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Motor Fuels Taxes.

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RESEARCH REFERENCES

AM. Jur. 72 Am. Jur. 2d, State Tax., § 616 et seq.

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Subchapter 1.
General Provisions.

Effective dates. Acts 1929, No. 65, § 75: approved Feb. 28, 1929. Emergency clause provided: "It is ascertained and hereby declared that the defective condition of the public roads is a standing menace to the traveling public; that the repairs of the present public roads, and the construction of the roads contemplated by this Act, are necessary for the safety of the traveling public, so that the immediate operation of the Act is essential for the protection of the public safety, and an emergency is therefore declared; and this Act shall take effect and be in force from and after its passage."

Acts 1935, No. 185, § 2: Mar. 26, 1935. Emergency clause provided: "It is hereby ascertained, that motor bus systems are now operating in adjoining cities and towns without adequate provision under existing laws for the collection of the motor vehicle fuel tax or for such cities and towns being reimbursed for the use of and damage to their streets, and that such fact constitutes an emergency, and it is ordered that this act take effect upon its approval."

Acts 1993, No. 1029, § 11: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that current laws do not require explicit monthly reports from terminals or pipeline companies regarding their activities relative to gasoline and diesel transactions and as a consequence the State may be experiencing a loss of fuel tax revenues since certain of such transactions may result in the evasion of such taxes; that such tax revenues are greatly needed by the State for highway, road, and street purposes; and that only by the effectiveness of the amendments contained in this act as expeditiously as possible may the aforementioned problems be solved. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1993."

26-55-101. Exemption for United States Government vehicles - Refunds.

(a) Motor vehicles belonging to the United States Government and used in its business exclusively shall not be required to pay any motor vehicle fuel tax.

(b) Where motor vehicle fuel upon which the tax has been paid is sold to any agent or employee of the United States Government for use in a motor vehicle belonging to the United States Government, and is used in its business exclusively, the wholesaler or dealer may not charge the consumer with the amount of the tax but may claim the refund of the tax under such regulations as the Director of the Department of Finance and Administration may prescribe.

History. Acts 1929, No. 65, § 35; Pope's Dig., § 6635; A.S.A. 1947, § 75-248.

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26-55-102. City motor bus system operating across state lines.

(a) The fee to be paid to this state for the registration and licensing of any motor bus used by a system of motor buses operating in lieu of a street car system in adjoining cities or incorporated towns which are separated by a state line shall not exceed the fee provided by law in the adjoining state for such bus where:

(1) More than one-half (1/2) of the mileage of the routes regularly run by the motor bus system is outside this state; and

(2) More than one-half (1/2) of the gross revenues of such a system is derived from its operation outside this state and from the carrying of passengers from outside this state into this state; and

(3) Such system is operated in this state under a franchise contract with the Arkansas city or town; and

(4) The motor buses are not operated under any conditions whatever on any of the roads or highways in this state outside the corporate limits of such city or town; and

(5) The motor bus system shall pay to this state a motor vehicle fuel tax, at the applicable rate as fixed by the law of this state, upon at least one-half (1/2) of the motor vehicle fuel used in the operation of the system as a whole.

(b) At any time the adjoining city or town in Arkansas may, by ordinances, provide a privilege tax on the buses sufficient to reimburse such city or town for the use of its streets, and that tax may be greater in amount than authorized in § 7444 of Crawford and Moses Digest [repealed].

History. Acts 1935, No. 185, § 1; Pope's Dig., § 6881; A.S.A. 1947, § 75-1132.

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Subchapter 2.
Motor Fuel Tax Law.

Effective dates. Acts 1941, No. 383, § 32: July 1, 1941.

Acts 1943, No. 250, § 2: approved Mar. 18, 1943. Emergency clause provided: "Whereas gasoline and other petroleum products classified as motor fuel, and especially aviation gasoline, are vitally essential in the present war emergency, and the rapid sale and movement of such products in commerce will be impeded if the distributors thereof are not promptly licensed and qualified as such under our State tax collection procedure and the regulations promulgated under our gasoline tax statutes, it is hereby declared that an emergency exists and this act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage."

Acts 1943, No. 251, § 2: approved Mar. 18, 1943. Emergency clause provided: "Whereas gasoline and other petroleum products classified as motor fuel, and especially aviation gasoline, are vitally essential in the present war emergency, and the rapid sale and movement of such products in commerce will be impeded if the distributors thereof are not promptly licensed and qualified as such under our State tax collection procedure and the regulations promulgated under our gasoline tax statutes, it is hereby declared that an emergency exists and this act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage."

Acts 1943, No. 252, § 2: approved Mar. 18, 1943. Emergency clause provided: "It is found to be a fact that by amending Act 383 of 1941, as herein set out, the amount of motor fuel taxes collected will be greatly increased, and such taxes being essential to the payment of the State's highway obligations, and the payment of same being necessary to the peace, health, safety and welfare of the State and its citizens, an emergency is declared to exist by reason thereof and this act shall take effect and be in force immediately upon its enactment."

Acts 1943, No. 253, § 3: approved Mar. 18, 1943. Emergency clause provided: "It is found to be a fact that by amending Act 383 of 1941, as herein set out, the amount of motor fuel taxes collected will be greatly increased, and such taxes being essential to the payment of the State's highway obligations, and the payment of same being necessary to the peace, health, safety and welfare of the State and its citizens, an emergency is declared to exist by reason thereof and this act shall take effect and be in force immediately upon its enactment."

Acts 1943, No. 255, § 2: approved Mar. 18, 1943. Emergency clause provided: "Whereas gasoline and other petroleum products classified as motor fuel, and especially aviation gasoline, are vitally essential in the present war emergency, and the rapid sale and movement of such products in commerce will be impeded if the distributors thereof are not promptly licensed and qualified as such under our State tax collection procedure and the regulations promulgated under our gasoline tax statutes, it is hereby declared that an emergency exists and this act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage."

Acts 1945, No. 166, § 2: approved Mar. 2, 1945. Emergency clause provided: "Whereas gasoline and other petroleum products classified as motor fuel, and especially aviation gasoline, are vitally essential in the present war emergency, and the rapid sale and movement of such products in commerce will be impeded if the distributors thereof are not promptly licensed and qualified as such under our State

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tax collection procedure and the regulations promulgated under our gasoline tax statutes, it is hereby declared that an emergency exists and this Act, being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force and effect from and after its passage."

Acts 1947, No. 415, § 3: Mar. 28, 1947. Emergency clause provided: "Whereas, it is ascertained that the exportation of motor fuel is necessary for the preservation of public peace, health, safety and welfare of the people of this state and that present laws do not provide therefor. Therefore, an emergency is hereby declared to exist and this law shall be in full force and effect from and after its passage and approval."

Acts 1949, No. 352, § 2: approved Mar. 21, 1949. Emergency clause provided: "This Act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage."

Acts 1953, No. 143, § 3: Feb. 25, 1953. Emergency clause provided: "It has been found and is declared by the General Assembly that large numbers of oil companies and operators of filling stations selling gasoline in states adjoining the Arkansas borders and that they have leased many tracts of land in Arkansas for a distance of 300 feet from the Arkansas state boundary lines and that such practice is causing the loss of revenue to this state and that the adoption of this Act will prohibit said practice and increase the revenue of this State. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from the date of its passage and approval."

Acts 1957, No. 312, § 4: approved Mar. 27, 1957. Emergency clause provided: "It has been found and declared by the General Assembly that in some instances bridges have been abandoned, redesigned, relocated or otherwise changed so as to eliminate from border zones areas previously within such zones beyond the required distance from new bridges or bridges as redesigned, relocated or otherwise changed, thereby destroying long existing rights of the owners or lessees of such areas and the diminution of such areas is also causing the loss of substantial revenues to this State due to the inability of filling station operators within said zones to compete favorably with filling station operators in states adjoining the Arkansas borders, and the adoption of this Act will prohibit the loss of such revenues and will actually increase the revenue of this State. Therefore, an emergency is declared to exist and this Act being necessary for the public peace, health and safety shall take effect and be in force from the date of its passage."

Acts 1957, No. 393, § 5: Mar. 27, 1957. Emergency clause provided: "It has been found and declared by the General Assembly that the bond heretofore required to be posted by distributors of motor fuel to assure the payment of state taxes upon such fuel have in many instances been sufficient to insure the State of Arkansas against the loss of revenues, that the penalties heretofore prescribed by law for failure of distributors to pay the taxes upon motor fuel within the prescribed time were excessive and therefore almost unenforceable, and that this Act will provide for an increase in the bond and a decrease in the penalties provided for failure to pay the tax on or before the due date and will thereby render the motor fuel tax laws of this State more enforceable. Therefore an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, safety and welfare shall be in full force and effect from and after its passage and approval."

Acts 1959, No. 273, § 2: Mar. 25, 1959. Emergency clause provided: "It is hereby found and determined by the General Assembly that severe weather conditions have caused serious damage to the public highways of this State; that adequate funds are not available and will not be available under the existing laws of this State to provide for adequate maintenance and reconstruction of such highways to make the same safe and suitable for the public use; and that only by the immediate passage of this Act may additional funds be provided whereby such situation may be corrected. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace,

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health and safety shall be in full force and effect from and after its passage and approval."

Acts 1965 (1st Ex. Sess.), No 41, § 16: June 10, 1965. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that many of the highways, roads and streets in the State are in a dangerous condition and in need of reconstruction and that there is an immediate need for the construction of new highways, roads and streets, in order to alleviate existing hazards detrimental to the public health, safety and welfare; that the State and the various counties and municipalities do not have funds sufficient in amount to undertake and complete the necessary construction and reconstruction work, which should be commenced and completed as soon as practicable; that only by this act can the necessary construction and reconstruction work be promptly commenced and completed; and for said reasons it is hereby declared necessary for the preservation of the public peace, health and safety that this act become effective without delay. It is, therefore, declared that an emergency exists and this act shall take effect and be in force from and after the date of its passage and approval."

Acts 1965 (1st Ex. Sess.), No. 43, §§ 3, 5: July 1, 1965. Emergency clause provided: "It is hereby found and declared that by providing for an adequate bond of distributors that there will be an increase in collection of highway user taxes, and that by providing that the Motor Fuel Tax be paid by the first receiver, there will be a substantial increase in the collection of highway user taxes. Therefore, an emergency is hereby found and declared to exist, and the Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval." Approved June 10, 1965.

Acts 1967, No. 45, § 2: Feb. 7, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that a great inequity exists under the present law relative to the border tax rate on motor fuel in certain cities of this State, in that service stations that were within the limits of a city or town on or before June 1, 1965, are entitled to charge and remit the border tax rate, while other nearby competing stations which are in an area made a part of the city or town since June 1, 1965, are required to collect and pay a higher rate of tax on motor fuel sold, and that this Act is immediately necessary to correct this situation and to provide a healthy competitive market in such cities and towns. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

Acts 1967, No. 198, §§ 3, 5: July 1, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing law relative to the liability of licensed distributors for motor fuel taxes on motor fuel is difficult to interpret and therefore creates confusion and uncertainty as to the tax liability of licensed distributors in this State, and that this Act is immediately necessary to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval." Approved March 6, 1967.

Acts 1971, No. 295, § 4: Mar. 15, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present law relating to the bond required to be deposited by licensed motor fuel distributors there is no specific limitation on the amount of the bond which the Commissioner of Revenues may require such distributor to post; that said law makes no distinction between licensed motor fuel distributors that are organized under the laws of the State of Arkansas and wholly owned by Arkansas residents, and non-resident distributors; that the bond required by the Commissioner of Revenues in the case of some resident distributors is extremely high and places an unreasonable burden on the distributor; that the purpose for requiring the deposit of a bond is to assure that the distributor will remit to the State all motor fuel taxes due the state; that since resident motor fuel distributors have property within the State which may be attached by the State for taxes in case the distributor fails to remit all taxes due, the bond required to be posted by resident distributors

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need not be in an amount equal to the total taxes to be remitted to the State by the distributor but that a maximum bond of fifty thousand dollars ($50,000.00) is adequate to protect the State in the collection of motor fuel taxes; and that this Act is immediately necessary to prescribe a maximum bond for resident motor fuel distributors. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 445, § 26: July 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that immediate steps must be taken to provide additional State funds, and to allocate federal revenue sharing funds, for the construction of State highways which are essential to the public health, safety, and welfare and that the immediate passage of this Act is necessary in order that fiscal officials of the State may make plans to prepare for the collection of additional highway revenues effective from and after July 1, 1973. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1973."

Acts 1973, No. 507, § 3: Mar. 29, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that a great inequity exists under the present law relative to the border tax rate on motor fuel in certain cities of this State in that service stations that were within the limits of a city or town on or before June 1, 1967, are entitled to charge and remit the border tax rate, while other nearby competing stations which are in an area made a part of the city or town since June 1, 1967, are required to collect and pay a higher rate of tax on motor fuel sold, and that this Act is immediately necessary to correct this situation and to provide proper competitive markets in such cities or towns. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 437, § 8: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing highway user revenue sources do not provide for the adequate maintenance, repair, construction and reconstruction of state highways, county roads and city streets; that the motor vehicular traffic on the public highways and streets of this State makes it immediately necessary that additional funds be provided in order to finance adequate highway, road and street maintenance and construction programs; that the continued economic expansion and growth of this State will be jeopardized if an adequate system of public roads and streets is not provided; and that only by the immediate passage of this Act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July first of 1979."

Acts 1979, No. 686, § 4: Apr. 2, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly that the present evaporation and collection allowance rate for motor fuel distributors is insufficient to cover the cost of collection, and that the passage of this Act is necessary to correct this situation. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 802, §§ 3, 5: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that this Act is necessary to control the payments of motor fuel tax. Therefore, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after July 1, 1979."

Acts 1983, No. 830, § 5: Mar. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the orderly administration of the motor fuel tax laws is

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essential for the effective collection of these taxes; that some uncertainty exists regarding the sale of fuels to the United States and, that this Act is necessary to clarify this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 112, § 2: May 30, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is urgent need for additional funds to provide for construction, repair and maintenance of state highways; that the exemption of gasohol from motor fuel taxes and special motor fuel taxes may in the future result in a substantial amount of highway revenues since such laws provide for a total exemption from all motor fuel and special motor fuel taxes for motor fuels which contain only ten percent anhydrous ethanol and this exemption could well lead to more widespread use of this fuel; that it is the purpose of this Act to repeal such exemptions and to assure that persons using such fuels pay their fair share of the cost of constructing and maintaining highways in the state and that this Act should be given effect immediately to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after May 30, 1985."

Acts 1987, No. 763, § 8: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in serious danger of losing revenues which are necessary to provide adequate funding for essential needs of the citizens of this State and the provisions of this Act are necessary to avoid a substantial reduction in State revenues. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1987."

Acts 1989, No. 168, § 5: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that this act is necessary to secure the indebtedness to the state for motor fuel taxes; that this act should go into effect on July 1, 1989, in order to provide sufficient time to give notice to all persons involved; and that unless this emergency clause is adopted, the act may not go into effect on July 1, 1989. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1989."

Acts 1991, No. 688, § 10: Mar. 21, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that some taxpayers are not properly completing and timely filing tax returns; that these failures create an administrative burden upon the Department of Finance and Administration; and that this act is designed to impose a fifty dollar ($50) penalty for failure to timely file returns, even if no tax is due, or if returns are not properly completed. Therefore, an emergency is hereby declared to exist and this act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1029, § 11: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that current laws do not require explicit monthly reports from terminals or pipeline companies regarding their activities relative to gasoline and diesel transactions and as a consequence the State may be experiencing a loss of fuel tax revenues since certain of such transactions may result in the evasion of such taxes; that such tax revenues are greatly needed by the State for highway, road, and street purposes; and that only by the effectiveness of the amendments contained in this act as expeditiously as possible may the aforementioned problems be solved. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1993."

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that

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these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1035, § 2: July 1, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly that motor fuels are taxed in order to repair, maintain, and construct the roads in Arkansas. It is also found that automobiles used solely for racing do not use the roads in Arkansas; and therefore, those persons paying taxes on leaded gasoline or methanol for racing automobiles are being unfairly taxed. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public preace, health and safety shall become effective on July 1, 2001."

Acts 2001, No. 1498, § 2: Apr. 12, 2001. Emergency clause provided: "It is found and determined by the General Assembly that border territory included within the limits of a border city, incorporated town, or planned community after February 1, 1973 are unjustly being denied the border tax rate on motor fuels. This leads to confusion within a border city, incorporated town, or planned community as to which entities are subject to the border tax rate on motor fuels. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

CASE NOTES

Cited: Snyder v. Martin, 305 Ark. 128, 806 S.W.2d 358 (1991).

26-55-201. Title.

This subchapter and any amendments thereof and supplements thereto shall be known and may be cited as the "Motor Fuel Tax Law," and as so constituted is hereinafter referred to as "this subchapter."

History. Acts 1941, No. 383, § 1; A.S.A. 1947, § 75-1101.

CASE NOTES

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Cited: Ragland v. Yeargan, 288 Ark. 81, 702 S.W.2d 23 (1986).

26-55-202. Definitions.

As used in this subchapter:

(1) "Bill of lading" means any serially numbered document which shall clearly indicate the following:

(A) The seller's distributor license number;

(B) The origin of the transport trip;

(C) The approximate destination or destinations of the transport trip;

(D) The type or types of motor fuel being transported and quantity or quantities of motor fuel to be delivered to each destination;

(E) The person or persons responsible for the payment of the motor fuel tax; and

(F) Such other information or forms as the director by regulation may adopt or require to implement the intent of this subchapter;

(2) "Dealer" means any person except a distributor engaged in the business of selling motor fuel in the State of Arkansas;

(3) "Distributor" means any person, including the State of Arkansas and any political subdivision of the state, but not including the United States or any of its instrumentalities except to the extent permitted by the Constitution or laws of the United States, that is customarily in the wholesale business offering for resale or delivery of motor fuel to dealers, consumers, or others in tanks of two hundred (200) gallons or more which are not connected to a motor vehicle and that is:

(A) Making the first sale in the State of Arkansas of any motor fuel, imported into the state from any other state, territory, or foreign country, after it shall have been received within this state within the meaning of this subchapter;

(B) Consuming or using in the State of Arkansas any motor fuel so imported and shall have purchased it before it shall have been received by any other person in this state, within the meaning of this subchapter; or

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(C) Producing, refining, preparing, distilling, manufacturing, blending, or compounding motor fuel in this state;

(4) "Duly licensed distributor" means any distributor holding an unrevoked license issued by the Director of the Department of Finance and Administration;

(5) "Exporting" means taking motor fuel out of this state;

(6) "Importing" means bringing motor fuel into this state;

(7)(A) "Motor fuel" means all products commonly or commercially known or sold as gasoline regardless of their classification or uses.

(B) "Motor fuel" includes casinghead, absorption, and natural gasoline and condensate when used without blending as a motor fuel or sold for use in motors directly or sold to those who blend for their own use.

(C) However, "motor fuel" does not include:

(i) Casinghead, absorption, and natural gasoline and condensate when sold to be blended or compounded with other less volatile liquids in the manufacture of commercial gasoline for motor fuel; or

(ii) Leaded gasoline with an octane rating one hundred ten (110) or higher used solely for off-highway testing;

(8) "Motor vehicle" means all vehicles, engines, machines, or mechanical contrivances which are propelled by internal combustion engines or motors and used for travel on public roads and highways;

(9) "Person" includes any individual, company, partnership, limited liability company, joint venture, joint agreement, mutual or other association, corporation, estate, trust, business trust, receiver or trustee appointed by any state, federal, or other court, syndicate, this state, any county, city, municipality, school district, or any other political subdivision of this state or group or combination acting as a unit, in the plural or singular number;

(10)(A) "Pipeline importer" means a distributor who imports motor fuel by common carrier pipeline, barge, or rail.

(B) A distributor who imports motor fuel exclusively by motor vehicle tank truck is not a pipeline importer;

(11) "Public highways" means every way or place of whatever nature, generally open to the use of the public as a matter of right, for the purposes of vehicular travel, and notwithstanding that it may be temporarily closed for the purpose of construction, reconstruction, maintenance, or

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repair;

(12) "Purchase" includes any acquisition of ownership;

(13) "Received" means:

(A) Motor fuel produced, refined, prepared, distilled, manufactured, blended, or compounded at any refinery at any place in the State of Arkansas by any person shall be deemed to be received by such person when the fuel shall have been loaded at such refinery or other place into tank cars, ships, or barges, or when the fuel shall have been placed in any tank at or by such refinery from which any withdrawals are made direct into tank trucks, tank wagons, pipelines, or other types of transportation equipment, containers, or facilities other than tank cars, ships, or barges, or from which any sales or deliveries not involving transportation are made directly;

(B) Motor fuel imported into the State of Arkansas from any other state, territory, or foreign country by vessel and delivered in that vessel to any person, at a marine terminal in the State of Arkansas for storage, or so imported by pipeline and delivered to any person by such pipeline or a connecting pipeline at a pipeline terminal or pipeline tank farm in the State of Arkansas for storage, shall be deemed to have been received by such person when the fuel shall have been loaded into tank cars, ships, or barges at such marine or pipeline terminal or tank farm for any purpose, or when the fuel shall have been placed in any tank of less than one hundred thousand (100,000) gallons capacity thereat, or elsewhere by such person, or when the fuel shall have been placed in any tank thereat, or elsewhere by such person, from which any withdrawals are made direct into tank trucks, tank wagons, pipelines or other types of transportation equipment, containers, or facilities other than tank cars, ships, or barges or from which tank any sales or deliveries not involving transportation are made directly, but not before;

(C) Motor fuel purchased in a tank car which shall be unloaded in the State of Arkansas shall be deemed to be received at the time when and place where the tank car is unloaded but not before;

(D)(i) Motor fuel imported by any person into this state from any other state, territory, or foreign country, other than by vessel for storage at marine terminals as set forth in this section, or by pipeline for storage at pipeline terminals or pipeline tank farms as hereinbefore set forth, or by tank car, shall be deemed to be received, in the case of motor fuel imported from a foreign country, at the time when and the place where the fuel shall be withdrawn from the original container in which the fuel was imported, but not before, and shall bedeemed to be received in the case of motor fuel imported from another state or territory of the United States at the time when and the place where the interstate transportation of the motor fuel shall have been completed within this state, but nor before.

(ii) However, nothing in this subsection (13) shall be construed to allow the transportation of gasoline by any person without first having secured the proper and necessary permit for such transportation from the director; and

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(E) Motor fuel purchased by one licensed distributor from another licensed distributor shall be deemed to be received by the distributor purchasing the motor fuel at the time title to such motor fuel passes;

(14) "Sale" includes any exchange, gift, or other disposition; and

(15) "Terminal" means every person in the business of withdrawing or removing motor fuel from any pipeline outlet in this state and then storing the motor fuel in any type of storage container.

History. Acts 1941, No. 383, § 2; 1943, No. 254, § 1; 1957, No. 352, § 1; 1967, No. 198, § 1; 1977, No. 346, § 3; A.S.A. 1947, § 75-1102; Acts 1987, No. 763, § 2; 1993, No. 1029, § 1; 1995, No. 1160, § 26; 2001, No. 1035, § 1.

Publisher's Notes. Acts 1987, No. 763, § 1, provided that terms used in the act have the same meaning as in Acts 1941, No. 383 (§ 26-55-201 et seq.).

Acts 1987, No. 763, § 6, provided that nothing in the act shall change or modify the tax rates levied on "motor fuel" pursuant to any of the laws of this state, including, but not limited to, Acts 1941, No. 383, § 4 (§§ 26-55-205 and 26-55-207), Acts 1973, No. 445, § 1 (§§ 26-55-205 and 26-56-201), and Acts 1985, No. 456, § 1 (§§ 26-55-1002 and 26-56-502).

Acts 1993, No. 1029, § 7, provided: "The Director of the Department of Finance and Administration is hereby directed, with the advise and concurrence of the Director of Highways and Transportation, or his designee, to make and promulgate all rules and regulations deemed necessary or desirable by such Directors in order that the amendments contained in this Act be effectuated by July 1, 1993."

Amendments. The 1993 amendment added (14) and (15).

The 1995 amendment inserted "limited liability company" in (4).

The 2001 amendment redesignated former (2) as present (2)(A)-(C) and made related changes; deleted "is" preceding "sold for" and "sold to" in (2)(B); and added (2)(C)(ii).

CASE NOTES

Cited: Camden v. Harris, 109 F. Supp. 311 (W.D. Ark. 1953).

26-55-203. Effect of reference to subchapter.

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Whenever in this subchapter reference is made to a section of this subchapter, the reference shall extend to and include any amendment of or supplement to the section so referred to or any section hereafter enacted in lieu thereof; and, unless otherwise provided, whenever a reference to this subchapter or to any section is made in any amendment or supplement to this subchapter or to any section hereafter enacted, such reference shall be deemed to refer to this subchapter or such section as the same shall then stand or as thereafter amended.

History. Acts 1941, No. 383, § 1; A.S.A. 1947, § 75-1101.

CASE NOTES

Cited: Ragland v. Yeargan, 288 Ark. 81, 702 S.W.2d 23 (1986).

26-55-204. Rules and regulations.

The Director of the Department of Finance and Administration shall prescribe and publish such rules and regulations as may be necessary for the enforcement of this subchapter.

History. Acts 1941, No. 383, § 29; A.S.A. 1947, § 75-1131.

26-55-205. Levy of tax.

(a) There is levied a privilege or excise tax of eight and one-half cents (81/2¢) on each gallon of motor fuel as defined in this subchapter, sold or used in this state, or purchased for sale or use in this state, to be computed in the manner hereinafter set forth.

(b) In addition to the tax levied in subsection (a), there is levied an excise tax of one cent (1¢) on each gallon of motor fuel as defined in this subchapter, sold or used in this state, or purchased for sale or use in this state, to be computed in the manner hereinafter set forth.

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History. Acts 1941, No. 383, § 4; 1943, No. 253, § 1; 1953, No. 112, § 12; 1965 (1st Ex. Sess.), No. 41, § 1; 1967, No. 198, § 2; 1973, No. 445, § 1; 1979, No. 437, § 1; A.S.A. 1947, §§ 75-1106, 75-1269; Acts 1989, No. 821, § 10.

CASE NOTES

Analysis

In General.
Applicability.

In General.

Acts 1921, No. 606 was not invalid as being arbitrary, unreasonable, or discriminatory in its application in that it did not affect vehicles propelled by steam, electricity, or gasoline purchased out of the state. Standard Oil Co. v. Brodie, 153 Ark. 114, 239 S.W. 753 (1922) (decision under prior law),.

Applicability.

Acts 1934 (Ex. Sess.), No. 11, § 22, levying a tax on gasoline applied to all gasoline sold or used within the state, whether used on highways or not, except that motor fuel manufactured, produced, or compounded in, or imported into, the state and subsequently sold for exportation was not taxable. Sparling v. Refunding Bd., 189 Ark. 189, 71 S.W.2d 182 (1934) (decision under prior law),.

Cited: Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-206. Purpose of tax - Allocation.

(a) The tax imposed by this subchapter is levied for the purpose of providing revenue to be used by the State of Arkansas to defray, in whole or in part, the cost of constructing, widening, reconstructing, maintaining, resurfacing, and repairing the public highways, and retiring highway indebtedness of this state.

(b)(1) The funds collected by this subchapter shall be allocated and distributed only in the

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manner now established by existing laws relating to motor fuel taxes.

(2) One cent (1¢) of the tax levied on each gallon of motor fuel under this subchapter shall be remitted to the State Treasurer separate and apart from other motor fuel and distillate special fuel taxes, and the gross amount thereof, without making any deduction therefrom for credit to the Constitutional and Fiscal Agencies Fund, shall be distributed as provided by the Arkansas Highway Revenue Distribution Law, §§ 27-70-201 - 27-70-203, 27-70-206, and 27-70-207.

History. Acts 1941, No. 383, § 3; 1979, No. 437, § 3; A.S.A. 1947, §§ 75-1105, 75-1241.1.

Cross References. Disposition of gross receipts tax on gasohol, § 27-70-208.

CASE NOTES

Analysis

In General.
Construction.

In General.

A legislative declaration that a gasoline tax is a privilege or excise tax is not conclusive where its constitutionality is attacked, as its character must be determined by its incidents. Sparling v. Refunding Bd., 189 Ark. 189, 71 S.W.2d 182 (1934) (decision under prior law),.

The tax provided for by Acts 1934 (Ex. Sess.), No. 11 was a privilege and not a property tax. Sparling v. Refunding Bd., 189 Ark. 189, 71 S.W.2d 182 (1934) (decision under prior law),.

The gasoline tax had its origin not as a sales tax upon the commodity but as a tax upon the privilege and use of the highways. McCarroll v. Mitchell, 198 Ark. 435, 129 S.W.2d 611 (1939) (decision under prior law),.

Construction.

This section did not conflict with former statute providing that no person shall drive into the state any motor vehicle operated for hire without first having paid a tax on all motor fuel over 20 gallons, used or to be used, in operating the vehicle while in the state. McLeod v. Santa Fe Trail Transp. Co., 205 Ark. 225,

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168 S.W.2d 413 (1943).

26-55-207. Exemptions.

The tax imposed by § 26-55-205 shall not be collected upon or with respect to the following transactions:

(1) The sale of motor fuel by a pipeline importer who has first received such motor fuel into this state via common carrier pipeline, barge, or rail to a duly licensed distributor in this state;

(2) The sale of motor fuel by a duly licensed distributor for export from the State of Arkansas, and shipped by common carrier f.o.b. destination, to any other state or territory or to any foreign country, or the export of motor fuel by a duly licensed distributor from the State of Arkansas to any other state or territory or to any foreign country, if satisfactory proof of actual exportation of all the motor fuel is furnished at the time and in the manner prescribed by the Director of the Department of Finance and Administration;

(3) The sale of motor fuel to the United States government;

(4) The sale of motor fuel for use in propelling airplanes, provided satisfactory proof is furnished in the manner prescribed by the Director of the Department of Finance and Administration that the motor fuel is to be used in the propelling of airplanes.

History. Acts 1941, No. 383, § 4; 1943, No. 253, § 1; 1947, No. 415, § 1; 1953, No. 112, § 12; 1959, No. 273, § 1; 1965 (1st Ex. Sess.), No. 41, § 1; 1965 (1st Ex. Sess.), No. 43, § 2; 1967, No. 198, § 2; 1979, No. 437, § 1; 1983, No. 830, § 1; 1985, No. 112, § 1; A.S.A. 1947, § 75-1106; Acts 1987, No. 763, § 3.

Publisher's Notes. As to meaning of terms in, and effect of, Acts 1987, No. 763, see Publisher's Notes, § 26-55-202.

CASE NOTES

State Agencies.

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State highway department was not exempt from payment of gasoline tax purchased for use in the repair, maintenance, and construction of highways and bridges in the state highway system. McCarroll v. Mitchell, 198 Ark. 435, 129 S.W.2d 611 (1939) (decision under prior law),.

Cited: Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-208. Sale of motor fuel exempt from sales or gross receipts tax.

No person selling motor fuel shall be liable to the State of Arkansas for any tax with respect to the sale thereof under the provisions of any sales or gross receipts tax acts of the State of Arkansas.

History. Acts 1941, No. 383, § 28; A.S.A. 1947, § 75-1130.

Cross References. Gasoline tax exempt from gross receipts tax, § 26-52-401.

26-55-209. Local taxes prohibited.

No city, village, town, county, township, or other subdivision or municipal corporation of this state shall levy or collect any excise tax upon or measured by the sale, receipt, or distribution of motor fuel.

History. Acts 1941, No. 383, § 28; A.S.A. 1947, § 75-1130.

26-55-210. Border tax rate areas generally.

(a)(1) The tax on motor fuel sold in cities, incorporated towns, or planned communities which border on a state line or sold within eight hundred feet (800') of the state line or sold within eight hundred feet (800') of the maximum shore line of a navigable lake, the opposite shore line of which is beyond the Arkansas state line or sold within eight hundred feet (800') of the Arkansas terminal of a bridge spanning a river where the state line is in the center of the main channel of the

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river, where such sales of motor fuel are made therein and delivered into the storage tanks of retail dealers or where such sales are made therein to consumers and delivered into the storage tanks of such consumers or directly into the standard fuel tank of a motor vehicle, shall be at the same rate as the tax levied on motor fuel sold in other areas of the state; but in no event shall the rate of tax on motor fuel sold in such border areas be more than one cent (1¢) per gallon above the rate of tax levied in the adjoining state.

(2) Further, no existing city or incorporated town, the corporate limits of which did not on August 1, 1941, or planned community, the limits of which did not on May 18, 1965, extend to within two (2) miles of the state line, shall take advantage of such border rate.

(3) Additionally, no tax is imposed upon or in respect to the transactions exempt from taxation under § 26-55-207.

(4) The tax on motor fuel sold from any establishment adjacent to a federal interstate highway and within one (1) mile of a state line shall be at the rate of tax levied in the adjoining state but not exceed the rate levied in this subchapter.

(b) Whenever any bridge spanning a river where the state line is in the center of the main channel of the river as defined and subject to the provisions of subsection (a) of this section shall have been or shall be abandoned, redesigned, relocated, or otherwise changed so that areas previously within eight hundred feet (800') of the Arkansas terminal of a bridge spanning a river where the state line is in the center of the main channel of the river shall, in whole or in part, no longer be within eight hundred feet (800') of the Arkansas terminal of such bridge, then the tax on motor fuel sold within eight hundred feet (800') of the Arkansas terminal of that bridge prior to its abandonment, redesign, relocation, or other change shall continue to be fixed on the same basis as if no such abandonment, redesign, relocation, or other change of the Arkansas terminal of the bridge had been made or taken place.

(c) Any distributor or dealer of motor fuel who shall sell and deliver any motor fuel within any border rate tax area, except as provided in subsection (a) of this section, shall be guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500) or be imprisoned in the county jail for not to exceed thirty (30) days, or be both so fined and imprisoned.

(d) This section shall apply to abandonments, redesign, relocation, and other changes of bridges made both before and after the passage of this section.

History. Acts 1941, No. 383, § 5; 1943, No. 252, § 1; 1953, No. 143, § 1; 1957, No. 312, §§ 1, 2; 1967, No. 406, § 1; 1967, No. 512, § 1; 1977, No. 378, § 1; 1979, No. 437, § 4; A.S.A. 1947, §§ 75-1107, 75-1107n, 75-1107.2; Acts 1997, No. 727, § 1.

Publisher's Notes. In reference to the term "passage of this section," Acts 1941, No. 383 was

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signed by the Governor on March 26, 1941, and became effective on July 1, 1941.

Amendments. The 1997 amendment, in (a), deleted former (2) and redesignated the remaining subdivisions accordingly.

Cross References. Rate of tax in city or town within one mile of city adjoining state line, § 26-25-104.

CASE NOTES

Analysis

Constitutionality.
Construction.
Incorporated Towns.

Constitutionality.

Acts 1931, No. 63 was not unconstitutional as granting special privileges or immunities nor as abridging the privileges or immunities of citizens of the United States. Bollinger v. Watson, 187 Ark. 1044, 63 S.W.2d 642 (1933) (decision under prior law),.

This section was held not void on ground it conflicted with § 26-55-230, which contains the only provisions for computation and collection of the tax and there is no provision in the law whereby it may be determined how much fuel has been sold and delivered into the tanks of auto owners' vehicles and how much was sold otherwise, since, under § 26-55-204, rules and regulations may be prescribed requiring dealers to report how much gasoline was sold by them under conditions not permissible at the preferential rate. Hardin v. Croom, 203 Ark. 519, 157 S.W.2d 520 (1942).

Construction.

When all of this section is read together, it appears clear that the legislative intent was to allow border dealers a preferential rate only in the circumstances stated. Hardin v. Croom, 203 Ark. 519, 157 S.W.2d 520 (1942).

Incorporated Towns.

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Gasoline dealers in a town bordering on the state line and incorporated since the passage of act were held not entitled to exemption provided by Acts 1935, No. 147. Wiseman v. Omaha, 192 Ark. 718, 94 S.W.2d 116 (1936) (decision under prior law),.

In suit to enjoin collection of motor vehicle fuel tax sold within town at a rate in excess of that provided by the laws of bordering state, exclusion of testimony that town, which was incorporated, included a strip of land a quarter of a mile wide and four miles long, that its land was agricultural, timber land, and bluff land and seven-eighths thereof was uninhabited except for isolated farm houses was error, since, under those facts, order of incorporation of the town would be void ab initio and subject to collateral attack. McCarroll v. Arnold, 199 Ark. 1125, 137 S.W.2d 921 (1940) (decision under prior law),.

In suit to restrain collection of state taxes on sales of gasoline within corporate limits of border town, evidence justified trial court's holding that agricultural and timber lands included in the corporate limits were not needed for urban purposes nor intended to be used for urban purposes and that incorporation was void. Arnold v. McCarroll, 200 Ark. 1094, 143 S.W.2d 35 (1940) (decision under prior law),.

Where single purpose actuating those who enlarged the territorial area of border town by embracing a narrow strip extending to within state boundary was to provide, by technical means, a method by which gasoline dealers might account for the equivalent of lower tax charged in adjoining state, citizen of state, after Attorney General had ruled in favor of state's view that only lesser rate should be charged, was entitled to bring suit against the state and to enjoin it from collecting only the lesser tax as charged in the adjoining state. Park v. Hardin, 203 Ark. 1135, 160 S.W.2d 501 (1942).

26-55-211. Border tax rate applicable within corporate boundaries.

(a) Whenever any territory included within the boundaries of any city, incorporated town, or planned community in this state is included within the border tax rate on motor fuel, as provided for in § 26-55-210, or by any other law of this state governing the border area tax rate on motor fuel, the same rate of tax on motor fuel that applies in the border tax area of the city, incorporated town, or planned community shall also apply to all sales of motor fuel within the boundaries of the city, incorporated town, or planned community.

(b) Except in a city bordering a state line that is the main channel of the Mississippi, the provisions of this section shall apply only to that territory included within the limits of such city, incorporated town, or planned community on July 1, 2001, and shall not apply to territory added to or annexed to the city, incorporated town, or planned community after July 1, 2001.

History. Acts 1953, No. 246, § 1; 1965 (1st Ex. Sess.), No. 41, § 8; 1967, No. 45, § 1; 1973, No. 507, § 1; 1977, No. 378, § 2; A.S.A. 1947, § 75-1107.1; Acts 1997, No. 727, § 2; 2001, No. 1498, § 1.

Amendments. The 1997 amendment substituted "Except in a city bordering a state line which is the main channel of the Mississippi, the provisions" for "However, the provisions" in the second sentence.

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The 2001 amendment substituted "line that" for "line which" and substituted "July 1, 2001" for "February 1, 1973."

26-55-212. Border tax rate areas - Use of auxiliary fuel tanks.

(a) Any consumer of motor fuel who has purchased motor fuel within a border rate area and has obtained delivery of the motor fuel into a storage tank shall not thereafter deliver any such motor fuel into an auxiliary tank attached to any motor vehicle and shall only use such motor fuel in propelling a motor vehicle as has been delivered directly from a storage tank into the standard fuel tank of a motor vehicle.

(b) The term "standard fuel tank" as used in this section means the fuel tank attached to the motor vehicle by the original manufacturer of the motor vehicle, except that it shall exclude any auxiliary fuel tank of a motor vehicle even if attached to a motor vehicle by the original manufacturer thereof.

(c) Any consumer who violates this section shall be guilty of a misdemeanor and, upon conviction, shall be fined in any sum of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500) or be imprisoned in the county jail for not to exceed thirty (30) days, or be both so fined and imprisoned.

History. Acts 1941, No. 383, § 5; 1943, No. 252, § 1; A.S.A. 1947, § 75-1107.

CASE NOTES

Analysis

Constitutionality.
Construction.

Constitutionality.

This section was held not void on ground that it was in restraint of trade for the reason the act imposed no limitation upon the amount of fuel which any purchaser might buy but only upon the amount which might be bought at a single purchase at a reduced rate. Hardin v. Croom, 203 Ark. 519, 157

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S.W.2d 520 (1942).

Provision of this section requiring gasoline to be delivered into standard tank was held not violative of the Constitution in granting certain citizens rights denied to others in that owners of vehicles having larger tanks may buy more motor fuel than owners of smaller tanks. Hardin v. Croom, 203 Ark. 519, 157 S.W.2d 520 (1942).

Construction.

When all of this section is read together, it appears clear that the legislative intent was to allow border dealers a preferential rate only in the circumstances stated. Hardin v. Croom, 203 Ark. 519, 157 S.W.2d 520 (1942).

26-55-213. Distributor's license - Requirement - Penalty for noncompliance.

(a) It shall be unlawful for any distributor to receive, use, sell, or distribute any motor fuel or to engage in business within this state unless the distributor is the holder of an uncancelled license issued by the Director of the Department of Finance and Administration to engage in such business or, if such distributor is an agent, commission or otherwise, of a distributor as defined in this subchapter, unless the agent is the holder of a certified duplicate copy of an uncancelled license issued by the director to his principal.

(b) Any person who engages in business in the State of Arkansas as a distributor without being the holder of an uncancelled license to engage in the business shall upon conviction be punished by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) or imprisonment in the county jail for a term of not less than thirty (30) days and not more than one (1) year, or both such fine and imprisonment. Each day or any part thereof during which any person shall engage in business as a distributor without being the holder of an uncancelled license shall constitute a separate offense within the meaning of this section.

History. Acts 1941, No. 383, §§ 7, 25; 1943, No. 250, § 1; 1945, No. 166, § 1; A.S.A. 1947, §§ 75-1109, 75-1127.

26-55-214. Distributor's license - Application and bond.

(a) To procure such license, every distributor shall file with the Director of the Department of Finance and Administration an application upon oath and in such form as the director may prescribe, setting forth:

(1) The name under which the distributor will transact business within the State of Arkansas;

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(2) The location, with street address, of its principal office or place of business within this state and all of its separate places of business within this state;

(3) The name and complete residence address of the owner or the names and addresses of the partners, if such distributor is a partnership, or the names and addresses of the principal officer, if such distributor is a corporation or association.

(b)(1) Concurrent with the filing of an application for a license, every distributor shall file with the director a bond of the character stipulated and in the amount provided for in §§ 26-55-222 and 26-55-228 [repealed].

(2) No license shall be issued upon any application unless accompanied by such bond, nor, if the applicant is a foreign corporation, unless it is at such time properly qualified under the laws of the State of Arkansas to do business therein.

(c) The director shall keep and file all applications and bonds with an alphabetical index together with a record of all licensed distributors.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; 1965 (1st Ex. Sess.), No. 41, § 5; A.S.A. 1947, § 75-1109.

26-55-215. Distributor's license - Issuance of certificate.

The application in proper form having been accepted for filing, the bond having been accepted and approved, and the other conditions and requirements of §§ 26-55-213 and 26-55-214 having been complied with, the Director of the Department of Finance and Administration shall issue to the distributor a license certificate to transact business as a distributor in the State of Arkansas.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; 1965 (1st Ex. Sess.), No. 41, § 6; A.S.A. 1947, § 75-1109.

26-55-216. Distributor's license - Nonassignable.

The license certificate issued by the Director of the Department of Finance and Administration shall not be assignable and shall be valid only for the distributor in whose name it was issued.

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History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; A.S.A. 1947, § 75-1109.

26-55-217. Distributor's license - Display required.

(a) The license certificate issued by the Director of the Department of Finance and Administration shall be displayed conspicuously in the principal place of business of the distributor in the State of Arkansas.

(b) A certified duplicate copy of the license certificate shall be displayed conspicuously at each separate place of business of the distributor in the State of Arkansas. The copy shall by appropriate language refer to and identify the agent of such distributor in charge of the separate place of business of the distributor.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; A.S.A. 1947, § 75-1109.

26-55-218. Distributor's license - Expiration.

The license shall remain in full force and effect until cancelled as provided in this subchapter.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; 1965 (1st Ex. Sess.), No. 41, § 6; A.S.A. 1947, § 75-1109.

26-55-219. Distributor's license - Refusal.

(a) In the event that any application for a license to transact business as a distributor in the State of Arkansas shall be filed by any person whose license shall at any time have been cancelled for cause by the Director of the Department of Finance and Administration, or in case the director shall be of the opinion that the application is not filed in good faith or in the event that the application is filed by some person as a subterfuge for the real person in interest whose license or registration shall theretofore have been cancelled for cause by the director, or for any other valid

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reason, then and in any of said events the director, after a hearing of which the applicant shall have been given five (5) days' notice in writing and at which the applicant shall have the right to appear in person or by counsel and present testimony, shall have and is given the right and authority to refuse to issue to such person a license certificate to transact business as a distributor in the State of Arkansas.

(b) Any distributor who is aggrieved by the action of the director in refusing to issue the license applied for, within thirty (30) days from the time of such refusal, may appeal to the chancery court of the county of such distributor's residence where he shall be entitled to a hearing de novo. An appeal shall lie from such chancery court to the Supreme Court of Arkansas as in other cases now provided by law.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; A.S.A. 1947, § 75-1109.

26-55-220. Municipal licenses for distributors.

Nothing in §§ 26-55-213 - 26-55-219 shall be construed so as to prevent the collection of any privilege or occupation taxes by any municipality of this state for engaging within the limits of such municipality in the business of distributor or the business of selling, dealing in, or storing petroleum products.

History. Acts 1941, No. 383, § 7; 1943, No. 250, § 1; 1945, No. 166, § 1; 1965 (1st Ex. Sess.), No. 41, § 5; A.S.A. 1947, § 75-1109.

26-55-221. Licenses - Persons other than distributors.

Persons, other than distributors, purchasing or otherwise acquiring motor fuel in tank car, tank truck, or cargo lots for sale, distribution, or use within the State of Arkansas, shall, in the discretion of the Director of the Department of Finance and Administration, also be licensed as set forth in §§ 26-55-213 - 26-55-220 upon compliance with the provisions of the section and thereupon shall be deemed to be the distributor for all purposes of this subchapter with respect to any such motor fuel received while the license remains unrevoked.

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History. Acts 1941, No. 383, § 8; A.S.A. 1947, § 75-1110.

26-55-222. Bonds - Requirement - Amounts - Waiver.

(a)(1) Every distributor shall file with the Director of the Department of Finance and Administration a surety bond of not less than one and one-half (11/2) times or one hundred fifty percent (150%) of the prior six (6) months average motor fuel tax due, based upon the gallonage of motor fuel to be sold or distributed as shown by the application for a permit if the applicant has not heretofore been engaged in the business of a distributor as herein defined, or as shown by sales for the previous year if the applicant theretofore has been engaged in such business in this state.

(2) However, no bond shall be filed for less than one thousand dollars ($1,000).

(3) If the director deems it necessary to protect the state in the collection of gasoline taxes, he may require any distributor to post a bond in an amount up to three (3) times or three hundred percent (300%) of the prior six (6) months average motor fuel tax due.

(b)(1) Provided further, the Director of Department of Finance and Administration or his authorized agent is authorized to waive the posting of bond by any licensed motor fuel distributor that is organized and operating under the laws of Arkansas and that is wholly owned by residents of this state and who has been licensed for a period of at least three (3) years and who has not been delinquent in remitting motor fuel taxes during the three-year period immediately preceding application by the distributor for waiver of bond.

(2) If any motor fuel distributor whose bond has been waived by the Director of the Department of Finance and Administration or his agent as authorized in this subsection subsequently becomes delinquent in remitting motor fuel taxes to the Director of the Department of Finance and Administration, the director or his agent may require that such distributor post a bond in the amount required in this section and such distributor shall not be eligible to petition for a waiver of bond for a period of three (3) years thereafter.

History. Acts 1941, No. 383, § 9; 1957, No. 393, § 1; 1965 (1st Ex. Sess.), No. 43, § 1; 1967, No. 311, § 1; 1971, No. 295, § 1; 1979, No. 644, § 1; 1981, No. 276, § 1; A.S.A. 1947, § 75-1111; Acts 1989, No. 168, § 1.

CASE NOTES

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Cited: Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-223. Bonds - Deposit or pledge of government obligations as alternative.

In lieu of furnishing a bond executed by a surety company, as hereinbefore provided, any distributor may furnish his bond or bonds not so executed, if he concurrently therewith deposits and pledges with the Director of the Department of Finance and Administration direct obligations of the United States or obligations of any agency of the United States fully guaranteed by it or bonds of the State of Arkansas of equal full amount to the amount of the bond required by § 26-55-222, as collateral security for the payment of such bonds.

History. Acts 1941, No. 383, § 9; 1957, No. 393, § 2; A.S.A. 1947, § 75-1111.

CASE NOTES

Cited: Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-224. Bonds - Additional bonds - Conditions for requirement.

In the event that upon a hearing, of which the distributor shall be given five (5) days' notice in writing, the Director of the Department of Finance and Administration shall decide that the amount of the existing bond is insufficient to insure payment to the State of Arkansas of the amount of the tax and any penalties and interest for which the distributor is or may at any time become liable, then the distributor shall immediately, upon the written demand of the director file an additional bond in the same manner and form with a surety company thereon approved by the director in any amount determined by him to be necessary to secure at all times the payment by such distributor to the State of Arkansas of all taxes, penalties, and interest due under the provisions of this subchapter. If the distributor fails to do so, the director shall immediately cancel

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the license certificate of the distributor.

History. Acts 1941, No. 383, § 9; A.S.A. 1947, § 75-1111.

CASE NOTES

Cited: Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-225. Bonds - New bonds - Conditions for requirement.

In the event that liability upon the bond thus filed by the distributor with the Director of the Department of Finance and Administration shall be discharged or reduced, whether by judgment rendered, payment made, or otherwise, or if in the opinion of the director any surety on the bond theretofore given shall have become unsatisfactory or unacceptable, then the director may require the distributor to file a new bond with a satisfactory surety in the same form and amount, failing which the director shall immediately cancel the license certificate of said distributor. If the new bond is furnished by the distributor as above provided, the director shall cancel and surrender the bond of the distributor for which the new bond shall be substituted.

History. Acts 1941, No. 383, § 9; A.S.A. 1947, § 75-1111.

CASE NOTES

Cited: Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-226. Bonds - Release or discharge of surety.

(a)(1) Any surety on any bond furnished by a distributor as provided in §§ 26-55-222 -

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26-55-225 shall be released and discharged from any and all liability to the State of Arkansas accruing on the bond after the expiration of sixty (60) days from the date upon which the surety shall have lodged with the Director of the Department of Finance and Administration written request to be released and discharged.

(2) However, the request shall not operate to relieve, release, or discharge the surety from any liability already accrued, or which shall accrue, before the expiration of the sixty-day period.

(b)(1) The director shall promptly on receipt of notice of such request notify the distributor who furnished the bond, and unless the distributor on or before the expiration of such sixty-day period files with the director a new bond with a surety company satisfactory to the director in the amount and form provided in § 26-55-222, the director shall immediately cancel the license of the distributor.

(2) If the new bond is furnished by the distributor as provided above, the director shall cancel and surrender the bond of the distributor for which the new bond shall be substituted.

History. Acts 1941, No. 383, § 9; A.S.A. 1947, § 75-1111.

CASE NOTES

Cited: Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-227. [Repealed.]

Publisher's Notes. This section, concerning the waiver of bonds, was repealed by Acts 1989, No. 168, § 2. The section was derived from Acts 1941, No. 383, § 9; 1979, No. 644, § 1; 1981, No. 276, § 1; A.S.A. 1947, § 75-1111.

26-55-228. [Repealed.]

Publisher's Notes. This section, concerning the unlawful sale of motor fuel to an unbonded dealer, was repealed by Acts 1995, No. 777, § 1. The section was derived from Acts 1941, No. 383, § 9; 1957, No. 393, § 2; A.S.A. 1947, § 75-1111.

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26-55-229. Tax reports.

(a) For the purpose of determining the amount of the tax imposed by this subchapter, the Director of the Department of Finance and Administration may require such supporting documents as he may deem necessary to assure accurate reporting.

(b) The reports shall be filed on forms prescribed by the director and shall be filed with the director on or before the twenty-fifth day of each calendar month following the reporting month in question. Once a distributor has become liable to file a monthly report with the Director of the Department of Finance and Administration, he must continue to file a monthly report, even though no tax is due, until such time as he notifies the director, in writing, that he is no longer liable for monthly reports.

(c) These reports shall include the following:

(1) An itemized statement of the number of gallons of all motor fuel received during the next-preceding calendar month by the distributor, which has been produced, refined, prepared, distilled, manufactured, or compounded by the distributor in the State of Arkansas;

(2) An itemized statement of the number of gallons of all motor fuel received by the distributor in the State of Arkansas from any source whatsoever during the next-preceding calendar month as shown by the shipper's bills of lading thereof, other than motor fuel falling within the provisions of subdivision (1) of this subsection, together with a statement showing:

(A) The date of receipt of each shipment of motor fuel;

(B) The name of the person from whom purchased or received;

(C) The point of origin and the point of destination of each shipment;

(D) The quantity of each of the purchases or shipment;

(E) The name of the carrier;

(F) The number of each tank car or tank truck;

(G) The number of gallons contained in each tank car or tank truck; and

(H) The owner of the boat, ship, barge, or vessel, if shipped by water;

(3) An itemized statement of the number of gallons of motor fuel deducted in accordance with the provisions of § 26-55-230(a)(1)(C) or (D) in making any previous monthly report with respect to which motor fuel so deducted the tax payable under the terms of this subchapter have not theretofore been paid;

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(4) An itemized statement of the number of gallons of motor fuel sold by the distributor during the preceding calendar month and exempted from the tax by § 26-55-207(1)-(4), separately itemizing the amount of motor fuel sold and claimed to be exempt under each one of those subdivisions of § 26-55-207; and the statement shall furnish such information relating to such sales as shall be required by the director and reasonably necessary to the enforcement by him of the provisions of this subchapter;

(5) An itemized statement of the number of gallons of motor fuel sold by the distributor within a border rate area and at the border rate tax, as is permitted by §§ 26-55-210 and 26-55-212, together with such information relating to such sales as shall be required by the director and reasonably necessary to the enforcement by him of the provisions of this subchapter;

(6) An itemized statement of the number of gallons of motor fuel which, during the next-preceding month, was received, within the meaning of § 26-55-202(9)(A) or (B), by being placed in a tank, but which had not been withdrawn therefrom at the close of the next preceding calendar month;

(7) An itemized statement of the number of gallons of motor fuel received during the next-preceding calendar month and deductible under the provisions of § 26-55-230(a)(1)(D);

(8) An itemized statement of the number of gallons of motor fuel received by the distributor during the next-preceding calendar month which were purchased by the distributor, tax-paid, and supported by copies of the seller's tax-paid invoices.

History. Acts 1941, No. 383, § 10; 1943, No. 253, § 2; 1979, No. 802, § 1; A.S.A. 1947, § 75-1112; Acts 1987, No. 763, § 4; 1991, No. 688, § 1.

Publisher's Notes. As to meaning of terms in, and effect of, Acts 1987, No. 763, see Publisher's Notes, § 26-55-202.

26-55-230. Computation and payment of tax.

(a) At the time of filing of each monthly report with the Director of the Department of Finance and Administration, each distributor shall pay to the director the full amount of the motor fuel tax for the next-preceding calendar month, which shall be computed as follows:

(1) From the sum of the total number of gallons of motor fuel received, reduced by the total number of gallons received upon which the tax has been paid as evidenced by the itemized statement filed pursuant to § 26-55-229(c)(8) by the distributor within the State of Arkansas during the next-preceding calendar month, plus the total number of gallons of motor fuel

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deducted on any previous monthly report of the distributor under the provisions of subdivisions (a)(1)(C) and (D) of this section with respect to which the tax payable under this subchapter remains unpaid, shall be made the following deductions:

(A) The total number of gallons of motor fuel received by the distributor within the State of Arkansas and sold or otherwise disposed of during the next-preceding calendar month as set forth in § 26-55-207;

(B) The total number of gallons of motor fuel received by the distributor within the State of Arkansas and sold or otherwise disposed of during the next-preceding calendar month as set forth in § 26-55-210;

(C) The total number of gallons of motor fuel which, during any previous calendar month, was received, within the meaning of § 26-55-202(9)(A) or (B), by being placed in a tank but had not been withdrawn therefrom at the close of the next-preceding calendar month;

(D) The total number of gallons of motor fuel received during any previous calendar month, within the meaning of § 26-55-202(9)(A), by being placed in a tank, which was thereafter delivered by the person receiving it to a common carrier pipeline for shipment or delivery to a point in Arkansas, but had not been, at the close of the next-preceding calendar month, delivered by the pipeline at its destination, even though because of being mingled in the common carrier pipeline system with other motor fuel, the motor fuel to be delivered to the point of destination is not the identical motor fuel delivered by the shipper to the common carrier pipeline;

(E) That number of gallons of motor fuel lost due to fire, flood, storm, theft, or other cause beyond his control, other than through evaporation. The deduction for the loss may be included in the report filed for the month in which the loss occurred or in any subsequent report filed within a period of one (1) year;

(F) That number of gallons of motor fuel which shall be equal to three percent (3%) of the first one million (1,000,000) gallons, and no allowance for the remaining gallons of the total number of gallons of motor fuel received by the distributor during the next-preceding calendar month, less the total number of gallons deducted under subdivisions (a)(1)(A)-(E) of this section. It is determined by the General Assembly that three percent (3%) of the first one million (1,000,000) gallons and no allowance for the remaining gallons so received is the actual and average amount of loss resulting from evaporation, shrinkage, and the losses resulting from unknown causes irrespective of the amount thereof, and the cost of collection;

(2) The number of gallons remaining after the deductions hereinabove set forth have been made shall be multiplied by the rate of tax provided in § 26-55-205;

(3) The remaining number of gallons computed on a volumetric basis shall be multiplied by the rate provided by law in the adjoining state, such rate not to exceed the rate provided by § 26-55-205; and the resulting figure, together with the figure obtained in subdivision (a)(2) of this

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section, shall be the total amount of motor fuel tax due for the next-preceding calendar month.

(b) In reporting and computing this tax, distributors shall adjust all volume measurements of motor fuel to a temperature of sixty degrees Fahrenheit (60° F).

(c) The director by regulation shall provide for the payment and collection of the motor fuel tax where it is due but which under the terms of this subchapter is not required to be remitted by a distributor.

History. Acts 1941, No. 383, § 10; 1943, No. 253, § 2; 1949, No. 352, § 1; 1965 (1st Ex. Sess.), No. 41, § 2; 1979, No. 686, § 1; A.S.A. 1947, § 75-1112; Acts 1987, No. 763, § 5; 1989, No. 821, § 10.

Publisher's Notes. As to meaning of terms in, and effect of, Acts 1987, No. 763, see Publisher's Notes, § 26-55-202.

CASE NOTES

Analysis

In General.
Collections.
Credits.
Deductions.

In General.

The term "expenditures," contained in Ark. Const., Art. 19, § 12 does not include the shrinkage allowance permitted to motor fuel distributors. Snyder v. Martin, 305 Ark. 128, 806 S.W.2d 358 (1991).

Collections.

Filling station operator not licensed as distributor was not entitled to recover from distributor retainage allowed such distributor on taxes collected on motor fuel shipped to filling station on theory that distributor was unjustly enriched. Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

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Credits.

That certain gasoline was destroyed, or lost by fire, after tax was paid, did not entitle manufacturer or dealer to credit upon new shipments for amount of tax paid upon destroyed gasoline. Barnsdall Ref. Corp. v. Ford, 194 Ark. 658, 109 S.W.2d 151 (1937) (decision under prior law),.

Deductions.

Acts 1929, No. 146 did not authorize the reduction or exemption of one percent from tank truck shipments. Barnsdall Ref. Corp. v. Ford, 194 Ark. 658, 109 S.W.2d 151 (1937) (decision under prior law),.

A wholesale dealer in gasoline received in this state by barge was not entitled to deduction from gallonage tax for evaporation loss on gasoline actually delivered to it in this state. Terminal Oil Co. v. McCarroll, 201 Ark. 830, 147 S.W.2d 352 (1941), overruled on other grounds, Foote's Dixie Dandy, Inc. v. McHenry, 270 Ark. 816, 607 S.W.2d 323 (1980) (decision under prior law),.

The deduction permitted by statute for "shrinkage allowance" is not an appropriation of public money within the framework of Ark. Const., Art. 19, § 12. It is merely a deduction, nothing more. Snyder v. Martin, 305 Ark. 128, 806 S.W.2d 358 (1991).

26-55-231. Failure to report or pay tax - Revocation or cancellation of license.

(a)(1) If a distributor at any time files a false monthly report of the data or information required by this subchapter or fails, refuses, or neglects to file the monthly report required by this subchapter, or to pay the full amount of the tax as required by this subchapter, the Director of the Department of Finance and Administration may give notice to the distributor of an intention to revoke the license of the distributor.

(2) The distributor shall be entitled to a period of five (5) days after receipt of the notice from the director, within which to apply for a hearing before the director on the question of having his license revoked. The director shall grant a hearing at such time and place as he may designate of which the distributor shall have five (5) days' advance notice in writing.

(3) After the hearing, at which time the distributor shall be entitled to present evidence and argument of counsel, the director shall decide whether the distributor's license shall be revoked.

(4)(A) Upon the issuance of an order revoking the license, the distributor shall be entitled to an appeal to the chancery court in the county where he may do business where the question shall be tried de novo.

(B) An appeal shall lie from the chancery court of that county as in other cases provided by law.

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(5) If the distributor fails to apply for a hearing within the time set out in subdivision (a)(2) of this section, the director may forthwith cancel the license of the distributor and notify the distributor of the cancellation by registered mail to the last known address of the distributor appearing on the files of the director. The director shall also notify the surety company on the distributor's bond in like manner.

(b)(1) Upon receipt of a written request from any distributor licensed under this subchapter to cancel the license issued to the distributor, the director shall have the power to cancel the license effective sixty (60) days from the date of the receipt of the written request.

(2) However, no such license shall be cancelled upon the request of any distributor unless and until the distributor shall, prior to the date of the cancellation, have paid to the State of Arkansas all excise taxes payable under the laws of the State of Arkansas, together with any and all penalties, interest, and fines accruing under any of the provisions of this subchapter, and unless and until the distributor shall have surrendered to the director the license certificate theretofore issued to the distributor.

(c) If, upon investigation, the director ascertains and finds that any person to whom a license has been issued under this subchapter is no longer engaged in the receipt, use, or sale of motor fuel as a distributor and has not been so engaged for a period of sixty (60) days, the director shall have the power to cancel the license by giving the person thirty (30) days' notice of the cancellation mailed to the last known address of the person, in which event the license certificate theretofore issued to the person shall be surrendered to the director.

(d) In the event that the license of any distributor shall be cancelled by the director as provided in this section and in the further event that the distributor shall have paid to the State of Arkansas all excise taxes due and payable by it under this subchapter, together with any and all penalties accruing under any of the provisions of this subchapter, then the director shall cancel and surrender the bond filed by the distributor.

History. Acts 1941, No. 383, § 11; A.S.A. 1947, § 75-1113.

CASE NOTES

Cited: Whiteley v. Wilcox Oil Co., 225 Ark. 293, 280 S.W.2d 903 (1955).

26-55-232. Failure to report or pay taxes promptly - Penalties.

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(a) When any distributor fails to file its monthly report with the Director of the Department of Finance and Administration on or before the time fixed in this subchapter for the filing thereof or when the distributor fails to submit the data outlined in §§ 26-55-229 and 26-55-230 in the monthly report, or when the distributor fails to pay to the director the amount of excise taxes due to the State of Arkansas when the excise taxes are payable, the distributor shall forfeit two percent (2%) of the amount due if the taxes are not remitted or paid within ten (10) days after the due date, and an additional eight percent (8%) shall be forfeited if the taxes are not remitted or paid on or before the thirtieth day after the taxes become due.

(b)(1) If the tax and penalty are not paid within sixty (60) days after the tax and penalty become due, then the license of the distributor shall be suspended.

(2) Thereafter the tax and penalty shall bear interest at the rate of one percent (1%) per month until paid.

(3) At the end of the sixty (60) days, the director shall notify the bonding company of the delinquency and declare the bond forfeited and shall certify the delinquent account to the legal division of the Revenue Division of the Department of Finance and Administration for collection.

(c) However, where failure to pay the tax or file the sworn reports required by this subchapter within the time prescribed by law or where errors or omissions in the reports or payments are the result of mistake or arise from circumstances beyond the control of the licensed distributor and the delinquency or inaccuracy was unavoidable and devoid of intent to evade the tax, the director may in his discretion waive the additional eight percent (8%) penalty and the interest prescribed in this section.

(d) Deposit in the Uniited States mails, with postage prepaid of the report or remittance in payment of the taxes, in sufficient time to reach the director in the ordinary course of the mails on or before the twenty-fifth day of the month, shall be deemed compliance with this section, even though the report or remittance shall not, in fact, reach the director until after the twenty-fifth day of the month.

History. Acts 1941, No. 383, § 12; 1943, No. 255, § 1; 1957, No. 393, § 3; A.S.A. 1947, § 75-1114.

26-55-233. Failure to file report - Assessment and collection of tax.

(a) Whenever any distributor neglects or refuses to make and file any report for any calendar

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month as required by this subchapter or files an incorrect or fraudulent report, then the Director of the Department of Finance and Administration shall determine upon such information as may be available to him the number of gallons of motor fuel with respect to which the distributor has incurred liability under the motor fuel tax laws of the State of Arkansas for any particular month and fix the amount of taxes and penalties payable to the director by the distributor under this subchapter accordingly.

(b) In any action or proceeding for the collection of the motor fuel tax or any penalties or interest imposed in connection therewith, an assessment by the director of the amount of tax due or interest or penalties due to the state shall constitute prima facie evidence of the claim of the state and the burden of proof shall be upon the distributor to show that the assessment was incorrect and contrary to law. However, no assessment shall be made for any month after the expiration of three (3) years from the date set for the filing of the monthly return, except that, in case of a false or fraudulent report with intent to evade tax or of failure to file a report, assessment may be made at any time.

History. Acts 1941, No. 383, § 13; 1967, No. 197, § 1; A.S.A. 1947, § 75-1115.

26-55-234. Statements and reports from persons not distributors.

(a) Every person or terminal purchasing or otherwise acquiring motor fuel by pipeline, tank car, tank truck, or cargo lot and selling, using, or otherwise disposing of the motor fuel for delivery in Arkansas not required by a provision of this subchapter to be licensed as a distributor in motor fuel shall file a statement setting forth the:

(1) Name under which the person or terminal is transacting business within the State of Arkansas;

(2) Location with the street number address of that person's or terminal's principal office or place of business within the state;

(3) Name and address of the owner or the names and addresses of the partners if the person or terminal is a partnership; or

(4) Names and addresses of the principal officers if the person or terminal is a corporation or association.

(b)(1) On or before the twenty-fifth day of each calendar month on forms prescribed by the Director of the Department of Finance and Administration, the person shall report to the director all purchases or other acquisitions and sales or other disposition of motor fuel during the next preceding calendar month giving a record of each tank car, tank truck, or cargo lot delivered to a point within the state and of all motor fuel otherwise delivered to the person.

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(2) The report shall set forth:

(A) From whom each tank car or cargo lot was purchased or otherwise acquired;

(B) The point of shipment;

(C) To whom sold or shipped;

(D) The point of delivery;

(E) The date of shipment;

(F) The name of the carrier;

(G) The initials and number of the tank car;

(H) The number of gallons contained in the tank car if shipped by rail;

(I) The name and owner of the boat, barge, or vessel, and the number of gallons contained in the boat, barge, or vessel if shipped by water; and

(J) Any other additional information the director may require relative to the motor fuel.

(c) On or before the twenty-fifth day of each calendar month on forms prescribed by the director, the terminal shall report to the director all purchases or other acquisitions and sales or other disposition of motor fuel during the next preceding calendar month, which report shall include the following:

(1) Beginning inventories in gallons of motor fuel in storage;

(2) Ending inventories in gallons of motor fuel in storage;

(3) Withdrawals of motor fuel in gallons from the pipeline outlet resulting in additions of motor fuel to storage, including the name of the distributor licensed as an importer who requested the placement of the motor fuel into storage; and

(4) Removals of motor fuel from storage, specifically including:

(A) Bill of lading numbers which represent physical movements of the motor fuel;

(B) The date of each removal;

(C) The quantity in gallons of motor fuel so removed;

(D) The person who had the motor fuel available for that particular removal; and

(E) The person possessing a license from the director who requested the removal of the motor fuel from that storage.

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(d) When any person or terminal purchasing or otherwise acquiring motor fuel by pipeline, in a tank car, tank truck, or cargo lot and selling or otherwise disposing of the motor fuel for delivery in Arkansas and not required by a provision of this subchapter to register as a distributor in motor fuel, fails to submit the person's or terminal's monthly report to the director by the twenty-fifth day of each calendar month or when the person or terminal fails to submit in the monthly report the data required by this subchapter, the person or terminal shall be guilty of a violation and shall be fined an amount not greater than one hundred dollars ($100) for the first offense and shall be fined an amount not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each subsequent offense.

History. Acts 1941, No. 383, § 14; A.S.A. 1947, § 75-1116; Acts 1993, No. 1029, § 2; 2005, No. 1994, § 175.

Publisher's Notes. Acts 1993, No. 1029, § 7, provided: "The Director of the Department of Finance and Administration is hereby directed, with the advise and concurrence of the Director of Highways and Transportation, or his designee, to make and promulgate all rules and regulations deemed necessary or desirable by such Directors in order that the amendments contained in this Act be effectuated by July 1, 1993."

Amendments. The 1993 amendment inserted present (c) and redesignated former (c) as (d); inserted "or terminal" in (a) and (d); substituted "twenty-fifth" for "twentieth" in (b)(1) and (d); and made stylistic changes in (b).

The 2005 amendment substituted "violation" for "misdemeanor" in (d).

26-55-235. Reports from carriers transporting motor fuel.

(a) Every railroad company, and every street, suburban, or interurban railroad company, every pipeline company, every water transportation company, and every common carrier transporting motor fuel, kerosene, or other hydrocarbon products, either in interstate or in intrastate commerce, to points within Arkansas, and every person transporting motor fuel or kerosene by whatever manner to a point within the state from any point outside of the state shall report under oath to the Director of the Department of Finance and Administration, on forms prescribed by him, all deliveries of motor fuel, kerosene, or other hydrocarbon products, so made to points within Arkansas.

(b) The reports shall cover monthly periods and shall be submitted within twenty-five (25) days after the close of the month covered by the report and shall show:

(1) The name and address of the person to whom the deliveries of motor fuel have in fact

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been made;

(2) The name and address of the originally named consignee if motor fuel has been delivered to any other than the originally named consignee;

(3) The point of origin, the point of delivery, the date of delivery, and the number and initials of each tank car and the number of gallons contained therein if shipped by rail;

(4) The name of the boat, barge, or vessel and the number of gallons contained therein if shipped by water;

(5) The license number of each tank truck, the number of gallons contained therein, and the bill of lading number, if transported by motor truck;

(6) The point of origin, the name and address of the person or terminal to whom the delivery was made, the date of the delivery, and the quantity of motor fuel delivered, if shipped by pipeline company; and

(7) The manner and quantities, if delivered by other means, in which the delivery is made.

(c) The reports shall also show such additional information relative to shipments of motor fuel as the director may require.

History. Acts 1941, No. 383, § 15; A.S.A. 1947, § 75-1117; Acts 1993, No. 1029, § 3.

Publisher's Notes. Acts 1993, No. 1029, § 7, provided: "The Director of the Department of Finance and Administration is hereby directed, with the advise and concurrence of the Director of Highways and Transportation, or his designee, to make and promulgate all rules and regulations deemed necessary or desirable by such Directors in order that the amendments contained in this Act be effectuated by July 1, 1993."

Amendments. The 1993 amendment made punctuation changes in (a); substituted "twenty-five (25) days" for "ten (10) days" in the introductory language of (b); inserted (b)(6) and redesignated former (b)(6) as (b)(7); and inserted "and quantities" in (b)(7).

26-55-236. Failure to file reports, statements, or returns - Falsification - Penalties.

Any person who refuses or neglects to make any statement, report, or return required by the provisions of this subchapter or who knowingly makes, or aids, or assists any other person in making a false statement in a return or report to the Director of the Department of Finance and Administration shall upon conviction be punished by a fine of not less than one thousand dollars

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($1,000) nor more than ten thousand dollars ($10,000) or imprisonment in the county jail for a term of not less than thirty (30) days and not more than one (1) year, or both such fine and imprisonment.

History. Acts 1941, No. 383, § 25; A.S.A. 1947, § 75-1127.

26-55-237. Retention of records by distributors and dealers - Penalty for noncompliance.

(a) Each distributor shall maintain and keep, for a period of two (2) years, records of motor fuel received, used, sold, or delivered, within this state by the distributor, together with invoices, bills of lading, and other pertinent records and papers as may be required by the Director of the Department of Finance and Administration for the reasonable administration of this subchapter.

(b) It shall be the duty of every dealer receiving motor fuel in this state to maintain and keep for a period of two (2) years a record of motor fuel received and the purchase price, together with delivery tickets, invoices, and bills of lading, and such other records as the director shall require.

(c) Records ordinarily kept outside the State of Arkansas by any distributor in the usual course of business shall be produced within the State of Arkansas upon proper demand of the director.

(d) Any person willfully violating any of the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be sentenced to pay a fine of one thousand dollars ($1,000) and costs of prosecution or to undergo imprisonment for not more than one (1) year, or both in the discretion of the court.

History. Acts 1941, No. 383, § 16; A.S.A. 1947, § 75-1118.

26-55-238. Inspection of records, books, etc. - Examination of witnesses.

(a) The Director of the Department of Finance and Administration shall have the power to require any person, firm, corporation, or association of persons engaged in the handling, sale, or distribution of gasoline or motor vehicle fuel, either as a distributor or as a retailer, to furnish any information other than the statements mentioned in § 26-55-237 by him deemed to be necessary for the purpose of enforcing the collection of the tax. For this purpose he shall have authority to examine the books, records, papers, and files and storage tanks and any other equipment of such

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persons, firms, corporations, or associations of persons.

(b)(1) To this end, he shall have the power and authority to administer oaths and examine witnesses.

(2)(A) If any witness fails or refuses to appear at the request of the director and give evidence under oath or refuses access to books, records, papers, and files and storage and any other equipment, the director shall certify the facts and the names of the witnesses failing and refusing to appear, refusing to give evidence, or refusing access to the books, papers, records, files, and storage tanks to the judge of the circuit court of this state having jurisdiction over the witness or witnesses.

(B) Thereupon, the judge shall direct that a summons issue out of the court directed to the witnesses commanding their appearance in the court on a day to be fixed and to be continued as occasion may require, and there give evidence, if within the knowledge of the witnesses, and produce and open for inspection the books, papers, records, and files as may be required for the purpose of ascertaining any facts necessary for the enforcement of the collection of the tax provided for in this subchapter.

(C) Upon the failure of the witnesses to appear in obedience to the summons, to give evidence and produce and open for inspection the books, records, papers, and files, and permit access to the storage tanks without satisfactory excuse, the witness shall be deemed guilty of contempt of court and shall be punished in the manner provided for that offense.

History. Acts 1941, No. 383, § 17; A.S.A. 1947, § 75-1119.

26-55-239. Forms for reports or records.

The Director of the Department of Finance and Administration shall have the authority to prescribe all forms upon which reports shall be made to him or forms of records to be used by distributors.

History. Acts 1941, No. 383, § 17; A.S.A. 1947, § 75-1119.

26-55-240. Discontinuance or transfer of business.

(a)(1) Whenever a distributor ceases to engage in business as a distributor within the State of

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Arkansas by reason of the discontinuance, sale, or transfer of the business of the distributor, it shall be the duty of the distributor to notify the Director of the Department of Finance and Administration in writing at least ten (10) days prior to the time the discontinuance, sale, or transfer takes effect.

(2) The notice shall give the date of discontinuance and, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee.

(b)(1) All taxes, penalties, and interest under this subchapter, not yet due and payable under the provisions of this subchapter, shall, together with any and all interest accruing or penalties imposed under this subchapter, notwithstanding any provisions thereof, become due and payable concurrently with the discontinuance, sale, or transfer.

(2) It shall be the duty of any such distributor concurrently with the discontinuance, sale, or transfer to make a report and pay all such taxes, interest, and penalties, and to surrender to the director the license certificate theretofore issued to the distributor by the director.

(c) Unless the notice provided for in subsection (a) of this section shall have been given to the director as provided in subsection (a) of this section, the purchaser or transferee shall be liable to the State of Arkansas for the amount of all taxes, penalties, and interest under this subchapter accrued against any such distributor selling or transferring his business, on the date of the sale or transfer but only to the extent of the value of the property and business acquired from the distributor.

(d) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and shall upon conviction be sentenced to pay a fine of not less than fifty dollars ($50.00) nor more than three hundred dollars ($300) and costs of the prosecution, or to undergo imprisonment for not more than one (1) year or both.

History. Acts 1941, No. 383, § 19; A.S.A. 1947, § 75-1121.

26-55-241. Unpaid tax - Lien on property - Enforcement.

(a) If any person liable for the tax imposed by the provisions of this subchapter neglects or refuses to pay the tax, the amount of the tax, including any interest, penalty, or addition to the tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by the person whether the property is employed by the person in the prosecution of business or is in the hands of an assignee, trustee, or receiver for the benefit of creditors from the date the taxes are due and payable as provided in this subchapter.

(b)(1) The lien may be enforced by the Director of the Department of Finance and

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Administration by filing a certificate of indebtedness as provided for in § 26-55-243 or by any other legal means.

(2) The action of the director in attempting to collect the delinquent taxes by issuing the certificate of indebtedness shall not be construed to be an election of remedies.

History. Acts 1941, No. 383, § 18; A.S.A. 1947, § 75-1120.

CASE NOTES

Statutes of Limitation.

Where state obtained judgment on certificate of indebtedness for gasoline taxes, but did not procure a writ or execution to collect or preserve its judgment, the right of the state to claim a lien was barred after three years, since such lien was not excepted from the three-year limitation provided for liens of judgments. Lion Oil & Ref. Co. v. Rex Oil Co., 195 Ark. 1021, 115 S.W.2d 556 (1938) (decision under prior law),.

26-55-242. Sale of distributor's property - Certificate of lien.

(a) Neither the sheriff of any county in which the property affected is situated nor any receiver, assignee, or other officer shall sell the property or franchise of any person who is a distributor without first filing with the Director of the Department of Finance and Administration a statement containing the name of the plaintiff or party at whose instance or upon whose account the sale is made, the name of the person whose property or franchise is to be sold, the time and place of sale, the nature of the property, and the location of the property.

(b) It shall be the duty of the director, after receiving notice as provided in subsection (a) of this section, to furnish to the sheriff, receiver, assignee, or other officer having charge of the sale, certified copies of all motor fuel tax, penalties, and interest on file as liens against the person and, in the event that there are no such liens, a certificate showing that fact. The certified copies of the certificate shall be publicly read by that officer at and immediately before the sale of the property or franchise of the person.

(c) It shall be the duty of the director to furnish to any person applying therefor a certificate showing the amount of all liens for motor fuel tax, penalties, and interest that may be in the files

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of the director against any person under the provisions of this subchapter.

History. Acts 1941, No. 383, § 18; A.S.A. 1947, § 75-1120.

26-55-243. Delinquent tax payments - Collection procedure.

(a) If any distributor of motor fuel shall become delinquent in the payment of any tax prescribed by law on motor fuel, it shall be the duty of the Director of the Department of Finance and Administration when the tax is determined, either by the report of the distributor or by such investigations as he may have made, to assess the tax so determined against the delinquent taxpayer, together with a penalty of twenty percent (20%) on the amount of the tax, and to certify the amount of the tax and penalty to the State Treasurer.

(b) The director also at the same time shall certify the amount of the tax and penalty to the clerk of the circuit court of the county wherein the tax or any part thereof accrued. It shall be the duty of the clerk to file the certificate of record and to enter the same in the circuit court for judgment and decrees under the procedure prescribed for filing transcripts of judgments by § 16-19-1011.

(c) Execution shall thereupon be issuable forthwith by the clerk of the circuit court directed to the sheriff, who shall make a levy on any property, assets, and effects of the distributor against whom the tax is assessed.

History. Acts 1941, No. 383, § 20; A.S.A. 1947, § 75-1122.

26-55-244. Refunds on excess gallonage reported.

(a)(1) Whenever it shall appear upon the filing of the monthly report by any distributor that the distributor has, during the period covered by such report, sold or otherwise disposed of or used during such period, an amount of motor fuel as set forth in §§ 26-55-205, 26-55-207, 26-55-210, and 26-55-212, in excess of the amount of motor fuel received by the distributor within the State of Arkansas during the period, the distributor shall be entitled thereupon to a refund upon the excess gallonage at the rate per gallon provided in § 26-55-205 if the distributor claiming the refund has paid a tax at the rate provided in § 26-55-205 on each gallon of motor fuel in storage or in the possession of the distributor at the beginning of such reporting period.

(2) However, the Director of the Department of Finance and Administration may deduct from the refund a sum equivalent to the one percent (1%) evaporation loss claimed by the distributor in

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reports made prior to the reporting period.

(b) In the event any distributor shall be in default in the payment of his motor fuel tax or any penalties or interest thereunder, the refunds provided for in this section shall be reduced by the amount of the default.

(c) Whenever the director determines that any distributor is entitled to a refund under any of the provisions of this section, he shall certify the amount of the refund and authorize and permit the distributor to deduct the same amount from his next motor fuel tax payment to the State of Arkansas.

History. Acts 1941, No. 383, § 22; 1965 (1st Ex. Sess.), No. 41, § 3; A.S.A. 1947, § 75-1124.

26-55-245. Refunds - Taxes erroneously or illegally collected - Lost fuel.

(a) In the event it appears to the Director of the Department of Finance and Administration that any taxes or penalties imposed by this subchapter have been erroneously or illegally collected from any distributor, the director shall certify the amount thereof and authorize and permit the distributor to make an equivalent deduction from his next motor fuel tax payment to the State of Arkansas.

(b) In the event any distributor sustains a loss of motor fuel due to fire, flood, storm, theft, or other causes beyond his control other than through evaporation, which product has been received as defined by § 26-55-202(9), the director shall authorize and permit the distributor to deduct the quantity so lost from the quantity subject to tax on the motor fuel tax report filed for the month in which the loss occurred or any subsequent report filed within a period of one (1) year. However, the same loss may be allowed only once.

(c)(1) Before the director shall certify or authorize any distributor to make any deduction or take any credit on its reports on account of any tax having been erroneously or illegally collected or on account of any loss as provided in subsections (a) and (b) of this section, satisfactory evidence, upon such forms and in such a manner as shall be prescribed by the Revenue Division of the Department of Finance and Administration, shall be submitted to the supervisor of the Motor Fuel Tax Section of the Office of Tax Administration of the Revenue Division of the Department of Finance and Administration, who shall determine from the evidence if any deduction or credit is to be allowed.

(2) Thereupon he shall transmit to the director his certificate of approval, and the director may in his discretion allow the deduction or credit in the amount he thinks proper or may reject the deduction or credit altogether.

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(3) Upon the approval in any amount by the director for any deduction or credit, he shall then transmit the certificate of approval of the supervisor of the Motor Fuel Tax Section of the Department of Finance and Administration and shall himself, or by his duly authorized representative, review the approvals for confirmation or rejection and shall certify or reject and return them to the director.

(4) The rejection or confirmation of the deduction or credit shall be final, and upon the confirmation by the director, the deduction or credit shall then be allowed in due course by the supervisor of the Motor Fuel Tax Section of the Department of Finance and Administration.

History. Acts 1941, No. 383, § 23; 1943, No. 251, § 1; A.S.A. 1947, § 75-1125.

26-55-246. Posting price of fuel plus tax.

Distributors and all other persons selling motor fuel may add the amount of the tax to the price of the motor fuel sold by them and shall state the rate of the tax separately from the price of the motor fuel on all price display signs, in letters or figures of the same size and color, sales or delivery slips, bills, and statements which advertise or indicate the price of motor fuel.

History. Acts 1941, No. 383, § 27; A.S.A. 1947, § 75-1129.

26-55-247. Confiscation and sale of equipment of persons transporting motor fuel unlawfully.

(a) Any person who knowingly transports or causes to be transported any motor fuel in any manner in violation of the provisions of this subchapter shall, in addition to other penalties and punishment provided for in this subchapter, be subject to the immediate confiscation of the tank truck or vehicle and the contents therein which are thus unlawfully transported, by the Director of the Department of Finance and Administration or his agents.

(b) Unless the operator or owner of such tank truck or vehicle can prove to the satisfaction of the director at a hearing for that purpose within ten (10) days that such motor fuel was being transported, transferred, or delivered in accordance with this subchapter or any other act affecting the transportation of motor fuel, and in accordance with any regulations issued pursuant to this subchapter or any other act, the tank truck or vehicle and the contents therein shall be sold by the director at auction without any recourse or liability on the director or any of his agents or the

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State of Arkansas.

History. Acts 1941, No. 383, § 21; A.S.A. 1947, § 75-1123.

26-55-248. Sale of fuels purchased from other than duly licensed distributor - Penalties.

Any person who sells any motor fuel purchased by a person from any person other than a duly licensed distributor upon which the tax herein imposed shall not be paid shall, upon conviction be punished by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) or imprisonment in the county jail for a term of not less than thirty (30) days and not more than one (1) year, or both fine and imprisonment.

History. Acts 1941, No. 383, § 25; A.S.A. 1947, § 75-1127.

26-55-249. Public inspection of records.

The records of the Director of the Department of Finance and Administration pertaining to motor fuel taxes shall at all reasonable times be open to the inspection of the public with the approval of the director.

History. Acts 1941, No. 383, § 24; A.S.A. 1947, § 75-1126.

CASE NOTES

Implied Repeal.

This section is impliedly repealed by § 26-18-303. Snyder v. Martin, 305 Ark. 128, 806 S.W.2d 358

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(1991).

26-55-250. Exchange of information among states.

The Director of the Department of Finance and Administration of the State of Arkansas shall, upon request duly received from the officials to whom are intrusted the enforcement of the motor fuel tax laws of any other state, forward to such officials any information which it may have in its possession relative to the manufacture, receipt, sale, use, transportation, or shipment by any person of motor fuel.

History. Acts 1941, No. 383, § 26; A.S.A. 1947, § 75-1128.

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Subchapter 3.
Refunds - Motor Fuels Used for Agricultural Purposes.

§ 26-55-301 - 26-55-321. [Repealed.]

Publisher's Notes. This subchapter, concerning a tax refund when motor fuel used for agricultural purposes, was repealed by Acts 1995, No. 777, § 9. The subchapter was derived from the following sources:

26-55-301. Acts 1949, No. 406, § 1; 1967, No. 181, § 1; 1969, No. 136, § 1; A.S.A. 1947, § 75-1133.

26-55-302. Acts 1949, No. 406, § 16; A.S.A. 1947, § 75-1148.

26-55-303. Acts 1949, No. 406, § 13; A.S.A. 1947, § 75-1145.

26-55-304. Acts 1949, No. 406, § 2; 1963, No. 114, § 1; A.S.A. 1947, § 75-1134.

26-55-305. Acts 1949, No. 406, §§ 4, 5, 10; 1967, No. 182, § 1; A.S.A. 1947, §§ 75-1136, 75-1137, 75-1142.

26-55-306. Acts 1949, No. 406, §§ 10, 12; A.S.A. 1947, §§ 75-1142, 75-1144.

26-55-307. Acts 1949, No. 406, §§ 5, 6; 1971, No. 165, § 1; A.S.A. 1947, §§ 75-1137, 75-1138.

26-55-308. Acts 1949, No. 406, §§ 2, 7; 1963, No. 114, § 1; A.S.A. 1947, §§ 75-1134, 75-1139.

26-55-309. Acts 1949, No. 406, § 13; A.S.A. 1947, § 75-1145.

26-55-310. Acts 1949, No. 406, § 2; 1963, No. 114, § 1; A.S.A. 1947, § 75-1134.

26-55-311. Acts 1949, No. 406, § 7; A.S.A. 1947, § 75-1139.

26-55-312. Acts 1949, No. 406, § 3; 1967, No. 183, § 1; A.S.A. 1947, § 75-1135.

26-55-313. Acts 1949, No. 406, § 9; A.S.A. 1947, § 75-1141.

26-55-314. Acts 1949, No. 406, § 10; A.S.A. 1947, § 75-1142.

26-55-315. Acts 1949, No. 406, § 8; A.S.A. 1947, § 75-1140.

26-55-316. Acts 1949, No. 406, § 11; A.S.A. 1947, § 75-1143.

26-55-317. Acts 1949, No. 406, §§ 14, 15; A.S.A. 1947, §§ 75-1146, 75-1147.

26-55-318. Acts 1949, No. 406, §§ 14, 15; A.S.A. 1947, §§ 75-1146, 75-1147.

26-55-319. Acts 1949, No. 406, § 15; A.S.A. 1947, § 75-1147.

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26-55-320. Acts 1949, No. 406, § 10; A.S.A. 1947, § 75-1142.

26-55-321. Acts 1949, No. 406, § 10; A.S.A. 1947, § 75-1142.

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Subchapter 4.
Refunds - Motor Fuels Used in Motor Buses.

Effective dates. Acts 1963, No. 269, § 9: Mar. 18, 1963. Emergency clause provided: "It is hereby found that economical mass transportation for the general public is essential to the public welfare; that the owners and/or operators of motor buses on designated streets according to regular schedules under franchises from municipalities in this state, are in dire circumstances, thereby jeopardizing the efficient and economical mass transportation of the public; and that an emergency therefore is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1971, No. 600, § 6: Apr. 7, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the maintenance and operation of economical mass transportation for the general public is essential to the public welfare, that the owners and/or operators of motor buses on designated streets according to regular schedules under franchise from municipalities in this State are in dire circumstances thereby jeopardizing the efficient and economical mass transportation of the public, and that the immediate passage of this Act is necessary to provide financial relief to the operation of mass transit facilities in municipalities in this State. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-55-401. Applicability of existing motor fuel refund laws.

All provisions of § 26-55-301 et seq. [repealed], with respect to records of refunds, erroneous or fraudulent claims, bond requirements, revocation of permits, inspection of dealers' records, and all other provisions thereof, so far as they are adaptable, shall be equally applicable to motor fuel tax refunds pursuant to this subchapter.

History. Acts 1963, No. 269, § 6; A.S.A. 1947, § 75-1148.6.

Publisher's Notes. Section 26-55-301 et seq., referred to in this section, was repealed by Acts 1995, No. 777, § 9.

26-55-402. Effect of subchapter on state highway bonds.

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Nothing in this subchapter shall be construed as an impairment of the obligation existing between the State of Arkansas and the holders of Arkansas state highway bonds whether the bonds have already been issued or may hereafter be issued.

History. Acts 1963, No. 269, § 8; A.S.A. 1947, § 75-1148.8.

26-55-403. Director's powers.

The Director of the Department of Finance and Administration shall have the authority to make, amend, and enforce regulations, to subpoena witnesses and documents, to administer oaths, and to do and perform all other acts he shall deem necessary to carry out the purpose and intent of this subchapter.

History. Acts 1963, No. 269, § 7; A.S.A. 1947, § 75-1148.7.

26-55-404. Entitlement to refund.

The owners or operators of motor buses operated on designated streets according to regular schedules, under municipal franchise, who for the purpose of operating the buses shall use motor fuel on which the tax, as imposed by the Motor Fuel Tax Law, § 26-55-201 et seq., has been paid or hereafter shall be paid, shall be entitled to a refund of the full amount of the motor fuel tax, subject to the provisions of this subchapter.

History. Acts 1963, No. 269, § 1; 1971, No. 600, § 1; A.S.A. 1947, § 75-1148.1.

26-55-405. Refund permits.

(a) No person, firm, or corporation shall secure a refund of tax under this subchapter unless that person is the holder of an unrevoked permit issued by the Director of the Department of Finance and Administration before the purchase of the motor fuel.

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(b) The permit shall be numbered and issued annually and shall entitle the holder to make application for refund under this subchapter.

(c) Applications for the permits shall be filed with the director on forms prescribed by him and shall contain the same information, so far as applicable, as is required in § 26-55-305 [repealed], and such other information as the director may require.

History. Acts 1963, No. 269, § 4; A.S.A. 1947, § 75-1148.4.

26-55-406. Applications for refund.

Applications for refund pursuant to this subchapter shall be sworn to and shall be made to the Director of the Department of Finance and Administration and shall be in the same form and contain the same information, so far as applicable, as is required in subchapter 3 of this chapter, and in addition, shall contain such other information as may be required by the director.

History. Acts 1963, No. 269, § 2; A.S.A. 1947, § 75-1148.2.

26-55-407. Refund paid from Gasoline Tax Refund Fund.

All valid claims for refund of motor fuel taxes under the provisions of this subchapter shall be paid from the Gasoline Tax Refund Fund and shall be subject to the same conditions and limitations as provided in subchapter 3 of this chapter with respect to agricultural motor fuel tax refunds, except that all such motor fuels covered by the provisions of this subchapter shall be subject to the full refund of the motor fuel taxes paid thereon.

History. Acts 1963, No. 269, § 3; 1971, No. 600, § 2; A.S.A. 1947, § 75-1148.3.

26-55-408. Dealers' and sellers' records and reports.

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Dealers and sellers of motor fuel shall keep the same records and shall prepare the same invoices and make the same reports to the Director of the Department of Finance and Administration with respect to motor fuel sold to permit holders under this subchapter as is required by subchapter 3 of this chapter with respect to agricultural motor fuel sales.

History. Acts 1963, No. 269, § 5; A.S.A. 1947, § 75-1148.5.

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Subchapter 5.
Interstate Motor Fuels Dealers.

§ 26-55-501 - 26-55-511. [Repealed.]

Publisher's Notes. This subchapter, concerning interstate motor fuel dealers, was repealed by Acts 1995, No. 777, § 2. The subchapter was derived from the following sources:

26-55-501. Acts 1968 (1st Ex. Sess.), No. 36, § 1; A.S.A. 1947, § 75-1180.

26-55-502. Acts 1968 (1st Ex. Sess.), No. 36, § 1; A.S.A. 1947, § 75-1180.

26-55-503. Acts 1968 (1st Ex. Sess.), No. 36, § 2; A.S.A. 1947, § 75-1181.

26-55-504. Acts 1968 (1st Ex. Sess.), No. 36, § 4; A.S.A. 1947, § 75-1183.

26-55-505. Acts 1968 (1st Ex. Sess.), No. 36, § 3; A.S.A. 1947, § 75-1182.

26-55-506. Acts 1968 (1st Ex. Sess.), No. 36, § 4; A.S.A. 1947, § 75-1183.

26-55-507. Acts 1968 (1st Ex. Sess.), No. 36, § 4; A.S.A. 1947, § 75-1183.

26-55-508. Acts 1968 (1st Ex. Sess.), No. 36, § 4; A.S.A. 1947, § 75-1183.

26-55-509. Acts 1968 (1st Ex. Sess.), No. 36, § 2; A.S.A. 1947, § 75-1181.

26-55-510. Acts 1968 (1st Ex. Sess.), No. 36, § 5; A.S.A. 1947, § 75-1184.

26-55-511. Acts 1968 (1st Ex. Sess.), No. 36, § 7; A.S.A. 1947, § 75-1185.

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Subchapter 6.
Shipments of Motor Fuels.

Publisher's Notes. Former subchapter 6, concerning shipments of motor fuels, was repealed by Acts 1987, No. 977, § 12. The former subchapter was derived from the following sources:

26-55-601. Acts 1977, No. 224, § 1; A.S.A. 1947, § 75-1186n.

26-55-602. Acts 1977, No. 224, § 2; A.S.A. 1947, § 75-1186.

26-55-603. Acts 1977, No. 224, § 6; A.S.A. 1947, § 75-1186.4.

26-55-604. Acts 1977, No. 224, § 9; A.S.A. 1947, § 75-1186.7.

26-55-605. Acts 1977, No. 224, § 10; 1979, No. 435, § 1; A.S.A. 1947, § 75-1186.8.

26-55-606. Acts 1977, No. 224, § 7; A.S.A. 1947, § 75-1186.5.

26-55-607. Acts 1977, No. 224, § 7; A.S.A. 1947, § 75-1186.5.

26-55-608. Acts 1977, No. 224, § 6; A.S.A. 1947, § 75-1186.4.

26-55-609. Acts 1977, No. 224, § 9; A.S.A. 1947, § 75-1186.7.

26-55-610. Acts 1977, No. 224, § 9; A.S.A. 1947, § 75-1186.7.

26-55-611. Acts 1977, No. 224, § 3; A.S.A. 1947, § 75-1186.1.

26-55-612. Acts 1977, No. 224, § 4; A.S.A. 1947, § 75-1186.2.

26-55-613. Acts 1977, No. 224, § 5; A.S.A. 1947, § 75-1186.3.

26-55-614. Acts 1977, No. 224, § 6; 1979, No. 435, § 2; A.S.A. 1947, §§ 75-1186.4, 75-1186.9.

26-55-615. Acts 1977, No. 224, § 6; A.S.A. 1947, § 75-1186.4.

26-55-616. Acts 1977, No. 224, § 8; A.S.A. 1947, § 75-1186.6.

26-55-617. Acts 1977, No. 224, § 6; A.S.A. 1947, § 75-1186.4.

Cross References. Special motor fuels taxes, § 26-56-101 et seq.

Effective dates. Acts 1987, No. 977, § 13: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly that abuses of the 'Motor Fuel Tax Law,' as amended, and 'Special Motor Fuels Tax Law,' as amended, exist which result in substantial loss of revenues to the State; and that this Act is immediately necessary to strengthen the enforcement provisions governing the transportation of fuels. Therefore, an emergency is hereby declared to exist and that this Act being necessary for the preservation of the public peace, health and safety shall be in full

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force and effect from and after July 1, 1987."

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-55-601. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Director" shall mean the Director of Highways and Transportation of the Arkansas State Highway and Transportation Department;

(2) "Fuels" shall mean motor fuel, distillate special fuels, and liquefied gas special fuels, as defined in the Motor Fuel Tax Law, § 26-55-201 et seq., and the Special Motor Fuels Tax Law, § 26-56-101 et seq., and shall include gasoline, diesel fuel, and liquefied petroleum gas fuels used to propel an automotive vehicle;

(3) "Person" shall include any operator, individual, owner, company, partnership, limited liability company, joint venture, joint agreement, association, whether mutual or otherwise, corporation, estate, trust, business trust, receiver, trustee, leasing company, common carrier, private carrier, or transporter;

(4) "River ports" shall mean those ports where fuels transported by barge are unloaded.

History. Acts 1987, No. 977, § 1; 1995, No. 1160, § 27.

Amendments. The 1995 amendment inserted "limited liability company" in (3).

26-55-602. Applicability.

The provisions of this subchapter shall not be applicable to any licensed distributor or supplier of fuels within this state who does not import or export fuels.

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History. Acts 1987, No. 977, § 11.

26-55-603. Penalties - Impoundment of vehicles.

(a) Any person transporting fuels into the State of Arkansas without the appropriate bill of lading and import/export load permit or interstate shipment record as required by this subchapter shall be guilty of a misdemeanor and shall be fined not more than two thousand five hundred dollars ($2,500), of which one-half (1/2) shall be deposited with the State Treasurer as special highway revenues to be disbursed in the same manner and to be used for the same purposes as is set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

(b) Any person who shall make, or assist any other person to make, any false or fraudulent statement in any report required by this subchapter or the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq., or who shall fail to include any information demanded by this subchapter or the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq., or who shall fail to produce upon request of proper authority any information required in this subchapter or the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq., shall be guilty of a misdemeanor and subject to the penalties as provided in this section.

(c) Any motor vehicle, including the cargo thereof, found to have been in violation of any of the provisions of this section shall be impounded by the director pending disposition under this subchapter.

History. Acts 1987, No. 977, § 8.

26-55-604. Rules and regulations - Audit assistance.

The Director of Highways and Transportation of the Arkansas State Highway and Transportation Department shall prescribe and promulgate rules and regulations necessary for the proper enforcement of this subchapter with the advice of the Legislative Council, and in any audits conducted by the Arkansas State Highway and Transportation Department relating to the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq., or this subchapter or other pertinent laws, may call upon the Director of the Department of Finance and Administration for assistance.

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History. Acts 1987, No. 977, § 10.

26-55-605. Import/export load permit required - Exception.

(a) No person shall import or export fuels into or out of this state, other than by pipeline or rail, for sale or use within this state without:

(1) Being a supplier or distributor, licensed by the Director of the Department of Finance and Administration under the laws of the State of Arkansas, as those terms are defined in the Motor Fuel Tax Law, § 26-55-201 et seq., and the Special Motor Fuels Tax Law, § 26-56-101 et seq.; and

(2) Acquiring an import/export load permit issued by the director, or his designee, for each load.

(b) No common carrier pipeline company shall import or export fuels by pipeline without filing a copy of all reports, required by other laws of this state, with the Director of Highways and Transportation. Railroad companies are exempt from the provisions of this subchapter except in those cases where the railroad company is importing fuels for other than off-road usage or for sale to licensed suppliers or distributors.

(c)(1) The director or his designee shall issue import/export load permits at no charge and on those forms provided by the director and in the manner provided by the director.

(2) The director shall provide a toll-free telephone number for both interstate and intrastate usage for those seeking the permits.

(3)(A) The director shall prescribe and publish such rules and regulations as may be necessary for the enforcement of this subchapter.

(B) The regulations shall provide that a licensed supplier or distributor may, upon demand, obtain a supply of prenumbered permits for use as required under this subchapter so long as the supplier or distributor has not been found in violation of this subchapter. However, each permit used must be accompanied by the relevant bill of lading when filed with the director.

(d) The director shall have the authority to station one (1) or more representatives at each port of entry or pipeline terminal to assist in the enforcement of this subchapter.

(e) The import/export load permit shall be on a form issued by the director.

History. Acts 1987, No. 977, §§ 2, 3.

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26-55-606. Bill of lading required - Penalty.

(a) All shipments or movements of fuels, except by pipeline or rail, for sale or use without, or when imported for sale or use within, the state shall be accompanied by a bill of lading which shall show the following:

(1) The seller's or the purchaser's supplier or distributor license number;

(2) The origin of the transport trip;

(3) The approximate destination or destinations of the transport trip;

(4) The type or types of fuels being transported and quantity or quantities of fuels to be delivered to each destination;

(5) The person or persons responsible for the payment of the fuels tax; and

(6) Such other information or forms as the director by regulation may adopt or require to implement the intent of this subchapter.

(b) Any transporter of fuels by any means, except by pipeline or rail, shall be required to produce a copy of the bill of lading containing the information required by this section and a copy of the permit, if required by § 26-55-605, for inspection by any enforcement officer within the State of Arkansas. Any failure to have the bill of lading and a copy of the permit in the vehicle, or to produce it as prescribed, shall be an offense punishable as set forth in § 26-55-603.

(c) The bill of lading required by this section may be on the transporter's own form, but shall contain the information set out above.

History. Acts 1987, No. 977, § 3.

26-55-607. Documentation to be retained in vehicle - Exception.

(a)(1) All transporters of fuels shall be responsible for retaining and safeguarding in their possession a clear and legible copy of all documentation required by this subchapter covering the cargo being transported.

(2) If transportation is by motor vehicle, the responsibility for the retention and safeguarding shall commence at the time the driver of the vehicle enters the boundaries of the State of Arkansas or assumes responsibility for the transport of the cargo which shall continue unabated until that point at which his responsibility for the transport of the cargo is terminated.

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(3) In all cases of highway transport by motor vehicle, the copy of the bill of lading and import/export load permit shall be retained in the cab of the vehicle during the period of the operator's responsibility.

(b) Fuels transported in interstate commerce through Arkansas, the origin of which is outside of Arkansas and destination of which is outside of Arkansas, shall be exempt from the import/export load permit requirements of § 26-55-605.

History. Acts 1987, No. 977, § 4.

26-55-608. Authority to stop, investigate, and impound vehicles.

(a) In order to enforce the provisions of this subchapter, any officer of the Arkansas Highway Police shall have the authority to stop any vehicle appearing to be handling or transporting fuels for the purpose of examining the documents required by this subchapter or to insure the operator's compliance with its provisions.

(b) If after the examination or investigation it is determined that the transporter should have secured an import/export load permit as required by this subchapter, but has failed to secure that permit, the enforcement officer shall immediately cause the offending vehicle and its operator to be removed to the nearest Arkansas State Highway and Transportation Department property, port of entry, or any designated location where the Director of the Department of Finance and Administration's representative shall immediately assess the tax on that load together with the penalty provided in § 26-55-609 against the person found to be responsible for the payment of the tax.

(c) Notice upon the person shall be effectuated by delivering written notice of the assessment to the operator of the vehicle at that time.

(d) The director or his representative shall be authorized to impound any vehicle and refuse authority to travel on Arkansas highways to any vehicle which, previous to the entry into this state, has not complied with all requirements of this subchapter.

(e) Further, travel shall not be authorized until the criminal fines or bonds have been posted and the taxes and penalties paid in full.

History. Acts 1987, No. 977, §§ 5, 6.

26-55-609. Responsibility for taxes - Provisions cumulative.

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Any person who shall violate any provision of this subchapter shall be immediately responsible for the taxes, as imposed by this state, on the fuels involved in the violation plus twenty percent (20%) as a penalty. All fines and penalties imposed pursuant to this subchapter shall be in addition to any and all penalties imposed pursuant to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

History. Acts 1987, No. 977, § 7.

26-55-610. Licensing and bonding requirements - Penalties.

(a) Each domestic refiner, importer, exporter, supplier, or distributor taking possession of fuels within the State of Arkansas for delivery without the state shall be licensed and bonded by the Motor Fuel Tax Section of the Department of Finance and Administration. Failure to obtain a license as required by the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq., or other pertinent law, shall constitute a violation of that law and any such person shall be subject to the penalties set forth in § 26-55-603.

(b) Each domestic refiner, importer, exporter, supplier, or distributor taking possession of fuels within this state shall include the license number of each licensed distributor or special fuels supplier on each cargo manifest, bill of lading, delivery ticket, or other document. The failure to so include the license number shall constitute a violation of this subchapter and shall be punishable in accordance with the provisions of § 26-55-603.

(c) Persons taking delivery at river ports, as defined in § 26-55-601, shall have the responsibility of complying with all the provisions of this subchapter and are subject to the applicable penalties.

(d) Domestic refiners, importers, exporters, suppliers, or distributors of fuels and other accounts acquiring fuels from without the state for delivery within the state shall be licensed pursuant to the laws of this state and subject to all provisions contained in this subchapter and are subject to the applicable penalties and fines set out by § 26-55-603.

History. Acts 1987, No. 977, § 9.

§ 26-55-611 - 26-55-617. [Repealed.]

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Publisher's Notes. As to repeal of these sections by Acts 1987, No. 977, § 12, see Publisher's Notes at the beginning of this subchapter.

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Subchapter 7.
Fuel Imported in Supply Tanks.

Cross References. Interstate users, tax refunds, credit, or assessment, § 26-56-214.

Effective dates. Acts 1953, No. 112, § 13: July 1, 1953.

Acts 1957, No. 213, § 5: Mar. 12, 1957. Emergency clause provided: "An emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, it shall be effective and in full force from and after the passage and approval of this Act."

Acts 1967, No. 356, § 7: Mar. 15, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State levying a tax upon gasoline and prescribing the procedure for collecting the same are confusing and difficult of enforcement and that this Act is immediately necessary to clarify the laws levying the gasoline tax in order that said tax may be more effectively and efficiently enforced. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

Acts 1967, No. 376, §§ 6, 9: July 1, 1967. Emergency clause provided: "It has been found and declared by the General Assembly that confusion and disagreement exists as to the Administrative Procedure pertaining to Motor Fuel Tax Laws of this State which causes unnecessary expense in such administration, and this Act is necessary to correct and clarify such procedure, and it is necessary to eliminate unnecessary expenditures in the administration of the Motor Fuel Tax Laws of this State. Therefore an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after the date of its approval." Approved March 15, 1967.

Acts 1968 (1st Ex. Sess.), No. 64, § 3: Feb. 27, 1968. Emergency clause provided: "It has been found and determined by the General Assembly that current legislation permits revenues from Motor Fuel Tax Forms to be dedicated for the benefit of the collecting agency and this procedure is contrary to the generally accepted principals [principles] of funding State agencies from the Constitutional and Fiscal Agencies Fund Account; therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1977, No. 51, § 5: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1977 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1977 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1977."

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Acts 1977, No. 354, § 5: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in need of additional funds for the construction and maintenance of the State Highway System, the county roads, and municipal streets of this State; that the present laws governing the rate of tax to be computed upon the use of highways in this State with respect to the class of motor carriers covered by the provisions of this Act, do not adequately apportion to each class of user a mileage factor reasonably approximating the actual miles per gallon of fuel used in this State, and that by the enactment of this Act the State of Arkansas will obtain its fair and reasonable share of taxes due from said classes of motor carriers at the existing rates of tax, and will also gain the benefits of penalty for failure of motor carriers to comply with the motor fuel and distillate motor fuel tax laws in reporting and paying taxes upon which Arkansas motor fuel or distillate special fuel taxes have not been collected, and that the immediate passage of this Act is necessary to correct this situation. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1977."

Acts 1979, No. 434, § 5: effective upon issuance of 1980 markings.

Acts 1987, No. 803, § 14: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that this Act makes various changes in the motor fuel tax law and the special motor fuel tax law; that such changes should go into effect at the beginning of the next fiscal year; and that unless this emergency clause is adopted, this Act may not go into effect until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1987."

Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after the first day of the first month immediately following its passage and approval."

Acts 1991, No. 928, § 6: Mar. 29, 1991. Emergency clause provided: "It is hereby found and determined by the 78th General Assembly that the imposition of a fee for the issuance of bonded interstate fuel user decals is inappropriate and that it is in the best interests of the highway-users of this state that such fee no longer be collected. Therefore, an emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect on and after its passage and approval."

Acts 1995, No. 777, § 13: July 1, 1995. Emergency clause provided: "It is found and determined by the Eightieth General Assembly of the State of Arkansas that current laws allowing for a refund of tax paid on gasoline used for agricultural purposes is an inefficient and impractical method of providing tax relief to farmers; that current laws collecting motor fuel tax on liquefied petroleum gas based upon a flat fee is inequitable and imposes an undue burden on some taxpayers in this State; that current licensing and bonding requirements on motor fuel and distillate special fuel dealers are unnecessary and contrary to federal law; that this bill is designed to correct each of these deficiencies in current law and this Act should be effective on July 1, 1995. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full

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force and effect on and after July 1, 1995."

26-55-701. Purpose of tax.

The tax imposed by this subchapter is levied for the purpose of providing revenue to be used by the State of Arkansas to defray the expenses of the administration of this subchapter and for the purpose of construction, reconstruction, maintenance, and repair of roads, highways, and bridges, and for the payment of obligations incurred for these purposes.

History. Acts 1953, No. 112, § 1; A.S.A. 1947, § 75-1149.

26-55-702. Liability for tax.

Any person, firm, or corporation who operates on the highways of this state any motor carrier, bus, truck, transport, or other motor vehicle, having a gross loaded weight of twenty-six thousand and one pounds (26,001 lbs.) or more, and having motor fuel commonly or commercially sold and used as gasoline as defined in § 26-55-202(2) in its fuel tank or tanks, upon which the Arkansas motor fuel tax has not been paid, shall be liable for a tax at the rate per gallon provided in § 26-55-205 on all such gasoline used or consumed in the State of Arkansas, subject to the provisions of §§ 26-55-710 and 26-55-715 [repealed].

History. Acts 1953, No. 112, § 2; 1965 (1st Ex. Sess.), No. 41, § 4; 1967, No. 356, § 1; A.S.A. 1947, § 75-1150; Acts 1993, No. 618, § 8.

Publisher's Notes. Section 26-55-715 referred to in this section was repealed by Acts 1987, No. 803, § 10.

Amendments. The 1993 amendment inserted "having a gross loaded weight of twenty-six thousand and one pounds (26,001 lbs.) or more, and" and substituted "tank" for "tanks" following "in its fuel tank or."

CASE NOTES

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Analysis

Construction.
Classification.

Construction.

Acts 1941, No. 383, § 6; 1943, No. 188, § 1, were not in conflict with § 26-55-205, which levies a tax on all motor fuel sold or used in the state or purchased for sale or use in the state. McLeod v. Santa Fe Trail Transp. Co., 205 Ark. 225, 168 S.W.2d 413 (1943) (decision under prior law),.

Classification.

Classification of motor carriers, motor buses, and other motor vehicles operated for hire as opposed to all other motor vehicles was not an arbitrary classification. McLeod v. Santa Fe Trail Transp. Co., 205 Ark. 225, 168 S.W.2d 413 (1943) (decision under prior law),.

In alternate or optional methods of determining calculation of tax allowed to operators of motor carriers, motor buses, and other motor vehicles operated for hire, provided they operate on a regular schedule, provision as to operation on regular schedule, as opposed to not operating on a regular schedule, was a fair classification. McLeod v. Santa Fe Trail Transp. Co., 205 Ark. 225, 168 S.W.2d 413 (1943) (decision under prior law),.

26-55-703. Exemptions.

The tax levied by this subchapter shall not apply to gasoline imported into this state in the fuel supply tanks, including any additional containers, of motor vehicles being used solely for noncommercial purposes if the aggregate capacity of the fuel supply tanks, including any additional containers, does not exceed thirty (30) gallons.

History. Acts 1953, No. 112, § 2; 1965 (1st Ex. Sess.), No. 41, § 4; 1967, No. 356, § 1; A.S.A. 1947, § 75-1150.

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CASE NOTES

Applicability.

Twenty-gallon exemption applied only when the motor fuel was actually measured at the port of entry and actually measured at the port of exit, and it did not apply when the alternate or optional method of determining the tax was used by the operator. McLeod v. Santa Fe Trail Transp. Co., 205 Ark. 225, 168 S.W.2d 413 (1943) (decision under prior law),.

26-55-704. Allocation and distribution of tax.

The funds collected under this subchapter shall be allocated and distributed only in the manner established by the laws relating to motor fuel taxes.

History. Acts 1953, No. 112, § 1; A.S.A. 1947, § 75-1149.

26-55-705. License required - Application.

(a) Before any person, firm, or corporation subject to § 26-55-702 imports, for use on the highways of this state, gasoline in the fuel supply tanks of any motor vehicle, or in any other container, with a gross loaded weight of twenty-six thousand and one pounds (26,001 lbs.) or more, such person shall file application for and obtain a license from the Director of the Department of Finance and Administration.

(b) The application required by this section shall be verified by affidavit and filed on a form prescribed and furnished by the director, stating the name, address, kind of business of the applicant, his or its principal place of business, and such other relevant information as the director may require.

(c) The applications must also contain, as a condition to the issuance of the license, an agreement by the applicant to comply with the requirements of the subchapter and the lawful rules and regulations of the director.

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History. Acts 1953, No. 112, § 3; A.S.A. 1947, § 75-1151; Acts 1993, No. 618, § 9.

Amendments. The 1993 amendment inserted "with a gross loaded weight of twenty-six thousand and one pounds (26,001 lbs.) or more" in (a).

26-55-706. Bond of applicant.

(a) Before any license application shall be approved by the Director of the Department of Finance and Administration, the applicant shall file a bond, with surety satisfactory to the director, payable to the State of Arkansas and conditioned upon the applicant's compliance with the provisions of this subchapter and the rules and regulations of the director.

(b)(1) The bond shall be in the sum of not less than five hundred dollars ($500) and not more than twenty thousand dollars ($20,000), the amount to be, in each case fixed by the director.

(2) However, the amount of any bond may be increased or decreased within the foregoing limits by the director at any time.

(c) No bond shall be cancelled by the surety thereon until the expiration of sixty (60) days after receipt of notice of the cancellation by the director, and the cancellation shall have no retroactive effect.

History. Acts 1953, No. 112, § 4; A.S.A. 1947, § 75-1152.

26-55-707. License - Issuance - Terms and conditions.

(a) Upon approval of the application and bond, the Director of the Department of Finance and Administration shall issue to the applicant a nontransferable fuel user's license bearing a distinctive number, to remain in full force until surrendered, suspended, or cancelled in the manner provided in this subchapter.

(b) Each license shall be valid only for the operation of motor vehicles on the highways of this state by the person to whom it is issued, including motor vehicles transporting persons or property in furtherance of the business of the licensee under a lease, a contract, or any other arrangement, whether permanent or temporary in nature.

History. Acts 1953, No. 112, § 5; A.S.A. 1947, § 75-1153.

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26-55-708. Registration of licensee's motor vehicles.

(a)(1) Before any motor vehicle with a gross loaded weight of twenty-six thousand and one pounds (26,001 lbs.) or more is operated on the public highways of this state, the operation of which is subject to the tax levied by this subchapter, the Director of the Department of Finance and Administration shall issue to each permitted gasoline, diesel, and liquefied petroleum gas user a distinctive marking to be prominently displayed on the passenger door of each vehicle traveling the public highways within this state.

(2) This marking shall be a nontransferable marking which shall be renewed on an annual basis.

(b) Applications for gasoline, diesel, and liquefied petroleum gas users' permits must be on a form prescribed and furnished by the director, to include such relevant information as deemed necessary by the director, for the proper administration of this subchapter.

(c) The director shall maintain a record of the quantity of markings issued each permitted user.

History. Acts 1953, No. 112, § 6; 1979, No. 434, § 1; A.S.A. 1947, § 75-1154; Acts 1991, No. 928, § 1; 1993, No. 618, § 10.

Amendments. The 1993 amendment, in (a)(1), inserted "with a gross loaded weight of twenty-six thousand and one pounds (26,001 lbs.) or more" and deleted "(LPG)" following "liquefied petroleum gas."

CASE NOTES

Cited: Smith v. American Trucking Ass'n, 300 Ark. 594, 781 S.W.2d 3 (1989).

26-55-709. Interstate carrier certificates or permits.

When the Arkansas State Highway and Transportation Department receives an application for an interstate carrier certificate or permit, with the appropriate fees for such certificate or permit, and also receives an application for a fuel user permit from that same applicant, that department

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shall deliver the application for a fuel user permit to the Motor Fuel Tax Section of the Revenue Division of the Department of Finance and Administration for issuance of the fuel user permit.

History. Acts 1979, No. 434, § 2; A.S.A. 1947, § 75-1154.1; Acts 1991, No. 928, § 2.

26-55-710. Quarterly mileage reports - Tax computation.

(a)(1) Every person, firm, or corporation licensed under this subchapter shall, on or before the last day of the month following the end of each calendar quarter, file with the Director of the Department of Finance and Administration, on forms prescribed by him, a report showing the quantities of gasoline purchased and used in this state during the preceding calendar quarter, together with payment of the tax due thereon.

(2) The number of gallons of motor fuel upon which the tax has been paid by an interstate user shall be determined from the form obtained by the interstate user from a licensed dealer or licensed bulk distributor within the state. This form must contain the information required by § 26-56-209.

(b) If it shall be determined by the quarterly reports filed with the director that the interstate user has used more gallons of gasoline in this state than the gasoline tax due thereon has been paid, the interstate user shall remit to the director an excise tax of eighteen and one-half cents ($.185) per gallon on the gasoline.

(c) Interstate users may not take credit on reports at a tax rate in excess of that actually paid.

(d)(1) For the purpose of determining whether a licensed interstate user owes tax or is entitled to a credit or refund, the licensed interstate user shall determine the average miles per gallon of fuel used. The average miles per gallon shall be determined by dividing the total miles traveled in all jurisdictions by the total gallons of fuel used in all jurisdictions.

(2) The licensed interstate user shall then determine the total amount of fuel used within the State of Arkansas by dividing the total number of miles traveled within the State of Arkansas by the average miles per gallon.

(3) The taxpayer's tax liability shall be calculated by multiplying the number of gallons of fuel used within the State of Arkansas by eighteen and one-half cents ($.185) per gallon. A taxpayer shall be entitled to credits against his tax liability for tax-paid fuel purchased within the State of Arkansas.

(e) For any licensed interstate user who fails to maintain adequate mileage or fuel records, as required by § 26-55-719, for the purpose of determining the amount the interstate user owes the State of Arkansas for tax on motor fuel used in this state as provided in this section, the number

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of gallons of motor fuel used in this state shall be determined by an assessment based on the following mileage factors per gallon of motor fuel as compared to the appropriate class of vehicle set out in subsection (f) of this section.

(f)(1) For the purposes of this section:

(A) All automobiles, except buses, with a capacity of less than eight (8) passengers shall be deemed to be Class A vehicles;

(B) All truck-type vehicles, except buses, with a factory rating and gross loaded weight of less than twenty-two thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class B vehicles;

(C) All other vehicles, except buses, with a factory rating in excess of twenty-two thousand five hundred pounds (22,500 lbs.), or whose total gross loaded weight exceeds twenty-two thousand five hundred pounds (22,500 lbs.), shall be deemed to be Class C vehicles;

(D) All buses rated and licensed as such shall be deemed to be Class D vehicles.

(2) The mileage factor per gallon of motor fuel for:

(A) Class A vehicles shall be twelve (12) miles;

(B) Class B vehicles shall be eight (8) miles;

(C) Class C vehicles shall be five (5) miles; and

(D) Class D vehicles shall be six (6) miles.

(3) These mileage factors shall be utilized in conjunction with the Arkansas mileage as determined through an audit and based upon the best records available regardless of source.

(g)(1) For the purposes of determining the amount any unlicensed or unbonded user owes the State of Arkansas for tax on motor fuel used in this state, only the above mileage factors per gallon of motor fuel for the applicable vehicle shall be utilized.

(2) If a quarterly report of an interstate user results in a net credit, the interstate user may elect to have the credit carried forward and applied against the motor fuel tax due for the succeeding eight (8) quarters or until the credit is completely used, whichever occurs first. In the alternative, a taxpayer who is entitled to a net credit on his quarterly fuel use tax report may elect to have the amount of credit refunded to him.

(3) An interstate user who had a total tax liability for motor fuel taxes during the previous calendar year of less than one hundred dollars ($100) may, upon application to the director, obtain permission to report his motor fuel tax liability on an annual basis. The annual report shall be due on or before the last day of the month following the end of each fiscal year.

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(h) The director shall prescribe the appropriate forms necessary for the administration of this subchapter. The director may make appropriate rules and regulations necessary to insure the accurate reporting of mileage traveled and gallons used and purchased by the licensed interstate users.

History. Acts 1953, No. 112, § 7; 1957, No. 213, § 3; 1967, No. 356, § 2; 1968 (1st Ex. Sess.), No. 36, § 6; 1977, No. 354, § 1; 1979, No. 764, § 1; A.S.A. 1947, §§ 75-1155, 75-1187; Acts 1987, No. 803, § 1; 1991, No. 364, § 2; 1991, No. 382, § 2; 1995, No. 777, § 3.

A.C.R.C. Notes. Acts 1991, No. 219, § 4 provided: "(a) Whenever an interstate user of distillate special fuels who is a bonded user of such fuels in all states in which he operates has exportations in excess of importations of tax-paid distillate special fuels in the fuel supply tanks of motor vehicles which fuels were delivered by a supplier into bulk storage facilities of the user within the State of Arkansas, the supplier may make a refund or allow a credit for the amount of the tax upon such excess upon approval by the director of a statement from the user to the effect that the tax-paid fuel was exported.

"(b)(1) For the purpose of determining whether an interstate distillate special fuels user owes special motor fuel tax or is entitled to a credit or refund, the licensed interstate distillate special fuels user shall file a quarterly report on or before the last day of the month following the end of each calendar quarter.

"(2) If it shall be determined by the quarterly report that the interstate user has used distillate special fuels in this state in excess of the number of gallons of the fuel upon which the Arkansas tax had been paid, the interstate user shall remit to the director, at the time of filing the report, an excise tax of sixteen and one-half cents (161/2 ¢) per gallon of the excess gallonage used.

"(3) If it shall be determined that the interstate user has purchased more gallons of distillate special fuels in this state than he has used in this state, then the user shall be entitled to a credit or refund of sixteen and one-half cents (161/2 ¢) per gallon of the excess gallonage purchased in the state.

"(c) The quarterly report required by this subchapter shall be filed on or before the last day of the month following the end of each calendar quarter and shall be made on forms prescribed by the director and shall include such information as the director may require.

"(d)(1) For the purpose of determining whether a distillate special fuel user owes tax or is entitled to a credit or refund as provided in subsection (b) of this section, the distillate special fuel user shall file with the director a report showing the quantities of special motor fuels used in this state during the preceding calendar quarter. This report shall be due on or before the last day of the month following the end of each calendar quarter.

"(2) If it shall be determined by the quarterly report filed with the director that the distillate special fuel user has used more gallons of special motor fuel in this state than the special motor fuel tax due thereon has been paid, the distillate special fuel user shall remit to the director an excise tax of sixteen and one-half cents (161/2 ¢) per gallon of special motor fuel.

"(3) Distillate special fuel users may not take credit on reports at a tax rate in excess of that actually paid.

"(e)(1) For the purpose of determining whether a distillate special fuel user owes tax or is entitled to a

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credit or refund, the distillate special fuel user shall determine the average miles per gallon of fuel used. The average miles per gallon shall be determined by dividing total miles traveled in all jurisdictions by the total gallons of fuel used in all jurisdictions. The distillate special fuel user shall then determine the total amount of fuel used within the State of Arkansas by dividing the total number of miles traveled within the State of Arkansas by the average miles per gallon.

"(2) The taxpayer's tax liability shall be calculated by multiplying the number of gallons of fuel used within the State of Arkansas by sixteen and one-half cents (161/2 ¢) per gallon. A taxpayer shall be entitled to credits against his tax liability for tax-paid fuel purchased within the State of Arkansas.

"(f)(1) Any licensed interstate user who fails to maintain adequate mileage or fuel records, for the purpose of determining the amount the interstate user owes the State of Arkansas for tax on distillate special fuel used in this state as provided in this section, the number of gallons of distillate special fuel used in this state shall be determined by an assessment based on the following mileage factors per gallon of distillate special fuel as compared to the appropriate class of vehicle set out in subdivision (2) of this subsection.

"(2) For the purposes of this section:

"(A) All automobiles, except buses, with a capacity of less than eight (8) passengers shall be deemed to be Class A vehicles;

"(B) All truck-type vehicles, except buses, with a factory rating and gross loaded weight of less than twenty-two thousand five hundred pounds (22,500 lbs.), shall be deemed to be Class B vehicles;

"(C) All other vehicles, except buses, with a factory rating in excess of twenty-two thousand five hundred pounds (22,500 lbs.), or whose total gross loaded weight exceeds twenty-two thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class C vehicles; and

"(D) All buses rated and licensed as such shall be deemed to be Class D vehicles.

"(3) The mileage factor per gallon of distillate special fuel for:

"(A) Class A vehicles shall be twelve (12) miles;

"(B) Class B vehicles shall be eight (8) miles;

"(C) Class C vehicles shall be five (5) miles; and

"(D) Class D vehicles shall be six (6) miles.

"(4) These mileage factors shall be utilized in conjunction with the Arkansas mileage as determined through an audit and based upon the best records available regardless of source.

"(g) For the purposes of determining the amount any unlicensed or unbonded user owes the State of Arkansas for tax on distillate special fuel used in this state, only the above mileage factors per gallon of distillate special fuel for the applicable vehicles shall be utilized.

"(h)(1) If a quarterly report of a distillate special fuel user results in a net credit, the distillate special fuel user may elect to have the credit carried forward and applied against the special motor fuel tax due for the succeeding eight (8) quarters or until the credit is completely used, whichever occurs first. In the alternative, a taxpayer who is entitled to a net credit on his quarterly fuel use tax report may elect to have the amount of credit refunded to him.

"(2) A distillate special fuel user who has a total tax liability for special motor fuel tax during the

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previous calendar year of less than one hundred dollars ($100) may, upon application to the director, obtain permission to report his motor fuel tax liability on an annual basis. The annual report shall be due on or before the last day of the month following the end of each fiscal year.

"(i) The director shall prescribe the appropriate forms necessary for the administration of this subchapter. The director may make appropriate rules and regulations necessary to insure the accurate reporting of the special motor fuel tax."

Acts 1991, No. 364, § 5 as amended by identical Acts 1991, Nos. 1040 and 1239, §§ 5 and 6, and Acts 1991, No. 382, § 5, as amended by Acts 1991, Nos. 1040 and 1239, §§ 7 and 8, provided:

"(a) All of the additional taxes, fees, penalties and interest collected under the provisions of this subchapter and §§ 26-55-710, 26-56-214, and 26-56-304 shall be classified as special revenues and shall be deposited in the State Treasury. After deducting therefrom the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

"(A) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

"(B) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

"Seventy percent (70%) of the amount thereof to a special account in the State Highway and Transportation Department Fund to be designated the "1991 Highway Construction and Maintenance Account".

"(b) The funds in the 1991 Highway Construction and Maintenance Account shall be held, managed, and used in the same manner and for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., excluding, however, § 27-70-206;

"(c) Provided that, in keeping with the spirit of section 105 of Public Law 97-424 and the Arkansas State Highway Commission's goals for encouraging the participation of disadvantaged business enterprises in entering into and performing contracts with the commission, including the purchasing of supplies and equipment by the commission and for the construction, reconstruction, and maintenance of highways and bridges in the state highway system, the Arkansas State Highway Commission is authorized to expend up to ten percent (10%) of the total funds and revenues available and disbursed to the commission pursuant to this section for the purposes of achieving those goals."

Amendments. The 1995 amendment added the last sentence in (a)(2).

26-55-711. Bonded and unbonded interstate motor fuel users - Penalty for insufficient purchase.

Any motor fuel user who is a bonded or unbonded interstate motor fuel user as defined in § 26-55-710 who, upon arriving at a point of exit from this state, has failed to purchase sufficient gallons of motor fuel in this state and pay the tax as required by law as provided in this subchapter, calculated at the rate of four (4) miles per gallon for each mile traveled in this state,

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shall:

(1) If an unbonded motor fuel user, pay a penalty of four cents (4¢) per gallon on each gallon of fuel which he failed to buy in this state, in addition to paying the tax on the fuel at the point of exit from this state upon which the tax has not been paid; and

(2) If a bonded motor fuel user, pay a penalty of four cents (4¢) per gallon of the total number of gallons of fuel which he failed to buy in this state during each report period, in addition to paying the tax upon the fuel upon which tax has not been paid.

History. Acts 1977, No. 354, § 2; A.S.A. 1947, § 75-1187.1.

Publisher's Notes. Acts 1977, No. 354, § 4, provided in part that the act would be supplemental to the Motor Fuel Tax Law, § 26-55-201 et seq.

26-55-712. Bonded and unbonded interstate users - Knowing and intentional failure to pay tax or penalty.

Any bonded or unbonded motor fuel user who knowingly and intentionally fails to pay the Arkansas gallonage tax due the State of Arkansas on motor fuel used on the highways of this state as required in § 26-55-710 with respect to motor fuel taxes on Class C vehicles, or knowingly and intentionally fails to pay the penalty on the fuel on which the Arkansas motor fuel tax has not been paid, as required in § 26-55-711, shall be guilty of a Class A misdemeanor and upon conviction shall be punished in the manner provided by law.

History. Acts 1977, No. 354, § 3; A.S.A. 1947, § 75-1187.2.

Publisher's Notes. Acts 1977, No. 354, § 4, provided in part that the act would be supplemental to the Motor Fuel Tax Law, § 26-55-201 et seq.

26-55-713. Claims for refunds by nonbonded users.

(a) Claims for refunds of motor fuel taxes by nonbonded users of motor fuel or claims for credits for motor fuel taxes shall not be valid unless properly presented upon motor fuel tax forms as promulgated by and as required by the Director of the Department of Finance and

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Administration.

(b)(1) The director may assess and charge a fee upon all forms furnished by the Revenue Division of the Department of Finance and Administration when those forms pertain to the motor fuel tax laws of this state.

(2) The fees shall be based on the cost of the forms and moneys expended for postage, processing, and handling of the forms.

(3) The fees derived from motor fuel tax forms shall be deposited in the State Treasury as special revenues, there to be distributed monthly by the State Treasurer to the Constitutional and Fiscal Agencies Fund Account.

(c) The director shall not furnish forms for cash refunds or credits for motor fuel taxes to nonbonded users of motor fuel unless and until the General Assembly provides by law for the issuance of credits and cash refunds to nonbonded users of motor fuel who qualify for such credits or cash refunds or motor fuel taxes.

(d) Motor fuel users may not claim a credit for motor fuel taxes beyond the date of the next sucessive report after the period in which the credit arose.

History. Acts 1967, No. 376, §§ 1-5; 1968 (1st Ex. Sess.), No. 64, § 1; A.S.A. 1947, §§ 75-1175 - 75-1179.

26-55-714. Interstate users - Tax refund procedure.

(a)(1) The Director of the Department of Finance and Administration shall quarterly determine the amount estimated to be necessary to pay refunds to interstate users of motor fuels who are entitled to refunds with respect to a portion of the motor fuel taxes paid in this state as authorized in § 26-55-710, and, upon certification by the Director of the Department of Finance and Administration, the State Treasurer shall transfer from the gross amount of motor fuel taxes collected each month the amount so certified and shall credit it to the Interstate Motor Fuel Tax Refund Fund, which is established on the books of the State Treasury, from which the Department of Finance and Administration shall make refunds as provided by law.

(2) The transfers from the gross motor fuel taxes collected each month shall be after deducting allowances for bad checks or claims but before making any other distribution thereof as provided by law.

(b) All warrants drawn against the Interstate Motor Fuel Tax Refund Fund which are not presented for payment within one (1) year of issuance shall be void.

(c) Neither the Director of the Department of Finance and Administration nor any member or

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employee of the department shall be held personally liable for making any refund by reason of a fraudulent claim being filed as a basis for that refund.

(d) The Director of the Department of Finance and Administration is authorized to promulgate rules and regulations and to prescribe the necessary forms required for the administration of claims for tax refunds from interstate users of motor fuels in this state as authorized by law, which rules and regulations shall be in conformance with the following requirements:

(1) The director shall first determine, with respect to each refund claim filed, that the bond of the interstate user is adequate to compensate the State of Arkansas for any losses with respect to the recovery of any refunds illegally claimed by the interstate user, and he may require the increase of the bond if he determines it to be inadequate before approving any claim for refund;

(2) Each interstate user of motor fuels claiming refunds shall maintain adequate records to substantiate each claim for refund, and the director may reject any claim for refund if he determines the applicant has not maintained adequate records or has not conformed to the rules and regulations of the department in filing the claim;

(3) Each claim for refund must be upon the request of the interstate user, which shall be verified by the interstate user as to its accuracy and validity;

(4)(A) Each quarterly report filed by a licensed interstate user of motor fuels with the department, shall reflect thereon the amount of motor fuels purchased for use in Arkansas during the quarter, the number of gallons of motor fuels upon which taxes are due the State of Arkansas for the quarter, and the excess gallonage upon which the interstate user is entitled to refunds.

(B) At the end of each calendar quarter, the licensed interstate user may make application for refund with respect to the number of gallons of motor fuels upon which the motor fuels taxes have been paid during the calendar quarter for which the interstate user is entitled to refund.

History. Acts 1977, No. 51, §§ 2, 3; 1983, No. 830, § 3; A.S.A. 1947, §§ 75-1155.1, 75-1155.2; Acts 1987, No. 803, §§ 2-4.

Publisher's Notes. Acts 1977, No. 51, §§ 2, 3, as amended, are also codified as § 26-56-215.

26-55-715. [Repealed.]

Publisher's Notes. This section, concerning unlicensed importers, was repealed by Acts 1987, No. 803, § 10. The section was derived from Acts 1953, No. 112, § 9, as added by Acts 1967, No. 356, § 3;

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A.S.A. 1947, § 75-1157.

26-55-716. Failure or refusal to pay tax - Penalties, interest, and costs.

Any person who neglects or refuses to pay the tax levied by this subchapter at the time and as provided for in this subchapter shall become liable for the amount of the tax, together with a penalty of twenty percent (20%) thereof or a minimum of five dollars ($5.00), whichever is greater, plus interest at the rate of six percent (6%) per annum from the date when due until paid. If the tax, penalty, and interest are collected by proceedings in court, an additional penalty of twenty percent (20%) of the tax shall also be imposed and collected as attorney's fee.

History. Acts 1953, No. 112, § 10; 1957, No. 213, § 4; A.S.A. 1947, § 75-1158.

26-55-717. Unlicensed users - Failure to pay tax - Burden of proof.

(a) If a person who has not obtained a fuel user's license from this state, and who is nevertheless determined a fuel user, leaves the State of Arkansas by a state highway or other road not equipped with a permanent port of entry or exit and has not paid the motor fuel tax or has not purchased tax-paid motor fuel from a licensed dealer in an amount equal to the number of gallons used upon the highways of the State of Arkansas, he shall be liable for the payment of the tax due, together with the penalties as set out in § 26-55-716.

(b) If an unlicensed fuel user is within one (1) mile of the state line on the way out of the state and does not have in his possession a form issued by a licensed dealer showing the number of gallons purchased equal to the amount used in traveling upon the highways of the State of Arkansas, it shall be prima facie evidence of his failure to comply with the requirements of this subchapter, and he shall be liable for the payment of the tax due, plus the fine as set out in § 26-55-718.

(c) In the event an unlicensed fuel user enters the State of Arkansas via a state highway not equipped with a permanent port of entry, and the driver of the vehicle does not receive an entry form, then the burden of proof of the point of entry and time of entry for the purpose of determining the miles traveled, and the tax due shall be upon the driver or owner of the vehicle.

History. Acts 1953, No. 112, § 10; 1957, No. 213, § 4; 1967, No. 356, § 4; A.S.A. 1947, § 75-1158.

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26-55-718. Failure to file report or pay tax, filing fraudulent reports, etc. - Penalties.

Any person who uses gasoline in this state and fails to pay the tax levied by this subchapter or any person who makes a false or fraudulent report hereunder or who otherwise violates any of the provisions of this subchapter shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment. Each separate day of the violation shall constitute a separate offense.

History. Acts 1953, No. 112, § 10; 1957, No. 213, § 4; A.S.A. 1947, § 75-1158.

26-55-719. Records - Preservation - Inspection.

(a) Each person, firm, or corporation subject to this subchapter must maintain and keep for a period of three (3) years records of mileage traveled by vehicles operated in this state, together with inventories, withdrawals, purchases supported by invoices, and all relevant records and papers that may be required by the Director of the Department of Finance and Administration.

(b) The director or his authorized representative shall be entitled to inspect these records at any time.

History. Acts 1953, No. 112, § 8; A.S.A. 1947, § 75-1156.

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Subchapter 8.
Unlicensed Out-of-State Trucks.

Effective dates. Acts 1987, No. 803, § 14: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that this Act makes various changes in the motor fuel tax law and the special motor fuel tax law; that such changes should go into effect at the beginning of the next fiscal year; and that unless this emergency clause is adopted, this Act may not go into effect until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1987."

26-55-801. Purpose.

The purpose of this subchapter is to afford service station operators throughout the State of Arkansas an equal opportunity in the sale of motor fuel and special motor fuel to out-of-state truckers and to provide a means for payment of the fuel tax.

History. Acts 1965, No. 573, § 4; A.S.A. 1947, § 75-1174.

26-55-802. Failure to comply.

It shall be prima facie evidence of failure to comply with and intent to evade the provisions of this subchapter when any person or operator of an unlicensed motor fuel user or special motor fuel user out-of-state truck who has not complied with this subchapter is traveling upon a state highway within fifty (50) miles of the state line in the direction of exit of the State of Arkansas. The person or operator shall be liable for the penalty and interest set out in § 26-55-716.

History. Acts 1965, No. 573, § 2; A.S.A. 1947, § 75-1173.

26-55-803. Entry slips required - Computation of tax.

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(a) All licensed motor fuel user and distillate special fuel user out-of-state trucks with a gross loaded weight of twenty-six thousand and one pounds (26,001 lbs.) or more entering the State of Arkansas shall, at the point of entry, secure a copy of an entry slip from the Director of the Department of Finance and Administration or his authorized agent or employee.

(b) The entry slip shall be signed by the director or his authorized agent or employee, and the entry slip shall also be signed by the driver of the vehicle.

(c) The entry slip shall contain the following information:

(1) Name and address of the owner or the operator of the vehicle;

(2) State of registration;

(3) License number;

(4) Speedometer reading;

(5) Destination and point of leaving state; and

(6) Description of vehicle.

(d) The entry slip shall remain in the vehicle for the remainder of the trip over the highways of this state and shall be produced for the inspection of the director, or his authorized employee or representative, at any point within the state and shall also be produced at the port of exit to the director, or his authorized agent or employee, for determination of any fuel taxes due the state.

(e)(1) For the purpose of determining the amount the interstate user owes the State of Arkansas for tax on motor fuel or distillate special fuel used in this state as provided in this section, the number of gallons of motor fuel or distillate special fuel used in this state shall be determined by an assessment based on the following mileage factors per gallon of motor fuel or distillate special fuel as compared to the appropriate class of vehicle set out in subdivision (2) of this subsection.

(2) For the purposes of this section:

(A) All automobiles, except buses, with a capacity of less than eight (8) passengers shall be deemed to be Class A vehicles;

(B) All truck-type vehicles, except buses, with a factory rating and gross loaded weight of less than twenty-two thousand five hundred pounds (22,500 lbs.), shall be deemed to be Class B vehicles;

(C) All other vehicles except buses, with a factory rating in excess of twenty-two thousand five hundred pounds (22,500 lbs.), or whose total gross loaded weight exceeds twenty-two

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thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class C vehicles; and

(D) All buses rated and licensed as such shall be deemed to be Class D vehicles.

(3) The mileage factor per gallon of motor fuel or distillate special fuel for:

(A) Class A vehicles shall be twelve (12) miles;

(B) Class B vehicles shall be eight (8) miles;

(C) Class C vehicles shall be five (5) miles; and

(D) Class D vehicles shall be six (6) miles.

(f) The motor fuel tax and distillate special fuel tax levied by this state shall be paid upon all such fuel used to propel out-of-state trucks upon the highways of this state.

History. Acts 1965, No. 573, § 1; A.S.A. 1947, § 75-1172; Acts 1987, No. 803, § 9; 1993, No. 618, § 11.

Amendments. The 1993 amendment, in (a), substituted "licensed" for "unlicensed" and inserted "with a gross loaded weight of twenty-six thousand and one pounds (26,001 lbs.) or more".

26-55-804. Payment of tax.

The tax shall be paid by the owner or operator of the truck or vehicle in either of the following ways, at the option of the owner or operator:

(1) By the purchase of a sufficient amount or quantity of fuel from a retail dealer within the State of Arkansas to propel the vehicle the number of miles which the vehicle travels upon the highways of this state.

(A) At the time of the purchase of the fuel, the owner or operator of such vehicle shall obtain from the dealer from whom purchased an invoice or sales ticket, or forms approved by the Director of the Department of Finance and Administration, which shall contain the name and address of the seller of the fuel, the name and address of the purchaser, the date of purchase, the amount or quantity and kind of fuel purchased, and the invoice or sales ticket shall remain in the vehicle for the remainder of the trip over the highways of this state.

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(B) The invoice or sales ticket shall be preserved and retained by the owner or operator for a period of not less than three (3) years and shall be produced for the inspection and examination of the director, or his authorized agent or employee, at any reasonable time and place, either within or without this state, upon proper demand therefor;

(2) By the payment of the amount of tax which would be due upon a sufficient quantity of fuel to propel the vehicle over the highways of this state to the director or to his agent, representative, or employee.

(A) At the time of payment of the tax, the director, or his employee or representative, shall issue to the person paying the tax a receipt showing the amount of tax paid, the name and address of the owner or operator of the vehicle, a description of the vehicle, including the license number and state of registration, the point at which the vehicle entered upon the highways of this state, the destination and the place where the vehicle is to leave the highways of this state, and any other information which the director may require, which receipt shall be signed by the director or his agent or representative.

(B) The receipt shall remain in the vehicle for the remainder of the trip over the highways of this state and thereafter shall be preserved and retained by the owner or operator for a period of not less than three (3) years, and shall be produced for the inspection of the director, or his authorized agent or representative, at any reasonable time and place, either within or without this state, upon proper demand.

History. Acts 1965, No. 573, § 1; A.S.A. 1947, § 75-1172.

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Subchapter 9.
Vehicle Tank Inspections.

Effective dates. Acts 1955, No. 50, § 16: July 1, 1955.

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

26-55-901. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Person" means individuals, partnerships, limited liability companies, corporations, companies, societies, and associations;

(2) "Vehicle tank" means an assembly used for the delivery of petroleum products, comprising a tank which may or may not be subdivided into two (2) or more compartments and which is mounted upon a vehicle, together with its accessory piping, valves, meters, etc.;

(3) "Compartment" means the entire tank when it is not subdivided; otherwise, compartment means any one (1) of those subdivisions of a tank designed to hold petroleum products, unless otherwise provided by the Director of the Department of Finance and Administration by regulations adopted pursuant to § 26-55-903. Compartment shall include piping leading from the compartment to the manifold but shall not include the manifold;

(4) "Director" means the Director of the Arkansas Bureau of Standards or any employee of the bureau authorized by the director to carry out the provisions of this subchapter;

(5) "Petroleum product" means any liquid hydrocarbon product extracted or refined from crude petroleum, crude oil distillate, or natural gas and includes all products customarily known as gasoline or motor fuel by whatever name such liquid may be known or sold, including naphthas, tractor fuels, residual oils, and asphalts, but shall not include liquefied petroleum gases.

History. Acts 1955, No. 50, § 1; A.S.A. 1947, § 75-1159; Acts 1995, No. 1160, § 28.

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Publisher's Notes. Acts 1993, Nos. 610 and 624, § 1, provided: "The Arkansas Bureau of Standards, created by Act 482 of 1963, as amended, the same being A.C.A. 4-18-201 et seq., and its functions, powers, duties, assets, properties, and appropriations are transferred by a type 2 transfer [see § 25-2-105] to the State Plant Board."

Amendments. The 1995 amendment inserted "limited liability companies" in (1).

26-55-902. Penalties.

(a)(1) Any person who violates the provisions of this subchapter or the rules or regulations issued under this subchapter shall be guilty of a misdemeanor and for first conviction shall be punished by a fine of not more than one hundred dollars ($100) or by imprisonment for not more than ten (10) days; for a second such conviction within one (1) year thereafter such person shall be punished by fine of not more than two hundred dollars ($200) or by imprisonment for not more than twenty (20) days, or by both such fine and imprisonment.

(2) Upon a third or subsequent conviction within one (1) year after the first conviction, the person shall be punished by a fine of not more than five hundred dollars ($500) or by imprisonment for not more than six (6) months, or by both a fine and imprisonment.

(b) Each separate loading of a vehicle tank or compartment thereof in violation of this subchapter shall be deemed a separate offense.

History. Acts 1955, No. 50, § 13; A.S.A. 1947, § 75-1171.

26-55-903. Rules and regulations.

(a) The director shall have the power to adopt and, from time to time, to change by addition, amendment, or repeal reasonable rules and regulations consistent with law, for the enforcement of the provisions of this subchapter.

(b) The rules and regulations shall be, to the extent practicable, consistent with pertinent nationally recognized standards, methods, and tolerances.

(c) The regulations shall be applicable only to the extent that they are not in conflict with regulations or orders issued by an agency of the United States and shall be drawn with due consideration for the desirability of uniformity of the laws of the several states and the United States.

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(d)(1) The rules or regulations and any addition to or amendment or repeal thereof shall be adopted, changed, amended, or repealed only after full public hearing which shall be adjourned from time to time as may be necessary to permit all interested or affected parties to be heard.

(2) At least thirty (30) days' prior written notice of the commencement of such hearing shall be published two (2) times in one (1) newspaper of general circulation which has been designated for that purpose by the director.

(3) The notice shall state the time, place, and purpose of hearing and shall either set forth in full the rule or regulation to be considered or shall state where and how such full text may be obtained.

(4) A copy of the notice shall be sent at the same time to every person who shall have registered with the director a request to be so notified, together with the name and address to which such notice should be sent.

(5) Any such rule or regulation or amendment or repeal thereof shall be effective sixty (60) days after certified copies have been filed as required by Acts 1953, No. 183 [repealed].

History. Acts 1955, No. 50, §§ 3, 4; A.S.A. 1947, §§ 75-1161, 75-1162.

26-55-904. Measurement of vehicle tanks.

(a) The director shall gauge and determine the capacity of vehicle tanks used in the sale or delivery of petroleum products in this state and inspect and test, to ascertain if they are correct, the capacity indicators of the compartments of those vehicle tanks.

(b) The director is authorized to use the services of a recognized calibrating agency in determining the correctness of measurements whenever a difference of opinion exists between the owner or operator of a tank and the director as to the correctness of the gauging, and that determination shall be final.

History. Acts 1955, No. 50, § 2; A.S.A. 1947, § 75-1160.

26-55-905. Testing stations.

The director shall establish, at locations to be determined by him, a sufficient number of

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checking stations either fixed or mobile to carry out the purposes of this subchapter. However, the number of stations so established shall not exceed five (5) for the state.

History. Acts 1955, No. 50, § 5; A.S.A. 1947, § 75-1163.

26-55-906. Time and place of inspection.

(a) Every person owning or operating any vehicle tank shall present it to the checking station when notified to do so by the director upon ten (10) days' notice to him by the director. However, the director shall not require any such vehicle tank to be presented for testing at a checking station which is more than one hundred seventy-five (175) miles distant from the point which is the customary base of operations of that vehicle tank.

(b) The director shall not call in any vehicle tank for recalibrating sooner than eighteen (18) months after the date of last calibration unless the director has evidence or reason to believe that a change in the capacity of the vehicle tank has occurred since the date on which it was last calibrated.

History. Acts 1955, No. 50, § 6; A.S.A. 1947, § 75-1164.

26-55-907. Testing and sealing.

(a) Every compartment of a vehicle tank shall be equipped with permanently attached indicators of the capacity of the compartment.

(b) After each compartment has been gauged or calibrated, if it is approved, the director shall place a seal on each indicator.

(c) It shall be the duty of the owner or operator of the vehicle tank to report to the director immediately the breaking of any such seal on such an indicator which was placed there by the director.

History. Acts 1955, No. 50, § 8; A.S.A. 1947, § 75-1166.

26-55-908. Marking tank.

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After testing and sealing by the director, the owner or operator of a vehicle tank shall have stenciled or painted conspicuously, on each compartment of the tank, the calibrated capacity of the tank and, in addition, shall have stenciled or painted on the tank, or the vehicle to which it is attached, the total calibrated capacity of all compartments of the tank.

History. Acts 1955, No. 50, § 8; A.S.A. 1947, § 75-1166.

26-55-909. Reinspection, retesting, and remeasurement.

If any vehicle tank, after having been tested, shall become damaged or is repaired or modified in any way which might affect the accuracy of measurement of its deliveries, it shall not again be used for the delivery of petroleum products until it is officially reinspected, if deemed necessary, retested, and remeasured.

History. Acts 1955, No. 50, § 8; A.S.A. 1947, § 75-1166.

26-55-910. Unlawful to use vehicle tanks unless tested and sealed.

It shall be unlawful for any person to use any vehicle tank or compartment thereof for the transportation of the quantity of petroleum products sold or delivered in this state unless the vehicle tank has been tested and sealed as provided in this subchapter and otherwise complies with the provisions of this subchapter. However, no person shall be considered a violator of this subchapter unless and until he has received the notice required by § 26-55-906 and until after the time fixed by the notice for the testing of the vehicle tank.

History. Acts 1955, No. 50, § 9; A.S.A. 1947, § 75-1167.

26-55-911. Sealing of inlets and outlets.

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In making deliveries of petroleum products, all such tank wagons, tank trucks, and all inlets and outlets to such equipment shall be sealed as may be directed by the director, and no such petroleum products shall be delivered unless sealed as provided in this subchapter. However, the provisions of this section shall apply only to transport trucks bringing petroleum products into the State of Arkansas and to common and contract carriers transporting petroleum products either into or within the State of Arkansas.

History. Acts 1955, No. 50, § 10; A.S.A. 1947, § 75-1168.

26-55-912. Display of marks indicating proper gauging - Exemption from subchapter.

(a) Any vehicles, tanks, and equipment which display symbols or identification marks indicating that the equipment has been properly gauged under the laws of another state will be exempt from the requirements of this subchapter to the same extent that vehicles of this state are exempt in the state which gauged the vehicles, tanks and equipment in the first instance.

(b) However, this section shall not be applicable if the director has evidence or reason to believe that a change in the capacity of the tank or tank truck has occurred since the date it was last gauged.

History. Acts 1955, No. 50, § 11; A.S.A. 1947, § 75-1169.

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Subchapter 10.
Additional Taxes and Fees.

Publisher's Notes. Acts 1985, No. 456, § 6, contained an emergency clause to the effect that the act would be in full force and effect from and after its passage and approval; Acts 1985, No. 456 was vetoed by the Governor on March 19, 1985, but passed over his veto by the General Assembly on March 20, 1985.

Effective dates. Acts 1985, No. 456, § 6. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the rural roads, highways, roads and streets in this State are operationally hazardous and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction and reconstruction of such roads, highways and streets is essential to the public health, welfare and safety of the people of this State and that only by the immediate passage of this Act may such vitally needed additional funds be provided to solve the aforementioned problem. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval." Vetoed, Mar. 19, 1985 and passed over veto Mar. 20, 1985.

Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after the first day of the first month immediately following its passage and approval."

Acts 1999, No. 1028, § 9: Apr. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that existing highway user revenue sources do not provide sufficient funds for the necessary maintenance, repair, construction and reconstruction of state highways, county roads and municipal streets; that there is an immediate and urgent need for adequate state highways, county roads and municipal streets; that the continued economic expansion and growth of this state will be jeopardized if an adequate system of state highways, county roads and municipal streets is not provided; and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve these problems. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 685, § 4: Mar. 9, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need for the construction,

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reconstruction, and renovation of highways and roads comprising the federal interstate road system within the State of Arkansas; that a construction program cannot be accomplished without the issuance of bonds secured by federal highway assistance payments to finance the program; and that this act is immediately necessary in order to begin the process of facilitating the issuance of bonds. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

26-55-1001. Applicability.

The additional taxes and fees levied in this subchapter on motor fuel, distillate special fuels, liquefied petroleum gas special fuel, and vehicles using liquefied petroleum gas (LPG) special fuel shall be applicable to motor fuel and distillate special motor fuels sold and to liquefied petroleum gas vehicles which are registered or for which registration is renewed on and after April 1, 1985.

History. Acts 1985, No. 456, § 4; A.S.A. 1947, § 75-1281.

Publisher's Notes. Acts 1985, No. 456, §§ 1-4, are also codified as 26-56-501 et seq.

26-55-1002. Additional tax levied on motor fuel.

(a) In addition to the tax levied upon motor fuel in § 26-55-205, there is levied an excise tax of four cents (4¢) per gallon upon all motor fuel subject to the tax levied in that section.

(b) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of other motor fuel taxes.

History. Acts 1985, No. 456, § 1; A.S.A. 1947, § 75-1278; Acts 1989, No. 821, § 10.

26-55-1003. [Repealed.]

Publisher's Notes. This section, concerning additional fees for vehicles using liquefied gas special

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fuel, was repealed by Acts 1991, Nos. 364 and 382, § 6. The section was derived from Acts 1985, No. 456, § 2; A.S.A. 1947, § 75-1279.

26-55-1004. Disposition of revenues.

(a)(1) All taxes, interest, penalties, and costs received by the Director of the Department of Finance and Administration from the additional taxes and fees levied by this subchapter shall be classified as special revenues and shall be deposited in the State Treasury.

(2) The net amount thereof shall be transferred by the State Treasurer on the last business day of each month, as follows:

(A) Fifteen percent (15%) of the amount to the County Aid Fund;

(B) Fifteen percent (15%) of the amount to the Municipal Aid Fund; and

(C) Seventy percent (70%) of the amount to the State Highway and Transportation Department Fund.

(b)(1) All such funds credited the State Highway and Transportation Department Fund shall be used for construction, reconstruction, and maintenance of the rural state highways of the state and their extensions into municipalities and industrial access roads.

(2) The State Highway Commission shall provide to each member of the General Assembly on January 1, 1986, and annually thereafter, a report indicating how the money provided by this subchapter was spent, which roads were worked on, and what other progress was made regarding the plan outlined to the General Assembly by the commission during the debate on this subchapter.

History. Acts 1985, No. 456, § 3; A.S.A. 1947, § 75-1280.

26-55-1005. Motor fuel excise tax.

This act may be referred to and cited as the "Arkansas Distillate Special Fuel Excise Tax Act of 1999" and the "Motor Fuel Excise Tax Act of 1999".

History. Acts 1999, No. 1028, § 1.

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Meaning of "this act". Acts 1999, No. 1028, codified as §§ 26-55-1005, 26-55-1006, 26-56-201, 27-72-305.

26-55-1006. Excise tax rates.

(a)(1) On and after July 1, 1999, in addition to the taxes levied on motor fuel in §§ 26-55-205, 26-55-1002, and 26-55-1201, there is levied an additional excise tax of one cent (1¢) per gallon upon all motor fuels subject to the taxes levied in those sections.

(2) On and after July 1, 2000, the additional tax levied by this subsection shall be increased to two cents (2¢) per gallon.

(3) On and after July 1, 2001, the additional tax levied by this subsection shall be increased to three cents (3¢) per gallon.

(b) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of the other motor fuel taxes under Arkansas law.

(c) The additional tax levied by this section shall be taken into consideration and used when calculating tax credits or additional tax due under § 26-55-710.

(d) The additional taxes collected pursuant to this section shall be considered special revenues and shall be distributed as set forth in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

History. Acts 1999, No. 1028, §§ 3, 4; 2005, No. 685, § 3.

Amendments. The 2005 amendment deleted former (d)(2); and redesignated former (d)(1) as present (d).

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Subchapter 11.
International Fuel Tax Agreement.

26-55-1101. Definition.

As used in this subchapter, "director" means the Director of the Department of Finance and Administration, State of Arkansas, or his authorized agent.

History. Acts 1989, No. 854, § 1.

26-55-1102. Authority to enter Agreement - Audits not precluded - Identification decal costs.

(a) The director is authorized to enter into the International Fuel Tax Agreement of July 1987 with jurisdictions outside this state to provide for cooperation and assistance among member jurisdictions in the administration and collection of taxes imposed upon the consumption of all fuels used in vehicles operated or intended to operate interstate. Provided, however, that such agreement shall not be effective until stated and agreed to in writing and filed with the director.

(b) The agreement authorized by this subchapter may provide for determining the base jurisdiction for fuel users, users' record requirements, audit procedures, exchange of information, eligibility for licensing, definition of qualified motor vehicles, definition of motor fuels, bond requirements, reporting requirements, reporting periods, methods for collecting and forwarding fuel taxes and penalties to another jurisdiction, and other provisions to facilitate the administration of the agreement.

(c) No agreement authorized by this subchapter shall preclude the director from auditing the records of any person subject to the provisions of Title 26, Chapters 55 or 56 of this Code.

(d) For the purposes of this subchapter, the amount necessary to recover reasonable administrative costs for issuance of a vehicle identification decal is hereby determined to be that amount required to be paid for the distinctive marking under § 26-55-708.

History. Acts 1989, No. 854, § 1.

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26-55-1103. Persons subject to Agreement provisions.

Upon and after the date on which the International Fuel Tax Agreement of July 1987 becomes effective, every person who holds a valid license issued by a member jurisdiction of such agreement shall be subject to the provisions of such agreement, which provisions shall prevail in the case of any conflict with the provisions of Title 26, Chapters 55 or 56 of this Code. Provided, however, that for all persons other than those holding a valid license issued by a member jurisdiction of the International Fuel Tax Agreement of July 1987, the provisions of Title 26, Chapters 55 and 56 of this Code shall be and remain fully applicable.

History. Acts 1989, No. 854, § 1.

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Subchapter 12.
Additional Taxes on Motor Fuel, Distillate Special Fuels, and Liquefied Gas Special Fuels.

Effective dates. Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after the first day of the first month immediately following its passage and approval."

Acts 1991, Nos. 1040 and 1239, § 11: Apr. 8, 1991, and Apr. 10, 1991, respectively. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that there is an immediate need for the construction and repair of the State Highway System. For these reasons, it is declared necessary for the preservation of the public peace, health, and safety that this Act become effective without delay. It is, therefore, declared that an emergency exists, and this Act shall take effect from the date of its passage and approval."

26-55-1201. Additional taxes on motor fuel, distillate special fuels and liquefied gas special fuels.

(a) On and after March 6, 1991, in addition to the taxes levied upon motor fuel in §§ 26-55-205 and 26-55-1002 and upon distillate special fuels in §§ 26-56-201 and 26-56-502 and upon liquefied gas special fuels in §§ 26-56-301 and 26-56-502, and in addition to any other taxes levied on such fuel or fuels during the Seventy-eighth regular session of the General Assembly, there is hereby levied an excise tax of five cents ($.05) per gallon upon all motor fuel and liquefied gas special fuels and an excise tax of two cents ($.02) per gallon upon all distillate special fuels subject to the taxes levied in those Code sections.

(b) Such additional taxes shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of other motor fuel taxes, distillate special fuels taxes, and liquefied gas special fuels taxes.

History. Acts 1991, No. 364, § 1; 1991, No. 382, § 1.

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Publisher's Notes. Identical acts 1991, Nos. 364 and 382, § 1, are also codified as § 26-56-601.

26-55-1202. Additional funds deposited in State Treasury.

(a) All of the additional taxes, fees, penalties and interest collected under the provisions of this subchapter and §§ 26-55-710, 26-56-214, and 26-56-304 shall be classified as special revenues and shall be deposited in the State Treasury. After deducting therefrom the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

(1) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

(2) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

(3) Seventy percent (70%) of the amount thereof to a special account in the State Highway and Transportation Department Fund to be designated the "1991 Highway Construction and Maintenance Account".

(b) The funds in the 1991 Highway Construction and Maintenance Account shall be held, managed, and used in the same manner and for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., excluding however, § 27-70-206;

(c) Provided that, in keeping with the spirit of section 105 of Public Law 97-424 and the Arkansas State Highway Commission's goals for encouraging the participation of disadvantaged business enterprises in entering into and performing contracts with the commission, including the purchasing of supplies and equipment by the commission and for the construction, reconstruction, and maintenance of highways and bridges in the state highway system, the Arkansas State Highway Commission is authorized to expend up to ten percent (10%) of the total funds and revenues available and disbursed to the commission pursuant to this act for the purposes of achieving those goals.

History. Acts 1991, No. 364, § 5; 1991, No. 382, § 5; 1991, No. 1040, §§ 5-8; 1991, No. 1239, §§ 5-8.

Publisher's Notes. Identical Acts 1991, Nos. 364 and 382, § 5, are also codified as § 26-56-602.

Identical Acts 1991, Nos. 1040 and 1239, § 4, provided: "(a) This Act shall be liberally construed to accomplish the purposes thereof. This Act shall constitute the sole authority necessary to accomplish the purposes hereof, and to this end it shall not be necessary that the provisions of other laws pertaining to the development of public facilities and properties and the financing thereof be complied with.

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"(b) This Act shall be interpreted to supplement existing laws conferring rights and powers upon the Authority and the Commission, and the rights and powers set forth herein shall be regarded as alternative methods for the accomplishment of the purposes of this Act."

Meaning of "this act". Acts 1991, Nos. 364 and 382, as amended by identical acts Nos. 1040 and 1239, codified as §§ 26-55-710, 26-55-1201, 26-55-1202, 26-56-214, 26-56-304, 26-56-601 and 26-56-602.

U.S. Code. Public Law 97-424, referred to in this section, is codified primarily as 23 U.S.C. § 101 et seq., 26 U.S.C. § 4041 et seq., and 26 U.S.C. § 6411 et seq.

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Subchapter 13.
Refunds - Motor Fuels Used by Fire Departments.

26-55-1301. Definitions.

As used in this subchapter:

(1) "Director" means the Director of the Department of Finance and Administration or any of his or her deputies, employees, or agents;

(2) "Distillate special fuel" means distillate special fuel as defined in § 26-56-102;

(3)(A) "Fire truck" means fire department-owned fire fighting apparatus used to respond to fire alarms, including, but not limited to, tanker trucks, pumper trucks, and equipment trucks.

(B) "Fire truck" does not include passenger vehicles and ambulances; and

(4) "Motor fuel" means motor fuel as defined in § 26-55-202.

History. Acts 2001, No. 419, § 1.

A.C.R.C. Notes. Acts 2001, No. 419, § 1, is also codified as § 26-56-701.

26-55-1302. Applicability.

Any fire department that purchases motor fuel or distillate special fuel for use in a fire truck shall be entitled to a refund of the motor fuel tax or distillate special motor fuel tax paid.

History. Acts 2001, No. 419, § 2.

A.C.R.C. Notes. Acts 2001, No. 419, § 2, is also codified as § 26-56-702.

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26-55-1303. Refund permit.

(a) No fire department shall secure a refund of tax under this subchapter unless the fire department is the holder of an unrevoked permit which was issued by the Director of the Department of Finance and Administration before the purchase of the motor fuel or the distillate special fuel.

(b) The permit shall be numbered and shall entitle the fire department to make an annual application for refund under this subchapter.

(c) An application for the permit shall be filed with the director on forms prescribed by the director and shall contain such information as the director may require.

(d) No person shall knowingly make a false or fraudulent statement in an application for a refund permit or in an application for a refund of any taxes under this subchapter.

(e) The refund permit of any person who violates any provision of this subchapter shall be revoked by the director and shall not be reissued until two (2) years have elapsed after the date of the revocation.

History. Acts 2001, No. 419, § 3.

A.C.R.C. Notes. Acts 2001, No. 419, § 3, is also codified as § 26-56-703.

26-55-1304. Applications for refunds.

(a) The refund permit holder shall file with the Director of the Department of Finance and Administration an application for refund on forms furnished by the director which shall include, but not be limited to, the following information:

(1) The quantity of motor fuel and distillate special fuel purchased for use in its fire trucks;

(2) A statement that the motor fuel and distillate special fuel have been used exclusively in its fire trucks;

(3) The amount of the tax claimed to be refunded;

(4) The name, post office, and resident address of the fire department;

(5) The name and address of the sellers from whom the motor fuel and distillate special fuel

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were purchased; and

(6) Other information as the director shall require.

(b)(1) An application for a refund shall be accompanied by a paid receipt for the purchase price of motor fuel and distillate special fuel on which the refund is sought.

(2) The application shall be notarized and made to the director.

(c) All claims for a refund under the provisions of this subchapter shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(d)(1) The director shall promulgate a rule establishing the annual date for claiming a refund pursuant to this subchapter.

(2) A refund shall only be granted for a purchase of motor fuel and distillate special fuel made within one (1) calendar year of the annual date for claiming the refund.

History. Acts 2001, No. 419, § 4.

A.C.R.C. Notes. Acts 2001, No. 419, § 4, is also codified as § 26-56-704.

26-55-1305. Refund paid from Gasoline Tax Refund Fund.

(a) All valid claims for refund of the motor fuel tax under the provisions of this subchapter shall be paid from the Gasoline Tax Refund Fund and shall be subject to the same conditions and limitations as provided under § 26-55-407, except that all the motor fuels covered by the provisions of this subchapter shall be subject to the full refund of the motor fuel taxes paid.

(b)(1)(A) The Director of the Department of Finance and Administration shall annually estimate the amount necessary to pay refunds to the users of distillate special fuel who are entitled to refunds with respect to distillate special fuel taxes paid in this state as authorized in this subchapter.

(B) Upon certification by the director, the Treasurer of State shall transfer from the gross amount of distillate special fuel taxes collected each month the amount so certified and shall credit the amount to the fund.

(2) The transfers from the distillate special fuel taxes collected each month shall be made after deducting allowances for bad checks or claims but before making any other distribution as provided by law.

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(c)(1) All valid claims for refund of the distillate special fuel tax under the provisions of this subchapter shall be paid from the fund.

(2) The refund for purchases of distillate special fuel tax shall not include the moneys which have been pledged to the repayment of highway bonds under § 26-56-201.

(d) All warrants drawn against the fund that are not presented for payment within one (1) year after issuance shall be void.

(e) Neither the director nor any member or employee of the Department of Finance and Administration shall be held personally liable for making any refund by reason of a fraudulent claim filed as a basis for such a refund.

History. Acts 2001, No. 419, § 5.

A.C.R.C. Notes. Acts 2001, No. 419, § 5, is also codified as § 26-56-705.

26-55-1306. Records - Inspection.

(a) The Director of the Department of Finance and Administration shall keep a permanent record by fire department of the amount of refund claimed and paid to each claimant.

(b) The records shall be open to public inspection.

History. Acts 2001, No. 419, § 6.

A.C.R.C. Notes. Acts 2001, No. 419, § 6, is also codified as § 26-56-706.

26-55-1307. Construction.

Nothing in this subchapter shall be construed as an impairment of the obligation existing between the State of Arkansas and the holders of Arkansas state highway bonds whether the bonds have already been issued or may be issued in the future.

History. Acts 2001, No. 419, § 7.

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A.C.R.C. Notes. Acts 2001, No. 419, § 7, is also codified as § 26-56-707.

26-55-1308. Director's powers.

The Director of the Department of Finance and Administration may make, amend, and enforce regulations, subpoena witnesses and documents, administer oaths, and do and perform all other acts necessary to carry out the purpose and intent of this subchapter.

History. Acts 2001, No. 419, § 8.

A.C.R.C. Notes. Acts 2001, No. 419, § 8, is also codified as § 26-56-708.

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