

By: Representative Watson

To: Ways and Means

HOUSE BILL NO. 1459

1 AN ACT TO AMEND SECTION 27-55-5, MISSISSIPPI CODE OF 1972, TO
2 EXCLUDE RACING FUEL FROM THE DEFINITION OF THE TERM "GASOLINE"
3 UNDER THE GASOLINE TAX LAWS; TO AMEND SECTION 27-55-505,
4 MISSISSIPPI CODE OF 1972, TO EXCLUDE RACING FUEL FROM THE
5 DEFINITION OF THE TERM "SPECIAL FUEL" UNDER THE SPECIAL FUEL TAX
6 LAW; TO REPEAL SECTION 27-55-529, MISSISSIPPI CODE OF 1972, WHICH
7 AUTHORIZES A BONDED DISTRIBUTOR OF SPECIAL FUEL TO SELL UNDYED
8 DIESEL FUEL TO A CONSUMER FOR NONHIGHWAY USE AND PROVIDES A TAX
9 EXEMPTION FOR SALES OF UNDYED DIESEL FUEL FOR NONHIGHWAY USE; AND
10 FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 27-55-5, Mississippi Code of 1972, is
13 amended as follows:

14 27-55-5. The words, terms and phrases as used in this
15 article shall have the following meanings unless the context
16 requires otherwise:

17 (a) "Gasoline" means:

18 (i) All products commonly or commercially known or
19 sold as gasoline (excluding casinghead and absorption or natural
20 gasoline) regardless of their classification or uses; and

21 (ii) Any liquid prepared, advertised, offered for
22 sale or sold for use as or commonly and commercially used as a
23 fuel in internal combustion engines, which when subjected to
24 distillation in accordance with the standard method of test for
25 distillation of gasoline, naphtha, kerosene and similar petroleum
26 products (American Society for Testing Materials Designation D-86)
27 shows not less than ten percent (10%) distilled (recovered) below
28 two hundred sixty (260) degrees Fahrenheit and not less than
29 ninety-five percent (95%) distilled (recovered) below four hundred
30 sixty-four (464) degrees Fahrenheit.

31 The term "gasoline" shall include "aviation gasoline."

32 The term "gasoline" shall not include:

33 (i) Liquefied gases which would not exist as
34 liquid at a temperature of sixty (60) degrees Fahrenheit and at a
35 pressure of fourteen and seven-tenths (14.7) pounds per square
36 inch absolute; * * *

37 (ii) Commercial solvents or naphthas or raw
38 petroleum products or petrochemicals intermediates when used as or
39 sold for use in production or manufacture of plastics, detergents,
40 synthetic rubber, herbicides or other chemicals or products which
41 are not prepared, advertised, offered for sale or sold for use or
42 suitable for use as fuel for generating power in internal
43 combustion engines;

44 (iii) Racing gasoline.

45 (b) "Aviation gasoline" means gasoline refined or
46 manufactured, according to the specifications for aviation
47 gasoline set forth in ASTM D-910, for exclusive use in
48 reciprocating aviation engines.

49 (c) "Person" means any individual, firm, copartnership,
50 joint venture, association, corporation, estate, trust or any
51 other group or combination acting as a unit, and the plural as
52 well as the singular number unless the intention to give a more
53 limited meaning is disclosed by the context.

54 (d) "Distributor of gasoline" means:

55 (i) Any person importing gasoline into this state;

56 (ii) Any person receiving, purchasing, acquiring,
57 using, storing or selling any gasoline in this state on which the
58 gasoline excise tax imposed by this article has not been paid;

59 (iii) Refiners, blenders, marine terminal
60 operators or pipeline terminal operators; and

61 (iv) Any person licensed to sell gasoline in
62 another state or jurisdiction who is authorized by that state or
63 jurisdiction to collect the gasoline excise tax imposed by this
64 article.

65 (e) "Highway" means every way or place, of whatever
66 nature including public roads, toll roads, streets and alleys of
67 this state generally open to the use of the public or to be opened
68 or reopened to the use of the public for the purpose of vehicular
69 travel, and notwithstanding that the same may be temporarily
70 closed for the purpose of construction, reconstruction,
71 maintenance or repair. * * * The confines of a highway shall
72 include the entire width and length of the right-of-way.

73 (f) "Refiner" means every person who manufactures
74 finished petroleum products from crude oil, unfinished oils,
75 natural gas liquids, other hydrocarbons, or alcohol.

76 (g) "Bonded distributor of gasoline" means any person
77 holding a valid gasoline distributor's permit issued by the
78 commission.

79 (h) * * * "For agricultural or maritime purposes" * * *
80 means gasoline used:

81 (i) In operating farm tractors or other farm
82 equipment used exclusively in plowing, planting or harvesting farm
83 products, or in operating boats, and no part of which is used in
84 any motor vehicle or equipment driven or operated upon the public
85 roads, streets or highways of this state; and * * *

86 (ii) As a fuel in a farm tractor using the
87 highways solely in hauling or transporting farm products of the
88 soil from the farm to a gin or market where the title to such
89 products is still in the producer, or in transporting fertilizer
90 or feed to the farm, where the title to such products is still in
91 the user.

92 (i) * * * "For industrial purposes" * * * means
93 gasoline used in engines or motors of stationary or portable type
94 for the purpose of operating machinery used for manufacturing or
95 used for industrial purposes, and no part of which machinery is
96 driven or operated upon the public roads, streets or highways of
97 this state.

98 (j) * * * "For domestic purposes" * * * means gasoline
99 used for any other purpose than agricultural, maritime, industrial
100 or manufacturing, and no part of which is used for operating motor
101 vehicles or motor-propelled machines of any description along the
102 public roads, streets, alleys or highways (as defined in this
103 article) of this state.

104 (k) * * * "For nonhighway purposes" * * * means gasoline
105 gasoline used for any other purpose than agricultural, maritime,
106 industrial, manufacturing or domestic purposes, and no part of
107 which is used for operating motor vehicles or motor-propelled
108 machines of any description along the public roads, streets,
109 alleys or highways (as defined in this article) of this state.

110 (l) * * * "For aviation purposes" * * * means gasoline
111 used for the operation of aircraft.

112 (m) * * * "Refund gasoline" * * * means gasoline used
113 or to be used for agricultural, maritime, industrial,
114 manufacturing, domestic or nonhighway purposes only, as these
115 terms are defined in this article.

116 (n) "Commission" means the State Tax Commission, acting
117 either directly or through its duly authorized officers, agents or
118 employees.

119 (o) * * * "United States government" * * * means and
120 includes all purchasing officers of the Armed Forces of the United
121 States and the United States Property and Fiscal Officer for the
122 State of Mississippi or any other state appointed pursuant to
123 Section 708, Title 32, United States Code, when purchasing
124 gasoline with federal funds for the account of and use by a
125 component of the Armed Forces as herein defined.

126 (p) * * * "Armed Forces" * * * means and includes all
127 components of the Armed Forces of the United States including the
128 Army National Guard, the Army National Guard of the United States,
129 the Air National Guard and the Air National Guard of the United
130 States, as those terms are defined in Section 101, Title 10,

131 United States Code, and any other reserve component of the Armed
132 Forces of the United States enumerated in Section 261, Title 10,
133 United States Code.

134 (q) "Blend stock" means ethanol, methanol or any other
135 products blended with gasoline to produce motor fuel.

136 (r) "Blender" means any person other than a refiner who
137 blends blend stock with gasoline or who sells or distributes blend
138 stock for the purpose of being blended with gasoline.

139 (s) "Racing gasoline" means gasoline manufactured
140 exclusively for use in racing and gasoline containing lead, or
141 having an octane rating of 105 or higher that is not suitable for
142 use on the highways.

143 **SECTION 2.** Section 27-55-505, Mississippi Code of 1972, is
144 amended as follows:

145 27-55-505. The words, terms and phrases as used in this
146 article shall have the following meanings unless the context
147 requires otherwise:

148 (a) "Special fuel" means kerosene, diesel fuel, fuel
149 oils, and any petroleum fuel or any other product other than
150 gasoline or compressed gas which is usable as fuel in an internal
151 combustion engine, and any combustible liquid other than gasoline
152 or compressed gas used or capable of being used as a fuel in
153 aircraft. The term "special fuel" shall not include racing
154 gasoline as defined in Section 27-55-5.

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

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

168 (d) "Distributor of special fuel" means:

169 (i) Any person importing special fuel into this
170 state;

171 (ii) Any person who shall receive, purchase,
172 acquire, use, store or sell any special fuel in this state on
173 which the excise tax hereinafter imposed by this article has not
174 been paid;

175 (iii) Any person exporting special fuel; * * *

176 (iv) Any person engaged in the distribution of
177 special fuel by tank car or tank truck or both; however, no person
178 may qualify as a distributor of special fuel for the sole purpose
179 of using special fuel, as defined in this article, as a fuel to
180 propel a vehicle or vehicles owned or operated by him on the
181 highways of this state; and

182 (v) All persons meeting the definition of
183 "refiners," "processors," "terminal operator," "blenders" and any
184 person licensed to sell motor fuel in another state or
185 jurisdiction who is authorized by that state or jurisdiction to
186 collect the special fuel excise tax imposed by this article.

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

190 (f) "Refiner" or "processor" means every person who
191 shall receive, produce, manufacture, refine, distill, blend or
192 compound special fuel in this state, when such person shall engage
193 in any business incident to or necessary for refining or
194 processing petroleum products in this state; provided further,
195 that such refiner or processor must have at least two (2)

196 ten-thousand-gallon or larger tanks for product storage, and the
197 blending or mixing process produces a finished product that has
198 entirely different physical and chemical properties from the
199 original products.

200 (g) * * * "For nonhighway purposes" means special fuel
201 which is not used for operating motor vehicles or motor-propelled
202 machines of any description along the public roads, streets,
203 alleys or highways of this state as defined in this article.

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

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

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

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

223 (l) * * * "United States government" means and includes
224 all purchasing officers of the Armed Forces of the United States
225 and the United States Property and Fiscal Officer for the State of
226 Mississippi or any other state appointed pursuant to Section 708,
227 Title 32, United States Code, when purchasing special fuel with

228 federal funds for the account of and use by a component of the
229 Armed Forces as herein defined.

230 (m) * * * "Armed Forces" means and includes all
231 components of the Armed Forces of the United States including the
232 Army National Guard, the Army National Guard of the United States,
233 the Air National Guard and the Air National Guard of the United
234 States, as those terms are defined in Section 101, Title 10,
235 United States Code, and any other reserve component of the Armed
236 Forces of the United States enumerated in Section 261, Title 10,
237 United States Code.

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

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

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

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

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

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

260 Environmental Protection Agency or Internal Revenue Service
261 Regulations.

262 (t) "Fuel oil" means a general classification for one
263 of the petroleum fractions produced in conventional distillation
264 operations. For the purposes of this article, "fuel oil" is No.
265 1, No. 2 and No. 4 fuel oils and No. 1, No. 2 and No. 4 diesel
266 fuels.

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

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

271 **SECTION 3.** Section 27-55-529, Mississippi Code of 1972,
272 which authorizes a bonded distributor of special fuel to sell
273 undyed diesel fuel to a consumer for nonhighway use and provides a
274 tax exemption for sales of undyed diesel fuel for nonhighway use,
275 is repealed.

276 **SECTION 4.** This act shall take effect and be in force from
277 and after July 1, 2004.