

1 HB39
2 134387-3
3 By Representatives Lee, Moore (B), Chesteen, Shiver, Barton,
4 Weaver, Gaston, Ison, Fincher, Mask, Millican, McMillan,
5 Collins, Johnson (K), Williams (J), Wren, Wallace, Buttram,
6 Sessions, Beckman, Baker, Patterson, Sanderford, Faust,
7 Galliher, Hill, Farley and Clouse
8 RFD: Economic Development and Tourism
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8 SYNOPSIS: This bill would provide for a sales tax
9 exemption for any parts, components, and systems
10 used in the conversion, reconfiguration, or
11 maintenance of an aircraft certified as a transport
12 category airplane. The exemption would not apply to
13 a local sales tax unless an exemption is provided
14 by local law or by the adoption of a resolution of
15 the local governing body.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT

20
21 To amend Section 40-23-4, Code of Alabama 1975,
22 relating to sales tax exemptions, to exempt any parts,
23 components, and systems used in the conversion,
24 reconfiguration, or maintenance of an aircraft certified as a
25 transport category airplane; and providing that the exemption
26 shall not apply to a local sales tax unless exempted by local

1 law or the adoption of a resolution by the local governing
2 body.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 40-23-4, Code of Alabama 1975, is
5 amended to read as follows:

6 "§40-23-4.

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

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

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

22 "(3) The gross proceeds of the sale, or sales, of
23 seeds for planting purposes and baby chicks and poults.
24 Nothing herein shall be construed to exempt or exclude from
25 the computation of the tax levied, assessed, or payable, the
26 gross proceeds of the sale or sales of plants, seedlings,
27 nursery stock, or floral products.

1 "(4) The gross proceeds of sales of insecticides and
2 fungicides when used for agricultural purposes or when used by
3 persons properly permitted by the Department of Agriculture
4 and Industries or any applicable local or state governmental
5 authority for structural pest control work and feed for
6 livestock and poultry, but not including prepared food for
7 dogs and cats.

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

19 "(6) Cottonseed meal exchanged for cottonseed at or
20 by cotton gins.

21 "(7) The gross receipts from the business on which,
22 or for engaging in which, a license or privilege tax is levied
23 by or under the provisions of Sections 40-21-50, 40-21-53, and
24 40-21-56 through 40-21-60; provided, that nothing contained in
25 this subdivision shall be construed to exempt or relieve the
26 person or persons operating the business enumerated in said
27 sections from the payments of the tax levied by this division

1 upon or measured by the gross proceeds of sales of any
2 tangible personal property, except gas and water, the gross
3 receipts from the sale of which are the measure of the tax
4 levied by said Section 40-21-50, merchandise or other tangible
5 commodities sold at retail by said persons, unless the gross
6 proceeds of sale thereof are otherwise specifically exempted
7 by the provisions of this division.

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

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

23 "(10) The gross proceeds from the sale or sales of
24 fuel and supplies for use or consumption aboard ships,
25 vessels, towing vessels, or barges, or drilling ships, rigs or
26 barges, or seismic or geophysical vessels, or other watercraft
27 (herein for purposes of this exemption being referred to as

1 "vessels") engaged in foreign or international commerce or in
2 interstate commerce; provided, that nothing in this division
3 shall be construed to exempt or exclude from the measure of
4 the tax herein levied the gross proceeds of sale or sales of
5 material and supplies to any person for use in fulfilling a
6 contract for the painting, repair, or reconditioning of
7 vessels, barges, ships, other watercraft, and commercial
8 fishing vessels of over five tons load displacement as
9 registered with the U.S. Coast Guard and licensed by the State
10 of Alabama Department of Conservation and Natural Resources.

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

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

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

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

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

24 "(13) The gross proceeds of the sale or sales of
25 materials, equipment, and machinery which, at any time, enter
26 into and become a component part of ships, vessels, towing
27 vessels or barges, or drilling ships, rigs or barges, or

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

16 "(14) The gross proceeds of the sale or sales of
17 fuel oil purchased as fuel for kiln use in manufacturing
18 establishments.

19 "(15) The gross proceeds of the sale or sales of
20 tangible personal property to county and city school boards,
21 independent school boards, and all educational institutions
22 and agencies of the State of Alabama, the counties within the
23 state, or any incorporated municipalities of the State of
24 Alabama.

25 "(16) The gross proceeds from the sale of all
26 devices or facilities, and all identifiable components
27 thereof, or materials for use therein, acquired primarily for

1 the control, reduction, or elimination of air or water
2 pollution and the gross proceeds from the sale of all
3 identifiable components of or materials used or intended for
4 use in structures built primarily for the control, reduction,
5 or elimination of air and water pollution.

6 "(17) The gross proceeds of sales of tangible
7 personal property or the gross receipts of any business which
8 the state is prohibited from taxing under the Constitution or
9 laws of the United States or under the Constitution of this
10 state.

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

18 "(19) The gross proceeds received from the sale or
19 furnishing of food, including potato chips, candy, fruit and
20 similar items, soft drinks, tobacco products, and stationery
21 and other similar or related articles by hospital canteens
22 operated by Alabama state hospitals at Bryce Hospital and
23 Partlow State School for Mental Deficients at Tuscaloosa,
24 Alabama, and Searcy Hospital at Mt. Vernon, Alabama, for the
25 benefit of the patients therein.

26 "(20) The gross proceeds of the sale, or sales, of
27 wrapping paper and other wrapping materials when used in

1 preparing poultry or poultry products for delivery, shipment,
2 or sale by the producer, processor, packer, or seller of such
3 poultry or poultry products, including pallets used in
4 shipping poultry and egg products, paper or other materials
5 used for lining boxes or other containers in which poultry or
6 poultry products are packed together with any other materials
7 placed in such containers for the delivery, shipment, or sale
8 of poultry or poultry products.

9 "(21) The gross proceeds of the sales of all
10 antibiotics, hormones and hormone preparations, drugs,
11 medicines or medications, vitamins, minerals or other
12 nutrients, and all other feed ingredients including
13 concentrates, supplements, and other feed ingredients when
14 such substances are used as ingredients in mixing and
15 preparing feed for fish raised to be sold on a commercial
16 basis, livestock, and poultry. Such exemption herein granted
17 shall be in addition to exemptions now provided by law for
18 feed for fish raised to be sold on a commercial basis,
19 livestock, and poultry, but not including prepared foods for
20 dogs or cats.

21 "(22) The gross proceeds of the sale, or sales, of
22 seedlings, plants, shoots, and slips which are to be used for
23 planting vegetable gardens or truck farms and other
24 agricultural purposes. Nothing herein shall be construed to
25 exempt, or exclude from the computation of the tax levied,
26 assessed, or payable, the gross proceeds of the sale, or the

1 use of plants, seedlings, shoots, slips, nursery stock, and
2 floral products, except as hereinabove exempted.

3 "(23) The gross proceeds of the sale, or sales, of
4 fabricated steel tube sections, when produced and fabricated
5 in this state by any person, firm, or corporation for any
6 vehicular tunnel for highway vehicular traffic, when sold by
7 the manufacturer or fabricator thereof, and also the gross
8 proceeds of the sale, or sales, of steel which enters into and
9 becomes a component part of such fabricated steel tube
10 sections of said tunnel.

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

25 "(25) The gross proceeds of sales of herbicides for
26 agricultural uses by whomsoever sold. The term herbicides, as
27 used in this subdivision, means any substance or mixture of

1 substances intended to prevent, destroy, repel, or retard the
2 growth of weeds or plants. It shall include preemergence
3 herbicides, postemergence herbicides, lay-by herbicides,
4 pasture herbicides, defoliant herbicides, and desiccant
5 herbicides.

6 "(26) The Alabama Chapter of the Cystic Fibrosis
7 Research Foundation and the Jefferson Tuberculosis Sanatorium
8 and any of their departments or agencies, heretofore or
9 hereafter organized and existing in good faith in the State of
10 Alabama for purposes other than for pecuniary gain and not for
11 individual profit, shall be exempted from the computation of
12 the tax on the gross proceeds of all sales levied, assessed,
13 or payable.

14 "(27) The gross proceeds from the sale or sales of
15 fuel for use or consumption aboard commercial fishing vessels
16 are hereby exempt from the computation of all sales taxes
17 levied, assessed, or payable under the provisions of this
18 division or levied under any county or municipal sales tax
19 law.

20 "The words commercial fishing vessels shall mean
21 vessels whose masters and owners are regularly and exclusively
22 engaged in fishing as their means of livelihood.

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

26 "(29) The gross proceeds of the sales of all
27 antibiotics, hormones and hormone preparations, drugs,

1 medicines, and other medications including serums and
2 vaccines, vitamins, minerals, or other nutrients for use in
3 the production and growing of fish, livestock, and poultry by
4 whomsoever sold. Such exemption as herein granted shall be in
5 addition to the exemption provided by law for feed for fish,
6 livestock, and poultry, and in addition to the exemptions
7 provided by law for the above-enumerated substances and
8 products when mixed and used as ingredients in fish,
9 livestock, and poultry feed.

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

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

20 "a. The name and claim number as shown on a
21 "Medicare" card issued by the United States Social Security
22 Administration.

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

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

4 "For the purposes of this subdivision, any person
5 filing a false proof of age shall be guilty of a misdemeanor
6 and upon conviction thereof shall be punished by a fine of
7 \$100.

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

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

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

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

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

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

9 "(37) The gross receipts of any aircraft
10 manufactured, sold, and delivered in this state if said
11 aircraft are not permanently domiciled in Alabama and are
12 removed to another state within three days of delivery.

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

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

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

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

22 "c. Determines a national championship of a national
23 organization, including but not limited to the Professional
24 Golfers Association of America, the Tournament Players
25 Association, the United States Golf Association, the United
26 States Tennis Association, and the National Collegiate
27 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.

25 "(41) The gross receipts from the sale of hot or
26 cold food and beverage products sold to or by a certificated
27 or licensed air carrier with a hub operation within this

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

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

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

13 "(42) The gross proceeds of the sale or sales of the
14 following:

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

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

21 "c. Fuel and supplies for use or consumption aboard
22 boats, ships, aircraft, and towing vessels when used
23 exclusively in transporting persons or property between a
24 point in Alabama and a point or points in offshore federal
25 waters for the exploration for or production of oil, gas,
26 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 "The delivery of items exempted by this subdivision
6 to the purchaser or lessee in this state does not disqualify
7 the purchaser or lessee from the exemption if the property is
8 removed from the state by any means, including by the use of
9 the purchaser's or lessee's own facilities.

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

19 "(43) The gross receipts derived from all bingo
20 games and operations which are conducted in compliance with
21 validly enacted legislation authorizing the conduct of such
22 games and operations, and which comply with the distribution
23 requirements of the applicable local laws; provided that the
24 exemption from sales taxation granted by this subdivision
25 shall apply only to gross receipts taxable under subdivision
26 (2) of Section 40-23-2. It is further provided that this
27 exemption shall not apply to any gross receipts from the sale

1 of tangible personal property, such as concessions, novelties,
2 food, beverages, etc. The exemption provided for in this
3 section shall be limited to those games and operations by
4 organizations which have qualified for exemption under the
5 provisions of 26 U.S.C. § 501 (c) (3), (4), (7), (8), (10), or
6 (19), or which are defined in 26 U.S.C. § 501(d).

7 "(44) The gross receipts derived from the sale or
8 sales of fruit or other agricultural products by the person or
9 corporation that planted, cultivated, and harvested such fruit
10 or agricultural product.

11 "(45) The gross receipts derived from the sale or
12 sales of all domestically mined or produced coal, coke, and
13 coke by-products used in cogeneration plants.

14 "(46) The gross receipts from the sales of parts,
15 components, and systems that become a part of a certified
16 transport category aircraft which undergoes conversion,
17 reconfiguration, or general maintenance; provided, however,
18 that this exemption shall not apply to a local sales tax
19 unless a local sales tax exemption is provided by local law or
20 approved by resolution of the local governing body either
21 prior to or after the effective date of the act adding this
22 subdivision.

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

1 Section 2. 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 3. All laws or parts of laws which conflict
6 with this act are repealed.

7 Section 4. This act shall become effective for the
8 fiscal year beginning October 1, 2012, and continuing
9 thereafter, following its passage and approval by the
10 Governor, or its otherwise becoming law.