810-6-3-.66 Sales Tax Holiday for Severe Weather Preparedness

(1) Beginning at 12:01 a.m. on Friday, July 6, 2012, and ending at twelve midnight on Sunday, July 8, 2012, a sales tax holiday is enacted pursuant to Act No. 2012-256, whereby no state sales or use tax is due on "covered items" as defined herein. For each year thereafter, the sales tax holiday begins at 12:01 a.m. on the Friday of the last full weekend in February and ends at twelve midnight the following Sunday. This sales tax holiday is referred to as the Severe Weather Preparedness Sales Tax Holiday.

(2) Pursuant to Act No. 2012-256, any county or municipality may, by resolution or ordinance adopted at least 14 days prior to July 6, 2012 and at least 30 days prior to the last full weekend of February in subsequent years, provide for the exemption of "covered items" from county or municipal sales or use taxes during the same time period, under the same terms, conditions, and definitions as provided in this rule for the state sales tax holiday. A county or municipality is prohibited from providing for a sales and use tax exemption during any period other than concurrently with a state sales tax holiday. A participating county or municipality shall submit a certified copy of their adopted resolution or ordinance providing for the sales tax holiday, and any subsequent amendments thereof, to the Alabama Department of Revenue at least 14 days prior to the 2012 holiday and at least 30 days prior to the holiday in subsequent years. The Department will compile this information into a list of all counties and municipalities participating in the Severe Weather Preparedness Sales Tax Holiday and issue a current publication of the list on its website.

(3) "Covered items" include the following selling for $60 or less per item:

(a) Any package of AAA-cell, AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding coin batteries and automobile and boat batteries;

(b) Any cellular phone battery or cellular phone charger;

(c) Any portable self-powered or battery-powered radio, two-way radio, weatherband radio, or NOAA weather radio;

(d) Any portable self-powered light source, including battery-powered flashlights, lanterns, or emergency glow sticks;

(e) Any tarpaulin, plastic sheeting, plastic drop cloths or other flexible, waterproof sheeting;

(f) Any ground anchor system, such as bungee cords or rope, or tie-down kit;

(g) Any duct tape;

(h) Any plywood, window film or other materials specifically designed to protect window openings;

(i) Any non-electric food storage cooler or water storage container;

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810-6-3-.66. (Continued)

(j) Any non-electric can opener;

(k) Any artificial ice, blue ice, ice packs, or reusable ice;

(l) Any self-contained first aid kit;

(m) Any fire extinguisher, smoke detector or carbon monoxide detector; and,

(n) Any gas or diesel fuel tank or container.

(4) "Covered items" also includes any portable generator and power cords used to provide light or communications or preserve food in the event of a power outage selling for $1,000 or less per item.

(5) Covered items are exempt only if the individual item is priced at or below the established threshold for the exemption. Exemption for only a portion of an individual item is not allowed. The following example illustrates the application of the rule to the exemption:

(a) A customer purchases a generator for $1800. Tax is due on the entire $1800. The exemption does not apply to the first $1000 of the price of a generator selling for more than $1000.

(6) Splitting of items normally sold together. To qualify for the exemption, items normally sold in pairs shall not be separated, and articles that are normally sold as a single unit must continue to be sold in that manner.

(7) "Buy one, get one free" and other similar offers. If a dealer offers "buy one, get one free" or "two for the price of one" on covered items, the purchase shall qualify for the exemption when all other conditions of the exemption are met. However, if a dealer offers a "buy one, get one for a reduced price" the two prices cannot be averaged to qualify both items for the exemption.

(8) Discounts, coupons, and rebates. A discount by the seller reduces the sales price of the item and the discounted sales price determines whether the sales price is within the sales tax holiday price threshold. A coupon that reduces the sales price is treated as a discount if the seller is not reimbursed for the coupon amount by a third-party. If a discount applies to the total amount paid by a purchaser rather than to the sales price of a particular item and the purchaser has purchased both eligible property and taxable property, the seller should allocate the discount based on the total sales prices of the taxable property compared to the total sales prices of all property sold in that same transaction. The application of the exemption to discounts, coupons and rebates extended on a covered item during the exemption period is illustrated by the following examples:

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810-6-3-.66. (Continued)

(a) If a dealer offers to sell a portable radio with a sales price of $70 at a discount of 20 percent at the time of sale, the exemption would apply because the actual sales price of the radio is $56.

(b) If a dealer offers a reduction in sales price of $100.00 through a store coupon for a portable generator with a sales price of $1100.00, the exemption would apply to the purchase because the dealer's actual sales price to the customer is $1000.00.

(c) If a customer gives to a dealer a manufacturer's coupon for $100.00 for a portable generator with a sales price of $1100.00, the exemption would not apply.

(d) Rebates generally occur after the sale, thus the amount of the rebate does not affect the sales price of the purchased item. For example, if a portable generator was purchased for $1,100.00 with a manufacturer's rebate for $100.00, the exemption would not apply because the sales price is in excess of $1,000.00.

(9) Exchanges. The application of the exemption to an exchange of a covered item purchased during the exemption period is illustrated by the following examples:

(a) A customer purchases a covered item during the exemption period, but later exchanges the item for a similar item of a different size, color, or other feature at the same price and the original sale is not cancelled. No additional tax is due even though the exchange is made after the exemption period.

(b) A customer purchases a covered item during the exemption period. After the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item and the original sale is cancelled. Sales tax is due on the total sales price of the newly purchased item.

(c) A customer purchases a covered item before the exemption period. During the exemption period the customer returns the item and receives credit on the purchase of a different covered item and the original sale is cancelled. Sales tax is not due on the sale of the new item if the new item is purchased during the exemption period.

(10) Layaway sales. A layaway sale is a transaction in which articles are set aside for future delivery to a purchaser who makes a deposit, agrees to pay the balance of the sales price over a period of time, and, at the end of the payment period, receives the merchandise. A sale of a covered item under a layaway sale will qualify for the exemption when final payment on the layaway order is made by, and the item is given to, the purchaser during the exemption period; or when title to the covered item transfers to the purchaser and delivery is made to the purchaser during the exemption period. A sale made by completion of transfer of title after the exemption period shall not qualify for the exemption.

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810-6-3-.66. (Continued)

(11) Rain checks. A rain check allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock. Covered items purchased during the exemption period with the use of a rain check will qualify for the exemption regardless of when the rain check was issued. Issuance of a rain check during the exemption period will not qualify a covered item for the exemption if the item is actually purchased after the exemption period.

(12) Mail, telephone, e-mail, and Internet sales. The sale of a covered item qualifies for exemption when sold through the mail, telephone, e-mail or Internet when the item is paid for and delivered to the customer during the exemption period; or when title to the covered item transfers to the purchaser and delivery is made to the purchaser during the exemption period. Pursuant to Section 40-23-1(a)(5), the sale of an item is not closed or completed until the time and place where delivery occurs to the purchaser after the act of transportation ends and the item comes to rest in this state for use or consumption. Covered items that are pre-ordered and delivered to the customer during the exemption period qualify for the exemption.

(13) Gift certificates and gift cards. Covered items purchased during the exemption period using a gift certificate or gift card will qualify for the exemption, regardless of when the gift certificate or gift card was purchased. Covered items purchased after the exemption period using a gift certificate or gift card are taxable even if the gift certificate or gift card was purchased during the exemption period. A gift certificate or gift card cannot be used to reduce the selling price of a covered item in order for the item to qualify for the exemption.

(14) Returns. For a 60 day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This 60 day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 60 day period is not intended to change a seller's policy on the time period during which the seller will accept returns.

(15) Different time zones. The time zone of the purchaser's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and a seller is located in another.

(16) Records. The retailer is not required to obtain an exemption certificate on sales of covered items during the exemption period. However, the retailer's records should clearly identify the type of item sold, the date on which the item was sold, the sales price of all items and, if applicable, any tax charged.

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810-6-3-.66. (Continued)

(17) Reporting Exempt Sales. No special reporting procedures are necessary to report exempt sales on covered items made during the exemption period. Exempt sales are to be included in the Gross Sales Amount and in the Deductions amount reported on the state and local returns. Taxable sales and exempt transactions should be reported as currently required by law.

(18) Transportation Charges.

(a) Where delivery is made by common carrier or the U.S. Postal Service, the transportation charge, if billed as a separate item and paid directly or indirectly by the purchaser, is excluded from the sales price of the covered item. Transportation charges made by any other means are included as part of the sales price of the covered item, whether or not separately stated. Transportation charges are not separately stated if included with other charges and billed as "shipping and handling" or "postage and handling."

(b) "Shipping and handling" or "postage and handling" charges are included as part of the sales price of the covered item, whether or not separately stated. If multiple items are shipped on a single invoice, to determine if any covered items qualify for the exemption for purposes of determining a sales tax holiday price threshold, the shipping and handling charge or postage and handling charge must be proportionately allocated to each item ordered, and separately identified on the invoice.

(19) This rule shall become effective immediately.

(Sections 40-2A-7(a)(5), 40-23-31, 40-23-83, Code of Alabama 1975; Act 2012-256. Emergency Rule filed May 2, 2012, Permanent Rule effective September 13, 2012)