HB282

MVDBWW1-1

By Representatives Shirey, Hulsey, Robertson, Rigsby, Gidley, Holk-Jones, Fidler, Lamb, Lomax, Shaw, Wood (D), Brown, Sorrells, Marques, Wilcox

RFD: Ways and Means Education

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SYNOPSIS:

Under current law certain items are exempt from sales and use tax. Also under current law, certain opthalmic materials are subject to sales tax.

This bill would exempt the gross proceeds from the sale of optical aids, including eyeglasses and contact lenses, from sales and use tax.

A BILL

TO BE ENTITLED

AN ACT

To amend Section 40-23-1, Code of Alabama 1975, relating to sales tax; to exempt the gross proceeds from the sale of optical aids, including eyeglasses and contact lenses, from sales and use tax.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 40-23-1, Code of Alabama 1975, is amended to read as follows:

"§40-23-1

(a) For the purpose of this division, the following terms have the respective meanings ascribed by this section:

(1) PERSON or COMPANY. Used interchangeably, includes any individual, firm, copartnership, association, corporation,

receiver, trustee, or any other group or combination acting as a unit and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(2) DEPARTMENT. The Department of Revenue of the State of Alabama.

(3) COMMISSIONER. The Commissioner of Revenue of the State of Alabama.

(4) TAX YEAR or TAXABLE YEAR. The calendar year.

(5) SALE or SALES. Installment and credit sales and the exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale. Provided, however, a transaction shall not be closed or a sale completed until the time and place when and where title is transferred by the seller or seller's agent to the purchaser or purchaser's agent, and for the purpose of determining transfer of title, a common carrier or the U.S. Postal Service shall be deemed to be the agent of the seller, regardless of any F.O.B. point and regardless of who selects the method of transportation, and regardless of by whom or the method by which freight, postage, or other transportation charge is paid. Provided further that, where billed as a separate item to and paid by the purchaser, the freight, postage, or other transportation charge paid to a common carrier or the U.S. Postal Service is not a part of the selling price.

(6) GROSS PROCEEDS OF SALES. The value proceeding or accruing from the sale of tangible personal property, and including the proceeds from the sale of any property handled

on consignment by the taxpayer, including merchandise of any kind and character without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, any consumer excise taxes that may be included within the sales price of the property sold, or any other expenses whatsoever, and without any deductions on account of losses; provided, that cash discounts allowed and taken on sales shall not be included, and "gross proceeds of sales" shall not include the sale price of property returned by customers when the full sales price thereof is refunded either in cash or by credit. The term "gross proceeds of sale" shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn or used from the business or stock and used or consumed in connection with a business, and shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed by any person so withdrawing the same, except property that has been previously withdrawn from business or stock and so used or consumed with respect to which property the tax has been paid because of previous withdrawal, use, or consumption, except property that enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale and not for the personal and private use or consumption of any person so withdrawing, using, or consuming the same, and except refinery, residue, or

fuel gas, whether in a liquid or gaseous state, that has been generated by, or is otherwise a by-product of, a petroleum-refining process, which gas is then utilized in the process to generate heat or is otherwise utilized in the distillation or refining of petroleum products.

In the case of the retail sale of equipment, accessories, fixtures, and other similar tangible personal property used in connection with the sale of commercial mobile services as defined herein, or in connection with satellite television services, at a price below cost, "gross proceeds of sale" shall only include the stated sales price thereof and shall not include any sales commission or rebate received by the seller as a result of the sale. As used herein, the term "commercial mobile services" shall have the same meaning as that term has in 47 U.S.C. §§ 153(n) and 332(d), as in effect from time to time.

(7) TAXPAYER. Any person liable for taxes hereunder.

(8) GROSS RECEIPTS. The value proceeding or accruing from the sale of tangible personal property, including merchandise and commodities of any kind and character, all receipts actual and accrued, by reason of any business engaged in, not including, however, interest, discounts, rentals of real estate, or royalties, and without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, any consumer excise taxes that may be included in the sales price of the property sold, or any other expenses whatsoever and without any deductions on account of losses. The term "gross

receipts" shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn or used from the business or stock and used or consumed in connection with a business, and shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed by any person so withdrawing the same, except property which has been previously withdrawn from business or stock and so used or consumed and with respect to which property the tax has been paid because of previous withdrawal, use, or consumption, except property which enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale as provided in subdivision (9) and not for the personal and private use or consumption of any person so withdrawing, using, or consuming the same, and except refinery, residue, or fuel gas, whether in a liquid or gaseous state, that has been generated by, or is otherwise a by-product of, a petroleum-refining process, which gas is then utilized in the process to generate heat or is otherwise utilized in the distillation or refining of petroleum products.

(9) WHOLESALE SALE or SALE AT WHOLESALE. Any one of the following:

a. A sale of tangible personal property by wholesalers to licensed retail merchants, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers, not for resale.

b. A sale of tangible personal property or products, including iron ore, and including the furnished container and label of the property or products, to a manufacturer or compounder which enter into and become an ingredient or component part of the tangible personal property or products that the manufacturer or compounder manufactures or compounds for sale, whether or not the tangible personal property or product used in manufacturing or compounding a finished product is used with the intent that it becomes a component of the finished product; provided, however, that it is the intent of this section that no sale of capital equipment, machinery, tools, or product shall be included in the term "wholesale sale." The term "capital equipment, machinery, tools, or product" shall mean property that is subject to depreciation allowances for Alabama income tax purposes.

c. A sale of containers intended for one-time use only, and the labels thereof, when containers are sold without contents to persons who sell or furnish containers along with the contents placed therein for sale by persons.

d. A sale of pallets intended for one-time use only when pallets are sold without contents to persons who sell or furnish pallets along with the contents placed thereon for sale by persons.

e. A sale to a manufacturer or compounder, of crowns, caps, and tops intended for one-time use employed and used upon the containers in which a manufacturer or compounder markets his products.

f. A sale of containers to persons engaged in selling

or otherwise supplying or furnishing baby chicks to growers thereof where containers are used for the delivery of chicks or a sale of containers for use in the delivery of eggs by the producer thereof to the distributor or packer of eggs even though containers used for delivery of baby chicks or eggs may be recovered for reuse.

g. A sale of bagging and ties used in preparing cotton for market.

h. A sale to meat packers, manufacturers, compounders, or processors of meat products of all casings used in molding or forming wieners and Vienna sausages even though casings may be recovered for reuse.

i. A sale of commercial fish feed including concentrates, supplements, and other feed ingredients when substances are used as ingredients in mixing and preparing feed for fish raised to be sold on a commercial basis.

j. A sale of bait used to capture or attempt to capture fish or other seafood in the process of commercial fishing by a holder of a commercial license issued pursuant to Chapter 12 of Title 9.

k. A sale of tangible personal property to any person engaging in the business of leasing or renting tangible personal property to others, if tangible personal property is purchased for the purpose of leasing or renting it to others under a transaction subject to the privilege or license tax levied in Article 4 of Chapter 12 of this title against any person engaging in the business of leasing or renting tangible personal property to others.

l. A purchase or withdrawal of parts or materials from stock by any person licensed under this division where parts or materials are used in repairing or reconditioning the tangible personal property of a licensed person, which tangible personal property is a part of the stock of goods of a licensed person, offered for sale by him or her, and not for use or consumption of a licensed person.

(10) SALE AT RETAIL or RETAIL SALE. All sales of tangible personal property except those defined as wholesale sales. The quantities of goods sold or prices at which sold are immaterial in determining whether or not a sale is at retail. Sales of building materials to contractors, builders, or landowners for resale or use in the form of real estate are retail sales in whatever quantity sold. Sales of building materials, fixtures, or other equipment to a manufacturer or builder of modular buildings for use in manufacturing, building, or equipping a modular building ultimately becoming a part of real estate situated in the State of Alabama are retail sales, and the use, sale, or resale of building shall not be subject to the tax. Sales of tangible personal property to undertakers and morticians are retail sales and subject to the tax at the time of purchase, but are not subject to the tax on resale to the consumer. Sales of tangible personal property or products to manufacturers, quarry operators, mine operators, or compounders, which are used or consumed by them in manufacturing, mining, quarrying, or compounding and do not become an ingredient or component part of the tangible personal property manufactured or compounded as provided in

subdivision (9) are retail sales. The term "sale at retail" or "retail sale" shall also mean and include the withdrawal, use, or consumption of any tangible personal property by any one who purchases same at wholesale, except property that has been previously withdrawn from the business or stock and so used or consumed and with respect to which property tax has been paid because of previous withdrawal, use, or consumption, except property that enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale as provided in subdivision (9) and not for the personal and private use or consumption of any person so withdrawing, using, or consuming the same; and wholesale purchaser shall report and pay the taxes thereon. In the case of the sale of equipment, accessories, fixtures, and other similar tangible personal property used in connection with the sale of commercial mobile services as defined in subdivision (6), or in connection with satellite television services, at a price below cost, the term "sale at retail" and "retail sale" shall include those sales, and those sales shall not also be taxable as a withdrawal, use, or consumption of such tangible personal property.

(11) BUSINESS. All activities engaged in, or caused to be engaged in, with the object of gain, profit, benefit, or advantage, either direct or indirect, and not excepting subactivities producing marketable commodities used or consumed in the main business activity, each of which subactivities shall be considered business engaged in, taxable in the class in which it falls.

(12) AUTOMOTIVE VEHICLE. A power shovel, dragline, crawler, crawler crane, ditcher, or any similar machine that is self-propelled, in addition to self-propelled machines that are used primarily as instruments of conveyance.

(13) PREPAID TELEPHONE CALLING CARD. A sale of a prepaid telephone calling card or a prepaid authorization number, or both, shall be deemed the sale of tangible personal property subject to the tax imposed on the sale of tangible personal property pursuant to this chapter. For purposes of this subdivision, the sale of prepaid wireless service that is evidenced by a physical card constitutes the sale of a prepaid telephone calling card, and the sale of prepaid wireless service that is not evidenced by a physical card constitutes the sale of a prepaid authorization number.

(14) PREPAID WIRELESS SERVICE. The right to use mobile telecommunications service, which must be paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount, and which may include rights to use non-telecommunications services or to download digital products or digital content. For purposes of this subdivision, mobile telecommunications service has the meaning ascribed by Section 40-21-120.

(15) CONSUMABLE VAPOR PRODUCT. Any nicotine liquid solution or other material containing nicotine that is depleted when used as a vapor product.

(16) VAPOR PRODUCTS. Any non-lighted, noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be

used to produce vapor from nicotine in a solution. The term includes any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term does not include any product regulated by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.

(17) PRODUCER VALUE ADDED AGRICULTURAL PRODUCTS. Fruits or other agricultural products that have undergone some degree of further processing by the original producer of the agricultural product, including, but not limited to, whole cuts of meat, bound cut flowers, jams, jellies, or boiled or roasted peanuts.

(18) COMMERCIAL FISHING. The activity of catching or processing fish or other seafood regularly and exclusively as a means of livelihood by a holder of a commercial license issued pursuant to Chapter 12 of Title 9. The term includes shellfish farmers, shrimpers, oysterers, lobsterers, and crabbers.

(19) COMMERCIAL FISHING VESSEL. Any vessel whose masters and owners are regularly and exclusively engaged in commercial fishing as their means of livelihood.

(20) FOOD. Food as defined in 7 U.S.C. § 2012, for the purposes of the federal Supplemental Nutrition Assistance Program regardless of where or by what means food is sold. In the event that the federal Supplemental Nutrition Assistance Program definition no longer exists, the Legislature shall

provide a new definition of "food" by general law.

(b) The use within this state of tangible personal property by the manufacturer thereof, as building materials in the performance of a construction contract, for the purposes of this division, shall be considered as a retail sale thereof by the manufacturer, who shall also be construed as the ultimate consumer of materials or property, and who shall be required to report transaction and pay the sales tax thereon, based upon the reasonable and fair market price thereof at the time and place where same are used or consumed by the manufacturer. Where the contractor is the manufacturer or compounder of ready-mix concrete or asphalt plant mix used in the performance of a contract, whether the ready-mix concrete or asphalt plant mix is manufactured or compounded at the job site or at a fixed or permanent plant location, the tax applies only to the cost of the ingredients that become a component part of the ready-mix concrete or the asphalt plant mix. The provisions of this subsection shall not apply to any tangible personal property that is specifically exempted from the tax levied in this division.

(c) The sale of lumber by a lumber manufacturer to a trucker for resale is a sale at wholesale as sales are defined herein where the trucker is either a licensed dealer in lumber or, if a resident of Alabama, has registered with the Department of Revenue, and has received therefrom a certificate of registration or, if a nonresident of this state purchasing lumber for resale outside the State of Alabama, has furnished to the lumber manufacturer his or her name, address,

and the vehicle license number of the truck in which the lumber is to be transported, which name, address, and vehicle license number shall be shown on the sales invoice rendered by the lumber manufacturer. The certificate provided for herein shall be valid for the calendar year of its issuance and may be renewed from year to year on application to the Department of Revenue on or before January 31 of each succeeding year; provided, that if not renewed the certificate shall become invalid for the purpose of this division on February 1.

~~(d) The dispensing or transferring of ophthalmic materials, including lenses, frames, eyeglasses, contact lenses, and other therapeutic optic devices, to a patient by a licensed ophthalmologist, as a part of his or her professional service, for purposes of this division, shall constitute a sale, subject to the state sales tax. The licensed ophthalmologist or licensed optometrist shall collect the state sales tax. In no event shall the providing of professional services in connection with the dispensing or transferring of ophthalmic materials, including dispensing fees or fitting fees, by a licensed ophthalmologist or licensed optometrist be considered a sale subject to the state sales tax. When the ophthalmic materials are purchased by a consumer covered by a third party benefit plan, including Medicare, the sales tax shall be applicable to the amount that the ophthalmologist, optometrist, or optician is reimbursed by the third party benefit plan plus the amount that the consumer pays to the ophthalmologist, optometrist, or optician at the time of the sale. All transfers of ophthalmic materials by~~

~~opticians or optometrists shall be considered retail sales subject to the state sales tax. The term "supplier" shall include but not be limited to optical laboratories, ophthalmic material wholesalers, or anyone selling ophthalmic materials to ophthalmologists.~~

(d) ~~(c)~~ Notwithstanding the above, the withdrawal, use, or consumption of a manufactured product by the manufacturer thereof in quality control testing performed by employees or independent contractors of the taxpayer, for purposes of this division, shall not be deemed or considered to constitute a transaction subject to sales tax, nor shall a gift by the manufacturer of a manufactured product, withdrawn from the manufacturer's inventory, to an entity listed in 26 U.S.C. §§ 170(b) or (c), be considered a transaction subject to sales tax.

(e) ~~(f)~~ Notwithstanding the foregoing, a gift by a retailer of a product or products where the aggregate retail value of any single gift is equal to or less than ten thousand dollars ($10,000), withdrawn from the retailer's inventory, to an entity listed in 26 U.S.C. §§ 170(b) or (c) shall not be deemed or considered to constitute a transaction subject to sales and use tax."

Section 2. (a) For the purposes of this section, the following words or terms have the following meanings:

(1) EYEGLASSES. Term includes lenses and frames into which lenses have been installed if the lenses have been prescribed by a physician or optometrist licensed by any state, country, or province.

(2) OPTICAL AID. Eyeglasses, contact lenses, or other instruments or devices that may aid or correct human vision and that have been prescribed by a physician or optometrist licensed by any state, country, or province.

(b)(1) The gross proceeds of the sale, or sales, of optical aids are exempted from state sales and use tax.

(2) The exemption provided in this subsection shall not apply to county or municipal sales or use taxes unless approved by resolution or ordinance adopted by the local governing body.

Section 3. This act shall become effective on September 1, 2024.