

1 HB10
2 214446-3
3 By Representative Brown (C)
4 RFD: Ways and Means General Fund
5 First Read: 11-JAN-22
6 PFD: 06/28/2021

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ENROLLED, An Act,

Relating to ad valorem tax; to amend Section 40-9-1 of the Code of Alabama 1975, to exempt all commercial fishing vessels and equipment from ad valorem taxation; relating to sales and use tax; to amend Sections 40-23-1, 40-23-4, as last amended by Act 2019-444, 2019 Regular Session, 40-23-37, 40-23-60, and 40-23-63 of the Code of Alabama 1975, to provide for an exemption for bait and all materials and equipment used by commercial fishermen; and to levy a rate differential of one and one-half percent on the purchase and storage of vessels and machinery used for commercial fishing.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-9-1, 40-23-1, 40-23-4, as last amended by Act 2019-444, 2019 Regular Session, 40-23-37, 40-23-60, and 40-23-63 of the Code of Alabama 1975, are amended to read as follows:

"§40-9-1.

"The following property and persons shall be exempt from ad valorem taxation and none other:

"(1) All bonds of the United States and this state and all county and municipal bonds issued by counties and municipalities in this state, all property, real and personal, of the United States and this state and of county and municipal corporations in this state; all cemeteries, all

1 property, real and personal, used exclusively for religious
2 worship, for schools or for purposes purely charitable;
3 provided, that property, real or personal, owned by any
4 educational, religious, or charitable institution, society or
5 corporation let for rent or hire or for use for business
6 purposes shall not be exempt from taxation, notwithstanding
7 that the income from such property shall be used exclusively
8 for education, religious, or charitable purposes; all
9 mortgages, together with the notes, debts, and credits secured
10 thereby on real and personal property situated in this state,
11 which mortgages have been filed for record and the privilege
12 tax paid thereon; all security agreements and security
13 interests under the Uniform Commercial Code, together with the
14 notes, debts, and credits secured thereby; all money on
15 deposit in any bank or banking institution and all other
16 solvent credits; all warrants issued by county boards of
17 education and city boards of education for the purpose of
18 erecting, repairing, furnishing school buildings, or for other
19 school purposes;

20 "(2) All property, real or personal, used
21 exclusively for hospital purposes, to the amount of
22 seventy-five thousand dollars (\$75,000), where such hospitals
23 maintain wards for charity patients or give treatment to such
24 patients; provided, that the treatment of charity patients
25 constitutes at least 15 percent of the business of such

1 hospitals; provided further, that such hospital need not be
2 assessed for taxation if the owner or manager shall file with
3 the county tax assessor wherein such hospital is located
4 within the time allowed for assessing such property for
5 taxation a certificate that such hospital has done 15 percent
6 charity work in the preceding tax year; and further provided,
7 that such hospital through its owner or manager shall have
8 until the expiration of the preceding tax year to class its
9 work and ascertain whether or not such hospital has done 15
10 percent of its treatment of patients as charity work;

11 "(3) The shares of the capital stock of any
12 corporation owning and operating a hospital, to the extent of
13 seventy-five thousand dollars (\$75,000) in value; provided,
14 that said corporation maintains wards for charity patients and
15 gives treatment to such patients, which treatment constitutes
16 at least 15 percent of the business of the hospital of said
17 corporation; provided, that the total exemption granted to any
18 such corporation shall not exceed seventy-five thousand
19 dollars (\$75,000), taking into consideration its real and
20 personal property and the value of its shares of capital
21 stock;

22 "(4) All property owned by the American Legion or by
23 Veterans of Foreign Wars or by the Disabled American Veterans,
24 or any post thereof; provided, that such property is used and
25 occupied exclusively by said organization;

1 "(5) All the property of literary and scientific
2 institutions and literary societies, when employed or used in
3 the regular business of such institutions;

4 "(6) The libraries of ministers of the gospel, all
5 libraries other than those of a professional character and all
6 religious books kept for sale by ministers of the gospel and
7 colporteurs;

8 "(7) The property of deaf mutes and insane persons
9 to the extent of three thousand dollars (\$3,000) and the
10 property of blind persons to the extent of twelve thousand
11 dollars (\$12,000);

12 "(8) All family portraits;

13 "(9) All cotton, livestock, or agricultural products
14 which have been raised or grown in the State of Alabama and
15 which shall remain in the hands of the producer thereof, or
16 his landlord, or in the hands of a cooperative association for
17 all time, and for a period of one year in the hands of the
18 purchaser or the manufacturer;

19 "(10) All cotton, wherever grown, stored in licensed
20 warehouses in the State of Alabama for a period not exceeding
21 12 months;

22 "(11) Provisions and supplies on hand for the
23 current year for the use of the family and the making of
24 crops; all wearing apparel; farming tools; tools and
25 implements of mechanics to the value of two hundred dollars

1 (\$200); all livestock, including mules, studs, jacks and
2 jennets, cattle, horses, cows, calves, hogs, sheep, and goats;
3 household and kitchen furniture and one sewing machine;

4 "(12) No license or taxation of any character,
5 except franchise taxes provided by Section 229 of the
6 Constitution of the State of Alabama, shall be collected or
7 required to be paid to the state or any county or municipality
8 therein by any state or county fair, agricultural association,
9 stock, kennel, or poultry show. Athletic stadiums owned and
10 controlled by universities, schools, or colleges and which are
11 used exclusively for the purpose of promoting intercollegiate
12 or interschool athletics; provided, that the revenue received
13 from athletic stadiums, when admission is charged, shall be
14 used for the benefit of athletic associations of such
15 universities, colleges, or schools. Nothing contained in this
16 subdivision shall be construed to prohibit any municipality,
17 county, or state from imposing any license tax upon or for the
18 privilege of engaging in the business of supplying services
19 for hire or reward or selling commodities other than
20 livestock, farm products, or farm implements or conducting or
21 operating devices or games of skill or amusements or other
22 games or devices, or conducting or operating shows, displays
23 or exhibits other than shows, displays or exhibits of
24 agricultural implements, farm products, livestock and athletic
25 prowess;

1 "(13) All material, including without limitation
2 coke, to be compounded or further manufactured, when stocked
3 at any plant or furnace for manufacturing purposes in Alabama;

4 "(14) All articles manufactured in Alabama,
5 including pig iron, in the hands of the producer or
6 manufacturer thereof, for 12 months after its production or
7 manufacture;

8 "(15) All property, both real and personal, owned by
9 any unit or organization of the Alabama National Guard
10 officially recognized as such by the federal government and
11 organized and maintained by the state, and all property owned
12 by shares and used exclusively by and kept exclusively in the
13 possession of any such unit or organization of the Alabama
14 National Guard, the annual rent or hire of which is not in
15 excess of the annual state, county and municipal taxes on said
16 property shall be exempt from taxation by the state, and the
17 county and municipality in which the same may be situated;

18 "(16) All poultry;

19 "(17) The property of all incompetent veterans to
20 the value of three thousand dollars (\$3,000);

21 "(18) The following items of personal property when
22 owned by individuals for personal use in the home or usually
23 kept at the home of the owner and not carried as stocks of
24 merchandise, namely: Libraries; phonographs; pianos and other
25 musical instruments; paintings; precious stones, jewelry,

1 plate silverware, ornaments, and articles of taste; watches
2 and clocks; wagons, buggies, bicycles, guns, pistols, canes,
3 golf sticks, golf bags, and sporting goods; money hoarded;
4 radios; mechanical and electrical refrigerators; electrical
5 appliances;

6 "(19) All property owned by the Benevolent and
7 Protective Order of Elks, Fraternal Order of Police, Fraternal
8 Order of Eagles, or Loyal Order of Moose, or lodge thereof;
9 provided, that such property is used and occupied exclusively
10 by such organization;

11 "(20) All devices, facilities or structures, and all
12 identifiable components thereof or materials for use therein,
13 acquired or constructed primarily for the control, reduction,
14 or elimination of air or water pollution;

15 "(21) Tobacco leaf stored in hogsheads;

16 "(22) All farm tractors, as that term is defined in
17 subdivision (19) of Section 32-1-1.1; and all farming
18 implements, as that term is used in subdivision (b) (5) of
19 Section 40-11-1, as amended, when used exclusively in
20 connection with agricultural property as defined in
21 subdivision (b) (3) of Section 40-8-1, as amended;

22 "(23) All stocks of goods, wares, and merchandise
23 described in subdivision (b) (4) of Section 40-11-1, as
24 amended; and

1 "(24) All aircraft, replacement parts, components,
2 systems, supplies and sundries affixed or used on said
3 aircraft, and ground support equipment and vehicles used by or
4 for the aircraft, when used by a certificated or licensed air
5 carrier with a hub operation within this state, for use in
6 conducting intrastate, interstate, or foreign commerce for
7 transporting people or property by air. For the purpose of
8 this subdivision, the words "hub operation within this state"
9 shall be construed to have all of the following criteria:

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

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

17 "(25) All property described in Title 12 U.S.C. §
18 1701(Q), commonly known as HUD 202 property, is hereby exempt
19 from any and all ad valorem taxes.

20 "(26) All vessels and equipment thereon, used
21 predominantly in the business of commercial ~~shrimping~~ fishing,
22 as defined in Section 40-23-1, by the owners thereof.

23 "§40-23-1.

1 "(a) For the purpose of this division, the following
2 terms shall have the respective meanings ascribed by this
3 section:

4 "(1) PERSON or COMPANY. Used interchangeably,
5 includes any individual, firm, copartnership, association,
6 corporation, receiver, trustee, or any other group or
7 combination acting as a unit and the plural as well as the
8 singular number, unless the intention to give a more limited
9 meaning is disclosed by the context.

10 "(2) DEPARTMENT. The Department of Revenue of the
11 State of Alabama.

12 "(3) COMMISSIONER. The Commissioner of Revenue of
13 the State of Alabama.

14 "(4) TAX YEAR or TAXABLE YEAR. The calendar year.

15 "(5) SALE or SALES. Installment and credit sales and
16 the exchange of properties as well as the sale thereof for
17 money, every closed transaction constituting a sale. Provided,
18 however, a transaction shall not be closed or a sale completed
19 until the time and place when and where title is transferred
20 by the seller or seller's agent to the purchaser or
21 purchaser's agent, and for the purpose of determining transfer
22 of title, a common carrier or the ~~U.S.~~ U.S. Postal Service
23 shall be deemed to be the agent of the seller, regardless of
24 any F.O.B. point and regardless of who selects the method of
25 transportation, and regardless of by whom or the method by

1 which freight, postage, or other transportation charge is
2 paid. Provided further that, where billed as a separate item
3 to and paid by the purchaser, the freight, postage, or other
4 transportation charge paid to a common carrier or the U.S.
5 Postal Service is not a part of the selling price.

6 "(6) GROSS PROCEEDS OF SALES. The value proceeding
7 or accruing from the sale of tangible personal property, and
8 including the proceeds from the sale of any property handled
9 on consignment by the taxpayer, including merchandise of any
10 kind and character without any deduction on account of the
11 cost of the property sold, the cost of the materials used,
12 labor or service cost, interest paid, any consumer excise
13 taxes that may be included within the sales price of the
14 property sold, or any other expenses whatsoever, and without
15 any deductions on account of losses; provided, that cash
16 discounts allowed and taken on sales shall not be included,
17 and "gross proceeds of sales" shall not include the sale price
18 of property returned by customers when the full sales price
19 thereof is refunded either in cash or by credit. The term
20 "gross proceeds of sale" shall also mean and include the
21 reasonable and fair market value of any tangible personal
22 property previously purchased at wholesale which is withdrawn
23 or used from the business or stock and used or consumed in
24 connection with a business, and shall also mean and include
25 the reasonable and fair market value of any tangible personal

1 property previously purchased at wholesale which is withdrawn
2 from the business or stock and used or consumed by any person
3 so withdrawing the same, except property which has been
4 previously withdrawn from business or stock and so used or
5 consumed with respect to which property the tax has been paid
6 because of previous withdrawal, use, or consumption, except
7 property which enters into and becomes an ingredient or
8 component part of tangible personal property or products
9 manufactured or compounded for sale and not for the personal
10 and private use or consumption of any person so withdrawing,
11 using, or consuming the same, and except refinery, residue, or
12 fuel gas, whether in a liquid or gaseous state, that has been
13 generated by, or is otherwise a by-product of, a
14 petroleum-refining process, which gas is then utilized in the
15 process to generate heat or is otherwise utilized in the
16 distillation or refining of petroleum products.

17 "In the case of the retail sale of equipment,
18 accessories, fixtures, and other similar tangible personal
19 property used in connection with the sale of commercial mobile
20 services as defined herein, or in connection with satellite
21 television services, at a price below cost, "gross proceeds of
22 sale" shall only include the stated sales price thereof and
23 shall not include any sales commission or rebate received by
24 the seller as a result of the sale. As used herein, the term
25 "commercial mobile services" shall have the same meaning as

1 that term has in 47 U.S.C. Sections 153(n) and 332(d), as in
2 effect from time to time.

3 "(7) TAXPAYER. Any person liable for taxes
4 hereunder.

5 "(8) GROSS RECEIPTS. The value proceeding or
6 accruing from the sale of tangible personal property,
7 including merchandise and commodities of any kind and
8 character, all receipts actual and accrued, by reason of any
9 business engaged in, not including, however, interest,
10 discounts, rentals of real estate or royalties, and without
11 any deduction on account of the cost of the property sold, the
12 cost of the materials used, labor or service cost, interest
13 paid, any consumer excise taxes that may be included in the
14 sales price of the property sold, or any other expenses
15 whatsoever and without any deductions on account of losses.
16 The term "gross receipts" shall also mean and include the
17 reasonable and fair market value of any tangible personal
18 property previously purchased at wholesale which is withdrawn
19 or used from the business or stock and used or consumed in
20 connection with a business, and shall also mean and include
21 the reasonable and fair market value of any tangible personal
22 property previously purchased at wholesale which is withdrawn
23 from the business or stock and used or consumed by any person
24 so withdrawing the same, except property which has been
25 previously withdrawn from business or stock and so used or

1 consumed and with respect to which property the tax has been
2 paid because of previous withdrawal, use, or consumption,
3 except property which enters into and becomes an ingredient or
4 component part of tangible personal property or products
5 manufactured or compounded for sale as provided in subdivision
6 (9) and not for the personal and private use or consumption of
7 any person so withdrawing, using, or consuming the same, and
8 except refinery, residue, or fuel gas, whether in a liquid or
9 gaseous state, that has been generated by, or is otherwise a
10 by-product of, a petroleum-refining process, which gas is then
11 utilized in the process to generate heat or is otherwise
12 utilized in the distillation or refining of petroleum
13 products.

14 "(9) WHOLESALE SALE or SALE AT WHOLESALE. Any one of
15 the following:

16 "a. A sale of tangible personal property by
17 wholesalers to licensed retail merchants, jobbers, dealers, or
18 other wholesalers for resale and does not include a sale by
19 wholesalers to users or consumers, not for resale.

20 "b. A sale of tangible personal property or
21 products, including iron ore, and including the furnished
22 container and label of such property or products, to a
23 manufacturer or compounder which enter into and become an
24 ingredient or component part of the tangible personal property
25 or products which the manufacturer or compounder manufactures

1 or compounds for sale, whether or not such tangible personal
2 property or product used in manufacturing or compounding a
3 finished product is used with the intent that it becomes a
4 component of the finished product; provided, however, that it
5 is the intent of this section that no sale of capital
6 equipment, machinery, tools, or product shall be included in
7 the term "wholesale sale." The term "capital equipment,
8 machinery, tools, or product" shall mean property that is
9 subject to depreciation allowances for Alabama income tax
10 purposes.

11 "c. A sale of containers intended for one-time use
12 only, and the labels thereof, when containers are sold without
13 contents to persons who sell or furnish containers along with
14 the contents placed therein for sale by persons.

15 "d. A sale of pallets intended for one-time use only
16 when pallets are sold without contents to persons who sell or
17 furnish pallets along with the contents placed thereon for
18 sale by persons.

19 "e. A sale to a manufacturer or compounder, of
20 crowns, caps, and tops intended for one-time use employed and
21 used upon the containers in which a manufacturer or compounder
22 markets his products.

23 "f. A sale of containers to persons engaged in
24 selling or otherwise supplying or furnishing baby chicks to
25 growers thereof where containers are used for the delivery of

1 chicks or a sale of containers for use in the delivery of eggs
2 by the producer thereof to the distributor or packer of eggs
3 even though containers used for delivery of baby chicks or
4 eggs may be recovered for reuse.

5 "g. A sale of bagging and ties used in preparing
6 cotton for market.

7 "h. A sale to meat packers, manufacturers,
8 compounders, or processors of meat products of all casings
9 used in molding or forming wieners and Vienna sausages even
10 though casings may be recovered for reuse.

11 "i. A sale of commercial fish feed including
12 concentrates, supplements, and other feed ingredients when
13 substances are used as ingredients in mixing and preparing
14 feed for fish raised to be sold on a commercial basis.

15 "j. A sale of bait used to capture or attempt to
16 capture fish or other seafood in the process of commercial
17 fishing by a holder of a commercial license issued pursuant to
18 Chapter 12 of Title 9.

19 "~~j.~~ k. A sale of tangible personal property to any
20 person engaging in the business of leasing or renting tangible
21 personal property to others, if tangible personal property is
22 purchased for the purpose of leasing or renting it to others
23 under a transaction subject to the privilege or license tax
24 levied in Article 4 of Chapter 12 of this title against any

1 person engaging in the business of leasing or renting tangible
2 personal property to others.

3 ~~"k.~~ l. A purchase or withdrawal of parts or
4 materials from stock by any person licensed under this
5 division where parts or materials are used in repairing or
6 reconditioning the tangible personal property of a licensed
7 person, which tangible personal property is a part of the
8 stock of goods of a licensed person, offered for sale by him,
9 and not for use or consumption of a licensed person.

10 "(10) SALE AT RETAIL or RETAIL SALE. All sales of
11 tangible personal property except those above defined as
12 wholesale sales. The quantities of goods sold or prices at
13 which sold are immaterial in determining whether or not a sale
14 is at retail. Sales of building materials to contractors,
15 builders, or landowners for resale or use in the form of real
16 estate are retail sales in whatever quantity sold. Sales of
17 building materials, fixtures, or other equipment to a
18 manufacturer or builder of modular buildings for use in
19 manufacturing, building, or equipping a modular building
20 ultimately becoming a part of real estate situated in the
21 State of Alabama are retail sales, and the use, sale, or
22 resale of building shall not be subject to the tax. Sales of
23 tangible personal property to undertakers and morticians are
24 retail sales and subject to the tax at the time of purchase,
25 but are not subject to the tax on resale to the consumer.

1 Sales of tangible personal property or products to
2 manufacturers, quarry operators, mine operators, or
3 compounders, which are used or consumed by them in
4 manufacturing, mining, quarrying, or compounding and do not
5 become an ingredient or component part of the tangible
6 personal property manufactured or compounded as provided in
7 subdivision (9) are retail sales. The term "sale at retail" or
8 "retail sale" shall also mean and include the withdrawal, use,
9 or consumption of any tangible personal property by any one
10 who purchases same at wholesale, except property which has
11 been previously withdrawn from the business or stock and so
12 used or consumed and with respect to which property tax has
13 been paid because of previous withdrawal, use, or consumption,
14 except property which enters into and becomes an ingredient or
15 component part of tangible personal property or products
16 manufactured or compounded for sale as provided in subdivision
17 (9) and not for the personal and private use or consumption of
18 any person so withdrawing, using, or consuming the same; and
19 wholesale purchaser shall report and pay the taxes thereon. In
20 the case of the sale of equipment, accessories, fixtures, and
21 other similar tangible personal property used in connection
22 with the sale of commercial mobile services as defined in
23 subdivision (6) above, or in connection with satellite
24 television services, at a price below cost, the term "sale at
25 retail" and "retail sale" shall include those sales, and those

1 sales shall not also be taxable as a withdrawal, use, or
2 consumption of such tangible personal property.

3 "(11) BUSINESS. All activities engaged in, or caused
4 to be engaged in, with the object of gain, profit, benefit, or
5 advantage, either direct or indirect, and not excepting
6 subactivities producing marketable commodities used or
7 consumed in the main business activity, each of which
8 subactivities shall be considered business engaged in, taxable
9 in the class in which it falls.

10 "(12) AUTOMOTIVE VEHICLE. A power shovel, dragline,
11 crawler, crawler crane, ditcher, or any similar machine which
12 is self-propelled, in addition to self-propelled machines
13 which are used primarily as instruments of conveyance.

14 "(13) PREPAID TELEPHONE CALLING CARD. A sale of a
15 prepaid telephone calling card or a prepaid authorization
16 number, or both, shall be deemed the sale of tangible personal
17 property subject to the tax imposed on the sale of tangible
18 personal property pursuant to this chapter. For purposes of
19 this subdivision, the sale of prepaid wireless service that is
20 evidenced by a physical card constitutes the sale of a prepaid
21 telephone calling card, and the sale of prepaid wireless
22 service that is not evidenced by a physical card constitutes
23 the sale of a prepaid authorization number.

24 "(14) PREPAID WIRELESS SERVICE. The right to use
25 mobile telecommunications service, which must be paid for in

1 advance and that is sold in predetermined units or dollars of
2 which the number declines with use in a known amount, and
3 which may include rights to use non-telecommunications
4 services or to download digital products or digital content.
5 For purposes of this subdivision, mobile telecommunications
6 service has the meaning ascribed by Section 40-21-120.

7 "(15) CONSUMABLE VAPOR PRODUCT. Any nicotine liquid
8 solution or other material containing nicotine that is
9 depleted when used as a vapor product.

10 "(16) VAPOR PRODUCTS. Any non-lighted,
11 noncombustible product that employs a mechanical heating
12 element, battery, or electronic circuit regardless of shape or
13 size and that can be used to produce vapor from nicotine in a
14 solution. The term includes any vapor cartridge or other
15 container of nicotine in a solution or other form that is
16 intended to be used with or in an electronic cigarette,
17 electronic cigar, electronic cigarillo, electronic pipe, or
18 similar product or device. The term does not include any
19 product regulated by the United States Food and Drug
20 Administration under Chapter V of the Federal Food, Drug, and
21 Cosmetic Act.

22 "(17) COMMERCIAL FISHING. The activity of catching
23 or processing fish or other seafood regularly and exclusively
24 as a means of livelihood by a holder of a commercial license
25 issued pursuant to Chapter 12 of Title 9. The term includes

1 shellfish farmers, shrimpers, oysterers, lobsterers, and
2 crabbers.

3 "(18) COMMERCIAL FISHING VESSEL. Any vessel whose
4 masters and owners are regularly and exclusively engaged in
5 commercial fishing as their means of livelihood.

6 "(b) The use within this state of tangible personal
7 property by the manufacturer thereof, as building materials in
8 the performance of a construction contract, shall, for the
9 purposes of this division, be considered as a retail sale
10 thereof by manufacturer, who shall also be construed as the
11 ultimate consumer of materials or property, and who shall be
12 required to report transaction and pay the sales tax thereon,
13 based upon the reasonable and fair market price thereof at the
14 time and place where same are used or consumed by him or it.
15 Where the contractor is the manufacturer or compounder of
16 ready-mix concrete or asphalt plant mix used in the
17 performance of a contract, whether the ready-mix concrete or
18 asphalt plant mix is manufactured or compounded at the job
19 site or at a fixed or permanent plant location, the tax
20 applies only to the cost of the ingredients that become a
21 component part of the ready-mix concrete or the asphalt plant
22 mix. The provisions of this subsection shall not apply to any
23 tangible personal property which is specifically exempted from
24 the tax levied in this division.

1 "(c) The sale of lumber by a lumber manufacturer to
2 a trucker for resale is a sale at wholesale as sales are
3 defined herein where the trucker is either a licensed dealer
4 in lumber or, if a resident of Alabama, has registered with
5 the Department of Revenue, and has received therefrom a
6 certificate of registration or, if a nonresident of this state
7 purchasing lumber for resale outside the State of Alabama, has
8 furnished to the lumber manufacturer his name, address and the
9 vehicle license number of the truck in which the lumber is to
10 be transported, which name, address, and vehicle license
11 number shall be shown on the sales invoice rendered by the
12 lumber manufacturer. The certificate provided for herein shall
13 be valid for the calendar year of its issuance and may be
14 renewed from year to year on application to the Department of
15 Revenue on or before January 31 of each succeeding year;
16 provided, that if not renewed the certificate shall become
17 invalid for the purpose of this division on February 1.

18 "(d) The dispensing or transferring of ophthalmic
19 materials, including lenses, frames, eyeglasses, contact
20 lenses, and other therapeutic optic devices, to a patient by a
21 licensed ophthalmologist, as a part of his or her professional
22 service, shall, for purposes of this division, constitute a
23 sale, subject to the state sales tax. The licensed
24 ophthalmologist or licensed optometrist shall collect the
25 state sales tax. In no event shall the providing of

1 professional services in connection with the dispensing or
2 transferring of ophthalmic materials, including dispensing
3 fees or fitting fees, by a licensed ophthalmologist or
4 licensed optometrist be considered a sale subject to the state
5 sales tax. When the ophthalmic materials are purchased by a
6 consumer covered by a third party benefit plan, including
7 Medicare, the sales tax shall be applicable to the amount that
8 the ophthalmologist, optometrist, or optician is reimbursed by
9 the third party benefit plan plus the amount that the consumer
10 pays to the ophthalmologist, optometrist, or optician at the
11 time of the sale. All transfers of ophthalmic materials by
12 opticians or optometrists shall be considered retail sales
13 subject to the state sales tax. The term supplier shall
14 include but not be limited to optical laboratories, ophthalmic
15 material wholesalers, or anyone selling ophthalmic materials
16 to ophthalmologists.

17 "(e) Notwithstanding the above, the withdrawal, use,
18 or consumption of a manufactured product by the manufacturer
19 thereof in quality control testing performed by employees or
20 independent contractors of the taxpayer, for purposes of this
21 division, shall not be deemed or considered to constitute a
22 transaction subject to sales tax, nor shall a gift by the
23 manufacturer of a manufactured product, withdrawn from the
24 manufacturer's inventory, to an entity listed in 26 U.S.C.

1 Sections 170(b) or (c), be considered a transaction subject to
2 sales tax.

3 (f) Notwithstanding the foregoing, a gift by a
4 retailer of a product or products where the aggregate retail
5 value of any single gift is equal to or less than ten thousand
6 dollars (\$10,000), withdrawn from the retailer's inventory, to
7 an entity listed in 26 U.S.C. Sections 170(b) or (c) shall not
8 be deemed or considered to constitute a transaction subject to
9 sales and use tax.

10 "§40-23-4.

11 "(a) There are exempted from the provisions of this
12 division and from the computation of the amount of the tax
13 levied, assessed, or payable under this division the
14 following:

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

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

1 "(3) The gross proceeds of the sale, or sales, of
2 seeds for planting purposes and baby chicks and poults.
3 Nothing herein shall be construed to exempt or exclude from
4 the computation of the tax levied, assessed, or payable, the
5 gross proceeds of the sale or sales of plants, seedlings,
6 nursery stock, or floral products.

7 "(4) The gross proceeds of sales of insecticides and
8 fungicides when used for agricultural purposes or when used by
9 persons properly permitted by the Department of Agriculture
10 and Industries or any applicable local or state governmental
11 authority for structural pest control work and feed for
12 livestock and poultry, but not including prepared food for
13 dogs and cats.

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

1 "(6) Cottonseed meal exchanged for cottonseed at or
2 by cotton gins.

3 "(7) The gross receipts from the business on which,
4 or for engaging in which, a license or privilege tax is levied
5 by or under the provisions of Sections 40-21-50, 40-21-53, and
6 40-21-56 through 40-21-60; provided, that nothing contained in
7 this subdivision shall be construed to exempt or relieve the
8 person or persons operating the business enumerated in said
9 sections from the payments of the tax levied by this division
10 upon or measured by the gross proceeds of sales of any
11 tangible personal property, except gas and water, the gross
12 receipts from the sale of which are the measure of the tax
13 levied by said Section 40-21-50, merchandise or other tangible
14 commodities sold at retail by said persons, unless the gross
15 proceeds of sale thereof are otherwise specifically exempted
16 by the provisions of this division.

17 "(8) The gross proceeds of sales or gross receipts
18 of or by any person, firm, or corporation, from the sale of
19 transportation, gas, water, or electricity, of the kinds and
20 natures, the rates and charges for which, when sold by public
21 utilities, are customarily fixed and determined by the Public
22 Service Commission of Alabama or like regulatory bodies.

23 "(9) The gross proceeds of the sale, or sales of
24 wood residue, coal, or coke to manufacturers, electric power
25 companies, and transportation companies for use or consumption

1 in the production of by-products, or the generation of heat or
2 power used in manufacturing tangible personal property for
3 sale, for the generation of electric power or energy for use
4 in manufacturing tangible personal property for sale or for
5 resale, or for the generation of motive power for
6 transportation.

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

22 "For purposes of this subdivision, it shall be
23 presumed that vessels engaged in the transportation of cargo
24 between ports in the State of Alabama and ports in foreign
25 countries or possessions or territories of the United States

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

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

1 ~~such~~ the merchant or seller shall not be liable for the taxes
2 imposed by this division, if ~~such~~ the merchant or seller had
3 no knowledge that ~~such~~ the certificate was false when it was
4 filed with ~~such~~ the merchant or seller.

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

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

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

1 the control, reduction, or elimination of air or water
2 pollution and the gross proceeds from the sale of all
3 identifiable components of, or materials used or intended for
4 use in, structures built primarily for the control, reduction,
5 or elimination of air and water pollution.

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

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

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

1 "(20) The gross proceeds of the sale, or sales, of
2 wrapping paper and other wrapping materials when used in
3 preparing poultry or poultry products for delivery, shipment,
4 or sale by the producer, processor, packer, or seller of such
5 poultry or poultry products, including pallets used in
6 shipping poultry and egg products, paper or other materials
7 used for lining boxes or other containers in which poultry or
8 poultry products are packed together with any other materials
9 placed in such containers for the delivery, shipment, or sale
10 of poultry or poultry products.

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

23 "(22) The gross proceeds of the sale, or sales, of
24 seedlings, plants, shoots, and slips which are to be used for
25 planting vegetable gardens or truck farms and other

1 agricultural purposes. Nothing herein shall be construed to
2 exempt, or exclude from the computation of the tax levied,
3 assessed, or payable, the gross proceeds of the sale, or the
4 use of plants, seedlings, shoots, slips, nursery stock, and
5 floral products, except as hereinabove exempted.

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

14 "(24) The gross proceeds from sales of admissions to
15 any theatrical production, symphonic or other orchestral
16 concert, ballet, or opera production when such concert or
17 production is presented by any society, association, guild, or
18 workshop group, organized within this state, whose members or
19 some of whose members regularly and actively participate in
20 such concerts or productions for the purposes of providing a
21 creative outlet for the cultural and educational interests of
22 such members, and of promoting such interests for the
23 betterment of the community by presenting such productions to
24 the general public for an admission charge. The employment of
25 a paid director or conductor to assist in any such

1 presentation described in this subdivision shall not be
2 construed to prohibit the exemptions herein provided.

3 "(25) The gross proceeds of sales of herbicides for
4 agricultural uses by whomsoever sold. The term herbicides, as
5 used in this subdivision, means any substance or mixture of
6 substances intended to prevent, destroy, repel, or retard the
7 growth of weeds or plants. It shall include preemergence
8 herbicides, postemergence herbicides, lay-by herbicides,
9 pasture herbicides, defoliant herbicides, and desiccant
10 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 computation of
17 the tax on the gross proceeds of all sales levied, assessed,
18 or payable.

19 "(27) The gross proceeds from the sale or sales of
20 fuel for use or consumption aboard commercial fishing vessels
21 are hereby exempt from the computation of all sales taxes
22 levied, assessed, or payable under the provisions of this
23 division or levied under any county or municipal sales tax
24 law.

1 ~~"The words commercial fishing vessels shall mean~~
2 ~~vessels whose masters and owners are regularly and exclusively~~
3 ~~engaged in fishing as their means of livelihood.~~

4 "(28) The gross proceeds from the sales of rope,
5 fishing nets, tools, or any substitute used directly in the
6 process of commercial fishing by a holder of a commercial
7 license issued pursuant to Chapter 12 of Title 9.

8 ~~"(28)~~ (29) The gross proceeds of sales of sawdust,
9 wood shavings, wood chips, and other like materials sold for
10 use as chicken litter by poultry producers and poultry
11 processors.

12 ~~"(29)~~ (30) The gross proceeds of the sales of all
13 antibiotics, hormones and hormone preparations, drugs,
14 medicines, and other medications including serums and
15 vaccines, vitamins, minerals, or other nutrients for use in
16 the production and growing of fish, livestock, and poultry by
17 whomsoever sold. Such exemption as herein granted shall be in
18 addition to the exemption provided by law for feed for fish,
19 livestock, and poultry, and in addition to the exemptions
20 provided by law for the above-enumerated substances and
21 products when mixed and used as ingredients in fish,
22 livestock, and poultry feed.

23 ~~"(30)~~ (31) The gross proceeds of the sale or sales
24 of all medicines prescribed by physicians for persons who are
25 65 years of age or older, and when said prescriptions are

1 filled by licensed pharmacists, shall be exempted under this
2 division or under any county or municipal sales tax law. The
3 exemption provided in this section shall not apply to any
4 medicine purchased in any manner other than as is herein
5 provided.

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

9 "a. The name and claim number as shown on a Medicare
10 card issued by the United States Social Security
11 Administration.

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

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

18 "For the purposes of this subdivision, any person
19 filing a false proof of age shall be guilty of a misdemeanor
20 and upon conviction thereof shall be punished by a fine of one
21 hundred dollars (\$100).

22 "~~(31)~~ (32) There shall be exempted from the tax
23 levied by this division the gross receipts of sales of grass
24 sod of all kinds and character when in the original state of
25 production or condition of preparation for sale, when such

1 sales are made by the producer or members of his family or for
2 him by those employed by him to assist in the production
3 thereof; provided, that nothing herein shall be construed to
4 exempt sales of sod by a person engaged in the business of
5 selling plants, seedlings, nursery stock, or floral products.

6 ~~"(32)~~ (33) The gross receipts of sales of the
7 following items or materials which are necessary in the
8 farm-to-market production of tomatoes when such items or
9 materials are used by the producer or members of his family or
10 for him by those employed by him to assist in the production
11 thereof: Twine for tying tomatoes, tomato stakes, field boxes
12 (wooden boxes used to take tomatoes from the fields to shed),
13 and tomato boxes used in shipments to customers.

14 ~~"(33)~~ (34) The gross proceeds from the sale of
15 liquefied petroleum gas or natural gas sold to be used for
16 agricultural purposes.

17 ~~"(34)~~ (35) The gross receipts of sales from state
18 nurseries of forest tree seedlings.

19 ~~"(35)~~ (36) The gross receipts of sales of forest
20 tree seed by the state.

21 ~~"(36)~~ (37) The gross receipts of sales of Lespedeza
22 bicolor and other species of perennial plant seed and
23 seedlings sold for wildlife and game food production purposes
24 by the state.

1 "~~(37)~~ (38) The gross receipts of any aircraft
2 manufactured, sold, and delivered in this state if said
3 aircraft are not permanently domiciled in Alabama and are
4 removed to another state.

5 "~~(38)~~ (39) The gross proceeds from the sale or sales
6 of all diesel fuel used for off-highway agricultural purposes.

7 "~~(39)~~ (40) The gross proceeds from sales of
8 admissions to any sporting event which:

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

11 "b. Is hosted by a not-for-profit corporation
12 organized and existing under the laws of the State of Alabama;
13 and

14 "c. Determines a national championship of a national
15 organization, including, but not limited to, the Professional
16 Golfers Association of America, the Tournament Players
17 Association, the United States Golf Association, the United
18 States Tennis Association, and the National Collegiate
19 Athletic Association; and

20 "d. Has not been held in the State of Alabama on
21 more than one prior occasion, provided, however, that for such
22 purpose the Professional Golfers Association Championship, the
23 United States Open Golf Championship, the United States
24 Amateur Golf Championship of the United States Golf

1 Association, and the United States Open Tennis Championship
2 shall each be treated as a separate event.

3 ~~"(40)~~ (41) The gross receipts from the sale of any
4 aircraft and replacement parts, components, systems, supplies,
5 and sundries affixed or used on said aircraft and ground
6 support equipment and vehicles used by or for the aircraft to
7 or by a certificated or licensed air carrier with a hub
8 operation within this state, for use in conducting intrastate,
9 interstate, or foreign commerce for transporting people or
10 property by air. For the purpose of this subdivision, the
11 words "hub operation within this state" shall be construed to
12 have all of the following criteria:

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

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

20 ~~"(41)~~ (42) The gross receipts from the sale of hot
21 or cold food and beverage products sold to or by a
22 certificated or licensed air carrier with a hub operation
23 within this state, for use in conducting intrastate,
24 interstate, or foreign commerce for transporting people or
25 property by air. For the purpose of this subdivision, the

1 words "hub operation within this state" shall be construed to
2 have all of the following 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 "~~(42)~~ (43) The gross receipts from the sale of any
11 aviation jet fuel to a certificated or licensed air carrier
12 purchased for use in scheduled all-cargo operations being
13 conducted on international flights or in international
14 commerce. For purposes of this subdivision, the following
15 words or terms shall be defined and interpreted as follows:

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

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

23 "c. International Commerce. Any air carrier engaged
24 in all-cargo operations transporting goods for compensation or
25 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)~~ (44) The gross proceeds of the sale or sales
10 of the 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

1 minerals, that is built for exclusive use outside this state
2 and that is, on completion, removed forthwith from this state.

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 "~~(44)~~ (45) The gross receipts derived from all bingo
18 games and operations which are conducted in compliance with
19 validly enacted legislation authorizing the conduct of such
20 games and operations, and which comply with the distribution
21 requirements of the applicable local laws; provided that the
22 exemption from sales taxation granted by this subdivision
23 shall apply only to gross receipts taxable under subdivision
24 (2) of Section 40-23-2. It is further provided that this
25 exemption shall not apply to any gross receipts from the sale

1 of tangible personal property, such as concessions, novelties,
2 food, beverages, etc. The exemption provided for in this
3 section shall be limited to those games and operations by
4 organizations which have qualified for exemption under the
5 provisions of 26 U.S.C. § 501 (c) (3), (4), (7), (8), (10), or
6 (19), or which are defined in 26 U.S.C. § 501(d).

7 "~~(45)~~ (46) The gross receipts derived from the sale
8 or sales of fruit or other agricultural products by the person
9 or company, as defined in Section 40-23-1, that planted or
10 cultivated and harvested the fruit or agricultural product,
11 when the land is owned or leased by the seller.

12 "~~(46)~~ (47) The gross receipts derived from the sale
13 or sales of all domestically mined or produced coal, coke, and
14 coke by-products used in cogeneration plants.

15 "~~(47)~~ (48) The gross receipts from the sale or sales
16 of metal, other than gold or silver, when such metal is
17 purchased for the purpose of transferring such metal to an
18 investment trust in exchange for shares or other units, each
19 of which are both publicly traded and represent fractional
20 undivided beneficial interests in the trust's net assets,
21 including metal stored in warehouses located in this state, as
22 well as the gross proceeds from the sale or other transfer of
23 such metal to or from such investment trust in exchange for
24 shares or other units that are publicly traded and represent
25 fractional undivided beneficial interests in the trust's net

1 assets but not to the extent that metal is transferred to or
2 from the investment trust in exchange for consideration other
3 than such publicly traded shares or other units. For purposes
4 of this subdivision, the term metals includes, but is not
5 limited to, copper, aluminum, nickel, zinc, tin, lead, and
6 other similar metals typically used in commercial and
7 industrial applications.

8 ~~"(48)~~ (49) For the period commencing on October 1,
9 2012, and ending May 30, 2022, unless extended by joint
10 resolution, the gross receipts from the sale of parts,
11 components, and systems that become a part of a fixed or
12 rotary wing military aircraft or certified transport category
13 aircraft that undergoes conversion, reconfiguration, or
14 general maintenance so long as the address of the aircraft for
15 FAA registration is not in the state; provided, however, that
16 this exemption shall not apply to a local sales tax unless
17 previously exempted by local law or approved by resolution of
18 the local governing body.

19 ~~"(49)~~ (50) The gross proceeds from the sale or sales
20 within school buildings of lunches to pupils of kindergarten,
21 grammar, and high schools, either public or private, that are
22 not sold for profit.

23 ~~"(50)~~ (51) The gross proceeds of services provided
24 by photographers, including, but not limited to, sitting fees
25 and consultation fees, even when provided as part of a

1 transaction ultimately involving the sale of one or more
2 photographs, so long as the exempt services are separately
3 stated to the customer on a bill of sale, invoice, or like
4 memorialization of the transaction. For transactions occurring
5 before October 1, 2017, neither the Department of Revenue nor
6 local tax officials may seek payment for sales tax not
7 collected. With regard to such transactions in which sales tax
8 was collected and remitted on services provided by
9 photographers, neither the taxpayer nor the entity remitting
10 sales tax shall have the right to seek refund of such tax.

11 ~~"(51)~~ (52) a. For the period commencing on June 1,
12 2018, and ending five years thereafter, unless extended by an
13 act of the Legislature, the gross proceeds of sales of bullion
14 or money, as defined in Section 40-1-1(7).

15 "b. For purposes of this subdivision, the following
16 words or terms shall be defined and interpreted as follows:

17 "1. Bullion. Gold, silver, platinum, palladium, or a
18 combination of each precious metal, that has gone through a
19 refining process and for which the item's value depends on its
20 mass and purity, and not on its form, numismatic value, or
21 other value. The term includes bullion in the form of bars,
22 ingots, or coins that meet the requirements set forth above.
23 Qualifying bullion may contain other metals or substances,
24 provided that the other substances are minimal in value
25 compared with the value of the gold, silver, platinum, or

1 palladium and the other substances do not add value to the
2 item. For purposes of this subparagraph, "gold, silver,
3 platinum, or palladium" does not include jewelry or works of
4 art.

5 "2. Mass Purity. An item's mass is its weight in
6 precious metal, and its purity is the amount of precious metal
7 contained within the item.

8 "3. Numismatic Value. An external value above and
9 beyond the base value of the underlying precious metal, due to
10 the item's rarity, condition, age, or other external factor.

11 "c. In order for bullion to qualify for the sales
12 tax exemption, gold, silver, platinum, and palladium items
13 must meet all of the following requirements:

14 "1. Must be refined.

15 "2. Must contain at least ninety percent gold,
16 silver, platinum, or palladium or some combination of these
17 metals.

18 "3. The sales price of the item must fluctuate with
19 and depend on the market price of the underlying precious
20 metal, and not on the item's rarity, condition, age, or other
21 external factor.

22 "~~(52)~~ (53) a. The gross proceeds of the initial
23 retail sales of adaptive equipment that is permanently affixed
24 to a motor vehicle.

1 "b. For the purposes of this subdivision, the
2 following words or terms shall be defined and interpreted as
3 follows:

4 "1. Adaptive Equipment. Equipment not generally used
5 by persons with normal mobility that is appropriate for use in
6 a motor vehicle and that is not normally provided by a motor
7 vehicle manufacturer.

8 "2. Motor Vehicle. A vehicle as defined in Section
9 40-12-240.

10 "3. Motor Vehicle Manufacturer. Every person engaged
11 in the business of constructing or assembling vehicles or
12 manufactured homes.

13 "c. In order to qualify for the exemption provided
14 for herein, the adaptive equipment must be separately stated
15 to the customer on a bill of sale, invoice, or like
16 memorialization of the transaction.

17 "(b) Any violation of any provision of this section
18 shall be punishable in a court of competent jurisdiction by a
19 fine of not less than five hundred dollars (\$500) and no more
20 than two thousand dollars (\$2,000) and imprisonment of not
21 less than six months nor more than one year in the county
22 jail.

23 "§40-23-37.

24 "There is hereby levied, in lieu of the state sales
25 tax levied by Section 40-23-2, a privilege or license tax

1 against the person on account of the business activities
2 engaged in and in the amount to be determined by the
3 application of rates against gross sales, or gross receipts,
4 as the case may be as follows:

5 "Upon every person, firm, or corporation engaged or
6 continuing within this state in the business of selling at
7 retail any machine, machinery, vessel, or equipment which is
8 used in planting, cultivating and harvesting farm products,
9 the capture, attempted capture, or processing of fish or other
10 seafood by means of commercial fishing by a holder of a
11 commercial license issued pursuant to Chapter 12 of Title 9,
12 or used in connection with the production of agricultural
13 produce or products, livestock or poultry on farms, and the
14 parts of such machines, machinery, vessel, or equipment,
15 attachments and replacements therefor which are made or
16 manufactured for use on or in the operation of such machine,
17 machinery, vessel, or equipment, and which are necessary to
18 and customarily used in the operation of such machine,
19 machinery, vessel, or equipment, an amount equal to one and
20 one-half percent of the gross proceeds of the sale thereof;
21 provided, that the one and one-half percent rate herein
22 prescribed with respect to parts, attachments and replacements
23 shall not apply to any automotive vehicle or trailer designed
24 primarily for public highway use, except farm trailers used

1 primarily in the production and harvesting of agricultural
2 commodities.

3 "Where any used machine, machinery, vessel, or
4 equipment which is used in planting, cultivating and
5 harvesting farm products, or used in connection with the
6 production of agricultural produce or products, livestock, and
7 poultry on farms is taken in trade or in a series of trades as
8 a credit or part payment on a sale of a new or used machine,
9 machinery, vessel, or equipment, the tax levied herein shall
10 be paid on the net difference, that is, the price of the new
11 or used machine, machinery, vessel, or equipment sold, less
12 the credit for the used machine, machinery, vessel, or
13 equipment taken in trade.

14 "§40-23-60.

15 "For the purpose of this article, the following
16 terms shall have the respective meanings ascribed to them in
17 this section:

18 "(1) PERSON or COMPANY. Any individual, firm,
19 company, partnership, association, corporation, receiver or
20 trustee, or any other group or combination acting as a unit,
21 and the plural as well as the singular number, unless the
22 intention to give a more limited meaning is disclosed by the
23 context.

24 "(2) DEPARTMENT. The Department of Revenue of the
25 State of Alabama.

1 "(3) COMMISSIONER. The Commissioner of Revenue of
2 the State of Alabama.

3 "(4) WHOLESALE SALE or SALE AT WHOLESALE. Any one of
4 the following:

5 "a. A sale of tangible personal property by
6 wholesaler to licensed retail merchants, jobbers, dealers or
7 other wholesalers for resale and does not include a sale by
8 wholesalers to users or consumers, not for resale.

9 "b. A sale of tangible personal property or
10 products, including iron ore, and including the furnished
11 container and label of such property or products, to a
12 manufacturer or compounder which enter into and become an
13 ingredient or component part of the tangible personal property
14 or products which the manufacturer or compounder manufactures
15 or compounds for sale, whether or not such tangible personal
16 property or product used in manufacturing or compounding a
17 finished product is used with the intent that it become a
18 component of the finished product; provided, however, that it
19 is the intent of this section that no sale of capital
20 equipment, machinery, tools, or product shall be included in
21 the term "wholesale sale." The term "capital equipment,
22 machinery, tools, or product" shall mean property that is
23 subject to depreciation allowances for Alabama income tax
24 purposes.

1 "c. A sale of containers intended for one-time use
2 only, and the labels thereof, when such containers are sold
3 without contents to persons who sell or furnish such
4 containers along with the contents placed therein for sale by
5 such persons.

6 "d. A sale of pallets intended for one-time use only
7 when such pallets are sold without contents to persons who
8 sell or furnish such pallets along with the contents placed
9 thereon for sale by such persons.

10 "e. A sale to a manufacturer or compounder, of
11 crowns, caps and tops intended for one-time use employed and
12 used upon the containers in which such manufacturer or
13 compounder markets his products.

14 "f. A sale of containers to persons engaged in
15 selling or otherwise supplying or furnishing baby chicks to
16 growers thereof where such containers are used for the
17 delivery of such chicks or a sale of containers for use in the
18 delivery of eggs by the producer thereof to the distributor or
19 packer of such eggs even though such containers used for
20 delivery of baby chicks or eggs may be recovered for reuse.

21 "g. A sale of bagging and ties used in preparing
22 cotton for market.

23 "h. A sale of commercial fish feed including
24 concentrates, supplements and other feed ingredients when such

1 substances are used as ingredients in mixing and preparing
2 feed for fish raised to be sold on a commercial basis.

3 "i. A sale of bait used to capture or attempt to
4 capture fish or other seafood in the process of commercial
5 fishing, as defined in Section 40-23-1, by a holder of a
6 commercial license issued pursuant to Chapter 12 of Title 9.

7 ~~"i.~~ j. A sale of tangible personal property to any
8 person engaging in the business of leasing or renting such
9 tangible personal property to others, if such tangible
10 personal property is purchased for the purpose of leasing or
11 renting it to others under a transaction subject to the
12 privilege or license tax levied in Article 4 of Chapter 12 of
13 this title against any person engaging in the business of
14 leasing or renting tangible personal property to others.

15 ~~"j.~~ k. A purchase or withdrawal of parts or
16 materials from stock by any person licensed under this article
17 where such parts or materials are used in repairing or
18 reconditioning the tangible personal property of such licensed
19 person which tangible personal property is a part of the stock
20 of goods of such licensed person, offered for sale by him and
21 not for use or consumption of such licensed person.

22 ~~"k.~~ l. A sale to meat packers, manufacturers,
23 compounders or processors of meat products of all casings used
24 in moulding or forming wieners and Vienna sausages, even
25 though such casings may be recovered for reuse.

1 "(5) SALE AT RETAIL or RETAIL SALE. All sales of
2 tangible personal property except those above defined as
3 wholesale sales. The quantities of goods sold or prices at
4 which sold are immaterial in determining whether or not a sale
5 is at retail. Sales of building materials to contractors,
6 builders or landowners for resale or use in the form of real
7 estate are retail sales in whatever quantity sold. Sales of
8 building materials, fixtures or other equipment to a
9 manufacturer or builder of modular buildings for use in
10 manufacturing, building or equipping a modular building
11 ultimately becoming a part of real estate situated in the
12 State of Alabama are retail sales, and the use, sale or resale
13 of such building shall not be subject to the tax. Sales of
14 tangible personal property to undertakers and morticians are
15 retail sales and subject to the tax at the time of purchase,
16 but are not subject to the tax on resale to the consumer.
17 Sales of tangible personal property or products to
18 manufacturers, quarry operators, mine operators or
19 compounders, which are used or consumed by them in
20 manufacturing, mining, quarrying or compounding and do not
21 become an ingredient or component part of the tangible
22 personal property manufactured or compounded as provided in
23 subdivision (4) are retail sales. The term "sale at retail" or
24 "retail sale" shall also mean and include the withdrawal, use
25 or consumption of any tangible personal property by anyone who

1 purchases same at wholesale, except property which has been
2 previously withdrawn from the business or stock and so used or
3 consumed and with respect to which property the tax has been
4 paid because of such previous withdrawal, use or consumption,
5 except property which enters into and becomes an ingredient or
6 component part of tangible personal property or products
7 manufactured or compounded for sale as provided in subdivision
8 (4); and not for the personal and private use or consumption
9 of any person so withdrawing, using or consuming the same, and
10 such wholesale purchaser shall report and pay the taxes
11 thereon; and except refinery, residue, or fuel gas, whether in
12 a liquid or gaseous state, that has been generated by, or is
13 otherwise a by-product of, a petroleum-refining process, which
14 gas is then utilized in the process to generate heat or is
15 otherwise utilized in the distillation or refining of
16 petroleum products. The term "retail sale" or "sale at retail"
17 shall also mean and include the sale of tangible personal
18 property previously purchased at wholesale for the purpose of
19 leasing or renting under a transaction subject to the
20 privilege or license tax levied in Article 4 of Chapter 12 of
21 this title, regardless of whether such sale is to the person
22 who theretofore leased or rented the said tangible personal
23 property or to some other person.

24 "(6) BUSINESS. All activities engaged in, or caused
25 to be engaged in, with the object of gain, profit, benefit or

1 advantage, either direct or indirect, and not excepting
2 subactivities producing marketable commodities used or
3 consumed in the main business activity, each of which
4 subactivities shall be considered business engaged in, taxable
5 in the class in which it falls.

6 "(7) STORAGE. Any keeping or retention in this state
7 for any purpose except sale in the regular course of business
8 or subsequent use solely outside this state of tangible
9 personal property purchased at retail.

10 "(8) USE. The exercise of any right or power over
11 tangible personal property incident to the ownership of that
12 property, or by any transaction where possession is given,
13 except that it shall not include the sale of that property in
14 the regular course of business.

15 "(9) PURCHASE. Acquired for a consideration, whether
16 such acquisition was effected by a transfer of title, or of
17 possession or of both, or a license to use or consume; whether
18 such transfer shall have been absolute or conditional, and by
19 whatsoever means the same shall have been effected; and
20 whether such consideration be a price or rental in money, or
21 by way of exchange or barter.

22 "(10) SALES PRICE. The total amount for which
23 tangible personal property is sold, including any services,
24 including transportation, that are a part of the sale, valued
25 in money, whether paid in money or otherwise, and includes any

1 amount for which credit is given to the purchaser by the
2 seller, without any deduction therefrom on account of the cost
3 of the property sold, the cost of the materials used, labor or
4 service cost, interest charged, losses or any other expenses
5 whatsoever; provided, that cash discounts allowed and taken on
6 sales shall not be included and sales price shall not include
7 the amount charged for property returned by customers when the
8 entire amount charged therefor is refunded either in cash or
9 by credit.

10 "(11) IN THIS STATE or IN THE STATE. Within the
11 exterior limits of the State of Alabama, and includes all
12 territory within such limits owned by or ceded to the United
13 States of America.

14 "(12) AUTOMOTIVE VEHICLE. A power shovel, dragline,
15 crawler, crawler crane, ditcher or any similar machine which
16 is self-propelled, in addition to self-propelled machines
17 which are used primarily as instruments of conveyance.

18 "(13) PREPAID TELEPHONE CALLING CARD. A sale of a
19 prepaid telephone calling card or a prepaid authorization
20 number, or both, shall be deemed the sale of tangible personal
21 property subject to the tax imposed pursuant to this chapter.
22 For purposes of this subdivision, the sale of prepaid wireless
23 service that is evidenced by a physical card constitutes the
24 sale of a prepaid telephone calling card, and the sale of

1 prepaid wireless service that is not evidenced by a physical
2 card constitutes the sale of a prepaid authorization number.

3 "(14) PREPAID WIRELESS SERVICE. The right to use
4 mobile telecommunications service, which must be paid for in
5 advance and that is sold in predetermined units or dollars of
6 which the number declines with use or the expiration of time
7 in a known amount, and which may include rights to use
8 non-telecommunications services or to download digital
9 products or digital content. For purposes of this subdivision,
10 mobile telecommunications service has the meaning ascribed by
11 Section 40-21-120.

12 "(15) REMOTE USE TAX. Amounts collected from out of
13 state vendors who, on October 1, 2012, were or would have been
14 remote sellers as defined in Section 40-23-171; and amounts
15 remitted by consumers on the individual tax return.

16 "§40-23-63.

17 "There is hereby levied and imposed an excise tax on
18 the storage, use or other consumption in this state of any
19 machine, machinery, vessel, or equipment which is used in
20 planting, cultivating and harvesting farm products, the
21 capture, attempted capture, or processing of fish or other
22 seafood by means of commercial fishing, as defined in Section
23 40-23-1, by a holder of a commercial license issued pursuant
24 to Chapter 12 of Title 9, or used in connection with the
25 production of agricultural produce or products, livestock or

1 poultry, ~~or~~ on farms, and the parts of such machines,
2 machinery, vessels, or equipment, attachments and replacements
3 therefor which are made or manufactured for use on or in the
4 operation of such machine, machinery, vessel, or equipment,
5 and which are necessary to and customarily used in the
6 operation of such machine, machinery, vessel, or equipment,
7 which is purchased at retail after October 1, 1966, for
8 storage, use, or other consumption in this state, at the rate
9 of one and one-half percent of the sales price of such
10 property or the amount of tax collected by the seller,
11 whichever is greater, provided, however, when the seller
12 follows the Department of Revenue's suggested use tax brackets
13 and his records prove that his following said brackets
14 resulted in a net undercollection of tax for the month, he may
15 report the tax due or tax collected whichever is less,
16 regardless of whether the retailer is or is not engaged in
17 business in this state. The tax herein levied and imposed
18 shall be in lieu of the excise tax levied and imposed by
19 Section 40-23-61; provided, that the one and one-half percent
20 rate herein prescribed with respect to parts, attachments and
21 replacements shall not apply to any automotive vehicle or
22 trailer designed primarily for public highway use except farm
23 trailers used primarily in the production and harvesting of
24 agricultural commodities.

1 "Every person storing, using, or otherwise consuming
 2 in this state such tangible personal property purchased at
 3 retail shall be liable for the tax imposed by this article,
 4 and the liability shall not be extinguished until the tax has
 5 been paid to this state; provided, that a receipt from a
 6 retailer maintaining a place of business in this state or a
 7 retailer authorized by the Department of Revenue under such
 8 rules and regulations as the Commissioner of Revenue may
 9 prescribe, to collect the tax imposed hereby and who shall for
 10 the purpose of this article be regarded as a retailer
 11 maintaining a place of business in this state, given to the
 12 purchaser in accordance with the provisions of Section
 13 40-23-67, shall be sufficient to relieve the purchaser from
 14 further liability for a tax to which such receipt may refer."

15 Section 2. The Department of Revenue may adopt rules
 16 for the implementation and administration of this act.

17 Section 3. This act shall become effective on
 18 January 1, 2023, following its passage and approval by the
 19 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 3-FEB-22, as amended.

Jeff Woodard
Clerk

Senate

17-MAR-22

Passed