

1 SB387
2 133411-1
3 By Senator Dial
4 RFD: Finance and Taxation Education
5 First Read: 01-MAR-12

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, the state imposes sales
9 or use taxes upon certain persons, firms, or
10 corporations. Sales of certain items are taxed at a
11 reduced rate. Sales of other items are exempt from
12 the taxes.

13 This bill would increase the state sales and
14 use tax general rate to four and one-quarter
15 percent on September 1, 2012, to four and one-half
16 percent on September 1, 2013, to four and
17 three-quarters percent on September 1, 2014, and to
18 five percent on September 1, 2015.

19 This bill would phase out the state sales
20 and use taxes on food over a four-year period by
21 reducing the rates by one percentage point per year
22 beginning September 1, 2012.

23 This bill would exempt sales of food from
24 the sales and use taxes beginning September 1,
25 2015.

26
27 A BILL

1 TO BE ENTITLED

2 AN ACT

3
4 To amend Sections 40-23-2 and 40-23-61, Code of
5 Alabama 1975, to increase the state sales and use tax general
6 rates to four and one-quarter percent on September 1, 2012, to
7 four and one-half percent on September 1, 2013, to four and
8 three-quarters percent on September 1, 2014, and to five
9 percent on September 1, 2015; to phase out the state sales and
10 use taxes on food by reducing the rates by one percentage
11 point per year beginning September 1, 2012; to exempt sales of
12 food from the sales and use taxes beginning September 1, 2015.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Section 40-23-2 and Section 40-23-61,
15 Code of Alabama 1975, are amended to read as follows:

16 "§40-23-2.

17 There is levied, in addition to all other taxes of
18 every kind now imposed by law, and shall be collected as
19 herein provided, a privilege or license tax against the person
20 on account of the business activities and in the amount to be
21 determined by the application of rates against gross sales, or
22 gross receipts, as the case may be, as follows:

23 (1) Upon every person, firm, or corporation,
24 (including the State of Alabama and its Alcoholic Beverage
25 Control Board in the sale of alcoholic beverages of all kinds,
26 the University of Alabama, Auburn University, and all other
27 institutions of higher learning in the state, whether the

1 institutions be denominational, state, county, or municipal
2 institutions, any association or other agency or
3 instrumentality of the institutions) engaged or continuing
4 within this state, in the business of selling at retail any
5 tangible personal property whatsoever, including merchandise
6 and commodities of every kind and character, (not including,
7 however, bonds or other evidences of debts or stocks, nor
8 sales of material and supplies to any person for use in
9 fulfilling a contract for the painting, repair, or
10 reconditioning of vessels, barges, ships, other watercraft,
11 and commercial fishing vessels of over five tons load
12 displacement as registered with the U.S. Coast Guard and
13 licensed by the State of Alabama Department of Conservation
14 and Natural Resources), an amount equal to: for taxable
15 periods beginning on or before August 31, 2012, four percent
16 of the gross proceeds of sales of the business except where a
17 different amount is expressly provided herein; for taxable
18 periods beginning on or after September 1, 2012, four and
19 one-quarter percent of the gross proceeds of sales of the
20 business except where a different amount is expressly provided
21 herein; for taxable periods beginning on and after September
22 1, 2013, four and one-half percent of the gross proceeds of
23 sales of the business except where a different amount is
24 expressly provided herein; for taxable periods beginning on
25 and after September 1, 2014, four and three-quarters percent
26 of the gross proceeds of sales of the business except where a
27 different amount is expressly provided herein; for taxable

1 periods beginning on and after September 1, 2015, five percent
2 of the gross proceeds of sales of the business except where a
3 different amount is expressly provided herein. Provided,
4 however, that any person engaging or continuing in business as
5 a retailer and wholesaler or jobber shall pay the tax required
6 on the gross proceeds of retail sales of the business at the
7 rates specified, when his or her books are kept so as to show
8 separately the gross proceeds of sales of each business, and
9 when his or her books are not kept he or she shall pay the tax
10 as a retailer, on the gross sales of the business.

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

19 (2) Upon every person, firm, or corporation engaged
20 or continuing within this state in the business of conducting
21 or operating places of amusement or entertainment, billiard
22 and pool rooms, bowling alleys, amusement devices, musical
23 devices, theaters, opera houses, moving picture shows,
24 vaudevilles, amusement parks, athletic contests, including
25 wrestling matches, prize fights, boxing and wrestling
26 exhibitions, football and baseball games, (including athletic
27 contests, conducted by or under the auspices of any

1 educational institution within this state, or any athletic
2 association thereof, or other association whether the
3 institution or association be a denominational, a state, or
4 county, or a municipal institution, or association or a state,
5 county, or city school, or other institution, association or
6 school), skating rinks, race tracks, golf courses, or any
7 other place at which any exhibition, display, amusement, or
8 entertainment is offered to the public or place or places
9 where an admission fee is charged, including public bathing
10 places, public dance halls of every kind and description
11 within the State of Alabama, an amount equal to: for taxable
12 periods beginning on or before August 31, 2012, four percent
13 of the gross receipts of any such business; for taxable
14 periods beginning on or after September 1, 2012, four and
15 one-quarter percent of the gross receipts of any such
16 business; for taxable periods beginning on and after September
17 1, 2013, four and one-half percent of the gross receipts of
18 any such business; for taxable periods beginning on and after
19 September 1, 2014, four and three-quarters percent of the
20 gross receipts of any such business; for taxable periods
21 beginning on and after September 1, 2015, five percent of the
22 gross receipts of any such business. Provided, however,
23 notwithstanding any language to the contrary in the prior
24 portion of this subdivision, the tax provisions so specified
25 shall not apply to any athletic event conducted by a public or
26 nonpublic primary or secondary school or any athletic event
27 conducted by or under the auspices of the Alabama High School

1 Athletic Association. The tax amount which would have been
2 collected pursuant to this subdivision shall continue to be
3 collected by the public or nonpublic primary or secondary
4 school, but shall be retained by the school which collected it
5 and shall be used by the school for school purposes.

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

19 (4) Upon every person, firm, or corporation engaged
20 or continuing within this state in the business of selling at
21 retail any automotive vehicle or truck trailer, semitrailer,
22 or house trailer, or mobile home set-up materials and supplies
23 including but not limited to steps, blocks, anchoring, cable
24 pipes, and any other materials pertaining thereto an amount
25 equal to two percent of the gross proceeds of sale of the
26 automotive vehicle or truck trailer, semitrailer, or house
27 trailer, or mobile home set-up materials and supplies

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

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

21 Sales of automobiles, motorcycles, trucks, truck
22 trailers, or semitrailers that will be registered or titled
23 outside Alabama, that are exported or removed from Alabama
24 within 72 hours by the purchaser or his or her agent for first
25 use outside Alabama are not subject to the Alabama sales tax.
26 Sales of other vehicles such as mobile homes, motor bikes, all
27 terrain vehicles, and boats do not qualify for the export

1 exemption provision and are taxable unless the dealer can
2 provide factual evidence that the vehicle was delivered
3 outside of Alabama or to a common carrier for transportation
4 outside Alabama. In order for the sale to be exempt from
5 Alabama tax, the information relative to the exempt sale shall
6 be documented on forms approved by the Revenue Department.

7 Of the total \$.02 tax on each dollar of sale
8 provided hereunder, 58 percent of the total tax generated by
9 this subdivision (4) shall be deposited to the credit of the
10 Education Trust Fund; and 42 percent of the total tax
11 generated by this subdivision (4) shall be deposited to the
12 credit of the State General Fund.

13 (5) Upon every person, firm, or corporation engaged
14 or continuing within this state in the business of selling
15 through coin-operated dispensing machines, food and food
16 products for human consumption, not including beverages other
17 than coffee, milk, milk products, and substitutes therefor,
18 there is levied a tax equal to three percent of the cost of
19 the food, food products, and beverages sold through the
20 machines, which cost for the purpose of this subdivision shall
21 be the gross proceeds of sales of the business.

22 "§40-23-61.

23 (a) An excise tax is hereby imposed on the storage,
24 use or other consumption in this state of tangible personal
25 property, not including, however, materials and supplies
26 bought for use in fulfilling a contract for the painting,
27 repairing or reconditioning of vessels, barges, ships, other

1 watercraft and commercial fishing vessels of over five tons
2 load displacement as registered with the U.S. Coast Guard and
3 licensed by the State of Alabama Department of Conservation
4 and Natural Resources, purchased at retail on or after October
5 1, 1965, for storage, use or other consumption in this state
6 at the ~~rate of~~ following rates: for taxable periods beginning
7 on or before August 31, 2012, four percent of the sales price
8 of such property or the amount of tax collected by the seller,
9 whichever is greater; for taxable periods beginning on and
10 after September 1, 2012, four and one-quarter percent of the
11 sales price of such property or the amount of tax collected by
12 the seller, whichever is greater; for taxable periods
13 beginning on and after September 1, 2013, four and one-half
14 percent of the sales price of such property or the amount of
15 tax collected by the seller, whichever is greater; for taxable
16 periods beginning on and after September 1, 2014, four and
17 three-quarters percent of the sales price of such property or
18 the amount of tax collected by the seller, whichever is
19 greater; for taxable periods beginning on and after September
20 1, 2015, five 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, purchased at retail on or after
5 October 1, 1965, at the rate of one and one-half percent of
6 the sales price of any such machine or the amount of tax
7 collected by the seller, whichever is greater; provided,
8 however, when the seller follows the Department of Revenue's
9 suggested use tax brackets and his records prove that his
10 following said brackets resulted in a net undercollection of
11 tax for the month, he may report the tax due or tax collected,
12 whichever is less; provided, that the term "machine," as
13 herein used, shall include machinery which is used for mining,
14 quarrying, compounding, processing, or manufacturing tangible
15 personal property, and the parts of such machines, attachments
16 and replacements therefor, which are made or manufactured for
17 use on or in the operation of such machines and which are
18 necessary to the operation of such machines and are
19 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. For purposes of Sections 3 and 4 of this
20 act, the following terms are defined as follows:

21 (1) FOOD. Food as defined in 7 U.S.C §2011, et seq.,
22 for the purposes of the federal Supplemental Nutrition
23 Assistance Program regardless of where or by what means food
24 is sold. In the event that the federal Supplemental Nutrition
25 Assistance Program definition no longer exists, the
26 Legislature shall provide a new definition of food by general
27 law.

1 (2) SALES TAX. The tax levied in Section 40-23-2,
2 Code of Alabama 1975, on the gross sales or gross receipts
3 from the sale of tangible personal property.

4 (3) USE TAX. The tax levied in Section 40-23-61,
5 Code of Alabama 1975, on the storage, use, or other
6 consumption of tangible personal property in Alabama.

7 Section 3. Notwithstanding any other provision of
8 law,

9 (a) For taxable periods beginning on and after
10 September 1, 2012, the state sales and use tax rate on food
11 shall be three percent of the gross receipts from the sale or
12 use of food.

13 (b) For taxable periods beginning on and after
14 September 1, 2013, the state sales and use tax rate on food
15 shall be two percent of the gross receipts from the sale or
16 use of food.

17 (c) For taxable periods beginning on and after
18 September 1, 2014, the state sales and use tax rate on food
19 shall be one percent of the gross receipts from the sale or
20 use of food.

21 (d) For taxable periods beginning on and after
22 September 1, 2015, the gross receipts from the sale or use of
23 food shall be exempt from the state sales and use taxes.

24 Section 4. This act shall become effective on the
25 first day of the third month following its passage and
26 approval by the Governor, or its otherwise becoming a law.