ENROLLED SENATE
BILL NO. 157

BY: MUEGGE and WILLIAMS (Don)
of the SENATE

and

MADDUX (Elmer), BEGLEY and
REESE of the HOUSE

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING 68 O.S. 1981, SECTION 509, WHICH RELATES TO MOTOR FUEL TAXES; AUTHORIZING CERTAIN PERSONS TO OBTAIN AGRICULTURAL EXEMPTION PERMIT; REQUIRING EVIDENCE OF COMPLIANCE WITH CERTAIN LAWS AND OTHER INFORMATION BE PRESENTED TO TAX COMMISSION; SPECIFYING FORM THEREOF; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 1981, Section 509, is amended to read as follows:

Section 509. (a) The tax levied by this act shall not apply to diesel fuel used exclusively for purposes other than to propel motor vehicles over the public highways of this state. Provided that distributors shall execute on monthly reports, certification that the purchasers represented to the seller that the diesel fuel was to be used exclusively for purposes other than to propel motor vehicles over the public highways.

(b) Every person actually engaged in farming in Oklahoma <u>or in a state which borders the State of Oklahoma</u> and buying motor fuel to be used as fuel for farm tractors or stationary engines owned or leased and operated by him and used exclusively for agricultural purposes ~~within the state~~, who has obtained an agricultural exemption permit, as provided in this article, may purchase such motor fuel without paying the tax levied by Section 502 of this ~~Code~~ <u>title</u> and one-half cent ($0.005) per gallon of the tax levied by Section 516 of this ~~Code~~ <u>title</u>.

Provided, that motor fuel or diesel fuel shall be deemed to be used exclusively for agricultural purposes when used in farm tractors or stationary engines used for any of the hereinafter enumerated purposes or related purposes and the term "agricultural purposes", as herein used, is hereby defined to include: clearing, terracing or otherwise preparing ground on a farm; preparing soil for planting and fertilizing, cultivating, raising and harvesting crops; raising and feeding livestock and poultry and building fences; pumping water for any and all uses on the farm, including irrigation; building roads upon any farm by the owner or person farming same; operating milking machines; sawing wood for use on farm; producing electricity for use on farm; movement of tractors, farm implements and equipment from one field to another and use of farm tractors to move farm products from farm to market. The term "farm tractor", as used herein, shall include all tractor-type, motorized farm implements and equipment but shall not include motor

vehicles of the truck-type, pickup truck-type, automobiles, and other motor vehicles required to be registered and licensed each year under the provisions of the motor vehicle license and registration laws.

(c) Every person, firm or corporation claiming an exemption under the provisions of this section shall first obtain an annual fuel tax exemption permit from the Tax Commission by filing a verified application on a form furnished by the Tax Commission. Each fuel tax exemption permit holder must furnish a copy of the permit to a supplier prior to purchasing diesel fuel. Suppliers selling to permit holders must maintain a record of each sale to a permit holder and shall report the total gallons of tax-exempt diesel fuel sold during a calendar month on a form prescribed by the Tax Commission. Said form will include a listing of the total gallons sold to each permit holder, by name and exemption number. The supplier shall furnish each permit holder a copy of its tax-exempt sales for the calendar month. The supplier and permit holder shall maintain these records for three (3) years. Any supplier selling diesel fuel that is exempt under this section may deduct the number of gallons of such diesel fuel from the total gallonage required to be reported to the Tax Commission only if prescribed forms listing the tax-exempt sales are attached to the report required by the Tax Commission. A supplier shall not deduct from the required report the sale of diesel fuel made by any other distributor. All fuel tax exemption permits expire on the 30th day of June of each year and no exemption shall be allowed to the holder thereof after September 30 of that year. Provided, the Tax Commission may exempt such purchases after September 30 upon verifying that the fuel was actually used in accordance with the exemption provisions of this section.

(d) Every person claiming an exemption under the provisions of this section shall first obtain an annual agricultural exemption permit from the Tax Commission by filing a verified application on a form furnished by the Tax Commission, which application shall contain the name, address and occupation of the applicant and such other information as the Tax Commission requires. Upon approval of the application by the Tax Commission an agricultural exemption permit shall be issued bearing a distinctive number. Subsequent annual agricultural exemption permits shall be issued on receipt of a certificate of current assessment provided for in Section 2423 <u>or 2810</u> of this title <u>or, if the farming activity does not occur in this state, evidence of compliance with property tax laws of the state in which the activity occurs and a copy of the appropriate schedule from the prior year's federal income tax return which provides documentation of farming activity. Such evidence shall be in such form as required by the Tax Commission</u>. The Tax Commission shall keep a permanent record of all permits issued and a record of the amount of exemptions claimed. All such permits expire on the 30th day of June of each year and no agricultural exemption shall be allowed to the holder thereof after September 30 of that year. Provided, the Tax Commission may exempt such purchases after September 30 upon verifying that the fuel was actually used in accordance with the exemption provisions of this section.

(e) Agricultural exemption permit holders shall furnish a copy of the permit to a distributor prior to purchasing motor fuel. Distributors selling to permit holders shall maintain a record of each sale to a permit holder and shall report the total gallons of tax-exempt motor fuel sold during a calendar month on forms prescribed by the Tax Commission. Said forms shall include a listing of the total gallons sold to each permit holder, by name and

exemption number. The supplier shall furnish each permit holder a copy of its tax-exempt sales for the calendar month. The distributor and permit holder shall maintain these records for three (3) years.

(f) Any distributor selling motor fuel that is exempt under this section may deduct the number of gallons of such motor fuel from the total gallonage required to be reported to the Tax Commission only if the forms required by this section covering sales of such motor fuel are attached to the report in which the exemption is claimed under this section. The deduction shall be made before computing the amount of tax due upon the basis of ninety-seven and one-half percent (97 1/2%) of the net gallons subject to the tax. A distributor shall not deduct from his report or attach agricultural exemption monthly report forms covering the sale of motor fuel made by any other distributor. All agricultural exemption report forms must be received by the Tax Commission within ninety (90) days following the last day of the calendar month in which sales were made.

(g) Tractors or stationary engines used for agricultural purposes must be registered by the owners or lessees thereof with the Tax Commission on forms prescribed and furnished by the Tax Commission before any exemption of the tax shall be allowed for motor fuel used in such tractors or stationary engines.

(h) If any person uses motor fuel that was purchased under an agricultural exemption invoice in any manner other than for agricultural purposes, the Tax Commission shall cancel his agricultural exemption permit and shall not issue a new agricultural exemption permit to him for a period of at least one (1) year. Such person shall also be guilty of a misdemeanor and shall, upon conviction, be fined not more than One Thousand Dollars ($1,000.00), or shall be sentenced to a term of not more than one (1) year in the county jail.

Provided, that within a reasonable time after the Tax Commission shall have made a field audit or investigation of the uses for which the holder of an agricultural exemption permit has made of motor fuel acquired by him under his permit, the Tax Commission shall advise the permit holder as to the period covered and the results of such audit.

(i) If upon investigation it is determined by the Tax Commission that any deduction claimed by any distributor has been supported by any agricultural exemption report form fraudulently or falsely made or altered in any manner by such distributor, the Tax Commission shall disallow the deduction and shall cancel the distributor license of such person in the manner provided by law. Any distributor or agent of a distributor violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment.

(j) If any person whose agricultural exemption permit has been canceled purchases motor fuel from any distributor and obtains an exemption by representing to the distributor that his agricultural exemption permit is in force or by furnishing the distributor with the number of a permit which has been canceled, such person shall be guilty of a misdemeanor, and shall, upon conviction, be fined not more than Five Hundred Dollars ($500.00), or shall be sentenced to a term of not more than six (6) months in the county jail.

(k) The tax levied by Sections 502.1 and 522.1 of this title shall not apply to diesel fuel used exclusively in road machinery

and equipment built for and being used on location in the construction, repair or maintenance of public highways, roads and bridges by road contractors and by counties, cities and towns of this state, provided, however, this exemption shall not apply to automobiles nor to truck-type vehicles such as dump trucks, flatbed trucks and pickup trucks.

(l) The tax levied by Sections 502.1 and 522.1 of this title shall not apply to diesel fuel used exclusively in passenger motor buses or coaches, having a seating capacity of ten or more persons, when such fuel is purchased by and used exclusively in public transit systems operated by any county, city or town of this state, or by any public trust created under the laws of this state of which a county, city or town of this state is the sole beneficiary thereof. Provided this exemption shall be allowed only when supported by a certificate executed by such city or trust on forms prescribed and furnished by the Oklahoma Tax Commission.

(m) The tax levied by Sections 502.1 and 522.1 of this title shall not apply to diesel fuel purchased by any county, city or town for use as fuel to propel motor vehicles on the public roads and highways of this state, when said vehicles are being operated for the sole benefit of said county, city or town; provided that if the diesel fuel is placed directly into the fuel supply tank or tanks of the motor vehicle by the supplier, certification must be made on the invoice and all such sales must be reported by the supplier on forms furnished by the Oklahoma Tax Commission.

SECTION 2. This act shall become effective September 1, 1991.

Passed the Senate the 6th day of March, 1991.

President of the Senate

Passed the House of Representatives the 15th day of April, 1991.

Speaker of the House of Representatives