

1 HB373
2 157594-3
3 By Representative Poole
4 RFD: Ways and Means Education
5 First Read: 30-JAN-14

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ENROLLED, An Act,

To amend Sections 40-23-1 and 40-23-60, Code of Alabama 1975, relating to sales and use tax definitions, to clarify that prepaid wireless service that is evidenced by a physical card and prepaid wireless service that is not evidenced by a physical card, are subject to sales and use tax.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 40-23-1, Code of Alabama 1975, is hereby amended to read as follows:

"§40-23-1.

"(a) For the purpose of this division, the following terms shall have the respective meanings ascribed by this section:

"(1) PERSON or COMPANY. Used interchangeably, includes any individual, firm, copartnership, association, corporation, receiver, trustee, or any other group or combination acting as a unit and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

"(2) DEPARTMENT. The Department of Revenue of the State of Alabama.

"(3) COMMISSIONER. The Commissioner of Revenue of the State of Alabama.

1 "(4) TAX YEAR or TAXABLE YEAR. The calendar year.

2 "(5) SALE or SALES. Installment and credit sales and
3 the exchange of properties as well as the sale thereof for
4 money, every closed transaction constituting a sale. Provided,
5 however, a transaction shall not be closed or a sale completed
6 until the time and place when and where title is transferred
7 by the seller or seller's agent to the purchaser or
8 purchaser's agent, and for the purpose of determining transfer
9 of title, a common carrier or the U. S. Postal Service shall
10 be deemed to be the agent of the seller, regardless of any
11 F.O.B. point and regardless of who selects the method of
12 transportation, and regardless of by whom or the method by
13 which freight, postage, or other transportation charge is
14 paid. Provided further that, where billed as a separate item
15 to and paid by the purchaser, the freight, postage, or other
16 transportation charge paid to a common carrier or the U.S.
17 Postal Service is not a part of the selling price.

18 "(6) GROSS PROCEEDS OF SALES. The value proceeding
19 or accruing from the sale of tangible personal property, and
20 including the proceeds from the sale of any property handled
21 on consignment by the taxpayer, including merchandise of any
22 kind and character without any deduction on account of the
23 cost of the property sold, the cost of the materials used,
24 labor or service cost, interest paid, any consumer excise
25 taxes that may be included within the sales price of the

1 property sold, or any other expenses whatsoever, and without
2 any deductions on account of losses; provided, that cash
3 discounts allowed and taken on sales shall not be included,
4 and "gross proceeds of sales" shall not include the sale price
5 of property returned by customers when the full sales price
6 thereof is refunded either in cash or by credit. The term
7 "gross proceeds of sale" shall also mean and include the
8 reasonable and fair market value of any tangible personal
9 property previously purchased at wholesale which is withdrawn
10 or used from the business or stock and used or consumed in
11 connection with a business, and shall also mean and include
12 the reasonable and fair market value of any tangible personal
13 property previously purchased at wholesale which is withdrawn
14 from the business or stock and used or consumed by any person
15 so withdrawing the same, except property which has been
16 previously withdrawn from business or stock and so used or
17 consumed with respect to which property the tax has been paid
18 because of previous withdrawal, use, or consumption, except
19 property which enters into and becomes an ingredient or
20 component part of tangible personal property or products
21 manufactured or compounded for sale and not for the personal
22 and private use or consumption of any person so withdrawing,
23 using, or consuming the same, and except refinery, residue, or
24 fuel gas, whether in a liquid or gaseous state, that has been
25 generated by, or is otherwise a by-product of, a

1 petroleum-refining process, which gas is then utilized in the
2 process to generate heat or is otherwise utilized in the
3 distillation or refining of petroleum products.

4 "In the case of the retail sale of equipment,
5 accessories, fixtures, and other similar tangible personal
6 property used in connection with the sale of commercial mobile
7 services as defined herein, or in connection with satellite
8 television services, at a price below cost, "gross proceeds of
9 sale" shall only include the stated sales price thereof and
10 shall not include any sales commission or rebate received by
11 the seller as a result of the sale. As used herein, the term
12 "commercial mobile services" shall have the same meaning as
13 that term has in 47 U.S.C. Sections 153(n) and 332(d), as in
14 effect from time to time.

15 "(7) TAXPAYER. Any person liable for taxes
16 hereunder.

17 "(8) GROSS RECEIPTS. The value proceeding or
18 accruing from the sale of tangible personal property,
19 including merchandise and commodities of any kind and
20 character, all receipts actual and accrued, by reason of any
21 business engaged in, not including, however, interest,
22 discounts, rentals of real estate or royalties, and without
23 any deduction on account of the cost of the property sold, the
24 cost of the materials used, labor or service cost, interest
25 paid, any consumer excise taxes that may be included in the

1 sales price of the property sold, or any other expenses
2 whatsoever and without any deductions on account of losses.
3 The term "gross receipts" shall also mean and include the
4 reasonable and fair market value of any tangible personal
5 property previously purchased at wholesale which is withdrawn
6 or used from the business or stock and used or consumed in
7 connection with a business, and shall also mean and include
8 the reasonable and fair market value of any tangible personal
9 property previously purchased at wholesale which is withdrawn
10 from the business or stock and used or consumed by any person
11 so withdrawing the same, except property which has been
12 previously withdrawn from business or stock and so used or
13 consumed and with respect to which property the tax has been
14 paid because of previous withdrawal, use, or consumption,
15 except property which enters into and becomes an ingredient or
16 component part of tangible personal property or products
17 manufactured or compounded for sale as provided in subdivision
18 (9) and not for the personal and private use or consumption of
19 any person so withdrawing, using, or consuming the same, and
20 except refinery, residue, or fuel gas, whether in a liquid or
21 gaseous state, that has been generated by, or is otherwise a
22 by-product of, a petroleum-refining process, which gas is then
23 utilized in the process to generate heat or is otherwise
24 utilized in the distillation or refining of petroleum
25 products.

1 "(9) WHOLESALE SALE or SALE AT WHOLESALE. Any one of
2 the following:

3 "a. A sale of tangible personal property by
4 wholesalers to licensed retail merchants, jobbers, dealers, or
5 other wholesalers for resale and does not include a sale by
6 wholesalers to users or consumers, not for resale.

7 "b. A sale of tangible personal property or
8 products, including iron ore, and including the furnished
9 container and label of such property or products, to a
10 manufacturer or compounder which enter into and become an
11 ingredient or component part of the tangible personal property
12 or products which the manufacturer or compounder manufactures
13 or compounds for sale, whether or not such tangible personal
14 property or product used in manufacturing or compounding a
15 finished product is used with the intent that it becomes a
16 component of the finished product; provided, however, that it
17 is the intent of this section that no sale of capital
18 equipment, machinery, tools, or product shall be included in
19 the term "wholesale sale." The term "capital equipment,
20 machinery, tools, or product" shall mean property that is
21 subject to depreciation allowances for Alabama income tax
22 purposes.

23 "c. A sale of containers intended for one-time use
24 only, and the labels thereof, when containers are sold without

1 contents to persons who sell or furnish containers along with
2 the contents placed therein for sale by persons.

3 "d. A sale of pallets intended for one-time use only
4 when pallets are sold without contents to persons who sell or
5 furnish pallets along with the contents placed thereon for
6 sale by persons.

7 "e. A sale to a manufacturer or compounder, of
8 crowns, caps, and tops intended for one-time use employed and
9 used upon the containers in which a manufacturer or compounder
10 markets his products.

11 "f. A sale of containers to persons engaged in
12 selling or otherwise supplying or furnishing baby chicks to
13 growers thereof where containers are used for the delivery of
14 chicks or a sale of containers for use in the delivery of eggs
15 by the producer thereof to the distributor or packer of eggs
16 even though containers used for delivery of baby chicks or
17 eggs may be recovered for reuse.

18 "g. A sale of bagging and ties used in preparing
19 cotton for market.

20 "h. A sale to meat packers, manufacturers,
21 compounders, or processors of meat products of all casings
22 used in molding or forming wieners and Vienna sausages even
23 though casings may be recovered for reuse.

24 "i. A sale of commercial fish feed including
25 concentrates, supplements, and other feed ingredients when

1 substances are used as ingredients in mixing and preparing
2 feed for fish raised to be sold on a commercial basis.

3 "j. A sale of tangible personal property to any
4 person engaging in the business of leasing or renting tangible
5 personal property to others, if tangible personal property is
6 purchased for the purpose of leasing or renting it to others
7 under a transaction subject to the privilege or license tax
8 levied in Article 4 of Chapter 12 of this title against any
9 person engaging in the business of leasing or renting tangible
10 personal property to others.

11 "k. A purchase or withdrawal of parts or materials
12 from stock by any person licensed under this division where
13 parts or materials are used in repairing or reconditioning the
14 tangible personal property of a licensed person, which
15 tangible personal property is a part of the stock of goods of
16 a licensed person, offered for sale by him, and not for use or
17 consumption of a licensed person.

18 "(10) SALE AT RETAIL or RETAIL SALE. All sales of
19 tangible personal property except those above defined as
20 wholesale sales. The quantities of goods sold or prices at
21 which sold are immaterial in determining whether or not a sale
22 is at retail. Sales of building materials to contractors,
23 builders, or landowners for resale or use in the form of real
24 estate are retail sales in whatever quantity sold. Sales of
25 building materials, fixtures, or other equipment to a

1 manufacturer or builder of modular buildings for use in
2 manufacturing, building, or equipping a modular building
3 ultimately becoming a part of real estate situated in the
4 State of Alabama are retail sales, and the use, sale, or
5 resale of building shall not be subject to the tax. Sales of
6 tangible personal property to undertakers and morticians are
7 retail sales and subject to the tax at the time of purchase,
8 but are not subject to the tax on resale to the consumer.
9 Sales of tangible personal property or products to
10 manufacturers, quarry operators, mine operators, or
11 compounders, which are used or consumed by them in
12 manufacturing, mining, quarrying, or compounding and do not
13 become an ingredient or component part of the tangible
14 personal property manufactured or compounded as provided in
15 subdivision (9) are retail sales. The term "sale at retail" or
16 "retail sale" shall also mean and include the withdrawal, use,
17 or consumption of any tangible personal property by any one
18 who purchases same at wholesale, except property which has
19 been previously withdrawn from the business or stock and so
20 used or consumed and with respect to which property tax has
21 been paid because of previous withdrawal, use, or consumption,
22 except property which enters into and becomes an ingredient or
23 component part of tangible personal property or products
24 manufactured or compounded for sale as provided in subdivision
25 (9) and not for the personal and private use or consumption of

1 any person so withdrawing, using, or consuming the same; and
2 wholesale purchaser shall report and pay the taxes thereon. In
3 the case of the sale of equipment, accessories, fixtures, and
4 other similar tangible personal property used in connection
5 with the sale of commercial mobile services as defined in
6 subdivision (6) above, or in connection with satellite
7 television services, at a price below cost, the term "sale at
8 retail" and "retail sale" shall include those sales, and those
9 sales shall not also be taxable as a withdrawal, use, or
10 consumption of such tangible personal property.

11 "(11) BUSINESS. All activities engaged in, or caused
12 to be engaged in, with the object of gain, profit, benefit, or
13 advantage, either direct or indirect, and not excepting
14 subactivities producing marketable commodities used or
15 consumed in the main business activity, each of which
16 subactivities shall be considered business engaged in, taxable
17 in the class in which it falls.

18 "(12) AUTOMOTIVE VEHICLE. A power shovel, dragline,
19 crawler, crawler crane, ditcher, or any similar machine which
20 is self-propelled, in addition to self-propelled machines
21 which are used primarily as instruments of conveyance.

22 "(13) PREPAID TELEPHONE CALLING CARD. A sale of a
23 prepaid telephone calling card or a prepaid authorization
24 number, or both, shall be deemed the sale of tangible personal
25 property subject to the tax imposed on the sale of tangible

1 personal property pursuant to this chapter. For purposes of
2 this subdivision (13), the sale of prepaid wireless service
3 that is evidenced by a physical card constitutes the sale of a
4 prepaid telephone calling card, and the sale of prepaid
5 wireless service that is not evidenced by a physical card
6 constitutes the sale of a prepaid authorization number.

7 "(b) The use within this state of tangible personal
8 property by the manufacturer thereof, as building materials in
9 the performance of a construction contract, shall, for the
10 purposes of this division, be considered as a retail sale
11 thereof by manufacturer, who shall also be construed as the
12 ultimate consumer of materials or property, and who shall be
13 required to report transaction and pay the sales tax thereon,
14 based upon the reasonable and fair market price thereof at the
15 time and place where same are used or consumed by him or it.
16 Where the contractor is the manufacturer or compounder of
17 ready-mix concrete or asphalt plant mix used in the
18 performance of a contract, whether the ready-mix concrete or
19 asphalt plant mix is manufactured or compounded at the job
20 site or at a fixed or permanent plant location, the tax
21 applies only to the cost of the ingredients that become a
22 component part of the ready-mix concrete or the asphalt plant
23 mix. The provisions of this subsection shall not apply to any
24 tangible personal property which is specifically exempted from
25 the tax levied in this division.

1 "(c) The sale of lumber by a lumber manufacturer to
2 a trucker for resale is a sale at wholesale as sales are
3 defined herein where the trucker is either a licensed dealer
4 in lumber or, if a resident of Alabama, has registered with
5 the Department of Revenue, and has received therefrom a
6 certificate of registration or, if a nonresident of this state
7 purchasing lumber for resale outside the State of Alabama, has
8 furnished to the lumber manufacturer his name, address and the
9 vehicle license number of the truck in which the lumber is to
10 be transported, which name, address, and vehicle license
11 number shall be shown on the sales invoice rendered by the
12 lumber manufacturer. The certificate provided for herein shall
13 be valid for the calendar year of its issuance and may be
14 renewed from year to year on application to the Department of
15 Revenue on or before January 31 of each succeeding year;
16 provided, that if not renewed the certificate shall become
17 invalid for the purpose of this division on February 1.

18 "(d) The dispensing or transferring of ophthalmic
19 materials, including lenses, frames, eyeglasses, contact
20 lenses, and other therapeutic optic devices, to a patient by a
21 licensed ophthalmologist, as a part of his or her professional
22 service, shall, for purposes of this division, constitute a
23 sale, subject to the state sales tax. The licensed
24 ophthalmologist or licensed optometrist shall collect the
25 state sales tax. In no event shall the providing of

1 professional services in connection with the dispensing or
2 transferring of ophthalmic materials, including dispensing
3 fees or fitting fees, by a licensed ophthalmologist or
4 licensed optometrist be considered a sale subject to the state
5 sales tax. When the ophthalmic materials are purchased by a
6 consumer covered by a third party benefit plan, including
7 Medicare, the sales tax shall be applicable to the amount that
8 the ophthalmologist, optometrist, or optician is reimbursed by
9 the third party benefit plan plus the amount that the consumer
10 pays to the ophthalmologist, optometrist, or optician at the
11 time of the sale. All transfers of ophthalmic materials by
12 opticians or optometrists shall be considered retail sales
13 subject to the state sales tax. The term supplier shall
14 include but not be limited to optical laboratories, ophthalmic
15 material wholesalers, or anyone selling ophthalmic materials
16 to ophthalmologists.

17 "(e) Notwithstanding the above, the withdrawal, use,
18 or consumption of a manufactured product by the manufacturer
19 thereof in quality control testing performed by employees or
20 independent contractors of the taxpayer, for purposes of this
21 division, shall not be deemed or considered to constitute a
22 transaction subject to sales tax, nor shall a gift by the
23 manufacturer of a manufactured product, withdrawn from the
24 manufacturer's inventory, to an entity listed in 26 U.S.C.

1 Sections 170(b) or (c), be considered a transaction subject to
 2 sales tax.

3 "(f) Notwithstanding the foregoing, a gift by a
 4 retailer of a product or products where the aggregate retail
 5 value of any single gift is equal to or less than ten thousand
 6 dollars (\$10,000), withdrawn from the retailer's inventory, to
 7 an entity listed in 26 U.S.C. Sections 170(b) or (c) shall not
 8 be deemed or considered to constitute a transaction subject to
 9 sales and use tax.

10 "(14) PREPAID WIRELESS SERVICE. The right to use
 11 mobile telecommunications service, which must be paid for in
 12 advance and that is sold in predetermined units or dollars of
 13 which the number declines with use in a known amount, and
 14 which may include rights to use non-telecommunications
 15 services or to download digital products or digital content.
 16 For purposes of this subdivision (14), "mobile
 17 telecommunications service" has the meaning ascribed by
 18 Section 40-21-120."

19 Section 2. Section 40-23-60, Code of Alabama 1975,
 20 is hereby amended to read as follows:

21 "§40-23-60.

22 For the purpose of this article, the following terms
 23 shall have the respective meanings ascribed to them in this
 24 section:

1 (1) PERSON or COMPANY. Any individual, firm,
2 company, partnership, association, corporation, receiver or
3 trustee, or any other group or combination acting as a unit,
4 and the plural as well as the singular number, unless the
5 intention to give a more limited meaning is disclosed by the
6 context.

7 (2) DEPARTMENT. The Department of Revenue of the
8 State of Alabama.

9 (3) COMMISSIONER. The Commissioner of Revenue of the
10 State of Alabama.

11 (4) WHOLESALE SALE or SALE AT WHOLESALE. Any one of
12 the following:

13 a. A sale of tangible personal property by
14 wholesaler to licensed retail merchants, jobbers, dealers or
15 other wholesalers for resale and does not include a sale by
16 wholesalers to users or consumers, not for resale.

17 b. A sale of tangible personal property or products,
18 including iron ore, and including the furnished container and
19 label of such property or products, to a manufacturer or
20 compounder which enter into and become an ingredient or
21 component part of the tangible personal property or products
22 which the manufacturer or compounder manufactures or compounds
23 for sale, whether or not such tangible personal property or
24 product used in manufacturing or compounding a finished
25 product is used with the intent that it become a component of

1 the finished product; provided, however, that it is the intent
2 of this section that no sale of capital equipment, machinery,
3 tools, or product shall be included in the term "wholesale
4 sale." The term "capital equipment, machinery, tools, or
5 product" shall mean property that is subject to depreciation
6 allowances for Alabama income tax purposes.

7 c. A sale of containers intended for one-time use
8 only, and the labels thereof, when such containers are sold
9 without contents to persons who sell or furnish such
10 containers along with the contents placed therein for sale by
11 such persons.

12 d. A sale of pallets intended for one-time use only
13 when such pallets are sold without contents to persons who
14 sell or furnish such pallets along with the contents placed
15 thereon for sale by such persons.

16 e. A sale to a manufacturer or compounder, of
17 crowns, caps and tops intended for one-time use employed and
18 used upon the containers in which such manufacturer or
19 compounder markets his products.

20 f. A sale of containers to persons engaged in
21 selling or otherwise supplying or furnishing baby chicks to
22 growers thereof where such containers are used for the
23 delivery of such chicks or a sale of containers for use in the
24 delivery of eggs by the producer thereof to the distributor or

1 packer of such eggs even though such containers used for
 2 delivery of baby chicks or eggs may be recovered for reuse.

3 g. A sale of bagging and ties used in preparing
 4 cotton for market.

5 h. A sale of commercial fish feed including
 6 concentrates, supplements and other feed ingredients when such
 7 substances are used as ingredients in mixing and preparing
 8 feed for fish raised to be sold on a commercial basis.

9 i. A sale of tangible personal property to any
 10 person engaging in the business of leasing or renting such
 11 tangible personal property to others, if such tangible
 12 personal property is purchased for the purpose of leasing or
 13 renting it to others under a transaction subject to the
 14 privilege or license tax levied in Article 4 of Chapter 12 of
 15 this title against any person engaging in the business of
 16 leasing or renting tangible personal property to others.

17 j. A purchase or withdrawal of parts or materials
 18 from stock by any person licensed under this article where
 19 such parts or materials are used in repairing or
 20 reconditioning the tangible personal property of such licensed
 21 person which tangible personal property is a part of the stock
 22 of goods of such licensed person, offered for sale by him and
 23 not for use or consumption of such licensed person.

24 k. A sale to meat packers, manufacturers,
 25 compounders or processors of meat products of all casings used

1 in moulding or forming wieners and Vienna sausages, even
2 though such casings may be recovered for reuse.

3 (5) SALE AT RETAIL or RETAIL SALE. All sales of
4 tangible personal property except those above defined as
5 wholesale sales. The quantities of goods sold or prices at
6 which sold are immaterial in determining whether or not a sale
7 is at retail. Sales of building materials to contractors,
8 builders or landowners for resale or use in the form of real
9 estate are retail sales in whatever quantity sold. Sales of
10 building materials, fixtures or other equipment to a
11 manufacturer or builder of modular buildings for use in
12 manufacturing, building or equipping a modular building
13 ultimately becoming a part of real estate situated in the
14 State of Alabama are retail sales, and the use, sale or resale
15 of such building shall not be subject to the tax. Sales of
16 tangible personal property to undertakers and morticians are
17 retail sales and subject to the tax at the time of purchase,
18 but are not subject to the tax on resale to the consumer.
19 Sales of tangible personal property or products to
20 manufacturers, quarry operators, mine operators or
21 compounders, which are used or consumed by them in
22 manufacturing, mining, quarrying or compounding and do not
23 become an ingredient or component part of the tangible
24 personal property manufactured or compounded as provided in
25 subdivision (4) are retail sales. The term "sale at retail" or

1 "retail sale" shall also mean and include the withdrawal, use
2 or consumption of any tangible personal property by anyone who
3 purchases same at wholesale, except property which has been
4 previously withdrawn from the business or stock and so used or
5 consumed and with respect to which property the tax has been
6 paid because of such previous withdrawal, use or consumption,
7 except property which enters into and becomes an ingredient or
8 component part of tangible personal property or products
9 manufactured or compounded for sale as provided in subdivision
10 (4); and not for the personal and private use or consumption
11 of any person so withdrawing, using or consuming the same, and
12 such wholesale purchaser shall report and pay the taxes
13 thereon; and except refinery, residue, or fuel gas, whether in
14 a liquid or gaseous state, that has been generated by, or is
15 otherwise a by-product of, a petroleum-refining process, which
16 gas is then utilized in the process to generate heat or is
17 otherwise utilized in the distillation or refining of
18 petroleum products. The term "retail sale" or "sale at retail"
19 shall also mean and include the sale of tangible personal
20 property previously purchased at wholesale for the purpose of
21 leasing or renting under a transaction subject to the
22 privilege or license tax levied in Article 4 of Chapter 12 of
23 this title, regardless of whether such sale is to the person
24 who theretofore leased or rented the said tangible personal
25 property or to some other person.

1 (6) BUSINESS. All activities engaged in, or caused
2 to be engaged in, with the object of gain, profit, benefit or
3 advantage, either direct or indirect, and not excepting
4 subactivities producing marketable commodities used or
5 consumed in the main business activity, each of which
6 subactivities shall be considered business engaged in, taxable
7 in the class in which it falls.

8 (7) STORAGE. Any keeping or retention in this state
9 for any purpose except sale in the regular course of business
10 or subsequent use solely outside this state of tangible
11 personal property purchased at retail.

12 (8) USE. The exercise of any right or power over
13 tangible personal property incident to the ownership of that
14 property, or by any transaction where possession is given,
15 except that it shall not include the sale of that property in
16 the regular course of business.

17 (9) PURCHASE. Acquired for a consideration, whether
18 such acquisition was effected by a transfer of title, or of
19 possession or of both, or a license to use or consume; whether
20 such transfer shall have been absolute or conditional, and by
21 whatsoever means the same shall have been effected; and
22 whether such consideration be a price or rental in money, or
23 by way of exchange or barter.

24 (10) SALES PRICE. The total amount for which
25 tangible personal property is sold, including any services,

1 including transportation, that are a part of the sale, valued
2 in money, whether paid in money or otherwise, and includes any
3 amount for which credit is given to the purchaser by the
4 seller, without any deduction therefrom on account of the cost
5 of the property sold, the cost of the materials used, labor or
6 service cost, interest charged, losses or any other expenses
7 whatsoever; provided, that cash discounts allowed and taken on
8 sales shall not be included and sales price shall not include
9 the amount charged for property returned by customers when the
10 entire amount charged therefor is refunded either in cash or
11 by credit.

12 (11) IN THIS STATE or IN THE STATE. Within the
13 exterior limits of the State of Alabama, and includes all
14 territory within such limits owned by or ceded to the United
15 States of America.

16 (12) AUTOMOTIVE VEHICLE. A power shovel, dragline,
17 crawler, crawler crane, ditcher or any similar machine which
18 is self-propelled, in addition to self-propelled machines
19 which are used primarily as instruments of conveyance.

20 (13) PREPAID TELEPHONE CALLING CARD. A sale of a
21 prepaid telephone calling card or a prepaid authorization
22 number, or both, shall be deemed the sale of tangible personal
23 property subject to the tax imposed pursuant to this chapter.
24 For purposes of this subdivision (13), the sale of prepaid
25 wireless service that is evidenced by a physical card

1 constitutes the sale of a prepaid telephone calling card, and
2 the sale of prepaid wireless service that is not evidenced by
3 a physical card constitutes the sale of a prepaid
4 authorization number.

5 (14) PREPAID WIRELESS SERVICE. The right to use
6 mobile telecommunications service, which must be paid for in
7 advance and that is sold in predetermined units or dollars of
8 which the number declines with use or the expiration of time
9 in a known amount, and which may include rights to use
10 non-telecommunications services or to download digital
11 products or digital content. For purposes of this subdivision
12 (14), "mobile telecommunications service" has the meaning
13 ascribed by Section 40-21-120.

14 ~~(14)~~ (15) REMOTE USE TAX. Amounts collected from out
15 of state vendors who, on October 1, 2012, were or would have
16 been remote sellers as defined in Section 40-23-171; and
17 amounts remitted by consumers on the individual tax return.

18 Section 3. The provisions of this act are severable.
19 If any part of this act is declared invalid or
20 unconstitutional, that declaration shall not affect the part
21 which remains.

22 Section 4. All laws or parts of laws which conflict
23 with this act are repealed.

24 Section 5. The amendments in this act are intended
25 to clarify existing law and are not substantive changes to the

1 tax law. For that reason, the amendments should be applied to
2 all open tax periods.

3 Section 6. For transactions that occurred prior to
4 the effective date of this act in which the consumer did not
5 receive from the retailer either an authorization number or a
6 physical card, neither the Department of Revenue nor local tax
7 officials may seek payment for sales tax not collected. This
8 limitation on the authority of the department or local
9 officials shall not apply to audits that began or assessments
10 that were entered prior to the effective date of this act.
11 With regard to such transactions in which sales tax was
12 collected and remitted, neither the taxpayer nor the entity
13 remitting sales tax shall have the right to seek refund of
14 such tax.

15 Section 7. This act shall become effective on the
16 first day of the third month following its passage and
17 approval by the 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 20-FEB-14, as amended.

Jeff Woodard
Clerk

Senate

20-MAR-14

Passed