

APA-6
10/96

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

Control No. 810 Department or Agency REVENUE

Rule No: 810-6-2-.90.01

Rule Title: Seller's Responsibility to Collect and Pay State Sales Tax and Seller's Use Tax

New 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:**
This new rule establishes a rule pursuant to Code of Alabama 1975, Sections 40-23-2, 40-23-61 through 40-23-68, and 40-23-190 that sets forth the conditions under which a seller must collect and remit state sales and seller's use tax. This rule also specifies the conditions under which a seller establishes substantial nexus, thereby causing the seller to come under the jurisdictional taxing authority of the state.
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:**
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:
The increase in use tax revenues will directly benefit the Alabama Special Education Trust Fund for both short-term and long-term purposes. This increase will be the direct result of use tax collections by entities that have substantial nexus with Alabama, but whose sales to customers in Alabama may have otherwise gone untaxed.
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:

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ALABAMA DEPARTMENT OF REVENUE
Sales & Use Tax Division

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-6-2-.90.01 Seller's Responsibility to Collect and pay State Sales Tax and
Seller's Use Tax

INTENDED ACTION: Adopt a new rule

SUBSTANCE OF PROPOSED ACTION: The purpose of the proposed action is to establish a rule pursuant to Code of Alabama 1975, Sections 40-23-2, 40-23-61 through 40-23-68, and 40-23-190 that sets forth the conditions under which a seller must collect and remit state sales and seller's use tax.


TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at 10:00 a.m. on Thursday, June 7, 2012, 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, June 7, 2012

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

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810-6-2-.90.01 Seller's Responsibility to Collect and Pay State Sales Tax and Seller's Use Tax. **(NEW RULE)**

(1) Under certain conditions, an out-of-state seller engaged within this state in the business of selling at retail tangible personal property is required to register with the Department for a sales tax license and collect and remit sales tax on all sales made within the state as provided for by Chapter 23, Article 1 of Title 40, Code of Alabama 1975. Sales taxes collected must be reported and paid in accordance with the provisions of Rule 810-6-4-.19, State Sales Tax Returns Required from All Retail Vendors and Annual Schedule of Locations Required from All Retail Vendors with Multiple Locations.

(2) A transaction on which the sales tax imposed is collected by a licensed seller is exempt from use tax and is not subject to the following provisions of this rule. (Section 40-23-62(1))

(3) Otherwise, a seller engaged in making retail sales of tangible personal property for storage, use or other consumption in this state is required to register with the Department and collect and remit use tax, as provided for by Chapter 23, Article 2 of Title 40, when the seller has "substantial nexus" with the state. Substantial nexus is a connection between a seller and the state, created by the seller's business activities in the state, which is substantial enough to cause the seller to be subject to come under the jurisdictional taxing authority of the state.

(4) Section 40-23-68 sets forth the conditions under which a seller must collect and remit use tax on retail sales of property for storage, use or other consumption in the state. These conditions include any contact with this state that would allow this state to require the seller to collect and remit the tax due under the provisions of the Constitution and laws of the United States. These conditions include, but are limited to:

(a) Delivery within the State of Alabama by means of vehicle owned by the selling entity;

(b) Maintains, occupies, or uses, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business;

(c) Employs or retains under contract any representative, agent, salesman, canvasser, solicitor or installer operating in this state under the authority of the person or its subsidiary for the purpose of selling, delivering, or the taking of orders for the sale of tangible personal property or any services taxable under this chapter or otherwise solicits and receives purchases or orders by any agent or salesman;

(d) Solicits, pursuant to a contract with a broadcaster or publisher located in this state, orders for tangible personal property by means of advertising which is disseminated primarily to consumers located in this state and only secondarily to bordering jurisdiction;

(e) Solicits orders for tangible personal property by mail if the solicitations are substantial and recurring and if the retailer benefits from any banking, financing, debt collection, telecommunication, or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities. Notwithstanding the previous sentence, a seller who contracts with a provider of call center services shall not be deemed to benefit from telecommunication activities occurring in this state or from the location in this state of authorized installation, servicing, or repair facilities merely as a result of contracting for and receiving only call center services from a call center located in this state. The preceding sentence shall only apply for call centers, as authorized or specified in Division 3 of Article 17 of Chapter 10 of Title 41, and placed in service in this state on or before October 1, 2003;

(f) Has, under a franchise or licensing arrangement or contract, a franchisee or licensee operating under its trade name;

(g) Solicits, pursuant to a contract with a cable television operator located in this state, orders for tangible personal property by means of advertising which is transmitted or distributed over a cable television system in this state;

(h) Distributes catalogs or other advertising matter and by reason thereof receives and accepts orders from residents, within the state of Alabama.

(5) Notwithstanding paragraph (4)(h) above, a seller is not required to collect use tax where his only connection with this state is sending catalogs through the mail to customers in this state and filling orders by shipping goods to the customers by mail or common carrier. (National Bellas Hess, Inc. v. Department of Revenue of the State of Illinois, 386 U.S. 753 (1967); Quill Corporation v. North Dakota, 504 U. S. 298 (1992)).

(6) A seller may have substantial nexus with this state due to the business activities conducted in the state by the seller's affiliates as set forth in Section 40-23-190, Conditions for Remote Entity Nexus. A seller has substantial nexus with this state for the collection of use tax if:

(a) The seller and an in-state business maintaining one or more locations within this state are related parties; and

(b) The seller and the in-state business use an identical or substantially similar name, tradename, trademark, or goodwill, to develop, promote, or maintain sales, or the in-state business and the seller pay for each other's services in whole or in part contingent upon the volume or value of sales, or the in-state business and the seller share a common business plan or substantially coordinate their business plans, or

the in-state business provides services to, or that inure to the benefit of, the business related to developing, promoting, or maintaining the in-state market.

(7) Two entities are related parties under this section if one of the entities meets at least one of the following tests with respect to the other entity:

(a) One or both entities is a corporation, and one entity and any party related to that entity in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Section 318 of the Internal Revenue Code owns directly, indirectly, beneficially, or constructively at least 50 percent of the value of the corporation's outstanding stock;

(b) One or both entities is a limited liability company, partnership, estate, or trust and any member, partner, or beneficiary, and the limited liability company, partnership, estate, or trust and its members, partners, or beneficiaries own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the profits, or capital, or stock, or value of the other entity or both entities; or

(c) An individual stockholder and the members of the stockholder's family, as defined in Section 318 of the Internal Revenue Code, owns directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of both entities' outstanding stock. (Section 40-23-190)

(8) Every seller required to collect the use tax shall register with the Department and give the name and address of each agent operating in this state, the location of any and all distribution or sales houses or offices or other places of business in this state, and such other information as the Department may require with respect to matters pertinent to the enforcement of the Alabama Use Tax Law. Use taxes collected must be reported and paid in accordance with the provisions of Rule 810-6-5-.19.01, State Use Tax Returns.

Author: Ginger Buchanan

Authority: Sections 40-2A-7(a)(5), 40-23-2, 40-23-61 thru 40-23-68, 40-23-83, and 40-23-190, Code of Alabama 1975.

History: