

1 HB373  
2 157594-1  
3 By Representative Poole  
4 RFD: Ways and Means Education  
5 First Read: 30-JAN-14

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8 SYNOPSIS: Under existing law, prepaid calling cards  
9 and prepaid authorization numbers are deemed  
10 tangible property, the sale of which is subject to  
11 sales tax. This bill amends the definition of a  
12 prepaid telephone calling card to clarify that  
13 prepaid wireless service that is evidenced by a  
14 physical card, and prepaid wireless service that is  
15 not evidenced by a physical card, which is  
16 considered a prepaid authorization number, are  
17 subject to sales and use tax. This bill also  
18 defines prepaid wireless service.

19  
20 A BILL  
21 TO BE ENTITLED  
22 AN ACT

23  
24 To amend Sections 40-23-1 and 40-23-60, Code of  
25 Alabama 1975, relating to sales and use tax definitions, to  
26 clarify that prepaid wireless service that is evidenced by a  
27 physical card and prepaid wireless service that is not

1 evidenced by a physical card, are subject to sales and use  
2 tax.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 40-23-1, Code of Alabama 1975, is  
5 hereby amended to read as follows:

6 "§40-23-1.

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

10 "(1) PERSON or COMPANY. Used interchangeably,  
11 includes any individual, firm, copartnership, association,  
12 corporation, receiver, trustee, or any other group or  
13 combination acting as a unit and the plural as well as the  
14 singular number, unless the intention to give a more limited  
15 meaning is disclosed by the context.

16 "(2) DEPARTMENT. The Department of Revenue of the  
17 State of Alabama.

18 "(3) COMMISSIONER. The Commissioner of Revenue of  
19 the State of Alabama.

20 "(4) TAX YEAR or TAXABLE YEAR. The calendar year.

21 "(5) SALE or SALES. Installment and credit sales and  
22 the exchange of properties as well as the sale thereof for  
23 money, every closed transaction constituting a sale. Provided,  
24 however, a transaction shall not be closed or a sale completed  
25 until the time and place when and where title is transferred  
26 by the seller or seller's agent to the purchaser or  
27 purchaser's agent, and for the purpose of determining transfer

1 of title, a common carrier or the U. S. Postal Service shall  
2 be deemed to be the agent of the seller, regardless of any  
3 F.O.B. point and regardless of who selects the method of  
4 transportation, and regardless of by whom or the method by  
5 which freight, postage, or other transportation charge is  
6 paid. Provided further that, where billed as a separate item  
7 to and paid by the purchaser, the freight, postage, or other  
8 transportation charge paid to a common carrier or the U.S.  
9 Postal Service is not a part of the selling price.

10 "(6) GROSS PROCEEDS OF SALES. The value proceeding  
11 or accruing from the sale of tangible personal property, and  
12 including the proceeds from the sale of any property handled  
13 on consignment by the taxpayer, including merchandise of any  
14 kind and character without any deduction on account of the  
15 cost of the property sold, the cost of the materials used,  
16 labor or service cost, interest paid, any consumer excise  
17 taxes that may be included within the sales price of the  
18 property sold, or any other expenses whatsoever, and without  
19 any deductions on account of losses; provided, that cash  
20 discounts allowed and taken on sales shall not be included,  
21 and "gross proceeds of sales" shall not include the sale price  
22 of property returned by customers when the full sales price  
23 thereof is refunded either in cash or by credit. The term  
24 "gross proceeds of sale" shall also mean and include the  
25 reasonable and fair market value of any tangible personal  
26 property previously purchased at wholesale which is withdrawn  
27 or used from the business or stock and used or consumed in

1 connection with a business, and shall also mean and include  
2 the reasonable and fair market value of any tangible personal  
3 property previously purchased at wholesale which is withdrawn  
4 from the business or stock and used or consumed by any person  
5 so withdrawing the same, except property which has been  
6 previously withdrawn from business or stock and so used or  
7 consumed with respect to which property the tax has been paid  
8 because of previous withdrawal, use, or consumption, except  
9 property which enters into and becomes an ingredient or  
10 component part of tangible personal property or products  
11 manufactured or compounded for sale and not for the personal  
12 and private use or consumption of any person so withdrawing,  
13 using, or consuming the same, and except refinery, residue, or  
14 fuel gas, whether in a liquid or gaseous state, that has been  
15 generated by, or is otherwise a by-product of, a  
16 petroleum-refining process, which gas is then utilized in the  
17 process to generate heat or is otherwise utilized in the  
18 distillation or refining of petroleum products.

19 "In the case of the retail sale of equipment,  
20 accessories, fixtures, and other similar tangible personal  
21 property used in connection with the sale of commercial mobile  
22 services as defined herein, or in connection with satellite  
23 television services, at a price below cost, "gross proceeds of  
24 sale" shall only include the stated sales price thereof and  
25 shall not include any sales commission or rebate received by  
26 the seller as a result of the sale. As used herein, the term  
27 "commercial mobile services" shall have the same meaning as

1 that term has in 47 U.S.C. Sections 153(n) and 332(d), as in  
2 effect from time to time.

3 "(7) TAXPAYER. Any person liable for taxes  
4 hereunder.

5 "(8) GROSS RECEIPTS. The value proceeding or  
6 accruing from the sale of tangible personal property,  
7 including merchandise and commodities of any kind and  
8 character, all receipts actual and accrued, by reason of any  
9 business engaged in, not including, however, interest,  
10 discounts, rentals of real estate or royalties, and without  
11 any deduction on account of the cost of the property sold, the  
12 cost of the materials used, labor or service cost, interest  
13 paid, any consumer excise taxes that may be included in the  
14 sales price of the property sold, or any other expenses  
15 whatsoever and without any deductions on account of losses.  
16 The term "gross receipts" shall also mean and include the  
17 reasonable and fair market value of any tangible personal  
18 property previously purchased at wholesale which is withdrawn  
19 or used from the business or stock and used or consumed in  
20 connection with a business, and shall also mean and include  
21 the reasonable and fair market value of any tangible personal  
22 property previously purchased at wholesale which is withdrawn  
23 from the business or stock and used or consumed by any person  
24 so withdrawing the same, except property which has been  
25 previously withdrawn from business or stock and so used or  
26 consumed and with respect to which property the tax has been  
27 paid because of previous withdrawal, use, or consumption,

1 except property which enters into and becomes an ingredient or  
2 component part of tangible personal property or products  
3 manufactured or compounded for sale as provided in subdivision  
4 (9) and not for the personal and private use or consumption of  
5 any person so withdrawing, using, or consuming the same, and  
6 except refinery, residue, or fuel gas, whether in a liquid or  
7 gaseous state, that has been generated by, or is otherwise a  
8 by-product of, a petroleum-refining process, which gas is then  
9 utilized in the process to generate heat or is otherwise  
10 utilized in the distillation or refining of petroleum  
11 products.

12 "(9) WHOLESALE SALE or SALE AT WHOLESALE. Any one of  
13 the following:

14 "a. A sale of tangible personal property by  
15 wholesalers to licensed retail merchants, jobbers, dealers, or  
16 other wholesalers for resale and does not include a sale by  
17 wholesalers to users or consumers, not for resale.

18 "b. A sale of tangible personal property or  
19 products, including iron ore, and including the furnished  
20 container and label of such property or products, to a  
21 manufacturer or compounder which enter into and become an  
22 ingredient or component part of the tangible personal property  
23 or products which the manufacturer or compounder manufactures  
24 or compounds for sale, whether or not such tangible personal  
25 property or product used in manufacturing or compounding a  
26 finished product is used with the intent that it becomes a  
27 component of the finished product; provided, however, that it

1 is the intent of this section that no sale of capital  
2 equipment, machinery, tools, or product shall be included in  
3 the term "wholesale sale." The term "capital equipment,  
4 machinery, tools, or product" shall mean property that is  
5 subject to depreciation allowances for Alabama income tax  
6 purposes.

7 "c. A sale of containers intended for one-time use  
8 only, and the labels thereof, when containers are sold without  
9 contents to persons who sell or furnish containers along with  
10 the contents placed therein for sale by persons.

11 "d. A sale of pallets intended for one-time use only  
12 when pallets are sold without contents to persons who sell or  
13 furnish pallets along with the contents placed thereon for  
14 sale by persons.

15 "e. A sale to a manufacturer or compounder, of  
16 crowns, caps, and tops intended for one-time use employed and  
17 used upon the containers in which a manufacturer or compounder  
18 markets his products.

19 "f. A sale of containers to persons engaged in  
20 selling or otherwise supplying or furnishing baby chicks to  
21 growers thereof where containers are used for the delivery of  
22 chicks or a sale of containers for use in the delivery of eggs  
23 by the producer thereof to the distributor or packer of eggs  
24 even though containers used for delivery of baby chicks or  
25 eggs may be recovered for reuse.

26 "g. A sale of bagging and ties used in preparing  
27 cotton for market.



1            "h. A sale to meat packers, manufacturers,  
2 compounders, or processors of meat products of all casings  
3 used in molding or forming wieners and Vienna sausages even  
4 though casings may be recovered for reuse.

5            "i. A sale of commercial fish feed including  
6 concentrates, supplements, and other feed ingredients when  
7 substances are used as ingredients in mixing and preparing  
8 feed for fish raised to be sold on a commercial basis.

9            "j. A sale of tangible personal property to any  
10 person engaging in the business of leasing or renting tangible  
11 personal property to others, if tangible personal property is  
12 purchased for the purpose of leasing or renting it to others  
13 under a transaction subject to the privilege or license tax  
14 levied in Article 4 of Chapter 12 of this title against any  
15 person engaging in the business of leasing or renting tangible  
16 personal property to others.

17            "k. A purchase or withdrawal of parts or materials  
18 from stock by any person licensed under this division where  
19 parts or materials are used in repairing or reconditioning the  
20 tangible personal property of a licensed person, which  
21 tangible personal property is a part of the stock of goods of  
22 a licensed person, offered for sale by him, and not for use or  
23 consumption of a licensed person.

24            "(10) SALE AT RETAIL or RETAIL SALE. All sales of  
25 tangible personal property except those above defined as  
26 wholesale sales. The quantities of goods sold or prices at  
27 which sold are immaterial in determining whether or not a sale

1 is at retail. Sales of building materials to contractors,  
2 builders, or landowners for resale or use in the form of real  
3 estate are retail sales in whatever quantity sold. Sales of  
4 building materials, fixtures, or other equipment to a  
5 manufacturer or builder of modular buildings for use in  
6 manufacturing, building, or equipping a modular building  
7 ultimately becoming a part of real estate situated in the  
8 State of Alabama are retail sales, and the use, sale, or  
9 resale of building shall not be subject to the tax. Sales of  
10 tangible personal property to undertakers and morticians are  
11 retail sales and subject to the tax at the time of purchase,  
12 but are not subject to the tax on resale to the consumer.  
13 Sales of tangible personal property or products to  
14 manufacturers, quarry operators, mine operators, or  
15 compounders, which are used or consumed by them in  
16 manufacturing, mining, quarrying, or compounding and do not  
17 become an ingredient or component part of the tangible  
18 personal property manufactured or compounded as provided in  
19 subdivision (9) are retail sales. The term "sale at retail" or  
20 "retail sale" shall also mean and include the withdrawal, use,  
21 or consumption of any tangible personal property by any one  
22 who purchases same at wholesale, except property which has  
23 been previously withdrawn from the business or stock and so  
24 used or consumed and with respect to which property tax has  
25 been paid because of previous withdrawal, use, or consumption,  
26 except property which enters into and becomes an ingredient or  
27 component part of tangible personal property or products

1 manufactured or compounded for sale as provided in subdivision  
2 (9) and not for the personal and private use or consumption of  
3 any person so withdrawing, using, or consuming the same; and  
4 wholesale purchaser shall report and pay the taxes thereon. In  
5 the case of the sale of equipment, accessories, fixtures, and  
6 other similar tangible personal property used in connection  
7 with the sale of commercial mobile services as defined in  
8 subdivision (6) above, or in connection with satellite  
9 television services, at a price below cost, the term "sale at  
10 retail" and "retail sale" shall include those sales, and those  
11 sales shall not also be taxable as a withdrawal, use, or  
12 consumption of such tangible personal property.

13 "(11) BUSINESS. All activities engaged in, or caused  
14 to be engaged in, with the object of gain, profit, benefit, or  
15 advantage, either direct or indirect, and not excepting  
16 subactivities producing marketable commodities used or  
17 consumed in the main business activity, each of which  
18 subactivities shall be considered business engaged in, taxable  
19 in the class in which it falls.

20 "(12) AUTOMOTIVE VEHICLE. A power shovel, dragline,  
21 crawler, crawler crane, ditcher, or any similar machine which  
22 is self-propelled, in addition to self-propelled machines  
23 which are used primarily as instruments of conveyance.

24 "(13) PREPAID TELEPHONE CALLING CARD. A sale of a  
25 prepaid telephone calling card or a prepaid authorization  
26 number, or both, shall be deemed the sale of tangible personal  
27 property subject to the tax imposed on the sale of tangible

1 personal property pursuant to this chapter. For purposes of  
2 this subdivision (13), the sale of prepaid wireless service  
3 that is evidenced by a physical card constitutes the sale of a  
4 prepaid telephone calling card, and the sale of prepaid  
5 wireless service that is not evidenced by a physical card  
6 constitutes the sale of a prepaid authorization number.

7           "(b) The use within this state of tangible personal  
8 property by the manufacturer thereof, as building materials in  
9 the performance of a construction contract, shall, for the  
10 purposes of this division, be considered as a retail sale  
11 thereof by manufacturer, who shall also be construed as the  
12 ultimate consumer of materials or property, and who shall be  
13 required to report transaction and pay the sales tax thereon,  
14 based upon the reasonable and fair market price thereof at the  
15 time and place where same are used or consumed by him or it.  
16 Where the contractor is the manufacturer or compounder of  
17 ready-mix concrete or asphalt plant mix used in the  
18 performance of a contract, whether the ready-mix concrete or  
19 asphalt plant mix is manufactured or compounded at the job  
20 site or at a fixed or permanent plant location, the tax  
21 applies only to the cost of the ingredients that become a  
22 component part of the ready-mix concrete or the asphalt plant  
23 mix. The provisions of this subsection shall not apply to any  
24 tangible personal property which is specifically exempted from  
25 the tax levied in this division.

26           "(c) The sale of lumber by a lumber manufacturer to  
27 a trucker for resale is a sale at wholesale as sales are

1 defined herein where the trucker is either a licensed dealer  
2 in lumber or, if a resident of Alabama, has registered with  
3 the Department of Revenue, and has received therefrom a  
4 certificate of registration or, if a nonresident of this state  
5 purchasing lumber for resale outside the State of Alabama, has  
6 furnished to the lumber manufacturer his name, address and the  
7 vehicle license number of the truck in which the lumber is to  
8 be transported, which name, address, and vehicle license  
9 number shall be shown on the sales invoice rendered by the  
10 lumber manufacturer. The certificate provided for herein shall  
11 be valid for the calendar year of its issuance and may be  
12 renewed from year to year on application to the Department of  
13 Revenue on or before January 31 of each succeeding year;  
14 provided, that if not renewed the certificate shall become  
15 invalid for the purpose of this division on February 1.

16 "(d) The dispensing or transferring of ophthalmic  
17 materials, including lenses, frames, eyeglasses, contact  
18 lenses, and other therapeutic optic devices, to a patient by a  
19 licensed ophthalmologist, as a part of his or her professional  
20 service, shall, for purposes of this division, constitute a  
21 sale, subject to the state sales tax. The licensed  
22 ophthalmologist or licensed optometrist shall collect the  
23 state sales tax. In no event shall the providing of  
24 professional services in connection with the dispensing or  
25 transferring of ophthalmic materials, including dispensing  
26 fees or fitting fees, by a licensed ophthalmologist or  
27 licensed optometrist be considered a sale subject to the state

1 sales tax. When the ophthalmic materials are purchased by a  
2 consumer covered by a third party benefit plan, including  
3 Medicare, the sales tax shall be applicable to the amount that  
4 the ophthalmologist, optometrist, or optician is reimbursed by  
5 the third party benefit plan plus the amount that the consumer  
6 pays to the ophthalmologist, optometrist, or optician at the  
7 time of the sale. All transfers of ophthalmic materials by  
8 opticians or optometrists shall be considered retail sales  
9 subject to the state sales tax. The term supplier shall  
10 include but not be limited to optical laboratories, ophthalmic  
11 material wholesalers, or anyone selling ophthalmic materials  
12 to ophthalmologists.

13 "(e) Notwithstanding the above, the withdrawal, use,  
14 or consumption of a manufactured product by the manufacturer  
15 thereof in quality control testing performed by employees or  
16 independent contractors of the taxpayer, for purposes of this  
17 division, shall not be deemed or considered to constitute a  
18 transaction subject to sales tax, nor shall a gift by the  
19 manufacturer of a manufactured product, withdrawn from the  
20 manufacturer's inventory, to an entity listed in 26 U.S.C.  
21 Sections 170(b) or (c), be considered a transaction subject to  
22 sales tax.

23 "(f) Notwithstanding the foregoing, a gift by a  
24 retailer of a product or products where the aggregate retail  
25 value of any single gift is equal to or less than ten thousand  
26 dollars (\$10,000), withdrawn from the retailer's inventory, to  
27 an entity listed in 26 U.S.C. Sections 170(b) or (c) shall not

1 be deemed or considered to constitute a transaction subject to  
2 sales and use tax.

3 "(14) PREPAID WIRELESS SERVICE. The right to use  
4 mobile telecommunications service, which must be paid for in  
5 advance and that is sold in predetermined units or dollars of  
6 which the number declines with use in a known amount, and  
7 which may include rights to use non-telecommunications  
8 services or to download digital products or digital content.  
9 For purposes of this subdivision (14), "mobile  
10 telecommunications service" has the meaning ascribed by  
11 Section 40-21-120."

12 Section 2. Section 40-23-60, Code of Alabama 1975,  
13 is hereby amended to read as follows:

14 "§40-23-60.

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

18 (1) PERSON or COMPANY. Any individual, firm,  
19 company, partnership, association, corporation, receiver or  
20 trustee, or any other group or combination acting as a unit,  
21 and the plural as well as the singular number, unless the  
22 intention to give a more limited meaning is disclosed by the  
23 context.

24 (2) DEPARTMENT. The Department of Revenue of the  
25 State of Alabama.

26 (3) COMMISSIONER. The Commissioner of Revenue of the  
27 State of Alabama.

1                   (4) WHOLESALE SALE or SALE AT WHOLESALE. Any one of  
2 the following:

3                   a. A sale of tangible personal property by  
4 wholesaler to licensed retail merchants, jobbers, dealers or  
5 other wholesalers for resale and does not include a sale by  
6 wholesalers to users or consumers, not for resale.

7                   b. A sale of tangible personal property or products,  
8 including iron ore, and including the furnished container and  
9 label of such property or products, to a manufacturer or  
10 compounder which enter into and become an ingredient or  
11 component part of the tangible personal property or products  
12 which the manufacturer or compounder manufactures or compounds  
13 for sale, whether or not such tangible personal property or  
14 product used in manufacturing or compounding a finished  
15 product is used with the intent that it become a component of  
16 the finished product; provided, however, that it is the intent  
17 of this section that no sale of capital equipment, machinery,  
18 tools, or product shall be included in the term "wholesale  
19 sale." The term "capital equipment, machinery, tools, or  
20 product" shall mean property that is subject to depreciation  
21 allowances for Alabama income tax purposes.

22                   c. A sale of containers intended for one-time use  
23 only, and the labels thereof, when such containers are sold  
24 without contents to persons who sell or furnish such  
25 containers along with the contents placed therein for sale by  
26 such persons.



1           d. A sale of pallets intended for one-time use only  
2 when such pallets are sold without contents to persons who  
3 sell or furnish such pallets along with the contents placed  
4 thereon for sale by such persons.

5           e. A sale to a manufacturer or compounder, of  
6 crowns, caps and tops intended for one-time use employed and  
7 used upon the containers in which such manufacturer or  
8 compounder markets his products.

9           f. A sale of containers to persons engaged in  
10 selling or otherwise supplying or furnishing baby chicks to  
11 growers thereof where such containers are used for the  
12 delivery of such chicks or a sale of containers for use in the  
13 delivery of eggs by the producer thereof to the distributor or  
14 packer of such eggs even though such containers used for  
15 delivery of baby chicks or eggs may be recovered for reuse.

16           g. A sale of bagging and ties used in preparing  
17 cotton for market.

18           h. A sale of commercial fish feed including  
19 concentrates, supplements and other feed ingredients when such  
20 substances are used as ingredients in mixing and preparing  
21 feed for fish raised to be sold on a commercial basis.

22           i. A sale of tangible personal property to any  
23 person engaging in the business of leasing or renting such  
24 tangible personal property to others, if such tangible  
25 personal property is purchased for the purpose of leasing or  
26 renting it to others under a transaction subject to the  
27 privilege or license tax levied in Article 4 of Chapter 12 of

1 this title against any person engaging in the business of  
2 leasing or renting tangible personal property to others.

3 j. A purchase or withdrawal of parts or materials  
4 from stock by any person licensed under this article where  
5 such parts or materials are used in repairing or  
6 reconditioning the tangible personal property of such licensed  
7 person which tangible personal property is a part of the stock  
8 of goods of such licensed person, offered for sale by him and  
9 not for use or consumption of such licensed person.

10 k. A sale to meat packers, manufacturers,  
11 compounders or processors of meat products of all casings used  
12 in moulding or forming wieners and Vienna sausages, even  
13 though such casings may be recovered for reuse.

14 (5) SALE AT RETAIL or RETAIL SALE. All sales of  
15 tangible personal property except those above defined as  
16 wholesale sales. The quantities of goods sold or prices at  
17 which sold are immaterial in determining whether or not a sale  
18 is at retail. Sales of building materials to contractors,  
19 builders or landowners for resale or use in the form of real  
20 estate are retail sales in whatever quantity sold. Sales of  
21 building materials, fixtures or other equipment to a  
22 manufacturer or builder of modular buildings for use in  
23 manufacturing, building or equipping a modular building  
24 ultimately becoming a part of real estate situated in the  
25 State of Alabama are retail sales, and the use, sale or resale  
26 of such building shall not be subject to the tax. Sales of  
27 tangible personal property to undertakers and morticians are

1 retail sales and subject to the tax at the time of purchase,  
2 but are not subject to the tax on resale to the consumer.  
3 Sales of tangible personal property or products to  
4 manufacturers, quarry operators, mine operators or  
5 compounders, which are used or consumed by them in  
6 manufacturing, mining, quarrying or compounding and do not  
7 become an ingredient or component part of the tangible  
8 personal property manufactured or compounded as provided in  
9 subdivision (4) are retail sales. The term "sale at retail" or  
10 "retail sale" shall also mean and include the withdrawal, use  
11 or consumption of any tangible personal property by anyone who  
12 purchases same at wholesale, except property which has been  
13 previously withdrawn from the business or stock and so used or  
14 consumed and with respect to which property the tax has been  
15 paid because of such previous withdrawal, use or consumption,  
16 except property which enters into and becomes an ingredient or  
17 component part of tangible personal property or products  
18 manufactured or compounded for sale as provided in subdivision  
19 (4); and not for the personal and private use or consumption  
20 of any person so withdrawing, using or consuming the same, and  
21 such wholesale purchaser shall report and pay the taxes  
22 thereon; and except refinery, residue, or fuel gas, whether in  
23 a liquid or gaseous state, that has been generated by, or is  
24 otherwise a by-product of, a petroleum-refining process, which  
25 gas is then utilized in the process to generate heat or is  
26 otherwise utilized in the distillation or refining of  
27 petroleum products. The term "retail sale" or "sale at retail"

1 shall also mean and include the sale of tangible personal  
2 property previously purchased at wholesale for the purpose of  
3 leasing or renting under a transaction subject to the  
4 privilege or license tax levied in Article 4 of Chapter 12 of  
5 this title, regardless of whether such sale is to the person  
6 who theretofore leased or rented the said tangible personal  
7 property or to some other person.

8 (6) BUSINESS. All activities engaged in, or caused  
9 to be engaged in, with the object of gain, profit, benefit or  
10 advantage, either direct or indirect, and not excepting  
11 subactivities producing marketable commodities used or  
12 consumed in the main business activity, each of which  
13 subactivities shall be considered business engaged in, taxable  
14 in the class in which it falls.

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

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

24 (9) PURCHASE. Acquired for a consideration, whether  
25 such acquisition was effected by a transfer of title, or of  
26 possession or of both, or a license to use or consume; whether  
27 such transfer shall have been absolute or conditional, and by

1        whatsoever means the same shall have been effected; and  
2        whether such consideration be a price or rental in money, or  
3        by way of exchange or barter.

4                (10) SALES PRICE. The total amount for which  
5        tangible personal property is sold, including any services,  
6        including transportation, that are a part of the sale, valued  
7        in money, whether paid in money or otherwise, and includes any  
8        amount for which credit is given to the purchaser by the  
9        seller, without any deduction therefrom on account of the cost  
10       of the property sold, the cost of the materials used, labor or  
11       service cost, interest charged, losses or any other expenses  
12       whatsoever; provided, that cash discounts allowed and taken on  
13       sales shall not be included and sales price shall not include  
14       the amount charged for property returned by customers when the  
15       entire amount charged therefor is refunded either in cash or  
16       by credit.

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

21               (12) AUTOMOTIVE VEHICLE. A power shovel, dragline,  
22       crawler, crawler crane, ditcher or any similar machine which  
23       is self-propelled, in addition to self-propelled machines  
24       which are used primarily as instruments of conveyance.

25               (13) PREPAID TELEPHONE CALLING CARD. A sale of a  
26       prepaid telephone calling card or a prepaid authorization  
27       number, or both, shall be deemed the sale of tangible personal

1 property subject to the tax imposed pursuant to this chapter.  
2 For purposes of this subdivision (13), the sale of prepaid  
3 wireless service that is evidenced by a physical card  
4 constitutes the sale of a prepaid telephone calling card, and  
5 the sale of prepaid wireless service that is not evidenced by  
6 a physical card constitutes the sale of a prepaid  
7 authorization number.

8 (14) PREPAID WIRELESS SERVICE. The right to use  
9 mobile telecommunications service, which must be paid for in  
10 advance and that is sold in predetermined units or dollars of  
11 which the number declines with use in a known amount, and  
12 which may include rights to use non-telecommunications  
13 services or to download digital products or digital content.  
14 For purposes of this subdivision (14), "mobile  
15 telecommunications service" has the meaning ascribed by  
16 Section 40-21-120.

17 ~~(14)~~ (15) REMOTE USE TAX. Amounts collected from out  
18 of state vendors who, on October 1, 2012, were or would have  
19 been remote sellers as defined in Section 40-23-171; and  
20 amounts remitted by consumers on the individual tax return.

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

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

1                   Section 5. The amendments in this act are intended  
2                   to clarify existing law and are not substantive changes to the  
3                   tax law. For that reason, the amendments should be applied to  
4                   all open tax periods.

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