

Recent Legislation Clarifies “Remote Entity Nexus”

A new act effective Aug. 1, 2003, makes it easier for state and local governments in Alabama to collect the proper taxes on products delivered to customers in Alabama.

Act 2003-390 outlines the conditions which establish a foreign business' physical presence (or “nexus”) in Alabama, thereby requiring the business to collect and remit state and local use tax. Additionally, the new law defines the relationship between two related entities—an out-of-state vendor and an in-state business—which would result in the out-of-state vendor being required to collect and remit state and local taxes to Alabama.

“With Alabama’s fiscal crisis and the revenue loss of uncollected sales tax from Internet transactions, there is an increasing need for clarifying a state of nexus between a remote seller and an in-state business,” explained State Revenue Commissioner Dwight Carlisle. “This significant legislation is another step toward the department’s goal of promoting taxpayer compliance with Alabama’s sales and use tax laws.”

The new law is patterned after legislation passed in other states, which are also struggling to collect taxes on the growing amount of retail transactions being conducted via the Internet and catalog sales. The legislation was sponsored in the House by Rep. Betty Carol Graham and in the Senate by Sen. Hank Sanders.

The following criteria will determine if the relationship between the entities of an out-of-state vendor and an in-state business establishes a substantial physical presence, or nexus:

- If an out-of-state vendor and an in-state business maintaining one or more locations are related parties;
- If they use an identical or substantially similar name, trade name, trademark, or goodwill, to develop, promote, or maintain sales;
- If they pay for each other’s services in whole or in part contingent upon the volume or value of sales;
- If they share a common business plan or substantially coordinate their business

plans;

- If the in-state business provides services to the out-of-state vendor related to developing, promoting or maintaining the in-state market, resulting in benefit to the out-of-state vendor.

The following criteria determine whether the entities of an out-of-state vendor and an in-state business are considered “related parties”:

- If one or both is a corporation, and one

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New Scrap Tire Environmental Fee

The Alabama Department of Revenue has mailed notices to over 1,900 Alabama retail tire dealers informing them of a new law, effective Sept. 1, 2003, that requires a one-dollar fee to be collected from their customers upon the sale of any new, used, or retread tire.

Act 2003-332 provides for the new one-dollar per tire Scrap Tire Environmental Fee to be collected at the point of sale from the consumer regardless of whether the tires—new, used, or retread—are mounted on a rim or wheel.

The new law requires retail dealers to report and pay the fee to the Alabama Department of Revenue (ADOR) on a monthly basis, on or before the twentieth day of the month following each month’s activity, using forms provided by the ADOR. The first report will be for the month of September 2003, and must be filed on or before Oct. 20, 2003.

“We have made every effort to notify all known retail tire dealers and inform them of the new reporting requirements,” said State Revenue Commissioner Dwight Carlisle. “However, if for some reason a business owner did not receive notification by the department, but should have, since the taxpayer’s operation also includes sales of new, used, or retread tires to customers, we encourage the business owner to contact the department as soon as possible so that the owner can register to collect and report the fee and comply with provisions of Act 2003-332,” advised Carlisle.

The \$1 fee is earmarked for the disposal and recycling of scrap tires in Alabama.

For more information regarding the new scrap tire environmental fee, contact the department’s Sales, Use, & Business Tax Division at (334) 242-9608, or visit the department’s Web site at www.ador.state.al.us.

Alabama's Abandoned Vehicle Law Changes

According to the Alabama Department of Revenue, the Alabama Legislature recently amended key provisions of Alabama's 1971 abandoned vehicle law by placing certain disclosure requirements upon anyone offering an abandoned vehicle for sale.

An "abandoned vehicle" refers to a vehicle that has been left by an owner, or some person acting for the owner, with an automobile dealer, repairman or wrecker service for repair or for some other reason and has not been called for by the owner or other person within a period of 60 days. An "abandoned vehicle" also includes any vehicle, which is left unattended on a public street, road, or highway or other public property for a period of at least seven days; or left unattended continuously for at least seven days in a business or residential district.

The new law, Act 2003-402, becomes effective Sept. 1, 2003, and details specific notification procedures that sellers of abandoned vehicles must follow before a vehicle may be offered for sale. Specifically, the seller must:

- Request the Alabama Department of Revenue (ADOR) to conduct a title search of the abandoned vehicle to determine the current owner of the vehicle and any lienholders of record for the vehicle.
- Notify the owner of record and any lienholders by certified mail of the intent to sell the vehicle under the provisions of Alabama's abandoned vehicle law.
- Publish 10 days prior to the sale a notice advertising the sale in a newspaper of general circulation.
- File a copy of the "Report of Sale" with the register or clerk of the circuit court of the county in which the sales occurs.
- Provide the buyer with a copy of a "Report of Sale" within 10 days from the date of the vehicle's purchase. The purchaser of the vehicle must present the "Report of Sale" and a notarized bill of sale to the county license plate issuing authority in order for the vehicle to be

titled and registered in the purchaser's name.

The "Report of Sale" must contain the following information:

- Name and addresses of the owners, secured parties, and lienholders of record.
- Date on which certified mail was sent to these parties notifying them of the intended sale.
- Time and place of the sale.
- Amount for which the abandoned motor vehicle was sold.
- Amounts deducted from the sale price for repair, towing, and storage expenses.
- Amount paid to the register or clerk of the circuit court.
- The name of the newspaper in which the notice of sale was published as required by Section 32-13-4(b), *Code of Alabama 1975*; the dates of publication; and the cost of publication.

If the seller cannot identify the owner(s) or lienholder(s) of the vehicle through a title search, then the seller is required to publish 30 days before the sale date a notice of intent to sell the abandoned vehicle, with a second notice following the next week. Newspaper publication requirements are detailed in Section 32-13-4(b), *Code of Alabama 1975*, relating to the sale notice's publication dates and frequency.

Act 2003-402 provides that if the person making the sale failed to provide notice, or did not attempt to provide notice by certified mail to the owners, secured parties, and lienholders of record, then the sale of the abandoned vehicle would be void and the owners, secured parties, and lienholders of record would retain ownership, security interests and lien rights to the vehicle.

"With the passage of Act 2003-402, provisions in Alabama's abandoned vehicle law have now been strengthened to offer greater protection to vehicle owners and others with a security interest in abandoned vehicles. Sellers of abandoned vehicles must now evidence their notification

efforts before an abandoned vehicle can be sold, titled, or registered to another person," explained State Revenue Commissioner Dwight Carlisle.

Approximately 18,000 vehicles are sold annually under provisions of Alabama's abandoned vehicle law.

For more information concerning Alabama's abandoned vehicle law and recent changes in the law, contact the Motor Vehicle Division at (334) 242-9000 or visit the department's Web site at www.ador.state.al.us.

Remote Entity Nexus

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entity and any party related to that entity in a manner requiring an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Sec. 318, Internal Revenue Service Code, owns directly, indirectly, beneficially, or constructively, at least 50% of the value of the corporation's outstanding stock;

- If one or both is a limited liability company, partnership, estate or trust, and any member, partner or beneficiary and the limited liability company, partnership, estate or trust and its members, partners and beneficiaries own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the profits, or capital, or stock, or value of the other entity, or both entities;
- If an individual stockholder and his/her family members (as defined in Section 318 of the Internal Revenue Code) own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the value of both entities' outstanding stock.

For more information concerning Alabama's determination of remote entity nexus, contact the Sales, Use and Business Tax Division at (334) 242-1490 or visit the department's Web site at www.ador.state.al.us.

Motor Vehicle Dealer Tag Requirements and Fees Change

Alabama motor vehicle dealers and manufacturers will notice some important changes this October when they purchase their dealer and manufacturer tags.

As a result of legislation passed last year during the 2002 Regular Session, key provisions of Alabama's dealer tag law were amended to provide new registration fee schedules, remove restrictions regarding the number of tags a dealer may obtain, change the tag renewal period from two years to one year, and eliminate certain registration requirements.

Effective Oct. 1, 2003, the new registration and issuance fees for the motor vehicle dealer, motorcycle dealer, and manufacturer license plates will change from the current \$10 per plate fee to the follow-

ing: motor vehicle dealer, \$26; motorcycle dealer, \$18; and manufacturer, \$24.25. The license plates will expire on September 30 each year and will be renewed during October and November each year.

Another important change for dealers and manufacturers involves the license plate issuance procedures. Beginning with the new registration year, Oct. 1, 2003, dealers and manufacturers will purchase their license plates in the county where their business operation is located.

License plates will no longer be available at Alabama Department of Revenue Taxpayer Service Centers. Dealers, reconditioners, rebuilders, and manufacturers will no longer be required to complete an application to purchase dealer or manufacturer license plates. However, in order to pur-

chase a dealer or manufacturer license plate, the appropriate state regulatory license and/or county licenses must be presented to the county tag-issuing official before the license plate can be issued. Also beginning Oct. 1, 2003, dealers are no longer limited in the number of dealer license plates they may obtain.

Dealer license plates, however, cannot be used on vehicles utilized by the dealership or wholesaler as rental or lease vehicles, tow trucks, service trucks, or other service vehicles.

For more information concerning Alabama's dealer tag law and recent changes in the law, contact the Motor Vehicle Division at (334) 242-9000 or visit the department's Web site at www.ador.state.al.us.

Administrative Rules

Effective Aug. 1, 2003:

Amended:

- 810-27-1-4-.19 Public Law 86-272 Exemption from Income Tax
- 810-27-1-4-.01 Multistate Tax Compact Regulation Definitions

Adopted:

- 810-3-35-.02 Restrictions on the Deductibility of Certain Intangible Expenses and Costs and Interest Expenses and Costs

Effective Aug. 14, 2003:

Amended:

- 810-3-74-.01 Withholding Returns and Payments

Adopted:

- 810-8-1-.24 Credit Card Sales at Retail Outlets to Exempt Entities

Effective Sept. 2, 2003:

Adopted:

- 810-5-1-.206 Military Exemption and the United States Armed Forces Reserve Distinctive License Plates
- 810-5-1-.208 Military Exemptions and the National Guard Distinctive License Plates

Statement of Gross Tax Collections

FYTD 2003 Through End of
3rd Quarter (April, May, June '03)

	FYTD '2002-2003	FYTD '2001-2002	% Change
Business Privilege Tax	\$ 64,939,639.82	\$ 62,074,724.46	4.62
Gasoline	292,613,419.03	290,865,548.20	0.60
Income Tax-Corporate	174,941,108.80	189,042,513.55	(7.46)
Income Tax-Individual	1,882,190,715.68	1,837,380,163.32	2.44
Income Tax (Total)	2,057,131,824.48	2,026,422,676.87	1.52
Motor Fuels	89,062,007.61	87,444,031.81	1.85
Oil & Gas Privilege (8%)	48,479,348.58	27,443,055.00	76.65
Oil & Gas Production (2%)	19,499,664.96	10,325,271.91	88.85
Sales	1,182,428,240.81	1,155,227,851.13	2.35
Use Tax	143,984,527.99	150,120,066.00	(4.09)
Utility Gross Receipts	255,480,044.11	232,761,096.00	9.76
SUBTOTAL	4,153,618,717.39	4,042,684,321.38	2.74
SUBTOTAL (OTHER TAXES)	472,569,274.76	478,342,198.73	(1.21)
TOTAL (ALL TAXES)	\$4,626,187,992.15	\$4,521,026,520.11	2.33

Required Monthly Returns Tax Activity

- 10th**
- Medicaid-related tax return and payment due for nursing facilities.
 - Tobacco use tax return and payment due.
- 15th**
- Gasoline information return due from carriers, transporters, and warehouses.
 - Lubricating oils information return due from carriers, transporters, and warehouses.
 - Motor carrier mileage tax return and payment due.
 - Oil and gas production tax and privilege tax return and payment due two months following month of production.
 - Withholding return and payment due from those employers required to remit on a monthly basis.
- 20th**
- Aviation fuel tax return and payment due.
 - Coal severance tax return and payment due.
 - Coal transporters' and purchasers' returns due.
 - Contractors' gross receipts tax return and payment due.
 - Gasoline tax return and payment due.
 - Iron ore severance tax return and payment due.
 - Local solid minerals tax returns and payments due.
 - Lodgings tax return and payment due.
 - Lubricating oils tax return and payment due.
 - Medicaid tax return and payment due from pharmaceutical service providers.
 - Mobile telecommunications tax return and payment due.
 - Motor fuel tax return and payment due.
 - Pari-mutuel pool tax return and payment due.
 - Rental or leasing tax return and payment due.
 - Sales tax (state and local) return and payment due.
 - Scrap Tire Environmental Fee due.
 - Tobacco tax (state and county) return and payment due.
 - Underground and aboveground storage tank trust fund charge due.
 - Use tax return and payment due.
 - Utility gross receipts tax return and payment due.
- 30th**
- Hazardous waste fee return and payment due.
- Last day of month
- State horse wagering fee return and payment due.

Quarterly/Annual Tax Activity

(September, October, November, December 2003)

- Sept.**
- 15**
- Third installment of estimated corporate income tax due (for calendar-year taxpayers)
 - Third installment of estimated personal income tax due.
- 25**
- Hydroelectric gross receipts' return and payment due.
- Oct.**
- 1**
- Ad valorem tax on real and personal property due.
 - Automotive dismantlers and parts recyclers' license due.
 - Business privilege license fee due.
 - Quarterly Dry Cleaning Trust Fund Fee return and payment due.
 - Manufactured home registration and fee due.
 - Motor fuel identification markers issued.
 - Motor vehicle dealers, reconditioners, rebuilders and wholesalers' license tax due.
- NOTE:** Effective Oct. 1, 2003, dealer license plates and manufacturer license plates will be issued through county license-plate issuing officials.
- Store and chain store license tax due.
 - Utility license (2.2%) return and first quarterly payment due.
- 14**
- Annual wholesale oil license return and payment due.
- 20**
- Quarterly sales tax return and payment due.
 - Quarterly use tax return and payment due.
 - Quarterly rental or leasing tax return and payment due.
- 30**
- Forest products' severance tax return and payment due.
- 31**
- Quarterly withholding return and payment due from employer.

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Decatur Taxpayer Service Center Closes Sept. 1

The Alabama Department of Revenue's Decatur Taxpayer Service Center will close Sept. 1, 2003.

According to the ADOR, cost-savings measures prompted the closing of the Decatur office. Prior to closing the Decatur office, the ADOR operated three service centers within the north Alabama area—Decatur, Huntsville, and Muscle Shoals.

No employee layoffs will occur as a result of the service center's closing. All clerical and managerial personnel will be assigned to the Huntsville or Muscle Shoals offices. Audit personnel will be based out of their homes.

Walk-in customer service for taxpayers will be available at both the Huntsville and Muscle Shoals offices. The Huntsville office is located at 944 Explorer Boulevard; telephone (256) 922-1082. The Muscle Shoals office is located at 3005 South Wilson Dam Highway; telephone (256) 383-4631.

IRS Interest Rate to Remain at 5%

The quarterly interest rate for the calendar quarter beginning July 1, 2003, will remain at five percent (5% APR) for underpayments, according to Internal Revenue Service News Release No. 2003-75.

According to §40-1-44, *Code of Alabama 1975*, the Alabama Department of Revenue will calculate interest on underpayments and overpayments (where applicable) at this same annual rate (5%), with the exception of land sold by the state for taxes, which shall be calculated at 12% as provided for under Sec. 40-5-9.

Revenue Review is published quarterly by the Alabama Department of Revenue Media Affairs Section. Comments or suggestions should be sent to: **Revenue Review**, Alabama Department of Revenue, P. O. Box 327001, Montgomery, AL 36132-7001; telephone (334) 242-1390 or (334) 242-1175. Dwight Carlisle, Commissioner; Cynthia Underwood, Assistant Commissioner; Lewis A. Easterly, Department Secretary; Carla A. Snellgrove, Public Information Manager; Carolyn Blackstock, Editor; and Mickey Godwin, layout and design.

Quarterly/Annual Tax Activity

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- Quarterly IFTA tax return and payment due.
- Annual business privilege licenses delinquent after this date.
- Store and chain store licenses delinquent after this date.

Nov.

- 30 • Last day to register and pay fee for manufactured homes without penalty.

Dec.

- 15 • Fourth installment of estimated corporate income tax due (for calendar-year taxpayers).

- 31 • Ad valorem tax on real and personal property delinquent after this date.
• Expiration of the previous calendar year's motor fuel identification markers.

Interest Rates By Calendar Quarter

(Established by: 26 USCA §6621; §40-1-44, *Code of Alabama 1975*)

	1ST QTR	2ND QTR	3RD QTR	4TH QTR
1982	20%	20%	20%	20%
1983	16%	16%	11%	11%
1984	11%	11%	11%	11%
1985	13%	13%	11%	11%
1986	10%	10%	9%	9%
1987	9%	9%	9%	10%
1988	11%	10%	10%	11%
1989	11%	12%	12%	11%
1990	11%	11%	11%	11%
1991	11%	10%	10%	10%
1992	9%	8%	8%	7%
1993	7%	7%	7%	7%
1994	7%	7%	8%	9%
1995	9%	10%	9%	9%
1996	9%	8%	9%	9%
1997	9%	9%	9%	9%
1998	9%	8%	8%	8%
1999	7%	8%	8%	8%
2000	8%	9%	9%	9%
2001	9%	8%	7%	7%
2002	6%	6%	6%	6%
2003	5%	5%	5%	