

1 SB279
2 147702-1
3 By Senators Dial and Whatley
4 RFD: Finance and Taxation Education
5 First Read: 28-FEB-13

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

13 This bill would increase the state sales and
14 use tax general rate to four and one-quarter
15 percent on September 1, 2013, to four and one-half
16 percent on September 1, 2014, to four and
17 three-quarters percent on September 1, 2015, and to
18 five percent on September 1, 2016.

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, 2013.

23 This bill would exempt sales of food from
24 the sales and use taxes beginning September 1,
25 2016.

26
27 A BILL

1 TO BE ENTITLED

2 AN ACT

3
4 To amend Sections 40-23-2 and 40-23-61, Code of
5 Alabama 1975, to increase the state sales and use tax general
6 rates to four and one-quarter percent on September 1, 2013, to
7 four and one-half percent on September 1, 2014, to four and
8 three-quarters percent on September 1, 2015, and to five
9 percent on September 1, 2016; to phase out the state sales and
10 use taxes on food by reducing the rates by one percentage
11 point per year beginning September 1, 2013; to exempt sales of
12 food from the sales and use taxes beginning September 1, 2016.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

26 "§40-23-2.

1 There is levied, in addition to all other taxes of
2 every kind now imposed by law, and shall be collected as
3 herein provided, a privilege or license tax against the person
4 on account of the business activities and in the amount to be
5 determined by the application of rates against gross sales, or
6 gross receipts, as the case may be, as follows:

7 (1) Upon every person, firm, or corporation,
8 (including the State of Alabama and its Alcoholic Beverage
9 Control Board in the sale of alcoholic beverages of all kinds,
10 the University of Alabama, Auburn University, and all other
11 institutions of higher learning in the state, whether the
12 institutions be denominational, state, county, or municipal
13 institutions, any association or other agency or
14 instrumentality of the institutions) engaged or continuing
15 within this state, in the business of selling at retail any
16 tangible personal property whatsoever, including merchandise
17 and commodities of every kind and character, (not including,
18 however, bonds or other evidences of debts or stocks, nor
19 sales of material and supplies to any person for use in
20 fulfilling a contract for the painting, repair, or
21 reconditioning of vessels, barges, ships, other watercraft,
22 and commercial fishing vessels of over five tons load
23 displacement as registered with the U.S. Coast Guard and
24 licensed by the State of Alabama Department of Conservation
25 and Natural Resources), an amount equal to: for taxable
26 periods beginning on or before August 31, 2013, four percent
27 of the gross proceeds of sales of the business except where a

1 different amount is expressly provided herein; for taxable
2 periods beginning on and after September 1, 2013, four and
3 one-quarter percent of the gross proceeds of sales of the
4 business except where a different amount is expressly provided
5 herein; for taxable periods beginning on and after September
6 1, 2014, four and one-half percent of the gross proceeds of
7 sales of the business except where a different amount is
8 expressly provided herein; for taxable periods beginning on
9 and after September 1, 2015, four and three-quarters 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, 2016, five percent
13 of the gross proceeds of sales of the business except where a
14 different amount is expressly provided herein. Provided,
15 however, that any person engaging or continuing in business as
16 a retailer and wholesaler or jobber shall pay the tax required
17 on the gross proceeds of retail sales of the business at the
18 rates specified, when his or her books are kept so as to show
19 separately the gross proceeds of sales of each business, and
20 when his or her books are not kept he or she shall pay the tax
21 as a retailer, on the gross sales of the business.

22 Where any used part including tires of an automotive
23 vehicle or a truck trailer, semitrailer, or house trailer is
24 taken in trade, or in a series of trades, as a credit or part
25 payment on the sale of a new or rebuilt part or tire, the tax
26 levied herein shall be paid on the net difference, that is,
27 the price of the new or used part or tire sold less the credit

1 for the used part or tire taken in trade, provided, however,
2 this provision shall not be construed to include batteries.

3 (2) Upon every person, firm, or corporation engaged
4 or continuing within this state in the business of conducting
5 or operating places of amusement or entertainment, billiard
6 and pool rooms, bowling alleys, amusement devices, musical
7 devices, theaters, opera houses, moving picture shows,
8 vaudevilles, amusement parks, athletic contests, including
9 wrestling matches, prize fights, boxing and wrestling
10 exhibitions, football and baseball games, (including athletic
11 contests, conducted by or under the auspices of any
12 educational institution within this state, or any athletic
13 association thereof, or other association whether the
14 institution or association be a denominational, a state, or
15 county, or a municipal institution, or association or a state,
16 county, or city school, or other institution, association or
17 school), skating rinks, race tracks, golf courses, or any
18 other place at which any exhibition, display, amusement, or
19 entertainment is offered to the public or place or places
20 where an admission fee is charged, including public bathing
21 places, public dance halls of every kind and description
22 within the State of Alabama, an amount equal to: for taxable
23 periods beginning on or before August 31, 2013, four percent
24 of the gross receipts of any such business; for taxable
25 periods beginning on and after September 1, 2013, four and
26 one-quarter percent of the gross receipts of any such
27 business; for taxable periods beginning on and after September

1 1, 2014, four and one-half percent of the gross receipts of
2 any such business; for taxable periods beginning on and after
3 September 1, 2015, four and three-quarters percent of the
4 gross receipts of any such business; for taxable periods
5 beginning on and after September 1, 2016, five percent of the
6 gross receipts of any such business. Provided, however,
7 notwithstanding any language to the contrary in the prior
8 portion of this subdivision, the tax provisions so specified
9 shall not apply to any athletic event conducted by a public or
10 nonpublic primary or secondary school or any athletic event
11 conducted by or under the auspices of the Alabama High School
12 Athletic Association. The tax amount which would have been
13 collected pursuant to this subdivision shall continue to be
14 collected by the public or nonpublic primary or secondary
15 school, but shall be retained by the school which collected it
16 and shall be used by the school for school purposes.

17 (3) Upon every person, firm, or corporation engaged
18 or continuing within this state in the business of selling at
19 retail machines used in mining, quarrying, compounding,
20 processing, and manufacturing of tangible personal property an
21 amount equal to one and one-half percent of the gross proceeds
22 of the sale of the machines. The term "machine," as herein
23 used, shall include machinery which is used for mining,
24 quarrying, compounding, processing, or manufacturing tangible
25 personal property, and the parts of the machines, attachments,
26 and replacements therefor, which are made or manufactured for
27 use on or in the operation of the machines and which are

1 necessary to the operation of the machines and are customarily
2 so used.

3 (4) Upon every person, firm, or corporation engaged
4 or continuing within this state in the business of selling at
5 retail any automotive vehicle or truck trailer, semitrailer,
6 or house trailer, or mobile home set-up materials and supplies
7 including but not limited to steps, blocks, anchoring, cable
8 pipes, and any other materials pertaining thereto an amount
9 equal to two percent of the gross proceeds of sale of the
10 automotive vehicle or truck trailer, semitrailer, or house
11 trailer, or mobile home set-up materials and supplies
12 provided, however, where a person subject to the tax provided
13 for in this subdivision withdraws from his or her stock in
14 trade any automotive vehicle or truck trailer, semitrailer, or
15 house trailer for use by him or her or by his or her employee
16 or agent in the operation of the business, there shall be
17 paid, in lieu of the tax levied herein, a fee of five dollars
18 (\$5) per year or part thereof during which the automotive
19 vehicle, truck trailer, semitrailer, or house trailer shall
20 remain the property of the person. Each year or part thereof
21 shall begin with the day or anniversary date, as the case may
22 be, of such withdrawal and shall run for the 12 succeeding
23 months or part thereof during which the automotive vehicle,
24 truck trailer, semitrailer, or house trailer shall remain the
25 property of the person.

26 Where any used automotive vehicle or truck trailer,
27 semitrailer, or house trailer is taken in trade or in a series

1 of trades, as a credit or part payment on the sale of a new or
2 used vehicle, the tax levied herein shall be paid on the net
3 difference, that is, the price of the new or used vehicle sold
4 less the credit for the used vehicle taken in trade.

5 Sales of automobiles, motorcycles, trucks, truck
6 trailers, or semitrailers that will be registered or titled
7 outside Alabama, that are exported or removed from Alabama
8 within 72 hours by the purchaser or his or her agent for first
9 use outside Alabama are not subject to the Alabama sales tax.
10 Sales of other vehicles such as mobile homes, motor bikes, all
11 terrain vehicles, and boats do not qualify for the export
12 exemption provision and are taxable unless the dealer can
13 provide factual evidence that the vehicle was delivered
14 outside of Alabama or to a common carrier for transportation
15 outside Alabama. In order for the sale to be exempt from
16 Alabama tax, the information relative to the exempt sale shall
17 be documented on forms approved by the Revenue Department.

18 Of the total \$.02 tax on each dollar of sale
19 provided hereunder, 58 percent of the total tax generated by
20 this subdivision (4) shall be deposited to the credit of the
21 Education Trust Fund; and 42 percent of the total tax
22 generated by this subdivision (4) shall be deposited to the
23 credit of the State General Fund.

24 (5) Upon every person, firm, or corporation engaged
25 or continuing within this state in the business of selling
26 through coin-operated dispensing machines, food and food
27 products for human consumption, not including beverages other

1 than coffee, milk, milk products, and substitutes therefor,
2 there is levied a tax equal to three percent of the cost of
3 the food, food products, and beverages sold through the
4 machines, which cost for the purpose of this subdivision shall
5 be the gross proceeds of sales of the business.

6 "§40-23-61.

7 (a) An excise tax is hereby imposed on the storage,
8 use or other consumption in this state of tangible personal
9 property, not including, however, materials and supplies
10 bought for use in fulfilling a contract for the painting,
11 repairing or reconditioning of vessels, barges, ships, other
12 watercraft and commercial fishing vessels of over five tons
13 load displacement as registered with the U.S. Coast Guard and
14 licensed by the State of Alabama Department of Conservation
15 and Natural Resources, purchased at retail on or after October
16 1, 1965, for storage, use or other consumption in this state
17 at the rate of following rates: for taxable periods beginning
18 on or before August 31, 2013, four percent of the sales price
19 of such property or the amount of tax collected by the seller,
20 whichever is greater; for taxable periods beginning on and
21 after September 1, 2013, four and one-quarter percent of the
22 sales price of such property or the amount of tax collected by
23 the seller, whichever is greater; for taxable periods
24 beginning on and after September 1, 2014, four and one-half
25 percent of the sales price of such property or the amount of
26 tax collected by the seller, whichever is greater; for taxable
27 periods beginning on and after September 1, 2015, four and

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

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

1 use on or in the operation of such machines and which are
2 necessary to the operation of such machines and are
3 customarily so used.

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

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

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

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

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

1 subsection shall not apply where the taxes imposed by
2 subsection (a), (b), or (c) of this section apply.

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

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

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

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

18 Section 4. Notwithstanding any other provision of
19 law,

20 (a) For taxable periods beginning on and after
21 September 1, 2013, the state sales and use tax rate on food
22 shall be three percent of the gross receipts from the sale or
23 use of food.

24 (b) For taxable periods beginning on and after
25 September 1, 2014, the state sales and use tax rate on food
26 shall be two percent of the gross receipts from the sale or
27 use of food.

1 (c) For taxable periods beginning on and after
2 September 1, 2015, the state sales and use tax rate on food
3 shall be one percent of the gross receipts from the sale or
4 use of food.

5 (d) For taxable periods beginning on and after
6 September 1, 2016, the gross receipts from the sale or use of
7 food shall be exempt from the state sales and use taxes.

8 Section 5. The Legislature shall review the results
9 of this act during the 2017 Regular Session and make any
10 necessary adjustments to ensure that the provisions of this
11 act are revenue neutral.

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