

HB479 ENGROSSED



1 E0XQ22-2

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17 RFD: Ways and Means Education

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19 2023 Regular Session



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A BILL
TO BE ENTITLED
AN ACT

Relating to sales taxes; to amend Section 40-23-1, as last amended by Acts 2022-199 and 2022-291, 2022 Regular Session, Code of Alabama 1975, Section 40-23-2, as last amended by Act 2022-346, 2022 Regular Session, Code of Alabama 1975, Section 40-23-60, as last amended by Act 2022-199, 2022 Regular Session, Code of Alabama 1975, and Section 40-23-61, Code of Alabama 1975, to define "food" and begin reducing the state sales and use tax on food on September 1, 2023; to require certain growth targets in the Education Trust Fund for future sales tax reductions on food; to 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 and use tax rate; and to provide for the levy of sale and use tax on food by counties and municipalities.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 40-23-1, as last amended by Acts 2022-199 and 2022-291 of the 2022 Regular Session, Code of Alabama 1975, Section 40-23-2, as last amended by Act 2022-346 of the 2022 Regular Session, Code of Alabama 1975, Section



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29 40-23-60, as last amended by Act 2022-199 of the 2022 Regular
30 Session, Code of Alabama 1975, and Section 40-23-61, Code of
31 Alabama 1975, are amended to read as follows:

32 "§40-23-1

33 (a) For the purpose of this division, the following
34 terms shall have the respective meanings ascribed by this
35 section:

36 (1) PERSON or COMPANY. Used interchangeably, includes
37 any individual, firm, copartnership, association, corporation,
38 receiver, trustee, or any other group or combination acting as
39 a unit and the plural as well as the singular number, unless
40 the intention to give a more limited meaning is disclosed by
41 the context.

42 (2) DEPARTMENT. The Department of Revenue of the State
43 of Alabama.

44 (3) COMMISSIONER. The Commissioner of Revenue of the
45 State of Alabama.

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

47 (5) SALE or SALES. Installment and credit sales and the
48 exchange of properties as well as the sale thereof for money,
49 every closed transaction constituting a sale. Provided,
50 however, a transaction shall not be closed or a sale completed
51 until the time and place when and where title is transferred
52 by the seller or seller's agent to the purchaser or
53 purchaser's agent, and for the purpose of determining transfer
54 of title, a common carrier or the U.S. Postal Service shall be
55 deemed to be the agent of the seller, regardless of any F.O.B.
56 point and regardless of who selects the method of



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57 transportation, and regardless of by whom or the method by
58 which freight, postage, or other transportation charge is
59 paid. Provided further that, where billed as a separate item
60 to and paid by the purchaser, the freight, postage, or other
61 transportation charge paid to a common carrier or the U.S.
62 Postal Service is not a part of the selling price.

63 (6) GROSS PROCEEDS OF SALES. The value proceeding or
64 accruing from the sale of tangible personal property, and
65 including the proceeds from the sale of any property handled
66 on consignment by the taxpayer, including merchandise of any
67 kind and character without any deduction on account of the
68 cost of the property sold, the cost of the materials used,
69 labor or service cost, interest paid, any consumer excise
70 taxes that may be included within the sales price of the
71 property sold, or any other expenses whatsoever, and without
72 any deductions on account of losses; provided, that cash
73 discounts allowed and taken on sales shall not be included,
74 and "gross proceeds of sales" shall not include the sale price
75 of property returned by customers when the full sales price
76 thereof is refunded either in cash or by credit. The term
77 "gross proceeds of sale" shall also mean and include the
78 reasonable and fair market value of any tangible personal
79 property previously purchased at wholesale which is withdrawn
80 or used from the business or stock and used or consumed in
81 connection with a business, and shall also mean and include
82 the reasonable and fair market value of any tangible personal
83 property previously purchased at wholesale which is withdrawn
84 from the business or stock and used or consumed by any person



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85 so withdrawing the same, except property that has been
86 previously withdrawn from business or stock and so used or
87 consumed with respect to which property the tax has been paid
88 because of previous withdrawal, use, or consumption, except
89 property that enters into and becomes an ingredient or
90 component part of tangible personal property or products
91 manufactured or compounded for sale and not for the personal
92 and private use or consumption of any person so withdrawing,
93 using, or consuming the same, and except refinery, residue, or
94 fuel gas, whether in a liquid or gaseous state, that has been
95 generated by, or is otherwise a by-product of, a
96 petroleum-refining process, which gas is then utilized in the
97 process to generate heat or is otherwise utilized in the
98 distillation or refining of petroleum products.

99 In the case of the retail sale of equipment,
100 accessories, fixtures, and other similar tangible personal
101 property used in connection with the sale of commercial mobile
102 services as defined herein, or in connection with satellite
103 television services, at a price below cost, "gross proceeds of
104 sale" shall only include the stated sales price thereof and
105 shall not include any sales commission or rebate received by
106 the seller as a result of the sale. As used herein, the term
107 "commercial mobile services" shall have the same meaning as
108 that term has in 47 U.S.C. §§ 153(n) and 332(d), as in effect
109 from time to time.

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

111 (8) GROSS RECEIPTS. The value proceeding or accruing
112 from the sale of tangible personal property, including



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113 merchandise and commodities of any kind and character, all
114 receipts actual and accrued, by reason of any business engaged
115 in, not including, however, interest, discounts, rentals of
116 real estate, or royalties, and without any deduction on
117 account of the cost of the property sold, the cost of the
118 materials used, labor or service cost, interest paid, any
119 consumer excise taxes that may be included in the sales price
120 of the property sold, or any other expenses whatsoever and
121 without any deductions on account of losses. The term "gross
122 receipts" shall also mean and include the reasonable and fair
123 market value of any tangible personal property previously
124 purchased at wholesale which is withdrawn or used from the
125 business or stock and used or consumed in connection with a
126 business, and shall also mean and include the reasonable and
127 fair market value of any tangible personal property previously
128 purchased at wholesale which is withdrawn from the business or
129 stock and used or consumed by any person so withdrawing the
130 same, except property which has been previously withdrawn from
131 business or stock and so used or consumed and with respect to
132 which property the tax has been paid because of previous
133 withdrawal, use, or consumption, except property which enters
134 into and becomes an ingredient or component part of tangible
135 personal property or products manufactured or compounded for
136 sale as provided in subdivision (9) and not for the personal
137 and private use or consumption of any person so withdrawing,
138 using, or consuming the same, and except refinery, residue, or
139 fuel gas, whether in a liquid or gaseous state, that has been
140 generated by, or is otherwise a by-product of, a



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141 petroleum-refining process, which gas is then utilized in the
142 process to generate heat or is otherwise utilized in the
143 distillation or refining of petroleum products.

144 (9) WHOLESALE SALE or SALE AT WHOLESALE. Any one of the
145 following:

146 a. A sale of tangible personal property by wholesalers
147 to licensed retail merchants, jobbers, dealers, or other
148 wholesalers for resale and does not include a sale by
149 wholesalers to users or consumers, not for resale.

150 b. A sale of tangible personal property or products,
151 including iron ore, and including the furnished container and
152 label of the property or products, to a manufacturer or
153 compounder which enter into and become an ingredient or
154 component part of the tangible personal property or products
155 that the manufacturer or compounder manufactures or compounds
156 for sale, whether or not the tangible personal property or
157 product used in manufacturing or compounding a finished
158 product is used with the intent that it becomes a component of
159 the finished product; provided, however, that it is the intent
160 of this section that no sale of capital equipment, machinery,
161 tools, or product shall be included in the term "wholesale
162 sale." The term "capital equipment, machinery, tools, or
163 product" shall mean property that is subject to depreciation
164 allowances for Alabama income tax purposes.

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



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169 d. A sale of pallets intended for one-time use only
170 when pallets are sold without contents to persons who sell or
171 furnish pallets along with the contents placed thereon for
172 sale by persons.

173 e. A sale to a manufacturer or compounder, of crowns,
174 caps, and tops intended for one-time use employed and used
175 upon the containers in which a manufacturer or compounder
176 markets his products.

177 f. A sale of containers to persons engaged in selling
178 or otherwise supplying or furnishing baby chicks to growers
179 thereof where containers are used for the delivery of chicks
180 or a sale of containers for use in the delivery of eggs by the
181 producer thereof to the distributor or packer of eggs even
182 though containers used for delivery of baby chicks or eggs may
183 be recovered for reuse.

184 g. A sale of bagging and ties used in preparing cotton
185 for market.

186 h. A sale to meat packers, manufacturers, compounders,
187 or processors of meat products of all casings used in molding
188 or forming wieners and Vienna sausages even though casings may
189 be recovered for reuse.

190 i. A sale of commercial fish feed including
191 concentrates, supplements, and other feed ingredients when
192 substances are used as ingredients in mixing and preparing
193 feed for fish raised to be sold on a commercial basis.

194 j. A sale of bait used to capture or attempt to capture
195 fish or other seafood in the process of commercial fishing by
196 a holder of a commercial license issued pursuant to Chapter 12



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197 of Title 9.

198 k. A sale of tangible personal property to any person
199 engaging in the business of leasing or renting tangible
200 personal property to others, if tangible personal property is
201 purchased for the purpose of leasing or renting it to others
202 under a transaction subject to the privilege or license tax
203 levied in Article 4 of Chapter 12 of this title against any
204 person engaging in the business of leasing or renting tangible
205 personal property to others.

206 l. A purchase or withdrawal of parts or materials from
207 stock by any person licensed under this division where parts
208 or materials are used in repairing or reconditioning the
209 tangible personal property of a licensed person, which
210 tangible personal property is a part of the stock of goods of
211 a licensed person, offered for sale by him or her, and not for
212 use or consumption of a licensed person.

213 (10) SALE AT RETAIL or RETAIL SALE. All sales of
214 tangible personal property except those defined as wholesale
215 sales. The quantities of goods sold or prices at which sold
216 are immaterial in determining whether or not a sale is at
217 retail. Sales of building materials to contractors, builders,
218 or landowners for resale or use in the form of real estate are
219 retail sales in whatever quantity sold. Sales of building
220 materials, fixtures, or other equipment to a manufacturer or
221 builder of modular buildings for use in manufacturing,
222 building, or equipping a modular building ultimately becoming
223 a part of real estate situated in the State of Alabama are
224 retail sales, and the use, sale, or resale of building shall



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225 not be subject to the tax. Sales of tangible personal property
226 to undertakers and morticians are retail sales and subject to
227 the tax at the time of purchase, but are not subject to the
228 tax on resale to the consumer. Sales of tangible personal
229 property or products to manufacturers, quarry operators, mine
230 operators, or compounders, which are used or consumed by them
231 in manufacturing, mining, quarrying, or compounding and do not
232 become an ingredient or component part of the tangible
233 personal property manufactured or compounded as provided in
234 subdivision (9) are retail sales. The term "sale at retail" or
235 "retail sale" shall also mean and include the withdrawal, use,
236 or consumption of any tangible personal property by any one
237 who purchases same at wholesale, except property that has been
238 previously withdrawn from the business or stock and so used or
239 consumed and with respect to which property tax has been paid
240 because of previous withdrawal, use, or consumption, except
241 property that enters into and becomes an ingredient or
242 component part of tangible personal property or products
243 manufactured or compounded for sale as provided in subdivision
244 (9) and not for the personal and private use or consumption of
245 any person so withdrawing, using, or consuming the same; and
246 wholesale purchaser shall report and pay the taxes thereon. In
247 the case of the sale of equipment, accessories, fixtures, and
248 other similar tangible personal property used in connection
249 with the sale of commercial mobile services as defined in
250 subdivision (6), or in connection with satellite television
251 services, at a price below cost, the term "sale at retail" and
252 "retail sale" shall include those sales, and those sales shall



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253 not also be taxable as a withdrawal, use, or consumption of
254 such tangible personal property.

255 (11) BUSINESS. All activities engaged in, or caused to
256 be engaged in, with the object of gain, profit, benefit, or
257 advantage, either direct or indirect, and not excepting
258 subactivities producing marketable commodities used or
259 consumed in the main business activity, each of which
260 subactivities shall be considered business engaged in, taxable
261 in the class in which it falls.

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

266 (13) PREPAID TELEPHONE CALLING CARD. A sale of a
267 prepaid telephone calling card or a prepaid authorization
268 number, or both, shall be deemed the sale of tangible personal
269 property subject to the tax imposed on the sale of tangible
270 personal property pursuant to this chapter. For purposes of
271 this subdivision, the sale of prepaid wireless service that is
272 evidenced by a physical card constitutes the sale of a prepaid
273 telephone calling card, and the sale of prepaid wireless
274 service that is not evidenced by a physical card constitutes
275 the sale of a prepaid authorization number.

276 (14) PREPAID WIRELESS SERVICE. The right to use mobile
277 telecommunications service, which must be paid for in advance
278 and that is sold in predetermined units or dollars of which
279 the number declines with use in a known amount, and which may
280 include rights to use non-telecommunications services or to



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281 download digital products or digital content. For purposes of
282 this subdivision, mobile telecommunications service has the
283 meaning ascribed by Section 40-21-120.

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

287 (16) VAPOR PRODUCTS. Any non-lighted, noncombustible
288 product that employs a mechanical heating element, battery, or
289 electronic circuit regardless of shape or size and that can be
290 used to produce vapor from nicotine in a solution. The term
291 includes any vapor cartridge or other container of nicotine in
292 a solution or other form that is intended to be used with or
293 in an electronic cigarette, electronic cigar, electronic
294 cigarillo, electronic pipe, or similar product or device. The
295 term does not include any product regulated by the United
296 States Food and Drug Administration under Chapter V of the
297 Federal Food, Drug, and Cosmetic Act.

298 (17) PRODUCER VALUE ADDED AGRICULTURAL PRODUCTS. Fruits
299 or other agricultural products that have undergone some degree
300 of further processing by the original producer of the
301 agricultural product, including, but not limited to, whole
302 cuts of meat, bound cut flowers, jams, jellies, or boiled or
303 roasted peanuts.

304 (18) COMMERCIAL FISHING. The activity of catching or
305 processing fish or other seafood regularly and exclusively as
306 a means of livelihood by a holder of a commercial license
307 issued pursuant to Chapter 12 of Title 9. The term includes
308 shellfish farmers, shrimpers, oysterers, lobsterers, and



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309 crabbers.

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

313 (20) FOOD. Food as defined in 7 U.S.C. § 2011, et seq.,
314 for the purposes of the federal Supplemental Nutrition
315 Assistance Program regardless of where or by what means food
316 is sold. In the event that the federal Supplemental Nutrition
317 Assistance Program definition no longer exists, the
318 Legislature shall provide a new definition of "food" by
319 general law.

320 (b) The use within this state of tangible personal
321 property by the manufacturer thereof, as building materials in
322 the performance of a construction contract, for the purposes
323 of this division, shall be considered as a retail sale thereof
324 by the manufacturer, who shall also be construed as the
325 ultimate consumer of materials or property, and who shall be
326 required to report transaction and pay the sales tax thereon,
327 based upon the reasonable and fair market price thereof at the
328 time and place where same are used or consumed by the
329 manufacturer. Where the contractor is the manufacturer or
330 compounder of ready-mix concrete or asphalt plant mix used in
331 the performance of a contract, whether the ready-mix concrete
332 or asphalt plant mix is manufactured or compounded at the job
333 site or at a fixed or permanent plant location, the tax
334 applies only to the cost of the ingredients that become a
335 component part of the ready-mix concrete or the asphalt plant
336 mix. The provisions of this subsection shall not apply to any



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337 tangible personal property that is specifically exempted from
338 the tax levied in this division.

339 (c) The sale of lumber by a lumber manufacturer to a
340 trucker for resale is a sale at wholesale as sales are defined
341 herein where the trucker is either a licensed dealer in lumber
342 or, if a resident of Alabama, has registered with the
343 Department of Revenue, and has received therefrom a
344 certificate of registration or, if a nonresident of this state
345 purchasing lumber for resale outside the State of Alabama, has
346 furnished to the lumber manufacturer his or her name, address,
347 and the vehicle license number of the truck in which the
348 lumber is to be transported, which name, address, and vehicle
349 license number shall be shown on the sales invoice rendered by
350 the lumber manufacturer. The certificate provided for herein
351 shall be valid for the calendar year of its issuance and may
352 be renewed from year to year on application to the Department
353 of Revenue on or before January 31 of each succeeding year;
354 provided, that if not renewed the certificate shall become
355 invalid for the purpose of this division on February 1.

356 (d) The dispensing or transferring of ophthalmic
357 materials, including lenses, frames, eyeglasses, contact
358 lenses, and other therapeutic optic devices, to a patient by a
359 licensed ophthalmologist, as a part of his or her professional
360 service, for purposes of this division, shall constitute a
361 sale, subject to the state sales tax. The licensed
362 ophthalmologist or licensed optometrist shall collect the
363 state sales tax. In no event shall the providing of
364 professional services in connection with the dispensing or



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365 transferring of ophthalmic materials, including dispensing
366 fees or fitting fees, by a licensed ophthalmologist or
367 licensed optometrist be considered a sale subject to the state
368 sales tax. When the ophthalmic materials are purchased by a
369 consumer covered by a third party benefit plan, including
370 Medicare, the sales tax shall be applicable to the amount that
371 the ophthalmologist, optometrist, or optician is reimbursed by
372 the third party benefit plan plus the amount that the consumer
373 pays to the ophthalmologist, optometrist, or optician at the
374 time of the sale. All transfers of ophthalmic materials by
375 opticians or optometrists shall be considered retail sales
376 subject to the state sales tax. The term "supplier" shall
377 include but not be limited to optical laboratories, ophthalmic
378 material wholesalers, or anyone selling ophthalmic materials
379 to ophthalmologists.

380 (e) Notwithstanding the above, the withdrawal, use, or
381 consumption of a manufactured product by the manufacturer
382 thereof in quality control testing performed by employees or
383 independent contractors of the taxpayer, for purposes of this
384 division, shall not be deemed or considered to constitute a
385 transaction subject to sales tax, nor shall a gift by the
386 manufacturer of a manufactured product, withdrawn from the
387 manufacturer's inventory, to an entity listed in 26 U.S.C. §§
388 170(b) or (c), be considered a transaction subject to sales
389 tax.

390 (f) Notwithstanding the foregoing, a gift by a retailer
391 of a product or products where the aggregate retail value of
392 any single gift is equal to or less than ten thousand dollars



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393 (\$10,000), withdrawn from the retailer's inventory, to an
394 entity listed in 26 U.S.C. §§ 170(b) or (c) shall not be
395 deemed or considered to constitute a transaction subject to
396 sales and use tax."

397 "§40-23-2

398 There is levied, in addition to all other taxes of
399 every kind now imposed by law, and shall be collected as
400 herein provided, a privilege or license tax against the person
401 on account of the business activities and in the amount to be
402 determined by the application of rates against gross sales, or
403 gross receipts, as the case may be, as follows:

404 (1) Upon every person, firm, or corporation, (including
405 the State of Alabama and its Alcoholic Beverage Control Board
406 in the sale of alcoholic beverages of all kinds, the
407 University of Alabama, Auburn University, and all other
408 institutions of higher learning in the state, whether the
409 institutions be denominational, state, county, or municipal
410 institutions, any association or other agency or
411 instrumentality of the institutions) engaged or continuing
412 within this state, in the business of selling at retail any
413 tangible personal property whatsoever, including merchandise
414 and commodities of every kind and character, (not including,
415 however, bonds or other evidences of debts or stocks, nor
416 sales of material and supplies to any person for use in
417 fulfilling a contract for the painting, repair, or
418 reconditioning of vessels, barges, ships, other watercraft,
419 and commercial fishing vessels of over five tons load
420 displacement as registered with the U.S. Coast Guard and



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421 licensed by the State of Alabama Department of Conservation
422 and Natural Resources) an amount equal to four percent of the
423 gross proceeds of sales of the business except where a
424 different amount is expressly provided herein. Provided,
425 however, that any person engaging or continuing in business as
426 a retailer and wholesaler or jobber shall pay the tax required
427 on the gross proceeds of retail sales of the business at the
428 rates specified, when his or her books are kept so as to show
429 separately the gross proceeds of sales of each business, and
430 when his or her books are not kept he or she shall pay the tax
431 as a retailer, on the gross sales of the business.

432 Where any used part including tires of an automotive
433 vehicle or a truck trailer, semitrailer, or house trailer is
434 taken in trade, or in a series of trades, as a credit or part
435 payment on the sale of a new or rebuilt part or tire, the tax
436 levied herein shall be paid on the net difference, that is,
437 the price of the new or used part or tire sold less the credit
438 for the used part or tire taken in trade, provided, however,
439 this provision shall not be construed to include batteries.

440 (2) Upon every person, firm, or corporation engaged or
441 continuing within this state in the business of conducting or
442 operating places of amusement or entertainment, billiard and
443 pool rooms, bowling alleys, amusement devices, musical
444 devices, theaters, opera houses, moving picture shows,
445 vaudevilles, amusement parks, athletic contests, including
446 wrestling matches, prize fights, boxing and wrestling
447 exhibitions, football and baseball games, (including athletic
448 contests, conducted by or under the auspices of any



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449 educational institution within this state, or any athletic
450 association thereof, or other association whether the
451 institution or association be a denominational, a state, or
452 county, or a municipal institution, or association or a state,
453 county, or city school, or other institution, association or
454 school) skating rinks, race tracks, golf courses, or any other
455 place at which any exhibition, display, amusement, or
456 entertainment is offered to the public or place or places
457 where an admission fee is charged, including public bathing
458 places and public dance halls of every kind and description
459 within the State of Alabama, an amount equal to four percent
460 of the gross receipts of any such business. Provided, however,
461 notwithstanding any language to the contrary in the prior
462 portion of this subdivision, the tax provisions so specified
463 shall not apply to any athletic event conducted by a public or
464 nonpublic primary or secondary school or any athletic event
465 conducted by or under the auspices of the Alabama High School
466 Athletic Association. The tax amount which would have been
467 collected pursuant to this subdivision shall continue to be
468 collected by the public or nonpublic primary or secondary
469 school, but shall be retained by the school that collected it
470 and shall be used by the school for school purposes.

471 (3) Upon every person, firm, or corporation engaged or
472 continuing within this state in the business of selling at
473 retail machines used in mining, quarrying, compounding,
474 processing, and manufacturing of tangible personal property an
475 amount equal to one and one-half percent of the gross proceeds
476 of the sale of the machines. The term "machine," as herein



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477 used, shall include machinery which is used for mining,
478 quarrying, compounding, processing, or manufacturing tangible
479 personal property, and the parts of the machines, attachments,
480 and replacements therefor, which are made or manufactured for
481 use on or in the operation of the machines and which are
482 necessary to the operation of the machines and are customarily
483 so used.

484 (4) Upon every person, firm, or corporation engaged or
485 continuing within this state in the business of selling at
486 retail any automotive vehicle or truck trailer, semitrailer,
487 or house trailer, or mobile home set-up materials and supplies
488 including but not limited to steps, blocks, anchoring, cable
489 pipes, and any other materials pertaining thereto, an amount
490 equal to two percent of the gross proceeds of sale of the
491 automotive vehicle or truck trailer, semitrailer, or house
492 trailer, or mobile home set-up materials and supplies
493 provided, however, where a person subject to the tax provided
494 for in this subdivision withdraws from his or her stock in
495 trade any automotive vehicle or truck trailer, semitrailer, or
496 house trailer for use by him or her or by his or her employee
497 or agent in the operation of the business, there shall be
498 paid, in lieu of the tax levied herein, a fee of five dollars
499 (\$5) per year or part thereof during which the automotive
500 vehicle, truck trailer, semitrailer, or house trailer shall
501 remain the property of the person. Each year or part thereof
502 shall begin with the day or anniversary date, as the case may
503 be, of such withdrawal and shall run for the 12 succeeding
504 months or part thereof during which the automotive vehicle,



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505 truck trailer, semitrailer, or house trailer shall remain the
506 property of the person.

507 Where any used automotive vehicle or truck trailer,
508 semitrailer, or house trailer is taken in trade or in a series
509 of trades, as a credit or part payment on the sale of a new or
510 used vehicle, the tax levied herein shall be paid on the net
511 difference, that is, the price of the new or used vehicle sold
512 less the credit for the used vehicle taken in trade.

513 Sales of automobiles, motorcycles, trucks, truck
514 trailers, travel trailers, campers, housecars, or semitrailers
515 that will be registered or titled outside Alabama, that are
516 exported or removed from Alabama within 72 hours by the
517 purchaser or his or her agent for first use outside Alabama
518 are subject to Alabama sales tax in an amount equal to only
519 the state automotive sales tax rate, unless the sales tax laws
520 of the state in which the purchaser will title or register the
521 vehicle allows an Alabama resident to purchase a motor vehicle
522 for first titling and registering in Alabama without the
523 payment of tax to that state. However, in no case shall the
524 amount of Alabama state sales tax due on a motor vehicle that
525 will be registered or titled for use in another state exceed
526 the amount of sales tax that would otherwise have been due in
527 the state where the vehicle will be registered or titled for
528 first use. In order to qualify as a travel trailer, camper, or
529 housecar that will be registered or titled for use in another
530 state, the purchaser must provide documentation to the seller
531 that the purchaser is not a resident of Alabama as required by
532 the Department of Revenue. No such proof is required in the



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533 sale of an automobile, motorcycle, truck, truck trailer, or
534 semitrailer, excluding a travel trailer, camper, or housecar.
535 The tax collected under this export provision shall be Alabama
536 sales tax and shall exclude county and municipal sales tax. On
537 January 1, 2016, and each January 1 thereafter, the Alabama
538 Department of Revenue shall publish to the state's website a
539 list of states that do not allow drive out provisions to
540 Alabama residents. Should the list, required by this
541 subsection and relied upon by the taxpayer, be incorrect, the
542 taxpayer shall be relieved from the liability concerning the
543 miscollection of the state automotive sales tax. Sales of all
544 other vehicles such as mobile homes, motor bikes, all terrain
545 vehicles, and boats do not qualify for the export exemption
546 provision and are taxable unless the dealer can provide
547 factual evidence that the vehicle was delivered outside of
548 Alabama or to a common carrier for transportation outside
549 Alabama. In order for the sale to be exempt from Alabama tax,
550 the information relative to the exempt sale shall be
551 documented on forms approved by the Revenue Department.

552 Of the total \$.02 tax on each dollar of sale provided
553 hereunder, 58 percent of the total tax generated by this
554 subdivision (4) shall be deposited to the credit of the
555 Education Trust Fund and 42 percent of the total tax generated
556 by this subdivision (4) shall be deposited to the credit of
557 the State General Fund.

558 (5) Upon every person, firm, or corporation engaged or
559 continuing within this state in the business of selling
560 through coin-operated dispensing machines, food and food



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561 products for human consumption, not including beverages other
562 than coffee, milk, milk products, and substitutes therefor,
563 there is levied a tax equal to three percent of the cost of
564 the food, food products, and beverages sold through the
565 machines, which cost for the purpose of this subdivision shall
566 be the gross proceeds of sales of the business.

567 (6) Upon every person, firm, or corporation engaged or
568 continuing within this state in the business of selling food
569 as defined in Section 40-23-1, there is a tax levied equal to
570 four percent of the gross proceeds of the sale of food. On
571 September 1, 2023, the tax rate shall be reduced to three
572 percent. On September 1, 2025, the tax rate shall be reduced
573 to two percent, if the total net receipts from all revenue
574 sources to the Education Trust Fund for the fiscal year ending
575 September 30, 2026 is at least two percent higher than the
576 previous fiscal year, as certified by the Director of Finance
577 and the Legislative Fiscal Officer pursuant to Section 260.02
578 of the Constitution of Alabama of 2022. If the growth
579 requirement is not satisfied for the fiscal year ending
580 September 30, 2026, the rate shall be reduced to two percent
581 in a subsequent fiscal year when the growth requirement is
582 satisfied."

583 "§40-23-60

584 For the purpose of this article, the following terms
585 shall have the respective meanings ascribed to them in this
586 section:

587 (1) PERSON or COMPANY. Any individual, firm, company,
588 partnership, association, corporation, receiver or trustee, or



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589 any other group or combination acting as a unit, and the
590 plural as well as the singular number, unless the intention to
591 give a more limited meaning is disclosed by the context.

592 (2) DEPARTMENT. The Department of Revenue of the State
593 of Alabama.

594 (3) COMMISSIONER. The Commissioner of Revenue of the
595 State of Alabama.

596 (4) WHOLESALE SALE or SALE AT WHOLESALE. Any one of the
597 following:

598 a. A sale of tangible personal property by wholesaler
599 to licensed retail merchants, jobbers, dealers or other
600 wholesalers for resale and does not include a sale by
601 wholesalers to users or consumers, not for resale.

602 b. A sale of tangible personal property or products,
603 including iron ore, and including the furnished container and
604 label of such property or products, to a manufacturer or
605 compounder which enter into and become an ingredient or
606 component part of the tangible personal property or products
607 which the manufacturer or compounder manufactures or compounds
608 for sale, whether or not such tangible personal property or
609 product used in manufacturing or compounding a finished
610 product is used with the intent that it become a component of
611 the finished product; provided, however, that it is the intent
612 of this section that no sale of capital equipment, machinery,
613 tools, or product shall be included in the term "wholesale
614 sale." The term "capital equipment, machinery, tools, or
615 product" shall mean property that is subject to depreciation
616 allowances for Alabama income tax purposes.



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

621 d. A sale of pallets intended for one-time use only
622 when the pallets are sold without contents to persons who sell
623 or furnish the pallets along with the contents placed thereon
624 for sale by such persons.

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

629 f. A sale of containers to persons engaged in selling
630 or otherwise supplying or furnishing baby chicks to growers
631 thereof where the containers are used for the delivery of the
632 chicks or a sale of containers for use in the delivery of eggs
633 by the producer thereof to the distributor or packer of the
634 eggs even though the containers used for delivery of baby
635 chicks or eggs may be recovered for reuse.

636 g. A sale of bagging and ties used in preparing cotton
637 for market.

638 h. A sale of commercial fish feed including
639 concentrates, supplements, and other feed ingredients when
640 such substances are used as ingredients in mixing and
641 preparing feed for fish raised to be sold on a commercial
642 basis.

643 i. A sale of bait used to capture or attempt to capture
644 fish or other seafood in the process of commercial fishing, as



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645 defined in Section 40-23-1, by a holder of a commercial
646 license issued pursuant to Chapter 12 of Title 9.

647 j. A sale of tangible personal property to any person
648 engaging in the business of leasing or renting such tangible
649 personal property to others, if the tangible personal property
650 is purchased for the purpose of leasing or renting it to
651 others under a transaction subject to the privilege or license
652 tax levied in Article 4 of Chapter 12 against any person
653 engaging in the business of leasing or renting tangible
654 personal property to others.

655 k. A purchase or withdrawal of parts or materials from
656 stock by any person licensed under this article where the
657 parts or materials are used in repairing or reconditioning the
658 tangible personal property of the licensed person which
659 tangible personal property is a part of the stock of goods of
660 the licensed person, offered for sale by the licensed person
661 and not for use or consumption of the licensed person.

662 l. A sale to meat packers, manufacturers, compounders,
663 or processors of meat products of all casings used in moulding
664 or forming wieners and Vienna sausages, even though the
665 casings may be recovered for reuse.

666 (5) SALE AT RETAIL or RETAIL SALE. All sales of
667 tangible personal property except those above defined as
668 wholesale sales. The quantities of goods sold or prices at
669 which sold are immaterial in determining whether or not a sale
670 is at retail. Sales of building materials to contractors,
671 builders, or landowners for resale or use in the form of real
672 estate are retail sales in whatever quantity sold. Sales of



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673 building materials, fixtures, or other equipment to a
674 manufacturer or builder of modular buildings for use in
675 manufacturing, building, or equipping a modular building
676 ultimately becoming a part of real estate situated in the
677 State of Alabama are retail sales, and the use, sale, or
678 resale of such building shall not be subject to the tax. Sales
679 of tangible personal property to undertakers and morticians
680 are retail sales and subject to the tax at the time of
681 purchase, but are not subject to the tax on resale to the
682 consumer. Sales of tangible personal property or products to
683 manufacturers, quarry operators, mine operators, or
684 compounders, which are used or consumed by them in
685 manufacturing, mining, quarrying, or compounding and do not
686 become an ingredient or component part of the tangible
687 personal property manufactured or compounded as provided in
688 subdivision (4) are retail sales. The term "sale at retail" or
689 "retail sale" shall also mean and include the withdrawal, use,
690 or consumption of any tangible personal property by anyone who
691 purchases same at wholesale, except property that has been
692 previously withdrawn from the business or stock and so used or
693 consumed and with respect to which property the tax has been
694 paid because of such previous withdrawal, use, or consumption,
695 except property that enters into and becomes an ingredient or
696 component part of tangible personal property or products
697 manufactured or compounded for sale as provided in subdivision
698 (4); and not for the personal and private use or consumption
699 of any person so withdrawing, using, or consuming the same,
700 and such wholesale purchaser shall report and pay the taxes



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701 thereon; and except refinery, residue, or fuel gas, whether in
702 a liquid or gaseous state, that has been generated by, or is
703 otherwise a by-product of, a petroleum-refining process, which
704 gas is then utilized in the process to generate heat or is
705 otherwise utilized in the distillation or refining of
706 petroleum products. The term "retail sale" or "sale at retail"
707 shall also mean and include the sale of tangible personal
708 property previously purchased at wholesale for the purpose of
709 leasing or renting under a transaction subject to the
710 privilege or license tax levied in Article 4 of Chapter 12,
711 regardless of whether the sale is to the person who
712 theretofore leased or rented the tangible personal property or
713 to some other person.

714 (6) BUSINESS. All activities engaged in, or caused to
715 be engaged in, with the object of gain, profit, benefit, or
716 advantage, either direct or indirect, and not excepting
717 subactivities producing marketable commodities used or
718 consumed in the main business activity, each of which
719 subactivities shall be considered business engaged in, taxable
720 in the class in which it falls.

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

725 (8) USE. The exercise of any right or power over
726 tangible personal property incident to the ownership of that
727 property, or by any transaction where possession is given,
728 except that it shall not include the sale of that property in



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729 the regular course of business.

730 (9) PURCHASE. Acquired for a consideration, whether
731 such acquisition was effected by a transfer of title, or of
732 possession or of both, or a license to use or consume; whether
733 such transfer shall have been absolute or conditional, and by
734 whatsoever means the same shall have been effected; and
735 whether such consideration be a price or rental in money, or
736 by way of exchange or barter.

737 (10) SALES PRICE. The total amount for which tangible
738 personal property is sold, including any services, including
739 transportation, that are a part of the sale, valued in money,
740 whether paid in money or otherwise, and includes any amount
741 for which credit is given to the purchaser by the seller,
742 without any deduction therefrom on account of the cost of the
743 property sold, the cost of the materials used, labor or
744 service cost, interest charged, losses, or any other expenses
745 whatsoever; provided, that cash discounts allowed and taken on
746 sales shall not be included and sales price shall not include
747 the amount charged for property returned by customers when the
748 entire amount charged therefor is refunded either in cash or
749 by credit.

750 (11) IN THIS STATE or IN THE STATE. Within the exterior
751 limits of the State of Alabama, and includes all territory
752 within such limits owned by or ceded to the United States of
753 America.

754 (12) AUTOMOTIVE VEHICLE. A power shovel, dragline,
755 crawler, crawler crane, ditcher or any similar machine which
756 is self-propelled, in addition to self-propelled machines



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757 which are used primarily as instruments of conveyance.

758 (13) PREPAID TELEPHONE CALLING CARD. A sale of a
759 prepaid telephone calling card or a prepaid authorization
760 number, or both, shall be deemed the sale of tangible personal
761 property subject to the tax imposed pursuant to this chapter.
762 For purposes of this subdivision, the sale of prepaid wireless
763 service that is evidenced by a physical card constitutes the
764 sale of a prepaid telephone calling card, and the sale of
765 prepaid wireless service that is not evidenced by a physical
766 card constitutes the sale of a prepaid authorization number.

767 (14) PREPAID WIRELESS SERVICE. The right to use mobile
768 telecommunications service, which must be paid for in advance
769 and that is sold in predetermined units or dollars of which
770 the number declines with use or the expiration of time in a
771 known amount, and which may include rights to use
772 non-telecommunications services or to download digital
773 products or digital content. For purposes of this subdivision,
774 mobile telecommunications service has the meaning ascribed by
775 Section 40-21-120.

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

780 (16) FOOD. Food as defined in 7 U.S.C. § 2011, et seq.,
781 for the purposes of the federal Supplemental Nutrition
782 Assistance Program regardless of where or by what means food
783 is sold. In the event that the federal Supplemental Nutrition
784 Assistance Program definition no longer exists, the



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785 Legislature shall provide a new definition of "food" by
786 general law."

787 "§40-23-61

788 (a) An excise tax is hereby imposed on the storage, use
789 or other consumption in this state of tangible personal
790 property, not including, however, materials and supplies
791 bought for use in fulfilling a contract for the painting,
792 repairing or reconditioning of vessels, barges, ships, other
793 watercraft and commercial fishing vessels of over five tons
794 load displacement as registered with the U.S. Coast Guard and
795 licensed by the State of Alabama Department of Conservation
796 and Natural Resources, purchased at retail on or after October
797 1, 1965, for storage, use or other consumption in this state
798 at the rate of four percent of the sales price of such
799 property or the amount of tax collected by the seller,
800 whichever is greater; provided, however, when the seller
801 follows the Department of Revenue's suggested use tax brackets
802 and his records prove that his following said brackets
803 resulted in a net undercollection of tax for the month, he may
804 report the tax due or tax collected, whichever is less, except
805 as provided in subsections (b), ~~and~~ (c), and (d) of this
806 section.

807 (b) An excise tax is hereby imposed on the storage, use
808 or other consumption in this state of any machines used in
809 mining, quarrying, compounding, processing and manufacturing
810 of tangible personal property, purchased at retail on or after
811 October 1, 1965, at the rate of one and one-half percent of
812 the sales price of any such machine or the amount of tax



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813 collected by the seller, whichever is greater; provided,
814 however, when the seller follows the Department of Revenue's
815 suggested use tax brackets and his records prove that his
816 following said brackets resulted in a net undercollection of
817 tax for the month, he may report the tax due or tax collected,
818 whichever is less; provided, that the term "machine," as
819 herein used, shall include machinery which is used for mining,
820 quarrying, compounding, processing, or manufacturing tangible
821 personal property, and the parts of such machines, attachments
822 and replacements therefor, which are made or manufactured for
823 use on or in the operation of such machines and which are
824 necessary to the operation of such machines and are
825 customarily so used.

826 (c) An excise tax is hereby imposed on the storage, use
827 or other consumption in this state of any automotive vehicle
828 or truck trailer, semitrailer or house trailer, and mobile
829 home set-up materials and supplies including but not limited
830 to steps, blocks, anchoring, cable pipes and any other
831 materials pertaining thereto, purchased at retail on or after
832 October 1, 1965, for storage, use or other consumption in this
833 state at the rate of two percent of the sales price of such
834 automotive vehicle, truck trailer, semitrailer or house
835 trailer, and mobile home set-up materials and supplies as
836 specified above, or the amount of tax collected by the seller,
837 whichever is greater; provided, however, when the seller
838 follows the Department of Revenue's suggested use tax brackets
839 and his records prove that his following said brackets
840 resulted in a net undercollection of tax for the month, he may



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841 report the tax due or tax collected, whichever is less. Where
842 any used automotive vehicle or truck trailer, semitrailer or
843 house trailer is taken in trade, or in a series of trades, as
844 a credit or part payment on the sale of a new or used vehicle,
845 the tax levied herein shall be paid on the net difference,
846 that is, the price of the new or used vehicle sold less the
847 credit for the used vehicle taken in trade.

848 Of the total \$.02 tax on each dollar of sale provided
849 hereunder, 58 percent of the total tax generated by this
850 subsection shall be deposited to the credit of the Education
851 Trust Fund; and 42 percent of the total tax generated by this
852 subsection shall be deposited to the credit of the State
853 General Fund.

854 (d) An excise tax is hereby imposed on the storage,
855 use, or other consumption in this state of food as defined in
856 Section 40-23-60, at the rate of four percent of the sales
857 price of such food. On September 1, 2023, the tax rate shall
858 be reduced to three percent. On September 1, 2025, the tax
859 rate shall be reduced to two percent, if the total net
860 receipts from all revenue sources to the Education Trust Fund
861 for the fiscal year ending September 30, 2026 is at least two
862 percent higher than the previous fiscal year, as certified by
863 the Director of Finance and the Legislative Fiscal Officer
864 pursuant to Section 260.02 of the Constitution of Alabama of
865 2022. If the growth requirement is not satisfied for the
866 fiscal year ending September 30, 2026, the rate shall be
867 reduced to two percent in a subsequent fiscal year when the
868 growth requirement is satisfied.



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869 ~~(d)~~ (e) Every person storing, using or otherwise
870 consuming in this state tangible personal property purchased
871 at retail shall be liable for the tax imposed by this article,
872 and the liability shall not be extinguished until the tax has
873 been paid to this state; provided, that a receipt from a
874 retailer maintaining a place of business in this state or a
875 retailer authorized by the department, under such rules and
876 regulations as it may prescribe, to collect the tax imposed
877 hereby and who shall for the purpose of this article be
878 regarded as a retailer maintaining a place of business in this
879 state, given to the purchaser in accordance with the
880 provisions of Section 40-23-67, shall be sufficient to relieve
881 the purchaser from further liability for tax to which such
882 receipt may refer.

883 ~~(e)~~ (f) An excise tax is hereby imposed on the classes
884 of tangible personal property, and at the rates imposed on
885 such classes, specified in subsections (a), (b), ~~and~~ (c), and
886 (d) of this section, on the storage, use, or other consumption
887 in the performance of a contract in this state of any such
888 tangible personal property, new or used, the tax to be
889 measured by the sales price or the fair and reasonable market
890 value of such tangible personal property when put into use in
891 this state, whichever is less; provided, that the tax imposed
892 by this subsection shall not apply where the taxes imposed by
893 subsection (a), (b), ~~or~~ (c), or (d) of this section apply."

894 Section 2. (a) On the effective date of this act, the
895 definition of "food" in Sections 40-23-1 and 40-23-60, Code of
896 Alabama 1975, shall apply to county and municipal sales and



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897 use taxes. For purposes of county and municipal sales and use
898 taxes, the sales tax rate on food shall be established as the
899 general or retail sales tax rate in effect in the county or
900 municipality on the effective date of this act, unless
901 otherwise provided by law. An act of the Legislature or an
902 ordinance or resolution adopted by a county or municipal
903 governing body levying a county or municipal sales and use tax
904 inclusive of food passed or enacted on or before the effective
905 date of this act shall remain operative, but no additional
906 county or municipal sales and use taxes on food may be levied.

907 (b) Any county or municipal governing body may, by
908 resolution or ordinance, reduce the general or retail sales
909 tax rate on food for local sales and use taxes. Such ordinance
910 or resolution must be adopted at least 60 days prior to
911 becoming effective.

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

918 Section 3. This act shall become effective immediately
919 following its passage and approval by the Governor, or its
920 otherwise becoming law.



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House of Representatives

Read for the first time and referred16-May-23
to the House of Representatives
committee on Ways and Means
Education
Read for the second time and placed24-May-23
on the calendar:
2 amendments
Read for the third time and passed25-May-23
as amended
Yeas 103
Nays 0
Abstains 0

John Treadwell
Clerk