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-.26.05 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.

(1) Unless otherwise defined herein, the definitions of terms contained in Sections 40-2A-3(13), 40-21-80, 40-21-120, 40-21-125, and 40-21-126, Code of Ala. 1975, are incorporated by reference herein.

(2) The terms "utility gross receipts tax" and "utility tax" as used in this rule shall mean the tax levied in Section 40-21-82.

(3) The term "mobile communication services tax" as used in this rule shall mean the tax applicable to mobile telecommunications service and mobile radio communication services as defined in Sections 40-21-120(1)(a) and 40-21-125, respectively, and levied in Section 40-21-121.

(4) Persons (i) who are not required to have a utility tax license pursuant to Section 40-21-84, Code of Ala. 1975, and who are entitled to make tax-exempt purchases of utility services without payment of utility tax to the provider or (ii) persons who are not required to have a mobile communications services tax license pursuant to Section 40-21-124, Code of Ala. 1975, and who are entitled to make tax-exempt purchases of mobile communication services without payment of mobile communication services tax to the provider may obtain a utility gross receipts tax or mobile communication services tax certificate of exemption (Form STE-3) by applying for the certificate on forms provided by the Department. Upon receipt and approval of a properly completed application, the Department will issue the qualified applicant a Form STE-3 which the certificate holder may copy, complete, and provide to its vendors as documentation for the tax-exempt status of the certificate holder's qualifying purchases of utility services or mobile communication services. The Form STE-3 shall be used only by the person to whom it is issued.

(5) The application referenced in paragraph (4) shall require the following information:

(a) Applicant's Federal Employer Identification Number,

(b) Applicant’s business telephone number,

(c) Applicant's legal name, trade name, and complete mailing address,

(d) Business address(es) in Alabama (including city, county, and street address or, if a location is on a highway or rural route, including details sufficient to allow Department personnel to find the place of business),

(e) Indication of the nature of the applicant’s business (i.e., wholesaler, reseller, broker, etc.)

(f) The kind of services (electricity, domestic water, natural gas, telegraph, telephone, or mobile communications) to be purchased tax exempt with the exemption certificate,

(g) Reason or reasons the exemption is claimed,

(h) 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.),

(i) 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,

(j) 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), and

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

(6) The Department, upon approving an application for a Form STE-3, will provide the applicant with a Form STE-3 containing the following information:

(a) Certificate holder’s exemption number,

(b) The type of services (electricity, domestic water, natural gas, telegraph, telephone, or mobile communications) to which the certificate of exemption applies,

(c) The reason for the certificate holder's exemption and the restrictions, if any, to the certificate holder's exemption,

(d) Nature of the certificate holder's business,

(e) Statement of the duties and responsibilities of the vendor to whom a certificate is provided by the certificate holder,

(f) Statement, to be declared by the certificate holder under penalties of false swearing, as to the validity of the exemption claim,

(g) Certificate holder's name and address,

(h) Date of approval or issuance by the Department, and

(i) Signature of approval by the Department.

(7) At the time of providing a copy of a Form STE-3 to a provider from whom a tax-exempt purchase of utility services or mobile communication services is being made, the following information shall be provided by the certificate holder on the certificate copy which the certificate holder gives to the provider:

(a) Name and address of the vendor to whom the certificate copy is provided,

(b) Date the certificate is provided, and

(c) Certificate holder's signature and title.

(8) A certificate holder regularly making tax-exempt purchases of the kind and nature for which the Form STE-3 has been issued may furnish a properly executed certificate to the provider specifying that all utility services or mobile communication services subsequently purchased will be for the purpose shown on the certificate and thus be relieved of the burden of executing a separate certificate for each individual tax-exempt purchase as long as the services purchased qualify for exemption.

(9) The certificate holder shall maintain a list of all utility or mobile communication services providers to whom a copy of the exemption certificate is furnished. This list shall be retained in the certificate holder's records available for inspection by the Department during regular business hours and shall provide the name, address, and type of business of each utility or mobile communication services provider to whom a copy of the certificate has been furnished.

(10) The certificate holder shall return the certificate to the Department if the business for which the certificate was issued is closed or the nature of certificate holder's business changes in a manner that no longer qualifies its purchases for exemption.

(11) The certificate holder shall notify the Department immediately in writing of any change in name or mailing address.

(12) The burden of proof that a sale of utility services or mobile communication services is exempt is upon the person providing the services unless the provider of the services takes from the certificate holder a properly executed Form STE-3. Any sale of utility services or mobile communication services for which an exemption has been claimed but which is not supported by a Form STE-3 shall be deemed a taxable sale by the Department and the utility or mobile communication services provider held liable for the tax thereon unless the provider can document the exemption claim. A provider who provides utility services or mobile communication services tax-exempt based upon the presentment of a Form STE-3 by the purchaser shall reference the exemption number shown on the Form STE-3 upon the invoice or billing to the certificate holder.

(13) Any person providing utility services or mobile communication services tax-exempt who relies in good faith on a Form STE-3 and reasonably believes the tax exemption claim is legal shall not be held liable for utility tax or mobile communication services tax subsequently determined by the Department to be due on the sale for which the certificate was received. Instead, the Department will collect or recover the 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. (Sections 40-21-88 and 40-21-125)

(14) Other than a utility tax direct pay permit issued pursuant to Utility Tax Rule 810-6-5-.26.02, Form STE-3 is the only exemption certificate or exemption number which relieves the utility provider, when acting in good faith and exercising reasonable care, of liability for any utility tax later determined by the Department to be due on a sale for which an exemption was originally claimed by the purchaser. (Sections 40-21-88 and 40-21-125)

(15) Form STE-3 is the only exemption certificate or exemption number which relieves the mobile communication services provider, when acting in good faith and exercising reasonable care, of liability for any mobile communication services tax later determined by the Department to be due on a sale for which an exemption was originally claimed by the purchaser. (Sections 40-21-88 and 40-21-125)

(16) The Department may use its powers and responsibilities, in accordance with the general laws of this state, to collect or recover any utility taxes or mobile communication services taxes due on purchases made illegally with any Form STE-3 from the party or parties using the Form STE-3 and the person or persons who benefited from the illegal use of the Form STE-3, if the utility provider or mobile communication services provider acted in good

faith and reasonably believed the tax exemption claim was legal. Powers which may be used by the Department shall include the authority granted under Chapter 2A of Title 40, Code of Ala. 1975, to examine the certificate holder's records; assess tax, penalties, and interest against the certificate holder; and file tax liens against the certificate holder. (Sections 40-21-88 and 40-21-125)

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Statutory Authority: Code of Ala. 1975, §§40-2A-7(a)(5), 40-2A-3(13), 40-21-80, 40-21-82, 40-21-84, 40-21-85, 40-21-88, 40-21-120, 40-21-121, 40-21-123, 40-21-124, 40-21-125, 40-21-126, 40-23-31;, Act 2001-1090.
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