

1 HB444
2 128106-1
3 By Representatives Barton, Ison and Gaston
4 RFD: Ways and Means Education
5 First Read: 05-APR-11

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8 SYNOPSIS: This bill would provide for a sales tax
9 exemption for any parts, components, systems,
10 supplies, and ancillary items used in the
11 conversion or refurbishing of commercial passenger
12 aircraft with a seating capacity of 50 seats or
13 more.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT
18

19 To amend Section 40-23-4, Code of Alabama 1975, as
20 amended by Act 2010-514, 2010 Regular Session (Acts 2010, p.
21 242), relating to sales tax exemptions, to exempt any parts,
22 components, systems, supplies, and ancillary items used in the
23 conversion or refurbishing of commercial passenger aircraft
24 with a seating capacity of 50 seats or more.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 40-23-4, Code of Alabama 1975, as
2 amended by Act 2010-514, 2010 Regular Session (Acts 2010, p.
3 242), is amended to read as follows:

4 "§40-23-4.

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

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

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

20 "(3) The gross proceeds of the sale, or sales, of
21 seeds for planting purposes and baby chicks and poults.
22 Nothing herein shall be construed to exempt or exclude from
23 the computation of the tax levied, assessed, or payable, the
24 gross proceeds of the sale or sales of plants, seedlings,
25 nursery stock, or floral products.

26 "(4) The gross proceeds of sales of insecticides and
27 fungicides when used for agricultural purposes or when used by

1 persons properly permitted by the Department of Agriculture
2 and Industries or any applicable local or state governmental
3 authority for structural pest control work and feed for
4 livestock and poultry, but not including prepared food for
5 dogs and cats.

6 "(5) The gross proceeds of sales of all livestock by
7 whomsoever sold, and also the gross proceeds of poultry and
8 other products of the farm, dairy, grove, or garden, when in
9 the original state of production or condition of preparation
10 for sale, when such sale or sales are made by the producer or
11 members of his immediate family or for him by those employed
12 by him to assist in the production thereof. Nothing herein
13 shall be construed to exempt or exclude from the measure or
14 computation of the tax levied, assessed, or payable hereunder,
15 the gross proceeds of sales of poultry or poultry products
16 when not products of the farm.

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

19 "(7) The gross receipts from the business on which,
20 or for engaging in which, a license or privilege tax is levied
21 by or under the provisions of Sections 40-21-50, 40-21-53, and
22 40-21-56 through 40-21-60; provided, that nothing contained in
23 this subdivision shall be construed to exempt or relieve the
24 person or persons operating the business enumerated in said
25 sections from the payments of the tax levied by this division
26 upon or measured by the gross proceeds of sales of any
27 tangible personal property, except gas and water, the gross

1 receipts from the sale of which are the measure of the tax
2 levied by said Section 40-21-50, merchandise or other tangible
3 commodities sold at retail by said persons, unless the gross
4 proceeds of sale thereof are otherwise specifically exempted
5 by the provisions of this division.

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

12 "(9) The gross proceeds of the sale, or sales of
13 wood residue, coal, or coke to manufacturers, electric power
14 companies, and transportation companies for use or consumption
15 in the production of by-products, or the generation of heat or
16 power used in manufacturing tangible personal property for
17 sale, for the generation of electric power or energy for use
18 in manufacturing tangible personal property for sale or for
19 resale, or for the generation of motive power for
20 transportation.

21 "(10) The gross proceeds from the sale or sales of
22 fuel and supplies for use or consumption aboard ships,
23 vessels, towing vessels, or barges, or drilling ships, rigs or
24 barges, or seismic or geophysical vessels, or other watercraft
25 (herein for purposes of this exemption being referred to as
26 "vessels") engaged in foreign or international commerce or in
27 interstate commerce; provided, that nothing in this division

1 shall be construed to exempt or exclude from the measure of
2 the tax herein levied the gross proceeds of sale or sales of
3 material and supplies to any person for use in fulfilling a
4 contract for the painting, repair, or reconditioning of
5 vessels, barges, ships, other watercraft, and commercial
6 fishing vessels of over five tons load displacement as
7 registered with the U.S. Coast Guard and licensed by the State
8 of Alabama Department of Conservation and Natural Resources.

9 "For purposes of this subdivision, it shall be
10 presumed that vessels engaged in the transportation of cargo
11 between ports in the State of Alabama and ports in foreign
12 countries or possessions or territories of the United States
13 or between ports in the State of Alabama and ports in other
14 states are engaged in foreign or international commerce or
15 interstate commerce, as the case may be. For the purposes of
16 this subdivision, the engaging in foreign or international
17 commerce or interstate commerce shall not require that the
18 vessel involved deliver cargo to or receive cargo from a port
19 in the State of Alabama. For purposes of this subdivision,
20 vessels carrying passengers for hire, and no cargo, between
21 ports in the State of Alabama and ports in foreign countries
22 or possessions or territories of the United States or between
23 ports in the State of Alabama and ports in other states shall
24 be engaged in foreign or international commerce or interstate
25 commerce, as the case may be, if, and only if, both of the
26 following conditions are met: (i) The vessel in question is a
27 vessel of at least 100 gross tons; and (ii) the vessel in

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

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

12 "(11) The gross proceeds of sales of tangible
13 personal property to the State of Alabama, to the counties
14 within the state and to incorporated municipalities of the
15 State of Alabama.

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

22 "(13) The gross proceeds of the sale or sales of
23 materials, equipment, and machinery which, at any time, enter
24 into and become a component part of ships, vessels, towing
25 vessels or barges, or drilling ships, rigs or barges, or
26 seismic or geophysical vessels, other watercraft and
27 commercial fishing vessels of over five tons load displacement

1 as registered with the U.S. Coast Guard and licensed by the
2 State of Alabama Department of Conservation and Natural
3 Resources. Additionally, the gross proceeds from the sale or
4 sales of lifeboats, personal flotation devices, ring life
5 buoys, survival craft equipment, distress signals, EPIRB's,
6 fire extinguishers, injury placards, waste management plans
7 and logs, marine sanitation devices, navigation rulebooks,
8 navigation lights, sound signals, navigation day shapes, oil
9 placard cards, garbage placards, FCC SSL, stability
10 instructions, first aid equipment, compasses, anchor and radar
11 reflectors, general alarm systems, bilge pumps, piping, and
12 discharge and electronic position fixing devices which are
13 used on the aforementioned watercraft.

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

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

23 "(16) The gross proceeds from the sale of all
24 devices or facilities, and all identifiable components
25 thereof, or materials for use therein, acquired primarily for
26 the control, reduction, or elimination of air or water
27 pollution and the gross proceeds from the sale of all

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

4 "(17) The gross proceeds of sales of tangible
5 personal property or the gross receipts of any business which
6 the state is prohibited from taxing under the Constitution or
7 laws of the United States or under the Constitution of this
8 state.

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

16 "(19) The gross proceeds received from the sale or
17 furnishing of food, including potato chips, candy, fruit and
18 similar items, soft drinks, tobacco products, and stationery
19 and other similar or related articles by hospital canteens
20 operated by Alabama state hospitals at Bryce Hospital and
21 Partlow State School for Mental Deficients at Tuscaloosa,
22 Alabama, and Searcy Hospital at Mt. Vernon, Alabama, for the
23 benefit of the patients therein.

24 "(20) The gross proceeds of the sale, or sales, of
25 wrapping paper and other wrapping materials when used in
26 preparing poultry or poultry products for delivery, shipment,
27 or sale by the producer, processor, packer, or seller of such

1 poultry or poultry products, including pallets used in
2 shipping poultry and egg products, paper or other materials
3 used for lining boxes or other containers in which poultry or
4 poultry products are packed together with any other materials
5 placed in such containers for the delivery, shipment, or sale
6 of poultry or poultry products.

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

19 "(22) The gross proceeds of the sale, or sales, of
20 seedlings, plants, shoots, and slips which are to be used for
21 planting vegetable gardens or truck farms and other
22 agricultural purposes. Nothing herein shall be construed to
23 exempt, or exclude from the computation of the tax levied,
24 assessed, or payable, the gross proceeds of the sale, or the
25 use of plants, seedlings, shoots, slips, nursery stock, and
26 floral products, except as hereinabove exempted.

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

9 "(24) The gross proceeds from sales of admissions to
10 any theatrical production, symphonic or other orchestral
11 concert, ballet, or opera production when such concert or
12 production is presented by any society, association, guild, or
13 workshop group, organized within this state, whose members or
14 some of whose members regularly and actively participate in
15 such concerts or productions for the purposes of providing a
16 creative outlet for the cultural and educational interests of
17 such members, and of promoting such interests for the
18 betterment of the community by presenting such productions to
19 the general public for an admission charge. The employment of
20 a paid director or conductor to assist in any such
21 presentation described in this subdivision shall not be
22 construed to prohibit the exemptions herein provided.

23 "(25) The gross proceeds of sales of herbicides for
24 agricultural uses by whomsoever sold. The term herbicides, as
25 used in this subdivision, means any substance or mixture of
26 substances intended to prevent, destroy, repel, or retard the
27 growth of weeds or plants. It shall include preemergence

1 herbicides, postemergence herbicides, lay-by herbicides,
2 pasture herbicides, defoliant herbicides, and desiccant
3 herbicides.

4 "(26) The Alabama Chapter of the Cystic Fibrosis
5 Research Foundation and the Jefferson Tuberculosis Sanatorium
6 and any of their departments or agencies, heretofore or
7 hereafter organized and existing in good faith in the State of
8 Alabama for purposes other than for pecuniary gain and not for
9 individual profit, shall be exempted from the computation of
10 the tax on the gross proceeds of all sales levied, assessed,
11 or payable.

12 "(27) The gross proceeds from the sale or sales of
13 fuel for use or consumption aboard commercial fishing vessels
14 are hereby exempt from the computation of all sales taxes
15 levied, assessed, or payable under the provisions of this
16 division or levied under any county or municipal sales tax
17 law.

18 The words commercial fishing vessels shall mean
19 vessels whose masters and owners are regularly and exclusively
20 engaged in fishing as their means of livelihood.

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

24 "(29) The gross proceeds of the sales of all
25 antibiotics, hormones and hormone preparations, drugs,
26 medicines, and other medications including serums and
27 vaccines, vitamins, minerals, or other nutrients for use in

1 the production and growing of fish, livestock, and poultry by
2 whomsoever sold. Such exemption as herein granted shall be in
3 addition to the exemption provided by law for feed for fish,
4 livestock, and poultry, and in addition to the exemptions
5 provided by law for the above-enumerated substances and
6 products when mixed and used as ingredients in fish,
7 livestock, and poultry feed.

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

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

18 "a. The name and claim number as shown on a
19 "Medicare" card issued by the United States Social Security
20 Administration.

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

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

1 "For the purposes of this subdivision, any person
2 filing a false proof of age shall be guilty of a misdemeanor
3 and upon conviction thereof shall be punished by a fine of
4 \$100.

5 "(31) There shall be exempted from the tax levied by
6 this division the gross receipts of sales of grass sod of all
7 kinds and character when in the original state of production
8 or condition of preparation for sale, when such sales are made
9 by the producer or members of his family or for him by those
10 employed by him to assist in the production thereof; provided,
11 that nothing herein shall be construed to exempt sales of sod
12 by a person engaged in the business of selling plants,
13 seedlings, nursery stock, or floral products.

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

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

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

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

3 "(36) The gross receipts of sales of Lespedeza
4 bicolor and other species of perennial plant seed and
5 seedlings sold for wildlife and game food production purposes
6 by the state.

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

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

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

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

17 "b. Is hosted by a not-for-profit corporation
18 organized and existing under the laws of the State of Alabama;
19 and

20 "c. Determines a national championship of a national
21 organization, including but not limited to the Professional
22 Golfers Association of America, the Tournament Players
23 Association, the United States Golf Association, the United
24 States Tennis Association, and the National Collegiate
25 Athletic Association; and

26 "d. Has not been held in the State of Alabama on
27 more than one prior occasion, provided, however, that for such

1 purpose the Professional Golfers Association Championship, the
2 United States Open Golf Championship, the United States
3 Amateur Golf Championship of the United States Golf
4 Association, and the United States Open Tennis Championship
5 shall each be treated as a separate event.

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

16 "a. There originates from the location 15 or more
17 flight departures and five or more different first-stop
18 destinations five days per week for six or more months during
19 the calendar year; and

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

23 "(41) The gross receipts from the sale of hot or
24 cold food and beverage products sold to or by a certificated
25 or licensed air carrier with a hub operation within this
26 state, for use in conducting intrastate, interstate, or
27 foreign commerce for transporting people or property by air.

1 For the purpose of this subdivision, the words "hub operation
2 within this state" shall be construed to have all of the
3 following criteria:

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

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

11 "(42) The gross proceeds of the sale or sales of the
12 following:

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

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

19 "c. Fuel and supplies for use or consumption aboard
20 boats, ships, aircraft, and towing vessels when used
21 exclusively in transporting persons or property between a
22 point in Alabama and a point or points in offshore federal
23 waters for the exploration for or production of oil, gas,
24 sulphur, or other minerals in offshore federal waters.

25 "d. Drilling equipment that is used for the
26 exploration for or production of oil, gas, sulphur, or other

1 minerals, that is built for exclusive use outside this state
2 and that is, on completion, removed forthwith from this state.

3 "The delivery of items exempted by this subdivision
4 to the purchaser or lessee in this state does not disqualify
5 the purchaser or lessee from the exemption if the property is
6 removed from the state by any means, including by the use of
7 the purchaser's or lessee's own facilities.

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

17 "(43) The gross receipts derived from all bingo
18 games and operations which are conducted in compliance with
19 validly enacted legislation authorizing the conduct of such
20 games and operations, and which comply with the distribution
21 requirements of the applicable local laws; provided that the
22 exemption from sales taxation granted by this subdivision
23 shall apply only to gross receipts taxable under subdivision
24 (2) of Section 40-23-2. It is further provided that this
25 exemption shall not apply to any gross receipts from the sale
26 of tangible personal property, such as concessions, novelties,
27 food, beverages, etc. The exemption provided for in this

1 section shall be limited to those games and operations by
2 organizations which have qualified for exemption under the
3 provisions of 26 U.S.C. § 501 (c) (3), (4), (7), (8), (10), or
4 (19), or which are defined in 26 U.S.C. § 501(d).

5 "(44) The gross receipts derived from the sale or
6 sales of fruit or other agricultural products by the person or
7 corporation that planted, cultivated, and harvested such fruit
8 or agricultural product.

9 "(45) The gross receipts derived from the sale or
10 sales of all domestically mined or produced coal, coke, and
11 coke by-products used in cogeneration plants.

12 "(46) The gross receipts from the sales of parts,
13 components, and systems that become a part of a commercial
14 aircraft that undergoes a conversion or reconfiguration, if
15 the aircraft to be converted was originally configured with a
16 seating capacity of 50 seats or more.

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

22 Section 2. The provisions of this act are severable.
23 If any part of this act is declared invalid or
24 unconstitutional, that declaration shall not affect the part
25 which remains.

26 Section 3. All laws or parts of laws which conflict
27 with this act are repealed.

1 Section 4. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.