

810-6-5-.26 Utility Privilege or License Tax.

(1) Unless otherwise defined herein, the definitions of terms set forth in Code of Alabama 1975, Section 40-21-80, are incorporated by reference herein.

(2) Section 40-21-82 levies a privilege or license tax against every utility in the State of Alabama on account of the furnishing of utility services by said utilities. The amount of tax levied on the furnishing of electricity, domestic water, and natural gas services shall be determined by the application of rates against gross sales or gross receipts, as the case may be, and shall be computed monthly in accordance with the following table:

If monthly gross sales or gross receipts respecting a person are:	The tax is:
Not over \$40,000	4% of such gross sales or gross receipts
Over \$40,000 but not over \$60,000	\$1,600 plus 3% of excess over \$40,000
Over \$60,000	\$2,200 plus 2% of excess over \$60,000

The amount of tax levied on the furnishing of telegraph and telephone services shall be determined in the same manner and shall be computed monthly in accordance with the following table:

If monthly gross sales or gross receipts respecting a person are:	The tax is:
Not over \$60,000	6.7% of such gross sales or gross receipts
Over \$60,000	\$4,020 plus 3.7% of excess over \$60,000

(3) Telephone and Telegraph Services

(a) The gross sales or gross receipts from the furnishing of telegraph and telephone services are taxable pursuant to Section 40-21-82(b).

(b) The term "telephone services" is defined in Section 40-21-80(11). This section specifically excludes from the definition of telephone services the furnishing of any telephone services for resale including access charges paid by an interexchange

carrier. Any utility making a sale of telephone services for resale shall obtain from the purchaser a copy or record of the purchaser's utility tax license issued pursuant to Section 40-21-84. The term "telephone services" specifically includes telephone services sold by motels and hotels to their customers or to others, telephone services sold by colleges and universities to their students or to others, and telephone services sold by hospitals to their patients or to others.

(c) Internet access charges are not taxable under Sections 40-21-82 and 40-21-102.

(d) Any excise, franchise, or similar tax or like fee or assessment levied by the United States, by the state of Alabama, or by any political subdivision of the state of Alabama upon the purchase, sale, use, or consumption of any telephone services shall not be included in the measure of the tax levied in Section 40-21-82(b) provided it is collected by the seller from the purchaser and is separately billed to the purchaser.

(e) The use or consumption of telephone service by an incorporated municipality in providing a fire alarm system is not taxable. Telephone service or telegraph service used or consumed by a utility regularly engaged in furnishing such service to persons is not taxable.

(f) Charges made for telephone calls and telegraphic messages originating within this state to a point outside of this state, or originating outside of this state to a point within this state, are not taxable provided the charges are clearly indicated on a statement given to the customer.

(4) Domestic Water

(a) "Domestic water" shall mean all water except water that is sold to persons for use or consumption in industrial processes and not primarily for human consumption. Water used in industrial processes shall mean water used by any person in the manufacturing, processing, compounding, mining or quarrying of tangible personal property for sale. Where water is used for both human consumption and industrial processing and more than 50 percent of the total water purchased is used in industrial processing, the gross receipts from the sale of the water would not be taxable. Where less than 50 percent is used for industrial processing and more than 50 percent is used for human consumption, the total gross receipts from the sale of water would be taxable.

(b) The use or consumption of domestic water by an incorporated municipality in extinguishing fires, explosions, or conflagrations is not taxable. (Section 40-21-83(8))

(c) Water used or consumed by a water board created under Sections 11-50-310, et seq., Code of Alabama 1975 as amended, which is engaged in furnishing water to persons is not taxable.

(d) Water used or consumed by a municipal utility department or an independent municipal utility board which is engaged in furnishing water to persons is not taxable. Water furnished by a municipal utility department or an independent municipal utility board to other departments or agencies of the same municipality is taxable.

(e) Water used or consumed by private water systems engaged in furnishing water to persons is not taxable.

(f) The sale of water by a board (created under Sections 11-50-310, et seq., Code of Alabama 1975 as amended) to an incorporated municipality is taxable except water used in extinguishing fires, explosions, or conflagrations.

(g) Domestic water used or consumed by any person in or for the direct production, generation, processing, storage, delivery, or transmission of domestic water, electricity, and natural gas is not taxable. (Section 40-21-83(4))

(5) Electricity and Natural Gas

(a) The gross sales or gross receipts from the furnishing of electricity and natural gas are taxable pursuant to Section 40-21-82(a).

(b) The use or consumption of electricity by an incorporated municipality or a board or corporation organized under the authority of any incorporated municipality in furnishing or providing street lighting or traffic control systems is not taxable. (Section 40-21-83(8))

(c) Electricity and natural gas used or consumed by any person in or for the direct production, generation, processing, storage, delivery, or transmission of electricity, natural gas, or domestic water are not taxable. (Section 40-21-83(4))

(d) The furnishing of electricity to a manufacturer or compounder for use in an electrolytic or electrothermal manufacturing or compounding process, natural gas which becomes a component of tangible personal property manufactured or compounded (but not as fuel or energy), and natural gas used by a manufacturer or compounder to chemically convert raw materials prior to the use of such converted raw materials in an electrolytic or electrothermal manufacturing or compounding process are not taxable.

(e) Electricity and natural gas used or consumed by an electric board or gas board created under Sections 11-50-310, et seq., Code of Alabama 1975 as amended, which is engaged in furnishing such utility services to persons are not taxable.

(f) Electricity and natural gas used or consumed by a municipal utility department or an independent municipal utility board which is engaged in furnishing such utility services to persons are not taxable. Electricity and natural gas furnished by a municipal utility department or an independent municipal utility board to other

departments or agencies of the same municipality are taxable.

(g) Electricity and natural gas used or consumed by private utilities engaged in furnishing such utility services to persons are not taxable.

(h) The sale of electricity by a board created under Section 11-50-310, et seq., Code of Alabama 1975 as amended, to an incorporated municipality is taxable except electricity used in furnishing or providing street lighting or traffic control systems.

(i) The sale of natural gas by a board created under the above section to an incorporated municipality is taxable.

(j) "Electrolysis" is the passage of an electric current through a conducting solution or molten salt (either is a type of electrolyte) which then dissociates. Various substances are prepared commercially by electrolysis; for example, chlorine (from salt), hydrogen (from water), and aluminum (from alumina). An "electrolyte" chemically, is a conductor in which the electric current is a movement of ions. Electrolysis is also used in the medical profession. "Electrothermal" means heat produced by electricity. Electric furnaces are used for making large quantities of high grade steel; they are especially used in making high grade alloy steels.

(k) A person, firm, or corporation that transports natural gas purchased by their customer from a third party is not liable for utility tax on their gross receipts from furnishing such transportation services.

(l) Electricity or natural gas used or consumed as fuel or energy in and for the heating of poultry houses is not taxable. (Section 40-21-83(9))

(6) General provisions

(a) Where a discount is deductible from the gross charge for a utility service if payment is made within a prescribed period, the tax applies to the amount actually paid.

(b) Receipts from (i) standard collection charges, which are flat-amount administrative fees charged to cover the cost of sending a customer a delinquent billing letter; (ii) reconnect fees, which are fees charged for reconnecting a utility service after someone has moved from one location to another or after service has been disconnected because of nonpayment for services; (iii) collection fees, which are fees charged when a utility must send a collector to a utility customer to attempt to collect payment on a utility service billing prior to disconnecting service; and (iv) charges or fees added for failure to timely pay utility bills, whether the charge or fee is a flat amount or is based upon a percentage of the bill which was not timely paid, do not constitute gross sales or gross receipts from furnishing utility services and, therefore, are not taxable. (State of Alabama v. Muscle Shoals Electric Board (Admin. Law Div. Docket No. S. 93-286, decided November 4, 1993) and State Department of Revenue

v. Mobile Gas 621 So.2d 1333 (Ala.Civ.App. 1993))

(c) Any person engaged or continuing in the business of furnishing taxable and nontaxable utility services to a customer shall pay the tax required on the taxable services furnished when his or her books are kept so as to show separately the taxable utility services furnished and the nontaxable utility services furnished. When the books are not so kept, the person furnishing the utility services shall pay tax on the total gross receipts of all utility services furnished. This would require separate meters for taxable and nontaxable services furnished; estimates will not be acceptable. (Shellcast Corp. v. White, 477 So.2d 422 (Ala. 1985))

(d) In case a customer of a utility claims an exemption, the applicability of which there is some doubt, either the utility or the customer may request from the Department a determination of the validity of the claim for the exemption.

(e) The tax levied in Section 40-21-82 shall apply to all utility services furnished for use by the State of Alabama, the counties within the State of Alabama, and any other person or entity previously exempt from all taxation. The tax levied under this section shall apply to utility services furnished for use by incorporated municipalities of the State of Alabama except the exemptions noted in previous paragraphs. The tax levied under this section shall not apply to utility services furnished to the Federal Government and its agencies. Utility services furnished to national banks are taxable.

(f) Any person regularly engaging in any business for which a privilege tax is imposed by Section 40-21-82 shall apply for and obtain from the Department a license to engage in and to conduct such business on forms furnished by the Department. The application for a utility tax license shall require the following information:

1. Applicant's Federal Employer Identification Number,
2. Applicant's legal name, trade name, and complete mailing address,
3. Number of businesses in Alabama and exact location of each (exact location shall include city, county, and street address; if location is on highway or rural route, exact location shall include details sufficient to allow Department personnel to find the place of business),
4. Indication of the kind and class of business (i.e. domestic water, natural gas, electricity, telephone services, and/or telegraph services,
5. Indication of the legal form of ownership (sole proprietorship, partnership, corporation, LLC, etc.),
6. Copy of certificate of incorporation or articles of incorporation, if applicable,

7. Name, title, home address, and social security number of sole proprietor, each partner, or each corporate officer,

8. Name of former owner of business, if any,

9. Beginning date of business,

10. Business and home phone numbers, and

11. Signature of sole proprietor, each partner, or an elected corporate officer.

(g) The taxes levied under Sections 40-21-82 and 40-21-102 shall be due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax accrues. Every person, firm, or corporation on whom these taxes are levied shall prepare and forward to the Department within the time fixed and prescribed by law on forms prepared and furnished by the Department, a return for each calendar month and shall compute the tax due and shall pay to the Department the amount of tax shown to be due. Each taxpayer shall file only one return for all units of businesses operated within the state. Any taxpayer liable for utility tax whose average monthly tax liability was \$10,000 or greater during the preceding calendar year shall make estimated payments to the Department on or before the twentieth day of the month in which the liability occurred. Such estimated payments must be at least equal to the taxpayer's actual tax liability for the same calendar month of the preceding year. (Section 40-21-85)

1. Utility Privilege License Tax returns shall require the following information:

(i) Taxpayer's utility privilege license tax account number, legal name, and complete address,

(ii) Period covered by the return and due date of the return,

(iii) Estimated tax due for the current month, if applicable,

(iv) A breakdown, by utility service type, of total receipts, exempt receipts, and taxable receipts from furnishing utility services,

(v) A breakdown, by applicable tax rate, of the number of persons from whom taxable receipts were received, the amount of such receipts, and the tax due thereon,

(vi) Total tax due,

(vii) Estimated tax paid on previous month's return, if applicable,

- (viii) Tax due after deducting credit for previous month's estimate,
- (ix) Grand total tax due (total tax due plus current month's estimate, if applicable),
- (x) Penalties and interest due, if applicable,
- (xi) Credits claimed, if any,
- (xii) Total amount remitted,
- (xiii) An indication if payment of tax is made through electronic funds transfer (EFT), and
- (xiv) Taxpayer's signature, title, and date signed.

2. Utility Excise Tax returns shall require the following information:

- (i) Taxpayer's utility excise tax account number, legal name, and complete address,
- (ii) Period covered by the return and due date of the return,
- (iii) Estimated tax due for the current month, if applicable,
- (iv) A breakdown, by vendor, of taxable purchases and the tax due thereon,
- (v) Total tax due on all taxable purchases,
- (vi) Estimated tax paid on previous month's return, if applicable,
- (vii) Total tax due after deducting credit for previous month's estimate,
- (viii) Grand total tax due (total tax due plus current month's estimate, if applicable),
- (ix) Penalties and interest due, if applicable,
- (x) Credits claimed, if any,
- (xi) Total amount remitted,
- (xii) An indication if payment of tax is made through electronic funds transfer (EFT), and

(xiii) Taxpayer's signature, title, and date signed.

(h) Every person engaged in the business of furnishing utility services shall add the tax levied in Section 40-21-82 to the gross receipts from furnishing such services and include the tax as a part of the total price billed to the purchaser of the services. (Section 40-21-86)

(i) The utility gross receipts tax shall be administered and the tax shall be collected in accordance with the uniform procedures set forth in Title 40 along with the procedures outlined in Sections 40-23-8 through 40-23-12, 40-23-25, and 40-23-27 through 40-23-31, Code of Alabama 1975, as amended, together with the applicable definitions contained in Section 40-23-1, Code of Alabama 1975, as amended. No discount is allowed for prompt payment of the utility gross receipts tax. (Section 40-21-85)

(j) Insofar as applicable, the provisions of this rule shall apply equally to the tax levied in Section 40-21-102. In the event that a seller making sales of utility services for storage, use, or other consumption in this state, not exempted under the provisions of Section 40-21-103, is exempted from collection of the tax herein levied by any provisions of the Constitution or laws of the United States of America, then the purchaser of the utility services shall pay the the tax directly to the Department each month pursuant to this rule.

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