

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.