

1 HB268
2 165763-1
3 By Representative Clouse
4 RFD: Ways and Means General Fund
5 First Read: 12-MAR-15

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

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT

23
24 To amend Section 40-23-2, 40-23-61, 40-23-101,
25 40-23-102, and 40-23-108, Code of Alabama 1975; to increase
26 the motor vehicle sales and use tax from two percent to three
27 percent, and provide a refund process for the amount of

1 additional tax paid on certain trucks and truck-tractors used
2 in interstate commerce; to exclude vehicle campers and house
3 cars as defined in 40-12-240, from the motor vehicle drive-out
4 provisions; to provide further for the distribution of
5 revenues received from the motor vehicle sales and use tax;
6 and to provide that the increased tax shall be exclusive and
7 in lieu of future local taxes on motor vehicles.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 40-23-2, 40-23-61, 40-23-101,
10 40-23-102, and 40-23-108, Code of Alabama 1975, are hereby
11 amended to read as follows:

12 "§40-23-2.

13 "There is levied, in addition to all other taxes of
14 every kind now imposed by law, and shall be collected as
15 herein provided, a privilege or license tax against the person
16 on account of the business activities and in the amount to be
17 determined by the application of rates against gross sales, or
18 gross receipts, as the case may be, as follows:

19 "(1) Upon every person, firm, or corporation,
20 (including the State of Alabama and its Alcoholic Beverage
21 Control Board in the sale of alcoholic beverages of all kinds,
22 the University of Alabama, Auburn University, and all other
23 institutions of higher learning in the state, whether the
24 institutions be denominational, state, county, or municipal
25 institutions, any association or other agency or
26 instrumentality of the institutions) engaged or continuing
27 within this state, in the business of selling at retail any

1 tangible personal property whatsoever, including merchandise
2 and commodities of every kind and character, (not including,
3 however, bonds or other evidences of debts or stocks, nor
4 sales of material and supplies to any person for use in
5 fulfilling a contract for the painting, repair, or
6 reconditioning of vessels, barges, ships, other watercraft,
7 and commercial fishing vessels of over five tons load
8 displacement as registered with the U.S. Coast Guard and
9 licensed by the State of Alabama Department of Conservation
10 and Natural Resources), an amount equal to four percent of the
11 gross proceeds of sales of the business except where a
12 different amount is expressly provided herein. Provided,
13 however, that any person engaging or continuing in business as
14 a retailer and wholesaler or jobber shall pay the tax required
15 on the gross proceeds of retail sales of the business at the
16 rates specified, when his or her books are kept so as to show
17 separately the gross proceeds of sales of each business, and
18 when his or her books are not kept he or she shall pay the tax
19 as a retailer, on the gross sales of the business.

20 "Where any used part including tires of an
21 automotive vehicle or a truck trailer, semitrailer, or house
22 trailer is taken in trade, or in a series of trades, as a
23 credit or part payment on the sale of a new or rebuilt part or
24 tire, the tax levied herein shall be paid on the net
25 difference, that is, the price of the new or used part or tire
26 sold less the credit for the used part or tire taken in trade,

1 provided, however, this provision shall not be construed to
2 include batteries.

3 "(2) Upon every person, firm, or corporation engaged
4 or continuing within this state in the business of conducting
5 or operating places of amusement or entertainment, billiard
6 and pool rooms, bowling alleys, amusement devices, musical
7 devices, theaters, opera houses, moving picture shows,
8 vaudevilles, amusement parks, athletic contests, including
9 wrestling matches, prize fights, boxing and wrestling
10 exhibitions, football and baseball games, (including athletic
11 contests, conducted by or under the auspices of any
12 educational institution within this state, or any athletic
13 association thereof, or other association whether the
14 institution or association be a denominational, a state, or
15 county, or a municipal institution, or association or a state,
16 county, or city school, or other institution, association or
17 school), skating rinks, race tracks, golf courses, or any
18 other place at which any exhibition, display, amusement, or
19 entertainment is offered to the public or place or places
20 where an admission fee is charged, including public bathing
21 places, public dance halls of every kind and description
22 within the State of Alabama, an amount equal to four percent
23 of the gross receipts of any such business. Provided, however,
24 notwithstanding any language to the contrary in the prior
25 portion of this subdivision, the tax provisions so specified
26 shall not apply to any athletic event conducted by a public or
27 nonpublic primary or secondary school or any athletic event

1 conducted by or under the auspices of the Alabama High School
2 Athletic Association. The tax amount which would have been
3 collected pursuant to this subdivision shall continue to be
4 collected by the public or nonpublic primary or secondary
5 school, but shall be retained by the school which collected it
6 and shall be used by the school for school purposes.

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

20 "(4) ~~Upon~~ Except as otherwise provided in this
21 subdivision, upon every person, firm, or corporation engaged
22 or continuing within this state in the business of selling at
23 retail any automotive vehicle or truck trailer, semitrailer,
24 or house trailer, or mobile home set-up materials and supplies
25 including but not limited to steps, blocks, anchoring, cable
26 pipes, and any other materials pertaining thereto an amount
27 equal to ~~two~~ three percent of the gross proceeds of sale of

1 the automotive vehicle or truck trailer, semitrailer, or house
2 trailer, or mobile home set-up materials and supplies
3 provided, however, where a person subject to the tax provided
4 for in this subdivision withdraws from his or her stock in
5 trade any automotive vehicle or truck trailer, semitrailer, or
6 house trailer for use by him or her or by his or her employee
7 or agent in the operation of the business, there shall be
8 paid, in lieu of the tax levied herein, a fee of five dollars
9 (\$5) per year or part thereof during which the automotive
10 vehicle, truck trailer, semitrailer, or house trailer shall
11 remain the property of the person. Each year or part thereof
12 shall begin with the day or anniversary date, as the case may
13 be, of such withdrawal and shall run for the 12 succeeding
14 months or part thereof during which the automotive vehicle,
15 truck trailer, semitrailer, or house trailer shall remain the
16 property of the person.

17 "In the event that a purchaser of a truck or truck
18 tractors, as defined in Section 40-12-240, can establish that
19 the vehicle has been used in interstate commerce, by providing
20 proof of registration and registration renewal through the
21 International Registration Plan, the purchaser can file a
22 petition for refund of excess taxes paid. Excess tax shall be
23 defined as the amount of state Sales Tax paid exceeding two
24 percent of the net difference of the price of the new or used
25 vehicle sold less the credit for the used vehicle taken in
26 trade. Such petition for refund shall be in a manner as
27 prescribed by the Department. For a properly documented refund

1 petition, interest shall be paid beginning 30 days after the
2 receipt of the refund petition and supporting documentation by
3 the taxing division.

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

10 "Sales of automobiles, motorcycles, trucks, truck
11 trailers, or semitrailers, excluding vehicle campers or
12 housecars as defined in Section 40-12-240, that will be
13 registered or titled outside Alabama, that are exported or
14 removed from Alabama within 72 hours by the purchaser or his
15 or her agent for first use outside Alabama are not subject to
16 the Alabama sales tax. Sales of other vehicles such as mobile
17 homes, motor bikes, all terrain vehicles, and boats do not
18 qualify for the export exemption provision and are taxable
19 unless the dealer can provide factual evidence that the
20 vehicle was delivered outside of Alabama or to a common
21 carrier for transportation outside Alabama. In order for the
22 sale to be exempt from Alabama tax, the information relative
23 to the exempt sale shall be documented on forms approved by
24 the Revenue Department.

25 "Of the total ~~\$.02~~ tax on each dollar of sale
26 provided ~~hereunder~~ in this subdivision (4), ~~58~~ 44.7 percent of
27 the total tax generated by this subdivision (4) shall be

1 deposited to the credit of the Education Trust Fund; and ~~42~~
2 55.3 percent of the total tax generated by this subdivision
3 (4) shall be deposited to the credit of the State General
4 Fund.

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

14 "§40-23-61.

15 "(a) An excise tax is hereby imposed on the storage,
16 use or other consumption in this state of tangible personal
17 property, not including, however, materials and supplies
18 bought for use in fulfilling a contract for the painting,
19 repairing or reconditioning of vessels, barges, ships, other
20 watercraft and commercial fishing vessels of over five tons
21 load displacement as registered with the U.S. Coast Guard and
22 licensed by the State of Alabama Department of Conservation
23 and Natural Resources, purchased at retail on or after October
24 1, 1965, for storage, use or other consumption in this state
25 at the rate of four percent of the sales price of such
26 property or the amount of tax collected by the seller,
27 whichever is greater; provided, however, when the seller

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

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

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

1 mobile home set-up materials and supplies including but not
2 limited to steps, blocks, anchoring, cable pipes and any other
3 materials pertaining thereto, purchased at retail on or after
4 October 1, 1965, for storage, use or other consumption in this
5 state at the rate of ~~two~~ three percent of the sales price of
6 such automotive vehicle, truck trailer, semitrailer or house
7 trailer, and mobile home set-up materials and supplies as
8 specified above, or the amount of tax collected by the seller,
9 whichever is greater; provided, however, when the seller
10 follows the Department of Revenue's suggested use tax brackets
11 and his records prove that his following said brackets
12 resulted in a net undercollection of tax for the month, he may
13 report the tax due or tax collected, whichever is less. In the
14 event that the storage, use or other consumption of a truck or
15 truck tractors, as defined in Section 40-12-240, can establish
16 that the vehicle has been used in interstate commerce, by
17 providing proof of registration and registration renewal
18 through the International Registration Plan, the user can file
19 a petition for refund of excess taxes paid. Excess tax shall
20 be defined as the amount of state Use Tax paid exceeding two
21 percent of the net difference of the price of the new or used
22 vehicle sold less the credit for the used vehicle taken in
23 trade. Such petition for refund shall be in a manner as
24 prescribed by the Department. For a properly documented refund
25 petition, interest shall be paid beginning 30 days after the
26 receipt of the refund petition and supporting documentation by
27 the taxing division. Where any used automotive vehicle or

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

7 ~~Of the~~ The total ~~\$.02~~ tax on each dollar of sale
8 provided hereunder, ~~58 percent of the total tax generated by~~
9 ~~this subsection shall be deposited to the credit of the~~
10 ~~Education Trust Fund; and 42 percent of the total tax~~
11 ~~generated by this subsection~~ in this subdivision shall be
12 deposited to the credit of the State General Fund.

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

1 "(e) An excise tax is hereby imposed on the classes
2 of tangible personal property, and at the rates imposed on
3 such classes, specified in subsections (a), (b) and (c) of
4 this section, on the storage, use, or other consumption in the
5 performance of a contract in this state of any such tangible
6 personal property, new or used, the tax to be measured by the
7 sales price or the fair and reasonable market value of such
8 tangible personal property when put into use in this state,
9 whichever is less; provided, that the tax imposed by this
10 subsection shall not apply where the taxes imposed by
11 subsection (a), (b), or (c) of this section apply.

12 "§40-23-101.

13 "(a) There is hereby levied and shall be collected
14 as herein provided a sales tax upon every person, firm, or
15 corporation purchasing within this state, other than at
16 wholesale, any automotive vehicle, motorboat, truck trailer,
17 trailer, semitrailer, or travel trailer required to be
18 registered or licensed with the judge of probate of any county
19 in this state from any person, firm or corporation that is not
20 a licensed dealer engaged in selling automotive vehicles,
21 motorboats, truck trailers, trailers, semitrailers, or travel
22 trailers in an amount equal to ~~two~~ three percent of the
23 purchase price. In the event that a purchaser of a truck or
24 truck tractors, as defined in Section 40-12-240, can establish
25 that the vehicle has been used in interstate commerce, by
26 providing proof of registration and registration renewal
27 through the International Registration Plan, the purchaser can

1 file a petition for refund of excess taxes paid. Excess tax
2 shall be defined as the amount of state Sales Tax paid
3 exceeding two percent of the net difference of the price of
4 the new or used vehicle sold less the credit for the used
5 vehicle taken in trade. Such petition for refund shall be in a
6 manner as prescribed by the Department. For a properly
7 documented refund petition, interest shall be paid beginning
8 30 days after the receipt of the refund petition and
9 supporting documentation by the taxing division.

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

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

1 "§40-23-102.

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

26 "(b) Commencing October 1, 1989, there is hereby
27 levied and shall be collected, as provided for under the

1 provisions of subsection (e) of Section 40-23-104, an excise
2 or use tax in the amount equal to ~~two~~ three percent of the
3 purchase price on the storage, use, or other consumption in
4 the state of any manufactured home as defined in subsection
5 (n) of Section 40-12-255 purchased other than at wholesale
6 outside the state on or after October 1, 1989, for storage,
7 use, or other consumption in this state.

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

21 "§40-23-108.

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

26 "Of the total ~~two cents (\$.02)~~ tax on each dollar of
27 sale, ~~58%~~ 44.7% of the total tax generated shall be deposited

1 to the credit of the Education Trust Fund; and ~~42%~~ 55.3% of
2 the total tax generated shall be deposited to the credit of
3 the State General Fund. Provided, however, of the total of
4 those funds derived from the state sales and use taxes
5 collected on motorboats, 50 percent shall be paid to the State
6 General Fund and 50 percent to the Education Trust Fund."

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

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

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

22 Section 5. This act shall become effective September
23 1, 2015, following its passage and approval by the Governor,
24 or its otherwise becoming law.