

MEMORANDUM OF UNDERSTANDING

BY AND AMONG

**ALABAMA DEPARTMENT OF REVENUE
("ADOR")**

AND

**BALDWIN COUNTY, ALABAMA, SALES & USE TAX /
LICENSE INSPECTION DEPARTMENT
("COUNTY")**

AND

**CITY OF FOLEY, ALABAMA
("CITY")**

AND

**FOLEY HOLDINGS LLC
AND CERTAIN OF ITS' SUBSIDIARIES
("FOLEY GROUP")**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is effective the 1st day of July, 2019 (“Effective Date”), by and among the Alabama Department of Revenue (“ADOR”), the Baldwin County, Alabama, Sales & Use Tax / License Inspection Department (“County”), the City of Foley, Alabama (“City”), Foley Holdings LLC, an Alabama limited liability company (“Company”), and the subsidiaries of the Company that are listed on the attached Schedule 1 (collectively, with the Company, “Company Group”). ADOR, County, City, and Company Group are sometimes collectively referred to herein as “Parties” and each individually as “Party”.

RECITALS

WHEREAS, the Company Group has constructed and operates a (predominately) amusement and entertainment development (the “Project”) as a “tourist destination attraction” within the City of Foley, Baldwin County, Alabama, which such Project has, among other things, an amusement park, splash pad, lake, a hotel, theater, entertainment venues, retail establishments, restaurants, food service, and parking adjacent to the City’s new sports and business tourism destination;

WHEREAS, the Project is still being developed and constructed by the Company Group, and is planned to include additional tourist destination attractions such as a recreational vehicle park, a waterpark, and additional lodging, retail, restaurants and entertainment venues;

WHEREAS, the general location of the Project is 10113 Foley Beach Express, Foley Alabama 36535;

WHEREAS, each member of the Company Group (including, but not limited to, the Company) is a “private user” as such term is defined by the Tax Incentive Reform Act of 1992, Ala. Code §40-9B-1 et seq. (the “Act”);

WHEREAS, the Project and the business activities of the Company meets the qualifications of an industrial or research enterprise under §40-9B-3(a)(10)(j) as a “tourism destination attraction”;

WHEREAS, via the Application to Granting Authority for Abatement of Taxes dated June 9, 2016, the Company applied for and was granted an abatement of non-educational sales and use tax by ADOR on June 13, 2016, proof of which is attached hereto as Exhibit “A”;

WHEREAS, the Company was granted an abatement of non-educational sales and use tax by the County on September 19, 2016, proof of which is attached hereto as Exhibit “B”;

WHEREAS, the Company was granted an abatement of non-educational sales and use tax by the City on July 5, 2016, proof of which is attached hereto as Exhibit “C”;

WHEREAS, per Ala. Admin. Code §810-6-4-.22(5), purchases of tangible personal property to be incorporated into a project such as the Project for which a private user such as the Company has been granted a valid abatement of construction-related sales and use taxes pursuant to the Act are exempt from state and non-educational local sales or use taxes whether the purchase

is made by either the private user or a contractor, subcontractor or vendor for incorporation into the project;

WHEREAS, due to the size and complexity of the Project, the Parties agree that it is impossible or practically impossible for the Company, and the Company's contractors, subcontractors, and vendors, and ADOR, the County, and the City to strictly follow the standard collection rules set forth in Ala. Admin. Code Reg. §810-6-4-.22 with any degree of certainty, and, further, it would facilitate and expedite the collection of sales and use taxes to permit the Company, as a private user, and its' contractors, subcontractors, and vendors to purchase tangible personal property for the Project without payment of sales and use taxes at the time of purchase;

WHEREAS, due to the size and complexity of the Project, contractors, subcontractors, and vendors of the Project ("Vendors") are unable to understand and properly administer the reporting and filing requirements, or the distinction between abated and non-abated portions (i.e. non-education part vs. education part), of sales and use taxes thus causing the Company to potentially not realize the benefit of the granted tax incentives and frustrating the intent of the Parties, the Act, and ADOR rules;

WHEREAS, the Company, as a private user, has the personnel and capacity to better administer and facilitate (in accordance with the intent of the Parties, the Act, and the regulations) the proper collection and reporting of non-abated sales and use taxes on purchases of tangible personal property to be used in the development and construction of the Project;

WHEREAS, pursuant to Ala. Admin. Code §810-6-4-.14, under circumstances where normal collection of sales and use taxes are practically impossible and where it would facilitate and expedite the proper collection of sales and use taxes, ADOR may permit a private user and its' contractors, subcontractors, and vendors to purchase tangible personal property without collection of sales and use taxes at the time of purchase, but instead arrange for an alternative tax payment procedure;

WHEREAS, pursuant to Ala. Admin. Code §810-6-3-.69.02, entities which are exempt or partially exempt from paying tangible personal property sales and use taxes may appoint "purchasing agents" to act on the entity's behalf in making purchases of tangible personal property;

WHEREAS, the Parties desire to establish better procedures, administered by the Company, for the filing, reporting and collection of unabated sales and use taxes with regard to the Project;

WHEREAS, the Company Group has requested that it be allowed to designate their Vendors as "purchasing agents" to act on the entity's behalf in making purchases of tangible personal property for the Project in a manner consistent with Ala. Admin. Code §810-6-3-.69.02; and

WHEREAS, starting on July 1, 2019, and thereafter, the Parties desire that the Company Group utilize purchasing agents and the procedures of Ala. Admin. Code §810-6-3-.69.02, and

that the Company file the unabated sales and use tax directly with the County in order to avoid the issues previously caused by the Vendors and in order to better carry out the intent of the law;

NOW, THEREFORE, the above premises considered, and in order to minimize confusion, delay and unnecessary administrative costs, the Parties hereby enter into this MOU:

- I. Any terms of legal art not defined herein shall have the meaning given by the Act and ADOR's sales and use tax rules, Ala. Admin. Code Chapter 810-6-1 et seq.
- II. All Applications for Sales and Use Tax Certificates of Exemption (ADOR Sales and Use Tax Division Form ST: EX-A2) previously issued to Vendors of the Project (collectively, the "Forms") shall be returned to the Company and then remitted to ADOR, or destroyed. As of the Effective Date, the Parties agree that the Forms are null, void, and shall no longer be given effect. Company shall be liable for all taxes due if any member of the Company Group or a Vendor of the Company Group utilize any of the exemption Forms after the date this MOU is executed by the parties.
- III. Beginning on the Effective Date, in order to more effectively carry out the intent of the Parties, the Act, and ADOR's sales and use tax rules, the Parties agree to the following procedures with regard to purchases of tangible personal property to be incorporated into the Project:
 - (a) A member of the Company Group may appoint one or more of its third party Vendors as "purchasing agents" to act on their behalf for making purchases of tangible personal property which are to be incorporated into the Project; provided that, the relevant member of the Company Group adheres to the procedures set forth in Ala. Admin. Code §810-6-3-.69.02(1).
 - (b) ADOR, County, and City will recognize the agency relationship between a member of the Company Group and its Vendor provided that a written contract between said member and the Vendor/purchasing agent has been entered which clearly establishes that: (i) the appointment was made prior to the purchase of the tangible personal property (to be incorporated into the Project) by the Vendor; (ii) the purchasing agent Vendor has the authority to bind the relevant Company Group member contractually for the purchase of the tangible personal property to be incorporated into the Project; (iii) title to all materials and supplies purchased pursuant to such Vendor agency appointment shall immediately vest in the relevant Company Group member at the point of delivery; and (iv) the Vendor agent is required to notify all vendors and suppliers of the agency relationship and make it clear to such vendors and suppliers that the obligation for payment is that of the relevant Company Group member and not the Vendor agent. All purchase orders and remittance devices of tangible personal property to be incorporated into the Project furnished to the suppliers and vendors dealing with a Vendor agent (under an agency agreement) shall clearly reflect the

agency relationship between Vendor and the relevant member of the Company Group.

- (c) When a member of the Company Group utilizes a purchasing agent to purchase tangible personal property to be incorporated into the Project, the funds used to pay for said tangible personal property must belong to a member of the Company Group.
- (d) The appointment of a Vendor as purchasing agent of a member of the Company Group may be made by the execution of the ADOR Form ST:PAA-1, Purchasing Agent Appointment between Vendor and a member of the Company Group, or a document that is substantially the same as said ADOR Form.
- (e) Each purchasing agency agreement with a Vendor shall provide that the Vendor shall not collect, report, file, or pay sales or use taxes on any tangible personal property that is to be incorporated into the Project, and that the Company shall indemnify the Vendor for any losses, costs or expenses incurred if the Company fails to collect, report, file, or pay sales or use taxes due on such tangible personal property.
- (f) For a purchasing agency agreement between a member of the Company Group and a Vendor to be effective and honored by ADOR, the relevant member of the Company Group must comply with the terms of the purchasing agency agreement and this MOU.
- (g) ADOR shall provide a certificate or other document(s) to be used by the Company Group and/or Vendors to show sellers of tangible personal property (for incorporation into the Project) that there exists a procedure for administering and paying Alabama sales and use taxes including, but not limited to, any non-abated sales and use taxes, and that such sellers should not collect such sales and use taxes;
- (h) Vendors that purchase tangible personal property for incorporation into the Project as a purchasing agent of a member of the Company Group shall not collect sales and use taxes, including, but not limited to, any non-abated sales and use taxes that is due; provided that, the requirements of this MOU are followed including, but not limited to, Sections (a) – (b), above.
- (i) The Company shall collect, report, file, and pay all non-abated sales and use taxes on purchases of tangible personal property to be used in the development and construction of the Project on behalf of itself, the Company Group, and the purchasing agent/Vendors of each member of the Company Group (collectively, the “Group Sales Tax”). In other words, the Company shall direct pay all non-abated sales and use taxes on purchases of tangible personal property to be incorporated into the Project.
- (j) The Company shall, on a monthly basis, collect, report, file, and pay the Group Sales Tax.
- (k) The Company shall provide ADOR, the County and the City with such additional information as is reasonable to confirm that all unabated sales and use taxes are being paid on tangible personal property incorporated into the Project.

- IV. This MOU shall be terminable by either party by giving the other party 30 days written notice thereof.
- V. Each Party has duly authorized and empowered a representative to execute this MOU on their respective behalf, and the execution of this MOU by such representative binds the Party to the terms and conditions hereof. Each Party has full power and capacity to enter into this MOU, and to perform the same.
- VI. This MOU is effective as of the Effective Date.

ADOR:

ALABAMA DEPARTMENT OF REVENUE

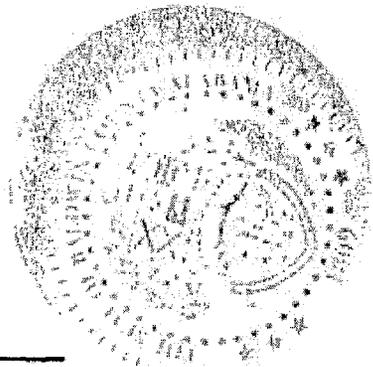


COMMISSIONER

DATE: 10/9/19

COUNTY:

BALDWIN COUNTY, ALABAMA,
SALES & USE TAX/LICENSE INSPECTION
DEPARTMENT



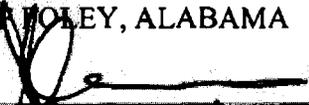
By: 
Name: Charles F. Gruber
Title: Chairman
September 20, 2019



Wayne News
County Administrator

CITY:

CITY OF FOLEY, ALABAMA

By: 
Name: John Kowina
Title: Mayor

The City is not undertaking
any additional liability or
obligation by this **MOU**.

COMPANY:

FOLEY HOLDINGS LLC

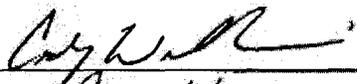
By: 
Name: Cory Williamson
Title: CEO OF SOLE MANAGER

EXHIBIT "A"

ADOR Proof of Abatement



JULIE P. MAGEE
Commissioner

State of Alabama Department of Revenue

(www.revenue.alabama.gov)

50 North Ripley Street
Montgomery, Alabama 36132

August 24, 2016

JOE W. GARRETT, JR.
Deputy Commissioner

CURTIS E. STEWART
Deputy Commissioner

BRENDA R. COONE
Deputy Commissioner

MICHAEL D. GAMBLE
Deputy Commissioner

Attention: Mr. Chad Klinck
Foley Holdings, LLC
100 Brookwood Road
Atmore, AL 36502

Dear Mr. Klinck:

We are enclosing your company's State Sales and Use Tax Certificate of Exemption [REDACTED] and Sales and Use Tax Rule No. [REDACTED] explaining the proper use of this certificate. You should present a signed copy of this certificate to each vendor from whom you purchase tangible personal property which will become a part of the project for which the sales and use tax abatement has been granted. This certificate is non-transferable and may only be used by the person, firm or corporation whose name appears at the bottom of the certificate.

This certificate is not authorized to be used for purchases which do not qualify for the abatement. However, should you erroneously use this certificate to make a tax-exempt purchase of tangible personal property which is not incorporated into the project for which the abatement has been granted or which does not otherwise qualify for the abatement, you are required to report and pay the applicable state and local sales or use tax directly to the State of Alabama Sales and Use Tax Division.

With regard to the local sales and use taxes, none of the City of Foley sales and use taxes are earmarked for educational purposes, and the Alabama Department of Revenue does not administer the taxes for Baldwin County. Accordingly, information regarding how the abatement of these taxes must be handled should be secured directly from the Baldwin County local taxing authority.

Once the local taxing authority has been contacted and you have registered and received an account number, the unabated city and county sales and use taxes can be filed and paid electronically using the My Alabama Taxes (MAT) Filing and Payment System.

The certificate will expire on December 31, 2020; the date estimated that the project will be complete. Upon expiration, please return the original certificate to this office. If I can be of further assistance, please contact me at 334-353-9350.

Sincerely,

Tawanna Small, Revenue Examiner
Sales and Use Tax Division

Enclosure
cc: William Jamar



JULIE F. MAGEE
Commissioner

State of Alabama Department of Revenue

(www.revenue.alabama.gov)
50 North Ripley Street
Montgomery, Alabama 36132

November 21, 2016

JOE W. GARRETT, JR.
Deputy Commissioner
CURTIS E. STEWART
Deputy Commissioner
BRENDA N. COONE
Deputy Commissioner
MICHAEL B. GAMBLE
Deputy Commissioner

Attention: Mr. Chad Klinck
Foley Hotel One, LLC
100 Brookwood Road
Atmore, AL 36502

Dear Mr. Klinck:

We are enclosing your company's State Sales and Use Tax Certificate of Exemption No. [REDACTED] and Sales and Use Tax Rule No. [REDACTED] explaining the proper use of this certificate. You should present a signed copy of this certificate to each vendor from whom you purchase tangible personal property which will become a part of the project for which the sales and use tax abatement has been granted. This certificate is non-transferable and may only be used by the person, firm or corporation whose name appears at the bottom of the certificate.

This certificate is not authorized to be used for purchases which do not qualify for the abatement. However, should you erroneously use this certificate to make a tax-exempt purchase of tangible personal property which is not incorporated into the project for which the abatement has been granted or which does not otherwise qualify for the abatement, you are required to report and pay the applicable state and local sales or use tax directly to the State of Alabama Sales and Use Tax Division.

With regard to the local sales and use taxes, none of the City of Foley sales and use taxes are earmarked for educational purposes, and the Alabama Department of Revenue does not administer the taxes for Baldwin County. Accordingly, information regarding how the abatement of these taxes must be handled should be secured directly from the Baldwin County local taxing authority.

Once the local taxing authority has been contacted and you have registered and received an account number, the unabated city and county sales and use taxes can be filed and paid electronically using the My Alabama Taxes (MAT) Filing and Payment System.

The certificate will expire on December 31, 2020; the date estimated that the project will be complete. Upon expiration, please return the original certificate to this office. If I can be of further assistance, please contact me at 334-353-9350.

Sincerely,

Tawanna Small, Revenue Examiner
Sales and Use Tax Division

Enclosure
cc: William Jamar

EXHIBIT "B"

Baldwin County Proof of Abatement



COUNTY COMMISSION

BALDWIN COUNTY
312 Courthouse Square, Suite 12
BAY MINETTÉ, ALABAMA 36507
(251) 937-0264
Fax (251) 580-2500
www.baldwincountyal.gov

MEMBERS
DISTRICT 1. FRANK BURT, JR.
2. CHRIS ELLIOTT
3. J. TUCKER DORSEY
4. CHARLES F. GRUBER

January 17, 2017

The Honorable Teddy J. Faust, Jr.
Revenue Commissioner
Baldwin County, Alabama
Post Office Box 1389
Bay Minette, Alabama 36507

The Honorable Tim Russell
Judge of Probate
Baldwin County, Alabama
Post Office Box 459
Bay Minette, Alabama 36507

RE: Acknowledgement of Amendment to Tax Abatement - Foley Holdings, LLC and Foley Hotel One, LLC

Dear Revenue Commissioner Faust and Judge Russell:

The Baldwin County Commission, during its regularly scheduled meeting held on January 17, 2017, took the following actions:

- 1) In observance with §40-9B-5(d), Code of Alabama 1975, acknowledged receipt of an Amendment to the Tax Abatement to Foley Holdings, LLC, granted by the City Council of the City of Foley, Alabama, which Tax Abatement was originally acknowledged by the Baldwin County Commission at its September 6, 2016, Regular Meeting; and
- 2) Approved forwarding to the Office of the Revenue Commissioner of Baldwin County and the Office of the Probate Judge of Baldwin County, the "Amendment of Tax Abatement Agreement" and all associated attachments informing the Baldwin County Commission of the Amendment of such Tax Abatement.

If you have any questions or need further assistance, please do not hesitate to contact me at (251) 990-4606 or Ron Cink, County Administrator/Budget Director, at (251) 580-2550.

Sincerely,

T. CHRISTOPHER ELLIOTT, Chairman
Baldwin County Commission

TCE/rust Item BA2

cc: Ron Cink
Brandy Volovecky
Kim Creech
Heather Gwynn

ENCLOSURE

EXHIBIT "C"

City of Foley Proof of Abatement

**AMENDMENT OF
TAX ABATEMENT AGREEMENT
(Section II)**

Effective Date: August 18, 2016

This Amendment to Tax Abatement Agreement is made and entered on the above date by the following persons for the purposes provided herein pursuant to Section 11 of that certain Tax Abatement Agreement dated July 5, 2016 (the "Original Abatement Agreement") by the City of Foley, Alabama and Foley Holdings LLC:

Granting Authority: City of Foley, Alabama

Company: Foley Holdings LLC

Foley Hotel One: Foley Hotel One LLC

FOR VALUE RECEIVED, and in consideration of the mutual agreements herein and in the Original Abatement Agreement, the undersigned do hereby covenant and agree as follows:

Section 1. Incorporation of Defined Terms

- (a) Capitalized terms used herein without definition shall have the respective meanings assigned thereto in the Original Abatement Agreement.
- (b) Foley Hotel One Project shall mean the part of the Project described in the Application attached hereto as Exhibit A.
- (c) Original Abatement Agreement shall mean the Tax Abatement Agreement dated July 5, 2016 by the Granting Authority and the Company.

Section 2. Representations

The Company and Foley Hotel One hereby represent and warrant to the Granting Authority as follows:

- (a) Foley Hotel One is duly organized under the laws of the State of Delaware.
- (b) Foley Hotel One is registered with the Alabama Secretary of State to do business in the State of Alabama.

- (g) Foley Hotel One is an Affiliate or Subsidiary of the Company within the meaning of the Original Abatement Agreement.
- (h) Foley Hotel One will own or operate the part of the Project described on the Application attached hereto as Exhibit A.

Section 3. Agreements of Granting Authority

The Granting Authority hereby covenants and agrees that the Foley Hotel One Project shall be part of the Project for all purposes of the Original Abatement Agreement and the abatements granted in Section 3 of the Original Abatement Agreement shall apply to, and benefit, the Foley Hotel One Project in all respects.

Section 4. Agreements of The Company and Foley Hotel One

Foley Hotel One hereby covenants and agrees (i) to be bound by the Original Abatement Agreement with respect to the Foley Hotel One Project and (ii) that all provisions of the Original Abatement Agreement with respect to the Company shall be binding upon and enforceable against Foley Hotel One.

Section 5. General Provisions

The Granting Authority, Company and Foley Hotel One hereby covenant and agree:

- (a) This Agreement shall become part of the Original Abatement Agreement for all purposes thereof.
- (b) This Agreement shall be construed in accordance with, governed by, the laws of the State of Alabama without regard to principles of conflict of laws.
- (c) This Agreement may be executed in any number of counterparts, each of which shall be an original and all such counterparts shall together constitute one and the same agreement.
- (d) This Agreement shall be binding upon the successors and assigns of the Granting Authority, the Company and Foley Hotel One.

Section 6. Notices.

- (a) Any notices to the Granting Authority and the Company shall be given and made in accordance with Section 19 of the Original Abatement Agreement.
- (b) Any notice to Foley Hotel One under this Agreement shall be made in writing and delivered therein at the following address or at such other address as shall have been provided by Foley Hotel One and acknowledged in writing:

Foley Hotel One LLC
c/o James T. Martin
Creek Indian Enterprises Development Authority
100 Brookwood Road
Aknore, Alabama 36502

Section 7. Termination.

This Agreement shall terminate and be discharged simultaneously with the termination and discharge of the Original Abatement Agreement.

IN WITNESS WHEREOF, the undersigned Foley Holdings LLC and the undersigned Foley Hotel One LLC and the undersigned City of Foley, Alabama, have each caused this agreement to be executed in the name and on behalf thereof, under seal, by an officer thereof duly authorized thereunto, as of the Effective Date first above written.



Attest: Victoria Southern
City Clerk

CITY OF FOLEY, ALABAMA
(the Granting Authority)

By: [Signature]
Name: John E. Konitz
Title: Mayor

FOLEY HOLDINGS LLC
(the Company)

By: [Signature]
Name: James T. Martin
Title: Managing Member

FOLEY HOTEL ONE LLC

By: [Signature]
Name: James T. Martin
Title: Managing Member

SCHEDULE I

Company Group

Foley Holdings LLC
Foley Hotel One LLC
Foley Hotel South LLC
Park at OWA LLC
Shops at OWA LLC
Sweets at OWA LLC
Events at OWA LLC
PD Eats LLC
OWA Burgers LLC
OWA Sports & Games LLC
RV Park at OWA LLC

ALABAMA DEPARTMENT OF REVENUE - SALES AND USE TAX RULES
Code of Alabama 1975, Sections 40-23-31 and 40-23-83

810-6-4-22. Abatement of the Sales and Use Tax Liability on Private Use Industrial Development Property.

(1) Unless otherwise defined herein, the definitions of terms set forth in Code of Alabama 1975, Section 40-9B-3, are incorporated by reference herein.

(2) As used in this rule, the term "project" means a private use industrial development property or a major addition to a private use industrial development property.

(3) As used in this rule, the term "public body" means a public authority, county, or municipal government.

(4) A private user who is liable for sales and use taxes pursuant to Section 40-9B-7 may be granted an abatement of these taxes by a public body subject to the geographical or jurisdictional limitations outlined in Section 40-9B-5 and to the extent authorized in Section 40-9B-4.

(5) Effective August 1, 1998, purchases of tangible personal property to be incorporated into a project for which the private user has been granted a valid abatement of construction-related sales and use taxes pursuant to Chapter 9B of Title 40 are exempt from state and noneducational local sales or use taxes whether the purchase is made by (i) a contractor or a subcontractor who will incorporate the property into the project or (ii) the private user of the project. The contractor or subcontractor is no longer required to purchase the property in the name of the private user or as agent for the private user; have the property billed or invoiced to the private user; and have the property paid for with funds belonging to the private user in order to purchase the property exempt from sales and use taxes. The exemption on purchases by contractors or subcontractors shall not apply to any purchases which would not also be exempt if purchased by a private user who has been granted a valid abatement pursuant to Chapter 9B of Title 40. Contractors, subcontractors, and private users making tax-exempt purchases pursuant to an abatement granted under Chapter 9B of Title 40 shall comply with the provisions of Sales and Use Tax Rules 810-6-4-24 and 810-6-4-24.01.

(6) With respect to purchases by contractors or subcontractors of tangible personal property to be incorporated into a project for which a valid abatement was granted prior to August 1, 1998, the new exemption for direct purchases by contractors and subcontractors outlined in paragraph (5) shall apply only to those purchases which occur on or after August 1, 1998. Purchases occurring prior to August 1, 1998, are exempt only if the purchase is made in the name of the private user or as agent for the private user, the purchase is billed or invoiced to the private user, and the purchase is paid for with funds belonging to the private user. The criteria contained in Section 40-23-1(a)(5) for determining when transactions are closed or sales are completed shall be used to determine when purchases by contractors and subcontractors occur.

(7) It shall not be necessary for a private user to vest title to industrial development property in a public body in order to be granted an abatement of sales and use tax. A private user is not required to purchase property in the name of a public body;

(Continued)

ALABAMA DEPARTMENT OF REVENUE - SALES AND USE TAX RULES
Code of Alabama 1975, Sections 40-23-31 and 40-23-83

810-6-4.22. (Continued)

have the property billed or invoiced to the public body; and have the property paid for with funds belonging to the public body in order to purchase property exempt from sales and use taxes pursuant to an abatement.

(8) An abatement of sales and use taxes may be granted without the issuance of bonds by a public body.

(9) An abatement of sales and use taxes (a) shall commence on the date in which the applicable public body grants that abatement, (b) shall apply to all property which shall not have been acquired by the private user, contractor, or subcontractor as of the commencement date, and (c) shall expire on the date the entire project is placed in service.

(10) Section 40-9B-6(c) provides that the private user who is granted an abatement shall file with the Revenue Department within 90 days after the granting of the abatement a copy of the agreement required by Section 40-9B-6(b).

(11) An abatement of sales and use taxes may be granted only with respect to a project that has not previously been placed in service by the private user who is applying for the abatement or by a person who is a related party.

(12) A change of ownership or assignment of interest in property shall not qualify the property for a new or additional abatement beyond the previous abatement. The new user may be allowed to receive the remainder of abatements previously granted to the original user.

(13) With respect to the abatement of sales and use taxes incurred in connection with a major addition, the addition must constitute an amount at least equal to 30 percent of the original cost to the industrial development property or two million dollars (\$2,000,000), whichever is less.

(14) Capitalized repairs, rebuilds, maintenance, and replacement equipment shall not qualify as a major addition. Replacement equipment includes equipment that performs the same function as the equipment it replaces even though the new equipment performs the function better or faster, but does not include equipment that performs one or more additional functions in addition to performing the same function as the equipment it replaces.

(15) Only additions to existing industrial development property may be considered as a major addition. The renovation or remodeling of existing facilities shall not constitute a major addition and, therefore, does not qualify for an abatement of sales and use taxes. (Adopted through APA effective May 22, 1993, amended October 20, 1998)

ALABAMA DEPARTMENT OF REVENUE - SALES AND USE TAX RULES
Code of Alabama 1975, Sections 40-23-31 and 40-23-83

810-6-4-.14. Sales and Use Tax Direct Pay Permit.

(1) Where the Department finds that it is practically impossible at the time of purchase for a manufacturer, transportation company, or persons engaged in the business of mining, quarrying, compounding, or processing tangible personal property, or their vendors, to determine with any degree of certainty the applicability of sales or use tax upon purchases of tangible personal property and where it would facilitate and expedite the collection of the taxes to permit the manufacturer, transportation company, or person engaged in the business of mining, quarrying, compounding or processing tangible personal property to purchase tangible personal property without payment to the vendor of the sales or use tax upon, or with respect to, the property, the manufacturer, transportation company, or person engaged in the business of mining, quarrying, compounding or processing tangible personal property upon application therefor may be permitted to purchase tangible personal property without payment to the vendor of Alabama sales or use tax subject to the following conditions:

(a) The permit holder shall purchase all tangible personal property without payment of sales or use tax to the seller, and shall report and pay all sales and use tax directly to the Department of Revenue.

(b) The permit holder shall report the sales and use tax upon forms approved by the Department and shall pay the taxes directly to the State Department of Revenue. Unless the permit holder qualifies to file and pay sales and use taxes on a calendar quarter or calendar year basis, sales and use taxes must be reported and paid monthly on or before the twentieth day of the month following the month during which the tangible personal property was used for a taxable purpose. See Rule 810-6-5-.30 Filing and Paying State

Sales and Use Taxes and State-Administered County and Municipal Sales and Use Taxes on a Quarterly or Annual Basis. (Sections 11-51-211(a)(1), 11-51-211(a)(2), 40-23-7, and 40-23-88, Code of Alabama 1975)

(c) The permit holder shall be required to keep the books and records necessary to determine the permit holder's tax liability, which records shall be subject to examination by the Department.

(d) Upon demand of the Department, the permit holder shall execute a bond or indemnity agreement securing the payment of the taxes to the Department in an amount not exceeding estimated sales tax liability for three months and estimated use tax liability for six months.

(e) The permit does not extend to construction contracts. The contractor is the consumer of building materials used in the performance of construction contracts, and must pay the sales tax to the seller at the time of purchasing tangible personal property from vendors in Alabama, and use tax to the seller on purchases of tangible personal property from the vendors located outside of Alabama. If the use tax is not paid to the seller, the contractor is required to pay the tax directly to the Department of Revenue.

(Continued)

ALABAMA DEPARTMENT OF REVENUE - SALES AND USE TAX RULES
Code of Alabama 1975, Sections 40-23-31 and 40-23-83

810-6-3-69.02. Exemption for United States, State, County, City, and Other Exempt Entities from the Payment of Sales Tax, and Purchases Made Through the Use of Purchasing Agents.

(1) The United States Government, the State of Alabama, counties and incorporated municipalities of the state, and various other entities within the state are specifically exempt from paying sales and use tax on their purchases of tangible personal property. These exempt entities may appoint purchasing agents to act on their behalf for making tax-exempt purchases. In such situations the department will recognize that an agency relationship exists, provided that a written contract between the owner and the contractor-agent has been entered which clearly establishes that: (i) the appointment was made prior to the purchase of materials; (ii) the purchasing agent has the authority to bind the exempt entity contractually for the purchase of tangible personal property necessary to carry out the entity's contractual obligations; (iii) title to all materials and supplies purchased pursuant to such appointment shall immediately vest in the exempt entity at the point of delivery; and (iv) the agent is required to notify all vendors and suppliers of the agency relationship and make it clear to such vendors and suppliers that the obligation for payment is that of the exempt entity and not the contractor-agent. All purchase orders and remittance devices furnished to the vendors shall clearly reflect the agency relationship. The tax-exempt entity may enjoy its tax-exempt status when utilizing a purchasing agent, provided that the purchase is paid for by the tax-exempt entity with funds belonging to the tax-exempt entity and the proper documentation as listed above exists to confirm the agency relationship. The appointment of the contractor as purchasing agent of the tax-exempt entity may be made by execution of the department Form ST:PAA-1, Purchasing Agent Appointment. (Sections 40-23-4(a)(11) and 40-23-62(13))

(2) A contractor is the consumer of all the materials which are used by the contractor in the performance of the construction contract and which become a part of real property. Accordingly, in the absence of an agency agreement as set forth in paragraph (1) above, purchases by a contractor or subcontractor of tangible personal property which it will use in the performance of a contract with the United States Government, the State of Alabama, county or incorporated municipality of the state, or an entity with a specific exemption, for making additions, alterations, or improvements to realty belonging to the government, state, county, municipality, or entity are not purchases by the government, state, county, municipality, or entity and do not qualify for the sales and use tax exemptions in Sections 40-23-4(a)(11) and 40-23-62(13). (Sections 40-23-1(a)(10) and 40-23-60(5))

(a) A contractor that sells building materials to a tax exempt entity under one contract and affixes the materials to realty under a second contract with the tax exempt entity is liable for sales or use tax; the fact that the materials are sold and installed under separate contracts does not qualify the contractor's purchase of the materials for the sales or use tax exemptions in Sections 40-23-4(a)(11) and 40-23-62(13). A contractor may not purchase materials tax exempt for resale to the tax exempt entity and then affix the same materials to realty for the tax exempt entity. (State v. Algemon Blair Industrial Contractors, Inc., 362 So.2d 248 (Ala.Civ.App. 1978), cert. denied 362 So.2d 253)

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810-6-3-69.02. (Continued)

(b) A contractor may purchase items of tangible personal property tax free when the items are purchased for resale to a tax exempt governmental entity in the form of tangible personal property and are not affixed to realty by the contractor pursuant to a contract with the tax exempt entity.

(3) On and after October 1, 2000, the sale to, or the storage, use, or consumption by, any contractor or subcontractor of any tangible personal property to be incorporated into realty pursuant to a contract with the State of Alabama or a county or incorporated municipality of the State of Alabama awarded prior to July 1, 2004, is exempt from state, county, and municipal sales and use taxes provided the contractor or subcontractor has complied with Rule 810-6-3-.77, entitled Exemption for Certain Purchases by Contractors and Subcontractors in conjunction with Construction Contracts with Certain Governmental Entities, Public Corporations, and Educational Institutions. (Section 40-9-33)

(4) On and after July 1, 2004, the sale to, or the storage, use, or consumption by, any contractor or subcontractor of any tangible personal property to be incorporated into realty pursuant to a contract with the United States government, the State of Alabama or a county or incorporated municipality of the State of Alabama is subject to all state, county, and municipal sales and use taxes for any contract awarded, or any portion of a contract which is revised, renegotiated, or otherwise altered on and after July 1, 2004, to the extent that such revision, renegotiation, or alteration requires the purchase of additional tangible personal property. If the "change order" or other revision does not require the purchase of additional tangible personal property, however, the change will not cause the contract to lose its exempt status. Items purchased after June 30, 2004, pursuant to a contract awarded prior to July 1, 2004, will continue to be exempt for the remainder of the contract. (Sections 40-2A-7(a)(5), 40-23-31, 40-23-83, 40-23-4(a)(10), 40-23-4(a)(11), 40-23-62(13), 40-23-1(a)(10), 40-23-60(5), and 40-9-33, Code of Alabama 1975) (Readopted through APA effective October 1, 1982, amended November 12, 1997, amended March 27, 2001, amended June 10, 2005, amended January 5, 2010)