

1 HB448  
2 118549-5  
3 By Representative Collier  
4 RFD: Education Appropriations  
5 First Read: 26-JAN-10

ENGROSSED

A BILL  
TO BE ENTITLED  
AN ACT

To amend Sections 40-23-4 and 40-23-62, Code of Alabama 1975, relating to sales and use tax exemptions, to clarify the exemption for watercraft.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§40-23-4.

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

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

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

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

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

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

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

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

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

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

25 "(9) The gross proceeds of the sale, or sales of  
26 wood residue, coal, or coke to manufacturers, electric power

1 companies, and transportation companies for use or consumption  
2 in the production of by-products, or the generation of heat or  
3 power used in manufacturing tangible personal property for  
4 sale, for the generation of electric power or energy for use  
5 in manufacturing tangible personal property for sale or for  
6 resale, or for the generation of motive power for  
7 transportation.

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

23 "For purposes of this subdivision, it shall be  
24 presumed that vessels engaged in the transportation of cargo  
25 between ports in the State of Alabama and ports in foreign  
26 countries or possessions or territories of the United States

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

1 merchant or seller had no knowledge that such certificate was  
2 false when it was filed with such merchant or seller.

3 "(11) The gross proceeds of sales of tangible  
4 personal property to the State of Alabama, to the counties  
5 within the state and to incorporated municipalities of the  
6 State of Alabama.

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

13 "(13) The gross proceeds of the sale or sales of  
14 materials, equipment, ~~lifeboats, personal flotation devices,~~  
15 ~~ring life buoys, survival craft equipment, distress signals,~~  
16 ~~EPIRB's, fire extinguishers, injury placards, waste management~~  
17 ~~plans and logs, marine sanitation devices, navigation rule~~  
18 ~~books, navigation lights, sound signals, navigation day~~  
19 ~~shapes, oil placard cards, garbage placards, FCC SSL,~~  
20 ~~stability instructions, first aid equipment, compasses, anchor~~  
21 ~~and radar reflectors, general alarm systems, bilge pumps,~~  
22 ~~piping, and discharge, electronic position fixing devices and~~  
23 machinery which, at any time, enter into and become a  
24 component part of ships, vessels, towing vessels or barges, or  
25 drilling ships, rigs or barges, or seismic or geophysical  
26 vessels, other watercraft and commercial fishing vessels of



1 over five tons load displacement as registered with the U.S.  
2 Coast Guard and licensed by the State of Alabama Department of  
3 Conservation and Natural Resources. ~~Additionally, the gross~~  
4 ~~proceeds from the sale of any safety equipment and other such~~  
5 ~~items which are required by the United States Coast Guard in~~  
6 ~~the operation of the aforementioned watercraft.~~

7 Additionally, the gross proceeds from the sale or  
8 sales of lifeboats, personal flotation devices, ring life  
9 buoys, survival craft equipment, distress signals, EPIRB's  
10 fire extinguishers, injury placards, waste management plans  
11 and logs, marine sanitation devices, navigation rulebooks,  
12 navigation lights, sound signals, navigation day shapes, oil  
13 placard cards, garbage placards, FCC SSL, stability  
14 instructions, first aid equipment, compasses, anchor and radar  
15 reflectors, general alarm systems, bilge pumps, piping, and  
16 discharge and electronic position fixing devices which are  
17 used on the aforementioned watercraft.

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

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

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

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

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

21          "(19) The gross proceeds received from the sale or  
22      furnishing of food, including potato chips, candy, fruit and  
23      similar items, soft drinks, tobacco products, and stationery  
24      and other similar or related articles by hospital canteens  
25      operated by Alabama state hospitals at Bryce Hospital and  
26      Partlow State School for Mental Deficients at Tuscaloosa,

1 Alabama, and Searcy Hospital at Mt. Vernon, Alabama, for the  
2 benefit of the patients therein.

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

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

25 "(22) The gross proceeds of the sale, or sales, of  
26 seedlings, plants, shoots, and slips which are to be used for

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

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

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

1 presentation described in this subdivision shall not be  
2 construed to prohibit the exemptions herein provided.

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

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

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

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

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

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

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

4           "a. The name and claim number as shown on a  
5 "Medicare" card issued by the United States Social Security  
6 Administration.

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

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

13          "For the purposes of this subdivision, any person  
14 filing a false proof of age shall be guilty of a misdemeanor  
15 and upon conviction thereof shall be punished by a fine of  
16 \$100.

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

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

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

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

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

16           "(36) The gross receipts of sales of Lespedeza  
17 bicolor and other species of perennial plant seed and  
18 seedlings sold for wildlife and game food production purposes  
19 by the state.

20           "(37) The gross receipts of any aircraft  
21 manufactured, sold, and delivered in this state if said  
22 aircraft are not permanently domiciled in Alabama and are  
23 removed to another state within three days of delivery.

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



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

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

5           "b. Is hosted by a not-for-profit corporation  
6 organized and existing under the laws of the State of Alabama;  
7 and

8           "c. Determines a national championship of a national  
9 organization, including but not limited to the Professional  
10 Golfers Association of America, the Tournament Players  
11 Association, the United States Golf Association, the United  
12 States Tennis Association, and the National Collegiate  
13 Athletic Association; and

14           "d. Has not been held in the State of Alabama on  
15 more than one prior occasion, provided, however, that for such  
16 purpose the Professional Golfers Association Championship, the  
17 United States Open Golf Championship, the United States  
18 Amateur Golf Championship of the United States Golf  
19 Association, and the United States Open Tennis Championship  
20 shall each be treated as a separate event.

21           "(40) The gross receipts from the sale of any  
22 aircraft and replacement parts, components, systems, supplies,  
23 and sundries affixed or used on said aircraft and ground  
24 support equipment and vehicles used by or for the aircraft to  
25 or by a certificated or licensed air carrier with a hub  
26 operation within this state, for use in conducting intrastate,

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

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

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

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

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

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

1           "(42) The gross proceeds of the sale or sales of the  
2 following:

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

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

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

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

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

24           "The shipment to a place in this state of equipment  
25 exempted by this subdivision for further assembly or  
26 fabrication does not disqualify the purchaser or lessee from

1 the exemption if on completion of the further assembly or  
2 fabrication the equipment is removed forthwith from this  
3 state. This subdivision applies to a sale that may occur when  
4 the equipment exempted is further assembled or fabricated if  
5 on completion the equipment is removed forthwith from this  
6 state.

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

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

1           "(45) 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           "(b) Any violation of any provision of this section  
5 shall be punishable in a court of competent jurisdiction by a  
6 fine of not less than \$500 and no more than \$2,000 and  
7 imprisonment of not less than six months nor more than one  
8 year in the county jail.

9           "§40-23-62.

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

13           "(1) Property, on which the sales tax imposed by the  
14 provisions of Article 1 of this chapter is paid by the  
15 consumer to a person licensed under the provisions of Article  
16 1 of this chapter.

17           "(2) Property, the storage, use or other consumption  
18 of which this state is prohibited from taxing under the  
19 Constitution or laws of the United States of America or under  
20 the constitution of this state.

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

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

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

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

11           "(7) Insecticides and fungicides and feed for  
12 livestock and poultry, but not including prepared foods for  
13 dogs and cats.

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

25           "(9) Cottonseed meal exchanged for cottonseed at or  
26 by cotton gins.

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

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

10          "a. In manufacturing tangible personal property for  
11     sale;

12          "b. For the generation of electric power or energy  
13     for use in manufacturing tangible personal property for sale  
14     or for resale; or

15          "c. For the generation of motive power for  
16     transportation.

17          "(12) Fuel and supplies for use or consumption  
18     aboard ships, vessels, towing vessels, or barges, or drilling  
19     ships, rigs or barges, or seismic or geophysical vessels, or  
20     other watercraft (herein for purposes of this exemption being  
21     referred to as "vessels") engaged in foreign or international  
22     commerce or in interstate commerce; provided, that nothing in  
23     this article shall be construed to exempt or exclude from the  
24     measure of the tax herein levied the gross proceeds of sale or  
25     sales of material and supplies to any person for use in  
26     fulfilling a contract for the painting, repair or

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



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

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

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

13 "(14) The use, storage or consumption of materials,  
14 equipment ~~, including safety equipment and other such items,~~  
15 ~~lifeboats, personal flotation devices, ring life buoys,~~  
16 ~~survival craft equipment, distress signals, EPIRB's, fire~~  
17 ~~extinguishers, injury placards, waste management plans and~~  
18 ~~logs, marine sanitation devices, navigation rule books,~~  
19 ~~navigation lights, sound signals, navigation day shapes, oil~~  
20 ~~placard cards, garbage placards, FCC SSL, stability~~  
21 ~~instructions, first aid equipment, compasses, anchor and radar~~  
22 ~~reflectors, general alarm systems, bilge pumps, piping, and~~  
23 ~~discharge, electronic position fixing devices and machinery~~  
24 ~~which is required by the United States Coast Guard in the~~  
25 ~~operation of a watercraft that,~~ at any time, enter into and  
26 become a component part of ships, vessels, towing vessels or

1 barges, or drilling ships, rigs or barges, or seismic or  
2 geophysical vessels, other watercraft and commercial fishing  
3 vessels of over five tons load displacement as registered with  
4 the U.S. Coast Guard and licensed by the ~~State of Alabama~~  
5 Department of Conservation and Natural Resources.

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

17 "(15) The use, storage or consumption of fuel oil  
18 purchased as fuel for kilns used in manufacturing  
19 establishments.

20 "(16) Tangible personal property stored, used or  
21 consumed by county and city school boards, independent school  
22 boards and all educational institutions and agencies of the  
23 State of Alabama, the counties within the state or any  
24 incorporated municipality of the State of Alabama.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24           "(30) All medicines prescribed by physicians for  
25 persons who are 65 years of age or older, and when said  
26 prescriptions are filled by licensed pharmacists, shall be

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

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

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

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

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

18               "For the purposes of this subdivision any person  
19       filing a false proof of age shall be guilty of a misdemeanor  
20       and upon conviction thereof shall be punished by a fine of  
21       \$100.

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

24               "(32) The storage, use or other consumption of any  
25       aircraft and replacement parts, components, systems, supplies  
26       and sundries affixed or used on said aircraft and ground



1 support equipment and vehicles used by or for the aircraft by  
2 a certificated or licensed air carrier with a hub operation  
3 within this state, for use in conducting intrastate,  
4 interstate or foreign commerce for transporting people or  
5 property by air. For the purpose of this subdivision, the  
6 words "hub operation within this state" shall be construed to  
7 have all of the following criteria:

8 "a. 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 "b. 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 "(33) The storage, use or other consumption of hot  
16 or cold food and beverage products by a certificated or  
17 licensed air carrier with a hub operation within this state,  
18 for use in conducting intrastate, interstate or foreign  
19 commerce for transporting people or property by air. For the  
20 purpose of this subdivision, the words "hub operation within  
21 this state" shall be construed to have all of the following  
22 criteria:

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

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

4            "(34) The storage, use or other consumption of the  
5            following:

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

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

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

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

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

24           "The delivery of items exempted by this subdivision  
25           to the purchaser or lessee in this state does not disqualify  
26           the purchaser or lessee from the exemption if the property is

1 removed from the state by any means, including by the use of  
2 the purchaser's or lessee's own facilities.

3 "The shipment to a place in this state of equipment  
4 exempted by this subdivision for further assembly or  
5 fabrication does not disqualify the purchaser or lessee from  
6 the exemption if on completion of the further assembly or  
7 fabrication the equipment is removed forthwith from this  
8 state. This subdivision applies to a sale that may occur when  
9 the equipment exempted is further assembled or fabricated if  
10 on completion the equipment is removed forthwith from this  
11 state."

12 Section 2. 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 law.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Education Appro-  
priations ..... 26-JAN-10

Read for the second time and placed  
on the calendar with 1 substitute  
and ..... 17-FEB-10

Read for the third time and passed  
as amended ..... 03-MAR-10

Yeas 94, Nays 0, Abstains 1

Greg Pappas  
Clerk