

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-6-1-46

Rule Title: Contractor's Liability

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?

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 *Michael D. Paul*

Date 9/16/15

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

Rule Title: Contractor's Liability

 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:

2. COSTS/BENEFITS OF RULE AND WHY RULE IS THE MOST EFFECTIVE, EFFICIENT, AND FEASIBLE MEANS FOR ALLOCATING RESOURCES AND ACHIEVING THE STATED PURPOSE:

3. EFFECT OF THIS RULE ON COMPETITION:

4. EFFECT OF THIS RULE ON COST OF LIVING AND DOING BUSINESS IN THE GEOGRAPHICAL AREA WHERE THE RULE IS TO BE IMPLEMENTED:

5. EFFECT OF THIS RULE ON EMPLOYMENT IN THE GEOGRAPHICAL AREA HERE THE RULE IS TO BE IMPLEMENTED:

6. SOURCE OF REVENUE TO BE USED 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:

8. UNCERTAINTIES ASSOCIATED WITH THE ESTIMATED BENEFITS AND

BURDENS OF THE RULE, INCLUDING QUALITATIVE/QUANTITATIVE
BENEFITS AND BURDEN COMPARISON:

9. THE EFFECT OF THIS RULE ON THE ENVIRONMENT AND PUBLIC HEALTH:
10. DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE RULE IS NOT IMPLEMENTED:
11. OTHER COMMENTS:

APA-2
11/96

ALABAMA DEPARTMENT OF REVENUE
Sales & Use Tax Division

NOTICE OF INTENDED ACTION

RULE NO. & TITLE

810-6-1-.46 Contractor's Liability

INTENDED ACTION: Amend rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule to include information from various court cases related to contractors and to clarify when the contractor's provision applies to additions to realty.

RULE NO. & TITLE

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

INTENDED ACTION: Amend rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rules to incorporate the changes in the drive out provision in Section 40-23-2(4) as amended by Act 2015-503, and provide an effective date for the change.

RULE NO. & TITLE

810-6-5-.02 State Sales and Use Tax Certificate of Exemption (Form STE-1) -
Responsibilities of Certificate Holder - Burden of Proof - Liability
for Taxes Later Determined to be Due

INTENDED ACTION: Amend rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to amend the above rule to reflect changes created by Act 2015-534 that require entities having a statutory exemption from the payment of sales, use and lodgings tax to obtain an annual certificate of exemption, reference the new rule relating to those changes, and to change the title of this rule.

RULE NO. & TITLE

810-6-5-.02.01

State Sales and Use Tax Certificate of Exemption for Entities Having a Statutory Exemption from the Payment of Sales, Use, and Lodgings Taxes

INTENDED ACTION: Adopt rule

SUBSTANCE OF PROPOSED ACTION: The department proposes to adopt the above new rule to comply with the provisions of Act 2015-534.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held at 10:30 a.m. on Thursday, November 12, 2015, Room 1203, First Floor, Gordon Persons Building, located at 50 N Ripley Street, Montgomery, Alabama. Copies of the rule(s) can be obtained at <http://revenue.alabama.gov/analysis/upcoming-rule-hearings.cfm>

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 12, 2015

CONTACT PERSON AT AGENCY:

Patricia Thomas
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 Contractor's Liability.

(1) Contractors or builders must pay either to the seller or directly to the Department of Revenue sales or use tax on the following:

(a) All of the materials, equipment, tools, and supplies which they use or consume in the operation of their business and

(b) All building materials attached by them to real property except property qualifying for a specific exemption. See Rule 810-6-1-.27 entitled Building Materials.

(2) Prior to January 1, 2014, contractors or builders may not claim any immunity or exemption from the sales or use tax laws on account of property purchased and used in connection with contracts with the state, county, or city governments. (*Lone Star Cement Corporation v. State*, *Curry v. U.S. et al.*, 314 U.S. 1, 62 S.Ct. 48 and *State v. King & Boozer*, 314 U.S. 1, 62 S.Ct. 43 (1941)). (Sections 40-23-1(a)(10) and 40-23-60(5))

(3) On and after January 1, 2014, 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 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 all state, county, and municipal sales and use taxes provided the contractor or subcontractor has complied with all provisions of said rule.

(4) Courts in this State have held that the contractor provision provided in Section 40-23-1(a)(10) applies if the following criteria are met: (i) the taxpayer must be a contractor; (ii) the materials must be building materials; and (iii) the materials must become a part of the real estate. See Department of Revenue v. James A. Head & Co., 306 So.2d 5 (Ala. Civ. App.1974), cert. denied 306 So.2d 12 (1975).

(5) It has also been determined that the taxpayer was a contractor even though actual installation was performed by a third party:

(a) ...the 'contractor' provision also applied to those materials provided by the taxpayer, but installed by the electrical contractors, citing Montgomery Woodworks. "The Court's holding in Montgomery Woodworks illustrates, however, that actual installation by the taxpayer is not required." Hunter Security, Inc. v. State of Alabama, Docket S. 05-1309, 5.

(b) "Therefore, the failure of the taxpayer to actually install the cabinets after they have been fabricated does not prevent the taxpayer from

being a 'contractor' within the meaning of §40-23-1(a)(10)." State of Alabama v. Montgomery Woodworks, Inc., 389 So.2d 512 (Ala. Civ. App. 1980)

Author: Traci Floyd, Ginger L. Buchanan
Authority: Sections 40-2A-7(a)(5), 40-23-1(a)(10), 40-23-31, 40-23-60(5) 40-23-83, and **40-9-14.1 Act 2013-205, 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.
Amended: Filed November 20, 2013, effective December 25, 2013.