

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2001

By: Cotner

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 1991, Sections 510.1 and 607.2, which relate to the Oklahoma Motor Fuel Distributor Indemnity Fund; providing for the right of the Oklahoma Tax Commission to recover a tax liability to the indemnity fund; providing for rights and remedies of the Oklahoma Tax Commission; providing that tax warrant remain effective; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 1991, Section 510.1, is amended to read as follows:

Section 510.1 A. There is hereby created the Oklahoma Motor Fuel Distributor Indemnity Fund. The fund shall be established to ensure that the Oklahoma Tax Commission recovers tax revenue not remitted to the Oklahoma Tax Commission because of negligence, malfeasance or fraud by a motor fuel distributor.

B. The fund shall be administered by the three (3) members of the Oklahoma Tax Commission or their designees. The Commission shall invest all monies deposited in the fund in insured accounts and all interest shall be deposited in the fund.

C. The annual assessment from all motor fuel distributors who have held a motor fuel distributor's license for a period of not less than two (2) years shall be remitted to the Commission for deposit into the fund. The annual assessment shall be nonrefundable, except as otherwise provided in subsection D of this section. Beginning March 15, 1988, the annual assessment for each motor fuel distributor shall be based upon the estimated motor fuel tax liability for a twelve-month period as follows:

12-MONTH TAX LIABILITY	ANNUAL ASSESSMENT
\$ 1,000 - 5,000	\$50.00
5,001 - 10,000	100.00
10,001 - 15,000	150.00
15,001 - 20,000	200.00
20,001 - 25,000	250.00
25,001 - 30,000	300.00
30,001 - 35,000	350.00
35,001 - 40,000	400.00
40,001 - 45,000	450.00
45,001 - 50,000	500.00
50,001 - 55,000	550.00
55,001 - 60,000	600.00
60,001 - 65,000	650.00
65,001 - 70,000	700.00
70,001 - 75,000	750.00
75,001 - 80,000	800.00
80,001 - 85,000	850.00
85,001 - 90,000	900.00
90,001 - 95,000	950.00
95,001 - 100,000	1,000.00
100,001 - 105,000	1,050.00
105,001 - 110,000	1,100.00
110,001 - 115,000	1,150.00

115,001	-	120,000	1,200.00
120,001	-	125,000	1,250.00
125,001	-	130,000	1,300.00
130,001	-	135,000	1,350.00
135,001	-	140,000	1,400.00
140,001	-	145,000	1,450.00
145,001	-	150,000	1,500.00
150,001	-	155,000	1,550.00
155,001	-	160,000	1,600.00
160,001	-	165,000	1,650.00
165,001	-	170,000	1,700.00
170,001	-	175,000	1,750.00
175,001	-	180,000	1,800.00
180,001	-	185,000	1,850.00
185,001	-	190,000	1,900.00
190,001	-	195,000	1,950.00
195,001	-	200,000	2,000.00
200,001	-	205,000	2,050.00
205,001	-	210,000	2,100.00
210,001	-	215,000	2,150.00
215,001	-	220,000	2,200.00
220,001	-	225,000	2,250.00
225,001	-	230,000	2,300.00
230,001	-	235,000	2,350.00
235,001	-	240,000	2,400.00
240,001	-	245,000	2,450.00
245,001	-	and over	2,500.00

Thereafter each motor fuel distributor shall pay an annual assessment as follows:

1. When the fund contains less than One Million Dollars (\$1,000,000.00), the assessment shall be one percent (1%) of the

twelve-month motor fuel tax liability for each motor fuel distributor not to exceed One Thousand Dollars (\$1,000.00);

2. When the fund contains One Million Dollars (\$1,000,000.00) or greater the assessment shall be one percent (1%) of the twelve-month motor fuel tax liability for each motor fuel distributor not to exceed Five Hundred Dollars (\$500.00);

3. However, when the fund contains Two Million Dollars (\$2,000,000.00) or greater the Commission may elect to make no annual assessment;

4. All assessments shall be paid to the Motor Vehicle Division of the Oklahoma Tax Commission not later than March 15 of each year. Nothing herein shall be construed as prohibiting the Tax Commission from requiring a motor fuel distributor to file a bond payable to the Tax Commission as provided in this act.

D. If a motor fuel distributor does not elect to make the annual assessment provided for in subsection C of this section, the motor fuel distributor shall file a bond or irrevocable letter of credit as provided for in Section 510 of this title and shall be entitled to a pro rata refund of the amount previously paid into the Oklahoma Motor Fuel Distributor Indemnity Fund.

E. Upon final determination by the Motor Vehicle Division of the Oklahoma Tax Commission of the tax liability of the motor fuel distributor, a claim in the amount of said liability may be made by the Motor Vehicle Division of the Oklahoma Tax Commission against the fund. Said claim shall be paid by the fund unless the Commission finds that there has not been a final determination of the tax liability by the Motor Vehicle Division of the Oklahoma Tax Commission. No claim shall be paid until sixty (60) days' written notice is given to the delinquent distributor.

F. ~~The Commission shall have the power to seek restitution to the fund from any motor fuel distributor whose tax liability was paid out of the fund~~ payment of a claim shall subrogate the

Commission's right to recover the tax liability to the fund. The Commission, on behalf of the fund, shall have the same rights and remedies to recover the amounts paid by the fund as afforded the Commission to recover delinquent tax, penalty and interest. Any tax warrant shall remain in effect until the fund has recovered the amount paid.

G. The State Auditor and Inspector shall conduct an annual audit of the activity for the Oklahoma Motor Fuel Distributor Indemnity Fund each fiscal year. The audit shall be made in accordance with standards established by the American Institute of Certified Public Accountants by a licensed public accountant or a certified public accountant holding a permit to practice in this state. A copy of the review examination shall be forwarded to the Oklahoma Tax Commission. The State Auditor and Inspector and the Tax Commission shall review the examination and may conduct any further examinations as deemed necessary.

SECTION 2. AMENDATORY 68 O.S. 1991, Section 607.2, is amended to read as follows:

Section 607.2 A. There is hereby created the Oklahoma Motor/Diesel Fuel Importer for Use Indemnity Fund. The fund shall be established to ensure that the Oklahoma Tax Commission recovers tax revenue not remitted to the Oklahoma Tax Commission because of negligence, malfeasance or fraud by a motor fuel/diesel fuel importer.

B. The fund shall be administered by the three (3) members of the Oklahoma Tax Commission or their designees. The Commission shall invest all monies deposited in the fund in insured accounts and all interest shall be deposited in the fund.

C. Beginning March 15, 1988, the nonrefundable assessment of Twenty-five Dollars (\$25.00) for each motor fuel/diesel fuel importer shall be collected by the Motor Vehicle Division of the Oklahoma Tax Commission and remitted to the Commission for deposit

into the fund. The Commission shall have the power to make annual assessments for contribution to the fund in an amount not to exceed Twenty-five Dollars (\$25.00) per year for each motor fuel/diesel fuel importer. Nothing herein shall be construed as prohibiting the Motor Vehicle Division of the Oklahoma Tax Commission from requiring a motor fuel/diesel fuel importer to file a bond payable to the Oklahoma Tax Commission as provided in this act.

D. Upon final determination by the Motor Vehicle Division of the Oklahoma Tax Commission of the tax liability of the motor fuel/diesel fuel importer, a claim in the amount of said liability may be made by the Motor Vehicle Division of the Oklahoma Tax Commission against the fund. Said claim shall be paid by the fund unless the Commission finds that there has not been a final determination of the tax liability by the Motor Vehicle Division of the Oklahoma Tax Commission. No claim shall be paid until sixty (60) days' written notice is given to the delinquent importer.

E. ~~The Commission shall have the power to seek restitution to the fund from any motor fuel/diesel fuel importer whose tax liability was paid out of the fund~~ payment of a claim shall subrogate the Commission's right to recover the tax liability to the fund. The Commission, on behalf of the fund, shall have the same rights and remedies to recover the amounts paid by the fund as afforded the Commission to recover delinquent tax, penalty and interest. Any tax warrant shall remain in effect until the fund has recovered the amount paid.

F. The State Auditor and Inspector shall conduct an annual audit of the activity for the Oklahoma Motor/Diesel Fuel Importer for Use Indemnity Fund each fiscal year. The audit shall be made in accordance with standards established by the American Institute of Certified Public Accountants by a licensed public accountant or a certified public accountant holding a permit to practice in this state. A copy of the review examination shall be forwarded to the

Oklahoma Tax Commission. The State Auditor and Inspector and the Tax Commission shall review the examination and may conduct any further examinations as deemed necessary.

SECTION 3. This act shall become effective September 1, 1994.

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