

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 810 Department or Agency REVENUE

Rule Nos. 810-6-5-.02

Rule Title: 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

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

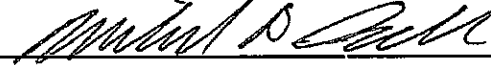
Does the proposed rule have any economic impact?

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 

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: 810-6-5-.02

Rule Title: 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,

 New X Amend Repeal Adopt by Reference

- NO
 YES

This rule has no economic impact.

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:

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

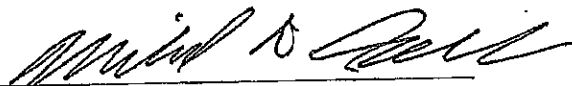
SUBSTANCE OF PROPOSED ACTION: The department proposes to adopt the above new rule to comply with the provisions of Act 2015-534.

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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810-6-5-02 State Sales and Use Tax Certificate of Exemption (Form STE-1) - Responsibilities of the Certificate Holder - Burden of Proof - Liability for Taxes Later Determined to be Due Issued For Wholesalers, Manufacturers and Other Product Based Exemptions.

(1) The term "Department" as used in this regulation shall mean the Department of Revenue of the State of Alabama.

(2) Persons, firms, and corporations who are not required to have a sales tax license pursuant to Section 40-23-6, Code of Alabama 1975, and who are entitled to make certain purchases at wholesale, tax free, may obtain a sales and use tax certificate of exemption by applying for same on a form provided by the Department. Upon receipt of a properly completed application and approval of same by the Department, the applicant will be issued a state sales and use tax certificate of exemption (Form STE-1) which can be copied, completed, and provided to vendors as documentation for tax exempt purchases. A form STE-1 will not be issued to persons, firms, or corporations who have a sales tax license issued pursuant to Section 40-23-6, Code of Alabama 1975, or who do not have a place of business within the State of Alabama.

(3) Persons or companies, including but not limited to those cited in Title 40, Chapter 9, other than governmental entities, which have a statutory exemption from the payment of Alabama sales, use, or lodgings taxes, shall be required to obtain a sales and use tax certificate of exemption to be renewed on an annual basis by applying for same on a form provided by the Department. Please see Sales and Use Tax Rule 810-6-5-02.01, entitled State Sales and Use Tax Certificate of Exemption for Entities Having a Statutory Exemption from the Payment of Sales, Use, and Lodgings Taxes, for additional information.

~~(3-4)~~ An application for a sales and use tax certificate of exemption shall require the following information:

- (a) Applicant's Federal Employer Identification Number,
- (b) Applicant's business telephone number,
- (c) Applicant's legal name, trade name, and complete mailing address,
- (d) Number of businesses in Alabama and exact location of each (exact location shall include city, county, and street address; if location is on highway or rural route, exact location shall include details sufficient to allow Department personnel to find the place of business),
- (e) Indication of the kind and class of business (i.e. wholesaler, manufacturer, etc.),

- (f) Type of products manufactured or sold,
- (g) Reason the exemption is claimed,
- (h) Indication of the legal form of ownership (sole proprietorship, partnership, corporation, LLC, etc.),
- (i) Copy of certificate of incorporation or articles of incorporation, if applicable,
- (j) Name, title, home address, and social security number of sole proprietor, each partner, or each corporate officer, and
- (k) Signature of sole proprietor, each partner, or an elected corporate officer.

(4-5) The Department, upon approving an application for a sales and use tax certificate of exemption, will provide the applicant with a Form STE-1 containing the following information:

- (a) Certificate holder's exemption number,
- (b) Restrictions, if any, to the scope of the certificate holder's exempt status,
- (c) Nature of the certificate holder's business,
- (d) Statement of the duties and responsibilities of the vendor to whom a certificate is provided by the holder,
- (e) Statement, to be declared by the certificate holder under penalties of false swearing, as to the validity of the exemption claim,
- (f) Certificate holder's name and address,
- (g) Date of approval or issuance by the Department, and
- (h) Signature of approval by the Department.

(5-6) At the time of providing a copy of a Form STE-1 to a vendor from whom a tax-exempt purchase is being made, the following information shall be provided by the certificate holder on the certificate copy which the holder gives to the vendor:

- (a) Name and address of the vendor to whom the certificate copy is provided,
- (b) Date the certificate is provided,
- (c) Basis for the certificate holder's exemption claim, and

(d) Certificate holder's signature and title.

(6 7) Certificate holders regularly engaged in making tax exempt purchases of the kind and nature for which the Form STE-1 has been issued may furnish a properly executed certificate to the seller specifying that all tangible personal property subsequently purchased will be for the purpose shown on the certificate and thus be relieved of the burden of executing a separate certificate for each individual tax exempt purchase as long as there is no change in the character of their operations and the tangible personal property purchased is of the kind usually purchased for the purpose indicated.

(7 8) Certificate holders must maintain a list of all vendors to whom they furnish a copy of their exemption certificate. This list should be retained in their records available for inspection by the Department during regular business hours and should provide the name, address, and type of business of each vendor to whom a copy of the certificate has been furnished.

(8 9) Certificate holders must return their certificate to the Department if the business for which the certificate was issued is closed or if they engage in retail sales for which a sales tax license is required.

(9 10) Certificate holders must notify the Department immediately in writing of any change in name or address.

(10 11) Sales of tangible personal property to any person, firm, or corporation not required to have a sales tax license are subject to sales or use tax until the contrary is established. The burden of proof that a sale is exempt is upon the person making the sale unless the seller takes from the purchaser a properly executed Form STE-1. Any such sale for which an exemption has been claimed but which is not supported by a Form STE-1 may be deemed a sale at retail by the Department and the seller held liable for the tax thereon.

(11 12) Any person, firm, or corporation selling tangible personal property tax free who relies on a Form STE-1 and reasonably believes the tax exemption claim is legal shall not be held liable for sales or use tax subsequently determined by the Department to be due on the sale for which the certificate was received. Instead, the Department will collect or recover the tax due from the party or parties who made the illegal tax-free purchase with the Form STE-1 and the person or persons who benefited from the illegal use of the Form STE-1. (Sections 40-23-120 and 40-23-121)

(12 13) With the exception of the certificates which are provided for in Sections 40-23-4(a)(10), 40-23-62(12), and 40-23-4.3, Code of Alabama 1975, Form STC-1 provided for in Sales and Use Tax Rule 810-6-3-77, and Form STE-2 provided for in Sales and Use Tax Rule 810-6-4-.24.01 pursuant to Section 40-23-120, the state sales and use tax certificate of exemption (Form STE-1) is the only exemption certificate

or exemption number which relieves the seller, when acting in good faith and exercising reasonable care, of liability for any sales or use tax later determined by the Department to be due on a sale for which an exemption was originally claimed.

~~(13) The provisions outlined in paragraphs (10), (11), and (12) pertaining to the collection or recovery of taxes due from persons or parties making illegal tax-free purchases using Form STE-1 or benefiting from the illegal use of said Form STE-1 are effective May 11, 1989, and apply to Forms STE-1 issued prior to May 11, 1989, as well as those issued on or after that date.~~

(13 14) Section 40-23-121 authorizes the Department to use its powers and responsibilities in accordance with the general laws of this state to effect collection of any tax due from a purchaser resulting from the purchaser's unauthorized use of a state sales and use tax certificate of exemption (Form STE-1). This act will be enforced by the Department in the same manner as the state Sales or Use Tax Law, as the case may be, is enforced, including but not limited to the power to examine purchasers' records; assess tax, penalty, and interest; and file tax liens.

Author: Ginger Buchanan

History: Adopted July 6, 1977.

Amended November 3, 1980.

Readopted through APA effective October 1, 1982.

Amended: Filed December 22, 1989, effective January 29, 1990.

Amended: Filed May 2, 1996; effective June 6, 1996.

Amended: Filed November 5, 1996; effective December 10, 1996.