

1 HB602  
2 139326-1  
3 By Representative McCutcheon  
4 RFD: Transportation, Utilities and Infrastructure  
5 First Read: 22-MAR-12

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8 SYNOPSIS: Under existing law, a tax is levied on  
9 aviation gasoline and aviation jet fuel.

10 This bill would require the Alabama  
11 Department of Transportation to establish the State  
12 Aviation Trust Fund.

13 This bill would provide for the distribution  
14 of the proceeds from the tax imposed on aviation  
15 gasoline and jet fuel sold from certain locations.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT

20  
21 To amend Section 10 of Act 2011-565, 2011 Regular  
22 Session, now appearing as Section 40-17-329 of the Code of  
23 Alabama 1975, relating to the tax on aviation gasoline and  
24 aviation jet fuel; to require the Alabama Department of  
25 Transportation to establish the State Aviation Trust Fund; and  
26 to provide for the distribution of the proceeds from the tax

1 imposed on aviation gasoline and jet fuel sold from certain  
2 locations.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 10 of Act 2011-565, 2011 Regular  
5 Session, now appearing as Section 40-17-329 of the Code of  
6 Alabama 1975, is amended to read as follows:

7 "§40-17-329.

8 "(a) Unless otherwise provided for in this  
9 subsection, sales of motor fuel to the following are exempt  
10 from the tax levied by subsection (a) of Section 40-17-325 and  
11 shall not be paid at the rack:

12 "(1) All motor fuel exported from this state for  
13 which proof of export is available in the form of a terminal  
14 issued destination state shipping document that is a. exported  
15 by a supplier who is licensed in the destination state or b.  
16 is sold by a supplier to a licensed exporter for immediate  
17 export to a state for which the applicable destination state  
18 motor fuel excise tax has been collected by the supplier who  
19 is licensed to remit the tax to the destination state. This  
20 exemption shall not apply to any motor fuel which is  
21 transported and delivered outside this state in the motor fuel  
22 supply tank of a highway vehicle.

23 "(2) All sales of dyed diesel fuel.

24 "(3) Gasoline blendstocks when sold to a. a licensed  
25 supplier or b. a person who will not be using the blendstocks  
26 in the manufacture of gasoline or as a motor fuel, as  
27 evidenced by the exemption certificate prescribed under

1 regulations promulgated under Section 4081, Title 26 of the  
2 United States Code.

3 "(4) All motor fuel sold by a licensed supplier or  
4 licensed permissive supplier to an exempt agency electing to  
5 be licensed under Section 40-17-332.

6 "(5) Motor fuel that is delivered by a licensed  
7 supplier from one terminal to another terminal when ownership  
8 in the motor fuel has not changed, or by a licensed supplier  
9 from a terminal to a refinery operated by the licensed  
10 supplier.

11 "(6) Aviation jet fuel sold by a licensed supplier  
12 to an air carrier that purchases jet fuel in a Foreign Trade  
13 Zone located within this state and uses the jet fuel to propel  
14 aircraft powered by jet or turbine engines operated in  
15 scheduled all-cargo operations being conducted on  
16 international flights or in international commerce. For the  
17 purposes of this subdivision, the following words or terms  
18 shall be defined and interpreted as follows:

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

22 "b. All-Cargo Operations. Any flight conducted by an  
23 air carrier for compensation or hire other than a passenger  
24 carrying flight, except passengers as specified in Section  
25 121.583 (a) or 135.85 of the Federal Aviation Regulations, as  
26 amended.

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

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

12            "(b) Having first paid the tax owed under this  
13 article, a licensed distributor shall have the right to apply  
14 to the department on a monthly basis for a refund of the taxes  
15 paid on the gallons sold by that licensed distributor to the  
16 exempt agencies listed under subsection (e), provided the  
17 exempt agency has elected to obtain a license under Section  
18 40-17-332.

19            "(c) Having first paid the tax owed under this  
20 article, an exporter shall have the right to apply to the  
21 department on a monthly basis for a refund of the taxes paid  
22 to this state on the gallons of motor fuel that are ultimately  
23 exported by the exporter. The department will require the  
24 exporter to provide proof of payment of the applicable  
25 destination state excise taxes before issuing a refund.

26            "(d) Having first paid the tax owed under this  
27 article, a licensed aviation fuel purchaser shall have the

1 right to apply to the department on a monthly basis for a  
2 refund of the taxes paid to this state on the gallons of jet  
3 fuel sold to an air carrier that purchases jet fuel in a  
4 foreign trade zone located within this state and uses the jet  
5 fuel to propel aircraft powered by jet or turbine engines  
6 operated in scheduled all-cargo operations being conducted on  
7 international flights or in international commerce. For the  
8 purposes of this subsection, the following words or terms  
9 shall be defined and interpreted as follows:

10 "(1) AIR CARRIER. Any person, firm, corporation, or  
11 entity undertaking by any means, directly or indirectly, to  
12 provide air transportation.

13 "(2) ALL-CARGO OPERATIONS. Any flight conducted by  
14 an air carrier for compensation or hire other than a passenger  
15 carrying flight, except passengers as specified in Section  
16 121.583 (a) or 135.85 of the Federal Aviation Regulations, as  
17 amended.

18 "(3) INTERNATIONAL COMMERCE. Any air carrier engaged  
19 in all-cargo operations transporting goods for compensation or  
20 hire on international flights.

21 "(4) INTERNATIONAL FLIGHTS. Any air carrier  
22 conducting scheduled all-cargo operations between any point  
23 within the 50 states of the United States and the District of  
24 Columbia and any point outside the 50 states of the United  
25 States and the District of Columbia, including any interim  
26 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 "(e) Having first paid the tax to its vendor, the  
4 following entities shall have the right to apply to the  
5 department for a refund on a quarterly basis for any purchases  
6 of motor fuel:

7 "(1) The United States government or any agency  
8 thereof.

9 "(2) Any county governing body of this state.

10 "(3) Any incorporated municipal governing body of  
11 this state.

12 "(4) City and county boards of education of this  
13 state.

14 "(5) The Alabama Institute for Deaf and Blind, the  
15 Department of Youth Services school district, and private and  
16 church school systems as defined in Section 16-28-1, and which  
17 offer essentially the same curriculum as offered in grades  
18 K-12 in the public schools of this state.

19 "(f) If the sale of taxable motor fuel to exempt  
20 entities listed in subsection (e) occurs at a fixed retail  
21 pump available to the general public and is charged to a  
22 credit card issued to the exempt entity, the issuer of the  
23 card, having billed the exempt entity without the tax, may  
24 apply on a quarterly basis for a refund of the motor fuel  
25 excise taxes by submitting the application and supporting  
26 documentation as prescribed by the department.

1           ~~"(g) Having first paid the tax, a licensed air~~  
2 ~~carrier with a hub operation within this state shall have the~~  
3 ~~right to apply to the department for a refund on a quarterly~~  
4 ~~basis for any purchases of jet fuel used to propel aircraft.~~  
5 ~~For the purposes of this subsection, the words "hub operation~~  
6 ~~within this state" shall be construed to have all of the~~  
7 ~~following criteria:~~

8           ~~"(1) There originates from the location 15 or more~~  
9 ~~flight departures and five or more different first-stop~~  
10 ~~destinations five days per week for six or more months during~~  
11 ~~the calendar year; and~~

12           ~~"(2) Passengers and/or property are regularly~~  
13 ~~exchanged at the location between flights of the same or a~~  
14 ~~different certificated or licensed air carrier.~~

15           "(g) All amounts collected on account of the tax  
16 imposed on aviation gasoline and jet fuel sales shall be  
17 deposited into a State Aviation Trust Fund to be established  
18 and administered by the Alabama Department of Transportation.

19           "(1) Fifty percent of the tax revenues deposited  
20 into the State Aviation Trust Fund shall be distributed to the  
21 Air Carrier Airports as an entitlement based upon an airport's  
22 pro rata share of the amount of tax revenue collected from the  
23 sale of aviation gasoline and jet fuel at the airport where  
24 the fuel is pumped into an aircraft. Air Carrier Airports  
25 shall be defined as any public airport in the State of Alabama  
26 having regularly scheduled commercial airline service and  
27 enplaning more than 10,000 passengers annually.

1           "(2) The remaining 50 percent of the tax revenue  
2 deposited into the State Aviation Trust Fund shall be  
3 distributed on a discretionary basis to both Air Carrier  
4 Airports and non-Air Carrier Airports based on a priority  
5 system. Before distributing grants on a discretionary basis,  
6 the Alabama Department of Transportation shall develop a  
7 priority system for funding eligible projects. The funding  
8 system shall give priority to all of the following:

9           "a. Providing state matching funds for non-Air  
10 Carrier Airport projects which are eligible for federal  
11 funding and the local community is contributing at least half  
12 of the local match.

13           "b. Facilitating economic and industrial development  
14 projects which produce jobs and capital investment in the  
15 state.

16           "(h) End users who first pay the tax levied by  
17 subdivision (2) of subsection (a) of Section 40-17-325 on all  
18 gallons of diesel fuel used in designated off-road vehicles,  
19 other off-road equipment, or for other off-road use may apply  
20 to the department for a refund on a quarterly basis.

21           "(i) End users who first pay the tax levied by  
22 subdivision (1) of subsection (a) of Section 40-17-325 on  
23 gallons of gasoline blendstocks not used in the manufacture of  
24 gasoline or as a motor fuel may apply to the department for a  
25 refund on a quarterly basis.

26           "(j) Tax paid on motor fuel that (1) is lost or  
27 destroyed as a direct result of a sudden and unexpected

1 casualty, or (2) becomes unsalable or unusable as highway fuel  
2 due to such things as the contamination by dye or mixture of  
3 gasoline and diesel shall be refundable.

4 "(k) Tax paid on transmix not used as a motor fuel  
5 or that is delivered to a refinery for further processing  
6 shall be refundable, with the person so using the transmix  
7 being eligible to file for the refund on a quarterly basis.

8 "(l) Tax paid on motor fuel within the bulk transfer  
9 system may be refunded upon sufficient proof that (1) a second  
10 tax had been paid pursuant to Section 40-17-325 or (2) the  
11 fuel was exported to another state or country. The party  
12 paying the second tax or exporting the fuel may file for a  
13 refund on a monthly basis."

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