HB3

171076-5

By Representatives Rowe, Greer, Faust, Martin, Collins and Hill (M)

RFD: Ways and Means General Fund

First Read: 08-SEP-15
ENROLLED, An Act,

To amend Sections 40-23-1, 40-23-35, 40-25-2 and 40-25-5, Code of Alabama 1975, relating to the state tax on tobacco products, to increase the tax on cigarettes and provide for its distribution; to decrease the tobacco tax stamp discount; and to change the distribution of tax on consumable vapor products and to impose a floor-stock tax; to require wholesalers of tobacco products to stamp cigarettes and collect tobacco tax when those tobacco products are sold to a reservation tobacco vendor in this state; and to provide for the refund of tobacco taxes paid by tribal members on purchases of cigarettes and other tobacco products purchased within the boundaries of a federally recognized Indian reservation.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-23-1, 40-23-35, 40-25-2 and 40-25-5, Code of Alabama 1975, are amended to read as follows:

"§40-23-1.

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

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

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

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

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

(5) SALE or SALES. Installment and credit sales and the exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale. Provided, however, a transaction shall not be closed or a sale completed until the time and place when and where title is transferred by the seller or seller's agent to the purchaser or purchaser's agent, and for the purpose of determining transfer of title, a common carrier or the U. S. Postal Service shall be deemed to be the agent of the seller, regardless of any F.O.B. point and regardless of who selects the method of transportation, and regardless of by whom or the method by which freight, postage, or other transportation charge is paid. Provided further that, where billed as a separate item to and paid by the purchaser, the freight, postage, or other transportation charge paid to a common carrier or the U.S. Postal Service is not a part of the selling price.
(6) GROSS PROCEEDS OF SALES. The value proceeding or accruing from the sale of tangible personal property, and including the proceeds from the sale of any property handled on consignment by the taxpayer, including merchandise of any kind and character without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, any consumer excise taxes that may be included within the sales price of the property sold, or any other expenses whatsoever, and without any deductions on account of losses; provided, that cash discounts allowed and taken on sales shall not be included, and "gross proceeds of sales" shall not include the sale price of property returned by customers when the full sales price thereof is refunded either in cash or by credit. The term "gross proceeds of sale" shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn or used from the business or stock and used or consumed in connection with a business, and shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed by any person so withdrawing the same, except property which has been previously withdrawn from business or stock and so used or consumed with respect to which property the tax has been paid.
because of previous withdrawal, use, or consumption, except
property which enters into and becomes an ingredient or
component part of tangible personal property or products
manufactured or compounded for sale and not for the personal
and private use or consumption of any person so withdrawing,
using, or consuming the same, and except refinery, residue, or
fuel gas, whether in a liquid or gaseous state, that has been
generated by, or is otherwise a by-product of, a
petroleum-refining process, which gas is then utilized in the
process to generate heat or is otherwise utilized in the
distillation or refining of petroleum products.

In the case of the retail sale of equipment,
accessories, fixtures, and other similar tangible personal
property used in connection with the sale of commercial mobile
services as defined herein, or in connection with satellite
television services, at a price below cost, "gross proceeds of
sale" shall only include the stated sales price thereof and
shall not include any sales commission or rebate received by
the seller as a result of the sale. As used herein, the term
"commercial mobile services" shall have the same meaning as
that term has in 47 U.S.C. Sections 153(n) and 332(d), as in
effect from time to time.

(7) TAXPAYER. Any person liable for taxes hereunder.

(8) GROSS RECEIPTS. The value proceeding or accruing
from the sale of tangible personal property, including
merchandise and commodities of any kind and character, all receipts actual and accrued, by reason of any business engaged in, not including, however, interest, discounts, rentals of real estate or royalties, and without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, any consumer excise taxes that may be included in the sales price of the property sold, or any other expenses whatsoever and without any deductions on account of losses. The term "gross receipts" shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn or used from the business or stock and used or consumed in connection with a business, and shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed by any person so withdrawing the same, except property which has been previously withdrawn from business or stock and so used or consumed and with respect to which property the tax has been paid because of previous withdrawal, use, or consumption, except property which enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale as provided in subdivision (9) and not for the personal and private use or consumption of any person so withdrawing,
using, or consuming the same, and except refinery, residue, or fuel gas, whether in a liquid or gaseous state, that has been generated by, or is otherwise a by-product of, a petroleum-refining process, which gas is then utilized in the process to generate heat or is otherwise utilized in the distillation or refining of petroleum products.

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

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

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

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

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

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

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

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

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

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

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

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

(10) SALE AT RETAIL or RETAIL SALE. All sales of
tangible personal property except those above defined as
wholesale sales. The quantities of goods sold or prices at
which sold are immaterial in determining whether or not a sale
is at retail. Sales of building materials to contractors,
builders, or landowners for resale or use in the form of real
estate are retail sales in whatever quantity sold. Sales of
building materials, fixtures, or other equipment to a
manufacturer or builder of modular buildings for use in
manufacturing, building, or equipping a modular building
ultimately becoming a part of real estate situated in the
State of Alabama are retail sales, and the use, sale, or
resale of building shall not be subject to the tax. Sales of
tangible personal property to undertakers and morticians are
retail sales and subject to the tax at the time of purchase,
but are not subject to the tax on resale to the consumer.
Sales of tangible personal property or products to
manufacturers, quarry operators, mine operators, or
compounders, which are used or consumed by them in
manufacturing, mining, quarrying, or compounding and do not
become an ingredient or component part of the tangible
personal property manufactured or compounded as provided in
subdivision (9) are retail sales. The term "sale at retail" or
"retail sale" shall also mean and include the withdrawal, use,
or consumption of any tangible personal property by any one
who purchases same at wholesale, except property which has
been previously withdrawn from the business or stock and so
used or consumed and with respect to which property tax has
been paid because of previous withdrawal, use, or consumption,
except property which enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale as provided in subdivision (9) and not for the personal and private use or consumption of any person so withdrawing, using, or consuming the same; and wholesale purchaser shall report and pay the taxes thereon. In the case of the sale of equipment, accessories, fixtures, and other similar tangible personal property used in connection with the sale of commercial mobile services as defined in subdivision (6) above, or in connection with satellite television services, at a price below cost, the term "sale at retail" and "retail sale" shall include those sales, and those sales shall not also be taxable as a withdrawal, use, or consumption of such tangible personal property.

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

(12) AUTOMOTIVE VEHICLE. A power shovel, dragline, crawler, crawler crane, ditcher, or any similar machine which is self-propelled, in addition to self-propelled machines which are used primarily as instruments of conveyance.
(13) PREPAID TELEPHONE CALLING CARD. A sale of a prepaid telephone calling card or a prepaid authorization number, or both, shall be deemed the sale of tangible personal property subject to the tax imposed on the sale of tangible personal property pursuant to this chapter. For purposes of this subdivision, the sale of prepaid wireless service that is evidenced by a physical card constitutes the sale of a prepaid telephone calling card, and the sale of prepaid wireless service that is not evidenced by a physical card constitutes the sale of a prepaid authorization number.

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

(15) CONSUMABLE VAPOR PRODUCT. Any nicotine liquid solution or other material containing nicotine that is depleted as a vapor product is used.

(16) VAPOR PRODUCTS. Any non-lighted, noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to produce vapor from nicotine in a solution. The term
includes any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term does not include any product regulated by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.

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

(c) The sale of lumber by a lumber manufacturer to a
trucker for resale is a sale at wholesale as sales are defined
herein where the trucker is either a licensed dealer in lumber
or, if a resident of Alabama, has registered with the
Department of Revenue, and has received therefrom a
certificate of registration or, if a nonresident of this state
purchasing lumber for resale outside the State of Alabama, has
furnished to the lumber manufacturer his name, address and the
vehicle license number of the truck in which the lumber is to
be transported, which name, address, and vehicle license
number shall be shown on the sales invoice rendered by the
lumber manufacturer. The certificate provided for herein shall
be valid for the calendar year of its issuance and may be
renewed from year to year on application to the Department of
Revenue on or before January 31 of each succeeding year;
provided, that if not renewed the certificate shall become
invalid for the purpose of this division on February 1.

(d) The dispensing or transferring of ophthalmic
materials, including lenses, frames, eyeglasses, contact
lenses, and other therapeutic optic devices, to a patient by a
licensed ophthalmologist, as a part of his or her professional
service, shall, for purposes of this division, constitute a
sale, subject to the state sales tax. The licensed
ophthalmologist or licensed optometrist shall collect the state sales tax. In no event shall the providing of professional services in connection with the dispensing or transferring of ophthalmic materials, including dispensing fees or fitting fees, by a licensed ophthalmologist or licensed optometrist be considered a sale subject to the state sales tax. When the ophthalmic materials are purchased by a consumer covered by a third party benefit plan, including Medicare, the sales tax shall be applicable to the amount that the ophthalmologist, optometrist, or optician is reimbursed by the third party benefit plan plus the amount that the consumer pays to the ophthalmologist, optometrist, or optician at the time of the sale. All transfers of ophthalmic materials by opticians or optometrists shall be considered retail sales subject to the state sales tax. The term supplier shall include but not be limited to optical laboratories, ophthalmic material wholesalers, or anyone selling ophthalmic materials to ophthalmologists.

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

(f) Notwithstanding the foregoing, a gift by a retailer of a product or products where the aggregate retail value of any single gift is equal to or less than ten thousand dollars ($10,000), withdrawn from the retailer's inventory, to an entity listed in 26 U.S.C. Sections 170(b) or (c) shall not be deemed or considered to constitute a transaction subject to sales and use tax."

"§40-23-35

(a) Such amount of money as shall be appropriated for each fiscal year by the Legislature to the Department of Revenue with which to pay the salaries, the cost of operation and management of said department shall be deducted, as a first charge thereon, from the taxes collected under the provisions of this division; provided, that the expenditure of said sum so appropriated shall be budgeted and allotted pursuant to Article 4 of Chapter 4 of Title 41, and limited to the amount appropriated to defray the expenses of operating said department for each fiscal year. After the payment of the expenses, so much of the amount remaining as may be necessary, after first applying all sums of money received by reason of the application of the surplus in the income tax as provided by Section 40-18-58, for the replacement in the public school
fund of the three-mill constitutional levy for schools and in
the General Fund of the one-mill levy for soldiers' relief and
the two and one-half mills for general purposes lost by
exemption of homestead provided for in this division shall be
first charges against the proceeds of said licenses, taxes or
receipts levied or collected under this division. The
Comptroller, with the approval of the Governor, is hereby
directed to draw his warrants payable out of the total
proceeds of said licenses, taxes or receipts levied or
collected under this division as herein provided in such sum
as shall be found necessary to take care of and replace the
three-mill constitutional school levy, the one-mill soldiers'
relief levy and the two and one-half mill levy for general
purposes of the state ad valorem taxes lost as above set
forth.

(b) Of the amounts of such collections in any fiscal
year, remaining after the payment of the expenses of
administration and replacement of the amounts in the several
funds as herein provided there shall be paid into the Treasury
sums to be credited as follows:

(1) To the credit of the 67 counties of the state,
to be divided and distributed as hereinafter provided,
$378,000;

(2) To the Department of Human Resources,
$1,322,000;
(3) Beginning June 1, 2000, to the Department of Conservation and Natural Resources for capital outlay for acquisition of land contiguous to existing state parks and land acquired for lakes and or water reservoirs, provision, construction, improvement, renovation, equipping, and maintenance of the state parks system only and not for use by the Department of Conservation and Natural Resources for personnel or administrative use, the sum equal to the increase in receipts accruing to the State of Alabama due to the cap on discounts per license holder in Section 40-23-36(b), which increase shall be equal to the difference between the discount rate or amount allowed under Section 40-23-36(b) and the maximum discount rate allowable under Section 40-23-36(a); provided, however, if at any time any bonds of the Alabama State Parks System Improvement Corporation or the Alabama Public Historical Sites and Parks Improvement Corporation are outstanding (excluding bonds that have been refunded by the establishment of an escrow trust for the payment thereof consisting solely of bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America) there shall first be paid into the State General Fund from such collections an amount equal to the debt service (principal, interest, and premium, if any) payable on such bonds in the then current fiscal year of the state. Provided,
however, that one million dollars ($1,000,000) of such
increase in receipts per fiscal year shall be credited to the
Department of Human Resources beginning October 1, 1996, until
September 30, 2002, and shall be expended for the foster
children program.

(4)a. On October 1, 2002, to the Department of
Conservation and Natural Resources for capital outlay, repairs
and maintenance of the state parks system only, the minimum
sum of five million dollars ($5,000,000) from the increase in
receipts accruing to the State of Alabama due to the cap on
discounts per license holder in Section 40-23-36(b) as
calculated in Section 40-23-35(b)(3). Beginning October 1,
2003, annually, to the Department of Conservation and Natural
Resources for capital outlay, repairs, and maintenance of the
state parks system only, the sum calculated by a fraction, the
numerator of which is five million dollars ($5,000,000) and
the denominator of which is equal to the increase in receipts
as calculated in Section 40-23-35(b)(3) for fiscal year 2002
accruing to the State of Alabama multiplied by the increase in
receipts as calculated in Section 40-23-35(b)(3) for the then
current fiscal year, or the sum of five million dollars
($5,000,000), whichever is greater. Notwithstanding the
previous sentence, for the fiscal years ending September 30,
2012, and September 30, 2013, only, the five million dollars
($5,000,000) shall be transferred to the State General Fund.
b. Beginning October 1, 2002, to the credit of the State General Fund, the balance of the sum equal to the increase in receipts accruing to the State of Alabama due to the cap on discounts per license holder in Section 40-23-36(b).

(c) One-half of the amount deposited to the credit of the 67 counties as above provided, shall be divided and distributed proportionately among the 67 counties of the state according to the population of the said counties as shown by the last federal census as proclaimed, published or certified by the Director of the Bureau of the Census; and one-half of said proceeds shall be divided or distributed equally among 67 counties; provided, that the funds divided and distributed to the several counties of the state as hereinabove provided for shall be used exclusively for full-time health service in cooperation with the State Board of Health or the federal government, and for extension services in cooperation with the Alabama Agriculture Extension Service or the federal government, at the discretion of the county commissions of the several counties of the state.

(d) The amounts provided in subsection (b) for the Department of Human Resources shall be used for general welfare purposes. For purposes of this division, "general welfare purposes" means:
(1) The administration of public assistance as set out in Sections 38-2-5 and 38-4-1;

(2) Services, including supplementation and supplementary services under the federal Social Security Act, to or on behalf of persons to whom such public assistance may be given under said Section 38-4-1;

(3) Services to and on behalf of dependent, neglected or delinquent children; and

(4) Investigative and referral services to and on behalf of needy persons.

(e) In addition, there shall be paid, commencing on January 1, 1978, and on the first day of each fiscal quarter thereafter, to the Department of Human Resources for a statewide, state-administered food stamp program, as authorized by the Food Stamp Act of 1964, Public Law 88-525, 88th Congress, and amendments thereto, an amount equal to five percent of the value of food stamp benefits issued statewide in excess of the amount paid by recipients (bonus or free stamps) during the immediate prior fiscal quarter, which sum so appropriated shall be paid quarterly to the Department of Human Resources Trust Fund for administration of the food stamp program in conformity with rules and regulations promulgated by the United States Department of Agriculture and in conformity with Sections 38-1-1 through 38-6-9. Such administrative funds shall be limited to and based on fiscal
year 1976-77 administrative costs, normal inflationary increases and mandated administration requirements of the Alabama Legislature and the United States Department of Agriculture. The Department of Human Resources will not staff any county food stamp office at a level which exceeds the average staff-to-recipient ratios which existed in Alabama during fiscal year 1976-77. This restriction will apply in coordination with those provided hereinabove and, should conflict occur, the lesser amount of expenditure shall be required. At the end of each fiscal year, an accounting shall be made of said sum so that any unexpended and unencumbered balance of funds may be determined for the purpose of paying such balance to the Education Trust Fund.

(f) The amount of the proceeds of all taxes levied by this division remaining after the payment of the expenses of administration and enforcement and the replacement in the several funds of the amount lost by any homestead exemptions and the distribution as provided in subsections (b) and (d), shall be paid into the Education Trust Fund except as provided in subdivision (4) of Section 40-23-2 and subsection (c) of Section 40-23-61 and, beginning January 1, 2016, except those collected on consumable vapor products as defined in subdivision (15) of subsection (a) of Section 40-23-1, which shall be distributed to the State General Fund."

"§40-25-2."
"(a) In addition to all other taxes of every kind now imposed by law, every person, firm, corporation, club, or association, within the State of Alabama, who sells or stores or receives for the purpose of distribution to any person, firm, corporation, club, or association within the State of Alabama, cigars, cheroots, stogies, cigarettes, smoking tobacco, chewing tobacco, snuff, or any substitute therefor, either or all, shall pay to the State of Alabama for state purposes only a license or privilege tax which shall be measured by and graduated in accordance with the volume of sales of such person, firm, corporation, club, or association in Alabama. There is hereby levied license or privilege taxes on articles containing tobacco enumerated in this article in the following amounts:

"(1) LITTLE CIGARS. Upon cigars of all descriptions, including filtered cigars, made of tobacco, or any substitute therefor, and weighing not more than three pounds per 1,000, $.04 for each ten cigars, or fractional part thereof.

"(2) FILTERED CIGARS. Upon filtered cigars that have a cellulose acetate or similar integrated filter, made of tobacco, or any substitute therefor, and weighing more than three pounds per 1,000, $0.015 for each filtered cigar.

"(3) CHEROOTS, STOGIES, CIGARS, ETC. Upon all other cigars of any descriptions made of tobacco, or any substitute therefor, $40.50 per thousand cigars, or $0.0405 each.
(4) CIGARETTES. Upon all cigarettes made of tobacco, or any substitute therefor, 21.25 33.75 mills on each such cigarette.

(5) SMOKING TOBACCO. Upon all smoking tobacco, including granulated, plug cut, crimp cut, ready rubbed, and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette, upon each package: Weighing not more than one and one-eighth ounces, tax $.04; over one and one-eighth ounces, not exceeding two ounces, tax $.10; over two ounces, not exceeding three ounces, tax $.16; over three ounces, not exceeding four ounces, tax $.21; $.06 additional tax for each ounce or fractional part thereof over four ounces.

(6) CHEWING TOBACCO. Upon all chewing tobacco prepared in such manner as to be suitable for chewing only and not suitable for smoking as described and taxed in subdivision (9) of this subsection: $.015 per ounce or fractional part thereof.

(7) SNUFF. Upon each can or package of snuff weighing not more than five-eighths ounces, one cent tax; over five-eighths ounces and not exceeding one and five-eighths ounces, $.02 tax; over one and five-eighths ounces and not exceeding two and one-half ounces, $.04 tax; over two and one-half ounces and not exceeding five ounces (cans, packages, gullets), $.06 tax; over three ounces and not exceeding five
ounces (glasses, tumblers, bottles), seven cents tax; over
five ounces and not exceeding six ounces, $.08 tax; weighing
over six ounces, an additional $.12 for each ounce or
fractional part thereof.

"(b) Whenever in this article reference is made to
any manufactured tobacco products on which the tax is based on
weight, the weight as shown by the manufacturer or the federal
internal revenue stamp shall apply.

"(c) When any articles or commodities subject to tax
in this article are given as prizes on punch boards, shooting
galleries, premiums, etc., the tax shall be based on the tax
rates in subsection (a) of such articles.

"(d) The tax herein levied shall be paid to the
state through the use of stamps as herein provided. However,
every wholesaler, distributor, jobber, semijobber, or retail
dealer shall add the amount of the tax levied herein to the
price of the tobacco or tobacco products sold, it being the
purpose and intent of this provision that the tax levied is in
fact a levy on the ultimate consumer or user with the
wholesaler, distributor, jobber, semijobber, or retail dealer
acting merely as an agent of the state for the collection and
payment of the tax to the state. Therefore, notwithstanding
any exemptions from taxes which any such seller may now or
hereafter enjoy under the Constitution or laws of this or any
other state, or of the United States, he or she shall collect
the tax imposed hereunder from the purchaser or consumer, and
the amount of the tax shall constitute a debt from the
purchaser or consumer to the seller until paid. It shall be
unlawful for any person, firm, corporation, association, or
copartnership to fail or refuse to add to the sales price and
collect from the purchaser the amount of the tax to be added
to the sales price and collected from the purchaser hereunder.
Stamps in denominations to the amount of the tax or in
denominations specified pursuant to subsection (e) of this
section shall be affixed to the box or other container from or
in which tobacco products taxed by this section are normally
sold at retail. The stamps shall be affixed in such a manner
that their removal will require continued application of
water, steam, or heat; and in case of cigars, cheroots,
chewing tobacco and like manufactured tobacco products, where
sales are made from the original container, the stamps shall
be affixed to the box or container in such a way that the
stamps shall be torn in two or mutilated when such containers
or boxes are opened for the sale of the tobacco products. In
the case of cigarettes, smoking tobacco, snuff, and like
products sold at retail in packages, the required amount of
stamps to cover the tax shall be affixed to each individual
package or container. All taxable tobaccos herein enumerated,
when offered for sale, either at wholesale or retail, without
having stamps affixed in the manner set out by this article,
or without payment of the tax by return by the wholesaler, 
jobber, semijobber, or registered retailer, shall be subject 
to confiscation, in the manner provided for contraband goods 
as set out in this article.

"(e) The Commissioner of Revenue shall prepare and 
issue stamps in denominations for the amount of the tax 
imposed by this article provided that if the commissioner 
determines that it is not economical for the state to have a 
stamp prepared and issued for one or more particular types of 
packages of tobacco products, then the commissioner may by 
regulation prescribe the use of a stamp in a denomination 
other than for the amount of the tax imposed with the 
difference between the amount of tax actually imposed and the 
amount of tax denominated by the stamp paid with the use of a 
monthly report; or may require a monthly report without use of 
a stamp to report the amount of taxes due.

"(f) The increases levied by this section shall be 
exclusive and shall be in lieu of any other or additional 
local taxes and/or license fees, county or municipal, imposed 
on the sale or use of cigarettes and/or other tobacco 
products. Notwithstanding the foregoing, an act of the 
Legislature or an ordinance or resolution by a taxing 
authority passed or enacted on or before May 18, 2004, 
imposing a local tax and/or license fee shall remain 
operative, but no additional local tax and/or license fee may
thereafter be levied on the sale of cigarettes and/or other tobacco products.

"(g) Local taxes and/or license fees, county or municipal, imposed on the sale or use of cigarettes shall be paid to the local government through the use of stamps affixed to the product as provided herein for the state tax. Provided, however, this requirement shall not be interpreted to require the Department of Revenue to prepare all stamps or to collect all local taxes. Local governments may contract with another entity to collect their local cigarette tax but all local taxes must be collected as provided herein.

"§40-25-5.

"The Department of Revenue is hereby authorized and directed to have prepared and distributed stamps suitable for denoting the tax on all articles enumerated herein. Any person, firm, corporation, or association of persons, other than the Department of Revenue, who sells tobacco tax stamps not affixed to tobacco sold and delivered by them, whether the said stamps be genuine or counterfeit, shall be guilty of a felony and punishable as set out in Section 40-25-6. When wholesalers or jobbers have qualified as such with the Department of Revenue, as provided in Section 40-25-16, and desire to purchase stamps as prescribed herein for use on taxable tobaccos sold and delivered by them, the Department of Revenue shall allow on such sales of tobacco tax stamps a
discount of seven and one half percent 4.75 percent on the entire amount of the sale. Where wholesalers or jobbers are entitled to purchase stamps at a discount as herein provided, instead of the Department of Revenue selling such stamps to such jobbers or wholesalers for cash, it may consign such stamps, if and when such wholesaler or jobber shall give to the Department of Revenue a good and sufficient bond executed by some surety company authorized to do business in this state, conditioned to secure the payment for the stamps so consigned when and as they are used on manufactured tobacco products by such wholesaler or jobber. Every wholesaler or jobber purchasing stamps on consignment as described herein, shall be required to make a full and complete accounting and remittance on or before the twentieth of each month for all stamps used on taxable tobaccos during the preceding month. Every wholesaler or jobber refusing or failing to comply with this section shall forfeit the commission or discount on stamps used which he failed or refused to account or remit for in the time allowed, and in addition shall be charged interest on such delinquent amount for each day delinquent at the rate of eight percent per annum."

Section 2. Section 40-25-2.2 is hereby added to the Code of Alabama 1975, to read as follows:

§40-25-2.2
(a) There is hereby imposed a floor-stock tax on tobacco products owned by any permitted wholesaler as of the effective date of any tax increase regarding any tobacco products enumerated in Sections 40-25-2 and 40-25-2.1.

(b) For the purpose of tax revaluation, at the close of business on the day before the effective date of the tobacco tax rate increase, each permitted wholesaler shall take a physical inventory of tax-paid tobacco products, stamped cigarettes and unaffixed revenue stamps currently owned which are affected by the tax increase. Each person subject to the tax increase shall:

(1) File a report on forms prescribed by the Department of Revenue, setting forth the additional tax due for each product type and stamp subject to the increase; and

(2) Pay the additional tax imposed under Sections 40-25-2 and 40-25-2.1, along with the above report, to the Department of Revenue no later than 30 days following the effective date of the tax increase.

Any permitted wholesaler owning tobacco products and revenue stamps as of the effective date of the tax increase shall be liable for the tax, and it shall be paid in the manner prescribed by the Department of Revenue."

Section 3. (a) For the purpose of this article, the following terms shall have the respective meanings ascribed by this section:
(1) DEPARTMENT. The Alabama Department of Revenue.

(2) FEDERALLY RECOGNIZED INDIAN TRIBE. A tribe that is acknowledged by the U.S. Department of Interior, Bureau of Indian Affairs as being an Indian Nation or Tribe.

(3) OTHER TOBACCO PRODUCTS. Smoking tobacco, cigars, stogies, cheroots, chewing tobacco, snuff, and other products taxable under Title 40 Chapter 25 excluding cigarettes.

(4) RESERVATION. (a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

(5) RESERVATION TOBACCO VENDOR. A seller of tobacco products which is an Indian nation or tribe, one or more members of such tribe, or an entity wholly owned by either or both, which sells cigarettes and/or other tobacco products within the boundaries of a qualified reservation.

(6) TRIBAL MEMBER. A person duly enrolled on the tribal rolls of a federally recognized Indian tribe located within the state of Alabama.
(b) A permitted wholesaler is required to stamp all packages of cigarettes and pay the applicable other tobacco product taxes on the monthly tax return for tobacco product sold to a reservation tobacco vendor in this state. A reservation tobacco vendor is eligible for a refund of the tobacco taxes paid on cigarettes and/or other tobacco products when these tobacco products are sold to tribal members of legal smoking age as specified in Title 28, Chapter 11. The reservation tobacco vendor may submit a monthly refund petition with supporting documentation to the Department. The documentation must include the reservation tobacco vendor’s name, address, number of tribal members of legal smoking age, permitted wholesaler’s name, date purchased, quantity purchased, quantity sold, brand of cigarettes and/or description of other tobacco products.

(1) Refunds will be allowed to reservation tobacco vendors for tobacco products purchased on or after October 1, 2015 upon submission of properly completed refund petitions and supporting documentation. The reservation tobacco vendor shall have two years from the date of sale of tobacco products to apply to the Department for the refund.

(2) The number of cigarettes subject to refund in any fiscal year purchased by tribal members within the boundaries of a federally recognized Indian tribe shall not
exceed 14,600 cigarettes annually or prorated monthly for each tribal member of legal smoking age.

(3) No refund is allowed to tribal members for tobacco products purchased at other retailers located off the reservation."

Section 4. Notwithstanding any other provision of Chapter 25, Title 40, Code of Alabama 1975, all revenue received from the increased tax levied by this amendatory act shall be deposited into the State General Fund for the Medicaid Program.

Section 5. This act shall become effective on October 1, 2015, following its passage and approval by the Governor, or its otherwise becoming law.
Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives
I hereby certify that the within Act originated in and was passed by the House 10-SEP-15.

Jeff Woodard
Clerk

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