

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

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 7/16/13

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 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

This rule has no economic impact.

YES

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 new rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to promulgate the above 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.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at **10:00 a.m. on Friday, September 6, 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.

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:
Friday, September 6, 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

0903APC.INT

810-6-5-.04.02 Seller'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, whether or not that business has a physical location in the state. 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. Likewise, this rule does not address sourcing issues associated with the determination of where tax is due or in which local jurisdiction tax is due. Sourcing issues are controlled by the passage of title from seller to customer and are not addressed herein. The provisions of this rule do not apply to the sale of automobiles, motorcycles, trucks, truck trailers or semitrailers in transactions governed by Section 40-23-2(4) or 40-23-102, Code of Alabama 1975, and Rule 810-6-3-.42.02. (Nonresidents, Sales to), 810-6-3-.42.03. (Sales of Certain Automotive Vehicles to Nonresidents for First Use and Registration or Titling Outside Alabama), or 810-6-3-.03.02. (Automotive Vehicles, Certificate of Exemption/Out-Of-State Delivery Form).

(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 Sections 11-3-11.2 and 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, parallel to the state levy of sales and use tax except in limited instances where a contrary local sales and use tax act was in effect on February 25, 1997. As used in this rule, the term "local jurisdiction" means a municipality, special tax district, police jurisdiction or county in Alabama.

(3) The threshold applicable for determining whether a seller is obligated to collect and remit the state sales or use tax associated with interstate transactions shall also be applied by sellers to determine whether the seller is obligated to collect and remit local sales or use tax by examining the contacts the seller has with each local jurisdiction where local sales or use tax is due. Any seller responsible for collecting and remitting state sales or use tax with respect to a particular retail sales transaction or taxable use must collect and remit the corresponding sales or use tax for the appropriate local jurisdiction(s) with respect to the transaction or use. A seller can only avoid the responsibility for collecting and remitting local sales or use tax when the seller lacks physical presence within the local jurisdiction sufficient to create an obligation to collect and remit state sales or use tax.

(4) For purposes of determining whether the seller's contacts with the local jurisdiction are sufficient to create an obligation to collect and remit state sales or use

tax, and therefore sufficient under the provisions of this rule to create an obligation to collect and remit the local jurisdiction's sales or use tax, the seller should refer to and must apply the provisions of Rule 810-6-2-.90.01 entitled "Seller's Responsibility to Collect and Pay State Sales Tax and Seller's Use Tax."

(5) This rule shall apply to all transactions occurring on or after January 1, 2014.

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: