

APA-1

TRANSMITTAL SHEET FOR NOTICE
OF INTENDED ACTION

Control: 810

Department or Agency: Alabama Department of Revenue

Rule No.: 810-6-1-.196

Rule Title: Withdrawals From Inventory

Intended Action Repeal and Replace

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved? No

To what degree?: N/A

Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? NA

Are all facets of the rule-making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

.....

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

.....

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer

Cameran Clark
Cameran Clark

Date

Friday, April 19, 2024

REC'D & FILED

APR 19, 2024

LEGISLATIVE SVC AGENCY

ALABAMA DEPARTMENT OF REVENUE

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Revenue

RULE NO. & TITLE: 810-6-1-.196 Withdrawals From Inventory

INTENDED ACTION: Repeal and Replace

SUBSTANCE OF PROPOSED ACTION:

Pursuant to the Red Tape Reduction Act 2013-88, this rule has been reviewed and rewritten to add titles and provide better clarity to taxpayers relating to taxable transactions for withdrawals from inventory.

TIME, PLACE AND MANNER OF PRESENTING VIEWS:

A public hearing will be conducted at 1:30 P.M. on Tuesday, June 04, 2024, via web-conference. To participate in the upcoming web-conference public hearing please contact the Tax Policy and Governmental Affairs Division at Taxpolicy@revenue.alabama.gov or 334-242-1380 to obtain the appropriate sign-in information for a specific public hearing date. Copies of the rule(s) can be obtained at <http://www.revenue.alabama.gov/tax-policy/>.

All interested parties may present their views in writing to the Secretary of the Alabama Department of Revenue, Room 4131, Gordon Persons Building, 50 N Ripley Street, Montgomery, Alabama 36132 at any time following publication of the notice up until the conclusion of the hearing. Interested parties may also may present their views during the web-conference.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Tuesday, June 4, 2024

CONTACT PERSON AT AGENCY:

Meagan Barrett

Alabama Department of Revenue
4131 Gordon Persons Building
Montgomery, Alabama 36132
(334) 242-1380

Cameron Clark

Cameron Clark

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

~~810-6-1-.196~~ ~~Withdrawals From Inventory.~~

~~(1) Except as noted in paragraphs (2), (3) and (4) below, all withdrawals of tangible personal property from inventory are taxable under the withdrawal provisions of the sales tax statute unless the property has been previously withdrawn from the inventory and the sales tax has been paid because of the previous withdrawal or unless the property withdrawn enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale and not for the personal and private use or consumption of the person withdrawing same. (Ex parte Sizemore, 605 So. 2d 1221 (Ala. 1992)) (Sections 40-23-1(a)(6), 40-23-1(a)(8), 40-23-1(a)(10), and 40-23-60(5), Code of Ala. 1975).~~

~~(2) The transactions in (a) and (b) below shall not be deemed or considered to constitute a transaction subject to sales tax. Qualified charitable entities listed in 26 U.S.C. Sections 170(b) or (c) are defined in (c) below.~~

~~(a) Pursuant to Section 40-23-1(e), the withdrawal, use, or consumption of a manufactured product by the manufacturer thereof in quality control testing performed by employees or independent contractors of the manufacturer, nor a gift by the manufacturer of a manufactured product, withdrawn from the manufacturer's inventory, to an entity listed in 26 U.S.C. Sections 170(b) or (c).~~

~~(b) Pursuant to Section 40-23-23-1(f), effective July 1, 2006, a gift by a retailer of a product or products withdrawn from the retailer's inventory to a qualified charitable entity listed in 26 U.S.C. Sections 170(b) or (c), where the aggregate retail value of any single gift is equal to or less than \$10,000.00.~~

~~(c) Qualified charitable entities listed in 26 U.S.C. Sections 170(b) or (c) include, but are not limited to the following:~~

- ~~1. a church, or a convention or association of churches;~~
- ~~2. an educational organization which normally maintains a regular faculty, curriculum, and enrolled body of students;~~
- ~~3. a hospital or a medical research organization which provides medical or hospital care, medical education, or medical research as their primary purpose or function;~~
- ~~4. an organization which normally receives a substantial part of its support from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated for the benefit of a college or university referenced in 2. above;~~
- ~~5. a governmental unit that is a State or a possession of the United States and any political subdivision of any of the foregoing, the United States, or the District~~

~~of Columbia, which uses the gift exclusively for public purposes;~~

~~6. a corporation, trust, or community chest, fund, or foundation created or organized in the United States or in any possession thereof or under the laws thereof, and organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, and which normally receives a substantial part of its support from governmental units referenced in 5. above or from direct or indirect contributions from the general public;~~

~~7. a private foundation described in 26USC170(b)(1)(E); and~~

~~8. an organization described in 26USC509(a)(2).~~

~~(3) Sales of equipment, accessories, fixtures, and other similar tangible personal property used in connection with a sale of commercial mobile services as defined in Section 40-23-1(a)(6) or in connection with satellite television services, at a price below cost, are not taxable as a withdrawal. Instead, sales of this nature are retail sales and are taxable measured only by the seller's stated retail selling price. (Sections 40-23-1(a)(6) and 40-23-1(a)(10)).~~

~~(4) Refinery, residue, or fuel gas, whether in a liquid or gaseous state, that has been generated by, or is otherwise a by-product of, a petroleum-refining process, which gas is then utilized in the process to generate heat or is otherwise utilized in the distillation or refining of petroleum products is not taxable under the withdrawal provisions of the sales or use tax statutes. (Sections 40-23-1(a)(6), 40-23-1(A)(8), and 40-23-7=60(5)).~~

~~(5) The sales tax due on taxable withdrawals shall be computed and paid by the person, firm, or corporation withdrawing the property. The measure of the sales of tax due on taxable withdrawals is the price paid for the property by the person, firm, or corporation withdrawing same. Alabama sales tax becomes due at the time and place of the withdrawal of tangible personal property from inventory. Alabama sales tax is due on tangible personal property withdrawn from inventory in Alabama regardless of where the property so withdrawn is used or consumed.~~

~~(6) Withdrawals of building materials by a contractor who makes retail sales of building materials and who also withdraws building materials from the same stock of goods for use in fulfilling a contract for making additions, alterations, or improvements to realty are taxable to the person, firm, or corporation making the withdrawals. The measure of sales tax due on these withdrawals is the price paid for the building materials by the person, firm, or corporation withdrawing same.~~

~~Alabama sales tax becomes due on these of building materials at the time and place of the withdrawals. Alabama sales tax is due on building materials withdrawn from stock in Alabama for use in fulfilling contracts both inside and outside the State of Alabama.~~

~~**Author:** Donna Joyner~~

~~**Statutory Authority:** Code of Ala. 1975, §§40-2A-7(a)(5), 40-23-1(a)(6), 40-23-1(a)(8), 40-23-1(a)(10), 40-23-1(e), 40-23-31, 40-34-60(5), 40-23-83.~~

~~**History:** Filed January 15, 1993; April 15, 1993. **Amended:** Filed December 1, 1995; effective January 5, 1996. **Amended:** Filed November 18, 1999; effective December 23, 1999. **Amended:** Filed August 24, 2007; effective September 28, 2007.~~

(1) Taxable Transactions. Unless specifically exempted by law, withdrawals of tangible personal property from inventory are taxable under the withdrawal provisions of the sales tax statute.

(a) The sales tax due on taxable withdrawals are computed and paid by the person, firm, or corporation withdrawing the property.

(b) The measure of the sales tax due on taxable withdrawals is the price paid for the property by the person, firm, or corporation making the withdrawal.

(c) Alabama sales tax becomes due at the time and place that tangible personal property is withdrawn from inventory.

(d) Alabama sales tax is due on tangible personal property withdrawn from inventory in Alabama, regardless of where the withdrawn property is used or consumed.

(e) Withdrawals of building materials by a contractor who makes retail sales of building materials and who also withdraws building materials from the same stock of goods for use in fulfilling a contract for making additions, alterations, or improvements to realty are taxable to the person, firm, or corporation withdrawing the property. The measure of sales tax due on these withdrawals is the price paid for the building materials by the person, firm, or corporation making the withdrawals. Alabama sales tax becomes due on these building materials at the time and place of the withdrawals. Alabama sales tax is due on building materials withdrawn from stock in Alabama for use in fulfilling contracts both inside and outside of the state.

(2) Exemptions. The transactions in this paragraph shall not be deemed or considered to constitute a transaction subject to sales tax.

(a) The withdrawal, use, or consumption of a manufactured product by the manufacturer of such product in quality control testing performed by employees or independent contractors of the manufacturer.

(b) A gift by the manufacturer of a manufactured product, withdrawn from the manufacturer's inventory to an entity listed in 26 U.S.C. Section 170(b) or (c).

(c) A gift by a retailer of a product or products withdrawn from the retailer's inventory to a qualified charitable entity listed in 26 U.S.C. Section 170(b) or (c), where the aggregate retail value of any single gift is equal to or less than \$10,000.

(d) Refinery, residue, or fuel gas, whether in a liquid or gaseous state, that has been generated by, or is otherwise a by-product of, a petroleum-refining process, which gas is

then utilized in the process to generate heat or is otherwise utilized in the distillation or refining of petroleum products.

(e) The property has been previously withdrawn from the inventory and the sales tax has been paid because of the previous withdrawal.

(f) The property withdrawn enters into and becomes an ingredient or component part of tangible personal property.

(g) Products manufactured or compounded for sale and not for the personal and private use or consumption of the person making the withdrawal.

(3) Exceptions. Sales of equipment, accessories, fixtures, and other similar tangible personal property used in connection with a sale of commercial mobile services as defined in §40-23-1, Code of Ala. 1975, or in connection with satellite television services, at a price below cost, are not taxable as a withdrawal. Instead, sales of this nature are retail sales and are taxable measured only by the seller's stated retail selling price.

Author: Donna Joyner and Christy Vandevender

Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-23-1(a)(6), 40-23-1(a)(8), 40-23-1(a)(10), 40-23-1(e), 40-23-31, 40-34-60(5), 40-23-83. Ex Parte Sizemore, 605 So. 2d 1221 (Ala. 1992)

History: Filed January 15, 1993; April 15, 1993. **Amended:** Filed December 1, 1995; effective January 5, 1996. **Amended:** Filed November 18, 1999; effective December 23, 1999. **Amended:** Filed August 24, 2007; effective September 28, 2007. **Repealed**

and New Rule: Published _____; effective _____.