

1 HB216
2 144416-4
3 By Representatives Lee, Chesteen, McClurkin, Buskey, Gaston,
4 McMillan, Sessions, Ison, Collins, Nordgren, Henry, Fincher
5 and Moore (B)
6 RFD: Commerce and Small Business
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ENROLLED, An Act,

To amend Section 40-23-62, Code of Alabama 1975, as last amended, relating to state use taxes; to clarify legislative intent and conform the provisions of the state use tax to the sales tax exemption provided by Act 2012-185, 2012 Regular Session; to specify an equivalent use tax exemption for any parts, components, and systems which become a part of a fixed or rotary wing military aircraft or certified transport category aircraft which undergoes conversion, reconfiguration, or general maintenance so long as the address of the aircraft for FAA registration is not in the state; to provide that the exemption shall not apply to a local use tax except under certain conditions; and to provide for this act to be effective retroactively for the fiscal year commencing October 1, 2012.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The intent of this act is to clarify legislative intent and conform the provisions of the sales tax exemption provided in Act No. 2012-185, 2012 Regular Session, to specify an equivalent use tax exemption for certain aircraft parts and to provide uniformity in the administration and collection of sales and use tax.

Section 2. Section 40-23-62, Code of Alabama 1975, as last amended, is amended to read as follows:

1 "§40-23-62.

2 "The storage, use or other consumption in this state
3 of the following tangible personal property is hereby
4 specifically exempted from the tax imposed by this article:

5 "(1) Property, on which the sales tax imposed by the
6 provisions of Article 1 of this chapter is paid by the
7 consumer to a person licensed under the provisions of Article
8 1 of this chapter.

9 "(2) Property, the storage, use or other consumption
10 of which this state is prohibited from taxing under the
11 Constitution or laws of the United States of America or under
12 the constitution of this state.

13 "(3) Tangible personal property, not to be used in
14 the performance of a contract, brought into this state by a
15 nonresident thereof for his own storage, use or consumption
16 while temporarily within this state.

17 "(4) Lubricating oil and gasoline as defined in
18 Sections 40-17-30 and 40-17-170, the storage, use or other
19 consumption of which is otherwise taxed.

20 "(5) All fertilizer; provided, that the word
21 "fertilizer" as used in this article shall not be construed to
22 include cottonseed meal when not in combination with other
23 material.

1 "(6) All seeds for planting purposes and baby chicks
2 and poult; provided, that nothing herein shall be construed
3 to exempt plants, seedlings, nursery stock or floral products.

4 "(7) Insecticides and fungicides and feed for
5 livestock and poultry, but not including prepared foods for
6 dogs and cats.

7 "(8) The use, storage or consumption of all
8 livestock by whomsoever sold; and also the gross proceeds of
9 poultry and other products of the farm, dairy, grove or
10 garden, when in the original state of production or condition
11 of preparation for sale, when such sale or sales are made by
12 the producer or members of his immediate family or for him by
13 those employed by him to assist in the production thereof.
14 Nothing herein shall be construed to exempt or exclude from
15 the measure or computation of the tax levied, assessed, or
16 payable hereunder, the gross proceeds of sales of poultry or
17 poultry products when not products of the farm.

18 "(9) Cottonseed meal exchanged for cottonseed at or
19 by cotton gins.

20 "(10) Transportation, gas, water, or electricity, of
21 the kinds and natures, the rates and charges for which when
22 sold by public utilities, are customarily fixed and determined
23 by the Public Service Commission of Alabama or like regulatory
24 bodies.

1 "(11) Coal or coke to be stored, used or consumed by
2 manufacturers, electric power companies and transportation
3 companies for use or consumption in the production of
4 by-products or the generation of heat or power used:

5 "a. In manufacturing tangible personal property for
6 sale;

7 "b. For the generation of electric power or energy
8 for use in manufacturing tangible personal property for sale
9 or for resale; or

10 "c. For the generation of motive power for
11 transportation.

12 "(12) Fuel and supplies for use or consumption
13 aboard ships, vessels, towing vessels, or barges, or drilling
14 ships, rigs or barges, or seismic or geophysical vessels, or
15 other watercraft (herein for purposes of this exemption being
16 referred to as vessels) engaged in foreign or international
17 commerce or in interstate commerce; provided, that nothing in
18 this article shall be construed to exempt or exclude from the
19 measure of the tax herein levied the gross proceeds of sale or
20 sales of material and supplies to any person for use in
21 fulfilling a contract for the painting, repair or
22 reconditioning of vessels, barges, ships, other watercraft and
23 commercial fishing vessels of over five tons load displacement
24 as registered with the U.S. Coast Guard and licensed by the
25 State of Alabama Department of Conservation and Natural

1 Resources. For purposes of this subdivision, it shall be
2 presumed that vessels engaged in the transportation of cargo
3 between ports in the State of Alabama and ports in foreign
4 countries or possessions or territories of the United States
5 or between ports in the State of Alabama and ports in other
6 states are engaged in foreign or international commerce or
7 interstate commerce, as the case may be. For the purposes of
8 this subdivision, the engaging in foreign or international
9 commerce or interstate commerce shall not require that the
10 vessel involved deliver cargo to or receive cargo from a port
11 in the State of Alabama. For purposes of this subdivision,
12 vessels carrying passengers for hire, and no cargo, between
13 ports in the State of Alabama and ports in foreign countries
14 or possessions or territories of the United States or between
15 ports in the State of Alabama and ports in other states shall
16 be engaged in foreign or international commerce or interstate
17 commerce, as the case may be, if, and only if, both of the
18 following conditions are met: (i) The vessel in question is a
19 vessel of at least 100 gross tons; and (ii) the vessel in
20 question has an unexpired certificate of inspection issued by
21 the United States Coast Guard or by the proper authority of a
22 foreign country for a foreign vessel, which certificate is
23 recognized as acceptable under the laws of the United States.
24 Vessels which are engaged in foreign or international commerce
25 or interstate commerce shall be deemed for the purposes of

1 this subdivision to remain in such commerce while awaiting or
2 under repair in a port of the State of Alabama if such vessel
3 returns after such repairs are completed to engaging in
4 foreign or international commerce or interstate commerce. For
5 purposes of this subdivision, seismic or geophysical vessels
6 which are engaged either in seismic or geophysical tests or
7 evaluations exclusively in offshore federal waters or in
8 traveling to or from conducting such tests or evaluations
9 shall be deemed to be engaged in international or foreign
10 commerce. For purposes of this subdivision, proof that fuel
11 and supplies purchased are for use or consumption aboard
12 vessels engaged in foreign or international commerce or in
13 interstate commerce may be accomplished by the merchant or
14 seller securing the duly signed certificate of the vessel
15 owner, operator or captain or their respective agent on a form
16 prescribed by the department that the fuel and supplies
17 purchased are for use or consumption aboard vessels engaged in
18 foreign or international commerce or in interstate commerce.
19 Any person filing a false certificate shall be guilty of a
20 misdemeanor and upon conviction shall be fined not less than
21 \$25 nor more than \$500 for each offense. Each false
22 certificate filed shall constitute a separate offense. Any
23 person filing a false certificate shall be liable to the
24 department for all taxes imposed by this division upon the
25 merchant or seller, together with any interest or penalties

1 thereon, by reason of the sale or sales of fuel and supplies
2 applicable to such false certificate. If a merchant or seller
3 of fuel and supplies secures the certificate herein mentioned,
4 properly completed, such merchant or seller shall not be
5 liable for the taxes imposed by this division, if such
6 merchant or seller had no knowledge that such certificate was
7 false when it was filed with such merchant or seller.

8 "(13) Property stored, used or consumed by the State
9 of Alabama, by the counties within the state or by
10 incorporated municipalities of the State of Alabama.

11 "(14) The use, storage or consumption of materials,
12 equipment and machinery which, at any time, enter into and
13 become a component part of ships, vessels, towing vessels or
14 barges, or drilling ships, rigs or barges, or seismic or
15 geophysical vessels, other watercraft and commercial fishing
16 vessels of over five tons load displacement as registered with
17 the U.S. Coast Guard and licensed by the Department of
18 Conservation and Natural Resources. Additionally, the use,
19 storage, or consumption of lifeboats, personal flotation
20 devices, ring life buoys, survival craft equipment, distress
21 signals, EPIRB's, fire extinguishers, injury placards, waste
22 management plans and logs, marine sanitation devices,
23 navigation rulebooks, navigation lights, sound signals,
24 navigation day shapes, oil placard cards, garbage placards,
25 FCC SSL, stability instructions, first aid equipment,

1 compasses, anchor and radar reflectors, general alarm systems,
 2 bilge pumps, piping, and discharge and electronic position
 3 fixing devices on the aforementioned watercraft.

4 "(15) The use, storage, or consumption of fuel oil
 5 purchased as fuel for kilns used in manufacturing
 6 establishments.

7 "(16) Tangible personal property stored, used or
 8 consumed by county and city school boards, independent school
 9 boards and all educational institutions and agencies of the
 10 State of Alabama, the counties within the state or any
 11 incorporated municipality of the State of Alabama.

12 "(17) The storage, use, or consumption of railroad
 13 cars, vessels, and barges and commercial fishing vessels of
 14 over five tons load displacement as registered with the U.S.
 15 Coast Guard and licensed by the State of Alabama Department of
 16 Conservation and Natural Resources when purchased from the
 17 manufacturers or builders thereof.

18 "(18) The storage, use, or consumption of all
 19 devices or facilities, and all identifiable components thereof
 20 or materials for use therein, used or placed in operation
 21 primarily for the control, reduction or elimination of air or
 22 water pollution, and the storage, use, or consumption of all
 23 identifiable components of or materials used or intended for
 24 use in structures built primarily for the control, reduction
 25 or elimination of air or water pollution.

1 "(19) When dealers or distributors use parts taken
2 from stocks owned by them in making repairs without charge for
3 such parts to the owner of the property required pursuant to
4 warranty agreements entered into by manufacturers, such use
5 shall not constitute taxable sales to the manufacturers,
6 distributors or to the dealers, under this article, or under
7 any county use tax law.

8 "(20) The storage, use, or other consumption in this
9 state of religious magazines and publications. For the purpose
10 of this subdivision the words "religious magazines and
11 publications" shall be construed to mean printed or
12 illustrated lessons, notes and explanations distributed by
13 churches or other religious organizations free of charge to
14 pupils or students in Sunday schools, Bible classes or other
15 educational facilities established and maintained by churches
16 or similar religious organizations in this state.

17 "(21) The storage, use, or other consumption of
18 wrapping paper and other wrapping materials when used in
19 preparing poultry or poultry products for delivery, shipment
20 or sale by the producer, processor, packer, or seller of such
21 poultry or poultry products including pallets used in shipping
22 poultry and egg products, paper or other materials used for
23 lining boxes or other containers in which poultry or poultry
24 products are packed together with any other materials placed

1 in such containers for the delivery, shipment or sale of
2 poultry or poultry products.

3 "(22) The storage, use, or other consumption of all
4 antibiotics, hormones and hormone preparations, drugs,
5 medicines or medications, vitamins, minerals, or other
6 nutrients and all other feed ingredients including
7 concentrates, supplements and other feed ingredients when such
8 substances are used as ingredients in mixing and preparing
9 feed for livestock and poultry. Such exemption herein granted
10 shall be in addition to exemptions now provided by law for
11 feed for livestock and poultry, but not including prepared
12 foods for dogs and cats.

13 "(23) The use of seedlings, plants, shoots, and
14 slips which are to be used for planting vegetable gardens or
15 truck farms. Nothing herein shall be construed to exempt, or
16 exclude from the computation of the tax levied, assessed, or
17 payable, the use of plants, seedlings, shoots, slips, nursery
18 stock and floral products except as hereinabove exempted.

19 "(24) Fabricated steel tube sections, when produced
20 and fabricated in this state by any person, firm, or
21 corporation, for any vehicular tunnel for highway vehicular
22 traffic, when sold by the manufacturer or fabricator thereof,
23 and also steel which enters into and becomes a component part
24 of such fabricated steel tube sections of said tunnel, shall
25 be exempted from the provisions of this article and from the

1 computation of the amount of the tax levied, assessed or
 2 payable under this article.

3 "(25) The storage, use or other consumption of
 4 herbicides for agricultural uses by whomsoever sold. The term
 5 "herbicides" as used in this subdivision means any substance
 6 or mixture of substances intended to prevent, destroy, repel,
 7 or retard the growth of weeds or plants. It shall include
 8 preemergence herbicides, postemergence herbicides, lay-by
 9 herbicides, pasture herbicides, defoliant herbicides, and
 10 desiccant herbicides.

11 "(26) The Alabama Chapter of the Cystic Fibrosis
 12 Research Foundation, and the Jefferson Tuberculosis Sanatorium
 13 and any of their departments or agencies, heretofore or
 14 hereafter organized and existing in good faith in the State of
 15 Alabama for purposes other than for pecuniary gain and not for
 16 individual profit, shall be exempted from the payment of the
 17 state use tax levied under this article.

18 "(27) Fuel for use or consumption aboard commercial
 19 fishing vessels are hereby exempt from the payment of the
 20 state use tax levied under this article, or levied under any
 21 county or municipal use tax law.

22 "The words commercial fishing vessels shall mean
 23 vessels whose masters and owners are regularly and exclusively
 24 engaged in fishing as their means of livelihood.

1 "(28) The storage, use, or withdrawal of sawdust,
2 wood shavings, wood chips, and other like materials purchased
3 for use as chicken litter by poultry producers and poultry
4 processors shall be exempt under this article.

5 "(29) The storage, use or other consumption of all
6 antibiotics, hormones and hormone preparations, drugs,
7 medicines and other medications including serums and vaccines,
8 vitamins, minerals or other nutrients for use in the
9 production and growing of fish, livestock, and poultry are
10 hereby specifically exempted from the payment of the state use
11 tax levied by this article. Such exemption as herein granted
12 shall be in addition to the exemptions now provided by law for
13 feed for fish, livestock, and poultry, and in addition to the
14 exemptions now provided by law for the above-enumerated
15 substances and products when mixed and used as ingredients in
16 fish, livestock and poultry feeds.

17 "(30) All medicines prescribed by physicians for
18 persons who are 65 years of age or older, and when said
19 prescriptions are filled by licensed pharmacists, shall be
20 exempted from the operation of the state use tax law levied by
21 this article, or by any county or municipal use tax law. The
22 exemptions provided in this subdivision shall not apply to any
23 medicine purchased in any manner other than as is herein
24 provided.

1 "For the purposes of this subdivision, proof of age
2 may be accomplished by filing with the dispensing pharmacist
3 any one or more of the following documents:

4 "a. The name and claim number as shown on a
5 "Medicare" card issued by the United States Social Security
6 Administration.

7 "b. A certificate executed by any adult person
8 having knowledge of the fact that the person for whom the
9 medicine was prescribed is not less than 65 years of age.

10 "c. An affidavit executed by any adult person having
11 knowledge of the fact that the person for whom the medicine
12 was prescribed is not less than 65 years of age.

13 "For the purposes of this subdivision any person
14 filing a false proof of age shall be guilty of a misdemeanor
15 and upon conviction thereof shall be punished by a fine of
16 \$100.

17 "(31) All diesel fuel used for off-highway
18 agricultural purposes.

19 "(32) The storage, use or other consumption of any
20 aircraft and replacement parts, components, systems, supplies
21 and sundries affixed or used on said aircraft and ground
22 support equipment and vehicles used by or for the aircraft by
23 a certificated or licensed air carrier with a hub operation
24 within this state, for use in conducting intrastate,
25 interstate or foreign commerce for transporting people or

1 property by air. For the purpose of this subdivision, the
2 words "hub operation within this state" shall be construed to
3 have all of the following criteria:

4 "a. There originates from the location 15 or more
5 flight departures and five or more different first-stop
6 destinations five days per week for six or more months during
7 the calendar year; and

8 "b. Passengers and/or property are regularly
9 exchanged at the location between flights of the same or a
10 different certificated or licensed air carrier.

11 "(33) The storage, use, or other consumption of hot
12 or cold food and beverage products by a certificated or
13 licensed air carrier with a hub operation within this state,
14 for use in conducting intrastate, interstate, or foreign
15 commerce for transporting people or property by air. For the
16 purpose of this subdivision, the words "hub operation within
17 this state" shall be construed to have all of the following
18 criteria:

19 "a. There originates from the location 15 or more
20 flight departures and five or more different first-stop
21 destinations five days per week for six or more months during
22 the calendar year; and

23 "b. Passengers and/or property are regularly
24 exchanged at the location between flights of the same or a
25 different certificated or licensed air carrier.

1 "(34) The storage, use, or other consumption of the
2 following:

3 "a. Drill pipe, casing, tubing, and other pipe used
4 for the exploration for or production of oil, gas, sulphur, or
5 other minerals in offshore federal waters.

6 "b. Tangible personal property exclusively used for
7 the exploration for or production of oil, gas, sulphur, or
8 other minerals in offshore federal waters.

9 "c. Fuel and supplies for use or consumption aboard
10 boats, ships, aircraft, and towing vessels when used
11 exclusively in transporting persons or property between a
12 point in Alabama and a point or points in offshore federal
13 waters for the exploration for or production of oil, gas,
14 sulphur, or other minerals in offshore federal waters.

15 "d. Drilling equipment that is used for the
16 exploration for or production of oil, gas, sulphur, or other
17 minerals, that is built for exclusive use outside this state
18 and that is, on completion, removed forthwith from this state.

19 "e. All domestically mined or produced coal, coke,
20 and coke by-products used in cogeneration plants in Alabama.

21 "The delivery of items exempted by this subdivision
22 to the purchaser or lessee in this state does not disqualify
23 the purchaser or lessee from the exemption if the property is
24 removed from the state by any means, including by the use of
25 the purchaser's or lessee's own facilities.

1 "The shipment to a place in this state of equipment
2 exempted by this subdivision for further assembly or
3 fabrication does not disqualify the purchaser or lessee from
4 the exemption if on completion of the further assembly or
5 fabrication the equipment is removed forthwith from this
6 state. This subdivision applies to a sale that may occur when
7 the equipment exempted is further assembled or fabricated if
8 on completion the equipment is removed forthwith from this
9 state.

10 "(35) The storage or use of metal, other than gold
11 or silver, when such metal is held by an investment trust the
12 shares or other units in the trust's net assets of which have
13 been issued in exchange for such metal and are publicly
14 traded, including metal stored in warehouses located in this
15 state. For purposes of this subdivision, the term metals
16 includes, but is not limited to, copper, aluminum, nickel,
17 zinc, tin, lead, and other similar metals typically used in
18 commercial and industrial applications.

19 "(36) For the period commencing October 1, 2012, and
20 ending May 30, 2022, unless extended by joint resolution, all
21 parts, components, and systems that become a part of a fixed
22 or rotary wing military aircraft or certified transport
23 category aircraft which undergoes conversion, reconfiguration,
24 or general maintenance so long as the address of the aircraft
25 for FAA registration is not in the state; provided, however,

1 that this exemption shall not apply to a local use tax unless
2 previously exempted by local law or approved by resolution of
3 the local governing body."

4 Section 3. The provisions of this act are severable.
5 If any part of this act is declared invalid or
6 unconstitutional, that declaration shall not affect the part
7 which remains.

8 Section 4. All laws or parts of laws which conflict
9 with this act are repealed.

10 Section 5. This act shall be effective retroactively
11 for the fiscal year beginning October 1, 2012, and continuing
12 thereafter following its passage and approval by the Governor,
13 or its otherwise becoming law, and any use tax exemptions
14 provided in conformance with this act prior to the enactment
15 of this act are ratified and confirmed.

