

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 230

BY: HOOPER

AS INTRODUCED

AN ACT RELATING TO REVENUE AND TAXATION; CREATING THE
OKLAHOMA WASTE TIRE RECYCLING ACT OF 1991;
PROVIDING SHORT TITLE; DEFINING TERMS; PROHIBITING
DISPOSAL OF TIRES BY CERTAIN DATE; PROVIDING
EXCEPTIONS; PROHIBITING STORAGE OF TIRES; PROVIDING
EXCEPTIONS; PROVIDING FOR PERMIT; AUTHORIZING THE
STATE DEPARTMENT OF HEALTH TO FURNISH APPLICATION
FORM FOR CERTAIN PERMITS FOR FACILITIES; STATING
REQUIREMENTS FOR PERMIT APPLICATIONS; REQUIRING
CERTAIN NOTICE TO BE GIVEN TO PUBLIC UPON
SUBMISSION OF WASTE TIRE STORAGE SITE PERMIT
APPLICATION; REQUIRING PUBLIC HEARING IN COUNTY
WHERE PROPOSED SITE IS LOCATED; AUTHORIZING
DEPARTMENT TO ISSUE OR DENY PERMIT AFTER CERTAIN
REVIEW AND PUBLIC COMMENT; PROVIDING FOR FEE OF
PERMITTEES; STATING REQUIREMENTS FOR FEE;
AUTHORIZING COMMISSION OF THE DEPARTMENT TO REVOKE
PERMITS; REQUIRING DEPARTMENT TO ESTABLISH CERTAIN
PROGRAM OVER STORAGE SITES AND TIRE CARRIERS;
PROVIDING FOR FEES TO BE DEPOSITED IN STATE
TREASURY; PROVIDING FOR CERTAIN REIMBURSEMENT FOR
PURCHASE OF TIRE CHIPS FOR CERTAIN PURPOSES;
ESTABLISHING WASTE TIRE RECYCLING ACCOUNT IN STATE
TREASURY; STATING USES OF MONIES; STATING

REQUIREMENTS FOR REMOVAL AND PROCESSING OF WASTE TIRES; AUTHORIZING DEPARTMENT TO PROMULGATE RULES TO CARRY OUT PROVISIONS OF ACT; STATING EXCEPTIONS FROM ACT; IMPOSING CERTAIN FEE ON RETAIL SALE OF NEW TIRES; STATING EXCEPTIONS; STATING PROCEDURES AND REQUIREMENTS FOR RETAIL DEALERS REMITTING FEES; PROVIDING EXCEPTION FOR CERTAIN TIRES; REQUIRING RETAIL SELLERS TO APPLY FOR CERTAIN CERTIFICATE; AUTHORIZING OKLAHOMA TAX COMMISSION TO REQUIRE CERTAIN SECURITIES; AUTHORIZING COMMISSION TO ISSUE CERTIFICATE; STATING PENALTIES FOR NONCOMPLIANCE; STATING REQUIREMENTS AND PROCEDURES FOR RETAIL SELLERS; REQUIRING INVOICES AND CERTAIN INFORMATION TO BE KEPT FOR CERTAIN TIME PERIOD; AUTHORIZING OKLAHOMA TAX COMMISSION TO ADMINISTER AND ENFORCE CERTAIN PROVISIONS OF ACT AND PROMULGATE NECESSARY RULES AND PROCEDURES; PROHIBITING ACTS OF NONCOMPLIANCE; STATING PENALTIES AND PROCEDURES FOR ENFORCEMENT OF ACT; AUTHORIZING COMMISSION TO MAKE CERTAIN DETERMINATIONS ON UNCOLLECTED FEES; PROVIDING PROCEDURES FOR COLLECTION OF UNPAID FEES; AUTHORIZING COMMISSION TO ENTER INTO AGREEMENTS WITH CERTAIN INDIAN TRIBES; STATING REMEDIES PROVIDED IN ACT ARE CUMULATIVE; REQUIRING MONIES TO BE DEPOSITED IN STATE TREASURY IN CERTAIN FUND; STATING FEE IMPOSED BY ACT IS IN ADDITION TO ALL OTHER FEES ON SALES OF NEW TIRES; PROVIDING CIVIL PENALTY; REPEALING SECTIONS 1 AND 2, CHAPTER 176, O.S.L. 1989, SECTION 3, CHAPTER 176, O.S.L. 1989, AS AMENDED BY SECTION 9, CHAPTER 296, O.S.L. 1990, AND SECTIONS 4, 5, 6, 7, 8, 9 AND 10, CHAPTER 176, O.S.L. 1989 (68 O.S. SUPP. 1990, SECTIONS 53001,

53002, 53003, 53004, 53005, 53006, 53007, 53008,
53009 AND 53010), WHICH RELATE TO THE OKLAHOMA
WASTE TIRE RECYCLING ACT; PROVIDING FOR
CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND
DECLARING AN EMERGENCY.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 53100 of Title 68, unless there
is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Waste
Tire Recycling Act of 1991".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 53101 of Title 68, unless there
is created a duplication in numbering, reads as follows:

As used in this act:

1. "Consumer" means a person who purchases a new tire to
satisfy a direct need, rather than for resale;

2. "Commissioner" means the Commissioner of the State
Department of Health;

3. "Department" means the State Department of Health;

4. "Dispose" means to deposit, dump, spill or place any waste
tire on any land or into any waters of the State of Oklahoma;

5. "Person" means the United States, the State of Oklahoma, or
a public or private corporation, local government unit, public
agency, individual, partnership, association, firm, trust, estate or
any other legal entity;

6. "Store" or "storage" means the placing of waste tires in a
manner that does not constitute disposal of the waste tires;

7. "Tire" means a continuous solid or pneumatic rubber covering encircling the wheel of a vehicle in which a person or property is or may be transported in or drawn by upon a highway;

8. "Tire carrier" means any person engaged in picking up or transporting waste tires for the purpose of storage or disposal. This does not include solid waste collectors operating under a license or franchise from any local government unit and who transport fewer than ten (10) tires at any one time or persons transporting fewer than five (5) tires with their own solid waste for disposal;

9. "Tire retailer" means any person engaged in the business of selling new replacement tires; and

10. "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53102 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection B of this section, after July 1, 1991, no person shall dispose of waste tires in a land disposal site.

B. After July 1, 1991, a person may dispose of waste tires in a land disposal site permitted by the Department if:

1. The waste tires are chipped in accordance with standards established by the State Department of Health;

2. The waste tires were located for disposal before July 1, 1991, at a land disposal site permitted by the Department;

3. The Department finds that the reuse or recycling of waste tires is not economically feasible;

4. The waste tires are received from a solid waste collector, operating under a license or franchise from any local government unit, who transports fewer than ten (10) tires at any one time; or

5. The waste tires are received from a person transporting fewer than five (5) tires in combination with the person's own solid waste for disposal.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53103 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. After July 1, 1991, no person shall store more than one hundred (100) waste tires anywhere in this state except at a waste tire storage site operated under a permit issued under the provisions of this act.

B. Subsection A of this section shall not apply to:

1. A solid waste disposal site permitted by the Department if the permit has been modified by the Department to authorize the storage of tires;

2. A tire retailer with not more than one thousand five hundred (1,500) waste tires in storage; or

3. A tire retreader with not more than three thousand (3,000) waste tires stored outside.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53104 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Each waste tire storage site permittee shall be required to do the following as a condition to holding the permit:

1. Report periodically to the Department on numbers of waste tires received and the manner of disposition;

2. Maintain current contingency plans to minimize damage from fire or other accidental or intentional event;

3. Maintain financial assurance acceptable to the Department and in such amounts as determined by the Department to be reasonably necessary for waste tire removal processing, fire suppression or other measures to protect the environment and the health, safety and welfare of the people of this state; and

4. Maintain other plans and exhibits pertaining to the site and its operation as determined by the Department to be reasonably necessary to protect the public health, welfare or safety or the environment.

B. The Department may waive any of the requirements of subsection A of this section for a waste tire storage site in existence on or before January 1, 1991.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53105 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Health shall furnish an application form to anyone who wishes to operate a waste tire storage site or to be a waste tire carrier.

B. In addition to information requested on the application form, the Department also shall require the submission of such information relating to the construction, development or establishment of a proposed waste tire storage site and facilities to be operated in conjunction therewith and such additional information, data and reports as it considers necessary to make a decision granting or denying a permit.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53106 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Permit applications submitted to the State Department of Health for operating a waste tire storage site shall contain the following:

1. The management program for the operation of the site, including the name of the individual responsible for the operation of the site, the proposed method of disposal and the proposed emergency measures to be provided at the site;

2. A description of the size and type of facilities to be constructed upon the site, including the height and type of fencing

to be used, the size and construction of structures or buildings, warning signs, notices and alarms to be used;

3. The exact location and place where the applicant proposes to operate and maintain the site, including the legal description of the lands included within the site;

4. An application fee, as determined by the Department to be adequate to pay for the costs of investigating and processing the application;

5. Any additional information requested by the Department;

B. A permit application submitted to the Department for operating as a waste tire carrier shall include the following:

1. The name and place of business of the applicant;

2. A description and license number of each truck used for transporting waste tires;

3. The locations of the sites at which waste tires will be stored or disposed;

4. A bond in the sum of Five Thousand Dollars (\$5,000.00) in favor of the State of Oklahoma. In lieu of the bond, the applicant may submit financial assurance acceptable to the Department;

5. An application fee, as determined by the Department to be adequate to pay for the costs of investigating and processing the application; and

6. Any additional information requested by the Department.

C. The bond required under subsection B of this section shall be executed by the applicant as principal and by a surety company authorized to transact a surety business within the State of Oklahoma. The bond shall be filed with the Department and shall provide that:

1. In performing services as a waste tire carrier, the applicant shall comply with the provisions of this act and rules adopted by the Department regarding tire carriers; and

2. Any person injured by the failure of the applicant to comply with the provisions of this act or the rules adopted by the Commission regarding waste tire carriers shall have a right of action on the bond in the name of the person, provided that written claim of such right of action shall be made to the principal or the surety company within two (2) years after the injury.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53107 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Following the submittal of a waste tire storage site permit application, the Commissioner shall cause notice to be given in the county where the proposed site is located in a manner reasonably calculated by the State Department of Health to notify interested and affected persons of the permit application.

B. The notice shall contain information regarding the location of the site and the type and amount of waste tires intended for storage at the site, and shall fix a time and place for a public hearing. In addition, the notice shall give any person substantially affected by the proposed site an opportunity to comment on the permit application.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53108 of Title 68, unless there is created a duplication in numbering, reads as follows:

The State Department of Health shall conduct a public hearing in the county where a proposed waste tire storage site is located and may conduct hearings at other places as the Department considers suitable. At the hearing the applicant may present the application and the public may appear or be represented in support of or in opposition to the application.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53109 of Title 68, unless there is created a duplication in numbering, reads as follows:

Based upon the State Department of Health review of the waste tire storage site or waste tire carrier permit application, and any public comments received by the Department, the Commissioner shall issue or deny the permit. The Commissioner's decision shall be subject to appeal to the State Board of Health and judicial review under the laws of the State of Oklahoma.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53110 of Title 68, unless there is created a duplication in numbering, reads as follows:

A fee may be required of every permittee under the provisions of this act. The fee shall be in an amount determined by the State Department of Health to be adequate, less any federal funds budgeted therefor by legislative action, to carry on the monitoring, inspection and surveillance program established by this act and to cover related administrative costs.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53111 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Commissioner may revoke any permit issued under the provisions of this act upon finding that the permittee has violated any provision of this act or rules adopted pursuant thereto or any material condition of the permit, subject to appeal to the State Board of Health and judicial review under the laws of the State of Oklahoma.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53112 of Title 68, unless there is created a duplication in numbering, reads as follows:

The State Department of Health shall establish and operate a monitoring, inspection and surveillance program over all waste tire storage sites and all waste tire carriers. After reasonable notice, owners and operators of these facilities must allow necessary access to the site of waste tire storage and to its records, including

those required by other public agencies, for the operation of such program.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53113 of Title 68, unless there is created a duplication in numbering, reads as follows:

Fees received by the State Department of Health pursuant to the provisions of this act shall be deposited in the State Treasury and credited to the Department to carry out the provisions of this act.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53114 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Any person who purchases waste tires generated in the State of Oklahoma or tire chips or similar materials from waste tires generated in this state and who uses the tires or chips or similar material for energy recovery or other appropriate uses may apply for partial reimbursement of the cost of purchasing the tires or chips or similar materials.

B. Any person who uses, but does not purchase, waste tires or chips or similar materials, for energy recovery or another appropriate use, may apply for a reimbursement of part of the cost of such use.

C. Any costs reimbursed under this section shall not exceed the amount in the Waste Tire Recycling Account. If applications for reimbursement during a period specified by the Oklahoma Tax Commission exceed the amount in the account, the Commission shall prorate the amount of all reimbursements.

D. The intent of the partial reimbursement of costs under this section is to promote the use of waste tires by enhancing markets for waste tires or chips or similar materials. The Commission shall limit or eliminate reimbursements if the Commission finds they are not necessary to promote the use of waste tires.

E. The Commission shall adopt rules to carry out the provisions of this section. The rules shall:

1. Govern the types of energy recovery or other appropriate uses eligible for reimbursement including but not limited to recycling other than retreading;

2. Establish the procedure for applying for a reimbursement; and

3. Establish the amount of reimbursement.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53115 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Waste Tire Recycling Account is established in the State Treasury, separate and distinct from the General Fund. All monies received by the Oklahoma Tax Commission under Sections 20 to 40 of this act shall be deposited in the account. Money in the account shall be used:

1. For expenses in cleaning up waste tire piles as provided in this act;

2. To reimburse persons for the costs of using waste tires or chips or similar materials; and

3. For expenses incurred by the State Department of Health in carrying out the provisions of this act.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53116 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Health, as a condition of a waste tire storage site permit issued under the provisions of this act, may require the permittee to remove or process the waste tires according to a plan approved by the Department.

B. The Department may use monies from the Waste Tire Recycling Account to assist a permittee in removing or processing the waste tires. Monies may be used only after the Department finds that:

1. Special circumstances make such assistance appropriate; or
2. Strict compliance with the provisions of this act would result in substantial curtailment or closing of the permittee's business or operation or the bankruptcy of the permittee.

C. The Department may use the following provisions of this section if:

1. A person fails to apply for or obtain a waste tire storage site permit provided for by this act; or
2. A permittee fails to meet the conditions of such permit.

D. The Department may abate any danger or nuisance created by waste tires by removing or processing the tires. Before taking any action to abate the danger or nuisance, the Department shall give any persons having the care, custody or control of the waste tires, or owning the property upon which the tires are located, notice of the Department's intentions and order the person to abate the danger or nuisance in a manner approved by the Department. Any order issued by the Department under this subsection shall be subject to appeal to the State Board of Health.

E. If a person fails to take action as required under subsection D of this section within the time specified the Commissioner may abate the danger or nuisance. The order issued under subsection D of this section may include entering the property where the danger or nuisance is located, taking the tires into public custody and providing for their processing or removal.

F. The Department may request the Attorney General of the State of Oklahoma to bring an action to recover any reasonable and necessary expenses incurred by the Department for abatement costs, including administrative and legal expenses. The Department's certification of expenses shall be prima facie evidence that the expenses are reasonable and necessary.

G. Nothing in this act shall affect the right of any person or local government unit to abate a danger or nuisance or to recover

for damages to real property or personal injury related to the transportation, storage or disposal of waste tires. The Department may reimburse a person or local government unit for the cost of abatement.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53117 of Title 68, unless there is created a duplication in numbering, reads as follows:

The State Department of Health shall promulgate rules necessary to carry out the provisions of this act in accordance with the provisions of the Administrative Procedures Act, Section 250 and 301 et seq. of Title 75 of the Oklahoma Statutes.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53118 of Title 68, unless there is created a duplication in numbering, reads as follows:

The provisions of this act do not apply to tires from:

1. Any device moved exclusively by human power;
2. Any device used exclusively upon stationary rails or tracks;
3. A motorcycle;
4. An all-terrain vehicle; or
5. Any device used exclusively for farming purposes, except a farm truck.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53119 of Title 68, unless there is created a duplication in numbering, reads as follows:

As used in Sections 20 to 40 of this act, unless the context otherwise requires:

1. "Business" means any trade, occupation, activity or enterprise engaged in for the purpose of selling new tires in this state;
2. "Commission" means the Oklahoma Tax Commission;
3. "Place of business" means any place where new tires are sold;

4. "Retail dealer" means every person who is engaged in the business of selling to ultimate consumers new tires;

5. "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling new tires, for advertising, as a means of evading the provisions of this act, or for any other purposes whatsoever;

6. "Tire" has the meaning given that term in Section 2 of this act; and

7. "Wholesale sales price" means the established price for which a manufacturer sells a tire to a distributor, after any discount or other reduction for quantity or cash.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53120 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Beginning July 1, 1991, a fee is hereby imposed upon the retail sale of all new replacement tires in this state of One Dollar (\$1.00) per tire sold. The fee shall be imposed on retail dealers at the time the retail dealer sells a new replacement tire to the ultimate consumer.

B. The amount remitted to the Oklahoma Tax Commission by the retail dealer for each quarter shall be equal to eighty-five percent (85%) of the total fees due and payable by the retail dealer for the quarter.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53121 of Title 68, unless there is created a duplication in numbering, reads as follows:

The fee imposed under Sections 20 to 40 of this act shall not apply to new tires for:

1. Any device moved exclusively by human power;
2. Any device used exclusively upon stationary rails or tracks;

3. A motorcycle;
4. An all-terrain vehicle; and
5. Any device used exclusively for farming purposes, except a farm truck.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53122 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in Sections 20 to 40 of this act, the fee imposed by Section 21 of this act shall be paid by each retail dealer to the Oklahoma Tax Commission on or before the last day of January, April, July and October of each year for the preceding calendar quarter.

B. With each quarterly payment, the retail dealer shall submit a a return to the Oklahoma Tax Commission, in such form and containing such information as the Oklahoma Tax Commission shall prescribe.

C. The fee, penalties and interest imposed by Sections 20 to 40 of this act shall be a personal debt, from the time liability is incurred, owed by the retail dealer to the State of Oklahoma until paid.

D. The returns required of retail dealers under this section shall be filed by all such retail dealers regardless of whether any fee is owed by them.

E. The Commission for good cause may extend for not to exceed one (1) month the time for making any return and paying any fee due with a return under Sections 20 to 40 of this act. The extension may be granted at any time if a written request therefor is filed with the Department within or prior to the period for which the extension may be granted. When the time for filing a return and payment of fee is extended at the request of a retail dealer, interest for each month, or fraction of a month, from the time the

return was originally required to be filed to the time of payment, shall be added and paid.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53123 of Title 68, unless there is created a duplication in numbering, reads as follows:

Every person desiring to engage in the sale of new tires as a retail dealer, except a person who desires merely to sell or accept orders for new tires which are to be transported from a point outside this state to a consumer within this state, shall file with the Oklahoma Tax Commission an application, in such form as the Oklahoma Tax Commission may prescribe, for a certificate. A retail dealer shall apply for and obtain a certificate for each place of business at which the retail dealer engages in the business of selling new tires. No fee shall be charged for such certificate.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53124 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. If the State Department of Health considers such action necessary to ensure compliance with Sections 20 to 40 of this act, it may require any person subject to this act to place with the Oklahoma Tax Commission such security as the Oklahoma Tax Commission may determine.

B. The amount of the security shall be fixed by the Commission but, except as provided in subsection C of this section, may not be greater than twice the estimated liability for fees of a person for the reporting period under Sections 20 to 40 of this act determined in such manner as the Commission considers proper.

C. In the case of a person who, pursuant to this act, has been given notice of proposed revocation or suspension of certificate, the amount of the security may not be greater than twice the liability of the person for the reporting period under Sections 20

to 40 of this act determined in such manner as the Commission considers proper, up to Ten Thousand Dollars (\$10,000.00).

D. Limitations provided in this section apply regardless of the type of security placed with the Commission. The required amount of the security may be increased or decreased by the Commission subject to the limitations provided in this section.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53125 of Title 68, unless there is created a duplication in numbering, reads as follows:

Upon receipt of a completed application and such security as may be required by the Commission under Sections 20 to 40 of this act, the Commission shall issue to the applicant a certificate as a retail dealer. A separate certificate shall be issued for each place of business of the retail dealer within the state. A certificate is valid only for engaging in business as a retail dealer at the place designated thereon, and it shall at all times be conspicuously displayed at the place for which issued. The certificate is not transferable and is valid until canceled, suspended or revoked.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53126 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. If any person fails to comply with any provision of Sections 20 to 40 of this act relating to the fee or any rule of the Oklahoma Tax Commission relating to the fee adopted under Sections 20 to 40 of this act, the Oklahoma Tax Commission may suspend or revoke the certificate held by the person. The Oklahoma Tax Commission shall not issue a new certificate after the revocation of a certificate unless it is satisfied that the former holder of the certificate will comply with the provisions of Sections 20 to 40 of this act relating to the fee and the rules of the Oklahoma Tax Commission.

B. If the Oklahoma Tax Commission proposes to refuse to issue or renew a certificate, or proposes to suspend or revoke a certificate, the Oklahoma Tax Commission shall give notice of the proposed refusal, suspension or revocation at least thirty (30) days before the refusal, suspension or revocation will be final. Appeal following the notice of the determination may be taken to the Commissioners of the Oklahoma Tax Commission for hearing.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53127 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Every retail dealer shall keep at each registered place of business complete and accurate records for that place of business, including itemized invoices, of new tire products held, purchased, manufactured, brought in or caused to be brought in from without the state or shipped or transported to retail dealers in this state, and of all new tire sales made to the ultimate consumer.

B. The records required by subsection A of this section shall show the names and addresses of purchasers, the inventory of all new tires on hand on July 1, 1991, and other pertinent papers and documents relating to the sale of new tires.

C. When a certified retail dealer sells new tires exclusively to the ultimate consumer at the address given in the certificate, itemized invoices shall be made of all new tires sold by that certified retail dealer.

D. 1. All books, records and other papers and documents required by this section to be kept shall be preserved for a period of at least three (3) years after the initial date of the books, records and other papers or documents, or the date of entries appearing therein, unless the Oklahoma Tax Commission, in writing, authorizes their destruction or disposal at an earlier date.

2. The Oklahoma Tax Commission or its authorized representative, upon oral or written reasonable notice, may make

such examinations of the books, papers, records and equipment required to be kept under this section as it may deem necessary in carrying out the provisions of Sections 20 to 40 of this act.

3. If the Oklahoma Tax Commission, or any of its agents or employees, are denied free access or are hindered or interfered with in making such examination, the certificate of the retail dealer at such premises shall be subject to revocation by the Oklahoma Tax Commission.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53128 of Title 68, unless there is created a duplication in numbering, reads as follows:

Every person who sells new tires to the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the date of sale, the fee collected and all prices and discounts. Such person shall preserve legible copies of all such invoices for three (3) years from the date of this sale.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53129 of Title 68, unless there is created a duplication in numbering, reads as follows:

Every retail dealer shall procure itemized invoices of all tires purchased. The invoices shall show the name and address of the seller and the date of purchase. The retail dealer shall preserve a legible copy of each such invoice for three (3) years from the date of purchase. Invoices shall be available for inspection by the Oklahoma Tax Commission or its authorized agents or employees at the retail dealer's place of business.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53130 of Title 68, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Tax Commission shall administer and enforce Sections 20 to 40 of this act. The Oklahoma Tax Commission is authorized to establish those rules and procedures for the

implementation and enforcement of Sections 20 to 40 of this act that are consistent with its provisions and as are considered necessary and appropriate.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53131 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. No person shall:

1. Fail to furnish any return required to be made pursuant to Sections 20 to 40 of this act;

2. Fail to furnish a supplemental return or other data required by the Oklahoma Tax Commission; or

3. Render a false or fraudulent return, report or claim for refund.

B. No person who is required to make, render, sign or verify any report or return under Sections 20 to 40 of this act shall make a false or fraudulent report or return with intent to defeat or evade the determination of an amount due required by law.

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53132 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. If there is a failure to file a return required under Sections 20 to 40 of this act or a failure to pay a fee at the time the fee becomes due, and no extension is granted under the provisions of this act, or if the time granted as an extension has expired and there is a failure to file a return or pay a fee, there shall be added to the amount of fee required to be shown on the return a delinquency penalty of five percent (5%) of the amount of the fee.

B. If the failure to file a return continues for a period in excess of three (3) months after the due date:

1. There shall be added to the fee required to be shown on the return a failure to file penalty of twenty percent (20%) of the amount of such fee; and

2. Thereafter, the Commission may send a notice and demand to the person to file a return within thirty (30) days of the mailing notice. If after such notice and demand no return is filed within the thirty (30) days, the Commission may determine the fee according to the best of its information and belief, assess the fee with appropriate penalty and interest, plus an additional penalty of twenty-five percent (25%) of the fee deficiency determined by the Commission, and give written notice of the determination and assessment to the person required to make the filing.

C. A penalty equal to one hundred percent (100%) of any deficiency determined by the Commission shall be assessed and collected if:

1. There is a failure to file a return with intent to evade the fee; or

2. A return was falsely prepared and filed with intent to evade the fee.

D. Interest shall be collected on the unpaid fee for each month or fraction of a month, computed from the time the fee became due, during which the fee remains unpaid.

E. Each penalty imposed under this section is in addition to any other penalty imposed under this section. However, the total amount of penalty imposed under this section with respect to any deficiency shall not exceed one hundred percent (100%) of the deficiency.

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53133 of Title 68, unless there is created a duplication in numbering, reads as follows:

If, under Sections 20 to 40 of this act, the Oklahoma Tax Commission is not satisfied with the return of the fee or as to the

amount of fee required to be paid to this state by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or upon the basis of any information within its possession or that may come into its possession. One or more deficiency determinations may be made of the amount due for one or for more than one period. Liens for fees or deficiencies shall arise at the time of assessment, and shall continue until the fees, interest and penalties are fully satisfied and may be recorded and collected in the manner provided for the collection of delinquent income taxes.

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53134 of Title 68, unless there is created a duplication in numbering, reads as follows:

If the Oklahoma Tax Commission believes that the collection of any fee imposed under Sections 20 to 40 of this act or any amount of the fee required to be collected and paid to the state or of any determination will be jeopardized by delay, it shall make a determination of the fee or amount of fee required to be collected, noting that fact upon the determination. The amount determined is immediately due and payable and the Oklahoma Tax Commission shall assess the fees, notify the person and proceed to collect the fee in the same manner and using the same procedures as for the collection of income taxes.

SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53135 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. If any fee imposed under Sections 20 to 40 of this act or any portion of the fee is not paid within the time provided by law and no provision is made to secure the payment of the fee by bond, deposit or otherwise, pursuant to rules adopted by the Oklahoma Tax Commission, the Oklahoma Tax Commission may issue a warrant under its official seal directed to the sheriff of any county of the State

of Oklahoma commanding the sheriff to levy upon and sell the real and personal property of the retail dealer found within the county, for the payment of the amount of the fee, with the added penalties, interest and the sheriff's cost of executing the warrant, and to return the warrant to the Department and pay to it the money collected from the sale, within sixty (60) days after the date of receipt of the warrant.

B. The sheriff shall, within five (5) days after the receipt of the warrant, record with the clerk of the county a copy of the warrant, and the clerk shall immediately enter in the County Clerk Lien Record the name of the retail dealer mentioned in the warrant, the amount of the fee or portion of the fee and penalties for which the warrant is issued and the date the copy is recorded. The amount of the warrant so recorded shall become a lien upon the title to and interest in real property of the retail dealer against whom it is issued in the same manner as a judgment duly docketed. The sheriff immediately shall proceed upon the warrant in all respects, with like effect and in the same manner prescribed by the laws of this state in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be added to and collected as a part of the warrant liability.

C. In the discretion of the Oklahoma Tax Commission a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect the fees imposed by Sections 20 to 40 of this act. In the execution of the warrant, the agent shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

D. If a warrant is returned not satisfied in full, the Commission shall have the same remedies to enforce the claim for fees against the retail dealer as if the people of the State of

Oklahoma had recovered judgment against the retail dealer for the amount of the fee.

SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53136 of Title 68, unless there is created a duplication in numbering, reads as follows:

The remedies of the state provided for in Sections 20 to 40 of this act are cumulative, and no action taken by the Oklahoma Tax Commission or the Attorney General of the State of Oklahoma constitutes an election by the state to pursue any remedy to the exclusion of any other remedy for which provision is made in Sections 20 to 40 of this act.

SECTION 38. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53137 of Title 68, unless there is created a duplication in numbering, reads as follows:

All monies received by the Oklahoma Tax Commission under Sections 20 to 40 of this act shall be deposited in the State Treasury. After payment of administration expenses incurred by the Commission in the administration of Sections 20 to 40 of this act and of refunds or credits arising from erroneous overpayments, the balance of the money shall be credited to the Waste Tire Recycling Account established by this act.

SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53138 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. The fees imposed by the provisions of this act are in addition to all other state, county or municipal fees on the sale of new tires.

B. Any new tire with respect to which a fee has once been imposed under this act shall not be subject upon a subsequent sale to the fees imposed by this act.

SECTION 40. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 53139 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. If a person or an officer or employee of a corporation or a member or employee of a partnership violates the provisions of this act, the Oklahoma Tax Commission shall assess against the person a civil penalty of not more than One Thousand Dollars (\$1,000.00). The penalty shall be recovered as provided in subsection B of this section.

B. Any person against whom a penalty is assessed under this section may appeal to the Oklahoma Tax Commission in the manner provided in the laws of the State of Oklahoma. If the penalty is not paid within ten (10) days after the order of the Commission becomes final, the Commission may record the order and collect the amount assessed in the same manner as income tax deficiencies are recorded and collected.

SECTION 41. REPEALER Sections 1 and 2, Chapter 176, O.S.L. 1989, Section 3, Chapter 176, O.S.L. 1989, as amended by Section 9, Chapter 296, O.S.L. 1990, and Sections 4, 5, 6, 7, 8, 9 and 10, Chapter 176, O.S.L. 1989 (68 O.S. Supp. 1990, Sections 53001, 53002, 53003, 53004, 53005, 53006, 53007, 53008, 53009 and 53010), are hereby repealed.

SECTION 42. This act shall become effective July 1, 1991.

SECTION 43. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-1-370

MJF