HB268

165763-1

By Representative Clouse

RFD: Ways and Means General Fund

First Read: 12-MAR-15
SYNOPSIS: This bill will change the rates for motor vehicle sales and use tax from two percent to three percent, and provide a refund process for the amount of additional tax paid on certain trucks and truck-tractors used in interstate commerce; will clarify which motor vehicles are subject to drive-out provisions; will provide further for the distribution of revenues received from the motor vehicle sales and use tax; and to provide that the increased tax shall be exclusive and in lieu of future local taxes on motor vehicles.

A BILL
TO BE ENTITLED
AN ACT

To amend Section 40-23-2, 40-23-61, 40-23-101, 40-23-102, and 40-23-108, Code of Alabama 1975; to increase the motor vehicle sales and use tax from two percent to three percent, and provide a refund process for the amount of
additional tax paid on certain trucks and truck-tractors used in interstate commerce; to exclude vehicle campers and house cars as defined in 40-12-240, from the motor vehicle drive-out provisions; to provide further for the distribution of revenues received from the motor vehicle sales and use tax; and to provide that the increased tax shall be exclusive and in lieu of future local taxes on motor vehicles.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-23-2, 40-23-61, 40-23-101, 40-23-102, and 40-23-108, Code of Alabama 1975, are hereby amended to read as follows:

"§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 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
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, public dance halls of every kind and description 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 which 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 except as otherwise provided in this
subdivision, 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,
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 three 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.

"In the event that a purchaser of a truck or truck tractors, as defined in Section 40-12-240, can establish that the vehicle has been used in interstate commerce, by providing proof of registration and registration renewal through the International Registration Plan, the purchaser can file a petition for refund of excess taxes paid. Excess tax shall be defined as the amount of state Sales Tax paid exceeding two percent of the net difference of the price of the new or used vehicle sold less the credit for the used vehicle taken in trade. Such petition for refund shall be in a manner as prescribed by the Department. For a properly documented refund
petition, interest shall be paid beginning 30 days after the
receipt of the refund petition and supporting documentation by
the taxing division.

"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, or semitrailers, excluding vehicle campers or
housecars as defined in Section 40-12-240, that will be
registered or titled outside Alabama, that are exported or
removed from Alabama within 72 hours by the purchaser or his
or her agent for first use outside Alabama are not subject to
the Alabama sales tax. Sales of 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 in this subdivision (4), 58.44.7 percent of
the total tax generated by this subdivision (4) shall be
deposited to the credit of the Education Trust Fund; and

55.3 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.

"§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,
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 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 three percent of the sales price of
such automotive vehicle, truck trailer, semitrailer or house
tractor, 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. In the
event that the storage, use or other consumption of a truck or
truck tractors, as defined in Section 40-12-240, can establish
that the vehicle has been used in interstate commerce, by
providing proof of registration and registration renewal
through the International Registration Plan, the user can file
a petition for refund of excess taxes paid. Excess tax shall
be defined as the amount of state Use Tax paid exceeding two
percent of the net difference of the price of the new or used
vehicle sold less the credit for the used vehicle taken in
trade. Such petition for refund shall be in a manner as
prescribed by the Department. For a properly documented refund
petition, interest shall be paid beginning 30 days after the
receipt of the refund petition and supporting documentation by
the taxing division. 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 6.02 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 in this subdivision shall be deposited to the credit of the State General Fund.

"(d) 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) 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
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.


"(a) There is hereby levied and shall be collected
as herein provided a sales tax upon every person, firm, or
corporation purchasing within this state, other than at
wholesale, any automotive vehicle, motorboat, truck trailer,
trailer, semitrailer, or travel trailer required to be
registered or licensed with the judge of probate of any county
in this state from any person, firm or corporation that is not
a licensed dealer engaged in selling automotive vehicles,
motorboats, truck trailers, trailers, semitrailers, or travel
trailers in an amount equal to two three percent of the
purchase price. In the event that a purchaser of a truck or
truck tractors, as defined in Section 40-12-240, can establish
that the vehicle has been used in interstate commerce, by
providing proof of registration and registration renewal
through the International Registration Plan, the purchaser can
file a petition for refund of excess taxes paid. Excess tax shall be defined as the amount of state Sales Tax paid exceeding two percent of the net difference of the price of the new or used vehicle sold less the credit for the used vehicle taken in trade. Such petition for refund shall be in a manner as prescribed by the Department. For a properly documented refund petition, interest shall be paid beginning 30 days after the receipt of the refund petition and supporting documentation by the taxing division.

"(b) Commencing October 1, 1989, there is hereby levied and shall be collected, as provided for under the provisions of subsection (e) of Section 40-23-104, a sales tax in the amount equal to two three percent of the purchase price on the sale of any manufactured home as defined in subsection (n) of Section 40-12-255, purchased other than at wholesale in this state from any person, firm, or corporation which is not a licensed dealer engaged in selling manufactured homes.

"(c) In addition to the two percent respective state sales tax, there shall also be collected any applicable municipal gross receipts or sales taxes and county sales taxes on the vehicles listed in subsection (a) of this section authorized by general or local law passed or enacted prior to the effective date of this act for the local taxing jurisdiction in which the purchaser resides or, if a business, the business location. Penalties for falsifying or misrepresenting the correct taxing jurisdictions shall be as provided in subsection (b) of Section 40-29-115.
§40-23-102.

(a) There is hereby levied and shall be collected as herein provided, in lieu of the excise tax levied by subsection (c) of Section 40-23-61, an excise or use tax upon every person, firm, or corporation purchasing outside the state, other than at wholesale, any automotive vehicle, motorboat, truck trailer, trailers, semitrailer, or travel trailer, required to be registered or licensed with the judge of probate of any county in this state for use, storage, or other consumption within this state a tax in an amount equal to two three percent of the purchase price. In the event that the storage, use or other consumption of a truck or truck tractors, as defined in Section 40-12-240, can establish that the vehicle has been used in interstate commerce, by providing proof of registration and registration renewal through the International Registration Plan, the user can file a petition for refund of excess taxes paid. Excess tax shall be defined as the amount of state Use Tax paid exceeding two percent of the net difference of the price of the new or used vehicle sold less the credit for the used vehicle taken in trade. Such petition for refund shall be in a manner as prescribed by the Department. For a properly documented refund petition, interest shall be paid beginning 30 days after the receipt of the refund petition and supporting documentation by the taxing division.

(b) Commencing October 1, 1989, there is hereby levied and shall be collected, as provided for under the
provisions of subsection (e) of Section 40-23-104, an excise or use tax in the amount equal to two thirds percent of the purchase price on the storage, use, or other consumption in the state of any manufactured home as defined in subsection (n) of Section 40-12-255 purchased other than at wholesale outside the state on or after October 1, 1989, for storage, use, or other consumption in this state.

"(c) In addition to the two percent respective state use tax, there shall also be collected any applicable municipal and county use tax authorized by general or local law passed on enacted prior to the effective date of this act for the local taxing jurisdiction in which the purchaser resides, or, if a business, the business location on any automotive vehicle, motorboat, truck trailer, trailer, semitrailer, or travel trailer purchased from dealers doing business outside the State of Alabama and from licensed Alabama dealers where municipal and county sales taxes were not collected at the time of purchase. Penalties for falsifying or misrepresenting the correct taxing jurisdiction shall be as provided in subsection (b) of Section 40-29-115.

§40-23-108.

"The licensing official shall, after the deduction of the fee as provided in Section 40-23-107, remit the revenue collected hereunder to the Department of Revenue for deposit as follows:

"Of the total two cents ($0.02) tax on each dollar of sale, 58% 44.7% of the total tax generated shall be deposited...
to the credit of the Education Trust Fund; and 42% 55.3% of the total tax generated shall be deposited to the credit of the State General Fund. Provided, however, of the total of those funds derived from the state sales and use taxes collected on motorboats, 50 percent shall be paid to the State General Fund and 50 percent to the Education Trust Fund."

Section 2. The increased taxes levied by this act shall be exclusive and in lieu of any other additional local taxes, county or municipal, imposed on the sale or use of motor vehicles. Notwithstanding the foregoing, an act of the Legislature or an ordinance or resolution by a taxing authority passed or enacted prior to the effective date of this act imposing a local tax shall remain operative, but no additional local tax may thereafter be levied on the sale of motor vehicles.

Section 3. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 4. All laws or parts of laws which conflict with this act are hereby repealed.

Section 5. This act shall become effective September 1, 2015, following its passage and approval by the Governor, or its otherwise becoming law.