

1 HB129
2 156176-3
3 By Representative McClurkin
4 RFD: Ways and Means Education
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ENROLLED, An Act,

To amend Sections 40-23-4, as amended by Act 2013-200, 2013 Regular Session, and 40-23-62, as amended by Act 2013-196 and Act 2013-200 of the 2013 Regular Session, Code of Alabama 1975, to clarify and confirm that the gross proceeds of sales to or the storage, use, or other consumption of tangible personal property by private schools, colleges, and universities located in Alabama are exempt from state and local sales and use tax, as are lunches sold to school children of either public or private schools, while in school buildings; and to provide a retroactive effective date. However, no refunds shall be due or issued pursuant to this act with respect to those periods prior to the effective date of this act.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-23-4, as amended by Act 2013-200, 2013 Regular Session, and 40-23-62, as amended by Act 2013-196 and Act 2013-200 of the 2013 Regular Session, Code of Alabama 1975, are amended to read as follows:

"§40-23-4.

"(a) There are exempted from the provisions of this division and from the computation of the amount of the tax levied, assessed, or payable under this division the following:

1 "(1) The gross proceeds of the sales of lubricating
2 oil and gasoline as defined in Sections 40-17-30 and 40-17-170
3 and the gross proceeds from those sales of lubricating oil
4 destined for out-of-state use which are transacted in a manner
5 whereby an out-of-state purchaser takes delivery of such oil
6 at a distributor's plant within this state and transports it
7 out-of-state, which are otherwise taxed.

8 "(2) The gross proceeds of the sale, or sales, of
9 fertilizer when used for agricultural purposes. The word
10 "fertilizer" shall not be construed to include cottonseed
11 meal, when not in combination with other materials.

12 "(3) The gross proceeds of the sale, or sales, of
13 seeds for planting purposes and baby chicks and poults.
14 Nothing herein shall be construed to exempt or exclude from
15 the computation of the tax levied, assessed, or payable, the
16 gross proceeds of the sale or sales of plants, seedlings,
17 nursery stock, or floral products.

18 "(4) The gross proceeds of sales of insecticides and
19 fungicides when used for agricultural purposes or when used by
20 persons properly permitted by the Department of Agriculture
21 and Industries or any applicable local or state governmental
22 authority for structural pest control work and feed for
23 livestock and poultry, but not including prepared food for
24 dogs and cats.

1 "(5) The gross proceeds of sales of all livestock by
2 whomsoever sold, and also the gross proceeds of poultry and
3 other products of the farm, dairy, grove, or garden, when in
4 the original state of production or condition of preparation
5 for sale, when such sale or sales are made by the producer or
6 members of his immediate family or for him by those employed
7 by him to assist in the production thereof. Nothing herein
8 shall be construed to exempt or exclude from the measure or
9 computation of the tax levied, assessed, or payable hereunder,
10 the gross proceeds of sales of poultry or poultry products
11 when not products of the farm.

12 "(6) Cottonseed meal exchanged for cottonseed at or
13 by cotton gins.

14 "(7) The gross receipts from the business on which,
15 or for engaging in which, a license or privilege tax is levied
16 by or under the provisions of Sections 40-21-50, 40-21-53, and
17 40-21-56 through 40-21-60; provided, that nothing contained in
18 this subdivision shall be construed to exempt or relieve the
19 person or persons operating the business enumerated in said
20 sections from the payments of the tax levied by this division
21 upon or measured by the gross proceeds of sales of any
22 tangible personal property, except gas and water, the gross
23 receipts from the sale of which are the measure of the tax
24 levied by said Section 40-21-50, merchandise or other tangible
25 commodities sold at retail by said persons, unless the gross

1 proceeds of sale thereof are otherwise specifically exempted
2 by the provisions of this division.

3 "(8) The gross proceeds of sales or gross receipts
4 of or by any person, firm, or corporation, from the sale of
5 transportation, gas, water, or electricity, of the kinds and
6 natures, the rates and charges for which, when sold by public
7 utilities, are customarily fixed and determined by the Public
8 Service Commission of Alabama or like regulatory bodies.

9 "(9) The gross proceeds of the sale, or sales of
10 wood residue, coal, or coke to manufacturers, electric power
11 companies, and transportation companies for use or consumption
12 in the production of by-products, or the generation of heat or
13 power used in manufacturing tangible personal property for
14 sale, for the generation of electric power or energy for use
15 in manufacturing tangible personal property for sale or for
16 resale, or for the generation of motive power for
17 transportation.

18 "(10) The gross proceeds from the sale or sales of
19 fuel and supplies for use or consumption aboard ships,
20 vessels, towing vessels, or barges, or drilling ships, rigs or
21 barges, or seismic or geophysical vessels, or other watercraft
22 (herein for purposes of this exemption being referred to as
23 "vessels") engaged in foreign or international commerce or in
24 interstate commerce; provided, that nothing in this division
25 shall be construed to exempt or exclude from the measure of

1 the tax herein levied the gross proceeds of sale or sales of
2 material and supplies to any person for use in fulfilling a
3 contract for the painting, repair, or reconditioning of
4 vessels, barges, ships, other watercraft, and commercial
5 fishing vessels of over five tons load displacement as
6 registered with the U.S. Coast Guard and licensed by the State
7 of Alabama Department of Conservation and Natural Resources.

8 "For purposes of this subdivision, it shall be
9 presumed that vessels engaged in the transportation of cargo
10 between ports in the State of Alabama and ports in foreign
11 countries or possessions or territories of the United States
12 or between ports in the State of Alabama and ports in other
13 states are engaged in foreign or international commerce or
14 interstate commerce, as the case may be. For the purposes of
15 this subdivision, the engaging in foreign or international
16 commerce or interstate commerce shall not require that the
17 vessel involved deliver cargo to or receive cargo from a port
18 in the State of Alabama. For purposes of this subdivision,
19 vessels carrying passengers for hire, and no cargo, between
20 ports in the State of Alabama and ports in foreign countries
21 or possessions or territories of the United States or between
22 ports in the State of Alabama and ports in other states shall
23 be engaged in foreign or international commerce or interstate
24 commerce, as the case may be, if, and only if, both of the
25 following conditions are met: (i) The vessel in question is a

1 vessel of at least 100 gross tons; and (ii) the vessel in
2 question has an unexpired certificate of inspection issued by
3 the United States Coast Guard or by the proper authority of a
4 foreign country for a foreign vessel, which certificate is
5 recognized as acceptable under the laws of the United States.
6 Vessels which are engaged in foreign or international commerce
7 or interstate commerce shall be deemed for the purposes of
8 this subdivision to remain in such commerce while awaiting or
9 under repair in a port of the State of Alabama if such vessel
10 returns after such repairs are completed to engaging in
11 foreign or international commerce or interstate commerce. For
12 purposes of this subdivision, seismic or geophysical vessels
13 which are engaged either in seismic or geophysical tests or
14 evaluations exclusively in offshore federal waters or in
15 traveling to or from conducting such tests or evaluations
16 shall be deemed to be engaged in international or foreign
17 commerce. For purposes of this subdivision, proof that fuel
18 and supplies purchased are for use or consumption aboard
19 vessels engaged in foreign or international commerce or in
20 interstate commerce may be accomplished by the merchant or
21 seller securing the duly signed certificate of the vessel
22 owner, operator, or captain or their respective agent on a
23 form prescribed by the department that the fuel and supplies
24 purchased are for use or consumption aboard vessels engaged in
25 foreign or international commerce or in interstate commerce.

1 Any person filing a false certificate shall be guilty of a
2 misdemeanor and upon conviction shall be fined not less than
3 \$25 nor more than \$500 for each offense. Each false
4 certificate filed shall constitute a separate offense. Any
5 person filing a false certificate shall be liable to the
6 department for all taxes imposed by this division upon the
7 merchant or seller, together with any interest or penalties
8 thereon, by reason of the sale or sales of fuel and supplies
9 applicable to such false certificate. If a merchant or seller
10 of fuel and supplies secures the certificate herein mentioned,
11 properly completed, such merchant or seller shall not be
12 liable for the taxes imposed by this division, if such
13 merchant or seller had no knowledge that such certificate was
14 false when it was filed with such merchant or seller.

15 "(11) The gross proceeds of sales of tangible
16 personal property to the State of Alabama, to the counties
17 within the state and to incorporated municipalities of the
18 State of Alabama.

19 "(12) The gross proceeds of the sale or sales of
20 railroad cars, vessels, barges, and commercial fishing vessels
21 of over five tons load displacement as registered with the
22 U.S. Coast Guard and licensed by the State of Alabama
23 Department of Conservation and Natural Resources, when sold by
24 the manufacturers or builders thereof.

1 "(13) The gross proceeds of the sale or sales of
2 materials, equipment, and machinery which, at any time, enter
3 into and become a component part of ships, vessels, towing
4 vessels or barges, or drilling ships, rigs or barges, or
5 seismic or geophysical vessels, other watercraft and
6 commercial fishing vessels of over five tons load displacement
7 as registered with the U.S. Coast Guard and licensed by the
8 State of Alabama Department of Conservation and Natural
9 Resources. Additionally, the gross proceeds from the sale or
10 sales of lifeboats, personal flotation devices, ring life
11 buoys, survival craft equipment, distress signals, EPIRB's,
12 fire extinguishers, injury placards, waste management plans
13 and logs, marine sanitation devices, navigation rulebooks,
14 navigation lights, sound signals, navigation day shapes, oil
15 placard cards, garbage placards, FCC SSL, stability
16 instructions, first aid equipment, compasses, anchor and radar
17 reflectors, general alarm systems, bilge pumps, piping, and
18 discharge and electronic position fixing devices which are
19 used on the aforementioned watercraft.

20 "(14) The gross proceeds of the sale or sales of
21 fuel oil purchased as fuel for kiln use in manufacturing
22 establishments.

23 "(15) The gross proceeds of the sale or sales of
24 tangible personal property to county and city school boards
25 within the State of Alabama, independent school boards within

1 the State of Alabama, and all educational institutions and
2 agencies of the State of Alabama, the counties within the
3 state, or any incorporated municipalities of the State of
4 Alabama, and private educational institutions operating within
5 the State of Alabama offering conventional and traditional
6 courses of study, such as those offered by public schools,
7 colleges, or universities within the State of Alabama; but not
8 including nurseries, day care centers, and home schools.

9 "(16) The gross proceeds from the sale of all
10 devices or facilities, and all identifiable components
11 thereof, or materials for use therein, acquired primarily for
12 the control, reduction, or elimination of air or water
13 pollution and the gross proceeds from the sale of all
14 identifiable components of or materials used or intended for
15 use in structures built primarily for the control, reduction,
16 or elimination of air and water pollution.

17 "(17) The gross proceeds of sales of tangible
18 personal property or the gross receipts of any business which
19 the state is prohibited from taxing under the Constitution or
20 laws of the United States or under the Constitution of this
21 state.

22 "(18) When dealers or distributors use parts taken
23 from stocks owned by them in making repairs without charge for
24 such parts to the owner of the property repaired pursuant to
25 warranty agreements entered into by manufacturers, such use

1 shall not constitute taxable sales to the manufacturers,
2 distributors, or to the dealers, under this division or under
3 any county sales tax law.

4 "(19) The gross proceeds received from the sale or
5 furnishing of food, including potato chips, candy, fruit and
6 similar items, soft drinks, tobacco products, and stationery
7 and other similar or related articles by hospital canteens
8 operated by Alabama state hospitals at Bryce Hospital and
9 Partlow State School for Mental Deficients at Tuscaloosa,
10 Alabama, and Searcy Hospital at Mt. Vernon, Alabama, for the
11 benefit of the patients therein.

12 "(20) The gross proceeds of the sale, or sales, of
13 wrapping paper and other wrapping materials when used in
14 preparing poultry or poultry products for delivery, shipment,
15 or sale by the producer, processor, packer, or seller of such
16 poultry or poultry products, including pallets used in
17 shipping poultry and egg products, paper or other materials
18 used for lining boxes or other containers in which poultry or
19 poultry products are packed together with any other materials
20 placed in such containers for the delivery, shipment, or sale
21 of poultry or poultry products.

22 "(21) The gross proceeds of the sales of all
23 antibiotics, hormones and hormone preparations, drugs,
24 medicines or medications, vitamins, minerals or other
25 nutrients, and all other feed ingredients including

1 concentrates, supplements, and other feed ingredients when
2 such substances are used as ingredients in mixing and
3 preparing feed for fish raised to be sold on a commercial
4 basis, livestock, and poultry. Such exemption herein granted
5 shall be in addition to exemptions now provided by law for
6 feed for fish raised to be sold on a commercial basis,
7 livestock, and poultry, but not including prepared foods for
8 dogs or cats.

9 "(22) The gross proceeds of the sale, or sales, of
10 seedlings, plants, shoots, and slips which are to be used for
11 planting vegetable gardens or truck farms and other
12 agricultural purposes. Nothing herein shall be construed to
13 exempt, or exclude from the computation of the tax levied,
14 assessed, or payable, the gross proceeds of the sale, or the
15 use of plants, seedlings, shoots, slips, nursery stock, and
16 floral products, except as hereinabove exempted.

17 "(23) The gross proceeds of the sale, or sales, of
18 fabricated steel tube sections, when produced and fabricated
19 in this state by any person, firm, or corporation for any
20 vehicular tunnel for highway vehicular traffic, when sold by
21 the manufacturer or fabricator thereof, and also the gross
22 proceeds of the sale, or sales, of steel which enters into and
23 becomes a component part of such fabricated steel tube
24 sections of said tunnel.

1 "(24) The gross proceeds from sales of admissions to
2 any theatrical production, symphonic or other orchestral
3 concert, ballet, or opera production when such concert or
4 production is presented by any society, association, guild, or
5 workshop group, organized within this state, whose members or
6 some of whose members regularly and actively participate in
7 such concerts or productions for the purposes of providing a
8 creative outlet for the cultural and educational interests of
9 such members, and of promoting such interests for the
10 betterment of the community by presenting such productions to
11 the general public for an admission charge. The employment of
12 a paid director or conductor to assist in any such
13 presentation described in this subdivision shall not be
14 construed to prohibit the exemptions herein provided.

15 "(25) The gross proceeds of sales of herbicides for
16 agricultural uses by whomsoever sold. The term herbicides, as
17 used in this subdivision, means any substance or mixture of
18 substances intended to prevent, destroy, repel, or retard the
19 growth of weeds or plants. It shall include preemergence
20 herbicides, postemergence herbicides, lay-by herbicides,
21 pasture herbicides, defoliant herbicides, and desiccant
22 herbicides.

23 "(26) The Alabama Chapter of the Cystic Fibrosis
24 Research Foundation and the Jefferson Tuberculosis Sanatorium
25 and any of their departments or agencies, heretofore or

1 hereafter organized and existing in good faith in the State of
2 Alabama for purposes other than for pecuniary gain and not for
3 individual profit, shall be exempted from the computation of
4 the tax on the gross proceeds of all sales levied, assessed,
5 or payable.

6 "(27) The gross proceeds from the sale or sales of
7 fuel for use or consumption aboard commercial fishing vessels
8 are hereby exempt from the computation of all sales taxes
9 levied, assessed, or payable under the provisions of this
10 division or levied under any county or municipal sales tax
11 law.

12 The words commercial fishing vessels shall mean
13 vessels whose masters and owners are regularly and exclusively
14 engaged in fishing as their means of livelihood.

15 "(28) The gross proceeds of sales of sawdust, wood
16 shavings, wood chips, and other like materials sold for use as
17 chicken litter by poultry producers and poultry processors.

18 "(29) The gross proceeds of the sales of all
19 antibiotics, hormones and hormone preparations, drugs,
20 medicines, and other medications including serums and
21 vaccines, vitamins, minerals, or other nutrients for use in
22 the production and growing of fish, livestock, and poultry by
23 whomsoever sold. Such exemption as herein granted shall be in
24 addition to the exemption provided by law for feed for fish,
25 livestock, and poultry, and in addition to the exemptions

1 provided by law for the above-enumerated substances and
2 products when mixed and used as ingredients in fish,
3 livestock, and poultry feed.

4 "(30) The gross proceeds of the sale or sales of all
5 medicines prescribed by physicians for persons who are 65
6 years of age or older, and when said prescriptions are filled
7 by licensed pharmacists, shall be exempted under this division
8 or under any county or municipal sales tax law. The exemption
9 provided in this section shall not apply to any medicine
10 purchased in any manner other than as is herein provided.

11 "For the purposes of this subdivision, proof of age
12 may be accomplished by filing with the dispensing pharmacist
13 any one or more of the following documents:

14 "a. The name and claim number as shown on a
15 "Medicare" card issued by the United States Social Security
16 Administration.

17 "b. A certificate executed by any adult person
18 having knowledge of the fact that the person for whom the
19 medicine was prescribed is not less than 65 years of age.

20 "c. An affidavit executed by any adult person having
21 knowledge of the fact that the person for whom the medicine
22 was prescribed is not less than 65 years of age.

23 "For the purposes of this subdivision, any person
24 filing a false proof of age shall be guilty of a misdemeanor

1 and upon conviction thereof shall be punished by a fine of
2 \$100.

3 "(31) There shall be exempted from the tax levied by
4 this division the gross receipts of sales of grass sod of all
5 kinds and character when in the original state of production
6 or condition of preparation for sale, when such sales are made
7 by the producer or members of his family or for him by those
8 employed by him to assist in the production thereof; provided,
9 that nothing herein shall be construed to exempt sales of sod
10 by a person engaged in the business of selling plants,
11 seedlings, nursery stock, or floral products.

12 "(32) The gross receipts of sales of the following
13 items or materials which are necessary in the farm-to-market
14 production of tomatoes when such items or materials are used
15 by the producer or members of his family or for him by those
16 employed by him to assist in the production thereof: Twine for
17 tying tomatoes, tomato stakes, field boxes (wooden boxes used
18 to take tomatoes from the fields to shed), and tomato boxes
19 used in shipments to customers.

20 "(33) The gross proceeds from the sale of liquefied
21 petroleum gas or natural gas sold to be used for agricultural
22 purposes.

23 "(34) The gross receipts of sales from state
24 nurseries of forest tree seedlings.

1 "(35) The gross receipts of sales of forest tree
2 seed by the state.

3 "(36) The gross receipts of sales of Lespedeza
4 bicolor and other species of perennial plant seed and
5 seedlings sold for wildlife and game food production purposes
6 by the state.

7 "(37) The gross receipts of any aircraft
8 manufactured, sold, and delivered in this state if said
9 aircraft are not permanently domiciled in Alabama and are
10 removed to another state.

11 "(38) The gross proceeds from the sale or sales of
12 all diesel fuel used for off-highway agricultural purposes.

13 "(39) The gross proceeds from sales of admissions to
14 any sporting event which:

15 "a. Takes place in the State of Alabama on or after
16 January 1, 1984, regardless of when such sales occur; and

17 "b. Is hosted by a not-for-profit corporation
18 organized and existing under the laws of the State of Alabama;
19 and

20 "c. Determines a national championship of a national
21 organization, including but not limited to the Professional
22 Golfers Association of America, the Tournament Players
23 Association, the United States Golf Association, the United
24 States Tennis Association, and the National Collegiate
25 Athletic Association; and

1 "d. Has not been held in the State of Alabama on
2 more than one prior occasion, provided, however, that for such
3 purpose the Professional Golfers Association Championship, the
4 United States Open Golf Championship, the United States
5 Amateur Golf Championship of the United States Golf
6 Association, and the United States Open Tennis Championship
7 shall each be treated as a separate event.

8 "(40) The gross receipts from the sale of any
9 aircraft and replacement parts, components, systems, supplies,
10 and sundries affixed or used on said aircraft and ground
11 support equipment and vehicles used by or for the aircraft to
12 or by a certificated or licensed air carrier with a hub
13 operation within this state, for use in conducting intrastate,
14 interstate, or foreign commerce for transporting people or
15 property by air. For the purpose of this subdivision, the
16 words "hub operation within this state" shall be construed to
17 have all of the following criteria:

18 "a. There originates from the location 15 or more
19 flight departures and five or more different first-stop
20 destinations five days per week for six or more months during
21 the calendar year; and

22 "b. Passengers and/or property are regularly
23 exchanged at the location between flights of the same or a
24 different certificated or licensed air carrier.

1 "(41) The gross receipts from the sale of hot or
2 cold food and beverage products sold to or by a certificated
3 or licensed air carrier with a hub operation within this
4 state, for use in conducting intrastate, interstate, or
5 foreign commerce for transporting people or property by air.
6 For the purpose of this subdivision, the words "hub operation
7 within this state" shall be construed to have all of the
8 following criteria:

9 "a. There originates from the location 15 or more
10 flight departures and five or more different first-stop
11 destinations five days per week for six or more months during
12 the calendar year; and

13 "b. Passengers and/or property are regularly
14 exchanged at the location between flights of the same or a
15 different certificated or licensed air carrier.

16 "(42) The gross receipts from the sale of any
17 aviation jet fuel to a certificated or licensed air carrier
18 purchased for use in scheduled all-cargo operations being
19 conducted on international flights or in international
20 commerce. For purposes of this subdivision, the following
21 words or terms shall be defined and interpreted as follows:

22 "a. Air Carrier. Any person, firm, corporation, or
23 entity undertaking by any means, directly or indirectly, to
24 provide air transportation.

1 "b. All-Cargo Operations. Any flight conducted by an
2 air carrier for compensation or hire other than a passenger
3 carrying flight, except passengers as specified in 14 C.F.R.
4 §121.583(a) or 14 C.F.R. §135.85, as amended.

5 "c. International Commerce. Any air carrier engaged
6 in all-cargo operations transporting goods for compensation or
7 hire on international flights.

8 "d. International Flights. Any air carrier
9 conducting scheduled all-cargo operations between any point
10 within the 50 states of the United States and the District of
11 Columbia and any point outside the 50 states of the United
12 States and the District of Columbia, including any interim
13 stops within the United States so long as the ultimate origin
14 or destination of the aircraft is outside the United States
15 and the District of Columbia.

16 "(43) The gross proceeds of the sale or sales of the
17 following:

18 "a. Drill pipe, casing, tubing, and other pipe used
19 for the exploration for or production of oil, gas, sulphur, or
20 other minerals in offshore federal waters.

21 "b. Tangible personal property exclusively used for
22 the exploration for or production of oil, gas, sulphur, or
23 other minerals in offshore federal waters.

24 "c. Fuel and supplies for use or consumption aboard
25 boats, ships, aircraft, and towing vessels when used

1 exclusively in transporting persons or property between a
2 point in Alabama and a point or points in offshore federal
3 waters for the exploration for or production of oil, gas,
4 sulphur, or other minerals in offshore federal waters.

5 "d. Drilling equipment that is used for the
6 exploration for or production of oil, gas, sulphur, or other
7 minerals, that is built for exclusive use outside this state
8 and that is, on completion, removed forthwith from this state.

9 "The delivery of items exempted by this subdivision
10 to the purchaser or lessee in this state does not disqualify
11 the purchaser or lessee from the exemption if the property is
12 removed from the state by any means, including by the use of
13 the purchaser's or lessee's own facilities.

14 "The shipment to a place in this state of equipment
15 exempted by this subdivision for further assembly or
16 fabrication does not disqualify the purchaser or lessee from
17 the exemption if on completion of the further assembly or
18 fabrication the equipment is removed forthwith from this
19 state. This subdivision applies to a sale that may occur when
20 the equipment exempted is further assembled or fabricated if
21 on completion the equipment is removed forthwith from this
22 state.

23 "(44) The gross receipts derived from all bingo
24 games and operations which are conducted in compliance with
25 validly enacted legislation authorizing the conduct of such

1 games and operations, and which comply with the distribution
2 requirements of the applicable local laws; provided that the
3 exemption from sales taxation granted by this subdivision
4 shall apply only to gross receipts taxable under subdivision
5 (2) of Section 40-23-2. It is further provided that this
6 exemption shall not apply to any gross receipts from the sale
7 of tangible personal property, such as concessions, novelties,
8 food, beverages, etc. The exemption provided for in this
9 section shall be limited to those games and operations by
10 organizations which have qualified for exemption under the
11 provisions of 26 U.S.C. § 501 (c) (3), (4), (7), (8), (10), or
12 (19), or which are defined in 26 U.S.C. § 501(d).

13 "(45) The gross receipts derived from the sale or
14 sales of fruit or other agricultural products by the person or
15 corporation that planted, cultivated, and harvested such fruit
16 or agricultural product.

17 "(46) The gross receipts derived from the sale or
18 sales of all domestically mined or produced coal, coke, and
19 coke by-products used in cogeneration plants.

20 "(47) The gross receipts from the sale or sales of
21 metal, other than gold or silver, when such metal is purchased
22 for the purpose of transferring such metal to an investment
23 trust in exchange for shares or other units, each of which are
24 both publicly traded and represent fractional undivided
25 beneficial interests in the trust's net assets, including

1 metal stored in warehouses located in this state, as well as
2 the gross proceeds from the sale or other transfer of such
3 metal to or from such investment trust in exchange for shares
4 or other units that are publicly traded and represent
5 fractional undivided beneficial interests in the trust's net
6 assets but not to the extent that metal is transferred to or
7 from the investment trust in exchange for consideration other
8 than such publicly traded shares or other units. For purposes
9 of this subdivision, the term metals includes, but is not
10 limited to, copper, aluminum, nickel, zinc, tin, lead, and
11 other similar metals typically used in commercial and
12 industrial applications.

13 "(48) For the period commencing on October 1, 2012,
14 and ending May 30, 2022, unless extended by joint resolution,
15 the gross receipts from the sale of parts, components, and
16 systems that become a part of a fixed or rotary wing military
17 aircraft or certified transport category aircraft that
18 undergoes conversion, reconfiguration, or general maintenance
19 so long as the address of the aircraft for FAA registration is
20 not in the state; provided, however, that this exemption shall
21 not apply to a local sales tax unless previously exempted by
22 local law or approved by resolution of the local governing
23 body.

24 "(49) The gross proceeds from the sale or sales
25 within school buildings of lunches to pupils of kindergarten,

1 grammar, and high schools, either public or private, that are
2 not sold for profit.

3 "(b) Any violation of any provision of this section
4 shall be punishable in a court of competent jurisdiction by a
5 fine of not less than \$500 and no more than \$2,000 and
6 imprisonment of not less than six months nor more than one
7 year in the county jail.

8 "§40-23-62.

9 "The storage, use or other consumption in this state
10 of the following tangible personal property is hereby
11 specifically exempted from the tax imposed by this article:

12 "(1) Property, on which the sales tax imposed by the
13 provisions of Article 1 of this chapter is paid by the
14 consumer to a person licensed under the provisions of Article
15 1 of this chapter.

16 "(2) Property, the storage, use or other consumption
17 of which this state is prohibited from taxing under the
18 Constitution or laws of the United States of America or under
19 the constitution of this state.

20 "(3) Tangible personal property, not to be used in
21 the performance of a contract, brought into this state by a
22 nonresident thereof for his own storage, use or consumption
23 while temporarily within this state.

1 "(4) Lubricating oil and gasoline as defined in
2 Sections 40-17-30 and 40-17-170, the storage, use or other
3 consumption of which is otherwise taxed.

4 "(5) All fertilizer; provided, that the word
5 "fertilizer" as used in this article shall not be construed to
6 include cottonseed meal when not in combination with other
7 material.

8 "(6) All seeds for planting purposes and baby chicks
9 and poults; provided, that nothing herein shall be construed
10 to exempt plants, seedlings, nursery stock or floral products.

11 "(7) Insecticides and fungicides and feed for
12 livestock and poultry, but not including prepared foods for
13 dogs and cats.

14 "(8) The use, storage or consumption of all
15 livestock by whomsoever sold; and also the gross proceeds of
16 poultry and other products of the farm, dairy, grove or
17 garden, when in the original state of production or condition
18 of preparation for sale, when such sale or sales are made by
19 the producer or members of his immediate family or for him by
20 those employed by him to assist in the production thereof.
21 Nothing herein shall be construed to exempt or exclude from
22 the measure or computation of the tax levied, assessed, or
23 payable hereunder, the gross proceeds of sales of poultry or
24 poultry products when not products of the farm.

1 "(9) Cottonseed meal exchanged for cottonseed at or
2 by cotton gins.

3 "(10) Transportation, gas, water, or electricity, of
4 the kinds and natures, the rates and charges for which when
5 sold by public utilities, are customarily fixed and determined
6 by the Public Service Commission of Alabama or like regulatory
7 bodies.

8 "(11) Coal or coke to be stored, used or consumed by
9 manufacturers, electric power companies and transportation
10 companies for use or consumption in the production of
11 by-products or the generation of heat or power used:

12 "a. In manufacturing tangible personal property for
13 sale;

14 "b. For the generation of electric power or energy
15 for use in manufacturing tangible personal property for sale
16 or for resale; or

17 "c. For the generation of motive power for
18 transportation.

19 "(12) Fuel and supplies for use or consumption
20 aboard ships, vessels, towing vessels, or barges, or drilling
21 ships, rigs or barges, or seismic or geophysical vessels, or
22 other watercraft (herein for purposes of this exemption being
23 referred to as vessels) engaged in foreign or international
24 commerce or in interstate commerce; provided, that nothing in
25 this article shall be construed to exempt or exclude from the

1 measure of the tax herein levied the gross proceeds of sale or
2 sales of material and supplies to any person for use in
3 fulfilling a contract for the painting, repair or
4 reconditioning of vessels, barges, ships, other watercraft and
5 commercial fishing vessels of over five tons load displacement
6 as registered with the U.S. Coast Guard and licensed by the
7 State of Alabama Department of Conservation and Natural
8 Resources. For purposes of this subdivision, it shall be
9 presumed that vessels engaged in the transportation of cargo
10 between ports in the State of Alabama and ports in foreign
11 countries or possessions or territories of the United States
12 or between ports in the State of Alabama and ports in other
13 states are engaged in foreign or international commerce or
14 interstate commerce, as the case may be. For the purposes of
15 this subdivision, the engaging in foreign or international
16 commerce or interstate commerce shall not require that the
17 vessel involved deliver cargo to or receive cargo from a port
18 in the State of Alabama. For purposes of this subdivision,
19 vessels carrying passengers for hire, and no cargo, between
20 ports in the State of Alabama and ports in foreign countries
21 or possessions or territories of the United States or between
22 ports in the State of Alabama and ports in other states shall
23 be engaged in foreign or international commerce or interstate
24 commerce, as the case may be, if, and only if, both of the
25 following conditions are met: (i) The vessel in question is a

1 vessel of at least 100 gross tons; and (ii) the vessel in
2 question has an unexpired certificate of inspection issued by
3 the United States Coast Guard or by the proper authority of a
4 foreign country for a foreign vessel, which certificate is
5 recognized as acceptable under the laws of the United States.
6 Vessels which are engaged in foreign or international commerce
7 or interstate commerce shall be deemed for the purposes of
8 this subdivision to remain in such commerce while awaiting or
9 under repair in a port of the State of Alabama if such vessel
10 returns after such repairs are completed to engaging in
11 foreign or international commerce or interstate commerce. For
12 purposes of this subdivision, seismic or geophysical vessels
13 which are engaged either in seismic or geophysical tests or
14 evaluations exclusively in offshore federal waters or in
15 traveling to or from conducting such tests or evaluations
16 shall be deemed to be engaged in international or foreign
17 commerce. For purposes of this subdivision, proof that fuel
18 and supplies purchased are for use or consumption aboard
19 vessels engaged in foreign or international commerce or in
20 interstate commerce may be accomplished by the merchant or
21 seller securing the duly signed certificate of the vessel
22 owner, operator or captain or their respective agent on a form
23 prescribed by the department that the fuel and supplies
24 purchased are for use or consumption aboard vessels engaged in
25 foreign or international commerce or in interstate commerce.

1 Any person filing a false certificate shall be guilty of a
2 misdemeanor and upon conviction shall be fined not less than
3 \$25 nor more than \$500 for each offense. Each false
4 certificate filed shall constitute a separate offense. Any
5 person filing a false certificate shall be liable to the
6 department for all taxes imposed by this division upon the
7 merchant or seller, together with any interest or penalties
8 thereon, by reason of the sale or sales of fuel and supplies
9 applicable to such false certificate. If a merchant or seller
10 of fuel and supplies secures the certificate herein mentioned,
11 properly completed, such merchant or seller shall not be
12 liable for the taxes imposed by this division, if such
13 merchant or seller had no knowledge that such certificate was
14 false when it was filed with such merchant or seller.

15 "(13) Property stored, used or consumed by the State
16 of Alabama, by the counties within the state or by
17 incorporated municipalities of the State of Alabama.

18 "(14) The use, storage or consumption of materials,
19 equipment and machinery which, at any time, enter into and
20 become a component part of ships, vessels, towing vessels or
21 barges, or drilling ships, rigs or barges, or seismic or
22 geophysical vessels, other watercraft and commercial fishing
23 vessels of over five tons load displacement as registered with
24 the U.S. Coast Guard and licensed by the Department of
25 Conservation and Natural Resources. Additionally, the use,

1 storage, or consumption of lifeboats, personal flotation
2 devices, ring life buoys, survival craft equipment, distress
3 signals, EPIRB's, fire extinguishers, injury placards, waste
4 management plans and logs, marine sanitation devices,
5 navigation rulebooks, navigation lights, sound signals,
6 navigation day shapes, oil placard cards, garbage placards,
7 FCC SSL, stability instructions, first aid equipment,
8 compasses, anchor and radar reflectors, general alarm systems,
9 bilge pumps, piping, and discharge and electronic position
10 fixing devices on the aforementioned watercraft.

11 "(15) The use, storage, or consumption of fuel oil
12 purchased as fuel for kilns used in manufacturing
13 establishments.

14 "(16) Tangible personal property stored, used or
15 consumed by county and city school boards within the State of
16 Alabama, independent school boards within the State of
17 Alabama, ~~and~~ all educational institutions and agencies of the
18 State of Alabama, the counties within the state or any
19 incorporated municipality of the State of Alabama, and private
20 educational institutions operating within the State of Alabama
21 offering conventional and traditional courses of study, such
22 as those offered by public schools, colleges, or universities
23 within the State of Alabama; but not including nurseries, day
24 care centers, and home schools.

1 "(17) The storage, use, or consumption of railroad
2 cars, vessels, and barges and commercial fishing vessels of
3 over five tons load displacement as registered with the U.S.
4 Coast Guard and licensed by the State of Alabama Department of
5 Conservation and Natural Resources when purchased from the
6 manufacturers or builders thereof.

7 "(18) The storage, use, or consumption of all
8 devices or facilities, and all identifiable components thereof
9 or materials for use therein, used or placed in operation
10 primarily for the control, reduction or elimination of air or
11 water pollution, and the storage, use, or consumption of all
12 identifiable components of or materials used or intended for
13 use in structures built primarily for the control, reduction
14 or elimination of air or water pollution.

15 "(19) When dealers or distributors use parts taken
16 from stocks owned by them in making repairs without charge for
17 such parts to the owner of the property required pursuant to
18 warranty agreements entered into by manufacturers, such use
19 shall not constitute taxable sales to the manufacturers,
20 distributors or to the dealers, under this article, or under
21 any county use tax law.

22 "(20) The storage, use, or other consumption in this
23 state of religious magazines and publications. For the purpose
24 of this subdivision the words "religious magazines and
25 publications" shall be construed to mean printed or

1 illustrated lessons, notes and explanations distributed by
2 churches or other religious organizations free of charge to
3 pupils or students in Sunday schools, Bible classes or other
4 educational facilities established and maintained by churches
5 or similar religious organizations in this state.

6 "(21) The storage, use, or other consumption of
7 wrapping paper and other wrapping materials when used in
8 preparing poultry or poultry products for delivery, shipment
9 or sale by the producer, processor, packer, or seller of such
10 poultry or poultry products including pallets used in shipping
11 poultry and egg products, paper or other materials used for
12 lining boxes or other containers in which poultry or poultry
13 products are packed together with any other materials placed
14 in such containers for the delivery, shipment or sale of
15 poultry or poultry products.

16 "(22) The storage, use, or other consumption of all
17 antibiotics, hormones and hormone preparations, drugs,
18 medicines or medications, vitamins, minerals, or other
19 nutrients and all other feed ingredients including
20 concentrates, supplements and other feed ingredients when such
21 substances are used as ingredients in mixing and preparing
22 feed for livestock and poultry. Such exemption herein granted
23 shall be in addition to exemptions now provided by law for
24 feed for livestock and poultry, but not including prepared
25 foods for dogs and cats.

1 "(23) The use of seedlings, plants, shoots, and
2 slips which are to be used for planting vegetable gardens or
3 truck farms. Nothing herein shall be construed to exempt, or
4 exclude from the computation of the tax levied, assessed, or
5 payable, the use of plants, seedlings, shoots, slips, nursery
6 stock and floral products except as hereinabove exempted.

7 "(24) Fabricated steel tube sections, when produced
8 and fabricated in this state by any person, firm, or
9 corporation, for any vehicular tunnel for highway vehicular
10 traffic, when sold by the manufacturer or fabricator thereof,
11 and also steel which enters into and becomes a component part
12 of such fabricated steel tube sections of said tunnel, shall
13 be exempted from the provisions of this article and from the
14 computation of the amount of the tax levied, assessed or
15 payable under this article.

16 "(25) The storage, use or other consumption of
17 herbicides for agricultural uses by whomsoever sold. The term
18 "herbicides" as used in this subdivision means any substance
19 or mixture of substances intended to prevent, destroy, repel,
20 or retard the growth of weeds or plants. It shall include
21 preemergence herbicides, postemergence herbicides, lay-by
22 herbicides, pasture herbicides, defoliant herbicides, and
23 desiccant herbicides.

24 "(26) The Alabama Chapter of the Cystic Fibrosis
25 Research Foundation, and the Jefferson Tuberculosis Sanatorium

1 and any of their departments or agencies, heretofore or
2 hereafter organized and existing in good faith in the State of
3 Alabama for purposes other than for pecuniary gain and not for
4 individual profit, shall be exempted from the payment of the
5 state use tax levied under this article.

6 "(27) Fuel for use or consumption aboard commercial
7 fishing vessels are hereby exempt from the payment of the
8 state use tax levied under this article, or levied under any
9 county or municipal use tax law.

10 "The words commercial fishing vessels shall mean
11 vessels whose masters and owners are regularly and exclusively
12 engaged in fishing as their means of livelihood.

13 "(28) The storage, use, or withdrawal of sawdust,
14 wood shavings, wood chips, and other like materials purchased
15 for use as chicken litter by poultry producers and poultry
16 processors shall be exempt under this article.

17 "(29) The storage, use or other consumption of all
18 antibiotics, hormones and hormone preparations, drugs,
19 medicines and other medications including serums and vaccines,
20 vitamins, minerals or other nutrients for use in the
21 production and growing of fish, livestock, and poultry are
22 hereby specifically exempted from the payment of the state use
23 tax levied by this article. Such exemption as herein granted
24 shall be in addition to the exemptions now provided by law for
25 feed for fish, livestock, and poultry, and in addition to the

1 exemptions now provided by law for the above-enumerated
2 substances and products when mixed and used as ingredients in
3 fish, livestock and poultry feeds.

4 "(30) All medicines prescribed by physicians for
5 persons who are 65 years of age or older, and when said
6 prescriptions are filled by licensed pharmacists, shall be
7 exempted from the operation of the state use tax law levied by
8 this article, or by any county or municipal use tax law. The
9 exemptions provided in this subdivision shall not apply to any
10 medicine purchased in any manner other than as is herein
11 provided.

12 "For the purposes of this subdivision, proof of age
13 may be accomplished by filing with the dispensing pharmacist
14 any one or more of the following documents:

15 "a. The name and claim number as shown on a
16 "Medicare" card issued by the United States Social Security
17 Administration.

18 "b. A certificate executed by any adult person
19 having knowledge of the fact that the person for whom the
20 medicine was prescribed is not less than 65 years of age.

21 "c. An affidavit executed by any adult person having
22 knowledge of the fact that the person for whom the medicine
23 was prescribed is not less than 65 years of age.

24 "For the purposes of this subdivision any person
25 filing a false proof of age shall be guilty of a misdemeanor

1 and upon conviction thereof shall be punished by a fine of
2 \$100.

3 "(31) All diesel fuel used for off-highway
4 agricultural purposes.

5 "(32) The storage, use or other consumption of any
6 aircraft and replacement parts, components, systems, supplies
7 and sundries affixed or used on said aircraft and ground
8 support equipment and vehicles used by or for the aircraft by
9 a certificated or licensed air carrier with a hub operation
10 within this state, for use in conducting intrastate,
11 interstate or foreign commerce for transporting people or
12 property by air. For the purpose of this subdivision, the
13 words "hub operation within this state" shall be construed to
14 have all of the following criteria:

15 "a. There originates from the location 15 or more
16 flight departures and five or more different first-stop
17 destinations five days per week for six or more months during
18 the calendar year; and

19 "b. Passengers and/or property are regularly
20 exchanged at the location between flights of the same or a
21 different certificated or licensed air carrier.

22 "(33) The storage, use or other consumption of any
23 aviation jet fuel used by an aircraft operated by a
24 certificated or licensed air carrier that purchases jet fuel
25 for use in scheduled all-cargo operations being conducted on

1 international flights or in international commerce. For
 2 purposes of this subdivision, the following words or terms
 3 shall be defined and interpreted as follows:

4 "a. Air Carrier. Any person, firm, corporation, or
 5 entity undertaking by any means, directly or indirectly, to
 6 provide air transportation.

7 "b. All-Cargo Operations. Any flight conducted by an
 8 air carrier for compensation or hire other than a passenger
 9 carrying flight, except passengers as specified in 14 C.F.R.
 10 §121.583(a) or 14 C.F.R. §135.85, as amended.

11 "c. International Commerce. Any air carrier engaged
 12 in all-cargo operations transporting goods for compensation or
 13 hire on international flights.

14 "d. International Flights. Any air carrier
 15 conducting scheduled all-cargo operations between any point
 16 within the 50 states of the United States and the District of
 17 Columbia and any point outside the 50 states of the United
 18 States and the District of Columbia, including any interim
 19 stops within the United States so long as the ultimate origin
 20 or destination of the aircraft is outside the United States
 21 and the District of Columbia.

22 "(34) The storage, use, or other consumption of hot
 23 or cold food and beverage products by a certificated or
 24 licensed air carrier with a hub operation within this state,
 25 for use in conducting intrastate, interstate, or foreign

1 commerce for transporting people or property by air. For the
2 purpose of this subdivision, the words "hub operation within
3 this state" shall be construed to have all of the following
4 criteria:

5 "a. There originates from the location 15 or more
6 flight departures and five or more different first-stop
7 destinations five days per week for six or more months during
8 the calendar year; and

9 "b. Passengers and/or property are regularly
10 exchanged at the location between flights of the same or a
11 different certificated or licensed air carrier.

12 "(35) The storage, use, or other consumption of the
13 following:

14 "a. Drill pipe, casing, tubing, and other pipe used
15 for the exploration for or production of oil, gas, sulphur, or
16 other minerals in offshore federal waters.

17 "b. Tangible personal property exclusively used for
18 the exploration for or production of oil, gas, sulphur, or
19 other minerals in offshore federal waters.

20 "c. Fuel and supplies for use or consumption aboard
21 boats, ships, aircraft, and towing vessels when used
22 exclusively in transporting persons or property between a
23 point in Alabama and a point or points in offshore federal
24 waters for the exploration for or production of oil, gas,
25 sulphur, or other minerals in offshore federal waters.

1 "d. Drilling equipment that is used for the
2 exploration for or production of oil, gas, sulphur, or other
3 minerals, that is built for exclusive use outside this state
4 and that is, on completion, removed forthwith from this state.

5 "e. All domestically mined or produced coal, coke,
6 and coke by-products used in cogeneration plants in Alabama.

7 "The delivery of items exempted by this subdivision
8 to the purchaser or lessee in this state does not disqualify
9 the purchaser or lessee from the exemption if the property is
10 removed from the state by any means, including by the use of
11 the purchaser's or lessee's own facilities.

12 "The shipment to a place in this state of equipment
13 exempted by this subdivision for further assembly or
14 fabrication does not disqualify the purchaser or lessee from
15 the exemption if on completion of the further assembly or
16 fabrication the equipment is removed forthwith from this
17 state. This subdivision applies to a sale that may occur when
18 the equipment exempted is further assembled or fabricated if
19 on completion the equipment is removed forthwith from this
20 state.

21 "(36) The storage or use of metal, other than gold
22 or silver, when such metal is held by an investment trust the
23 shares or other units in the trust's net assets of which have
24 been issued in exchange for such metal and are publicly
25 traded, including metal stored in warehouses located in this

1 state. For purposes of this subdivision, the term metals
2 includes, but is not limited to, copper, aluminum, nickel,
3 zinc, tin, lead, and other similar metals typically used in
4 commercial and industrial applications.

5 "(37) For the period commencing October 1, 2012, and
6 ending May 30, 2022, unless extended by joint resolution, all
7 parts, components, and systems that become a part of a fixed
8 or rotary wing military aircraft or certified transport
9 category aircraft which undergoes conversion, reconfiguration,
10 or general maintenance so long as the address of the aircraft
11 for FAA registration is not in the state; provided, however,
12 that this exemption shall not apply to a local use tax unless
13 previously exempted by local law or approved by resolution of
14 the local governing body.

15 "(38) Lunches sold not for profit and within school
16 buildings to pupils of kindergarten, grammar, and high
17 schools, either public or private."

18 Section 2. This act shall apply retroactively to all
19 open tax periods and all periods for which a preliminary or
20 final assessment of tax could be entered pursuant to Section
21 40-2A-7, Code of Alabama 1975, or any successor general or
22 local law. No refunds shall be due or issued pursuant to this
23 act with respect to those periods prior to the effective date
24 of this act.

1 Section 3. The provisions of this act are severable.
2 If any part of this act is declared invalid or
3 unconstitutional, that declaration shall not affect the part
4 which remains.

5 Section 4. All laws or parts of laws which conflict
6 with this act are repealed, provided that the amendments
7 herein are not intended to amend or repeal, but shall instead
8 supplement, the provisions of Section 40-9-31, Code of Alabama
9 1975.

10 Section 5. This act shall become effective
11 immediately following its passage and approval by the
12 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 30-JAN-14.

Jeff Woodard
Clerk

Senate

01-APR-14

Passed