

HB74 INTRODUCED



1 HB74
2 ZUATKRRK-1
3 By Representative Shirey
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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 shall be defined and interpreted as
389 follows:

390 (1) EYEGLASSES. The term includes lenses and frames
391 into which lenses have been installed if the lenses have been
392 prescribed by a physician or optometrist licensed by any



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393 state, country, or province.

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

398 (b) The gross proceeds of the sale or sales of optical
399 aids are exempted from all state, county, and municipal sales
400 and use tax.

401 Section 3. This act shall become effective on September
402 1, 2025.