

By: Senator(s) Minor

To: Finance

SENATE BILL NO. 2619

1 AN ACT TO AMEND SECTIONS 27-55-505, 27-55-507, 27-55-519,
 2 27-55-527 AND 27-55-529, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
 3 SPECIAL FUEL TAX SHALL BE PAID BY THE PERSON THAT HOLDS THE
 4 INVENTORY POSITION OF THE SPECIAL FUEL AS REFLECTED IN THE RECORDS
 5 OF THE TERMINAL OPERATOR AT THE TIME OF WITHDRAWAL FROM THE
 6 TERMINAL; TO INCREASE THE MAXIMUM AMOUNT OF THE SURETY BOND THAT
 7 THE STATE TAX COMMISSION MAY REQUIRE IN ORDER FOR A PERSON TO
 8 ENGAGE IN BUSINESS AS A DISTRIBUTOR OF SPECIAL FUEL; TO CREATE A
 9 NEW CODE SECTION TO BE CODIFIED AS SECTION 27-55-520, MISSISSIPPI
 10 CODE OF 1972, TO AUTHORIZE A REFUND FOR EXEMPT SALES BY
 11 DISTRIBUTORS WHO HAVE NO TAX LIABILITY TO OFFSET THE EXEMPTION;
 12 AND FOR RELATED PURPOSES.

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

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

16 27-55-505. The words, terms and phrases as used in this
 17 article shall have the following meanings unless the context
 18 requires otherwise:

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

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

31 not be less than one hundred fifty (150) seconds when determined
32 by use of the Saybolt Universal Tubes.

33 (c) "Person" means any individual, firm, copartnership,
34 joint venture, association, corporation, estate, trust, or any
35 group or combination acting as a unit, and the plural as well as
36 the singular number unless the intention to give a more limited
37 meaning is disclosed by the context.

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

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

57 (f) "Refiner" or "processor" shall mean every person
58 who shall receive, produce, manufacture, refine, distill, blend or
59 compound special fuel in this state, when such person shall engage
60 in any business incident to or necessary for refining or
61 processing petroleum products in this state; provided further,
62 that such refiner or processor must have at least two (2)
63 ten-thousand-gallon or larger tanks for product storage, and the

64 blending or mixing process produces a finished product that has
65 entirely different physical and chemical properties from the
66 original products.

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

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

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

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

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

91 (l) For the purposes of this article, the term "United
92 States government" shall include all purchasing officers of the
93 Armed Forces of the United States and the United States Property
94 and Fiscal Officer for the State of Mississippi or any other state
95 appointed pursuant to Section 708, Title 32, United States Code,

96 when purchasing special fuel with federal funds for the account of
97 and use by a component of the Armed Forces as herein defined.

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

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

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

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

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

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

126 (s) "Undyed diesel fuel" means diesel fuel that does
127 not meet the dyeing requirements prescribed by United States

128 Environmental Protection Agency or Internal Revenue Service
129 Regulations.

130 (t) "Fuel oil" means a general classification for one
131 of the petroleum fractions produced in conventional distillation
132 operations. For the purposes of this article, "fuel oil" is No.
133 1, No. 2 and No. 4 fuel oils and No. 1, No. 2 and No. 4 diesel
134 fuels.

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

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

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

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

149 27-55-507. Before any person shall engage in business as a
150 distributor of special fuel in this state, he shall first make
151 application to the commission, upon forms prescribed by the
152 commission, for a permit to engage in said business.

153 If the application is approved by the commission, the
154 applicant shall enter into a good and sufficient surety bond,
155 written by a company qualified to write such bonds in this state.
156 The bond shall be made payable to the State of Mississippi in a
157 sum not less than One Thousand Dollars (\$1,000.00) nor more than
158 Two Million Dollars (\$2,000,000.00), the amount to be determined
159 by the commission; or, in lieu thereof, the applicant may deposit
160 with the commission a cash bond in the amount so determined. A

161 personal bond in the amount so determined shall also be acceptable
162 in lieu of a surety bond if the same is adequately secured by the
163 pledge or assignment of a pledgeable or assignable bond, or bonds,
164 of the State of Mississippi or the United States government. Such
165 bond or bonds shall be in an amount not to exceed Two Hundred
166 Fifty Thousand Dollars (\$250,000.00), and not to exceed the
167 special fuel taxes estimated to become due by the distributor of
168 special fuel for any ninety-day period. The bond required by this
169 section shall be increased within the limits hereinabove set forth
170 from time to time if deemed insufficient by the commission, giving
171 to the distributor of special fuel fifteen (15) days' notice, in
172 writing, to increase such bond, such notice to state the amount of
173 increase demanded.

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

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

181 27-55-519. (1) Any person engaged in business as a
182 distributor of special fuel or who acts as a distributor of
183 special fuel, as defined in this article, shall pay for the
184 privilege of engaging in such business or acting as such
185 distributor an excise tax on all special fuel stored, used, sold,
186 distributed, manufactured, refined, distilled, blended or
187 compounded in this state or received in this state for sale,
188 storage, distribution or for any purpose, adjusted to sixty (60)
189 degrees Fahrenheit.

190 The excise tax shall become due and payable when:

191 (a) Special fuel is withdrawn from storage at a
192 refinery, marine or pipeline terminal, except when withdrawal is

193 by barge or pipeline. The tax shall be paid by the person that is
194 the position holder at the time of withdrawal.

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

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

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

205 (e) Special fuel is acquired tax free.

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

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

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

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

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

217 27-55-527. (1) There shall not be included in the measure
218 of the tax levied in this article any special fuel:

219 * * *

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

223 (b) Delivered to a bonded warehouse for storage within
224 this state for the United States Department of Interior.

225 (c) Exported to a destination beyond the borders of
226 this state by a bonded distributor of special fuel when the tax on
227 such special fuel has been paid or on which the tax liability
228 imposed by this article has accrued against such bonded
229 distributor.

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

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

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

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

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

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

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

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

257 or institution of the State of Mississippi or any political
258 subdivision thereof.

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

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

272 (5) When special fuel is withdrawn from the storage tank of
273 a refiner, processor, marine or pipeline terminal operator and the
274 tax is paid on such special fuel and it or any part thereof cannot
275 be delivered to a purchaser, said refiner, processor, marine or
276 pipeline terminal operator may deduct the tax on all or that
277 portion of such special fuel not delivered to a purchaser from its
278 next special fuel distributor's tax report, provided that such
279 refiner, processor, marine or pipeline terminal operator submits
280 with such tax report: (a) a written report setting forth the
281 reasons why such delivery could not be made, and (b) proof or
282 evidence satisfactory to the commission that the tax in question
283 had theretofore been paid to the commission, and (c) proof or
284 evidence satisfactory to the commission that the nondelivered
285 special fuel was actually returned to the refinery, processor,
286 marine or pipeline terminal from which it was taken for the
287 purpose of delivering it to a purchaser; and provided further,
288 that immediately upon ascertainment by the refiner, processor,
289 marine or pipeline terminal operator that said special fuel cannot

290 be delivered, he or it shall immediately notify the commission of
291 this fact and before moving his or its truck or other means of
292 transporting such special fuel from the intended point of
293 delivery; and should the commission desire to inspect such truck
294 or other means of conveyance, such refiner, processor, marine or
295 pipeline terminal operator shall arrange for such inspection at
296 that point or at such other point that may be designated by the
297 commission.

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

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

304 27-55-529. (1) A bonded distributor of special fuel may
305 sell undyed diesel fuel to a consumer for nonhighway use.

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

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

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

315 27-55-530. When an exempt sale of special fuel is made by a
316 distributor who has no tax liability with which to offset the
317 exemption, the commission shall, upon application of the
318 distributor, issue a refund to the distributor for such exempt
319 sale.

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