

1 HB170  
2 115790-2  
3 By Representative Collier  
4 RFD: Education Appropriations  
5 First Read: 12-JAN-10

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8 SYNOPSIS: Under existing law, the State of Alabama  
9 levies a sales and use tax on the sale and use of  
10 certain products and services and activities.  
11 Certain products and business activities are exempt  
12 from the imposition of the taxes.

13 This bill would clarify the exemption for  
14 watercraft.

15  
16 A BILL  
17 TO BE ENTITLED  
18 AN ACT

19  
20 To amend Section 40-23-62, Code of Alabama 1975,  
21 relating to sales and use tax exemptions, to clarify the  
22 exemption for watercraft.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Section 40-23-62 of the Code of Alabama  
25 1975, is amended to read as follows:

26 "§40-23-62.

1           "The storage, use or other consumption in this state  
2 of the following tangible personal property is hereby  
3 specifically exempted from the tax imposed by this article:

4           "(1) Property, on which the sales tax imposed by the  
5 provisions of Article 1 of this chapter is paid by the  
6 consumer to a person licensed under the provisions of Article  
7 1 of this chapter.

8           "(2) Property, the storage, use or other consumption  
9 of which this state is prohibited from taxing under the  
10 Constitution or laws of the United States of America or under  
11 the constitution of this state.

12           "(3) Tangible personal property, not to be used in  
13 the performance of a contract, brought into this state by a  
14 nonresident thereof for his own storage, use or consumption  
15 while temporarily within this state.

16           "(4) Lubricating oil and gasoline as defined in  
17 Sections 40-17-30 and 40-17-170, the storage, use or other  
18 consumption of which is otherwise taxed.

19           "(5) All fertilizer; provided, that the word  
20 "fertilizer" as used in this article shall not be construed to  
21 include cottonseed meal when not in combination with other  
22 material.

23           "(6) All seeds for planting purposes and baby chicks  
24 and poults; provided, that nothing herein shall be construed  
25 to exempt plants, seedlings, nursery stock or floral products.

1           "(7) Insecticides and fungicides and feed for  
2 livestock and poultry, but not including prepared foods for  
3 dogs and cats.

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

15           "(9) Cottonseed meal exchanged for cottonseed at or  
16 by cotton gins.

17           "(10) Transportation, gas, water or electricity, of  
18 the kinds and natures, the rates and charges for which when  
19 sold by public utilities, are customarily fixed and determined  
20 by the Public Service Commission of Alabama or like regulatory  
21 bodies.

22           "(11) Coal or coke to be stored, used or consumed by  
23 manufacturers, electric power companies and transportation  
24 companies for use or consumption in the production of  
25 by-products or the generation of heat or power used:

26           "a. In manufacturing tangible personal property for  
27 sale;

1            "b. For the generation of electric power or energy  
2 for use in manufacturing tangible personal property for sale  
3 or for resale; or

4            "c. For the generation of motive power for  
5 transportation.

6            "(12) Fuel and supplies for use or consumption  
7 aboard ships, vessels, towing vessels, or barges, or drilling  
8 ships, rigs or barges, or seismic or geophysical vessels, or  
9 other watercraft (herein for purposes of this exemption being  
10 referred to as "vessels") engaged in foreign or international  
11 commerce or in interstate commerce; provided, that nothing in  
12 this article shall be construed to exempt or exclude from the  
13 measure of the tax herein levied the gross proceeds of sale or  
14 sales of material and supplies to any person for use in  
15 fulfilling a contract for the painting, repair or  
16 reconditioning of vessels, barges, ships, other watercraft and  
17 commercial fishing vessels of over five tons load displacement  
18 as registered with the U.S. Coast Guard and licensed by the  
19 State of Alabama Department of Conservation and Natural  
20 Resources. For purposes of this subdivision, it shall be  
21 presumed that vessels engaged in the transportation of cargo  
22 between ports in the State of Alabama and ports in foreign  
23 countries or possessions or territories of the United States  
24 or between ports in the State of Alabama and ports in other  
25 states are engaged in foreign or international commerce or  
26 interstate commerce, as the case may be. For the purposes of  
27 this subdivision, the engaging in foreign or international

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

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

23 "(13) Property stored, used or consumed by the State  
24 of Alabama, by the counties within the state or by  
25 incorporated municipalities of the State of Alabama.

26 "(14) The use, storage or consumption of materials,  
27 equipment, including safety equipment and other such items,

1 and machinery which is required by the United States Coast  
2 Guard in the operation of a watercraft that, at any time,  
3 enter into and become a component part of ships, vessels,  
4 towing vessels or barges, or drilling ships, rigs or barges,  
5 or seismic or geophysical vessels, other watercraft and  
6 commercial fishing vessels of over five tons load displacement  
7 as registered with the U.S. Coast Guard and licensed by the  
8 ~~State of Alabama~~ Department of Conservation and Natural  
9 Resources.

10 "(15) The use, storage or consumption of fuel oil  
11 purchased as fuel for kilns used in manufacturing  
12 establishments.

13 "(16) Tangible personal property stored, used or  
14 consumed by county and city school boards, independent school  
15 boards and all educational institutions and agencies of the  
16 State of Alabama, the counties within the state or any  
17 incorporated municipality of the State of Alabama.

18 "(17) The storage, use or consumption of railroad  
19 cars, vessels, and barges and commercial fishing vessels of  
20 over five tons load displacement as registered with the U.S.  
21 Coast Guard and licensed by the State of Alabama Department of  
22 Conservation and Natural Resources when purchased from the  
23 manufacturers or builders thereof.

24 "(18) The storage, use or consumption of all devices  
25 or facilities, and all identifiable components thereof or  
26 materials for use therein, used or placed in operation  
27 primarily for the control, reduction or elimination of air or



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

5 "(19) When dealers or distributors use parts taken  
6 from stocks owned by them in making repairs without charge for  
7 such parts to the owner of the property required pursuant to  
8 warranty agreements entered into by manufacturers, such use  
9 shall not constitute taxable sales to the manufacturers,  
10 distributors or to the dealers, under this article, or under  
11 any county use tax law.

12 "(20) The storage, use or other consumption in this  
13 state of religious magazines and publications. For the purpose  
14 of this subdivision the words "religious magazines and  
15 publications" shall be construed to mean printed or  
16 illustrated lessons, notes and explanations distributed by  
17 churches or other religious organizations free of charge to  
18 pupils or students in Sunday schools, Bible classes or other  
19 educational facilities established and maintained by churches  
20 or similar religious organizations in this state.

21 "(21) The storage, use or other consumption of  
22 wrapping paper and other wrapping materials when used in  
23 preparing poultry or poultry products for delivery, shipment  
24 or sale by the producer, processor, packer or seller of such  
25 poultry or poultry products including pallets used in shipping  
26 poultry and egg products, paper or other materials used for  
27 lining boxes or other containers in which poultry or poultry

1 products are packed together with any other materials placed  
2 in such containers for the delivery, shipment or sale of  
3 poultry or poultry products.

4 "(22) The storage, use or other consumption of all  
5 antibiotics, hormones and hormone preparations, drugs,  
6 medicines or medications, vitamins, minerals or other  
7 nutrients and all other feed ingredients including  
8 concentrates, supplements and other feed ingredients when such  
9 substances are used as ingredients in mixing and preparing  
10 feed for livestock and poultry. Such exemption herein granted  
11 shall be in addition to exemptions now provided by law for  
12 feed for livestock and poultry, but not including prepared  
13 foods for dogs and cats.

14 "(23) The use of seedlings, plants, shoots, and  
15 slips which are to be used for planting vegetable gardens or  
16 truck farms. Nothing herein shall be construed to exempt, or  
17 exclude from the computation of the tax levied, assessed or  
18 payable, the use of plants, seedlings, shoots, slips, nursery  
19 stock and floral products except as hereinabove exempted.

20 "(24) Fabricated steel tube sections, when produced  
21 and fabricated in this state by any person, firm or  
22 corporation, for any vehicular tunnel for highway vehicular  
23 traffic, when sold by the manufacturer or fabricator thereof,  
24 and also steel which enters into and becomes a component part  
25 of such fabricated steel tube sections of said tunnel, shall  
26 be exempted from the provisions of this article and from the

1 computation of the amount of the tax levied, assessed or  
2 payable under this article.

3 "(25) The storage, use or other consumption of  
4 herbicides for agricultural uses by whomsoever sold. The term  
5 "herbicides" as used in this subdivision means any substance  
6 or mixture of substances intended to prevent, destroy, repel  
7 or retard the growth of weeds or plants. It shall include  
8 preemergence herbicides, postemergence herbicides, lay-by  
9 herbicides, pasture herbicides, defoliant herbicides and  
10 desiccant herbicides.

11 "(26) The Alabama Chapter of the Cystic Fibrosis  
12 Research Foundation, and the Jefferson Tuberculosis Sanatorium  
13 and any of their departments or agencies, heretofore or  
14 hereafter organized and existing in good faith in the State of  
15 Alabama for purposes other than for pecuniary gain and not for  
16 individual profit, shall be exempted from the payment of the  
17 state use tax levied under this article.

18 "(27) Fuel for use or consumption aboard commercial  
19 fishing vessels are hereby exempt from the payment of the  
20 state use tax levied under this article, or levied under any  
21 county or municipal use tax law.

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

25 "(28) The storage, use or withdrawal of sawdust,  
26 wood shavings, wood chips and other like materials purchased

1 for use as "chicken litter" by poultry producers and poultry  
2 processors shall be exempt under this article.

3 "(29) The storage, use or other consumption of all  
4 antibiotics, hormones and hormone preparations, drugs,  
5 medicines and other medications including serums and vaccines,  
6 vitamins, minerals or other nutrients for use in the  
7 production and growing of fish, livestock and poultry are  
8 hereby specifically exempted from the payment of the state use  
9 tax levied by this article. Such exemption as herein granted  
10 shall be in addition to the exemptions now provided by law for  
11 feed for fish, livestock and poultry, and in addition to the  
12 exemptions now provided by law for the above-enumerated  
13 substances and products when mixed and used as ingredients in  
14 fish, livestock and poultry feeds.

15 "(30) All medicines prescribed by physicians for  
16 persons who are 65 years of age or older, and when said  
17 prescriptions are filled by licensed pharmacists, shall be  
18 exempted from the operation of the state use tax law levied by  
19 this article, or by any county or municipal use tax law. The  
20 exemptions provided in this subdivision shall not apply to any  
21 medicine purchased in any manner other than as is herein  
22 provided.

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

1            "a. The name and claim number as shown on a  
2 "Medicare" card issued by the United States Social Security  
3 Administration.

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

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

10           "For the purposes of this subdivision any person  
11 filing a false proof of age shall be guilty of a misdemeanor  
12 and upon conviction thereof shall be punished by a fine of  
13 \$100.

14           "(31) All diesel fuel used for off-highway  
15 agricultural purposes.

16           "(32) The storage, use or other consumption of any  
17 aircraft and replacement parts, components, systems, supplies  
18 and sundries affixed or used on said aircraft and ground  
19 support equipment and vehicles used by or for the aircraft by  
20 a certificated or licensed air carrier with a hub operation  
21 within this state, for use in conducting intrastate,  
22 interstate or foreign commerce for transporting people or  
23 property by air. For the purpose of this subdivision, the  
24 words "hub operation within this state" shall be construed to  
25 have all of the following criteria:

26           "a. There originates from the location 15 or more  
27 flight departures and five or more different first-stop

1 destinations five days per week for six or more months during  
2 the calendar year; and

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

6 "(33) The storage, use or other consumption of hot  
7 or cold food and beverage products by a certificated or  
8 licensed air carrier with a hub operation within this state,  
9 for use in conducting intrastate, interstate or foreign  
10 commerce for transporting people or property by air. For the  
11 purpose of this subdivision, the words "hub operation within  
12 this state" shall be construed to have all of the following  
13 criteria:

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

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

21 "(34) The storage, use or other consumption of the  
22 following:

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

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

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

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

14           "e. All domestically mined or produced coal, coke,  
15 and coke by-products used in cogeneration plants in Alabama.

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

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

1 on completion the equipment is removed forthwith from this  
2 state."

3 Section 2. This act shall become effective on the  
4 first day of the third month following its passage and  
5 approval by the Governor, or its otherwise becoming law.