

APA-1
11/96

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-6-1-.46.01

Rule Title: Bleacher Systems, Lockers, Backstops, and Other Fixtures Installed in Gymnasiums

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 *Michael D. ...*

Date 9/23/13

APA-6
10/96

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

Control No. 810 Department or Agency REVENUE

Rule No: 810-6-1-.46.01

Rule Title: Bleacher Systems, Lockers, Backstops, and Other Fixtures Installed in Gymnasiums

 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.
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:
The Legislature passed Act 2013-205 and we are required to comply.
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

APA-2
11/96

**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-.46.01 Bleacher Systems, Lockers, Backstops, and Other Fixtures Installed in Gymnasiums.

(1) Materials or fixtures which are purchased by contractors and are intended to become permanently affixed or attached to gymnasiums, or other realty, are "building materials" and are taxable at the time of purchase by the contractor. (See Rules 810-6-1-.27 and 810-6-1-.28) (Sections 40-23-1(a)(10) and 40-23-60(5))

(a) Prior to ~~October~~ January 1, 200014, these purchases are taxable even when the materials are used by the contractor in furnish and install contracts with tax-exempt governmental entities and tax-exempt educational institutions. A contractor that sells the materials to a tax-exempt entity under one contract and affixes the materials to realty under a second contract with the same tax-exempt entity is liable for sales or use tax; the fact that the materials are sold and installed under separate contracts does not qualify the contractor's purchase of materials for the sales or use tax exemptions found in Sections 40-23-4(a)(11), 40-23-4(a)(15), 40-23-4(a)(17), 40-23-62(2), 40-23-62(13), and 40-23-62(16). (State of Alabama v. Algernon Blair Industrial Contractors, Inc., 362 So. 2d 248 (Ala. Civ. App. 1978) and Alabama Precast Products, Inc. v. Charles A. Boswell, 357 So. 2d 985 (Ala. 1978)). On and after ~~October~~ January 1, 200014, however, purchases by contractors which do not qualify for the exemptions in Sections 40-23-4(a)(11), 40-23-4(a)(15), 40-23-4(a)(17), 40-23-62(2), 40-23-62(13), and 40-23-62(16) may qualify for the sales and use tax exemption outlined in paragraph (1)(b) below. (Rule 810-6-3-69.02)

(b) On and after ~~October~~ January 1, 200014, the sale of materials or fixtures to, or the storage, use, or consumption of materials or fixtures by, any contractor or subcontractor to be permanently affixed or attached to gymnasiums or other realty pursuant to a contract awarded ~~prior to on or after~~ prior to on or after July January 1, 20014, with a governmental entity, as defined in Rule 810-6-3-.77 entitled Exemption of Certain Purchases by Contractors and Subcontractors in Conjunction with Construction Contracts with Certain Governmental Entities, is exempt from state, county, and municipal sales and use taxes provided the contractor or subcontractor has complied with all provisions of said rule.~~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, Code of Alabama 1975)~~

(2) Criteria used in determining whether materials furnished and installed in gymnasiums, or other realty, become additions to real property include but are not limited to the following: the materials are physically attached to the realty with bolts; the materials when attached are intended to be permanent and are easily identified with a part of the realty; and the materials are appropriate to the realty to which they are attached--that is the materials or fixtures perform a function appropriate to the real property and such function is necessary or convenient to the normal and appropriate uses of the real property. Examples of these items include but are not limited to the

following: wall-attached telescopic bleacher systems, reverse-fold telescopic bleacher systems, lockers, and basketball backstops.

(3) Materials which (i) are not intended to become permanently affixed or attached to gymnasiums, or other realty, (ii) are intended to be mobile, and (iii) do, in fact, retain their identity as tangible personal property; qualify for the sales or use tax exemptions found in Sections 40-23-4(a)(11), 40-23-4(a)(15), 40-23-4(a)(17), 40-23-62(2), 40-23-62(13), and 40-23-62(16) when sold to tax-exempt governmental entities or tax-exempt educational institutions. These items are subject to sales or use tax when sold to nonexempt entities. Criteria used in determining whether materials remain tangible personal property include but are not limited to the following: the materials are not intended to become permanently affixed to realty; the materials can be easily moved from one location to another, and can even be stored out of sight or moved from building to building. An example of an item of this nature includes, but is not limited to, a mobile telescopic bleacher system. (Sections 40-23-1(a)(10) and 40-23-60(5))

~~(4) 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, the State of Alabama or a county or incorporated municipality of the State of Alabama 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. If the "change order" or revision does not require the purchase of additional tangible personal property, the change will not cause the contract to lose its exempt status. 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: Traci Floyd, Ginger L. Buchanan
Authority: Sections 40-2A-7(a)(5), 40-23-31, 40-23-83, 40-23-1(a)(10) 40-23-60(5), and 40-9-33, Code of Alabama 1975
History: Adopted through APA effective January 27, 1998.
Amended: Filed February 20, 2001, effective March 27, 2001.
Amended: Filed May 6, 2005, effective June 10, 2005.