

1 HB39
2 134387-4
3 By Representatives Lee, Moore (B), Chesteen, Shiver, Barton,
4 Weaver, Gaston, Ison, Fincher, Mask, Millican, McMillan,
5 Collins, Johnson (K), Williams (P), Wren, Wallace, Buttram,
6 Sessions, Beckman, Baker, Patterson, Sanderford, Faust,
7 Galliher, Hill, Farley and Clouse
8 RFD: Economic Development and Tourism
9 First Read: 07-FEB-12
10 PFD: 12/01/2011

1 whereby an out-of-state purchaser takes delivery of such oil
2 at a distributor's plant within this state and transports it
3 out-of-state, which are otherwise taxed.

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

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

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

21 "(5) The gross proceeds of sales of all livestock by
22 whomsoever sold, and also the gross proceeds of poultry and
23 other products of the farm, dairy, grove, or garden, when in
24 the original state of production or condition of preparation
25 for sale, when such sale or sales are made by the producer or
26 members of his immediate family or for him by those employed
27 by him to assist in the production thereof. Nothing herein

1 shall be construed to exempt or exclude from the measure or
2 computation of the tax levied, assessed, or payable hereunder,
3 the gross proceeds of sales of poultry or poultry products
4 when not products of the farm.

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

7 "(7) The gross receipts from the business on which,
8 or for engaging in which, a license or privilege tax is levied
9 by or under the provisions of Sections 40-21-50, 40-21-53, and
10 40-21-56 through 40-21-60; provided, that nothing contained in
11 this subdivision shall be construed to exempt or relieve the
12 person or persons operating the business enumerated in said
13 sections from the payments of the tax levied by this division
14 upon or measured by the gross proceeds of sales of any
15 tangible personal property, except gas and water, the gross
16 receipts from the sale of which are the measure of the tax
17 levied by said Section 40-21-50, merchandise or other tangible
18 commodities sold at retail by said persons, unless the gross
19 proceeds of sale thereof are otherwise specifically exempted
20 by the provisions of this division.

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

1 "(9) The gross proceeds of the sale, or sales of
2 wood residue, coal, or coke to manufacturers, electric power
3 companies, and transportation companies for use or consumption
4 in the production of by-products, or the generation of heat or
5 power used in manufacturing tangible personal property for
6 sale, for the generation of electric power or energy for use
7 in manufacturing tangible personal property for sale or for
8 resale, or for the generation of motive power for
9 transportation.

10 "(10) The gross proceeds from the sale or sales of
11 fuel and supplies for use or consumption aboard ships,
12 vessels, towing vessels, or barges, or drilling ships, rigs or
13 barges, or seismic or geophysical vessels, or other watercraft
14 (herein for purposes of this exemption being referred to as
15 "vessels") engaged in foreign or international commerce or in
16 interstate commerce; provided, that nothing in this division
17 shall be construed to exempt or exclude from the measure of
18 the tax herein levied the gross proceeds of sale or sales of
19 material and supplies to any person for use in fulfilling a
20 contract for the painting, repair, or reconditioning of
21 vessels, barges, ships, other watercraft, and commercial
22 fishing vessels of over five tons load displacement as
23 registered with the U.S. Coast Guard and licensed by the State
24 of Alabama Department of Conservation and Natural Resources.

25 "For purposes of this subdivision, it shall be
26 presumed that vessels engaged in the transportation of cargo
27 between ports in the State of Alabama and ports in foreign

1 countries or possessions or territories of the United States
2 or between ports in the State of Alabama and ports in other
3 states are engaged in foreign or international commerce or
4 interstate commerce, as the case may be. For the purposes of
5 this subdivision, the engaging in foreign or international
6 commerce or interstate commerce shall not require that the
7 vessel involved deliver cargo to or receive cargo from a port
8 in the State of Alabama. For purposes of this subdivision,
9 vessels carrying passengers for hire, and no cargo, between
10 ports in the State of Alabama and ports in foreign countries
11 or possessions or territories of the United States or between
12 ports in the State of Alabama and ports in other states shall
13 be engaged in foreign or international commerce or interstate
14 commerce, as the case may be, if, and only if, both of the
15 following conditions are met: (i) The vessel in question is a
16 vessel of at least 100 gross tons; and (ii) the vessel in
17 question has an unexpired certificate of inspection issued by
18 the United States Coast Guard or by the proper authority of a
19 foreign country for a foreign vessel, which certificate is
20 recognized as acceptable under the laws of the United States.
21 Vessels which are engaged in foreign or international commerce
22 or interstate commerce shall be deemed for the purposes of
23 this subdivision to remain in such commerce while awaiting or
24 under repair in a port of the State of Alabama if such vessel
25 returns after such repairs are completed to engaging in
26 foreign or international commerce or interstate commerce. For
27 purposes of this subdivision, seismic or geophysical vessels

1 which are engaged either in seismic or geophysical tests or
2 evaluations exclusively in offshore federal waters or in
3 traveling to or from conducting such tests or evaluations
4 shall be deemed to be engaged in international or foreign
5 commerce. For purposes of this subdivision, proof that fuel
6 and supplies purchased are for use or consumption aboard
7 vessels engaged in foreign or international commerce or in
8 interstate commerce may be accomplished by the merchant or
9 seller securing the duly signed certificate of the vessel
10 owner, operator, or captain or their respective agent on a
11 form prescribed by the department that the fuel and supplies
12 purchased are for use or consumption aboard vessels engaged in
13 foreign or international commerce or in interstate commerce.
14 Any person filing a false certificate shall be guilty of a
15 misdemeanor and upon conviction shall be fined not less than
16 \$25 nor more than \$500 for each offense. Each false
17 certificate filed shall constitute a separate offense. Any
18 person filing a false certificate shall be liable to the
19 department for all taxes imposed by this division upon the
20 merchant or seller, together with any interest or penalties
21 thereon, by reason of the sale or sales of fuel and supplies
22 applicable to such false certificate. If a merchant or seller
23 of fuel and supplies secures the certificate herein mentioned,
24 properly completed, such merchant or seller shall not be
25 liable for the taxes imposed by this division, if such
26 merchant or seller had no knowledge that such certificate was
27 false when it was filed with such merchant or seller.

1 "(11) The gross proceeds of sales of tangible
2 personal property to the State of Alabama, to the counties
3 within the state and to incorporated municipalities of the
4 State of Alabama.

5 "(12) The gross proceeds of the sale or sales of
6 railroad cars, vessels, barges, and commercial fishing vessels
7 of over five tons load displacement as registered with the
8 U.S. Coast Guard and licensed by the State of Alabama
9 Department of Conservation and Natural Resources, when sold by
10 the manufacturers or builders thereof.

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

1 discharge and electronic position fixing devices which are
2 used on the aforementioned watercraft.

3 "(14) The gross proceeds of the sale or sales of
4 fuel oil purchased as fuel for kiln use in manufacturing
5 establishments.

6 "(15) The gross proceeds of the sale or sales of
7 tangible personal property to county and city school boards,
8 independent school boards, and all educational institutions
9 and agencies of the State of Alabama, the counties within the
10 state, or any incorporated municipalities of the State of
11 Alabama.

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

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

25 "(18) When dealers or distributors use parts taken
26 from stocks owned by them in making repairs without charge for
27 such parts to the owner of the property repaired pursuant to

1 warranty agreements entered into by manufacturers, such use
2 shall not constitute taxable sales to the manufacturers,
3 distributors, or to the dealers, under this division or under
4 any county sales tax law.

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

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

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

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

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

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

24 "(24) The gross proceeds from sales of admissions to
25 any theatrical production, symphonic or other orchestral
26 concert, ballet, or opera production when such concert or
27 production is presented by any society, association, guild, or

1 workshop group, organized within this state, whose members or
2 some of whose members regularly and actively participate in
3 such concerts or productions for the purposes of providing a
4 creative outlet for the cultural and educational interests of
5 such members, and of promoting such interests for the
6 betterment of the community by presenting such productions to
7 the general public for an admission charge. The employment of
8 a paid director or conductor to assist in any such
9 presentation described in this subdivision shall not be
10 construed to prohibit the exemptions herein provided.

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

19 "(26) The Alabama Chapter of the Cystic Fibrosis
20 Research Foundation and the Jefferson Tuberculosis Sanatorium
21 and any of their departments or agencies, heretofore or
22 hereafter organized and existing in good faith in the State of
23 Alabama for purposes other than for pecuniary gain and not for
24 individual profit, shall be exempted from the computation of
25 the tax on the gross proceeds of all sales levied, assessed,
26 or payable.

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

7 "The words commercial fishing vessels shall mean
8 vessels whose masters and owners are regularly and exclusively
9 engaged in fishing as their means of livelihood.

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

13 "(29) The gross proceeds of the sales of all
14 antibiotics, hormones and hormone preparations, drugs,
15 medicines, and other medications including serums and
16 vaccines, vitamins, minerals, or other nutrients for use in
17 the production and growing of fish, livestock, and poultry by
18 whomsoever sold. Such exemption as herein granted shall be in
19 addition to the exemption provided by law for feed for fish,
20 livestock, and poultry, and in addition to the exemptions
21 provided by law for the above-enumerated substances and
22 products when mixed and used as ingredients in fish,
23 livestock, and poultry feed.

24 "(30) The gross proceeds of the sale or sales of all
25 medicines prescribed by physicians for persons who are 65
26 years of age or older, and when said prescriptions are filled
27 by licensed pharmacists, shall be exempted under this division

1 or under any county or municipal sales tax law. The exemption
2 provided in this section shall not apply to any medicine
3 purchased in any manner other than as is herein provided.

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

7 "a. The name and claim number as shown on a
8 "Medicare" card issued by the United States Social Security
9 Administration.

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

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

16 "For the purposes of this subdivision, any person
17 filing a false proof of age shall be guilty of a misdemeanor
18 and upon conviction thereof shall be punished by a fine of
19 \$100.

20 "(31) There shall be exempted from the tax levied by
21 this division the gross receipts of sales of grass sod of all
22 kinds and character when in the original state of production
23 or condition of preparation for sale, when such sales are made
24 by the producer or members of his family or for him by those
25 employed by him to assist in the production thereof; provided,
26 that nothing herein shall be construed to exempt sales of sod

1 by a person engaged in the business of selling plants,
2 seedlings, nursery stock, or floral products.

3 "(32) The gross receipts of sales of the following
4 items or materials which are necessary in the farm-to-market
5 production of tomatoes when such items or materials are used
6 by the producer or members of his family or for him by those
7 employed by him to assist in the production thereof: Twine for
8 tying tomatoes, tomato stakes, field boxes (wooden boxes used
9 to take tomatoes from the fields to shed), and tomato boxes
10 used in shipments to customers.

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

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

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

18 "(36) The gross receipts of sales of Lespedeza
19 bicolor and other species of perennial plant seed and
20 seedlings sold for wildlife and game food production purposes
21 by the state.

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

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

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

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

5 "b. Is hosted by a not-for-profit corporation
6 organized and existing under the laws of the State of Alabama;
7 and

8 "c. Determines a national championship of a national
9 organization, including but not limited to the Professional
10 Golfers Association of America, the Tournament Players
11 Association, the United States Golf Association, the United
12 States Tennis Association, and the National Collegiate
13 Athletic Association; and

14 "d. Has not been held in the State of Alabama on
15 more than one prior occasion, provided, however, that for such
16 purpose the Professional Golfers Association Championship, the
17 United States Open Golf Championship, the United States
18 Amateur Golf Championship of the United States Golf
19 Association, and the United States Open Tennis Championship
20 shall each be treated as a separate event.

21 "(40) The gross receipts from the sale of any
22 aircraft and replacement parts, components, systems, supplies,
23 and sundries affixed or used on said aircraft and ground
24 support equipment and vehicles used by or for the aircraft to
25 or by a certificated or licensed air carrier with a hub
26 operation within this state, for use in conducting intrastate,
27 interstate, or foreign commerce for transporting people or

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

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

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

11 "(41) The gross receipts from the sale of hot or
12 cold food and beverage products sold to or by a certificated
13 or licensed air carrier with a hub operation within this
14 state, for use in conducting intrastate, interstate, or
15 foreign commerce for transporting people or property by air.
16 For the purpose of this subdivision, the words "hub operation
17 within this state" shall be construed to have all of the
18 following criteria:

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

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

26 "(42) The gross proceeds of the sale or sales of the
27 following:

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

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

7 "c. Fuel and supplies for use or consumption aboard
8 boats, ships, aircraft, and towing vessels when used
9 exclusively in transporting persons or property between a
10 point in Alabama and a point or points in offshore federal
11 waters for the exploration for or production of oil, gas,
12 sulphur, or other minerals in offshore federal waters.

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

17 "The delivery of items exempted by this subdivision
18 to the purchaser or lessee in this state does not disqualify
19 the purchaser or lessee from the exemption if the property is
20 removed from the state by any means, including by the use of
21 the purchaser's or lessee's own facilities.

22 "The shipment to a place in this state of equipment
23 exempted by this subdivision for further assembly or
24 fabrication does not disqualify the purchaser or lessee from
25 the exemption if on completion of the further assembly or
26 fabrication the equipment is removed forthwith from this
27 state. This subdivision applies to a sale that may occur when

1 the equipment exempted is further assembled or fabricated if
2 on completion the equipment is removed forthwith from this
3 state.

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

19 "(44) The gross receipts derived from the sale or
20 sales of fruit or other agricultural products by the person or
21 corporation that planted, cultivated, and harvested such fruit
22 or agricultural product.

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

26 "(46) The gross receipts from the sales of parts,
27 components, and systems that become a part of a certified

1 ~~transport category aircraft certified military, federal,~~
2 ~~state, local, and commercial certified transport category~~
3 ~~aircraft or rotary wing aircraft which undergoes conversion,~~
4 ~~reconfiguration, or general maintenance; provided, however,~~
5 ~~that this exemption shall not apply to a local sales tax~~
6 ~~unless a local sales tax exemption is provided by local law or~~
7 ~~approved by resolution of the local governing body either~~
8 ~~prior to or after the effective date of the act adding this~~
9 ~~subdivision.~~

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

15 Section 2. The provisions of this act are severable.
16 If any part of this act is declared invalid or
17 unconstitutional, that declaration shall not affect the part
18 which remains.

19 Section 3. All laws or parts of laws which conflict
20 with this act are repealed.

21 Section 4. This act shall become effective for the
22 fiscal year beginning October 1, 2012, and continuing
23 thereafter, following its passage and approval by the
24 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Economic Devel-
opment and Tourism..... 07-FEB-12

Read for the second time and placed
on the calendar 1 amendment 08-FEB-12

Read for the third time and passed
as amended..... 09-FEB-12

Yeas 80, Nays 8, Abstains 4

Greg Pappas
Clerk