ALABAMA DEPARTMENT OF REVENUE
SALES, USE & BUSINESS TAX DIVISION
ADMINISTRATIVE CODE

CHAPTER 810-6-5
USE TAX LAW; CONTRACTORS GROSS RECEIPTS TAX; LODGINGS TAX; RENTAL TAX; UTILITY TAXES; MISCELLANEOUS RULES

810-6-5-.26 Utility Privilege Or License Tax.

(1) Unless otherwise defined herein, the definitions of terms set forth in Section 40-21-80, Code of Ala. 1975, are incorporated by reference herein.

(2) Section 40-21-82, Code of Ala. 1975, levies a privilege or license tax against every utility in the State of Alabama on account of the furnishing of utility services by said utilities.

(a) The amount of tax levied on the furnishing of electricity, domestic water, and natural gas services shall be determined by the application of rates against gross sales or gross receipts, as the case may be, and shall be computed monthly in accordance with the following table:

If monthly gross sales or gross receipts respecting a person are:	The tax is:
Not over $40,000	4% of such gross sales or gross receipts
Over $40,000 but not over $60,000	$1,600 plus 3% of excess over $40,000
Over $60,000	$2,200 plus 2% of excess over $60,000

(b) For periods prior to April 1, 2002, the amount of tax levied on the furnishing of telegraph and telephone services shall be determined by the application of rates against gross sales or gross receipts, as the case may be, and shall be computed monthly in accordance with the following table:

If monthly gross sales or gross receipts respecting a person are:	The tax is:
Not over $60,000	6.7% of such gross sales or gross receipts
Over $60,000	$4,020 plus 3.7% of excess over $60,000

1. Beginning with bills dated on or after April 1, 2002, Act #2001-1090 amended Section 40-21-82(b), Code of Ala. 1975, which provides that the amount of tax levied on the furnishing of telegraph and telephone services shall be

computed at the rate of 6% on all gross sales or gross receipts.

2. Act #2001-1090 further provides that on or after February 1, 2002, the utility furnishing such telegraph or telephone services shall be entitled to deduct and retain from the gross amount of tax billed by the utility 9/10 of 1% of the amount of such tax billed in consideration of the costs incurred by the utility in collecting and remitting the tax levied by Section 40-21-82(b), Code of Ala. 1975. However, on and following October 1, 2002, the amount deducted and retained by such utility shall be 1/4 of 1% of the gross amount of such tax billed.

(3) Telephone and Telegraph Services

(a) The gross sales or gross receipts from the furnishing of telegraph and telephone services are taxable pursuant to Section 40-21-82(b), Code of Ala. 1975.

(b) The term "telephone services" is defined in Section 40-21-80(a)(11), Code of Ala. 1975. and specifically includes the following which shall be included in the measure of the tax levied in Section 40-21-82(b), Code of Ala. 1975:

1. Local telephone service;

2. Intrastate toll telephone service;

3. Private communications service;

4. Teletypewriter, and computer exchange service;

5. Telephone services sold by motels and hotels to their customers or to others, telephone services sold by colleges and universities to their students or to others, and telephone services sold by hospitals to their patients or to others;

6. Beginning with bills dated on or after February 1, 2002, interstate telephone service which originates or terminates within this state but does not both originate and terminate in this state and is charged to a service address in this state. (Act #2001-1090)

(c) The term "telephone services" shall not include the following and as such shall not be included in the measure of the tax levied in Section 40-21-82(b), Code of Ala. 1975:

1. Telephone services provided through any pay telephone;

2. Any excise, franchise, or similar tax or like fee or assessment levied by the United States, by the state of Alabama, or by any political subdivision of the state of Alabama upon the purchase, sale, use, or consumption of any telephone services provided it is collected by the seller from the purchaser and is separately billed to the purchaser;

3. The furnishing of any telephone services for resale including access charges paid by an interexchange carrier. Any utility making a sale of telephone services for resale shall obtain from the purchaser a copy or record of the purchaser's utility tax license issued to the purchaser by the Department pursuant to Section 40-21-84, Code of Ala. 1975, or a copy of a utility tax certificate of exemption (Form STE-3) issued to the purchaser by the Department pursuant to Section 40-21-88, Code of Ala. 1975, and Rule 810-6-5-.26.05;

4. Charges for customer premises equipment, including such equipment that is leased or rented by the customer from any source;

5. Cable television service, paging services, specialized mobile radio, or mobile telecommunications service;

6. Services which are ancillary to the provision of telephone service but are not directly related to the transmission of voice, data, or information such as directory advertising and installation and repair of equipment and inside wiring;

7. Internet access charges;

8. Prior to February 1, 2002, charges made for telephone calls and telegraphic messages originating within this state to a point outside of this state, or originating outside of this state to a point within this state, provided the charges were clearly indicated on a statement given to the customer;

9. The use or consumption of telephone service by an incorporated municipality in providing a fire alarm system;

10. Telephone service or telegraph service used or consumed by a utility regularly engaged in furnishing such service to persons.

11. The furnishing of utility services through the use of a prepaid telephone calling card.

(d) Beginning with bills dated on or after May 5, 2004, charges for nontaxable services combined or bundled with and not separately stated from taxable charges for telephone or telegraph services are subject to taxation, unless the exempt charges can be reasonably identified in the books and records kept in the regular course of business by the utility provider.

(e) The provisions of subsection (d) do not create any right for the customer to require that either the utility or the department allocate or attribute the bundled charge to the different portions of the transaction in order to reduce or minimize the amount of tax charged to the customer.

(4) Domestic Water

(a) The gross sales or gross receipts from the furnishing of domestic water are taxable pursuant to Section 40-21-82(a), Code of Ala. 1975.

(b) "Domestic water" shall mean all water except water that is sold to persons for use or consumption in industrial processes and not primarily for human consumption. Water used in industrial processes shall mean water used by any person in the manufacturing, processing, compounding, mining or quarrying of tangible personal property for sale. Where water is used for both human consumption and industrial processing and more than 50 percent of the total water purchased is used in industrial processing, the gross receipts from the sale of the water would not be taxable. Where less than 50 percent is used for industrial processing and more than 50 percent is used for human consumption, the total gross receipts from the sale of water would be taxable.

(c) The use or consumption of domestic water by an incorporated municipality in extinguishing fires, explosions, or conflagrations is not taxable. (Section 40-21-83(8), Code of Ala. 1975)

(d) Water used or consumed by a water board created under Sections 11-50-310, et seq., Code of Ala. 1975, as amended, which is engaged in furnishing water to persons is not taxable.

(e) Water used or consumed by a municipal utility department or an independent municipal utility board which is engaged in furnishing water to persons is not taxable. Water furnished by a municipal utility department or an independent municipal utility board to other departments or agencies of the same municipality is taxable.

(f) Water used or consumed by private water systems engaged in furnishing water to persons is not taxable.

(g) The sale of water by a board (created under Sections 11-50-310, et seq., Code of Ala. 1975, as amended) to an incorporated municipality is taxable except water used in extinguishing fires, explosions, or conflagrations.

(h) Domestic water used or consumed by any person in or for the direct production, generation, processing, storage, delivery, or transmission of domestic water, electricity, and natural gas is not taxable. (Section 40-21-83(4), Code of Ala. 1975)

(5) Electricity and Natural Gas

(a) The gross sales or gross receipts from the furnishing of electricity and natural gas are taxable pursuant to Section 40-21-82(a), Code of Ala. 1975.

(b) The use or consumption of electricity by an incorporated municipality or a board or corporation organized under the authority of any incorporated municipality in furnishing or providing street lighting or traffic control systems is not taxable. (Section 40-21-83(8), Code of Ala. 1975)

(c) Electricity and natural gas used or consumed by any person in or for the direct production, generation, processing, storage, delivery, or transmission of electricity, natural gas, or domestic water are not taxable. (Section 40-21-83(4), Code of Ala. 1975)

(d) The furnishing of electricity to a manufacturer or compounder for use in an electrolytic or electrothermal manufacturing or compounding process, natural gas which becomes a component of tangible personal property manufactured or compounded (but not as fuel or energy), and natural gas used by a manufacturer or compounder to chemically convert raw materials prior to the use of such converted raw materials in an electrolytic or electrothermal manufacturing or compounding process are not taxable.

(e) Electricity and natural gas used or consumed by an electric board or gas board created under Sections 11-50-310, et seq., Code of Ala. 1975, as amended, which is engaged in furnishing such utility services to persons are not taxable.

(f) Electricity and natural gas used or consumed by a municipal utility department or an independent municipal utility board which is engaged in furnishing such utility services to persons are not taxable. Electricity and natural gas furnished by a municipal utility department or an independent municipal utility board to other departments or agencies of the same municipality are taxable.

(g) Electricity and natural gas used or consumed by private utilities engaged in furnishing such utility services to persons are not taxable.

(h) The sale of electricity by a board created under Sections 11-50-310, et seq., Code of Ala. 1975, as amended, to an incorporated municipality is taxable except electricity used in furnishing or providing street lighting or traffic control systems.

(i) The sale of natural gas by a board created under Sections 11-50-310, et seq., Code of Ala. 1975 to an incorporated municipality is taxable.

(j) "Electrolysis" is the passage of an electric current through a conducting solution or molten salt (either is a type of electrolyte) which then dissociates. Various substances are prepared commercially by electrolysis; for example, chlorine (from salt), hydrogen (from water), and aluminum (from alumina). An "electrolyte" chemically, is a conductor in which the electric current is a movement of ions. Electrolysis is also used in the medical profession. "Electrothermal" means heat produced by electricity. Electric furnaces are used for making large quantities of high grade steel; they are especially used in making high grade alloy steels.

(k) A person, firm, or corporation that transports natural gas purchased by their customer from a third party is not liable for utility tax on their gross receipts from furnishing such transportation services.

1. Electricity or natural gas used or consumed as fuel or energy in commercial aquaculture aeration systems, commercial greenhouses, pivot irrigation systems, and poultry houses is not taxable.

2. The exclusion provided in (l)1 shall not include the furnishing of natural gas or electricity for use or consumption as fuel or energy in the production of industrial hemp or hemp, as defined in Section 2-8-381, Code of Ala. 1975, or cannabis, as defined in Section 20-2A-3, Code of Ala. 1975.

(6) Alabama Economic Incentive Enhancement Act of 2007

(a) An entity locating in Alabama subsequent to December 31, 2006 and qualifying for the tax abatements created by Act # 2007-199 under new Chapter 9D of Title 40 of Code of Ala. 1975 known as the “Alabama Economic Incentive Enhancement Act of 2007”, shall be allowed an exclusion for a period of ten years from the utility tax levied in Section 40-21-82(a), Code of Ala. 1975, on purchases of electricity, natural gas, and domestic water. Entities qualifying for this exemption shall

obtain a State Utility Tax Certificate of Exemption (Form STE-3) by applying for the certificate on forms provided by the Department. (See Rule 810-6-5-.26.05 entitled Utility Gross Receipts Tax or Mobile Communication Services Tax Certificate of Exemption (Form STE-3) - Responsibilities of the Certificate Holder - Burden of Proof - Liability for Taxes Later Determined to be Due.)

(b) Pursuant to Section 40-9B-3(a)(8), Code of Ala. 1975, the beginning date of the ten year period exclusion shall commence from:

1. The date of initial issuance by a county, city, or public authority of bonds to finance any costs of the property, or

2. If no bonds are ever issued, the later of:

i. The date on which title to such property was acquired by or vested in such county, city, or public authority, or

ii. The date on which such property is or becomes owned, for federal income tax purposes, by the qualifying entity

3. Or, the date the property (facility) is placed in service.

(c) The existing utility tax exemption specified in paragraph (4)(b) of this Rule on total purchases of water where more than 50 percent of the water is used in industrial processing does not limit the exemption to a specified number of years. An entity qualifying under Chapter 9D of Title 40 may qualify for this existing exemption.

(d) The exclusion from utility tax provided in paragraph (6)(a) of this rule and the provisions thereof shall apply equally to the Utility Service Use Tax levied on electricity, natural gas, and domestic water.

(7) Consolidation by a Single Entity of Multiple Monthly Bills from Any One Utility Service Provider of Electricity, Domestic Water, or Natural Gas Services

(a) The taxes levied in Sections 40-21-82 and 40-21-102, Code of Ala. 1975, are structured such that, when a person who is furnished electricity, domestic water, or natural gas services is receiving more than one bill from any one utility for such services, respective of a month, and the aggregate of the purchase price of utility services furnished by the utility exceeds forty thousand dollars ($40,000) for the month, the

tax calculated on the separate billings may exceed the tax due.

1. When a person purchasing utility services and receiving more than one bill each month from any one utility for such services has paid to the utility more tax on the billings than is due on the aggregate of the purchase price of utility services furnished for the month by the utility, the person may apply for a refund of the overpayment in accordance with the procedures outlined in Section 40-2A-7, Code of Ala. 1975.

2. When a person purchasing utility services and receiving more than one bill each month from any one utility for such services desires to pay the utility privilege license tax computed upon the aggregate of the purchase price of utility services furnished for the month by the utility, the person may apply for a permit from the Department of Revenue, purchase the utility services without the payment of the tax to the utility, and remit the tax directly to the Department in accordance with the procedures outlined in Rule 810-6-5-.26.02. Utility Tax Direct Pay Permit.

(b) For the purposes of the taxing statutes in Title 40, Code of Ala. 1975, a single member limited liability company is classified in the same manner as it is for federal income tax purposes. Unless the single member limited liability company has made the election to be treated as a corporation under the Internal Revenue Service's "check-the-box" regulations, it is disregarded as an entity separate from its owner. A person who is the single member of one or more limited liability companies that are classified as disregarded entities may consolidate the purchases of utility services made by the companies from any one utility with the purchases made by the person from that utility, respective of a month, and compute the utility tax on the aggregate as though the purchases made by the limited liability companies were made directly by the single member, as outlined in paragraph (a)2. Prior to consolidation, documentation must be provided to the Department to clearly establish ownership of each limited liability company and its status for federal income tax purposes. (Section 10-12-8(b), Code of Ala. 1975.)

(8) General Provisions

(a) Where a discount is deductible from the gross charge for a utility service if payment is made within a prescribed period, the tax applies to the amount actually paid.

(b) Receipts from (i) standard collection charges, which are flat-amount administrative fees charged to cover the cost of sending a customer a delinquent billing letter; (ii) reconnect

fees, which are fees charged for reconnecting a utility service after someone has moved from one location to another or after service has been disconnected because of nonpayment for services; (iii) collection fees, which are fees charged when a utility must send a collector to a utility customer to attempt to collect payment on a utility service billing prior to disconnecting service; and (iv) charges or fees added for failure to timely pay utility bills, whether the charge or fee is a flat amount or is based upon a percentage of the bill which was not timely paid, do not constitute gross sales or gross receipts from furnishing utility services and, therefore, are not taxable. (State of Alabama v. Muscle Shoals Electric Board (Admin. Law Div. Docket No. S. 93-286, decided November 4, 1993) and State Department of Revenue v. Mobile Gas 621 So.2d 1333 (Ala. Civ. App. 1993))

(c) Any person engaged or continuing in the business of furnishing taxable and nontaxable utility services to a customer shall pay the tax required on the taxable services furnished when his or her books are kept so as to show separately the taxable utility services furnished and the nontaxable utility services furnished. When the books are not so kept, the person furnishing the utility services shall pay tax on the total gross receipts of all utility services furnished. This would require separate meters for taxable and nontaxable services furnished; estimates will not be acceptable. (Shellcast Corp. v. White, 477 So.2d 422 (Ala. 1985))

(d) In case a customer of a utility claims an exemption, the applicability of which there is some doubt, either the utility or the customer may request from the Department a determination of the validity of the claim for the exemption.

(e) The tax levied in Section 40-21-82, Code of Ala. 1975, shall apply to all utility services furnished for use by the State of Alabama, the counties within the State of Alabama, and any other person or entity previously exempt from all taxation. The tax levied under this section shall apply to utility services furnished for use by incorporated municipalities of the State of Alabama except the exemptions noted in previous paragraphs. The tax levied under this section shall not apply to utility services furnished to the Federal Government and its agencies. Utility services furnished to national banks are taxable.

(f) Any person regularly engaging in any business for which a privilege tax is imposed by Section 40-21-82, Code of Ala. 1975, shall apply for and obtain from the Department a license to engage in and to conduct such business on forms furnished by the Department. The application for a utility tax license shall require the following information:

1. Applicant's Federal Employer Identification Number,

2. Applicant's legal name, trade name, and complete mailing address,

3. Number of businesses in Alabama and exact location of each (exact location shall include city, county, and street address; if location is on highway or rural route, exact location shall include details sufficient to allow Department personnel to find the place of business),

4. Indication of the kind and class of business (i.e. domestic water, natural gas, electricity, telephone services, and/or telegraph services,

5. Indication of the legal form of ownership (sole proprietorship, partnership, corporation, multi-member limited liability company, single-member limited liability company, limited liability partnership, etc.),

6. If the applicant is a corporation, a copy of the certified certificate of incorporation, amended certificate of incorporation, certificate of authority, or articles of incorporation; if the applicant is a limited liability company or a limited liability partnership, a copy of the certified articles of organization,

7. Name, title, home address, and social security number of the sole proprietor, each partner, each corporate officer, or each member (for a partner or member that is a corporation or limited liability entity, the federal employer identification number shall be requested in lieu of a social security number)

8. Name of former owner of business, if any, 9. Beginning date of business,

10. Business and home phone numbers, and

11. Signature and title of the sole proprietor, each partner, an elected corporate officer, or a member and the date of the signature.

(g) The taxes levied under Sections 40-21-82 and 40-21-102, Code of Ala. 1975, shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax accrues. Every person, firm, or corporation on whom these taxes are levied shall prepare and forward to the Department within the time fixed and prescribed by law a return for each calendar month using forms prepared and furnished by the Department, and shall pay to the Department the amount of tax shown to be due. See Rule

810-1-6-.12 entitled Taxes Required to be Filed Electronically. Each taxpayer shall file only one return for all units of businesses operated within the state. Any taxpayer liable for utility tax whose average monthly tax liability was $10,000 or greater during the preceding calendar year shall make estimated payments to the Department on or before the twentieth day of the month in which the liability occurred. Such estimated payments must be at least equal to the taxpayer's actual tax liability for the same calendar month of the preceding year. (Section 40-21-85, Code of Ala. 1975) Beginning with the October 2011 return due November 20, 2011, the term "actual tax liability" as used herein shall not include the estimated amounts reported on the return from the previous year.

1. Utility Privilege License Tax returns shall require the following information:

(i) Taxpayer's utility privilege license tax account number, legal name, and complete address,

(ii) Period covered by the return and due date of the return,

(iii) Estimated tax due for the current month, if applicable, must be at least equal to line 7 (Total Utility Tax Due) of the return for the same calendar month of the previous year,

(iv) A breakdown, by utility service type, of total receipts, exempt receipts, and taxable receipts from furnishing utility services,

(v) A breakdown, by applicable tax rate, of the number of persons from whom taxable receipts were received, the amount of such receipts, and the tax due thereon,

(vi) Total tax due,

(vii) Estimated tax paid on previous month's return, if applicable,

(viii) Tax due after deducting credit for previous month's estimate,

(ix) Grand total tax due (total tax due plus current month's estimate, if applicable),

(x) Penalties and interest due, if applicable,

(xi) Credits claimed, if any,

(xii) Total amount remitted,

(xiii) An indication if payment of tax is made through electronic funds transfer (EFT), and

(xiv) Taxpayer's signature, title, and date signed. Pursuant to department Rule 810-1-6-.01 entitled Signature Requirements of Tax Returns and Other Documents of All Types Filed by Electronic Methods, the taxpayer’s signature and date requirements are met upon the submission of an electronic return filed in accordance with Rule 810-1-6-.12 entitled Taxes Required to be Filed Electronically.

2. Utility Excise Tax returns shall require the following information:

(i) Taxpayer's utility excise tax account number, legal name, and complete address,

(ii) Period covered by the return and due date of the return,

(iii) Estimated tax due for the current month, if applicable, must be at least equal to line 5 (Total Tax Due) of the return for the same calendar month of the previous year,

(iv) A breakdown, by vendor, of taxable purchases and the tax due thereon,

(v) Total tax due on all taxable purchases,

(vi) Estimated tax paid on previous month's return, if applicable,

(vii) Total tax due after deducting credit for previous month's estimate,

(viii) Grand total tax due (total tax due plus current month's estimate, if applicable),

(ix) Penalties and interest due, if applicable, (x) Credits claimed, if any,

(xi) Total amount remitted,

(xii) An indication if payment of tax is made through electronic funds transfer (EFT), and

(xiii) Taxpayer's signature, title, and date signed. Pursuant to department Rule 810-1-6-.01 entitled Signature Requirements of Tax Returns and Other

Documents of All Types Filed by Electronic Methods, the taxpayer's signature and date requirements are met upon the submission of an electronic return filed in accordance with Rule 810-1-6-.12 entitled Taxes Required to be Filed Electronically.

(h) Every person engaged in the business of furnishing utility services shall add the tax levied in Section 40-21-82, Code of Ala. 1975, to the gross receipts from furnishing such services and include the tax as a part of the total price billed to the purchaser of the services. (Section 40-21-86, Code of Ala. 1975)

(i) A utility service provider is not required to collect utility tax from a purchaser who claims an exemption from the tax and, as documentation of the exemption claim, furnishes the utility service provider a properly executed utility tax certificate of exemption (Form STE-3) issued by the Department pursuant to Rule 810-6-5-.26.05. The utility service provider who relies in good faith on the Form STE-3 and reasonably believes the tax exemption claim is legal shall not be held liable for utility tax later determined by the Department to be due on the sale for which the certificate was received. Instead, the Department will collect or recover the utility tax due from the party or parties who made the illegal tax-free purchase with the Form STE-3 and the person or persons who benefited from the illegal use of the Form STE-3. (Section 40-21-88, Code of Ala. 1975).

(j) The utility gross receipts tax shall be administered and the tax shall be collected in accordance with the uniform procedures set forth in Title 40 along with the procedures outlined in Sections 40-23-8 through 40-23-12, 40-23-25, and 40-23-27 through 40-23-31, Code of Ala. 1975, as amended, together with the applicable definitions contained in Section 40-23-1, Code of Ala. 1975, as amended. No discount is allowed for prompt payment of the utility gross receipts tax. However, Act #2001-1090 amended Section 40-21-82(b), Code of Ala. 1975, which provides that a utility furnishing telephone and telegraph services is entitled to a collection allowance effective February 1, 2002 as stipulated in paragraph (2)(b) of this rule. (Section 40-21-85, Code of Ala. 1975)

(k) Insofar as applicable, the provisions of this rule shall apply equally to the tax levied in Section 40-21-102, Code of Ala. 1975. In the event that a seller making sales of utility services for storage, use, or other consumption in this state, not exempted under the provisions of Section 40-21-103, Code of Ala. 1975, is exempted from collection of the tax herein levied by any provisions of the Constitution or laws of the United States of America, then the purchaser of the utility services shall pay the tax directly to the Department each month pursuant to this rule.

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