

HB440 INTRODUCED



1 9GK0BM-1
2 By Representative Lovvorn
3 RFD: Ways and Means Education
4 First Read: 04-May-23
5
6 2023 Regular Session



SYNOPSIS:

This bill would provide for the Department of Revenue to grant certificates of exemption from sales and use taxes to contractors and subcontractors licensed by the State Licensing Board for General Contractors for the purchase of building materials and construction materials to be use in the construction of a project for an entity that is exempt by law from paying sales and use taxes.

A BILL
TO BE ENTITLED
AN ACT

Relating to taxation and revenue; to provide for the Department of Revenue to grant certificates of exemption from sales and use taxes to contractors and subcontractors licensed by the State Licensing Board for General Contractors for the purchase of building materials and construction materials to be used in the construction of a building or other project for an entity statutorily exempt from paying sales and use taxes; and to provide for accounting for purchases and enforcement for violations.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:



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Section 1. Section 40-9-14.3 is added to the Code of Alabama 1975, to read as follows:

§40-9-14.3

(a) For the purposes of this section, the term "statutorily exempt entity" means any person or company, as those terms are defined under Section 40-23-1, that has been granted a statutory exemption from the payment of Alabama sales and use taxes levied pursuant to Chapter 23, including any person or company listed in Article 1, Chapter 9 of Title 40. The term does not include any governmental entity, as defined in Section 40-9-14.1(a).

(b)(1) The Department of Revenue shall issue a certificate of exemption to the statutorily exempt entity for each tax exempt project.

(2) The Department of Revenue shall grant a certificate of exemption from state and local sales and use taxes to any contractor licensed by the State Licensing Board for General Contractors, or any subcontractor working under the same contract, for the purchase of building materials, construction materials and supplies, and other tangible personal property that becomes part of the structure that is the subject of a written contract for the construction of a building or other project for and on behalf of a statutorily exempt entity that is exempt from the payment of sales and use taxes.

(c) The use of a certificate of exemption for the purchase of tangible personal property pursuant to this section shall include only tangible personal property that becomes part of the structure that is the subject of the



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57 construction contract. Any contractor or subcontractor
58 purchasing any tangible personal property pursuant to a
59 certificate of exemption shall maintain an accurate cost
60 accounting of the purchase and use of the property in the
61 construction of the project.

62 (d) A contractor who has an exemption from sales and
63 use tax for the purchase of materials to use on a statutorily
64 exempt entity project shall file, in a manner as prescribed by
65 the department, reports of all exempt purchases. The reports
66 shall be filed as a prerequisite to renewal of a certificate
67 of exemption.

68 (e) (1) The department may assess any contractor or
69 subcontractor with state and local sales or use taxes on any
70 item purchased with a certificate of exemption not properly
71 accounted for and reported as required.

72 (2) Any contractor or subcontractor who intentionally
73 uses a certificate of exemption in violation of this section,
74 in addition to the actual sales or use tax liability due,
75 shall be subject to a civil penalty levied by the department
76 in the amount of two times any state and local sales or use
77 tax due for the property not less than two thousand dollars
78 (\$2,000) and, based on the contractor's or subcontractor's
79 willful misuse of the certificate of exemption, may be barred
80 from the use of any certificate of exemption on any project
81 for up to two years.

82 (f) The department may adopt rules to implement this
83 section in order to effectuate the purposes of this section
84 and to provide for accurate accounting and enforcement of this



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85 section.

86 (g) In bidding the work on a tax exempt project, the
87 bid form shall provide for an accounting for the tax savings.

88 (h) The intent of this section is to lower the
89 administrative cost for the statutorily exempt entity,
90 contractor, and subcontractor for construction projects on
91 behalf of a statutorily exempt entity. It is not the intent of
92 this section to change the basis for determining professional
93 services from fair market value, which may include sales and
94 use taxes.

95 (i) This section shall be operative for any contracts
96 with a statutorily exempt entity entered into on or after
97 January 1, 2024, and shall not apply to any contracts entered
98 into prior to January 1, 2024, nor shall this section apply to
99 any contract change order or contract extensions, including
100 revised, renegotiated, or altered contracts, when the original
101 contract was entered into prior to January 1, 2024.

102 Section 2. This act shall become effective immediately
103 following its passage and approval by the Governor, or its
104 otherwise becoming law.