

CITY OF BAYOU LA BATRE

ORDINANCE NUMBER 506

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AN ORDINANCE LEVYING AND IMPOSING AN EXCISE TAX ON PERSONS, CORPORATIONS, PARTNERSHIPS, COPARTNERSHIPS, COMPANIES, AGENCIES, OR ASSOCIATIONS ENGAGED IN THE BUSINESS OF SELLING, DISTRIBUTING, STORING OR WITHDRAWING FROM STORAGE, FOR ANY PURPOSE WHATEVER, MARINE DIESEL FUEL WITHIN THE CORPORATE LIMITS OF THE CITY OF BAYOU LA BATRE AND WITHIN THE POLICE JURISDICTION THEREOF AND PROVIDING FOR THE COLLECTION AND PAYMENT OF SUCH TAX AND PROVIDING FOR A PENALTY FOR ITS VIOLATION.

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WHEREAS, the City of Bayou La Batre imposed a one cent (\$0.01) per gallon excise tax on the sale of marine diesel fuel by the passage of Ordinance Number 2003-484, which became effective as of November 1, 2003, and;

WHEREAS, said City of Bayou La Batre Ordinance Number 2003-484 was to be effective for the period of twenty-four (24) months beginning November 1, 2003 and ending November 1, 2005, and;

WHEREAS, the City Council of the City of Bayou La Batre has determined that it is necessary to continue to impose a one cent (\$0.01) per gallon excise tax on the sale of marine diesel fuel within the City limits and police jurisdiction of the City of Bayou La Batre, and;

WHEREAS, the City Council of the City of Bayou La Batre has determined that such increase in marine diesel fuels is necessary to promote the economically

declining seafood and shrimping industry in Southwest Alabama and the City of Bayou La Batre, and;

WHEREAS, the City Council of the City of Bayou La Batre believes that such increase should only be in effect for a period of twelve (12) months from effective date of passage;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BAYOU LA BATRE, ALABAMA:

SECTION ONE:

(a) The term "diesel fuels" as used in this ordinance shall include diesel oil, gas oil and/or any other liquid diesel marine fuels or any devices or substitutes therefor used in internal diesel fuel marine combustion engines provided, however, that nothing in this ordinance shall be held to apply to those products known commercially as "kerosene oil," "fuel oil," or "crude oil" used for lighting, heating or industrial purposes.

(b) The term "person" means and includes every person, corporation, partnership, copartnership, company, agency, or association, singular or plural.

(c) The term "distributor" means and includes every person who shall engage in the selling of diesel fuel as herein defined in the corporate limits of the City of Bayou La Batre, and outside the corporate limits but within the police jurisdiction thereof, at wholesale, or retail, but shall not apply to any transaction by any such distributor engaged in interstate commerce.

(d) The term "retail dealer" shall include any person herein defined as the distributor who is engaged in the sale of diesel fuel as herein defined within the corporate limits of the City of Bayou La Batre, and outside the corporate limits but within the police jurisdiction, in broken or component quantities at retail.

(e) The term "storer" as used herein shall include any person who ships or transports diesel fuel as herein defined into the City of Bayou La Batre and the police jurisdiction thereof, in tank quantities and stores the same and withdraws or uses same for any purpose.

SECTION TWO:

(a) There is hereby levied and imposed an excise tax of one cent (\$0.01) per gallon on all persons, corporations, partnerships, copartnerships, companies, agencies or associations engaged in the business of selling, distributing, storing or withdrawing from storage for any purpose whatever, diesel fuels or other liquid marine fuels or devices or substitutes therefor within the corporate limits of the City of Bayou La Batre; and every distributor, retail dealer, or storer of diesel fuel as herein defined is required to pay such excise tax in such amount upon the selling, distributing, or withdrawing from storage for any use diesel fuel as herein defined in the City of Bayou La Batre; but the excise tax levied hereby shall not and is not levied and shall not be collected upon the sales of diesel fuel in interstate commerce; provided, further that if the excise tax imposed hereby upon the sale, distribution, or withdrawal from storage of such shall have been paid by a distributor or a retail

dealer or by a storer, such payment shall be sufficient, the intention being that the tax shall not be paid but once. The excise tax imposed under this Ordinance shall apply to persons, firms, corporations, dealers or distributors storing and distributing the same or allowing the same to be withdrawn from storage, whether such withdrawal be for sale or other use; provided that sellers of diesel fuel and its substitutes paying the tax herein provided may pay the same computed and paid on the basis of their sales as herein provided and storer and distributors shall compute and pay such tax on the basis of their withdrawals or distributions.

(b) The excise tax herein imposed shall be in addition to any and all excise or other taxes imposed on diesel fuels, as defined herein, and/or other liquid marine motor fuels or any device or substitute therefor, or on the business of selling, distributing, storing or withdrawing from storage for any purpose diesel fuel as herein defined by the State of Alabama or any other agency or subdivision of the State of Alabama, or the United States.

SECTION THREE: That on or before the 20th day of each month hereafter every person upon whom the excise tax is levied shall render to the City Clerk of the City of Bayou La Batre on form prescribed by the City Clerk a sworn true and correct statement of all sales and withdrawals of diesel fuel made by him or them during the next preceding month liable for payment of the excise tax imposed by this Ordinance, and shall furnish to the said City Clerk such additional information as the City Clerk may require upon blanks to be formulated and furnished by the City, and

at the time of making such report shall pay to the City an amount of money equal to the excise tax levied hereby. The statement herein required to be made by the distributor, storer, or retail dealer shall be sworn to before some officer authorized to administer oaths.

SECTION FOUR: All distributors, storers and retail dealers shall keep for not less than two (2) years within the State of Alabama at some certain place or office such books, documents or papers as will clearly show the amount of sales or withdrawals of diesel fuel made in the City of Bayou La Batre taxed under this Ordinance.

SECTION FIVE: That on or before the 20th day of each month, next following the adoption of this Ordinance thereafter every distributor, storer or retail dealer engaged in the sale or withdrawal of diesel fuel as herein defined in the City of Bayou La Batre shall make a report on blanks furnished under Section Three hereof to the City Clerk of the City of Bayou La Batre, showing the place and post office address at which he is engaged in business as a distributor or storer or retail dealer in diesel fuel within the said City, which information shall be entered by the City Clerk on a book kept for that purpose, and should such distributor, storer or retail dealer move his place of business from one business address to another, such distributor, storer or retail dealer shall within thirty (30) days thereafter notify the said City Clerk of the City of Bayou La Batre of such removal, giving the former place and post office address and also the place and post office address to which his place of business

has been removed. Hereafter no person shall become a distributor, storer or seller of gasoline in the City of Bayou La Batre until he shall have made such reports to the said City Clerk.

SECTION SIX: The licensee must keep accurate records of all purchases and furnish to the City Clerk all pertinent information as to the amount of purchases, gross amount paid thereof, or other information as may be required from time to time by the City Clerk, and shall pay monthly to the City Clerk not later than the twentieth (20th) of each month, the amount due as hereby fixed and prescribed; and if not paid by said day, a penalty of twenty (20%) percent of the amount due, together with interest thereon at the rate of one (1%) percent per month, or a fraction thereof from the date at which the tax levied herein became due and payable, such penalty and interest to be assessed and collected as part of the taxes hereunder.

SECTION SEVEN: If any person subject to this Ordinance shall fail or refuse to make report thereof, the City Clerk may make or cause to be made an assessment of the tax owing by him from the person or licensee against whom such assessment is made, may within ten (10) days of a notice of such assessment protest the same in writing. Should the City Clerk deny the matter set forth in such protest, then it shall notify the person or licensee of its decision and such person or licensee must pay the assessment or it shall be subject to punishment as provided hereinafter.

SECTION EIGHT: The acceptance of any amount paid for the excise tax imposed hereby shall not preclude the collection of the amount actually due. However, the amount actually paid shall constitute a credit against the amount actually due.

SECTION NINE: Any distributor, storer or dealer against whom such tax shall be imposed by the City of Bayou La Batre who shall violate any provisions of this Ordinance, may (a) be restrained by the City of Bayou La Batre from distributing, selling, storing or withdrawing from storage any diesel fuel, as herein defined, the sale or withdrawal of which is taxable until such person shall have complied with the provisions of this Ordinance, and/or (b) be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), or by imprisonment for a period not exceeding six (6) months, or both, in the discretion of the Municipal Judge. Each and every incidence of failure to collect or pay such excise tax shall constitute a separate offense chargeable under this Ordinance.

SECTION TEN: Should any section, paragraph or portion of this Ordinance be declared unconstitutional, it shall not invalidate the remaining sections, paragraphs or portions thereof.

SECTION ELEVEN: This Ordinance shall become effective as of January 1, 2006.

SECTION TWELVE: This Ordinance shall not modify, alter, change or amend in any form any other ordinance that imposes any excise or tax on marine diesel fuels.

SECTION THIRTEEN: This Ordinance shall be and remain in effect for a period of twelve (12) months from effective date, after said time has expired this Ordinance shall lapse.

ADOPTED and APPROVED this 12th day of December, 2005.

THE CITY OF BAYOU LA BATRE



STAN WRIGHT, MAYOR

ATTEST:



DONNA GAINES, CITY CLERK