

SB257 INTRODUCED



1 S2RM77-1

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4 Singleton, Smitherman, Allen, Roberts, Stutts, Williams,
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8 RFD: Finance and Taxation Education

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11 2023 Regular Session



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SYNOPSIS:

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

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

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

A BILL
TO BE ENTITLED
AN ACT

Relating to sales taxes; to amend Section 40-23-1, as



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29 last amended by Acts 2022-199 and 2022-291, 2022 Regular
30 Session, Code of Alabama 1975, Section 40-23-2, as last
31 amended by Act 2022-346, 2022 Regular Session, Code of Alabama
32 1975, Section 40-23-60, as last amended by Act 2022-199, 2022
33 Regular Session, Code of Alabama 1975, and Section 40-23-61,
34 Code of Alabama 1975; to define "food" and begin phasing-out
35 the state sales and use tax on food on September 1, 2023; to
36 require certain growth targets in the Education Trust Fund for
37 future sales tax reductions on food; to establish the sales
38 and use tax rate on food for purposes of county and municipal
39 sales and use taxes as the existing general or retail sales
40 and use tax rate; and to authorize a county and municipality
41 to reduce the sales and use tax rate or exempt food from local
42 sales and use taxes.

43 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

44 Section 1. Section 40-23-1, as last amended by Acts
45 2022-199 and 2022-291 in the 2022 Regular Session, Code of
46 Alabama 1975, Section 40-23-2, as last amended by Act 2022-346
47 in the 2022 Regular Session, Code of Alabama 1975, Section
48 40-23-60, as last amended by Act 2022-199 in the 2022 Regular
49 Session, Code of Alabama 1975, and Section 40-23-61, Code of
50 Alabama 1975, are amended to read as follows:

51 "§40-23-1

52 (a) For the purpose of this division, the following
53 terms shall have the respective meanings ascribed by this
54 section:

55 (1) PERSON or COMPANY. Used interchangeably, includes
56 any individual, firm, copartnership, association, corporation,



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57 receiver, trustee, or any other group or combination acting as
58 a unit and the plural as well as the singular number, unless
59 the intention to give a more limited meaning is disclosed by
60 the context.

61 (2) DEPARTMENT. The Department of Revenue of the State
62 of Alabama.

63 (3) COMMISSIONER. The Commissioner of Revenue of the
64 State of Alabama.

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

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

82 (6) GROSS PROCEEDS OF SALES. The value proceeding or
83 accruing from the sale of tangible personal property, and
84 including the proceeds from the sale of any property handled



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85 on consignment by the taxpayer, including merchandise of any
86 kind and character without any deduction on account of the
87 cost of the property sold, the cost of the materials used,
88 labor or service cost, interest paid, any consumer excise
89 taxes that may be included within the sales price of the
90 property sold, or any other expenses whatsoever, and without
91 any deductions on account of losses; provided, that cash
92 discounts allowed and taken on sales shall not be included,
93 and "gross proceeds of sales" shall not include the sale price
94 of property returned by customers when the full sales price
95 thereof is refunded either in cash or by credit. The term
96 "gross proceeds of sale" shall also mean and include the
97 reasonable and fair market value of any tangible personal
98 property previously purchased at wholesale which is withdrawn
99 or used from the business or stock and used or consumed in
100 connection with a business, and shall also mean and include
101 the reasonable and fair market value of any tangible personal
102 property previously purchased at wholesale which is withdrawn
103 from the business or stock and used or consumed by any person
104 so withdrawing the same, except property that has been
105 previously withdrawn from business or stock and so used or
106 consumed with respect to which property the tax has been paid
107 because of previous withdrawal, use, or consumption, except
108 property that enters into and becomes an ingredient or
109 component part of tangible personal property or products
110 manufactured or compounded for sale and not for the personal
111 and private use or consumption of any person so withdrawing,
112 using, or consuming the same, and except refinery, residue, or



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113 fuel gas, whether in a liquid or gaseous state, that has been
114 generated by, or is otherwise a by-product of, a
115 petroleum-refining process, which gas is then utilized in the
116 process to generate heat or is otherwise utilized in the
117 distillation or refining of petroleum products.

118 In the case of the retail sale of equipment,
119 accessories, fixtures, and other similar tangible personal
120 property used in connection with the sale of commercial mobile
121 services as defined herein, or in connection with satellite
122 television services, at a price below cost, "gross proceeds of
123 sale" shall only include the stated sales price thereof and
124 shall not include any sales commission or rebate received by
125 the seller as a result of the sale. As used herein, the term
126 "commercial mobile services" shall have the same meaning as
127 that term has in 47 U.S.C. §§ 153(n) and 332(d), as in effect
128 from time to time.

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

130 (8) GROSS RECEIPTS. The value proceeding or accruing
131 from the sale of tangible personal property, including
132 merchandise and commodities of any kind and character, all
133 receipts actual and accrued, by reason of any business engaged
134 in, not including, however, interest, discounts, rentals of
135 real estate, or royalties, and without any deduction on
136 account of the cost of the property sold, the cost of the
137 materials used, labor or service cost, interest paid, any
138 consumer excise taxes that may be included in the sales price
139 of the property sold, or any other expenses whatsoever and
140 without any deductions on account of losses. The term "gross



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141 receipts" shall also mean and include the reasonable and fair
142 market value of any tangible personal property previously
143 purchased at wholesale which is withdrawn or used from the
144 business or stock and used or consumed in connection with a
145 business, and shall also mean and include the reasonable and
146 fair market value of any tangible personal property previously
147 purchased at wholesale which is withdrawn from the business or
148 stock and used or consumed by any person so withdrawing the
149 same, except property which has been previously withdrawn from
150 business or stock and so used or consumed and with respect to
151 which property the tax has been paid because of previous
152 withdrawal, use, or consumption, except property which enters
153 into and becomes an ingredient or component part of tangible
154 personal property or products manufactured or compounded for
155 sale as provided in subdivision (9) and not for the personal
156 and private use or consumption of any person so withdrawing,
157 using, or consuming the same, and except refinery, residue, or
158 fuel gas, whether in a liquid or gaseous state, that has been
159 generated by, or is otherwise a by-product of, a
160 petroleum-refining process, which gas is then utilized in the
161 process to generate heat or is otherwise utilized in the
162 distillation or refining of petroleum products.

163 (9) WHOLESALE SALE or SALE AT WHOLESALE. Any one of the
164 following:

165 a. A sale of tangible personal property by wholesalers
166 to licensed retail merchants, jobbers, dealers, or other
167 wholesalers for resale and does not include a sale by
168 wholesalers to users or consumers, not for resale.



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169 b. A sale of tangible personal property or products,
170 including iron ore, and including the furnished container and
171 label of the property or products, to a manufacturer or
172 compounder which enter into and become an ingredient or
173 component part of the tangible personal property or products
174 that the manufacturer or compounder manufactures or compounds
175 for sale, whether or not the tangible personal property or
176 product used in manufacturing or compounding a finished
177 product is used with the intent that it becomes a component of
178 the finished product; provided, however, that it is the intent
179 of this section that no sale of capital equipment, machinery,
180 tools, or product shall be included in the term "wholesale
181 sale." The term "capital equipment, machinery, tools, or
182 product" shall mean property that is subject to depreciation
183 allowances for Alabama income tax purposes.

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

188 d. A sale of pallets intended for one-time use only
189 when pallets are sold without contents to persons who sell or
190 furnish pallets along with the contents placed thereon for
191 sale by persons.

192 e. A sale to a manufacturer or compounder, of crowns,
193 caps, and tops intended for one-time use employed and used
194 upon the containers in which a manufacturer or compounder
195 markets his products.

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



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197 or otherwise supplying or furnishing baby chicks to growers
198 thereof where containers are used for the delivery of chicks
199 or a sale of containers for use in the delivery of eggs by the
200 producer thereof to the distributor or packer of eggs even
201 though containers used for delivery of baby chicks or eggs may
202 be recovered for reuse.

203 g. A sale of bagging and ties used in preparing cotton
204 for market.

205 h. A sale to meat packers, manufacturers, compounders,
206 or processors of meat products of all casings used in molding
207 or forming wieners and Vienna sausages even though casings may
208 be recovered for reuse.

209 i. A sale of commercial fish feed including
210 concentrates, supplements, and other feed ingredients when
211 substances are used as ingredients in mixing and preparing
212 feed for fish raised to be sold on a commercial basis.

213 j. A sale of bait used to capture or attempt to capture
214 fish or other seafood in the process of commercial fishing by
215 a holder of a commercial license issued pursuant to Chapter 12
216 of Title 9.

217 k. A sale of tangible personal property to any person
218 engaging in the business of leasing or renting tangible
219 personal property to others, if tangible personal property is
220 purchased for the purpose of leasing or renting it to others
221 under a transaction subject to the privilege or license tax
222 levied in Article 4 of Chapter 12 of this title against any
223 person engaging in the business of leasing or renting tangible
224 personal property to others.



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225 1. A purchase or withdrawal of parts or materials from
226 stock by any person licensed under this division where parts
227 or materials are used in repairing or reconditioning the
228 tangible personal property of a licensed person, which
229 tangible personal property is a part of the stock of goods of
230 a licensed person, offered for sale by him or her, and not for
231 use or consumption of a licensed person.

232 (10) SALE AT RETAIL or RETAIL SALE. All sales of
233 tangible personal property except those defined as wholesale
234 sales. The quantities of goods sold or prices at which sold
235 are immaterial in determining whether or not a sale is at
236 retail. Sales of building materials to contractors, builders,
237 or landowners for resale or use in the form of real estate are
238 retail sales in whatever quantity sold. Sales of building
239 materials, fixtures, or other equipment to a manufacturer or
240 builder of modular buildings for use in manufacturing,
241 building, or equipping a modular building ultimately becoming
242 a part of real estate situated in the State of Alabama are
243 retail sales, and the use, sale, or resale of building shall
244 not be subject to the tax. Sales of tangible personal property
245 to undertakers and morticians are retail sales and subject to
246 the tax at the time of purchase, but are not subject to the
247 tax on resale to the consumer. Sales of tangible personal
248 property or products to manufacturers, quarry operators, mine
249 operators, or compounders, which are used or consumed by them
250 in manufacturing, mining, quarrying, or compounding and do not
251 become an ingredient or component part of the tangible
252 personal property manufactured or compounded as provided in



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253 subdivision (9) are retail sales. The term "sale at retail" or
254 "retail sale" shall also mean and include the withdrawal, use,
255 or consumption of any tangible personal property by any one
256 who purchases same at wholesale, except property that has been
257 previously withdrawn from the business or stock and so used or
258 consumed and with respect to which property tax has been paid
259 because of previous withdrawal, use, or consumption, except
260 property that enters into and becomes an ingredient or
261 component part of tangible personal property or products
262 manufactured or compounded for sale as provided in subdivision
263 (9) and not for the personal and private use or consumption of
264 any person so withdrawing, using, or consuming the same; and
265 wholesale purchaser shall report and pay the taxes thereon. In
266 the case of the sale of equipment, accessories, fixtures, and
267 other similar tangible personal property used in connection
268 with the sale of commercial mobile services as defined in
269 subdivision (6), or in connection with satellite television
270 services, at a price below cost, the term "sale at retail" and
271 "retail sale" shall include those sales, and those sales shall
272 not also be taxable as a withdrawal, use, or consumption of
273 such tangible personal property.

274 (11) BUSINESS. All activities engaged in, or caused to
275 be engaged in, with the object of gain, profit, benefit, or
276 advantage, either direct or indirect, and not excepting
277 subactivities producing marketable commodities used or
278 consumed in the main business activity, each of which
279 subactivities shall be considered business engaged in, taxable
280 in the class in which it falls.



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

285 (13) PREPAID TELEPHONE CALLING CARD. A sale of a
286 prepaid telephone calling card or a prepaid authorization
287 number, or both, shall be deemed the sale of tangible personal
288 property subject to the tax imposed on the sale of tangible
289 personal property pursuant to this chapter. For purposes of
290 this subdivision, the sale of prepaid wireless service that is
291 evidenced by a physical card constitutes the sale of a prepaid
292 telephone calling card, and the sale of prepaid wireless
293 service that is not evidenced by a physical card constitutes
294 the sale of a prepaid authorization number.

295 (14) PREPAID WIRELESS SERVICE. The right to use mobile
296 telecommunications service, which must be paid for in advance
297 and that is sold in predetermined units or dollars of which
298 the number declines with use in a known amount, and which may
299 include rights to use non-telecommunications services or to
300 download digital products or digital content. For purposes of
301 this subdivision, mobile telecommunications service has the
302 meaning ascribed by Section 40-21-120.

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

306 (16) VAPOR PRODUCTS. Any non-lighted, noncombustible
307 product that employs a mechanical heating element, battery, or
308 electronic circuit regardless of shape or size and that can be



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309 used to produce vapor from nicotine in a solution. The term
310 includes any vapor cartridge or other container of nicotine in
311 a solution or other form that is intended to be used with or
312 in an electronic cigarette, electronic cigar, electronic
313 cigarillo, electronic pipe, or similar product or device. The
314 term does not include any product regulated by the United
315 States Food and Drug Administration under Chapter V of the
316 Federal Food, Drug, and Cosmetic Act.

317 (17) PRODUCER VALUE ADDED AGRICULTURAL PRODUCTS. Fruits
318 or other agricultural products that have undergone some degree
319 of further processing by the original producer of the
320 agricultural product, including, but not limited to, whole
321 cuts of meat, bound cut flowers, jams, jellies, or boiled or
322 roasted peanuts.

323 (18) COMMERCIAL FISHING. The activity of catching or
324 processing fish or other seafood regularly and exclusively as
325 a means of livelihood by a holder of a commercial license
326 issued pursuant to Chapter 12 of Title 9. The term includes
327 shellfish farmers, shrimpers, oysterers, lobsterers, and
328 crabbers.

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

332 (20) FOOD. Food as defined in 7 U.S.C § 2011, et seq.,
333 for the purposes of the federal Supplemental Nutrition
334 Assistance Program regardless of where or by what means food
335 is sold. In the event that the federal Supplemental Nutrition
336 Assistance Program definition no longer exists, the



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337 Legislature shall provide a new definition of "food" by
338 general law.

339 (b) The use within this state of tangible personal
340 property by the manufacturer thereof, as building materials in
341 the performance of a construction contract, for the purposes
342 of this division, shall be considered as a retail sale thereof
343 by the manufacturer, who shall also be construed as the
344 ultimate consumer of materials or property, and who shall be
345 required to report transaction and pay the sales tax thereon,
346 based upon the reasonable and fair market price thereof at the
347 time and place where same are used or consumed by the
348 manufacturer. Where the contractor is the manufacturer or
349 compounder of ready-mix concrete or asphalt plant mix used in
350 the performance of a contract, whether the ready-mix concrete
351 or asphalt plant mix is manufactured or compounded at the job
352 site or at a fixed or permanent plant location, the tax
353 applies only to the cost of the ingredients that become a
354 component part of the ready-mix concrete or the asphalt plant
355 mix. The provisions of this subsection shall not apply to any
356 tangible personal property that is specifically exempted from
357 the tax levied in this division.

358 (c) The sale of lumber by a lumber manufacturer to a
359 trucker for resale is a sale at wholesale as sales are defined
360 herein where the trucker is either a licensed dealer in lumber
361 or, if a resident of Alabama, has registered with the
362 Department of Revenue, and has received therefrom a
363 certificate of registration or, if a nonresident of this state
364 purchasing lumber for resale outside the State of Alabama, has



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365 furnished to the lumber manufacturer his or her name, address,
366 and the vehicle license number of the truck in which the
367 lumber is to be transported, which name, address, and vehicle
368 license number shall be shown on the sales invoice rendered by
369 the lumber manufacturer. The certificate provided for herein
370 shall be valid for the calendar year of its issuance and may
371 be renewed from year to year on application to the Department
372 of Revenue on or before January 31 of each succeeding year;
373 provided, that if not renewed the certificate shall become
374 invalid for the purpose of this division on February 1.

375 (d) The dispensing or transferring of ophthalmic
376 materials, including lenses, frames, eyeglasses, contact
377 lenses, and other therapeutic optic devices, to a patient by a
378 licensed ophthalmologist, as a part of his or her professional
379 service, for purposes of this division, shall constitute a
380 sale, subject to the state sales tax. The licensed
381 ophthalmologist or licensed optometrist shall collect the
382 state sales tax. In no event shall the providing of
383 professional services in connection with the dispensing or
384 transferring of ophthalmic materials, including dispensing
385 fees or fitting fees, by a licensed ophthalmologist or
386 licensed optometrist be considered a sale subject to the state
387 sales tax. When the ophthalmic materials are purchased by a
388 consumer covered by a third party benefit plan, including
389 Medicare, the sales tax shall be applicable to the amount that
390 the ophthalmologist, optometrist, or optician is reimbursed by
391 the third party benefit plan plus the amount that the consumer
392 pays to the ophthalmologist, optometrist, or optician at the



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393 time of the sale. All transfers of ophthalmic materials by
394 opticians or optometrists shall be considered retail sales
395 subject to the state sales tax. The term "supplier" shall
396 include but not be limited to optical laboratories, ophthalmic
397 material wholesalers, or anyone selling ophthalmic materials
398 to ophthalmologists.

399 (e) Notwithstanding the above, the withdrawal, use, or
400 consumption of a manufactured product by the manufacturer
401 thereof in quality control testing performed by employees or
402 independent contractors of the taxpayer, for purposes of this
403 division, shall not be deemed or considered to constitute a
404 transaction subject to sales tax, nor shall a gift by the
405 manufacturer of a manufactured product, withdrawn from the
406 manufacturer's inventory, to an entity listed in 26 U.S.C. §§
407 170(b) or (c), be considered a transaction subject to sales
408 tax.

409 (f) Notwithstanding the foregoing, a gift by a retailer
410 of a product or products where the aggregate retail value of
411 any single gift is equal to or less than ten thousand dollars
412 (\$10,000), withdrawn from the retailer's inventory, to an
413 entity listed in 26 U.S.C. §§ 170(b) or (c) shall not be
414 deemed or considered to constitute a transaction subject to
415 sales and use tax."

416 "§40-23-2

417 There is levied, in addition to all other taxes of
418 every kind now imposed by law, and shall be collected as
419 herein provided, a privilege or license tax against the person
420 on account of the business activities and in the amount to be



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421 determined by the application of rates against gross sales, or
422 gross receipts, as the case may be, as follows:

423 (1) Upon every person, firm, or corporation, (including
424 the State of Alabama and its Alcoholic Beverage Control Board
425 in the sale of alcoholic beverages of all kinds, the
426 University of Alabama, Auburn University, and all other
427 institutions of higher learning in the state, whether the
428 institutions be denominational, state, county, or municipal
429 institutions, any association or other agency or
430 instrumentality of the institutions) engaged or continuing
431 within this state, in the business of selling at retail any
432 tangible personal property whatsoever, including merchandise
433 and commodities of every kind and character, (not including,
434 however, bonds or other evidences of debts or stocks, nor
435 sales of material and supplies to any person for use in
436 fulfilling a contract for the painting, repair, or
437 reconditioning of vessels, barges, ships, other watercraft,
438 and commercial fishing vessels of over five tons load
439 displacement as registered with the U.S. Coast Guard and
440 licensed by the State of Alabama Department of Conservation
441 and Natural Resources) an amount equal to four percent of the
442 gross proceeds of sales of the business except where a
443 different amount is expressly provided herein. Provided,
444 however, that any person engaging or continuing in business as
445 a retailer and wholesaler or jobber shall pay the tax required
446 on the gross proceeds of retail sales of the business at the
447 rates specified, when his or her books are kept so as to show
448 separately the gross proceeds of sales of each business, and



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449 when his or her books are not kept he or she shall pay the tax
450 as a retailer, on the gross sales of the business.

451 Where any used part including tires of an automotive
452 vehicle or a truck trailer, semitrailer, or house trailer is
453 taken in trade, or in a series of trades, as a credit or part
454 payment on the sale of a new or rebuilt part or tire, the tax
455 levied herein shall be paid on the net difference, that is,
456 the price of the new or used part or tire sold less the credit
457 for the used part or tire taken in trade, provided, however,
458 this provision shall not be construed to include batteries.

459 (2) Upon every person, firm, or corporation engaged or
460 continuing within this state in the business of conducting or
461 operating places of amusement or entertainment, billiard and
462 pool rooms, bowling alleys, amusement devices, musical
463 devices, theaters, opera houses, moving picture shows,
464 vaudevilles, amusement parks, athletic contests, including
465 wrestling matches, prize fights, boxing and wrestling
466 exhibitions, football and baseball games, (including athletic
467 contests, conducted by or under the auspices of any
468 educational institution within this state, or any athletic
469 association thereof, or other association whether the
470 institution or association be a denominational, a state, or
471 county, or a municipal institution, or association or a state,
472 county, or city school, or other institution, association or
473 school) skating rinks, race tracks, golf courses, or any other
474 place at which any exhibition, display, amusement, or
475 entertainment is offered to the public or place or places
476 where an admission fee is charged, including public bathing



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477 places and public dance halls of every kind and description
478 within the State of Alabama, an amount equal to four percent
479 of the gross receipts of any such business. Provided, however,
480 notwithstanding any language to the contrary in the prior
481 portion of this subdivision, the tax provisions so specified
482 shall not apply to any athletic event conducted by a public or
483 nonpublic primary or secondary school or any athletic event
484 conducted by or under the auspices of the Alabama High School
485 Athletic Association. The tax amount which would have been
486 collected pursuant to this subdivision shall continue to be
487 collected by the public or nonpublic primary or secondary
488 school, but shall be retained by the school that collected it
489 and shall be used by the school for school purposes.

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

503 (4) Upon every person, firm, or corporation engaged or
504 continuing within this state in the business of selling at



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505 retail any automotive vehicle or truck trailer, semitrailer,
506 or house trailer, or mobile home set-up materials and supplies
507 including but not limited to steps, blocks, anchoring, cable
508 pipes, and any other materials pertaining thereto, an amount
509 equal to two percent of the gross proceeds of sale of the
510 automotive vehicle or truck trailer, semitrailer, or house
511 trailer, or mobile home set-up materials and supplies
512 provided, however, where a person subject to the tax provided
513 for in this subdivision withdraws from his or her stock in
514 trade any automotive vehicle or truck trailer, semitrailer, or
515 house trailer for use by him or her or by his or her employee
516 or agent in the operation of the business, there shall be
517 paid, in lieu of the tax levied herein, a fee of five dollars
518 (\$5) per year or part thereof during which the automotive
519 vehicle, truck trailer, semitrailer, or house trailer shall
520 remain the property of the person. Each year or part thereof
521 shall begin with the day or anniversary date, as the case may
522 be, of such withdrawal and shall run for the 12 succeeding
523 months or part thereof during which the automotive vehicle,
524 truck trailer, semitrailer, or house trailer shall remain the
525 property of the person.

526 Where any used automotive vehicle or truck trailer,
527 semitrailer, or house trailer is taken in trade or in a series
528 of trades, as a credit or part payment on the sale of a new or
529 used vehicle, the tax levied herein shall be paid on the net
530 difference, that is, the price of the new or used vehicle sold
531 less the credit for the used vehicle taken in trade.

532 Sales of automobiles, motorcycles, trucks, truck



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533 trailers, travel trailers, campers, housecars, or semitrailers
534 that will be registered or titled outside Alabama, that are
535 exported or removed from Alabama within 72 hours by the
536 purchaser or his or her agent for first use outside Alabama
537 are subject to Alabama sales tax in an amount equal to only
538 the state automotive sales tax rate, unless the sales tax laws
539 of the state in which the purchaser will title or register the
540 vehicle allows an Alabama resident to purchase a motor vehicle
541 for first titling and registering in Alabama without the
542 payment of tax to that state. However, in no case shall the
543 amount of Alabama state sales tax due on a motor vehicle that
544 will be registered or titled for use in another state exceed
545 the amount of sales tax that would otherwise have been due in
546 the state where the vehicle will be registered or titled for
547 first use. In order to qualify as a travel trailer, camper, or
548 housecar that will be registered or titled for use in another
549 state, the purchaser must provide documentation to the seller
550 that the purchaser is not a resident of Alabama as required by
551 the Department of Revenue. No such proof is required in the
552 sale of an automobile, motorcycle, truck, truck trailer, or
553 semitrailer, excluding a travel trailer, camper, or housecar.
554 The tax collected under this export provision shall be Alabama
555 sales tax and shall exclude county and municipal sales tax. On
556 January 1, 2016, and each January 1 thereafter, the Alabama
557 Department of Revenue shall publish to the state's website a
558 list of states that do not allow drive out provisions to
559 Alabama residents. Should the list, required by this
560 subsection and relied upon by the taxpayer, be incorrect, the



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561 taxpayer shall be relieved from the liability concerning the
562 miscollection of the state automotive sales tax. Sales of all
563 other vehicles such as mobile homes, motor bikes, all terrain
564 vehicles, and boats do not qualify for the export exemption
565 provision and are taxable unless the dealer can provide
566 factual evidence that the vehicle was delivered outside of
567 Alabama or to a common carrier for transportation outside
568 Alabama. In order for the sale to be exempt from Alabama tax,
569 the information relative to the exempt sale shall be
570 documented on forms approved by the Revenue Department.

571 Of the total \$.02 tax on each dollar of sale provided
572 hereunder, 58 percent of the total tax generated by this
573 subdivision (4) shall be deposited to the credit of the
574 Education Trust Fund and 42 percent of the total tax generated
575 by this subdivision (4) shall be deposited to the credit of
576 the State General Fund.

577 (5) Upon every person, firm, or corporation engaged or
578 continuing within this state in the business of selling
579 through coin-operated dispensing machines, food and food
580 products for human consumption, not including beverages other
581 than coffee, milk, milk products, and substitutes therefor,
582 there is levied a tax equal to three percent of the cost of
583 the food, food products, and beverages sold through the
584 machines, which cost for the purpose of this subdivision shall
585 be the gross proceeds of sales of the business.

586 (6) Upon every person, firm, or corporation engaged or
587 continuing within this state in the business of selling food
588 as defined in Section 40-23-1, there is a tax levied equal to



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589 four percent. Beginning September 1, 2023, the tax rate shall
590 be reduced to three and one-half percent. On November 1, 2024,
591 and on November 1 of every year thereafter until the tax rate
592 is two percent, the tax rate shall be reduced by one-half of
593 one percent. Provided, however, the rate of tax shall only be
594 reduced if the growth in total net receipts from all revenue
595 sources to the Education Trust Fund in the immediately
596 preceding fiscal year was at least two percent more than the
597 prior fiscal year."

598 "§40-23-60

599 For the purpose of this article, the following terms
600 shall have the respective meanings ascribed to them in this
601 section:

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

607 (2) DEPARTMENT. The Department of Revenue of the State
608 of Alabama.

609 (3) COMMISSIONER. The Commissioner of Revenue of the
610 State of Alabama.

611 (4) WHOLESALE SALE or SALE AT WHOLESALE. Any one of the
612 following:

613 a. A sale of tangible personal property by wholesaler
614 to licensed retail merchants, jobbers, dealers or other
615 wholesalers for resale and does not include a sale by
616 wholesalers to users or consumers, not for resale.



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

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

636 d. A sale of pallets intended for one-time use only
637 when the pallets are sold without contents to persons who sell
638 or furnish the pallets along with the contents placed thereon
639 for sale by such persons.

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

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



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645 or otherwise supplying or furnishing baby chicks to growers
646 thereof where the containers are used for the delivery of the
647 chicks or a sale of containers for use in the delivery of eggs
648 by the producer thereof to the distributor or packer of the
649 eggs even though the containers used for delivery of baby
650 chicks or eggs may be recovered for reuse.

651 g. A sale of bagging and ties used in preparing cotton
652 for market.

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

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

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

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



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673 tangible personal property of the licensed person which
674 tangible personal property is a part of the stock of goods of
675 the licensed person, offered for sale by the licensed person
676 and not for use or consumption of the licensed person.

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

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



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



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729 (6) BUSINESS. All activities engaged in, or caused to
730 be engaged in, with the object of gain, profit, benefit, or
731 advantage, either direct or indirect, and not excepting
732 subactivities producing marketable commodities used or
733 consumed in the main business activity, each of which
734 subactivities shall be considered business engaged in, taxable
735 in the class in which it falls.

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

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

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

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



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757 without any deduction therefrom on account of the cost of the
758 property sold, the cost of the materials used, labor or
759 service cost, interest charged, losses, or any other expenses
760 whatsoever; provided, that cash discounts allowed and taken on
761 sales shall not be included and sales price shall not include
762 the amount charged for property returned by customers when the
763 entire amount charged therefor is refunded either in cash or
764 by credit.

765 (11) IN THIS STATE or IN THE STATE. Within the exterior
766 limits of the State of Alabama, and includes all territory
767 within such limits owned by or ceded to the United States of
768 America.

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

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

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



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785 the number declines with use or the expiration of time in a
786 known amount, and which may include rights to use
787 non-telecommunications services or to download digital
788 products or digital content. For purposes of this subdivision,
789 mobile telecommunications service has the meaning ascribed by
790 Section 40-21-120.

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

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

802 "§40-23-61

803 (a) An excise tax is hereby imposed on the storage, use
804 or other consumption in this state of tangible personal
805 property, not including, however, materials and supplies
806 bought for use in fulfilling a contract for the painting,
807 repairing or reconditioning of vessels, barges, ships, other
808 watercraft and commercial fishing vessels of over five tons
809 load displacement as registered with the U.S. Coast Guard and
810 licensed by the State of Alabama Department of Conservation
811 and Natural Resources, purchased at retail on or after October
812 1, 1965, for storage, use or other consumption in this state



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813 at the rate of four percent of the sales price of such
814 property or the amount of tax collected by the seller,
815 whichever is greater; provided, however, when the seller
816 follows the Department of Revenue's suggested use tax brackets
817 and his records prove that his following said brackets
818 resulted in a net undercollection of tax for the month, he may
819 report the tax due or tax collected, whichever is less, except
820 as provided in subsections (b) and (c) of this section.

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

840 (c) An excise tax is hereby imposed on the storage, use



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841 or other consumption in this state of any automotive vehicle
842 or truck trailer, semitrailer or house trailer, and mobile
843 home set-up materials and supplies including but not limited
844 to steps, blocks, anchoring, cable pipes and any other
845 materials pertaining thereto, purchased at retail on or after
846 October 1, 1965, for storage, use or other consumption in this
847 state at the rate of two percent of the sales price of such
848 automotive vehicle, truck trailer, semitrailer or house
849 trailer, and mobile home set-up materials and supplies as
850 specified above, or the amount of tax collected by the seller,
851 whichever is greater; provided, however, when the seller
852 follows the Department of Revenue's suggested use tax brackets
853 and his records prove that his following said brackets
854 resulted in a net undercollection of tax for the month, he may
855 report the tax due or tax collected, whichever is less. Where
856 any used automotive vehicle or truck trailer, semitrailer or
857 house trailer is taken in trade, or in a series of trades, as
858 a credit or part payment on the sale of a new or used vehicle,
859 the tax levied herein shall be paid on the net difference,
860 that is, the price of the new or used vehicle sold less the
861 credit for the used vehicle taken in trade.

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

868 (d) An excise tax is hereby imposed on the storage, use



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869 or other consumption in this state of food as defined in
870 Section 40-23-60, at the rate of four percent of the sales
871 price of such food. Beginning September 1, 2023, the tax rate
872 shall be reduced to three and one-half percent. On November 1,
873 2024, and on November 1 of every year thereafter until the tax
874 rate is two percent, the tax rate shall be reduced by one-half
875 of one percent. Provided, however, the rate of tax shall only
876 be reduced if the growth in total net receipts from all
877 revenue sources to the Education Trust Fund in the preceding
878 fiscal year was at least two percent more than the prior
879 fiscal year.

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

894 ~~(e)~~ (f) An excise tax is hereby imposed on the classes
895 of tangible personal property, and at the rates imposed on
896 such classes, specified in subsections (a), (b) and (c) of



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

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

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

923 Section 3. This act shall become effective on September
924 1, 2023, following its passage and approval by the Governor,



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925 or its otherwise becoming law.