

HB386 INTRODUCED



1 HB386

2 L7HRAYA-1

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11 RFD: Ways and Means Education

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SYNOPSIS:

Under existing law, the state imposes sales or use taxes upon certain persons, firms, or corporations at a general rate of four percent. Sales of certain items are taxed at a reduced rate, including food, which is taxed at three percent.

This bill would reduce the sales and use tax rate on food to two percent, on September 1, 2025.

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



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

31 (1) Upon every person, firm, or corporation, (including
32 the State of Alabama and its Alcoholic Beverage Control Board
33 in the sale of alcoholic beverages of all kinds, the
34 University of Alabama, Auburn University, and all other
35 institutions of higher learning in the state, whether the
36 institutions be denominational, state, county, or municipal
37 institutions, any association or other agency or
38 instrumentality of the institutions) engaged or continuing
39 within this state, in the business of selling at retail any
40 tangible personal property whatsoever, including merchandise
41 and commodities of every kind and character, (not including,
42 however, bonds or other evidences of debts or stocks, nor
43 sales of material and supplies to any person for use in
44 fulfilling a contract for the painting, repair, or
45 reconditioning of vessels, barges, ships, other watercraft,
46 and commercial fishing vessels of over five tons load
47 displacement as registered with the U.S. Coast Guard and
48 licensed by the State of Alabama Department of Conservation
49 and Natural Resources) an amount equal to four percent of the
50 gross proceeds of sales of the business except where a
51 different amount is expressly provided herein. Provided,
52 however, that any person engaging or continuing in business as
53 a retailer and wholesaler or jobber shall pay the tax required
54 on the gross proceeds of retail sales of the business at the
55 rates specified, when his or her books are kept so as to show
56 separately the gross proceeds of sales of each business, and



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

59 Where any used part including tires of an automotive
60 vehicle or a truck trailer, semitrailer, or house trailer is
61 taken in trade, or in a series of trades, as a credit or part
62 payment on the sale of a new or rebuilt part or tire, the tax
63 levied herein shall be paid on the net difference, that is,
64 the price of the new or used part or tire sold less the credit
65 for the used part or tire taken in trade, provided, however,
66 this provision shall not be construed to include batteries.

67 (2) Upon every person, firm, or corporation engaged or
68 continuing within this state in the business of conducting or
69 operating places of amusement or entertainment, billiard and
70 pool rooms, bowling alleys, amusement devices, musical
71 devices, theaters, opera houses, moving picture shows,
72 vaudevilles, amusement parks, athletic contests, including
73 wrestling matches, prize fights, boxing and wrestling
74 exhibitions, football and baseball games, (including athletic
75 contests, conducted by or under the auspices of any
76 educational institution within this state, or any athletic
77 association thereof, or other association whether the
78 institution or association be a denominational, a state, or
79 county, or a municipal institution, or association or a state,
80 county, or city school, or other institution, association or
81 school) skating rinks, race tracks, golf courses, or any other
82 place at which any exhibition, display, amusement, or
83 entertainment is offered to the public or place or places
84 where an admission fee is charged, including public bathing



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85 places and public dance halls of every kind and description
86 within the State of Alabama, an amount equal to four percent
87 of the gross receipts of any such business. Provided, however,
88 notwithstanding any language to the contrary in the prior
89 portion of this subdivision, the tax provisions so specified
90 shall not apply to any athletic event conducted by a public or
91 nonpublic primary or secondary school or any athletic event
92 conducted by or under the auspices of the Alabama High School
93 Athletic Association. The tax amount which would have been
94 collected pursuant to this subdivision shall continue to be
95 collected by the public or nonpublic primary or secondary
96 school, but shall be retained by the school that collected it
97 and shall be used by the school for school purposes.

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

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



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113 retail any automotive vehicle or truck trailer, semitrailer,
114 or house trailer, or mobile home set-up materials and supplies
115 including but not limited to steps, blocks, anchoring, cable
116 pipes, and any other materials pertaining thereto, an amount
117 equal to two percent of the gross proceeds of sale of the
118 automotive vehicle or truck trailer, semitrailer, or house
119 trailer, or mobile home set-up materials and supplies
120 provided, however, where a person subject to the tax provided
121 for in this subdivision withdraws from his or her stock in
122 trade any automotive vehicle or truck trailer, semitrailer, or
123 house trailer for use by him or her or by his or her employee
124 or agent in the operation of the business, there shall be
125 paid, in lieu of the tax levied herein, a fee of five dollars
126 (\$5) per year or part thereof during which the automotive
127 vehicle, truck trailer, semitrailer, or house trailer shall
128 remain the property of the person. Each year or part thereof
129 shall begin with the day or anniversary date, as the case may
130 be, of such withdrawal and shall run for the 12 succeeding
131 months or part thereof during which the automotive vehicle,
132 truck trailer, semitrailer, or house trailer shall remain the
133 property of the person.

134 Where any used automotive vehicle or truck trailer,
135 semitrailer, or house trailer is taken in trade or in a series
136 of trades, as a credit or part payment on the sale of a new or
137 used vehicle, the tax levied herein shall be paid on the net
138 difference, that is, the price of the new or used vehicle sold
139 less the credit for the used vehicle taken in trade.

140 Sales of automobiles, motorcycles, trucks, truck



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141 trailers, travel trailers, campers, housecars, or semitrailers
142 that will be registered or titled outside Alabama, that are
143 exported or removed from Alabama within 72 hours by the
144 purchaser or his or her agent for first use outside Alabama
145 are subject to Alabama sales tax in an amount equal to only
146 the state automotive sales tax rate, unless the sales tax laws
147 of the state in which the purchaser will title or register the
148 vehicle allows an Alabama resident to purchase a motor vehicle
149 for first titling and registering in Alabama without the
150 payment of tax to that state. However, in no case shall the
151 amount of Alabama state sales tax due on a motor vehicle that
152 will be registered or titled for use in another state exceed
153 the amount of sales tax that would otherwise have been due in
154 the state where the vehicle will be registered or titled for
155 first use. In order to qualify as a travel trailer, camper, or
156 housecar that will be registered or titled for use in another
157 state, the purchaser must provide documentation to the seller
158 that the purchaser is not a resident of Alabama as required by
159 the Department of Revenue. No such proof is required in the
160 sale of an automobile, motorcycle, truck, truck trailer, or
161 semitrailer, excluding a travel trailer, camper, or housecar.
162 The tax collected under this export provision shall be Alabama
163 sales tax and shall exclude county and municipal sales tax. On
164 January 1, 2016, and each January 1 thereafter, the Alabama
165 Department of Revenue shall publish to the state's website a
166 list of states that do not allow drive out provisions to
167 Alabama residents. Should the list, required by this
168 subsection and relied upon by the taxpayer, be incorrect, the



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169 taxpayer shall be relieved from the liability concerning the
170 miscollection of the state automotive sales tax. Sales of all
171 other vehicles such as mobile homes, motor bikes, all terrain
172 vehicles, and boats do not qualify for the export exemption
173 provision and are taxable unless the dealer can provide
174 factual evidence that the vehicle was delivered outside of
175 Alabama or to a common carrier for transportation outside
176 Alabama. In order for the sale to be exempt from Alabama tax,
177 the information relative to the exempt sale shall be
178 documented on forms approved by the Revenue Department.

179 Of the total \$.02 tax on each dollar of sale provided
180 hereunder, 58 percent of the total tax generated by this
181 subdivision (4) shall be deposited to the credit of the
182 Education Trust Fund and 42 percent of the total tax generated
183 by this subdivision (4) shall be deposited to the credit of
184 the State General Fund.

185 (5) Upon every person, firm, or corporation engaged or
186 continuing within this state in the business of selling
187 through coin-operated dispensing machines, food and food
188 products for human consumption, not including beverages other
189 than coffee, milk, milk products, and substitutes therefor,
190 there is levied a tax equal to three percent of the cost of
191 the food, food products, and beverages sold through the
192 machines, which cost for the purpose of this subdivision shall
193 be the gross proceeds of sales of the business.

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



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197 ~~four percent of the gross proceeds of the sale of food. On~~
198 ~~September 1, 2023, the tax rate shall be reduced to~~ three
199 percent. On September 1, ~~2024~~2025, the tax rate shall be
200 reduced to two percent, ~~if the average of the estimated growth~~
201 ~~in the total net receipts from all revenue sources to the~~
202 ~~Education Trust Fund for the fiscal year ending September 30,~~
203 ~~2025, as certified by the Director of Finance and the~~
204 ~~Legislative Fiscal Officer, respectively, pursuant to Section~~
205 ~~260.02 of the Constitution of Alabama of 2022, is at least~~
206 ~~three and one-half percent higher than the previous fiscal~~
207 ~~year. If the growth requirement is not satisfied for the~~
208 ~~fiscal year ending September 30, 2025, the rate shall be~~
209 ~~reduced to two percent in a subsequent fiscal year when the~~
210 ~~growth requirement is satisfied."~~

211 "§40-23-61

212 (a) An excise tax is hereby imposed on the storage,
213 use, or other consumption in this state of tangible personal
214 property, not including, however, materials and supplies
215 bought for use in fulfilling a contract for the painting,
216 repairing or reconditioning of vessels, barges, ships, other
217 watercraft and commercial fishing vessels of over five tons
218 load displacement as registered with the U.S. Coast Guard and
219 licensed by the State of Alabama Department of Conservation
220 and Natural Resources, purchased at retail on or after October
221 1, 1965, for storage, use or other consumption in this state
222 at the rate of four percent of the sales price of the property
223 or the amount of tax collected by the seller, whichever is
224 greater; provided, however, when the seller follows the



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225 Department of Revenue's suggested use tax brackets and his or
226 her records prove that his or her following the brackets
227 resulted in a net undercollection of tax for the month, he or
228 she may report the tax due or tax collected, whichever is
229 less, except as provided in subsections (b), (c), and (d).

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

249 (c) (1) An excise tax is hereby imposed on the storage,
250 use or other consumption in this state of any automotive
251 vehicle or truck trailer, semitrailer or house trailer, and
252 mobile home set-up materials and supplies including but not



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253 limited to steps, blocks, anchoring, cable pipes and any other
254 materials pertaining thereto, purchased at retail on or after
255 October 1, 1965, for storage, use, or other consumption in
256 this state at the rate of two percent of the sales price of
257 such automotive vehicle, truck trailer, semitrailer or house
258 trailer, and mobile home set-up materials and supplies as
259 specified above, or the amount of tax collected by the seller,
260 whichever is greater; provided, however, when the seller
261 follows the Department of Revenue's suggested use tax brackets
262 and his or her records prove that his or her following the
263 brackets resulted in a net undercollection of tax for the
264 month, he or she may report the tax due or tax collected,
265 whichever is less. Where any used automotive vehicle or truck
266 trailer, semitrailer, or house trailer is taken in trade, or
267 in a series of trades, as a credit or part payment on the sale
268 of a new or used vehicle, the tax levied herein shall be paid
269 on the net difference, that is, the price of the new or used
270 vehicle sold less the credit for the used vehicle taken in
271 trade.

272 (2) Of the total \$.02 tax on each dollar of sale
273 provided in this subsection, 58 percent of the total tax
274 generated by this subsection shall be deposited to the credit
275 of the Education Trust Fund; and 42 percent of the total tax
276 generated by this subsection shall be deposited to the credit
277 of the State General Fund.

278 (d) An excise tax is hereby imposed on the storage,
279 use, or other consumption in this state of food as defined in
280 Section 40-23-60, at the rate of ~~four percent of the sales~~



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281 ~~price of such food. On September 1, 2023, the tax rate shall~~
282 ~~be reduced to~~ three percent. On September 1, ~~2024~~2025, the tax
283 rate shall be reduced to two percent, ~~if the average of the~~
284 ~~estimated growth in the total net receipts from all revenue~~
285 ~~sources to the Education Trust Fund for the fiscal year ending~~
286 ~~September 30, 2025, as certified by the Director of Finance~~
287 ~~and the Legislative Fiscal Officer, respectively, pursuant to~~
288 ~~Section 260.02 of the Constitution of Alabama of 2022, is at~~
289 ~~least three and one-half percent higher than the previous~~
290 ~~fiscal year. If the growth requirement is not satisfied for~~
291 ~~the fiscal year ending September 30, 2025, the rate shall be~~
292 ~~reduced to two percent in a subsequent fiscal year when the~~
293 ~~growth requirement is satisfied.~~

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

307 (f) An excise tax is hereby imposed on the classes of
308 tangible personal property, and at the rates imposed on such



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309 classes, specified in subsections (a), (b), (c), and (d) on
310 the storage, use, or other consumption in the performance of a
311 contract in this state of any such tangible personal property,
312 new or used, the tax to be measured by the sales price or the
313 fair and reasonable market value of the tangible personal
314 property when put into use in this state, whichever is less;
315 provided, that the tax imposed by this subsection shall not
316 apply where the taxes imposed by subsection (a), (b), (c), or
317 (d) of this section apply."

318 Section 2. This act shall become effective on June 1,
319 2025.