

810-6-3-.69.02 Exemption for United States, State, County, City, and Other Exempt Entities from the Payment of Sales Tax, and Purchases Made Through the Use of Purchasing Agents.

(1) The United States Government, the State of Alabama, counties and incorporated municipalities of the state, and various other entities within the state are specifically exempt from paying sales and use tax on their purchases of tangible personal property. These exempt entities may appoint purchasing agents to act on their behalf for making tax-exempt purchases. In such situations the department will recognize that a agency relationship exists, provided that a written contract between the owner and the contractor-agent has been entered which clearly establishes that: (i) the appointment was made prior to the purchase of materials; (ii) the purchasing agent has the authority to bind the exempt entity contractually for the purchase of tangible personal property necessary to carry out the entity's contractual obligations; (iii) title to all materials and supplies purchased pursuant to such appointment shall immediately vest in the exempt entity at the point of delivery; and (iv) the agent is required to notify all vendors and suppliers of the agency relationship and make it clear to such vendors and suppliers that the obligation for payment is that of the exempt entity and not the contractor-agent. All purchase orders and remittance devices furnished to the vendors shall clearly reflect the agency relationship. The tax-exempt entity may enjoy its tax-exempt status when utilizing a purchasing agent, provided that the purchase is paid for by the tax-exempt entity with funds belonging to the tax-exempt entity and the proper documentation as listed above exists to confirm the agency relationship. **The appointment of the contractor as purchasing agent of the tax-exempt entity may be made by execution of the department Form ST:PAA-1, Purchasing Agent Appointment.** (Sections 40-23-4(a)(11) and 40-23-62(13))

(2) A contractor is the consumer of all the materials which are used by the contractor in the performance of the construction contract and which become a part of real property. Accordingly, in the absence of an agency agreement as set forth in paragraph (1) above, purchases by a contractor or subcontractor of tangible personal property which it will use in the performance of a contract with the United States Government, the State of Alabama, county or incorporated municipality of the state, or an entity with a specific exemption, for making additions, alterations, or improvements to realty belonging to the government, state, county, municipality, or entity are not purchases by the government, state, county, municipality, or entity and do not qualify for the sales and use tax exemptions in Sections 40-23-4(a)(11) and 40-23-62(13). (Sections 40-23-1(a)(10) and 40-23-60(5))

(a) A contractor that sells building materials to a tax exempt entity under one contract and affixes the materials to realty under a second contract with the 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 the materials for the sales or use tax exemptions in Sections 40-23-4(a)(11) and 40-23-62(13). A contractor may not purchase materials tax exempt for resale to the tax exempt entity

and then affix the same materials to realty for the tax exempt entity. (State v. Algernon Blair Industrial Contractors, Inc., 362 So.2d 248 (Ala.Civ.App. 1978), cert. denied 362 So.2d 253)

(b) A contractor may purchase items of tangible personal property tax free when the items are purchased for resale to a tax exempt governmental entity in the form of tangible personal property and are not affixed to realty by the contractor pursuant to a contract with the tax exempt entity.

(3) 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 with the State of Alabama or a county or incorporated municipality of the State of Alabama awarded prior to July 1, 2004, is exempt from state, county, and municipal sales and use taxes provided the contractor or subcontractor has complied with Rule 810-6-3-.77, entitled Exemption for Certain Purchases by Contractors and Subcontractors in conjunction with Construction Contracts with Certain Governmental Entities, Public Corporations, and Educational Institutions. (Section 40-9-33)

(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 other revision does not require the purchase of additional tangible personal property, however, 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.

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Authority: Sections 40-2A-7(a)(5), 40-23-31, 40-23-83, 40-23-4(a)(10), 40-23-4(a)(11), 40-23-62(13), 40-23-1(a)(10), 40-23-60(5), and 40-9-33, Code of Alabama 1975

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