



Alabama Chapter

November 6, 2013

Mr. Michael D. Gamble
Secretary
Alabama Department of Revenue
Room 4131, Gordon Persons Building
50 North Ripley Street
Montgomery, AL 36132

Re: Comments of ABC of Alabama on Certain Proposed Rules Relating to the Government Contractor Exemption

Dear Mr. Secretary:

These comments are filed on behalf of the Associated Builders & Contractors of Alabama and a group of Alabama general contractors who regularly deal with government entities and who supported the passage of Acts of Alabama 2013-205 (the "Act") this past Spring. We thank the Alabama Department of Revenue (the "Department") for issuing interpretative guidance, but we believe further guidance is necessary in some respects and that certain parts of the proposed rules need to be examined and reworded for clarity. We would be glad to meet with the authors of the proposed rules and to discuss the following comments, along with a few more minor, technical issues. We respectfully request that you consider the issues identified below for either correction or clarification.

1. The Act authorizes the Department to issue exemption certificates to certain contractors and subcontractors performing construction projects for certain governmental entities. The Act defines a qualifying "governmental entity" as "the State of Alabama and its political subdivisions, including a county, a municipality, and an industrial or economic development board or authority..." However, there are a number of governmental or quasi-governmental entities, such as the Alabama State Port Authority and healthcare authorities, that would seem to fit that definition but it is unclear. Therefore, we believe it would be useful if Proposed Rule 810-6-3-.77 is revised to provide some clarification, and perhaps some examples, as to which governmental entities qualify under the Act.

2. As mentioned above, the Act employs the term "industrial or economic development board or authority..." while Proposed Rule 810-6-3-.77(1)(d) limits the qualifying term to only industrial development boards formed under Ala. Code § 11-54-80, et seq., which only deals with municipal IDBs. There are numerous other kinds of IDAs, IDBs and EDBs in the State that have been formed under another statute, a local act, or otherwise. For example, the Randolph County Industrial Development *Council* was established by a local act in 2001 and is based on Amendment 701 of the Alabama Constitution. We suggest that the regulation track the broader language of the Act and provide some examples.

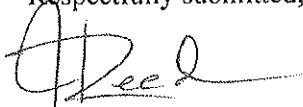
3. The Act's definition of a "governmental entity" is narrower than the list of exempt entities that now qualify for the purchasing agent procedure described in ADOR Rule 810-6-3-69.02 and related Form ST:PAA-1. Several of our members have asked for confirmation that the current purchasing agent procedure will continue to be available after December 31. We understand from our conversations during the legislative deliberations and more recently that the Department has no intention of amending or withdrawing the existing purchasing agent regulation and the related purchasing agent designation form. However, if read literally, Proposed Rule 810-6-1-.46, "Contractor's Liability," may create an inconsistency regarding the availability of this procedure. We suggest that the proposed rule be amended to clarify that. We also suggest that Proposed Rule 810-6-3-.77 explicitly state that it is not intended to repeal or narrow the scope of the current purchasing agency rule and procedures.

4. Section 1(e) of the Act allows the Department to levy a civil penalty of "not less than a minimum of \$2,000 or two times any state and local sales or use tax due . . ." if the contractor or subcontractor "intentionally uses" the certificate of exemption in violation of the Act. The contractor or subcontractor may also be barred from any (otherwise qualified) government construction project "for up to two years based on the contractor's or subcontractor's willful misuse of a certificate of exemption...." First, we request clarification as to what the terms "intentionally uses" and "willful misuse" mean. Second, we request confirmation that the taxpayer who is assessed this penalty or is proposed to be de-barred is entitled to the standard appeal rights under Alabama Taxpayers' Bill of Rights. We are more concerned about this issue as applied at the local government level, especially if one of the private auditing firms is involved. Finally, we suggest some clarification regarding when the two year period begins to run.

5. Lastly, Section 2 of the Act provides that the Act "shall be operative for contracts *entered into* January 1, 2014, or thereafter." (emphasis added). However, Proposed Rule 810-6-3-.77(2)(e) states that the exemption shall not apply to "purchases of tangible personal property made pursuant to any contract *awarded* prior to January 1, 2014" (emphasis added). Because contracts can be awarded long before they are formally entered into, we ask that Proposed Rule 810-6-3-.77(2)(e) be revised to track the language of the Act.

Matt Smith of Brasfield & Gorrie, LLC will attend the hearing on our behalf to elaborate on these comments and to request that the Department confirm for the record that the current purchasing agent procedure will remain viable. Thank you for the opportunity to file comments on these proposed rules. Please let us know if you have any questions or wish to arrange a meeting with our tax attorneys and in-house tax directors involved in reviewing the proposals for us.

Respectfully submitted,



Jay Reed
President

cc: Mr. Matthew A. Smith
Ms. Margaret Johnson McNeil
Mr. Bruce P. Ely