

1 SB96
2 156176-2
3 By Senators Whatley and Brewbaker
4 RFD: Finance and Taxation General Fund
5 First Read: 14-JAN-14
6 PFD: 01/10/2014

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8 SYNOPSIS: Certain items and organizations are exempted
9 from sales and use taxes in the Code of Alabama
10 1975.

11 This bill retroactively clarifies and
12 confirms that the gross proceeds of sales of
13 tangible personal property to, or the storage, use,
14 or other consumption of tangible personal property
15 by, private schools, colleges, and universities
16 located in Alabama continue to be exempt from state
17 and local sales and use tax, as provided in Act 371
18 of the 1959 Regular Session. Consistent with that
19 act, this bill also retroactively clarifies and
20 confirms that the exemption from sales and use
21 taxes continues to apply to lunches sold to both
22 public and private school children within school
23 buildings.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

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2 To amend Sections 40-23-4, as amended by Act
3 2013-200, 2013 Regular Session, and 40-23-62, as amended by
4 Act 2013-196 and Act 2013-200 of the 2013 Regular Session,
5 Code of Alabama 1975, to clarify and confirm that the gross
6 proceeds of sales to or the storage, use, or other consumption
7 of tangible personal property by private schools, colleges,
8 and universities located in Alabama are exempt from state and
9 local sales and use tax, as are lunches sold to school
10 children of either public or private schools, while in school
11 buildings; and to provide a retroactive effective date.
12 However, no refunds shall be due or issued pursuant to this
13 act with respect to those periods prior to the effective date
14 of this act.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 40-23-4, as amended by Act
17 2013-200, 2013 Regular Session, and 40-23-62, as amended by
18 Act 2013-196 and Act 2013-200 of the 2013 Regular Session,
19 Code of Alabama 1975, are amended to read as follows:

20 "§40-23-4.

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

25 "(1) The gross proceeds of the sales of lubricating
26 oil and gasoline as defined in Sections 40-17-30 and 40-17-170
27 and the gross proceeds from those sales of lubricating oil

1 destined for out-of-state use which are transacted in a manner
2 whereby an out-of-state purchaser takes delivery of such oil
3 at a distributor's plant within this state and transports it
4 out-of-state, which are otherwise taxed.

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

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

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

22 "(5) The gross proceeds of sales of all livestock by
23 whomsoever sold, and also the gross proceeds of poultry and
24 other products of the farm, dairy, grove, or garden, when in
25 the original state of production or condition of preparation
26 for sale, when such sale or sales are made by the producer or
27 members of his immediate family or for him by those employed

1 by him to assist in the production thereof. Nothing herein
2 shall be construed to exempt or exclude from the measure or
3 computation of the tax levied, assessed, or payable hereunder,
4 the gross proceeds of sales of poultry or poultry products
5 when not products of the farm.

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

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

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

1 "(9) The gross proceeds of the sale, or sales of
2 wood residue, coal, or coke to manufacturers, electric power
3 companies, and transportation companies for use or consumption
4 in the production of by-products, or the generation of heat or
5 power used in manufacturing tangible personal property for
6 sale, for the generation of electric power or energy for use
7 in manufacturing tangible personal property for sale or for
8 resale, or for the generation of motive power for
9 transportation.

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

25 "For purposes of this subdivision, it shall be
26 presumed that vessels engaged in the transportation of cargo
27 between ports in the State of Alabama and ports in foreign

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

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

18 "(29) The gross proceeds of the sales of all
19 antibiotics, hormones and hormone preparations, drugs,
20 medicines, and other medications including serums and
21 vaccines, vitamins, minerals, or other nutrients for use in
22 the production and growing of fish, livestock, and poultry by
23 whomsoever sold. Such exemption as herein granted shall be in
24 addition to the exemption provided by law for feed for fish,
25 livestock, and poultry, and in addition to the exemptions
26 provided by law for the above-enumerated substances and

1 products when mixed and used as ingredients in fish,
2 livestock, and poultry feed.

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

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

13 "a. The name and claim number as shown on a
14 "Medicare" card issued by the United States Social Security
15 Administration.

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

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

22 "For the purposes of this subdivision, any person
23 filing a false proof of age shall be guilty of a misdemeanor
24 and upon conviction thereof shall be punished by a fine of
25 \$100.

26 "(31) There shall be exempted from the tax levied by
27 this division the gross receipts of sales of grass sod of all

1 kinds and character when in the original state of production
2 or condition of preparation for sale, when such sales are made
3 by the producer or members of his family or for him by those
4 employed by him to assist in the production thereof; provided,
5 that nothing herein shall be construed to exempt sales of sod
6 by a person engaged in the business of selling plants,
7 seedlings, nursery stock, or floral products.

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

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

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

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

23 "(36) The gross receipts of sales of Lespedeza
24 bicolor and other species of perennial plant seed and
25 seedlings sold for wildlife and game food production purposes
26 by the state.

1 "(37) The gross receipts of any aircraft
2 manufactured, sold, and delivered in this state if said
3 aircraft are not permanently domiciled in Alabama and are
4 removed to another state.

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

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

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

11 "b. Is hosted by a not-for-profit corporation
12 organized and existing under the laws of the State of Alabama;
13 and

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

20 "d. Has not been held in the State of Alabama on
21 more than one prior occasion, provided, however, that for such
22 purpose the Professional Golfers Association Championship, the
23 United States Open Golf Championship, the United States
24 Amateur Golf Championship of the United States Golf
25 Association, and the United States Open Tennis Championship
26 shall each be treated as a separate event.

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

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

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

18 "(41) The gross receipts from the sale of hot or
19 cold food and beverage products sold to or by a certificated
20 or licensed air carrier with a hub operation within this
21 state, for use in conducting intrastate, interstate, or
22 foreign commerce for transporting people or property by air.
23 For the purpose of this subdivision, the words "hub operation
24 within this state" shall be construed to have all of the
25 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 "(42) The gross receipts from the sale of any
7 aviation jet fuel to a certificated or licensed air carrier
8 purchased for use in scheduled all-cargo operations being
9 conducted on international flights or in international
10 commerce. For purposes of this subdivision, the following
11 words or terms shall be defined and interpreted as follows:

12 "a. Air Carrier. Any person, firm, corporation, or
13 entity undertaking by any means, directly or indirectly, to
14 provide air transportation.

15 "b. All-Cargo Operations. Any flight conducted by an
16 air carrier for compensation or hire other than a passenger
17 carrying flight, except passengers as specified in 14 C.F.R.
18 §121.583(a) or 14 C.F.R. §135.85, as amended.

19 "c. International Commerce. Any air carrier engaged
20 in all-cargo operations transporting goods for compensation or
21 hire on international flights.

22 "d. International Flights. Any air carrier
23 conducting scheduled all-cargo operations between any point
24 within the 50 states of the United States and the District of
25 Columbia and any point outside the 50 states of the United
26 States and the District of Columbia, including any interim
27 stops within the United States so long as the ultimate origin

1 or destination of the aircraft is outside the United States
2 and the District of Columbia.

3 "(43) The gross proceeds of the sale or sales of the
4 following:

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

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

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

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

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

23 "(45) The gross receipts derived from the sale or
24 sales of fruit or other agricultural products by the person or
25 corporation that planted, cultivated, and harvested such fruit
26 or agricultural product.

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

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

22 "(48) For the period commencing on October 1, 2012,
23 and ending May 30, 2022, unless extended by joint resolution,
24 the gross receipts from the sale of parts, components, and
25 systems that become a part of a fixed or rotary wing military
26 aircraft or certified transport category aircraft that
27 undergoes conversion, reconfiguration, or general maintenance

1 so long as the address of the aircraft for FAA registration is
2 not in the state; provided, however, that this exemption shall
3 not apply to a local sales tax unless previously exempted by
4 local law or approved by resolution of the local governing
5 body.

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

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

15 "§40-23-62.

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

19 "(1) Property, on which the sales tax imposed by the
20 provisions of Article 1 of this chapter is paid by the
21 consumer to a person licensed under the provisions of Article
22 1 of this chapter.

23 "(2) Property, the storage, use or other consumption
24 of which this state is prohibited from taxing under the
25 Constitution or laws of the United States of America or under
26 the constitution of this state.

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

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

8 "(5) All fertilizer; provided, that the word
9 "fertilizer" as used in this article shall not be construed to
10 include cottonseed meal when not in combination with other
11 material.

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

15 "(7) Insecticides and fungicides and feed for
16 livestock and poultry, but not including prepared foods for
17 dogs and cats.

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

1 payable hereunder, the gross proceeds of sales of poultry or
2 poultry products when not products of the farm.

3 "(9) Cottonseed meal exchanged for cottonseed at or
4 by cotton gins.

5 "(10) Transportation, gas, water, or electricity, of
6 the kinds and natures, the rates and charges for which when
7 sold by public utilities, are customarily fixed and determined
8 by the Public Service Commission of Alabama or like regulatory
9 bodies.

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

14 "a. In manufacturing tangible personal property for
15 sale;

16 "b. For the generation of electric power or energy
17 for use in manufacturing tangible personal property for sale
18 or for resale; or

19 "c. For the generation of motive power for
20 transportation.

21 "(12) Fuel and supplies for use or consumption
22 aboard ships, vessels, towing vessels, or barges, or drilling
23 ships, rigs or barges, or seismic or geophysical vessels, or
24 other watercraft (herein for purposes of this exemption being
25 referred to as vessels) engaged in foreign or international
26 commerce or in interstate commerce; provided, that nothing in
27 this article shall be construed to exempt or exclude from the

1 measure of the tax herein levied the gross proceeds of sale or
2 sales of material and supplies to any person for use in
3 fulfilling a contract for the painting, repair or
4 reconditioning of vessels, barges, ships, other watercraft and
5 commercial fishing vessels of over five tons load displacement
6 as registered with the U.S. Coast Guard and licensed by the
7 State of Alabama Department of Conservation and Natural
8 Resources. For purposes of this subdivision, it shall be
9 presumed that vessels engaged in the transportation of cargo
10 between ports in the State of Alabama and ports in foreign
11 countries or possessions or territories of the United States
12 or between ports in the State of Alabama and ports in other
13 states are engaged in foreign or international commerce or
14 interstate commerce, as the case may be. For the purposes of
15 this subdivision, the engaging in foreign or international
16 commerce or interstate commerce shall not require that the
17 vessel involved deliver cargo to or receive cargo from a port
18 in the State of Alabama. For purposes of this subdivision,
19 vessels carrying passengers for hire, and no cargo, between
20 ports in the State of Alabama and ports in foreign countries
21 or possessions or territories of the United States or between
22 ports in the State of Alabama and ports in other states shall
23 be engaged in foreign or international commerce or interstate
24 commerce, as the case may be, if, and only if, both of the
25 following conditions are met: (i) The vessel in question is a
26 vessel of at least 100 gross tons; and (ii) the vessel in
27 question has an unexpired certificate of inspection issued by

1 the United States Coast Guard or by the proper authority of a
2 foreign country for a foreign vessel, which certificate is
3 recognized as acceptable under the laws of the United States.
4 Vessels which are engaged in foreign or international commerce
5 or interstate commerce shall be deemed for the purposes of
6 this subdivision to remain in such commerce while awaiting or
7 under repair in a port of the State of Alabama if such vessel
8 returns after such repairs are completed to engaging in
9 foreign or international commerce or interstate commerce. For
10 purposes of this subdivision, seismic or geophysical vessels
11 which are engaged either in seismic or geophysical tests or
12 evaluations exclusively in offshore federal waters or in
13 traveling to or from conducting such tests or evaluations
14 shall be deemed to be engaged in international or foreign
15 commerce. For purposes of this subdivision, proof that fuel
16 and supplies purchased are for use or consumption aboard
17 vessels engaged in foreign or international commerce or in
18 interstate commerce may be accomplished by the merchant or
19 seller securing the duly signed certificate of the vessel
20 owner, operator or captain or their respective agent on a form
21 prescribed by the department that the fuel and supplies
22 purchased are for use or consumption aboard vessels engaged in
23 foreign or international commerce or in interstate commerce.
24 Any person filing a false certificate shall be guilty of a
25 misdemeanor and upon conviction shall be fined not less than
26 \$25 nor more than \$500 for each offense. Each false
27 certificate filed shall constitute a separate offense. Any

1 person filing a false certificate shall be liable to the
2 department for all taxes imposed by this division upon the
3 merchant or seller, together with any interest or penalties
4 thereon, by reason of the sale or sales of fuel and supplies
5 applicable to such false certificate. If a merchant or seller
6 of fuel and supplies secures the certificate herein mentioned,
7 properly completed, such merchant or seller shall not be
8 liable for the taxes imposed by this division, if such
9 merchant or seller had no knowledge that such certificate was
10 false when it was filed with such merchant or seller.

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

14 "(14) The use, storage or consumption of materials,
15 equipment and machinery which, at any time, enter into and
16 become a component part of ships, vessels, towing vessels or
17 barges, or drilling ships, rigs or barges, or seismic or
18 geophysical vessels, other watercraft and commercial fishing
19 vessels of over five tons load displacement as registered with
20 the U.S. Coast Guard and licensed by the Department of
21 Conservation and Natural Resources. Additionally, the use,
22 storage, or consumption of lifeboats, personal flotation
23 devices, ring life buoys, survival craft equipment, distress
24 signals, EPIRB's, fire extinguishers, injury placards, waste
25 management plans and logs, marine sanitation devices,
26 navigation rulebooks, navigation lights, sound signals,
27 navigation day shapes, oil placard cards, garbage placards,

1 FCC SSL, stability instructions, first aid equipment,
2 compasses, anchor and radar reflectors, general alarm systems,
3 bilge pumps, piping, and discharge and electronic position
4 fixing devices on the aforementioned watercraft.

5 "(15) The use, storage, or consumption of fuel oil
6 purchased as fuel for kilns used in manufacturing
7 establishments.

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

19 "(17) The storage, use, or consumption of railroad
20 cars, vessels, and barges and commercial fishing vessels of
21 over five tons load displacement as registered with the U.S.
22 Coast Guard and licensed by the State of Alabama Department of
23 Conservation and Natural Resources when purchased from the
24 manufacturers or builders thereof.

25 "(18) The storage, use, or consumption of all
26 devices or facilities, and all identifiable components thereof
27 or materials for use therein, used or placed in operation

1 primarily for the control, reduction or elimination of air or
2 water pollution, and the storage, use, or consumption of all
3 identifiable components of or materials used or intended for
4 use in structures built primarily for the control, reduction
5 or elimination of air or water pollution.

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

13 "(20) The storage, use, or other consumption in this
14 state of religious magazines and publications. For the purpose
15 of this subdivision the words "religious magazines and
16 publications" shall be construed to mean printed or
17 illustrated lessons, notes and explanations distributed by
18 churches or other religious organizations free of charge to
19 pupils or students in Sunday schools, Bible classes or other
20 educational facilities established and maintained by churches
21 or similar religious organizations in this state.

22 "(21) The storage, use, or other consumption of
23 wrapping paper and other wrapping materials when used in
24 preparing poultry or poultry products for delivery, shipment
25 or sale by the producer, processor, packer, or seller of such
26 poultry or poultry products including pallets used in shipping
27 poultry and egg products, paper or other materials used for

1 lining boxes or other containers in which poultry or poultry
2 products are packed together with any other materials placed
3 in such containers for the delivery, shipment or sale of
4 poultry or poultry products.

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

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

21 "(24) Fabricated steel tube sections, when produced
22 and fabricated in this state by any person, firm, or
23 corporation, for any vehicular tunnel for highway vehicular
24 traffic, when sold by the manufacturer or fabricator thereof,
25 and also steel which enters into and becomes a component part
26 of such fabricated steel tube sections of said tunnel, shall
27 be exempted from the provisions of this article and from the

1 computation of the amount of the tax levied, assessed or
2 payable under this article.

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

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

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

22 "The words commercial fishing vessels shall mean
23 vessels whose masters and owners are regularly and exclusively
24 engaged in fishing as their means of livelihood.

25 "(28) The storage, use, or withdrawal of sawdust,
26 wood shavings, wood chips, and other like materials purchased

1 for use as chicken litter by poultry producers and poultry
2 processors shall be exempt under this article.

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

15 "(30) All medicines prescribed by physicians for
16 persons who are 65 years of age or older, and when said
17 prescriptions are filled by licensed pharmacists, shall be
18 exempted from the operation of the state use tax law levied by
19 this article, or by any county or municipal use tax law. The
20 exemptions provided in this subdivision shall not apply to any
21 medicine purchased in any manner other than as is herein
22 provided.

23 "For the purposes of this subdivision, proof of age
24 may be accomplished by filing with the dispensing pharmacist
25 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) All diesel fuel used for off-highway
15 agricultural purposes.

16 "(32) The storage, use or other consumption of any
17 aircraft and replacement parts, components, systems, supplies
18 and sundries affixed or used on said aircraft and ground
19 support equipment and vehicles used by or for the aircraft by
20 a certificated or licensed air carrier with a hub operation
21 within this state, for use in conducting intrastate,
22 interstate or foreign commerce for transporting people or
23 property by air. For the purpose of this subdivision, the
24 words "hub operation within this state" shall be construed to
25 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 "(33) The storage, use or other consumption of any
7 aviation jet fuel used by an aircraft operated by a
8 certificated or licensed air carrier that purchases jet fuel
9 for use in scheduled all-cargo operations being conducted on
10 international flights or in international commerce. For
11 purposes of this subdivision, the following words or terms
12 shall be defined and interpreted as follows:

13 "a. Air Carrier. Any person, firm, corporation, or
14 entity undertaking by any means, directly or indirectly, to
15 provide air transportation.

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

20 "c. International Commerce. Any air carrier engaged
21 in all-cargo operations transporting goods for compensation or
22 hire on international flights.

23 "d. International Flights. Any air carrier
24 conducting scheduled all-cargo operations between any point
25 within the 50 states of the United States and the District of
26 Columbia and any point outside the 50 states of the United
27 States and the District of Columbia, including any interim

1 stops within the United States so long as the ultimate origin
2 or destination of the aircraft is outside the United States
3 and the District of Columbia.

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

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

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

1 "c. Fuel and supplies for use or consumption aboard
2 boats, ships, aircraft, and towing vessels when used
3 exclusively in transporting persons or property between a
4 point in Alabama and a point or points in offshore federal
5 waters for the exploration for or production of oil, gas,
6 sulphur, or other minerals in offshore federal waters.

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

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

13 "The delivery of items exempted by this subdivision
14 to the purchaser or lessee in this state does not disqualify
15 the purchaser or lessee from the exemption if the property is
16 removed from the state by any means, including by the use of
17 the purchaser's or lessee's own facilities.

18 "The shipment to a place in this state of equipment
19 exempted by this subdivision for further assembly or
20 fabrication does not disqualify the purchaser or lessee from
21 the exemption if on completion of the further assembly or
22 fabrication the equipment is removed forthwith from this
23 state. This subdivision applies to a sale that may occur when
24 the equipment exempted is further assembled or fabricated if
25 on completion the equipment is removed forthwith from this
26 state.

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

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

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

23 Section 2. This act shall apply retroactively to all
24 open tax periods and all periods for which a preliminary or
25 final assessment of tax could be entered pursuant to Section
26 40-2A-7, Code of Alabama 1975, or any successor general or
27 local law. No refunds shall be due or issued pursuant to this

1 act with respect to those periods prior to the effective date
2 of this act.

3 Section 3. The provisions of this act are severable.
4 If any part of this act is declared invalid or
5 unconstitutional, that declaration shall not affect the part
6 which remains.

7 Section 4. All laws or parts of laws which conflict
8 with this act are repealed, provided that the amendments
9 herein are not intended to amend or repeal, but shall instead
10 supplement, the provisions of Section 40-9-31, Code of Alabama
11 1975.

12 Section 5. This act shall become effective
13 immediately following its passage and approval by the
14 Governor, or its otherwise becoming law.