

1 HB511
2 209145-1
3 By Representatives Brown (C) and Marques
4 RFD: Ways and Means General Fund
5 First Read: 09-MAR-21

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8 SYNOPSIS: Under existing law, all vessels and
9 equipment thereon, used predominantly in the
10 business of commercial shrimping, are exempt from
11 ad valorem tax. This bill would exempt all business
12 of commercial fishing from ad valorem tax.

13 Under existing law, the sale of commercial
14 fishing vessels and machinery and the materials and
15 equipment used by commercial fishermen to capture
16 or attempt to capture fish or other seafood are not
17 exempt from sales and use tax. This bill would
18 create a sales and use tax rate differential of one
19 and one-half percent for the purchase and storage
20 of all vessels and machinery used in the process of
21 commercial fishing. This bill will also exempt bait
22 and all materials and equipment used in the process
23 of commercial fishing from sales and use tax.

24 This bill would define commercial fishing
25 and commercial fishing vessels for the purpose of
26 ad valorem taxation and sale and use taxation.
27

1 A BILL
2 TO BE ENTITLED
3 AN ACT
4

5 Relating to ad valorem tax; to amend Section 40-9-1
6 of the Code of Alabama 1975, to exempt all commercial fishing
7 vessels and equipment from ad valorem taxation; relating to
8 sales and use tax; to amend Sections 40-23-1, 40-23-4, as last
9 amended by Act 2019-444, 2019 Regular Session, 40-23-37,
10 40-23-60, and 40-23-63 of the Code of Alabama 1975, to provide
11 for an exemption for bait and all materials and equipment used
12 by commercial fishermen; and to levy a rate differential of
13 one and one-half percent on the purchase and storage of
14 vessels and machinery used for commercial fishing.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 40-9-1, 40-23-1, 40-23-4, as
17 last amended by Act 2019-444, 2019 Regular Session, 40-23-37,
18 40-23-60, and 40-23-63 of the Code of Alabama 1975, are
19 amended to read as follows:

20 "§40-9-1.

21 "The following property and persons shall be exempt
22 from ad valorem taxation and none other:

23 "(1) All bonds of the United States and this state
24 and all county and municipal bonds issued by counties and
25 municipalities in this state, all property, real and personal,
26 of the United States and this state and of county and
27 municipal corporations in this state; all cemeteries, all

1 property, real and personal, used exclusively for religious
2 worship, for schools or for purposes purely charitable;
3 provided, that property, real or personal, owned by any
4 educational, religious, or charitable institution, society or
5 corporation let for rent or hire or for use for business
6 purposes shall not be exempt from taxation, notwithstanding
7 that the income from such property shall be used exclusively
8 for education, religious, or charitable purposes; all
9 mortgages, together with the notes, debts, and credits secured
10 thereby on real and personal property situated in this state,
11 which mortgages have been filed for record and the privilege
12 tax paid thereon; all security agreements and security
13 interests under the Uniform Commercial Code, together with the
14 notes, debts, and credits secured thereby; all money on
15 deposit in any bank or banking institution and all other
16 solvent credits; all warrants issued by county boards of
17 education and city boards of education for the purpose of
18 erecting, repairing, furnishing school buildings, or for other
19 school purposes;

20 "(2) All property, real or personal, used
21 exclusively for hospital purposes, to the amount of
22 seventy-five thousand dollars (\$75,000), where such hospitals
23 maintain wards for charity patients or give treatment to such
24 patients; provided, that the treatment of charity patients
25 constitutes at least 15 percent of the business of such
26 hospitals; provided further, that such hospital need not be
27 assessed for taxation if the owner or manager shall file with

1 the county tax assessor wherein such hospital is located
2 within the time allowed for assessing such property for
3 taxation a certificate that such hospital has done 15 percent
4 charity work in the preceding tax year; and further provided,
5 that such hospital through its owner or manager shall have
6 until the expiration of the preceding tax year to class its
7 work and ascertain whether or not such hospital has done 15
8 percent of its treatment of patients as charity work;

9 "(3) The shares of the capital stock of any
10 corporation owning and operating a hospital, to the extent of
11 seventy-five thousand dollars (\$75,000) in value; provided,
12 that said corporation maintains wards for charity patients and
13 gives treatment to such patients, which treatment constitutes
14 at least 15 percent of the business of the hospital of said
15 corporation; provided, that the total exemption granted to any
16 such corporation shall not exceed seventy-five thousand
17 dollars (\$75,000), taking into consideration its real and
18 personal property and the value of its shares of capital
19 stock;

20 "(4) All property owned by the American Legion or by
21 Veterans of Foreign Wars or by the Disabled American Veterans,
22 or any post thereof; provided, that such property is used and
23 occupied exclusively by said organization;

24 "(5) All the property of literary and scientific
25 institutions and literary societies, when employed or used in
26 the regular business of such institutions;

1 "(6) The libraries of ministers of the gospel, all
2 libraries other than those of a professional character and all
3 religious books kept for sale by ministers of the gospel and
4 colporteurs;

5 "(7) The property of deaf mutes and insane persons
6 to the extent of three thousand dollars (\$3,000) and the
7 property of blind persons to the extent of twelve thousand
8 dollars (\$12,000);

9 "(8) All family portraits;

10 "(9) All cotton, livestock, or agricultural products
11 which have been raised or grown in the State of Alabama and
12 which shall remain in the hands of the producer thereof, or
13 his landlord, or in the hands of a cooperative association for
14 all time, and for a period of one year in the hands of the
15 purchaser or the manufacturer;

16 "(10) All cotton, wherever grown, stored in licensed
17 warehouses in the State of Alabama for a period not exceeding
18 12 months;

19 "(11) Provisions and supplies on hand for the
20 current year for the use of the family and the making of
21 crops; all wearing apparel; farming tools; tools and
22 implements of mechanics to the value of two hundred dollars
23 (\$200); all livestock, including mules, studs, jacks and
24 jennets, cattle, horses, cows, calves, hogs, sheep, and goats;
25 household and kitchen furniture and one sewing machine;

26 "(12) No license or taxation of any character,
27 except franchise taxes provided by Section 229 of the

1 Constitution of the State of Alabama, shall be collected or
2 required to be paid to the state or any county or municipality
3 therein by any state or county fair, agricultural association,
4 stock, kennel, or poultry show. Athletic stadiums owned and
5 controlled by universities, schools, or colleges and which are
6 used exclusively for the purpose of promoting intercollegiate
7 or interschool athletics; provided, that the revenue received
8 from athletic stadiums, when admission is charged, shall be
9 used for the benefit of athletic associations of such
10 universities, colleges, or schools. Nothing contained in this
11 subdivision shall be construed to prohibit any municipality,
12 county, or state from imposing any license tax upon or for the
13 privilege of engaging in the business of supplying services
14 for hire or reward or selling commodities other than
15 livestock, farm products, or farm implements or conducting or
16 operating devices or games of skill or amusements or other
17 games or devices, or conducting or operating shows, displays
18 or exhibits other than shows, displays or exhibits of
19 agricultural implements, farm products, livestock and athletic
20 prowess;

21 "(13) All material, including without limitation
22 coke, to be compounded or further manufactured, when stocked
23 at any plant or furnace for manufacturing purposes in Alabama;

24 "(14) All articles manufactured in Alabama,
25 including pig iron, in the hands of the producer or
26 manufacturer thereof, for 12 months after its production or
27 manufacture;

1 "(15) All property, both real and personal, owned by
2 any unit or organization of the Alabama National Guard
3 officially recognized as such by the federal government and
4 organized and maintained by the state, and all property owned
5 by shares and used exclusively by and kept exclusively in the
6 possession of any such unit or organization of the Alabama
7 National Guard, the annual rent or hire of which is not in
8 excess of the annual state, county and municipal taxes on said
9 property shall be exempt from taxation by the state, and the
10 county and municipality in which the same may be situated;

11 "(16) All poultry;

12 "(17) The property of all incompetent veterans to
13 the value of three thousand dollars (\$3,000);

14 "(18) The following items of personal property when
15 owned by individuals for personal use in the home or usually
16 kept at the home of the owner and not carried as stocks of
17 merchandise, namely: Libraries; phonographs; pianos and other
18 musical instruments; paintings; precious stones, jewelry,
19 plate silverware, ornaments, and articles of taste; watches
20 and clocks; wagons, buggies, bicycles, guns, pistols, canes,
21 golf sticks, golf bags, and sporting goods; money hoarded;
22 radios; mechanical and electrical refrigerators; electrical
23 appliances;

24 "(19) All property owned by the Benevolent and
25 Protective Order of Elks, Fraternal Order of Police, Fraternal
26 Order of Eagles, or Loyal Order of Moose, or lodge thereof;

1 provided, that such property is used and occupied exclusively
2 by such organization;

3 "(20) All devices, facilities or structures, and all
4 identifiable components thereof or materials for use therein,
5 acquired or constructed primarily for the control, reduction,l
6 or elimination of air or water pollution;

7 "(21) Tobacco leaf stored in hogsheads;

8 "(22) All farm tractors, as that term is defined in
9 subdivision (19) of Section 32-1-1.1; and all farming
10 implements, as that term is used in subdivision (b) (5) of
11 Section 40-11-1, as amended, when used exclusively in
12 connection with agricultural property as defined in
13 subdivision (b) (3) of Section 40-8-1, as amended;

14 "(23) All stocks of goods, wares,l and merchandise
15 described in subdivision (b) (4) of Section 40-11-1, as
16 amended; and

17 "(24) All aircraft, replacement parts, components,
18 systems, supplies and sundries affixed or used on said
19 aircraft, and ground support equipment and vehicles used by or
20 for the aircraft, when used by a certificated or licensed air
21 carrier with a hub operation within this state, for use in
22 conducting intrastate, interstate,l or foreign commerce for
23 transporting people or property by air. For the purpose of
24 this subdivision, the words "hub operation within this state"
25 shall be construed to 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 "(25) All property described in Title 12 U.S.C.
7 §1701(Q), commonly known as HUD 202 property, is hereby exempt
8 from any and all ad valorem taxes.

9 "(26) All vessels and equipment thereon, used
10 predominantly in the business of commercial ~~shrimping~~ fishing,
11 as defined in Section 40-23-1, by the owners thereof.

12 "§40-23-1.

13 "(a) For the purpose of this division, the following
14 terms shall have the respective meanings ascribed by this
15 section:

16 "(1) PERSON or COMPANY. Used interchangeably,
17 includes any individual, firm, copartnership, association,
18 corporation, receiver, trustee, or any other group or
19 combination acting as a unit and the plural as well as the
20 singular number, unless the intention to give a more limited
21 meaning is disclosed by the context.

22 "(2) DEPARTMENT. The Department of Revenue of the
23 State of Alabama.

24 "(3) COMMISSIONER. The Commissioner of Revenue of
25 the State of Alabama.

26 "(4) TAX YEAR or TAXABLE YEAR. The calendar year.

1 "(5) SALE or SALES. Installment and credit sales and
2 the exchange of properties as well as the sale thereof for
3 money, every closed transaction constituting a sale. Provided,
4 however, a transaction shall not be closed or a sale completed
5 until the time and place when and where title is transferred
6 by the seller or seller's agent to the purchaser or
7 purchaser's agent, and for the purpose of determining transfer
8 of title, a common carrier or the ~~U.S.~~ U.S. Postal Service
9 shall be deemed to be the agent of the seller, regardless of
10 any F.O.B. point and regardless of who selects the method of
11 transportation, and regardless of by whom or the method by
12 which freight, postage, or other transportation charge is
13 paid. Provided further that, where billed as a separate item
14 to and paid by the purchaser, the freight, postage, or other
15 transportation charge paid to a common carrier or the U.S.
16 Postal Service is not a part of the selling price.

17 "(6) GROSS PROCEEDS OF SALES. The value proceeding
18 or accruing from the sale of tangible personal property, and
19 including the proceeds from the sale of any property handled
20 on consignment by the taxpayer, including merchandise of any
21 kind and character without any deduction on account of the
22 cost of the property sold, the cost of the materials used,
23 labor or service cost, interest paid, any consumer excise
24 taxes that may be included within the sales price of the
25 property sold, or any other expenses whatsoever, and without
26 any deductions on account of losses; provided, that cash
27 discounts allowed and taken on sales shall not be included,

1 and "gross proceeds of sales" shall not include the sale price
2 of property returned by customers when the full sales price
3 thereof is refunded either in cash or by credit. The term
4 "gross proceeds of sale" shall also mean and include the
5 reasonable and fair market value of any tangible personal
6 property previously purchased at wholesale which is withdrawn
7 or used from the business or stock and used or consumed in
8 connection with a business, and shall also mean and include
9 the reasonable and fair market value of any tangible personal
10 property previously purchased at wholesale which is withdrawn
11 from the business or stock and used or consumed by any person
12 so withdrawing the same, except property which has been
13 previously withdrawn from business or stock and so used or
14 consumed with respect to which property the tax has been paid
15 because of previous withdrawal, use, or consumption, except
16 property which enters into and becomes an ingredient or
17 component part of tangible personal property or products
18 manufactured or compounded for sale and not for the personal
19 and private use or consumption of any person so withdrawing,
20 using, or consuming the same, and except refinery, residue, or
21 fuel gas, whether in a liquid or gaseous state, that has been
22 generated by, or is otherwise a by-product of, a
23 petroleum-refining process, which gas is then utilized in the
24 process to generate heat or is otherwise utilized in the
25 distillation or refining of petroleum products.

26 "In the case of the retail sale of equipment,
27 accessories, fixtures, and other similar tangible personal

1 property used in connection with the sale of commercial mobile
2 services as defined herein, or in connection with satellite
3 television services, at a price below cost, "gross proceeds of
4 sale" shall only include the stated sales price thereof and
5 shall not include any sales commission or rebate received by
6 the seller as a result of the sale. As used herein, the term
7 "commercial mobile services" shall have the same meaning as
8 that term has in 47 U.S.C. Sections 153(n) and 332(d), as in
9 effect from time to time.

10 "(7) TAXPAYER. Any person liable for taxes
11 hereunder.

12 "(8) GROSS RECEIPTS. The value proceeding or
13 accruing from the sale of tangible personal property,
14 including merchandise and commodities of any kind and
15 character, all receipts actual and accrued, by reason of any
16 business engaged in, not including, however, interest,
17 discounts, rentals of real estate or royalties, and without
18 any deduction on account of the cost of the property sold, the
19 cost of the materials used, labor or service cost, interest
20 paid, any consumer excise taxes that may be included in the
21 sales price of the property sold, or any other expenses
22 whatsoever and without any deductions on account of losses.
23 The term "gross receipts" shall also mean and include the
24 reasonable and fair market value of any tangible personal
25 property previously purchased at wholesale which is withdrawn
26 or used from the business or stock and used or consumed in
27 connection with a business, and shall also mean and include

1 the reasonable and fair market value of any tangible personal
2 property previously purchased at wholesale which is withdrawn
3 from the business or stock and used or consumed by any person
4 so withdrawing the same, except property which has been
5 previously withdrawn from business or stock and so used or
6 consumed and with respect to which property the tax has been
7 paid because of previous withdrawal, use, or consumption,
8 except property which enters into and becomes an ingredient or
9 component part of tangible personal property or products
10 manufactured or compounded for sale as provided in subdivision
11 (9) and not for the personal and private use or consumption of
12 any person so withdrawing, using, or consuming the same, and
13 except refinery, residue, or fuel gas, whether in a liquid or
14 gaseous state, that has been generated by, or is otherwise a
15 by-product of, a petroleum-refining process, which gas is then
16 utilized in the process to generate heat or is otherwise
17 utilized in the distillation or refining of petroleum
18 products.

19 "(9) WHOLESALE SALE or SALE AT WHOLESALE. Any one of
20 the following:

21 "a. A sale of tangible personal property by
22 wholesalers to licensed retail merchants, jobbers, dealers, or
23 other wholesalers for resale and does not include a sale by
24 wholesalers to users or consumers, not for resale.

25 "b. A sale of tangible personal property or
26 products, including iron ore, and including the furnished
27 container and label of such property or products, to a

1 manufacturer or compounder which enter into and become an
2 ingredient or component part of the tangible personal property
3 or products which the manufacturer or compounder manufactures
4 or compounds for sale, whether or not such tangible personal
5 property or product used in manufacturing or compounding a
6 finished product is used with the intent that it becomes a
7 component of the finished product; provided, however, that it
8 is the intent of this section that no sale of capital
9 equipment, machinery, tools, or product shall be included in
10 the term "wholesale sale." The term "capital equipment,
11 machinery, tools, or product" shall mean property that is
12 subject to depreciation allowances for Alabama income tax
13 purposes.

14 "c. A sale of containers intended for one-time use
15 only, and the labels thereof, when containers are sold without
16 contents to persons who sell or furnish containers along with
17 the contents placed therein for sale by persons.

18 "d. A sale of pallets intended for one-time use only
19 when pallets are sold without contents to persons who sell or
20 furnish pallets along with the contents placed thereon for
21 sale by persons.

22 "e. A sale to a manufacturer or compounder, of
23 crowns, caps, and tops intended for one-time use employed and
24 used upon the containers in which a manufacturer or compounder
25 markets his products.

26 "f. A sale of containers to persons engaged in
27 selling or otherwise supplying or furnishing baby chicks to

1 growers thereof where containers are used for the delivery of
2 chicks or a sale of containers for use in the delivery of eggs
3 by the producer thereof to the distributor or packer of eggs
4 even though containers used for delivery of baby chicks or
5 eggs may be recovered for reuse.

6 "g. A sale of bagging and ties used in preparing
7 cotton for market.

8 "h. A sale to meat packers, manufacturers,
9 compounders, or processors of meat products of all casings
10 used in molding or forming wieners and Vienna sausages even
11 though casings may be recovered for reuse.

12 "i. A sale of commercial fish feed including
13 concentrates, supplements, and other feed ingredients when
14 substances are used as ingredients in mixing and preparing
15 feed for fish raised to be sold on a commercial basis.

16 "j. A sale of bait used to capture or attempt to
17 capture fish or other seafood in the process of commercial
18 fishing.

19 "~~j.~~ k. A sale of tangible personal property to any
20 person engaging in the business of leasing or renting tangible
21 personal property to others, if tangible personal property is
22 purchased for the purpose of leasing or renting it to others
23 under a transaction subject to the privilege or license tax
24 levied in Article 4 of Chapter 12 of this title against any
25 person engaging in the business of leasing or renting tangible
26 personal property to others.

1 ~~"k.~~ 1. A purchase or withdrawal of parts or
2 materials from stock by any person licensed under this
3 division where parts or materials are used in repairing or
4 reconditioning the tangible personal property of a licensed
5 person, which tangible personal property is a part of the
6 stock of goods of a licensed person, offered for sale by him,
7 and not for use or consumption of a licensed person.

8 "(10) SALE AT RETAIL or RETAIL SALE. All sales of
9 tangible personal property except those above defined as
10 wholesale sales. The quantities of goods sold or prices at
11 which sold are immaterial in determining whether or not a sale
12 is at retail. Sales of building materials to contractors,
13 builders, or landowners for resale or use in the form of real
14 estate are retail sales in whatever quantity sold. Sales of
15 building materials, fixtures, or other equipment to a
16 manufacturer or builder of modular buildings for use in
17 manufacturing, building, or equipping a modular building
18 ultimately becoming a part of real estate situated in the
19 State of Alabama are retail sales, and the use, sale, or
20 resale of building shall not be subject to the tax. Sales of
21 tangible personal property to undertakers and morticians are
22 retail sales and subject to the tax at the time of purchase,
23 but are not subject to the tax on resale to the consumer.
24 Sales of tangible personal property or products to
25 manufacturers, quarry operators, mine operators, or
26 compounders, which are used or consumed by them in
27 manufacturing, mining, quarrying, or compounding and do not

1 become an ingredient or component part of the tangible
2 personal property manufactured or compounded as provided in
3 subdivision (9) are retail sales. The term "sale at retail" or
4 "retail sale" shall also mean and include the withdrawal, use,
5 or consumption of any tangible personal property by any one
6 who purchases same at wholesale, except property which has
7 been previously withdrawn from the business or stock and so
8 used or consumed and with respect to which property tax has
9 been paid because of previous withdrawal, use, or consumption,
10 except property which enters into and becomes an ingredient or
11 component part of tangible personal property or products
12 manufactured or compounded for sale as provided in subdivision
13 (9) and not for the personal and private use or consumption of
14 any person so withdrawing, using, or consuming the same; and
15 wholesale purchaser shall report and pay the taxes thereon. In
16 the case of the sale of equipment, accessories, fixtures, and
17 other similar tangible personal property used in connection
18 with the sale of commercial mobile services as defined in
19 subdivision (6) above, or in connection with satellite
20 television services, at a price below cost, the term "sale at
21 retail" and "retail sale" shall include those sales, and those
22 sales shall not also be taxable as a withdrawal, use, or
23 consumption of such tangible personal property.

24 "(11) BUSINESS. All activities engaged in, or caused
25 to be engaged in, with the object of gain, profit, benefit, or
26 advantage, either direct or indirect, and not excepting
27 subactivities producing marketable commodities used or

1 consumed in the main business activity, each of which
2 subactivities shall be considered business engaged in, taxable
3 in the class in which it falls.

4 "(12) AUTOMOTIVE VEHICLE. A power shovel, dragline,
5 crawler, crawler crane, ditcher, or any similar machine which
6 is self-propelled, in addition to self-propelled machines
7 which are used primarily as instruments of conveyance.

8 "(13) PREPAID TELEPHONE CALLING CARD. A sale of a
9 prepaid telephone calling card or a prepaid authorization
10 number, or both, shall be deemed the sale of tangible personal
11 property subject to the tax imposed on the sale of tangible
12 personal property pursuant to this chapter. For purposes of
13 this subdivision, the sale of prepaid wireless service that is
14 evidenced by a physical card constitutes the sale of a prepaid
15 telephone calling card, and the sale of prepaid wireless
16 service that is not evidenced by a physical card constitutes
17 the sale of a prepaid authorization number.

18 "(14) PREPAID WIRELESS SERVICE. The right to use
19 mobile telecommunications service, which must be paid for in
20 advance and that is sold in predetermined units or dollars of
21 which the number declines with use in a known amount, and
22 which may include rights to use non-telecommunications
23 services or to download digital products or digital content.
24 For purposes of this subdivision, mobile telecommunications
25 service has the meaning ascribed by Section 40-21-120.

1 "(15) CONSUMABLE VAPOR PRODUCT. Any nicotine liquid
2 solution or other material containing nicotine that is
3 depleted when used as a vapor product.

4 "(16) VAPOR PRODUCTS. Any non-lighted,
5 noncombustible product that employs a mechanical heating
6 element, battery, or electronic circuit regardless of shape or
7 size and that can be used to produce vapor from nicotine in a
8 solution. The term includes any vapor cartridge or other
9 container of nicotine in a solution or other form that is
10 intended to be used with or in an electronic cigarette,
11 electronic cigar, electronic cigarillo, electronic pipe, or
12 similar product or device. The term does not include any
13 product regulated by the United States Food and Drug
14 Administration under Chapter V of the Federal Food, Drug, and
15 Cosmetic Act.

16 "(17) COMMERCIAL FISHING. The activity of catching
17 or processing fish or other seafood for profit. The term
18 includes shrimpers, oysters, lobsters, and crabbers.

19 "(18) COMMERCIAL FISHING VESSEL. Any vessel whose
20 masters and owners are regularly and exclusively engaged in
21 fishing as their means of livelihood.

22 "(b) The use within this state of tangible personal
23 property by the manufacturer thereof, as building materials in
24 the performance of a construction contract, shall, for the
25 purposes of this division, be considered as a retail sale
26 thereof by manufacturer, who shall also be construed as the
27 ultimate consumer of materials or property, and who shall be

1 required to report transaction and pay the sales tax thereon,
2 based upon the reasonable and fair market price thereof at the
3 time and place where same are used or consumed by him or it.
4 Where the contractor is the manufacturer or compounder of
5 ready-mix concrete or asphalt plant mix used in the
6 performance of a contract, whether the ready-mix concrete or
7 asphalt plant mix is manufactured or compounded at the job
8 site or at a fixed or permanent plant location, the tax
9 applies only to the cost of the ingredients that become a
10 component part of the ready-mix concrete or the asphalt plant
11 mix. The provisions of this subsection shall not apply to any
12 tangible personal property which is specifically exempted from
13 the tax levied in this division.

14 "(c) The sale of lumber by a lumber manufacturer to
15 a trucker for resale is a sale at wholesale as sales are
16 defined herein where the trucker is either a licensed dealer
17 in lumber or, if a resident of Alabama, has registered with
18 the Department of Revenue, and has received therefrom a
19 certificate of registration or, if a nonresident of this state
20 purchasing lumber for resale outside the State of Alabama, has
21 furnished to the lumber manufacturer his name, address and the
22 vehicle license number of the truck in which the lumber is to
23 be transported, which name, address, and vehicle license
24 number shall be shown on the sales invoice rendered by the
25 lumber manufacturer. The certificate provided for herein shall
26 be valid for the calendar year of its issuance and may be
27 renewed from year to year on application to the Department of

1 Revenue on or before January 31 of each succeeding year;
2 provided, that if not renewed the certificate shall become
3 invalid for the purpose of this division on February 1.

4 "(d) The dispensing or transferring of ophthalmic
5 materials, including lenses, frames, eyeglasses, contact
6 lenses, and other therapeutic optic devices, to a patient by a
7 licensed ophthalmologist, as a part of his or her professional
8 service, shall, for purposes of this division, constitute a
9 sale, subject to the state sales tax. The licensed
10 ophthalmologist or licensed optometrist shall collect the
11 state sales tax. In no event shall the providing of
12 professional services in connection with the dispensing or
13 transferring of ophthalmic materials, including dispensing
14 fees or fitting fees, by a licensed ophthalmologist or
15 licensed optometrist be considered a sale subject to the state
16 sales tax. When the ophthalmic materials are purchased by a
17 consumer covered by a third party benefit plan, including
18 Medicare, the sales tax shall be applicable to the amount that
19 the ophthalmologist, optometrist, or optician is reimbursed by
20 the third party benefit plan plus the amount that the consumer
21 pays to the ophthalmologist, optometrist, or optician at the
22 time of the sale. All transfers of ophthalmic materials by
23 opticians or optometrists shall be considered retail sales
24 subject to the state sales tax. The term supplier shall
25 include but not be limited to optical laboratories, ophthalmic
26 material wholesalers, or anyone selling ophthalmic materials
27 to ophthalmologists.

1 "(e) Notwithstanding the above, the withdrawal, use,
2 or consumption of a manufactured product by the manufacturer
3 thereof in quality control testing performed by employees or
4 independent contractors of the taxpayer, for purposes of this
5 division, shall not be deemed or considered to constitute a
6 transaction subject to sales tax, nor shall a gift by the
7 manufacturer of a manufactured product, withdrawn from the
8 manufacturer's inventory, to an entity listed in 26 U.S.C.
9 Sections 170(b) or (c), be considered a transaction subject to
10 sales tax.

11 (f) Notwithstanding the foregoing, a gift by a
12 retailer of a product or products where the aggregate retail
13 value of any single gift is equal to or less than ten thousand
14 dollars (\$10,000), withdrawn from the retailer's inventory, to
15 an entity listed in 26 U.S.C. Sections 170(b) or (c) shall not
16 be deemed or considered to constitute a transaction subject to
17 sales and use tax.

18 "§40-23-4.

19 "(a) There are exempted from the provisions of this
20 division and from the computation of the amount of the tax
21 levied, assessed, or payable under this division the
22 following:

23 "(1) The gross proceeds of the sales of lubricating
24 oil and gasoline as defined in Sections 40-17-30 and 40-17-170
25 and the gross proceeds from those sales of lubricating oil
26 destined for out-of-state use which are transacted in a manner
27 whereby an out-of-state purchaser takes delivery of such oil

1 at a distributor's plant within this state and transports it
2 out-of-state, which are otherwise taxed.

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

7 "(3) The gross proceeds of the sale, or sales, of
8 seeds for planting purposes and baby chicks and poults.
9 Nothing herein shall be construed to exempt or exclude from
10 the computation of the tax levied, assessed, or payable, the
11 gross proceeds of the sale or sales of plants, seedlings,
12 nursery stock, or floral products.

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

20 "(5) The gross proceeds of sales of all livestock by
21 whomsoever sold, and also the gross proceeds of poultry and
22 other products of the farm, dairy, grove, or garden, when in
23 the original state of production or condition of preparation
24 for sale, when such sale or sales are made by the producer or
25 members of his immediate family or for him by those employed
26 by him to assist in the production thereof. Nothing herein
27 shall be construed to exempt or exclude from the measure or

1 computation of the tax levied, assessed, or payable hereunder,
2 the gross proceeds of sales of poultry or poultry products
3 when not products of the farm.

4 "(6) Cottonseed meal exchanged for cottonseed at or
5 by cotton gins.

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

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

26 "(9) The gross proceeds of the sale, or sales of
27 wood residue, coal, or coke to manufacturers, electric power

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

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

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

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

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

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

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

11 "(13) The gross proceeds of the sale or sales of
12 materials, equipment, and machinery that, at any time, enter
13 into and become a component part of ships, vessels, towing
14 vessels or barges, or drilling ships, rigs or barges, or
15 seismic or geophysical vessels, other watercraft and
16 commercial fishing vessels of over five tons load displacement
17 as registered with the U.S. Coast Guard and licensed by the
18 State of Alabama Department of Conservation and Natural
19 Resources. Additionally, the gross proceeds from the sale or
20 sales of lifeboats, personal flotation devices, ring life
21 buoys, survival craft equipment, distress signals, EPIRB's,
22 fire extinguishers, injury placards, waste management plans
23 and logs, marine sanitation devices, navigation rulebooks,
24 navigation lights, sound signals, navigation day shapes, oil
25 placard cards, garbage placards, FCC SSL, stability
26 instructions, first aid equipment, compasses, anchor and radar
27 reflectors, general alarm systems, bilge pumps, piping, and

1 discharge and electronic position fixing devices which are
2 used on the aforementioned watercraft.

3 "(14) The gross proceeds of the sale or sales of
4 fuel oil purchased as fuel for kiln use in manufacturing
5 establishments.

6 "(15) The gross proceeds of the sale or sales of
7 tangible personal property to county and city school boards
8 within the State of Alabama, independent school boards within
9 the State of Alabama, all educational institutions and
10 agencies of the State of Alabama, the counties within the
11 state, or any incorporated municipalities of the State of
12 Alabama, and private educational institutions operating within
13 the State of Alabama offering conventional and traditional
14 courses of study, such as those offered by public schools,
15 colleges, or universities within the State of Alabama; but not
16 including nurseries, day care centers, and home schools.

17 "(16) The gross proceeds from the sale of all
18 devices or facilities, and all identifiable components
19 thereof, or materials for use therein, acquired primarily for
20 the control, reduction, or elimination of air or water
21 pollution and the gross proceeds from the sale of all
22 identifiable components of, or materials used or intended for
23 use in, structures built primarily for the control, reduction,
24 or elimination of air and water pollution.

25 "(17) The gross proceeds of sales of tangible
26 personal property or the gross receipts of any business which
27 the state is prohibited from taxing under the Constitution or

1 laws of the United States or under the Constitution of this
2 state.

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

10 "(19) The gross proceeds received from the sale or
11 furnishing of food, including potato chips, candy, fruit and
12 similar items, soft drinks, tobacco products, and stationery
13 and other similar or related articles by hospital canteens
14 operated by Alabama state hospitals at Bryce Hospital and
15 Partlow State School for Mental Deficients at Tuscaloosa,
16 Alabama, and Searcy Hospital at Mt. Vernon, Alabama, for the
17 benefit of the patients therein.

18 "(20) The gross proceeds of the sale, or sales, of
19 wrapping paper and other wrapping materials when used in
20 preparing poultry or poultry products for delivery, shipment,
21 or sale by the producer, processor, packer, or seller of such
22 poultry or poultry products, including pallets used in
23 shipping poultry and egg products, paper or other materials
24 used for lining boxes or other containers in which poultry or
25 poultry products are packed together with any other materials
26 placed in such containers for the delivery, shipment, or sale
27 of poultry or poultry products.

1 "(21) The gross proceeds of the sales of all
2 antibiotics, hormones and hormone preparations, drugs,
3 medicines or medications, vitamins, minerals or other
4 nutrients, and all other feed ingredients including
5 concentrates, supplements, and other feed ingredients when
6 such substances are used as ingredients in mixing and
7 preparing feed for fish raised to be sold on a commercial
8 basis, livestock, and poultry. Such exemption herein granted
9 shall be in addition to exemptions now provided by law for
10 feed for fish raised to be sold on a commercial basis,
11 livestock, and poultry, but not including prepared foods for
12 dogs or cats.

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

21 "(23) The gross proceeds of the sale, or sales, of
22 fabricated steel tube sections, when produced and fabricated
23 in this state by any person, firm, or corporation for any
24 vehicular tunnel for highway vehicular traffic, when sold by
25 the manufacturer or fabricator thereof, and also the gross
26 proceeds of the sale, or sales, of steel which enters into and

1 becomes a component part of such fabricated steel tube
2 sections of said tunnel.

3 "(24) The gross proceeds from sales of admissions to
4 any theatrical production, symphonic or other orchestral
5 concert, ballet, or opera production when such concert or
6 production is presented by any society, association, guild, or
7 workshop group, organized within this state, whose members or
8 some of whose members regularly and actively participate in
9 such concerts or productions for the purposes of providing a
10 creative outlet for the cultural and educational interests of
11 such members, and of promoting such interests for the
12 betterment of the community by presenting such productions to
13 the general public for an admission charge. The employment of
14 a paid director or conductor to assist in any such
15 presentation described in this subdivision shall not be
16 construed to prohibit the exemptions herein provided.

17 "(25) The gross proceeds of sales of herbicides for
18 agricultural uses by whomsoever sold. The term herbicides, as
19 used in this subdivision, means any substance or mixture of
20 substances intended to prevent, destroy, repel, or retard the
21 growth of weeds or plants. It shall include preemergence
22 herbicides, postemergence herbicides, lay-by herbicides,
23 pasture herbicides, defoliant herbicides, and desiccant
24 herbicides.

25 "(26) The Alabama Chapter of the Cystic Fibrosis
26 Research Foundation and the Jefferson Tuberculosis Sanatorium
27 and any of their departments or agencies, heretofore or

1 hereafter organized and existing in good faith in the State of
2 Alabama for purposes other than for pecuniary gain and not for
3 individual profit, shall be exempted from the computation of
4 the tax on the gross proceeds of all sales levied, assessed,
5 or payable.

6 "(27) The gross proceeds from the sale or sales of
7 fuel for use or consumption aboard commercial fishing vessels
8 are hereby exempt from the computation of all sales taxes
9 levied, assessed, or payable under the provisions of this
10 division or levied under any county or municipal sales tax
11 law.

12 ~~"The words commercial fishing vessels shall mean~~
13 ~~vessels whose masters and owners are regularly and exclusively~~
14 ~~engaged in fishing as their means of livelihood.~~

15 "(28) The gross proceeds from the sales of
16 materials, rope, fishing nets, tools, or any substitute used
17 directly in the process of commercial fishing.

18 "~~(28)~~ (29) The gross proceeds of sales of sawdust,
19 wood shavings, wood chips, and other like materials sold for
20 use as chicken litter by poultry producers and poultry
21 processors.

22 "~~(29)~~ (30) The gross proceeds of the sales of all
23 antibiotics, hormones and hormone preparations, drugs,
24 medicines, and other medications including serums and
25 vaccines, vitamins, minerals, or other nutrients for use in
26 the production and growing of fish, livestock, and poultry by
27 whomsoever sold. Such exemption as herein granted shall be in

1 addition to the exemption provided by law for feed for fish,
2 livestock, and poultry, and in addition to the exemptions
3 provided by law for the above-enumerated substances and
4 products when mixed and used as ingredients in fish,
5 livestock, and poultry feed.

6 "~~(30)~~ (31) The gross proceeds of the sale or sales
7 of all medicines prescribed by physicians for persons who are
8 65 years of age or older, and when said prescriptions are
9 filled by licensed pharmacists, shall be exempted under this
10 division or under any county or municipal sales tax law. The
11 exemption provided in this section shall not apply to any
12 medicine purchased in any manner other than as is herein
13 provided.

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

17 "a. The name and claim number as shown on a Medicare
18 card issued by the United States Social Security
19 Administration.

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

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

26 "For the purposes of this subdivision, any person
27 filing a false proof of age shall be guilty of a misdemeanor

1 and upon conviction thereof shall be punished by a fine of one
2 hundred dollars (\$100).

3 "~~(31)~~ (32) There shall be exempted from the tax
4 levied by this division the gross receipts of sales of grass
5 sod of all kinds and character when in the original state of
6 production or condition of preparation for sale, when such
7 sales are made by the producer or members of his family or for
8 him by those employed by him to assist in the production
9 thereof; provided, that nothing herein shall be construed to
10 exempt sales of sod by a person engaged in the business of
11 selling plants, seedlings, nursery stock, or floral products.

12 "~~(32)~~ (33) The gross receipts of sales of the
13 following items or materials which are necessary in the
14 farm-to-market production of tomatoes when such items or
15 materials are used by the producer or members of his family or
16 for him by those employed by him to assist in the production
17 thereof: Twine for tying tomatoes, tomato stakes, field boxes
18 (wooden boxes used to take tomatoes from the fields to shed),
19 and tomato boxes used in shipments to customers.

20 "~~(33)~~ (34) The gross proceeds from the sale of
21 liquefied petroleum gas or natural gas sold to be used for
22 agricultural purposes.

23 "~~(34)~~ (35) The gross receipts of sales from state
24 nurseries of forest tree seedlings.

25 "~~(35)~~ (36) The gross receipts of sales of forest
26 tree seed by the state.

1 "~~(36)~~ (37) The gross receipts of sales of Lespedeza
2 bicolor and other species of perennial plant seed and
3 seedlings sold for wildlife and game food production purposes
4 by the state.

5 "~~(37)~~ (38) The gross receipts of any aircraft
6 manufactured, sold, and delivered in this state if said
7 aircraft are not permanently domiciled in Alabama and are
8 removed to another state.

9 "~~(38)~~ (39) The gross proceeds from the sale or sales
10 of all diesel fuel used for off-highway agricultural purposes.

11 "~~(39)~~ (40) The gross proceeds from sales of
12 admissions to any sporting event which:

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

15 "b. Is hosted by a not-for-profit corporation
16 organized and existing under the laws of the State of Alabama;
17 and

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

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

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

4 ~~"(40)~~ (41) The gross receipts from the sale of any
5 aircraft and replacement parts, components, systems, supplies,
6 and sundries affixed or used on said aircraft and ground
7 support equipment and vehicles used by or for the aircraft to
8 or by a certificated or licensed air carrier with a hub
9 operation within this state, for use in conducting intrastate,
10 interstate, or foreign commerce for transporting people or
11 property by air. For the purpose of this subdivision, the
12 words "hub operation within this state" shall be construed to
13 have all of the following 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 ~~"(41)~~ (42) The gross receipts from the sale of hot
22 or cold food and beverage products sold to or by a
23 certificated or licensed air carrier with a hub operation
24 within this state, for use in conducting intrastate,
25 interstate, or foreign commerce for transporting people or
26 property by air. For the purpose of this subdivision, the

1 words "hub operation within this state" shall be construed to
2 have all of the 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)~~ (43) The gross receipts from the sale of any
11 aviation jet fuel to a certificated or licensed air carrier
12 purchased for use in scheduled all-cargo operations being
13 conducted on international flights or in international
14 commerce. For purposes of this subdivision, the following
15 words or terms shall be defined and interpreted as follows:

16 "a. Air Carrier. Any person, firm, corporation, or
17 entity undertaking by any means, directly or indirectly, to
18 provide air transportation.

19 "b. All-Cargo Operations. Any flight conducted by an
20 air carrier for compensation or hire other than a passenger
21 carrying flight, except passengers as specified in 14 C.F.R.
22 §121.583(a) or 14 C.F.R. §135.85, as amended.

23 "c. International Commerce. Any air carrier engaged
24 in all-cargo operations transporting goods for compensation or
25 hire on international flights.

26 "d. International Flights. Any air carrier
27 conducting scheduled all-cargo operations between any point

1 within the 50 states of the United States and the District of
2 Columbia and any point outside the 50 states of the United
3 States and the District of Columbia, including any interim
4 stops within the United States so long as the ultimate origin
5 or destination of the aircraft is outside the United States
6 and the District of Columbia.

7 "~~(43)~~ (44) The gross proceeds of the sale or sales
8 of the following:

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

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

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

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

25 "The delivery of items exempted by this subdivision
26 to the purchaser or lessee in this state does not disqualify
27 the purchaser or lessee from the exemption if the property is

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

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

12 "~~(44)~~ (45) The gross receipts derived from all bingo
13 games and operations which are conducted in compliance with
14 validly enacted legislation authorizing the conduct of such
15 games and operations, and which comply with the distribution
16 requirements of the applicable local laws; provided that the
17 exemption from sales taxation granted by this subdivision
18 shall apply only to gross receipts taxable under subdivision
19 (2) of Section 40-23-2. It is further provided that this
20 exemption shall not apply to any gross receipts from the sale
21 of tangible personal property, such as concessions, novelties,
22 food, beverages, etc. The exemption provided for in this
23 section shall be limited to those games and operations by
24 organizations which have qualified for exemption under the
25 provisions of 26 U.S.C. § 501 (c) (3), (4), (7), (8), (10), or
26 (19), or which are defined in 26 U.S.C. § 501(d).

1 "~~(45)~~ (46) The gross receipts derived from the sale
2 or sales of fruit or other agricultural products by the person
3 or company, as defined in Section 40-23-1, that planted or
4 cultivated and harvested the fruit or agricultural product,
5 when the land is owned or leased by the seller.

6 "~~(46)~~ (47) The gross receipts derived from the sale
7 or sales of all domestically mined or produced coal, coke, and
8 coke by-products used in cogeneration plants.

9 "~~(47)~~ (48) The gross receipts from the sale or sales
10 of metal, other than gold or silver, when such metal is
11 purchased for the purpose of transferring such metal to an
12 investment trust in exchange for shares or other units, each
13 of which are both publicly traded and represent fractional
14 undivided beneficial interests in the trust's net assets,
15 including metal stored in warehouses located in this state, as
16 well as the gross proceeds from the sale or other transfer of
17 such metal to or from such investment trust in exchange for
18 shares or other units that are publicly traded and represent
19 fractional undivided beneficial interests in the trust's net
20 assets but not to the extent that metal is transferred to or
21 from the investment trust in exchange for consideration other
22 than such publicly traded shares or other units. For purposes
23 of this subdivision, the term metals includes, but is not
24 limited to, copper, aluminum, nickel, zinc, tin, lead, and
25 other similar metals typically used in commercial and
26 industrial applications.

1 "~~(48)~~ (49) For the period commencing on October 1,
2 2012, and ending May 30, 2022, unless extended by joint
3 resolution, the gross receipts from the sale of parts,
4 components, and systems that become a part of a fixed or
5 rotary wing military aircraft or certified transport category
6 aircraft that undergoes conversion, reconfiguration, or
7 general maintenance so long as the address of the aircraft for
8 FAA registration is not in the state; provided, however, that
9 this exemption shall not apply to a local sales tax unless
10 previously exempted by local law or approved by resolution of
11 the local governing body.

12 "~~(49)~~ (50) The gross proceeds from the sale or sales
13 within school buildings of lunches to pupils of kindergarten,
14 grammar, and high schools, either public or private, that are
15 not sold for profit.

16 "~~(50)~~ (51) The gross proceeds of services provided
17 by photographers, including, but not limited to, sitting fees
18 and consultation fees, even when provided as part of a
19 transaction ultimately involving the sale of one or more
20 photographs, so long as the exempt services are separately
21 stated to the customer on a bill of sale, invoice, or like
22 memorialization of the transaction. For transactions occurring
23 before October 1, 2017, neither the Department of Revenue nor
24 local tax officials may seek payment for sales tax not
25 collected. With regard to such transactions in which sales tax
26 was collected and remitted on services provided by

1 photographers, neither the taxpayer nor the entity remitting
2 sales tax shall have the right to seek refund of such tax.

3 "~~(51)~~ (52) a. For the period commencing on June 1,
4 2018, and ending five years thereafter, unless extended by an
5 act of the Legislature, the gross proceeds of sales of bullion
6 or money, as defined in Section 40-1-1(7).

7 "b. For purposes of this subdivision, the following
8 words or terms shall be defined and interpreted as follows:

9 "1. Bullion. Gold, silver, platinum, palladium, or a
10 combination of each precious metal, that has gone through a
11 refining process and for which the item's value depends on its
12 mass and purity, and not on its form, numismatic value, or
13 other value. The term includes bullion in the form of bars,
14 ingots, or coins that meet the requirements set forth above.
15 Qualifying bullion may contain other metals or substances,
16 provided that the other substances are minimal in value
17 compared with the value of the gold, silver, platinum, or
18 palladium and the other substances do not add value to the
19 item. For purposes of this subparagraph, "gold, silver,
20 platinum, or palladium" does not include jewelry or works of
21 art.

22 "2. Mass Purity. An item's mass is its weight in
23 precious metal, and its purity is the amount of precious metal
24 contained within the item.

25 "3. Numismatic Value. An external value above and
26 beyond the base value of the underlying precious metal, due to
27 the item's rarity, condition, age, or other external factor.

1 "c. In order for bullion to qualify for the sales
2 tax exemption, gold, silver, platinum, and palladium items
3 must meet all of the following requirements:

4 "1. Must be refined.

5 "2. Must contain at least ninety percent gold,
6 silver, platinum, or palladium or some combination of these
7 metals.

8 "3. The sales price of the item must fluctuate with
9 and depend on the market price of the underlying precious
10 metal, and not on the item's rarity, condition, age, or other
11 external factor.

12 "~~(52)~~ (53) a. The gross proceeds of the initial
13 retail sales of adaptive equipment that is permanently affixed
14 to a motor vehicle.

15 "b. For the purposes of this subdivision, the
16 following words or terms shall be defined and interpreted as
17 follows:

18 "1. Adaptive Equipment. Equipment not generally used
19 by persons with normal mobility that is appropriate for use in
20 a motor vehicle and that is not normally provided by a motor
21 vehicle manufacturer.

22 "2. Motor Vehicle. A vehicle as defined in Section
23 40-12-240.

24 "3. Motor Vehicle Manufacturer. Every person engaged
25 in the business of constructing or assembling vehicles or
26 manufactured homes.

1 "c. In order to qualify for the exemption provided
2 for herein, the adaptive equipment must be separately stated
3 to the customer on a bill of sale, invoice, or like
4 memorialization of the transaction.

5 "(b) Any violation of any provision of this section
6 shall be punishable in a court of competent jurisdiction by a
7 fine of not less than five hundred dollars (\$500) and no more
8 than two thousand dollars (\$2,000) and imprisonment of not
9 less than six months nor more than one year in the county
10 jail.

11 "§40-23-37.

12 "There is hereby levied, in lieu of the state sales
13 tax levied by Section 40-23-2, a privilege or license tax
14 against the person on account of the business activities
15 engaged in and in the amount to be determined by the
16 application of rates against gross sales, or gross receipts,
17 as the case may be as follows:

18 "Upon every person, firm, or corporation engaged or
19 continuing within this state in the business of selling at
20 retail any machine, machinery, vessel, or equipment which is
21 used in planting, cultivating and harvesting farm products,
22 the capture, attempted capture, or processing of fish or other
23 seafood by means of commercial fishing, or used in connection
24 with the production of agricultural produce or products,
25 livestock or poultry on farms, and the parts of such machines,
26 machinery, vessel, or equipment, attachments and replacements
27 therefor which are made or manufactured for use on or in the

1 operation of such machine, machinery, vessel, or equipment,
2 and which are necessary to and customarily used in the
3 operation of such machine, machinery, vessel, or equipment, an
4 amount equal to one and one-half percent of the gross proceeds
5 of the sale thereof; provided, that the one and one-half
6 percent rate herein prescribed with respect to parts,
7 attachments and replacements shall not apply to any automotive
8 vehicle or trailer designed primarily for public highway use,
9 except farm trailers used primarily in the production and
10 harvesting of agricultural commodities.

11 "Where any used machine, machinery, vessel, or
12 equipment which is used in planting, cultivating and
13 harvesting farm products, or used in connection with the
14 production of agricultural produce or products, livestock, and
15 poultry on farms is taken in trade or in a series of trades as
16 a credit or part payment on a sale of a new or used machine,
17 machinery, vessel, or equipment, the tax levied herein shall
18 be paid on the net difference, that is, the price of the new
19 or used machine, machinery, vessel, or equipment sold, less
20 the credit for the used machine, machinery, vessel, or
21 equipment taken in trade.

22 "§40-23-60.

23 "For the purpose of this article, the following
24 terms shall have the respective meanings ascribed to them in
25 this section:

26 "(1) PERSON or COMPANY. Any individual, firm,
27 company, partnership, association, corporation, receiver or

1 trustee, or any other group or combination acting as a unit,
2 and the plural as well as the singular number, unless the
3 intention to give a more limited meaning is disclosed by the
4 context.

5 "(2) DEPARTMENT. The Department of Revenue of the
6 State of Alabama.

7 "(3) COMMISSIONER. The Commissioner of Revenue of
8 the State of Alabama.

9 "(4) WHOLESALE SALE or SALE AT WHOLESALE. Any one of
10 the following:

11 "a. A sale of tangible personal property by
12 wholesaler to licensed retail merchants, jobbers, dealers or
13 other wholesalers for resale and does not include a sale by
14 wholesalers to users or consumers, not for resale.

15 "b. A sale of tangible personal property or
16 products, including iron ore, and including the furnished
17 container and label of such property or products, to a
18 manufacturer or compounder which enter into and become an
19 ingredient or component part of the tangible personal property
20 or products which the manufacturer or compounder manufactures
21 or compounds for sale, whether or not such tangible personal
22 property or product used in manufacturing or compounding a
23 finished product is used with the intent that it become a
24 component of the finished product; provided, however, that it
25 is the intent of this section that no sale of capital
26 equipment, machinery, tools, or product shall be included in
27 the term "wholesale sale." The term "capital equipment,

1 machinery, tools, or product" shall mean property that is
2 subject to depreciation allowances for Alabama income tax
3 purposes.

4 "c. A sale of containers intended for one-time use
5 only, and the labels thereof, when such containers are sold
6 without contents to persons who sell or furnish such
7 containers along with the contents placed therein for sale by
8 such persons.

9 "d. A sale of pallets intended for one-time use only
10 when such pallets are sold without contents to persons who
11 sell or furnish such pallets along with the contents placed
12 thereon for sale by such persons.

13 "e. A sale to a manufacturer or compounder, of
14 crowns, caps and tops intended for one-time use employed and
15 used upon the containers in which such manufacturer or
16 compounder markets his products.

17 "f. A sale of containers to persons engaged in
18 selling or otherwise supplying or furnishing baby chicks to
19 growers thereof where such containers are used for the
20 delivery of such chicks or a sale of containers for use in the
21 delivery of eggs by the producer thereof to the distributor or
22 packer of such eggs even though such containers used for
23 delivery of baby chicks or eggs may be recovered for reuse.

24 "g. A sale of bagging and ties used in preparing
25 cotton for market.

26 "h. A sale of commercial fish feed including
27 concentrates, supplements and other feed ingredients when such

1 substances are used as ingredients in mixing and preparing
2 feed for fish raised to be sold on a commercial basis.

3 "i. A sale of bait used to capture or attempt to
4 capture fish or other seafood in the process of commercial
5 fishing.

6 ~~"i.~~ j. A sale of tangible personal property to any
7 person engaging in the business of leasing or renting such
8 tangible personal property to others, if such tangible
9 personal property is purchased for the purpose of leasing or
10 renting it to others under a transaction subject to the
11 privilege or license tax levied in Article 4 of Chapter 12 of
12 this title against any person engaging in the business of
13 leasing or renting tangible personal property to others.

14 ~~"j.~~ k. A purchase or withdrawal of parts or
15 materials from stock by any person licensed under this article
16 where such parts or materials are used in repairing or
17 reconditioning the tangible personal property of such licensed
18 person which tangible personal property is a part of the stock
19 of goods of such licensed person, offered for sale by him and
20 not for use or consumption of such licensed person.

21 ~~"k.~~ l. A sale to meat packers, manufacturers,
22 compounders or processors of meat products of all casings used
23 in moulding or forming wieners and Vienna sausages, even
24 though such casings may be recovered for reuse.

25 "(5) SALE AT RETAIL or RETAIL SALE. All sales of
26 tangible personal property except those above defined as
27 wholesale sales. The quantities of goods sold or prices at

1 which sold are immaterial in determining whether or not a sale
2 is at retail. Sales of building materials to contractors,
3 builders or landowners for resale or use in the form of real
4 estate are retail sales in whatever quantity sold. Sales of
5 building materials, fixtures or other equipment to a
6 manufacturer or builder of modular buildings for use in
7 manufacturing, building or equipping a modular building
8 ultimately becoming a part of real estate situated in the
9 State of Alabama are retail sales, and the use, sale or resale
10 of such building shall not be subject to the tax. Sales of
11 tangible personal property to undertakers and morticians are
12 retail sales and subject to the tax at the time of purchase,
13 but are not subject to the tax on resale to the consumer.
14 Sales of tangible personal property or products to
15 manufacturers, quarry operators, mine operators or
16 compounders, which are used or consumed by them in
17 manufacturing, mining, quarrying or compounding and do not
18 become an ingredient or component part of the tangible
19 personal property manufactured or compounded as provided in
20 subdivision (4) are retail sales. The term "sale at retail" or
21 "retail sale" shall also mean and include the withdrawal, use
22 or consumption of any tangible personal property by anyone who
23 purchases same at wholesale, except property which has been
24 previously withdrawn from the business or stock and so used or
25 consumed and with respect to which property the tax has been
26 paid because of such previous withdrawal, use or consumption,
27 except property which enters into and becomes an ingredient or

1 component part of tangible personal property or products
2 manufactured or compounded for sale as provided in subdivision
3 (4); and not for the personal and private use or consumption
4 of any person so withdrawing, using or consuming the same, and
5 such wholesale purchaser shall report and pay the taxes
6 thereon; and except refinery, residue, or fuel gas, whether in
7 a liquid or gaseous state, that has been generated by, or is
8 otherwise a by-product of, a petroleum-refining process, which
9 gas is then utilized in the process to generate heat or is
10 otherwise utilized in the distillation or refining of
11 petroleum products. The term "retail sale" or "sale at retail"
12 shall also mean and include the sale of tangible personal
13 property previously purchased at wholesale for the purpose of
14 leasing or renting under a transaction subject to the
15 privilege or license tax levied in Article 4 of Chapter 12 of
16 this title, regardless of whether such sale is to the person
17 who theretofore leased or rented the said tangible personal
18 property or to some other person.

19 "(6) BUSINESS. All activities engaged in, or caused
20 to be engaged in, with the object of gain, profit, benefit or
21 advantage, either direct or indirect, and not excepting
22 subactivities producing marketable commodities used or
23 consumed in the main business activity, each of which
24 subactivities shall be considered business engaged in, taxable
25 in the class in which it falls.

26 "(7) STORAGE. Any keeping or retention in this state
27 for any purpose except sale in the regular course of business

1 or subsequent use solely outside this state of tangible
2 personal property purchased at retail.

3 "(8) USE. The exercise of any right or power over
4 tangible personal property incident to the ownership of that
5 property, or by any transaction where possession is given,
6 except that it shall not include the sale of that property in
7 the regular course of business.

8 "(9) PURCHASE. Acquired for a consideration, whether
9 such acquisition was effected by a transfer of title, or of
10 possession or of both, or a license to use or consume; whether
11 such transfer shall have been absolute or conditional, and by
12 whatsoever means the same shall have been effected; and
13 whether such consideration be a price or rental in money, or
14 by way of exchange or barter.

15 "(10) SALES PRICE. The total amount for which
16 tangible personal property is sold, including any services,
17 including transportation, that are a part of the sale, valued
18 in money, whether paid in money or otherwise, and includes any
19 amount for which credit is given to the purchaser by the
20 seller, without any deduction therefrom on account of the cost
21 of the property sold, the cost of the materials used, labor or
22 service cost, interest charged, losses or any other expenses
23 whatsoever; provided, that cash discounts allowed and taken on
24 sales shall not be included and sales price shall not include
25 the amount charged for property returned by customers when the
26 entire amount charged therefor is refunded either in cash or
27 by credit.

1 "(11) IN THIS STATE or IN THE STATE. Within the
2 exterior limits of the State of Alabama, and includes all
3 territory within such limits owned by or ceded to the United
4 States of America.

5 "(12) AUTOMOTIVE VEHICLE. A power shovel, dragline,
6 crawler, crawler crane, ditcher or any similar machine which
7 is self-propelled, in addition to self-propelled machines
8 which are used primarily as instruments of conveyance.

9 "(13) PREPAID TELEPHONE CALLING CARD. A sale of a
10 prepaid telephone calling card or a prepaid authorization
11 number, or both, shall be deemed the sale of tangible personal
12 property subject to the tax imposed pursuant to this chapter.
13 For purposes of this subdivision, the sale of prepaid wireless
14 service that is evidenced by a physical card constitutes the
15 sale of a prepaid telephone calling card, and the sale of
16 prepaid wireless service that is not evidenced by a physical
17 card constitutes the sale of a prepaid authorization number.

18 "(14) PREPAID WIRELESS SERVICE. The right to use
19 mobile telecommunications service, which must be paid for in
20 advance and that is sold in predetermined units or dollars of
21 which the number declines with use or the expiration of time
22 in a known amount, and which may include rights to use
23 non-telecommunications services or to download digital
24 products or digital content. For purposes of this subdivision,
25 mobile telecommunications service has the meaning ascribed by
26 Section 40-21-120.

1 "(15) REMOTE USE TAX. Amounts collected from out of
2 state vendors who, on October 1, 2012, were or would have been
3 remote sellers as defined in Section 40-23-171; and amounts
4 remitted by consumers on the individual tax return.

5 "§40-23-63.

6 "There is hereby levied and imposed an excise tax on
7 the storage, use or other consumption in this state of any
8 machine, machinery, vessel, or equipment which is used in
9 planting, cultivating and harvesting farm products, the
10 capture, attempted capture, or processing of fish or other
11 seafood by means of commercial fishing, or used in connection
12 with the production of agricultural produce or products,
13 livestock or poultry, ~~or~~ on farms, and the parts of such
14 machines, machinery, vessels, or equipment, attachments and
15 replacements therefor which are made or manufactured for use
16 on or in the operation of such machine, machinery, vessel, or
17 equipment, and which are necessary to and customarily used in
18 the operation of such machine, machinery, vessel, or
19 equipment, which is purchased at retail after October 1, 1966,
20 for storage, use, or other consumption in this state, at the
21 rate of one and one-half percent of the sales price of such
22 property or the amount of tax collected by the seller,
23 whichever is greater, provided, however, when the seller
24 follows the Department of Revenue's suggested use tax brackets
25 and his records prove that his following said brackets
26 resulted in a net undercollection of tax for the month, he may
27 report the tax due or tax collected whichever is less,

1 regardless of whether the retailer is or is not engaged in
2 business in this state. The tax herein levied and imposed
3 shall be in lieu of the excise tax levied and imposed by
4 Section 40-23-61; provided, that the one and one-half percent
5 rate herein prescribed with respect to parts, attachments and
6 replacements shall not apply to any automotive vehicle or
7 trailer designed primarily for public highway use except farm
8 trailers used primarily in the production and harvesting of
9 agricultural commodities.

10 "Every person storing, using, or otherwise consuming
11 in this state such tangible personal property purchased at
12 retail shall be liable for the tax imposed by this article,
13 and the liability shall not be extinguished until the tax has
14 been paid to this state; provided, that a receipt from a
15 retailer maintaining a place of business in this state or a
16 retailer authorized by the Department of Revenue under such
17 rules and regulations as the Commissioner of Revenue may
18 prescribe, to collect the tax imposed hereby and who shall for
19 the purpose of this article be regarded as a retailer
20 maintaining a place of business in this state, given to the
21 purchaser in accordance with the provisions of Section
22 40-23-67, shall be sufficient to relieve the purchaser from
23 further liability for a tax to which such receipt may refer."

24 Section 2. This act shall become effective on
25 January 1, 2022, following its passage and approval by the
26 Governor, or its otherwise becoming law.