

810-6-3-.77 Exemption for Certain Purchases by Contractors and Subcontractors in Conjunction with Construction Contracts with Certain Governmental Entities.

(1) 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 entered into on or after January 1, 2014, with a governmental entity is exempt from all state, county, and municipal sales and use taxes. For the purpose of this rule, a governmental entity is defined as:

(a) The State of Alabama.

(b) A county or incorporated municipality of the State of Alabama.

(c) An educational institution of the State of Alabama, or a county or incorporated municipality of the State of Alabama.

(d) An industrial or economic development board or authority that is exempt from the payment of Alabama sales and use taxes.

(e) Other governmental agencies that are exempt from the payment of Alabama sales and use taxes excluding those agencies as provided in sections (2) and (3) below.

(2) The exemption outlined in section (1) shall not apply to any of the following:

(a) Purchases of tangible personal property by a contractor or subcontractor for storage, use, or consumption in conjunction with performing a contract with a governmental entity that is not itself exempt from Alabama sales and use taxes.

(b) Purchases of tangible personal property by a contractor or subcontractor that are not incorporated into realty pursuant to the contract.

(c) Purchases of tangible personal property for contracts with the federal government.

(d) Purchases of tangible personal property made for any contracts for the construction of any highway, road or bridge for, or on behalf of, any governmental entity as outlined above.

(e) Purchases of tangible personal property made pursuant to any contract entered into prior to January 1, 2014.

(3) The exemption outlined in section (1) shall not apply to 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 a state other

than the State of Alabama, a county or incorporated municipality of a state other than the State of Alabama, an industrial development board created pursuant to the Constitution or general or local laws of a state other than the State of Alabama, an educational institution of a state other than the State of Alabama, or an educational institution of a county or incorporated municipality of a state other than the State of Alabama.

(4) In order to qualify for the sales and use tax exemption referenced in section (1), the governmental entity shall complete an application (Form ST: EXC-01) for a sales and use tax certificate of exemption (Form STC-1) for each tax-exempt project. Contractors and subcontractors licensed by the State Licensing Board for General Contractors, shall also apply per project to the Department of Revenue for a sales and use tax certificate of exemption (Form STC-1). Upon review and approval of the application, the department shall issue the applicant a Form STC-1 which shall be used by the certificate holder to claim the exemption when making qualifying tax-exempt purchases for the project listed on the certificate. Before approving or denying the application, the Department of Revenue may require the applicant to submit additional documentation that the property to be purchased tax-exempt with the certificate will be incorporated into realty pursuant to contracts with one of the governmental entities enumerated in section (1) or to subcontracts arising from contracts with one of the governmental entities enumerated in section (1). If the department denies the application, the applicant may appeal the denial in accordance with Section 40-2A-8, Code of Alabama 1975.

(5) A contractor or subcontractor who obtains a Form STC-1 shall comply with all of the provisions of the Code of Alabama 1975, as amended, Section 40-23-9 and shall maintain records sufficient to document the tax-exempt status of qualifying purchases. Further, the contractor or subcontractor who presents Form STC-1 to a vendor for purchases of tangible personal property without the payment of sales or use tax must make a report of all exempt purchases to the Department of Revenue in a manner prescribed by the department. The report of exempt purchases shall be a prerequisite to the renewal of a certificate of exemption. Failure to report the exempt purchases will result in an assessment against the contractor or subcontractor for sales and use taxes on any items purchased with the certificate of exemption.

(6) Any contractor or subcontractor who intentionally uses a certificate of exemption (STC-1) in violation of Act 2013-205 shall be (a) liable for the actual sales and use tax due, (b) subject to a civil penalty levied by the department in the amount of not less than a minimum of two thousand dollars (\$2,000) or two times any state and local sales or use tax due for the tangible personal property, whichever is the greater; and (c) may be barred from the use of any certificate of exemption (STC-1) on any project for up to two years based on the contractor's or subcontractor's willful misuse of a certificate of exemption. Contractors and subcontractors may appeal any such decisions in accordance with Section 40-2A-8, Code of Alabama 1975.

(7) The date of the sale to, or the purchase, withdrawal, storage, use or consumption by, the contractor shall be used to determine if an otherwise qualifying transaction or event qualifies for the exemption. Jobs or projects entered into prior to, January 1, 2014 shall not qualify for the exemption regardless of the transaction date.

(8) For the purpose of this rule, the term “entered into” shall mean the date that a contractor or subcontractor signs a contract with a governmental entity defined in section (1).

(9) The amendatory language in this rule shall become operative on January 1, 2014.

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Authority: Sections 40-2A-7(a)(5), 40-2A-8, 40-23-31, 40-23-83, Code of Alabama 1975, and Act 2013-205

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