

SB177 INTRODUCED



1 ROWSYY-1
2 By Senators Orr, Givhan, Butler, Allen, Waggoner, Roberts
3 RFD: Finance and Taxation Education
4 First Read: 05-Apr-23
5



4 SYNOPSIS:

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

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

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

24 A BILL

25 TO BE ENTITLED

26 AN ACT

27
28 Relating to sales taxes; to amend Section 40-23-1, as



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last amended by Acts 2022-199 and 2022-291, 2022 Regular Session, Code of Alabama 1975, Section 40-23-2, as last amended by Act 2022-346, 2022 Regular Session, Code of Alabama 1975, Section 40-23-60, as last amended by Act 2022-199, 2022 Regular Session, Code of Alabama 1975, and Section 40-23-61, Code of Alabama 1975; to define "food" and begin phasing-out the state sales and use tax on food on September 1, 2023; to require certain growth targets in the Education Trust Fund for future sales tax reductions on food; to 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 and use tax rate; and to authorize a county and municipality to reduce the sales and use tax rate or exempt food from local sales and use taxes.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§40-23-1

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

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



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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



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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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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



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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.



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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



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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.



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1. 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



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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.



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(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



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



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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,



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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



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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.

(e) 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.

(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."

"§40-23-2

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



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

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



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

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

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



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

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

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



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

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

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

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

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

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



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

"§40-23-60

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

(1) PERSON or COMPANY. Any individual, firm, company, partnership, association, corporation, receiver or 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) WHOLESALE SALE or SALE AT WHOLESALE. Any one of the following:

a. A sale of tangible personal property by wholesaler 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,



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including iron ore, and including the furnished container and label of such 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 which the manufacturer or compounder manufactures or compounds for sale, whether or not such tangible personal property or product used in manufacturing or compounding a finished product is used with the intent that it become 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 the containers are sold without contents to persons who sell or furnish the containers along with the contents placed therein for sale by such persons.

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

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



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thereof where the containers are used for the delivery of the chicks or a sale of containers for use in the delivery of eggs by the producer thereof to the distributor or packer of the eggs even though the 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 of commercial fish feed including concentrates, supplements, and other feed ingredients when such substances are used as ingredients in mixing and preparing feed for fish raised to be sold on a commercial basis.

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

j. A sale of tangible personal property to any person engaging in the business of leasing or renting such tangible personal property to others, if the 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 against any person engaging in the business of leasing or renting tangible personal property to others.

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



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

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

(5) SALE AT RETAIL or RETAIL SALE. All sales of tangible personal property except those above 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 such 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



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personal property manufactured or compounded as provided in subdivision (4) 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 anyone 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 the tax has been paid because of such 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 (4); and not for the personal and private use or consumption of any person so withdrawing, using, or consuming the same, and such wholesale purchaser shall report and pay the taxes thereon; 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. The term "retail sale" or "sale at retail" shall also mean and include the sale of tangible personal property previously purchased at wholesale for the purpose of leasing or renting under a transaction subject to the privilege or license tax levied in Article 4 of Chapter 12, regardless of whether the sale is to the person who theretofore leased or rented the tangible personal property or to some other person.

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



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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.

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

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

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

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



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

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

(12) AUTOMOTIVE VEHICLE. A power shovel, dragline, crawler, crawler crane, ditcher or any similar machine which is self-propelled, in addition to self-propelled machines which 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 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 or the expiration of time in a



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

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

"§40-23-61

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



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

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

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



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

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

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



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

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

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



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

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

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

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