

HB386 ENGROSSED



1 HB386

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3 By Representatives Garrett, Stadthagen, Colvin, Brinyark,
4 Kirkland, Marques, Sorrells, Rehm, Whorton, Paschal, Smith,
5 Shaw, Butler, Estes, Moore (P), Robertson, Lipscomb, Wilcox,
6 Harrison, Hammett, Pettus, Easterbrook, Stubbs, Starnes,
7 Standridge, Carns, Holk-Jones, Givens, Underwood, Ross,
8 Mooney, Ingram, Baker, Treadaway, Sells, Rigsby, Yarbrough,
9 Woods, DuBose, Lovvorn, Lamb, Gidley, Shirey, Fidler, Hulsey,
10 Lomax, Mr.Speaker, Hurst, Kiel

11 RFD: Ways and Means Education

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A BILL
TO BE ENTITLED
AN ACT

Relating to sales taxes; to amend Sections 40-23-2 and 40-23-61, Code of Alabama 1975, to reduce the state sales and use tax rate on food to two percent on September 1, 2025.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-23-2 and 40-23-61, Code of Alabama 1975, are hereby amended as follows:

"§40-23-2

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

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



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29 instrumentality of the institutions) engaged or continuing
30 within this state, in the business of selling at retail any
31 tangible personal property whatsoever, including merchandise
32 and commodities of every kind and character, (not including,
33 however, bonds or other evidences of debts or stocks, nor
34 sales of material and supplies to any person for use in
35 fulfilling a contract for the painting, repair, or
36 reconditioning of vessels, barges, ships, other watercraft,
37 and commercial fishing vessels of over five tons load
38 displacement as registered with the U.S. Coast Guard and
39 licensed by the State of Alabama Department of Conservation
40 and Natural Resources) an amount equal to four percent of the
41 gross proceeds of sales of the business except where a
42 different amount is expressly provided herein. Provided,
43 however, that any person engaging or continuing in business as
44 a retailer and wholesaler or jobber shall pay the tax required
45 on the gross proceeds of retail sales of the business at the
46 rates specified, when his or her books are kept so as to show
47 separately the gross proceeds of sales of each business, and
48 when his or her books are not kept he or she shall pay the tax
49 as a retailer, on the gross sales of the business.

50 Where any used part including tires of an automotive
51 vehicle or a truck trailer, semitrailer, or house trailer is
52 taken in trade, or in a series of trades, as a credit or part
53 payment on the sale of a new or rebuilt part or tire, the tax
54 levied herein shall be paid on the net difference, that is,
55 the price of the new or used part or tire sold less the credit
56 for the used part or tire taken in trade, provided, however,



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57 this provision shall not be construed to include batteries.

58 (2) Upon every person, firm, or corporation engaged or
59 continuing within this state in the business of conducting or
60 operating places of amusement or entertainment, billiard and
61 pool rooms, bowling alleys, amusement devices, musical
62 devices, theaters, opera houses, moving picture shows,
63 vaudevilles, amusement parks, athletic contests, including
64 wrestling matches, prize fights, boxing and wrestling
65 exhibitions, football and baseball games, (including athletic
66 contests, conducted by or under the auspices of any
67 educational institution within this state, or any athletic
68 association thereof, or other association whether the
69 institution or association be a denominational, a state, or
70 county, or a municipal institution, or association or a state,
71 county, or city school, or other institution, association or
72 school) skating rinks, race tracks, golf courses, or any other
73 place at which any exhibition, display, amusement, or
74 entertainment is offered to the public or place or places
75 where an admission fee is charged, including public bathing
76 places and public dance halls of every kind and description
77 within the State of Alabama, an amount equal to four percent
78 of the gross receipts of any such business. Provided, however,
79 notwithstanding any language to the contrary in the prior
80 portion of this subdivision, the tax provisions so specified
81 shall not apply to any athletic event conducted by a public or
82 nonpublic primary or secondary school or any athletic event
83 conducted by or under the auspices of the Alabama High School
84 Athletic Association. The tax amount which would have been



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85 collected pursuant to this subdivision shall continue to be
86 collected by the public or nonpublic primary or secondary
87 school, but shall be retained by the school that collected it
88 and shall be used by the school for school purposes.

89 (3) Upon every person, firm, or corporation engaged or
90 continuing within this state in the business of selling at
91 retail machines used in mining, quarrying, compounding,
92 processing, and manufacturing of tangible personal property an
93 amount equal to one and one-half percent of the gross proceeds
94 of the sale of the machines. The term "machine," as herein
95 used, shall include machinery which is used for mining,
96 quarrying, compounding, processing, or manufacturing tangible
97 personal property, and the parts of the machines, attachments,
98 and replacements therefor, which are made or manufactured for
99 use on or in the operation of the machines and which are
100 necessary to the operation of the machines and are customarily
101 so used.

102 (4) Upon every person, firm, or corporation engaged or
103 continuing within this state in the business of selling at
104 retail any automotive vehicle or truck trailer, semitrailer,
105 or house trailer, or mobile home set-up materials and supplies
106 including but not limited to steps, blocks, anchoring, cable
107 pipes, and any other materials pertaining thereto, an amount
108 equal to two percent of the gross proceeds of sale of the
109 automotive vehicle or truck trailer, semitrailer, or house
110 trailer, or mobile home set-up materials and supplies
111 provided, however, where a person subject to the tax provided
112 for in this subdivision withdraws from his or her stock in



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113 trade any automotive vehicle or truck trailer, semitrailer, or
114 house trailer for use by him or her or by his or her employee
115 or agent in the operation of the business, there shall be
116 paid, in lieu of the tax levied herein, a fee of five dollars
117 (\$5) per year or part thereof during which the automotive
118 vehicle, truck trailer, semitrailer, or house trailer shall
119 remain the property of the person. Each year or part thereof
120 shall begin with the day or anniversary date, as the case may
121 be, of such withdrawal and shall run for the 12 succeeding
122 months or part thereof during which the automotive vehicle,
123 truck trailer, semitrailer, or house trailer shall remain the
124 property of the person.

125 Where any used automotive vehicle or truck trailer,
126 semitrailer, or house trailer is taken in trade or in a series
127 of trades, as a credit or part payment on the sale of a new or
128 used vehicle, the tax levied herein shall be paid on the net
129 difference, that is, the price of the new or used vehicle sold
130 less the credit for the used vehicle taken in trade.

131 Sales of automobiles, motorcycles, trucks, truck
132 trailers, travel trailers, campers, housecars, or semitrailers
133 that will be registered or titled outside Alabama, that are
134 exported or removed from Alabama within 72 hours by the
135 purchaser or his or her agent for first use outside Alabama
136 are subject to Alabama sales tax in an amount equal to only
137 the state automotive sales tax rate, unless the sales tax laws
138 of the state in which the purchaser will title or register the
139 vehicle allows an Alabama resident to purchase a motor vehicle
140 for first titling and registering in Alabama without the



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141 payment of tax to that state. However, in no case shall the
142 amount of Alabama state sales tax due on a motor vehicle that
143 will be registered or titled for use in another state exceed
144 the amount of sales tax that would otherwise have been due in
145 the state where the vehicle will be registered or titled for
146 first use. In order to qualify as a travel trailer, camper, or
147 housecar that will be registered or titled for use in another
148 state, the purchaser must provide documentation to the seller
149 that the purchaser is not a resident of Alabama as required by
150 the Department of Revenue. No such proof is required in the
151 sale of an automobile, motorcycle, truck, truck trailer, or
152 semitrailer, excluding a travel trailer, camper, or housecar.
153 The tax collected under this export provision shall be Alabama
154 sales tax and shall exclude county and municipal sales tax. On
155 January 1, 2016, and each January 1 thereafter, the Alabama
156 Department of Revenue shall publish to the state's website a
157 list of states that do not allow drive out provisions to
158 Alabama residents. Should the list, required by this
159 subsection and relied upon by the taxpayer, be incorrect, the
160 taxpayer shall be relieved from the liability concerning the
161 miscollection of the state automotive sales tax. Sales of all
162 other vehicles such as mobile homes, motor bikes, all terrain
163 vehicles, and boats do not qualify for the export exemption
164 provision and are taxable unless the dealer can provide
165 factual evidence that the vehicle was delivered outside of
166 Alabama or to a common carrier for transportation outside
167 Alabama. In order for the sale to be exempt from Alabama tax,
168 the information relative to the exempt sale shall be



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169 documented on forms approved by the Revenue Department.

170 Of the total \$.02 tax on each dollar of sale provided
171 hereunder, 58 percent of the total tax generated by this
172 subdivision (4) shall be deposited to the credit of the
173 Education Trust Fund and 42 percent of the total tax generated
174 by this subdivision (4) shall be deposited to the credit of
175 the State General Fund.

176 (5) Upon every person, firm, or corporation engaged or
177 continuing within this state in the business of selling
178 through coin-operated dispensing machines, food and food
179 products for human consumption, not including beverages other
180 than coffee, milk, milk products, and substitutes therefor,
181 there is levied a tax equal to three percent of the cost of
182 the food, food products, and beverages sold through the
183 machines, which cost for the purpose of this subdivision shall
184 be the gross proceeds of sales of the business.

185 (6) Upon every person, firm, or corporation engaged or
186 continuing within this state in the business of selling food
187 as defined in Section 40-23-1, there is a tax levied equal to
188 ~~four percent of the gross proceeds of the sale of food. On~~
189 ~~September 1, 2023, the tax rate shall be reduced to three~~
190 ~~percent of the gross proceeds of the sale of food. On~~
191 ~~September 1, 2024~~2025, the tax rate shall be reduced to two
192 percent, ~~if the average of the estimated growth in the total~~
193 ~~net receipts from all revenue sources to the Education Trust~~
194 ~~Fund for the fiscal year ending September 30, 2025, as~~
195 ~~certified by the Director of Finance and the Legislative~~
196 ~~Fiscal Officer, respectively, pursuant to Section 260.02 of~~



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197 ~~the Constitution of Alabama of 2022, is at least three and~~
198 ~~one-half percent higher than the previous fiscal year. If the~~
199 ~~growth requirement is not satisfied for the fiscal year ending~~
200 ~~September 30, 2025, the rate shall be reduced to two percent~~
201 ~~in a subsequent fiscal year when the growth requirement is~~
202 ~~satisfied."~~

203 "§40-23-61

204 (a) An excise tax is hereby imposed on the storage,
205 use, or other consumption in this state of tangible personal
206 property, not including, however, materials and supplies
207 bought for use in fulfilling a contract for the painting,
208 repairing or reconditioning of vessels, barges, ships, other
209 watercraft and commercial fishing vessels of over five tons
210 load displacement as registered with the U.S. Coast Guard and
211 licensed by the State of Alabama Department of Conservation
212 and Natural Resources, purchased at retail on or after October
213 1, 1965, for storage, use or other consumption in this state
214 at the rate of four percent of the sales price of the property
215 or the amount of tax collected by the seller, whichever is
216 greater; provided, however, when the seller follows the
217 Department of Revenue's suggested use tax brackets and his or
218 her records prove that his or her following the brackets
219 resulted in a net undercollection of tax for the month, he or
220 she may report the tax due or tax collected, whichever is
221 less, except as provided in subsections (b), (c), and (d).

222 (b) An excise tax is hereby imposed on the storage,
223 use, or other consumption in this state of any machines used
224 in mining, quarrying, compounding, processing, and



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225 manufacturing of tangible personal property, purchased at
226 retail on or after October 1, 1965, at the rate of one and
227 one-half percent of the sales price of any such machine or the
228 amount of tax collected by the seller, whichever is greater;
229 provided, however, when the seller follows the Department of
230 Revenue's suggested use tax brackets and his or her records
231 prove that his or her following the brackets resulted in a net
232 undercollection of tax for the month, he or she may report the
233 tax due or tax collected, whichever is less; provided, that
234 the term "machine," as used in this subsection, shall include
235 machinery that is used for mining, quarrying, compounding,
236 processing, or manufacturing tangible personal property, and
237 the parts of such machines, attachments, and replacements
238 therefor, which are made or manufactured for use on or in the
239 operation of such machines and which are necessary to the
240 operation of such machines and are customarily so used.

241 (c) (1) An excise tax is hereby imposed on the storage,
242 use or other consumption in this state of any automotive
243 vehicle or truck trailer, semitrailer or house trailer, and
244 mobile home set-up materials and supplies including but not
245 limited to steps, blocks, anchoring, cable pipes and any other
246 materials pertaining thereto, purchased at retail on or after
247 October 1, 1965, for storage, use, or other consumption in
248 this state at the rate of two percent of the sales price of
249 such automotive vehicle, truck trailer, semitrailer or house
250 trailer, and mobile home set-up materials and supplies as
251 specified above, or the amount of tax collected by the seller,
252 whichever is greater; provided, however, when the seller



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253 follows the Department of Revenue's suggested use tax brackets
254 and his or her records prove that his or her following the
255 brackets resulted in a net undercollection of tax for the
256 month, he or she may report the tax due or tax collected,
257 whichever is less. Where any used automotive vehicle or truck
258 trailer, semitrailer, or house trailer is taken in trade, or
259 in a series of trades, as a credit or part payment on the sale
260 of a new or used vehicle, the tax levied herein shall be paid
261 on the net difference, that is, the price of the new or used
262 vehicle sold less the credit for the used vehicle taken in
263 trade.

264 (2) Of the total \$.02 tax on each dollar of sale
265 provided in this subsection, 58 percent of the total tax
266 generated by this subsection shall be deposited to the credit
267 of the Education Trust Fund; and 42 percent of the total tax
268 generated by this subsection shall be deposited to the credit
269 of the State General Fund.

270 (d) An excise tax is hereby imposed on the storage,
271 use, or other consumption in this state of food as defined in
272 Section 40-23-60, at the rate of ~~four percent of the sales~~
273 ~~price of such food. On September 1, 2023, the tax rate shall~~
274 ~~be reduced to three percent~~ of the sales price of such food.
275 On September 1, ~~2024~~2025, the tax rate shall be reduced to two
276 percent, ~~if the average of the estimated growth in the total~~
277 ~~net receipts from all revenue sources to the Education Trust~~
278 ~~Fund for the fiscal year ending September 30, 2025, as~~
279 ~~certified by the Director of Finance and the Legislative~~
280 ~~Fiscal Officer, respectively, pursuant to Section 260.02 of~~



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281 ~~the Constitution of Alabama of 2022, is at least three and~~
282 ~~one-half percent higher than the previous fiscal year. If the~~
283 ~~growth requirement is not satisfied for the fiscal year ending~~
284 ~~September 30, 2025, the rate shall be reduced to two percent~~
285 ~~in a subsequent fiscal year when the growth requirement is~~
286 ~~satisfied.~~

287 (e) Every person storing, using or otherwise consuming
288 in this state tangible personal property purchased at retail
289 shall be liable for the tax imposed by this article, and the
290 liability shall not be extinguished until the tax has been
291 paid to this state; provided, that a receipt from a retailer
292 maintaining a place of business in this state or a retailer
293 authorized by the department, under such rules as it may
294 prescribe, to collect the tax imposed hereby and who shall for
295 the purpose of this article be regarded as a retailer
296 maintaining a place of business in this state, given to the
297 purchaser in accordance with Section 40-23-67, shall be
298 sufficient to relieve the purchaser from further liability for
299 tax to which the receipt may refer.

300 (f) An excise tax is hereby imposed on the classes of
301 tangible personal property, and at the rates imposed on such
302 classes, specified in subsections (a), (b), (c), and (d) on
303 the storage, use, or other consumption in the performance of a
304 contract in this state of any such tangible personal property,
305 new or used, the tax to be measured by the sales price or the
306 fair and reasonable market value of the tangible personal
307 property when put into use in this state, whichever is less;
308 provided, that the tax imposed by this subsection shall not

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309 apply where the taxes imposed by subsection (a), (b), (c), or
310 (d) of this section apply."

311 Section 2. This act shall become effective on June 1,
312 2025.

