

1 SB287
2 156101-2
3 By Senator Dial
4 RFD: Finance and Taxation Education
5 First Read: 28-JAN-14

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

13 This bill would increase the state sales and
14 use tax general rate to four and one-quarter
15 percent on September 1, 2014, to four and one-half
16 percent on September 1, 2015, to four and
17 three-quarters percent on September 1, 2016, and to
18 five percent on September 1, 2017.

19 This bill would phase out the state sales
20 and use taxes on food over a four-year period by
21 reducing the rates by one percentage point per year
22 beginning September 1, 2014.

23 This bill would phase out the state sales
24 and use taxes on food sold through coin-operated
25 dispensing machines over a three-year period by
26 reducing the rates by one percentage point per year
27 beginning September 1, 2015.

1 This bill would exempt sales of food,
2 including food sold through coin-operated
3 dispensing machines, from the sales and use taxes
4 beginning September 1, 2017.

5
6 A BILL
7 TO BE ENTITLED
8 AN ACT

9
10 To amend Sections 40-23-2 and 40-23-61, Code of
11 Alabama 1975, to increase the state sales and use tax general
12 rates to four and one-quarter percent on September 1, 2014, to
13 four and one-half percent on September 1, 2015, to four and
14 three-quarters percent on September 1, 2016, and to five
15 percent on September 1, 2017; to phase out the state sales and
16 use taxes on food by reducing the rates by one percentage
17 point per year beginning September 1, 2014; to phase out the
18 state sales and use taxes on food sold through coin-operated
19 dispensing machines by reducing the rates by one percentage
20 point per year beginning September 1, 2015; to exempt sales of
21 food, including food sold through coin-operated dispensing
22 machines, from the sales and use taxes beginning September 1,
23 2017.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. LEGISLATIVE INTENT. The Legislature
26 hereby finds that the requirement to pay sales tax on food
27 places a burden on all taxpayers in the state, especially the

1 less fortunate. The Legislature recognizes the effect on-line
2 purchases has had on tax collections due to inaction by the
3 federal government to act on pending legislation allowing for
4 the collection on on-line sales. The passage of this act would
5 have a positive impact on state tax collections on general
6 merchandise which would help offset the elimination of the
7 sales tax on food.

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

10 "§40-23-2.

11 "There is levied, in addition to all other taxes of
12 every kind now imposed by law, and shall be collected as
13 herein provided, a privilege or license tax against the person
14 on account of the business activities and in the amount to be
15 determined by the application of rates against gross sales, or
16 gross receipts, as the case may be, as follows:

17 "(1) Upon every person, firm, or corporation,
18 (including the State of Alabama and its Alcoholic Beverage
19 Control Board in the sale of alcoholic beverages of all kinds,
20 the University of Alabama, Auburn University, and all other
21 institutions of higher learning in the state, whether the
22 institutions be denominational, state, county, or municipal
23 institutions, any association or other agency or
24 instrumentality of the institutions) engaged or continuing
25 within this state, in the business of selling at retail any
26 tangible personal property whatsoever, including merchandise
27 and commodities of every kind and character, (not including,

1 however, bonds or other evidences of debts or stocks, nor
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,
5 and commercial fishing vessels of over five tons load
6 displacement as registered with the U.S. Coast Guard and
7 licensed by the State of Alabama Department of Conservation
8 and Natural Resources), an amount equal to: for taxable
9 periods beginning on or before August 31, 2014, four percent
10 of the gross proceeds of sales of the business except where a
11 different amount is expressly provided herein; for taxable
12 periods beginning on and after September 1, 2014, four and
13 one-quarter percent of the gross proceeds of sales of the
14 business except where a different amount is expressly provided
15 herein; for taxable periods beginning on and after September
16 1, 2015, four and one-half percent of the gross proceeds of
17 sales of the business except where a different amount is
18 expressly provided herein; for taxable periods beginning on
19 and after September 1, 2016, four and three-quarters percent
20 of the gross proceeds of sales of the business except where a
21 different amount is expressly provided herein; for taxable
22 periods beginning on and after September 1, 2017, five percent
23 of the gross proceeds of sales of the business except where a
24 different amount is expressly provided herein. Provided,
25 however, that any person engaging or continuing in business as
26 a retailer and wholesaler or jobber shall pay the tax required
27 on the gross proceeds of retail sales of the business at the

1 rates specified, when his or her books are kept so as to show
2 separately the gross proceeds of sales of each business, and
3 when his or her books are not kept he or she shall pay the tax
4 as a retailer, on the gross sales of the business.

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

14 "(2) Upon every person, firm, or corporation engaged
15 or continuing within this state in the business of conducting
16 or operating places of amusement or entertainment, billiard
17 and pool rooms, bowling alleys, amusement devices, musical
18 devices, theaters, opera houses, moving picture shows,
19 vaudevilles, amusement parks, athletic contests, including
20 wrestling matches, prize fights, boxing and wrestling
21 exhibitions, football and baseball games, (including athletic
22 contests, conducted by or under the auspices of any
23 educational institution within this state, or any athletic
24 association thereof, or other association whether the
25 institution or association be a denominational, a state, or
26 county, or a municipal institution, or association or a state,
27 county, or city school, or other institution, association or

1 school), skating rinks, race tracks, golf courses, or any
2 other place at which any exhibition, display, amusement, or
3 entertainment is offered to the public or place or places
4 where an admission fee is charged, including public bathing
5 places, public dance halls of every kind and description
6 within the State of Alabama, an amount equal to: for taxable
7 periods beginning on or before August 31, 2014, four percent
8 of the gross receipts of any such business; for taxable
9 periods beginning on and after September 1, 2014, four and
10 one-quarter percent of the gross receipts of any such
11 business; for taxable periods beginning on and after September
12 1, 2015, four and one-half percent of the gross receipts of
13 any such business; for taxable periods beginning on and after
14 September 1, 2016, four and three-quarters percent of the
15 gross receipts of any such business; for taxable periods
16 beginning on and after September 1, 2017, five percent of the
17 gross receipts of any such business. Provided, however,
18 notwithstanding any language to the contrary in the prior
19 portion of this subdivision, the tax provisions so specified
20 shall not apply to any athletic event conducted by a public or
21 nonpublic primary or secondary school or any athletic event
22 conducted by or under the auspices of the Alabama High School
23 Athletic Association. The tax amount which would have been
24 collected pursuant to this subdivision shall continue to be
25 collected by the public or nonpublic primary or secondary
26 school, but shall be retained by the school which collected it
27 and shall be used by the school for school purposes.

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

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

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

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

16 "Sales of automobiles, motorcycles, trucks, truck
17 trailers, or semitrailers that will be registered or titled
18 outside Alabama, that are exported or removed from Alabama
19 within 72 hours by the purchaser or his or her agent for first
20 use outside Alabama are not subject to the Alabama sales tax.
21 Sales of other vehicles such as mobile homes, motor bikes, all
22 terrain vehicles, and boats do not qualify for the export
23 exemption provision and are taxable unless the dealer can
24 provide factual evidence that the vehicle was delivered
25 outside of Alabama or to a common carrier for transportation
26 outside Alabama. In order for the sale to be exempt from

1 Alabama tax, the information relative to the exempt sale shall
2 be documented on forms approved by the Revenue Department.

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

9 "(5) Upon every person, firm, or corporation engaged
10 or continuing within this state in the business of selling
11 through coin-operated dispensing machines, food and food
12 products for human consumption, not including beverages other
13 than coffee, milk, milk products, and substitutes therefor,
14 there is levied a tax equal to: for taxable periods beginning
15 on or before August 31, 2015, three percent of the cost of the
16 food, food products, and beverages sold through the machines,
17 which cost for the purpose of this subdivision shall be the
18 gross proceeds of sales of the business; for taxable periods
19 beginning on and after September 1, 2015, two percent of the
20 cost of the food, food products, and beverages sold through
21 the machines, which cost for the purpose of this subdivision
22 shall be the gross proceeds of sales of the business; for
23 taxable periods beginning on and after September 1, 2016, one
24 percent of the cost of food, food products, and beverages sold
25 through the machines, which cost for the purpose of this
26 subdivision shall be the gross proceeds of sales of the
27 business; for taxable periods beginning on and after September

1 1, 2017, the cost of food, food products, and beverages sold
2 through the machines shall be exempt.

3 "§40-23-61.

4 "(a) An excise tax is hereby imposed on the storage,
5 use or other consumption in this state of tangible personal
6 property, not including, however, materials and supplies
7 bought for use in fulfilling a contract for the painting,
8 repairing or reconditioning of vessels, barges, ships, other
9 watercraft and commercial fishing vessels of over five tons
10 load displacement as registered with the U.S. Coast Guard and
11 licensed by the State of Alabama Department of Conservation
12 and Natural Resources, purchased at retail on or after October
13 1, 1965, for storage, use or other consumption in this state
14 at the rate of following rates: for taxable periods beginning
15 on or before August 31, 2014, four percent of the sales price
16 of such property or the amount of tax collected by the seller,
17 whichever is greater; for taxable periods beginning on and
18 after September 1, 2014, four and one-quarter percent of the
19 sales price of such property or the amount of tax collected by
20 the seller, whichever is greater; for taxable periods
21 beginning on and after September 1, 2015, four and one-half
22 percent of the sales price of such property or the amount of
23 tax collected by the seller, whichever is greater; for taxable
24 periods beginning on and after September 1, 2016, four and
25 three-quarters percent of the sales price of such property or
26 the amount of tax collected by the seller, whichever is
27 greater; for taxable periods beginning on and after September

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

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

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

23 "Of the total \$.02 tax on each dollar of sale
24 provided hereunder, 58 percent of the total tax generated by
25 this subsection shall be deposited to the credit of the
26 Education Trust Fund; and 42 percent of the total tax

1 generated by this subsection shall be deposited to the credit
2 of the State General Fund.

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

17 "(e) An excise tax is hereby imposed on the classes
18 of tangible personal property, and at the rates imposed on
19 such classes, specified in subsections (a), (b) and (c) of
20 this section, on the storage, use, or other consumption in the
21 performance of a contract in this state of any such tangible
22 personal property, new or used, the tax to be measured by the
23 sales price or the fair and reasonable market value of such
24 tangible personal property when put into use in this state,
25 whichever is less; provided, that the tax imposed by this
26 subsection shall not apply where the taxes imposed by
27 subsection (a), (b), or (c) of this section apply."

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

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

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

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

16 Section 4. Notwithstanding any other provision of
17 law,

18 (a) For taxable periods beginning on and after
19 September 1, 2014, the state sales and use tax rate on food
20 shall be three percent of the gross receipts from the sale or
21 use of food.

22 (b) For taxable periods beginning on and after
23 September 1, 2015, the state sales and use tax rate on food
24 shall be two percent of the gross receipts from the sale or
25 use of food.

26 (c) For taxable periods beginning on and after
27 September 1, 2016, the state sales and use tax rate on food

1 shall be one percent of the gross receipts from the sale or
2 use of food.

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

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

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