

By: Representative Franks

To: Ways and Means

HOUSE BILL NO. 1292

1 AN ACT TO AMEND SECTIONS 27-55-13 AND 27-55-19, MISSISSIPPI
2 CODE OF 1972, TO ELIMINATE THE EVAPORATION, SHRINKAGE AND OTHER
3 NORMAL LOSS DEDUCTION ALLOWED DISTRIBUTORS OF GASOLINE ON THEIR
4 GASOLINE EXCISE TAX LIABILITY; AND FOR RELATED PURPOSES.

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

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

8 27-55-13. For the purpose of determining the amount of his
9 liability for the tax imposed by this article, each bonded
10 distributor of gasoline shall, not later than the twentieth day of
11 the month next following the month in which this article becomes
12 effective, and not later than the twentieth day of each month
13 thereafter, file with the commission a monthly report which shall
14 include a statement of the number of gallons of gasoline or blend
15 stock received by such distributor within this state during the
16 preceding calendar month, and such other information as may be
17 reasonably necessary for the proper administration of this
18 article.

19 At the time of filing each monthly report with the
20 commission, a distributor may take a credit for the number of
21 gallons of gasoline that he purchased during the preceding
22 calendar month from a distributor who pays the excise tax imposed
23 by this article on such gasoline.

24 At the time of filing each monthly report with the
25 commission, each distributor of gasoline shall pay to the
26 commission the full amount of the gasoline tax due from such
27 distributor for the preceding calendar month * * *.

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

34 The monthly report of the distributor of gasoline shall be
35 prepared and filed with the commission on forms prescribed by the
36 commission, or the distributor of gasoline may, with the approval
37 of the commission, furnish the required information on
38 machine-prepared schedules. Such monthly reports or schedules
39 shall be signed by the distributor or his duly authorized agent
40 and shall contain a declaration that the statements contained
41 therein are true and correct and are made under the penalty of
42 perjury.

43 **SECTION 2.** Section 27-55-19, Mississippi Code of 1972, is
44 amended as follows:

45 27-55-19. There shall not be included in the measure of the
46 tax levied hereunder any gasoline:

47 (a) Sold or delivered by a bonded distributor of
48 gasoline to a second bonded distributor of gasoline within this
49 state, but nothing in this exclusion shall exempt the second
50 bonded distributor of gasoline from paying the tax, unless the
51 second bonded distributor of gasoline sells or delivers said
52 gasoline to a third bonded distributor of gasoline in which event
53 the third bonded distributor of gasoline shall be liable for the
54 tax.

55 (b) Sold to the United States government for use of the
56 Armed Forces only, and delivered in quantities of not less than
57 four thousand (4,000) gallons. Any exemption provided in this
58 paragraph (b) may be deducted without the prior approval of the
59 commission, provided that satisfactory proof of such exemption
60 shall be furnished to the commission. However, such exemption may

61 be disallowed by the commission if the distributor fails to
62 furnish satisfactory proof of such exemption to the commission.

63 (c) Exported to a destination beyond the borders of
64 this state by a bonded distributor of gasoline when the tax on
65 such gasoline has been paid or on which the tax liability imposed
66 by this article has accrued against such bonded distributor. Any
67 exemption provided in this paragraph (c) may be deducted without
68 the prior approval of the commission, provided that satisfactory
69 proof of such exemption shall be furnished to the commission;
70 however, such exemption may be disallowed by the commission if the
71 distributor fails to furnish satisfactory proof of such exemption
72 to the commission within ninety (90) days from the sale or
73 delivery of the gasoline.

74 (d) Exported by any person to a destination beyond the
75 borders of this state in quantities of not less than three
76 thousand (3,000) gallons by ship, vessel, barge, railroad tank
77 car, or pipeline, or by tank truck if such tank truck is operated
78 by a common or contract carrier.

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

82 (f) Sold to any manufacturer for blending or
83 compounding to the end that it becomes a component part of any
84 manufactured product, or where used as a processing agent in the
85 treatment of raw material in manufacturing a product which does
86 not fall within the meaning of the term "gasoline" as defined in
87 this article.

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

90 Except as provided in paragraphs (b) and (c) above, evidence
91 of exempt transactions provided in this section and subsections
92 thereof, satisfactory to the commission, shall be submitted by the
93 distributor desiring an allowance of said exemptions to the

94 commission with the payment of the excise tax on the gasoline on
95 which the exemption is claimed. If the commission decides that
96 the distributor is entitled to the exemption and allowance
97 claimed, it shall notify said distributor in writing of such
98 allowance. The distributor shall then be allowed to deduct from
99 the payments made in his next monthly report, after said
100 allowance, the amount of tax which he paid on this exempted
101 gasoline which amount shall be arrived at by multiplying the
102 amount of exempted gasoline * * * by the amount of excise tax per
103 gallon. In cases where the amount of such tax cannot be absorbed
104 on the estimated tax liability of the person making such payments
105 during the next six (6) months, the amount shall be refunded to
106 the taxpayer. Such amount shall be certified to the State Auditor
107 of Public Accounts by the commission. The said Auditor is hereby
108 authorized to make such investigation and audit of the claim as he
109 finds necessary. If he finds that the commission is correct in
110 its determination, the Auditor may issue his warrant to the State
111 Treasurer in favor of the taxpayer for the amount of tax
112 erroneously paid, such refunds to be made from current gasoline,
113 or special fuel tax collections.

114 Except as otherwise provided in this section, in order to
115 claim exemptions provided for under this article, the distributor
116 of gasoline must file claims therefor within three (3) years from
117 the date of sale or delivery; otherwise, claims for such
118 exemptions shall be disallowed.

119 In case gasoline and special fuel on which the tax has been
120 previously paid are accidentally mixed, the distributor of
121 gasoline or other person owning such mixture may ship the mixture
122 out of the State of Mississippi, or to a Mississippi refinery, and
123 may claim credit for the gasoline and/or special fuel tax on the
124 gasoline and special fuel so mixed. The distributor of gasoline
125 or other person may also ship the mixture to a barge or pipeline
126 storage terminal within the State of Mississippi to be brought up

127 to gasoline specifications, or lowered to special fuel
128 specifications, as the case might be, under the supervision of a
129 representative of the commission. It shall be the duty of the
130 distributor of gasoline or other person to whom the mixed product
131 belongs to notify the commission immediately after knowledge that
132 the mixture has occurred.

133 In case the distributor of gasoline or other person elects to
134 ship the mixture to a barge or pipeline terminal for storage
135 within this state, the commission shall supervise the unloading of
136 the mixture.

137 In order to perfect a claim for credit for the tax on the
138 gasoline and special fuel constituting any such mixture, the
139 distributor of gasoline or other person making the claim shall do
140 so in writing and shall furnish proof satisfactory to the
141 commission that the mixture was either shipped out of this state
142 or to a refinery or other approved place of storage within this
143 state. The commission shall notify the claimant, in writing,
144 whether or not his claim is approved, and, if approved, the
145 claimant may deduct the amount of the claim from his next tax
146 report. No such claim shall be allowed unless filed within three
147 (3) years after the date of such accidental mixture. Bonded
148 distributors of gasoline having no gasoline tax liability with the
149 commission may assign such tax credit to a bonded distributor of
150 gasoline having such tax liability.

151 No tax liability shall accrue against the operator of a
152 refinery when shipments of gasoline are made from such refinery,
153 either by common carrier or by tank trucks owned and operated by
154 the operator of said refinery, to a tax-exempt account within this
155 state or to another refinery within this state.

156 Provided, however, that when gasoline is withdrawn from the
157 storage tank of a refiner or processor on which the tax is paid on
158 such gasoline and it or any part thereof cannot be delivered to a
159 purchaser, said refiner or processor may deduct the tax on all or

160 that portion of such gasoline not delivered to a purchaser from
161 its next gasoline distributor's tax report; provided that such
162 refiner or processor submits with such tax report: (1) a written
163 report setting forth the reasons why such delivery could not be
164 made, and (2) proof or evidence satisfactory to the commission
165 that the tax in question had theretofore been paid to the
166 commission, and (3) proof or evidence satisfactory to the
167 commission that the nondelivered gasoline was actually returned to
168 the refinery or processor from which it was taken for the purpose
169 of delivering it to a purchaser; and provided further, that
170 immediately upon ascertainment by the refiner or processor that
171 said gasoline cannot be delivered, he or it shall immediately
172 notify the commission of this fact and before moving his or its
173 truck or other means of transporting said gasoline from the
174 intended point of delivery; and should the commission desire to
175 inspect said truck, or other means of conveyance, such refiner or
176 processor shall arrange for such inspection at the point or at
177 such other point that may be designated by the commission.

178 The United States government, the State of Mississippi,
179 counties, municipalities, school districts and all other political
180 subdivisions of the state shall be exempt from Five and
181 Four-tenths Cents (5.4¢) of the portion of the gasoline excise tax
182 rate which exceeds Nine Cents (9¢) per gallon. Any exemption
183 provided in this paragraph may be deducted without the prior
184 approval of the commission.

185 **SECTION 3.** This act shall take effect and be in force from
186 and after July 1, 2005.