

1 HB401
2 137393-2
3 By Representatives Ison, Hammon, Mask, Fincher, Gaston, Scott,
4 Hubbard (J), Baker, Johnson (R), Sessions, Buskey, Davis,
5 McClurkin, Barton, Bracy and Kennedy
6 RFD: Economic Development and Tourism
7 First Read: 23-FEB-12

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8 SYNOPSIS: Under existing law, the State of Alabama
9 levies a sales and use tax on the sale and use of
10 certain products and services and activities.
11 Certain products and business activities are exempt
12 from the imposition of the taxes.

13 This bill would provide that certain metal
14 held for investment purposes shall be exempt from
15 the sales and use tax.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT
20

21 To amend Sections 40-23-4 and 40-23-62, Code of
22 Alabama 1975, relating to sales and use tax exemptions; to
23 provide certain metal held for investment purposes shall be
24 exempt from the sales and use tax.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

1 "§40-23-4.

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

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

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

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

23 "(4) The gross proceeds of sales of insecticides and
24 fungicides when used for agricultural purposes or when used by
25 persons properly permitted by the Department of Agriculture
26 and Industries or any applicable local or state governmental
27 authority for structural pest control work and feed for

1 livestock and poultry, but not including prepared food for
2 dogs and cats.

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

14 "(6) Cottonseed meal exchanged for cottonseed at or
15 by cotton gins.

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

1 proceeds of sale thereof are otherwise specifically exempted
2 by the provisions of this division.

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

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

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

1 contract for the painting, repair, or reconditioning of
2 vessels, barges, ships, other watercraft, and commercial
3 fishing vessels of over five tons load displacement as
4 registered with the U.S. Coast Guard and licensed by the State
5 of Alabama Department of Conservation and Natural Resources.

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

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

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

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

19 "(13) The gross proceeds of the sale or sales of
20 materials, equipment, and machinery which, at any time, enter
21 into and become a component part of ships, vessels, towing
22 vessels or barges, or drilling ships, rigs or barges, or
23 seismic or geophysical vessels, other watercraft and
24 commercial fishing vessels of over five tons load displacement
25 as registered with the U.S. Coast Guard and licensed by the
26 State of Alabama Department of Conservation and Natural
27 Resources. Additionally, the gross proceeds from the sale or

1 sales of lifeboats, personal flotation devices, ring life
2 buoys, survival craft equipment, distress signals, EPIRB's,
3 fire extinguishers, injury placards, waste management plans
4 and logs, marine sanitation devices, navigation rulebooks,
5 navigation lights, sound signals, navigation day shapes, oil
6 placard cards, garbage placards, FCC SSL, stability
7 instructions, first aid equipment, compasses, anchor and radar
8 reflectors, general alarm systems, bilge pumps, piping, and
9 discharge and electronic position fixing devices which are
10 used on the aforementioned watercraft.

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

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

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

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

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

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

21 "(20) The gross proceeds of the sale, or sales, of
22 wrapping paper and other wrapping materials when used in
23 preparing poultry or poultry products for delivery, shipment,
24 or sale by the producer, processor, packer, or seller of such
25 poultry or poultry products, including pallets used in
26 shipping poultry and egg products, paper or other materials
27 used for lining boxes or other containers in which poultry or

1 poultry products are packed together with any other materials
2 placed in such containers for the delivery, shipment, or sale
3 of poultry or poultry products.

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

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

24 "(23) The gross proceeds of the sale, or sales, of
25 fabricated steel tube sections, when produced and fabricated
26 in this state by any person, firm, or corporation for any
27 vehicular tunnel for highway vehicular traffic, when sold by

1 the manufacturer or fabricator thereof, and also the gross
2 proceeds of the sale, or sales, of steel which enters into and
3 becomes a component part of such fabricated steel tube
4 sections of said tunnel.

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

19 "(25) The gross proceeds of sales of herbicides for
20 agricultural uses by whomsoever sold. The term herbicides, as
21 used in this subdivision, means any substance or mixture of
22 substances intended to prevent, destroy, repel, or retard the
23 growth of weeds or plants. It shall include preemergence
24 herbicides, postemergence herbicides, lay-by herbicides,
25 pasture herbicides, defoliant herbicides, and desiccant
26 herbicides.

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

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

15 "The words commercial fishing vessels shall mean
16 vessels whose masters and owners are regularly and exclusively
17 engaged in fishing as their means of livelihood.

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

21 "(29) The gross proceeds of the sales of all
22 antibiotics, hormones and hormone preparations, drugs,
23 medicines, and other medications including serums and
24 vaccines, vitamins, minerals, or other nutrients for use in
25 the production and growing of fish, livestock, and poultry by
26 whomsoever sold. Such exemption as herein granted shall be in
27 addition to the exemption provided by law for feed for fish,

1 livestock, and poultry, and in addition to the exemptions
2 provided by law for the above-enumerated substances and
3 products when mixed and used as ingredients in fish,
4 livestock, and poultry feed.

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

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

15 "a. The name and claim number as shown on a
16 "Medicare" card issued by the United States Social Security
17 Administration.

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

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

24 "For the purposes of this subdivision, any person
25 filing a false proof of age shall be guilty of a misdemeanor
26 and upon conviction thereof shall be punished by a fine of
27 \$100.

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

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

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

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

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

25 "(36) The gross receipts of sales of Lespedeza
26 bicolor and other species of perennial plant seed and

1 seedlings sold for wildlife and game food production purposes
2 by the state.

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

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

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

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

13 "b. Is hosted by a not-for-profit corporation
14 organized and existing under the laws of the State of Alabama;
15 and

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

22 "d. Has not been held in the State of Alabama on
23 more than one prior occasion, provided, however, that for such
24 purpose the Professional Golfers Association Championship, the
25 United States Open Golf Championship, the United States
26 Amateur Golf Championship of the United States Golf

1 Association, and the United States Open Tennis Championship
2 shall each be treated as a separate event.

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

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

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

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

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

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

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

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

26 "The delivery of items exempted by this subdivision
27 to the purchaser or lessee in this state does not disqualify

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

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

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

1 "(44) The gross receipts derived from the sale or
2 sales of fruit or other agricultural products by the person or
3 corporation that planted, cultivated, and harvested such fruit
4 or agricultural product.

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

8 "(46) The gross receipts from the sale or sales of
9 metal, other than gold or silver, when such metal is purchased
10 for the purpose of transferring such metal to an investment
11 trust in exchange for shares or other units, each of which are
12 both publicly traded and represent fractional undivided
13 beneficial interests in the trust's net assets, including
14 metal stored in warehouses located in this state, as well as
15 the gross proceeds from the sale or other transfer of such
16 metal to or from such investment trust in exchange for shares
17 or other units that are publicly traded and represent
18 fractional undivided beneficial interests in the trust's net
19 assets. For purposes of this subdivision, the term metals
20 includes, but is not limited to, copper, aluminum, nickel,
21 zinc, tin, lead, and other similar metals typically used in
22 commercial industrial applications.

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

1 "§40-23-62.

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

5 "(1) Property, on which the sales tax imposed by the
6 provisions of Article 1 of this chapter is paid by the
7 consumer to a person licensed under the provisions of Article
8 1 of this chapter.

9 "(2) Property, the storage, use or other consumption
10 of which this state is prohibited from taxing under the
11 Constitution or laws of the United States of America or under
12 the constitution of this state.

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

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

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

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

1 "(7) Insecticides and fungicides and feed for
2 livestock and poultry, but not including prepared foods for
3 dogs and cats.

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

15 "(9) Cottonseed meal exchanged for cottonseed at or
16 by cotton gins.

17 "(10) Transportation, gas, water, or electricity, of
18 the kinds and natures, the rates and charges for which when
19 sold by public utilities, are customarily fixed and determined
20 by the Public Service Commission of Alabama or like regulatory
21 bodies.

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

26 "a. In manufacturing tangible personal property for
27 sale;

1 "b. For the generation of electric power or energy
2 for use in manufacturing tangible personal property for sale
3 or for resale; or

4 "c. For the generation of motive power for
5 transportation.

6 "(12) Fuel and supplies for use or consumption
7 aboard ships, vessels, towing vessels, or barges, or drilling
8 ships, rigs or barges, or seismic or geophysical vessels, or
9 other watercraft (herein for purposes of this exemption being
10 referred to as vessels) engaged in foreign or international
11 commerce or in interstate commerce; provided, that nothing in
12 this article shall be construed to exempt or exclude from the
13 measure of the tax herein levied the gross proceeds of sale or
14 sales of material and supplies to any person for use in
15 fulfilling a contract for the painting, repair or
16 reconditioning of vessels, barges, ships, other watercraft and
17 commercial fishing vessels of over five tons load displacement
18 as registered with the U.S. Coast Guard and licensed by the
19 State of Alabama Department of Conservation and Natural
20 Resources. For purposes of this subdivision, it shall be
21 presumed that vessels engaged in the transportation of cargo
22 between ports in the State of Alabama and ports in foreign
23 countries or possessions or territories of the United States
24 or between ports in the State of Alabama and ports in other
25 states are engaged in foreign or international commerce or
26 interstate commerce, as the case may be. For the purposes of
27 this subdivision, the engaging in foreign or international

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

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

23 "(13) Property stored, used or consumed by the State
24 of Alabama, by the counties within the state or by
25 incorporated municipalities of the State of Alabama.

26 "(14) The use, storage or consumption of materials,
27 equipment and machinery which, at any time, enter into and

1 become a component part of ships, vessels, towing vessels or
2 barges, or drilling ships, rigs or barges, or seismic or
3 geophysical vessels, other watercraft and commercial fishing
4 vessels of over five tons load displacement as registered with
5 the U.S. Coast Guard and licensed by the Department of
6 Conservation and Natural Resources. Additionally, the use,
7 storage, or consumption of lifeboats, personal flotation
8 devices, ring life buoys, survival craft equipment, distress
9 signals, EPIRB's, fire extinguishers, injury placards, waste
10 management plans and logs, marine sanitation devices,
11 navigation rulebooks, navigation lights, sound signals,
12 navigation day shapes, oil placard cards, garbage placards,
13 FCC SSL, stability instructions, first aid equipment,
14 compasses, anchor and radar reflectors, general alarm systems,
15 bilge pumps, piping, and discharge and electronic position
16 fixing devices on the 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
27 over five tons load displacement as registered with the U.S.

1 Coast Guard and licensed by the State of Alabama Department of
2 Conservation and Natural Resources when purchased from the
3 manufacturers or builders thereof.

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

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

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

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

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

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

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

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

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

25 "(27) Fuel for use or consumption aboard commercial
26 fishing vessels are hereby exempt from the payment of the

1 state use tax levied under this article, or levied under any
2 county or municipal use tax law.

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

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

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

22 "(30) All medicines prescribed by physicians for
23 persons who are 65 years of age or older, and when said
24 prescriptions are filled by licensed pharmacists, shall be
25 exempted from the operation of the state use tax law levied by
26 this article, or by any county or municipal use tax law. The
27 exemptions provided in this subdivision shall not apply to any

1 medicine purchased in any manner other than as is herein
2 provided.

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

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

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

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

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

19 "(31) All diesel fuel used for off-highway
20 agricultural purposes.

21 "(32) The storage, use or other consumption 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 by
25 a certificated or licensed air carrier with a hub operation
26 within this state, for use in conducting intrastate,
27 interstate or foreign commerce for transporting people or

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

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

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

26 "(34) The storage, use, or other consumption of the
27 following:

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

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

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

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

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

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
27 the exemption if on completion of the further assembly or

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

6 "(35) The storage or use of metal, other than gold
7 or silver, when such metal is held by an investment trust the
8 shares or other units in the trust's net assets of which have
9 been issued in exchange for such metal and are publicly
10 traded, including metal stored in warehouses located in this
11 state. For purposes of this subdivision, the term metals
12 includes, but is not limited to, aluminum, nickel, zinc, tin,
13 lead, and other similar metals typically used in commercial
14 and industrial applications."

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