

810-6-3-.77

**Exemption For Certain Purchases By Contractors
And Subcontractors In Conjunction With
Construction Contracts With Certain Governmental
Entities And Statutorily Exempt Entities.**

(1) On and after January 1, 2014, the sale to, or the storage, use, or consumption by, any contractor or subcontractor of any tangible personal property to be incorporated into realty pursuant to a contract entered into on or after January 1, 2014, with a governmental entity is exempt from all state, county, and municipal sales and use taxes.

For this rule, a governmental entity is defined as:

(a) The State of Alabama.

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

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

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

(e) Other governmental entities that are exempt from the payment of Alabama sales and use taxes.

(f) On or after January 1, 2019, the term governmental entity includes any public water or sewer authority, district, system, or board that otherwise is exempt from sales and use tax. The sale to, or the storage, use, or consumption by, any contractor or subcontractor of any tangible personal property to be incorporated into realty pursuant to a contract entered into on or after January 1, 2019, with any public water or sewer authority, district, system, or board that otherwise is exempt from sales and use tax is exempt from all state, county, and municipal sales and use taxes.

(g) On or after January 1, 2020, the term governmental entity includes any airport authority established pursuant to Chapter 3 of Title 4 of the Code of Ala. 1975, that otherwise is exempt from sales and use tax. The sale to, or the storage, use or consumption by, any contractor or subcontractor of any tangible personal property to be incorporated into realty pursuant to a contract entered into on or after January 1, 2022, with an airport authority that otherwise is exempt from sales and use tax is exempt from all state, county, and municipal sales and use taxes.

(h) On or after January 1, 2022, the purchase of construction materials for use on construction projects for governmental entities; to include any contract for the construction of highways, roads, or bridge projects is exempt from all state, county, and municipal sales and use taxes.

(i) On or after April 14, 2022, the term governmental entity includes an agricultural authority, established pursuant to Chapter 20 of Title 11 of the Code of Ala. 1975, that otherwise is exempt from sales and use tax. The sale to, or the storage, use, or consumption by, any contractor or subcontractor of any tangible personal property to be incorporated into realty pursuant to a contract entered into on or after April 14, 2022, with an agricultural authority that otherwise is exempt from sales and use tax is exempt from all state, county, and municipal sales and use taxes.

(2) **Governmental Entity-Purchases Not Exempt.** The exemptions outlined in section (1) do not apply to any of the following:

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

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

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

(d) Purchases of tangible personal property made pursuant to any contract entered into prior to applicable dates in section (1).

(3) **Exclusion from Governmental Entity Exemption.** The exemption outlined in section (1) does not apply to the sale to, or the storage, use, or consumption by, any contractor or subcontractor of any tangible personal property purchased pursuant to a contract with a state other than the State of Alabama, a county or incorporated municipality of a state other than the State of Alabama, an industrial development board created pursuant to the Constitution or general or local laws of a state other than the State of Alabama, an educational institution of a state other than the State of Alabama, or an educational institution of a county or incorporated municipality of a state other than the State of Alabama.

(4) On or after January 1, 2024, the sale to, or the storage, use, or consumption by, any contractor or subcontractor of any tangible personal property to be incorporated into realty pursuant to a contract entered into on or after January 1, 2024, with a Statutorily Exempt Entity is exempt from all state, county, and municipal sales and use taxes.

For this rule, a statutorily exempt entity is defined as:

(a) Any person or company, as those terms are defined under §40-23-1, Code of Ala. 1975, that has been granted a statutory exemption from the payment of Alabama sales and use taxes.

(b) Any person or company listed in Article 1, Chapter 9 of Title 40, Code of Ala. 1975.

(c) Any person or company which the state is prohibited from taxing under the Constitution or laws of the United States or under the Alabama Constitution.

(5) Statutorily Exempt Entity - Purchases Not Exempt. The exemptions outlined in section (4) do not apply to any of the following:

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

(b) Purchases of tangible personal property made pursuant to any contract entered into prior to January 1, 2024.

(6) **Application Requirements.**

(a) Contractors and subcontractors licensed by the State Licensing Board for General Contractors, must apply per project to the department for a sales and use tax certificate of exemption. Upon application, the contractor and subcontractor must provide the department with an estimated amount of tax exempt purchases to be made for the project. Upon review and approval of the application, the department shall issue the applicant a certificate of exemption, which shall be used by the certificate holder to claim the exemption when making qualifying tax-exempt purchases for the project listed on the certificate. Certificates of exemption will be issued as of the project start date or the received date of the application. The effective date of the certificate of exemption will be no earlier than the date the application is submitted to the department. Before approving or denying the application, the department may require the applicant to submit additional documentation.

(b) Effective January 1, 2024, or the effective date of this rule, whichever is later, contractors and subcontractors must apply electronically for each project.

(c) If the department denies the application, the applicant may appeal the denial in accordance with §40-2A-8, Code of Ala. 1975.

(7) **Record Retention Requirement.**

(a) A contractor or subcontractor who obtains a certificate of exemption must comply with all of the provisions of §40-23-9, Code of Ala. 1975, and must maintain records sufficient to document the tax-exempt status of qualifying purchases.

(b) Upon renewal of the certificate of exemption, the contractor or subcontractor shall verify the tax exempt purchases made for the project in the previous year.

(8) **Violation Penalties.** Any contractor or subcontractor who intentionally uses a certificate of exemption in violation of §40-9-14.1 or §40-9-14.3, Code of Ala. 1975, will be:

(a) Liable for the actual sales and use tax due.

(b) Subject to a civil penalty levied by the department in the amount of not less than a minimum of two thousand dollars (\$2,000) or two times any state and local sales or use tax due for the tangible personal property, whichever is the greater.

(c) May be barred from the use of any certificate of exemption on any project for up to two years based on the contractor's or subcontractor's willful misuse of a certificate of exemption. Contractors and subcontractors may appeal any such decisions in accordance with §40-2A-8, Code of Ala. 1975.

(9) **Determination of Qualification According to Date.**

(a) The date of the sale to, or the purchase, withdrawal, storage, use or consumption by, the contractor must be used to determine if an otherwise qualifying transaction or event qualifies for the exemption. Jobs or projects entered into prior to the applicable dates noted in sections (1) and (4) do not qualify for the exemption regardless of the transaction date.

(b) For the purpose of this rule, the term "entered into" means the date that a contractor or subcontractor signs a contract with a governmental entity defined in section (1) or a statutorily exempt entity as defined in section (4).

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Statutory Authority: §§11-20-81, 40-2A-7(a)(5), 40-2A-8, 40-9-14.1, 40-9-14.3, 40-23-1, 40-23-4, 40-23-9, 40-23-31, 40-23-83, Code of Ala. 1975.

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