

1 HB30
2 171737-2
3 By Representative Poole
4 RFD: Ways and Means Education
5 First Read: 08-SEP-15

2
3
4
5
6
7
8 SYNOPSIS: This bill would amend Sections 40-23-61,
9 40-23-85 and 40-23-174, Code of Alabama 1975 to
10 provide further for the distribution of use tax
11 funds.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 To amend Sections 40-23-61, 40-23-85 and 40-23-174,
18 Code of Alabama 1975 to provide further for the distribution
19 of use tax funds.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 40-23-61, 40-23-85 and
22 40-23-174, Code of Alabama 1975, are amended to read as
23 follows:

24 "§40-23-61.

25 "(a) An excise tax is hereby imposed on the storage,
26 use or other consumption in this state of tangible personal
27 property, not including, however, materials and supplies

1 bought for use in fulfilling a contract for the painting,
2 repairing or reconditioning of vessels, barges, ships, other
3 watercraft and commercial fishing vessels of over five tons
4 load displacement as registered with the U.S. Coast Guard and
5 licensed by the State of Alabama Department of Conservation
6 and Natural Resources, purchased at retail on or after October
7 1, 1965, for storage, use or other consumption in this state
8 at the rate of four percent of the sales price of such
9 property or the amount of tax collected by the seller,
10 whichever is greater; provided, however, when the seller
11 follows the Department of Revenue's suggested use tax brackets
12 and his records prove that his following said brackets
13 resulted in a net undercollection of tax for the month, he may
14 report the tax due or tax collected, whichever is less, except
15 as provided in subsections (b) and (c) of this section.

16 "(b) An excise tax is hereby imposed on the storage,
17 use or other consumption in this state of any machines used in
18 mining, quarrying, compounding, processing and manufacturing
19 of tangible personal property, purchased at retail on or after
20 October 1, 1965, at the rate of one and one-half percent of
21 the sales price of any such machine or the amount of tax
22 collected by the seller, whichever is greater; provided,
23 however, when the seller follows the Department of Revenue's
24 suggested use tax brackets and his records prove that his
25 following said brackets resulted in a net undercollection of
26 tax for the month, he may report the tax due or tax collected,
27 whichever is less; provided, that the term "machine," as

1 herein used, shall include machinery which is used for mining,
2 quarrying, compounding, processing, or manufacturing tangible
3 personal property, and the parts of such machines, attachments
4 and replacements therefor, which are made or manufactured for
5 use on or in the operation of such machines and which are
6 necessary to the operation of such machines and are
7 customarily so used.

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

1 that is, the price of the new or used vehicle sold less the
2 credit for the used vehicle taken in trade.

3 ~~"Of the total \$.02 tax on each dollar of sale
4 provided hereunder, 58 percent of the total tax generated by
5 this subsection shall be deposited to the credit of the
6 Education Trust Fund; and 42 percent of the total tax
7 generated by this subsection shall be deposited to the credit
8 of the State General Fund.~~

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

23 "(e) An excise tax is hereby imposed on the classes
24 of tangible personal property, and at the rates imposed on
25 such classes, specified in subsections (a), (b) and (c) of
26 this section, on the storage, use, or other consumption in the
27 performance of a contract in this state of any such tangible

1 personal property, new or used, the tax to be measured by the
2 sales price or the fair and reasonable market value of such
3 tangible personal property when put into use in this state,
4 whichever is less; provided, that the tax imposed by this
5 subsection shall not apply where the taxes imposed by
6 subsection (a), (b), or (c) of this section apply.

7 "§40-23-85.

8 "(a) All taxes, fees, interest or penalties imposed
9 and all amounts of tax herein required to be paid to the state
10 under this article must be paid to the Department of Revenue
11 at Montgomery, Alabama, with remittance payable to the
12 Treasurer of Alabama. Such amount of money as shall be
13 appropriated for each fiscal year by the Legislature to the
14 Department of Revenue with which to pay the salaries, the cost
15 of operation and the management of the said department shall
16 be deducted, as a first charge thereon, from the taxes
17 collected under and pursuant to Section 40-23-61; provided,
18 that the expenditure of said sum so appropriated shall be
19 budgeted and allotted pursuant to Article 4 of Chapter 4 of
20 Title 41, and limited to the amount appropriated to defray the
21 expenses of operating said department for each fiscal year.
22 After the distributions provided herein ~~and the distributions~~
23 ~~of use tax on automobiles to the General Fund as provided in~~
24 ~~Section 40-23-61(c)~~, the balance of the tax collected under
25 and pursuant to said Section 40-23-61 shall be distributed ~~as~~
26 ~~follows: (1) remote use tax amounts, seventy five percent~~
27 ~~(75%) to the General Fund and twenty five percent (25%) to the~~

1 ~~Education Trust Fund, and (2) any remaining amounts,~~
2 ~~seventy-five percent (75%) to the Education Trust Fund and~~
3 ~~twenty-five percent (25%) to the General Fund. An amount~~
4 ~~sufficient to fund the Children's Health Insurance Program~~
5 ~~(CHIP) shall be distributed annually as a first charge against~~
6 ~~the amounts allocated to the General Fund under this section.~~
7 It is the legislative intent that all amounts collected on
8 transactions involving a seller located outside the State of
9 Alabama when the property is shipped or transported from
10 outside the state shall be considered use tax for the purpose
11 of this distribution, regardless of whether the taxes may be
12 considered sales taxes for other purposes.

13 (b) Beginning with appropriations made for the
14 fiscal year ending September 30, 2017, the agencies and
15 related programs listed in subsection (c) shall be funded from
16 the State General Fund in an amount to be determined by the
17 Legislature and shall no longer be funded from the Education
18 Trust Fund. In the event that any of these programs receives
19 an appropriation from the Education Trust Fund in any fiscal
20 year beginning after September 30, 2016, than an amount equal
21 to the amount appropriated for the program from the Education
22 Trust Fund shall be distributed from the use tax revenues to
23 the Education Trust Fund for that fiscal year. This
24 distribution shall be in addition to any other distribution of
25 use tax revenues to the Education Trust Fund.

26 (c) The entities that will be shifted to the State
27 General Fund pursuant to subsection (b) include the following:

- 1 A. Legislative Fiscal Office
- 2 B. Legislative Reference Service
- 3 C. Legislature
- 4 D. Archives and History
- 5 E. Child Abuse & Neglect Prevention, Department
- 6 of
- 7 F. Geological Survey
- 8 G. Health, Department of Public
- 9 1. Public Health Services Program
- 10 a. AIDS Alabama
- 11 b. Alabama Kidney Foundation
- 12 c. Statewide Trauma System
- 13 2. Continuing Education for EMT Personnel
- 14 H. Higher Education Commission (ACHE)
- 15 1. National Computer Forensics Institute
- 16 J. Historical Commission
- 17 K. Human Resources, Department of
- 18 1. OBS Program and Family and Children Services
- 19 Program
- 20 a. Child Advocacy Centers
- 21 2. Child Care & After School Child Care Program
- 22 a. Black Belt Eye Care Consortium

- 1 b. Greater Alabama Child Development Program
2 for rural day care
- 3 c. Wiregrass Rehabilitation Center for day care
- 4 d. Mental Health-Eagles' Wings
- 5 L. Law Enforcement Agency, State
- 6 M. Mental Health, Department of
- 7 1. Institutional Treatment and Care of Mental
8 Illness Program
- 9 2. Substance Abuse Program
- 10 3. Special Services Program
- 11 a. Alabama Interagency Autism Coordinating
12 Council
- 13 b. Mental Health-Rainbow Omega
- 14 4. Institutional Treatment and Care of Intel-
15 lectually Disabled Program
- 16 a. Mental Health-ARC programs
- 17 b. Mental Health-Camp ASCCA
- 18 N. Rehabilitation Services, Department of
- 19 1. Homebound Program
- 20 2. Hemophilia Program
- 21 3. Children's Rehab Services
- 22 4. Dependents of Blind Parents
- 23 5. Rehabilitation Services

- 1 6. Teaching Children with Disabilities
- 2 7. Early Intervention
- 3 8. Respite Related Services & Training
- 4 9. Rehabilitation Projects
- 5 10. Federal Medicaid Assistance Program
- 6 0. Youth Services, Department of
- 7 1. Youth Services Program
- 8 2. Talladega College
- 9 3. Special Programming for Achievement Network
- 10 (SPAN)

11 "§40-23-174.

12 "(a) Should the enactment of a national agreement
13 for the collection of sales and use taxes from remote sellers
14 establish a single national tax rate on such remote sales or
15 should the agreement provide for the State of Alabama to
16 establish a single statewide rate on such remote sales, the
17 proceeds shall be distributed as follows:

18 "(1) One-half of such proceeds shall be distributed
19 to the State of Alabama of which ~~75%~~ 50% shall be deposited
20 into the General Fund, and ~~25%~~ 50% shall be deposited into the
21 Education Trust Fund.

1 "(2) One-quarter shall be distributed to the
2 governing body of the municipality in which the delivery is
3 made, if the delivery is made into a municipality.

4 "(3) The remainder shall be distributed to the
5 county governing body in the county in which the delivery is
6 made.

7 "(b) The tax proceeds distributed to a municipality
8 or county shall be expended by the governing body of the
9 municipality or county as required and provided by law for
10 other sales and use tax proceeds levied and collected by the
11 county or municipality including any bonded indebtedness."

12 Section 2. The provisions of this act are severable.
13 If any part of this act is declared invalid or
14 unconstitutional, that declaration shall not affect the part
15 that remains.

16 Section 3. All laws or parts of laws which conflict
17 with this act are repealed.

18 Section 4. This act shall become effective only upon
19 the enactment of HB _____ of the 2015 Second Special Session
20 following its passage and approval by the Governor.