

2  
3 HOUSE WAYS AND MEANS EDUCATION COMMITTEE SUBSTITUTE FOR HB290  
4  
5  
6  
7

8 SYNOPSIS: Under current law, sales tax exemptions and  
9 use tax exemptions are not consistent with each  
10 other. This bill provides further for the sales of  
11 photographs and commissioned portraits.  
12

13 A BILL  
14 TO BE ENTITLED  
15 AN ACT  
16

17 To amend Sections 40-23-4, Code of Alabama 1975, to  
18 provide an exemption for gross receipts occurring from the  
19 services provided by photographers and commissioned portrait  
20 artists; and to amend Section 40-23-62, Code of Alabama 1975,  
21 relating to exemptions from use tax.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 40-23-4 and 40-23-62, Code of  
24 Alabama 1975, is amended to read as follows:

25 "§40-23-4.

26 "(a) There are exempted from the provisions of this  
27 division and from the computation of the amount of the tax

1 levied, assessed, or payable under this division the  
2 following:

3 "(1) The gross proceeds of the sales of lubricating  
4 oil and gasoline as defined in Sections 40-17-30 and 40-17-170  
5 and the gross proceeds from those sales of lubricating oil  
6 destined for out-of-state use which are transacted in a manner  
7 whereby an out-of-state purchaser takes delivery of such oil  
8 at a distributor's plant within this state and transports it  
9 out-of-state, which are otherwise taxed.

10 "(2) The gross proceeds of the sale, or sales, of  
11 fertilizer when used for agricultural purposes. The word  
12 "fertilizer" shall not be construed to include cottonseed  
13 meal, when not in combination with other materials.

14 "(3) The gross proceeds of the sale, or sales, of  
15 seeds for planting purposes and baby chicks and poults.  
16 Nothing herein shall be construed to exempt or exclude from  
17 the computation of the tax levied, assessed, or payable, the  
18 gross proceeds of the sale or sales of plants, seedlings,  
19 nursery stock, or floral products.

20 "(4) The gross proceeds of sales of insecticides and  
21 fungicides when used for agricultural purposes or when used by  
22 persons properly permitted by the Department of Agriculture  
23 and Industries or any applicable local or state governmental  
24 authority for structural pest control work and feed for  
25 livestock and poultry, but not including prepared food for  
26 dogs and cats.

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

12           "(6) Cottonseed meal exchanged for cottonseed at or  
13 by cotton gins.

14           "(7) The gross receipts from the business on which,  
15 or for engaging in which, a license or privilege tax is levied  
16 by or under the provisions of Sections 40-21-50, 40-21-53, and  
17 40-21-56 through 40-21-60; provided, that nothing contained in  
18 this subdivision shall be construed to exempt or relieve the  
19 person or persons operating the business enumerated in said  
20 sections from the payments of the tax levied by this division  
21 upon or measured by the gross proceeds of sales of any  
22 tangible personal property, except gas and water, the gross  
23 receipts from the sale of which are the measure of the tax  
24 levied by said Section 40-21-50, merchandise or other tangible  
25 commodities sold at retail by said persons, unless the gross  
26 proceeds of sale thereof are otherwise specifically exempted  
27 by the provisions of this division.

1           "(8) The gross proceeds of sales or gross receipts  
2 of or by any person, firm, or corporation, from the sale of  
3 transportation, gas, water, or electricity, of the kinds and  
4 natures, the rates and charges for which, when sold by public  
5 utilities, are customarily fixed and determined by the Public  
6 Service Commission of Alabama or like regulatory bodies.

7           "(9) The gross proceeds of the sale, or sales of  
8 wood residue, coal, or coke to manufacturers, electric power  
9 companies, and transportation companies for use or consumption  
10 in the production of by-products, or the generation of heat or  
11 power used in manufacturing tangible personal property for  
12 sale, for the generation of electric power or energy for use  
13 in manufacturing tangible personal property for sale or for  
14 resale, or for the generation of motive power for  
15 transportation.

16           "(10) The gross proceeds from the sale or sales of  
17 fuel and supplies for use or consumption aboard ships,  
18 vessels, towing vessels, or barges, or drilling ships, rigs or  
19 barges, or seismic or geophysical vessels, or other watercraft  
20 (herein for purposes of this exemption being referred to as  
21 "vessels") engaged in foreign or international commerce or in  
22 interstate commerce; provided, that nothing in this division  
23 shall be construed to exempt or exclude from the measure of  
24 the tax herein levied the gross proceeds of sale or sales of  
25 material and supplies to any person for use in fulfilling a  
26 contract for the painting, repair, or reconditioning of  
27 vessels, barges, ships, other watercraft, and commercial

1 fishing vessels of over five tons load displacement as  
2 registered with the U.S. Coast Guard and licensed by the State  
3 of Alabama Department of Conservation and Natural Resources.

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

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

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

7 "(11) The gross proceeds of sales of tangible  
8 personal property to the State of Alabama, to the counties  
9 within the state and to incorporated municipalities of the  
10 State of Alabama.

11 "(12) The gross proceeds of the sale or sales of  
12 railroad cars, vessels, barges, and commercial fishing vessels  
13 of over five tons load displacement as registered with the  
14 U.S. Coast Guard and licensed by the State of Alabama  
15 Department of Conservation and Natural Resources, when sold by  
16 the manufacturers or builders thereof.

17 "(13) The gross proceeds of the sale or sales of  
18 materials, equipment, and machinery which, at any time, enter  
19 into and become a component part of ships, vessels, towing  
20 vessels or barges, or drilling ships, rigs or barges, or  
21 seismic or geophysical vessels, other watercraft and  
22 commercial fishing vessels of over five tons load displacement  
23 as registered with the U.S. Coast Guard and licensed by the  
24 State of Alabama Department of Conservation and Natural  
25 Resources. Additionally, the gross proceeds from the sale or  
26 sales of lifeboats, personal flotation devices, ring life  
27 buoys, survival craft equipment, distress signals, EPIRB's,

1 fire extinguishers, injury placards, waste management plans  
2 and logs, marine sanitation devices, navigation rulebooks,  
3 navigation lights, sound signals, navigation day shapes, oil  
4 placard cards, garbage placards, FCC SSL, stability  
5 instructions, first aid equipment, compasses, anchor and radar  
6 reflectors, general alarm systems, bilge pumps, piping, and  
7 discharge and electronic position fixing devices which are  
8 used on the aforementioned watercraft.

9 "(14) The gross proceeds of the sale or sales of  
10 fuel oil purchased as fuel for kiln use in manufacturing  
11 establishments.

12 "(15) The gross proceeds of the sale or sales of  
13 tangible personal property to county and city school boards  
14 within the State of Alabama, independent school boards within  
15 the State of Alabama, all educational institutions and  
16 agencies of the State of Alabama, the counties within the  
17 state, or any incorporated municipalities of the State of  
18 Alabama, and private educational institutions operating within  
19 the State of Alabama offering conventional and traditional  
20 courses of study, such as those offered by public schools,  
21 colleges, or universities within the State of Alabama; but not  
22 including nurseries, day care centers, and home schools.

23 "(16) The gross proceeds from the sale of all  
24 devices or facilities, and all identifiable components  
25 thereof, or materials for use therein, acquired primarily for  
26 the control, reduction, or elimination of air or water  
27 pollution and the gross proceeds from the sale of all

1 identifiable components of or materials used or intended for  
2 use in structures built primarily for the control, reduction,  
3 or elimination of air and water pollution.

4 "(17) The gross proceeds of sales of tangible  
5 personal property or the gross receipts of any business which  
6 the state is prohibited from taxing under the Constitution or  
7 laws of the United States or under the Constitution of this  
8 state.

9 "(18) When dealers or distributors use parts taken  
10 from stocks owned by them in making repairs without charge for  
11 such parts to the owner of the property repaired pursuant to  
12 warranty agreements entered into by manufacturers, such use  
13 shall not constitute taxable sales to the manufacturers,  
14 distributors, or to the dealers, under this division or under  
15 any county sales tax law.

16 "(19) The gross proceeds received from the sale or  
17 furnishing of food, including potato chips, candy, fruit and  
18 similar items, soft drinks, tobacco products, and stationery  
19 and other similar or related articles by hospital canteens  
20 operated by Alabama state hospitals at Bryce Hospital and  
21 Partlow State School for Mental Deficients at Tuscaloosa,  
22 Alabama, and Searcy Hospital at Mt. Vernon, Alabama, for the  
23 benefit of the patients therein.

24 "(20) The gross proceeds of the sale, or sales, of  
25 wrapping paper and other wrapping materials when used in  
26 preparing poultry or poultry products for delivery, shipment,  
27 or sale by the producer, processor, packer, or seller of such

1 poultry or poultry products, including pallets used in  
2 shipping poultry and egg products, paper or other materials  
3 used for lining boxes or other containers in which poultry or  
4 poultry products are packed together with any other materials  
5 placed in such containers for the delivery, shipment, or sale  
6 of poultry or poultry products.

7 "(21) The gross proceeds of the sales of all  
8 antibiotics, hormones and hormone preparations, drugs,  
9 medicines or medications, vitamins, minerals or other  
10 nutrients, and all other feed ingredients including  
11 concentrates, supplements, and other feed ingredients when  
12 such substances are used as ingredients in mixing and  
13 preparing feed for fish raised to be sold on a commercial  
14 basis, livestock, and poultry. Such exemption herein granted  
15 shall be in addition to exemptions now provided by law for  
16 feed for fish raised to be sold on a commercial basis,  
17 livestock, and poultry, but not including prepared foods for  
18 dogs or cats.

19 "(22) The gross proceeds of the sale, or sales, of  
20 seedlings, plants, shoots, and slips which are to be used for  
21 planting vegetable gardens or truck farms and other  
22 agricultural purposes. Nothing herein shall be construed to  
23 exempt, or exclude from the computation of the tax levied,  
24 assessed, or payable, the gross proceeds of the sale, or the  
25 use of plants, seedlings, shoots, slips, nursery stock, and  
26 floral products, except as hereinabove exempted.

1           "(23) The gross proceeds of the sale, or sales, of  
2     fabricated steel tube sections, when produced and fabricated  
3     in this state by any person, firm, or corporation for any  
4     vehicular tunnel for highway vehicular traffic, when sold by  
5     the manufacturer or fabricator thereof, and also the gross  
6     proceeds of the sale, or sales, of steel which enters into and  
7     becomes a component part of such fabricated steel tube  
8     sections of said tunnel.

9           "(24) The gross proceeds from sales of admissions to  
10    any theatrical production, symphonic or other orchestral  
11    concert, ballet, or opera production when such concert or  
12    production is presented by any society, association, guild, or  
13    workshop group, organized within this state, whose members or  
14    some of whose members regularly and actively participate in  
15    such concerts or productions for the purposes of providing a  
16    creative outlet for the cultural and educational interests of  
17    such members, and of promoting such interests for the  
18    betterment of the community by presenting such productions to  
19    the general public for an admission charge. The employment of  
20    a paid director or conductor to assist in any such  
21    presentation described in this subdivision shall not be  
22    construed to prohibit the exemptions herein provided.

23           "(25) The gross proceeds of sales of herbicides for  
24    agricultural uses by whomsoever sold. The term herbicides, as  
25    used in this subdivision, means any substance or mixture of  
26    substances intended to prevent, destroy, repel, or retard the  
27    growth of weeds or plants. It shall include preemergence

1 herbicides, postemergence herbicides, lay-by herbicides,  
2 pasture herbicides, defoliant herbicides, and desiccant  
3 herbicides.

4 "(26) The Alabama Chapter of the Cystic Fibrosis  
5 Research Foundation and the Jefferson Tuberculosis Sanatorium  
6 and any of their departments or agencies, heretofore or  
7 hereafter organized and existing in good faith in the State of  
8 Alabama for purposes other than for pecuniary gain and not for  
9 individual profit, shall be exempted from the computation of  
10 the tax on the gross proceeds of all sales levied, assessed,  
11 or payable.

12 "(27) The gross proceeds from the sale or sales of  
13 fuel for use or consumption aboard commercial fishing vessels  
14 are hereby exempt from the computation of all sales taxes  
15 levied, assessed, or payable under the provisions of this  
16 division or levied under any county or municipal sales tax  
17 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 gross proceeds of sales of sawdust, wood  
22 shavings, wood chips, and other like materials sold for use as  
23 chicken litter by poultry producers and poultry processors.

24 "(29) The gross proceeds of the sales of all  
25 antibiotics, hormones and hormone preparations, drugs,  
26 medicines, and other medications including serums and  
27 vaccines, vitamins, minerals, or other nutrients for use in

1 the production and growing of fish, livestock, and poultry by  
2 whomsoever sold. Such exemption as herein granted shall be in  
3 addition to the exemption provided by law for feed for fish,  
4 livestock, and poultry, and in addition to the exemptions  
5 provided by law for the above-enumerated substances and  
6 products when mixed and used as ingredients in fish,  
7 livestock, and poultry feed.

8 "(30) The gross proceeds of the sale or sales of all  
9 medicines prescribed by physicians for persons who are 65  
10 years of age or older, and when said prescriptions are filled  
11 by licensed pharmacists, shall be exempted under this division  
12 or under any county or municipal sales tax law. The exemption  
13 provided in this section shall not apply to any medicine  
14 purchased in any manner other than as is herein provided.

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

18 "a. The name and claim number as shown on a  
19 "Medicare" card issued by the United States Social Security  
20 Administration.

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

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

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

5           "(31) There shall be exempted from the tax levied by  
6 this division the gross receipts of sales of grass sod of all  
7 kinds and character when in the original state of production  
8 or condition of preparation for sale, when such sales are made  
9 by the producer or members of his family or for him by those  
10 employed by him to assist in the production thereof; provided,  
11 that nothing herein shall be construed to exempt sales of sod  
12 by a person engaged in the business of selling plants,  
13 seedlings, nursery stock, or floral products.

14           "(32) The gross receipts of sales of the following  
15 items or materials which are necessary in the farm-to-market  
16 production of tomatoes when such items or materials are used  
17 by the producer or members of his family or for him by those  
18 employed by him to assist in the production thereof: Twine for  
19 tying tomatoes, tomato stakes, field boxes (wooden boxes used  
20 to take tomatoes from the fields to shed), and tomato boxes  
21 used in shipments to customers.

22           "(33) The gross proceeds from the sale of liquefied  
23 petroleum gas or natural gas sold to be used for agricultural  
24 purposes.

25           "(34) The gross receipts of sales from state  
26 nurseries of forest tree seedlings.

1           "(35) The gross receipts of sales of forest tree  
2 seed by the state.

3           "(36) The gross receipts of sales of Lespedeza  
4 bicolor and other species of perennial plant seed and  
5 seedlings sold for wildlife and game food production purposes  
6 by the state.

7           "(37) The gross receipts of any aircraft  
8 manufactured, sold, and delivered in this state if said  
9 aircraft are not permanently domiciled in Alabama and are  
10 removed to another state.

11           "(38) The gross proceeds from the sale or sales of  
12 all diesel fuel used for off-highway agricultural purposes.

13           "(39) The gross proceeds from sales of admissions to  
14 any sporting event which:

15           "a. Takes place in the State of Alabama on or after  
16 January 1, 1984, regardless of when such sales occur; and

17           "b. Is hosted by a not-for-profit corporation  
18 organized and existing under the laws of the State of Alabama;  
19 and

20           "c. Determines a national championship of a national  
21 organization, including but not limited to the Professional  
22 Golfers Association of America, the Tournament Players  
23 Association, the United States Golf Association, the United  
24 States Tennis Association, and the National Collegiate  
25 Athletic Association; and

26           "d. Has not been held in the State of Alabama on  
27 more than one prior occasion, provided, however, that for such

1 purpose the Professional Golfers Association Championship, the  
2 United States Open Golf Championship, the United States  
3 Amateur Golf Championship of the United States Golf  
4 Association, and the United States Open Tennis Championship  
5 shall each be treated as a separate event.

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

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

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

23 "(41) The gross receipts from the sale of hot or  
24 cold food and beverage products sold to or by a certificated  
25 or licensed air carrier with a hub operation within this  
26 state, for use in conducting intrastate, interstate, or  
27 foreign commerce for transporting people or property by air.

1 For the purpose of this subdivision, the words "hub operation  
2 within this state" shall be construed to have all of the  
3 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 "(42) The gross receipts from the sale of any  
12 aviation jet fuel to a certificated or licensed air carrier  
13 purchased for use in scheduled all-cargo operations being  
14 conducted on international flights or in international  
15 commerce. For purposes of this subdivision, the following  
16 words or terms shall be defined and interpreted as follows:

17 "a. Air Carrier. Any person, firm, corporation, or  
18 entity undertaking by any means, directly or indirectly, to  
19 provide air transportation.

20 "b. All-Cargo Operations. Any flight conducted by an  
21 air carrier for compensation or hire other than a passenger  
22 carrying flight, except passengers as specified in 14 C.F.R.  
23 §121.583(a) or 14 C.F.R. §135.85, as amended.

24 "c. International Commerce. Any air carrier engaged  
25 in all-cargo operations transporting goods for compensation or  
26 hire on international flights.

1            "d. International Flights. Any air carrier  
2            conducting scheduled all-cargo operations between any point  
3            within the 50 states of the United States and the District of  
4            Columbia and any point outside the 50 states of the United  
5            States and the District of Columbia, including any interim  
6            stops within the United States so long as the ultimate origin  
7            or destination of the aircraft is outside the United States  
8            and the District of Columbia.

9            "(43) The gross proceeds of the sale or sales of the  
10           following:

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

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

17           "c. Fuel and supplies for use or consumption aboard  
18           boats, ships, aircraft, and towing vessels when used  
19           exclusively in transporting persons or property between a  
20           point in Alabama and a point or points in offshore federal  
21           waters for the exploration for or production of oil, gas,  
22           sulphur, or other minerals in offshore federal waters.

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

1           "The delivery of items exempted by this subdivision  
2 to the purchaser or lessee in this state does not disqualify  
3 the purchaser or lessee from the exemption if the property is  
4 removed from the state by any means, including by the use of  
5 the purchaser's or lessee's own facilities.

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

15           "(44) The gross receipts derived from all bingo  
16 games and operations which are conducted in compliance with  
17 validly enacted legislation authorizing the conduct of such  
18 games and operations, and which comply with the distribution  
19 requirements of the applicable local laws; provided that the  
20 exemption from sales taxation granted by this subdivision  
21 shall apply only to gross receipts taxable under subdivision  
22 (2) of Section 40-23-2. It is further provided that this  
23 exemption shall not apply to any gross receipts from the sale  
24 of tangible personal property, such as concessions, novelties,  
25 food, beverages, etc. The exemption provided for in this  
26 section shall be limited to those games and operations by  
27 organizations which have qualified for exemption under the

1 provisions of 26 U.S.C. § 501 (c) (3), (4), (7), (8), (10), or  
2 (19), or which are defined in 26 U.S.C. § 501(d).

3 "(45) The gross receipts derived from the sale or  
4 sales of fruit or other agricultural products by the person or  
5 corporation that planted, cultivated, and harvested such fruit  
6 or agricultural product.

7 "(46) The gross receipts derived from the sale or  
8 sales of all domestically mined or produced coal, coke, and  
9 coke by-products used in cogeneration plants.

10 "(47) The gross receipts from the sale or sales of  
11 metal, other than gold or silver, when such metal is purchased  
12 for the purpose of transferring such metal to an investment  
13 trust in exchange for shares or other units, each of which are  
14 both publicly traded and represent fractional undivided  
15 beneficial interests in the trust's net assets, including  
16 metal stored in warehouses located in this state, as well as  
17 the gross proceeds from the sale or other transfer of such  
18 metal to or from such investment trust in exchange for shares  
19 or other units that are publicly traded and represent  
20 fractional undivided beneficial interests in the trust's net  
21 assets but not to the extent that metal is transferred to or  
22 from the investment trust in exchange for consideration other  
23 than such publicly traded shares or other units. For purposes  
24 of this subdivision, the term metals includes, but is not  
25 limited to, copper, aluminum, nickel, zinc, tin, lead, and  
26 other similar metals typically used in commercial and  
27 industrial applications.

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

12           "(49) The gross proceeds from the sale or sales  
13 within school buildings of lunches to pupils of kindergarten,  
14 grammar, and high schools, either public or private, that are  
15 not sold for profit.

16           "(50) The gross proceeds of services provided by  
17 photographers, including but not limited to sitting fees and  
18 consultation fees, even when provided as part of a transaction  
19 ultimately involving the sale of one or more photographs, so  
20 long as the exempt services are separately stated to the  
21 customer on a bill of sale, invoice, or like memorialization  
22 of the transaction. For transactions occurring before October  
23 1, 2017, neither the Department of Revenue nor local tax  
24 officials may seek payment for sales tax not collected. With  
25 regard to such transactions in which sales tax was collected  
26 and remitted on services provided by photographers, neither

1 the taxpayer nor the entity remitting sales tax shall have the  
2 right to seek refund of such tax.

3 "(b) Any violation of any provision of this section  
4 shall be punishable in a court of competent jurisdiction by a  
5 fine of not less than \$500 and no more than \$2,000 and  
6 imprisonment of not less than six months nor more than one  
7 year in the county jail."

8 "§40-23-62.

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

12 "(1) Property, on which the sales tax imposed by the  
13 provisions of Article 1 of this chapter is paid by the  
14 consumer to a person licensed under the provisions of Article  
15 1 of this chapter.

16 "(2) Property, the storage, use, or other  
17 consumption of which this state is prohibited from taxing  
18 under the Constitution or laws of the United States of America  
19 or under the constitution of this state.

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

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

1           "(5) All fertilizer; provided, that the word  
2 "fertilizer" as used in this article shall not be construed to  
3 include cottonseed meal when not in combination with other  
4 material.

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

8           "(7) Insecticides and fungicides and feed for  
9 livestock and poultry, but not including prepared foods for  
10 dogs and cats.

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

22           "(9) Cottonseed meal exchanged for cottonseed at or  
23 by cotton gins.

24           "(10) Transportation, gas, water, or electricity, of  
25 the kinds and natures, the rates and charges for which when  
26 sold by public utilities, are customarily fixed and determined

1 by the Public Service Commission of Alabama or like regulatory  
2 bodies.

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

7 "a. In manufacturing tangible personal property for  
8 sale;

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

12 "c. For the generation of motive power for  
13 transportation.

14 "(12) Fuel and supplies for use or consumption  
15 aboard ships, vessels, towing vessels, or barges, or drilling  
16 ships, rigs or barges, or seismic or geophysical vessels, or  
17 other watercraft (herein for purposes of this exemption being  
18 referred to as vessels) engaged in foreign or international  
19 commerce or in interstate commerce; provided, that nothing in  
20 this article shall be construed to exempt or exclude from the  
21 measure of the tax herein levied the gross proceeds of sale or  
22 sales of material and supplies to any person for use in  
23 fulfilling a contract for the painting, repair or  
24 reconditioning of vessels, barges, ships, other watercraft and  
25 commercial fishing vessels of over five tons load displacement  
26 as registered with the U.S. Coast Guard and licensed by the  
27 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  
26 this subdivision to remain in such commerce while awaiting or  
27 under repair in a port of the State of Alabama if such vessel

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

1       liable for the taxes imposed by this division, if such  
2       merchant or seller had no knowledge that such certificate was  
3       false when it was filed with such merchant or seller.

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

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

25               "(15) The use, storage, or consumption of fuel oil  
26       purchased as fuel for kilns used in manufacturing  
27       establishments.

1           "(16) Tangible personal property stored, used, or  
2 consumed by county and city school boards within the State of  
3 Alabama, independent school boards within the State of  
4 Alabama, all educational institutions and agencies of the  
5 State of Alabama, the counties within the state or any  
6 incorporated municipality of the State of Alabama, and private  
7 educational institutions operating within the State of Alabama  
8 offering conventional and traditional courses of study, such  
9 as those offered by public schools, colleges, or universities  
10 within the State of Alabama; but not including nurseries, day  
11 care centers, and home schools.

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.

26           "(19) When dealers or distributors use parts taken  
27 from stocks owned by them in making repairs without charge for

1 such parts to the owner of the property required pursuant to  
2 warranty agreements entered into by manufacturers, such use  
3 shall not constitute taxable sales to the manufacturers,  
4 distributors or to the dealers, under this article, or under  
5 any county use tax law.

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

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

25 "(22) The storage, use, or other consumption of all  
26 antibiotics, hormones and hormone preparations, drugs,  
27 medicines or medications, vitamins, minerals, or other

1 nutrients and all other feed ingredients including  
2 concentrates, supplements and other feed ingredients when such  
3 substances are used as ingredients in mixing and preparing  
4 feed for livestock and poultry. Such exemption herein granted  
5 shall be in addition to exemptions now provided by law for  
6 feed for livestock and poultry, but not including prepared  
7 foods for dogs and cats.

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

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

23 "(25) The storage, use, or other consumption of  
24 herbicides for agricultural uses by whomsoever sold. The term  
25 "herbicides" as used in this subdivision means any substance  
26 or mixture of substances intended to prevent, destroy, repel,  
27 or retard the growth of weeds or plants. It shall include

1 preemergence herbicides, postemergence herbicides, lay-by  
2 herbicides, pasture herbicides, defoliant herbicides, and  
3 desiccant herbicides.

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

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

15 "The words commercial fishing vessels shall mean  
16 vessels whose masters and owners are regularly and exclusively  
17 engaged in fishing as their means of livelihood.

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

22 "(29) The storage, use, or other consumption of all  
23 antibiotics, hormones and hormone preparations, drugs,  
24 medicines and other medications including serums and vaccines,  
25 vitamins, minerals or other nutrients for use in the  
26 production and growing of fish, livestock, and poultry are  
27 hereby specifically exempted from the payment of the state use

1 tax levied by this article. Such exemption as herein granted  
2 shall be in addition to the exemptions now provided by law for  
3 feed for fish, livestock, and poultry, and in addition to the  
4 exemptions now provided by law for the above-enumerated  
5 substances and products when mixed and used as ingredients in  
6 fish, livestock and poultry feeds.

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

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

18 "a. The name and claim number as shown on a  
19 "Medicare" card issued by the United States Social Security  
20 Administration.

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

24 " c. An affidavit 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           "For the purposes of this subdivision any person  
2 filing a false proof of age shall be guilty of a misdemeanor  
3 and upon conviction thereof shall be punished by a fine of  
4 \$100.

5           "(31) All diesel fuel used for off-highway  
6 agricultural purposes.

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

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

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

24           "(33) The storage, use, or other consumption of any  
25 aviation jet fuel used by an aircraft operated by a  
26 certificated or licensed air carrier that purchases jet fuel  
27 for use in scheduled all-cargo operations being conducted on

1 international flights or in international commerce. For  
2 purposes of this subdivision, the following words or terms  
3 shall be defined and interpreted as follows:

4 "a. Air Carrier. Any person, firm, corporation, or  
5 entity undertaking by any means, directly or indirectly, to  
6 provide air transportation.

7 " b. All-Cargo Operations. Any flight conducted by  
8 an air carrier for compensation or hire other than a passenger  
9 carrying flight, except passengers as specified in 14 C.F.R.  
10 §121.583(a) or 14 C.F.R. §135.85, as amended.

11 " c. International Commerce. Any air carrier engaged  
12 in all-cargo operations transporting goods for compensation or  
13 hire on international flights.

14 "d. International Flights. Any air carrier  
15 conducting scheduled all-cargo operations between any point  
16 within the 50 states of the United States and the District of  
17 Columbia and any point outside the 50 states of the United  
18 States and the District of Columbia, including any interim  
19 stops within the United States so long as the ultimate origin  
20 or destination of the aircraft is outside the United States  
21 and the District of Columbia.

22 "(34) The storage, use, or other consumption of hot  
23 or cold food and beverage products by a certificated or  
24 licensed air carrier with a hub operation within this state,  
25 for use in conducting intrastate, interstate, or foreign  
26 commerce for transporting people or property by air. For the  
27 purpose of this subdivision, the words "hub operation within

1 this state" shall be construed to have all of the following  
2 criteria:

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

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

10 "(35) The storage, use, or other consumption of the  
11 following:

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

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

18 " c. Fuel and supplies for use or consumption aboard  
19 boats, ships, aircraft, and towing vessels when used  
20 exclusively in transporting persons or property between a  
21 point in Alabama and a point or points in offshore federal  
22 waters for the exploration for or production of oil, gas,  
23 sulphur, or other minerals in offshore federal waters.

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

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

3           "The delivery of items exempted by this subdivision  
4 to the purchaser or lessee in this state does not disqualify  
5 the purchaser or lessee from the exemption if the property is  
6 removed from the state by any means, including by the use of  
7 the purchaser's or lessee's own facilities.

8           "The shipment to a place in this state of equipment  
9 exempted by this subdivision for further assembly or  
10 fabrication does not disqualify the purchaser or lessee from  
11 the exemption if on completion of the further assembly or  
12 fabrication the equipment is removed forthwith from this  
13 state. This subdivision applies to a sale that may occur when  
14 the equipment exempted is further assembled or fabricated if  
15 on completion the equipment is removed forthwith from this  
16 state.

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

26           "(37) For the period commencing October 1, 2012, and  
27 ending May 30, 2022, unless extended by joint resolution, all

1 parts, components, and systems that become a part of a fixed  
2 or rotary wing military aircraft or certified transport  
3 category aircraft which undergoes conversion, reconfiguration,  
4 or general maintenance so long as the address of the aircraft  
5 for FAA registration is not in the state; provided, however,  
6 that this exemption shall not apply to a local use tax unless  
7 previously exempted by local law or approved by resolution of  
8 the local governing body.

9 "(38) Lunches sold not for profit and within school  
10 buildings to pupils of kindergarten, grammar, and high  
11 schools, either public or private.

12 "(39) Services provided by photographers, including  
13 but not limited to sitting fees and consultation fees, even  
14 when provided as a part of a transaction ultimately involving  
15 the sale of one or more photographs, so long as the exempt  
16 services are separately stated to the customer on a bill of  
17 sale, invoice, or like memorialization of the transaction. For  
18 transactions occurring before October 1, 2017, neither the  
19 Department of Revenue nor local tax officials may seek payment  
20 for use tax not collected. With regard to such transactions in  
21 which use tax was collected and remitted on services provided  
22 by photographers, neither the taxpayer nor the entity  
23 remitting use tax shall have the right to seek refund of such  
24 tax."

25 Section 2. The provisions of this act shall apply  
26 retroactively to all open tax years and tax periods for which  
27 a preliminary assessment or final assessment could be entered

1       pursuant to Section 40-2A-7, Code of Alabama 1975, or any  
2       successor general or local law. No refunds shall be due or  
3       issued pursuant to this act with respect to those periods  
4       prior to the effective date of this act.

5                 Section 3. This act shall become effective  
6       immediately following its passage and approval by the  
7       Governor, or upon its otherwise becoming law.