

1 HB216  
2 144416-3  
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  
7 First Read: 07-FEB-13

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8 SYNOPSIS: Under existing law, Act 2012-185, 2012  
9 Regular Session, provided a state sales tax  
10 exemption for parts, components, and systems used  
11 in the conversion, reconfiguration, or maintenance  
12 of certain aircraft in this state.

13 This bill would clarify legislative intent  
14 and conform the provisions of the sales tax  
15 exemption provided in Act 2012-185, to specify an  
16 equivalent use tax exemption.

17  
18 A BILL  
19 TO BE ENTITLED  
20 AN ACT

21  
22 To amend Section 40-23-62, Code of Alabama 1975, as  
23 last amended, relating to state use taxes; to clarify  
24 legislative intent and conform the provisions of the state use  
25 tax to the sales tax exemption provided by Act 2012-185, 2012  
26 Regular Session; to specify an equivalent use tax exemption  
27 for any parts, components, and systems which become a part of

1 a fixed or rotary wing military aircraft or certified  
2 transport category aircraft which undergoes conversion,  
3 reconfiguration, or general maintenance so long as the address  
4 of the aircraft for FAA registration is not in the state; to  
5 provide that the exemption shall not apply to a local use tax  
6 except under certain conditions; and to provide for this act  
7 to be effective retroactively for the fiscal year commencing  
8 October 1, 2012.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

18 "§40-23-62.

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

22 "(1) Property, on which the sales tax imposed by the  
23 provisions of Article 1 of this chapter is paid by the  
24 consumer to a person licensed under the provisions of Article  
25 1 of this chapter.

26 "(2) Property, the storage, use or other consumption  
27 of which this state is prohibited from taxing under the

1 Constitution or laws of the United States of America or under  
2 the constitution of this state.

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

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

10 "(5) All fertilizer; provided, that the word  
11 "fertilizer" as used in this article shall not be construed to  
12 include cottonseed meal when not in combination with other  
13 material.

14 "(6) All seeds for planting purposes and baby chicks  
15 and poults; provided, that nothing herein shall be construed  
16 to exempt plants, seedlings, nursery stock or floral products.

17 "(7) Insecticides and fungicides and feed for  
18 livestock and poultry, but not including prepared foods for  
19 dogs and cats.

20 "(8) The use, storage or consumption of all  
21 livestock by whomsoever sold; and also the gross proceeds of  
22 poultry and other products of the farm, dairy, grove or  
23 garden, when in the original state of production or condition  
24 of preparation for sale, when such sale or sales are made by  
25 the producer or members of his immediate family or for him by  
26 those employed by him to assist in the production thereof.  
27 Nothing herein shall be construed to exempt or exclude from

1 the measure or computation of the tax levied, assessed, or  
2 payable hereunder, the gross proceeds of sales of poultry or  
3 poultry products when not products of the farm.

4 "(9) Cottonseed meal exchanged for cottonseed at or  
5 by cotton gins.

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

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

15 "a. In manufacturing tangible personal property for  
16 sale;

17 "b. For the generation of electric power or energy  
18 for use in manufacturing tangible personal property for sale  
19 or for resale; or

20 "c. For the generation of motive power for  
21 transportation.

22 "(12) Fuel and supplies for use or consumption  
23 aboard ships, vessels, towing vessels, or barges, or drilling  
24 ships, rigs or barges, or seismic or geophysical vessels, or  
25 other watercraft (herein for purposes of this exemption being  
26 referred to as vessels) engaged in foreign or international  
27 commerce or in interstate commerce; provided, that nothing in

1 this article shall be construed to exempt or exclude from the  
2 measure of the tax herein levied the gross proceeds of sale or  
3 sales of material and supplies to any person for use in  
4 fulfilling a contract for the painting, repair or  
5 reconditioning of vessels, barges, ships, other watercraft and  
6 commercial fishing vessels of over five tons load displacement  
7 as registered with the U.S. Coast Guard and licensed by the  
8 State of Alabama Department of Conservation and Natural  
9 Resources. For purposes of this subdivision, it shall be  
10 presumed that vessels engaged in the transportation of cargo  
11 between ports in the State of Alabama and ports in foreign  
12 countries or possessions or territories of the United States  
13 or between ports in the State of Alabama and ports in other  
14 states are engaged in foreign or international commerce or  
15 interstate commerce, as the case may be. For the purposes of  
16 this subdivision, the engaging in foreign or international  
17 commerce or interstate commerce shall not require that the  
18 vessel involved deliver cargo to or receive cargo from a port  
19 in the State of Alabama. For purposes of this subdivision,  
20 vessels carrying passengers for hire, and no cargo, between  
21 ports in the State of Alabama and ports in foreign countries  
22 or possessions or territories of the United States or between  
23 ports in the State of Alabama and ports in other states shall  
24 be engaged in foreign or international commerce or interstate  
25 commerce, as the case may be, if, and only if, both of the  
26 following conditions are met: (i) The vessel in question is a  
27 vessel of at least 100 gross tons; and (ii) the vessel in

1 question has an unexpired certificate of inspection issued by  
2 the United States Coast Guard or by the proper authority of a  
3 foreign country for a foreign vessel, which certificate is  
4 recognized as acceptable under the laws of the United States.  
5 Vessels which are engaged in foreign or international commerce  
6 or interstate commerce shall be deemed for the purposes of  
7 this subdivision to remain in such commerce while awaiting or  
8 under repair in a port of the State of Alabama if such vessel  
9 returns after such repairs are completed to engaging in  
10 foreign or international commerce or interstate commerce. For  
11 purposes of this subdivision, seismic or geophysical vessels  
12 which are engaged either in seismic or geophysical tests or  
13 evaluations exclusively in offshore federal waters or in  
14 traveling to or from conducting such tests or evaluations  
15 shall be deemed to be engaged in international or foreign  
16 commerce. For purposes of this subdivision, proof that fuel  
17 and supplies purchased are for use or consumption aboard  
18 vessels engaged in foreign or international commerce or in  
19 interstate commerce may be accomplished by the merchant or  
20 seller securing the duly signed certificate of the vessel  
21 owner, operator or captain or their respective agent on a form  
22 prescribed by the department that the fuel and supplies  
23 purchased are for use or consumption aboard vessels engaged in  
24 foreign or international commerce or in interstate commerce.  
25 Any person filing a false certificate shall be guilty of a  
26 misdemeanor and upon conviction shall be fined not less than  
27 \$25 nor more than \$500 for each offense. Each false

1 certificate filed shall constitute a separate offense. Any  
2 person filing a false certificate shall be liable to the  
3 department for all taxes imposed by this division upon the  
4 merchant or seller, together with any interest or penalties  
5 thereon, by reason of the sale or sales of fuel and supplies  
6 applicable to such false certificate. If a merchant or seller  
7 of fuel and supplies secures the certificate herein mentioned,  
8 properly completed, such merchant or seller shall not be  
9 liable for the taxes imposed by this division, if such  
10 merchant or seller had no knowledge that such certificate was  
11 false when it was filed with such merchant or seller.

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

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



1 navigation day shapes, oil placard cards, garbage placards,  
2 FCC SSL, stability instructions, first aid equipment,  
3 compasses, anchor and radar reflectors, general alarm systems,  
4 bilge pumps, piping, and discharge and electronic position  
5 fixing devices on the aforementioned watercraft.

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

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

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

20 "(18) The storage, use, or consumption of all  
21 devices or facilities, and all identifiable components thereof  
22 or materials for use therein, used or placed in operation  
23 primarily for the control, reduction or elimination of air or  
24 water pollution, and the storage, use, or consumption of all  
25 identifiable components of or materials used or intended for  
26 use in structures built primarily for the control, reduction  
27 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  
25 in such containers for the delivery, shipment or sale of  
26 poultry or poultry products.

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

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

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

26           "(25) The storage, use or other consumption of  
27 herbicides for agricultural uses by whomsoever sold. The term

1 "herbicides" as used in this subdivision means any substance  
2 or mixture of substances intended to prevent, destroy, repel,  
3 or retard the growth of weeds or plants. It shall include  
4 preemergence herbicides, postemergence herbicides, lay-by  
5 herbicides, pasture herbicides, defoliant herbicides, and  
6 desiccant herbicides.

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

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

18 "The words commercial fishing vessels shall mean  
19 vessels whose masters and owners are regularly and exclusively  
20 engaged in fishing as their means of livelihood.

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

25 "(29) The storage, use or other consumption of all  
26 antibiotics, hormones and hormone preparations, drugs,  
27 medicines and other medications including serums and vaccines,

1 vitamins, minerals or other nutrients for use in the  
2 production and growing of fish, livestock, and poultry are  
3 hereby specifically exempted from the payment of the state use  
4 tax levied by this article. Such exemption as herein granted  
5 shall be in addition to the exemptions now provided by law for  
6 feed for fish, livestock, and poultry, and in addition to the  
7 exemptions now provided by law for the above-enumerated  
8 substances and products when mixed and used as ingredients in  
9 fish, livestock and poultry feeds.

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

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

21 "a. The name and claim number as shown on a  
22 "Medicare" card issued by the United States Social Security  
23 Administration.

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

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

4            "For the purposes of this subdivision any person  
5 filing a false proof of age shall be guilty of a misdemeanor  
6 and upon conviction thereof shall be punished by a fine of  
7 \$100.

8            "(31) All diesel fuel used for off-highway  
9 agricultural purposes.

10           " (32) The storage, use or other consumption of any  
11 aircraft and replacement parts, components, systems, supplies  
12 and sundries affixed or used on said aircraft and ground  
13 support equipment and vehicles used by or for the aircraft by  
14 a certificated or licensed air carrier with a hub operation  
15 within this state, for use in conducting intrastate,  
16 interstate or foreign commerce for transporting people or  
17 property by air. For the purpose of this subdivision, the  
18 words "hub operation within this state" shall be construed to  
19 have all of the following criteria:

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

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

1           "(33) The storage, use, or other consumption of hot  
2 or cold food and beverage products by a certificated or  
3 licensed air carrier with a hub operation within this state,  
4 for use in conducting intrastate, interstate, or foreign  
5 commerce for transporting people or property by air. For the  
6 purpose of this subdivision, the words "hub operation within  
7 this state" shall be construed to have all of the following  
8 criteria:

9           "a. There originates from the location 15 or more  
10 flight departures and five or more different first-stop  
11 destinations five days per week for six or more months during  
12 the calendar year; and

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

16           "(34) The storage, use, or other consumption of the  
17 following:

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

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

24           "c. Fuel and supplies for use or consumption aboard  
25 boats, ships, aircraft, and towing vessels when used  
26 exclusively in transporting persons or property between a  
27 point in Alabama and a point or points in offshore federal

1 waters for the exploration for or production of oil, gas,  
2 sulphur, or other minerals in offshore federal waters.

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

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

9 "The delivery of items exempted by this subdivision  
10 to the purchaser or lessee in this state does not disqualify  
11 the purchaser or lessee from the exemption if the property is  
12 removed from the state by any means, including by the use of  
13 the purchaser's or lessee's own facilities.

14 "The shipment to a place in this state of equipment  
15 exempted by this subdivision for further assembly or  
16 fabrication does not disqualify the purchaser or lessee from  
17 the exemption if on completion of the further assembly or  
18 fabrication the equipment is removed forthwith from this  
19 state. This subdivision applies to a sale that may occur when  
20 the equipment exempted is further assembled or fabricated if  
21 on completion the equipment is removed forthwith from this  
22 state.

23 "(35) The storage or use of metal, other than gold  
24 or silver, when such metal is held by an investment trust the  
25 shares or other units in the trust's net assets of which have  
26 been issued in exchange for such metal and are publicly  
27 traded, including metal stored in warehouses located in this



1 state. For purposes of this subdivision, the term metals  
2 includes, but is not limited to, copper, aluminum, nickel,  
3 zinc, tin, lead, and other similar metals typically used in  
4 commercial and industrial applications.

5 "(36) For the period commencing October 1, 2012, and  
6 ending May 30, 2022, unless extended by joint resolution, all  
7 parts, components, and systems that become a part of a fixed  
8 or rotary wing military aircraft or certified transport  
9 category aircraft which undergoes conversion, reconfiguration,  
10 or general maintenance so long as the address of the aircraft  
11 for FAA registration is not in the state; provided, however,  
12 that this exemption shall not apply to a local use tax unless  
13 previously exempted by local law or approved by resolution of  
14 the local governing body."

15 Section 3. The provisions of this act are severable.  
16 If any part of this act is declared invalid or  
17 unconstitutional, that declaration shall not affect the part  
18 which remains.

19 Section 4. All laws or parts of laws which conflict  
20 with this act are repealed.

21 Section 5. This act shall be effective retroactively  
22 for the fiscal year beginning October 1, 2012, and continuing  
23 thereafter following its passage and approval by the Governor,  
24 or its otherwise becoming law, and any use tax exemptions  
25 provided in conformance with this act prior to the enactment  
26 of this act are ratified and confirmed.