

By: Representative McCoy

To: Ways and Means

HOUSE BILL NO. 757

1 AN ACT TO AMEND SECTION 27-61-9, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE FOR THE ISSUANCE AND REVOCATION OF LICENSES UNDER THE
3 INTERNATIONAL FUEL TAX AGREEMENT; TO AMEND SECTION 27-61-11,
4 MISSISSIPPI CODE OF 1972, TO DESIGNATE WHEN MOTOR CARRIER FUEL TAX
5 REPORTS ARE TIMELY FILED; TO DELETE REFERENCES TO REFUNDS AND
6 CERTAIN ADMINISTRATIVE PROVISIONS; TO AMEND SECTION 27-61-13,
7 MISSISSIPPI CODE OF 1972, TO SPECIFY THE PROCEDURE FOR USE OF
8 CREDITS ON REPORTS FILED UNDER THE INTERNATIONAL FUEL TAX
9 AGREEMENT; TO DELETE REFERENCES TO CREDIT CERTIFICATES AND MINIMUM
10 PURCHASES; TO AMEND SECTION 27-61-15, MISSISSIPPI CODE OF 1972, TO
11 CHANGE THE RECORD RETENTION PERIOD FROM THREE TO FOUR YEARS; TO
12 INCLUDE REFERENCES TO PERSONS LICENSED UNDER THE INTERNATIONAL
13 FUEL TAX AGREEMENT; TO PROVIDE FOR THE ASSESSMENT OF TAXES AND TO
14 PROVIDE A THREE YEAR LIMITATION PERIOD FOR ASSESSMENT OF TAXES; TO
15 AMEND SECTION 27-61-20, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
16 AN AGREEMENT ENTERED INTO UNDER THE INTERNATIONAL FUEL TAX
17 AGREEMENT WILL NOT RESTRICT THE STATE IN CERTAIN MATTERS AND TO
18 PROVIDE THAT THE STATE TAX COMMISSION MAY PARTICIPATE IN DATA
19 CLEARINGHOUSES FOR THE EXCHANGE OF INFORMATION; TO CODIFY SECTION
20 27-61-31, MISSISSIPPI CODE OF 1972, TO PROVIDE ADMINISTRATIVE
21 PROCEDURES FOR THE ASSESSMENT OF INTEREST AND PENALTIES UNDER THE
22 MOTOR CARRIER FUEL TAX LAWS; TO CODIFY SECTION 27-61-33, TO
23 PROVIDE FOR THE REFUND OF TAXES ERRONEOUSLY COLLECTED UNDER THE
24 MOTOR CARRIER FUEL TAX LAWS; TO CODIFY SECTION 27-61-35,
25 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPEALS OF ACTS AND
26 ORDERS OF THE STATE TAX COMMISSION UNDER THE MOTOR CARRIER FUEL
27 TAX LAWS; AND FOR RELATED PURPOSES.

28 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

29 SECTION 1. Section 27-61-9, Mississippi Code of 1972, is
30 amended as follows:

31 27-61-9. If the commission approves the application and
32 bond, it shall issue to the applicant an interstate fuel use
33 permit which shall remain valid for the calendar year in which it
34 was issued, to expire on December 31 of that year. All such
35 permits shall be revocable by the commission upon ten (10) days'
36 written notice to the permittee, if the permittee fails or refuses
37 to comply with any of the terms or provisions of this chapter.

38 A renewal permit for the following calendar year will be
39 issued upon application if: the permit has not been revoked or
40 cancelled; all reports have been filed; and all taxes, penalties
41 and interest due have been paid. Any interstate fuel use permit
42 issued under the provisions of this section before March 12, 1993,
43 shall expire on December 31, 1993.

44 If the commission approves an application filed under the
45 provisions of the International Fuel Tax Agreement, it shall issue
46 to the applicant a license and decals for each motor vehicle. The
47 license and decals shall expire on December 31 of each year. The
48 International Fuel Tax Agreement may provide for a grace period
49 for the display of the license and decals. Such license and
50 decals may be revoked by the commission upon ten (10) days written
51 notice to the licensee, if the licensee fails to file reports,
52 fails to pay taxes due or fails to otherwise comply with the
53 provisions of this chapter or the International Fuel Tax
54 Agreement.

55 SECTION 2. Section 27-61-11, Mississippi Code of 1972, is
56 amended as follows:

57 27-61-11. The permittee shall file a quarterly fuel use
58 report for the preceding calendar quarter on or before the last
59 day of the month following each calendar quarter on forms to be
60 prescribed by the commission, or the carriers may, with the
61 approval of the commission, furnish the required information on
62 machine-prepared schedules. Said report shall show any
63 information required by the commission for the administration of
64 this chapter. Such report must be filed even though it may
65 reflect no Mississippi miles for the quarter or accounting period.
66 At the time of filing of each quarterly report, each permittee
67 shall pay to the commission the full amount of the tax due on all
68 fuel used by him in this state at the rate provided for in
69 paragraph (a) of Section 27-61-5 of this chapter. The permittee
70 in determining the fuel used by him in this state for said period

71 may, as to each type of fuel used, determine his average number of
72 miles of motor vehicle travel for a gallon of fuel by the use of
73 the following formula: There shall first be determined the total
74 miles traveled by all motor vehicles operated by permittee using a
75 particular type of fuel; there shall then be determined the total
76 number of gallons of such fuel consumed; the total number of
77 gallons of such fuel consumed shall then be divided into the total
78 number of miles traveled to determine the average number of miles
79 of motor vehicle travel per gallon of fuel used. Proper records
80 supporting these computations shall be maintained for a period of
81 not less than three (3) years and shall be available to the
82 inspection and audit of the commission. Permittee may, however,
83 use any standards established by the commission in determining the
84 motor vehicle travel per gallon of fuel consumed as to any
85 particular type fuel. The permittee, in computing the amount of
86 tax due, may take credit for all payments of the taxes levied in
87 Sections 27-55-11 and 27-59-11, Mississippi Code of 1972, and
88 Sections 27-55-519 and 27-55-521.

89 Reports and payments sent to the commission by mail must be
90 postmarked by the due date in order to be considered timely filed,
91 except when the due date falls on a weekend or holiday, in which
92 case such reports and payments must be postmarked by the first
93 working day following the due date in order to be considered
94 timely filed.

95 SECTION 3. Section 27-61-13, Mississippi Code of 1972, is
96 amended as follows:

97 27-61-13. If the quarterly report filed by any permittee as
98 provided herein shall establish that such permittee has paid a
99 greater amount of tax for such quarter than permittee was liable
100 for under the provisions of this chapter, then the amount of such
101 overpayment may be carried forward and credit therefor taken
102 against subsequent tax liability incurred under the provisions of
103 this chapter, provided such credit is taken on a report filed

104 within three (3) years from the quarter in which such excess tax
105 was paid.

106 If the quarterly report filed by any permittee as provided
107 herein shall establish that such permittee has paid a greater
108 amount of tax for such quarter than permittee was liable for under
109 the provisions of this chapter, then under the following
110 conditions such permittee may obtain a refund for such excess tax
111 paid: Permittee must file with the commission a claim for refund
112 on tax paid to this state on fuel consumed outside the State of
113 Mississippi on forms provided by the commission. Such excess tax
114 refund * * * may be allowed if it is shown that such permittee has
115 paid to another state under lawful requirements of such state a
116 tax, similar in effect to the tax herein provided, on the use or
117 consumption in such state of fuel purchased in Mississippi to the
118 extent of the fuel consumed in said other state at the rate per
119 gallon of the applicable Mississippi tax on fuel as established by
120 this chapter. All such claims must be submitted to the commission
121 within three (3) years from the quarter in which the excess tax
122 was paid, otherwise such claim shall be disallowed. Upon approval
123 of such claim, the commission shall issue a refund to the
124 permittee for the amount of the excess tax paid. * * *

125 Refunds * * * may be withheld when the permittee is in
126 arrears or default to this state for any taxes or has failed to
127 file returns as required by the provisions of the laws
128 administered by the commission.

129 When a report filed by a licensee under the provisions of the
130 International Fuel Tax Agreement indicates a credit for
131 Mississippi due to an overpurchase of fuel in this state, the
132 credit shall first be used to offset the licensee's tax liability
133 in other jurisdictions. After such offset any remaining credit
134 may be carried forward to a future report or may be refunded to
135 the licensee.

136 SECTION 4. Section 27-61-15, Mississippi Code of 1972, is
137 amended as follows:

138 27-61-15. Each permittee, owner or operator liable for tax
139 under this chapter or person licensed under the provisions of the
140 International Fuel Tax Agreement shall maintain and keep for a
141 period of not less than four (4) years such records of all fuel
142 purchases and all fuel used within this state * * * together with
143 invoices, bills of lading, records of distances traveled and other
144 pertinent records as may be required by the commission for the
145 reasonable administration of this chapter or the International
146 Fuel Tax Agreement. The commission shall have the right to
147 examine and inspect, during the usual business hours of the day,
148 all records, books, papers and other documents relating to the tax
149 liability of any such person. In the event such records, books,
150 papers and other documents are not located in this state and
151 available to the commission, then the commission shall have the
152 authority and power to require such owners or operators, or
153 persons licensed under the provisions of the International Fuel
154 Tax Agreement to produce within this state, at such time and place
155 as the commission may designate, all such records, books, papers
156 and other documents or, at the option of the owner or operator, or
157 persons licensed under the provisions of the International Fuel
158 Tax Agreement duly verified copies thereof. Whenever any
159 permittee shall fail or refuse to file any report required by this
160 chapter, or keep and maintain the records required by this
161 chapter, or shall file an incorrect or fraudulent report, or if an
162 audit of the records of such permittee or any other information
163 discloses that taxes are due and unpaid, the commission shall make
164 assessments of taxes, damages and interest which shall be prima
165 facie correct.

166 All actions by this state for the recovery of additional
167 amounts claimed as tax due under this chapter must be commenced
168 within three (3) years from the date of the filing of the report

169 with the commission, provided that in the case of a fraudulent or
170 false report with intent to evade tax or a failure to file a
171 report, action may be commenced at any time. However, when the
172 commission has initiated an examination of a taxpayer's records in
173 order to verify reports under this chapter and the taxpayer has
174 been notified thereof by certified mail within the three (3) year
175 examination period provided herein, the determination of the
176 correct tax liability may be made after the expiration of the
177 three (3) year examination period, provided that such
178 determination shall be made with reasonable promptness and
179 diligence.

180 SECTION 5. Section 27-61-20, Mississippi Code of 1972, is
181 amended as follows:

182 27-61-20. The commission, in its discretion, may enter into
183 the International Fuel Tax Agreement in order to permit base state
184 or base jurisdiction licensing of motor carriers subject to the
185 taxes levied in this chapter.

186 An agreement may provide for determining the base state for
187 motor carriers, motor carrier's records requirements, audit
188 procedures, exchange of information, persons eligible for tax
189 licensing; issuing and revoking licenses; defining qualified motor
190 vehicles; determining of and under what conditions bonding is
191 required; specifying reporting requirements and periods,
192 determining methods for collecting and forwarding of motor fuel
193 taxes, interest and penalties to another jurisdiction; and such
194 other provisions as will facilitate the administration of the
195 agreement.

196 An agreement entered into under the provisions of this
197 section shall not restrict the State of Mississippi with regard to
198 determining whether to impose taxes; fixing tax rates; defining
199 tax exemptions or deductions; determining what constitutes taxable
200 events triggering the imposition of taxes or determining any other
201 related matters.

202 As required by the terms of the agreement, the commission may
203 forward to officials of another state any information in the
204 commission's possession regarding the receipt, sale, use,
205 transportation or shipment of motor fuels, distances traveled and
206 routes traveled by any person. The commission may disclose to
207 officers of another state the location of offices, motor vehicles,
208 and other real and personal property of persons subject to the
209 provisions of a compact or agreement.

210 The commission may participate in the International Fuel Tax
211 Agreement Clearinghouse and may place into the clearinghouse any
212 information the commission is required to provide to other member
213 jurisdictions under the International Fuel Tax Agreement. The
214 commission may provide information regarding a licensee's situs to
215 the officials or law enforcement officers of the State of
216 Mississippi or any other member jurisdiction who are responsible
217 for the enforcement of motor carrier fuel tax laws. The
218 commission also may place such information into the State On-Line
219 Enforcement Network or any other database used for the enforcement
220 of motor carrier fuel tax laws.

221 An agreement may provide for each state to audit the records
222 of persons based in the state to determine if the motor fuel taxes
223 due each state are properly reported and paid. Each state shall
224 forward the findings of the audits performed on persons based in
225 the state to each state in which the person has taxable use of
226 motor fuels. For persons not based in this state and who have
227 taxable use of motor fuels in this state, the commission, in its
228 discretion, may serve the audit findings received from another
229 state in the form of a proposed assessment of the person as though
230 an audit was conducted by the commission.

231 Any agreement entered into under this section shall not
232 preclude the commission from auditing the records of any person
233 covered by the provisions of this chapter.

234 The commission may adopt rules and regulations for the
235 administration and enforcement of any agreement.

236 The commission is authorized to collect motor fuel taxes,
237 interest and fees due the members of any cooperative compact or
238 agreement entered into under the provisions of this section and to
239 deposit such taxes, interest and fees into a special holding fund
240 until such taxes, interest and fees are properly distributed to
241 the members of the compact or agreement.

242 SECTION 6. The following shall be codified as Section
243 27-61-31, Mississippi Code of 1972:

244 27-61-31. All administrative provisions of the Mississippi
245 Sales Tax Law, including those which fix damages, penalties and
246 interest for nonpayment of taxes, failure to file returns, and for
247 other noncompliance with the provisions of said law, and all other
248 requirements and duties imposed upon taxpayers, shall apply to all
249 persons liable for taxes under the provisions of this chapter, and
250 the commission shall exercise all the power and authority and
251 perform all the duties with respect to taxpayers under this
252 chapter as are provided in said Sales Tax Law, except that in
253 cases of conflict, then the provisions of this chapter shall
254 control.

255 Interest at the rate of one percent (1%) per month, or
256 fraction thereof, may be assessed for the late payment or
257 nonpayment of taxes under this chapter. A penalty of fifty
258 dollars (\$50.00) or ten percent (10%) of the tax due, whichever is
259 greater, may be assessed for the failure to file a report, the
260 late payment of taxes or the failure to pay taxes.

261 SECTION 7. The following shall be codified as Section
262 27-61-33, Mississippi Code of 1972:

263 27-61-33. In the event that any taxes or penalties imposed
264 by this chapter have been erroneously or illegally collected from
265 any person, the commission may permit such person to take credit
266 against a subsequent tax report for the amount of the erroneous

267 payment, or the amount may be refunded to the person in the same
268 manner as provided in Section 27-55-19. No refunds shall be made
269 under the provisions of this section unless a written claim is
270 filed setting forth the circumstances by reason of which such
271 refund should be allowed. Such claim shall be in such form as the
272 commission shall prescribe and shall be filed with the commission
273 within three (3) years from the date of payment of the taxes
274 erroneously or illegally collected. Nothing in this chapter shall
275 be construed to prohibit a refund or credit for tax paid on fuel
276 tax reports not subject to tax or which is exempt from tax,
277 provided there has not been a willful disregard of the provisions
278 of this chapter and further provided that the claim is filed
279 within three (3) years.

280 SECTION 8. The following shall be codified as Section
281 27-61-35, Mississippi Code of 1972:

282 27-61-35. A person aggrieved by any order or act of the
283 commission in the administration of this chapter may appeal in the
284 same manner and under the same conditions as provided for appeals
285 from acts or orders of the commission pertaining to gasoline taxes
286 in Section 27-55-41.

287 SECTION 9. Nothing in this act shall affect or defeat any
288 claim, assessment, appeal, suit, right or cause of action for
289 taxes due or accrued under Chapter 61, Title 27, Mississippi Code
290 of 1972, before the date on which this act becomes effective,
291 whether such claims, assessments, appeals, suits or actions have
292 been begun before the date on which this act becomes effective or
293 are begun thereafter; and the provisions of Chapter 61, Title 27,
294 Mississippi Code of 1972, are expressly continued in full force,
295 effect and operation for the purpose of the assessment, collection
296 and enrollment of liens for any taxes due or accrued and the
297 execution of any warrant under such laws before the date on which
298 this act becomes effective, and for the imposition of any

299 penalties, forfeitures or claims for failure to comply with such
300 laws.

301 SECTION 10. This act shall take effect and be in force from
302 and after its passage.