

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

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2 ENROLLED, An Act,

3 Relating to lease tax exemptions; to amend Section
4 40-12-222, as last amended by Act 2019-89, 2019 Regular
5 Session, and Section 40-12-223, Code of Alabama 1975; to
6 remove the restriction that a lessor may not pass a lease tax
7 on to a lessee except under certain circumstances; to provide
8 a lease exemption for a lease transaction that lasts for a
9 period of at least 180 days and involves certain entities; and
10 to make nonsubstantive, technical revisions to update the
11 existing code language to current style.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Section 40-12-222, as last amended by Act
14 2019-89, 2019 Regular Session, and Section 40-12-223, Code of
15 Alabama 1975, are amended to read as follows:

16 "§40-12-222.

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

24 "(2) ~~provided, that the~~ The privilege or license tax
25 on each person engaging or continuing within this state in the

1 business of leasing or renting any automotive vehicle or truck
2 trailer, semitrailer, or house trailer shall be at the rate of
3 one and one-half percent of the gross proceeds derived by the
4 lessor from the lease or rental of such automotive vehicle or
5 truck trailer, semitrailer, or house trailer;

6 "(3) ~~provided further, that the~~ The tax levied in
7 this article shall not apply to any leasing or rental, as
8 lessor, by the state, or any municipality or county in the
9 state, or any public corporation organized under the laws of
10 the state, including, without limiting the generality of the
11 foregoing, any corporation organized under the provisions of
12 Sections 11-54-80 through 11-54-101;

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

19 "(b) Notwithstanding the above, nothing shall
20 prohibit a lessor subject to a state or local privilege or
21 license tax from passing the amounts on to a lessee by adding
22 the taxes to the leasing price or otherwise; provided,
23 however, that all amounts passed on to the lessee shall be
24 includable in the gross proceeds derived from the lease of

1 tangible personal property which shall be subject to the
2 privilege or license tax owed by the lessor.

3 ~~"Provided, however, the authority to pass on the~~
4 ~~amounts of the privilege or license tax granted in this~~
5 ~~subsection shall not apply to the leasing or renting of~~
6 ~~tangible personal property to the State of Alabama or a~~
7 ~~municipality or county in the state, unless the flat amount~~
8 ~~collected by the lessor includes both the tax and the leasing~~
9 ~~fee.~~

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

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

15 "a. When tangible personal property is delivered to
16 the lessee by the lessor or his or her agent, the privilege or
17 license tax levy shall be determined based on where the
18 property is delivered.

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

23 "(2) For automotive vehicles required to be
24 registered pursuant to Section 32-6-61, each lease payment is
25 considered a separate lease transaction and occurs in the

1 location as provided below and the following rules shall
2 apply:

3 "a. The privilege or license tax levy on any
4 nonrecurring gross proceeds due at the inception of the lease
5 to a new motor vehicle dealer or a used motor vehicle dealer
6 licensed pursuant to Section 40-12-391, including any
7 capitalized cost reduction or other fee that is retained by
8 the dealer in connection with its initiation of the lease,
9 shall be determined based on the location of the dealer where
10 the lease was initiated.

11 "b. The privilege or license tax levy on gross
12 proceeds other than those described in paragraph a., including
13 the initial lease or rental payment and all subsequent lease
14 or rental payments, shall be determined based on the garage
15 address of the lessee as provided to the county licensing
16 official. The lessor is considered to be engaging or
17 continuing within this state in the business of leasing or
18 renting tangible personal property when its lessee has a
19 garage address within this state.

20 "§40-12-223.

21 "There are exempted from the computation of the
22 amount of the tax levied, assessed, or payable under this
23 article all of the following:

1 "(1) The gross proceeds accruing from the leasing or
2 rental of a film or films to a lessee who charges, or proposes
3 to charge, admission for viewing the ~~said~~ film or films7.

4 "(2) The gross proceeds accruing from any charge in
5 respect to the use of docks or docking facilities furnished
6 for boats or other craft operated on waterways7.

7 "(3) The gross proceeds accruing from any charge
8 made by a landlord to a tenant in respect of the leasing or
9 furnishing of tangible personal property to be used on the
10 premises of real property leased by the same landlord to the
11 same tenant for use as a residence or dwelling place,
12 including mobile homes7.

13 "(4) The gross proceeds accruing from the leasing or
14 rental of tangible personal property to a lessee who acquires
15 possession of the ~~said~~ property for the purpose of leasing or
16 renting to another the same property under a leasing or rental
17 transaction subject to the provisions of this article7.

18 "(5) The gross proceeds accruing from any charge
19 made by a landlord to a tenant in respect to the leasing or
20 furnishing of tangible personal property to be used on the
21 premises of any room or rooms, lodging or accommodations
22 leased or rented to transients in any hotel, motel, inn,
23 tourist camp, tourist cabin, or any other place in which
24 rooms, lodgings, or accommodations are regularly furnished to
25 transients for a consideration7.

1 "(6) The gross proceeds accruing from the leasing or
2 rental of tangible personal property which the state is
3 prohibited from taxing under the Constitution or laws of the
4 United States or under the constitution of the state~~7.~~.

5 "(7) The gross proceeds accruing from the leasing or
6 rental of nuclear fuel assemblies together with the nuclear
7 material contained therein and other nuclear material used or
8 useful in the production of electricity and assemblies
9 containing ionizing radiation sources together with the
10 ionizing radiation sources contained therein used or useful in
11 medical treatment or scientific research~~7.~~.

12 "(8) A transaction ~~whereunder~~ in which the lessor
13 leases a truck or tractor-trailer or semitrailer for operation
14 over the public roads and highways and such lessor furnishes a
15 driver or drivers for each ~~such~~ vehicle, and ~~such~~ the
16 transaction shall be deemed to constitute the rendition of
17 service and not a "leasing or rental" within the meaning of
18 this article~~7.~~.

19 "(9) The gross proceeds accruing from the leasing or
20 rental of vehicles in interchange between regulated motor
21 carriers on a per diem basis~~7.~~.

22 "(10) The gross proceeds accruing from the leasing
23 or rental of all structures, devices, facilities, and
24 identifiable components of any thereof acquired primarily for
25 the control, reduction, or elimination of air or water

1 pollution, and the gross proceeds accruing from the leasing or
2 rental of all materials used or intended for use in structures
3 built primarily for the control, reduction, or elimination of
4 air and water pollution~~7~~.

5 "(11) The gross proceeds derived by the lessor,
6 which term includes a sublessor, from the leasing or rental of
7 tangible personal property when the lessor and lessee, which
8 term includes a sublessee, are wholly-owned subsidiary
9 corporations of the same parent corporation or one is the
10 wholly-owned subsidiary of the other; provided, that the
11 appropriate sales or use tax, if any was due, has been paid on
12 ~~such~~ the item of personal property; and provided further, that
13 in the event of any subsequent subleasing of ~~such~~ the tangible
14 personal property to any person other than any ~~such~~ sister,
15 parent, or subsidiary corporation, any privilege or license
16 tax due and payable with respect to ~~such~~ that subsequent
17 subleasing under the provisions of this article shall be
18 paid~~7~~.

19 "(12) The gross proceeds accruing from a transaction
20 which involves the leasing or rental of vessels or railroad
21 equipment which are engaged in interstate or foreign commerce,
22 or both~~7~~.

23 "(13) The gross proceeds accruing from the leasing
24 or rental of aircraft, replacement parts, components, systems,
25 sundries, and supplies affixed or used on ~~said~~ the aircraft

1 and all ground support equipment and vehicles used by or for
2 the aircraft to or by a certificated or licensed air carrier
3 with a hub operation within this state, for use in conducting
4 intrastate, interstate, or foreign commerce for transporting
5 people or property by air. For the purpose of this
6 subdivision, the words "hub operation within this state" shall
7 be construed to have ~~all~~ both of the following criteria:

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

12 "b. Passengers ~~and/or~~ property, or both, are
13 regularly exchanged at the location between flights of the
14 same or a different certificated or licensed air carrier, ~~and~~.

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

18 "a. Prior to being leased under the lease subject to
19 this exemption, the leased tangible personal property shall
20 have been owned, or considered to be owned for either Alabama
21 or federal income tax purposes or both, or subject to
22 acquisition pursuant to a binding contract, by the lessee or
23 by a corporation, partnership or other entity controlled by,
24 or under common control with, ~~such~~ the lessee~~.~~

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

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

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

