

AN EDUCATIONAL UPDATE FROM
THE SOUTHEAST LAW INSTITUTE™, INC.

To: SLI Supporters
Date: November 2015
From: A. Eric Johnston
Re: **Nonpublic School Alabama Sales, Use and Lodging Tax Exemption and Annual Reporting**

On August 15, 2013, an administrative law judge ruled that nonpublic schools were not exempt from sales, use and lodging taxes as had been the practice. The Department of Revenue had permitted church and other nonpublic schools to be treated as private schools under the statute, Section 40-23-4 (15), 1975 *Code of Alabama*, and not being required to pay said taxes. However, the administrative law judge's finding changed that.

This was corrected by an amendment to the statute in 2014. Section 40-23-4 (15) now specifically exempts private schools, being church, parochial, secular private, K-12, colleges, seminaries and other nonpublic schools from taxes.

In the First Special Session 2015 of the Alabama Legislature, a bill (SB24) was passed that requires annual reporting of certain organizations that are exempt from sales, use and lodging taxes. This includes the nonpublic schools mentioned above and other specifically named organizations exempt by Section 40-23-1, *et sequel*.

An annual certificate of exemption on a form prepared by the Department of Revenue will be required. The expectation is that the form will not be onerous. It is not intended to be an encroachment on private, religious or other rights. If the form raises legitimate objections, we will check on those. However, keep in mind that if you accept a benefit from the government, there may be strings attached.

As you know, the Legislature continues to struggle with state budgets and finding necessary revenue for them. Essentially, they are looking everywhere that a dollar may be found. At some point along the way, someone realized that there were many sales, use and lodging tax exemptions granted by the Legislature, but no follow up as to whether those that were exempted were actually engaged in exempt activities.

The exempt entities were primarily those named by statute and exempt from paying sales, use or lodging taxes. It was popular a number of years ago for nonprofit entities to get this exemption from the Legislature. In more recent years, it has not been easy to get these exemptions.

In addition to those specific exemptions, are more general ones setting up generic descriptions for who may be taxed and that is where Section 40-23-4 comes in. While individual church schools, private secular schools and other nonpublic schools are not identified, they are named by category. Because you fit into that category, you will need to file the exemption certificate each year.

This does not apply, however, to home schools. Home schools are not exempt from sales, use or lodging taxes. Therefore, they will not be required to file the certificate.

Finally, keep in mind this new law does not require all tax exempt organizations, nonprofits, ministries, churches, *etcetera*, to file the annual reports. Churches are automatically tax exempt by the *Internal Revenue Code*. Other nonprofit organizations that engage in educational, charitable, religious, scientific, *etcetera*, work must apply for tax exempt status from the Internal Revenue Service. Therefore, both churches and tax exempt organizations are not taxed on the contributions they receive (no income tax) and the contributors get a tax deduction. SB24 does not apply to that type of tax exempt organization. It is only those referenced in the *Alabama Code* above for sales, use and lodging taxes.

One last caveat. If you are a church, tax exempt organization, or even one of the identified organizations above, and you have set up a "united appeal fund" under Alabama law, you will be required to file the annual certificate of exemption form. It was vogue a few years back to set up united appeal funds for churches and other ministries in order to not pay sales taxes, particularly when they were involved in building campaigns.

If you have questions, please feel free to contact us. We know the combination of these events has caused a lot of confusion. We hope this clears it up.