

1 HB448
2 118549-6
3 By Representative Collier
4 RFD: Education Appropriations
5 First Read: 26-JAN-10

1
2 ENROLLED, An Act,

3 To amend Sections 40-23-4 and 40-23-62, Code of
4 Alabama 1975, relating to sales and use tax exemptions, to
5 clarify the exemption for watercraft.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 40-23-4 and 40-23-62 of the Code
8 of Alabama 1975, are amended to read as follows:

9 "§40-23-4.

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

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

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

1 "(3) The gross proceeds of the sale, or sales, of
2 seeds for planting purposes and baby chicks and poults.
3 Nothing herein shall be construed to exempt or exclude from
4 the computation of the tax levied, assessed, or payable, the
5 gross proceeds of the sale or sales of plants, seedlings,
6 nursery stock, or floral products.

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

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

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

3 "(7) The gross receipts from the business on which,
4 or for engaging in which, a license or privilege tax is levied
5 by or under the provisions of Sections 40-21-50, 40-21-53, and
6 40-21-56 through 40-21-60; provided, that nothing contained in
7 this subdivision shall be construed to exempt or relieve the
8 person or persons operating the business enumerated in said
9 sections from the payments of the tax levied by this division
10 upon or measured by the gross proceeds of sales of any
11 tangible personal property, except gas and water, the gross
12 receipts from the sale of which are the measure of the tax
13 levied by said Section 40-21-50, merchandise or other tangible
14 commodities sold at retail by said persons, unless the gross
15 proceeds of sale thereof are otherwise specifically exempted
16 by the provisions of this division.

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

23 "(9) The gross proceeds of the sale, or sales of
24 wood residue, coal, or coke to manufacturers, electric power
25 companies, and transportation companies for use or consumption

1 in the production of by-products, or the generation of heat or
2 power used in manufacturing tangible personal property for
3 sale, for the generation of electric power or energy for use
4 in manufacturing tangible personal property for sale or for
5 resale, or for the generation of motive power for
6 transportation.

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

22 "For purposes of this subdivision, it shall be
23 presumed that vessels engaged in the transportation of cargo
24 between ports in the State of Alabama and ports in foreign
25 countries or possessions or territories of the United States

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

1 purposes of this subdivision, seismic or geophysical vessels
2 which are engaged either in seismic or geophysical tests or
3 evaluations exclusively in offshore federal waters or in
4 traveling to or from conducting such tests or evaluations
5 shall be deemed to be engaged in international or foreign
6 commerce. For purposes of this subdivision, proof that fuel
7 and supplies purchased are for use or consumption aboard
8 vessels engaged in foreign or international commerce or in
9 interstate commerce may be accomplished by the merchant or
10 seller securing the duly signed certificate of the vessel
11 owner, operator, or captain or their respective agent on a
12 form prescribed by the department that the fuel and supplies
13 purchased are for use or consumption aboard vessels engaged in
14 foreign or international commerce or in interstate commerce.
15 Any person filing a false certificate shall be guilty of a
16 misdemeanor and upon conviction shall be fined not less than
17 \$25 nor more than \$500 for each offense. Each false
18 certificate filed shall constitute a separate offense. Any
19 person filing a false certificate shall be liable to the
20 department for all taxes imposed by this division upon the
21 merchant or seller, together with any interest or penalties
22 thereon, by reason of the sale or sales of fuel and supplies
23 applicable to such false certificate. If a merchant or seller
24 of fuel and supplies secures the certificate herein mentioned,
25 properly completed, such merchant or seller shall not be

1 liable for the taxes imposed by this division, if such
2 merchant or seller had no knowledge that such certificate was
3 false when it was filed with such merchant or seller.

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

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

14 "(13) The gross proceeds of the sale or sales of
15 materials, equipment, ~~lifeboats, personal flotation devices,~~
16 ~~ring life buoys, survival craft equipment, distress signals,~~
17 ~~EPIRB's, fire extinguishers, injury placards, waste management~~
18 ~~plans and logs, marine sanitation devices, navigation rule~~
19 ~~books, navigation lights, sound signals, navigation day~~
20 ~~shapes, oil placard cards, garbage placards, FCC SSL,~~
21 ~~stability instructions, first aid equipment, compasses, anchor~~
22 ~~and radar reflectors, general alarm systems, bilge pumps,~~
23 ~~piping, and discharge, electronic position fixing devices and~~
24 machinery which, at any time, enter into and become a
25 component part of ships, vessels, towing vessels or barges, or

1 drilling ships, rigs or barges, or seismic or geophysical
2 vessels, other watercraft and commercial fishing vessels of
3 over five tons load displacement as registered with the U.S.
4 Coast Guard and licensed by the State of Alabama Department of
5 Conservation and Natural Resources. ~~Additionally, the gross~~
6 ~~proceeds from the sale of any safety equipment and other such~~
7 ~~items which are required by the United States Coast Guard in~~
8 ~~the operation of the aforementioned watercraft.~~

9 Additionally, the gross proceeds from the sale or
10 sales of lifeboats, personal flotation devices, ring life
11 buoys, survival craft equipment, distress signals, EPIRB's
12 fire extinguishers, injury placards, waste management plans
13 and logs, marine sanitation devices, navigation rulebooks,
14 navigation lights, sound signals, navigation day shapes, oil
15 placard cards, garbage placards, FCC SSL, stability
16 instructions, first aid equipment, compasses, anchor and radar
17 reflectors, general alarm systems, bilge pumps, piping, and
18 discharge and electronic position fixing devices which are
19 used on the aforementioned watercraft.

20 "(14) The gross proceeds of the sale or sales of
21 fuel oil purchased as fuel for kiln use in manufacturing
22 establishments.

23 "(15) The gross proceeds of the sale or sales of
24 tangible personal property to county and city school boards,
25 independent school boards, and all educational institutions

1 and agencies of the State of Alabama, the counties within the
2 state, or any incorporated municipalities of the State of
3 Alabama.

4 "(16) The gross proceeds from the sale of all
5 devices or facilities, and all identifiable components
6 thereof, or materials for use therein, acquired primarily for
7 the control, reduction, or elimination of air or water
8 pollution and the gross proceeds from the sale of all
9 identifiable components of or materials used or intended for
10 use in structures built primarily for the control, reduction,
11 or elimination of air and water pollution.

12 "(17) The gross proceeds of sales of tangible
13 personal property or the gross receipts of any business which
14 the state is prohibited from taxing under the Constitution or
15 laws of the United States or under the Constitution of this
16 state.

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

24 "(19) The gross proceeds received from the sale or
25 furnishing of food, including potato chips, candy, fruit and

1 similar items, soft drinks, tobacco products, and stationery
2 and other similar or related articles by hospital canteens
3 operated by Alabama state hospitals at Bryce Hospital and
4 Partlow State School for Mental Deficients at Tuscaloosa,
5 Alabama, and Searcy Hospital at Mt. Vernon, Alabama, for the
6 benefit of the patients therein.

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

17 "(21) The gross proceeds of the sales of all
18 antibiotics, hormones and hormone preparations, drugs,
19 medicines or medications, vitamins, minerals or other
20 nutrients, and all other feed ingredients including
21 concentrates, supplements, and other feed ingredients when
22 such substances are used as ingredients in mixing and
23 preparing feed for fish raised to be sold on a commercial
24 basis, livestock, and poultry. Such exemption herein granted
25 shall be in addition to exemptions now provided by law for

1 feed for fish raised to be sold on a commercial basis,
2 livestock, and poultry, but not including prepared foods for
3 dogs or cats.

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

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

20 "(24) The gross proceeds from sales of admissions to
21 any theatrical production, symphonic or other orchestral
22 concert, ballet, or opera production when such concert or
23 production is presented by any society, association, guild, or
24 workshop group, organized within this state, whose members or
25 some of whose members regularly and actively participate in

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

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

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

1 years of age or older, and when said prescriptions are filled
2 by licensed pharmacists, shall be exempted under this division
3 or under any county or municipal sales tax law. The exemption
4 provided in this section shall not apply to any medicine
5 purchased in any manner other than as is herein provided.

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

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

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

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

18 "For the purposes of this subdivision, any person
19 filing a false proof of age shall be guilty of a misdemeanor
20 and upon conviction thereof shall be punished by a fine of
21 \$100.

22 "(31) There shall be exempted from the tax levied by
23 this division the gross receipts of sales of grass sod of all
24 kinds and character when in the original state of production
25 or condition of preparation for sale, when such sales are made

1 by the producer or members of his family or for him by those
2 employed by him to assist in the production thereof; provided,
3 that nothing herein shall be construed to exempt sales of sod
4 by a person engaged in the business of selling plants,
5 seedlings, nursery stock, or floral products.

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

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

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

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

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

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

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

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

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

11 "b. Is hosted by a not-for-profit corporation
12 organized and existing under the laws of the State of Alabama;
13 and

14 "c. Determines a national championship of a national
15 organization, including but not limited to the Professional
16 Golfers Association of America, the Tournament Players
17 Association, the United States Golf Association, the United
18 States Tennis Association, and the National Collegiate
19 Athletic Association; and

20 "d. Has not been held in the State of Alabama on
21 more than one prior occasion, provided, however, that for such
22 purpose the Professional Golfers Association Championship, the
23 United States Open Golf Championship, the United States
24 Amateur Golf Championship of the United States Golf

1 Association, and the United States Open Tennis Championship
2 shall each be treated as a separate event.

3 "(40) The gross receipts from the sale of any
4 aircraft and replacement parts, components, systems, supplies,
5 and sundries affixed or used on said aircraft and ground
6 support equipment and vehicles used by or for the aircraft to
7 or by a certificated or licensed air carrier with a hub
8 operation within this state, for use in conducting intrastate,
9 interstate, or foreign commerce for transporting people or
10 property by air. For the purpose of this subdivision, the
11 words "hub operation within this state" shall be construed to
12 have all of the following criteria:

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

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

20 "(41) The gross receipts from the sale of hot or
21 cold food and beverage products sold to or by a certificated
22 or licensed air carrier with a hub operation within this
23 state, for use in conducting intrastate, interstate, or
24 foreign commerce for transporting people or property by air.
25 For the purpose of this subdivision, the words "hub operation

1 within this state" shall be construed to have all of the
2 following criteria:

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

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

10 "(42) The gross proceeds of the sale or sales of the
11 following:

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

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

18 "c. Fuel and supplies for use or consumption aboard
19 boats, ships, aircraft, and towing vessels when used
20 exclusively in transporting persons or property between a
21 point in Alabama and a point or points in offshore federal
22 waters for the exploration for or production of oil, gas,
23 sulphur, or other minerals in offshore federal waters.

24 "d. Drilling equipment that is used for the
25 exploration for or production of oil, gas, sulphur, or other

1 minerals, that is built for exclusive use outside this state
2 and that is, on completion, removed forthwith from this state.

3 "The delivery of items exempted by this subdivision
4 to the purchaser or lessee in this state does not disqualify
5 the purchaser or lessee from the exemption if the property is
6 removed from the state by any means, including by the use of
7 the purchaser's or lessee's own facilities.

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

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

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

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

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

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

19 "§40-23-62.

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

23 "(1) Property, on which the sales tax imposed by the
24 provisions of Article 1 of this chapter is paid by the

1 consumer to a person licensed under the provisions of Article
2 1 of this chapter.

3 "(2) Property, the storage, use or other consumption
4 of which this state is prohibited from taxing under the
5 Constitution or laws of the United States of America or under
6 the constitution of this state.

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

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

14 "(5) All fertilizer; provided, that the word
15 "fertilizer" as used in this article shall not be construed to
16 include cottonseed meal when not in combination with other
17 material.

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

21 "(7) Insecticides and fungicides and feed for
22 livestock and poultry, but not including prepared foods for
23 dogs and cats.

24 "(8) The use, storage or consumption of all
25 livestock by whomsoever sold; and also the gross proceeds of

1 poultry and other products of the farm, dairy, grove or
2 garden, when in the original state of production or condition
3 of preparation for sale, when such sale or sales are made by
4 the producer or members of his immediate family or for him by
5 those employed by him to assist in the production thereof.
6 Nothing herein shall be construed to exempt or exclude from
7 the measure or computation of the tax levied, assessed or
8 payable hereunder, the gross proceeds of sales of poultry or
9 poultry products when not products of the farm.

10 "(9) Cottonseed meal exchanged for cottonseed at or
11 by cotton gins.

12 "(10) Transportation, gas, water or electricity, of
13 the kinds and natures, the rates and charges for which when
14 sold by public utilities, are customarily fixed and determined
15 by the Public Service Commission of Alabama or like regulatory
16 bodies.

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

21 "a. In manufacturing tangible personal property for
22 sale;

23 "b. For the generation of electric power or energy
24 for use in manufacturing tangible personal property for sale
25 or for resale; or

1 "c. For the generation of motive power for
2 transportation.

3 "(12) Fuel and supplies for use or consumption
4 aboard ships, vessels, towing vessels, or barges, or drilling
5 ships, rigs or barges, or seismic or geophysical vessels, or
6 other watercraft (herein for purposes of this exemption being
7 referred to as "vessels") engaged in foreign or international
8 commerce or in interstate commerce; provided, that nothing in
9 this article shall be construed to exempt or exclude from the
10 measure of the tax herein levied the gross proceeds of sale or
11 sales of material and supplies to any person for use in
12 fulfilling a contract for the painting, repair or
13 reconditioning of vessels, barges, ships, other watercraft and
14 commercial fishing vessels of over five tons load displacement
15 as registered with the U.S. Coast Guard and licensed by the
16 State of Alabama Department of Conservation and Natural
17 Resources. For purposes of this subdivision, it shall be
18 presumed that vessels engaged in the transportation of cargo
19 between ports in the State of Alabama and ports in foreign
20 countries or possessions or territories of the United States
21 or between ports in the State of Alabama and ports in other
22 states are engaged in foreign or international commerce or
23 interstate commerce, as the case may be. For the purposes of
24 this subdivision, the engaging in foreign or international
25 commerce or interstate commerce shall not require that the

1 vessel involved deliver cargo to or receive cargo from a port
2 in the State of Alabama. For purposes of this subdivision,
3 vessels carrying passengers for hire, and no cargo, between
4 ports in the State of Alabama and ports in foreign countries
5 or possessions or territories of the United States or between
6 ports in the State of Alabama and ports in other states shall
7 be engaged in foreign or international commerce or interstate
8 commerce, as the case may be, if, and only if, both of the
9 following conditions are met: (i) The vessel in question is a
10 vessel of at least 100 gross tons; and (ii) the vessel in
11 question has an unexpired certificate of inspection issued by
12 the United States Coast Guard or by the proper authority of a
13 foreign country for a foreign vessel, which certificate is
14 recognized as acceptable under the laws of the United States.
15 Vessels which are engaged in foreign or international commerce
16 or interstate commerce shall be deemed for the purposes of
17 this subdivision to remain in such commerce while awaiting or
18 under repair in a port of the State of Alabama if such vessel
19 returns after such repairs are completed to engaging in
20 foreign or international commerce or interstate commerce. For
21 purposes of this subdivision, seismic or geophysical vessels
22 which are engaged either in seismic or geophysical tests or
23 evaluations exclusively in offshore federal waters or in
24 traveling to or from conducting such tests or evaluations
25 shall be deemed to be engaged in international or foreign

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

1 "(13) Property stored, used or consumed by the State
2 of Alabama, by the counties within the state or by
3 incorporated municipalities of the State of Alabama.

4 "(14) The use, storage or consumption of materials,
5 equipment ~~, including safety equipment and other such items,~~
6 ~~lifeboats, personal flotation devices, ring life buoys,~~
7 ~~survival craft equipment, distress signals, EPIRB's, fire~~
8 ~~extinguishers, injury placards, waste management plans and~~
9 ~~logs, marine sanitation devices, navigation rule books,~~
10 ~~navigation lights, sound signals, navigation day shapes, oil~~
11 ~~placard cards, garbage placards, FCC SSL, stability~~
12 ~~instructions, first aid equipment, compasses, anchor and radar~~
13 ~~reflectors, general alarm systems, bilge pumps, piping, and~~
14 ~~discharge, electronic position fixing devices and machinery~~
15 ~~which is required by the United States Coast Guard in the~~
16 ~~operation of a watercraft that, at any time, enter into and~~
17 ~~become a component part of ships, vessels, towing vessels or~~
18 ~~barges, or drilling ships, rigs or barges, or seismic or~~
19 ~~geophysical vessels, other watercraft and commercial fishing~~
20 ~~vessels of over five tons load displacement as registered with~~
21 ~~the U.S. Coast Guard and licensed by the State of Alabama~~
22 Department of Conservation and Natural Resources.

23 Additionally, the use, storage or consumption of
24 lifeboats, personal flotation devices, ring life buoys,
25 survival craft equipment, distress signals, EPIRB's, fire

1 extinguishers, injury placards, waste management plans and
2 logs, marine sanitation devices, navigation rulebooks,
3 navigation lights, sound signals, navigation day shapes, oil
4 placard cards, garbage placards, FCC SSL, stability
5 instructions, first aid equipment, compasses, anchor and radar
6 reflectors, general alarm systems, bilge pumps, piping, and
7 discharge and electronic position fixing devices on the
8 aforementioned watercraft.

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

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

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

23 "(18) The storage, use or consumption of all devices
24 or facilities, and all identifiable components thereof or
25 materials for use therein, used or placed in operation

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

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

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

22 "(21) The storage, use or other consumption of
23 wrapping paper and other wrapping materials when used in
24 preparing poultry or poultry products for delivery, shipment
25 or sale by the producer, processor, packer or seller of such

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

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

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

23 "(24) Fabricated steel tube sections, when produced
24 and fabricated in this state by any person, firm or
25 corporation, for any vehicular tunnel for highway vehicular

1 traffic, when sold by the manufacturer or fabricator thereof,
2 and also steel which enters into and becomes a component part
3 of such fabricated steel tube sections of said tunnel, shall
4 be exempted from the provisions of this article and from the
5 computation of the amount of the tax levied, assessed or
6 payable under this article.

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

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

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

1 "The words "commercial fishing vessels" shall mean
2 vessels whose masters and owners are regularly and exclusively
3 engaged in fishing as their means of livelihood.

4 "(28) The storage, use or withdrawal of sawdust,
5 wood shavings, wood chips and other like materials purchased
6 for use as "chicken litter" by poultry producers and poultry
7 processors shall be exempt under this article.

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

20 "(30) All medicines prescribed by physicians for
21 persons who are 65 years of age or older, and when said
22 prescriptions are filled by licensed pharmacists, shall be
23 exempted from the operation of the state use tax law levied by
24 this article, or by any county or municipal use tax law. The
25 exemptions provided in this subdivision shall not apply to any

1 medicine purchased in any manner other than as is herein
2 provided.

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

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

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

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

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

19 "(31) All diesel fuel used for off-highway
20 agricultural purposes.

21 "(32) The storage, use or other consumption 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 by
25 a certificated or licensed air carrier with a hub operation

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

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

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

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

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

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

4 "(34) The storage, use or other consumption of the
5 following:

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

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

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

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

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

24 "The delivery of items exempted by this subdivision
25 to the purchaser or lessee in this state does not disqualify

1 the purchaser or lessee from the exemption if the property is
2 removed from the state by any means, including by the use of
3 the purchaser's or lessee's own facilities.

4 "The shipment to a place in this state of equipment
5 exempted by this subdivision for further assembly or
6 fabrication does not disqualify the purchaser or lessee from
7 the exemption if on completion of the further assembly or
8 fabrication the equipment is removed forthwith from this
9 state. This subdivision applies to a sale that may occur when
10 the equipment exempted is further assembled or fabricated if
11 on completion the equipment is removed forthwith from this
12 state."

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

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 03-MAR-10, as amended.

Greg Pappas
Clerk

Senate

14-APR-10

Passed