

1 SB227
2 182538-1
3 By Senator Dial
4 RFD: Finance and Taxation Education
5 First Read: 21-FEB-17

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8 SYNOPSIS: Under existing law, the state imposes sales
9 or use taxes upon certain persons, firms, or
10 corporations. Sales of certain items are taxed at a
11 reduced rate. Sales of other items are exempt from
12 the taxes.

13 This bill would increase the state sales and
14 use tax general rate to four and thirty-five
15 one-hundredths percent (4.35%) on September 1, 2017
16 and to four and seventy one-hundredths percent
17 (4.70%) on September 1, 2018.

18 This bill would phase out the state sales
19 and use taxes on food over a two-year period by
20 reducing the rates by two percentage points per
21 year beginning September 1, 2017.

22 This bill would exempt sales of food from
23 the sales and use taxes beginning September 1,
24 2018.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 To amend Sections 40-23-2 and 40-23-61, Code of
4 Alabama 1975, to increase the state sales and use tax general
5 rates to four and thirty-five one-hundredths percent (4.35%)
6 on September 1, 2017 and four and seventy one-hundredths
7 percent (4.70%) on September 1, 2018; to phase out state sales
8 and use taxes on food by reducing the rates by two percentage
9 points per year beginning September 1, 2017; to exempt sales
10 of food from sales and use taxes beginning September 1, 2018.
11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. LEGISLATIVE INTENT. The Legislature
13 hereby finds that the requirement to pay sales tax on food
14 places a burden on all taxpayers in the state, especially the
15 less fortunate. The Legislature recognizes the effect on-line
16 purchases has had on tax collections due to inaction by the
17 federal government to act on pending legislation allowing for
18 the collection on on-line sales. The passage of this act would
19 have a positive impact on state tax collections on general
20 merchandise which would help offset the elimination of the
21 sales tax on food.

22 Section 2. Section 40-23-2 and Section 40-23-61,
23 Code of Alabama 1975, are amended to read as follows:

24 "§40-23-2.

25 "There is levied, in addition to all other taxes of
26 every kind now imposed by law, and shall be collected as
27 herein provided, a privilege or license tax against the person

1 on account of the business activities and in the amount to be
2 determined by the application of rates against gross sales, or
3 gross receipts, as the case may be, as follows:

4 "(1) Upon every person, firm, or corporation,
5 (including the State of Alabama and its Alcoholic Beverage
6 Control Board in the sale of alcoholic beverages of all kinds,
7 the University of Alabama, Auburn University, and all other
8 institutions of higher learning in the state, whether the
9 institutions be denominational, state, county, or municipal
10 institutions, any association or other agency or
11 instrumentality of the institutions) engaged or continuing
12 within this state, in the business of selling at retail any
13 tangible personal property whatsoever, including merchandise
14 and commodities of every kind and character, (not including,
15 however, bonds or other evidences of debts or stocks, nor
16 sales of material and supplies to any person for use in
17 fulfilling a contract for the painting, repair, or
18 reconditioning of vessels, barges, ships, other watercraft,
19 and commercial fishing vessels of over five tons load
20 displacement as registered with the U.S. Coast Guard and
21 licensed by the State of Alabama Department of Conservation
22 and Natural Resources), an amount equal to: for taxable
23 periods beginning on or before August 31, 2017, four percent
24 of the gross proceeds of sales of the business except where a
25 different amount is expressly provided herein; for taxable
26 periods beginning on and after September 1, 2017, four and
27 thirty-five one-hundredths percent (4.35%) of the gross

1 proceeds of sales of the business except where a different
2 amount is expressly provided herein; for taxable periods
3 beginning on and after September 1, 2018, four and seventy
4 one-hundredths percent (4.70%) of the gross proceeds of sales
5 of the business except where a different amount is expressly
6 provided herein. Provided, however, that any person engaging
7 or continuing in business as a retailer and wholesaler or
8 jobber shall pay the tax required on the gross proceeds of
9 retail sales of the business at the rates specified, when his
10 or her books are kept so as to show separately the gross
11 proceeds of sales of each business, and when his or her books
12 are not kept he or she shall pay the tax as a retailer, on the
13 gross sales of the business.

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

23 "(2) Upon every person, firm, or corporation engaged
24 or continuing within this state in the business of conducting
25 or operating places of amusement or entertainment, billiard
26 and pool rooms, bowling alleys, amusement devices, musical
27 devices, theaters, opera houses, moving picture shows,

1 vaudevilles, amusement parks, athletic contests, including
2 wrestling matches, prize fights, boxing and wrestling
3 exhibitions, football and baseball games, (including athletic
4 contests, conducted by or under the auspices of any
5 educational institution within this state, or any athletic
6 association thereof, or other association whether the
7 institution or association be a denominational, a state, or
8 county, or a municipal institution, or association or a state,
9 county, or city school, or other institution, association or
10 school), skating rinks, race tracks, golf courses, or any
11 other place at which any exhibition, display, amusement, or
12 entertainment is offered to the public or place or places
13 where an admission fee is charged, including public bathing
14 places, public dance halls of every kind and description
15 within the State of Alabama, an amount equal to: for taxable
16 periods beginning on or before August 31, 2017, four percent
17 of the gross receipts of any such business; for taxable
18 periods beginning on and after September 1, 2017, four and
19 thirty-five one-hundredths percent (4.35%) of the gross
20 receipts of any such business; for taxable periods beginning
21 on and after September 1, 2018, four and seventy
22 one-hundredths percent (4.70%) of the gross receipts of any
23 such business. Provided, however, notwithstanding any language
24 to the contrary in the prior portion of this subdivision, the
25 tax provisions so specified shall not apply to any athletic
26 event conducted by a public or nonpublic primary or secondary
27 school or any athletic event conducted by or under the

1 auspices of the Alabama High School Athletic Association. The
2 tax amount which would have been collected pursuant to this
3 subdivision shall continue to be collected by the public or
4 nonpublic primary or secondary school, but shall be retained
5 by the school which collected it and shall be used by the
6 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 every person, firm, or corporation engaged
21 or continuing within this state in the business of selling at
22 retail any automotive vehicle or truck trailer, semitrailer,
23 or house trailer, or mobile home set-up materials and supplies
24 including but not limited to steps, blocks, anchoring, cable
25 pipes, and any other materials pertaining thereto an amount
26 equal to two percent of the gross proceeds of sale of the
27 automotive vehicle or truck trailer, semitrailer, or house

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

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

22 "Sales of automobiles, motorcycles, trucks, truck
23 trailers, or semitrailers, excluding travel trailers or
24 housecars as defined in Section 40-12-240, that will be
25 registered or titled outside Alabama, that are exported or
26 removed from Alabama within 72 hours by the purchaser or his
27 or her agent for first use outside Alabama are subject to

1 Alabama sales tax in an amount equal to only the state
2 automotive sales tax rate, unless the sales tax laws of the
3 state in which the purchaser will title or register the
4 vehicle, allows an Alabama resident to purchase a motor
5 vehicle for first titling and registering in Alabama without
6 the payment of tax to that state. However, in no case shall
7 the amount of Alabama state sales tax due on a motor vehicle
8 that will be registered or titled for use in another state
9 exceed the amount of sales tax that would otherwise have been
10 due in the state where the vehicle will be registered or
11 titled for first use. The tax collected under this export
12 provision shall be Alabama sales tax and shall exclude county
13 and municipal sales tax. On January 1, 2016, and each January
14 1 thereafter, the Alabama Department of Revenue shall publish
15 to the state's website a list of states that do not allow
16 drive out provisions to Alabama residents. Should the list,
17 required by this subsection and relied upon by the taxpayer,
18 be incorrect, the taxpayer shall be relieved from the
19 liability concerning the miscollection of the state automotive
20 sales tax. Sales of all other vehicles such as mobile homes,
21 motor bikes, all terrain vehicles, and boats do not qualify
22 for the export exemption provision and are taxable unless the
23 dealer can provide factual evidence that the vehicle was
24 delivered outside of Alabama or to a common carrier for
25 transportation outside Alabama. In order for the sale to be
26 exempt from Alabama tax, the information relative to the

1 exempt sale shall be documented on forms approved by the
2 Revenue Department.

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

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

18 "§40-23-61.

19 "(a) An excise tax is hereby imposed on the storage,
20 use or other consumption in this state of tangible personal
21 property, not including, however, materials and supplies
22 bought for use in fulfilling a contract for the painting,
23 repairing or reconditioning of vessels, barges, ships, other
24 watercraft and commercial fishing vessels of over five tons
25 load displacement as registered with the U.S. Coast Guard and
26 licensed by the State of Alabama Department of Conservation
27 and Natural Resources, purchased at retail on or after October

1 1, 1965, for storage, use or other consumption in this state
2 at the ~~rate of~~ following rates: for taxable periods beginning
3 on or before August 31, 2017, four percent of the sales price
4 of such property or the amount of tax collected by the seller,
5 whichever is greater; for taxable periods beginning on and
6 after September 1, 2017, four and thirty-five one-hundredths
7 percent (4.35%) of the sales price of such poverty or the
8 amount of tax collected by the seller, whichever is greater;
9 for taxable periods beginning on and after September 1, 2018,
10 four and seventy one-hundredths percent (4.70%) of the sales
11 price of such property or the amount of tax collected by the
12 seller, whichever is greater; provided, however, when the
13 seller follows the Department of Revenue's suggested use tax
14 brackets and his records prove that his following said
15 brackets resulted in a net undercollection of tax for the
16 month, he may report the tax due or tax collected, whichever
17 is less, except as provided in subsections (b) and (c) of this
18 section.

19 "(b) An excise tax is hereby imposed on the storage,
20 use or other consumption in this state of any machines used in
21 mining, quarrying, compounding, processing and manufacturing
22 of tangible personal property, purchased at retail on or after
23 October 1, 1965, at the rate of one and one-half percent of
24 the sales price of any such machine or the amount of tax
25 collected by the seller, whichever is greater; provided,
26 however, when the seller follows the Department of Revenue's
27 suggested use tax brackets and his records prove that his

1 following said brackets resulted in a net undercollection of
2 tax for the month, he may report the tax due or tax collected,
3 whichever is less; provided, that the term "machine," as
4 herein used, shall include machinery which is used for mining,
5 quarrying, compounding, processing, or manufacturing tangible
6 personal property, and the parts of such machines, attachments
7 and replacements therefor, which are made or manufactured for
8 use on or in the operation of such machines and which are
9 necessary to the operation of such machines and are
10 customarily so used.

11 "(c) An excise tax is hereby imposed on the storage,
12 use or other consumption in this state of any automotive
13 vehicle or truck trailer, semitrailer or house trailer, and
14 mobile home set-up materials and supplies including but not
15 limited to steps, blocks, anchoring, cable pipes and any other
16 materials pertaining thereto, purchased at retail on or after
17 October 1, 1965, for storage, use or other consumption in this
18 state at the rate of two percent of the sales price of such
19 automotive vehicle, truck trailer, semitrailer or house
20 trailer, and mobile home set-up materials and supplies as
21 specified above, or the amount of tax collected by the seller,
22 whichever is greater; provided, however, when the seller
23 follows the Department of Revenue's suggested use tax brackets
24 and his records prove that his following said brackets
25 resulted in a net undercollection of tax for the month, he may
26 report the tax due or tax collected, whichever is less. Where
27 any used automotive vehicle or truck trailer, semitrailer or

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

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

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

26 "(e) An excise tax is hereby imposed on the classes
27 of tangible personal property, and at the rates imposed on

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

10 Section 3. For purposes of Section 3 of this act,
11 the following terms are defined as follows:

12 (1) FOOD. Food as defined in 7 U.S.C §2011, et seq.,
13 for the purposes of the federal Supplemental Nutrition
14 Assistance Program regardless of where or by what means food
15 is sold. In the event that the federal Supplemental Nutrition
16 Assistance Program definition no longer exists, the
17 Legislature shall provide a new definition of food by general
18 law.

19 (2) SALES TAX. The tax levied in Section 40-23-2,
20 Code of Alabama 1975, on the gross sales or gross receipts
21 from the sale of tangible personal property.

22 (3) USE TAX. The tax levied in Section 40-23-61,
23 Code of Alabama 1975, on the storage, use, or other
24 consumption of tangible personal property in Alabama.

25 Section 4. Notwithstanding any other provision of
26 law,

1 (a) For taxable periods beginning on and after
2 September 1, 2017, the state sales and use tax rate on food
3 shall be two percent of the gross receipts from the sale or
4 use of food.

5 (b) For taxable periods beginning on and after
6 September 1, 2018, the gross receipts from the sale or use of
7 food shall be exempt from the state sales and use taxes.

8 Section 5. The Legislature shall review the results
9 of this act during the 2019 Regular Session and make any
10 necessary adjustments to ensure that the provisions of this
11 act are revenue neutral.

12 Section 6. This act shall become effective on the
13 first day of the third month following its passage and
14 approval by the Governor, or its otherwise becoming a law.