

By: Representative McCoy

To: Ways and Means

HOUSE BILL NO. 757
(As Passed the House)

1 AN ACT TO AMEND SECTION 27-61-9, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE FOR THE ISSUANCE AND REVOCATION OF LICENSES UNDER THE
3 INTERNATIONAL FUEL TAX AGREEMENT; TO AMEND SECTION 27-61-11,
4 MISSISSIPPI CODE OF 1972, TO DESIGNATE WHEN MOTOR CARRIER FUEL TAX
5 REPORTS ARE TIMELY FILED; TO DELETE REFERENCES TO REFUNDS AND
6 CERTAIN ADMINISTRATIVE PROVISIONS; TO AMEND SECTION 27-61-13,
7 MISSISSIPPI CODE OF 1972, TO SPECIFY THE PROCEDURE FOR USE OF
8 CREDITS ON REPORTS FILED UNDER THE INTERNATIONAL FUEL TAX
9 AGREEMENT; TO DELETE REFERENCES TO CREDIT CERTIFICATES AND MINIMUM
10 PURCHASES; TO AMEND SECTION 27-61-15, MISSISSIPPI CODE OF 1972, TO
11 CHANGE THE RECORD RETENTION PERIOD FROM THREE TO FOUR YEARS; TO
12 INCLUDE REFERENCES TO PERSONS LICENSED UNDER THE INTERNATIONAL
13 FUEL TAX AGREEMENT; TO PROVIDE FOR THE ASSESSMENT OF TAXES AND TO
14 PROVIDE A THREE-YEAR LIMITATION PERIOD FOR ASSESSMENT OF TAXES; TO
15 AMEND SECTION 27-61-20, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
16 AN AGREEMENT ENTERED INTO UNDER THE INTERNATIONAL FUEL TAX
17 AGREEMENT WILL NOT RESTRICT THE STATE IN CERTAIN MATTERS AND TO
18 PROVIDE THAT THE STATE TAX COMMISSION MAY PARTICIPATE IN DATA
19 CLEARINGHOUSES FOR THE EXCHANGE OF INFORMATION; TO CODIFY SECTION
20 27-61-31, MISSISSIPPI CODE OF 1972, TO PROVIDE ADMINISTRATIVE
21 PROCEDURES FOR THE ASSESSMENT OF INTEREST AND PENALTIES UNDER THE
22 MOTOR CARRIER FUEL TAX LAWS; TO CODIFY SECTION 27-61-33, TO
23 PROVIDE FOR THE REFUND OF TAXES ERRONEOUSLY COLLECTED UNDER THE
24 MOTOR CARRIER FUEL TAX LAWS; TO CODIFY SECTION 27-61-35,
25 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPEALS OF ACTS AND
26 ORDERS OF THE STATE TAX COMMISSION UNDER THE MOTOR CARRIER FUEL
27 TAX LAWS; AND FOR RELATED PURPOSES.

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

29 SECTION 1. Section 27-61-9, Mississippi Code of 1972, is
30 amended as follows:

31 27-61-9. If the commission approves the application and
32 bond, it shall issue to the applicant an interstate fuel use
33 permit which shall remain valid for the calendar year in which it
34 was issued, to expire on December 31 of that year. All such
35 permits shall be revocable by the commission upon ten (10) days'
36 written notice to the permittee, if the permittee fails or refuses
37 to comply with any of the terms or provisions of this chapter.

38 A renewal permit for the following calendar year will be
39 issued upon application if: the permit has not been revoked or
40 cancelled; all reports have been filed; and all taxes, penalties
41 and interest due have been paid. Any interstate fuel use permit
42 issued under the provisions of this section before March 12, 1993,
43 shall expire on December 31, 1993.

44 If the commission approves an application filed under the
45 provisions of the International Fuel Tax Agreement, it shall issue
46 to the applicant a license and decals for each motor vehicle. The
47 license and decals shall expire on December 31 of each year. The
48 International Fuel Tax Agreement may provide for a grace period
49 for the display of the license and decals. Such license and
50 decals may be revoked by the commission upon ten (10) days written
51 notice to the licensee, if the licensee fails to file reports,
52 fails to pay taxes due or fails to otherwise comply with the
53 provisions of this chapter or the International Fuel Tax
54 Agreement.

55 SECTION 2. Section 27-61-11, Mississippi Code of 1972, is
56 amended as follows:

57 27-61-11. The permittee shall file a quarterly fuel use
58 report for the preceding calendar quarter on or before the last
59 day of the month following each calendar quarter on forms to be
60 prescribed by the commission, or the carriers may, with the
61 approval of the commission, furnish the required information on
62 machine-prepared schedules. Said report shall show any
63 information required by the commission for the administration of
64 this chapter. Such report must be filed even though it may
65 reflect no Mississippi miles for the quarter or accounting period.
66 At the time of filing of each quarterly report, each permittee
67 shall pay to the commission the full amount of the tax due on all
68 fuel used by him in this state at the rate provided for in
69 paragraph (a) of Section 27-61-5 of this chapter. The permittee
70 in determining the fuel used by him in this state for said period

71 may, as to each type of fuel used, determine his average number of
72 miles of motor vehicle travel for a gallon of fuel by the use of
73 the following formula: There shall first be determined the total
74 miles traveled by all motor vehicles operated by permittee using a
75 particular type of fuel; there shall then be determined the total
76 number of gallons of such fuel consumed; the total number of
77 gallons of such fuel consumed shall then be divided into the total
78 number of miles traveled to determine the average number of miles
79 of motor vehicle travel per gallon of fuel used. Proper records
80 supporting these computations shall be maintained for a period of
81 not less than three (3) years and shall be available to the
82 inspection and audit of the commission. Permittee may, however,
83 use any standards established by the commission in determining the
84 motor vehicle travel per gallon of fuel consumed as to any
85 particular type fuel. The permittee, in computing the amount of
86 tax due, may take credit for all payments of the taxes levied in
87 Sections 27-55-11 and 27-59-11, Mississippi Code of 1972, and
88 Sections 27-55-519 and 27-55-521.

89 Reports and payments sent to the commission by mail must be
90 postmarked by the due date in order to be considered timely filed,
91 except when the due date falls on a weekend or holiday, in which
92 case such reports and payments must be postmarked by the first
93 working day following the due date in order to be considered
94 timely filed.

95 SECTION 3. Section 27-61-13, Mississippi Code of 1972, is
96 amended as follows:

97 27-61-13. If the quarterly report filed by any permittee as
98 provided herein shall establish that such permittee has paid a
99 greater amount of tax for such quarter than permittee was liable
100 for under the provisions of this chapter, then the amount of such
101 overpayment may be carried forward and credit therefor taken
102 against subsequent tax liability incurred under the provisions of
103 this chapter, provided such credit is taken on a report filed

104 within three (3) years from the quarter in which such excess tax
105 was paid.

106 If the quarterly report filed by any permittee as provided
107 herein shall establish that such permittee has paid a greater
108 amount of tax for such quarter than permittee was liable for under
109 the provisions of this chapter, then under the following
110 conditions such permittee may obtain a refund for such excess tax
111 paid: Permittee must file with the commission a claim for refund
112 on tax paid to this state on fuel consumed outside the State of
113 Mississippi on forms provided by the commission. Such excess tax
114 refund * * * may be allowed if it is shown that such permittee has
115 paid to another state under lawful requirements of such state a
116 tax, similar in effect to the tax herein provided, on the use or
117 consumption in such state of fuel purchased in Mississippi to the
118 extent of the fuel consumed in said other state at the rate per
119 gallon of the applicable Mississippi tax on fuel as established by
120 this chapter. All such claims must be submitted to the commission
121 within three (3) years from the quarter in which the excess tax
122 was paid, otherwise such claim shall be disallowed. Upon approval
123 of such claim, the commission shall issue a refund to the
124 permittee for the amount of the excess tax paid. * * *

125 Refunds * * * may be withheld when the permittee is in
126 arrears or default to this state for any taxes or has failed to
127 file returns as required by the provisions of the laws
128 administered by the commission.

129 When a report filed by a licensee under the provisions of the
130 International Fuel Tax Agreement indicates a credit for
131 Mississippi due to an overpurchase of fuel in this state, the
132 credit shall first be used to offset the licensee's tax liability
133 in other jurisdictions. After such offset any remaining credit
134 may be carried forward to a future report or may be refunded to
135 the licensee.

136 SECTION 4. Section 27-61-15, Mississippi Code of 1972, is
137 amended as follows:

138 27-61-15. Each permittee, owner or operator liable for tax
139 under this chapter or person licensed under the provisions of the
140 International Fuel Tax Agreement shall maintain and keep for a
141 period of not less than four (4) years such records of all fuel
142 purchases and all fuel used within this state * * * together with
143 invoices, bills of lading, records of distances traveled and other
144 pertinent records as may be required by the commission for the
145 reasonable administration of this chapter or the International
146 Fuel Tax Agreement. The commission shall have the right to
147 examine and inspect, during the usual business hours of the day,
148 all records, books, papers and other documents relating to the tax
149 liability of any such person. In the event such records, books,
150 papers and other documents are not located in this state and
151 available to the commission, then the commission shall have the
152 authority and power to require such owners or operators, or
153 persons licensed under the provisions of the International Fuel
154 Tax Agreement to produce within this state, at such time and place
155 as the commission may designate, all such records, books, papers
156 and other documents or, at the option of the owner or operator, or
157 persons licensed under the provisions of the International Fuel
158 Tax Agreement duly verified copies thereof. Whenever any
159 permittee shall fail or refuse to file any report required by this
160 chapter, or keep and maintain the records required by this
161 chapter, or shall file an incorrect or fraudulent report, or if an
162 audit of the records of such permittee or any other information
163 discloses that taxes are due and unpaid, the commission shall make
164 assessments of taxes, damages and interest which shall be prima
165 facie correct.

166 All actions by this state for the recovery of additional
167 amounts claimed as tax due under this chapter must be commenced
168 within three (3) years from the date of the filing of the report

169 with the commission, provided that in the case of a fraudulent or
170 false report with intent to evade tax or a failure to file a
171 report, action may be commenced at any time. However, when the
172 commission has initiated an examination of a taxpayer's records in
173 order to verify reports under this chapter and the taxpayer has
174 been notified thereof by certified mail within the three-year
175 examination period provided herein, the determination of the
176 correct tax liability may be made after the expiration of the
177 three-year examination period, provided that such determination
178 shall be made with reasonable promptness and diligence.

179 SECTION 5. Section 27-61-20, Mississippi Code of 1972, is
180 amended as follows:

181 27-61-20. The commission, in its discretion, may enter into
182 the International Fuel Tax Agreement in order to permit base state
183 or base jurisdiction licensing of motor carriers subject to the
184 taxes levied in this chapter.

185 An agreement may provide for determining the base state for
186 motor carriers, motor carrier's records requirements, audit
187 procedures, exchange of information, persons eligible for tax
188 licensing; issuing and revoking licenses; defining qualified motor
189 vehicles; determining of and under what conditions bonding is
190 required; specifying reporting requirements and periods,
191 determining methods for collecting and forwarding of motor fuel
192 taxes, interest and penalties to another jurisdiction; and such
193 other provisions as will facilitate the administration of the
194 agreement.

195 An agreement entered into under the provisions of this
196 section shall not restrict the State of Mississippi with regard to
197 determining whether to impose taxes; fixing tax rates; defining
198 tax exemptions or deductions; determining what constitutes taxable
199 events triggering the imposition of taxes or determining any other
200 related matters.

201 As required by the terms of the agreement, the commission may
202 forward to officials of another state any information in the
203 commission's possession regarding the receipt, sale, use,
204 transportation or shipment of motor fuels, distances traveled and
205 routes traveled by any person. The commission may disclose to
206 officers of another state the location of offices, motor vehicles,
207 and other real and personal property of persons subject to the
208 provisions of a compact or agreement.

209 The commission may participate in the International Fuel Tax
210 Agreement Clearinghouse and may place into the clearinghouse any
211 information the commission is required to provide to other member
212 jurisdictions under the International Fuel Tax Agreement. The
213 commission may provide information regarding a licensee's status
214 to the officials or law enforcement officers of the State of
215 Mississippi or any other member jurisdiction who are responsible
216 for the enforcement of motor carrier fuel tax laws. The
217 commission also may place such information into the State On-Line
218 Enforcement Network or any other database used for the enforcement
219 of motor carrier fuel tax laws.

220 An agreement may provide for each state to audit the records
221 of persons based in the state to determine if the motor fuel taxes
222 due each state are properly reported and paid. Each state shall
223 forward the findings of the audits performed on persons based in
224 the state to each state in which the person has taxable use of
225 motor fuels. For persons not based in this state and who have
226 taxable use of motor fuels in this state, the commission, in its
227 discretion, may serve the audit findings received from another
228 state in the form of a proposed assessment of the person as though
229 an audit was conducted by the commission.

230 Any agreement entered into under this section shall not
231 preclude the commission from auditing the records of any person
232 covered by the provisions of this chapter.

233 The commission may adopt rules and regulations for the
234 administration and enforcement of any agreement.

235 The commission is authorized to collect motor fuel taxes,
236 interest and fees due the members of any cooperative compact or
237 agreement entered into under the provisions of this section and to
238 deposit such taxes, interest and fees into a special holding fund
239 until such taxes, interest and fees are properly distributed to
240 the members of the compact or agreement.

241 SECTION 6. The following shall be codified as Section
242 27-61-31, Mississippi Code of 1972:

243 27-61-31. All administrative provisions of the Mississippi
244 Sales Tax Law, including those which fix damages, penalties and
245 interest for nonpayment of taxes, failure to file returns, and for
246 other noncompliance with the provisions of said law, and all other
247 requirements and duties imposed upon taxpayers, shall apply to all
248 persons liable for taxes under the provisions of this chapter, and
249 the commission shall exercise all the power and authority and
250 perform all the duties with respect to taxpayers under this
251 chapter as are provided in said Sales Tax Law, except that in
252 cases of conflict, then the provisions of this chapter shall
253 control.

254 Interest at the rate of one percent (1%) per month, or
255 fraction thereof, may be assessed for the late payment or
256 nonpayment of taxes under this chapter. A penalty of Fifty
257 Dollars (\$50.00) or ten percent (10%) of the tax due, whichever is
258 greater, may be assessed for the failure to file a report, the
259 late payment of taxes or the failure to pay taxes.

260 SECTION 7. The following shall be codified as Section
261 27-61-33, Mississippi Code of 1972:

262 27-61-33. In the event that any taxes or penalties imposed
263 by this chapter have been erroneously or illegally collected from
264 any person, the commission may permit such person to take credit
265 against a subsequent tax report for the amount of the erroneous

266 payment, or the amount may be refunded to the person in the same
267 manner as provided in Section 27-55-19. No refunds shall be made
268 under the provisions of this section unless a written claim is
269 filed setting forth the circumstances by reason of which such
270 refund should be allowed. Such claim shall be in such form as the
271 commission shall prescribe and shall be filed with the commission
272 within three (3) years from the date of payment of the taxes
273 erroneously or illegally collected. Nothing in this chapter shall
274 be construed to prohibit a refund or credit for tax paid on fuel
275 tax reports not subject to tax or which is exempt from tax,
276 provided there has not been a willful disregard of the provisions
277 of this chapter and further provided that the claim is filed
278 within three (3) years.

279 SECTION 8. The following shall be codified as Section
280 27-61-35, Mississippi Code of 1972:

281 27-61-35. A person aggrieved by any order or act of the
282 commission in the administration of this chapter may appeal in the
283 same manner and under the same conditions as provided for appeals
284 from acts or orders of the commission pertaining to gasoline taxes
285 in Section 27-55-41.

286 SECTION 9. Nothing in this act shall affect or defeat any
287 claim, assessment, appeal, suit, right or cause of action for
288 taxes due or accrued under Chapter 61, Title 27, Mississippi Code
289 of 1972, before the date on which this act becomes effective,
290 whether such claims, assessments, appeals, suits or actions have
291 been begun before the date on which this act becomes effective or
292 are begun thereafter; and the provisions of Chapter 61, Title 27,
293 Mississippi Code of 1972, are expressly continued in full force,
294 effect and operation for the purpose of the assessment, collection
295 and enrollment of liens for any taxes due or accrued and the
296 execution of any warrant under such laws before the date on which
297 this act becomes effective, and for the imposition of any

298 penalties, forfeitures or claims for failure to comply with such
299 laws.

300 SECTION 10. This act shall take effect and be in force from
301 and after its passage.