AN ACT TO AMEND SECTIONS 27-55-505, 27-55-507, 27-55-519, 27-55-527 AND 27-55-529, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT SPECIAL FUEL TAX SHALL BE PAID BY THE PERSON THAT HOLDS THE INVENTORY POSITION OF THE SPECIAL FUEL AS REFLECTED IN THE RECORDS OF THE TERMINAL OPERATOR AT THE TIME OF WITHDRAWAL FROM THE TERMINAL; TO INCREASE THE MAXIMUM AMOUNT OF THE SURETY BOND THAT THE STATE TAX COMMISSION MAY REQUIRE IN ORDER FOR A PERSON TO ENGAGE IN BUSINESS AS A DISTRIBUTOR OF SPECIAL FUEL; TO CREATE A NEW CODE SECTION TO BE CODIFIED AS SECTION 27-55-520, MISSISSIPPI CODE OF 1972, TO AUTHORIZE A REFUND FOR EXEMPT SALES BY DISTRIBUTORS WHO HAVE NO TAX LIABILITY TO OFFSET THE EXEMPTION; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 27-55-505, Mississippi Code of 1972, is amended as follows:

27-55-505. The words, terms and phrases as used in this article shall have the following meanings unless the context requires otherwise:

(a) "Special fuel" means kerosene, diesel fuel, fuel oils, and any petroleum fuel or any other product other than gasoline or compressed gas which is usable as fuel in an internal combustion engine, and any combustible liquid other than gasoline or compressed gas used or capable of being used as a fuel in aircraft.

(b) "Bunker oil" is defined as a residual product obtained in the refining of crude petroleum intended for use for the generation of heat in a firebox or furnace when its flash point, as determined by use of the Pensky-Martens tester, shall not be less than one hundred fifty (150) degrees Fahrenheit and when its viscosity at one hundred (100) degrees Fahrenheit shall
not be less than one hundred fifty (150) seconds when determined by use of the Saybolt Universal Tubes.

(c) "Person" means any individual, firm, copartnership, joint venture, association, corporation, estate, trust, or any 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.

(d) "Distributor of special fuel" means (i) any person importing special fuel into this state; (ii) any person who shall receive, purchase, acquire, use, store or sell any special fuel in this state on which the excise tax hereinafter imposed by this article has not been paid; (iii) any person exporting special fuel; and (iv) any person engaged in the distribution of special fuel by tank car or tank truck or both; provided, that no person may qualify as a distributor of special fuel for the sole purpose of using special fuel, as defined in this article, as a fuel to propel a vehicle or vehicles owned or operated by him on the highways of this state. The term "distributor of special fuel" shall also include all persons meeting the definition of "refiners," "processors," "terminal operator," "blenders" and any person licensed to sell motor fuel in another state or jurisdiction who is authorized by that state or jurisdiction to collect the special fuel excise tax imposed by this article.

(e) "Bonded distributor of special fuel" means any person holding a valid distributor of special fuel permit issued by the State Tax Commission.

(f) "Refiner" or "processor" shall mean every person who shall receive, produce, manufacture, refine, distill, blend or compound special fuel in this state, when such person shall engage in any business incident to or necessary for refining or processing petroleum products in this state; provided further, that such refiner or processor must have at least two (2) ten-thousand-gallon or larger tanks for product storage, and the
blending or mixing process produces a finished product that has entirely different physical and chemical properties from the original products.

(g) The term "for nonhighway purposes," as used in this article, shall be construed to mean special fuel which is not used for operating motor vehicles or motor-propelled machines of any description along the public roads, streets, alleys or highways of this state as defined in this article.

(h) "Highway" shall mean every way or place of whatever nature, including public roads, toll roads, streets and alleys of this state generally open to the use of the public or to be opened or reopened to the use of the public for the purpose of vehicular travel, and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair. Provided, that the confines of a highway shall include the entire width and length of the right-of-way.

(i) "Commission" means the State Tax Commission of the State of Mississippi, acting either directly or through its duly authorized officers, agents or employees.

(j) "Terminal" means a tank farm within the State of Mississippi with storage capacity for the receipt of a full barge delivery or common carrier pipeline delivery of taxable petroleum products when such products are to be distributed within the state.

(k) "Marine dealer" means any person selling special fuel from marine or dockside storage facilities when such special fuel is for use in boats, vessels, barges or ships.

(l) For the purposes of this article, the term "United States government" shall include all purchasing officers of the Armed Forces of the United States and the United States Property and Fiscal Officer for the State of Mississippi or any other state appointed pursuant to Section 708, Title 32, United States Code,
when purchasing special fuel with federal funds for the account of
and use by a component of the Armed Forces as herein defined.

(m) For the purposes of this article, the term "Armed Forces" means and includes all components of the Armed Forces of
the United States including the Army National Guard, the Army
National Guard of the United States, the Air National Guard and
the Air National Guard of the United States, as those terms are
defined in Section 101, Title 10, United States Code, and any
other reserve component of the Armed Forces of the United States
enumerated in Section 261, Title 10, United States Code.

(n) "Motor vehicle" means every vehicle designed,
constructed for or used on the highways of this state which is
self-propelled, except a farm tractor using the highways solely in
hauling or transporting farm products of the soil from the farm to
a gin or market when the title to such products is still in the
producer, or a farm tractor used in transporting fertilizer or
food to a farm when the title to such products is still in the
user.

(o) "Consumer" means, in addition to its ordinary
 meaning, a person who purchases undyed diesel fuel to be used for
nonhighway purposes and who does not resell such undyed diesel
fuel.

(p) "Retail dealer" means any person who operates a
retail station.

(q) "Dyed diesel fuel" means diesel fuel that is dyed
in accordance with United States Environmental Protection Agency
or Internal Revenue Service requirements.

(r) "Dyed kerosene" means kerosene that is dyed in
accordance with United States Environmental Protection Agency or
Internal Revenue Service requirements.

(s) "Undyed diesel fuel" means diesel fuel that does
not meet the dyeing requirements prescribed by United States
Environmental Protection Agency or Internal Revenue Service Regulations.

(t) "Fuel oil" means a general classification for one of the petroleum fractions produced in conventional distillation operations. For the purposes of this article, "fuel oil" is No. 1, No. 2 and No. 4 fuel oils and No. 1, No. 2 and No. 4 diesel fuels.

(u) "Blender" shall mean any person who blends or compounds any product to produce special fuel.

(v) "Terminal operator" means any person who owns, operates or otherwise controls a terminal.

(w) "Position holder" means, with respect to a special fuel in a terminal, the person that holds the inventory position of the special fuel, as reflected in the records of the terminal operator. A person holds the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminal service at a terminal with respect to special fuel. This also includes a terminal operator who owns special fuel in their terminal.

SECTION 2. Section 27-55-507, Mississippi Code of 1972, is amended as follows:

27-55-507. Before any person shall engage in business as a distributor of special fuel in this state, he shall first make application to the commission, upon forms prescribed by the commission, for a permit to engage in said business.

If the application is approved by the commission, the applicant shall enter into a good and sufficient surety bond, written by a company qualified to write such bonds in this state. The bond shall be made payable to the State of Mississippi in a sum not less than One Thousand Dollars ($1,000.00) nor more than Two Million Dollars ($2,000,000.00), the amount to be determined by the commission; or, in lieu thereof, the applicant may deposit with the commission a cash bond in the amount so determined. A
personal bond in the amount so determined shall also be acceptable in lieu of a surety bond if the same is adequately secured by the pledge or assignment of a pledgeable or assignable bond, or bonds, of the State of Mississippi or the United States government. Such bond or bonds shall be in an amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00), and not to exceed the special fuel taxes estimated to become due by the distributor of special fuel for any ninety-day period. The bond required by this section shall be increased within the limits hereinabove set forth from time to time if deemed insufficient by the commission, giving to the distributor of special fuel fifteen (15) days' notice, in writing, to increase such bond, such notice to state the amount of increase demanded.

The condition of such bond shall be that the distributor of special fuel shall fully comply with all laws pertaining to distributors of special fuel and pertaining to the transportation of special fuel as regulated by this article, and that he shall pay the special fuel taxes, and the penalties provided.

SECTION 3. Section 27-55-519, Mississippi Code of 1972, is amended as follows:

27-55-519. (1) Any person engaged in business as a distributor of special fuel or who acts as a distributor of special fuel, as defined in this article, shall pay for the privilege of engaging in such business or acting as such distributor an excise tax on all special fuel stored, used, sold, distributed, manufactured, refined, distilled, blended or compounded in this state or received in this state for sale, storage, distribution or for any purpose, adjusted to sixty (60) degrees Fahrenheit.

The excise tax shall become due and payable when:

(a) Special fuel is withdrawn from storage at a refinery, marine or pipeline terminal, except when withdrawal is
by barge or pipeline. The tax shall be paid by the person that is
the position holder at the time of withdrawal.

(b) Special fuel imported by a common carrier is
unloaded by that carrier unless the special fuel is unloaded
directly into the storage tanks of a refinery, marine or pipeline
terminal.

(c) Special fuel imported by any person other than a
common carrier enters the State of Mississippi unless the special
fuel is unloaded directly into the storage tanks of a refinery,
marine or pipeline terminal.

(d) Special fuel is blended in this state unless such
blending occurs in a refinery, marine or pipeline terminal.

(e) Special fuel is acquired tax free.

(2) The special fuel excise tax shall be as follows:

(a) Eighteen Cents (18¢) per gallon on undyed diesel
fuel until the date specified in Section 65-39-35 and Fourteen and
Three-fourths Cents (14.75¢) per gallon thereafter;

(b) Five and Three-fourths Cents (5.75¢) per gallon on
all special fuel except undyed diesel fuel and special fuel used
as fuels in aircraft; and

(c) Five and One-fourth Cents (5.25¢) per gallon on
special fuel used as fuel in aircraft.

SECTION 4. Section 27-55-527, Mississippi Code of 1972, is
amended as follows:

27-55-527. (1) There shall not be included in the measure
of the tax levied in this article any special fuel:

* * *

(a) Sold to the United States government for use of the
Armed Forces only, and delivered in quantities of not less than
four thousand (4,000) gallons.

(b) Delivered to a bonded warehouse for storage within
this state for the United States Department of Interior.
(c) Exported to a destination beyond the borders of this state by a bonded distributor of special fuel when the tax on such special fuel has been paid or on which the tax liability imposed by this article has accrued against such bonded distributor.

(d) Imported by, or sold to, any refiner or processor in this state for the purpose of being refined or further processed.

(e) Sold or delivered to any person within this state to be used as a herbicide or as a solvent for insecticides, wood preservatives, and like products, or when so used in a commercial process that they become a component part of any manufactured product or where used as a processing agent in the treatment of raw material in manufacturing any product.

(f) Sold or delivered to be used for test purposes at any regularly established testing laboratory in this state.

(g) Sold to be consumed as fuel by any boat, vessel, ship, towboat or dredgeboat, or sold to the holder of a Marine Dealers Permit for resale or distribution as fuel for a boat, vessel, ship, towboat or dredgeboat.

(h) Sold as bunker oil or sold to be used for the generation of heat in a firebox or furnace.

(i) Sold or delivered to be used for the purpose of generating electricity.

(j) Sold for use as fuel in a railroad locomotive when subject to the tax levied by Section 27-59-301 et seq.

(2) The exemptions set forth in paragraphs (f), (h), (i) and (j) of subsection (1) of this section shall not apply to special fuel used in performing contracts for construction, reconstruction, maintenance, or repairs, where such contracts are entered into with the State of Mississippi, any political subdivision of the State of Mississippi, or any department, agency...
or institution of the State of Mississippi or any political
subdivision thereof.

(3) Evidence of exempt transactions provided in this section
and the subsections thereof shall consist of copies of invoices,
documents or any other evidence that may be required by the
commission.

(4) Any person other than a bonded distributor of special
fuel who has delivered or sold special fuel on which the tax has
been paid by him to the vendor may, if the special fuel is subject
to exemption under this article, assign his claim for exemption to
any bonded distributor of special fuel in this state. Such
distributor may deduct the amount of the tax exemption from his
next special fuel report, provided the distributor furnishes
evidence satisfactory to the commission that the claim for
exemption is valid.

(5) When special fuel is withdrawn from the storage tank of
a refiner, processor, marine or pipeline terminal operator and the
tax is paid on such special fuel and it or any part thereof cannot
be delivered to a purchaser, said refiner, processor, marine or
pipeline terminal operator may deduct the tax on all or that
portion of such special fuel not delivered to a purchaser from its
next special fuel distributor's tax report, provided that such
refiner, processor, marine or pipeline terminal operator submits
with such tax report: (a) a written report setting forth the
reasons why such delivery could not be made, and (b) proof or
evidence satisfactory to the commission that the tax in question
had theretofore been paid to the commission, and (c) proof or
evidence satisfactory to the commission that the nondelivered
special fuel was actually returned to the refinery, processor,
marine or pipeline terminal from which it was taken for the
purpose of delivering it to a purchaser; and provided further,
that immediately upon ascertainment by the refiner, processor,
marine or pipeline terminal operator that said special fuel cannot
be delivered, he or it shall immediately notify the commission of this fact and before moving his or its truck or other means of transporting such special fuel from the intended point of delivery; and should the commission desire to inspect such truck or other means of conveyance, such refiner, processor, marine or pipeline terminal operator shall arrange for such inspection at that point or at such other point that may be designated by the commission.

(6) In order to claim exemptions provided for under this article, the distributor of special fuel must file claims therefor within three (3) years from the date of sale or delivery; otherwise, claims for such exemptions shall be disallowed.

SECTION 5. Section 27-55-529, Mississippi Code of 1972, is amended as follows:

27-55-529. (1) A bonded distributor of special fuel may sell undyed diesel fuel to a consumer for nonhighway use.

(2) The distributor of special fuel who sells undyed diesel fuel to a consumer for nonhighway use may exempt from such sale all but Five and Three-fourths Cents (5.75¢) per gallon of the tax levied in Section 27-55-519.

(3) The distributor may deduct the amount of tax exempted on his special fuels tax report or may request a refund as provided in Section 27-55-530.

SECTION 6. The following provision shall be codified as Section 27-55-530, Mississippi Code of 1972:

27-55-530. When an exempt sale of special fuel is made by a distributor who has no tax liability with which to offset the exemption, the commission shall, upon application of the distributor, issue a refund to the distributor for such exempt sale.

SECTION 7. This act shall take effect and be in force from and after July 1, 2001.