



## State and Local Tax Bulletin

Alabama Edition



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### Department of Revenue Issues FAQs on New Contractor Fee

By Bruce P. Ely and Joel E. Brown

Late last week, the Alabama Department of Revenue (ADOR) posted on its website answers to a series of “frequently asked questions” regarding the new contractor fee that became effective July 1, 2009. As readers may recall, this fee was a result of Act No. 2009-561, the purpose of which is to fund a state program designed to recruit and train skilled construction workers in Alabama. Although our firm was not involved in drafting the legislation, several of our clients and CPA firms have requested guidance from us, and we in turn have posed questions to the ADOR employees charged with interpreting the new act. The staffers have been very cooperative, although as may be expected with any new tax legislation, there are a few interpretive issues on which we may disagree.

The helpful set of FAQs, posted at [www.revenue.alabama.gov/incometax/constructionfee.htm](http://www.revenue.alabama.gov/incometax/constructionfee.htm), discusses the quarterly due date of the fee, how it is calculated, on whom it is levied, and the taxable wage base. The FAQs clarify that the fee is levied on prime contractors and sub-contractors, not their employees, performing construction or supervisory work in the state. It is not intended to be a withholding tax. The fee is due on the last day of the month following each calendar quarter. For example, the first payment will be due October 31, 2009 for the quarter ending September 30, 2009. The payment must be e-filed; there is no other option.

One of the key FAQs confirms that the fee is calculated by taking the total gross wages (before deductions) paid to covered employees by covered employers during a calendar quarter and multiplying those wages by a fee rate of .0009. That equates to a fee of \$90 per \$100,000 of covered wages.

A related FAQ is devoted to the definition of taxable wages. It confirms that “wages paid for labor or service performed by clerical, management, owners, or supervisory employees above the working foreman level” are excluded from the tax base, as well as all payments to independent contractors. The FAQ reiterates, however, that taxable wages include not only hourly wages but salary and other fixed amounts paid to individuals who are “payroll employees,” whether or not they are full time--provided they are working at a job site in Alabama.

Another FAQ confirms that the contractor fee does not apply to all contractors. For example, home builders and their subcontractors who are working on single-family residential projects in Alabama are excluded, as are unlicensed contractors and those licensed contractors who derive 5% or less of their primary business from construction services described in either NAICS Codes 237 (“Heavy and Civil Engineering Construction”) or 238 (“Specialty Trade Contractors”). Although NAICS Code 236 was not included in the act (even though that is the more general description of the building trade), the ADOR believes that the reference to Codes 237 and 238 will capture nearly all commercial construction projects in the State.

Another helpful FAQ confirms that payments to staffing agencies for leased employees, as well as to individuals operating as true independent contractors, are not covered by the act. On a related note, wages paid to an employee who works on projects both in Alabama and outside Alabama must be allocated between the respective projects.

One FAQ confirms that federal and state government contractors are not exempt from the fee so long as the other criteria are met.

Finally, a FAQ addresses one of several questions our firm posed to the ADOR, involving the \$50,000 threshold included in the act. ADOR personnel believe that the \$50,000 threshold was simply included as part of the definition of the term “licensed contractor” and is not an additional requirement (either on an annual basis or per job basis) for a contractor to be subject to this fee.

The ADOR staff expects to issue proposed regulations interpreting the new act, probably within the next 30 days. If you have any questions regarding the application of this new fee, please contact Bruce Ely

([bely@babarc.com](mailto:bely@babarc.com); 205.521.8366), Joel Brown ([jbrown@babarc.com](mailto:jbrown@babarc.com); 205.521.8416), or Chris Grissom ([cgrissom@babarc.com](mailto:cgrissom@babarc.com); 205.521.8514).

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## ADOR Issues Suggested Form for Appointing Purchasing Agents on Tax-Exempt Construction Projects

By Bruce P. Ely and Axel Bolvig III

In other administrative news involving construction contractors, the ADOR publicly released a draft form on August 3, designed to streamline the purchasing agent procedure for contractors and their subcontractors working on most tax-exempt projects in Alabama. The draft form, Form ST-PAA1, is available on the ADOR's website or from Bruce Ely, Axel Bolvig ([abolvig@babarc.com](mailto:abolvig@babarc.com); 205.521.8337), or Joel Brown. The public comment period expires on September 9, and includes a formal administrative hearing in Montgomery that morning at which interested parties may participate. Our firm has been engaged by several of our general contractor clients to review the draft form and file official comments. The proposed amendment to Regulation 810-6-3-.69.02 states that the form is merely optional, not mandatory, but previous experience leads some of us to conclude that the form will, for all practical purposes, likely become the standard that ADOR and local government examiners will use when auditing government contractors and these projects.

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