

1 SB295
2 205501-1
3 By Senators Givhan, Gudger and Livingston
4 RFD: Finance and Taxation Education
5 First Read: 10-MAR-20

SYNOPSIS: Under current law, airport authorities are exempt from certain taxes.

Also under current law, certain governmental entities that are otherwise sales and use tax exempt may be issued certificates of exemption from sales and use taxes on certain projects. A sales and use tax exemption certificate may be issued to certain contractors and subcontractors working on these projects.

Also under current law, certain governmental entities that are otherwise exempt from sales, use, or lodgings tax are required to annually obtain a certificate of exemption.

This bill would exempt airport authorities from paying sales and use taxes.

Also, this bill would include airport authorities in the list of governmental entities that may be issued a certificate of exemption from sales and use taxes on certain projects and in the

1 list of governmental entities that shall obtain an
2 annual certificate of exemption.

3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 To amend Sections 40-9-14.1 and 40-9-60, Code of
9 Alabama 1975, relating to the tax exemption of airport
10 authorities and certificates of exemption to governmental
11 entities, contractors, etc. for certain tax exempt projects;
12 to exempt airport authorities from sales and use taxes; to
13 include airport authorities among those tax exempt entities
14 that may receive tax exemption certificates for certain
15 projects; and to include airport authorities among those that
16 shall obtain an annual certificate of exemption.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Notwithstanding any other provision of
19 law, beginning January 1, 2020, all airport authorities
20 established pursuant to Chapter 3 of Title 4 of the Code of
21 Alabama 1975, or by local law and contracts entered into by
22 airport authorities on or after January 1, 2020, are exempted
23 from paying any state, county, and municipal sales and use
24 tax.

25 Section 2. Sections 40-9-14.1 and 40-9-60, Code of
26 Alabama 1975, are amended to read as follows:

27 "§40-9-14.1.

1 "(a) For the purposes of this section, the term
2 governmental entity means the State of Alabama and its
3 political subdivisions, including a county, a municipality, an
4 industrial or economic development board or authority, airport
5 authority, and any public water or sewer authority, district,
6 system, or board that otherwise is sales and use tax exempt. A
7 governmental entity shall also include an educational
8 institution of any of the foregoing Alabama political
9 subdivisions including a public college or university, a
10 county or city board of education, and the State Board of
11 Education.

12 "(b) (1) The Department of Revenue shall issue a
13 certificate of exemption to the governmental entity for each
14 tax exempt project.

15 "(2) The Department of Revenue shall grant a
16 certificate of exemption from state and local sales and use
17 taxes to any contractor licensed by the State Licensing Board
18 for General Contractors, or any subcontractor working under
19 the same contract, for the purchase of building materials,
20 construction materials and supplies, and other tangible
21 personal property that becomes part of the structure that is
22 the subject of a written contract for the construction of a
23 building or other project, not to include any contract for the
24 construction of any highway, road, or bridge, for and on
25 behalf of a governmental entity which is exempt from the
26 payment of sales and use taxes.

1 "(c) The use of a certificate of exemption for the
2 purchase of tangible personal property pursuant to this
3 section shall include only tangible personal property that
4 becomes part of the structure that is the subject of the
5 construction contract. Any contractor or subcontractor
6 purchasing any tangible personal property pursuant to a
7 certificate of exemption shall maintain an accurate cost
8 accounting of the purchase and use of the property in the
9 construction of the project.

10 "(d) A contractor who has an exemption from sales
11 and use tax for the purchase of materials to use on a
12 government project shall file, in a manner as prescribed by
13 the department, reports of all exempt purchases. The reports
14 shall be filed as a prerequisite to renewal of a certificate
15 of exemption.

16 "(e) (1) The department may assess any contractor or
17 subcontractor with state and local sales or use taxes on any
18 item purchased with a certificate of exemption not properly
19 accounted for and reported as required.

20 "(2) Any contractor or subcontractor who
21 intentionally uses a certificate of exemption in violation of
22 this section shall, in addition to the actual sales or use tax
23 liability due, be subject to a civil penalty levied by the
24 department in the amount of not less than a minimum of two
25 thousand dollars (\$2,000) or two times any state and local
26 sales or use tax due for the property and, based on the
27 contractor's or subcontractor's willful misuse of the

1 certificate of exemption, may be barred from the use of any
2 certificate of exemption on any project for up to two years.

3 "(f) The department may adopt rules to implement
4 this section in order to effectuate the purposes of this
5 section and to provide for accurate accounting and enforcement
6 of this section.

7 "(g) In bidding the work on a tax exempt project,
8 the bid form shall provide for an accounting for the tax
9 savings.

10 "(h) The intent of this section is to lower the
11 administrative cost for the governmental entity, contractor,
12 and subcontractor for public works projects. It is not the
13 intent of this section to change the basis for determining
14 professional services from fair market value, which may
15 include sales and use taxes.

16 "(i) This section shall be operative for contracts
17 entered into with governmental entities as defined in
18 subsection (a), not including public water or sewer
19 authorities, districts, systems, or boards that otherwise are
20 sales and use tax exempt, on January 1, 2014, or thereafter,
21 and shall not apply to any contract entered into prior to
22 January 1, 2014. This section shall be operative for contracts
23 entered into with public water or sewer authorities,
24 districts, systems, or boards that otherwise are sales and use
25 tax exempt on January 1, 2019, and thereafter, and shall not
26 apply to any contract entered into with such entities prior to
27 January 1, 2019. In addition, this section shall not apply to

1 any contract change orders or contract extensions, including
2 revised, renegotiated, or altered contracts, when the original
3 contract was entered into prior to January 1, 2014, with a
4 governmental entity. Nor shall this section apply to any
5 contract change orders or contract extensions, including
6 revised, renegotiated, or altered contracts with any public
7 water or sewer authority, district, system, or board that
8 otherwise is sales and use tax exempt, when the original
9 contract was entered into prior to January 1, 2019. The
10 Department of Revenue may adopt rules to implement this
11 section.

12 "§40-9-60.

13 "(a) All persons or companies, including, but not
14 limited to, those cited in this chapter, other than
15 governmental entities, which have statutory exemption from the
16 payment of Alabama sales and use taxes levied in, including,
17 but not limited to, Chapter 23 of this title, or lodgings
18 taxes levied in Chapter 26 of this title, regardless of the
19 type of transaction or whether the tangible personal property
20 is subject to sales and use tax or whether the accommodations
21 are subject to lodgings tax, shall be required to annually
22 obtain a certificate of exemption from the Department of
23 Revenue. This requirement does not supersede or replace the
24 provisions of Section 40-9-14.1 or any other provision of
25 statute requiring an entity to obtain a certificate of
26 exemption.

1 "This article only applies to entities that have
2 been granted a general exemption from sales, use, or lodging
3 taxes. The requirements of this article are not triggered by
4 the purchase of tangible personal property that is exempt from
5 sales and use tax.

6 "(1) For purposes of this article, the term
7 governmental entity means the Federal Government, the State of
8 Alabama, Alabama public schools, Alabama public universities,
9 healthcare authorities, airport authorities, Alabama counties
10 and municipalities, and public corporations incorporated under
11 any of the provisions of Chapter 50 of Title 11, Chapter 50A
12 of Title 11, Chapter 5 of Title 37, or Chapter 7 of Title 39.

13 "(2) The term governmental entity does not include
14 public corporations, other than those public corporations
15 described in subdivision (1), private schools, or private
16 universities.

17 "(3) For purposes of this article, the term lodgings
18 tax means Transient Occupancy Tax, levied in Chapter 26 of
19 this title.

20 "(4) For the purposes of this article, the terms
21 person or company shall have the same meaning as prescribed in
22 Section 40-23-1.

23 "(b) Certificates of exemption shall be valid for
24 one year from the date of issuance and shall be renewed
25 annually each subsequent year. Any person or company that
26 fails to obtain or renew a certificate of exemption prior to
27 its expiration may not make tax exempt purchases or rent tax

1 exempt accommodations after the expiration. The Department of
2 Revenue may assess any person or company with state and local
3 sales, use, and lodgings tax for any transaction conducted
4 with a certificate of exemption not properly accounted for and
5 reported as required in Section 40-9-61. Any reports required
6 by the Department of Revenue shall be filed as a prerequisite
7 to the renewal of a certificate of exemption.

8 "(c) Any person or company that intentionally uses a
9 certificate of exemption in violation of its intended purpose,
10 in addition to the actual sales, use, and lodgings tax
11 liability due, shall be subject to a civil penalty levied by
12 the Department of Revenue in an amount of not less than
13 two-thousand dollars (\$2,000) or two times any state and local
14 sales, use, and lodgings tax due for the transactions,
15 whichever is greater, and based on the person or company's
16 willful misuse of the certificate of exemption, may be barred
17 from the use of any certificate of exemption for up to two
18 years.

19 "(d) This section shall be operative for all
20 applicable exempt persons or companies on January 1, 2016.

21 "(e) The Department of Revenue may adopt rules to
22 administer and implement this section and may adopt rules
23 requiring an annual exemption certificate for persons or
24 companies not subject to subsection (a), other than government
25 entities, providing for an annual information report from such
26 persons or companies, and imposing penalties equivalent to the
27 penalties provided for in subsection (c) for noncompliance by

1 such persons or companies in order to verify exemptions and
2 make reports to the Legislature."

3 Section 3. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.