

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-6-5-.26.02

Rule Title: Utility Tax Direct Pay Permit

 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 7/26/11

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

Control No. 810 Department or Agency REVENUE

Rule No: 810-6-5-.26.02

Rule Title: Utility Tax Direct Pay Permit

New 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 filed by a direct pay permit holder. 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 "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 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 in the rule by amending subsection (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.

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-.26.02 Utility Tax Direct Pay Permit.

(1) Absent evidence to the contrary, where any person is furnished utility services and is billed for such utility services by more than one bill, it shall be presumed that the gross sales or the gross receipts derived from the furnishing of utility services to such person are taxable at the rate applicable to receipts derived from each bill, and the tax so computed shall be added to each bill for utility services furnished. If any person purchasing utility services and receiving more than one bill from any one utility for such services desires that the tax levied by Sections 40-21-80, et seq., Code of Alabama 1975 as amended, be computed upon the aggregate of the purchase price of utility services furnished by such utility, such person may apply for a permit from the Department of Revenue and be permitted to purchase certain utility services without the payment of the tax to the utility subject to the following conditions, namely:

(a) The holder of such permit shall report such utility tax upon forms prepared and furnished by the Department of Revenue and shall pay said tax directly to the Department of Revenue on or before the twentieth day of the month following the month during which such utility services were used for a taxable purpose.

(b) The holder of such permit shall be required to keep such books and records as may be necessary to determine such tax liability, which records shall be subject to examination by the Department of Revenue.

(c) Upon demand of the Department of Revenue the holder of said permit shall execute a bond or indemnity agreement securing the payment of such tax to the Department of Revenue in an amount not exceeding estimated tax liability for six months.

(d) Said permit shall not be transferable and may be cancelled upon notice by registered mail to the holder thereof.

(2) The application for a utility tax direct pay permit shall require the following information:

(a) Applicant's Federal Employer Identification Number,

(b) Applicant's legal name and complete mailing address,

(c) Business address(es) in Alabama including city, county, and street address or, if location is on highway or rural route, including details sufficient to allow Department personnel to find the place of business),

(d) Indication of the nature of business (e.g. steel manufacturing, auto manufacturer, etc.),

(e) Business phone number,

(f) Desired effective date of permit,

(g) The type of utility service(s) the applicant wishes to purchase without payment of the tax to the vendor and the name of the vendor(s) from whom the service(s) will be purchased, and

(h) Signature and title of sole proprietor, each partner, or an elected corporate officer and the date of each signature.

(3) Utility tax direct pay permits shall contain the following information:

(a) Taxpayer's direct pay permit number, legal name, and complete address,

(b) Permit holder's principal business location,

(c) Nature of the holder's business,

(d) Effective date of the permit,

(e) Type(s) of utility services which can be purchased without payment of utility tax and the name(s) of the vendor(s) from whom the specified utility services can be purchased without payment of utility tax to the vendor,

(f) Statement that the specified utility services purchased from the specified vendor(s) shall be reported monthly to the Department of Revenue and the applicable utility taxes paid thereon by the holder of the permit,

(g) Legal name of the applicant for the direct pay permit, the date the application was filed, and the date the Department of Revenue approved the application, and

(h) Signature on behalf of the Department of Revenue and the date signed.

(4) Utility tax direct pay permit returns shall require the following information:

(a) Taxpayer's utility tax direct pay account number, legal name, and complete address,

(b) Period covered by the return and due date of the return,

(c) 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 preceding year.**

(d) The names of each vendor from whom utility services were purchased without payment of tax and a breakdown, by vendor, of the amount of taxable purchases of utility services and the tax due on such purchases,

(e) Estimated tax paid on previous month's return, if applicable,

- (f) Tax due after deducting credit for previous month's estimate,
- (g) Total tax due (tax due plus current month's estimate, if applicable),
- (h) Penalties and interest due, if applicable,
- (i) Credits claimed,
- (j) Total amount due,
- (k) Total amount remitted,
- (l) An indication if payment of tax is made through electronic funds transfer (EFT), and
- (m) Taxpayer's signature, title, and the date signed.

Author: **Ginger Buchanan Dan DeVaughn**
Authority: §§40-2A-7(a)(5) and 40-21-85 Code of Alabama 1975
History: Filed with LRS December 18, 1995. Certification filed February 26, 1996, effective April 1, 1996.

APPENDIX C - CHAPTER 810-6-5

Attachment 810-6-5-.26.02

Authority: §§40-2A-7(a)(5), 40-21-85, 40-23-31
History: Utility Privilege License Tax Return Direct Pay Permit (ST:UPL-5, Revised 8/02)
Filed with LRS February 26, 1996, effective April 1, 1996.



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

ST:UPL-5
 Revised 8/02

SC

UTILITY PRIVILEGE LICENSE TAX RETURN
 DIRECT PAY PERMIT

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 _____
 (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 _____

TAXABLE PURCHASES	TAX DUE

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 _____
 (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 _____

TAXABLE PURCHASES	TAX DUE

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 _____
 (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 _____

TAXABLE PURCHASES	TAX DUE

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		

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

RVSTNT (08-28-2002)