

1 HB399
2 129223-6
3 By Representatives McCutcheon, Hill, Morrow, Weaver, Ball,
4 Buttram, Johnson (K), Johnson (W), Patterson, Laird, Williams
5 (P), Faust, Baker, Shiver, Treadaway, Jones, Wallace, Beech
6 and Hammon
7 RFD: Transportation, Utilities and Infrastructure
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ENROLLED, An Act,

To revise the motor fuel tax collection and enforcement system; to impose the tax upon the removal or withdrawal of motor fuel from the terminal using the terminal rack and not by bulk transfer, when the supplier would collect the tax from the entity ordering the removal or withdrawal; to impose the tax when motor fuel is imported into the state, other than by bulk transfer; to impose the tax on blended motor fuel at the point motor fuel is blended; would provide for the levy of the tax on certain products and provide for exemptions; would provide for licensing and fees, for returns, disposition of the proceeds of the tax, and penalties for violations; and in this connection would amend Sections 40-1-44, 40-2-10, 40-17-171, 40-17-174, 40-17-220, 40-17-221, and 40-17-223 of the Code of Alabama 1975, and repeal Sections 40-12-190, 40-12-191, 40-12-192, 40-12-193, 40-12-194, 40-12-195, 40-12-196, 40-12-197, 40-12-198, 40-12-199, 40-12-200, 40-12-201, 40-12-202, 40-12-204, 40-12-205, 40-12-206, 40-17-1, 40-17-2, 40-17-5, 40-17-6, 40-17-7, 40-17-8, 40-17-9, 40-17-13, 40-17-14, 40-17-18, 40-17-19, 40-17-20, 40-17-22, 40-17-30, 40-17-31, 40-17-32, 40-17-33, 40-17-34, 40-17-35, 40-17-36, 40-17-37, 40-17-38, 40-17-39, 40-17-40, 40-17-43, 40-17-45, 40-17-49, 40-17-50, 40-17-51, 40-17-52, 40-17-70, 40-17-71, 40-17-72, 40-17-73, 40-17-74,

1 40-17-74.1, 40-17-75, 40-17-76, 40-17-77, 40-17-78, 40-17-79,
2 40-17-80, 40-17-81, 40-17-82, 40-17-120, 40-17-121, 40-17-122,
3 40-17-124, 40-17-125, 40-17-200, 40-17-201, 40-17-203,
4 40-17-222, 40-17-240, 40-17-250, 40-17-290, 40-17-291,
5 40-17-300, 40-17-301, 40-17-302, 40-17-303, 40-17-304,
6 40-17-305, 40-17-306, 40-17-307, and 40-17-308, Code of
7 Alabama 1975; and in connection therewith would have as its
8 purpose or effect the requirement of a new or increased
9 expenditure of local funds within the meaning of Amendment 621
10 of the Constitution of Alabama of 1901, now appearing as
11 Section 111.05 of the Official Recompilation of the
12 Constitution of Alabama of 1901, as amended.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. This act shall be known and may be cited
15 as the "Alabama Terminal Excise Tax Act."

16 Section 2. The intent of this act is to establish an
17 efficient, uniform, motor fuel tax collection and enforcement
18 system, to increase conformity and compatibility with federal
19 motor fuel laws, and to position the state to take advantage
20 of advances in highway enforcement systems and technology in
21 order to more effectively deter motor fuel tax evasion
22 emanating from sources within and without this state.

23 Section 3. As used in this act and unless the
24 context requires otherwise, the following terms have the
25 meaning ascribed herein:

1 (1) AIRCRAFT. Any airplane or helicopter.

2 (2) AVIATION FUEL. Aviation gasoline or aviation jet
3 fuel.

4 (3) AVIATION GASOLINE. Motor fuel designed for use
5 in the operation of aircraft other than jet aircraft, and sold
6 or used for that purpose.

7 (4) AVIATION JET FUEL. Motor fuel designed for use
8 in the operation of jet or turbo-prop aircraft and sold or
9 used for that purpose.

10 (5) BIODIESEL FUEL. Any motor fuel or mixture of
11 motor fuels that is derived, in whole or in part, from
12 agricultural products or animal fats, or the wastes of such
13 products or fats, and is advertised as, offered for sale as,
14 suitable for use or used as motor fuel in a diesel engine.

15 (6) BLENDED FUEL. A mixture composed of gasoline or
16 diesel fuel and any other liquid that can be used as a motor
17 fuel in a highway vehicle.

18 (7) BLENDER. A person who produces blended motor
19 fuel outside the bulk transfer/terminal system.

20 (8) BLENDING. The mixing of one or more petroleum
21 products, with or without another product, regardless of the
22 original character of the product blended, if the product
23 obtained by the blending is capable of use in the generation
24 of power for the propulsion of a motor vehicle, an airplane,
25 or a marine vessel. Blending does not include mixing that

1 occurs in the process of refining by a refiner of crude
2 petroleum and applicable feedstocks and blendstocks, or the
3 blending of products known as lubricating oil in the
4 production of lubricating oils and greases.

5 (9) BULK END USER. A person who receives into his or
6 her own storage facilities, in transport truck lots, taxable
7 motor fuel for his or her own consumption.

8 (10) BULK PLANT. A motor fuel storage and
9 distribution facility that is not a terminal and from which
10 motor fuel may be removed at a rack.

11 (11) BULK TRANSFER. Any transfer of motor fuel from
12 one location to another by pipeline tender or marine delivery
13 within a bulk transfer/terminal system, including, but not
14 limited to, the following:

15 a. The movement of motor fuel from a refinery or
16 terminal to a terminal by marine vessel or barge;

17 b. the movement of motor fuel from a refinery or
18 terminal to a terminal by pipeline;

19 c. the book or in-tank transfer of motor fuel within
20 a terminal between licensed suppliers prior to the completion
21 of removal across the rack; and

22 d. a two-party exchange between licensed suppliers
23 or between licensed suppliers and permissive suppliers.

1 (12) BULK TRANSFER/TERMINAL SYSTEM. The motor fuel
2 distribution system consisting of refineries, pipelines,
3 marine vessels, and terminals.

4 (13) CODE. The Code of Alabama 1975.

5 (14) COMMISSIONER. The Commissioner of the Alabama
6 Department of Revenue.

7 (15) DEPARTMENT. The Alabama Department of Revenue.

8 (16) DESTINATION STATE. The state, territory, or
9 foreign country to which motor fuel is directed for delivery.

10 (17) DIESEL FUEL. Any liquid that is advertised,
11 offered for sale, or sold for use as or used as a motor fuel
12 in a diesel-powered engine. Diesel fuel includes #1 and #2
13 fuel oils, kerosene, special fuels, and blended fuels which
14 contain diesel fuel, but shall not include gasoline or
15 aviation fuel.

16 (18) DISTRIBUTOR. A person who acquires motor fuel
17 from a supplier in this state for subsequent sale.

18 (19) DYED DIESEL FUEL. Diesel fuel that meets the
19 dyeing and marking requirements of Section 4082, Title 26 of
20 the United States Code.

21 (20) EXPORT. Motor fuel obtained in Alabama for sale
22 or other distribution in another state, territory, or foreign
23 country.

24 (21) EXPORTER. A person who exports motor fuel.

1 (22) GASOHOL. A blended motor fuel composed of
2 gasoline and motor fuel grade alcohol.

3 (23) GASOLINE. Any product commonly or commercially
4 known as gasoline, regardless of classification, that is
5 advertised, offered for sale, or sold for use as or used as
6 motor fuel in an internal combustion engine, including gasohol
7 and blended fuel which contains gasoline. Gasoline also
8 includes gasoline blendstocks as defined under Section 4081,
9 Title 26 of the United States Code and the regulations
10 promulgated thereunder. Gasoline does not include special fuel
11 or aviation gasoline sold to a licensed aviation fuel
12 purchaser for use in an aircraft motor.

13 (24) GROSS GALLONS. The total measured product,
14 exclusive of any temperature or pressure adjustments,
15 considerations, or deductions, in U.S. gallons.

16 (25) HIGHWAY. Includes, but is not limited to, every
17 highway, road, street, alley, lane, court, place, trail,
18 drive, bridge, viaduct, or trestle located within this state
19 and laid out or erected by the public or dedicated or
20 abandoned to the public or intended for use by or for the
21 public. The term shall also apply to and include driveways
22 upon the grounds of universities, colleges, schools, and
23 institutions but shall not be deemed to include private
24 driveways, private roads, or private places not intended for
25 use by the public.

1 (26) HIGHWAY VEHICLE. Any self-propelled vehicle
2 that is designed for use on a highway.

3 (27) IMPORT. To bring motor fuel into this state for
4 sale, use, or storage by any means of conveyance other than in
5 the fuel supply tank of a motor vehicle. Motor fuel delivered
6 into this state from out-of-state by or for the seller
7 constitutes an import by the seller. Motor fuel delivered into
8 this state from out-of-state by or for the purchaser
9 constitutes an import by the purchaser.

10 (28) IMPORT VERIFICATION NUMBER. The number assigned
11 by the department or its designee to an individual delivery of
12 motor fuel by a transport truck or by another means of
13 transfer outside the terminal transfer system.

14 (29) IMPORTER. A person who imports motor fuel into
15 this state.

16 (30) IN THIS STATE. The area within the borders of
17 Alabama, including all territory within the borders of Alabama
18 that is owned by the United States of America.

19 (31) LICENSEE. Any person licensed by the department
20 pursuant to Section 13 of this act.

21 (32) LIQUID. Any substance that is liquid above its
22 freezing point and at atmospheric pressure.

23 (33) MOTOR FUEL. Gasoline, blended fuel, aviation
24 fuel, and diesel fuel.

1 (34) MOTOR FUEL TRANSPORTER. A person who transports
2 motor fuel by pipeline or marine vessel, or outside the bulk
3 transfer/terminal system by means of a transport vehicle, or a
4 railroad tank car.

5 (35) MOTOR VEHICLE. Automobiles, motor carriers,
6 motor trucks, motorcycles, and all other vehicles which are
7 operated or propelled by combustion of motor fuel.

8 (36) NET GALLONS. The amount of motor fuel measured
9 in gallons when adjusted to a temperature of 60 degrees
10 Fahrenheit and a pressure of fourteen and seven-tenths pounds
11 pressure per square inch.

12 (37) PERMISSIVE SUPPLIER. An out-of-state supplier
13 that elects, but is not required, to have a supplier's
14 license.

15 (38) PERSON. Any individual, firm, cooperative,
16 association, corporation, limited liability corporation,
17 trust, business trust, syndicate, partnership, limited
18 liability partnership, joint venture, receiver, trustee in
19 bankruptcy, club, society, or other group or combination
20 acting as a unit. Any public body, including, but not limited
21 to, this state, any other state, and any agency, commissioner,
22 institution, political subdivision, or instrumentality of this
23 state or any other state shall be considered a person for the
24 purposes of this act.

1 (39) POSITION HOLDER. The person who holds the motor
2 fuel inventory position in a terminal, as reflected on the
3 records of the terminal operator, including a terminal
4 operator who owns motor fuel in the terminal. A person holds
5 the inventory position in motor fuel when that person has a
6 contract with the terminal operator for the use of storage
7 facilities and terminaling services for motor fuel at the
8 terminal.

9 (40) RACK. A mechanism for delivering motor fuel
10 from a refinery, terminal, marine vessel, or bulk plant into a
11 transport vehicle, railroad tank car, or other means of
12 transfer that is outside the bulk transfer/terminal system.

13 (41) REFINER. Any person who owns, operates, or
14 otherwise controls a refinery.

15 (42) REFINERY. A facility, other than natural gas
16 processing or fractionation plants, used to produce taxable
17 motor fuel from crude oil, unfinished oils, natural gas
18 liquids, or other hydrocarbons and from which taxable motor
19 fuel may be removed by pipeline, by vessel, or at a rack.

20 (43) REMOVAL. Physical transfer other than by
21 evaporation, loss, or destruction. A physical transfer to a
22 transport vehicle or other means of conveyance outside the
23 bulk transfer/terminal system is complete upon delivery into
24 the means of conveyance.

1 (44) RETAILER. A person other than a wholesale
2 distributor that engages in the business of selling or
3 distributing taxable motor fuel to the end user within this
4 state.

5 (45) SHIPPING DOCUMENT. Any invoice, shipping paper,
6 bill of lading, or drop ticket which discloses the destination
7 state.

8 (46) SPECIAL FUEL. Any gas or liquid, other than
9 gasoline, used or suitable for use as motor fuel in an
10 internal combustion engine or motor to propel any form of
11 vehicle, machine, or mechanical contrivance, and includes
12 products commonly known as natural or casing-head gasoline,
13 biodiesel fuel, and transmix. Special fuel does not include
14 any petroleum product or chemical compound such as alcohol,
15 industrial solvent, or lubricant, unless blended in or sold
16 for use as motor fuel in an internal combustion engine.

17 (47) STATE. The State of Alabama.

18 (48) SUPPLIER. A person who is subject to the
19 general taxing jurisdiction of this state and registered under
20 Section 4101 of the Internal Revenue Code for transactions in
21 motor fuel in the bulk transfer/terminal distribution system
22 and who owns motor fuel in the bulk transfer/terminal system,
23 or a person who receives motor fuel in this state pursuant to
24 a two-party exchange. A terminal operator shall not be
25 considered a supplier based solely on the fact that the

1 terminal operator handles motor fuel consigned to it within a
2 terminal.

3 (49) TERMINAL. A motor fuel storage and distribution
4 facility into which motor fuel is supplied by pipeline or
5 marine vessel, and from which motor fuel may be removed at a
6 rack.

7 (50) TERMINAL OPERATOR. A person who owns, operates,
8 or otherwise controls a terminal.

9 (51) TRANSMIX. A mixture of finished fuels that no
10 longer meets the specifications for a fuel that can be used or
11 sold without further processing.

12 (52) TRANSPORT VEHICLE. A vehicle designed or used
13 to carry motor fuel over the highway, including, but not
14 limited to, a straight truck, a straight truck/trailer
15 combination, and a semitrailer combination rig.

16 (53) TRUSTEE. A person who is licensed as a supplier
17 or a permissive supplier and receives tax payments from and on
18 behalf of another pursuant to Section 25 of this act.

19 (54) TWO-PARTY EXCHANGE. A transaction in which
20 motor fuel is transferred from one licensed supplier or
21 permissive supplier to another licensed supplier or permissive
22 supplier pursuant to an exchange agreement; and

23 a. includes a transfer from the person who holds the
24 inventory position in taxable motor fuel in the terminal as
25 reflected on the records of the terminal operator;

1 b. is completed prior to removal of the product from
2 the terminal by the receiving exchange partner; and

3 c. is recorded on the terminal operator's books and
4 records with the receiving exchange partner as the supplier
5 that removes the motor fuel across the terminal rack for
6 purposes of reporting the transaction to this state.

7 (55) UNDYED DIESEL FUEL. Diesel fuel that has not
8 been dyed in accordance with Internal Revenue Service fuel
9 dyeing provisions.

10 Section 4. The commissioner may promulgate rules
11 necessary to effectuate the reporting, collection,
12 administration, and enforcement of the taxes imposed under
13 this act. The commissioner shall prescribe the forms or format
14 for reporting the information required herein.

15 Section 5. The department, upon request from the
16 officials to whom are entrusted the enforcement of the motor
17 fuel laws of any other state, may forward to such officials
18 any information which it may have in its possession relative
19 to the manufacture, receipt, sale, use, transportation, or
20 shipment by any person of motor fuel, subject to the
21 provisions of Section 40-2A-10, Code of Alabama 1975.

22 Section 6. (a) Subject to the exemptions provided
23 for in this act, the tax is imposed on net gallons of motor
24 fuel according to Section 7 at the following rates:

1 (1) Sixteen cents per gallon on gasoline, which is
 2 comprised of a \$.07 excise tax, a supplemental \$.05 excise
 3 tax, and an additional \$.04 excise tax.

4 (2) Nineteen cents per gallon on diesel fuel,
 5 comprised of a \$.13 excise tax and an additional \$.06 excise
 6 tax.

7 (3) Nine and one-half cents per gallon (\$.095) on
 8 aviation gasoline and three and one-half cents per gallon
 9 (\$.035) on aviation jet fuel when ~~either~~ the aviation fuel is
 10 sold to a licensed aviation fuel purchaser. Aviation gasoline
 11 is to be taxed as gasoline and aviation jet fuel is to be
 12 taxed as diesel fuel when not sold to a licensed aviation fuel
 13 purchaser.

14 (b) The motor fuel subject to the excise tax levied
 15 by this section shall not be subject to any other excise tax
 16 levied by this state.

17 However, the payment of the motor fuel excise tax
 18 levied by this section shall not exempt the seller or importer
 19 of fuel from the license fees levied by Section 40-17-174.

20 Section 7. (a) A tax is imposed on the removal
 21 within this state of motor fuel from the terminal using the
 22 terminal rack, other than by bulk transfer. The supplier shall
 23 collect the tax imposed by this act from the person who orders
 24 the withdrawal at the terminal rack.

1 (b) Subject to the provisions of Section 21 of this
2 act, a tax is imposed at the time motor fuel is imported into
3 this state, other than by a bulk transfer, for delivery to a
4 destination in this state. The supplier or permissive supplier
5 shall collect the tax imposed by this act from the person who
6 imports the motor fuel into this state. If the seller is not a
7 supplier or permissive supplier, then the person who imports
8 the motor fuel into this state shall pay the tax.

9 (c) A tax is imposed on the sale or transfer of
10 motor fuel in the bulk transfer/terminal system in this state
11 by a supplier to a person who is not registered under Section
12 4101 of the Internal Revenue Code for transactions in motor
13 fuel in the bulk transfer/terminal distribution system. The
14 supplier shall collect the tax imposed by this act from the
15 person who orders the sale or transfer in the bulk
16 transfer/terminal system.

17 (d) A tax is imposed on the blending of motor fuel
18 at the point blended fuel is made in this state outside the
19 bulk transfer/terminal system. The blender shall pay the tax.
20 The rate of tax owed will be at the rate applicable for
21 gasoline or diesel fuel and will depend on which of these two
22 fuels is used in the blending. The number of gallons of
23 blended fuel on which the tax is imposed is equal to the
24 difference between the number of gallons of blended fuel made

1 and the number of gallons of previously taxed motor fuel used
 2 to make the blended fuel.

3 (e) A terminal operator in this state is considered
 4 a supplier for the purpose of the tax imposed under this act
 5 unless at the time of removal both of the following occur:

6 (1) The terminal operator has a terminal operator's
 7 license issued by the department for the facility from which
 8 the motor fuel is withdrawn.

9 (2) The terminal operator verifies that the person
 10 who removes the motor fuel has a supplier's license.

11 (f) In each subsequent sale of motor fuel on which
 12 the tax has been paid, the amount of the tax shall be added to
 13 the selling price so that the tax is paid ultimately by the
 14 person using or consuming the motor fuel. Motor fuel is
 15 considered to be used when it is delivered into a fuel supply
 16 tank.

17 (g) Motor fuel in a refinery, a pipeline, a
 18 terminal, or a marine vessel transporting motor fuel to a
 19 refinery or terminal is in the bulk transfer/terminal system.
 20 Motor fuel in a motor fuel storage facility including, but not
 21 limited to, a bulk plant that is not part of a refinery or
 22 terminal, in the motor fuel supply tank of any engine or motor
 23 vehicle, or in any tank car, rail car, trailer, truck, or
 24 other equipment suitable for ground transportation is not in
 25 the bulk transfer/terminal system.

1 Section 8. (a) There is hereby annually levied a tax
2 at the rates specified by Section 6 on taxable unaccounted for
3 motor fuel losses at a terminal in this state. For the
4 purposes of this section, taxable unaccounted for motor fuel
5 losses shall mean the number of net gallons of unaccounted for
6 motor fuel losses that exceed one half of one percent of the
7 number of net gallons removed from the terminal during the
8 year by a bulk transfer or at the terminal rack. Unaccounted
9 for motor fuel losses means the difference between: (1) The
10 amount of motor fuel in inventory at the terminal at the
11 beginning of the calendar year plus the amount of motor fuel
12 received by the terminal during the year; and (2) the amount
13 of motor fuel in inventory at the terminal at the end of the
14 calendar year plus the amount of motor fuel removed from the
15 terminal during the year. Accounted for motor fuel losses
16 which have been approved by the department or motor fuel
17 losses constituting part of a transmix shall not constitute
18 unaccounted for motor fuel losses.

19 (b) The terminal operator is liable for the tax
20 levied by this section on unaccounted gallons. Motor fuel
21 received by a terminal operator and not shown on an
22 informational report filed by the terminal operator with the
23 department as having been removed from the terminal is
24 presumed to be unaccounted for motor fuel losses. A terminal
25 operator may rebut this presumption by establishing that motor

1 fuel received at a terminal, but not shown on an informational
2 report as having been removed from the terminal, was an
3 accounted for loss or constitutes part of a transmix.

4 Section 9. (a) The tax levied pursuant to Section 6
5 is levied on all of the following:

6 (1) Dyed diesel fuel that is used to operate a
7 highway vehicle other than dyed diesel fuel used in city and
8 county vehicles.

9 (2) Motor fuel that is used to operate a highway
10 vehicle after an application for a refund of tax paid on the
11 motor fuel is made or allowed on the basis that the motor fuel
12 was used for an off-highway purpose.

13 (3) Aviation gasoline on which a tax was imposed
14 under subdivision (3) of subsection (a) of Section 6 that is
15 used other than for fuel in an aircraft is subject to the tax
16 rate imposed under subdivision (1) of subsection (a) of
17 Section 6.

18 (4) Aviation jet fuel on which a tax was imposed
19 under subdivision (3) of subsection (a) of Section 6 that is
20 used other than for fuel in an aircraft is subject to the tax
21 rate imposed under subdivision (2) of subsection (a) of
22 Section 6.

23 (b) The operator of a highway vehicle that uses
24 untaxed or refunded motor fuel that is taxable under
25 subdivisions (1) and (2) of subsection (a) of this section is

1 liable for the tax. If the highway vehicle that uses the motor
2 fuel is owned by or leased to a motor carrier, the operator of
3 the highway vehicle and the motor carrier are jointly and
4 severally liable for the tax. If the ultimate vendor of motor
5 fuel taxable under this section knew or had reason to know
6 that the motor fuel would be used for a purpose that is
7 taxable under this section, the operator of the highway
8 vehicle and the end seller are jointly and severally liable
9 for the tax.

10 (c) The licensed aviation fuel dealer selling the
11 aviation gasoline or aviation jet fuel that is not used in an
12 aircraft is liable for the tax owed under subdivisions (3) and
13 (4) of subsection (a) of this section.

14 (d) The tax liability levied by this section is in
15 addition to any other penalty imposed pursuant to this act.

16 Section 10. (a) Unless otherwise provided for in
17 this subsection, sales of motor fuel to the following are
18 exempt from the tax levied by subsection (a) of Section 6 and
19 shall not be paid at the rack:

20 (1) All motor fuel exported from this state for
21 which proof of export is available in the form of a terminal
22 issued destination state shipping document that is a. exported
23 by a supplier who is licensed in the destination state or b.
24 is sold by a supplier to a licensed exporter for immediate
25 export to a state for which the applicable destination state

1 motor fuel excise tax has been collected by the supplier who
2 is licensed to remit the tax to the destination state. This
3 exemption shall not apply to any motor fuel which is
4 transported and delivered outside this state in the motor fuel
5 supply tank of a highway vehicle.

6 (2) All sales of dyed diesel fuel.

7 (3) Gasoline blendstocks when sold to a. a licensed
8 supplier or b. a person who will not be using the blendstocks
9 in the manufacture of gasoline or as a motor fuel, as
10 evidenced by the exemption certificate prescribed under
11 regulations promulgated under Section 4081, Title 26 of the
12 United States Code.

13 (4) All motor fuel sold by a licensed supplier or
14 licensed permissive supplier to an exempt agency electing to
15 be licensed under Section 13.

16 (5) Motor fuel that is delivered by a licensed
17 supplier from one terminal to another terminal when ownership
18 in the motor fuel has not changed, or by a licensed supplier
19 from a terminal to a refinery operated by the licensed
20 supplier.

21 (6) Aviation jet fuel sold by a licensed supplier to
22 an air carrier that purchases jet fuel in a Foreign Trade Zone
23 located within this state and uses the jet fuel to propel
24 aircraft powered by jet or turbine engines operated in
25 scheduled all-cargo operations being conducted on

1 international flights or in international commerce. For the
2 purposes of this subdivision, the following words or terms
3 shall be defined and interpreted as follows:

4 a. Air carrier. Any person, firm, corporation, or
5 entity undertaking by any means, directly or indirectly, to
6 provide air transportation.

7 b. All-cargo operations. Any flight conducted by an
8 air carrier for compensation or hire other than a passenger
9 carrying flight, except passengers as specified in Sections
10 121.583 (a) or 135.85 of the Federal Aviation Regulations, as
11 amended.

12 c. International flights. Any air carrier conducting
13 scheduled all-cargo operations between any point within the 50
14 states of the United States and the District of Columbia and
15 any point outside the 50 states of the United States and the
16 District of Columbia, including any interim stops within the
17 United States so long as the ultimate origin or destination of
18 the aircraft is outside the United States and the District of
19 Columbia.

20 d. International commerce. Any air carrier engaged
21 in all-cargo operations transporting goods for compensation or
22 hire on international flights.

23 (b) Having first paid the tax owed under this act, a
24 licensed distributor shall have the right to apply to the
25 department on a monthly basis for a refund of the taxes paid

1 on the gallons sold by that licensed distributor to the exempt
2 agencies listed under subsection ~~(d)~~ (e) of this section,
3 provided the exempt agency has elected to obtain a license
4 under Section 13.

5 (c) Having first paid the tax owed under this act,
6 an exporter shall have the right to apply to the department on
7 a monthly basis for a refund of the taxes paid to this state
8 on the gallons of motor fuel that are ultimately exported by
9 the exporter. The department will require the exporter to
10 provide proof of payment of the applicable destination state
11 excise taxes before issuing a refund.

12 (d) Having first paid the tax owed under this act, a
13 licensed aviation fuel purchaser shall have the right to apply
14 to the department on a monthly basis for a refund of the taxes
15 paid to this state on the gallons of jet fuel sold to an air
16 carrier that purchases jet fuel in a foreign trade zone
17 located within this state and uses the jet fuel to propel
18 aircraft powered by jet or turbine engines operated in
19 scheduled all-cargo operations being conducted on
20 international flights or in international commerce. For the
21 purposes of this subdivision, the following words or terms
22 shall be defined and interpreted as follows:

23 a. Air carrier. Any person, firm, corporation, or
24 entity undertaking by any means, directly or indirectly, to
25 provide air transportation.

1 b. All-cargo operations. Any flight conducted by an
2 air carrier for compensation or hire other than a passenger
3 carrying flight, except passengers as specified in Sections
4 121.583 (a) or 135.85 of the Federal Aviation Regulations, as
5 amended.

6 c. International flights. Any air carrier conducting
7 scheduled all-cargo operations between any point within the 50
8 states of the United States and the District of Columbia and
9 any point outside the 50 states of the United States and the
10 District of Columbia, including any interim stops within the
11 United States so long as the ultimate origin or destination of
12 the aircraft is outside the United States and the District of
13 Columbia.

14 d. International commerce. Any air carrier engaged
15 in all-cargo operations transporting goods for compensation or
16 hire on international flights.

17 (e) Having first paid the tax to its vendor, the
18 following entities shall have the right to apply to the
19 department for a refund on a quarterly basis for any purchases
20 of motor fuel:

21 (1) The United States government or any agency
22 thereof.

23 (2) Any county governing body of this state.

24 (3) Any incorporated municipal governing body of
25 this state.

1 (4) City and county boards of education of this
2 state.

3 (5) The Alabama Institute for Deaf and Blind, the
4 Department of Youth Services school district, and private and
5 church school systems as defined in Section 16-28-1, Code of
6 Alabama 1975, and which offer essentially the same curriculum
7 as offered in grades K-12 in the public schools of this state.

8 (f) If the sale of taxable motor fuel to exempt
9 entities listed in subsection (e) occurs at a fixed retail
10 pump available to the general public and is charged to a
11 credit card issued to the exempt entity, the issuer of the
12 card, having billed the exempt entity without the tax, may
13 apply on a quarterly basis for a refund of the motor fuel
14 excise taxes by submitting the application and supporting
15 documentation as prescribed by the department.

16 (g) Having first paid the tax, the following
17 entities shall have the right to apply to the department for a
18 refund on a quarterly basis for any purchases of jet fuel used
19 to propel aircraft:

20 (1) A licensed air carrier with a hub operation
21 within this state. For the purposes of this subdivision, the
22 words "hub operation within this state" shall be construed to
23 have all of the following criteria:

24 a. There originates from the location 15 or more
25 flight departures and five or more different first-stop

1 destinations five days per week for six or more months during
2 the calendar year; and

3 b. Passengers and/or property are regularly
4 exchanged at the location between flights of the same or a
5 different certificated or licensed air carrier.

6 (h) End users who first pay the tax levied by
7 subdivision (2) of subsection (a) of Section 6 on all gallons
8 of diesel fuel used in designated off-road vehicles, other
9 off-road equipment, or for other off-road use may apply to the
10 department for a refund on a quarterly basis.

11 (i) End users who first pay the tax levied by
12 subdivision (1) of subsection (a) of Section 6 on gallons of
13 gasoline blendstocks not used in the manufacture of gasoline
14 or as a motor fuel may apply to the department for a refund on
15 a quarterly basis.

16 (j) Tax paid on motor fuel that (1) is lost or
17 destroyed as a direct result of a sudden and unexpected
18 casualty, or (2) becomes unsalable or unusable as highway fuel
19 due to such things as the contamination by dye or mixture of
20 gasoline and diesel shall be refundable.

21 (k) Tax paid on transmix not used as a motor fuel or
22 that is delivered to a refinery for further processing shall
23 be refundable, with the person so using the transmix being
24 eligible to file for the refund on a quarterly basis.

1 (1) Tax paid on motor fuel within the bulk transfer
2 system may be refunded upon sufficient proof that (1) a second
3 tax had been paid pursuant to Section 6 or (2) the fuel was
4 exported to another state or country. The party paying the
5 second tax or exporting the fuel may file for a refund on a
6 monthly basis.

7 Section 11. (a) Any person entitled to a refund
8 pursuant to ~~subsection (b), (c), (d), (e), (g), or (h)~~ of Section
9 10 within two years of the date that the motor fuel was
10 purchased shall present to the department a petition
11 accompanied by the original or duplicate original sales slip,
12 invoice, or any other documentation approved by the department
13 showing the gallons of motor fuel purchased and the taxes
14 paid. The petition shall be in a format prescribed by the
15 commissioner, shall be accompanied by supporting records, and
16 sworn to by the applicant under the penalty of perjury.

17 (b) The licensed distributor filing a refund claim
18 pursuant to Section 10(b) shall be eligible for an
19 administrative allowance of two cents (\$.02) on each gallon of
20 gasoline and diesel fuel covered by the claim.

21 (c) The right to receive any refund under the
22 provisions of this section is not assignable and any
23 assignment thereof is void and of no effect.

24 (d) Any applicant for a refund who willfully files
25 an inaccurate petition or false claim for a refund shall be

1 subject to a penalty of 100 percent of the refund claimed,
2 along with interest assessed according to the provisions of
3 Section 40-1-44, Code of Alabama 1975.

4 (e) The department may make any investigation or
5 audit any records considered necessary before refunding to a
6 person the tax levied by Section 6.

7 (f) Persons filing refund petitions in accordance
8 with subsection (e) of Section 10 shall accurately maintain
9 adequate records as required under regulations promulgated by
10 the department in accordance with the provisions of Chapter 22
11 of Title 41, Code of Alabama 1975.

12 (g) Whenever it is determined to the satisfaction of
13 the department that any person is entitled to a refund for
14 taxes paid pursuant to this act, the commissioner shall
15 certify the amount of the refund.

16 Section 12. (a) There is hereby imposed a
17 floor-stocks tax on motor fuel held in inventory outside of
18 the bulk transfer/terminal system on October 1, 2012, if:

19 (1) No tax was imposed on the motor fuel under
20 Sections 40-17-2, 40-17-31, and 40-17-220, Code of Alabama
21 1975, as of September 30, 2012; and

22 (2) The tax would have been imposed on the motor
23 fuel by this act had it been in effect for the periods prior
24 to its effective date.

1 (b) The rate of the tax imposed by this section
2 shall be the amount of tax imposed under Sections 40-17-2,
3 40-17-31, and 40-17-220, Code of Alabama 1975, on September
4 30, 2012.

5 (c) Any person owning motor fuel on October 1, 2012,
6 to which the tax imposed by this section applies, shall be
7 liable for the tax. The tax imposed by this section shall be
8 paid on or before December 31, 2012, and shall be paid in the
9 manner prescribed by the department.

10 Section 13. (a) Each person engaged in business in
11 this state as a supplier shall first obtain a supplier's
12 license. The fee for a supplier's license is two hundred
13 dollars (\$200). A supplier engaged in business in this state
14 will be deemed a permissive supplier with respect to its
15 transactions outside of this state and will have all of the
16 responsibilities and obligations applicable to a permissive
17 supplier as covered in this act.

18 (b) A person who elects to collect the tax imposed
19 by this act as a supplier and who meets the definition of a
20 permissive supplier may obtain a permissive supplier's
21 license. Application for or possession of a permissive
22 supplier's license does not in itself subject the applicant or
23 licensee to the jurisdiction of this state for a purpose other
24 than administration and enforcement of this act.

1 (c) Each terminal operator other than a supplier
2 licensed under subsection (a) engaged in business in this
3 state as a terminal operator shall first obtain a terminal
4 operator's license for each terminal site.

5 (d) The state shall require any exporter, other than
6 a licensed supplier, who exports products to another state to
7 first obtain an exporter's license prior to any exports. The
8 fee for an exporter's license is one hundred dollars (\$100).

9 (e) Each person who is not licensed as a supplier
10 shall obtain a transporter's license before transporting
11 taxable motor fuel by whatever manner whether the person is
12 engaged for hire in interstate commerce or for hire in
13 intrastate commerce. The fee for a transporter's license is
14 fifty dollars (\$50).

15 (f) Each person other than a licensed supplier who
16 wishes to cause motor fuel to be delivered into this state on
17 his or her behalf, for his or her own account, or for resale
18 to a purchaser in this state from another state in a fuel
19 transport truck or railcar shall apply and obtain an
20 importer's license. The fee for an importer's license is one
21 hundred dollars (\$100).

22 (g) Each person other than a licensed supplier who
23 is required to pay the tax imposed by subsection (d) of
24 Section 7 shall obtain a blender's license.

1 (h) Each person other than a licensed supplier who
2 purchases taxable motor fuel for resale within this state from
3 a licensed terminal supplier shall first obtain a
4 distributor's license which is operative for all locations
5 controlled or operated by that licensee in this state or in
6 any other state from which the person removes fuel for
7 delivery and use in Alabama. The fee for a distributor's
8 license is fifty dollars (\$50).

9 (i) Each person, other than a licensed supplier, who
10 desires to purchase aviation fuel at the rate of tax specified
11 under subdivision (3) of subsection (a) of Section 6 must
12 first obtain an aviation fuel purchaser license. The fee for
13 an aviation fuel dealer/consumer license is two hundred
14 dollars (\$200).

15 (j) The United States government or any agency
16 thereof, any county governing body of this state, any
17 incorporated municipal governing body of this state, city and
18 county boards of education of this state, the Alabama
19 Institute for Deaf and Blind and the Department of Youth
20 Services school district, and private and church school
21 systems as defined in Section 16-28-1, Code of Alabama 1975,
22 and which offer essentially the same curriculum as offered in
23 grades K-12 in the public schools of this state may apply for
24 a license to purchase motor fuel on a tax exempt basis. The
25 exempt agency will be responsible for supplying to its motor

1 fuel vendor a copy of the license as issued by the department
2 in support of its tax exempt status.

3 (k) Any person, other than one who possesses a valid
4 Alabama supplier's license, engaged in more than one activity
5 for which a license is required shall obtain a separate
6 license for each activity.

7 (1) All fees collected under this section, except
8 those refunded, shall be paid into the State Treasury to the
9 credit of the State Public Road and Bridge Fund.

10 Section 14. Each application for a license under
11 this act must be made upon a form prescribed by the
12 commissioner and furnished by the department.

13 Section 15. (a) A person may elect to obtain a
14 permissive supplier license to collect the tax levied by
15 Section 6 for motor fuel that is removed at a terminal in
16 another state and has Alabama as the destination state.

17 (b) A licensed permissive supplier removing motor
18 fuel at a terminal located in another state with Alabama as
19 its destination state shall do all of the following:

20 (1) Collect the tax due this state on the motor
21 fuel.

22 (2) Waive any defense that this state lacks
23 jurisdiction to require the supplier to collect the tax due
24 this state on the motor fuel under this act.

1 (3) Report and pay the tax due on the motor fuel in
2 the same manner as if the removal had occurred at a terminal
3 located in Alabama.

4 (4) Keep records of the removal of the motor fuel
5 and submit to audits concerning the motor fuel as if the
6 removal had occurred at a terminal located in Alabama.

7 (c) A licensed permissive supplier acknowledges that
8 this state imposes the requirements listed in subsection (b)
9 under its general police power and submits to the jurisdiction
10 of this state for purposes related to the administration of
11 this act.

12 Section 16. ~~(a) If the application is approved by~~
13 ~~the commissioner, the applicant shall file with the department~~
14 ~~a bond in the approximate sum of twice the average monthly~~
15 ~~excise tax estimated by the commissioner; provided, that in no~~
16 ~~case shall the bond be less than one thousand dollars (\$1,000)~~
17 ~~or more than twenty-five thousand dollars (\$25,000), except as~~
18 ~~otherwise provided in this section. The bond shall be in such~~
19 ~~form and amount as may be approved by the commissioner, shall~~
20 ~~be executed by a surety company licensed and duly authorized~~
21 ~~to do business in Alabama, shall be payable to the State of~~
22 ~~Alabama and shall be conditioned upon the prompt filing of~~
23 ~~true reports, the payment by the applicant to the department~~
24 ~~of any and all excise taxes accrued or accruing on the sale,~~
25 ~~distribution, or withdrawal from storage of gasoline which may~~

1 ~~now or may hereafter be levied or imposed by the State of~~
2 ~~Alabama, together with all penalties and interest thereon and~~
3 ~~generally upon faithful compliance with the provisions of this~~
4 ~~act. In lieu of a guaranty bond, the applicant may post~~
5 ~~Alabama state coupon bonds or United States government coupon~~
6 ~~bonds, under such terms and rules as may be approved by the~~
7 ~~Commissioner of the Department of Revenue.~~

8 (a) upon approval of the application by the
9 department, the applicant shall file with the Department of
10 Revenue a surety bond as herein provided:

11 (1) Except as provided under paragraph (3), the bond
12 amount for an applicant for a license as a supplier,
13 permissive supplier, or terminal operator shall be in the
14 approximate amount of twice the average monthly tax liability,
15 not to exceed two million dollars (\$2,000,000).

16 (2) Except as provided under paragraph (3), the bond
17 amount for an applicant for a license as an exporter, blender,
18 importer, or distributor shall be a minimum of two thousand
19 dollars (\$2,000) or the approximate amount of twice the
20 average monthly tax liability, whichever is greater.

21 (3) The bond for distributors, suppliers, and
22 permissive suppliers who are licensed with the department on
23 the effective date of this act shall remain at the amount that
24 is filed with the department on that date, except as provided
25 under subsection (b), below.

1 (4) For an applicant for a license only as a motor
2 fuel transporter or aviation fuel purchaser, there shall be no
3 bond.

4 (5) Only one bond shall be required of an applicant
5 for multiple licenses. Except as provided under paragraph (3),
6 the bond amount shall be based on the highest average monthly
7 tax liability of the separate licenses, but shall cover all
8 licenses.

9 (b) The commissioner may require an additional
10 surety bond from any licensee if: (1) the commissioner
11 determines that the surety on an existing bond is
12 unsatisfactory; (2) a surety notifies the department that it
13 intends to cancel a bond as provided in subsection (d); or (3)
14 the commissioner, after reviewing the financial condition of
15 the licensee, determines that the existing bond of the
16 licensee is insufficient in an amount to insure the prompt
17 payment of all excise taxes that are due or may become due the
18 state by the licensee upon the sale or withdrawal of motor
19 fuel. However, in no case shall a new or additional bond be
20 more than two months of average excise tax owed by the
21 licensee.

22 (c) The department shall notify a licensee at his or
23 her last known address by first class U.S. mail or, at the
24 option of the department, certified mail, return receipt
25 requested, that it is requiring such new or additional bond

1 for any reason as provided above, and the licensee, within 30
2 days from the date such notice is mailed by the department,
3 shall either (1) file the new or additional bond as requested
4 by the department, or (2) file a notice of appeal with the
5 Administrative Law Division as allowed in Chapter 2A of Title
6 40, Code of Alabama 1975. The department may immediately
7 cancel the licensee's license upon the expiration of the
8 30-day period set out above if the licensee fails to either
9 provide the new or additional bond requested by the department
10 or timely appeal to the Administrative Law Division.

11 (d) Any surety on an existing bond furnished by a
12 licensee may notify the department in writing of its intent to
13 cancel the bond. The department shall immediately notify the
14 licensee of the intent of the surety to cancel and the
15 licensee shall have 30 days from the date the notice is mailed
16 by the department to provide a sufficient replacement bond as
17 requested by the department. The department may immediately
18 cancel the licensee's license upon expiration of the 30-day
19 period set out above if the licensee fails to either provide a
20 new replacement bond as requested by the department or appeal
21 the proposed revocation to the Administrative Law Division
22 within the 30 days as allowed by Chapter 2A of Title 40, Code
23 of Alabama 1975. The surety requesting to be released shall
24 remain liable for any liability already accrued or which shall
25 accrue during the 30-day period set out above, but shall not

1 be responsible for any liability which accrues after the
2 30-day period.

3 (e) A surety providing a bond must be authorized to
4 engage in business within this state. The surety bonds are
5 conditioned upon faithful compliance with the provisions of
6 this act, including the filing of returns and the payment of
7 all tax prescribed herein. The surety bonds shall be approved
8 by the commissioner as to sufficiency and form, and shall
9 indemnify the state against any loss arising from the failure
10 of the licensee to pay, for any cause, the motor fuel excise
11 tax levied by this act.

12 Section 17. (a) The department may refuse to issue a
13 license under this act if the applicant or any principal of
14 the applicant has done any of the following:

15 (1) Had a license or registration issued under prior
16 law or this act canceled by the department for cause.

17 (2) Had a motor fuel license or registration issued
18 by another state canceled for cause.

19 (3) Had a federal certificate of registry issued
20 under Section 4101 of the Internal Revenue Code, or a similar
21 federal authorization, revoked.

22 (4) Been convicted of any offense involving fraud or
23 misrepresentation.

1 (5) Been convicted of any other offense that
 2 indicates that the applicant may not comply with this act if
 3 issued a license.

4 (b) The department may also refuse to issue a
 5 license if the applicant is in arrears to the state for any
 6 taxes or for other good cause shown.

7 (c) Any refusal by the department under this section
 8 to issue a license may be appealed to the administrative law
 9 division under the provisions of Chapter 2A of Title 40.

10 Section 18. Upon approval of the bond required, the
 11 department shall issue to the applicant the appropriate
 12 license or licenses. The license is not transferable and
 13 remains in effect until surrendered or canceled.

14 Section 19. (a) A licensee who discontinues in its
 15 entirety the business for which a license was authorized by
 16 this act shall notify the department in writing at least 10
 17 days prior to the time of the discontinuance, sale, or
 18 transfer takes effect, and shall surrender the license to the
 19 department. The notice shall state the effective date of the
 20 discontinuance and, if the licensee has transferred the
 21 business or otherwise relinquished control to another person
 22 by sale or other means, the date of the sale or transfer and
 23 the name and address of the person to whom the business is
 24 transferred or relinquished. The notice shall also include any
 25 other information required by the department.

1 (b) All taxes for which the licensee is liable under
2 this act but are not yet payable shall be due on the date of
3 the discontinuance. If the licensee has transferred the
4 business to another person and does not give the notice
5 required herein, the person to whom the business was
6 transferred is jointly and severally liable for the amount of
7 any tax owed by the licensee to this state on the date the
8 business was transferred. The liability of the person to whom
9 the business was transferred shall not exceed the value of the
10 property and business acquired from the licensee.

11 Section 20. (a) In accordance with the provisions of
12 Chapter 2A of Title 40, the department may cancel any license
13 required under Section 13, upon written notice sent to the
14 licensee's last known address, as it appears in the
15 department's files, for any of the following reasons:

16 (1) Filing by the licensee of a false report of the
17 data or information required by this act.

18 (2) Failure, refusal, or neglect of the licensee to
19 file a report or to provide any information required by this
20 act.

21 (3) Failure of the licensee to pay the full amount
22 of all excise taxes due or to pay any penalties or interest
23 due.

1 (4) Failure of the licensee to keep accurate records
2 of the quantities of motor fuel received, produced, refined,
3 manufactured, compounded, sold, or used in Alabama.

4 (5) Failure to file a new or additional cash deposit
5 or surety bond upon request of the department pursuant to
6 Section 16 of this act.

7 (6) Conviction of the licensee or a principal of the
8 licensee for any act prohibited under this act.

9 (7) Failure, refusal, or neglect of a licensee to
10 comply with any other provision of this act or any rule
11 promulgated pursuant to this act.

12 (8) Having a motor fuel license or registration
13 issued by another state canceled for cause.

14 (9) For any change in the ownership or control of
15 the business.

16 (b) Upon cancellation of any license for any cause
17 listed above, the tax levied under this act becomes due and
18 payable on all untaxed motor fuel held in storage or otherwise
19 in the possession of the licensee and all motor fuel sold,
20 delivered, or used prior to the cancellation on which the tax
21 has not been paid.

22 (c) The license can be cancelled upon the written
23 request of the licensee.

24 Section 21. (a) Each supplier, importer, blender,
25 permissive supplier, and exporter shall file the monthly

1 return required herein, in a format prescribed by the
2 commissioner, on or before the 22nd day of each calendar month
3 for the preceding month.

4 (b) Other than importers, the tax levied by this act
5 shall be paid to the department by each taxpayer on or before
6 the 22nd day of each calendar month for the preceding month
7 and shall be accompanied by any required returns. The
8 department may require all or certain taxpayers to file tax
9 returns and payments electronically.

10 (c) Importers importing motor fuel from a bulk plant
11 or some other non-terminal storage location shall pay the tax
12 levied by this act to the department on or before the 20th day
13 of each calendar month for the preceding month, and the
14 payment shall be accompanied by any required returns. The
15 department may require all or certain taxpayers to file tax
16 returns and payments electronically.

17 (d) Importers importing motor fuel acquired at an
18 out-of-state terminal from a supplier who has not precollected
19 the tax imposed under Section 6 at the time of such removal
20 shall pay the tax so levied to the department on or before the
21 3rd day following the day of importation, and the payment
22 shall be accompanied by any required returns.

23 (e) A supplier or permissive supplier who timely
24 files a return with the payment due may deduct from the amount
25 of tax payable with the return an administrative discount of

1 one half of one percent (.005) of the amount of tax payable to
2 the state.

3 Section 22. (a) Each distributor or importer shall
4 remit to the supplier or permissive supplier, as applicable,
5 the motor fuel tax levied by Section 6 due on motor fuel
6 removed at a terminal rack. At the election of a licensed
7 distributor or licensed importer, the supplier or permissive
8 supplier may not require the licensed distributor or licensed
9 importer to pay the tax levied by Section 6 earlier than one
10 business day before the date the supplier or permissive
11 supplier is required to pay the tax to this state. An election
12 under this subsection is subject to the condition that
13 remittances by the licensed distributor or licensed importer
14 of all tax due to the supplier or permissive supplier shall be
15 paid by electronic funds transfer. An election under this
16 subsection may be terminated by the supplier or permissive
17 supplier if the licensed distributor or licensed importer does
18 not make timely payments to the supplier or permissive
19 supplier as required by this subsection.

20 (b) A licensed exporter shall remit destination
21 state tax due on motor fuel removed at a terminal rack to the
22 supplier of the motor fuel. If the laws of the destination
23 state prohibit the collection of the destination state's tax,
24 the tax levied by Section 6 shall be collected.

1 (c) All tax payments received by a supplier or
2 permissive supplier shall be held in trust by the supplier or
3 permissive supplier until the supplier or permissive supplier
4 remits the tax payment to this state or to another state, and
5 the supplier or permissive supplier shall constitute the
6 trustee for the tax payments.

7 (d) A licensed distributor or importer that timely
8 pays the tax due a supplier or permissive supplier as required
9 in this section, may deduct from the amount otherwise due to
10 the supplier or permissive supplier a discount of four tenths
11 of one percent (.004) of the amount of tax payable. The
12 discount covers the expense of furnishing a bond and losses
13 due to shrinkage and evaporation. A supplier or permissive
14 supplier may not directly or indirectly deny the discount to a
15 licensed distributor or licensed importer that timely pays the
16 tax due the supplier or permissive supplier as required by
17 this section.

18 Section 23. Every return required to be filed under
19 this act shall be on forms and by means prescribed by the
20 commissioner and furnished by the department and shall contain
21 any information the department considers necessary for the
22 enforcement of this act.

23 Section 24. (a) The supplier or permissive supplier
24 may deduct from the next monthly return those tax payments
25 that were not remitted for the previous month to the supplier

1 or permissive supplier by any licensed distributor or any
2 licensed importer who removed motor fuel on which the tax is
3 due from the supplier's or permissive supplier's terminal. The
4 licensed supplier or permissive supplier is eligible to take
5 this deduction if the licensed supplier or permissive supplier
6 notifies the state within 20 business days after a return is
7 due of any licensed distributor, importer, or exporter who did
8 not pay to the supplier or permissive supplier the tax due
9 this state by the time the supplier or permissive supplier
10 filed the monthly return and if, when a licensed distributor
11 or licensed importer fails to remit the tax to the licensed
12 supplier or permissive supplier, the licensed supplier or
13 permissive supplier is not eligible to take the deduction for
14 any tax payments that accrue after the 20 business day period
15 referenced above for delinquent distributors or importers. The
16 notice shall be transmitted to the state in the form required
17 by the department. If a licensee later pays to a supplier or
18 permissive supplier the tax owed, but the payment occurs after
19 the supplier or permissive supplier has deducted the amount of
20 the tax on a return, the supplier or permissive supplier shall
21 remit the payment to the department with the next monthly
22 return filed subsequent to receipt of the tax.

23 (b) A supplier or permissive supplier who timely
24 files a return with the payment due may deduct, from the
25 amount of tax payable with the return, an administrative

1 discount of one tenth of one percent of the amount of tax
2 payable to this state, not to exceed two thousand dollars
3 (\$2,000) per month.

4 Section 25. (a) All tax payments due to this state
5 that are received by a supplier or permissive supplier shall
6 be held by the supplier or permissive supplier as trustee in
7 trust for this state, and the supplier or permissive supplier
8 has a fiduciary duty to remit to the department the amount of
9 tax received. A supplier or permissive supplier is liable for
10 the taxes paid to it.

11 (b) A supplier or permissive supplier of motor fuel
12 at a terminal shall notify the department within the time
13 period established by the department of any licensed
14 distributors, licensed exporters, or licensed importers who
15 did not pay the tax due when the supplier or permissive
16 supplier filed its return. The notice shall be transmitted in
17 the form required by the department.

18 Section 26. (a) Any importer bringing motor fuel
19 into this state in a transport truck, or by other means
20 outside the terminal transfer system, who has not acquired the
21 fuel from a supplier or permissive supplier who has
22 pre-collected the tax shall be required to obtain an import
23 verification number from the department or its designee prior
24 to the actual importation of that fuel.

1 (b) An importer who knowingly imports taxable motor
2 fuel in a transport truck in violation of the provisions of
3 this act, without either a valid importer's license or
4 supplier's license and either an import verification number or
5 a shipping paper showing on its face that the tax on the fuel
6 is not due shall be subject to a civil penalty of one thousand
7 dollars (\$1,000) for each occurrence, to be multiplied by the
8 sum of the current violation plus prior violations.

9 (c) When obtaining an import verification number an
10 importer is required to show that number on a shipping paper
11 or invoice associated with that specific load.

12 Section 27. (a) A person who is licensed as an
13 exporter shall file monthly returns with the department on
14 forms prescribed and furnished by the department concerning
15 the amount of taxable motor fuel exported from this state.

16 (b) The report must contain all of the following
17 information with respect to motor fuel other than diesel fuel
18 dyed in accordance with the Internal Revenue Code:

19 (1) All shipments of taxable motor fuel removed from
20 a terminal in this state as to which the tax imposed by this
21 act previously was paid or accrued for direct delivery outside
22 of this state by the exporter.

23 (2) All shipments of taxable motor fuel acquired
24 free of this state's motor fuel tax at a terminal in this
25 state for direct delivery outside of Alabama but as to which

1 the destination state's motor fuel tax was paid or accrued to
2 the supplier at the time of removal from the terminal.

3 (3) The gallons delivered to taxing jurisdictions
4 outside this state out of bulk plant storage and whether by
5 transport truck or tank wagon.

6 (4) The name and federal employer identification
7 number of the person receiving the exported taxable motor fuel
8 from the exporter.

9 (5) The date of the shipments.

10 (6) The carrier name and federal employee
11 identification number.

12 (c) The department in addition may require the
13 reporting of other information it considers reasonably
14 necessary to the enforcement of this act.

15 (d) The return shall serve as a claim for a refund
16 for tax paid to this state on exported motor fuel.

17 Section 28. (a) A terminal operator shall file with
18 the department a monthly informational report showing the
19 amount of motor fuel received and removed from the terminal
20 during the month. The report is due by the last day of the
21 month following the month covered by the report. The report
22 shall contain all of the following information and any other
23 information required by the department:

24 (1) The terminal code assigned by the Internal
25 Revenue Service.

1 (2) The beginning and ending inventory which
2 pertains to the applicable reporting month.

3 (3) The number of net gallons of motor fuel received
4 in inventory at the terminal during the month and each
5 position holder for the motor fuel.

6 (4) The number of net gallons of motor fuel removed
7 from inventory at the terminal during the month and, for each
8 removal, the position holder for the motor fuel and the
9 destination state of the motor fuel.

10 (5) The number of net gallons of motor fuel gained
11 or lost at the terminal during the month.

12 (b) Each person operating a terminal in this state
13 shall file an annual report for each terminal within this
14 state on forms provided by the department. The report must be
15 filed for each calendar year on or before January 31 of the
16 following year. This report must include all of the following
17 data:

18 (1) The net amount of monthly net gallons, gains or
19 losses.

20 (2) The total net gallons removed from the terminal
21 in bulk and across the rack during the calendar year and any
22 other information as the department considers reasonably
23 necessary to determine the tax liability of the terminal
24 operator under this article.

1 (3) The amount of tax due calculated pursuant to
2 Section 8.

3 Section 29. (a) A person licensed as a motor fuel
4 transporter in this state shall file a monthly informational
5 report with the department on forms prescribed and furnished
6 by the department concerning the amount of motor fuel received
7 or delivered for import or export by the motor fuel
8 transporter during the month.

9 (b) The report required by this section is due by
10 the last day of the month following the month covered by the
11 report.

12 (c) Any transporter failing to make the reports
13 required by this section shall be subject to a civil penalty
14 of one thousand dollars (\$1,000) for each violation, as
15 reasonably determined by the department.

16 Section 30. (a) Persons violating any provisions of
17 this act may be restrained from distributing, using, or
18 withdrawing from storage any taxable motor fuel, as herein
19 defined, and may be prosecuted in the name of the State of
20 Alabama by the Attorney General or, under his or her
21 direction, by a district attorney or, with the approval of the
22 Governor, an attorney employed by the Department of Revenue
23 until that person has complied with this act.

24 (b) It shall be unlawful for any person to sell for
25 use or to use motor fuel upon which the tax levied by this act

1 has not been paid or the payment assumed by a licensee. Any
2 person who willfully fails to comply with this act, for each
3 failure, shall be subject to a penalty imposed by the
4 department of not less than one hundred dollars (\$100) nor
5 more than ten thousand dollars (\$10,000).

6 Section 31. (a) Each person operating a refinery or
7 terminal in Alabama shall prepare and provide to the driver of
8 every highway vehicle receiving motor fuel at the facility a
9 shipping document setting out on its face the destination
10 state as represented to the terminal operator by the shipper
11 or the shipper's agent. Failure to comply with this subsection
12 may result in a department imposed penalty of not less than
13 five hundred dollars (\$500) nor more than one thousand dollars
14 (\$1,000), to be multiplied by the sum of the current violation
15 plus prior violations of this subsection.

16 (b) Every person transporting motor fuel in Alabama
17 in a highway vehicle other than in its supply tank shall carry
18 on board a shipping document issued by the facility where the
19 motor fuel was obtained. The shipping document shall set out
20 on its face the state of destination of the motor fuel
21 transported in the highway vehicle. Violation of this
22 subsection constitutes a Class A misdemeanor. Failure to
23 comply with this subsection may result in a department imposed
24 penalty of not less than five hundred dollars (\$500) nor more
25 than one thousand dollars (\$1,000), to be multiplied by the

1 sum of the current violation plus prior violations of this
2 subsection.

3 (c) Every person transporting in Alabama motor fuel
4 received from a terminal operator or refiner shall provide the
5 original or a copy of the terminal issued shipping document
6 accompanying the shipment to the operator of the retail outlet
7 to which delivery of the shipment was made. Knowingly
8 violating or knowingly aiding and abetting another person in
9 violating this subsection shall constitute a Class C felony.
10 Failure to comply with this subsection may result in a
11 department imposed penalty of not less than five hundred
12 dollars (\$500) nor more than one thousand dollars (\$1,000), to
13 be multiplied by the sum of the current violation plus prior
14 violations of this subsection.

15 (d) Each operator of a retail outlet shall receive,
16 examine, and retain the shipping document received from the
17 transporter for every shipment of motor fuel that is delivered
18 to each location, and retain the shipping document at the
19 location for not less than 30 days. At the end of 30 days, the
20 shipping document shall be maintained with the required books
21 and records for a period of three years from the date of
22 shipment. Knowingly violating or knowingly aiding and abetting
23 another person in violating this subsection shall constitute a
24 Class C felony. Failure to comply with this subsection may
25 result in a department imposed penalty of not less than five

1 hundred dollars (\$500) nor more than one thousand dollars
2 (\$1,000), to be multiplied by the sum of the current violation
3 plus prior violations of this subsection.

4 (e) No bulk end user, retail dealer, or wholesale
5 distributor shall knowingly accept delivery of motor fuel into
6 storage facilities in Alabama if that delivery is not
7 accompanied by a shipping document that sets out on its face
8 Alabama as the state of destination of the motor fuel.

9 Knowingly violating or knowingly aiding and abetting another
10 person in violating this subsection shall constitute a Class C
11 felony. Failure to comply with the provisions of this
12 subsection may result in a department imposed penalty of not
13 less than five hundred dollars (\$500) nor more than one
14 thousand dollars (\$1,000), to be multiplied by the sum of the
15 current violation plus prior violations of this subsection.

16 (f) The department shall provide for relief in a
17 case where a shipment of motor fuel is legitimately diverted
18 from the represented destination state after the shipping
19 document has been issued by the terminal operator or where the
20 terminal operator failed to cause proper information to be
21 printed on the shipping document. These relief provisions
22 shall include the requirement that the shipper or its agent
23 provide notification as prescribed by the department before
24 the diversion or correction is to occur.

1 (g) A terminal operator or bulk plant operator may
2 rely on the representation made by the purchaser of motor fuel
3 or the purchaser's agent concerning the destination state of
4 the motor fuel. A purchaser is liable for any tax due as a
5 result of the purchaser's diversion of motor fuel from the
6 represented destination state.

7 (h) Every person hauling, transporting, or conveying
8 motor fuel over any of the navigable waters of this state,
9 during the entire time so engaged, must maintain possession of
10 an invoice, bill of sale, or shipping document showing the
11 legal name and physical address of the person from whom motor
12 fuel was received, the legal name and physical address of
13 every person or persons to whom deliveries of motor fuel will
14 be made, and the number of gallons delivered. The person
15 hauling, transporting, or conveying the motor fuel shall, at
16 the request of any person authorized by law to inquire into or
17 investigate these matters, produce and offer for inspection
18 the invoice, bill of sale, or shipping document. Failure to
19 comply shall be prima facie evidence of a violation of this
20 section.

21 (1) No person shall haul, transport, or convey motor
22 fuel in boats or barges over any of the navigable waters of
23 the state except in boats or barges plainly visibly marked on
24 both sides and above the water line thereof with the word
25 "gasoline" or other name of the motor fuel being transported,

1 in letters at least four inches high and of correspondingly
2 appropriate width, together with the legal name and physical
3 address of the owner of the boat or barge in which the
4 gasoline is contained.

5 (2) The provisions of this subsection shall not
6 apply to boats transporting gasoline to be used solely for
7 motive power of the boats.

8 (i) Every motor vehicle being operated by private
9 and for-hire carriers of property must be marked as specified
10 in this section if that vehicle is transporting hazardous
11 materials including gasoline of a kind or quantity that
12 requires the vehicle to be marked or placarded in accordance
13 with Section 177.823 of the Hazardous Materials Regulations of
14 the Department of Transportation and is operating under its
15 own power, either alone or in combination.

16 (1) The marking shall display all of the following
17 information:

18 a. The name or trade name of the private and
19 for-hire carrier operating the vehicle.

20 b. The city or community and state abbreviation in
21 which the carrier maintains its principal office or in which
22 the vehicle is customarily based.

23 c. If the name of a person other than the operating
24 carrier appears on the vehicle, the words "operated by"

1 immediately preceding the information required by this
2 section.

3 d. Other identifying information may be displayed on
4 the vehicle if it is not inconsistent with the information
5 required by this section.

6 (2) The marking must meet all of the following
7 requirements:

8 a. Appear on both sides of the vehicle.

9 b. Be in letters that contrast sharply in color with
10 the background.

11 c. Be readily legible during daylight hours from a
12 distance of 50 feet while the vehicle is stationary.

13 d. Be kept and maintained in a manner that retains
14 the legibility required by this section.

15 e. The marking may consist of a removable device if
16 that device meets the identification and legibility
17 requirements of this act.

18 (j) Willful violation of any of the provisions of
19 subsection (h) or (i) shall constitute a Class C felony.

20 (k) The marking provisions of this section as to the
21 word "gasoline" shall not apply to a vehicle transporting
22 gasoline in the fuel tank supplied by the manufacturer with
23 the vehicle, or carried in an auxiliary fuel tank, connected
24 directly with the carburetor of the vehicle and used
25 exclusively for propelling it, to vehicles transporting

1 gasoline in quantities of not more than five gallons for
2 delivery in response to emergency calls, or to gasoline being
3 transported by common carriers in railroad cars.

4 ~~(1)(1) Officers or employees of the State of~~
5 ~~Alabama, or law enforcement officers of any county or~~
6 ~~municipality in the State of Alabama, upon the presentation of~~
7 ~~appropriate credentials and a written notice to the owner,~~
8 ~~operator, or agent in charge, are authorized to enter any~~
9 ~~place and to conduct inspections.~~

10 (1)(1) The Director of the Department of
11 Transportation may employ qualified employees to enforce the
12 provisions of this section. The employees shall be employed
13 pursuant to the Merit System Act. The employees or agents
14 shall be considered to be and shall be vested with the powers
15 and authority of law enforcement officers, including the power
16 to maintain public order, make arrests for all offenses and
17 investigate the commission or suspected commission of those
18 offenses, and investigate the commission or suspected
19 commission of transportation, public safety, and revenue
20 offenses, including, but not limited to, those offenses
21 regarding gasoline tax and tax on motor fuels or any
22 substitute thereof, licensing and registration of motor
23 vehicles, and violations of Titles 32 and 40, Code of Alabama
24 1975, as amended. Transportation law enforcement officers so
25 designated are authorized to issue or cause to be issued

1 citations, tickets, complaints, subpoenas, and other process
2 so as to commence and direct actions, prosecutions, and
3 proceedings to be instituted to enforce the laws of this state
4 in any county of the State of Alabama. The employees shall be
5 and are hereby constituted peace officers of the State of
6 Alabama provided they comply with the requirements set forth
7 by the Alabama Peace Officers' Standards and Training
8 Commission.

9 (2) Inspections shall be performed in a reasonable
10 manner and at times that are reasonable under the
11 circumstances, taking into consideration the normal business
12 hours of the place to be entered. Inspections may be at any
13 place at which taxable motor fuel is or may be produced or
14 stored or at any inspection site where evidence of activities
15 may be discovered. These places include, but are not limited
16 to, any of the following:

- 17 a. A terminal.
- 18 b. A motor fuel storage facility that is not a
19 terminal.
- 20 c. A retail motor fuel facility.
- 21 d. A state or local highway inspection station,
22 weigh station, agricultural inspection station, mobile
23 station, or other location designated by the commissioner or
24 his or her designated agent to be used as a motor fuel
25 inspection site.

1 (3) Officers or employees of the State of Alabama,
2 or law enforcement officers of any county or municipality in
3 the State of Alabama, may do any of the following:

4 a. Physically inspect, examine, or otherwise search
5 any tank, reservoir, or other container that can or may be
6 used for the production, storage, or transportation of motor
7 fuel, fuel dyes, or fuel markers. Inspection may also be made
8 of any equipment used for, or in connection with, production,
9 storage, or transportation of motor fuel, fuel dyes, or fuel
10 markers. This includes any equipment used for the dyeing or
11 marking of diesel fuel, and shall include the inspection of
12 related shipping documents.

13 b. Detain any vehicle, train, or boat for the
14 purpose of inspecting its fuel tanks and storage tanks.
15 Detainment may continue for any reasonable period of time, not
16 to exceed one hour, necessary to determine the amount and
17 composition of the motor fuel.

18 c. Take and remove samples of motor fuel in
19 reasonable quantities necessary to determine its composition.

20 (4) Penalties.

21 a. Any person refusing to allow an inspection may be
22 penalized one thousand dollars (\$1,000) for each refusal. This
23 penalty is in addition to any other penalties or tax that may
24 be imposed upon that person or any other person liable for
25 motor fuel excise taxes.

1 b. The following acts shall be subject to a civil
2 penalty payable to the Department of Revenue:

3 1. Transporting motor fuel in a railroad tank car or
4 transport truck without a shipping document or with a false or
5 an incomplete shipping document.

6 2. Delivering motor fuel to a destination state
7 other than that shown on the shipping document.

8 c. The penalty imposed under paragraph b. is payable
9 by the person in whose name the conveyance is registered,
10 tagged, or titled, or the lessee if the conveyance is a
11 transport truck. If the conveyance is a railroad tank car, it
12 is payable by the person responsible for the movement of motor
13 fuel in that conveyance. The amount of the penalty shall
14 depend upon the amount of fuel improperly transported or
15 diverted and whether the person against whom the penalty is
16 assessed has previously been assessed a penalty under this
17 subsection. For a first assessment under this subsection, the
18 penalty is twice the amount of excise tax payable on the
19 improperly transported or diverted motor fuel. For a second or
20 subsequent assessment under this subsection, the penalty is
21 the greater of five thousand dollars (\$5,000) or five times
22 the amount of excise tax payable on the improperly transported
23 or diverted motor fuel. The penalty imposed under this
24 subsection shall be in addition to any fuel excise tax
25 assessed.

1 d. It is unlawful to use dyed diesel fuel for
2 highway use, with the exception of a city or county vehicle
3 and those permitted under 26 U.S.C. § 4082. The operation of a
4 motor vehicle on a highway with a supply tank containing dyed
5 diesel fuel, the use of which is unlawful under this section,
6 or the use of other motor fuel on which the tax imposed by the
7 state has not been paid, shall constitute a Class A
8 misdemeanor and may result in a civil penalty. The penalty is
9 payable to the Department of Revenue by the person in whose
10 name the motor vehicle is registered or the driver of the
11 vehicle, or both. The penalty shall be the greater of one
12 thousand dollars (\$1,000) or ten dollars (\$10) per gallon of
13 the motor fuel involved. In the case of repeated violations,
14 the penalty is to be multiplied by the current violation plus
15 prior violations that have been imposed under this section in
16 addition to any fuel tax assessed. A county or municipality
17 shall be entitled to 25 percent of any penalty authorized by
18 this section if law enforcement officers in its employment
19 provide information that leads to the arrest and conviction of
20 any person violating this section or to the assessment and
21 collection of the excise taxes from any person violating this
22 section.

23 Section 32. (a) Any person who engages in any
24 business activity for which a license is required by this act
25 without having first obtained and subsequently retained a

1 valid license shall be subject to the following civil
2 penalties:

3 (1) Ten thousand dollars (\$10,000) for the first
4 violation.

5 (2) For each subsequent violation, the amount is to
6 be multiplied by the sum of the current violation plus prior
7 violations.

8 (b) Civil penalties prescribed under this section
9 shall be assessed, collected, and paid in the same manner as
10 the motor fuel tax.

11 Section 33. (a) Any person who willfully does any of
12 the following is guilty of a misdemeanor and upon conviction
13 thereof shall be fined not less than five thousand dollars
14 (\$5,000) nor more than twenty-five thousand dollars (\$25,000),
15 or imprisoned for not more than one year, or both:

16 (1) Fails to obtain a license as required by this
17 act prior to engaging in an activity for which a license is
18 required.

19 (2) Fails to pay to this state no more than 30 days
20 after the date the tax is due the tax levied by this act.

21 (3) Makes a false statement on an application,
22 return, ticket, invoice, statement, or any other document
23 required under this act.

24 (4) Fails to file no more than 30 days after it is
25 due any return required by this act.

1 (5) Fails to maintain any record required by this
2 act.

3 (6) Makes a false statement in an application for a
4 refund.

5 (7) Fails to make required disclosure of the correct
6 amount of fuel sold or used in this state.

7 (8) Fails to show or give a shipping document as
8 required under this act.

9 (9) Uses, delivers, or sells any aviation fuel for
10 use or intended for use in highway vehicles or watercraft.

11 (10) Interferes with or refuses to permit seizures
12 authorized under Section 32.

13 (11) Delivers motor fuel from a transport vehicle to
14 the fuel supply tank of a highway vehicle.

15 (12) Dispenses into the supply tank of a highway
16 vehicle, watercraft, or aircraft any motor fuel on which tax
17 levied by Section 6 has not been paid.

18 (13) Allows to be dispensed into the supply tank of
19 a highway vehicle, watercraft, or aircraft any motor fuel on
20 which tax levied by Section 6 has not been paid.

21 (14) Purchases motor fuel from an unlicensed
22 distributor, unlicensed importer, or unlicensed supplier.

23 (b) Any person who willfully does any of the
24 following with the intent to either evade or circumvent the
25 tax levied by Section 6 or assists any other person in efforts

1 to evade or circumvent the tax shall be guilty of a felony and
2 upon conviction thereof shall be fined not less than
3 twenty-five thousand dollars (\$25,000) nor more than fifty
4 thousand dollars (\$50,000), or imprisoned in a state
5 correctional facility for not less than one nor more than five
6 years, or both fined and imprisoned:

7 (1) Fails to pay motor fuel taxes and diverts the
8 tax proceeds for other purposes.

9 (2) As a licensee or the agent or representative of
10 a licensee, converts or attempts to convert motor fuel tax
11 proceeds for the use of the licensee or the licensee's agent
12 or representative, with the intent to defraud this state.

13 (3) Collects motor fuel taxes when not authorized or
14 licensed by the department to do so.

15 (4) Imports motor fuel into this state in
16 contravention of this act.

17 (5) Conspires with any other person or persons to
18 engage in an act, plan, or scheme to defraud this state of
19 motor fuel tax proceeds.

20 (6) Alters or attempts to alter the strength or
21 composition of any dye or marker in any dyed diesel fuel
22 intended to be used for a taxable purpose.

23 (7) Fails to remit to the department any tax levied
24 pursuant to this act if the person has added, or represented

1 that he or she has added, the tax to the sales price for the
2 motor fuel and has collected the amount of the tax.

3 (c) Each offense under this section is subject to a
4 separate criminal penalty.

5 Section 34. (a) Upon the discovery of any motor fuel
6 illegally imported into or illegally transported, delivered,
7 stored, or sold in this state, the commissioner shall order
8 the tank or other storage receptacle in which the motor fuel
9 is located to be seized and locked or sealed until the tax,
10 interest, and penalties levied under this act are assessed and
11 paid.

12 (b) If the assessment for the above tax is not paid
13 within 30 days, the commissioner, in addition to the other
14 remedies in this act, may sell the motor fuel and use the
15 proceeds of the sale to satisfy the assessment due, with any
16 excess funds after payment of the assessment and costs of the
17 sale being returned to the owner of the motor fuel.

18 (c) All motor fuel and any property, tangible or
19 intangible, which is found upon the person or in any vehicle
20 which the person is using, including the vehicle itself, to
21 transport or sell illegally transported, delivered, stored,
22 sold, imported, or acquired motor fuel, and any property found
23 in the immediate vicinity, including motor vehicles, tanks,
24 and other storage devices, used to aid in the illegal

1 transportation or sale of motor fuel, shall be considered
2 contraband and shall be forfeited to this state.

3 Section 35. Each person required to be licensed
4 under Section 13 and each bulk user and retailer shall keep
5 and maintain all records pertaining to motor fuel received,
6 produced, manufactured, refined, compounded, used, sold, or
7 delivered, together with delivery tickets, invoices, bills of
8 lading, and other pertinent records and papers required by the
9 department for the reasonable administration of this act, for
10 a period of no less than three years.

11 Section 36. (a) A person who refuses to permit an
12 inspection or audit authorized by this act is subject to a
13 civil penalty of five thousand dollars (\$5,000) in addition to
14 any penalty imposed by other provisions of this act.

15 (b) A person who refuses, for the purpose of evading
16 tax, to allow an inspection, in addition to being liable for
17 other penalties imposed by this act, is guilty of a felony and
18 upon conviction shall be fined not more than ten thousand
19 dollars (\$10,000) or imprisoned not more than three years, or
20 both.

21 Section 37. A notice stating: "DYED DIESEL FUEL,
22 NON-HIGHWAY USE ONLY, PENALTY FOR HIGHWAY USE" or a similar
23 phrase that clearly indicates that the diesel fuel is not to
24 be used to operate a highway vehicle shall be provided or
25 posted in all of the following circumstances:

1 (1) By the terminal operator to a person who
 2 receives dyed diesel fuel at a terminal rack of that terminal
 3 operator.

4 (2) By a seller of dyed diesel fuel to its buyer if
 5 the diesel fuel is located outside the bulk transfer/terminal
 6 system and is not sold from a retail pump or bulk plant posted
 7 in accordance with the requirements of subsection (3).

8 (3) By a seller on a retail pump or bulk plant where
 9 it sells dyed diesel fuel for use by its buyer.

10 (4) By the time of the removal or sale appears on
 11 shipping documents, bills of lading, and invoices accompanying
 12 the sale or removal of the dyed diesel fuel.

13 Section 38. Upon the effective date of this act, no
 14 city or town may levy or impose a new or additional excise or
 15 license tax on the sale, distribution, storage, use, or
 16 consumption of gasoline or any substitute therefor which is
 17 consumed as aviation fuel, as defined under subdivision (3) of
 18 Section 3. Any ordinance enacted or adopted contrary to the
 19 provisions of this section shall be null and void.

20 Section 39. All municipalities and all counties
 21 currently levying an excise or privilege license tax upon the
 22 sale, use, or consumption, distribution, storage, or
 23 withdrawal from storage of gasoline or motor fuel may require
 24 that where the tax has been paid to the municipality or county
 25 by a distributor, refiner, or by any retail dealer, storer, or

1 user, such payment shall be sufficient, the intent being that
2 the tax shall be borne by the consumer and paid to the
3 municipality or county but once.

4 Section 40. (a) For the purpose of this section, the
5 following terms shall have the meanings ascribed below:

6 (1) BASE ANNUAL COUNTY DISTRIBUTION. Five hundred
7 fifty thousand dollars (\$550,000).

8 (2) COST OF COLLECTION. The amounts from the
9 proceeds of the highway gasoline tax that may be appropriated
10 by the Legislature to the department for its operating
11 expenses.

12 (3) COUNTY. Each county in the state.

13 (4) FISCAL YEAR. The fiscal year of the state.

14 (5) DEPARTMENT OF TRANSPORTATION. The Department of
15 Transportation of the state.

16 (6) HIGHWAY GASOLINE TAX. Both of the following:

17 a. The excise tax levied under subdivision (1) of
18 subsection (a) of Section 6, with the exception of those
19 portions of the tax levied on aviation fuel and marine
20 gasoline.

21 b. The excise tax levied by Sections 40-17-140 to
22 40-17-155, inclusive, Code of Alabama 1975, except that
23 portion of the tax imposed on diesel fuel.

1 (7) LOCAL SUBDIVISIONS' SHARES OF THE NET TAX
 2 PROCEEDS. The 55 percent of the net tax proceeds referred to
 3 in the first sentence of subsection (d).

4 (8) MUNICIPALITY. An incorporated city or town in
 5 the state.

6 (9) NET TAX PROCEEDS. The entire proceeds from the
 7 highway gasoline tax, except the proceeds from the
 8 supplemental excise tax of five cents (\$.05) per gallon and
 9 additional four cents (\$.04) imposed by subdivision (1) of
 10 subsection (a) of Section 6, less the cost of collection and
 11 less any refunds pursuant to the provisions of this act.

12 (10) STATE. The State of Alabama.

13 (11) STATE'S SHARE OF THE NET TAX PROCEEDS. The 45
 14 percent of the net tax proceeds referred to in the first
 15 sentence of subsection (c).

16 (12) PUBLIC HIGHWAY. Every highway, road, street,
 17 alley, lane, court, place, trail, drive, bridge, viaduct, or
 18 trestle located either within a municipality or in
 19 unincorporated territory and laid out or erected by the public
 20 or dedicated or abandoned to the public or intended for use by
 21 or for the public. The term "public highway" shall apply to
 22 and include driveways upon the grounds of universities,
 23 colleges, schools, and institutions but shall not be deemed to
 24 include private driveways, private roads, or private places
 25 not intended for use by the public.

1 (13) SUPPLEMENTAL NET TAX PROCEEDS. That portion of
2 the highway gasoline tax remaining after the net tax proceeds
3 and additional four cents (\$.04) and applicable costs of
4 collection and refunds have been deducted, less the cost of
5 collection and less any refunds of the highway gasoline tax
6 applicable to the supplemental gasoline excise tax imposed in
7 subdivision (1) of subsection (a) of Section 6.

8 The foregoing definitions shall be deemed applicable
9 whether terms defined are used in the singular or plural.

10 (b) The revenue, less the cost of collection and
11 refunds authorized by law, from the seven cents (\$.07) excise
12 tax and the supplemental excise tax of five cents (\$.05) per
13 gallon on gasoline, shall not be used for any purposes other
14 than the following:

15 (1) The Legislature hereby finds as a fact that of
16 all the gasoline sold in this state not less than one and
17 twenty-three hundredths percent thereof is used for marine
18 purposes to propel vessels on inland and coastal waterways of
19 this state. The Legislature hereby declares that it is the
20 policy of this state to use the funds derived pursuant to this
21 section from the sale of marine gasoline to provide for the
22 programs and activities of the Marine Police, Marine
23 Resources, and Wildlife and Freshwater Fisheries Divisions of
24 the Department of Conservation and Natural Resources in this
25 state as follows:

1 a. Thirty-five one hundredths of one percent of all
2 state imposed taxes collected pursuant to this ~~section~~
3 subsection on the sale of gasoline, except gasoline and other
4 fuels consumed in airplanes, shall be credited as follows: 60
5 percent to the State Water Safety Fund of the Marine Police
6 Division and 40 percent to the Seafood Fund of the Marine
7 Resources Division.

8 b. An amount equal to seventy-one hundredths of one
9 percent of all state-imposed taxes levied pursuant to this
10 ~~section~~ subsection and collected on the sale of gasoline,
11 except gasoline and other fuels consumed in airplanes, and
12 which would otherwise be credited to the Public Road and
13 Bridge Fund pursuant to this section shall be credited to the
14 Game and Fish Fund of the Division of Wildlife and Freshwater
15 Fisheries. Provided, however, that the above credit to the
16 Game and Fish Fund shall not diminish the allocations provided
17 by subsection (d).

18 c. An amount equal to eighteen one hundredths of one
19 percent of all state-imposed taxes levied pursuant to this
20 ~~section~~ subsection and collected on the sale of gasoline,
21 except gasoline and other fuels consumed in airplanes, and
22 which would otherwise be credited to the Public Road and
23 Bridge Fund pursuant to this section shall be credited as
24 follows: 60 percent to the State Water Safety Fund of the
25 Marine Police Division and 40 percent to the Seafood Fund of

1 the Marine Resources Division. Provided, however, that this
2 additional credit to the State Water Safety Fund and Seafood
3 Fund shall not diminish the allocations provided by subsection
4 (d).

5 (2) The revenue arising from the sale of gasoline as
6 herein defined, except gasoline sold for use as fuel to propel
7 aircraft and which gasoline is subject to the tax imposed in
8 subdivision (3) of subsection (a) of Section 6, and except for
9 revenues from the supplemental net tax proceeds, for all other
10 purposes shall not be used for any purpose other than for the
11 construction, improvement, maintenance, and supervision of
12 highways, bridges, and streets, including the retirement of
13 bonds for the payment of which such revenues have been or may
14 hereafter be pledged. The payment of the per diem and mileage
15 of members of county governing bodies when engaged in
16 supervising the construction, improvement, and maintenance of
17 highways, bridges, and streets shall be construed as used in
18 supervision. The governing body of each county may expend an
19 amount not to exceed one third of the total amount of such
20 revenue that may be received by such county in the payment of
21 any debt that may have been incurred by such county for the
22 construction or maintenance of roads or bridges. This fund
23 shall be allocated in the manner now provided by law. On the
24 20th day of each month following that quarter of any fiscal
25 year, all revenue derived from the sale of gasoline to be

1 consumed in the motor of a boat or vessel as defined in
2 subdivision (1) shall be allocated to the State Water Safety
3 Fund, Seafood Fund, and Game and Fish Fund.

4 (c) Distribution of forty-five percent of net tax
5 proceeds shall be distributed as follows:

6 (1) Forty-five percent of the net tax proceeds are
7 hereby allocated and appropriated for state highway purposes
8 and as the state's share of the net tax proceeds to be covered
9 into the State Treasury to the credit of the Public Road and
10 Bridge Fund and to be disbursed as hereinafter provided in
11 this section.

12 (2) A portion of the state's share of the net tax
13 proceeds that is equal in amount to two sevenths (equivalent
14 to six twenty-firsts) of the net tax proceeds shall be
15 disbursed, to pay at their respective maturities the principal
16 of and interest on the bonds issued prior to March 1, 1967, by
17 the Alabama Highway Authority, a public corporation organized
18 and existing under the provisions of Sections 23-1-150 to
19 23-1-160, inclusive, Code of Alabama 1975, in the order in
20 which the two sevenths of the net tax proceeds were pledged
21 for the bonds.

22 (3) A portion of the state's share of the net tax
23 proceeds that is equal in amount to two twenty-firsts of the
24 net tax proceeds shall be disbursed to pay at their respective
25 maturities the principal of and interest on the bonds issued

1 prior to March 1, 1967, by the Alabama Highway Authority, in
2 the order in which the two twenty-firsts of the net tax
3 proceeds were pledged for the bonds.

4 (4) A portion of the state's share of the net tax
5 proceeds that is equal in amount to one twenty-first of the
6 net tax proceeds shall be disbursed to pay at their respective
7 maturities the principal of and interest on the bonds issued
8 by the Alabama Highway Authority after March 1, 1959, and
9 prior to March 1, 1967, in the order in which the one
10 twenty-first of the net tax proceeds was pledged for the
11 bonds.

12 (5) The residue of the state's share of the net tax
13 proceeds remaining after provision shall have been made out of
14 the aforesaid nine twenty-firsts of the net tax proceeds for
15 payment of the obligations referred to in the foregoing
16 subdivisions (2), (3), and (4) shall be disbursed for the
17 following purposes, in the following order and to the extent
18 necessary:

19 a. For payment at their respective maturities of the
20 principal of and interest on bonds, other than refunding
21 bonds, issued by the Alabama Highway Authority under the
22 provisions of Act No. 225, 1967 Special Session (Acts 1967, p.
23 302), to the extent that the portion of the motor vehicle
24 license taxes and registration fees provided in Section
25 40-12-270, Code of Alabama 1975, to be used for the payment of

1 the principal of and interest on the bonds, other than
2 refunding bonds, issued by the Alabama Highway Authority under
3 the provisions of Act No. 225, should be insufficient to pay
4 the principal and interest at their respective maturities.

5 b. For payment at their respective maturities of the
6 principal of and interest on the bonds, other than refunding
7 bonds, issued by the Alabama Highway Authority under the
8 provisions of Act No. 781, 1969 Regular Session (Acts 1969, p.
9 1398), to the extent that the portion of the motor vehicle
10 license taxes and registration fees provided in Section
11 40-12-270, Code of Alabama 1975, to be used for the payment of
12 the principal of and interest on the bonds, other than
13 refunding bonds, issued by the Alabama Highway Authority under
14 the provisions of Act No. 781, should be insufficient to pay
15 the principal and interest at their respective maturities.

16 c. For payment at their respective maturities of the
17 principal of and interest on the bonds, other than refunding
18 bonds, issued by the Alabama Highway Authority under the
19 provisions of Act No. 1416, 1971 Regular Session (Acts 1971,
20 p. 2412), to the extent that the portion of the motor vehicle
21 license taxes and registration fees provided in Section
22 40-12-270, Code of Alabama 1975, to be used for the payment of
23 the principal of and interest on the bonds, other than
24 refunding bonds, issued by the Alabama Highway Authority under

1 the provisions of Act No. 1416, should be insufficient to pay
2 the principal and interest at their respective maturities.

3 d. For payment at their respective maturities of the
4 principal of and interest on any bonds or other obligations,
5 including refunding obligations, issued after December 1,
6 1977, by a public corporation existing at the time of issuance
7 under the laws of the state pursuant to then existing
8 statutory authorization, or by the state pursuant to then
9 existing authorization, effective at the time of issuance,
10 under the constitution and laws of the state, and for which
11 the aforesaid residue, referred to in this subdivision, of the
12 state's share of the net tax proceeds shall have been
13 appropriated and pledged in a then effective statute or
14 constitutional provision (including any enabling act under a
15 constitutional provision) under which the bonds may be issued,
16 all in the manner and to the extent and subject to the
17 priorities in rank as may be provided in a statute or
18 constitutional provision or in any authorizing resolution
19 thereunder.

20 e. For allocation on September 30 of each fiscal
21 year to each county to which allocation shall have been made
22 under the provisions of subsection (d), during that fiscal
23 year less than the base annual county distribution, which,
24 when added to the amounts so allocated to that county under

1 subsection (d), will equal the base annual county
2 distribution.

3 (6) The state's share of the net tax proceeds paid
4 into the Public Road and Bridge Fund and not required for any
5 of the purposes referred to in any of the foregoing
6 subdivisions (2), (3), (4), and (5) may be withdrawn by the
7 Department of Transportation and used by it for highway
8 purposes.

9 (d) Fifty-five percent of net tax proceeds shall be
10 distributed as follows:

11 (1) Fifty-five percent of the net tax proceeds are
12 hereby allocated and appropriated to be used for highway
13 purposes by the counties and municipalities to be covered into
14 the State Treasury and shall be disbursed and allocated as
15 hereinafter provided in this section.

16 (2) A portion of the local subdivisions' shares of
17 the net tax proceeds that is equal to 25 percent of the net
18 tax proceeds shall be allocated equally among the 67 counties
19 of the state.

20 (3) The entire residue of the local subdivisions'
21 shares of the net tax proceeds, being an amount equal to 30
22 percent of the net tax proceeds less any amount paid pursuant
23 to the contingent appropriation in subdivision (2), shall be
24 allocated among the 67 counties of the state on the basis of
25 the ratio of the population of each county to the total

1 population of the state according to the then next preceding
2 federal decennial census, or any special federal census
3 heretofore held in any county subsequent to the effective date
4 of the 1960 Federal Decennial Census. The allocation provided
5 for in this subdivision shall be made on or prior to the tenth
6 day of each month with respect to receipts of the highway
7 gasoline tax by the state during the preceding month.

8 (e) (1) The amounts allocated or apportioned to each
9 county pursuant to each of subsections (c) and (d) shall be
10 disposed of as follows:

11 a. Ten percent of the amount so allocated or
12 apportioned to each county shall be distributed among the
13 municipalities in the county with respect to which the
14 allocation or apportionment is made; each distribution among
15 the municipalities shall be made on the basis of the ratio of
16 the population of each municipality to the total population of
17 all municipalities in the applicable county according to the
18 then next preceding federal decennial census.

19 b. The remaining portion of the amount so allocated
20 or apportioned to each county shall be distributed to the
21 county with respect to which the allocation or apportionment
22 is made. The distributions provided for in this subsection
23 shall be made monthly.

24 (2) The population of any municipality incorporated
25 subsequent to the taking of the then next preceding federal

1 decennial census shall be deemed to be the population shown by
2 the census for that municipality taken pursuant to the
3 requirements of Section 11-41-4, Code of Alabama 1975. Any
4 municipality incorporated after September 30, 1967, shall not
5 participate in the distribution provided for in this section
6 until the fiscal year next succeeding the fiscal year during
7 which it is incorporated, the first distribution to the
8 municipality to be made from the receipts of the highway
9 gasoline tax by the state during October of the fiscal year
10 next succeeding its incorporation.

11 (3) When requested to do so by any municipality, the
12 Department of Transportation may make available the services
13 and advice of its engineers and other employees with respect
14 to any work for which that municipality proposes to expend
15 moneys distributed to it under this section. Any services and
16 advice that may be made available shall be provided under the
17 terms and conditions that may be mutually agreeable to the
18 Department of Transportation and the municipality.

19 (f) Three-fifths of the supplemental net tax
20 proceeds on gasoline as defined in subsection (a), shall be
21 deposited in the State Treasury to the credit of the Public
22 Road and Bridge Fund of the Department of Transportation, and
23 shall be used exclusively in the construction, repair,
24 maintenance, and operation of public roads and bridges in this
25 state, including public roads in state parks and any toll road

1 or toll bridge constructed by the state Department of
2 Transportation or maintained and operated by it or under its
3 supervision. It is further provided that of the receipts
4 collected under the provisions of this section dedicated to
5 the Public Road and Bridge Fund, the sum of one million
6 dollars (\$1,000,000) shall be set aside in the fiscal year
7 ending September 30, 1992, and the sum of at least five
8 hundred thousand dollars (\$500,000) for the fiscal year ending
9 September 30, 1993, and in each fiscal year thereafter, to
10 coordinate with the Department of Conservation and Natural
11 Resources on the construction, maintenance, and repair of
12 public roads in the state's park system. The remaining
13 two-fifths of the supplemental net tax proceeds shall be
14 distributed, as provided for distribution of the net tax
15 proceeds, according to subsections (c), (d), and (e). Any
16 local laws or general laws of local application now in effect
17 regarding the distribution of the tax levied by Section 6
18 shall govern the distribution of the amounts allocated or
19 apportioned within every county by this section. The
20 Legislature may by general or local laws prescribe other
21 distributions within counties to local governments. The two
22 fifths of the supplemental net tax proceeds shall be used for
23 the same purposes and deposited in the same state, county, and
24 municipal funds as provided by Section 43. Where the use is by
25 a county, the funds may be used to match federal aid on any

1 projects that meet the requirements for federal funding and
2 the funds may also be used for new construction without regard
3 to the provision that 90 percent of the county's paved road
4 system has achieved a grade of 85 percent based on the State
5 of Alabama Department of Transportation's annual maintenance
6 report of county roads and bridges.

7 (g) In all counties wherein members of the county
8 governing bodies are compensated or paid on a salary basis,
9 the county governing bodies may pay a part of the salary out
10 of the county gasoline tax revenues. The part paid out of
11 county gasoline tax revenues shall bear the same proportion to
12 the total salary paid to the member as the time devoted by the
13 member to supervising, inspecting, accepting, building, or
14 repairing county roads or bridges bears to the total time
15 devoted by the member to all of his or her duties as a member
16 of the county governing body.

17 The county governing body may determine the
18 proportions set out in this section.

19 (h) The county commissions may pay a portion of the
20 compensation of their clerks out of the Public Road and Bridge
21 Fund or gasoline tax funds in the county treasury; provided,
22 that not more than 75 percent of the total salary payable
23 shall be paid out of the fund or funds.

24 (i) For the purpose of this section, each federal
25 decennial census shall be deemed to be effective on October 1

1 next following the publication of the results of the decennial
2 census.

3 (j) Wherever in this section any portion of the net
4 tax proceeds is provided to be applied or used for highway
5 purposes, it shall be used as follows:

6 (1) Where the use is by the Department of
7 Transportation, the use shall, with the approval of the
8 Governor, be for the construction of public roads and bridges
9 in the state, the maintenance of public roads and bridges on
10 the state highway system, the equipment and preparation of
11 convicts for use upon the public roads and bridges in the
12 state, the maintenance of the convicts while at work upon the
13 roads and bridges, the compensation to the state for the use
14 of any convicts, and for other public road and bridge purposes
15 in the state as may be authorized by the Department of
16 Transportation with the approval of the Governor.

17 (2) Where the use is by a county, the use shall be
18 for transportation planning, the construction, reconstruction,
19 maintenance, widening, alteration, and improvement of public
20 roads and bridges as is now or may hereafter be provided by
21 law, including payment of the principal of and interest on any
22 securities at any time issued by the county pursuant to law
23 for payment of which all or any of the net tax proceeds were
24 or may be lawfully pledged, and the use may also be for the

1 purpose and subject to the provisions contained in subsection
2 (g).

3 (3) Where the use is by a municipality, the use
4 shall be for transportation planning, the construction,
5 reconstruction, maintenance, widening, alteration, and
6 improvement of public roads, bridges, streets, and other
7 public ways, including payment of the principal of and
8 interest on any securities at any time issued by the
9 municipality pursuant to law for the payment of which any part
10 of the net tax proceeds were or may be lawfully pledged;
11 provided, that no part of the net tax proceeds referred to in
12 this section shall be expended contrary to the provisions of
13 the constitution; and provided further, that funds distributed
14 to municipalities under the provisions of this section shall
15 not be commingled with other funds of the municipality and
16 shall be kept and disbursed by the municipality from a special
17 fund only for the purposes hereinabove provided.

18 (k) The county commission of each of the counties
19 may use or expend the proceeds of the state gasoline tax
20 levied by Section 6, distributed to the county pursuant to
21 this section, for the construction and maintenance of streets
22 within the corporate limits of any municipality located within
23 the county, anything in Sections 3 to 37, inclusive, to the
24 contrary notwithstanding.

1 (1) The county commission of each of the counties
 2 may use or expend the state gasoline tax proceeds referred to
 3 in subsection (k) for the construction, reconstruction,
 4 maintenance, and repair of public highways and traffic control
 5 areas located on public school property or state school
 6 property within the county.

7 (m) The State Treasurer shall make all allocations
 8 of the net tax proceeds and the supplemental net tax proceeds
 9 and shall make the distributions and payments thereof pursuant
 10 to the allocations provided for in this section.

11 (n) It is the intention of the Legislature in
 12 enacting this section to preserve inviolate all pledges
 13 heretofore made pursuant to law of any portion of the proceeds
 14 derived from the highway gasoline tax for the benefit of those
 15 bonds now outstanding that are referred to in subsection (c),
 16 or for the benefit of securities now outstanding that were
 17 issued pursuant to law by any county or municipality.

18 (o) All revenues received or collected by the
 19 Department of Revenue from the additional four cents (\$.04)
 20 tax levied on gasoline remaining after the payment of refunds
 21 and the expense of administration and enforcement of this act
 22 are hereby allocated and appropriated in the following manner:

23 (1) ~~Forty-five percent of the net tax proceeds are~~
 24 ~~hereby allocated and appropriated~~ for state highway purposes
 25 and as the state's share of the ~~net tax proceeds~~ additional

1 \$.04 tax levied. This 45 percent ~~of the net tax proceeds~~ shall
2 be ~~covered~~ deposited into the State Treasury to the credit of
3 the Public Road and Bridge Fund and shall be disbursed as
4 provided in this act.

5 (2) Fifty-five percent ~~of the net tax proceeds~~ are
6 ~~hereby allocated and appropriated to be used~~ for highway
7 purposes by the counties and municipalities. The 55 percent of
8 the ~~net tax proceeds~~ additional \$.04 tax levied shall be
9 ~~covered~~ deposited into the State Treasury and shall be
10 disbursed and allocated as hereinafter provided in this
11 section.

12 a. A portion of the local subdivisions' shares of
13 the ~~net tax proceeds~~ additional \$.04 tax levied that is equal
14 to 25 percent of the ~~net tax proceeds~~ additional \$.04 tax
15 levied shall be allocated equally among the 67 counties of the
16 state.

17 b. The entire residue of the local subdivisions'
18 shares of the ~~net tax proceeds~~ additional \$.04 tax levied,
19 being an amount equal to 30 percent of the ~~net tax proceeds~~
20 additional \$.04 tax levied, shall be allocated among the 67
21 counties of the state on the basis of the ratio of the
22 population of each county to the total population of the state
23 according to the then next preceding federal decennial census,
24 or any special federal census heretofore held in any county
25 subsequent to the effective date of the 1970 Federal Decennial

1 Census. The allocation provided for in this subsection shall
2 be made on or prior to the tenth day of each month with
3 respect to receipts of the highway gasoline tax by the state
4 during the preceding month.

5 c. The distributions provided for in this
6 subdivision shall be made monthly. The amounts allocated or
7 apportioned to each county shall be disposed of as follows:

8 1. Ten percent of the amount so allocated or
9 apportioned to each county shall be distributed among the
10 municipalities in the county with respect to which the
11 allocation or apportionment is made, each distribution among
12 the municipalities shall be made on the basis of the ratio of
13 the population of each municipality to the total population of
14 all municipalities in the applicable county according to the
15 then next preceding federal decennial census. Provided, that
16 any local laws or general laws of local application now in
17 effect regarding the distribution of the tax levied by Section
18 6 shall govern the distribution of the amounts allocated or
19 apportioned within every county by this section; provided
20 further, that the Legislature may by general or local laws
21 prescribe other distributions within counties to local
22 governments.

23 2. The remaining portion of the amount so allocated
24 or apportioned to each county shall be distributed to the

1 county with respect to which such allocation or apportionment
2 is made.

3 d. The population of any municipality incorporated
4 subsequent to the taking of the then next preceding federal
5 decennial census shall be deemed to be the population shown by
6 the census for that municipality taken pursuant to the
7 requirements of Section 11-41-4, Code of Alabama 1975. Any
8 municipality incorporated after September 30, 1978, shall not
9 participate in the distribution provided for in this section
10 until the fiscal year next succeeding the fiscal year during
11 which it is incorporated, the first distribution to the
12 municipality shall be made in respect of receipts of the
13 highway gasoline tax by the state during October of the fiscal
14 year next succeeding its incorporation.

15 e. When requested to do so by any municipality, the
16 Department of Transportation may at its discretion make
17 available the services and advice of its engineers and other
18 employees with respect to any work for which that municipality
19 proposes to expend moneys distributed to it under this
20 subdivision. Any services and advice that may be so made
21 available shall be provided under the terms and conditions as
22 may be mutually agreeable to the Department of Transportation
23 and the municipality.

24 (p) The State Treasurer shall make all allocations
25 of the revenue collections and shall make the distribution and

1 payments thereof pursuant to such allocations provided for in
2 this act.

3 Section 41. The revenue, less the cost of
4 collection, obtained from the tax levied in subdivision (3) of
5 subsection (a) of Section 6 shall be paid into the State
6 Treasury to the credit of the Department of Transportation and
7 be used exclusively for the purpose of paying the cost of
8 acquiring, engineering, construction, improvement, and
9 maintenance of existing or proposed airports and other air
10 navigation facilities within the state, for the payment of the
11 salaries of all employees who have been transferred from the
12 Alabama Department of Aeronautics to the Department of
13 Transportation under Article 12 of Chapter 1 of Title 23, Code
14 of Alabama 1975, and for the payment of administrative
15 expenses incurred by the Department of Transportation in
16 performing aeronautical activities and for the further purpose
17 of creating a sinking fund for the payment of the interest and
18 retirement of the principal of all bonds which may be
19 hereafter lawfully issued, sold, and delivered for funds to be
20 used exclusively for the enumerated purposes.

21 Section 42. (a) The proceeds of the thirteen cents
22 (\$.13) diesel excise tax imposed by this act, when collected,
23 shall be applied as follows:

24 (1) For payment of the costs of collection thereof,
25 being the amount appropriated for each fiscal year by the

1 Legislature to the Department of Revenue for the
2 administration of this article.

3 (2) For payment of the principal of and interest on
4 bonds issued after October 1, 1969, and prior to December 1,
5 1977, by the Alabama Highway Authority, a public corporation
6 and instrumentality of the state, all in the manner and to the
7 extent and subject to the priorities as to rank as are
8 provided in the respective statutes under which the bonds were
9 issued.

10 (3) For payment of the principal of and interest on
11 bonds and other obligations, including refunding obligations,
12 issued after December 1, 1977, by a public corporation
13 existing at the time of issuance under the laws of Alabama
14 pursuant to then existing statutory or constitutional
15 authorization, or by the State of Alabama pursuant to
16 authorization, effective at the time of issuance, under the
17 Constitution and laws of the state, and for which the excise
18 tax imposed by this act shall have been appropriated and
19 pledged in a then effective statute or constitutional
20 provision, including any enabling act under a constitutional
21 provision, all in the manner and to the extent and subject to
22 the priorities in rank as may be provided in the statute or
23 constitutional provision or in an authorizing resolution
24 thereunder.

1 (4) The balance shall be covered into the State
2 Treasury to the credit of the Department of Transportation to
3 be used exclusively in the construction, repair, maintenance,
4 and operation of public roads and bridges in this state,
5 including any toll road or toll bridge constructed by the
6 Department of Transportation or maintained and operated by it
7 or under its supervision.

8 (b) Revenues received or collected from the
9 additional six cents (\$.06) excise tax by the Department of
10 Revenue upon the selling, use or consumption, distributing,
11 storing, or withdrawing from storage in this state of diesel
12 fuel remaining after the payment of the expense of
13 administration and enforcement of this section shall be
14 distributed as follows:

15 (1) Four and sixty-nine one hundredths percent shall
16 be distributed equally among each of the 67 counties of the
17 state monthly. These funds shall be used by counties for the
18 purposes specified in paragraph a. of subdivision (2) of
19 subsection (a) of Section 8-17-91, Code of Alabama 1975.

20 (2) Ninety-three one hundredths of one percent shall
21 be allocated among the incorporated municipalities of the
22 state and distributed and used as provided in paragraph c. of
23 subdivision (2) of subsection (a) of Section 8-17-91, Code of
24 Alabama 1975.

1 (3) The balance shall be paid to the State Treasury
 2 to be used for highway purposes by the Department of
 3 Transportation.

4 Provided, that for the first five full fiscal years
 5 commencing October 1, ~~2012~~ 2004, if distributions to the
 6 counties and municipalities provided for in subdivisions (1)
 7 and (2) above are insufficient to ensure, in combination with
 8 the distributions provided in Section 8-17-91, Code of Alabama
 9 1975, that the counties and municipalities receive no less
 10 than the distributions received for fiscal year 2003 under the
 11 previous provisions of Section 8-17-91, then the above
 12 percentages shall be adjusted accordingly. After the first
 13 five full fiscal years, the above percentages shall not be
 14 adjusted.

15 Section 43. (a) For the purposes of this section,
 16 the following words and phrases shall have the following
 17 meanings:

18 (1) BRIDGE REPLACEMENT. Bridge replacement includes
 19 the replacement of existing bridge structures and, if
 20 necessary, the realignment of the adjacent approaches.

21 (2) RESURFACING, RESTORATION, AND REHABILITATION.
 22 Work undertaken primarily to preserve an existing facility.
 23 Restoration and rehabilitation is work required to return the
 24 existing pavement or bridge deck, including shoulders, to a
 25 condition of adequate structural support or to a condition

1 adequate for placement of an additional state of construction.
2 Resurfacing consists of the placement of additional surface
3 material over the existing, restored, or rehabilitated roadway
4 or bridge deck to improve serviceability or to provide
5 additional strength. Resurfacing, restoration, and
6 rehabilitation work may include changes to geometric features,
7 such as minor widening, flattening curves, or improving sight
8 distances.

9 (b) It is the intent of the Legislature that the
10 proceeds of the tax collected on motor fuel and gasoline under
11 the provisions of this act shall be used in the following
12 manner:

13 (1) Where the use is by the Department of
14 Transportation, the use shall, with the approval of the
15 Governor, be for the construction and maintenance of public
16 roads and bridges on the state highway system.

17 (2) Where the use is by a county, the use shall be
18 for the resurfacing, restoration, and rehabilitation of the
19 paved county roads and bridges or bridge replacement on the
20 county road system. These funds shall not be used for new
21 construction unless 90 percent of the county's paved road
22 system has achieved a grade of 85 percent based on the State
23 of Alabama Department of Transportation's annual maintenance
24 report of county roads and bridges. These funds shall not be
25 used for the purchase of equipment. The net tax proceeds

1 distributed to the county shall not be commingled with other
2 funds of the county, including any other gasoline tax
3 revenues, and shall be kept and disbursed by the county from a
4 special fund only for the purposes hereinabove provided.

5 (3) Where the use is by a municipality, the use
6 shall be for resurfacing, restoration, and rehabilitation of
7 roads, bridges, and streets within the municipality. The use
8 may also be for bridge replacement within the municipality.
9 From time to time, the funds may also be used to construct new
10 roads and streets within the municipality. These funds shall
11 not be commingled with other funds of the municipality,
12 including any other gasoline tax revenues, and shall be kept
13 and disbursed by the municipality from a special fund only for
14 the purposes hereinabove provided.

15 Section 44. Sections 40-1-44, 40-2-10, 40-17-171,
16 40-17-174, 40-17-220, 40-17-221, and 40-17-223 of the Code of
17 Alabama 1975, are hereby amended to read as follows:

18 "§40-1-44.

19 "(a) Interest shall be added as provided herein to
20 any tax or other amount due the department which is not paid
21 by the due date. Interest on any delinquency shall be charged
22 from the due date of the tax, except (1) interest on
23 delinquent license taxes levied under Chapter 12 of this title
24 shall be charged from the delinquent date provided in
25 subsection (e) of Section 40-12-10; and (2) interest on

1 delinquent license tax and registration fees levied on motor
2 vehicles shall be charged beginning after the period allowed
3 for registration or renewal; and (3) interest on the freight
4 lines and equipment companies tax levied in Section 40-21-52
5 shall be charged from the delinquent date thereof. The
6 interest shall be computed based on the underpayment rate
7 established by the Secretary of the Treasury under the
8 authority of 26 U.S.C. §6621.

9 "(b) (1) Except as provided in subdivision (2) of
10 this subsection (b), interest shall be paid by the department
11 on any refund of tax erroneously paid directly to the
12 department. Interest shall be computed on any overpayment from
13 the date of overpayment to the department; except, a. interest
14 on any refund resulting from a net operating loss carryover or
15 carryback shall be computed from the date the claim giving
16 rise to the refund is filed, b. interest on any overpayment of
17 tax withheld and paid over to the state pursuant to Article 2
18 of Chapter 18 of this title and estimated tax paid pursuant to
19 Section 40-18-83, shall be paid beginning 90 days after the
20 due date of the return required by Section 40-18-27 for
21 individuals, and Section 40-18-39 for corporations, or the
22 date the return is filed, whichever is later. Interest as
23 required above shall be computed at the same rate as provided
24 herein for interest on underpayments.

1 "(2) No interest shall be paid on any overpayment of
2 the following taxes:

3 "a. Taxes paid by entities for which a refund is
4 allowed by Sections 40-9-12 and 40-9-13;

5 "b. License taxes which are refunded pursuant to
6 Sections 40-12-23 and 40-12-24;

7 "c. Gasoline taxes paid on gasoline used for
8 agricultural purposes for which a refund is allowed by
9 Division 3, Article 2, Chapter 17 of this title;

10 "d. Gasoline taxes paid on gasoline used for the
11 static testing of engines for which a refund is allowed by
12 Division 4, Article 2, Chapter 17 of this title;

13 "e. The motor fuels excise tax levied by Section
14 40-17-141 for which a refund or credit is allowed by Section
15 40-17-142;

16 "f. The tobacco taxes levied by Chapter 25 of this
17 title; and

18 "g. The motor fuels excise tax levied under Sections
19 40-17-2 and 40-17-220, for which a refund is provided for
20 off-road users in Chapter 17 of this title the Alabama
21 Terminal Excise Tax Act, which has been paid to a supplier by
22 a licensed distributor or end user who is authorized to obtain
23 a refund under Section 10 of that act, if the refund is paid
24 within 90 days of the receipt of the proper documentation.

25 "§40-2-10.

1 ~~"(a) Agents or employees of the Department of~~
2 ~~Revenue designated in writing by the Commissioner of Revenue~~
3 ~~shall be and are hereby constituted peace officers of the~~
4 ~~State of Alabama with full and unlimited police power and~~
5 ~~jurisdiction to enforce the provisions of the revenue laws of~~
6 ~~this state as they relate and only as they relate to the~~
7 ~~administration and enforcement of licensing and registration~~
8 ~~of motor vehicles, gasoline tax and tax on motor fuels or any~~
9 ~~substitute therefor and tobacco tax, and they may exercise~~
10 ~~such power in any county of the State of Alabama.~~

11 ~~"(b) In all cases where arrests are made by agents~~
12 ~~or employees designated peace officers by the Commissioner of~~
13 ~~Revenue, an arrest fee of \$5 for an arrest resulting in a~~
14 ~~conviction shall be collected by the proper authorities and~~
15 ~~promptly turned over to the Commissioner of Revenue, who shall~~
16 ~~cover the same into the State Treasury to the credit of the~~
17 ~~General Fund.~~

18 "The Commissioner of the Department of Revenue may
19 designate and appoint qualifying employees or agents of the
20 Department of Revenue as law enforcement officers as defined
21 by the Alabama Rules of Criminal Procedure.

22 "(1) Qualifying employees or agents designated as
23 peace officers shall be appointed by the Commissioner of the
24 Department of Revenue provided that they have complied with

1 the requirements set forth by the Alabama Peace Officers'
2 Standards and Training Commission.

3 "(2) Law enforcement officers of the Department of
4 Revenue shall investigate the commission or suspected
5 commission of tax evasion, tax fraud, and other matters
6 administered by the Department of Revenue including the
7 enforcement and administration of tobacco tax, gasoline tax,
8 and tax on motor fuels or any substitute thereof, licensing
9 and registration of motor vehicles, and violations of Title
10 13A, Title 32, and Title 40, Code of Alabama 1975, as amended.
11 Revenue law enforcement officers so designated are authorized
12 to issue or cause to be issued citations, tickets, complaints,
13 subpoenas, and other process so as to commence and direct
14 actions, prosecutions, and proceedings to be instituted to
15 enforce the laws of this state.

16 "§40-17-171.

17 "Every distributor, manufacturer, retail dealer, or
18 storer of lubricating oil, as herein defined, shall pay an
19 excise tax of \$.02 per gallon upon the selling, distributing,
20 or withdrawing from storage in this state for any use
21 lubricating oil as herein defined; provided, that this excise
22 tax shall neither be levied upon the sale of lubricating oil
23 in interstate commerce nor upon any sale of lubricating oil
24 destined for out-of-state use which is transacted in a manner
25 whereby an out-of-state purchaser takes delivery of such oil

1 at a distributor's plant within this state and transports it
2 out-of-state; and provided further that this excise tax shall
3 not be levied on lubricating oil sold to city and county
4 governing bodies, city and county boards of education, the
5 Alabama Institute for Deaf and Blind, the Department of Youth
6 Services school district, and private and church schools as
7 defined in Section 16-28-1, and which offer essentially the
8 same curriculum as offered in grades K-12 in the public
9 schools of this state; and provided further, that where the
10 excise tax of \$.02 per gallon upon the sale of ~~such~~ the
11 lubricating oil shall have been paid by a distributor,
12 manufacturer, retail dealer, or storer, ~~such~~ payment shall be
13 paid but one time by any person so liable. The state
14 Department of Revenue is hereby authorized to issue to the
15 United States certificates of exemption, upon forms prescribed
16 by the department, for use by the United States in purchasing
17 lubricating oil within the State of Alabama and which is paid
18 for by the United States. Any person in reporting and paying
19 ~~said~~ the tax to the department may deduct the number of
20 gallons of lubricating oil so sold to the United States, as
21 shown by ~~such~~ the certificates of exemption duly executed by
22 the United States and filed with ~~such~~ the report; ~~and the.~~ The
23 department is authorized to adopt rules and regulations with
24 respect to the issuance and use of ~~such~~ the certificates.

25 "§40-17-174.

1 ~~"Each person, firm, corporation, or agency selling~~
2 ~~illuminating, lubricating, or fuel oils at wholesale in~~
3 ~~quantities of 25 gallons or more, shall pay to the Department~~
4 ~~of Revenue for the use of the state, within two weeks from the~~
5 ~~beginning of the fiscal year, the sum of one half of one~~
6 ~~percent on the gross sales, excluding all federal, state, and~~
7 ~~local excise taxes, for the preceding fiscal year. The payment~~
8 ~~to the Department of Revenue shall be accompanied by a sworn~~
9 ~~statement verified by the person having knowledge of the facts~~
10 ~~showing the amount of the gross sales of the oils sold in the~~
11 ~~state during the preceding fiscal year. No county license~~
12 ~~shall be charged under this section. The tax shall be paid on~~
13 ~~the first, and only the first, wholesale sales transaction of~~
14 ~~the oils sold in the state. The initial wholesale transaction~~
15 ~~shall be the only point at which the wholesale oil license fee~~
16 ~~is imposed on the oils sold in the state, the intent being~~
17 ~~that the tax shall be paid to the state but once. A copy of~~
18 ~~the statement shall at the same time be filed with the~~
19 ~~Department of Revenue. The books of the person so engaged in~~
20 ~~the business shall be accurately kept and shall show the date,~~
21 ~~character, and quantity of the oils received for sale in this~~
22 ~~state and the name and post-office address of the person from~~
23 ~~whom received. The books shall also show the date, character,~~
24 ~~and quantity of each sale made, together with the name and~~
25 ~~address of the person to whom sold and, when consigned to an~~

1 ~~agent for sale in this state, the date, character, and~~
2 ~~quantity of the consignment, together with the name and~~
3 ~~address of the agent and place of consignment. The books shall~~
4 ~~always be open to inspection by the Department of Revenue. Any~~
5 ~~person failing to make the sworn statement or making a false~~
6 ~~statement or failing to keep books in substantial compliance~~
7 ~~with this section shall be guilty of a misdemeanor and upon~~
8 ~~conviction therefor shall be fined an amount not exceeding~~
9 ~~five hundred dollars (\$500), and also forfeit to the state~~
10 ~~three times the amount of the license on the gross sales, but~~
11 ~~no tax shall be paid to the county.~~

12 "(a) Each person, firm, corporation, or agency
13 selling diesel fuel in across the rack at a terminal within
14 this state, at wholesale, for removal from the terminal using
15 the terminal rack, other than by bulk transfer, shall pay to
16 the Department of Revenue for the use of the state, within two
17 weeks from the beginning of the fiscal year, a wholesale oil
18 license fee equal to three-fourths of one cent per gallon for
19 each gallon of diesel fuel so sold during the preceding fiscal
20 year, including all diesel fuel whether manufactured or
21 imported into the state prior to the sale.

22 "(b) Each importer of diesel fuel into this state,
23 other than by a bulk transfer, for delivery to a destination
24 in this state for resale shall pay to the Department of
25 Revenue for the use of the state within two weeks from the

1 beginning of the fiscal year, an import license fee equal to
2 three-fourths of one cent per gallon for each gallon of diesel
3 fuel imported during the preceding fiscal year; excluding any
4 gallons for which a permissive supplier collected the fee from
5 the importer, in accordance with subsection (c).

6 "(c) A permissive supplier shall collect the import
7 license fee imposed by subsection (b) of this section from the
8 person who purchases the diesel fuel for import into this
9 state. The permissive supplier shall remit the fee within two
10 weeks from the beginning of the fiscal year, for each gallon
11 of diesel fuel sold during the preceding fiscal year.

12 "(d) The payment to the Department of Revenue shall
13 be accompanied by a sworn statement verified by the person
14 having knowledge of the facts showing the number of gallons of
15 diesel fuel sold or imported into the state during the
16 preceding fiscal year. No county license shall be charged
17 under this section.

18 "(e) The sale of biodiesel fuel to a licensed
19 supplier when delivered to a terminal shall be exempted from
20 the wholesale oil license fee imposed under this section.

21 "§40-17-220.

22 "(a) There is hereby levied in addition to all other
23 taxes of every kind now imposed by law an excise tax on
24 ~~gasoline~~ and lubricating oil of \$.04 per gallon, which shall
25 be collected as herein provided.

1 "(b) Every manufacturer, distributor, refiner,
2 retail dealer, storer, or user of ~~gasoline or~~ lubricating oil
3 shall collect and pay over to the state Department of Revenue
4 an excise tax of \$.04 per gallon upon the selling, use or
5 consumption, distributing, storing, or withdrawing from
6 storage in this state for any use of ~~gasoline or~~ lubricating
7 oil as defined or otherwise referred to in this article,
8 except ~~gasoline and~~ lubricating oil expressly exempted by the
9 provisions of this article. Provided, that where any excise
10 tax imposed by this section upon the sale, use or consumption,
11 distribution, storage or withdrawal from storage in this state
12 of gasoline or lubricating oil shall have been paid to the
13 state by a manufacturer, distributor, refiner or by any retail
14 dealer, storer, or user, the payments shall be sufficient, the
15 intent being that the tax shall be paid to the state but once.

16 "~~(c) The state Department of Revenue is hereby~~
17 ~~authorized to issue to the United States certificates of~~
18 ~~exemption, upon forms prescribed by the department, for use by~~
19 ~~the United States in purchasing gasoline or lubricating oil~~
20 ~~taxed by this section within the State of Alabama and which is~~
21 ~~paid for by the United States. Any person in reporting and~~
22 ~~paying the tax to the department may deduct the number of~~
23 ~~gallons of products taxed by this section sold to the United~~
24 ~~States, as shown by a certificate of exemption duly executed~~
25 ~~by the United States and filed with a report, and the~~

1 ~~department is authorized to adopt rules and regulations with~~
 2 ~~respect to the issuance and use of these certificates.~~

3 ~~"(d)~~ (c) The following are expressly exempted from
 4 the provisions of this article:

5 ~~"(1) Gasoline and other fuel~~ Lubricating oil used to
 6 ~~propel~~ in aircraft powered by reciprocating engines, ~~any fuel~~
 7 ~~used to propel aircraft powered by~~ or jet or turbine engines
 8 ~~and lubricating oil used in such aircraft;~~

9 ~~"(2) Gasoline used to propel ships, vessels, barges,~~
 10 ~~railroad locomotives, other railroad equipment, and~~
 11 ~~lubricating~~ Lubricating oil used in ships, vessels, barges,
 12 railroad locomotives, and other railroad equipment;

13 ~~"(3) Gasoline and lubricating~~ Lubricating oil sold
 14 to be used for agricultural purposes;

15 ~~"(4) Gasoline and lubricating~~ Lubricating oil sold
 16 to governing bodies of counties and incorporated
 17 municipalities;

18 ~~"(5) Gasoline and lubricating~~ Lubricating oil sold
 19 to be used in off-road vehicles which presently do not require
 20 state licensing; specifically, but not limited to, forklifts
 21 and other like devices not for use on the streets and highways
 22 of this state;

23 ~~"(6) Gasoline and lubricating~~ Lubricating oil sold
 24 to city and county boards of education; and

1 ~~"(7) Gasoline and lubricating~~ Lubricating oil sold
2 to private and church school systems as defined in Section
3 16-28-1, and which offer essentially the same curriculum as
4 offered in grades K-12 in the public schools of this state,
5 Alabama Institute for Deaf and Blind, and the Department of
6 Youth Services.

7 ~~"(8) Lubricating oil sold to the United States.~~

8 ~~"(e) Every distributor or supplier shall collect and~~
9 ~~pay over to the state Department of Revenue an excise tax of~~
10 ~~\$.06 per gallon upon the receipt, by any means other than a~~
11 ~~transfer by a marine vessel or pipeline, of motor fuel from a~~
12 ~~terminal, refinery, barge, barge line, or pipeline terminal in~~
13 ~~this state, or upon import into this state by any means other~~
14 ~~than pipeline, marine vessel, or the fuel supply tank of the~~
15 ~~vehicle, for any use of motor fuel not exempted by this~~
16 ~~article. Provided, that where any excise tax imposed by this~~
17 ~~section shall have been paid to the state by a distributor or~~
18 ~~supplier the payment shall be sufficient, the intent being~~
19 ~~that the tax shall be paid to the state but once. Motor fuel~~
20 ~~that is indelibly dyed and chemically marked in accordance~~
21 ~~with regulations issued by the Secretary of the Treasury of~~
22 ~~the United States under 26 U.S.C. §4082 shall be exempt from~~
23 ~~the tax imposed by this subsection.~~

24 ~~"(f) A licensed distributor may take a credit or~~
25 ~~request a refund pursuant to the provisions of Section~~

1 ~~40-2A-7, for the following sales of motor fuel on which the~~
2 ~~tax has been imposed by this article:~~

3 ~~"(1) Motor fuel sold to the United States.~~

4 ~~"(2) Motor fuel used to propel aircraft powered by~~
5 ~~jet or turbine engines.~~

6 ~~"(3) Motor fuel sold to governing bodies of counties~~
7 ~~and incorporated municipalities.~~

8 ~~"(4) Motor fuel sold to city and county boards of~~
9 ~~education.~~

10 ~~"(5) Motor fuel sold to the Alabama Institute for~~
11 ~~Deaf and Blind, the Department of Youth Services school~~
12 ~~district, and to private and church school systems as defined~~
13 ~~in Section 16-28-1, and which offer essentially the same~~
14 ~~curriculum as offered in grades K-12 in the public schools of~~
15 ~~this state.~~

16 ~~"(6) Motor fuel sold as kerosene for lighting or~~
17 ~~heating purposes.~~

18 ~~"(7) Motor fuel that is sold from one Alabama~~
19 ~~licensed distributor to another Alabama licensed distributor.~~

20 ~~"(8) Motor fuel which is exported by the licensed~~
21 ~~distributor.~~

22 ~~"(9) Motor fuel used for off-road agricultural~~
23 ~~purposes on the farm.~~

24 ~~"(g) The use of motor fuel on which the tax has been~~
25 ~~imposed and paid under the provisions of this article shall be~~

1 ~~exempt from the tax imposed by this article and the user shall~~
2 ~~be entitled to a refund when motor fuel is used in designated~~
3 ~~off-road vehicles, or other off-road equipment (except marine~~
4 ~~use), or for commercial marine use as defined by the federal~~
5 ~~government or for any of the uses described in subsection (f).~~
6 ~~The end user shall be entitled to apply for a refund on a~~
7 ~~quarterly basis for excise taxes paid according to the~~
8 ~~provisions of this article, subject to the following~~
9 ~~limitations:~~

10 ~~"(1) Applications for refund shall be completed by~~
11 ~~the end user on forms prescribed by the Commissioner of~~
12 ~~Revenue and sworn to by the applicant before some officer~~
13 ~~authorized to administer oaths.~~

14 ~~"(2) The statute of limitations for filing refunds~~
15 ~~is within three years of the date that the motor fuel was~~
16 ~~purchased.~~

17 ~~"(h) Any applicant for the refund of the taxes~~
18 ~~levied herein who willfully files an inaccurate petition or~~
19 ~~false claim for a refund shall be subject to a penalty of 100%~~
20 ~~of the refund claimed, along with interest assessed according~~
21 ~~to the provisions of Section 40-1-44.~~

22 ~~"(i) Notwithstanding the foregoing provisions of~~
23 ~~this section, all motor fuel used by off-road equipment used~~
24 ~~for agricultural purposes shall be exempt from the tax imposed~~
25 ~~by this article at the time of sale. Provided, however, clear~~

1 ~~motor fuel shall only be sold for such purposes if no dyed~~
2 ~~motor fuel is available from the agricultural users supplier.~~

3 ~~"(j) Any person shall pay to the Department of~~
4 ~~Revenue an excise tax of \$.06 per gallon, on:~~

5 ~~"(1) Motor fuel which was allowed as a credit under~~
6 ~~the provisions of this article which is sold for a use not~~
7 ~~allowed as a credit by the provisions of this article.~~

8 ~~"(2) Motor fuel on which no tax has been paid under~~
9 ~~the provisions of this article when it is used to operate a~~
10 ~~highway vehicle not exempted under the provisions of this~~
11 ~~article.~~

12 ~~"(3) Motor fuel on which tax imposed by this article~~
13 ~~has been refunded when it is used to operate a highway vehicle~~
14 ~~not exempted under the provisions of this article.~~

15 ~~"(4) Dyed motor fuel used to operate any on-road~~
16 ~~vehicles other than city and county vehicles or used in marine~~
17 ~~craft not used for commercial purposes.~~

18 ~~"§40-17-221.~~

19 ~~"(a) The provisions of this article pertaining to~~
20 ~~gasoline and the tax herein levied on gasoline shall be~~
21 ~~administered and collected in accordance with Sections~~
22 ~~40-17-30, 40-17-32 through 40-17-37, 40-17-38, 40-17-39~~
23 ~~through 40-17-49, 40-17-52, and 40-17-220, or as otherwise~~
24 ~~provided in this title.~~

1 ~~"(b) The provisions of this article pertaining to~~
2 ~~motor fuel and the tax herein levied on motor fuel shall be~~
3 ~~administered and collected in accordance with Sections~~
4 ~~40-17-1, 40-17-5 through 40-17-9, 40-17-14 through 40-17-20,~~
5 ~~or as otherwise provided in this title.~~

6 ~~"(c) The provisions of this article pertaining to~~
7 ~~lubricating oil and the tax herein levied on lubricating oil~~
8 ~~shall be administered and collected in accordance with~~
9 ~~Sections 40-17-170, 40-17-173, 40-17-176 through 40-17-186, or~~
10 ~~as otherwise provided in this title.~~

11 "~~§40-17-223.~~

12 "All revenues received or collected by the
13 Department of Revenue upon the selling, use or consumption,
14 distributing, storing, or withdrawing from storage in this
15 state of ~~gasoline and~~ lubricating oil remaining after the
16 payment of the expense of administration and enforcement of
17 this article are hereby allocated and appropriated in the
18 following manner:

19 "(1) Forty-five percent of the net tax proceeds is
20 hereby allocated and appropriated for state highway purposes
21 and as the state's share of the net tax proceeds. ~~The said 45~~
22 ~~percent of the net tax proceeds shall~~ to be covered into the
23 State Treasury to the credit of the Public Road and Bridge
24 Fund and ~~shall be~~ disbursed as provided in this article.

1 "(2) Fifty-five percent of the net tax proceeds is
2 hereby allocated and appropriated to be used for highway
3 purposes by the counties and municipalities. ~~The said 55~~
4 ~~percent of the net tax proceeds shall~~ to be covered into the
5 State Treasury and ~~shall be~~ disbursed and allocated as
6 hereinafter provided in this section.

7 "a. A portion of the local subdivisions' share of
8 the net tax proceeds that is equal to 25 percent of the net
9 tax proceeds shall be allocated equally among the 67 counties
10 of the state.

11 "b. The entire residue of the local subdivisions'
12 share of the net tax proceeds, being an amount equal to 30
13 percent of the net tax proceeds shall be allocated among the
14 67 counties of the state on the basis of the ratio of the
15 population of each ~~such~~ county to the total population of the
16 state according to the then next preceding federal decennial
17 census, or any special federal census heretofore held in any
18 county subsequent to the effective date of the 1970 Federal
19 Decennial Census. The allocation provided for in this
20 subsection shall be made on or prior to the tenth day of each
21 month with respect to receipts of the ~~highway gasoline~~
22 lubricating oil tax by the state during the preceding month.

23 "c. The distributions provided for in this
24 subdivision shall be made monthly. The amounts allocated or
25 apportioned to each county shall be disposed of as follows:

1 "1. Ten percent of the amount so allocated or
2 apportioned to each county shall be distributed among the
3 municipalities in the county with respect to which the
4 allocation or apportionment is made, each ~~such~~ distribution
5 among the ~~said~~ municipalities to be made on the basis of the
6 ratio of the population of each ~~such~~ municipality to the total
7 population of all municipalities in the applicable county
8 according to the then next preceding federal decennial census.
9 ~~Provided, however, any local laws or general laws of local~~
10 ~~application now in effect regarding the distribution of the~~
11 ~~tax levied by Section 40-17-31 shall govern the distribution~~
12 ~~of the amounts allocated or apportioned within every county by~~
13 ~~this section; provided further, that the Legislature may by~~
14 ~~general or local laws prescribe other distributions within~~
15 ~~counties to local governments; and~~

16 "2. The remaining portion of the amount so allocated
17 or apportioned to each county shall be distributed to the
18 county with respect to which ~~such~~ the allocation or
19 apportionment is made.

20 "d. The population of any municipality incorporated
21 subsequent to the taking of the then next preceding federal
22 decennial census shall be deemed to be the population shown by
23 the census for that municipality taken pursuant to the
24 requirements of Section 11-41-4. Any municipality incorporated
25 after September 30, 1978 shall not participate in the

1 distribution provided for in this section until the fiscal
 2 year next succeeding the fiscal year during which it is
 3 incorporated, the first distribution to ~~such~~ that municipality
 4 to be made in respect of receipts of the ~~highway gasoline~~
 5 lubricating oil tax by the state during October of the fiscal
 6 year next succeeding ~~the said~~ its incorporation.

7 "e. When requested to do so by any municipality, the
 8 Department of Transportation may at its discretion make
 9 available the services and advice of its engineers and other
 10 employees with respect to any work for which that municipality
 11 proposes to expend moneys distributed to it under this
 12 subdivision. Any ~~such~~ services and advice that may be so made
 13 available shall be provided under ~~such~~ the terms and
 14 conditions as may be mutually agreeable to the Department of
 15 Transportation and the municipality."

16 Section 45. All general laws or parts of general
 17 laws that conflict with this act are repealed. The following
 18 sections of the Code of Alabama 1975, are specifically
 19 repealed: Sections 40-12-190, 40-12-191, 40-12-192, 40-12-193,
 20 40-12-194, 40-12-195, 40-12-196, 40-12-197, 40-12-198,
 21 40-12-199, 40-12-200, 40-12-201, 40-12-202, 40-12-204,
 22 40-12-205, 40-12-206, 40-17-1, 40-17-2, 40-17-5, 40-17-6,
 23 40-17-7, 40-17-8, 40-17-9, 40-17-13, 40-17-14, 40-17-18,
 24 40-17-19, 40-17-20, 40-17-22, 40-17-30, 40-17-31, 40-17-32,
 25 40-17-33, 40-17-34, 40-17-35, 40-17-36, 40-17-37, 40-17-38,

1 40-17-39, 40-17-40, 40-17-43, 40-17-45, 40-17-49, 40-17-50,
2 40-17-51, 40-17-52, 40-17-70, 40-17-71, 40-17-72, 40-17-73,
3 40-17-74, 40-17-74.1, 40-17-75, 40-17-76, 40-17-77, 40-17-78,
4 40-17-79, 40-17-80, 40-17-81, 40-17-82, ~~40-17-100, 40-17-101,~~
5 ~~40-17-102, 40-17-103, 40-17-104, 40-17-105, 40-17-106,~~
6 ~~40-17-107, 40-17-108,~~ 40-17-120, 40-17-121, 40-17-122,
7 40-17-124, 40-17-125, ~~40-17-174,~~ 40-17-200, 40-17-201,
8 40-17-203, 40-17-222, 40-17-240, 40-17-250, 40-17-290, and
9 40-17-291, 40-17-300, 40-17-301, 40-17-302, 40-17-303,
10 40-17-304, 40-17-305, 40-17-306, 40-17-307, and 40-17-308.

11 Section 46. There is appropriated to the Department
12 of Revenue, as a first charge against the revenues collected
13 under the provisions of this act for the fiscal year ending
14 September 30, 2012, one hundred fifty thousand dollars
15 (\$150,000), to be utilized for the implementation and
16 administration of this act, and every year thereafter as a
17 first charge against the revenues collected under the
18 provisions of this act, an amount of revenue shall be
19 appropriated to the department to offset its costs in the
20 administration of this act.

21 Section 47. Although this bill would have as its
22 purpose or effect the requirement of a new or increased
23 expenditure of local funds, the bill is excluded from further
24 requirements and application under Amendment 621, now
25 appearing as Section 111.05 of the Official Recompilation of

1 the Constitution of Alabama of 1901, as amended, because the
2 bill defines a new crime or amends the definition of an
3 existing crime.

4 Section 48. This act shall become effective October
5 1, 2012, following its passage and approval by the Governor,
6 or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 04-MAY-11, as amended.

Greg Pappas
Clerk

Senate	<hr/>	02-JUN-11	Amended and Passed
House	<hr/>	02-JUN-11	Concurred in Sen- ate Amendment