

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.