

HB479 ENROLLED



1 E0XQ22-3

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5 Rigsby, Ellis, Colvin, Kitchens, Shaw, Treadaway, Bedsole,
6 Fincher, Estes, Butler, Gidley, Robertson, Hulsey, Hall,
7 Underwood, Harbison, Brown, Kiel, Almond, Collins, Shaver,
8 Wood (D), Shedd, Sellers, Morris, Moore (M), Paschal,
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10 Givens, Jones, Holk-Jones, Fidler, Faulkner, Simpson, Bracy,
11 Plump, Boyd, Drummond, Clarke, Daniels, Hollis, Gray, Ensler,
12 Kirkland, Lawrence, Bolton, Easterbrook, Baker, Robbins,
13 Rogers, Blackshear, Stubbs, DuBose, Oliver, Ledbetter,
14 Whorton, Wadsworth, Lovvorn, Hammett, Chestnut, Rafferty,
15 Sells, McCampbell, Stadthagen, Moore (P), Harrison, Wilcox,
16 Tillman, England, Travis, Starnes, Mooney, Hassell, Warren

17 RFD: Ways and Means Education

18 First Read: 16-May-23

19 2023 Regular Session



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1 Enrolled, An Act,

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4 Relating to sales and use taxes; to amend Sections
5 40-23-1, 40-23-2, 40-23-60, and 40-23-61, Code of Alabama
6 1975, to define "food" and begin reducing the state sales and
7 use tax on food on September 1, 2023; to require certain
8 growth targets in the Education Trust Fund for future sales
9 tax reductions on food; to establish the sales and use tax
10 rate on food for purposes of county and municipal sales and
11 use taxes as the existing general or retail sales and use tax
12 rate; and to provide for the levy of sales and use tax on food
13 by counties and municipalities.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Sections 40-23-1, 40-23-2, 40-23-60, and
16 40-23-61, Code of Alabama 1975, are amended to read as
17 follows:

18 "§40-23-1

19 (a) For the purpose of this division, the following
20 terms shall have the respective meanings ascribed by this
21 section:

22 (1) PERSON or COMPANY. Used interchangeably, includes
23 any individual, firm, copartnership, association, corporation,
24 receiver, trustee, or any other group or combination acting as
25 a unit and the plural as well as the singular number, unless
26 the intention to give a more limited meaning is disclosed by
27 the context.

28 (2) DEPARTMENT. The Department of Revenue of the State

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29 of Alabama.

30 (3) COMMISSIONER. The Commissioner of Revenue of the
31 State of Alabama.

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

33 (5) SALE or SALES. Installment and credit sales and the
34 exchange of properties as well as the sale thereof for money,
35 every closed transaction constituting a sale. Provided,
36 however, a transaction shall not be closed or a sale completed
37 until the time and place when and where title is transferred
38 by the seller or seller's agent to the purchaser or
39 purchaser's agent, and for the purpose of determining transfer
40 of title, a common carrier or the U.S. Postal Service shall be
41 deemed to be the agent of the seller, regardless of any F.O.B.
42 point and regardless of who selects the method of
43 transportation, and regardless of by whom or the method by
44 which freight, postage, or other transportation charge is
45 paid. Provided further that, where billed as a separate item
46 to and paid by the purchaser, the freight, postage, or other
47 transportation charge paid to a common carrier or the U.S.
48 Postal Service is not a part of the selling price.

49 (6) GROSS PROCEEDS OF SALES. The value proceeding or
50 accruing from the sale of tangible personal property, and
51 including the proceeds from the sale of any property handled
52 on consignment by the taxpayer, including merchandise of any
53 kind and character without any deduction on account of the
54 cost of the property sold, the cost of the materials used,
55 labor or service cost, interest paid, any consumer excise
56 taxes that may be included within the sales price of the

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57 property sold, or any other expenses whatsoever, and without
58 any deductions on account of losses; provided, that cash
59 discounts allowed and taken on sales shall not be included,
60 and "gross proceeds of sales" shall not include the sale price
61 of property returned by customers when the full sales price
62 thereof is refunded either in cash or by credit. The term
63 "gross proceeds of sale" shall also mean and include the
64 reasonable and fair market value of any tangible personal
65 property previously purchased at wholesale which is withdrawn
66 or used from the business or stock and used or consumed in
67 connection with a business, and shall also mean and include
68 the reasonable and fair market value of any tangible personal
69 property previously purchased at wholesale which is withdrawn
70 from the business or stock and used or consumed by any person
71 so withdrawing the same, except property that has been
72 previously withdrawn from business or stock and so used or
73 consumed with respect to which property the tax has been paid
74 because of previous withdrawal, use, or consumption, except
75 property that enters into and becomes an ingredient or
76 component part of tangible personal property or products
77 manufactured or compounded for sale and not for the personal
78 and private use or consumption of any person so withdrawing,
79 using, or consuming the same, and except refinery, residue, or
80 fuel gas, whether in a liquid or gaseous state, that has been
81 generated by, or is otherwise a by-product of, a
82 petroleum-refining process, which gas is then utilized in the
83 process to generate heat or is otherwise utilized in the
84 distillation or refining of petroleum products.

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85 In the case of the retail sale of equipment,
86 accessories, fixtures, and other similar tangible personal
87 property used in connection with the sale of commercial mobile
88 services as defined herein, or in connection with satellite
89 television services, at a price below cost, "gross proceeds of
90 sale" shall only include the stated sales price thereof and
91 shall not include any sales commission or rebate received by
92 the seller as a result of the sale. As used herein, the term
93 "commercial mobile services" shall have the same meaning as
94 that term has in 47 U.S.C. §§ 153(n) and 332(d), as in effect
95 from time to time.

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

97 (8) GROSS RECEIPTS. The value proceeding or accruing
98 from the sale of tangible personal property, including
99 merchandise and commodities of any kind and character, all
100 receipts actual and accrued, by reason of any business engaged
101 in, not including, however, interest, discounts, rentals of
102 real estate, or royalties, and without any deduction on
103 account of the cost of the property sold, the cost of the
104 materials used, labor or service cost, interest paid, any
105 consumer excise taxes that may be included in the sales price
106 of the property sold, or any other expenses whatsoever and
107 without any deductions on account of losses. The term "gross
108 receipts" shall also mean and include the reasonable and fair
109 market value of any tangible personal property previously
110 purchased at wholesale which is withdrawn or used from the
111 business or stock and used or consumed in connection with a
112 business, and shall also mean and include the reasonable and

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113 fair market value of any tangible personal property previously
114 purchased at wholesale which is withdrawn from the business or
115 stock and used or consumed by any person so withdrawing the
116 same, except property which has been previously withdrawn from
117 business or stock and so used or consumed and with respect to
118 which property the tax has been paid because of previous
119 withdrawal, use, or consumption, except property which enters
120 into and becomes an ingredient or component part of tangible
121 personal property or products manufactured or compounded for
122 sale as provided in subdivision (9) and not for the personal
123 and private use or consumption of any person so withdrawing,
124 using, or consuming the same, and except refinery, residue, or
125 fuel gas, whether in a liquid or gaseous state, that has been
126 generated by, or is otherwise a by-product of, a
127 petroleum-refining process, which gas is then utilized in the
128 process to generate heat or is otherwise utilized in the
129 distillation or refining of petroleum products.

130 (9) WHOLESALE SALE or SALE AT WHOLESALE. Any one of the
131 following:

132 a. A sale of tangible personal property by wholesalers
133 to licensed retail merchants, jobbers, dealers, or other
134 wholesalers for resale and does not include a sale by
135 wholesalers to users or consumers, not for resale.

136 b. A sale of tangible personal property or products,
137 including iron ore, and including the furnished container and
138 label of the property or products, to a manufacturer or
139 compounder which enter into and become an ingredient or
140 component part of the tangible personal property or products



141 that the manufacturer or compounder manufactures or compounds
142 for sale, whether or not the tangible personal property or
143 product used in manufacturing or compounding a finished
144 product is used with the intent that it becomes a component of
145 the finished product; provided, however, that it is the intent
146 of this section that no sale of capital equipment, machinery,
147 tools, or product shall be included in the term "wholesale
148 sale." The term "capital equipment, machinery, tools, or
149 product" shall mean property that is subject to depreciation
150 allowances for Alabama income tax purposes.

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

155 d. A sale of pallets intended for one-time use only
156 when pallets are sold without contents to persons who sell or
157 furnish pallets along with the contents placed thereon for
158 sale by persons.

159 e. A sale to a manufacturer or compounder, of crowns,
160 caps, and tops intended for one-time use employed and used
161 upon the containers in which a manufacturer or compounder
162 markets his products.

163 f. A sale of containers to persons engaged in selling
164 or otherwise supplying or furnishing baby chicks to growers
165 thereof where containers are used for the delivery of chicks
166 or a sale of containers for use in the delivery of eggs by the
167 producer thereof to the distributor or packer of eggs even
168 though containers used for delivery of baby chicks or eggs may



169 be recovered for reuse.

170 g. A sale of bagging and ties used in preparing cotton
171 for market.

172 h. A sale to meat packers, manufacturers, compounders,
173 or processors of meat products of all casings used in molding
174 or forming wieners and Vienna sausages even though casings may
175 be recovered for reuse.

176 i. A sale of commercial fish feed including
177 concentrates, supplements, and other feed ingredients when
178 substances are used as ingredients in mixing and preparing
179 feed for fish raised to be sold on a commercial basis.

180 j. A sale of bait used to capture or attempt to capture
181 fish or other seafood in the process of commercial fishing by
182 a holder of a commercial license issued pursuant to Chapter 12
183 of Title 9.

184 k. A sale of tangible personal property to any person
185 engaging in the business of leasing or renting tangible
186 personal property to others, if tangible personal property is
187 purchased for the purpose of leasing or renting it to others
188 under a transaction subject to the privilege or license tax
189 levied in Article 4 of Chapter 12 of this title against any
190 person engaging in the business of leasing or renting tangible
191 personal property to others.

192 l. A purchase or withdrawal of parts or materials from
193 stock by any person licensed under this division where parts
194 or materials are used in repairing or reconditioning the
195 tangible personal property of a licensed person, which
196 tangible personal property is a part of the stock of goods of



197 a licensed person, offered for sale by him or her, and not for
198 use or consumption of a licensed person.

199 (10) SALE AT RETAIL or RETAIL SALE. All sales of
200 tangible personal property except those defined as wholesale
201 sales. The quantities of goods sold or prices at which sold
202 are immaterial in determining whether or not a sale is at
203 retail. Sales of building materials to contractors, builders,
204 or landowners for resale or use in the form of real estate are
205 retail sales in whatever quantity sold. Sales of building
206 materials, fixtures, or other equipment to a manufacturer or
207 builder of modular buildings for use in manufacturing,
208 building, or equipping a modular building ultimately becoming
209 a part of real estate situated in the State of Alabama are
210 retail sales, and the use, sale, or resale of building shall
211 not be subject to the tax. Sales of tangible personal property
212 to undertakers and morticians are retail sales and subject to
213 the tax at the time of purchase, but are not subject to the
214 tax on resale to the consumer. Sales of tangible personal
215 property or products to manufacturers, quarry operators, mine
216 operators, or compounders, which are used or consumed by them
217 in manufacturing, mining, quarrying, or compounding and do not
218 become an ingredient or component part of the tangible
219 personal property manufactured or compounded as provided in
220 subdivision (9) are retail sales. The term "sale at retail" or
221 "retail sale" shall also mean and include the withdrawal, use,
222 or consumption of any tangible personal property by any one
223 who purchases same at wholesale, except property that has been
224 previously withdrawn from the business or stock and so used or

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225 consumed and with respect to which property tax has been paid
226 because of previous withdrawal, use, or consumption, except
227 property that enters into and becomes an ingredient or
228 component part of tangible personal property or products
229 manufactured or compounded for sale as provided in subdivision
230 (9) and not for the personal and private use or consumption of
231 any person so withdrawing, using, or consuming the same; and
232 wholesale purchaser shall report and pay the taxes thereon. In
233 the case of the sale of equipment, accessories, fixtures, and
234 other similar tangible personal property used in connection
235 with the sale of commercial mobile services as defined in
236 subdivision (6), or in connection with satellite television
237 services, at a price below cost, the term "sale at retail" and
238 "retail sale" shall include those sales, and those sales shall
239 not also be taxable as a withdrawal, use, or consumption of
240 such tangible personal property.

241 (11) BUSINESS. All activities engaged in, or caused to
242 be engaged in, with the object of gain, profit, benefit, or
243 advantage, either direct or indirect, and not excepting
244 subactivities producing marketable commodities used or
245 consumed in the main business activity, each of which
246 subactivities shall be considered business engaged in, taxable
247 in the class in which it falls.

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

252 (13) PREPAID TELEPHONE CALLING CARD. A sale of a



253 prepaid telephone calling card or a prepaid authorization
254 number, or both, shall be deemed the sale of tangible personal
255 property subject to the tax imposed on the sale of tangible
256 personal property pursuant to this chapter. For purposes of
257 this subdivision, the sale of prepaid wireless service that is
258 evidenced by a physical card constitutes the sale of a prepaid
259 telephone calling card, and the sale of prepaid wireless
260 service that is not evidenced by a physical card constitutes
261 the sale of a prepaid authorization number.

262 (14) PREPAID WIRELESS SERVICE. The right to use mobile
263 telecommunications service, which must be paid for in advance
264 and that is sold in predetermined units or dollars of which
265 the number declines with use in a known amount, and which may
266 include rights to use non-telecommunications services or to
267 download digital products or digital content. For purposes of
268 this subdivision, mobile telecommunications service has the
269 meaning ascribed by Section 40-21-120.

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

273 (16) VAPOR PRODUCTS. Any non-lighted, noncombustible
274 product that employs a mechanical heating element, battery, or
275 electronic circuit regardless of shape or size and that can be
276 used to produce vapor from nicotine in a solution. The term
277 includes any vapor cartridge or other container of nicotine in
278 a solution or other form that is intended to be used with or
279 in an electronic cigarette, electronic cigar, electronic
280 cigarillo, electronic pipe, or similar product or device. The

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281 term does not include any product regulated by the United
282 States Food and Drug Administration under Chapter V of the
283 Federal Food, Drug, and Cosmetic Act.

284 (17) PRODUCER VALUE ADDED AGRICULTURAL PRODUCTS. Fruits
285 or other agricultural products that have undergone some degree
286 of further processing by the original producer of the
287 agricultural product, including, but not limited to, whole
288 cuts of meat, bound cut flowers, jams, jellies, or boiled or
289 roasted peanuts.

290 (18) COMMERCIAL FISHING. The activity of catching or
291 processing fish or other seafood regularly and exclusively as
292 a means of livelihood by a holder of a commercial license
293 issued pursuant to Chapter 12 of Title 9. The term includes
294 shellfish farmers, shrimpers, oysterers, lobsterers, and
295 crabbers.

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

299 (20) FOOD. Food as defined in 7 U.S.C. § 2011, et seq.,
300 for the purposes of the federal Supplemental Nutrition
301 Assistance Program regardless of where or by what means food
302 is sold. In the event that the federal Supplemental Nutrition
303 Assistance Program definition no longer exists, the
304 Legislature shall provide a new definition of "food" by
305 general law.

306 (b) The use within this state of tangible personal
307 property by the manufacturer thereof, as building materials in
308 the performance of a construction contract, for the purposes



309 of this division, shall be considered as a retail sale thereof
310 by the manufacturer, who shall also be construed as the
311 ultimate consumer of materials or property, and who shall be
312 required to report transaction and pay the sales tax thereon,
313 based upon the reasonable and fair market price thereof at the
314 time and place where same are used or consumed by the
315 manufacturer. Where the contractor is the manufacturer or
316 compounder of ready-mix concrete or asphalt plant mix used in
317 the performance of a contract, whether the ready-mix concrete
318 or asphalt plant mix is manufactured or compounded at the job
319 site or at a fixed or permanent plant location, the tax
320 applies only to the cost of the ingredients that become a
321 component part of the ready-mix concrete or the asphalt plant
322 mix. The provisions of this subsection shall not apply to any
323 tangible personal property that is specifically exempted from
324 the tax levied in this division.

325 (c) The sale of lumber by a lumber manufacturer to a
326 trucker for resale is a sale at wholesale as sales are defined
327 herein where the trucker is either a licensed dealer in lumber
328 or, if a resident of Alabama, has registered with the
329 Department of Revenue, and has received therefrom a
330 certificate of registration or, if a nonresident of this state
331 purchasing lumber for resale outside the State of Alabama, has
332 furnished to the lumber manufacturer his or her name, address,
333 and the vehicle license number of the truck in which the
334 lumber is to be transported, which name, address, and vehicle
335 license number shall be shown on the sales invoice rendered by
336 the lumber manufacturer. The certificate provided for herein

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337 shall be valid for the calendar year of its issuance and may
338 be renewed from year to year on application to the Department
339 of Revenue on or before January 31 of each succeeding year;
340 provided, that if not renewed the certificate shall become
341 invalid for the purpose of this division on February 1.

342 (d) The dispensing or transferring of ophthalmic
343 materials, including lenses, frames, eyeglasses, contact
344 lenses, and other therapeutic optic devices, to a patient by a
345 licensed ophthalmologist, as a part of his or her professional
346 service, for purposes of this division, shall constitute a
347 sale, subject to the state sales tax. The licensed
348 ophthalmologist or licensed optometrist shall collect the
349 state sales tax. In no event shall the providing of
350 professional services in connection with the dispensing or
351 transferring of ophthalmic materials, including dispensing
352 fees or fitting fees, by a licensed ophthalmologist or
353 licensed optometrist be considered a sale subject to the state
354 sales tax. When the ophthalmic materials are purchased by a
355 consumer covered by a third party benefit plan, including
356 Medicare, the sales tax shall be applicable to the amount that
357 the ophthalmologist, optometrist, or optician is reimbursed by
358 the third party benefit plan plus the amount that the consumer
359 pays to the ophthalmologist, optometrist, or optician at the
360 time of the sale. All transfers of ophthalmic materials by
361 opticians or optometrists shall be considered retail sales
362 subject to the state sales tax. The term "supplier" shall
363 include but not be limited to optical laboratories, ophthalmic
364 material wholesalers, or anyone selling ophthalmic materials



365 to ophthalmologists.

366 (e) Notwithstanding the above, the withdrawal, use, or
367 consumption of a manufactured product by the manufacturer
368 thereof in quality control testing performed by employees or
369 independent contractors of the taxpayer, for purposes of this
370 division, shall not be deemed or considered to constitute a
371 transaction subject to sales tax, nor shall a gift by the
372 manufacturer of a manufactured product, withdrawn from the
373 manufacturer's inventory, to an entity listed in 26 U.S.C. §§
374 170(b) or (c), be considered a transaction subject to sales
375 tax.

376 (f) Notwithstanding the foregoing, a gift by a retailer
377 of a product or products where the aggregate retail value of
378 any single gift is equal to or less than ten thousand dollars
379 (\$10,000), withdrawn from the retailer's inventory, to an
380 entity listed in 26 U.S.C. §§ 170(b) or (c) shall not be
381 deemed or considered to constitute a transaction subject to
382 sales and use tax."

383 "§40-23-2

384 There is levied, in addition to all other taxes of
385 every kind now imposed by law, and shall be collected as
386 herein provided, a privilege or license tax against the person
387 on account of the business activities and in the amount to be
388 determined by the application of rates against gross sales, or
389 gross receipts, as the case may be, as follows:

390 (1) Upon every person, firm, or corporation, (including
391 the State of Alabama and its Alcoholic Beverage Control Board
392 in the sale of alcoholic beverages of all kinds, the

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393 University of Alabama, Auburn University, and all other
394 institutions of higher learning in the state, whether the
395 institutions be denominational, state, county, or municipal
396 institutions, any association or other agency or
397 instrumentality of the institutions) engaged or continuing
398 within this state, in the business of selling at retail any
399 tangible personal property whatsoever, including merchandise
400 and commodities of every kind and character, (not including,
401 however, bonds or other evidences of debts or stocks, nor
402 sales of material and supplies to any person for use in
403 fulfilling a contract for the painting, repair, or
404 reconditioning of vessels, barges, ships, other watercraft,
405 and commercial fishing vessels of over five tons load
406 displacement as registered with the U.S. Coast Guard and
407 licensed by the State of Alabama Department of Conservation
408 and Natural Resources) an amount equal to four percent of the
409 gross proceeds of sales of the business except where a
410 different amount is expressly provided herein. Provided,
411 however, that any person engaging or continuing in business as
412 a retailer and wholesaler or jobber shall pay the tax required
413 on the gross proceeds of retail sales of the business at the
414 rates specified, when his or her books are kept so as to show
415 separately the gross proceeds of sales of each business, and
416 when his or her books are not kept he or she shall pay the tax
417 as a retailer, on the gross sales of the business.

418 Where any used part including tires of an automotive
419 vehicle or a truck trailer, semitrailer, or house trailer is
420 taken in trade, or in a series of trades, as a credit or part



421 payment on the sale of a new or rebuilt part or tire, the tax
422 levied herein shall be paid on the net difference, that is,
423 the price of the new or used part or tire sold less the credit
424 for the used part or tire taken in trade, provided, however,
425 this provision shall not be construed to include batteries.

426 (2) Upon every person, firm, or corporation engaged or
427 continuing within this state in the business of conducting or
428 operating places of amusement or entertainment, billiard and
429 pool rooms, bowling alleys, amusement devices, musical
430 devices, theaters, opera houses, moving picture shows,
431 vaudevilles, amusement parks, athletic contests, including
432 wrestling matches, prize fights, boxing and wrestling
433 exhibitions, football and baseball games, (including athletic
434 contests, conducted by or under the auspices of any
435 educational institution within this state, or any athletic
436 association thereof, or other association whether the
437 institution or association be a denominational, a state, or
438 county, or a municipal institution, or association or a state,
439 county, or city school, or other institution, association or
440 school) skating rinks, race tracks, golf courses, or any other
441 place at which any exhibition, display, amusement, or
442 entertainment is offered to the public or place or places
443 where an admission fee is charged, including public bathing
444 places and public dance halls of every kind and description
445 within the State of Alabama, an amount equal to four percent
446 of the gross receipts of any such business. Provided, however,
447 notwithstanding any language to the contrary in the prior
448 portion of this subdivision, the tax provisions so specified

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449 shall not apply to any athletic event conducted by a public or
450 nonpublic primary or secondary school or any athletic event
451 conducted by or under the auspices of the Alabama High School
452 Athletic Association. The tax amount which would have been
453 collected pursuant to this subdivision shall continue to be
454 collected by the public or nonpublic primary or secondary
455 school, but shall be retained by the school that collected it
456 and shall be used by the school for school purposes.

457 (3) Upon every person, firm, or corporation engaged or
458 continuing within this state in the business of selling at
459 retail machines used in mining, quarrying, compounding,
460 processing, and manufacturing of tangible personal property an
461 amount equal to one and one-half percent of the gross proceeds
462 of the sale of the machines. The term "machine," as herein
463 used, shall include machinery which is used for mining,
464 quarrying, compounding, processing, or manufacturing tangible
465 personal property, and the parts of the machines, attachments,
466 and replacements therefor, which are made or manufactured for
467 use on or in the operation of the machines and which are
468 necessary to the operation of the machines and are customarily
469 so used.

470 (4) Upon every person, firm, or corporation engaged or
471 continuing within this state in the business of selling at
472 retail any automotive vehicle or truck trailer, semitrailer,
473 or house trailer, or mobile home set-up materials and supplies
474 including but not limited to steps, blocks, anchoring, cable
475 pipes, and any other materials pertaining thereto, an amount
476 equal to two percent of the gross proceeds of sale of the

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477 automotive vehicle or truck trailer, semitrailer, or house
478 trailer, or mobile home set-up materials and supplies
479 provided, however, where a person subject to the tax provided
480 for in this subdivision withdraws from his or her stock in
481 trade any automotive vehicle or truck trailer, semitrailer, or
482 house trailer for use by him or her or by his or her employee
483 or agent in the operation of the business, there shall be
484 paid, in lieu of the tax levied herein, a fee of five dollars
485 (\$5) per year or part thereof during which the automotive
486 vehicle, truck trailer, semitrailer, or house trailer shall
487 remain the property of the person. Each year or part thereof
488 shall begin with the day or anniversary date, as the case may
489 be, of such withdrawal and shall run for the 12 succeeding
490 months or part thereof during which the automotive vehicle,
491 truck trailer, semitrailer, or house trailer shall remain the
492 property of the person.

493 Where any used automotive vehicle or truck trailer,
494 semitrailer, or house trailer is taken in trade or in a series
495 of trades, as a credit or part payment on the sale of a new or
496 used vehicle, the tax levied herein shall be paid on the net
497 difference, that is, the price of the new or used vehicle sold
498 less the credit for the used vehicle taken in trade.

499 Sales of automobiles, motorcycles, trucks, truck
500 trailers, travel trailers, campers, housecars, or semitrailers
501 that will be registered or titled outside Alabama, that are
502 exported or removed from Alabama within 72 hours by the
503 purchaser or his or her agent for first use outside Alabama
504 are subject to Alabama sales tax in an amount equal to only

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505 the state automotive sales tax rate, unless the sales tax laws
506 of the state in which the purchaser will title or register the
507 vehicle allows an Alabama resident to purchase a motor vehicle
508 for first titling and registering in Alabama without the
509 payment of tax to that state. However, in no case shall the
510 amount of Alabama state sales tax due on a motor vehicle that
511 will be registered or titled for use in another state exceed
512 the amount of sales tax that would otherwise have been due in
513 the state where the vehicle will be registered or titled for
514 first use. In order to qualify as a travel trailer, camper, or
515 housecar that will be registered or titled for use in another
516 state, the purchaser must provide documentation to the seller
517 that the purchaser is not a resident of Alabama as required by
518 the Department of Revenue. No such proof is required in the
519 sale of an automobile, motorcycle, truck, truck trailer, or
520 semitrailer, excluding a travel trailer, camper, or housecar.
521 The tax collected under this export provision shall be Alabama
522 sales tax and shall exclude county and municipal sales tax. On
523 January 1, 2016, and each January 1 thereafter, the Alabama
524 Department of Revenue shall publish to the state's website a
525 list of states that do not allow drive out provisions to
526 Alabama residents. Should the list, required by this
527 subsection and relied upon by the taxpayer, be incorrect, the
528 taxpayer shall be relieved from the liability concerning the
529 miscollection of the state automotive sales tax. Sales of all
530 other vehicles such as mobile homes, motor bikes, all terrain
531 vehicles, and boats do not qualify for the export exemption
532 provision and are taxable unless the dealer can provide

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533 factual evidence that the vehicle was delivered outside of
534 Alabama or to a common carrier for transportation outside
535 Alabama. In order for the sale to be exempt from Alabama tax,
536 the information relative to the exempt sale shall be
537 documented on forms approved by the Revenue Department.

538 Of the total \$.02 tax on each dollar of sale provided
539 hereunder, 58 percent of the total tax generated by this
540 subdivision (4) shall be deposited to the credit of the
541 Education Trust Fund and 42 percent of the total tax generated
542 by this subdivision (4) shall be deposited to the credit of
543 the State General Fund.

544 (5) Upon every person, firm, or corporation engaged or
545 continuing within this state in the business of selling
546 through coin-operated dispensing machines, food and food
547 products for human consumption, not including beverages other
548 than coffee, milk, milk products, and substitutes therefor,
549 there is levied a tax equal to three percent of the cost of
550 the food, food products, and beverages sold through the
551 machines, which cost for the purpose of this subdivision shall
552 be the gross proceeds of sales of the business.

553 (6) Upon every person, firm, or corporation engaged or
554 continuing within this state in the business of selling food
555 as defined in Section 40-23-1, there is a tax levied equal to
556 four percent of the gross proceeds of the sale of food. On
557 September 1, 2023, the tax rate shall be reduced to three
558 percent. On September 1, 2024, the tax rate shall be reduced
559 to two percent, if the average of the estimated growth in the
560 total net receipts from all revenue sources to the Education



561 Trust Fund for the fiscal year ending September 30, 2025, as
562 certified by the Director of Finance and the Legislative
563 Fiscal Officer, respectively, pursuant to Section 260.02 of
564 the Constitution of Alabama of 2022, is at least three and
565 one-half percent higher than the previous fiscal year. If the
566 growth requirement is not satisfied for the fiscal year ending
567 September 30, 2025, the rate shall be reduced to two percent
568 in a subsequent fiscal year when the growth requirement is
569 satisfied."

570 "§40-23-60

571 For the purpose of this article, the following terms
572 shall have the respective meanings ascribed to them in this
573 section:

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

579 (2) DEPARTMENT. The Department of Revenue of the State
580 of Alabama.

581 (3) COMMISSIONER. The Commissioner of Revenue of the
582 State of Alabama.

583 (4) WHOLESALE SALE or SALE AT WHOLESALE. Any one of the
584 following:

585 a. A sale of tangible personal property by wholesaler
586 to licensed retail merchants, jobbers, dealers or other
587 wholesalers for resale and does not include a sale by
588 wholesalers to users or consumers, not for resale.

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589 b. A sale of tangible personal property or products,
590 including iron ore, and including the furnished container and
591 label of such property or products, to a manufacturer or
592 compounder which enter into and become an ingredient or
593 component part of the tangible personal property or products
594 which the manufacturer or compounder manufactures or compounds
595 for sale, whether or not such tangible personal property or
596 product used in manufacturing or compounding a finished
597 product is used with the intent that it become a component of
598 the finished product; provided, however, that it is the intent
599 of this section that no sale of capital equipment, machinery,
600 tools, or product shall be included in the term "wholesale
601 sale." The term "capital equipment, machinery, tools, or
602 product" shall mean property that is subject to depreciation
603 allowances for Alabama income tax purposes.

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

608 d. A sale of pallets intended for one-time use only
609 when the pallets are sold without contents to persons who sell
610 or furnish the pallets along with the contents placed thereon
611 for sale by such persons.

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

616 f. A sale of containers to persons engaged in selling

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617 or otherwise supplying or furnishing baby chicks to growers
618 thereof where the containers are used for the delivery of the
619 chicks or a sale of containers for use in the delivery of eggs
620 by the producer thereof to the distributor or packer of the
621 eggs even though the containers used for delivery of baby
622 chicks or eggs may be recovered for reuse.

623 g. A sale of bagging and ties used in preparing cotton
624 for market.

625 h. A sale of commercial fish feed including
626 concentrates, supplements, and other feed ingredients when
627 such substances are used as ingredients in mixing and
628 preparing feed for fish raised to be sold on a commercial
629 basis.

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

634 j. A sale of tangible personal property to any person
635 engaging in the business of leasing or renting such tangible
636 personal property to others, if the tangible personal property
637 is purchased for the purpose of leasing or renting it to
638 others under a transaction subject to the privilege or license
639 tax levied in Article 4 of Chapter 12 against any person
640 engaging in the business of leasing or renting tangible
641 personal property to others.

642 k. A purchase or withdrawal of parts or materials from
643 stock by any person licensed under this article where the
644 parts or materials are used in repairing or reconditioning the

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645 tangible personal property of the licensed person which
646 tangible personal property is a part of the stock of goods of
647 the licensed person, offered for sale by the licensed person
648 and not for use or consumption of the licensed person.

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

653 (5) SALE AT RETAIL or RETAIL SALE. All sales of
654 tangible personal property except those above defined as
655 wholesale sales. The quantities of goods sold or prices at
656 which sold are immaterial in determining whether or not a sale
657 is at retail. Sales of building materials to contractors,
658 builders, or landowners for resale or use in the form of real
659 estate are retail sales in whatever quantity sold. Sales of
660 building materials, fixtures, or other equipment to a
661 manufacturer or builder of modular buildings for use in
662 manufacturing, building, or equipping a modular building
663 ultimately becoming a part of real estate situated in the
664 State of Alabama are retail sales, and the use, sale, or
665 resale of such building shall not be subject to the tax. Sales
666 of tangible personal property to undertakers and morticians
667 are retail sales and subject to the tax at the time of
668 purchase, but are not subject to the tax on resale to the
669 consumer. Sales of tangible personal property or products to
670 manufacturers, quarry operators, mine operators, or
671 compounders, which are used or consumed by them in
672 manufacturing, mining, quarrying, or compounding and do not

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673 become an ingredient or component part of the tangible
674 personal property manufactured or compounded as provided in
675 subdivision (4) are retail sales. The term "sale at retail" or
676 "retail sale" shall also mean and include the withdrawal, use,
677 or consumption of any tangible personal property by anyone who
678 purchases same at wholesale, except property that has been
679 previously withdrawn from the business or stock and so used or
680 consumed and with respect to which property the tax has been
681 paid because of such previous withdrawal, use, or consumption,
682 except property that enters into and becomes an ingredient or
683 component part of tangible personal property or products
684 manufactured or compounded for sale as provided in subdivision
685 (4); and not for the personal and private use or consumption
686 of any person so withdrawing, using, or consuming the same,
687 and such wholesale purchaser shall report and pay the taxes
688 thereon; and except refinery, residue, or fuel gas, whether in
689 a liquid or gaseous state, that has been generated by, or is
690 otherwise a by-product of, a petroleum-refining process, which
691 gas is then utilized in the process to generate heat or is
692 otherwise utilized in the distillation or refining of
693 petroleum products. The term "retail sale" or "sale at retail"
694 shall also mean and include the sale of tangible personal
695 property previously purchased at wholesale for the purpose of
696 leasing or renting under a transaction subject to the
697 privilege or license tax levied in Article 4 of Chapter 12,
698 regardless of whether the sale is to the person who
699 theretofore leased or rented the tangible personal property or
700 to some other person.

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701 (6) BUSINESS. All activities engaged in, or caused to
702 be engaged in, with the object of gain, profit, benefit, or
703 advantage, either direct or indirect, and not excepting
704 subactivities producing marketable commodities used or
705 consumed in the main business activity, each of which
706 subactivities shall be considered business engaged in, taxable
707 in the class in which it falls.

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

712 (8) USE. The exercise of any right or power over
713 tangible personal property incident to the ownership of that
714 property, or by any transaction where possession is given,
715 except that it shall not include the sale of that property in
716 the regular course of business.

717 (9) PURCHASE. Acquired for a consideration, whether
718 such acquisition was effected by a transfer of title, or of
719 possession or of both, or a license to use or consume; whether
720 such transfer shall have been absolute or conditional, and by
721 whatsoever means the same shall have been effected; and
722 whether such consideration be a price or rental in money, or
723 by way of exchange or barter.

724 (10) SALES PRICE. The total amount for which tangible
725 personal property is sold, including any services, including
726 transportation, that are a part of the sale, valued in money,
727 whether paid in money or otherwise, and includes any amount
728 for which credit is given to the purchaser by the seller,

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729 without any deduction therefrom on account of the cost of the
730 property sold, the cost of the materials used, labor or
731 service cost, interest charged, losses, or any other expenses
732 whatsoever; provided, that cash discounts allowed and taken on
733 sales shall not be included and sales price shall not include
734 the amount charged for property returned by customers when the
735 entire amount charged therefor is refunded either in cash or
736 by credit.

737 (11) IN THIS STATE or IN THE STATE. Within the exterior
738 limits of the State of Alabama, and includes all territory
739 within such limits owned by or ceded to the United States of
740 America.

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

745 (13) PREPAID TELEPHONE CALLING CARD. A sale of a
746 prepaid telephone calling card or a prepaid authorization
747 number, or both, shall be deemed the sale of tangible personal
748 property subject to the tax imposed pursuant to this chapter.
749 For purposes of this subdivision, the sale of prepaid wireless
750 service that is evidenced by a physical card constitutes the
751 sale of a prepaid telephone calling card, and the sale of
752 prepaid wireless service that is not evidenced by a physical
753 card constitutes the sale of a prepaid authorization number.

754 (14) PREPAID WIRELESS SERVICE. The right to use mobile
755 telecommunications service, which must be paid for in advance
756 and that is sold in predetermined units or dollars of which



757 the number declines with use or the expiration of time in a
758 known amount, and which may include rights to use
759 non-telecommunications services or to download digital
760 products or digital content. For purposes of this subdivision,
761 mobile telecommunications service has the meaning ascribed by
762 Section 40-21-120.

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

767 (16) FOOD. Food as defined in 7 U.S.C. § 2011, et seq.,
768 for the purposes of the federal Supplemental Nutrition
769 Assistance Program regardless of where or by what means food
770 is sold. In the event that the federal Supplemental Nutrition
771 Assistance Program definition no longer exists, the
772 Legislature shall provide a new definition of "food" by
773 general law."

774 "§40-23-61

775 (a) An excise tax is hereby imposed on the storage, use
776 or other consumption in this state of tangible personal
777 property, not including, however, materials and supplies
778 bought for use in fulfilling a contract for the painting,
779 repairing or reconditioning of vessels, barges, ships, other
780 watercraft and commercial fishing vessels of over five tons
781 load displacement as registered with the U.S. Coast Guard and
782 licensed by the State of Alabama Department of Conservation
783 and Natural Resources, purchased at retail on or after October
784 1, 1965, for storage, use or other consumption in this state

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785 at the rate of four percent of the sales price of such
786 property or the amount of tax collected by the seller,
787 whichever is greater; provided, however, when the seller
788 follows the Department of Revenue's suggested use tax brackets
789 and his records prove that his following said brackets
790 resulted in a net undercollection of tax for the month, he may
791 report the tax due or tax collected, whichever is less, except
792 as provided in subsections (b), ~~and~~ (c), and (d) of this
793 section.

794 (b) An excise tax is hereby imposed on the storage, use
795 or other consumption in this state of any machines used in
796 mining, quarrying, compounding, processing and manufacturing
797 of tangible personal property, purchased at retail on or after
798 October 1, 1965, at the rate of one and one-half percent of
799 the sales price of any such machine or the amount of tax
800 collected by the seller, whichever is greater; provided,
801 however, when the seller follows the Department of Revenue's
802 suggested use tax brackets and his records prove that his
803 following said brackets resulted in a net undercollection of
804 tax for the month, he may report the tax due or tax collected,
805 whichever is less; provided, that the term "machine," as
806 herein used, shall include machinery which is used for mining,
807 quarrying, compounding, processing, or manufacturing tangible
808 personal property, and the parts of such machines, attachments
809 and replacements therefor, which are made or manufactured for
810 use on or in the operation of such machines and which are
811 necessary to the operation of such machines and are
812 customarily so used.



813 (c) An excise tax is hereby imposed on the storage, use
814 or other consumption in this state of any automotive vehicle
815 or truck trailer, semitrailer or house trailer, and mobile
816 home set-up materials and supplies including but not limited
817 to steps, blocks, anchoring, cable pipes and any other
818 materials pertaining thereto, purchased at retail on or after
819 October 1, 1965, for storage, use or other consumption in this
820 state at the rate of two percent of the sales price of such
821 automotive vehicle, truck trailer, semitrailer or house
822 trailer, and mobile home set-up materials and supplies as
823 specified above, or the amount of tax collected by the seller,
824 whichever is greater; provided, however, when the seller
825 follows the Department of Revenue's suggested use tax brackets
826 and his records prove that his following said brackets
827 resulted in a net undercollection of tax for the month, he may
828 report the tax due or tax collected, whichever is less. Where
829 any used automotive vehicle or truck trailer, semitrailer or
830 house trailer is taken in trade, or in a series of trades, as
831 a credit or part payment on the sale of a new or used vehicle,
832 the tax levied herein shall be paid on the net difference,
833 that is, the price of the new or used vehicle sold less the
834 credit for the used vehicle taken in trade.

835 Of the total \$.02 tax on each dollar of sale provided
836 hereunder, 58 percent of the total tax generated by this
837 subsection shall be deposited to the credit of the Education
838 Trust Fund; and 42 percent of the total tax generated by this
839 subsection shall be deposited to the credit of the State
840 General Fund.

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841 (d) An excise tax is hereby imposed on the storage,
842 use, or other consumption in this state of food as defined in
843 Section 40-23-60, at the rate of four percent of the sales
844 price of such food. On September 1, 2023, the tax rate shall
845 be reduced to three percent. On September 1, 2024, the tax
846 rate shall be reduced to two percent, if the average of the
847 estimated growth in the total net receipts from all revenue
848 sources to the Education Trust Fund for the fiscal year ending
849 September 30, 2025, as certified by the Director of Finance
850 and the Legislative Fiscal Officer, respectively, pursuant to
851 Section 260.02 of the Constitution of Alabama of 2022, is at
852 least three and one-half percent higher than the previous
853 fiscal year. If the growth requirement is not satisfied for
854 the fiscal year ending September 30, 2025, the rate shall be
855 reduced to two percent in a subsequent fiscal year when the
856 growth requirement is satisfied.

857 ~~(d)~~ (e) Every person storing, using or otherwise
858 consuming in this state tangible personal property purchased
859 at retail shall be liable for the tax imposed by this article,
860 and the liability shall not be extinguished until the tax has
861 been paid to this state; provided, that a receipt from a
862 retailer maintaining a place of business in this state or a
863 retailer authorized by the department, under such rules and
864 regulations as it may prescribe, to collect the tax imposed
865 hereby and who shall for the purpose of this article be
866 regarded as a retailer maintaining a place of business in this
867 state, given to the purchaser in accordance with the
868 provisions of Section 40-23-67, shall be sufficient to relieve



869 the purchaser from further liability for tax to which such
870 receipt may refer.

871 ~~(e)~~ (f) An excise tax is hereby imposed on the classes
872 of tangible personal property, and at the rates imposed on
873 such classes, specified in subsections (a), (b), ~~and~~ (c), and
874 (d) of this section, on the storage, use, or other consumption
875 in the performance of a contract in this state of any such
876 tangible personal property, new or used, the tax to be
877 measured by the sales price or the fair and reasonable market
878 value of such tangible personal property when put into use in
879 this state, whichever is less; provided, that the tax imposed
880 by this subsection shall not apply where the taxes imposed by
881 subsection (a), (b), ~~or~~ (c), or (d) of this section apply."

882 Section 2. (a) On the effective date of this act, the
883 definition of "food" in Sections 40-23-1 and 40-23-60, Code of
884 Alabama 1975, shall apply to county and municipal sales and
885 use taxes. For purposes of county and municipal sales and use
886 taxes, the sales tax rate on food shall be established as the
887 general or retail sales tax rate in effect in the county or
888 municipality on the effective date of this act, unless
889 otherwise provided by law. An act of the Legislature or an
890 ordinance or resolution adopted by a county or municipal
891 governing body levying a county or municipal sales and use tax
892 inclusive of food passed or enacted on or before the effective
893 date of this act shall remain operative, but no additional
894 county or municipal sales and use taxes on food may be levied.

895 (b) Any county or municipal governing body may, by
896 resolution or ordinance, reduce the general or retail sales

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897 tax rate on food for local sales and use taxes by 25 percent
898 in any year in which the growth in the applicable municipal or
899 county general fund exceeds two percent over the prior year.
900 Such ordinance or resolution must be adopted at least 60 days
901 prior to becoming effective and will take effect on October 1
902 following adoption.

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

909 Section 3. This act shall become effective immediately
910 following its passage and approval by the Governor, or its
911 otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 25-May-23, as amended.

John Treadwell
Clerk

Senate

01-Jun-23

Passed

House

01-Jun-23

Concurred in
Senate Amendment