

1 SB345
2 175242-1
3 By Senators Singleton, Ward and Smitherman
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 10-MAR-16

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8 SYNOPSIS: Under existing law, the gross proceeds from
9 certain products are exempt from rental, sales, and
10 use taxes.

11 This bill would exempt from rental, sales,
12 and use taxes the gross proceeds from the rental or
13 sale of products transferred electronically
14 acquired with less than the right of permanent use
15 granted by the seller or use which is conditioned
16 upon continued payment from the purchaser.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT
21

22 To amend Sections 40-12-223, 40-23-4, and 40-23-62,
23 Code of Alabama 1975, relating to exemptions from rental,
24 sales, and use taxes; to exempt from rental, sales, and use
25 taxes the gross proceeds of the rental or sale of products
26 transferred electronically acquired with less than the right

1 of permanent use granted by the seller or use which is
2 conditioned upon continued payment from the purchaser.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 40-12-223, 40-23-4, and
5 40-23-62, Code of Alabama 1975, are amended to read as
6 follows:

7 "§40-12-223.

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

11 "(1) The gross proceeds accruing from the leasing or
12 rental of a film or films to a lessee who charges, or proposes
13 to charge, admission for viewing the said film or films;

14 "(2) The gross proceeds accruing from any charge in
15 respect to the use of docks or docking facilities furnished
16 for boats or other craft operated on waterways;

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

23 "(4) The gross proceeds accruing from the leasing or
24 rental of tangible personal property to a lessee who acquires
25 possession of the said property for the purpose of leasing or
26 renting to another the same property under a leasing or rental
27 transaction subject to the provisions of this article;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 by a corporation, partnership or other entity controlled by,
2 or under common control with, such lessee;

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

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

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

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

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

10 "(15) The gross proceeds accruing from the leasing
11 or rental of receipts of products transferred electronically
12 acquired with less than the right of permanent use granted by
13 the seller or use which is conditioned upon continued payment
14 from the purchaser. "Product transferred electronically" means
15 property or a service obtained by the purchaser by means other
16 than tangible storage media. The term includes video
17 programming services, including subscription video services,
18 video on demand television services, and broadcasting
19 services, including content to provide such services. The term
20 shall not include computer software. The term "computer
21 software" shall mean a sequence of automatic data-processing
22 equipment instructions necessary to solve a problem, and
23 includes both system and application programs and
24 subdivisions, such as assemblers, compilers, routines,
25 generators and utilities, but does not include digital video
26 and audio products transferred electronically. The term
27 "permanent" means perpetual or for an indefinite or

1 unspecified length of time. Access to an electronically
2 transferred product on a subscription basis is not a "right of
3 permanent use." A right of permanent use shall be presumed to
4 have been granted unless the agreement between the seller and
5 the purchaser specifies or the circumstances surrounding the
6 transaction suggest or indicate that the right to use
7 terminates on the occurrence of a condition subsequent.

8 "§40-23-4.

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

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

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

24 "(3) The gross proceeds of the sale, or sales, of
25 seeds for planting purposes and baby chicks and poults.
26 Nothing herein shall be construed to exempt or exclude from
27 the computation of the tax levied, assessed, or payable, the

1 gross proceeds of the sale or sales of plants, seedlings,
2 nursery stock, or floral products.

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

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

21 "(6) Cottonseed meal exchanged for cottonseed at or
22 by cotton gins.

23 "(7) The gross receipts from the business on which,
24 or for engaging in which, a license or privilege tax is levied
25 by or under the provisions of Sections 40-21-50, 40-21-53, and
26 40-21-56 through 40-21-60; provided, that nothing contained in
27 this subdivision shall be construed to exempt or relieve the

1 person or persons operating the business enumerated in said
2 sections from the payments of the tax levied by this division
3 upon or measured by the gross proceeds of sales of any
4 tangible personal property, except gas and water, the gross
5 receipts from the sale of which are the measure of the tax
6 levied by said Section 40-21-50, merchandise or other tangible
7 commodities sold at retail by said persons, unless the gross
8 proceeds of sale thereof are otherwise specifically exempted
9 by the provisions of this division.

10 "(8) The gross proceeds of sales or gross receipts
11 of or by any person, firm, or corporation, from the sale of
12 transportation, gas, water, or electricity, of the kinds and
13 natures, the rates and charges for which, when sold by public
14 utilities, are customarily fixed and determined by the Public
15 Service Commission of Alabama or like regulatory bodies.

16 "(9) The gross proceeds of the sale, or sales of
17 wood residue, coal, or coke to manufacturers, electric power
18 companies, and transportation companies for use or consumption
19 in the production of by-products, or the generation of heat or
20 power used in manufacturing tangible personal property for
21 sale, for the generation of electric power or energy for use
22 in manufacturing tangible personal property for sale or for
23 resale, or for the generation of motive power for
24 transportation.

25 "(10) The gross proceeds from the sale or sales of
26 fuel and supplies for use or consumption aboard ships,
27 vessels, towing vessels, or barges, or drilling ships, rigs or

1 barges, or seismic or geophysical vessels, or other watercraft
2 (herein for purposes of this exemption being referred to as
3 "vessels") engaged in foreign or international commerce or in
4 interstate commerce; provided, that nothing in this division
5 shall be construed to exempt or exclude from the measure of
6 the tax herein levied the gross proceeds of sale or sales of
7 material and supplies to any person for use in fulfilling a
8 contract for the painting, repair, or reconditioning of
9 vessels, barges, ships, other watercraft, and commercial
10 fishing vessels of over five tons load displacement as
11 registered with the U.S. Coast Guard and licensed by the State
12 of Alabama Department of Conservation and Natural Resources.

13 "For purposes of this subdivision, it shall be
14 presumed that vessels engaged in the transportation of cargo
15 between ports in the State of Alabama and ports in foreign
16 countries or possessions or territories of the United States
17 or between ports in the State of Alabama and ports in other
18 states are engaged in foreign or international commerce or
19 interstate commerce, as the case may be. For the purposes of
20 this subdivision, the engaging in foreign or international
21 commerce or interstate commerce shall not require that the
22 vessel involved deliver cargo to or receive cargo from a port
23 in the State of Alabama. For purposes of this subdivision,
24 vessels carrying passengers for hire, and no cargo, between
25 ports in the State of Alabama and ports in foreign countries
26 or possessions or territories of the United States or between
27 ports in the State of Alabama and ports in other states shall

1 be engaged in foreign or international commerce or interstate
2 commerce, as the case may be, if, and only if, both of the
3 following conditions are met: (i) The vessel in question is a
4 vessel of at least 100 gross tons; and (ii) the vessel in
5 question has an unexpired certificate of inspection issued by
6 the United States Coast Guard or by the proper authority of a
7 foreign country for a foreign vessel, which certificate is
8 recognized as acceptable under the laws of the United States.
9 Vessels which are engaged in foreign or international commerce
10 or interstate commerce shall be deemed for the purposes of
11 this subdivision to remain in such commerce while awaiting or
12 under repair in a port of the State of Alabama if such vessel
13 returns after such repairs are completed to engaging in
14 foreign or international commerce or interstate commerce. For
15 purposes of this subdivision, seismic or geophysical vessels
16 which are engaged either in seismic or geophysical tests or
17 evaluations exclusively in offshore federal waters or in
18 traveling to or from conducting such tests or evaluations
19 shall be deemed to be engaged in international or foreign
20 commerce. For purposes of this subdivision, proof that fuel
21 and supplies purchased are for use or consumption aboard
22 vessels engaged in foreign or international commerce or in
23 interstate commerce may be accomplished by the merchant or
24 seller securing the duly signed certificate of the vessel
25 owner, operator, or captain or their respective agent on a
26 form prescribed by the department that the fuel and supplies
27 purchased are for use or consumption aboard vessels engaged in

1 foreign or international commerce or in interstate commerce.
2 Any person filing a false certificate shall be guilty of a
3 misdemeanor and upon conviction shall be fined not less than
4 \$25 nor more than \$500 for each offense. Each false
5 certificate filed shall constitute a separate offense. Any
6 person filing a false certificate shall be liable to the
7 department for all taxes imposed by this division upon the
8 merchant or seller, together with any interest or penalties
9 thereon, by reason of the sale or sales of fuel and supplies
10 applicable to such false certificate. If a merchant or seller
11 of fuel and supplies secures the certificate herein mentioned,
12 properly completed, such merchant or seller shall not be
13 liable for the taxes imposed by this division, if such
14 merchant or seller had no knowledge that such certificate was
15 false when it was filed with such merchant or seller.

16 "(11) The gross proceeds of sales of tangible
17 personal property to the State of Alabama, to the counties
18 within the state and to incorporated municipalities of the
19 State of Alabama.

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

26 "(13) The gross proceeds of the sale or sales of
27 materials, equipment, and machinery which, at any time, enter

1 into and become a component part of ships, vessels, towing
2 vessels or barges, or drilling ships, rigs or barges, or
3 seismic or geophysical vessels, other watercraft and
4 commercial fishing vessels of over five tons load displacement
5 as registered with the U.S. Coast Guard and licensed by the
6 State of Alabama Department of Conservation and Natural
7 Resources. Additionally, the gross proceeds from the sale or
8 sales of lifeboats, personal flotation devices, ring life
9 buoys, survival craft equipment, distress signals, EPIRB's,
10 fire extinguishers, injury placards, waste management plans
11 and logs, marine sanitation devices, navigation rulebooks,
12 navigation lights, sound signals, navigation day shapes, oil
13 placard cards, garbage placards, FCC SSL, stability
14 instructions, first aid equipment, compasses, anchor and radar
15 reflectors, general alarm systems, bilge pumps, piping, and
16 discharge and electronic position fixing devices which are
17 used on the aforementioned watercraft.

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

21 "(15) The gross proceeds of the sale or sales of
22 tangible personal property to county and city school boards
23 within the State of Alabama, independent school boards within
24 the State of Alabama, all educational institutions and
25 agencies of the State of Alabama, the counties within the
26 state, or any incorporated municipalities of the State of
27 Alabama, and private educational institutions operating within

1 the State of Alabama offering conventional and traditional
2 courses of study, such as those offered by public schools,
3 colleges, or universities within the State of Alabama; but not
4 including nurseries, day care centers, and home schools.

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

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

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

25 "(19) The gross proceeds received from the sale or
26 furnishing of food, including potato chips, candy, fruit and
27 similar items, soft drinks, tobacco products, and stationery

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

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

16 "(21) The gross proceeds of the sales of all
17 antibiotics, hormones and hormone preparations, drugs,
18 medicines or medications, vitamins, minerals or other
19 nutrients, and all other feed ingredients including
20 concentrates, supplements, and other feed ingredients when
21 such substances are used as ingredients in mixing and
22 preparing feed for fish raised to be sold on a commercial
23 basis, livestock, and poultry. Such exemption herein granted
24 shall be in addition to exemptions now provided by law for
25 feed for fish raised to be sold on a commercial basis,
26 livestock, and poultry, but not including prepared foods for
27 dogs or cats.

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

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

17 "(24) The gross proceeds from sales of admissions to
18 any theatrical production, symphonic or other orchestral
19 concert, ballet, or opera production when such concert or
20 production is presented by any society, association, guild, or
21 workshop group, organized within this state, whose members or
22 some of whose members regularly and actively participate in
23 such concerts or productions for the purposes of providing a
24 creative outlet for the cultural and educational interests of
25 such members, and of promoting such interests for the
26 betterment of the community by presenting such productions to
27 the general public for an admission charge. The employment of

1 a paid director or conductor to assist in any such
2 presentation described in this subdivision shall not be
3 construed to prohibit the exemptions herein provided.

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

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

20 "(27) The gross proceeds from the sale or sales of
21 fuel for use or consumption aboard commercial fishing vessels
22 are hereby exempt from the computation of all sales taxes
23 levied, assessed, or payable under the provisions of this
24 division or levied under any county or municipal sales tax
25 law.

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

4 "(28) The gross proceeds of sales of sawdust, wood
5 shavings, wood chips, and other like materials sold for use as
6 chicken litter by poultry producers and poultry processors.

7 "(29) The gross proceeds of the sales of all
8 antibiotics, hormones and hormone preparations, drugs,
9 medicines, and other medications including serums and
10 vaccines, vitamins, minerals, or other nutrients for use in
11 the production and growing of fish, livestock, and poultry by
12 whomsoever sold. Such exemption as herein granted shall be in
13 addition to the exemption provided by law for feed for fish,
14 livestock, and poultry, and in addition to the exemptions
15 provided by law for the above-enumerated substances and
16 products when mixed and used as ingredients in fish,
17 livestock, and poultry feed.

18 "(30) The gross proceeds of the sale or sales of all
19 medicines prescribed by physicians for persons who are 65
20 years of age or older, and when said prescriptions are filled
21 by licensed pharmacists, shall be exempted under this division
22 or under any county or municipal sales tax law. The exemption
23 provided in this section shall not apply to any medicine
24 purchased in any manner other than as is herein provided.

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

1 "a. The name and claim number as shown on a
2 "Medicare" card issued by the United States Social Security
3 Administration.

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

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

10 "For the purposes of this subdivision, any person
11 filing a false proof of age shall be guilty of a misdemeanor
12 and upon conviction thereof shall be punished by a fine of
13 \$100.

14 "(31) There shall be exempted from the tax levied by
15 this division the gross receipts of sales of grass sod of all
16 kinds and character when in the original state of production
17 or condition of preparation for sale, when such sales are made
18 by the producer or members of his family or for him by those
19 employed by him to assist in the production thereof; provided,
20 that nothing herein shall be construed to exempt sales of sod
21 by a person engaged in the business of selling plants,
22 seedlings, nursery stock, or floral products.

23 "(32) The gross receipts of sales of the following
24 items or materials which are necessary in the farm-to-market
25 production of tomatoes when such items or materials are used
26 by the producer or members of his family or for him by those
27 employed by him to assist in the production thereof: Twine for

1 tying tomatoes, tomato stakes, field boxes (wooden boxes used
2 to take tomatoes from the fields to shed), and tomato boxes
3 used in shipments to customers.

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

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

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

11 "(36) The gross receipts of sales of Lespedeza
12 bicolor and other species of perennial plant seed and
13 seedlings sold for wildlife and game food production purposes
14 by the state.

15 "(37) The gross receipts of any aircraft
16 manufactured, sold, and delivered in this state if said
17 aircraft are not permanently domiciled in Alabama and are
18 removed to another state.

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

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

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

25 "b. Is hosted by a not-for-profit corporation
26 organized and existing under the laws of the State of Alabama;
27 and

1 "c. Determines a national championship of a national
2 organization, including but not limited to the Professional
3 Golfers Association of America, the Tournament Players
4 Association, the United States Golf Association, the United
5 States Tennis Association, and the National Collegiate
6 Athletic Association; and

7 "d. Has not been held in the State of Alabama on
8 more than one prior occasion, provided, however, that for such
9 purpose the Professional Golfers Association Championship, the
10 United States Open Golf Championship, the United States
11 Amateur Golf Championship of the United States Golf
12 Association, and the United States Open Tennis Championship
13 shall each be treated as a separate event.

14 "(40) The gross receipts from the sale of any
15 aircraft and replacement parts, components, systems, supplies,
16 and sundries affixed or used on said aircraft and ground
17 support equipment and vehicles used by or for the aircraft to
18 or by a certificated or licensed air carrier with a hub
19 operation within this state, for use in conducting intrastate,
20 interstate, or foreign commerce for transporting people or
21 property by air. For the purpose of this subdivision, the
22 words "hub operation within this state" shall be construed to
23 have all of the following criteria:

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

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

4 "(41) The gross receipts from the sale of hot or
5 cold food and beverage products sold to or by a certificated
6 or licensed air carrier with a hub operation within this
7 state, for use in conducting intrastate, interstate, or
8 foreign commerce for transporting people or property by air.
9 For the purpose of this subdivision, the words "hub operation
10 within this state" shall be construed to have all of the
11 following criteria:

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

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

19 "(42) The gross receipts from the sale of any
20 aviation jet fuel to a certificated or licensed air carrier
21 purchased for use in scheduled all-cargo operations being
22 conducted on international flights or in international
23 commerce. For purposes of this subdivision, the following
24 words or terms shall be defined and interpreted as follows:

25 "a. Air Carrier. Any person, firm, corporation, or
26 entity undertaking by any means, directly or indirectly, to
27 provide air transportation.

1 "b. All-Cargo Operations. Any flight conducted by an
2 air carrier for compensation or hire other than a passenger
3 carrying flight, except passengers as specified in 14 C.F.R.
4 §121.583(a) or 14 C.F.R. §135.85, as amended.

5 "c. International Commerce. Any air carrier engaged
6 in all-cargo operations transporting goods for compensation or
7 hire on international flights.

8 "d. International Flights. Any air carrier
9 conducting scheduled all-cargo operations between any point
10 within the 50 states of the United States and the District of
11 Columbia and any point outside the 50 states of the United
12 States and the District of Columbia, including any interim
13 stops within the United States so long as the ultimate origin
14 or destination of the aircraft is outside the United States
15 and the District of Columbia.

16 "(43) The gross proceeds of the sale or sales of the
17 following:

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

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

24 "c. Fuel and supplies for use or consumption aboard
25 boats, ships, aircraft, and towing vessels when used
26 exclusively in transporting persons or property between a
27 point in Alabama and a point or points in offshore federal

1 waters for the exploration for or production of oil, gas,
2 sulphur, or other minerals in offshore federal waters.

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

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

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

21 "(44) The gross receipts derived from all bingo
22 games and operations which are conducted in compliance with
23 validly enacted legislation authorizing the conduct of such
24 games and operations, and which comply with the distribution
25 requirements of the applicable local laws; provided that the
26 exemption from sales taxation granted by this subdivision
27 shall apply only to gross receipts taxable under subdivision

1 (2) of Section 40-23-2. It is further provided that this
2 exemption shall not apply to any gross receipts from the sale
3 of tangible personal property, such as concessions, novelties,
4 food, beverages, etc. The exemption provided for in this
5 section shall be limited to those games and operations by
6 organizations which have qualified for exemption under the
7 provisions of 26 U.S.C. § 501 (c) (3), (4), (7), (8), (10), or
8 (19), or which are defined in 26 U.S.C. § 501(d).

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

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

16 "(47) The gross receipts from the sale or sales of
17 metal, other than gold or silver, when such metal is purchased
18 for the purpose of transferring such metal to an investment
19 trust in exchange for shares or other units, each of which are
20 both publicly traded and represent fractional undivided
21 beneficial interests in the trust's net assets, including
22 metal stored in warehouses located in this state, as well as
23 the gross proceeds from the sale or other transfer of such
24 metal to or from such investment trust in exchange for shares
25 or other units that are publicly traded and represent
26 fractional undivided beneficial interests in the trust's net
27 assets but not to the extent that metal is transferred to or

1 from the investment trust in exchange for consideration other
2 than such publicly traded shares or other units. For purposes
3 of this subdivision, the term metals includes, but is not
4 limited to, copper, aluminum, nickel, zinc, tin, lead, and
5 other similar metals typically used in commercial and
6 industrial applications.

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

18 "(49) The gross proceeds from the sale or sales
19 within school buildings of lunches to pupils of kindergarten,
20 grammar, and high schools, either public or private, that are
21 not sold for profit.

22 "(50) The gross receipts of the sale of products
23 transferred electronically acquired with less than the right
24 of permanent use granted by the seller or use which is
25 conditioned upon continued payment from the purchaser.
26 "Product transferred electronically" means property or a
27 service obtained by the purchaser by means other than tangible

1 storage media. The term includes video programming services,
2 including subscription video services, video on demand
3 television services, and broadcasting services, including
4 content to provide such services. The term shall not include
5 computer software. The term "computer software" shall mean a
6 sequence of automatic data-processing equipment instructions
7 necessary to solve a problem, and includes both system and
8 application programs and subdivisions, such as assemblers,
9 compilers, routines, generators and utilities, but does not
10 include digital video and audio products transferred
11 electronically. The term "permanent" means perpetual or for an
12 indefinite or unspecified length of time. Access to an
13 electronically transferred product on a subscription basis is
14 not a "right of permanent use." A right of permanent use shall
15 be presumed to have been granted unless the agreement between
16 the seller and the purchaser specifies or the circumstances
17 surrounding the transaction suggest or indicate that the right
18 to use terminates on the occurrence of a condition subsequent.

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

24 "§40-23-62.

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

1 "(1) Property, on which the sales tax imposed by the
2 provisions of Article 1 of this chapter is paid by the
3 consumer to a person licensed under the provisions of Article
4 1 of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 "c. For the generation of motive power for
27 transportation.

1 "(12) Fuel and supplies for use or consumption
2 aboard ships, vessels, towing vessels, or barges, or drilling
3 ships, rigs or barges, or seismic or geophysical vessels, or
4 other watercraft (herein for purposes of this exemption being
5 referred to as vessels) engaged in foreign or international
6 commerce or in interstate commerce; provided, that nothing in
7 this article shall be construed to exempt or exclude from the
8 measure of the tax herein levied the gross proceeds of sale or
9 sales of material and supplies to any person for use in
10 fulfilling a contract for the painting, repair or
11 reconditioning of vessels, barges, ships, other watercraft and
12 commercial fishing vessels of over five tons load displacement
13 as registered with the U.S. Coast Guard and licensed by the
14 State of Alabama Department of Conservation and Natural
15 Resources. For purposes of this subdivision, it shall be
16 presumed that vessels engaged in the transportation of cargo
17 between ports in the State of Alabama and ports in foreign
18 countries or possessions or territories of the United States
19 or between ports in the State of Alabama and ports in other
20 states are engaged in foreign or international commerce or
21 interstate commerce, as the case may be. For the purposes of
22 this subdivision, the engaging in foreign or international
23 commerce or interstate commerce shall not require that the
24 vessel involved deliver cargo to or receive cargo from a port
25 in the State of Alabama. For purposes of this subdivision,
26 vessels carrying passengers for hire, and no cargo, between
27 ports in the State of Alabama and ports in foreign countries

1 or possessions or territories of the United States or between
2 ports in the State of Alabama and ports in other states shall
3 be engaged in foreign or international commerce or interstate
4 commerce, as the case may be, if, and only if, both of the
5 following conditions are met: (i) The vessel in question is a
6 vessel of at least 100 gross tons; and (ii) the vessel in
7 question has an unexpired certificate of inspection issued by
8 the United States Coast Guard or by the proper authority of a
9 foreign country for a foreign vessel, which certificate is
10 recognized as acceptable under the laws of the United States.
11 Vessels which are engaged in foreign or international commerce
12 or interstate commerce shall be deemed for the purposes of
13 this subdivision to remain in such commerce while awaiting or
14 under repair in a port of the State of Alabama if such vessel
15 returns after such repairs are completed to engaging in
16 foreign or international commerce or interstate commerce. For
17 purposes of this subdivision, seismic or geophysical vessels
18 which are engaged either in seismic or geophysical tests or
19 evaluations exclusively in offshore federal waters or in
20 traveling to or from conducting such tests or evaluations
21 shall be deemed to be engaged in international or foreign
22 commerce. For purposes of this subdivision, proof that fuel
23 and supplies purchased are for use or consumption aboard
24 vessels engaged in foreign or international commerce or in
25 interstate commerce may be accomplished by the merchant or
26 seller securing the duly signed certificate of the vessel
27 owner, operator or captain or their respective agent on a form

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

18 "(13) Property stored, used, or consumed by the
19 State of Alabama, by the counties within the state or by
20 incorporated municipalities of the State of Alabama.

21 "(14) The use, storage, or consumption of materials,
22 equipment and machinery which, at any time, enter into and
23 become a component part of ships, vessels, towing vessels or
24 barges, or drilling ships, rigs or barges, or seismic or
25 geophysical vessels, other watercraft and commercial fishing
26 vessels of over five tons load displacement as registered with
27 the U.S. Coast Guard and licensed by the Department of

1 Conservation and Natural Resources. Additionally, the use,
2 storage, or consumption of lifeboats, personal flotation
3 devices, ring life buoys, survival craft equipment, distress
4 signals, EPIRB's, fire extinguishers, injury placards, waste
5 management plans and logs, marine sanitation devices,
6 navigation rulebooks, navigation lights, sound signals,
7 navigation day shapes, oil placard cards, garbage placards,
8 FCC SSL, stability instructions, first aid equipment,
9 compasses, anchor and radar reflectors, general alarm systems,
10 bilge pumps, piping, and discharge and electronic position
11 fixing devices on the aforementioned watercraft.

12 "(15) The use, storage, or consumption of fuel oil
13 purchased as fuel for kilns used in manufacturing
14 establishments.

15 "(16) Tangible personal property stored, used, or
16 consumed by county and city school boards within the State of
17 Alabama, independent school boards within the State of
18 Alabama, all educational institutions and agencies of the
19 State of Alabama, the counties within the state or any
20 incorporated municipality of the State of Alabama, and private
21 educational institutions operating within the State of Alabama
22 offering conventional and traditional courses of study, such
23 as those offered by public schools, colleges, or universities
24 within the State of Alabama; but not including nurseries, day
25 care centers, and home schools.

26 "(17) The storage, use, or consumption of railroad
27 cars, vessels, and barges and commercial fishing vessels of

1 over five tons load displacement as registered with the U.S.
2 Coast Guard and licensed by the State of Alabama Department of
3 Conservation and Natural Resources when purchased from the
4 manufacturers or builders thereof.

5 "(18) The storage, use, or consumption of all
6 devices or facilities, and all identifiable components thereof
7 or materials for use therein, used or placed in operation
8 primarily for the control, reduction or elimination of air or
9 water pollution, and the storage, use, or consumption of all
10 identifiable components of or materials used or intended for
11 use in structures built primarily for the control, reduction
12 or elimination of air or water pollution.

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

20 "(20) The storage, use, or other consumption in this
21 state of religious magazines and publications. For the purpose
22 of this subdivision the words "religious magazines and
23 publications" shall be construed to mean printed or
24 illustrated lessons, notes and explanations distributed by
25 churches or other religious organizations free of charge to
26 pupils or students in Sunday schools, Bible classes or other

1 educational facilities established and maintained by churches
2 or similar religious organizations in this state.

3 "(21) The storage, use, or other consumption of
4 wrapping paper and other wrapping materials when used in
5 preparing poultry or poultry products for delivery, shipment
6 or sale by the producer, processor, packer, or seller of such
7 poultry or poultry products including pallets used in shipping
8 poultry and egg products, paper or other materials used for
9 lining boxes or other containers in which poultry or poultry
10 products are packed together with any other materials placed
11 in such containers for the delivery, shipment or sale of
12 poultry or poultry products.

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

23 "(23) The use of seedlings, plants, shoots, and
24 slips which are to be used for planting vegetable gardens or
25 truck farms. Nothing herein shall be construed to exempt, or
26 exclude from the computation of the tax levied, assessed, or

1 payable, the use of plants, seedlings, shoots, slips, nursery
2 stock and floral products except as hereinabove exempted.

3 "(24) Fabricated steel tube sections, when produced
4 and fabricated in this state by any person, firm, or
5 corporation, for any vehicular tunnel for highway vehicular
6 traffic, when sold by the manufacturer or fabricator thereof,
7 and also steel which enters into and becomes a component part
8 of such fabricated steel tube sections of said tunnel, shall
9 be exempted from the provisions of this article and from the
10 computation of the amount of the tax levied, assessed or
11 payable under this article.

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

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

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

5 "The words commercial fishing vessels shall mean
6 vessels whose masters and owners are regularly and exclusively
7 engaged in fishing as their means of livelihood.

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

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

24 "(30) All medicines prescribed by physicians for
25 persons who are 65 years of age or older, and when said
26 prescriptions are filled by licensed pharmacists, shall be
27 exempted from the operation of the state use tax law levied by

1 this article, or by any county or municipal use tax law. The
2 exemptions provided in this subdivision shall not apply to any
3 medicine purchased in any manner other than as is herein
4 provided.

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

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

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

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

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

21 "(31) All diesel fuel used for off-highway
22 agricultural purposes.

23 "(32) The storage, use, or other consumption of any
24 aircraft and replacement parts, components, systems, supplies
25 and sundries affixed or used on said aircraft and ground
26 support equipment and vehicles used by or for the aircraft by
27 a certificated or licensed air carrier with a hub operation

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

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

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

13 "(33) The storage, use, or other consumption of any
14 aviation jet fuel used by an aircraft operated by a
15 certificated or licensed air carrier that purchases jet fuel
16 for use in scheduled all-cargo operations being conducted on
17 international flights or in international commerce. For
18 purposes of this subdivision, the following words or terms
19 shall be defined and interpreted as follows:

20 "a. Air Carrier. Any person, firm, corporation, or
21 entity undertaking by any means, directly or indirectly, to
22 provide air transportation.

23 "b. All-Cargo Operations. Any flight conducted by an
24 air carrier for compensation or hire other than a passenger
25 carrying flight, except passengers as specified in 14 C.F.R.
26 §121.583(a) or 14 C.F.R. §135.85, as amended.

1 "c. International Commerce. Any air carrier engaged
2 in all-cargo operations transporting goods for compensation or
3 hire on international flights.

4 "d. International Flights. Any air carrier
5 conducting scheduled all-cargo operations between any point
6 within the 50 states of the United States and the District of
7 Columbia and any point outside the 50 states of the United
8 States and the District of Columbia, including any interim
9 stops within the United States so long as the ultimate origin
10 or destination of the aircraft is outside the United States
11 and the District of Columbia.

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

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

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

1 "(35) The storage, use, or other consumption of the
2 following:

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

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

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

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

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

21 "The delivery of items exempted by this subdivision
22 to the purchaser or lessee in this state does not disqualify
23 the purchaser or lessee from the exemption if the property is
24 removed from the state by any means, including by the use of
25 the purchaser's or lessee's own facilities.

26 "The shipment to a place in this state of equipment
27 exempted by this subdivision for further assembly or

1 fabrication does not disqualify the purchaser or lessee from
2 the exemption if on completion of the further assembly or
3 fabrication the equipment is removed forthwith from this
4 state. This subdivision applies to a sale that may occur when
5 the equipment exempted is further assembled or fabricated if
6 on completion the equipment is removed forthwith from this
7 state.

8 "(36) The storage or use of metal, other than gold
9 or silver, when such metal is held by an investment trust the
10 shares or other units in the trust's net assets of which have
11 been issued in exchange for such metal and are publicly
12 traded, including metal stored in warehouses located in this
13 state. For purposes of this subdivision, the term metals
14 includes, but is not limited to, copper, aluminum, nickel,
15 zinc, tin, lead, and other similar metals typically used in
16 commercial and industrial applications.

17 "(37) For the period commencing October 1, 2012, and
18 ending May 30, 2022, unless extended by joint resolution, all
19 parts, components, and systems that become a part of a fixed
20 or rotary wing military aircraft or certified transport
21 category aircraft which undergoes conversion, reconfiguration,
22 or general maintenance so long as the address of the aircraft
23 for FAA registration is not in the state; provided, however,
24 that this exemption shall not apply to a local use tax unless
25 previously exempted by local law or approved by resolution of
26 the local governing body.

1 "(38) Lunches sold not for profit and within school
2 buildings to pupils of kindergarten, grammar, and high
3 schools, either public or private.

4 "(39) Products transferred electronically acquired
5 with less than the right of permanent use granted by the
6 seller or use which is conditioned upon continued payment from
7 the purchaser. "Product transferred electronically" means
8 property or a service obtained by the purchaser by means other
9 than tangible storage media. The term includes video
10 programming services, including subscription video services,
11 video on demand television services, and broadcasting
12 services, including content to provide such services. The term
13 shall not include computer software. The term "computer
14 software" shall mean a sequence of automatic data-processing
15 equipment instructions necessary to solve a problem, and
16 includes both system and application programs and
17 subdivisions, such as assemblers, compilers, routines,
18 generators and utilities, but does not include digital video
19 and audio products transferred electronically. The term
20 "permanent" means perpetual or for an indefinite or
21 unspecified length of time. Access to an electronically
22 transferred product on a subscription basis is not a "right of
23 permanent use." A right of permanent use shall be presumed to
24 have been granted unless the agreement between the seller and
25 the purchaser specifies or the circumstances surrounding the
26 transaction suggest or indicate that the right to use
27 terminates on the occurrence of a condition subsequent."

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