

1 SB242
2 173544-1
3 By Senator Pittman
4 RFD: Finance and Taxation Education
5 First Read: 16-FEB-16

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8 SYNOPSIS: This bill updates the sales and use tax laws
9 to provide for definitions of tangible personal
10 property and digital goods. This bill also amends
11 the definition of a wholesale sale to add
12 clarification and consistency to the sales and use
13 tax code.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 Relating to sales and use tax definitions; to amend
20 Sections 40-23-1, 40-23-2, 40-23-60, and 40-23-61 of the Code
21 of Alabama 1975, to add and update definitions.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 40-23-1, 40-23-2, 40-23-60, and
24 40-23-61, Code of Alabama 1975 are hereby amended to read as
25 follows:

26 "§40-23-1.

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

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

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

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

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

15 "(5) SALE or SALES. Installment and credit sales and
16 the exchange of properties as well as the sale thereof for
17 money, every closed transaction constituting a sale. Provided,
18 however, a transaction shall not be closed or a sale completed
19 until the time and place when and where title is transferred
20 by the seller or seller's agent to the purchaser or
21 purchaser's agent, and for the purpose of determining transfer
22 of title, a common carrier or the U. S. Postal Service shall
23 be deemed to be the agent of the seller, regardless of any
24 F.O.B. point and regardless of who selects the method of
25 transportation, and regardless of by whom or the method by
26 which freight, postage, or other transportation charge is
27 paid. Provided further that, where billed as a separate item

1 to and paid by the purchaser, the freight, postage, or other
2 transportation charge paid to a common carrier or the U.S.
3 Postal Service is not a part of the selling price.

4 "(6) GROSS PROCEEDS OF SALES. The value proceeding
5 or accruing from the sale of tangible personal property, and
6 including the proceeds from the sale of any property handled
7 on consignment by the taxpayer, including merchandise of any
8 kind and character without any deduction on account of the
9 cost of the property sold, the cost of the materials used,
10 labor or service cost, interest paid, any consumer excise
11 taxes that may be included within the sales price of the
12 property sold, or any other expenses whatsoever, and without
13 any deductions on account of losses; provided, that cash
14 discounts allowed and taken on sales shall not be included,
15 and "gross proceeds of sales" shall not include the sale price
16 of property returned by customers when the full sales price
17 thereof is refunded either in cash or by credit. The term
18 "gross proceeds of sale" shall also mean and include the
19 reasonable and fair market value of any tangible personal
20 property previously purchased at wholesale which is withdrawn
21 or used from the business or stock and used or consumed in
22 connection with a business, and shall also mean and include
23 the reasonable and fair market value of any tangible personal
24 property previously purchased at wholesale which is withdrawn
25 from the business or stock and used or consumed by any person
26 so withdrawing the same, except property which has been
27 previously withdrawn from business or stock and so used or

1 consumed with respect to which property the tax has been paid
2 because of previous withdrawal, use, or consumption, except
3 property which enters into and becomes an ingredient or
4 component part of tangible personal property or products
5 manufactured or compounded for sale and not for the personal
6 and private use or consumption of any person so withdrawing,
7 using, or consuming the same, and except refinery, residue, or
8 fuel gas, whether in a liquid or gaseous state, that has been
9 generated by, or is otherwise a by-product of, a
10 petroleum-refining process, which gas is then utilized in the
11 process to generate heat or is otherwise utilized in the
12 distillation or refining of petroleum products.

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

24 "(7) TAXPAYER. Any person liable for taxes
25 hereunder.

26 "(8) GROSS RECEIPTS. The value proceeding or
27 accruing from the sale of tangible personal property,

1 including merchandise and commodities of any kind and
2 character, all receipts actual and accrued, by reason of any
3 business engaged in, not including, however, interest,
4 discounts, rentals of real estate or royalties, and without
5 any deduction on account of the cost of the property sold, the
6 cost of the materials used, labor or service cost, interest
7 paid, any consumer excise taxes that may be included in the
8 sales price of the property sold, or any other expenses
9 whatsoever and without any deductions on account of losses.
10 The term "gross receipts" shall also mean and include the
11 reasonable and fair market value of any tangible personal
12 property previously purchased at wholesale which is withdrawn
13 or used from the business or stock and used or consumed in
14 connection with a business, and shall also mean and include
15 the reasonable and fair market value of any tangible personal
16 property previously purchased at wholesale which is withdrawn
17 from the business or stock and used or consumed by any person
18 so withdrawing the same, except property which has been
19 previously withdrawn from business or stock and so used or
20 consumed and with respect to which property the tax has been
21 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
26 any person so withdrawing, using, or consuming the same, and
27 except refinery, residue, or fuel gas, whether in a liquid or

1 gaseous state, that has been generated by, or is otherwise a
2 by-product of, a petroleum-refining process, which gas is then
3 utilized in the process to generate heat or is otherwise
4 utilized in the distillation or refining of petroleum
5 products.

6 "(9) WHOLESALE SALE or SALE AT WHOLESALE. Any one of
7 the following:

8 "a. A sale of tangible personal property by
9 wholesalers to licensed retail merchants, jobbers, dealers, or
10 other wholesalers for resale and does not include a sale by
11 wholesalers to users or consumers, not for resale.

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

1 expensing in lieu of depreciation for Alabama income tax
2 purposes.

3 "c. A sale of containers intended for one-time use
4 only, and the labels thereof, when containers are sold without
5 contents to persons who sell or furnish containers along with
6 the contents placed therein for sale by persons.

7 "d. A sale of pallets intended for one-time use only
8 when pallets are sold without contents to persons who sell or
9 furnish pallets along with the contents placed thereon for
10 sale by persons.

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

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

22 "g. A sale of bagging and ties used in preparing
23 cotton for market.

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

1 "i. A sale of commercial fish feed including
2 concentrates, supplements, and other feed ingredients when
3 substances are used as ingredients in mixing and preparing
4 feed for fish raised to be sold on a commercial basis.

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

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

20 "(10) SALE AT RETAIL or RETAIL SALE. All sales of
21 tangible personal property except those above defined as
22 wholesale sales. The quantities of goods sold or prices at
23 which sold are immaterial in determining whether or not a sale
24 is at retail. Sales of building materials to contractors,
25 builders, or landowners for resale or use in the form of real
26 estate are retail sales in whatever quantity sold. Sales of
27 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
26 any person so withdrawing, using, or consuming the same; and
27 wholesale purchaser shall report and pay the taxes thereon. In

1 the case of the sale of equipment, accessories, fixtures, and
2 other similar tangible personal property used in connection
3 with the sale of commercial mobile services as defined in
4 subdivision (6) above, or in connection with satellite
5 television services, at a price below cost, the term "sale at
6 retail" and "retail sale" shall include those sales, and those
7 sales shall not also be taxable as a withdrawal, use, or
8 consumption of such tangible personal property.

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

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 on the sale of tangible
24 personal property pursuant to this chapter. For purposes of
25 this subdivision, the sale of prepaid wireless service that is
26 evidenced by a physical card constitutes the sale of a prepaid
27 telephone calling card, and the sale of prepaid wireless

1 service that is not evidenced by a physical card constitutes
2 the sale of a prepaid authorization number.

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

11 "(15) CONSUMABLE VAPOR PRODUCT. Any nicotine liquid
12 solution or other material containing nicotine that is
13 depleted when used as a vapor product.

14 "(16) VAPOR PRODUCTS. Any non-lighted,
15 noncombustible product that employs a mechanical heating
16 element, battery, or electronic circuit regardless of shape or
17 size and that can be used to produce vapor from nicotine in a
18 solution. The term includes any vapor cartridge or other
19 container of nicotine in a solution or other form that is
20 intended to be used with or in an electronic cigarette,
21 electronic cigar, electronic cigarillo, electronic pipe, or
22 similar product or device. The term does not include any
23 product regulated by the United States Food and Drug
24 Administration under Chapter V of the Federal Food, Drug, and
25 Cosmetic Act.

26 "(17) TANGIBLE PERSONAL PROPERTY. Personal property
27 which may be seen, weighed, measured, felt, or touched, or is

1 in any other manner perceptible to the senses. The term
2 "tangible personal property" shall not include stocks, bonds,
3 notes, insurance or other contracts, or securities, but shall
4 include digital goods.

5 "(18) DIGITAL GOODS. Sounds, images, data, facts, or
6 information, or any combination thereof, transferred
7 electronically, including, but not limited to, specified
8 digital products and any other service transferred
9 electronically that uses one or more software applications.

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

1 tangible personal property which is specifically exempted from
2 the tax levied in this division.

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

20 "(d) The dispensing or transferring of ophthalmic
21 materials, including lenses, frames, eyeglasses, contact
22 lenses, and other therapeutic optic devices, to a patient by a
23 licensed ophthalmologist, as a part of his or her professional
24 service, shall, for purposes of this division, constitute a
25 sale, subject to the state sales tax. The licensed
26 ophthalmologist or licensed optometrist shall collect the
27 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.
25 Sections 170(b) or (c), be considered a transaction subject to
26 sales tax.

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

8 "§40-23-2.

9 "There is levied, in addition to all other taxes of
10 every kind now imposed by law, and shall be collected as
11 herein provided, a privilege or license tax against the person
12 on account of the business activities and in the amount to be
13 determined by the application of rates against gross sales, or
14 gross receipts, as the case may be, as follows:

15 "(1) Upon every person, firm, or corporation,
16 (including the State of Alabama and its Alcoholic Beverage
17 Control Board in the sale of alcoholic beverages of all kinds,
18 the University of Alabama, Auburn University, and all other
19 institutions of higher learning in the state, whether the
20 institutions be denominational, state, county, or municipal
21 institutions, any association or other agency or
22 instrumentality of the institutions) engaged or continuing
23 within this state, in the business of selling at retail any
24 tangible personal property whatsoever, including merchandise
25 and, commodities, and digital goods of every kind and
26 character, (not including, however, bonds or other evidences
27 of debts or stocks, nor sales of material and supplies to any

1 person for use in fulfilling a contract for the painting,
2 repair, 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), an amount equal to four percent of the
7 gross proceeds of sales of the business except where a
8 different amount is expressly provided herein. Provided,
9 however, that any person engaging or continuing in business as
10 a retailer and wholesaler or jobber shall pay the tax required
11 on the gross proceeds of retail sales of the business at the
12 rates specified, when his or her books are kept so as to show
13 separately the gross proceeds of sales of each business, and
14 when his or her books are not kept he or she shall pay the tax
15 as a retailer, on the gross sales of the business.

16 "Where any used part including tires of an
17 automotive vehicle or a truck trailer, semitrailer, or house
18 trailer is taken in trade, or in a series of trades, as a
19 credit or part payment on the sale of a new or rebuilt part or
20 tire, the tax levied herein shall be paid on the net
21 difference, that is, the price of the new or used part or tire
22 sold less the credit for the used part or tire taken in trade,
23 provided, however, this provision shall not be construed to
24 include batteries.

25 "(2) Upon every person, firm, or corporation engaged
26 or continuing within this state in the business of conducting
27 or operating places of amusement or entertainment, billiard

1 and pool rooms, bowling alleys, amusement devices, musical
2 devices, theaters, opera houses, moving picture shows,
3 vaudevilles, amusement parks, athletic contests, including
4 wrestling matches, prize fights, boxing and wrestling
5 exhibitions, football and baseball games, (including athletic
6 contests, conducted by or under the auspices of any
7 educational institution within this state, or any athletic
8 association thereof, or other association whether the
9 institution or association be a denominational, a state, or
10 county, or a municipal institution, or association or a state,
11 county, or city school, or other institution, association or
12 school), skating rinks, race tracks, golf courses, or any
13 other place at which any exhibition, display, amusement, or
14 entertainment is offered to the public or place or places
15 where an admission fee is charged, including public bathing
16 places, public dance halls of every kind and description
17 within the State of Alabama, an amount equal to four percent
18 of the gross receipts of any such business. Provided, however,
19 notwithstanding any language to the contrary in the prior
20 portion of this subdivision, the tax provisions so specified
21 shall not apply to any athletic event conducted by a public or
22 nonpublic primary or secondary school or any athletic event
23 conducted by or under the auspices of the Alabama High School
24 Athletic Association. The tax amount which would have been
25 collected pursuant to this subdivision shall continue to be
26 collected by the public or nonpublic primary or secondary

1 school, but shall be retained by the school which collected it
2 and shall be used by the school for school purposes.

3 "(3) Upon every person, firm, or corporation engaged
4 or continuing within this state in the business of selling at
5 retail machines used in mining, quarrying, compounding,
6 processing, and manufacturing of tangible personal property
7 for resale purposes an amount equal to one and one-half
8 percent of the gross proceeds of the sale of the machines. The
9 term "machine," as herein used, shall include machinery which
10 is used for mining, quarrying, compounding, processing, or
11 manufacturing tangible personal property for resale purposes,
12 and the parts of the machines, attachments, and replacements
13 therefor, which are made or manufactured for use on or in the
14 operation of the machines and which are necessary to the
15 operation of the machines and are customarily so used.

16 "(4) Upon every person, firm, or corporation engaged
17 or continuing within this state in the business of selling at
18 retail any automotive vehicle or truck trailer, semitrailer,
19 or house trailer, or mobile home set-up materials and supplies
20 including but not limited to steps, blocks, anchoring, cable
21 pipes, and any other materials pertaining thereto an amount
22 equal to two percent of the gross proceeds of sale of the
23 automotive vehicle or truck trailer, semitrailer, or house
24 trailer, or mobile home set-up materials and supplies
25 provided, however, where a person subject to the tax provided
26 for in this subdivision withdraws from his or her stock in
27 trade any automotive vehicle or truck trailer, semitrailer, or

1 house trailer for use by him or her or by his or her employee
2 or agent in the operation of the business, there shall be
3 paid, in lieu of the tax levied herein, a fee of five dollars
4 (\$5) per year or part thereof during which the automotive
5 vehicle, truck trailer, semitrailer, or house trailer shall
6 remain the property of the person. Each year or part thereof
7 shall begin with the day or anniversary date, as the case may
8 be, of such withdrawal and shall run for the 12 succeeding
9 months or part thereof during which the automotive vehicle,
10 truck trailer, semitrailer, or house trailer shall remain the
11 property of the person.

12 "Where any used automotive vehicle or truck trailer,
13 semitrailer, or house trailer is taken in trade or in a series
14 of trades, as a credit or part payment on the sale of a new or
15 used vehicle, the tax levied herein shall be paid on the net
16 difference, that is, the price of the new or used vehicle sold
17 less the credit for the used vehicle taken in trade.

18 "Sales of automobiles, motorcycles, trucks, truck
19 trailers, or semitrailers, excluding travel trailers or
20 housecars as defined in Section 40-12-240, that will be
21 registered or titled outside Alabama, that are exported or
22 removed from Alabama within 72 hours by the purchaser or his
23 or her agent for first use outside Alabama are subject to
24 Alabama sales tax in an amount equal to only the state
25 automotive sales tax rate, unless the sales tax laws of the
26 state in which the purchaser will title or register the
27 vehicle, allows an Alabama resident to purchase a motor

1 vehicle for first titling and registering in Alabama without
2 the payment of tax to that state. However, in no case shall
3 the amount of Alabama state sales tax due on a motor vehicle
4 that will be registered or titled for use in another state
5 exceed the amount of sales tax that would otherwise have been
6 due in the state where the vehicle will be registered or
7 titled for first use. The tax collected under this export
8 provision shall be Alabama sales tax and shall exclude county
9 and municipal sales tax. On January 1, 2016, and each January
10 1 thereafter, the Alabama Department of Revenue shall publish
11 to the state's website a list of states that do not allow
12 drive out provisions to Alabama residents. Should the list,
13 required by this subsection and relied upon by the taxpayer,
14 be incorrect, the taxpayer shall be relieved from the
15 liability concerning the miscollection of the state automotive
16 sales tax. Sales of all other vehicles such as mobile homes,
17 motor bikes, all terrain vehicles, and boats do not qualify
18 for the export exemption provision and are taxable unless the
19 dealer can provide factual evidence that the vehicle was
20 delivered outside of Alabama or to a common carrier for
21 transportation outside Alabama. In order for the sale to be
22 exempt from Alabama tax, the information relative to the
23 exempt sale shall be documented on forms approved by the
24 Revenue Department.

25 "Of the total \$.02 tax on each dollar of sale
26 provided hereunder, 58 percent of the total tax generated by
27 this subdivision (4) shall be deposited to the credit of the

1 Education Trust Fund; and 42 percent of the total tax
2 generated by this subdivision (4) shall be deposited to the
3 credit of the State General Fund.

4 "(5) Upon every person, firm, or corporation engaged
5 or continuing within this state in the business of selling
6 through coin-operated dispensing machines, food and food
7 products for human consumption, not including beverages other
8 than coffee, milk, milk products, and substitutes therefor,
9 there is levied a tax equal to three percent of the cost of
10 the food, food products, and beverages sold through the
11 machines, which cost for the purpose of this subdivision shall
12 be the gross proceeds of sales of the business.

13 "§40-23-60.

14 "For the purpose of this article, the following
15 terms shall have the respective meanings ascribed to them in
16 this section:

17 "(1) PERSON or COMPANY. Any individual, firm,
18 company, partnership, association, corporation, receiver or
19 trustee, or any other group or combination acting as a unit,
20 and the plural as well as the singular number, unless the
21 intention to give a more limited meaning is disclosed by the
22 context.

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

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

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

3 "a. A sale of tangible personal property by
4 wholesaler 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~~ when such tangible
14 personal property or product used in manufacturing or
15 compounding a finished product is used with the intent that it
16 become a component part of and remains a part of the finished
17 product; provided, however, that it is the intent of this
18 section that no sale of capital equipment, machinery, tools,
19 or product shall be included in the term "wholesale sale." The
20 term "capital equipment, machinery, tools, or product" shall
21 mean property that is subject to depreciation allowances or
22 expensing in lieu of depreciation for Alabama income tax
23 purposes.

24 "c. A sale of containers intended for one-time use
25 only, and the labels thereof, when such containers are sold
26 without contents to persons who sell or furnish such

1 containers along with the contents placed therein for sale by
2 such persons.

3 "d. A sale of pallets intended for one-time use only
4 when such pallets are sold without contents to persons who
5 sell or furnish such pallets along with the contents placed
6 thereon for sale by such 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 such manufacturer or
10 compounder 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 such containers are used for the
14 delivery of such chicks or a sale of containers for use in the
15 delivery of eggs by the producer thereof to the distributor or
16 packer of such eggs even though such containers used for
17 delivery of baby chicks or 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 of commercial fish feed including
21 concentrates, supplements and other feed ingredients when such
22 substances are used as ingredients in mixing and preparing
23 feed for fish raised to be sold on a commercial basis.

24 "i. A sale of tangible personal property to any
25 person engaging in the business of leasing or renting such
26 tangible personal property to others, if such tangible
27 personal property is purchased for the purpose of leasing or

1 renting it to others under a transaction subject to the
2 privilege or license tax levied in Article 4 of Chapter 12 of
3 this title against any person engaging in the business of
4 leasing or renting tangible personal property to others.

5 "j. A purchase or withdrawal of parts or materials
6 from stock by any person licensed under this article where
7 such parts or materials are used in repairing or
8 reconditioning the tangible personal property of such licensed
9 person which tangible personal property is a part of the stock
10 of goods of such licensed person, offered for sale by him and
11 not for use or consumption of such licensed person.

12 "k. A sale to meat packers, manufacturers,
13 compounders or processors of meat products of all casings used
14 in moulding or forming wieners and Vienna sausages, even
15 though such casings may be recovered for reuse.

16 "(5) SALE AT RETAIL or RETAIL SALE. All sales of
17 tangible personal property except those above defined as
18 wholesale sales. The quantities of goods sold or prices at
19 which sold are immaterial in determining whether or not a sale
20 is at retail. Sales of building materials to contractors,
21 builders or landowners for resale or use in the form of real
22 estate are retail sales in whatever quantity sold. Sales of
23 building materials, fixtures or other equipment to a
24 manufacturer or builder of modular buildings for use in
25 manufacturing, building or equipping a modular building
26 ultimately becoming a part of real estate situated in the
27 State of Alabama are retail sales, and the use, sale or resale

1 of such building shall not be subject to the tax. Sales of
2 tangible personal property to undertakers and morticians are
3 retail sales and subject to the tax at the time of purchase,
4 but are not subject to the tax on resale to the consumer.
5 Sales of tangible personal property or products to
6 manufacturers, quarry operators, mine operators or
7 compounders, which are used or consumed by them in
8 manufacturing, mining, quarrying or compounding and do not
9 become an ingredient or component part of the tangible
10 personal property manufactured or compounded as provided in
11 subdivision (4) are retail sales. The term "sale at retail" or
12 "retail sale" shall also mean and include the withdrawal, use
13 or consumption of any tangible personal property by anyone who
14 purchases same at wholesale, except property which has been
15 previously withdrawn from the business or stock and so used or
16 consumed and with respect to which property the tax has been
17 paid because of such previous withdrawal, use or consumption,
18 except property which enters into and becomes an ingredient or
19 component part of tangible personal property or products
20 manufactured or compounded for sale as provided in subdivision
21 (4); and not for the personal and private use or consumption
22 of any person so withdrawing, using or consuming the same, and
23 such wholesale purchaser shall report and pay the taxes
24 thereon; and except refinery, residue, or fuel gas, whether in
25 a liquid or gaseous state, that has been generated by, or is
26 otherwise a by-product of, a petroleum-refining process, which
27 gas is then utilized in the process to generate heat or is

1 otherwise utilized in the distillation or refining of
2 petroleum products. The term "retail sale" or "sale at retail"
3 shall also mean and include the sale of tangible personal
4 property previously purchased at wholesale for the purpose of
5 leasing or renting under a transaction subject to the
6 privilege or license tax levied in Article 4 of Chapter 12 of
7 this title, regardless of whether such sale is to the person
8 who theretofore leased or rented the said tangible personal
9 property or to some other person.

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

17 "(7) STORAGE. Any keeping or retention in this state
18 for any purpose except sale in the regular course of business
19 or subsequent use solely outside this state of tangible
20 personal property purchased at retail.

21 "(8) USE. The exercise of any right or power over
22 tangible personal property incident to the ownership of that
23 property, or by any transaction where possession is given,
24 except that it shall not include the sale of that property in
25 the regular course of business.

26 "(9) PURCHASE. Acquired for a consideration, whether
27 such acquisition was effected by a transfer of title, or of

1 possession or of both, or a license to use or consume; whether
2 such transfer shall have been absolute or conditional, and by
3 whatsoever means the same shall have been effected; and
4 whether such consideration be a price or rental in money, or
5 by way of exchange or barter.

6 "(10) SALES PRICE. The total amount for which
7 tangible personal property is sold, including any services,
8 including transportation, that are a part of the sale, valued
9 in money, whether paid in money or otherwise, and includes any
10 amount for which credit is given to the purchaser by the
11 seller, without any deduction therefrom on account of the cost
12 of the property sold, the cost of the materials used, labor or
13 service cost, interest charged, losses or any other expenses
14 whatsoever; provided, that cash discounts allowed and taken on
15 sales shall not be included and sales price shall not include
16 the amount charged for property returned by customers when the
17 entire amount charged therefor is refunded either in cash or
18 by credit.

19 "(11) IN THIS STATE or IN THE STATE. Within the
20 exterior limits of the State of Alabama, and includes all
21 territory within such limits owned by or ceded to the United
22 States of America.

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

1 "(13) PREPAID TELEPHONE CALLING CARD. A sale of a
2 prepaid telephone calling card or a prepaid authorization
3 number, or both, shall be deemed the sale of tangible personal
4 property subject to the tax imposed pursuant to this chapter.
5 For purposes of this subdivision, the sale of prepaid wireless
6 service that is evidenced by a physical card constitutes the
7 sale of a prepaid telephone calling card, and the sale of
8 prepaid wireless service that is not evidenced by a physical
9 card constitutes the sale of a prepaid authorization number.

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 or the expiration of time
14 in a known amount, and which may include rights to use
15 non-telecommunications services or to download digital
16 products or digital content. For purposes of this subdivision,
17 mobile telecommunications service has the meaning ascribed by
18 Section 40-21-120.

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

23 "(16) TANGIBLE PERSONAL PROPERTY. Personal property
24 which may be seen, weighed, measured, felt, or touched, or is
25 in any other manner perceptible to the senses. The term
26 "tangible personal property" shall not include stocks, bonds,

1 notes, insurance or other contracts, or securities, but shall
2 include digital goods.

3 "(17) DIGITAL GOODS. Sounds, images, data, facts, or
4 information, or any combination thereof, transferred
5 electronically, including, but not limited to, specified
6 digital products and any other service transferred
7 electronically that uses one or more software applications.

8 "§40-23-61.

9 "(a) An excise tax is hereby imposed on the storage,
10 use or other consumption in this state of tangible personal
11 property, including but not limited to digital goods, not
12 including, however, materials and supplies bought for use in
13 fulfilling a contract for the painting, repairing or
14 reconditioning of vessels, barges, ships, other watercraft and
15 commercial fishing vessels of over five tons load displacement
16 as registered with the U.S. Coast Guard and licensed by the
17 State of Alabama Department of Conservation and Natural
18 Resources, purchased at retail on or after October 1, 1965,
19 for storage, use or other consumption in this state at the
20 rate of four percent of the sales price of such property or
21 the amount of tax collected by the seller, whichever is
22 greater; provided, however, when the seller follows the
23 Department of Revenue's suggested use tax brackets and his
24 records prove that his following said brackets resulted in a
25 net undercollection of tax for the month, he may report the
26 tax due or tax collected, whichever is less, except as
27 provided in subsections (b) and (c) of this section.

1 "(b) An excise tax is hereby imposed on the storage,
2 use or other consumption in this state of any machines used in
3 mining, quarrying, compounding, processing and manufacturing
4 of tangible personal property for resale purposes, purchased
5 at retail on or after October 1, 1965, at the rate of one and
6 one-half percent of the sales price of any such machine or the
7 amount of tax collected by the seller, whichever is greater;
8 provided, however, when the seller follows the Department of
9 Revenue's suggested use tax brackets and his records prove
10 that his following said brackets resulted in a net
11 undercollection of tax for the month, he may report the tax
12 due or tax collected, whichever is less; provided, that the
13 term "machine," as herein used, shall include machinery which
14 is used for mining, quarrying, compounding, processing, or
15 manufacturing tangible personal property for resale purposes,
16 and the parts of such machines, attachments and replacements
17 therefor, which are made or manufactured for use on or in the
18 operation of such machines and which are necessary to the
19 operation of such machines and are customarily so used.

20 "(c) An excise tax is hereby imposed on the storage,
21 use or other consumption in this state of any automotive
22 vehicle or truck trailer, semitrailer or house trailer, and
23 mobile home set-up materials and supplies including but not
24 limited to steps, blocks, anchoring, cable pipes and any other
25 materials pertaining thereto, purchased at retail on or after
26 October 1, 1965, for storage, use or other consumption in this
27 state at the rate of two percent of the sales price of such

1 automotive vehicle, truck trailer, semitrailer or house
2 trailer, and mobile home set-up materials and supplies as
3 specified above, or the amount of tax collected by the seller,
4 whichever is greater; provided, however, when the seller
5 follows the Department of Revenue's suggested use tax brackets
6 and his records prove that his following said brackets
7 resulted in a net undercollection of tax for the month, he may
8 report the tax due or tax collected, whichever is less. Where
9 any used automotive vehicle or truck trailer, semitrailer or
10 house trailer is taken in trade, or in a series of trades, as
11 a credit or part payment on the sale of a new or used vehicle,
12 the tax levied herein shall be paid on the net difference,
13 that is, the price of the new or used vehicle sold less the
14 credit for the used vehicle taken in trade.

15 "Of the total \$.02 tax on each dollar of sale
16 provided hereunder, 58 percent of the total tax generated by
17 this subsection shall be deposited to the credit of the
18 Education Trust Fund; and 42 percent of the total tax
19 generated by this subsection shall be deposited to the credit
20 of the State General Fund.

21 "(d) Every person storing, using or otherwise
22 consuming in this state tangible personal property purchased
23 at retail shall be liable for the tax imposed by this article,
24 and the liability shall not be extinguished until the tax has
25 been paid to this state; provided, that a receipt from a
26 retailer maintaining a place of business in this state or a
27 retailer authorized by the department, under such rules and

1 regulations as it may prescribe, to collect the tax imposed
2 hereby and who shall for the purpose of this article be
3 regarded as a retailer maintaining a place of business in this
4 state, given to the purchaser in accordance with the
5 provisions of Section 40-23-67, shall be sufficient to relieve
6 the purchaser from further liability for tax to which such
7 receipt may refer.

8 "(e) An excise tax is hereby imposed on the classes
9 of tangible personal property, and at the rates imposed on
10 such classes, specified in subsections (a), (b) and (c) of
11 this section, on the storage, use, or other consumption in the
12 performance of a contract in this state of any such tangible
13 personal property, new or used, the tax to be measured by the
14 sales price or the fair and reasonable market value of such
15 tangible personal property when put into use in this state,
16 whichever is less; provided, that the tax imposed by this
17 subsection shall not apply where the taxes imposed by
18 subsection (a), (b), or (c) of this section apply."

19 Section 2. The provisions of this act are severable.
20 If any part of this act is declared invalid or
21 unconstitutional, such declaration shall not affect the part
22 which remains.

23 Section 3. All laws or parts of laws which conflict
24 with this act are hereby repealed.

25 Section 4. This act shall become effective
26 immediately upon its passage and approval by the Governor, or
27 upon its otherwise becoming law.

