

By: Representative Franks

To: Ways and Means

HOUSE BILL NO. 836

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, 2006.