

# GUIDELINES REGARDING AGRICULTURAL RELATED SALES

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SALES AND USE TAX DIVISION**

**August 2017**

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# I. AGRICULTURE

## A. Definition

When interpreting references to “agriculture” and “agricultural purposes” in the sales and use tax statutes, the term “agriculture” is defined to be the art or science of cultivating the ground, as well as the raising and harvesting of crops. The term also includes feeding, breeding, and management of livestock and poultry. Tillage, husbandry, and farming are also used in the definition of agriculture.

The Alabama Department of Revenue recognizes the following areas to fall within the definition of agriculture:

- Tree farming, raising horticultural products in commercial greenhouses and nurseries;
- Fruit and nut trees, whether or not in a grove or orchard;
- Vegetable gardens, whether or not on a farm;
- Livestock farming;
- Dairy farming;
- Commercial fish ponds;
- Commercial sod farms;
- Poultry and egg farming.

Additionally, the following areas do **not** fall within the definition of agriculture:

- Lawns, shrubbery, and flower beds around residential and business properties;
- Golf courses, baseball, football, or other sports fields;
- Highway, railroad, or utility right-of-way;
- Shade trees, other than fruit or nut trees;
- House plants;
- Commercial pest control services.

## B. Exemptions for the producer

For agricultural products sold by the producer, there are two possible exemptions. A sale of agricultural products that does not qualify for one of the

exemptions may still qualify for the other. These two exemptions are further discussed in the following two paragraphs.

The first exemption is found in the sales and use tax law under Sections 40-23-4(a)(5) and 40-23-62(8). In order to qualify there are two criteria: 1) the products of the farm, dairy, grove, or garden must be sold by the producer, members of the producer's immediate family, or by persons employed by the producer to assist in the production of the product; and 2) the product has not been processed except to the extent that it is customarily processed for market. The exemption does not apply to agricultural products sold by the producer through a store which the producer operates. The exemption is not limited to products planted, cultivated, and harvested. Other items that qualify are milk, eggs, catfish, minnows, bees, honey, rabbits, and hamsters. In fact, this is the only exemption in the law for milk products.

The second exemption is found in the sales tax law under Section 40-23-4(a)(44). Fruit and other agricultural products are exempt from sales and use tax when sold by the person or corporation that planted, cultivated, and harvested the products. Unlike the previous exemption, this exemption is not lost to the producer who sells the products through a store he or she operates.

In order to qualify for either of these exemptions, the products must retain their raw, unprocessed form when prepared by the producer for market. An agricultural product is no longer in its raw, unprocessed form if it is cooked, boiled, or roasted. Also, it cannot be mixed or compounded with ingredients other than additional exempt agricultural products.

Sales of grass sod are exempt when made by the producer, members of the producer's immediate family, or by persons employed by the producer to assist in the production of the product.

The sale of nursery stock and floral products by the florist or nurseryman who planted, cultivated, and harvested the products are exempt from sales and use tax. Sales of seedlings, plants, shoots, and slips used for agricultural purposes are exempt.

Silage bags, silage wrap, end caps, and tape used for "storage purposes only" should be taxed at the general rate of sales or use tax (4% state tax, plus applicable local taxes). However, if they are used for fermenting feed for deer, the previously mentioned items should be taxed at the reduced manufacturing rate of sales or use tax (1.5% state tax, plus applicable local taxes). Additionally, if the items are used to ferment feed for livestock as defined in Chapter 23 of Title 40, they should be taxed at the farm rate of sales or use tax (1.5% state tax, plus applicable local taxes).

While deer is not livestock, the fermenting of the feed does constitute a manufacturing process. Machines used in manufacturing are taxed at the reduced state rate of 1.5% which equates to the same rate as farm machinery is taxed for state purposes. Local taxes vary by rate by location.

## **C. Fertilizer**

Sales of fertilizer when used for agricultural purposes are exempt from sales and use tax. The seller shall require the retail purchaser to complete form ST:EXC-1, Exemption Certificate Respecting Fertilizers, Insecticides, Fungicides and Seedlings before selling fertilizer tax exempt. While the EXC-1 relieves the seller from future tax liability for any fertilizer sold, the seller should only execute the certificate in good faith. For instance, farmers with an SCS farm number are not required to fill out a Form ST:EXC-1 for each purchase of fertilizer. The farmer will be required to complete this form annually for the seller to keep in their file. This form is to protect the seller from tax liabilities that may arise if it is determined the purchaser is using said items for purposes other than agricultural. While a farmer with an SCS number may sign for the exemption annually, please note that most landowners whether or not in the business of farming may be issued an SCS number. The seller should not knowingly sell fertilizer to someone he knows is not using the fertilizer for agricultural purposes.

Sales may be made to a purchaser for legitimate agricultural purposes who is not in the business of farming for profit. Any fertilizer sold for agricultural purposes including truck farming, home vegetable gardening and other qualified agricultural endeavors may be purchased without the payment of tax. To enjoy the exemption, the purchaser should be required to sign the form ST:EXC-1 at the time of each purchase. While it is acceptable to incorporate the form into an invoice, it once again should be stressed that due diligence should be exercised when obtaining the signature certifying that the fertilizer, insecticide, fungicides and seedlings are being purchased for agricultural purposes.

As with fertilizer, sales of herbicides for agricultural uses by whomever are exempt. Once again, the herbicides may be sold to someone who does not operate a traditional farm. The term herbicides refers to any substance or mixture of substances intended to prevent, destroy, repel, or retard the growth of weeds or plants. It includes pre-emergence herbicides, post-emergence herbicides, lay-by herbicides, pasture herbicides, defoliant herbicides, and desiccant herbicides.

Purchases of wheat, oats, and fertilizer used to plant green fields for wildlife are not exempt in the State of Alabama. Wildlife does not meet the Sales and Use Tax definition of livestock. (See ALJ Case Docket No. 12-237, Moseley's Feed Store Inc. vs. State of Alabama, 11/05/2012)

In the case of Moseley's Feed Store Inc., the Administrative Law Judge stated in his analysis:

"The sale of fertilizer used for agricultural purposes is exempt from sales tax. Code of Ala. 1975, §40-23-4(a)(2). Department Reg. 810-6-3-.01.01 defines "agriculture" as "the art or science of cultivating the ground, and raising and harvesting crops, including also feeding, breeding, and management of livestock and poultry; tillage; husbandry, farming." Department Reg. 810-6-3-.01.02(1) defines "livestock" to include "cattle, swine, sheep, goats and members of the equidae family of mammals such as horses, mules and donkeys." Paragraph (2) of that regulation also provides that all animals not listed in paragraph (1) are not livestock. Based on the above, I agree with the Department "that the planting of fields or plots for the purpose of feeding or attracting deer does not meet the regulatory definition of agriculture." Department's Post-Hearing Brief at 5. Consequently, the sale of fertilizer used for feeding and/or attracting deer is not exempt from sales tax."

#### **D. Livestock, poultry, fish farms**

The term "livestock" in the sales and use tax laws and rules refers to cattle, swine, sheep, goats, and members of the equidae family of mammals such as horses, mules, and donkeys. Animals other than those listed in this paragraph do not fall within the term of "livestock."

Alabama law provides exemptions from sales and use tax on the sales of livestock and poultry. All sales of livestock, baby chicks, and poults are exempt from sales and use tax. All antibiotics, hormones, hormone preparations, drugs, medicines, serums, vaccines, vitamins, minerals, or other nutrients for use in the production and growing of livestock and poultry are exempt from sales and use tax.

Chinchillas, hamsters, mice, and rabbits are not considered livestock and the sales of such animals are taxable unless they are products of the farm and sold by the producer, a member of his family, or a person employed to assist in the production of said animals. Feed for the animals listed in this paragraph is not exempt from sales or use tax.

Sales of feed for livestock and poultry are exempt from sales and use tax. Quail has been included in the definition of poultry. Therefore, quail feed is exempt from tax. (DOCKET NO. S. 11-353. Circle L Quail Farms, Inc. vs. State of Alabama, July 25, 2011.) Please note that this exemption does not include dog food, cat food, deer feed, or food for consumption by bees; none of these meet the definition of "livestock" in the sales or use tax laws.

Materials used as chicken litter by producers and processors are exempt from sales and use tax. Cottonseed meal is exempt when sold as feed for livestock or poultry, but not exempt as a fertilizer when sold in its pure form unmixed with other ingredients.

The sales of parakeets, parrots, and canaries are subject to the general rate of sales or use tax when the sale is made by a dealer. If sold by the producer, a member of his family, or a person employed to assist in the production, the sales of parakeets, parrots, and canaries are exempt from sales and use tax.

A casual sale of a pet, or a pet's offspring is not taxable. A casual sale is one where the seller is not in the business of selling such animals.

Sales of domesticated fish or minnows produced on the farm are not taxable when sold by the producer. They are considered products of the farm only when they have been raised from captive, domesticated stock owned by the producer. They are also products of the farm if raised from fry to fingerlings acquired from hatcheries.

Sales of commercial fish feed including concentrates, supplements, and other feed ingredients for fish raised to be sold on a commercial basis are exempt from sales and use tax.

Sales of drugs and medications used in the production and growing of fish are exempt from sales and use tax.

## **E. Farm machines, machinery, and equipment**

The sale of machinery or equipment used in planting, cultivating, and harvesting farm products, or used in the production of agricultural products, livestock, or poultry on farms, as well as the parts, attachments or replacements for any such machine, are taxable at the reduced farm rate of sales or use tax (1.5% state tax, plus applicable local taxes).



The terms “machine, machinery, and equipment” are understood to mean items such as tractors, detachable plows, harrows, planters, cultivators, fertilizer spreaders, plow stocks, turning plows, seed drills, and sprayers. The general rate of tax applies to all hand tools.

Chain saws used in the production and harvesting of timber grown on tree farms, including pulpwood, are taxed at the reduced farm rate. Chain saws used for clearing land, cutting firewood, or other nonagricultural uses are taxed at the general rate.

With regard to irrigation equipment, equipment above ground is taxed at the reduced farm rate. Irrigation equipment below ground is considered building material, and, therefore, taxed at the general rate.

## **F. Liquefied petroleum gas, electricity, natural gas, diesel**

Liquefied petroleum gas is exempt for the following purposes:

- Agricultural purposes;
- Heaters in hatcheries;
- For use in the commercial production of greenhouse and nursery products;

Liquefied petroleum gas is not exempt for any use which occurs after the harvesting process.

Recent law change necessitated an amendment to the rule regarding liquefied petroleum gas to include liquefied natural gas and compressed natural gas. (See Departmental Rule 810-6-3-.36 titled Liquefied Petroleum Gas, Liquefied Natural Gas and Compressed Natural Gas). The use of those products will be exempt in the same manner as listed above for liquefied petroleum gas.

Electricity and natural gas used or consumed as fuel or energy in and for the heating of poultry houses are not taxable.

The off-road use of diesel fuel for agricultural purposes is specifically exempted in the Alabama law. The law specifically exempts “the gross proceeds from the sale or sales of all diesel fuel used for off-highway agricultural purposes.” The seller of the fuel must keep a log of the customer’s name, the date of sale, and the usage purpose to substantiate any exempt sales. In the absence of such records, off-road use of diesel fuel is subject to sales tax.

Landscaping services and contractors are not considered to be using the off-road diesel fuel for agricultural purposes. Planting of seed in the highway right-of-way is not an agricultural use.

## **G. Hunting Lodges**

Hunting lodges open to the public are subject to the lodgings tax if the hunting lodge offers lodgings separately from packaged deals which include furnishing meals, lodgings, hunting, fishing, and guide services. A person, firm, or corporation must be “engaging in the business of” regularly renting or furnishing rooms to transients for a consideration in order to be subject to the state lodgings tax.

The state lodgings tax applies to hunting lodges only when the persons, firms, or corporations, with the intent to derive a gain, profit, benefit or advantage from such action or actions, advertise or otherwise hold themselves out to the public as being in the business of regularly renting or furnishing rooms to transients for a consideration when not associated with guide services.

Food charges by hunting lodges, if offered separately, are subject to the sales tax. The services of hunting or fishing guides are a nontaxable service when offered separately from package deals.

For packaged deals where there is a lump sum charge for lodgings, meals and guide services, the packaged deal charges are non-taxable.

## II. SALES TAX LAWS AND RULES

### A. LAW – LEVY, EXEMPTIONS AND FILING REQUIREMENTS

The State **Sales Tax** Law is designed to allow sales of certain agricultural equipment/machinery and the parts and attachments thereto, at a reduced tax rate as per [Code of Alabama 1975, Section 40-23-37](#), as follows:

There is hereby levied, in lieu of the state sales tax levied by Section 40-23-2, a privilege or license tax against the person on account of the business activities engaged in and in the amount to be determined by the application of rates against gross sales, or gross receipts, as the case may be as follows:

Upon every person, firm or corporation engaged or continuing within this state in the business of selling at retail any machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock or poultry on farms, and the parts of such machines, machinery or equipment, attachments and replacements therefor which are made or manufactured for use on or in the operation of such machine, machinery or equipment, and which are necessary to and customarily used in the operation of such machine, machinery or equipment, an amount equal to one and one-half percent of the gross proceeds of the sale thereof; provided, that the one and one-half percent rate herein prescribed with respect to parts, attachments and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use, except farm trailers used primarily in the production and harvesting of agricultural commodities.

Where any used machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock and poultry on farms is taken in trade or in a series of trades as a credit or part payment on a sale of a new or used machine, machinery or equipment, the tax levied herein shall be paid on the net difference, that is, the price of the new or used machine, machinery or equipment sold, less the credit for the used machine, machinery or equipment taken in trade.

The State **Use Tax** Law parallels the State Sales Tax Law in its treatment of certain agricultural equipment/machinery and the parts and attachments thereto, at a reduced tax rate as per [Code of Alabama 1975, Section 40-23-63](#), as follows:

There is hereby levied and imposed an excise tax on the storage, use or other consumption in this state of any machine, machinery, or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock or poultry, or farms, and the parts of such machines, machinery or equipment, attachments and replacements therefor which are made or manufactured for use on or in the operation of such machine, machinery or equipment, and which are necessary to and customarily used in the operation of such machine, machinery or equipment, which is purchased at retail after October 1, 1966, for storage, use or other consumption in this state, at the rate of one and one-half percent of the sales price of such property or the amount of tax collected by the seller, whichever is greater, provided, however, when the seller follows the Department of Revenue's suggested use tax brackets and his records prove that his following said brackets resulted in a net undercollection of tax for the month, he may report the tax due or tax collected whichever is less, regardless of whether the retailer is or is not engaged in business in this state. The tax herein levied and imposed shall be in lieu of the excise tax levied and imposed by Section 40-23-61; provided, that the one and one-half percent rate herein prescribed with respect to parts, attachments and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use except farm trailers used primarily in the production and harvesting of agricultural commodities.

Every person storing, using or otherwise consuming in this state such tangible personal property purchased at retail shall be liable for the tax imposed by this article, and the liability shall not be extinguished until the tax has been paid to this state; provided, that a receipt from a retailer maintaining a place of business in this state or a retailer authorized by the Department of Revenue under such rules and regulations as the Commissioner of Revenue may prescribe, to collect the tax imposed hereby and who shall for the purpose of this article be regarded as a retailer maintaining a place of business in this state, given to the purchaser in accordance with the provisions of Section 40-23-67, shall be sufficient to relieve the purchaser from further liability for a tax to which such receipt may refer.

[Code of Alabama 1975, Section 40-23-4\(a\)2](#), provides an exemption for the gross proceeds of the sale, or sales, of fertilizer when used for agricultural purposes. The word "fertilizer" shall not be construed to include cottonseed meal, when not in combination with other materials.

[Code of Alabama 1975, Section 40-23-4\(a\)3](#), provides an exemption for the gross proceeds of the sale, or sales, of seeds for planting purposes and baby chicks and

poults. Nothing herein shall be construed to exempt or exclude from the computation of the tax levied, assessed, or payable, the gross proceeds of the sale or sales of plants, seedlings, nursery stock, or floral products.

[Code of Alabama 1975, Section 40-23-4\(a\)4](#), provides an exemption for the gross proceeds of sales of insecticides and fungicides when used for agricultural purposes or when used by persons properly permitted by the Department of Agriculture and Industries or any applicable local or state governmental authority for structural pest control work and feed for livestock and poultry, but not including prepared food for dogs and cats.

[Code of Alabama 1975, Section 40-23-4\(a\)5](#), provides an exemption for the gross proceeds of sales of all livestock by whomsoever sold, and also the gross proceeds of poultry and other products of the farm, dairy, grove, or garden, when in the original state of production or condition of preparation for sale, when such sale or sales are made by the producer or members of his immediate family or for him by those employed by him to assist in the production thereof. Nothing herein shall be construed to exempt or exclude from the measure or computation of the tax levied, assessed, or payable hereunder, the gross proceeds of sales of poultry or poultry products when not products of the farm.

[Code of Alabama 1975, Section 40-23-4\(a\)6](#), provides an exemption for cottonseed meal exchanged for cottonseed at or by cotton gins.

[Code of Alabama 1975, Section 40-23-4\(a\)20](#), provides an exemption for the gross proceeds of the sale, or sales, of wrapping paper and other wrapping materials when used in preparing poultry or poultry products for delivery, shipment, or sale by the producer, processor, packer, or seller of such poultry or poultry products, including pallets used in shipping poultry and egg products, paper or other materials used for lining boxes or other containers in which poultry or poultry products are packed together with any other materials placed in such containers for the delivery, shipment, or sale of poultry or poultry products.

[Code of Alabama 1975, Section 40-23-4\(a\)21](#), provides an exemption for the gross proceeds of the sales of all antibiotics, hormones and hormone preparations, drugs, medicines or medications, vitamins, minerals or other nutrients, and all other feed ingredients including concentrates, supplements, and other feed ingredients when such substances are used as ingredients in mixing and preparing feed for fish raised to be sold on a commercial basis, livestock, and poultry. Such exemption herein granted shall be in addition to exemptions now provided by law for feed for fish raised to be sold on a commercial basis, livestock, and poultry, but not including prepared foods for dogs or cats.

[Code of Alabama 1975, Section 40-23-4\(a\)22](#), provides an exemption for the gross proceeds of the sale, or sales, of seedlings, plants, shoots, and slips which are to be used for planting vegetable gardens or truck farms and other agricultural purposes. Nothing herein shall be construed to exempt, or exclude from the computation of the tax levied, assessed, or payable, the gross proceeds of the sale, or the use of plants, seedlings, shoots, slips, nursery stock, and floral products, except as hereinabove exempted.

[Code of Alabama 1975, Section 40-23-4\(a\)25](#), provides an exemption for the gross proceeds of sales of herbicides for agricultural uses by whomsoever sold. The term herbicides, as used in this subdivision, means any substance or mixture of substances intended to prevent, destroy, repel, or retard the growth of weeds or plants. It shall include pre-emergence herbicides, post-emergence herbicides, lay-by herbicides, pasture herbicides, defoliant herbicides, and desiccant herbicides.

[Code of Alabama 1975, Section 40-23-4\(a\)28](#), provides an exemption for the gross proceeds of sales of sawdust, wood shavings, wood chips, and other like materials sold for use as chicken litter by poultry producers and poultry processors.

[Code of Alabama 1975, Section 40-23-4\(a\)29](#), provides an exemption for the gross proceeds of the sales of all antibiotics, hormones and hormone preparations, drugs, medicines, and other medications including serums and vaccines, vitamins, minerals, or other nutrients for use in the production and growing of fish, livestock, and poultry by whomsoever sold. Such exemption as herein granted shall be in addition to the exemption provided by law for feed for fish, livestock, and poultry, and in addition to the exemptions provided by law for the above-enumerated substances and products when mixed and used as ingredients in fish, livestock, and poultry feed.

[Code of Alabama 1975, Section 40-23-4\(a\)31](#), provides an exemption for the gross receipts of sales of grass sod of all kinds and character when in the original state of production or condition of preparation for sale, when such sales are made by the producer or members of his family or for him by those employed by him to assist in the production thereof; provided, that nothing herein shall be construed to exempt sales of sod by a person engaged in the business of selling plants, seedlings, nursery stock, or floral products.

[Code of Alabama 1975, Section 40-23-4\(a\)32](#), provides an exemption for the gross receipts of sales of the following items or materials which are necessary in the farm-to-market production of tomatoes when such items or materials are used by the producer or members of his family or for him by those employed by him to assist in the production thereof: twine for tying tomatoes, tomato stakes, field boxes (wooden boxes

used to take tomatoes from the fields to shed), and tomato boxes used in shipments to customers.

[Code of Alabama 1975, Section 40-23-4\(a\)33](#), provides an exemption for the gross proceeds from the sale of liquefied petroleum gas or natural gas sold to be used for agricultural purposes.

[Code of Alabama 1975, Section 40-23-4\(a\)34](#), provides an exemption for the gross receipts of sales from state nurseries of forest tree seedlings.

[Code of Alabama 1975, Section 40-23-4\(a\)35](#), provides an exemption for the gross receipts of sales of forest tree seed by the state.

[Code of Alabama 1975, Section 40-23-4\(a\)36](#), provides an exemption for the gross receipts of sales of Lespedeza bicolor and other species of perennial plant seed and seedlings sold for wildlife and game food production purposes by the state.

[Code of Alabama 1975, Section 40-23-4\(a\)38](#), provides an exemption for the gross proceeds from the sale or sales of all diesel fuel used for off-highway agricultural purposes.

[Code of Alabama 1975, Section 40-23-4\(a\)45](#), provides an exemption for the gross receipts derived from the sale or sales of fruit or other agricultural products by the person or corporation that planted, cultivated, and harvested such fruit or agricultural product.

[Code of Alabama 1975, Section 40-23-62\(5\)](#), provides an exemption for all fertilizer; provided, that the word "fertilizer" as used in this article shall not be construed to include cottonseed meal when not in combination with other material.

[Code of Alabama 1975, Section 40-23-62\(6\)](#), provides an exemption for all seeds for planting purposes and baby chicks and poults; provided, that nothing herein shall be construed to exempt plants, seedlings, nursery stock or floral products.

[Code of Alabama 1975, Section 40-23-62\(7\)](#), provides an exemption for insecticides and fungicides and feed for livestock and poultry, but not including prepared foods for dogs and cats.

[Code of Alabama 1975, Section 40-23-62\(8\)](#), provides an exemption for the use, storage, or consumption of all livestock by whomsoever sold; and also the gross proceeds of poultry and other products of the farm, dairy, grove or garden, when in the original state of production or condition of preparation for sale, when such sale or sales

are made by the producer or members of his immediate family or for him by those employed by him to assist in the production thereof. Nothing herein shall be construed to exempt or exclude from the measure or computation of the tax levied, assessed, or payable hereunder, the gross proceeds of sales of poultry or poultry products when not products of the farm.

[Code of Alabama 1975, Section 40-23-62\(9\)](#), provides an exemption for cottonseed meal exchanged for cottonseed at or by cotton gins.

[Code of Alabama 1975, Section 40-23-62\(21\)](#), provides an exemption for the storage, use, or other consumption of wrapping paper and other wrapping materials when used in preparing poultry or poultry products for delivery, shipment or sale by the producer, processor, packer, or seller of such poultry or poultry products including pallets used in shipping poultry and egg products, paper or other materials used for lining boxes or other containers in which poultry or poultry products are packed together with any other materials placed in such containers for the delivery, shipment or sale of poultry or poultry products.

[Code of Alabama 1975, Section 40-23-62\(22\)](#), provides an exemption for the storage, use, or other consumption of all antibiotics, hormones and hormone preparations, drugs, medicines or medications, vitamins, minerals, or other nutrients and all other feed ingredients including concentrates, supplements and other feed ingredients when such substances are used as ingredients in mixing and preparing feed for livestock and poultry. Such exemption herein granted shall be in addition to exemptions now provided by law for feed for livestock and poultry, but not including prepared foods for dogs and cats.

[Code of Alabama 1975, Section 40-23-62\(23\)](#), provides an exemption for the use of seedlings, plants, shoots, and slips which are to be used for planting vegetable gardens or truck farms. Nothing herein shall be construed to exempt, or exclude from the computation of the tax levied, assessed, or payable, the use of plants, seedlings, shoots, slips, nursery stock and floral products except as hereinabove exempted.

[Code of Alabama 1975, Section 40-23-62\(25\)](#), provides an exemption for the storage, use, or other consumption of herbicides for agricultural uses by whomsoever sold. The term "herbicides" as used in this subdivision means any substance or mixture of substances intended to prevent, destroy, repel, or retard the growth of weeds or plants. It shall include preemergence herbicides, postemergence herbicides, lay-by herbicides, pasture herbicides, defoliant herbicides, and desiccant herbicides.

[Code of Alabama 1975, Section 40-23-62\(28\)](#), provides an exemption for the storage, use, or withdrawal of sawdust, wood shavings, wood chips, and other like



materials purchased for use as chicken litter by poultry producers and poultry processors shall be exempt under this article.

[Code of Alabama 1975, Section 40-23-62\(29\)](#), provides an exemption for the storage, use, or other consumption of all antibiotics, hormones and hormone preparations, drugs, medicines and other medications including serums and vaccines, vitamins, minerals or other nutrients for use in the production and growing of fish, livestock, and poultry are hereby specifically exempted from the payment of the state use tax levied by this article. Such exemption as herein granted shall be in addition to the exemptions now provided by law for feed for fish, livestock, and poultry, and in addition to the exemptions now provided by law for the above-enumerated substances and products when mixed and used as ingredients in fish, livestock and poultry feeds.

[Code of Alabama 1975, Section 40-23-62\(31\)](#), provides an exemption for all diesel fuel used for off-highway agricultural purposes.

## **B. RULES AND REGULATIONS**

### **Rule No. 810-6-1-.186. Veterinarians.**

- (1) Veterinarians use and consume medicines, equipment, and supplies in the rendering of professional services. When used by veterinarians who are not licensed to collect sales tax on their retail sales, these medicines, equipment and supplies are taxable at the time of purchase by the veterinarian.
- (2) Veterinarians in many instances make retail sales of medicines, vaccines, and other supplies. Veterinarians who make retail sales shall apply for and obtain a sales tax license. Further, these veterinarians shall collect sales tax from their customers and remit the tax to the Department of Revenue.
- (3) Veterinarians who have obtained a sales tax license shall purchase all medicines, equipment, and supplies from veterinarian supply houses tax-free. Those items purchased tax-free and used or consumed by the veterinarian shall be reported as a withdrawal by the veterinarian and the sales tax thereon remitted directly to the Department of Revenue. The tax on withdrawals shall be computed on the cost of the item purchased tax-free from the veterinarian supply house. The veterinarian shall collect sales tax from the customer on those items purchased tax-free from veterinarian supply houses and resold by the veterinarian. The tax on retail sales by veterinarians shall be computed on the selling price to the customer.
- (4) With respect to purchases from suppliers other than veterinarian supply houses, veterinarians who have obtained a sales tax license shall pay tax to the supplier on items purchased for use or consumption and not for resale. Examples of such items include, but are not limited to, equipment, office supplies, and office furniture. Items purchased for resale from suppliers other than veterinarian supply houses shall be purchased tax-free and the veterinarian shall compute and pay sales tax on withdrawals and collect and remit sales tax on retail sales to customers.
- (5) The sale, use, storage, or consumption of all antibiotics, drugs, serums, vaccines, and other medications used in the commercial production and growing of fish, livestock, and poultry is exempt from sales and use tax. This exemption does not apply to medications for dogs, cats, or any other animal which does not qualify as fish, livestock, or poultry. When antibiotics, drugs, serums, vaccines, and other medications are used for both taxable and exempt purposes, the veterinarian must maintain adequate records to substantiate the exempt usage; otherwise tax shall be due on all antibiotics, drugs, serums, vaccines, and other medications regardless of how used. (Sections 40-23-4(a)(29) and 40-23-62(29)) (Amended November 3, 1980, readopted through APA effective October 1, 1982, amended January 19, 1998)

**Rule No. 810-6-3-.01. Exemptions for Agricultural Products Sold by the Producer.**

(1) There are two exemptions in the sales and use tax statutes relative to agricultural products sold by the producer - one is found in Sections 40-23-4(a)(5) and 40-23-62(8), Code of Alabama 1975, and the other in Section 40-23-4(a)(44). A sale of agricultural products that does not qualify for one of these exemptions may still qualify for the other.

(2) Sections 40-23-4(a)(5) and 40-23-62(8) exempt sales of products of the farm, dairy, grove, or garden from sales and use tax when the products (i) are sold by the producer, by members of the producer's immediate family, or by persons employed by the producer to assist in the production of the products and (ii) have not been processed, except to the extent that the products are customarily processed by operators of farms, dairies, groves or gardens in preparing products for market.

(a) This exemption does not apply to agricultural products sold by the producer through a store which the producer operates. (Curry v. Reeves, 240 Ala. 14, 195 So. 428)

(b) Unlike the exemption outlined in paragraph (3) below, this exemption is not limited to products that are planted, cultivated, and harvested by the producer. Examples of products that may qualify for this exemption but not the exemption in paragraph (3) include but are not limited to milk, eggs, catfish, minnows, bees, honey, rabbits, and hamsters produced on farms.

(3) Section 40-23-4(a)44 exempts fruit or other agricultural products from sales and use tax when sold by the person or corporation that planted, cultivated, and harvested the products. Unlike the exemption outlined in paragraph (2) above, this exemption is not lost to the producer who sells qualifying agricultural products through a store operated by the producer.

(4) Sales of agricultural products which otherwise qualify for one or both of the exemptions outlined in paragraphs (2) and (3) above do not lose their exempt status if the products retain their raw, unprocessed form when prepared by the producer for marketing or merchandising. An agricultural product is no longer in its raw, unprocessed form if it is cooked, boiled, roasted, or mixed or compounded with ingredients other than additional exempt agricultural products.

(a) Examples of prepared agricultural products which do not lose their exempt status when they otherwise qualify for either or both of the exemptions outlined in paragraphs (2) and (3) are:

1. raw pecans when cracked or shelled
2. raw shelled peanuts
3. raw shelled peas, beans, or butterbeans
4. raw shucked corn
5. raw washed fruits or vegetables.

(b) Examples of processed agricultural products which do not qualify for the exemptions outlined in paragraphs (2) and (3) above are:

1. apple cider
2. boiled or roasted peanuts
3. candy
4. cane or sorghum syrup
5. fruit pies
6. ice cream
7. jellies and jams
8. peanut butter
9. pickled peaches
10. pickles
11. roasted pecans.

(Readopted through APA effective October 1, 1982, amended May 22, 1993, amended July 30, 1998)

**Rule No. 810-6-3-.01.01. Agriculture, Definition of.**

(1) For purposes of interpreting references in the sales and use tax statutes to agriculture and agricultural purposes, the term "agriculture" is defined to be the art or science of cultivating the ground, and raising and harvesting crops, including also feeding, breeding, and management of livestock and poultry; tillage; husbandry, farming.

(2) The following items or areas fall within the definition of agriculture:

- tree farming
- raising horticultural products in commercial greenhouses and nurseries
- fruit and nut trees (whether or not in groves or orchards)
- vegetable gardens (whether or not on farms)
- livestock farming
- dairy farming
- commercial fish ponds
- commercial sod farms
- poultry and egg farming

(3) The following items or areas do not fall within the definition of agriculture:

- lawns, shrubbery, and flower beds around residential and business property
- golf courses, baseball or football fields
- highway, railroad, or utility right-of-way
- shade trees (other than fruit or nut trees)
- house plants
- commercial pest control services

(Adopted through APA effective May 22, 1993)

**Rule No. 810-6-3-.01.02. Livestock, Definition of.**

(1) In accordance with the guidelines for interpretation outlined in *Brundidge Milling Co. v. State*, 45 Ala. App. 208, 228 So. 2d 475 (1969); the term "livestock" as used in Title 40, Chapter 23 of Code of Alabama 1975 and in the sales and use tax regulations shall mean cattle, swine, sheep, goats, and members of the equidae family of mammals such as horses, mules, and donkeys.

(2) Animals other than those enumerated above do not fall within the term "livestock." (Adopted through APA effective July 20, 1994)

**Rule No. 810-6-3-.19. Feed for Livestock and Poultry.**

(1) Sales of feed for livestock and poultry (not including prepared food for dogs and cats) are exempt from sales and use taxes. (Sections 40-23-4(a)(4) and 40-23-62(7))

(2) The following items qualify for exemption when sold for consumption by livestock or poultry:

- (a) Stale bread, table waste, and other foodstuffs which have become unsuitable for sale for human consumption
- (b) Salt and salt blocks
- (c) Bone meal and oyster shells
- (d) Blackstrap molasses

(3) Bees are members of the insect family and are not livestock; therefore, sales of food, including sugar, for consumption by bees are not exempt from sales or use tax. (Section 40-23-1(a)(10))

(4) The gross proceeds of the sales of all antibiotics, hormones and hormone preparations, drugs, medicines, and other medications including serums and vaccines, vitamins, minerals, or other nutrients for use in the production and growing of livestock and poultry by whomsoever sold are exempt from the sales and use taxes. (Sections 40-23-4(a)(29) and 40-23-62(29)) Adopted March 9, 1961, amended November 1, 1963, amended March 18, 1970, readopted through APA effective October 1, 1982, amended April 3, 1987, amended July 9, 1998)

**Rule No. 810-6-3-.20. Fertilizer.**

(1) Sales of fertilizer when used for agricultural purposes are exempt from sales and use tax. (Sections 40-23-4(a)(2) and 40-23-62(5))

(2) The word "fertilizer" as used in the exemption sections referenced above means any material (not including cottonseed meal when unmixed with other material) which results in an increase in plant growth when added to the basic natural substances in which

plants are grown. Basic natural substances, including sand, clay, top soil, and water are not to be considered to fall within the meaning of the word "fertilizer" as used in those sections. (Sections 40-23-4(a)(2) and 40-23-62(5))

(3) Ammonium nitrate when used as an explosive, and not for agricultural purposes as a fertilizer, is taxable when sold to the consumer or user. (Sections 40-23-2(1) and 40-23-61(a)) (Adopted March 9, 1961, amended November 1, 1963, readopted through APA effective October 1, 1982, amended March 24, 1993)

**Rule No. 810-6-3-.20.01. Exemption Certification Form Respecting Fertilizers, Insecticides, Fungicides, and Seedlings (Form ST:EXC-1).**

(1) When a retail purchaser purchases tangible personal property which is exempt from sales tax pursuant to Section 40-23-4(a)(2), (4), or (22) or use tax pursuant to Section 40-23-62(5), (7), or (23); the filing by said purchaser of a certificate in the following form shall relieve the seller of any obligation to collect sales or use tax on the items purchased in conjunction therewith:

ALABAMA DEPARTMENT OF REVENUE  
SALES AND USE TAX DIVISION  
EXEMPTION CERTIFICATION RESPECTING FERTILIZERS,  
INSECTICIDES, FUNGICIDES, AND SEEDLINGS

Purchaser's Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip \_\_\_\_\_

Code: \_\_\_\_\_

SCS Farm Number (if available): \_\_\_\_\_

I, the undersigned, hereby certify that the items of tangible personal property purchased from (name of retailer) \_\_\_\_\_ will be used for the exempt agricultural purposes described in subdivision (2), (4), or (22) of Section 40-23-4(a) or subdivisions (5), (7), or (23) of Section 40-23-62, Code of Alabama 1975, as amended, and therefore may be purchased without payment of sales or use tax under Alabama law. I am aware that liability for payment of any sales or use tax ultimately determined to be applicable with respect to the items so purchased will be the exclusive responsibility of the undersigned.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(2) The form outlined in paragraph (1) shall be referred to as Form ST:EXC-1 Exemption Certification Respecting Fertilizers, Insecticides, Fungicides, and Seedlings

and the following procedures should be followed in conjunction with the execution of said form:

- (a) all of the information requested on the form should be completed;
- (b) the seller should furnish a copy of the completed certificate, with sales receipt attached, to the purchaser; and
- (c) the seller should retain the original certificate and a copy of the sales receipt for a three-year period.

(3) The items enumerated in Section 40-23-4(a)(2), (4), and (22) and Section 40-23-62(5), (7), and (23) are exempt from sales and use tax when used for agricultural purposes regardless of whether Form ST:EXC-1 is executed in conjunction with purchases of such items. Liability for sales or use tax on such items will later arise only if the Revenue Department determines that the item purchased, in fact, was not used for agricultural purposes. In the absence of a properly executed Form ST:EXC-1, the seller is liable for sales or use tax later determined to be due in the event the "agricultural use" exemption claim is disallowed; however, by having the purchaser execute a Form ST:EXC-1 the seller can place upon the purchaser the exclusive responsibility for payment of any sales or use taxes later determined to be due. Whenever a seller feels that the purchaser's exemption claim is invalid, the seller should collect sales or use tax from the purchaser or have the purchaser execute a Form ST:EXC-1.

(4) The seller is not required to secure a Form ST:EXC-1 for each sale of exempt items to a farmer with an SCS farm number when said seller knows the items purchased will be used for exempt agricultural purposes. Instead, the seller may have the farmer complete an annual exemption certification form and keep the certificate on file and available for review by the Revenue Department along with other business records. The purchaser's SCS farm number can be used as a reference number on each sales invoice covered by the annual certification form. Such annual exemption certification forms should be re-executed every 12 months.

(5) Form ST:EXC-1 may be incorporated into the sales invoice if it contains substantially the same information as provided for on the certification form. This may be done by (i) including the certification form on the sales invoice at the time of printing or (ii) by designing and using a rubber stamp to add the information to the sales invoice. Other methods which accomplish the same result as the exemption certification form may also be used. (Section 40-23-4.3) (Adopted through APA effective March 24, 1993)

**Rule No. 810-6-3-.29. Grass Sod.**

(1) The gross receipts from sales of grass sod of all kinds and character when in the original state of production or condition of preparation for sale, when such sales are made by the producer or members of his family or for him by those employed by him in the production thereof, are exempt from sales and use tax. This exemption does not

apply to sales of grass sod by a person engaged in the business of selling plants, seedlings, nursery stock, or floral products. (Section 40-23-4(a)(31))

(2) Sales of grass sod by the person or corporation that planted, cultivated, and harvested the sod are exempt from sales and use tax. Unlike the exemption outlined in paragraph (1) above, this exemption is not lost to the producer who also sells plants, seedlings, nursery stock, or floral products. (Section 40-23-4(a)(44))

(3) A seller who claims the exemption outlined in paragraph (2) must keep sufficient records to document such claims; and, in the absence of sufficient documentation, shall be liable for the sales or use tax due on all sales for which exemption claims cannot be verified by the Revenue Department. (Adopted October 29, 1976, readopted through APA effective October 1, 1982, amended May 22, 1993)

**Rule No. 810-6-3-.31. Herbicides.**

(1) The gross proceeds of sales of herbicides for agricultural uses by whomsoever sold are exempt from use tax.

(2) The term "herbicide" means any substance or mixture of substances intended to prevent, destroy, repel or retard the growth of weeds or plants. It shall include reemergence herbicides, post-emergence herbicides, lay-by herbicides, pasture herbicides, defoliant herbicides, and desiccant herbicides. (Sections 40-23-4(a)(25) and 40-23-62(25)) (Adopted January 1, 1966, readopted through APA effective October 1, 1982, amended March 24, 1993)

**Rule No. 810-6-3-.34. Insecticides and Fungicides.**

(1) The term "insecticides" means any substance or mixture of substances which are used for the preventing, destroying, repelling, or mitigating of any insects. The term "insect" means flies, mites, spiders, ticks, nematodes, and destructive worms and grubs as well as those small invertebrate animals strictly falling within the scientific class Insecta. (AGO Graddick, August 29, 1979). The term "fungicides" means any substance or mixture of substances which are used for preventing, destroying, or mitigating any fungi.

(2) Sales of insecticides and fungicides when used for agricultural purposes are exempt from sales and use tax.

(3) Sales of insecticides and fungicides when used by persons properly permitted by the Department of Agriculture and Industries or any applicable local or state governmental authority for structural pest control work are exempt from sales and use tax. (Sections 40-23-4(a)(4) and 40-23-62(7)) (Adopted March 9, 1961, amended November 1, 1963, amended January 20, 1966, amended June 12, 1978, readopted



through APA effective October 1, 1982, amended March 24, 1993, amended October 12, 1993)

**Rule No. 810-6-3-.43. Nurserymen-Sales of Plants, Seedlings, Nursery Stock and Floral Products.**

(1) The gross proceeds of the sales of seedlings, plants, shoots and slips which are to be used for planting vegetable gardens or truck farms and other agricultural purposes are exempt from sales and use tax. (Section 40-23-4(a)(22))

(2) Sales of nursery stock and floral products by the nurseryman who planted, cultivated, and harvested said items are exempt from sales and use tax. Sales of nursery stock and floral products not planted, cultivated, or harvested by the seller are taxable (Sections 40-23-2(1), 40-23-4(a)(44), and 40-23-61(a))

(3) A nurseryman who claims the exemption outlined in paragraph (2) must keep sufficient records to document such claims; and, in the absence of sufficient documentation, shall be liable for the sales or use tax due on all sales for which exemption claims cannot be verified by the Revenue Department.

(4) The planting of trees, floral products, and shrubbery or other nursery stock on the real property of a customer pursuant to a contract to furnish such items and plant same does not constitute a retail sale by the person performing the contract; instead, the person is performing a contract for making additions, alterations, or improvements to realty and is deemed to be the user or consumer of the items which are planted. Accordingly, nurserymen who maintain an inventory of trees, floral products, and shrubbery or other nursery stock from which they make retail sales to customers and from which they also withdraw items for use in performing contracts for making additions, alterations, or improvements to realty shall purchase all such items tax-free and, in turn, remit sales tax collected from the customer on retail sales of items from inventory and compute and pay sales tax on items withdrawn from inventory for use or consumption in the performance of contracts. Nurserymen or landscapers who maintain no inventory and make no retail sales of trees, floral products, or shrubbery or other nursery stock shall remit the appropriate sales or use tax to the vendor at the time they purchase such items for use in performing contracts for making additions, alterations, or improvements to realty. Purchases or withdrawals of trees, floral products, and shrubbery or other nursery stock which qualify for the exemptions outlined in paragraphs (1) and (2) above are exempt from sales and use tax. (Sections 40-23-1(a)(6), 40-23-1(a)(8), 40-23-1(a)(10), 40-23-2(1), and 40-23-61(a)) (Adopted March 9, 1961, amended January 20, 1966, readopted through APA effective October 1, 1982, amended May 22, 1993, amended July 25, 1994)

**Rule No. 810-6-3-.45. Peatmoss.**

When purchased for agricultural use as a soil conditioner or plant food, peat or peat moss is exempt from the sales or use tax, as the case may be, by the fertilizer exemptions found in Sections 40-23-4(a)(2) and 40-23-62(5). (State v. Flowerwood Nursery, Inc., 55 So.2d 130) (Readopted through APA effective October 1, 1982, amended March 24, 1993)

**Rule No. 810-6-4-.07. Farm Machines, Machinery, and Equipment.**

(1) Sales at retail of any machine, machinery, or equipment which is used in planting, cultivating, and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, and sales at retail of any parts of, or attachments and replacements for, any such machine, machinery, or equipment which (i) are made or manufactured for use on or in the operation of the machine, machinery, or equipment, and (ii) are necessary to and customarily used in the operation of the machine, machinery, or equipment are taxable at the reduced farm machine rate of sales or use tax. (Sections 40-23-37 and 40-23-63, Code of Alabama 1975)

(2) The reduced farm machine rate does not apply to sales of parts, attachments, and replacements for any automotive vehicle or trailer designed primarily for public highway use, except farm trailers used primarily in the production and harvesting of agricultural commodities. (Sections 40-23-37 and 40-23-63)

(3) The term "machine, machinery, and equipment" is understood to mean items such as tractors, detachable plows, harrows, planters, cultivators, fertilizer spreaders, plow stocks, turning plows, seed drills, and sprayers. The general rate of sales or use tax applies to all hand tools. A power chain saw sold for use by a pulpwood dealer in cutting trees for sale in the dealer's regular course of business qualifies for the reduced farm machine rate of sales or use tax. A power chain saw sold for nonfarm use is taxable at the general rate of sales or use tax. See Rule 810-6-2-.66.05 Portable Power Saws.

(4) Where any used machine, machinery, or equipment which is used in planting, cultivating, and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock, and poultry on farms is taken in trade or in a series of trades as credit or part payment on a sale of the new or used machine, machinery, or equipment, the measure of sales or use tax shall be the price of the new or used machine, machinery, or equipment sold, less the credit for the used machine, machinery, or equipment taken in trade. (Sections 40-23-37 and 40-23-63)

(5) The dealers' sales invoices will be accepted as the basis for determining the tax rate applicable unless there is conclusive evidence that the invoice does not reveal the

true facts. (Adopted September 26, 1966, amended August 16, 1974, amended November 3, 1980, readopted through APA effective October 1, 1982, amended December 28, 1998)

**Rule No. 810-6-2-90.01. Seller's Responsibility to Collect and Pay State Sales Tax and Seller's Use Tax.**

(1) Under certain conditions, an out-of-state seller engaged within this state in the business of selling at retail tangible personal property is required to register with the Department for a sales tax license and collect and remit sales tax on all sales made within the state as provided for by Chapter 23, Article 1 of Title 40, Code of Alabama 1975. Sales taxes collected must be reported and paid in accordance with the provisions of Rule 810-6-4-.19, State Sales Tax Returns Required from All Retail Vendors and Annual Schedule of Locations Required from All Retail Vendors with Multiple Locations.

(2) A transaction on which the sales tax imposed is collected by a licensed seller is exempt from use tax and is not subject to the following provisions of this rule. (Section 40-23-62(1)).

(3) Otherwise, a seller engaged in making retail sales of tangible personal property for storage, use or other consumption in this state is required to register with the Department and collect and remit use tax, as provided for by Chapter 23, Article 2 of Title 40, when the seller has "substantial nexus" with the state. Substantial nexus is a connection between a seller and the state, created by the seller's business activities in the state, which is substantial enough to cause the seller to be subject to the jurisdictional taxing authority of the state.

(4) Section 40-23-68 sets forth the conditions under which a seller must collect and remit use tax on retail sales of property for storage, use or other consumption in the state. These conditions include any contact with this state that would allow this state to require the seller to collect and remit the tax due under the provisions of the Constitution and laws of the United States. These conditions include, but are not limited to:

- (a) Delivery within the State of Alabama by means of vehicle owned by the selling entity;
- (b) Maintains, occupies, or uses, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business;
- (c) Employs or retains under contract any representative, agent, salesman, canvasser, solicitor or installer operating in this state under the authority of the person or its subsidiary for the purpose of selling, delivering, or the taking of orders for the sale of tangible personal property or any services taxable under

this chapter or otherwise solicits and receives purchases or orders by any agent or salesman;

(5) A seller may have substantial nexus with this state due to the business activities conducted in the state by the seller's affiliates as set forth in Section 40-23-190, Conditions for Remote Entity Nexus. A seller has substantial nexus with this state for the collection of use tax if:

(a) The seller and an in-state business maintaining one or more locations within this state are related parties; and

(b) The seller and the in-state business use an identical or substantially similar name, tradename, trademark, or goodwill, to develop, promote, or maintain sales, or the in-state business and the seller pay for each other's services in whole or in part contingent upon the volume or value of sales, or the in-state business and the seller share a common business plan or substantially coordinate their business plans, or the in-state business provides services to, or that inure to the benefit of, the business related to developing, promoting, or maintaining the in-state market.

(6) Two entities are related parties under this section if one of the entities meets at least one of the following tests with respect to the other entity:

(a) One or both entities is a corporation, and one entity and any party related to that entity in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of Section 318 of the Internal Revenue Code owns directly, indirectly, beneficially, or constructively at least 50 percent of the value of the corporation's outstanding stock;

(b) One or both entities 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, or beneficiaries own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the profits, or capital, or stock, or value of the other entity or both entities; or

(c) An individual stockholder and the members of the stockholder's family, as defined in Section 318 of the Internal Revenue Code, owns directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of both entities' outstanding stock. (Section 40-23-190)

(7) Every seller required to collect the use tax shall register with the Department and give the name and address of each agent operating in this state, the location of any and all distribution or sales houses or offices or other places of business in this state, and such other information as the Department may require with respect to matters pertinent to the enforcement of the Alabama Use Tax Law. Use taxes collected must be reported and paid in accordance with the provisions of Rule 810-6-5-.19.01, State Use Tax

Returns. (Sections 40-2A-7(a)(5), 40-23-2, 40-23-61 thru 40-23-68, 40-23-83, and 40-23-190, Code of Alabama 1975. Effective August 24, 2012.)

**Rule No. 810-6-3-.35.02. Interstate Commerce, Sales in.**

(1) Sales are considered to be made outside Alabama and cannot be taxed by the Alabama Sales Tax Law where:

- (a) The seller is required by the sales agreement to deliver the goods outside the state in the seller's equipment, or
- (b) The seller delivers the goods to a common carrier or to the United States Postal Service for transportation outside the state regardless of any F.O.B. point, or
- (c) The seller is required by the sales agreement to deliver the goods outside the state by the use of an independent trucker hired by the seller.

(2) Property is not sold outside Alabama, and therefore is subject to Alabama Sales Tax, when the buyer takes actual possession of the goods in this state or when an agent of the buyer accepts delivery for the buyer to make delivery outside the state at the buyer's direction. However, when the buyer contracts with a common carrier or the United States Postal Service to accept goods in this state for delivery outside this state at the buyer's direction, the sale is not subject to Alabama Sales Tax since the common carrier or United States Postal Service is the agent of the seller regardless of who selects the method of transportation. (Sections 40-23-1(a)(5) and 40-23-4(a)(17)) (Readopted through APA effective October 1, 1982, amended effective June 9, 1995, amended March 10, 1998)

**Rule No. 810-6-4-.20. Seller Must Pay and Collect Tax Due.**

It is the mandatory duty of the seller, the taxpayer, to pay the tax lawfully due under the Sales Tax Law and a like mandatory duty to add the amount thereof to the sales price and to collect same from the customer. (Doby v. State, 174 So. 233, Meriwether v. State, 42 So.2d 465.)

(2) No retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the sales price of the property sold or that, if added, it or any part thereof will be refunded. Under the provisions of this section, however, a retailer may advertise the sale of tangible personal property by (i) stating the sales price alone without reference to the tax, (ii) stating separately the sales price and the amount of tax to be collected thereon, or (iii) stating the sales price "plus tax" or "exclusive of tax" provided the retailer in the case of all such sales shall maintain his records to show separately the actual price of such sales and the amount of the tax paid thereon and

provided such retailer, if requested, shall furnish the consumer with a sales slip or other like evidence of the sale showing the tax separately computed thereon.

(3) Whenever practical, each retailer shall add the sales tax as a separate line item to the selling price. The initial invoice, bill, charge ticket, sales slip, or receipt shall separately state the amount of the tax being charged. If not separately stated, it will be presumed that sales tax was not charged to the customer or collected. In such cases, the measure will be the gross receipts.

(a) In those instances where it is practically impossible to furnish a customer with an invoice, bill, charge ticket, sales slip, or receipt, the retailer shall conspicuously post a sign indicating that the charge for the item being purchased includes the price of the item and the total percentage of sales tax being collected. The sign shall be of sufficient size to allow a person of normal vision to read it from a distance of 20 feet and shall be posted in plain view.

(b) Each retailer who makes tax-included sales in which tax is an unspecified part of the customer charge shall post a sign pursuant to paragraph (a) using the following example:

Charge for items purchased includes  
price of item and 8% sales tax.

**Rule No. 810-6-5-.04.02. Seller's Responsibility to Collect County and Municipal Sales and Use Taxes.**

(1) Scope. The provisions of this rule are limited to describing a business's obligation to collect and remit a local jurisdiction's sales or use tax, whether or not that business has a physical location in the state. The provisions of this rule have no bearing on a business's other local tax or fee obligations including specifically a local jurisdiction's business license tax. An obligation to collect and remit a local jurisdiction's sales or use tax under the provisions of this rule does not obligate the business to file a return for or pay any other local tax or fee. Likewise, this rule does not address sourcing issues associated with the determination of where tax is due or in which local jurisdiction tax is due. Sourcing issues are controlled by the passage of title from seller to customer and are not addressed herein. The provisions of this rule do not apply to the sale of automobiles, motorcycles, trucks, truck trailers or semitrailers in transactions governed by Section 40-23-2(4) or 40-23-102, Code of Alabama 1975, and Rule 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), or 810-6-3-.03.02. (Automotive Vehicles, Certificate of Exemption/Out-Of-State Delivery Form).

(2) Under the provisions of Sections 11-51-200 and 11-51-202, Code of Alabama 1975, as amended, the governing body of any municipality in the state may provide by ordinance for the levy of municipal sales and use taxes, parallel to the state levy of sales and use taxes. Under the provisions of Sections 11-3-11.2 and 40-12-4, Code of Alabama 1975, as amended, or any general, special or local enabling act of the Legislature, the governing body of any county in the state may provide for the levy of county sales and use taxes, parallel to the state levy of sales and use tax except in limited instances where a contrary local sales and use tax act was in effect on February 25, 1997. As used in this rule, the term "local jurisdiction" means a municipality, special tax district, police jurisdiction or county in Alabama.

(3) The threshold applicable for determining whether a seller is obligated to collect and remit the state sales or use tax associated with interstate transactions shall also be applied by sellers to determine whether the seller is obligated to collect and remit local sales or use tax by examining the contacts the seller has within each local jurisdiction where local sales or use tax is due. Except as described in the following paragraphs, any seller responsible for collecting and remitting state sales or use tax with respect to a particular retail sales transaction or taxable use must collect and remit the corresponding sales or use tax for the appropriate local jurisdiction(s) with respect to the transaction or use. A seller may only avoid the responsibility for collecting and remitting a local jurisdiction's sales or use tax when the seller lacks physical presence within the local jurisdiction that would be sufficient to create an obligation to collect and remit state sales or use tax if the sales transaction or use in question was an interstate transaction.

(4) For purposes of determining whether the seller lacks sufficient physical presence within the local jurisdiction to create an obligation to collect and remit the local jurisdiction's sales or use tax, the seller should refer to and must apply the provisions of Rule 810-6-2-.90.01 entitled "Seller's Responsibility to Collect and Pay State Sales Tax and Seller's Use Tax."

(5) The following are intended to provide examples of the type of activity that would or would not establish a taxable presence with a local jurisdiction. These examples do not address every business activity conducted by a seller that could establish a taxable presence and impose on the seller the requirement to collect the local tax.

(a) EXAMPLES:

1. Retailer A, a furniture store with its location in the City of Montgomery (Montgomery County), makes sales to customers in Auburn (Lee County) and delivers the furniture sold to Auburn customers into Auburn using its own delivery trucks and its own employees. Because Retailer A has a physical presence (delivery trucks and employees) in Auburn (Lee County) it is responsible for collecting and remitting the Auburn and Lee County sales taxes on its sales delivered into those localities.
2. Retailer B, a sporting goods store with its location in the City of Birmingham

(Jefferson County), makes sales to customers in Gulf Shores (Baldwin County) and delivers the goods sold to Gulf Shores' customers into Gulf Shores via UPS, a common carrier. Retailer B has no other contact with Gulf Shores or Baldwin County. Because Retailer B lacks a physical presence in Gulf Shores (Baldwin County) it is not responsible for collecting and remitting the Gulf Shores or Baldwin County sales tax on its sales delivered into those localities. However, the customer would be responsible for remitting any applicable use tax to Gulf Shores and Baldwin County.

3. Retailer C, a janitorial supply store with its location in the City of Mobile (Mobile County) and with salesmen soliciting sales in the City of Huntsville (Madison County), makes sales to Huntsville customers and delivers the supplies sold to Huntsville customers into Huntsville via UPS, a common carrier. Because Retailer C has a physical presence (salesmen) in Huntsville (Madison County), it is responsible for collecting and remitting the Huntsville and Madison County sales taxes on its sales delivered into those localities. Note: State sales tax would still have to be collected and remitted in all examples.

(6) This rule shall apply to all transactions occurring on or after January 1, 2014. (Sections 40-2A-7(a)(5), 40-23-2, 40-23-68, 11-51-180, 11-51-200, Code of Alabama 1975. Adopted through APA effective November 29, 2013.)