

By: Senator(s) Robertson

To: Finance

SENATE BILL NO. 2887

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 * * *

46 (b) "Aviation gasoline" means gasoline refined or
47 manufactured, according to the specifications for aviation
48 gasoline set forth in ASTM D-910, for exclusive use in
49 reciprocating aviation engines.

50 (c) "Person" means any individual, firm, copartnership,
51 joint venture, association, corporation, estate, trust or any
52 other group or combination acting as a unit, and the plural as
53 well as the singular number unless the intention to give a more
54 limited meaning is disclosed by the context.

55 (d) "Distributor of gasoline" means * * *

56 (i) Any person importing gasoline into this state;

57 (ii) Any person receiving, purchasing, acquiring,
58 using, storing or selling any gasoline in this state on which the
59 gasoline excise tax imposed by this article has not been paid;

60 (iii) Refiners, blenders, marine terminal
61 operators or pipeline terminal operators; and

62 (iv) Any person licensed to sell gasoline in
63 another state or jurisdiction who is authorized by that state or

64 jurisdiction to collect the gasoline excise tax imposed by this
65 article.

66 (e) "Highway" means every way or place, of whatever
67 nature including public roads, toll roads, streets and alleys of
68 this state generally open to the use of the public or to be opened
69 or reopened to the use of the public for the purpose of vehicular
70 travel, and notwithstanding that the same may be temporarily
71 closed for the purpose of construction, reconstruction,
72 maintenance or repair. * * * The confines of a highway shall
73 include the entire width and length of the right-of-way.

74 (f) "Refiner" means every person who manufactures
75 finished petroleum products from crude oil, unfinished oils,
76 natural gas liquids, other hydrocarbons, or alcohol.

77 (g) "Bonded distributor of gasoline" means any person
78 holding a valid gasoline distributor's permit issued by the
79 commission.

80 (h) * * * "For agricultural or maritime purposes" * * *
81 means gasoline used:

82 (i) In operating farm tractors or other farm
83 equipment used exclusively in plowing, planting or harvesting farm
84 products, or in operating boats, and no part of which is used in
85 any motor vehicle or equipment driven or operated upon the public
86 roads, streets or highways of this state; and * * *

87 (ii) As a fuel in a farm tractor using the
88 highways solely in hauling or transporting farm products of the
89 soil from the farm to a gin or market where the title to such
90 products is still in the producer, or in transporting fertilizer
91 or feed to the farm, where the title to such products is still in
92 the user.

93 (i) * * * "For industrial purposes" * * * means
94 gasoline used in engines or motors of stationary or portable type
95 for the purpose of operating machinery used for manufacturing or
96 used for industrial purposes, and no part of which machinery is

97 driven or operated upon the public roads, streets or highways of
98 this state.

99 (j) * * * "For domestic purposes" * * * means gasoline
100 used for any other purpose than agricultural, maritime, industrial
101 or manufacturing, and no part of which is used for operating motor
102 vehicles or motor-propelled machines of any description along the
103 public roads, streets, alleys or highways (as defined in this
104 article) of this state.

105 (k) * * * "For nonhighway purposes" * * * means gasoline
106 gasoline used for any other purpose than agricultural, maritime,
107 industrial, manufacturing or domestic purposes, and no part of
108 which is used for operating motor vehicles or motor-propelled
109 machines of any description along the public roads, streets,
110 alleys or highways (as defined in this article) of this state.

111 (l) * * * "For aviation purposes" * * * means gasoline
112 used for the operation of aircraft.

113 (m) * * * "Refund gasoline" * * * means gasoline used
114 or to be used for agricultural, maritime, industrial,
115 manufacturing, domestic or nonhighway purposes only, as these
116 terms are defined in this article.

117 (n) "Commission" means the State Tax Commission, acting
118 either directly or through its duly authorized officers, agents or
119 employees.

120 (o) * * * "United States government" means and includes
121 all purchasing officers of the Armed Forces of the United States
122 and the United States Property and Fiscal Officer for the State of
123 Mississippi or any other state appointed pursuant to Section 708,
124 Title 32, United States Code, when purchasing gasoline with
125 federal funds for the account of and use by a component of the
126 Armed Forces as herein defined.

127 (p) * * * "Armed Forces" means and includes all
128 components of the Armed Forces of the United States including the
129 Army National Guard, the Army National Guard of the United States,

130 the Air National Guard and the Air National Guard of the United
131 States, as those terms are defined in Section 101, Title 10,
132 United States Code, and any other reserve component of the Armed
133 Forces of the United States enumerated in Section 261, Title 10,
134 United States Code.

135 (q) "Blend stock" means ethanol, methanol or any other
136 products blended with gasoline to produce motor fuel.

137 (r) "Blender" means any person other than a refiner who
138 blends blend stock with gasoline or who sells or distributes blend
139 stock for the purpose of being blended with gasoline.

140 (s) "Racing gasoline" means gasoline manufactured
141 exclusively for use in racing and gasoline containing lead, or
142 having an octane rating of 105 or higher that is not suitable for
143 use on the highways.

144 **SECTION 2.** Section 27-55-505, Mississippi Code of 1972, is
145 amended as follows:

146 27-55-505. The words, terms and phrases as used in this
147 article shall have the following meanings unless the context
148 requires otherwise:

149 (a) "Special fuel" means kerosene, diesel fuel, fuel
150 oils, and any petroleum fuel or any other product other than
151 gasoline or compressed gas which is usable as fuel in an internal
152 combustion engine, and any combustible liquid other than gasoline
153 or compressed gas used or capable of being used as a fuel in
154 aircraft. The term "special fuel" shall not include racing
155 gasoline as defined in Section 27-55-5.

156 (b) "Bunker oil" means a residual product obtained in
157 the refining of crude petroleum intended for use for the
158 generation of heat in a firebox or furnace when its flash point,
159 as determined by use of the Pensky-Martens tester, shall not be
160 less than one hundred fifty (150) degrees Fahrenheit and when its
161 viscosity at one hundred (100) degrees Fahrenheit shall not be

162 less than one hundred fifty (150) seconds when determined by use
163 of the Saybolt Universal Tubes.

164 (c) "Person" means any individual, firm, copartnership,
165 joint venture, association, corporation, estate, trust, or any
166 group or combination acting as a unit, and the plural as well as
167 the singular number unless the intention to give a more limited
168 meaning is disclosed by the context.

169 (d) "Distributor of special fuel" means:

170 (i) Any person importing special fuel into this
171 state;

172 (ii) Any person who shall receive, purchase,
173 acquire, use, store or sell any special fuel in this state on
174 which the excise tax hereinafter imposed by this article has not
175 been paid;

176 (iii) Any person exporting special fuel; * * *

177 (iv) Any person engaged in the distribution of
178 special fuel by tank car or tank truck or both; * * * however, no
179 person may qualify as a distributor of special fuel for the sole
180 purpose of using special fuel, as defined in this article, as a
181 fuel to propel a vehicle or vehicles owned or operated by him on
182 the highways of this state; and * * *

183 (v) All persons meeting the definition of
184 "refiners," "processors," "terminal operator," "blenders" and any
185 person licensed to sell motor fuel in another state or
186 jurisdiction who is authorized by that state or jurisdiction to
187 collect the special fuel excise tax imposed by this article.

188 (e) "Bonded distributor of special fuel" means any
189 person holding a valid distributor of special fuel permit issued
190 by the State Tax Commission.

191 (f) "Refiner" or "processor" means every person who
192 shall receive, produce, manufacture, refine, distill, blend or
193 compound special fuel in this state, when such person shall engage
194 in any business incident to or necessary for refining or

195 processing petroleum products in this state; provided further,
196 that such refiner or processor must have at least two (2)
197 ten-thousand-gallon or larger tanks for product storage, and the
198 blending or mixing process produces a finished product that has
199 entirely different physical and chemical properties from the
200 original products.

201 (g) * * * "For nonhighway purposes" means special fuel
202 which is not used for operating motor vehicles or motor-propelled
203 machines of any description along the public roads, streets,
204 alleys or highways of this state as defined in this article.

205 (h) "Highway" means every way or place of whatever
206 nature, including public roads, toll roads, streets and alleys of
207 this state generally open to the use of the public or to be opened
208 or reopened to the use of the public for the purpose of vehicular
209 travel, and notwithstanding that the same may be temporarily
210 closed for the purpose of construction, reconstruction,
211 maintenance or repair. * * * The confines of a highway shall
212 include the entire width and length of the right-of-way.

213 (i) "Commission" means the State Tax Commission of the
214 State of Mississippi, acting either directly or through its duly
215 authorized officers, agents or employees.

216 (j) "Terminal" means a tank farm within the State of
217 Mississippi with storage capacity for the receipt of a full barge
218 delivery or common carrier pipeline delivery of taxable petroleum
219 products when such products are to be distributed within the
220 state.

221 (k) "Marine dealer" means any person selling special
222 fuel from marine or dockside storage facilities when such special
223 fuel is for use in boats, vessels, barges or ships.

224 (l) * * * "United States government" means and includes
225 all purchasing officers of the Armed Forces of the United States
226 and the United States Property and Fiscal Officer for the State of
227 Mississippi or any other state appointed pursuant to Section 708,

228 Title 32, United States Code, when purchasing special fuel with
229 federal funds for the account of and use by a component of the
230 Armed Forces as herein defined.

231 (m) * * * "Armed Forces" means and includes all
232 components of the Armed Forces of the United States including the
233 Army National Guard, the Army National Guard of the United States,
234 the Air National Guard and the Air National Guard of the United
235 States, as those terms are defined in Section 101, Title 10,
236 United States Code, and any other reserve component of the Armed
237 Forces of the United States enumerated in Section 261, Title 10,
238 United States Code.

239 (n) "Motor vehicle" means every vehicle designed,
240 constructed for or used on the highways of this state which is
241 self-propelled, except a farm tractor using the highways solely in
242 hauling or transporting farm products of the soil from the farm to
243 a gin or market when the title to such products is still in the
244 producer, or a farm tractor used in transporting fertilizer or
245 food to a farm when the title to such products is still in the
246 user.

247 (o) "Consumer" means, in addition to its ordinary
248 meaning, a person who purchases undyed diesel fuel to be used for
249 nonhighway purposes and who does not resell such undyed diesel
250 fuel.

251 (p) "Retail dealer" means any person who operates a
252 retail station.

253 (q) "Dyed diesel fuel" means diesel fuel that is dyed
254 in accordance with United States Environmental Protection Agency
255 or Internal Revenue Service requirements.

256 (r) "Dyed kerosene" means kerosene that is dyed in
257 accordance with United States Environmental Protection Agency or
258 Internal Revenue Service requirements.

259 (s) "Undyed diesel fuel" means diesel fuel that does
260 not meet the dyeing requirements prescribed by United States

261 Environmental Protection Agency or Internal Revenue Service
262 Regulations.

263 (t) "Fuel oil" means a general classification for one
264 of the petroleum fractions produced in conventional distillation
265 operations. For the purposes of this article, "fuel oil" is No.
266 1, No. 2 and No. 4 fuel oils and No. 1, No. 2 and No. 4 diesel
267 fuels.

268 (u) "Blender" shall mean any person who blends or
269 compounds any product to produce special fuel.

270 (v) "Terminal operator" means any person who owns,
271 operates or otherwise controls a terminal.

272 **SECTION 3.** Section 27-55-529, Mississippi Code of 1972,
273 which authorizes a bonded distributor of special fuel to sell
274 undyed diesel fuel to a consumer for nonhighway use and provides a
275 tax exemption for sales of undyed diesel fuel for nonhighway use,
276 is repealed.

277 **SECTION 4.** This act shall take effect and be in force from
278 and after July 1, 2004.