

## HB282 INTRODUCED



1 HB282  
2 MVDBWW1-1  
3 By Representatives Shirey, Hulsey, Robertson, Rigsby, Gidley,  
4 Holk-Jones, Fidler, Lamb, Lomax, Shaw, Wood (D), Brown,  
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SYNOPSIS:

Under current law certain items are exempt from sales and use tax. Also under current law, certain ophthalmic materials are subject to sales tax.

This bill would exempt the gross proceeds from the sale of optical aids, including eyeglasses and contact lenses, from sales and use tax.

A BILL  
TO BE ENTITLED  
AN ACT

To amend Section 40-23-1, Code of Alabama 1975, relating to sales tax; to exempt the gross proceeds from the sale of optical aids, including eyeglasses and contact lenses, from sales and use tax.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 40-23-1, Code of Alabama 1975, is amended to read as follows:

"§40-23-1

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

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



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29 receiver, trustee, or any other group or combination acting as  
30 a unit and the plural as well as the singular number, unless  
31 the intention to give a more limited meaning is disclosed by  
32 the context.

33 (2) DEPARTMENT. The Department of Revenue of the State  
34 of Alabama.

35 (3) COMMISSIONER. The Commissioner of Revenue of the  
36 State of Alabama.

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

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

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



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57 on consignment by the taxpayer, including merchandise of any  
58 kind and character without any deduction on account of the  
59 cost of the property sold, the cost of the materials used,  
60 labor or service cost, interest paid, any consumer excise  
61 taxes that may be included within the sales price of the  
62 property sold, or any other expenses whatsoever, and without  
63 any deductions on account of losses; provided, that cash  
64 discounts allowed and taken on sales shall not be included,  
65 and "gross proceeds of sales" shall not include the sale price  
66 of property returned by customers when the full sales price  
67 thereof is refunded either in cash or by credit. The term  
68 "gross proceeds of sale" shall also mean and include the  
69 reasonable and fair market value of any tangible personal  
70 property previously purchased at wholesale which is withdrawn  
71 or used from the business or stock and used or consumed in  
72 connection with a business, and shall also mean and include  
73 the reasonable and fair market value of any tangible personal  
74 property previously purchased at wholesale which is withdrawn  
75 from the business or stock and used or consumed by any person  
76 so withdrawing the same, except property that has been  
77 previously withdrawn from business or stock and so used or  
78 consumed with respect to which property the tax has been paid  
79 because of previous withdrawal, use, or consumption, except  
80 property that enters into and becomes an ingredient or  
81 component part of tangible personal property or products  
82 manufactured or compounded for sale and not for the personal  
83 and private use or consumption of any person so withdrawing,  
84 using, or consuming the same, and except refinery, residue, or



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85 fuel gas, whether in a liquid or gaseous state, that has been  
86 generated by, or is otherwise a by-product of, a  
87 petroleum-refining process, which gas is then utilized in the  
88 process to generate heat or is otherwise utilized in the  
89 distillation or refining of petroleum products.

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

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

102 (8) GROSS RECEIPTS. The value proceeding or accruing  
103 from the sale of tangible personal property, including  
104 merchandise and commodities of any kind and character, all  
105 receipts actual and accrued, by reason of any business engaged  
106 in, not including, however, interest, discounts, rentals of  
107 real estate, or royalties, and without any deduction on  
108 account of the cost of the property sold, the cost of the  
109 materials used, labor or service cost, interest paid, any  
110 consumer excise taxes that may be included in the sales price  
111 of the property sold, or any other expenses whatsoever and  
112 without any deductions on account of losses. The term "gross



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

135 (9) WHOLESALE SALE or SALE AT WHOLESALE. Any one of the  
136 following:

137 a. A sale of tangible personal property by wholesalers  
138 to licensed retail merchants, jobbers, dealers, or other  
139 wholesalers for resale and does not include a sale by  
140 wholesalers to users or consumers, not for resale.



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

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

160           d. A sale of pallets intended for one-time use only  
161 when pallets are sold without contents to persons who sell or  
162 furnish pallets along with the contents placed thereon for  
163 sale by persons.

164           e. A sale to a manufacturer or compounder, of crowns,  
165 caps, and tops intended for one-time use employed and used  
166 upon the containers in which a manufacturer or compounder  
167 markets his products.

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



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169 or otherwise supplying or furnishing baby chicks to growers  
170 thereof where containers are used for the delivery of chicks  
171 or a sale of containers for use in the delivery of eggs by the  
172 producer thereof to the distributor or packer of eggs even  
173 though containers used for delivery of baby chicks or eggs may  
174 be recovered for reuse.

175 g. A sale of bagging and ties used in preparing cotton  
176 for market.

177 h. A sale to meat packers, manufacturers, compounders,  
178 or processors of meat products of all casings used in molding  
179 or forming wieners and Vienna sausages even though casings may  
180 be recovered for reuse.

181 i. A sale of commercial fish feed including  
182 concentrates, supplements, and other feed ingredients when  
183 substances are used as ingredients in mixing and preparing  
184 feed for fish raised to be sold on a commercial basis.

185 j. A sale of bait used to capture or attempt to capture  
186 fish or other seafood in the process of commercial fishing by  
187 a holder of a commercial license issued pursuant to Chapter 12  
188 of Title 9.

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





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197           1. A purchase or withdrawal of parts or materials from  
198 stock by any person licensed under this division where parts  
199 or materials are used in repairing or reconditioning the  
200 tangible personal property of a licensed person, which  
201 tangible personal property is a part of the stock of goods of  
202 a licensed person, offered for sale by him or her, and not for  
203 use or consumption of a licensed person.

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



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

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



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

257 (13) PREPAID TELEPHONE CALLING CARD. A sale of a  
258 prepaid telephone calling card or a prepaid authorization  
259 number, or both, shall be deemed the sale of tangible personal  
260 property subject to the tax imposed on the sale of tangible  
261 personal property pursuant to this chapter. For purposes of  
262 this subdivision, the sale of prepaid wireless service that is  
263 evidenced by a physical card constitutes the sale of a prepaid  
264 telephone calling card, and the sale of prepaid wireless  
265 service that is not evidenced by a physical card constitutes  
266 the sale of a prepaid authorization number.

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

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

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



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281 used to produce vapor from nicotine in a solution. The term  
282 includes any vapor cartridge or other container of nicotine in  
283 a solution or other form that is intended to be used with or  
284 in an electronic cigarette, electronic cigar, electronic  
285 cigarillo, electronic pipe, or similar product or device. The  
286 term does not include any product regulated by the United  
287 States Food and Drug Administration under Chapter V of the  
288 Federal Food, Drug, and Cosmetic Act.

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

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

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

304 (20) FOOD. Food as defined in 7 U.S.C. § 2012, for the  
305 purposes of the federal Supplemental Nutrition Assistance  
306 Program regardless of where or by what means food is sold. In  
307 the event that the federal Supplemental Nutrition Assistance  
308 Program definition no longer exists, the Legislature shall



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309 provide a new definition of "food" by general law.

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

329 (c) The sale of lumber by a lumber manufacturer to a  
330 trucker for resale is a sale at wholesale as sales are defined  
331 herein where the trucker is either a licensed dealer in lumber  
332 or, if a resident of Alabama, has registered with the  
333 Department of Revenue, and has received therefrom a  
334 certificate of registration or, if a nonresident of this state  
335 purchasing lumber for resale outside the State of Alabama, has  
336 furnished to the lumber manufacturer his or her name, address,



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337 and the vehicle license number of the truck in which the  
338 lumber is to be transported, which name, address, and vehicle  
339 license number shall be shown on the sales invoice rendered by  
340 the lumber manufacturer. The certificate provided for herein  
341 shall be valid for the calendar year of its issuance and may  
342 be renewed from year to year on application to the Department  
343 of Revenue on or before January 31 of each succeeding year;  
344 provided, that if not renewed the certificate shall become  
345 invalid for the purpose of this division on February 1.

346 ~~(d) The dispensing or transferring of ophthalmic~~  
347 ~~materials, including lenses, frames, eyeglasses, contact~~  
348 ~~lenses, and other therapeutic optic devices, to a patient by a~~  
349 ~~licensed ophthalmologist, as a part of his or her professional~~  
350 ~~service, for purposes of this division, shall constitute a~~  
351 ~~sale, subject to the state sales tax. The licensed~~  
352 ~~ophthalmologist or licensed optometrist shall collect the~~  
353 ~~state sales tax. In no event shall the providing of~~  
354 ~~professional services in connection with the dispensing or~~  
355 ~~transferring of ophthalmic materials, including dispensing~~  
356 ~~fees or fitting fees, by a licensed ophthalmologist or~~  
357 ~~licensed optometrist be considered a sale subject to the state~~  
358 ~~sales tax. When the ophthalmic materials are purchased by a~~  
359 ~~consumer covered by a third party benefit plan, including~~  
360 ~~Medicare, the sales tax shall be applicable to the amount that~~  
361 ~~the ophthalmologist, optometrist, or optician is reimbursed by~~  
362 ~~the third party benefit plan plus the amount that the consumer~~  
363 ~~pays to the ophthalmologist, optometrist, or optician at the~~  
364 ~~time of the sale. All transfers of ophthalmic materials by~~



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365 ~~opticians or optometrists shall be considered retail sales~~  
366 ~~subject to the state sales tax. The term "supplier" shall~~  
367 ~~include but not be limited to optical laboratories, ophthalmic~~  
368 ~~material wholesalers, or anyone selling ophthalmic materials~~  
369 ~~to ophthalmologists.~~

370 (d) ~~(e)~~ Notwithstanding the above, the withdrawal, use,  
371 or consumption of a manufactured product by the manufacturer  
372 thereof in quality control testing performed by employees or  
373 independent contractors of the taxpayer, for purposes of this  
374 division, shall not be deemed or considered to constitute a  
375 transaction subject to sales tax, nor shall a gift by the  
376 manufacturer of a manufactured product, withdrawn from the  
377 manufacturer's inventory, to an entity listed in 26 U.S.C. §§  
378 170(b) or (c), be considered a transaction subject to sales  
379 tax.

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

387 Section 2. (a) For the purposes of this section, the  
388 following words or terms have the following meanings:

389 (1) EYEGLASSES. Term includes lenses and frames into  
390 which lenses have been installed if the lenses have been  
391 prescribed by a physician or optometrist licensed by any  
392 state, country, or province.



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393 (2) OPTICAL AID. Eyeglasses, contact lenses, or other  
394 instruments or devices that may aid or correct human vision  
395 and that have been prescribed by a physician or optometrist  
396 licensed by any state, country, or province.

397 (b) (1) The gross proceeds of the sale, or sales, of  
398 optical aids are exempted from state sales and use tax.

399 (2) The exemption provided in this subsection shall not  
400 apply to county or municipal sales or use taxes unless  
401 approved by resolution or ordinance adopted by the local  
402 governing body.

403 Section 3. This act shall become effective on September  
404 1, 2024.