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SYNOPSIS:

Under existing law, the state imposes sales or use taxes upon certain persons, firms, or corporations. Sales of certain items are taxed at a reduced rate. "Food" is not a defined term and is taxed at the general rate. Sales of other items are exempt from the taxes.

This bill would define "food" for purposes of sales and use taxes and begin reducing the state sales and use tax on food on September 1, 2023. Future rate reductions would be contingent upon certain growth requirements in the Education Trust Fund.

This bill would establish the sales and use tax rate on food for purposes of county and municipal sales and use taxes as the existing general or retail sales tax rate on the effective date of this act and allow a county and municipal election to reduce the sales tax rate or exempt food from local sales and use taxes.

A BILL
TO BE ENTITLED
AN ACT

Relating to sales and use taxes; to amend Sections



29 40-23-1, 40-23-2, 40-23-60, and 40-23-61, Code of Alabama
30 1975, to define "food" and begin reducing the state sales and
31 use tax on food on September 1, 2023; to require certain
32 growth targets in the Education Trust Fund for future sales
33 tax reductions on food; to establish the sales and use tax
34 rate on food for purposes of county and municipal sales and
35 use taxes as the existing general or retail sales and use tax
36 rate; and to provide for the levy of sales and use tax on food
37 by counties and municipalities.

38 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

39 Section 1. Sections 40-23-1, 40-23-2, 40-23-60, and
40 40-23-61, Code of Alabama 1975, are amended to read as
41 follows:

42 "§40-23-1

43 (a) For the purpose of this division, the following
44 terms shall have the respective meanings ascribed by this
45 section:

46 (1) PERSON or COMPANY. Used interchangeably, includes
47 any individual, firm, copartnership, association, corporation,
48 receiver, trustee, or any other group or combination acting as
49 a unit and the plural as well as the singular number, unless
50 the intention to give a more limited meaning is disclosed by
51 the context.

52 (2) DEPARTMENT. The Department of Revenue of the State
53 of Alabama.

54 (3) COMMISSIONER. The Commissioner of Revenue of the
55 State of Alabama.

56 (4) TAX YEAR or TAXABLE YEAR. The calendar year.



57 (5) SALE or SALES. Installment and credit sales and the
58 exchange of properties as well as the sale thereof for money,
59 every closed transaction constituting a sale. Provided,
60 however, a transaction shall not be closed or a sale completed
61 until the time and place when and where title is transferred
62 by the seller or seller's agent to the purchaser or
63 purchaser's agent, and for the purpose of determining transfer
64 of title, a common carrier or the U.S. Postal Service shall be
65 deemed to be the agent of the seller, regardless of any F.O.B.
66 point and regardless of who selects the method of
67 transportation, and regardless of by whom or the method by
68 which freight, postage, or other transportation charge is
69 paid. Provided further that, where billed as a separate item
70 to and paid by the purchaser, the freight, postage, or other
71 transportation charge paid to a common carrier or the U.S.
72 Postal Service is not a part of the selling price.

73 (6) GROSS PROCEEDS OF SALES. The value proceeding or
74 accruing from the sale of tangible personal property, and
75 including the proceeds from the sale of any property handled
76 on consignment by the taxpayer, including merchandise of any
77 kind and character without any deduction on account of the
78 cost of the property sold, the cost of the materials used,
79 labor or service cost, interest paid, any consumer excise
80 taxes that may be included within the sales price of the
81 property sold, or any other expenses whatsoever, and without
82 any deductions on account of losses; provided, that cash
83 discounts allowed and taken on sales shall not be included,
84 and "gross proceeds of sales" shall not include the sale price



85 of property returned by customers when the full sales price
86 thereof is refunded either in cash or by credit. The term
87 "gross proceeds of sale" shall also mean and include the
88 reasonable and fair market value of any tangible personal
89 property previously purchased at wholesale which is withdrawn
90 or used from the business or stock and used or consumed in
91 connection with a business, and shall also mean and include
92 the reasonable and fair market value of any tangible personal
93 property previously purchased at wholesale which is withdrawn
94 from the business or stock and used or consumed by any person
95 so withdrawing the same, except property that has been
96 previously withdrawn from business or stock and so used or
97 consumed with respect to which property the tax has been paid
98 because of previous withdrawal, use, or consumption, except
99 property that enters into and becomes an ingredient or
100 component part of tangible personal property or products
101 manufactured or compounded for sale and not for the personal
102 and private use or consumption of any person so withdrawing,
103 using, or consuming the same, and except refinery, residue, or
104 fuel gas, whether in a liquid or gaseous state, that has been
105 generated by, or is otherwise a by-product of, a
106 petroleum-refining process, which gas is then utilized in the
107 process to generate heat or is otherwise utilized in the
108 distillation or refining of petroleum products.

109 In the case of the retail sale of equipment,
110 accessories, fixtures, and other similar tangible personal
111 property used in connection with the sale of commercial mobile
112 services as defined herein, or in connection with satellite



113 television services, at a price below cost, "gross proceeds of
114 sale" shall only include the stated sales price thereof and
115 shall not include any sales commission or rebate received by
116 the seller as a result of the sale. As used herein, the term
117 "commercial mobile services" shall have the same meaning as
118 that term has in 47 U.S.C. §§ 153(n) and 332(d), as in effect
119 from time to time.

120 (7) TAXPAYER. Any person liable for taxes hereunder.

121 (8) GROSS RECEIPTS. The value proceeding or accruing
122 from the sale of tangible personal property, including
123 merchandise and commodities of any kind and character, all
124 receipts actual and accrued, by reason of any business engaged
125 in, not including, however, interest, discounts, rentals of
126 real estate, or royalties, and without any deduction on
127 account of the cost of the property sold, the cost of the
128 materials used, labor or service cost, interest paid, any
129 consumer excise taxes that may be included in the sales price
130 of the property sold, or any other expenses whatsoever and
131 without any deductions on account of losses. The term "gross
132 receipts" shall also mean and include the reasonable and fair
133 market value of any tangible personal property previously
134 purchased at wholesale which is withdrawn or used from the
135 business or stock and used or consumed in connection with a
136 business, and shall also mean and include the reasonable and
137 fair market value of any tangible personal property previously
138 purchased at wholesale which is withdrawn from the business or
139 stock and used or consumed by any person so withdrawing the
140 same, except property which has been previously withdrawn from



141 business or stock and so used or consumed and with respect to
142 which property the tax has been paid because of previous
143 withdrawal, use, or consumption, except property which enters
144 into and becomes an ingredient or component part of tangible
145 personal property or products manufactured or compounded for
146 sale as provided in subdivision (9) and not for the personal
147 and private use or consumption of any person so withdrawing,
148 using, or consuming the same, and except refinery, residue, or
149 fuel gas, whether in a liquid or gaseous state, that has been
150 generated by, or is otherwise a by-product of, a
151 petroleum-refining process, which gas is then utilized in the
152 process to generate heat or is otherwise utilized in the
153 distillation or refining of petroleum products.

154 (9) WHOLESALE SALE or SALE AT WHOLESALE. Any one of the
155 following:

156 a. A sale of tangible personal property by wholesalers
157 to licensed retail merchants, jobbers, dealers, or other
158 wholesalers for resale and does not include a sale by
159 wholesalers to users or consumers, not for resale.

160 b. A sale of tangible personal property or products,
161 including iron ore, and including the furnished container and
162 label of the property or products, to a manufacturer or
163 compounder which enter into and become an ingredient or
164 component part of the tangible personal property or products
165 that the manufacturer or compounder manufactures or compounds
166 for sale, whether or not the tangible personal property or
167 product used in manufacturing or compounding a finished
168 product is used with the intent that it becomes a component of



169 the finished product; provided, however, that it is the intent
170 of this section that no sale of capital equipment, machinery,
171 tools, or product shall be included in the term "wholesale
172 sale." The term "capital equipment, machinery, tools, or
173 product" shall mean property that is subject to depreciation
174 allowances for Alabama income tax purposes.

175 c. A sale of containers intended for one-time use only,
176 and the labels thereof, when containers are sold without
177 contents to persons who sell or furnish containers along with
178 the contents placed therein for sale by persons.

179 d. A sale of pallets intended for one-time use only
180 when pallets are sold without contents to persons who sell or
181 furnish pallets along with the contents placed thereon for
182 sale by persons.

183 e. A sale to a manufacturer or compounder, of crowns,
184 caps, and tops intended for one-time use employed and used
185 upon the containers in which a manufacturer or compounder
186 markets his products.

187 f. A sale of containers to persons engaged in selling
188 or otherwise supplying or furnishing baby chicks to growers
189 thereof where containers are used for the delivery of chicks
190 or a sale of containers for use in the delivery of eggs by the
191 producer thereof to the distributor or packer of eggs even
192 though containers used for delivery of baby chicks or eggs may
193 be recovered for reuse.

194 g. A sale of bagging and ties used in preparing cotton
195 for market.

196 h. A sale to meat packers, manufacturers, compounders,



197 or processors of meat products of all casings used in molding
198 or forming wieners and Vienna sausages even though casings may
199 be recovered for reuse.

200 i. A sale of commercial fish feed including
201 concentrates, supplements, and other feed ingredients when
202 substances are used as ingredients in mixing and preparing
203 feed for fish raised to be sold on a commercial basis.

204 j. A sale of bait used to capture or attempt to capture
205 fish or other seafood in the process of commercial fishing by
206 a holder of a commercial license issued pursuant to Chapter 12
207 of Title 9.

208 k. A sale of tangible personal property to any person
209 engaging in the business of leasing or renting tangible
210 personal property to others, if tangible personal property is
211 purchased for the purpose of leasing or renting it to others
212 under a transaction subject to the privilege or license tax
213 levied in Article 4 of Chapter 12 of this title against any
214 person engaging in the business of leasing or renting tangible
215 personal property to others.

216 l. A purchase or withdrawal of parts or materials from
217 stock by any person licensed under this division where parts
218 or materials are used in repairing or reconditioning the
219 tangible personal property of a licensed person, which
220 tangible personal property is a part of the stock of goods of
221 a licensed person, offered for sale by him or her, and not for
222 use or consumption of a licensed person.

223 (10) SALE AT RETAIL or RETAIL SALE. All sales of
224 tangible personal property except those defined as wholesale



225 sales. The quantities of goods sold or prices at which sold
226 are immaterial in determining whether or not a sale is at
227 retail. Sales of building materials to contractors, builders,
228 or landowners for resale or use in the form of real estate are
229 retail sales in whatever quantity sold. Sales of building
230 materials, fixtures, or other equipment to a manufacturer or
231 builder of modular buildings for use in manufacturing,
232 building, or equipping a modular building ultimately becoming
233 a part of real estate situated in the State of Alabama are
234 retail sales, and the use, sale, or resale of building shall
235 not be subject to the tax. Sales of tangible personal property
236 to undertakers and morticians are retail sales and subject to
237 the tax at the time of purchase, but are not subject to the
238 tax on resale to the consumer. Sales of tangible personal
239 property or products to manufacturers, quarry operators, mine
240 operators, or compounders, which are used or consumed by them
241 in manufacturing, mining, quarrying, or compounding and do not
242 become an ingredient or component part of the tangible
243 personal property manufactured or compounded as provided in
244 subdivision (9) are retail sales. The term "sale at retail" or
245 "retail sale" shall also mean and include the withdrawal, use,
246 or consumption of any tangible personal property by any one
247 who purchases same at wholesale, except property that has been
248 previously withdrawn from the business or stock and so used or
249 consumed and with respect to which property tax has been paid
250 because of previous withdrawal, use, or consumption, except
251 property that enters into and becomes an ingredient or
252 component part of tangible personal property or products



253 manufactured or compounded for sale as provided in subdivision
254 (9) and not for the personal and private use or consumption of
255 any person so withdrawing, using, or consuming the same; and
256 wholesale purchaser shall report and pay the taxes thereon. In
257 the case of the sale of equipment, accessories, fixtures, and
258 other similar tangible personal property used in connection
259 with the sale of commercial mobile services as defined in
260 subdivision (6), or in connection with satellite television
261 services, at a price below cost, the term "sale at retail" and
262 "retail sale" shall include those sales, and those sales shall
263 not also be taxable as a withdrawal, use, or consumption of
264 such tangible personal property.

265 (11) BUSINESS. All activities engaged in, or caused to
266 be engaged in, with the object of gain, profit, benefit, or
267 advantage, either direct or indirect, and not excepting
268 subactivities producing marketable commodities used or
269 consumed in the main business activity, each of which
270 subactivities shall be considered business engaged in, taxable
271 in the class in which it falls.

272 (12) AUTOMOTIVE VEHICLE. A power shovel, dragline,
273 crawler, crawler crane, ditcher, or any similar machine that
274 is self-propelled, in addition to self-propelled machines that
275 are used primarily as instruments of conveyance.

276 (13) PREPAID TELEPHONE CALLING CARD. A sale of a
277 prepaid telephone calling card or a prepaid authorization
278 number, or both, shall be deemed the sale of tangible personal
279 property subject to the tax imposed on the sale of tangible
280 personal property pursuant to this chapter. For purposes of



281 this subdivision, the sale of prepaid wireless service that is
282 evidenced by a physical card constitutes the sale of a prepaid
283 telephone calling card, and the sale of prepaid wireless
284 service that is not evidenced by a physical card constitutes
285 the sale of a prepaid authorization number.

286 (14) PREPAID WIRELESS SERVICE. The right to use mobile
287 telecommunications service, which must be paid for in advance
288 and that is sold in predetermined units or dollars of which
289 the number declines with use in a known amount, and which may
290 include rights to use non-telecommunications services or to
291 download digital products or digital content. For purposes of
292 this subdivision, mobile telecommunications service has the
293 meaning ascribed by Section 40-21-120.

294 (15) CONSUMABLE VAPOR PRODUCT. Any nicotine liquid
295 solution or other material containing nicotine that is
296 depleted when used as a vapor product.

297 (16) VAPOR PRODUCTS. Any non-lighted, noncombustible
298 product that employs a mechanical heating element, battery, or
299 electronic circuit regardless of shape or size and that can be
300 used to produce vapor from nicotine in a solution. The term
301 includes any vapor cartridge or other container of nicotine in
302 a solution or other form that is intended to be used with or
303 in an electronic cigarette, electronic cigar, electronic
304 cigarillo, electronic pipe, or similar product or device. The
305 term does not include any product regulated by the United
306 States Food and Drug Administration under Chapter V of the
307 Federal Food, Drug, and Cosmetic Act.

308 (17) PRODUCER VALUE ADDED AGRICULTURAL PRODUCTS. Fruits



309 or other agricultural products that have undergone some degree
310 of further processing by the original producer of the
311 agricultural product, including, but not limited to, whole
312 cuts of meat, bound cut flowers, jams, jellies, or boiled or
313 roasted peanuts.

314 (18) COMMERCIAL FISHING. The activity of catching or
315 processing fish or other seafood regularly and exclusively as
316 a means of livelihood by a holder of a commercial license
317 issued pursuant to Chapter 12 of Title 9. The term includes
318 shellfish farmers, shrimpers, oysterers, lobsterers, and
319 crabbers.

320 (19) COMMERCIAL FISHING VESSEL. Any vessel whose
321 masters and owners are regularly and exclusively engaged in
322 commercial fishing as their means of livelihood.

323 (20) FOOD. Food as defined in 7 U.S.C. § 2011, et seq.,
324 for the purposes of the federal Supplemental Nutrition
325 Assistance Program regardless of where or by what means food
326 is sold. In the event that the federal Supplemental Nutrition
327 Assistance Program definition no longer exists, the
328 Legislature shall provide a new definition of "food" by
329 general law.

330 (b) The use within this state of tangible personal
331 property by the manufacturer thereof, as building materials in
332 the performance of a construction contract, for the purposes
333 of this division, shall be considered as a retail sale thereof
334 by the manufacturer, who shall also be construed as the
335 ultimate consumer of materials or property, and who shall be
336 required to report transaction and pay the sales tax thereon,



337 based upon the reasonable and fair market price thereof at the
338 time and place where same are used or consumed by the
339 manufacturer. Where the contractor is the manufacturer or
340 compounder of ready-mix concrete or asphalt plant mix used in
341 the performance of a contract, whether the ready-mix concrete
342 or asphalt plant mix is manufactured or compounded at the job
343 site or at a fixed or permanent plant location, the tax
344 applies only to the cost of the ingredients that become a
345 component part of the ready-mix concrete or the asphalt plant
346 mix. The provisions of this subsection shall not apply to any
347 tangible personal property that is specifically exempted from
348 the tax levied in this division.

349 (c) The sale of lumber by a lumber manufacturer to a
350 trucker for resale is a sale at wholesale as sales are defined
351 herein where the trucker is either a licensed dealer in lumber
352 or, if a resident of Alabama, has registered with the
353 Department of Revenue, and has received therefrom a
354 certificate of registration or, if a nonresident of this state
355 purchasing lumber for resale outside the State of Alabama, has
356 furnished to the lumber manufacturer his or her name, address,
357 and the vehicle license number of the truck in which the
358 lumber is to be transported, which name, address, and vehicle
359 license number shall be shown on the sales invoice rendered by
360 the lumber manufacturer. The certificate provided for herein
361 shall be valid for the calendar year of its issuance and may
362 be renewed from year to year on application to the Department
363 of Revenue on or before January 31 of each succeeding year;
364 provided, that if not renewed the certificate shall become



365 invalid for the purpose of this division on February 1.

366 (d) The dispensing or transferring of ophthalmic
367 materials, including lenses, frames, eyeglasses, contact
368 lenses, and other therapeutic optic devices, to a patient by a
369 licensed ophthalmologist, as a part of his or her professional
370 service, for purposes of this division, shall constitute a
371 sale, subject to the state sales tax. The licensed
372 ophthalmologist or licensed optometrist shall collect the
373 state sales tax. In no event shall the providing of
374 professional services in connection with the dispensing or
375 transferring of ophthalmic materials, including dispensing
376 fees or fitting fees, by a licensed ophthalmologist or
377 licensed optometrist be considered a sale subject to the state
378 sales tax. When the ophthalmic materials are purchased by a
379 consumer covered by a third party benefit plan, including
380 Medicare, the sales tax shall be applicable to the amount that
381 the ophthalmologist, optometrist, or optician is reimbursed by
382 the third party benefit plan plus the amount that the consumer
383 pays to the ophthalmologist, optometrist, or optician at the
384 time of the sale. All transfers of ophthalmic materials by
385 opticians or optometrists shall be considered retail sales
386 subject to the state sales tax. The term "supplier" shall
387 include but not be limited to optical laboratories, ophthalmic
388 material wholesalers, or anyone selling ophthalmic materials
389 to ophthalmologists.

390 (e) Notwithstanding the above, the withdrawal, use, or
391 consumption of a manufactured product by the manufacturer
392 thereof in quality control testing performed by employees or



393 independent contractors of the taxpayer, for purposes of this
394 division, shall not be deemed or considered to constitute a
395 transaction subject to sales tax, nor shall a gift by the
396 manufacturer of a manufactured product, withdrawn from the
397 manufacturer's inventory, to an entity listed in 26 U.S.C. §§
398 170(b) or (c), be considered a transaction subject to sales
399 tax.

400 (f) Notwithstanding the foregoing, a gift by a retailer
401 of a product or products where the aggregate retail value of
402 any single gift is equal to or less than ten thousand dollars
403 (\$10,000), withdrawn from the retailer's inventory, to an
404 entity listed in 26 U.S.C. §§ 170(b) or (c) shall not be
405 deemed or considered to constitute a transaction subject to
406 sales and use tax."

407 "§40-23-2

408 There is levied, in addition to all other taxes of
409 every kind now imposed by law, and shall be collected as
410 herein provided, a privilege or license tax against the person
411 on account of the business activities and in the amount to be
412 determined by the application of rates against gross sales, or
413 gross receipts, as the case may be, as follows:

414 (1) Upon every person, firm, or corporation, (including
415 the State of Alabama and its Alcoholic Beverage Control Board
416 in the sale of alcoholic beverages of all kinds, the
417 University of Alabama, Auburn University, and all other
418 institutions of higher learning in the state, whether the
419 institutions be denominational, state, county, or municipal
420 institutions, any association or other agency or



421 instrumentality of the institutions) engaged or continuing
422 within this state, in the business of selling at retail any
423 tangible personal property whatsoever, including merchandise
424 and commodities of every kind and character, (not including,
425 however, bonds or other evidences of debts or stocks, nor
426 sales of material and supplies to any person for use in
427 fulfilling a contract for the painting, repair, or
428 reconditioning of vessels, barges, ships, other watercraft,
429 and commercial fishing vessels of over five tons load
430 displacement as registered with the U.S. Coast Guard and
431 licensed by the State of Alabama Department of Conservation
432 and Natural Resources) an amount equal to four percent of the
433 gross proceeds of sales of the business except where a
434 different amount is expressly provided herein. Provided,
435 however, that any person engaging or continuing in business as
436 a retailer and wholesaler or jobber shall pay the tax required
437 on the gross proceeds of retail sales of the business at the
438 rates specified, when his or her books are kept so as to show
439 separately the gross proceeds of sales of each business, and
440 when his or her books are not kept he or she shall pay the tax
441 as a retailer, on the gross sales of the business.

442 Where any used part including tires of an automotive
443 vehicle or a truck trailer, semitrailer, or house trailer is
444 taken in trade, or in a series of trades, as a credit or part
445 payment on the sale of a new or rebuilt part or tire, the tax
446 levied herein shall be paid on the net difference, that is,
447 the price of the new or used part or tire sold less the credit
448 for the used part or tire taken in trade, provided, however,



449 this provision shall not be construed to include batteries.

450 (2) Upon every person, firm, or corporation engaged or
451 continuing within this state in the business of conducting or
452 operating places of amusement or entertainment, billiard and
453 pool rooms, bowling alleys, amusement devices, musical
454 devices, theaters, opera houses, moving picture shows,
455 vaudevilles, amusement parks, athletic contests, including
456 wrestling matches, prize fights, boxing and wrestling
457 exhibitions, football and baseball games, (including athletic
458 contests, conducted by or under the auspices of any
459 educational institution within this state, or any athletic
460 association thereof, or other association whether the
461 institution or association be a denominational, a state, or
462 county, or a municipal institution, or association or a state,
463 county, or city school, or other institution, association or
464 school) skating rinks, race tracks, golf courses, or any other
465 place at which any exhibition, display, amusement, or
466 entertainment is offered to the public or place or places
467 where an admission fee is charged, including public bathing
468 places and public dance halls of every kind and description
469 within the State of Alabama, an amount equal to four percent
470 of the gross receipts of any such business. Provided, however,
471 notwithstanding any language to the contrary in the prior
472 portion of this subdivision, the tax provisions so specified
473 shall not apply to any athletic event conducted by a public or
474 nonpublic primary or secondary school or any athletic event
475 conducted by or under the auspices of the Alabama High School
476 Athletic Association. The tax amount which would have been



477 collected pursuant to this subdivision shall continue to be
478 collected by the public or nonpublic primary or secondary
479 school, but shall be retained by the school that collected it
480 and shall be used by the school for school purposes.

481 (3) Upon every person, firm, or corporation engaged or
482 continuing within this state in the business of selling at
483 retail machines used in mining, quarrying, compounding,
484 processing, and manufacturing of tangible personal property an
485 amount equal to one and one-half percent of the gross proceeds
486 of the sale of the machines. The term "machine," as herein
487 used, shall include machinery which is used for mining,
488 quarrying, compounding, processing, or manufacturing tangible
489 personal property, and the parts of the machines, attachments,
490 and replacements therefor, which are made or manufactured for
491 use on or in the operation of the machines and which are
492 necessary to the operation of the machines and are customarily
493 so used.

494 (4) Upon every person, firm, or corporation engaged or
495 continuing within this state in the business of selling at
496 retail any automotive vehicle or truck trailer, semitrailer,
497 or house trailer, or mobile home set-up materials and supplies
498 including but not limited to steps, blocks, anchoring, cable
499 pipes, and any other materials pertaining thereto, an amount
500 equal to two percent of the gross proceeds of sale of the
501 automotive vehicle or truck trailer, semitrailer, or house
502 trailer, or mobile home set-up materials and supplies
503 provided, however, where a person subject to the tax provided
504 for in this subdivision withdraws from his or her stock in



505 trade any automotive vehicle or truck trailer, semitrailer, or
506 house trailer for use by him or her or by his or her employee
507 or agent in the operation of the business, there shall be
508 paid, in lieu of the tax levied herein, a fee of five dollars
509 (\$5) per year or part thereof during which the automotive
510 vehicle, truck trailer, semitrailer, or house trailer shall
511 remain the property of the person. Each year or part thereof
512 shall begin with the day or anniversary date, as the case may
513 be, of such withdrawal and shall run for the 12 succeeding
514 months or part thereof during which the automotive vehicle,
515 truck trailer, semitrailer, or house trailer shall remain the
516 property of the person.

517 Where any used automotive vehicle or truck trailer,
518 semitrailer, or house trailer is taken in trade or in a series
519 of trades, as a credit or part payment on the sale of a new or
520 used vehicle, the tax levied herein shall be paid on the net
521 difference, that is, the price of the new or used vehicle sold
522 less the credit for the used vehicle taken in trade.

523 Sales of automobiles, motorcycles, trucks, truck
524 trailers, travel trailers, campers, housecars, or semitrailers
525 that will be registered or titled outside Alabama, that are
526 exported or removed from Alabama within 72 hours by the
527 purchaser or his or her agent for first use outside Alabama
528 are subject to Alabama sales tax in an amount equal to only
529 the state automotive sales tax rate, unless the sales tax laws
530 of the state in which the purchaser will title or register the
531 vehicle allows an Alabama resident to purchase a motor vehicle
532 for first titling and registering in Alabama without the



533 payment of tax to that state. However, in no case shall the
534 amount of Alabama state sales tax due on a motor vehicle that
535 will be registered or titled for use in another state exceed
536 the amount of sales tax that would otherwise have been due in
537 the state where the vehicle will be registered or titled for
538 first use. In order to qualify as a travel trailer, camper, or
539 housecar that will be registered or titled for use in another
540 state, the purchaser must provide documentation to the seller
541 that the purchaser is not a resident of Alabama as required by
542 the Department of Revenue. No such proof is required in the
543 sale of an automobile, motorcycle, truck, truck trailer, or
544 semitrailer, excluding a travel trailer, camper, or housecar.
545 The tax collected under this export provision shall be Alabama
546 sales tax and shall exclude county and municipal sales tax. On
547 January 1, 2016, and each January 1 thereafter, the Alabama
548 Department of Revenue shall publish to the state's website a
549 list of states that do not allow drive out provisions to
550 Alabama residents. Should the list, required by this
551 subsection and relied upon by the taxpayer, be incorrect, the
552 taxpayer shall be relieved from the liability concerning the
553 miscollection of the state automotive sales tax. Sales of all
554 other vehicles such as mobile homes, motor bikes, all terrain
555 vehicles, and boats do not qualify for the export exemption
556 provision and are taxable unless the dealer can provide
557 factual evidence that the vehicle was delivered outside of
558 Alabama or to a common carrier for transportation outside
559 Alabama. In order for the sale to be exempt from Alabama tax,
560 the information relative to the exempt sale shall be



561 documented on forms approved by the Revenue Department.

562 Of the total \$.02 tax on each dollar of sale provided
563 hereunder, 58 percent of the total tax generated by this
564 subdivision (4) shall be deposited to the credit of the
565 Education Trust Fund and 42 percent of the total tax generated
566 by this subdivision (4) shall be deposited to the credit of
567 the State General Fund.

568 (5) Upon every person, firm, or corporation engaged or
569 continuing within this state in the business of selling
570 through coin-operated dispensing machines, food and food
571 products for human consumption, not including beverages other
572 than coffee, milk, milk products, and substitutes therefor,
573 there is levied a tax equal to three percent of the cost of
574 the food, food products, and beverages sold through the
575 machines, which cost for the purpose of this subdivision shall
576 be the gross proceeds of sales of the business.

577 (6) Upon every person, firm, or corporation engaged or
578 continuing within this state in the business of selling food
579 as defined in Section 40-23-1, there is a tax levied equal to
580 four percent of the gross proceeds of the sale of food. On
581 September 1, 2023, the tax rate shall be reduced to three
582 percent. On September 1, 2024, the tax rate shall be reduced
583 to two percent, if the average of the estimated growth in the
584 total net receipts from all revenue sources to the Education
585 Trust Fund for the fiscal year ending September 30, 2025, as
586 certified by the Director of Finance and the Legislative
587 Fiscal Officer, respectively, pursuant to Section 260.02 of
588 the Constitution of Alabama of 2022, is at least three and



589 one-half percent higher than the previous fiscal year. If the
590 growth requirement is not satisfied for the fiscal year ending
591 September 30, 2025, the rate shall be reduced to two percent
592 in a subsequent fiscal year when the growth requirement is
593 satisfied."

594 "§40-23-60

595 For the purpose of this article, the following terms
596 shall have the respective meanings ascribed to them in this
597 section:

598 (1) PERSON or COMPANY. Any individual, firm, company,
599 partnership, association, corporation, receiver or trustee, or
600 any other group or combination acting as a unit, and the
601 plural as well as the singular number, unless the intention to
602 give a more limited meaning is disclosed by the context.

603 (2) DEPARTMENT. The Department of Revenue of the State
604 of Alabama.

605 (3) COMMISSIONER. The Commissioner of Revenue of the
606 State of Alabama.

607 (4) WHOLESALE SALE or SALE AT WHOLESALE. Any one of the
608 following:

609 a. A sale of tangible personal property by wholesaler
610 to licensed retail merchants, jobbers, dealers or other
611 wholesalers for resale and does not include a sale by
612 wholesalers to users or consumers, not for resale.

613 b. A sale of tangible personal property or products,
614 including iron ore, and including the furnished container and
615 label of such property or products, to a manufacturer or
616 compounder which enter into and become an ingredient or



617 component part of the tangible personal property or products
618 which the manufacturer or compounder manufactures or compounds
619 for sale, whether or not such tangible personal property or
620 product used in manufacturing or compounding a finished
621 product is used with the intent that it become a component of
622 the finished product; provided, however, that it is the intent
623 of this section that no sale of capital equipment, machinery,
624 tools, or product shall be included in the term "wholesale
625 sale." The term "capital equipment, machinery, tools, or
626 product" shall mean property that is subject to depreciation
627 allowances for Alabama income tax purposes.

628 c. A sale of containers intended for one-time use only,
629 and the labels thereof, when the containers are sold without
630 contents to persons who sell or furnish the containers along
631 with the contents placed therein for sale by such persons.

632 d. A sale of pallets intended for one-time use only
633 when the pallets are sold without contents to persons who sell
634 or furnish the pallets along with the contents placed thereon
635 for sale by such persons.

636 e. A sale to a manufacturer or compounder of crowns,
637 caps, and tops intended for one-time use employed and used
638 upon the containers in which the manufacturer or compounder
639 markets the manufacturer's or compounder's products.

640 f. A sale of containers to persons engaged in selling
641 or otherwise supplying or furnishing baby chicks to growers
642 thereof where the containers are used for the delivery of the
643 chicks or a sale of containers for use in the delivery of eggs
644 by the producer thereof to the distributor or packer of the



645 eggs even though the containers used for delivery of baby
646 chicks or eggs may be recovered for reuse.

647 g. A sale of bagging and ties used in preparing cotton
648 for market.

649 h. A sale of commercial fish feed including
650 concentrates, supplements, and other feed ingredients when
651 such substances are used as ingredients in mixing and
652 preparing feed for fish raised to be sold on a commercial
653 basis.

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

658 j. A sale of tangible personal property to any person
659 engaging in the business of leasing or renting such tangible
660 personal property to others, if the tangible personal property
661 is purchased for the purpose of leasing or renting it to
662 others under a transaction subject to the privilege or license
663 tax levied in Article 4 of Chapter 12 against any person
664 engaging in the business of leasing or renting tangible
665 personal property to others.

666 k. A purchase or withdrawal of parts or materials from
667 stock by any person licensed under this article where the
668 parts or materials are used in repairing or reconditioning the
669 tangible personal property of the licensed person which
670 tangible personal property is a part of the stock of goods of
671 the licensed person, offered for sale by the licensed person
672 and not for use or consumption of the licensed person.



673 1. A sale to meat packers, manufacturers, compounders,
674 or processors of meat products of all casings used in moulding
675 or forming wieners and Vienna sausages, even though the
676 casings may be recovered for reuse.

677 (5) SALE AT RETAIL or RETAIL SALE. All sales of
678 tangible personal property except those above defined as
679 wholesale sales. The quantities of goods sold or prices at
680 which sold are immaterial in determining whether or not a sale
681 is at retail. Sales of building materials to contractors,
682 builders, or landowners for resale or use in the form of real
683 estate are retail sales in whatever quantity sold. Sales of
684 building materials, fixtures, or other equipment to a
685 manufacturer or builder of modular buildings for use in
686 manufacturing, building, or equipping a modular building
687 ultimately becoming a part of real estate situated in the
688 State of Alabama are retail sales, and the use, sale, or
689 resale of such building shall not be subject to the tax. Sales
690 of tangible personal property to undertakers and morticians
691 are retail sales and subject to the tax at the time of
692 purchase, but are not subject to the tax on resale to the
693 consumer. Sales of tangible personal property or products to
694 manufacturers, quarry operators, mine operators, or
695 compounders, which are used or consumed by them in
696 manufacturing, mining, quarrying, or compounding and do not
697 become an ingredient or component part of the tangible
698 personal property manufactured or compounded as provided in
699 subdivision (4) are retail sales. The term "sale at retail" or
700 "retail sale" shall also mean and include the withdrawal, use,



701 or consumption of any tangible personal property by anyone who
702 purchases same at wholesale, except property that has been
703 previously withdrawn from the business or stock and so used or
704 consumed and with respect to which property the tax has been
705 paid because of such previous withdrawal, use, or consumption,
706 except property that enters into and becomes an ingredient or
707 component part of tangible personal property or products
708 manufactured or compounded for sale as provided in subdivision
709 (4); and not for the personal and private use or consumption
710 of any person so withdrawing, using, or consuming the same,
711 and such wholesale purchaser shall report and pay the taxes
712 thereon; and except refinery, residue, or fuel gas, whether in
713 a liquid or gaseous state, that has been generated by, or is
714 otherwise a by-product of, a petroleum-refining process, which
715 gas is then utilized in the process to generate heat or is
716 otherwise utilized in the distillation or refining of
717 petroleum products. The term "retail sale" or "sale at retail"
718 shall also mean and include the sale of tangible personal
719 property previously purchased at wholesale for the purpose of
720 leasing or renting under a transaction subject to the
721 privilege or license tax levied in Article 4 of Chapter 12,
722 regardless of whether the sale is to the person who
723 theretofore leased or rented the tangible personal property or
724 to some other person.

725 (6) BUSINESS. All activities engaged in, or caused to
726 be engaged in, with the object of gain, profit, benefit, or
727 advantage, either direct or indirect, and not excepting
728 subactivities producing marketable commodities used or



729 consumed in the main business activity, each of which
730 subactivities shall be considered business engaged in, taxable
731 in the class in which it falls.

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

736 (8) USE. The exercise of any right or power over
737 tangible personal property incident to the ownership of that
738 property, or by any transaction where possession is given,
739 except that it shall not include the sale of that property in
740 the regular course of business.

741 (9) PURCHASE. Acquired for a consideration, whether
742 such acquisition was effected by a transfer of title, or of
743 possession or of both, or a license to use or consume; whether
744 such transfer shall have been absolute or conditional, and by
745 whatsoever means the same shall have been effected; and
746 whether such consideration be a price or rental in money, or
747 by way of exchange or barter.

748 (10) SALES PRICE. The total amount for which tangible
749 personal property is sold, including any services, including
750 transportation, that are a part of the sale, valued in money,
751 whether paid in money or otherwise, and includes any amount
752 for which credit is given to the purchaser by the seller,
753 without any deduction therefrom on account of the cost of the
754 property sold, the cost of the materials used, labor or
755 service cost, interest charged, losses, or any other expenses
756 whatsoever; provided, that cash discounts allowed and taken on



757 sales shall not be included and sales price shall not include
758 the amount charged for property returned by customers when the
759 entire amount charged therefor is refunded either in cash or
760 by credit.

761 (11) IN THIS STATE or IN THE STATE. Within the exterior
762 limits of the State of Alabama, and includes all territory
763 within such limits owned by or ceded to the United States of
764 America.

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

769 (13) PREPAID TELEPHONE CALLING CARD. A sale of a
770 prepaid telephone calling card or a prepaid authorization
771 number, or both, shall be deemed the sale of tangible personal
772 property subject to the tax imposed pursuant to this chapter.
773 For purposes of this subdivision, the sale of prepaid wireless
774 service that is evidenced by a physical card constitutes the
775 sale of a prepaid telephone calling card, and the sale of
776 prepaid wireless service that is not evidenced by a physical
777 card constitutes the sale of a prepaid authorization number.

778 (14) PREPAID WIRELESS SERVICE. The right to use mobile
779 telecommunications service, which must be paid for in advance
780 and that is sold in predetermined units or dollars of which
781 the number declines with use or the expiration of time in a
782 known amount, and which may include rights to use
783 non-telecommunications services or to download digital
784 products or digital content. For purposes of this subdivision,



785 mobile telecommunications service has the meaning ascribed by
786 Section 40-21-120.

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

791 (16) FOOD. Food as defined in 7 U.S.C. § 2011, et seq.,
792 for the purposes of the federal Supplemental Nutrition
793 Assistance Program regardless of where or by what means food
794 is sold. In the event that the federal Supplemental Nutrition
795 Assistance Program definition no longer exists, the
796 Legislature shall provide a new definition of "food" by
797 general law."

798 "§40-23-61

799 (a) An excise tax is hereby imposed on the storage, use
800 or other consumption in this state of tangible personal
801 property, not including, however, materials and supplies
802 bought for use in fulfilling a contract for the painting,
803 repairing or reconditioning of vessels, barges, ships, other
804 watercraft and commercial fishing vessels of over five tons
805 load displacement as registered with the U.S. Coast Guard and
806 licensed by the State of Alabama Department of Conservation
807 and Natural Resources, purchased at retail on or after October
808 1, 1965, for storage, use or other consumption in this state
809 at the rate of four percent of the sales price of such
810 property or the amount of tax collected by the seller,
811 whichever is greater; provided, however, when the seller
812 follows the Department of Revenue's suggested use tax brackets



813 and his records prove that his following said brackets
814 resulted in a net undercollection of tax for the month, he may
815 report the tax due or tax collected, whichever is less, except
816 as provided in subsections (b), ~~and~~ (c), and (d) of this
817 section.

818 (b) An excise tax is hereby imposed on the storage, use
819 or other consumption in this state of any machines used in
820 mining, quarrying, compounding, processing and manufacturing
821 of tangible personal property, purchased at retail on or after
822 October 1, 1965, at the rate of one and one-half percent of
823 the sales price of any such machine or the amount of tax
824 collected by the seller, whichever is greater; provided,
825 however, when the seller follows the Department of Revenue's
826 suggested use tax brackets and his records prove that his
827 following said brackets resulted in a net undercollection of
828 tax for the month, he may report the tax due or tax collected,
829 whichever is less; provided, that the term "machine," as
830 herein used, shall include machinery which is used for mining,
831 quarrying, compounding, processing, or manufacturing tangible
832 personal property, and the parts of such machines, attachments
833 and replacements therefor, which are made or manufactured for
834 use on or in the operation of such machines and which are
835 necessary to the operation of such machines and are
836 customarily so used.

837 (c) An excise tax is hereby imposed on the storage, use
838 or other consumption in this state of any automotive vehicle
839 or truck trailer, semitrailer or house trailer, and mobile
840 home set-up materials and supplies including but not limited



841 to steps, blocks, anchoring, cable pipes and any other
842 materials pertaining thereto, purchased at retail on or after
843 October 1, 1965, for storage, use or other consumption in this
844 state at the rate of two percent of the sales price of such
845 automotive vehicle, truck trailer, semitrailer or house
846 trailer, and mobile home set-up materials and supplies as
847 specified above, or the amount of tax collected by the seller,
848 whichever is greater; provided, however, when the seller
849 follows the Department of Revenue's suggested use tax brackets
850 and his records prove that his following said brackets
851 resulted in a net undercollection of tax for the month, he may
852 report the tax due or tax collected, whichever is less. Where
853 any used automotive vehicle or truck trailer, semitrailer or
854 house trailer is taken in trade, or in a series of trades, as
855 a credit or part payment on the sale of a new or used vehicle,
856 the tax levied herein shall be paid on the net difference,
857 that is, the price of the new or used vehicle sold less the
858 credit for the used vehicle taken in trade.

859 Of the total \$.02 tax on each dollar of sale provided
860 hereunder, 58 percent of the total tax generated by this
861 subsection shall be deposited to the credit of the Education
862 Trust Fund; and 42 percent of the total tax generated by this
863 subsection shall be deposited to the credit of the State
864 General Fund.

865 (d) An excise tax is hereby imposed on the storage,
866 use, or other consumption in this state of food as defined in
867 Section 40-23-60, at the rate of four percent of the sales
868 price of such food. On September 1, 2023, the tax rate shall



869 be reduced to three percent. On September 1, 2024, the tax
870 rate shall be reduced to two percent, if the average of the
871 estimated growth in the total net receipts from all revenue
872 sources to the Education Trust Fund for the fiscal year ending
873 September 30, 2025, as certified by the Director of Finance
874 and the Legislative Fiscal Officer, respectively, pursuant to
875 Section 260.02 of the Constitution of Alabama of 2022, is at
876 least three and one-half percent higher than the previous
877 fiscal year. If the growth requirement is not satisfied for
878 the fiscal year ending September 30, 2025, the rate shall be
879 reduced to two percent in a subsequent fiscal year when the
880 growth requirement is satisfied.

881 ~~(d)~~ (e) Every person storing, using or otherwise
882 consuming in this state tangible personal property purchased
883 at retail shall be liable for the tax imposed by this article,
884 and the liability shall not be extinguished until the tax has
885 been paid to this state; provided, that a receipt from a
886 retailer maintaining a place of business in this state or a
887 retailer authorized by the department, under such rules and
888 regulations as it may prescribe, to collect the tax imposed
889 hereby and who shall for the purpose of this article be
890 regarded as a retailer maintaining a place of business in this
891 state, given to the purchaser in accordance with the
892 provisions of Section 40-23-67, shall be sufficient to relieve
893 the purchaser from further liability for tax to which such
894 receipt may refer.

895 ~~(e)~~ (f) An excise tax is hereby imposed on the classes
896 of tangible personal property, and at the rates imposed on



897 such classes, specified in subsections (a), (b), ~~and~~ (c), and
898 (d) of this section, on the storage, use, or other consumption
899 in the performance of a contract in this state of any such
900 tangible personal property, new or used, the tax to be
901 measured by the sales price or the fair and reasonable market
902 value of such tangible personal property when put into use in
903 this state, whichever is less; provided, that the tax imposed
904 by this subsection shall not apply where the taxes imposed by
905 subsection (a), (b), ~~or~~ (c), or (d) of this section apply."

906 Section 2. (a) On the effective date of this act, the
907 definition of "food" in Sections 40-23-1 and 40-23-60, Code of
908 Alabama 1975, shall apply to county and municipal sales and
909 use taxes. For purposes of county and municipal sales and use
910 taxes, the sales tax rate on food shall be established as the
911 general or retail sales tax rate in effect in the county or
912 municipality on the effective date of this act, unless
913 otherwise provided by law. An act of the Legislature or an
914 ordinance or resolution adopted by a county or municipal
915 governing body levying a county or municipal sales and use tax
916 inclusive of food passed or enacted on or before the effective
917 date of this act shall remain operative, but no additional
918 county or municipal sales and use taxes on food may be levied.

919 (b) Any county or municipal governing body may, by
920 resolution or ordinance, reduce the general or retail sales
921 tax rate on food for local sales and use taxes by 25 percent
922 in any year in which the growth in the applicable municipal or
923 county general fund exceeds two percent over the prior year.
924 Such ordinance or resolution must be adopted at least 60 days



925 prior to becoming effective and will take effect on October 1
926 following adoption.

927 (c) A county or municipal governing body that reduces
928 its general or retail sales tax rate on food for local sales
929 and use taxes pursuant to this section may subsequently
930 increase the rate on food not to exceed the rate in effect in
931 the county or municipality on the effective date of this act,
932 unless otherwise provided by law.

933 Section 3. This act shall become effective immediately
934 following its passage and approval by the Governor, or its
935 otherwise becoming law.