

By: Representative Watson

To: Ways and Means

## HOUSE BILL NO. 1067

1 AN ACT TO AMEND SECTIONS 27-55-37, 27-55-545, 27-57-25,  
2 27-59-25 AND 27-59-315, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT  
3 THE NOTICE TO THE TAXPAYER THAT TOLLS THE LIMITATION PERIOD ON THE  
4 RECOVERY OF ADDITIONAL TAXES ON GASOLINE, SPECIAL FUEL,  
5 LUBRICATING OIL, LIQUEFIED COMPRESSED GAS, NATURAL GAS, LOCOMOTIVE  
6 FUEL AND COMPRESSED GAS USED FOR CERTAIN PURPOSES MAY BE MADE  
7 EITHER BY CERTIFIED MAIL OR PERSONAL DELIVERY OF THE NOTICE BY AN  
8 AGENT OF THE STATE TAX COMMISSION; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 27-55-37, Mississippi Code of 1972, is  
11 amended as follows:

12 27-55-37. Each distributor of gasoline shall maintain and  
13 keep for a period of three (3) years a record of all gasoline  
14 purchased, received, procured, manufactured, refined, compounded,  
15 used, sold, stored or delivered within this state by the  
16 distributor, together with invoices, bills of lading and other  
17 pertinent records and papers as may be reasonably required by the  
18 commission.

19 It shall be the duty of every person purchasing gasoline from  
20 a distributor of gasoline or other person for the purpose of sale  
21 or distribution to maintain and keep for a period of three (3)  
22 years, a record of all gasoline received, together with delivery  
23 tickets, invoices, bills of lading and such other records as the  
24 commission may require.

25 All sales made by a distributor of gasoline, other than  
26 retail sales from a service station, shall be evidenced in  
27 writing, signed by the seller, or his agents, shall bear the date  
28 of purchases, name and address of the purchaser and the seller,  
29 and shall show the kind and quantity of the product purchased.

30 Sales tickets and invoices made to cash shall not be considered as  
31 complying with the terms of this article.

32 If, in the normal conduct of the business of a distributor of  
33 gasoline, the records of such distributor are maintained and kept  
34 at an office outside this state, it shall be a sufficient  
35 compliance with this section if the records shall be made  
36 available for audit and examination by the commission at such  
37 office located outside Mississippi. If a distributor of gasoline  
38 fails or refuses to permit the commission or any of its employees  
39 to check and audit his records during the usual business hours of  
40 the day, the commission shall have authority to subpoena said  
41 records and have them brought to the office of the commission  
42 within ten (10) days after the subpoena is served on the  
43 distributor of gasoline.

44 All actions by the state for the recovery of additional  
45 amounts claimed as tax due under this article must be commenced  
46 within a period of three (3) years from the date of the filing of  
47 the required report with the commission, provided, that in the  
48 case of a fraudulent or false report with intent to evade tax or  
49 of a failure to file a report, action may be commenced at any  
50 time. However, when an examination of a taxpayer's records to  
51 verify returns made under this chapter has been initiated and the  
52 taxpayer notified thereof either by certified mail or personal  
53 delivery of a notice by an agent of the commissioner, within the  
54 thirty-six-month examination period provided herein, the  
55 determination of the correct tax liability may be made by the  
56 commission after the expiration of said thirty-six-month  
57 examination period, provided that said determination shall be made  
58 with reasonable promptness and diligence.

59 **SECTION 2.** Section 27-55-545, Mississippi Code of 1972, is  
60 amended as follows:

61 27-55-545. Each distributor of special fuel shall maintain  
62 and keep for a period of three (3) years a record of all special

63 fuel purchased, received, procured, manufactured, refined,  
64 compounded, used, sold, stored or delivered within this state by  
65 such distributor, together with invoices, bills of lading, and  
66 other pertinent records and papers as may be reasonably required  
67 by the commission.

68 It shall be the duty of every person purchasing special fuel  
69 from a distributor of special fuel or other person for the purpose  
70 of sale or distribution to maintain and keep for a period of three  
71 (3) years a record of all special fuel received, together with  
72 delivery tickets, invoices, bills of lading and such other records  
73 as the commission may require.

74 All sales made by a distributor of special fuel, other than  
75 retail sales from a service station, shall be evidenced in  
76 writing, signed by the seller, or his agent, shall bear the date  
77 of purchase, name and address of the purchaser and the seller, and  
78 shall show the kind and quantity of the product purchased. Sales  
79 tickets and invoices made to cash shall not be considered as  
80 complying with the terms of this article.

81 If, in the normal conduct of business of a distributor of  
82 special fuel or purchaser, the records of such distributor or  
83 purchaser are maintained and kept at an office outside this state,  
84 it shall be a sufficient compliance with this section if the  
85 records shall be made available for audit and examination by the  
86 commission at such office located outside Mississippi. If a  
87 distributor or purchaser fails or refuses to permit the commission  
88 or any of its employees to check and audit its records during the  
89 usual business hours of the day, the commission shall have  
90 authority to subpoena said records and have them brought to the  
91 office of the commission within ten (10) days after the subpoena  
92 is served on the distributor of special fuel or purchaser.

93 If a distributor of special fuel or purchaser fails to  
94 maintain adequate records, or if an audit of the records of said  
95 distributor or purchaser, or any report filed by him or any other

96 information discloses that taxes are due and unpaid, the  
97 commission shall make assessments of taxes, damages and interest  
98 from any information available, which shall be prima facie  
99 correct.

100 All actions by this state for the recovery of additional  
101 amounts claimed as tax due under this article must be commenced  
102 within a period of three (3) years from the date of the filing of  
103 the required report with the commission, provided that in the case  
104 of a fraudulent or false report with intent to evade tax or of a  
105 failure to file a report, action may be commenced at any time.  
106 However, when an examination of a taxpayer's records to verify  
107 returns made under this article has been initiated and the  
108 taxpayer notified thereof either by certified mail or personal  
109 delivery of a notice by an agent of the commissioner, within the  
110 thirty-six-month examination period provided herein, the  
111 determination of the correct tax liability may be made by the  
112 commission after the expiration of said thirty-six-month  
113 examination period, provided that said determination shall be made  
114 with reasonable promptness and diligence.

115 **SECTION 3.** Section 27-57-25, Mississippi Code of 1972, is  
116 amended as follows:

117 27-57-25. Each distributor shall maintain and keep for a  
118 period of three (3) years a record of all lubricating oil  
119 purchased, received, procured, manufactured, refined, compounded,  
120 used, sold, stored or delivered within this state by such  
121 distributor, together with invoices, bills of lading, and other  
122 pertinent records and papers as may be reasonably required by the  
123 commission. All sales made by a distributor shall be evidenced in  
124 writing, signed by the seller, or their agents, shall bear the  
125 date of purchase, name and address of the purchaser, and the  
126 seller, and shall show the kind and quantity of the product  
127 purchased. Sales tickets and invoices made to cash shall not be  
128 considered as complying with the terms of this article.

129           It shall be the duty of every person purchasing lubricating  
130 oil from a distributor or other person for the purpose of sale or  
131 distribution to maintain and keep for a period of three (3) years  
132 a record of lubricating oil received together with delivery  
133 tickets, invoices, bills of lading and such other records as the  
134 commission shall require.

135           If, in the normal conduct of a distributor's business, the  
136 records of such distributor are maintained and kept at an office  
137 outside the State of Mississippi, it shall be a sufficient  
138 compliance with this section if the records shall be made  
139 available for audit and examination by the commission at such  
140 office located outside Mississippi. If a distributor fails or  
141 refuses to permit the commission or any of its employees to check  
142 and audit his record during the usual business hours of the day,  
143 the commission shall have authority to subpoena the records and  
144 have them brought to the office of the commission within ten (10)  
145 days after the subpoena is served on the distributor.

146           The commission may, after an audit and examination of the  
147 records of a distributor, authorize the disposal of such records,  
148 such authorization to be in writing by the commission after a  
149 request by the distributor.

150           All actions by the state for the recovery of additional  
151 amounts claimed as tax due under this article must be commenced  
152 within a period of three (3) years from the date of the filing of  
153 the required report with the commission, provided, that in the  
154 case of a fraudulent or false report with intent to evade tax or  
155 of a failure to file a report, action may be commenced at any  
156 time. However, when an examination of a taxpayer's records to  
157 verify returns made under this chapter has been initiated and the  
158 taxpayer notified thereof either by certified mail or personal  
159 delivery of a notice by an agent of the commissioner, within the  
160 thirty-six-month examination period provided herein, the  
161 determination of the correct tax liability may be made by the

162 commission after the expiration of said thirty-six-month  
163 examination period, provided that said determination shall be made  
164 with reasonable promptness and diligence.

165 **SECTION 4.** Section 27-59-25, Mississippi Code of 1972, is  
166 amended as follows:

167 27-59-25. Each distributor of compressed gas shall maintain  
168 and keep for a period of three (3) years a record of all  
169 compressed gas received, acquired, manufactured, refined,  
170 purchased, sold or delivered within this state, together with  
171 invoices, bills of lading and other pertinent records and papers  
172 as the commission may deem reasonably necessary for the  
173 administration of this chapter.

174 Any person owning or operating a motor vehicle or motor  
175 vehicles, with a gross license tag weight classification exceeding  
176 ten thousand (10,000) pounds, that use or are capable of using  
177 compressed gas as a motor fuel shall maintain and keep for a  
178 period of three (3) years records from which an accurate  
179 determination of the number of miles traveled in this state and  
180 the quantity of compressed gas purchased and consumed in this  
181 state can be made.

182 If a distributor of compressed gas or the \* \* \* owner or  
183 operator fails to maintain adequate records, or if an audit of the  
184 records of the distributor or owner or operator, or any report  
185 filed by him, or any other information discloses that taxes are  
186 due and unpaid, the commission shall make assessments of taxes,  
187 damages and interest from any information available, which  
188 assessments shall be prima facie correct.

189 If, in the normal conduct of a distributor's or owner's or  
190 operator's business, the records of the distributor, owner or  
191 operator are maintained and kept at an office outside the State of  
192 Mississippi, it shall be a sufficient compliance with this section  
193 if the records shall be made available for audit and examination  
194 by the commission at such office location outside Mississippi. If

195 a distributor, owner or operator fails or refuses to permit the  
196 commission or any of its employees to check and audit his records  
197 during the usual business hours of the day, the commission shall  
198 have authority to subpoena the records and have them brought to  
199 the office of the commission within ten (10) days after the  
200 subpoena is served on the distributor, owner or operator.

201 All actions by the state for the recovery of additional  
202 amounts claimed as tax due under this chapter must be commenced  
203 within a period of three (3) years from the date of the filing of  
204 the required report with the commission, provided that in the case  
205 of fraudulent or false report with intent to evade tax or of a  
206 failure to file a report, action may be commenced at any time.  
207 However, when an examination of a taxpayer's records to verify  
208 returns made under this chapter has been initiated and the  
209 taxpayer notified thereof either by certified mail or personal  
210 delivery of a notice by an agent of the commissioner, within the  
211 thirty-six-month examination period provided herein, the  
212 determination of the correct tax liability may be made by the  
213 commission after the expiration of said thirty-six-month  
214 examination period, provided that the determination shall be made  
215 with reasonable promptness and diligence.

216 **SECTION 5.** Section 27-59-315, Mississippi Code of 1972, is  
217 amended as follows:

218 27-59-315. Each person liable for the tax under this article  
219 shall maintain and keep for a period of not less than three (3)  
220 years records of the quantities of natural gas used, of the  
221 quantities of locomotive fuel used, the total miles traveled by  
222 railroad locomotives, the miles traveled by railroad locomotives  
223 in this state and other \* \* \* information as may be deemed  
224 reasonably necessary for the administration of this article.

225 If, in the normal conduct of business the records of the  
226 permittee are maintained and kept at an office outside this state,  
227 it shall be sufficient compliance with this section if the records

228 shall be made available for audit and examination by the  
229 commission at such office located outside Mississippi. If a  
230 permittee fails or refuses to permit the commission or any of its  
231 employees to verify and audit its records during the usual  
232 business hours of the day, the commission shall have the authority  
233 to subpoena the records and have them brought to the office of the  
234 commission within ten (10) days after the subpoena is served on  
235 the permittee.

236 All actions by the state for the recovery of additional  
237 amounts claimed as tax due under this article must be commenced  
238 within a period of three (3) years from the date of the filing of  
239 the required report with the commission; provided, that in the  
240 case of a fraudulent or false report with intent to evade tax or  
241 of a failure to file a report, action may be commenced at any  
242 time. However, when an examination of a taxpayer's records to  
243 verify returns made under this chapter has been initiated and the  
244 taxpayer notified thereof either by certified mail, or personal  
245 delivery of a notice by an agent of the commissioner, within the  
246 thirty-six (36) months' examination period provided herein, the  
247 determination of the correct tax liability may be made by the  
248 commission after the expiration of the thirty-six-month  
249 examination period, provided that said determination shall be made  
250 with reasonable promptness and diligence.

251 **SECTION 6.** This act shall take effect and be in force from  
252 and after July 1, 2006.