SENATE BILL NO. 2961
(As Passed the Senate)

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

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

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

27-61-9. If the commission approves the application and bond, it shall issue to the applicant an interstate fuel use permit which shall remain valid for the calendar year in which it was issued, to expire on December 31 of that year. All such permits shall be revocable by the commission upon ten (10) days' written notice to the permittee, if the permittee fails or refuses to comply with any of the terms or provisions of this chapter.
A renewal permit for the following calendar year will be issued upon application if: the permit has not been revoked or cancelled; all reports have been filed; and all taxes, penalties and interest due have been paid. Any interstate fuel use permit issued under the provisions of this section before March 12, 1993, shall expire on December 31, 1993.

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

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

27-61-11. The permittee shall file a quarterly fuel use report for the preceding calendar quarter on or before the last day of the month following each calendar quarter on forms to be prescribed by the commission, or the carriers may, with the approval of the commission, furnish the required information on machine-prepared schedules. Said report shall show any information required by the commission for the administration of this chapter. Such report must be filed even though it may reflect no Mississippi miles for the quarter or accounting period. At the time of filing of each quarterly report, each permittee shall pay to the commission the full amount of the tax due on all fuel used by him in this state at the rate provided for in paragraph (a) of Section 27-61-5 of this chapter. The permittee in determining the fuel used by him in this state for said period
may, as to each type of fuel used, determine his average number of miles of motor vehicle travel for a gallon of fuel by the use of the following formula: There shall first be determined the total miles traveled by all motor vehicles operated by permittee using a particular type of fuel; there shall then be determined the total number of gallons of such fuel consumed; the total number of gallons of such fuel consumed shall then be divided into the total number of miles traveled to determine the average number of miles of motor vehicle travel per gallon of fuel used. Proper records supporting these computations shall be maintained for a period of not less than three (3) years and shall be available to the inspection and audit of the commission. Permittee may, however, use any standards established by the commission in determining the motor vehicle travel per gallon of fuel consumed as to any particular type fuel. The permittee, in computing the amount of tax due, may take credit for all payments of the taxes levied in Sections 27-55-11 and 27-59-11, Mississippi Code of 1972, and Sections 27-55-519 and 27-55-521.

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

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

27-61-13. If the quarterly report filed by any permittee as provided herein shall establish that such permittee has paid a greater amount of tax for such quarter than permittee was liable for under the provisions of this chapter, then the amount of such overpayment may be carried forward and credit therefor taken against subsequent tax liability incurred under the provisions of this chapter, provided such credit is taken on a report filed...
within three (3) years from the quarter in which such excess tax was paid.

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

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

When a report filed by a licensee under the provisions of the International Fuel Tax Agreement indicates a credit for Mississippi due to an overpurchase of fuel in this state, the credit shall first be used to offset the licensee's tax liability in other jurisdictions. After such offset any remaining credit may be carried forward to a future report or may be refunded to the licensee.
SECTION 4. Section 27-61-15, Mississippi Code of 1972, is amended as follows:

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

All actions by this state for the recovery of additional amounts claimed as tax due under this chapter must be commenced within three (3) years from the date of the filing of the report.
with the commission, provided that in the case of a fraudulent or false report with intent to evade tax or a failure to file a report, action may be commenced at any time. However, when the commission has initiated an examination of a taxpayer's records in order to verify reports under this chapter and the taxpayer has been notified thereof by certified mail within the three (3) year examination period provided herein, the determination of the correct tax liability may be made after the expiration of the three (3) year examination period, provided that such determination shall be made with reasonable promptness and diligence.

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

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

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

An agreement entered into under the provisions of this section shall not restrict the State of Mississippi with regard to determining whether to impose taxes; fixing tax rates; defining tax exemptions or deductions; determining what constitutes taxable events triggering the imposition of taxes or determining any other related matters.
As required by the terms of the agreement, the commission may forward to officials of another state any information in the commission's possession regarding the receipt, sale, use, transportation or shipment of motor fuels, distances traveled and routes traveled by any person. The commission may disclose to officers of another state the location of offices, motor vehicles, and other real and personal property of persons subject to the provisions of a compact or agreement.

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

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

Any agreement entered into under this section shall not preclude the commission from auditing the records of any person covered by the provisions of this chapter.
The commission may adopt rules and regulations for the administration and enforcement of any agreement. The commission is authorized to collect motor fuel taxes, interest and fees due the members of any cooperative compact or agreement entered into under the provisions of this section and to deposit such taxes, interest and fees into a special holding fund until such taxes, interest and fees are properly distributed to the members of the compact or agreement.

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

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

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

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

27-61-33. In the event that any taxes or penalties imposed by this chapter have been erroneously or illegally collected from any person, the commission may permit such person to take credit against a subsequent tax report for the amount of the erroneous
payment, or the amount may be refunded to the person in the same manner as provided in Section 27-55-19. No refunds shall be made under the provisions of this section unless a written claim is filed setting forth the circumstances by reason of which such refund should be allowed. Such claim shall be in such form as the commission shall prescribe and shall be filed with the commission within three (3) years from the date of payment of the taxes erroneously or illegally collected. Nothing in this chapter shall be construed to prohibit a refund or credit for tax paid on fuel tax reports not subject to tax or which is exempt from tax, provided there has not been a willful disregard of the provisions of this chapter and further provided that the claim is filed within three (3) years.

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

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

SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Chapter 61, Title 27, Mississippi Code of 1972, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of Chapter 61, Title 27, Mississippi Code of 1972, are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any
penalties, forfeitures or claims for failure to comply with such laws.

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