

HB250 INTRODUCED



1 O2P4MW-1
2 By Representative Garrett
3 RFD: Ways and Means Education
4 First Read: 04-Apr-23
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SYNOPSIS:

Under existing law, the state imposes sales or use taxes upon certain persons, firms, or corporations. Sales of certain items are taxed at a reduced rate. "Food" is not a defined term and is taxed at the general rate. Sales of other items are exempt from the taxes.

This bill would define "food" for purposes of sales and use taxes and begin phasing-out the state sales and use tax on food on September 1, 2023. Future rate reductions would be contingent upon certain growth requirements in the Education Trust Fund.

This bill would establish the sales and use tax rate on food for purposes of county and municipal sales and use taxes as the existing general or retail sales tax rate on the effective date of this act and allow a county and municipal election to reduce the sales tax rate or exempt food from local sales and use taxes.

A BILL
TO BE ENTITLED
AN ACT

Relating to sales taxes; to amend Section 40-23-1, as



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29 last amended by Acts 2022-199 and 2022-291, 2022 Regular
30 Session, Code of Alabama 1975, Section 40-23-2, as last
31 amended by Act 2022-346, 2022 Regular Session, Code of Alabama
32 1975, Section 40-23-60, as last amended by Act 2022-199, 2022
33 Regular Session, Code of Alabama 1975, and Section 40-23-61,
34 Code of Alabama 1975; to define "food" and begin phasing-out
35 the state sales and use tax on food on September 1, 2023; to
36 require certain growth targets in the Education Trust Fund for
37 future sales tax reductions on food; to establish the sales
38 and use tax rate on food for purposes of county and municipal
39 sales and use taxes as the existing general or retail sales
40 and use tax rate; and to authorize a county and municipality
41 to reduce the sales and use tax rate or exempt food from local
42 sales and use taxes.

43 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

44 Section 1. Section 40-23-1, as last amended by Acts
45 2022-199 and 2022-291 in the 2022 Regular Session, Code of
46 Alabama 1975, Section 40-23-2, as last amended by Act 2022-346
47 in the 2022 Regular Session, Code of Alabama 1975, Section
48 40-23-60, as last amended by Act 2022-199 in the 2022 Regular
49 Session, Code of Alabama 1975, and Section 40-23-61, Code of
50 Alabama 1975, are amended to read as follows:

51 "§40-23-1

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

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



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

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

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

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

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

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



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



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

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

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

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



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

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

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



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

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

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

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

196 f. A sale of containers to persons engaged in selling



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

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

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

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

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

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



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

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



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

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



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

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

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

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

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



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

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

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

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

332 (20) FOOD. Food on the Special Supplemental Nutrition
333 Program for Women, Infants, and Children (WIC) state food list
334 meeting the requirements of 7 CFR Part 246.10 and WIC Policy
335 Memorandum #2015-3. In the event the federal WIC Program no
336 longer exists, the Legislature shall provide a new definition



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337 of "food" by general law.

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

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



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

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



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

398 (e) Notwithstanding the above, the withdrawal, use, or
399 consumption of a manufactured product by the manufacturer
400 thereof in quality control testing performed by employees or
401 independent contractors of the taxpayer, for purposes of this
402 division, shall not be deemed or considered to constitute a
403 transaction subject to sales tax, nor shall a gift by the
404 manufacturer of a manufactured product, withdrawn from the
405 manufacturer's inventory, to an entity listed in 26 U.S.C. §§
406 170(b) or (c), be considered a transaction subject to sales
407 tax.

408 (f) Notwithstanding the foregoing, a gift by a retailer
409 of a product or products where the aggregate retail value of
410 any single gift is equal to or less than ten thousand dollars
411 (\$10,000), withdrawn from the retailer's inventory, to an
412 entity listed in 26 U.S.C. §§ 170(b) or (c) shall not be
413 deemed or considered to constitute a transaction subject to
414 sales and use tax."

415 "§40-23-2

416 There is levied, in addition to all other taxes of
417 every kind now imposed by law, and shall be collected as
418 herein provided, a privilege or license tax against the person
419 on account of the business activities and in the amount to be
420 determined by the application of rates against gross sales, or



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421 gross receipts, as the case may be, as follows:

422 (1) Upon every person, firm, or corporation, (including
423 the State of Alabama and its Alcoholic Beverage Control Board
424 in the sale of alcoholic beverages of all kinds, the
425 University of Alabama, Auburn University, and all other
426 institutions of higher learning in the state, whether the
427 institutions be denominational, state, county, or municipal
428 institutions, any association or other agency or
429 instrumentality of the institutions) engaged or continuing
430 within this state, in the business of selling at retail any
431 tangible personal property whatsoever, including merchandise
432 and commodities of every kind and character, (not including,
433 however, bonds or other evidences of debts or stocks, nor
434 sales of material and supplies to any person for use in
435 fulfilling a contract for the painting, repair, or
436 reconditioning of vessels, barges, ships, other watercraft,
437 and commercial fishing vessels of over five tons load
438 displacement as registered with the U.S. Coast Guard and
439 licensed by the State of Alabama Department of Conservation
440 and Natural Resources) an amount equal to four percent of the
441 gross proceeds of sales of the business except where a
442 different amount is expressly provided herein. Provided,
443 however, that any person engaging or continuing in business as
444 a retailer and wholesaler or jobber shall pay the tax required
445 on the gross proceeds of retail sales of the business at the
446 rates specified, when his or her books are kept so as to show
447 separately the gross proceeds of sales of each business, and
448 when his or her books are not kept he or she shall pay the tax



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449 as a retailer, on the gross sales of the business.

450 Where any used part including tires of an automotive
451 vehicle or a truck trailer, semitrailer, or house trailer is
452 taken in trade, or in a series of trades, as a credit or part
453 payment on the sale of a new or rebuilt part or tire, the tax
454 levied herein shall be paid on the net difference, that is,
455 the price of the new or used part or tire sold less the credit
456 for the used part or tire taken in trade, provided, however,
457 this provision shall not be construed to include batteries.

458 (2) Upon every person, firm, or corporation engaged or
459 continuing within this state in the business of conducting or
460 operating places of amusement or entertainment, billiard and
461 pool rooms, bowling alleys, amusement devices, musical
462 devices, theaters, opera houses, moving picture shows,
463 vaudevilles, amusement parks, athletic contests, including
464 wrestling matches, prize fights, boxing and wrestling
465 exhibitions, football and baseball games, (including athletic
466 contests, conducted by or under the auspices of any
467 educational institution within this state, or any athletic
468 association thereof, or other association whether the
469 institution or association be a denominational, a state, or
470 county, or a municipal institution, or association or a state,
471 county, or city school, or other institution, association or
472 school) skating rinks, race tracks, golf courses, or any other
473 place at which any exhibition, display, amusement, or
474 entertainment is offered to the public or place or places
475 where an admission fee is charged, including public bathing
476 places and public dance halls of every kind and description



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477 within the State of Alabama, an amount equal to four percent
478 of the gross receipts of any such business. Provided, however,
479 notwithstanding any language to the contrary in the prior
480 portion of this subdivision, the tax provisions so specified
481 shall not apply to any athletic event conducted by a public or
482 nonpublic primary or secondary school or any athletic event
483 conducted by or under the auspices of the Alabama High School
484 Athletic Association. The tax amount which would have been
485 collected pursuant to this subdivision shall continue to be
486 collected by the public or nonpublic primary or secondary
487 school, but shall be retained by the school that collected it
488 and shall be used by the school for school purposes.

489 (3) Upon every person, firm, or corporation engaged or
490 continuing within this state in the business of selling at
491 retail machines used in mining, quarrying, compounding,
492 processing, and manufacturing of tangible personal property an
493 amount equal to one and one-half percent of the gross proceeds
494 of the sale of the machines. The term "machine," as herein
495 used, shall include machinery which is used for mining,
496 quarrying, compounding, processing, or manufacturing tangible
497 personal property, and the parts of the machines, attachments,
498 and replacements therefor, which are made or manufactured for
499 use on or in the operation of the machines and which are
500 necessary to the operation of the machines and are customarily
501 so used.

502 (4) Upon every person, firm, or corporation engaged or
503 continuing within this state in the business of selling at
504 retail any automotive vehicle or truck trailer, semitrailer,



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505 or house trailer, or mobile home set-up materials and supplies
506 including but not limited to steps, blocks, anchoring, cable
507 pipes, and any other materials pertaining thereto, an amount
508 equal to two percent of the gross proceeds of sale of the
509 automotive vehicle or truck trailer, semitrailer, or house
510 trailer, or mobile home set-up materials and supplies
511 provided, however, where a person subject to the tax provided
512 for in this subdivision withdraws from his or her stock in
513 trade any automotive vehicle or truck trailer, semitrailer, or
514 house trailer for use by him or her or by his or her employee
515 or agent in the operation of the business, there shall be
516 paid, in lieu of the tax levied herein, a fee of five dollars
517 (\$5) per year or part thereof during which the automotive
518 vehicle, truck trailer, semitrailer, or house trailer shall
519 remain the property of the person. Each year or part thereof
520 shall begin with the day or anniversary date, as the case may
521 be, of such withdrawal and shall run for the 12 succeeding
522 months or part thereof during which the automotive vehicle,
523 truck trailer, semitrailer, or house trailer shall remain the
524 property of the person.

525 Where any used automotive vehicle or truck trailer,
526 semitrailer, or house trailer is taken in trade or in a series
527 of trades, as a credit or part payment on the sale of a new or
528 used vehicle, the tax levied herein shall be paid on the net
529 difference, that is, the price of the new or used vehicle sold
530 less the credit for the used vehicle taken in trade.

531 Sales of automobiles, motorcycles, trucks, truck
532 trailers, travel trailers, campers, housecars, or semitrailers



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533 that will be registered or titled outside Alabama, that are
534 exported or removed from Alabama within 72 hours by the
535 purchaser or his or her agent for first use outside Alabama
536 are subject to Alabama sales tax in an amount equal to only
537 the state automotive sales tax rate, unless the sales tax laws
538 of the state in which the purchaser will title or register the
539 vehicle allows an Alabama resident to purchase a motor vehicle
540 for first titling and registering in Alabama without the
541 payment of tax to that state. However, in no case shall the
542 amount of Alabama state sales tax due on a motor vehicle that
543 will be registered or titled for use in another state exceed
544 the amount of sales tax that would otherwise have been due in
545 the state where the vehicle will be registered or titled for
546 first use. In order to qualify as a travel trailer, camper, or
547 housecar that will be registered or titled for use in another
548 state, the purchaser must provide documentation to the seller
549 that the purchaser is not a resident of Alabama as required by
550 the Department of Revenue. No such proof is required in the
551 sale of an automobile, motorcycle, truck, truck trailer, or
552 semitrailer, excluding a travel trailer, camper, or housecar.
553 The tax collected under this export provision shall be Alabama
554 sales tax and shall exclude county and municipal sales tax. On
555 January 1, 2016, and each January 1 thereafter, the Alabama
556 Department of Revenue shall publish to the state's website a
557 list of states that do not allow drive out provisions to
558 Alabama residents. Should the list, required by this
559 subsection and relied upon by the taxpayer, be incorrect, the
560 taxpayer shall be relieved from the liability concerning the



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561 miscollection of the state automotive sales tax. Sales of all
562 other vehicles such as mobile homes, motor bikes, all terrain
563 vehicles, and boats do not qualify for the export exemption
564 provision and are taxable unless the dealer can provide
565 factual evidence that the vehicle was delivered outside of
566 Alabama or to a common carrier for transportation outside
567 Alabama. In order for the sale to be exempt from Alabama tax,
568 the information relative to the exempt sale shall be
569 documented on forms approved by the Revenue Department.

570 Of the total \$.02 tax on each dollar of sale provided
571 hereunder, 58 percent of the total tax generated by this
572 subdivision (4) shall be deposited to the credit of the
573 Education Trust Fund and 42 percent of the total tax generated
574 by this subdivision (4) shall be deposited to the credit of
575 the State General Fund.

576 (5) Upon every person, firm, or corporation engaged or
577 continuing within this state in the business of selling
578 through coin-operated dispensing machines, food and food
579 products for human consumption, not including beverages other
580 than coffee, milk, milk products, and substitutes therefor,
581 there is levied a tax equal to three percent of the cost of
582 the food, food products, and beverages sold through the
583 machines, which cost for the purpose of this subdivision shall
584 be the gross proceeds of sales of the business.

585 (6) Upon every person, firm, or corporation engaged or
586 continuing within this state in the business of selling food
587 as defined in Section 40-23-1, there is a tax levied equal to
588 four percent. Beginning September 1, 2023, the tax rate shall



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589 be reduced to three percent. On November 1, 2025, and on
590 November 1 of every odd-numbered year thereafter until the tax
591 rate is zero, the tax rate shall be reduced by one percent.
592 Provided, however, the rate of tax shall only be reduced if
593 the growth in total net receipts from all revenue sources to
594 the Education Trust Fund in the preceding two fiscal years was
595 at least five percent more than the last odd-numbered fiscal
596 year."

597 "§40-23-60

598 For the purpose of this article, the following terms
599 shall have the respective meanings ascribed to them in this
600 section:

601 (1) PERSON or COMPANY. Any individual, firm, company,
602 partnership, association, corporation, receiver or trustee, or
603 any other group or combination acting as a unit, and the
604 plural as well as the singular number, unless the intention to
605 give a more limited meaning is disclosed by the context.

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

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

610 (4) WHOLESALE SALE or SALE AT WHOLESALE. Any one of the
611 following:

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

616 b. A sale of tangible personal property or products,



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617 including iron ore, and including the furnished container and
618 label of such property or products, to a manufacturer or
619 compounder which enter into and become an ingredient or
620 component part of the tangible personal property or products
621 which the manufacturer or compounder manufactures or compounds
622 for sale, whether or not such tangible personal property or
623 product used in manufacturing or compounding a finished
624 product is used with the intent that it become a component of
625 the finished product; provided, however, that it is the intent
626 of this section that no sale of capital equipment, machinery,
627 tools, or product shall be included in the term "wholesale
628 sale." The term "capital equipment, machinery, tools, or
629 product" shall mean property that is subject to depreciation
630 allowances for Alabama income tax purposes.

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

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

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

643 f. A sale of containers to persons engaged in selling
644 or otherwise supplying or furnishing baby chicks to growers



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645 thereof where the containers are used for the delivery of the
646 chicks or a sale of containers for use in the delivery of eggs
647 by the producer thereof to the distributor or packer of the
648 eggs even though the containers used for delivery of baby
649 chicks or eggs may be recovered for reuse.

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

652 h. A sale of commercial fish feed including
653 concentrates, supplements, and other feed ingredients when
654 such substances are used as ingredients in mixing and
655 preparing feed for fish raised to be sold on a commercial
656 basis.

657 i. A sale of bait used to capture or attempt to capture
658 fish or other seafood in the process of commercial fishing, as
659 defined in Section 40-23-1, by a holder of a commercial
660 license issued pursuant to Chapter 12 of Title 9.

661 j. A sale of tangible personal property to any person
662 engaging in the business of leasing or renting such tangible
663 personal property to others, if the tangible personal property
664 is purchased for the purpose of leasing or renting it to
665 others under a transaction subject to the privilege or license
666 tax levied in Article 4 of Chapter 12 against any person
667 engaging in the business of leasing or renting tangible
668 personal property to others.

669 k. A purchase or withdrawal of parts or materials from
670 stock by any person licensed under this article where the
671 parts or materials are used in repairing or reconditioning the
672 tangible personal property of the licensed person which



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673 tangible personal property is a part of the stock of goods of
674 the licensed person, offered for sale by the licensed person
675 and not for use or consumption of the licensed person.

676 1. A sale to meat packers, manufacturers, compounders,
677 or processors of meat products of all casings used in moulding
678 or forming wieners and Vienna sausages, even though the
679 casings may be recovered for reuse.

680 (5) SALE AT RETAIL or RETAIL SALE. All sales of
681 tangible personal property except those above defined as
682 wholesale sales. The quantities of goods sold or prices at
683 which sold are immaterial in determining whether or not a sale
684 is at retail. Sales of building materials to contractors,
685 builders, or landowners for resale or use in the form of real
686 estate are retail sales in whatever quantity sold. Sales of
687 building materials, fixtures, or other equipment to a
688 manufacturer or builder of modular buildings for use in
689 manufacturing, building, or equipping a modular building
690 ultimately becoming a part of real estate situated in the
691 State of Alabama are retail sales, and the use, sale, or
692 resale of such building shall not be subject to the tax. Sales
693 of tangible personal property to undertakers and morticians
694 are retail sales and subject to the tax at the time of
695 purchase, but are not subject to the tax on resale to the
696 consumer. Sales of tangible personal property or products to
697 manufacturers, quarry operators, mine operators, or
698 compounders, which are used or consumed by them in
699 manufacturing, mining, quarrying, or compounding and do not
700 become an ingredient or component part of the tangible



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701 personal property manufactured or compounded as provided in
702 subdivision (4) are retail sales. The term "sale at retail" or
703 "retail sale" shall also mean and include the withdrawal, use,
704 or consumption of any tangible personal property by anyone who
705 purchases same at wholesale, except property that has been
706 previously withdrawn from the business or stock and so used or
707 consumed and with respect to which property the tax has been
708 paid because of such previous withdrawal, use, or consumption,
709 except property that enters into and becomes an ingredient or
710 component part of tangible personal property or products
711 manufactured or compounded for sale as provided in subdivision
712 (4); and not for the personal and private use or consumption
713 of any person so withdrawing, using, or consuming the same,
714 and such wholesale purchaser shall report and pay the taxes
715 thereon; and except refinery, residue, or fuel gas, whether in
716 a liquid or gaseous state, that has been generated by, or is
717 otherwise a by-product of, a petroleum-refining process, which
718 gas is then utilized in the process to generate heat or is
719 otherwise utilized in the distillation or refining of
720 petroleum products. The term "retail sale" or "sale at retail"
721 shall also mean and include the sale of tangible personal
722 property previously purchased at wholesale for the purpose of
723 leasing or renting under a transaction subject to the
724 privilege or license tax levied in Article 4 of Chapter 12,
725 regardless of whether the sale is to the person who
726 theretofore leased or rented the tangible personal property or
727 to some other person.

728 (6) BUSINESS. All activities engaged in, or caused to



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729 be engaged in, with the object of gain, profit, benefit, or
730 advantage, either direct or indirect, and not excepting
731 subactivities producing marketable commodities used or
732 consumed in the main business activity, each of which
733 subactivities shall be considered business engaged in, taxable
734 in the class in which it falls.

735 (7) STORAGE. Any keeping or retention in this state for
736 any purpose except sale in the regular course of business or
737 subsequent use solely outside this state of tangible personal
738 property purchased at retail.

739 (8) USE. The exercise of any right or power over
740 tangible personal property incident to the ownership of that
741 property, or by any transaction where possession is given,
742 except that it shall not include the sale of that property in
743 the regular course of business.

744 (9) PURCHASE. Acquired for a consideration, whether
745 such acquisition was effected by a transfer of title, or of
746 possession or of both, or a license to use or consume; whether
747 such transfer shall have been absolute or conditional, and by
748 whatsoever means the same shall have been effected; and
749 whether such consideration be a price or rental in money, or
750 by way of exchange or barter.

751 (10) SALES PRICE. The total amount for which tangible
752 personal property is sold, including any services, including
753 transportation, that are a part of the sale, valued in money,
754 whether paid in money or otherwise, and includes any amount
755 for which credit is given to the purchaser by the seller,
756 without any deduction therefrom on account of the cost of the



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757 property sold, the cost of the materials used, labor or
758 service cost, interest charged, losses, or any other expenses
759 whatsoever; provided, that cash discounts allowed and taken on
760 sales shall not be included and sales price shall not include
761 the amount charged for property returned by customers when the
762 entire amount charged therefor is refunded either in cash or
763 by credit.

764 (11) IN THIS STATE or IN THE STATE. Within the exterior
765 limits of the State of Alabama, and includes all territory
766 within such limits owned by or ceded to the United States of
767 America.

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

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

781 (14) PREPAID WIRELESS SERVICE. The right to use mobile
782 telecommunications service, which must be paid for in advance
783 and that is sold in predetermined units or dollars of which
784 the number declines with use or the expiration of time in a



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785 known amount, and which may include rights to use
786 non-telecommunications services or to download digital
787 products or digital content. For purposes of this subdivision,
788 mobile telecommunications service has the meaning ascribed by
789 Section 40-21-120.

790 (15) REMOTE USE TAX. Amounts collected from out of
791 state vendors who, on October 1, 2012, were or would have been
792 remote sellers as defined in Section 40-23-171; and amounts
793 remitted by consumers on the individual tax return.

794 (16) FOOD. Food on the Special Supplemental Nutrition
795 Program for Women, Infants, and Children (WIC) state food list
796 meeting the requirements of 7 CFR Part 246.10 and WIC Policy
797 Memorandum #2015-3. In the event the federal WIC Program no
798 longer exists, the Legislature shall provide a new definition
799 of "food" by general law."

800 "§40-23-61

801 (a) An excise tax is hereby imposed on the storage, use
802 or other consumption in this state of tangible personal
803 property, not including, however, materials and supplies
804 bought for use in fulfilling a contract for the painting,
805 repairing or reconditioning of vessels, barges, ships, other
806 watercraft and commercial fishing vessels of over five tons
807 load displacement as registered with the U.S. Coast Guard and
808 licensed by the State of Alabama Department of Conservation
809 and Natural Resources, purchased at retail on or after October
810 1, 1965, for storage, use or other consumption in this state
811 at the rate of four percent of the sales price of such
812 property or the amount of tax collected by the seller,



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813 whichever is greater; provided, however, when the seller
814 follows the Department of Revenue's suggested use tax brackets
815 and his records prove that his following said brackets
816 resulted in a net undercollection of tax for the month, he may
817 report the tax due or tax collected, whichever is less, except
818 as provided in subsections (b) and (c) of this section.

819 (b) An excise tax is hereby imposed on the storage, use
820 or other consumption in this state of any machines used in
821 mining, quarrying, compounding, processing and manufacturing
822 of tangible personal property, purchased at retail on or after
823 October 1, 1965, at the rate of one and one-half percent of
824 the sales price of any such machine or the amount of tax
825 collected by the seller, whichever is greater; provided,
826 however, when the seller follows the Department of Revenue's
827 suggested use tax brackets and his records prove that his
828 following said brackets resulted in a net undercollection of
829 tax for the month, he may report the tax due or tax collected,
830 whichever is less; provided, that the term "machine," as
831 herein used, shall include machinery which is used for mining,
832 quarrying, compounding, processing, or manufacturing tangible
833 personal property, and the parts of such machines, attachments
834 and replacements therefor, which are made or manufactured for
835 use on or in the operation of such machines and which are
836 necessary to the operation of such machines and are
837 customarily so used.

838 (c) An excise tax is hereby imposed on the storage, use
839 or other consumption in this state of any automotive vehicle
840 or truck trailer, semitrailer or house trailer, and mobile



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841 home set-up materials and supplies including but not limited
842 to steps, blocks, anchoring, cable pipes and any other
843 materials pertaining thereto, purchased at retail on or after
844 October 1, 1965, for storage, use or other consumption in this
845 state at the rate of two percent of the sales price of such
846 automotive vehicle, truck trailer, semitrailer or house
847 trailer, and mobile home set-up materials and supplies as
848 specified above, or the amount of tax collected by the seller,
849 whichever is greater; provided, however, when the seller
850 follows the Department of Revenue's suggested use tax brackets
851 and his records prove that his following said brackets
852 resulted in a net undercollection of tax for the month, he may
853 report the tax due or tax collected, whichever is less. Where
854 any used automotive vehicle or truck trailer, semitrailer or
855 house trailer is taken in trade, or in a series of trades, as
856 a credit or part payment on the sale of a new or used vehicle,
857 the tax levied herein shall be paid on the net difference,
858 that is, the price of the new or used vehicle sold less the
859 credit for the used vehicle taken in trade.

860 Of the total \$.02 tax on each dollar of sale provided
861 hereunder, 58 percent of the total tax generated by this
862 subsection shall be deposited to the credit of the Education
863 Trust Fund; and 42 percent of the total tax generated by this
864 subsection shall be deposited to the credit of the State
865 General Fund.

866 (d) An excise tax is hereby imposed on the storage, use
867 or other consumption in this state of food as defined in
868 Section 40-23-60, at the rate of four percent of the sales



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869 price of such food. Beginning September 1, 2023, the tax rate
870 shall be reduced to three percent. On November 1, 2025, and on
871 November 1 of every odd-numbered year thereafter until the tax
872 rate is zero, the tax rate shall be reduced by one percent.
873 Provided, however, the rate of tax shall only be reduced if
874 the growth in total net receipts from all revenue sources to
875 the Education Trust Fund in the preceding two fiscal years was
876 at least five percent more than the last odd-numbered fiscal
877 year.

878 ~~(d)~~ (e) Every person storing, using or otherwise
879 consuming in this state tangible personal property purchased
880 at retail shall be liable for the tax imposed by this article,
881 and the liability shall not be extinguished until the tax has
882 been paid to this state; provided, that a receipt from a
883 retailer maintaining a place of business in this state or a
884 retailer authorized by the department, under such rules and
885 regulations as it may prescribe, to collect the tax imposed
886 hereby and who shall for the purpose of this article be
887 regarded as a retailer maintaining a place of business in this
888 state, given to the purchaser in accordance with the
889 provisions of Section 40-23-67, shall be sufficient to relieve
890 the purchaser from further liability for tax to which such
891 receipt may refer.

892 ~~(e)~~ (f) An excise tax is hereby imposed on the classes
893 of tangible personal property, and at the rates imposed on
894 such classes, specified in subsections (a), (b) and (c) of
895 this section, on the storage, use, or other consumption in the
896 performance of a contract in this state of any such tangible



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897 personal property, new or used, the tax to be measured by the
898 sales price or the fair and reasonable market value of such
899 tangible personal property when put into use in this state,
900 whichever is less; provided, that the tax imposed by this
901 subsection shall not apply where the taxes imposed by
902 subsection (a), (b), or (c) of this section apply."

903 Section 2. (a) On the effective date of this act, the
904 definition of "food" in Sections 40-23-1 and 40-23-60, Code of
905 Alabama 1975, shall apply to county and municipal sales and
906 use taxes. For purposes of county and municipal sales and use
907 taxes, the sales tax rate on food shall be established as the
908 general or retail sales tax rate in effect in the county or
909 municipality on the effective date of this act, unless
910 otherwise provided by law. An act of the Legislature or an
911 ordinance or resolution adopted by a county or municipal
912 governing body levying a county or municipal sales and use tax
913 inclusive of food passed or enacted on or before the effective
914 date of this act shall remain operative, but no additional
915 county or municipal sales and use taxes on food may be levied.

916 (b) Any county or municipal governing body may, by
917 resolution or ordinance, reduce the general or retail sales
918 tax rate on food for local sales and use taxes. Such ordinance
919 or resolution must be adopted at least 60 days prior to
920 becoming effective.

921 Section 3. This act shall become effective on September
922 1, 2023, following its passage and approval by the Governor,
923 or its otherwise becoming law.