

1 SB272
2 174272-1
3 By Senator Dial
4 RFD: Finance and Taxation Education
5 First Read: 18-FEB-16

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, the state imposes sales
9 or use taxes upon certain persons, firms, or
10 corporations. Sales of certain items are taxed at a
11 reduced rate. Sales of other items are exempt from
12 the taxes.

13 This bill would increase the state sales and
14 use tax general rate to four and one-half percent
15 on September 1, 2016 and to five percent on
16 September 1, 2017.

17 This bill would phase out the state sales
18 and use taxes on food over a two-year period by
19 reducing the rates by two percentage points per
20 year beginning September 1, 2016.

21 This bill would exempt sales of food from
22 the sales and use taxes beginning September 1,
23 2017.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

1
2 To amend Sections 40-23-2 and 40-23-61, Code of
3 Alabama 1975, to increase the state sales and use tax general
4 rates to four and one-half percent on September 1, 2016 and
5 five percent on September 1, 2017; to phase out the state
6 sales and use taxes on food by reducing the rates by two
7 percentage points per year beginning September 1, 2016; to
8 exempt sales of food from the sales and use taxes beginning
9 September 1, 2017.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. LEGISLATIVE INTENT. The Legislature
12 hereby finds that the requirement to pay sales tax on food
13 places a burden on all taxpayers in the state, especially the
14 less fortunate. The Legislature recognizes the effect on-line
15 purchases has had on tax collections due to inaction by the
16 federal government to act on pending legislation allowing for
17 the collection on on-line sales. The passage of this act would
18 have a positive impact on state tax collections on general
19 merchandise which would help offset the elimination of the
20 sales tax on food.

21 Section 2. Section 40-23-2 and Section 40-23-61,
22 Code of Alabama 1975, are amended to read as follows:

23 "§40-23-2.

24 "There is levied, in addition to all other taxes of
25 every kind now imposed by law, and shall be collected as
26 herein provided, a privilege or license tax against the person
27 on account of the business activities and in the amount to be

1 determined by the application of rates against gross sales, or
2 gross receipts, as the case may be, as follows:

3 "(1) Upon every person, firm, or corporation,
4 (including the State of Alabama and its Alcoholic Beverage
5 Control Board in the sale of alcoholic beverages of all kinds,
6 the University of Alabama, Auburn University, and all other
7 institutions of higher learning in the state, whether the
8 institutions be denominational, state, county, or municipal
9 institutions, any association or other agency or
10 instrumentality of the institutions) engaged or continuing
11 within this state, in the business of selling at retail any
12 tangible personal property whatsoever, including merchandise
13 and commodities of every kind and character, (not including,
14 however, bonds or other evidences of debts or stocks, nor
15 sales of material and supplies to any person for use in
16 fulfilling a contract for the painting, repair, or
17 reconditioning of vessels, barges, ships, other watercraft,
18 and commercial fishing vessels of over five tons load
19 displacement as registered with the U.S. Coast Guard and
20 licensed by the State of Alabama Department of Conservation
21 and Natural Resources), an amount equal to: for taxable
22 periods beginning on or before August 31, 2016, four percent
23 of the gross proceeds of sales of the business except where a
24 different amount is expressly provided herein; for taxable
25 periods beginning on and after September 1, 2016, four and
26 one-half percent of the gross proceeds of sales of the
27 business except where a different amount is expressly provided

1 herein; for taxable periods beginning on and after September
2 1, 2017, five percent of the gross proceeds of sales of the
3 business except where a different amount is expressly provided
4 herein. Provided, however, that any person engaging or
5 continuing in business as a retailer and wholesaler or jobber
6 shall pay the tax required on the gross proceeds of retail
7 sales of the business at the rates specified, when his or her
8 books are kept so as to show separately the gross proceeds of
9 sales of each business, and when his or her books are not kept
10 he or she shall pay the tax as a retailer, on the gross sales
11 of the business.

12 "Where any used part including tires of an
13 automotive vehicle or a truck trailer, semitrailer, or house
14 trailer is taken in trade, or in a series of trades, as a
15 credit or part payment on the sale of a new or rebuilt part or
16 tire, the tax levied herein shall be paid on the net
17 difference, that is, the price of the new or used part or tire
18 sold less the credit for the used part or tire taken in trade,
19 provided, however, this provision shall not be construed to
20 include batteries.

21 "(2) Upon every person, firm, or corporation engaged
22 or continuing within this state in the business of conducting
23 or operating places of amusement or entertainment, billiard
24 and pool rooms, bowling alleys, amusement devices, musical
25 devices, theaters, opera houses, moving picture shows,
26 vaudevilles, amusement parks, athletic contests, including
27 wrestling matches, prize fights, boxing and wrestling

1 exhibitions, football and baseball games, (including athletic
2 contests, conducted by or under the auspices of any
3 educational institution within this state, or any athletic
4 association thereof, or other association whether the
5 institution or association be a denominational, a state, or
6 county, or a municipal institution, or association or a state,
7 county, or city school, or other institution, association or
8 school), skating rinks, race tracks, golf courses, or any
9 other place at which any exhibition, display, amusement, or
10 entertainment is offered to the public or place or places
11 where an admission fee is charged, including public bathing
12 places, public dance halls of every kind and description
13 within the State of Alabama, an amount equal to: for taxable
14 periods beginning on or before August 31, 2016, four percent
15 of the gross receipts of any such business; for taxable
16 periods beginning on and after September 1, 2016, four and
17 one-half percent of the gross receipts of any such business;
18 for taxable periods beginning on and after September 1, 2017,
19 five percent of the gross receipts of any such business.
20 Provided, however, notwithstanding any language to the
21 contrary in the prior portion of this subdivision, the tax
22 provisions so specified shall not apply to any athletic event
23 conducted by a public or nonpublic primary or secondary school
24 or any athletic event conducted by or under the auspices of
25 the Alabama High School Athletic Association. The tax amount
26 which would have been collected pursuant to this subdivision
27 shall continue to be collected by the public or nonpublic

1 primary or secondary school, but shall be retained by the
2 school which collected it and shall be used by the school for
3 school purposes.

4 "(3) Upon every person, firm, or corporation engaged
5 or continuing within this state in the business of selling at
6 retail machines used in mining, quarrying, compounding,
7 processing, and manufacturing of tangible personal property an
8 amount equal to one and one-half percent of the gross proceeds
9 of the sale of the machines. The term "machine," as herein
10 used, shall include machinery which is used for mining,
11 quarrying, compounding, processing, or manufacturing tangible
12 personal property, and the parts of the machines, attachments,
13 and replacements therefor, which are made or manufactured for
14 use on or in the operation of the machines and which are
15 necessary to the operation of the machines and are customarily
16 so used.

17 "(4) Upon every person, firm, or corporation engaged
18 or continuing within this state in the business of selling at
19 retail any automotive vehicle or truck trailer, semitrailer,
20 or house trailer, or mobile home set-up materials and supplies
21 including but not limited to steps, blocks, anchoring, cable
22 pipes, and any other materials pertaining thereto an amount
23 equal to two percent of the gross proceeds of sale of the
24 automotive vehicle or truck trailer, semitrailer, or house
25 trailer, or mobile home set-up materials and supplies
26 provided, however, where a person subject to the tax provided
27 for in this subdivision withdraws from his or her stock in

1 trade any automotive vehicle or truck trailer, semitrailer, or
2 house trailer for use by him or her or by his or her employee
3 or agent in the operation of the business, there shall be
4 paid, in lieu of the tax levied herein, a fee of five dollars
5 (\$5) per year or part thereof during which the automotive
6 vehicle, truck trailer, semitrailer, or house trailer shall
7 remain the property of the person. Each year or part thereof
8 shall begin with the day or anniversary date, as the case may
9 be, of such withdrawal and shall run for the 12 succeeding
10 months or part thereof during which the automotive vehicle,
11 truck trailer, semitrailer, or house trailer shall remain the
12 property of the person.

13 "Where any used automotive vehicle or truck trailer,
14 semitrailer, or house trailer is taken in trade or in a series
15 of trades, as a credit or part payment on the sale of a new or
16 used vehicle, the tax levied herein shall be paid on the net
17 difference, that is, the price of the new or used vehicle sold
18 less the credit for the used vehicle taken in trade.

19 "Sales of automobiles, motorcycles, trucks, truck
20 trailers, or semitrailers, excluding travel trailers or
21 housecars as defined in Section 40-12-240, that will be
22 registered or titled outside Alabama, that are exported or
23 removed from Alabama within 72 hours by the purchaser or his
24 or her agent for first use outside Alabama are subject to
25 Alabama sales tax in an amount equal to only the state
26 automotive sales tax rate, unless the sales tax laws of the
27 state in which the purchaser will title or register the

1 vehicle, allows an Alabama resident to purchase a motor
2 vehicle for first titling and registering in Alabama without
3 the payment of tax to that state. However, in no case shall
4 the amount of Alabama state sales tax due on a motor vehicle
5 that will be registered or titled for use in another state
6 exceed the amount of sales tax that would otherwise have been
7 due in the state where the vehicle will be registered or
8 titled for first use. The tax collected under this export
9 provision shall be Alabama sales tax and shall exclude county
10 and municipal sales tax. On January 1, 2016, and each January
11 1 thereafter, the Alabama Department of Revenue shall publish
12 to the state's website a list of states that do not allow
13 drive out provisions to Alabama residents. Should the list,
14 required by this subsection and relied upon by the taxpayer,
15 be incorrect, the taxpayer shall be relieved from the
16 liability concerning the miscollection of the state automotive
17 sales tax. Sales of all other vehicles such as mobile homes,
18 motor bikes, all terrain vehicles, and boats do not qualify
19 for the export exemption provision and are taxable unless the
20 dealer can provide factual evidence that the vehicle was
21 delivered outside of Alabama or to a common carrier for
22 transportation outside Alabama. In order for the sale to be
23 exempt from Alabama tax, the information relative to the
24 exempt sale shall be documented on forms approved by the
25 Revenue Department.

26 "Of the total \$.02 tax on each dollar of sale
27 provided hereunder, 58 percent of the total tax generated by

1 this subdivision (4) shall be deposited to the credit of the
2 Education Trust Fund; and 42 percent of the total tax
3 generated by this subdivision (4) shall be deposited to the
4 credit of the State General Fund.

5 "(5) Upon every person, firm, or corporation engaged
6 or continuing within this state in the business of selling
7 through coin-operated dispensing machines, food and food
8 products for human consumption, not including beverages other
9 than coffee, milk, milk products, and substitutes therefor,
10 there is levied a tax equal to three percent of the cost of
11 the food, food products, and beverages sold through the
12 machines, which cost for the purpose of this subdivision shall
13 be the gross proceeds of sales of the business.

14 "§40-23-61.

15 "(a) An excise tax is hereby imposed on the storage,
16 use or other consumption in this state of tangible personal
17 property, not including, however, materials and supplies
18 bought for use in fulfilling a contract for the painting,
19 repairing or reconditioning of vessels, barges, ships, other
20 watercraft and commercial fishing vessels of over five tons
21 load displacement as registered with the U.S. Coast Guard and
22 licensed by the State of Alabama Department of Conservation
23 and Natural Resources, purchased at retail on or after October
24 1, 1965, for storage, use or other consumption in this state
25 at the ~~rate of~~ following rates: for taxable periods beginning
26 on or before August 31, 2016, four percent of the sales price
27 of such property or the amount of tax collected by the seller,

1 whichever is greater; for taxable periods beginning on and
2 after September 1, 2016, four and one-half percent of the
3 sales price of such property or the amount of tax collected by
4 the seller, whichever is greater; for taxable periods
5 beginning on and after September 1, 2017, five percent of the
6 sales price of such property or the amount of tax collected by
7 the seller, whichever is greater; provided, however, when the
8 seller follows the Department of Revenue's suggested use tax
9 brackets and his records prove that his following said
10 brackets resulted in a net undercollection of tax for the
11 month, he may report the tax due or tax collected, whichever
12 is less, except as provided in subsections (b) and (c) of this
13 section.

14 "(b) An excise tax is hereby imposed on the storage,
15 use or other consumption in this state of any machines used in
16 mining, quarrying, compounding, processing and manufacturing
17 of tangible personal property, purchased at retail on or after
18 October 1, 1965, at the rate of one and one-half percent of
19 the sales price of any such machine or the amount of tax
20 collected by the seller, whichever is greater; provided,
21 however, when the seller follows the Department of Revenue's
22 suggested use tax brackets and his records prove that his
23 following said brackets resulted in a net undercollection of
24 tax for the month, he may report the tax due or tax collected,
25 whichever is less; provided, that the term "machine," as
26 herein used, shall include machinery which is used for mining,
27 quarrying, compounding, processing, or manufacturing tangible

1 personal property, and the parts of such machines, attachments
2 and replacements therefor, which are made or manufactured for
3 use on or in the operation of such machines and which are
4 necessary to the operation of such machines and are
5 customarily so used.

6 "(c) An excise tax is hereby imposed on the storage,
7 use or other consumption in this state of any automotive
8 vehicle or truck trailer, semitrailer or house trailer, and
9 mobile home set-up materials and supplies including but not
10 limited to steps, blocks, anchoring, cable pipes and any other
11 materials pertaining thereto, purchased at retail on or after
12 October 1, 1965, for storage, use or other consumption in this
13 state at the rate of two percent of the sales price of such
14 automotive vehicle, truck trailer, semitrailer or house
15 trailer, and mobile home set-up materials and supplies as
16 specified above, or the amount of tax collected by the seller,
17 whichever is greater; provided, however, when the seller
18 follows the Department of Revenue's suggested use tax brackets
19 and his records prove that his following said brackets
20 resulted in a net undercollection of tax for the month, he may
21 report the tax due or tax collected, whichever is less. Where
22 any used automotive vehicle or truck trailer, semitrailer or
23 house trailer is taken in trade, or in a series of trades, as
24 a credit or part payment on the sale of a new or used vehicle,
25 the tax levied herein shall be paid on the net difference,
26 that is, the price of the new or used vehicle sold less the
27 credit for the used vehicle taken in trade.

1 "Of the total \$.02 tax on each dollar of sale
2 provided hereunder, 58 percent of the total tax generated by
3 this subsection shall be deposited to the credit of the
4 Education Trust Fund; and 42 percent of the total tax
5 generated by this subsection shall be deposited to the credit
6 of the State General Fund.

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

21 "(e) An excise tax is hereby imposed on the classes
22 of tangible personal property, and at the rates imposed on
23 such classes, specified in subsections (a), (b) and (c) of
24 this section, on the storage, use, or other consumption in the
25 performance of a contract in this state of any such tangible
26 personal property, new or used, the tax to be measured by the
27 sales price or the fair and reasonable market value of such

1 tangible personal property when put into use in this state,
2 whichever is less; provided, that the tax imposed by this
3 subsection shall not apply where the taxes imposed by
4 subsection (a), (b), or (c) of this section apply."

5 Section 3. For purposes of Section 3 of this act,
6 the following terms are defined as follows:

7 (1) FOOD. Food as defined in 7 U.S.C §2011, et seq.,
8 for the purposes of the federal Supplemental Nutrition
9 Assistance Program regardless of where or by what means food
10 is sold. In the event that the federal Supplemental Nutrition
11 Assistance Program definition no longer exists, the
12 Legislature shall provide a new definition of food by general
13 law.

14 (2) SALES TAX. The tax levied in Section 40-23-2,
15 Code of Alabama 1975, on the gross sales or gross receipts
16 from the sale of tangible personal property.

17 (3) USE TAX. The tax levied in Section 40-23-61,
18 Code of Alabama 1975, on the storage, use, or other
19 consumption of tangible personal property in Alabama.

20 Section 4. Notwithstanding any other provision of
21 law,

22 (a) For taxable periods beginning on and after
23 September 1, 2016, the state sales and use tax rate on food
24 shall be two percent of the gross receipts from the sale or
25 use of food.

1 (b) For taxable periods beginning on and after
2 September 1, 2017, the gross receipts from the sale or use of
3 food shall be exempt from the state sales and use taxes.

4 Section 5. The Legislature shall review the results
5 of this act during the 2018 Regular Session and make any
6 necessary adjustments to ensure that the provisions of this
7 act are revenue neutral.

8 Section 6. This act shall become effective on the
9 first day of the third month following its passage and
10 approval by the Governor, or its otherwise becoming a law.