

1 HB162  
2 209295-1  
3 By Representatives South and Clouse  
4 RFD: Ways and Means General Fund  
5 First Read: 02-FEB-21  
6 PFD: 01/26/2021

SYNOPSIS: This bill would provide for a lease tax exemption for a lease transaction that lasts for a period of at least 180 days and involves certain entities.

This bill would also remove a restriction that a lessor may not pass a lease tax on to a lessee except under certain circumstances.

This bill would also make nonsubstantive, technical revisions to update the existing code language to current style.

A BILL  
TO BE ENTITLED  
AN ACT

Relating to lease tax exemptions; to amend Section 40-12-222, as last amended by Act 2019-89, 2019 Regular Session, and Section 40-12-223, Code of Alabama 1975; to remove the restriction that a lessor may not pass a lease tax on to a lessee except under certain circumstances; to provide

1 a lease exemption for a lease transaction that lasts for a  
2 period of at least 180 days and involves certain entities; and  
3 to make nonsubstantive, technical revisions to update the  
4 existing code language to current style.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Section 40-12-222, as last amended by Act  
7 2019-89, 2019 Regular Session, and Section 40-12-223, Code of  
8 Alabama 1975, are amended to read as follows:

9 "§40-12-222.

10 "(a) (1) In addition to all other taxes now imposed  
11 by law, there is hereby levied and shall be collected ~~as~~  
12 ~~herein provided~~ a privilege or license tax on each person  
13 engaging or continuing within this state in the business of  
14 leasing or renting tangible personal property at the rate of  
15 four percent of the gross proceeds derived by the lessor from  
16 the lease or rental of tangible personal property;

17 "(2) ~~provided, that the~~ The privilege or license tax  
18 on each person engaging or continuing within this state in the  
19 business of leasing or renting any automotive vehicle or truck  
20 trailer, semitrailer, or house trailer shall be at the rate of  
21 one and one-half percent of the gross proceeds derived by the  
22 lessor from the lease or rental of such automotive vehicle or  
23 truck trailer, semitrailer, or house trailer;

24 "(3) ~~provided further, that the~~ The tax levied in  
25 this article shall not apply to any leasing or rental, as  
26 lessor, by the state, or any municipality or county in the  
27 state, or any public corporation organized under the laws of

1 the state, including, without limiting the generality of the  
2 foregoing, any corporation organized under the provisions of  
3 Sections 11-54-80 through 11-54-101;

4 "~~(4) provided further, that the~~ The privilege or  
5 license tax on each person or firm engaging or continuing  
6 within this state in the business of the leasing and rental of  
7 linens and garments shall be at the rate of two percent of the  
8 gross proceeds derived by the lessor from the lease or rental  
9 of the linens and garments.

10 "(b) Notwithstanding the above, nothing shall  
11 prohibit a lessor subject to a state or local privilege or  
12 license tax from passing the amounts on to a lessee by adding  
13 the taxes to the leasing price or otherwise; provided,  
14 however, that all amounts passed on to the lessee shall be  
15 includable in the gross proceeds derived from the lease of  
16 tangible personal property which shall be subject to the  
17 privilege or license tax owed by the lessor.

18 "~~Provided, however, the authority to pass on the~~  
19 ~~amounts of the privilege or license tax granted in this~~  
20 ~~subsection shall not apply to the leasing or renting of~~  
21 ~~tangible personal property to the State of Alabama or a~~  
22 ~~municipality or county in the state, unless the flat amount~~  
23 ~~collected by the lessor includes both the tax and the leasing~~  
24 ~~fee.~~

25 "(c) The state and applicable local privilege or  
26 license taxes applicable to a lease or rental transaction to  
27 which a lessor is subject shall be determined as follows:

1           "(1) Except for automotive vehicles as provided in  
2 subdivision (2), the following shall apply:

3           "a. When tangible personal property is delivered to  
4 the lessee by the lessor or his or her agent, the privilege or  
5 license tax levy shall be determined based on where the  
6 property is delivered.

7           "b. When tangible personal property is picked up at  
8 the lessor's rental location by the lessee or his or her  
9 agent, the privilege or license tax levy shall be determined  
10 based on the rental location.

11           "(2) For automotive vehicles required to be  
12 registered pursuant to Section 32-6-61, each lease payment is  
13 considered a separate lease transaction and occurs in the  
14 location as provided below and the following rules shall  
15 apply:

16           "a. The privilege or license tax levy on any  
17 nonrecurring gross proceeds due at the inception of the lease  
18 to a new motor vehicle dealer or a used motor vehicle dealer  
19 licensed pursuant to Section 40-12-391, including any  
20 capitalized cost reduction or other fee that is retained by  
21 the dealer in connection with its initiation of the lease,  
22 shall be determined based on the location of the dealer where  
23 the lease was initiated.

24           "b. The privilege or license tax levy on gross  
25 proceeds other than those described in paragraph a., including  
26 the initial lease or rental payment and all subsequent lease  
27 or rental payments, shall be determined based on the garage

1 address of the lessee as provided to the county licensing  
2 official. The lessor is considered to be engaging or  
3 continuing within this state in the business of leasing or  
4 renting tangible personal property when its lessee has a  
5 garage address within this state.

6 "§40-12-223.

7 "There are exempted from the computation of the  
8 amount of the tax levied, assessed, or payable under this  
9 article all of the following:

10 "(1) The gross proceeds accruing from the leasing or  
11 rental of a film or films to a lessee who charges, or proposes  
12 to charge, admission for viewing the ~~said~~ film or films<sup>7</sup>.

13 "(2) The gross proceeds accruing from any charge in  
14 respect to the use of docks or docking facilities furnished  
15 for boats or other craft operated on waterways<sup>7</sup>.

16 "(3) The gross proceeds accruing from any charge  
17 made by a landlord to a tenant in respect of the leasing or  
18 furnishing of tangible personal property to be used on the  
19 premises of real property leased by the same landlord to the  
20 same tenant for use as a residence or dwelling place,  
21 including mobile homes<sup>7</sup>.

22 "(4) The gross proceeds accruing from the leasing or  
23 rental of tangible personal property to a lessee who acquires  
24 possession of the ~~said~~ property for the purpose of leasing or  
25 renting to another the same property under a leasing or rental  
26 transaction subject to the provisions of this article<sup>7</sup>.

1           "(5) The gross proceeds accruing from any charge  
2 made by a landlord to a tenant in respect to the leasing or  
3 furnishing of tangible personal property to be used on the  
4 premises of any room or rooms, lodging or accommodations  
5 leased or rented to transients in any hotel, motel, inn,  
6 tourist camp, tourist cabin, or any other place in which  
7 rooms, lodgings, or accommodations are regularly furnished to  
8 transients for a consideration7.

9           "(6) The gross proceeds accruing from the leasing or  
10 rental of tangible personal property which the state is  
11 prohibited from taxing under the Constitution or laws of the  
12 United States or under the constitution of the state7.

13           "(7) The gross proceeds accruing from the leasing or  
14 rental of nuclear fuel assemblies together with the nuclear  
15 material contained therein and other nuclear material used or  
16 useful in the production of electricity and assemblies  
17 containing ionizing radiation sources together with the  
18 ionizing radiation sources contained therein used or useful in  
19 medical treatment or scientific research7.

20           "(8) A transaction ~~whereunder~~ in which the lessor  
21 leases a truck or tractor-trailer or semitrailer for operation  
22 over the public roads and highways and such lessor furnishes a  
23 driver or drivers for each ~~such~~ vehicle, and ~~such~~ the  
24 transaction shall be deemed to constitute the rendition of  
25 service and not a "leasing or rental" within the meaning of  
26 this article7.

1           "(9) The gross proceeds accruing from the leasing or  
2 rental of vehicles in interchange between regulated motor  
3 carriers on a per diem basis7.

4           "(10) The gross proceeds accruing from the leasing  
5 or rental of all structures, devices, facilities, and  
6 identifiable components of any thereof acquired primarily for  
7 the control, reduction, or elimination of air or water  
8 pollution, and the gross proceeds accruing from the leasing or  
9 rental of all materials used or intended for use in structures  
10 built primarily for the control, reduction, or elimination of  
11 air and water pollution7.

12           "(11) The gross proceeds derived by the lessor,  
13 which term includes a sublessor, from the leasing or rental of  
14 tangible personal property when the lessor and lessee, which  
15 term includes a sublessee, are wholly-owned subsidiary  
16 corporations of the same parent corporation or one is the  
17 wholly-owned subsidiary of the other; provided, that the  
18 appropriate sales or use tax, if any was due, has been paid on  
19 ~~such~~ the item of personal property; and provided further, that  
20 in the event of any subsequent subleasing of ~~such~~ the tangible  
21 personal property to any person other than any ~~such~~ sister,  
22 parent,l or subsidiary corporation, any privilege or license  
23 tax due and payable with respect to ~~such~~ that subsequent  
24 subleasing under the provisions of this article shall be  
25 paid7.

26           "(12) The gross proceeds accruing from a transaction  
27 which involves the leasing or rental of vessels or railroad



1 equipment which are engaged in interstate or foreign commerce,  
2 or both~~;~~.

3 "(13) The gross proceeds accruing from the leasing  
4 or rental of aircraft, replacement parts, components, systems,  
5 sundries, and supplies affixed or used on ~~said~~ the aircraft  
6 and all ground support equipment and vehicles used by or for  
7 the aircraft to or by a certificated or licensed air carrier  
8 with a hub operation within this state, for use in conducting  
9 intrastate, interstate~~,~~ or foreign commerce for transporting  
10 people or property by air. For the purpose of this  
11 subdivision, the words "hub operation within this state" shall  
12 be construed to have ~~all~~ both 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, or both, are  
18 regularly exchanged at the location between flights of the  
19 same or a different certificated or licensed air carrier~~;~~and.

20 "(14) The gross proceeds derived by the lessor,  
21 which term includes a sublessor, from the leasing of tangible  
22 personal property under all of the following conditions:

23 "a. Prior to being leased under the lease subject to  
24 this exemption, the leased tangible personal property shall  
25 have been owned, or considered to be owned for either Alabama  
26 or federal income tax purposes or both, or subject to  
27 acquisition pursuant to a binding contract, by the lessee or

1 by a corporation, partnership or other entity controlled by,  
2 or under common control with, ~~such~~ the lessee~~7~~.

3 "b. The leased tangible personal property, or the  
4 right to ownership thereof, shall have been acquired by the  
5 lessor from the lessee or a corporation, partnership or other  
6 entity controlled by, or under common control with, ~~such~~ that  
7 lessee and leased back to the lessee under a lease ~~(i)~~ that is  
8 considered a lease and not a sale for either Alabama or  
9 federal income tax purposes, or both, and ~~(ii)~~ that has a term  
10 of not less than 15 years, except that the lessor and the  
11 lessee may agree in the lease or any subsequent amendment  
12 thereof for the termination of the lease on any date through  
13 purchase of the leased tangible personal property by the  
14 lessee, which right to purchase ~~such~~ the property shall be  
15 exercisable solely at the option of the lessee~~7~~.

16 "c. The appropriate sales or use tax levied by the  
17 state shall have been paid with respect to the acquisition or  
18 use of the leased tangible personal property, or,  
19 alternatively, the acquisition or use of ~~such~~ that property  
20 shall be exempt by law from such sales or use tax~~7~~.

21 "d. The leased tangible personal property shall be  
22 installed in or about an industrial plant or other real  
23 property that was specially constructed or modified for the  
24 location and use of ~~such~~ the tangible personal property and  
25 that is owned, or considered to be owned, for either Alabama  
26 or federal income tax purposes or both, by a corporation,  
27 partnership, or other entity controlled by, or under common

1 control with, the lessee of such tangible personal property  
2 and.

3 "e. The leased tangible property shall be used only  
4 by a lessee engaged in the iron and steel industry, and the  
5 exemption from the tax levied by this article shall apply only  
6 to the gross proceeds derived from leases that become binding  
7 contracts of the parties thereto within 180 calendar days  
8 following the date on which the act adding the exemption  
9 contained in this subsection (14) shall become effective.

10 "(15) The gross proceeds accruing from a motor  
11 vehicle lease transaction for a duration of at least 180 days  
12 with the federal government, or any state, county, or  
13 municipal entity within the state, including a public school  
14 board or an individual public school, or any entity eligible  
15 for a sales tax exemption under federal law or Section  
16 40-23-5."

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