

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-6-5-.04.02

Rule Title: Seller's Responsibility to Collect county and Municipal Sales and Use Taxes

New; Amend; Repeal; Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? N/A (See Attached)

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? N/A

Is there another, less restrictive method of regulation available that could adequately protect the public? N/A

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? The rule will require sellers to collect tax that is not presently being collected. Likewise, it will relieve the consumer from reporting and paying the tax.

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? N/A

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 4/23/13

APA-1 ATTACHMENT

RULE 810-6-5-.04.02 Seller's Responsibility to Collect County and Municipal Sales and Use Taxes

As the taxing agency for the State of Alabama and in accordance with Title 40 of the Code of Alabama, the Department of Revenue has the authority to issue rules to provide guidance to taxpayers regarding Alabama tax laws. This rule is not issued pursuant to the state's policing powers. This rule is issued pursuant to the Department's rule authority found in Title 40 to administer the tax laws of the state.

APA-6
10/96

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

Control No. 810 Department or Agency REVENUE

Rule No: 810-6-5-.04.02

Rule Title: Seller's Responsibility to Collect County and Municipal Sales and Use Taxes

New 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:**
This rule explains the authority of counties and municipalities (local jurisdictions) to impose the requirement to collect the local sales and use taxes on Alabama sellers who are located outside the local jurisdiction but have a substantial connection with the local jurisdiction.
2. **COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:**
This rule allows local jurisdictions to utilize a more effective and efficient method by having the sellers collect and remit the sales and use taxes on purchases.
3. **EFFECT OF THIS RULE ON COMPETITION:**
This rule equalizes the impact of sales tax collections for sellers located in a local jurisdiction as compared to sellers located outside the jurisdiction.
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:**
N/A

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 primary economic impact is a substantial increase in the collection of local sales and use taxes. The rule has no impact on state sales and use taxes. The increase in use tax revenues will directly benefit the municipalities and counties for both short-term and long-term purposes. This increase will be the direct result of local use tax collections by Alabama retailers that sell into remote local jurisdictions in Alabama, but whose sales to customers in those jurisdictions may have otherwise gone untaxed.
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:
None

APA-2
11/96

ALABAMA DEPARTMENT OF REVENUE
Tax Policy & Research Division

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-6-5-.04.02 Seller's Responsibility to Collect County and
Municipal Sales and Use Taxes

INTENDED ACTION: Adopt a new rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to adopt the above new rule which will establish the authority of local jurisdictions to impose the requirement to collect the local sales or use taxes on Alabama sellers who are located outside the local jurisdiction.

RULE NO. & TITLE

810-6-3-.51 Municipal Sales and Use Taxes and Gross Receipts Taxes

INTENDED ACTION: Repeal an existing rule

SUBSTANCE OF PROPOSED ACTION: The above rule has been interpreted as the Department's local nexus rule; however, the rule does not adequately describe the circumstances under which a seller would be required to collect and pay local taxes. Therefore, the department proposes to repeal the above rule in its entirety and replace it with proposed new Rule 810-6-5-.04.02.


TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at **10:00 a.m. on Tuesday, June 11, 2013, 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:
June 11, 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

0893APC.INT

810-6-5-.04.02 Sellers's Responsibility to Collect County and Municipal Sales and Use Taxes. (NEW RULE)

(1) Scope. The provisions of this rule are limited to describing a business's obligation to collect and remit a local jurisdiction's sales or use tax. The provisions of this rule have no bearing on a business's other local tax or fee obligations including specifically a local jurisdiction's business license tax. An obligation to collect and remit a local jurisdiction's sales or use tax under the provisions of this rule does not obligate the business to file a return for or pay any other local tax or fee.

(2) Under the provisions of Sections 11-51-200 and 11-51-202, Code of Alabama 1975, as amended, the governing body of any municipality in the state may provide by ordinance for the levy of municipal sales and use taxes, parallel to the state levy of sales and use taxes. Under the provisions of Section 40-12-4, Code of Alabama 1975, as amended, or any general, special or local enabling act of the Legislature, the governing body of any county in the state may provide for the levy of county sales and use taxes. As used in this rule, the term "local jurisdiction" means a municipality or county in Alabama.

(3) Any seller responsible for collecting and remitting state sales or use tax must collect and remit the corresponding sales or use tax for the appropriate local jurisdiction(s). A seller can only avoid the responsibility for collecting and remitting local sales and use tax when the seller lacks minimum contacts with the local jurisdiction.

(4) A seller has minimum contacts with a local jurisdiction when the seller has a physical presence in the local jurisdiction, or when the seller has otherwise purposefully directed business activities toward the consumers of that jurisdiction.

(5) The following business activities will establish minimum contacts with a local jurisdiction and require a seller to collect and remit the local sales or use tax. The list is intended to provide examples of the types of activities that would establish minimum contacts with a local jurisdiction. It does not address every business activity conducted by a seller that could establish minimum contacts and impose on the seller the requirement to collect the local tax.

(a) The seller maintains an office, place of distribution, sales or sample room, warehouse or storage place, or any other place of business in the local jurisdiction;

(b) The seller has an employee, representative, agent, salesperson, canvasser, solicitor (either permanent or temporary), installer, repairman, or independent contractor who operates under the authority of the seller or its subsidiary inside the taxing limits of the local jurisdiction for any purpose, including repairing, selling, delivering, installing, or soliciting orders for the retailer's goods or services;

- (c) The seller delivers merchandise to customers in the local jurisdiction by use of equipment owned or leased by the seller or use of carriers acting as an agent for the seller, or vehicles owned by any related entity to the seller;
- (d) The seller owns or leases real property or tangible personal property in the local jurisdiction;
- (e) The seller distributes catalogs or other advertising materials and by reason thereof receives and accepts orders from consumers in the local jurisdiction;
- (f) The seller contracts with a broadcaster or publisher located in the local jurisdiction for advertising disseminated primarily to consumers located in the local jurisdiction to solicit sales orders;
- (g) The seller solicits sales orders from consumers in the local jurisdiction by mail;
- (h) The seller investigates, handles, or otherwise assists in resolving customer issues or complaints on items previously sold by the seller, while inside the taxing limits of a local jurisdiction;
- (i) The seller makes repairs, does warranty work, or approves or arranges for maintenance or service work on items previously sold by the seller, inside the taxing limits of a local jurisdiction;
- (j) The seller engages in convention or trade shows, or conducting seminars or similar events for the purpose of promoting or conducting business activity while inside the taxing limits of a local jurisdiction;
- (k) The seller conducts business activity inside the taxing limits of a local jurisdiction by owning, leasing or maintaining tangible personal property or real property located inside the taxing limits of a local jurisdiction;
- (l) The seller provides customers with any kind of service or technical assistance on items previously sold by the seller, inside the taxing limits of a local jurisdiction, including but not limited to, engineering assistance, consulting service, training, design service, quality control, product inspection, or similar services;
- (m) The seller warehouses, stores, installs, assembles or manufactures any tangible personal property inside the taxing limits of a local jurisdiction;
- (n) The seller engages in any other activity to purposefully avail itself of the benefits of the economic markets in the local jurisdiction.
- (o) The seller has otherwise purposely directed business activities toward the consumers of that jurisdiction.

Author: Christy Vandevender
Authority: Sections 40-2A-7(a)(5), 40-23-2, 40-23-68, 11-51-180, 11-51-200, Code of Alabama 1975
History: