

APA-1
11/96

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-6-1-.45

Rule Title: Contractors Furnishing and Erecting Building Materials Under Contract With the United States

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

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

Control No. 810 Department or Agency REVENUE

Rule No: 810-6-1-.45

Rule Title: Contractors Furnishing and Erecting Building Materials Under Contract With the United States

 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:**
The proposed amendment would update the existing rule to comply with the provisions of Act 2013-305, 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. The new Act does not include the federal government as a qualifying governmental entity. This proposed amendment would delete all references to earlier laws passed in 2000 which included federal contracts in the 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:
None
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

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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
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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.

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

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810-6-1-45 Contractors Furnishing and Erecting Building Materials Under Contract With the United States.

(1) Sections 40-23-4(a)(17) and 40-23-62(2) specifically exempt the United States government from paying sales or use tax on its purchases of tangible personal property. These exemptions, however, do not apply to purchases by a contractor where the contractor has a construction contract with the United States government to furnish all materials and labor for use in the performance of the contract. The contractor is the consumer of all the materials which the contractor purchases and uses in the performance of the construction contract and which become a part of real property. The United States Supreme Court in *State of Alabama v. King & Boozer*, 314 U.S. 1, 62 S.Ct. 43 (1941), and in *Curry v. U.S., et al.*, 314 U.S. 1, 62 S.Ct. 48, held that the Alabama sales and use taxes on building materials used by building contractors for the United States government were due by such contractors even though the costs of such taxes were passed on to the United States government. The court held that these taxes were levied on the contractors and not on the United States. ~~On and after October 1, 2000, however, a contractor's purchases which do not qualify for the exemptions in Sections 40-23-4(a)(17) and 40-23-62(2) may qualify for the new sales and use tax exemption outlined in paragraph (2) below.~~ (Sections 40-23-1(a)(10) and 40-23-60(5))

~~(2) On and after October 1, 2000, 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, with the United States government is exempt from all state, county, and municipal sales and use taxes provided the contractor or subcontractor has complied with Rule 810-6-3-.77 entitled Exemption of Certain Purchases by Contractors and Subcontractors in conjunction with Construction Contracts with Certain Governmental Entities, Public Corporations, and Educational Institutions. (Section 40-9-33)~~

~~(3) On and after July 1, 2004, 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 the United States government is subject to all state, county, and municipal sales and use taxes for any contract awarded, or any portion of a contract which is revised, renegotiated, or otherwise altered, on and after July 1, 2004, to the extent that such revision, renegotiation, or alteration requires the purchase of additional tangible personal property. 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.~~

Author: Ginger L. Buchanan

Authority: Sections 40-2A-7(a)(5), 40-23-1(a)(10), 40-23-4(a)(17), 40-23-31, 40-23-60(5), 40-23-62(2), 40-23-83, and 40-9-33, Code of Alabama 1975

History: Readopted through APA effective October 1, 1982.
Amended: Filed February 20, 2001, effective March 27, 2001.
Amended: Filed May 6, 2005, effective June 10, 2005.