

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

ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

1 at a distributor's plant within this state and transports it
2 out-of-state, which are otherwise taxed.

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

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

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

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

1 computation of the tax levied, assessed, or payable hereunder,
2 the gross proceeds of sales of poultry or poultry products
3 when not products of the farm.

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

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

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

26 "(9) The gross proceeds of the sale, or sales of
27 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
27 or between ports in the State of Alabama and ports in other

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

1 traveling to or from conducting such tests or evaluations
2 shall be deemed to be engaged in international or foreign
3 commerce. For purposes of this subdivision, proof that fuel
4 and supplies purchased are for use or consumption aboard
5 vessels engaged in foreign or international commerce or in
6 interstate commerce may be accomplished by the merchant or
7 seller securing the duly signed certificate of the vessel
8 owner, operator, or captain or their respective agent on a
9 form prescribed by the department that the fuel and supplies
10 purchased are for use or consumption aboard vessels engaged in
11 foreign or international commerce or in interstate commerce.
12 Any person filing a false certificate shall be guilty of a
13 misdemeanor and upon conviction shall be fined not less than
14 \$25 nor more than \$500 for each offense. Each false
15 certificate filed shall constitute a separate offense. Any
16 person filing a false certificate shall be liable to the
17 department for all taxes imposed by this division upon the
18 merchant or seller, together with any interest or penalties
19 thereon, by reason of the sale or sales of fuel and supplies
20 applicable to such false certificate. If a merchant or seller
21 of fuel and supplies secures the certificate herein mentioned,
22 properly completed, such merchant or seller shall not be
23 liable for the taxes imposed by this division, if such
24 merchant or seller had no knowledge that such certificate was
25 false when it was filed with such merchant or seller.

26 "(11) The gross proceeds of sales of tangible
27 personal property to the State of Alabama, to the counties

1 within the state and to incorporated municipalities of the
2 State of Alabama.

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

9 "(13) The gross proceeds of the sale or sales of
10 materials, equipment, and machinery which, at any time, enter
11 into and become a component part of ships, vessels, towing
12 vessels or barges, or drilling ships, rigs or barges, or
13 seismic or geophysical vessels, other watercraft and
14 commercial fishing vessels of over five tons load displacement
15 as registered with the U.S. Coast Guard and licensed by the
16 State of Alabama Department of Conservation and Natural
17 Resources. Additionally, the gross proceeds from the sale or
18 sales of lifeboats, personal flotation devices, ring life
19 buoys, survival craft equipment, distress signals, EPIRB's,
20 fire extinguishers, injury placards, waste management plans
21 and logs, marine sanitation devices, navigation rulebooks,
22 navigation lights, sound signals, navigation day shapes, oil
23 placard cards, garbage placards, FCC SSL, stability
24 instructions, first aid equipment, compasses, anchor and radar
25 reflectors, general alarm systems, bilge pumps, piping, and
26 discharge and electronic position fixing devices which are
27 used on the aforementioned watercraft.

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

4 "(15) The gross proceeds of the sale or sales of
5 tangible personal property to county and city school boards,
6 independent school boards, and all educational institutions
7 and agencies of the State of Alabama, the counties within the
8 state, or any incorporated municipalities of the State of
9 Alabama.

10 "(16) The gross proceeds from the sale of all
11 devices or facilities, and all identifiable components
12 thereof, or materials for use therein, acquired primarily for
13 the control, reduction, or elimination of air or water
14 pollution and the gross proceeds from the sale of all
15 identifiable components of or materials used or intended for
16 use in structures built primarily for the control, reduction,
17 or elimination of air and water pollution.

18 "(17) The gross proceeds of sales of tangible
19 personal property or the gross receipts of any business which
20 the state is prohibited from taxing under the Constitution or
21 laws of the United States or under the Constitution of this
22 state.

23 "(18) When dealers or distributors use parts taken
24 from stocks owned by them in making repairs without charge for
25 such parts to the owner of the property repaired pursuant to
26 warranty agreements entered into by manufacturers, such use
27 shall not constitute taxable sales to the manufacturers,

1 distributors, or to the dealers, under this division or under
2 any county sales tax law.

3 "(19) The gross proceeds received from the sale or
4 furnishing of food, including potato chips, candy, fruit and
5 similar items, soft drinks, tobacco products, and stationery
6 and other similar or related articles by hospital canteens
7 operated by Alabama state hospitals at Bryce Hospital and
8 Partlow State School for Mental Deficients at Tuscaloosa,
9 Alabama, and Searcy Hospital at Mt. Vernon, Alabama, for the
10 benefit of the patients therein.

11 "(20) The gross proceeds of the sale, or sales, of
12 wrapping paper and other wrapping materials when used in
13 preparing poultry or poultry products for delivery, shipment,
14 or sale by the producer, processor, packer, or seller of such
15 poultry or poultry products, including pallets used in
16 shipping poultry and egg products, paper or other materials
17 used for lining boxes or other containers in which poultry or
18 poultry products are packed together with any other materials
19 placed in such containers for the delivery, shipment, or sale
20 of poultry or poultry products.

21 "(21) The gross proceeds of the sales of all
22 antibiotics, hormones and hormone preparations, drugs,
23 medicines or medications, vitamins, minerals or other
24 nutrients, and all other feed ingredients including
25 concentrates, supplements, and other feed ingredients when
26 such substances are used as ingredients in mixing and
27 preparing feed for fish raised to be sold on a commercial

1 basis, livestock, and poultry. Such exemption herein granted
2 shall be in addition to exemptions now provided by law for
3 feed for fish raised to be sold on a commercial basis,
4 livestock, and poultry, but not including prepared foods for
5 dogs or cats.

6 "(22) The gross proceeds of the sale, or sales, of
7 seedlings, plants, shoots, and slips which are to be used for
8 planting vegetable gardens or truck farms and other
9 agricultural purposes. Nothing herein shall be construed to
10 exempt, or exclude from the computation of the tax levied,
11 assessed, or payable, the gross proceeds of the sale, or the
12 use of plants, seedlings, shoots, slips, nursery stock, and
13 floral products, except as hereinabove exempted.

14 "(23) The gross proceeds of the sale, or sales, of
15 fabricated steel tube sections, when produced and fabricated
16 in this state by any person, firm, or corporation for any
17 vehicular tunnel for highway vehicular traffic, when sold by
18 the manufacturer or fabricator thereof, and also the gross
19 proceeds of the sale, or sales, of steel which enters into and
20 becomes a component part of such fabricated steel tube
21 sections of said tunnel.

22 "(24) The gross proceeds from sales of admissions to
23 any theatrical production, symphonic or other orchestral
24 concert, ballet, or opera production when such concert or
25 production is presented by any society, association, guild, or
26 workshop group, organized within this state, whose members or
27 some of whose members regularly and actively participate in

1 such concerts or productions for the purposes of providing a
2 creative outlet for the cultural and educational interests of
3 such members, and of promoting such interests for the
4 betterment of the community by presenting such productions to
5 the general public for an admission charge. The employment of
6 a paid director or conductor to assist in any such
7 presentation described in this subdivision shall not be
8 construed to prohibit the exemptions herein provided.

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

17 "(26) The Alabama Chapter of the Cystic Fibrosis
18 Research Foundation and the Jefferson Tuberculosis Sanatorium
19 and any of their departments or agencies, heretofore or
20 hereafter organized and existing in good faith in the State of
21 Alabama for purposes other than for pecuniary gain and not for
22 individual profit, shall be exempted from the computation of
23 the tax on the gross proceeds of all sales levied, assessed,
24 or payable.

25 "(27) The gross proceeds from the sale or sales of
26 fuel for use or consumption aboard commercial fishing vessels
27 are hereby exempt from the computation of all sales taxes

1 levied, assessed, or payable under the provisions of this
2 division or levied under any county or municipal sales tax
3 law.

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

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

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

21 "(30) The gross proceeds of the sale or sales of all
22 medicines prescribed by physicians for persons who are 65
23 years of age or older, and when said prescriptions are filled
24 by licensed pharmacists, shall be exempted under this division
25 or under any county or municipal sales tax law. The exemption
26 provided in this section shall not apply to any medicine
27 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.

26 "(32) The gross receipts of sales of the following
27 items or materials which are necessary in the farm-to-market

1 production of tomatoes when such items or materials are used
2 by the producer or members of his family or for him by those
3 employed by him to assist in the production thereof: Twine for
4 tying tomatoes, tomato stakes, field boxes (wooden boxes used
5 to take tomatoes from the fields to shed), and tomato boxes
6 used in shipments to customers.

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

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

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

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

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

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

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

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

1 "b. Is hosted by a not-for-profit corporation
2 organized and existing under the laws of the State of Alabama;
3 and

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

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

17 "(40) The gross receipts from the sale of any
18 aircraft and replacement parts, components, systems, supplies,
19 and sundries affixed or used on said aircraft and ground
20 support equipment and vehicles used by or for the aircraft to
21 or by a certificated or licensed air carrier with a hub
22 operation within this state, for use in conducting intrastate,
23 interstate, or foreign commerce for transporting people or
24 property by air. For the purpose of this subdivision, the
25 words "hub operation within this state" shall be construed to
26 have all of the following criteria:

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

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

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

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

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

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

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

14 "The delivery of items exempted by this subdivision
15 to the purchaser or lessee in this state does not disqualify
16 the purchaser or lessee from the exemption if the property is
17 removed from the state by any means, including by the use of
18 the purchaser's or lessee's own facilities.

19 "The shipment to a place in this state of equipment
20 exempted by this subdivision for further assembly or
21 fabrication does not disqualify the purchaser or lessee from
22 the exemption if on completion of the further assembly or
23 fabrication the equipment is removed forthwith from this
24 state. This subdivision applies to a sale that may occur when
25 the equipment exempted is further assembled or fabricated if
26 on completion the equipment is removed forthwith from this
27 state.

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

16 "(44) The gross receipts derived from the sale or
17 sales of fruit or other agricultural products by the person or
18 corporation that planted, cultivated, and harvested such fruit
19 or agricultural product.

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

23 "(46) The gross receipts from the sales of parts,
24 components, and systems that become a part of a commercial
25 aircraft that undergoes a conversion or reconfiguration, if
26 the aircraft to be converted was originally configured with a
27 seating capacity of 50 seats or more; provided, however, that

1 this exemption shall not apply to a local sales tax unless
2 previously exempted by local law or approved by resolution of
3 the local governing body.

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 Section 2. The provisions of this act are severable.
10 If any part of this act is declared invalid or
11 unconstitutional, that declaration shall not affect the part
12 which remains.

13 Section 3. All laws or parts of laws which conflict
14 with this act are repealed.

15 Section 4. This act shall become effective
16 immediately following its passage and approval by the
17 Governor, or its otherwise becoming law.

1
2
3

4
5
6
7
8
9
10
11
12
13
14

15
16
17
18

House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Ways and Means
Education..... 05-APR-11

Read for the second time and placed
on the calendar 1 amendment 21-APR-11

Read for the third time and passed
as amended..... 31-MAY-11

Yeas 93, Nays 0, Abstains 1

Greg Pappas
Clerk