational institutions~~ enumerated in paragraph (1). If the department denies the application, the applicant may appeal the denial in accordance with Section 40-2A-8, Code of Alabama 1975. ~~A contractor or subcontractor who obtains a Form STE-1 shall comply with all of the provisions of Rule 810-6-5-.02 and shall maintain records sufficient to document the tax-exempt status of qualifying purchases. (Section 40-9-33, Code of Alabama 1975).~~

(5) A contractor or subcontractor who obtains a Form STC-1 shall comply with all of the provisions of the Code of Alabama 1975, as amended, Section 40-23-9 and shall 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 a report of all exempt purchases to the Department of Revenue in a manner prescribed by the

department. 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.

~~(5) Contractors and subcontractors that qualify as a “dual business” and have obtained a sales tax license from the Department of Revenue are not required to obtain a Sales and Use Tax Certificate of Exemption (Form STE-1). In lieu of utilizing the Form STE-1 and following the procedures outlined in Sales and Use Tax Rule 810-6-5-.02, dual business contractors and subcontractors shall provide their sales tax account number to their vendors when purchasing tangible personal property which qualifies for the exemption outlined in paragraph (1), purchase the property without payment of sales or use tax to the vendor, and report the cost of the property withdrawn as a nontaxable withdrawal on their sales tax returns. Dual business contractors and subcontractors shall comply with all of the provisions of Sales and Use Tax Rule 810-6-1-.56 and shall maintain records sufficient to document the tax-exempt status of qualifying withdrawals.~~

(6) Any contractor or subcontractor who intentionally uses a certificate of exemption (STC-1) in violation of Act 2013-205 shall 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.

~~(6)(7) The date of the sale to, or the purchase, withdrawal, storage, use or consumption by, the contractor shall be used to determine if an otherwise qualifying transaction or event qualifies for the exemption. With respect to jJobs or projects commenced prior to, but not completed on, October 1, 2000 by January 1, 2014; otherwise qualifying transactions or events that occur prior to October 1, 2000 on or after January 1, 2014, shall not qualify for the exemption regardless of the transaction date. ; otherwise qualifying transactions or events that occur on or after October 1, 2000, shall qualify for the exemption. For purchases or withdrawals made after July 1, 2004, see Rule 810-6-3-.69.02.~~

(8) The amendatory language in this rule shall become operative on January 1, 2014.

Author: Traci Floyd, Ginger L. Buchanan  
Authority: Sections 40-2A-7(a)(5), 40-2A-8, 40-23-31, 40-23-83, and ~~40-9-33~~, Code of Alabama 1975, and Act 2013-205  
History: New rule: Filed February 20, 2001, effective March 27, 2001.  
Amended: Filed May 6, 2005, effective June 10, 2005.