HB290

182396-2

By Representatives Weaver and Fridy

RFD: Ways and Means Education

First Read: 23-FEB-17
SYNOPSIS: Under current law, sales tax exemptions and use tax exemptions are not consistent with each other. This bill standardizes sales and use tax exemptions in order to provide uniformity for taxpayers by aligning current exemptions and incorporating certain sales tax exemptions into the use tax law. This bill provides further for the sales of photographs and commissioned portraits.

A BILL
TO BE ENTITLED
AN ACT

To amend Sections 40-23-4, Code of Alabama 1975, to provide an exemption for gross receipts occurring from the services provided by photographers and commissioned portrait artists; and to amend Section 40-23-62, Code of Alabama 1975; relating to exemptions from use tax.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
Section 1. Sections 40-23-4 and 40-23-62, Code of Alabama 1975, is amended to read as follows:

"§40-23-4.

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

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

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

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

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

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

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

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

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

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

"(10) The gross proceeds from the sale or sales of fuel and supplies for use or consumption aboard ships, vessels, towing vessels, or barges, or drilling ships, rigs or barges, or seismic or geophysical vessels, or other watercraft (herein for purposes of this exemption being referred to as "vessels") engaged in foreign or international commerce or in interstate commerce; provided, that nothing in this division shall be construed to exempt or exclude from the measure of
the tax herein levied the gross proceeds of sale or 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.

"For purposes of this subdivision, it shall be
presumed that vessels engaged in the transportation of cargo
between ports in the State of Alabama and ports in foreign
countries or possessions or territories of the United States
or between ports in the State of Alabama and ports in other
states are engaged in foreign or international commerce or
interstate commerce, as the case may be. For the purposes of
this subdivision, the engaging in foreign or international
commerce or interstate commerce shall not require that the
vessel involved deliver cargo to or receive cargo from a port
in the State of Alabama. For purposes of this subdivision,
vessels carrying passengers for hire, and no cargo, between
ports in the State of Alabama and ports in foreign countries
or possessions or territories of the United States or between
ports in the State of Alabama and ports in other states shall
be engaged in foreign or international commerce or interstate
commerce, as the case may be, if, and only if, both of the
following conditions are met: (i) The vessel in question is a
vessel of at least 100 gross tons; and (ii) the vessel in
question has an unexpired certificate of inspection issued by
the United States Coast Guard or by the proper authority of a
foreign country for a foreign vessel, which certificate is
recognized as acceptable under the laws of the United States.
Vessels which are engaged in foreign or international commerce
or interstate commerce shall be deemed for the purposes of
this subdivision to remain in such commerce while awaiting or
under repair in a port of the State of Alabama if such vessel
returns after such repairs are completed to engaging in
foreign or international commerce or interstate commerce. For
purposes of this subdivision, seismic or geophysical vessels
which are engaged either in seismic or geophysical tests or
evaluations exclusively in offshore federal waters or in
traveling to or from conducting such tests or evaluations
shall be deemed to be engaged in international or foreign
commerce. For purposes of this subdivision, proof that fuel
and supplies purchased are for use or consumption aboard
vessels engaged in foreign or international commerce or in
interstate commerce may be accomplished by the merchant or
seller securing the duly signed certificate of the vessel
owner, operator, or captain or their respective agent on a
form prescribed by the department that the fuel and supplies
purchased are for use or consumption aboard vessels engaged in
foreign or international commerce or in interstate commerce.
Any person filing a false certificate shall be guilty of a
misdemeanor and upon conviction shall be fined not less than
$25 nor more than $500 for each offense. Each false
certificate filed shall constitute a separate offense. Any
person filing a false certificate shall be liable to the
department for all taxes imposed by this division upon the
merchant or seller, together with any interest or penalties
thereon, by reason of the sale or sales of fuel and supplies
applicable to such false certificate. If a merchant or seller
of fuel and supplies secures the certificate herein mentioned,
properly completed, such merchant or seller shall not be
liable for the taxes imposed by this division, if such
merchant or seller had no knowledge that such certificate was
false when it was filed with such merchant or seller.

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

"(12) The gross proceeds of the sale or sales of
railroad cars, vessels, barges, 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, when sold by
the manufacturers or builders thereof.

"(13) The gross proceeds of the sale or sales of
materials, equipment, and machinery which, at any time, enter
into and become a component part of ships, vessels, towing
vessels or barges, or drilling ships, rigs or barges, or
seismic or geophysical vessels, 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. Additionally, the gross proceeds from the sale or sales of lifeboats, personal flotation devices, ring life buoys, survival craft equipment, distress signals, EPIRB's, fire extinguishers, injury placards, waste management plans and logs, marine sanitation devices, navigation rulebooks, navigation lights, sound signals, navigation day shapes, oil placard cards, garbage placards, FCC SSL, stability instructions, first aid equipment, compasses, anchor and radar reflectors, general alarm systems, bilge pumps, piping, and discharge and electronic position fixing devices which are used on the aforementioned watercraft.

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

"(15) The gross proceeds of the sale or sales of tangible personal property to county and city school boards within the State of Alabama, independent school boards within the State of Alabama, all educational institutions and agencies of the State of Alabama, the counties within the state, or any incorporated municipalities of the State of Alabama, and private educational institutions operating within the State of Alabama offering conventional and traditional courses of study, such as those offered by public schools, colleges, or universities within the State of Alabama; but not including nurseries, day care centers, and home schools.
"(16) The gross proceeds from the sale of all devices or facilities, and all identifiable components thereof, or materials for use therein, acquired primarily for the control, reduction, or elimination of air or water pollution and the gross proceeds from the sale of all identifiable components of or materials used or intended for use in structures built primarily for the control, reduction, or elimination of air and water pollution.

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

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

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

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

"(21) The gross proceeds of the sales of all
antibiotics, hormones and hormone preparations, drugs,
medicines or medications, vitamins, minerals or other
nutrients, and all other feed ingredients 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, livestock, and poultry. Such exemption herein granted
shall be in addition to exemptions now provided by law for
feed for fish raised to be sold on a commercial basis,
livestock, and poultry, but not including prepared foods for
dogs or cats.

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

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

"(24) The gross proceeds from sales of admissions to
any theatrical production, symphonic or other orchestral
concert, ballet, or opera production when such concert or
production is presented by any society, association, guild, or
workshop group, organized within this state, whose members or
some of whose members regularly and actively participate in
such concerts or productions for the purposes of providing a
creative outlet for the cultural and educational interests of
such members, and of promoting such interests for the
betterment of the community by presenting such productions to
the general public for an admission charge. The employment of
a paid director or conductor to assist in any such
presentation described in this subdivision shall not be
construed to prohibit the exemptions herein provided.
"(25) The gross proceeds of sales of herbicides for agricultural uses by whomsoever sold. The term herbicides, as used in this subdivision, means any substance or mixture of substances intended to prevent, destroy, repel, or retard the growth of weeds or plants. It shall include preemergence herbicides, postemergence herbicides, lay-by herbicides, pasture herbicides, defoliant herbicides, and desiccant herbicides.

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

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

"The words commercial fishing vessels shall mean vessels whose masters and owners are regularly and exclusively engaged in fishing as their means of livelihood."
"(28) The gross proceeds of sales of sawdust, wood shavings, wood chips, and other like materials sold for use as chicken litter by poultry producers and poultry processors.

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

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

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

"a. The name and claim number as shown on a "Medicare" card issued by the United States Social Security Administration.
"b. A certificate executed by any adult person having knowledge of the fact that the person for whom the medicine was prescribed is not less than 65 years of age.

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

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

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

"(32) The gross receipts of sales of the following items or materials which are necessary in the farm-to-market production of tomatoes when such items or materials are used by the producer or members of his family or for him by those employed by him to assist in the production thereof: Twine for tying tomatoes, tomato stakes, field boxes (wooden boxes used to take tomatoes from the fields to shed), and tomato boxes used in shipments to customers.
"(33) The gross proceeds from the sale of liquefied petroleum gas or natural gas sold to be used for agricultural purposes.

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

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

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

"(37) The gross receipts of any aircraft manufactured, sold, and delivered in this state if said aircraft are not permanently domiciled in Alabama and are removed to another state.

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

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

  "a. Takes place in the State of Alabama on or after January 1, 1984, regardless of when such sales occur; and
  "b. Is hosted by a not-for-profit corporation organized and existing under the laws of the State of Alabama; and
  "c. Determines a national championship of a national organization, including but not limited to the Professional Golfers Association of America, the Tournament Players
Association, the United States Golf Association, the United States Tennis Association, and the National Collegiate Athletic Association; and

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

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

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

b. Passengers and/or property are regularly exchanged at the location between flights of the same or a different certificated or licensed air carrier.
"(41) The gross receipts from the sale of hot or cold food and beverage products sold to or by a certificated or licensed air carrier with a hub operation within this state, for use in conducting intrastate, interstate, or foreign commerce for transporting people or property by air. For the purpose of this subdivision, the words "hub operation within this state" shall be construed to have all of the following criteria:

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

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

"(42) The gross receipts from the sale of any aviation jet fuel to a certificated or licensed air carrier purchased for use in scheduled all-cargo operations being conducted on international flights or in international commerce. For purposes of this subdivision, the following words or terms shall be defined and interpreted as follows:

"a. Air Carrier. Any person, firm, corporation, or entity undertaking by any means, directly or indirectly, to provide air transportation.

"b. All-Cargo Operations. Any flight conducted by an air carrier for compensation or hire other than a passenger
carrying flight, except passengers as specified in 14 C.F.R. §121.583(a) or 14 C.F.R. §135.85, as amended.

c. International Commerce. Any air carrier engaged in all-cargo operations transporting goods for compensation or hire on international flights.

d. International Flights. Any air carrier conducting scheduled all-cargo operations between any point within the 50 states of the United States and the District of Columbia and any point outside the 50 states of the United States and the District of Columbia, including any interim stops within the United States so long as the ultimate origin or destination of the aircraft is outside the United States and the District of Columbia.

(43) The gross proceeds of the sale or sales of the following:

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

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

c. Fuel and supplies for use or consumption aboard boats, ships, aircraft, and towing vessels when used exclusively in transporting persons or property between a point in Alabama and a point or points in offshore federal waters for the exploration for or production of oil, gas, sulphur, or other minerals in offshore federal waters.
"d. Drilling equipment that is used for the exploration for or production of oil, gas, sulphur, or other minerals, that is built for exclusive use outside this state and that is, on completion, removed forthwith from this state.

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

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

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

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

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

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

"(48) For the period commencing on October 1, 2012,
and ending May 30, 2022, unless extended by joint resolution,
the gross receipts from the sale of parts, components, and
systems that become a part of a fixed or rotary wing military
aircraft or certified transport category aircraft that
undergoes conversion, reconfiguration, or general maintenance
so long as the address of the aircraft for FAA registration is
not in the state; provided, however, that this exemption shall
not apply to a local sales tax unless previously exempted by
local law or approved by resolution of the local governing
body.

"(49) The gross proceeds from the sale or sales
within school buildings of lunches to pupils of kindergarten,
grammar, and high schools, either public or private, that are
not sold for profit.

"(50) The gross proceeds of services provided by
photographers or commissioned portrait artists are not
taxable. The gross proceeds from the sale of photographs or
portraits that are not merely incidental to the services
provided are taxable regardless of the method of delivery. For
sales of photographs or commissioned portraits made prior to
October 1, 2017, neither the Department of Revenue nor local
tax officials may seek payment for sales tax not collected.
With regard to such transactions in which sales tax was collected and remitted on services provided by photographers or commissioned portrait artists, neither the taxpayer nor the entity remitting sales tax shall have the right to seek refund of such tax.

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

"§40-23-62."

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

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

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

"(3) Tangible personal property, not to be used in the performance of a contract, brought into this state by a nonresident thereof for his own storage, use, or consumption while temporarily within this state."
"(4) Lubricating oil and gasoline as defined in Sections 40-17-30 and 40-17-170, the storage, use, or other consumption of which is otherwise taxed.

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

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

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

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

"(9) Cottonseed meal exchanged for cottonseed at or by cotton-gins.
"(10) Transportation, gas, water, or electricity, of the kinds and natures, the rates and charges for which when sold by public utilities, are customarily fixed and determined by the Public Service Commission of Alabama or like regulatory bodies.

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

"a. In manufacturing tangible personal property for sale;

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

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

"(12) Fuel and supplies for use or consumption aboard ships, vessels, towing vessels, or barges, or drilling ships, rigs or barges, or seismic or geophysical vessels, or other watercraft (herein for purposes of this exemption being referred to as vessels) engaged in foreign or international commerce or in interstate commerce; provided, that nothing in this article shall be construed to exempt or exclude from the measure of the tax herein levied the gross proceeds of sale or 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. For purposes of this subdivision, it shall be
presumed that vessels engaged in the transportation of cargo
between ports in the State of Alabama and ports in foreign
countries or possessions or territories of the United States
or between ports in the State of Alabama and ports in other
states are engaged in foreign or international commerce or
interstate commerce, as the case may be. For the purposes of
this subdivision, the engaging in foreign or international
commerce or interstate commerce shall not require that the
vessel involved deliver cargo to or receive cargo from a port
in the State of Alabama. For purposes of this subdivision,
vessels carrying passengers for hire, and no cargo, between
ports in the State of Alabama and ports in foreign countries
or possessions or territories of the United States or between
ports in the State of Alabama and ports in other states shall
be engaged in foreign or international commerce or interstate
commerce, as the case may be, if, and only if, both of the
following conditions are met: (i) The vessel in question is a
vessel of at least 100 gross tons; and (ii) the vessel in
question has an unexpired certificate of inspection issued by
the United States Coast Guard or by the proper authority of a
foreign country for a foreign vessel, which certificate is
recognized as acceptable under the laws of the United States.
Vessels which are engaged in foreign or international commerce
or interstate commerce shall be deemed for the purposes of
this subdivision to remain in such commerce while awaiting or
under repair in a port of the State of Alabama if such vessel
returns after such repairs are completed to engaging in
foreign or international commerce or interstate commerce. For
purposes of this subdivision, seismic or geophysical vessels
which are engaged either in seismic or geophysical tests or
evaluations exclusively in offshore federal waters or in
traveling to or from conducting such tests or evaluations
shall be deemed to be engaged in international or foreign
commerce. For purposes of this subdivision, proof that fuel
and supplies purchased are for use or consumption aboard
vessels engaged in foreign or international commerce or in
interstate commerce may be accomplished by the merchant or
seller securing the duly signed certificate of the vessel
owner, operator or captain or their respective agent on a form
prescribed by the department that the fuel and supplies
purchased are for use or consumption aboard vessels engaged in
foreign or international commerce or in interstate commerce.
Any person filing a false certificate shall be guilty of a
misdemeanor and upon conviction shall be fined not less than
$25 nor more than $500 for each offense. Each false
certificate filed shall constitute a separate offense. Any
person filing a false certificate shall be liable to the
department for all taxes imposed by this division upon the
merchant or seller, together with any interest or penalties
thereon, by reason of the sale or sales of fuel and supplies
applicable to such false certificate. If a merchant or seller
of fuel and supplies secures the certificate herein mentioned,
properly completed, such merchant or seller shall not be
liable for the taxes imposed by this division, if such
merchant or seller had no knowledge that such certificate was
false when it was filed with such merchant or seller.

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

"(14) The use, storage, or consumption of materials,
equipment and machinery which, at any time, enter into and
become a component part of ships, vessels, towing vessels or
barges, or drilling ships, rigs or barges, or seismic or
gEophysical vessels, other watercraft and commercial fishing
vessels of over five tons load displacement as registered with
the U.S. Coast Guard and licensed by the Department of
Conservation and Natural Resources. Additionally, the use,
storage, or consumption of lifeboats, personal flotation
devices, ring life buoys, survival craft equipment, distress
signals, EPIRB's, fire extinguishers, injury placards, waste
management plans and logs, marine sanitation devices,
navigation rulebooks, navigation lights, sound signals,
navigation day shapes, oil placard cards, garbage placards,
FCC SSL, stability instructions, first aid equipment,
compasses, anchor and radar reflectors, general alarm systems,
bilge pumps, piping, and discharge and electronic position
fixing devices on the aforementioned watercraft."
"(15) The use, storage, or consumption of fuel oil purchased as fuel for kilns used in manufacturing establishments.

"(16) Tangible personal property stored, used, or consumed by county and city school boards within the State of Alabama, independent school boards within the State of Alabama, all educational institutions and agencies of the State of Alabama, the counties within the state or any incorporated municipality of the State of Alabama, and private educational institutions operating within the State of Alabama offering conventional and traditional courses of study, such as those offered by public schools, colleges, or universities within the State of Alabama; but not including nurseries, day care centers, and home schools.

"(17) The storage, use, or consumption of railroad cars, vessels, and barges 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 when purchased from the manufacturers or builders thereof.

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

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

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

"(4) In addition to the exemptions provided in 
subsections (1), (2), and (3) above, all exemptions enumerated 
in Section 40-23-4(a) and 40-23-4.1, Code of Alabama 1975, are 
incorporated by reference herein.

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

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

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

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

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

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

"(27) Fuel for use or consumption aboard commercial
fishing vessels are hereby exempt from the payment of the
state use tax levied under this article, or levied under any
county or municipal use tax law.

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

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

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

"(30) All medicines prescribed by physicians for persons who are 65 years of age or older, and when said prescriptions are filled by licensed pharmacists, shall be exempted from the operation of the state use tax law levied by this article, or by any county or municipal use tax law. The exemptions provided in this subdivision shall not apply to any medicine purchased in any manner other than as is herein provided.

"For the purposes of this subdivision, proof of age may be accomplished by filing with the dispensing pharmacist any one or more of the following documents:
"a. The name and claim number as shown on a
"Medicare" card issued by the United States Social Security
Administration.

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

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

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

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

"(32) The storage, use, or other consumption of any
aircraft and replacement parts, components, systems, supplies
and sundries affixed or used on said aircraft and ground
support equipment and vehicles used by or for the aircraft by
a certificated or licensed air carrier with a hub operation
within this state, for use in conducting intrastate,
interstate or foreign commerce for transporting people or
property by air. For the purpose of this subdivision, the
words "hub operation within this state" shall be construed to
have all of the following criteria:

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

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

“(33) The storage, use, or other consumption of any
aviation jet fuel used by an aircraft operated by a
certificated or licensed air carrier that purchases jet fuel
for use in scheduled all-cargo operations being conducted on
international flights or in international commerce. For
purposes of this subdivision, the following words or terms
shall be defined and interpreted as follows:

"a. Air Carrier. Any person, firm, corporation, or
entity undertaking by any means, directly or indirectly, to
provide air transportation.

"b. All-Cargo Operations. Any flight conducted by
an air carrier for compensation or hire other than a passenger
carrying flight, except passengers as specified in 14 C.F.R.
§121.583(a) or 14 C.F.R. §135.85, as amended.

"c. International Commerce. Any air carrier engaged
in all-cargo operations transporting goods for compensation or
hire on international flights.

"d. International Flights. Any air carrier
conducting scheduled all-cargo operations between any point
within the 50 states of the United States and the District of
Columbia and any point outside the 50 states of the United
States and the District of Columbia, including any interim
stops within the United States so long as the ultimate origin or destination of the aircraft is outside the United States and the District of Columbia.

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

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

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

"(35) The storage, use, or other consumption of the following:

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

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

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

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

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

"The shipment to a place in this state of equipment exempted by this subdivision for further assembly or fabrication does not disqualify the purchaser or lessee from the exemption if on completion of the further assembly or fabrication the equipment is removed forthwith from this state. This subdivision applies to a sale that may occur when the equipment exempted is further assembled or fabricated if on completion the equipment is removed forthwith from this state.
"(36) The storage or use of metal, other than gold or silver, when such metal is held by an investment trust the shares or other units in the trust's net assets of which have been issued in exchange for such metal and are publicly traded, including metal stored in warehouses located in this state. For purposes of this subdivision, the term metals includes, but is not limited to, copper, aluminum, nickel, zinc, tin, lead, and other similar metals typically used in commercial and industrial applications.

"(37) For the period commencing October 1, 2012, and ending May 30, 2022, unless extended by joint resolution, all parts, components, and systems that become a part of a fixed or rotary wing military aircraft or certified transport category aircraft which undergoes conversion, reconfiguration, or general maintenance so long as the address of the aircraft for FAA registration is not in the state; provided, however, that this exemption shall not apply to a local use tax unless previously exempted by local law or approved by resolution of the local governing body.

"(38) Lunches sold not for profit and within school buildings to pupils of kindergarten, grammar, and high schools, either public or private."

Section 2. The provisions of this act shall apply retroactively to all open tax years and tax periods for which a preliminary assessment or final assessment could be entered pursuant to Section 40-2A-7, Code of Alabama 1975, or any successor general or local law. No refunds shall be due or
1 issued pursuant to this act with respect to those periods
2 prior to the effective date of this act.
3
4 Section 3. This act shall become effective
5 immediately following its passage and approval by the
6 Governor, or upon its otherwise becoming law.