HB427

QNNP755-1

By Representatives Moore (M), Datcher, Sellers, Tillman, Jackson, Bracy, Hassell, Drummond, Forte, Clarke, Gray, Lawrence, Chestnut, McCampbell

RFD: Ways and Means Education

First Read: 18-Mar-25

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

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

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

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

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

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

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

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

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

Sales of automobiles, motorcycles, trucks, truck trailers, travel trailers, campers, housecars, or semitrailers that will be registered or titled outside Alabama, that are exported or removed from Alabama within 72 hours by the purchaser or his or her agent for first use outside Alabama are subject to Alabama sales tax in an amount equal to only the state automotive sales tax rate, unless the sales tax laws of the state in which the purchaser will title or register the vehicle allows an Alabama resident to purchase a motor vehicle for first titling and registering in Alabama without the payment of tax to that state. However, in no case shall the amount of Alabama state sales tax due on a motor vehicle that will be registered or titled for use in another state exceed the amount of sales tax that would otherwise have been due in the state where the vehicle will be registered or titled for first use. In order to qualify as a travel trailer, camper, or housecar that will be registered or titled for use in another state, the purchaser must provide documentation to the seller that the purchaser is not a resident of Alabama as required by the Department of Revenue. No such proof is required in the sale of an automobile, motorcycle, truck, truck trailer, or semitrailer, excluding a travel trailer, camper, or housecar. The tax collected under this export provision shall be Alabama sales tax and shall exclude county and municipal sales tax. On January 1, 2016, and each January 1 thereafter, the Alabama Department of Revenue shall publish to the state's website a list of states that do not allow drive out provisions to Alabama residents. Should the list, required by this subsection and relied upon by the taxpayer, be incorrect, the taxpayer shall be relieved from the liability concerning the miscollection of the state automotive sales tax. Sales of all other vehicles such as mobile homes, motor bikes, all terrain vehicles, and boats do not qualify for the export exemption provision and are taxable unless the dealer can provide factual evidence that the vehicle was delivered outside of Alabama or to a common carrier for transportation outside Alabama. In order for the sale to be exempt from Alabama tax, the information relative to the exempt sale shall be documented on forms approved by the Revenue Department.

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

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

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

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

"§40-23-61

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

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

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

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

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

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

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

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