ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 2818 By: Hamilton and Steidley

(state government - amending 74 O.S., Section 250.4 - state officers' salaries - emergency)

AUTHORS: Add the following Senate Author and Coauthor: Wilkerson (principal) and Roberts

NOTE: Emergency failed

AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause and entire bill and insert

[revenue and taxation - amending 68 O.S. 1991 - motor fuel taxes - collection - sales - federally recognized Indian tribe - amendment of declaration - exemption - codification - effective date]

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 501.1 of Title 68, unless there is created a duplication in numbering, reads as follows:

It is the intent of the Legislature that the taxes and assessments imposed on motor fuel by law are a direct tax on the ultimate or retail consumer. When the taxes or assessments are paid by any person other than the ultimate or retail consumer, the payment shall be considered as precollected and as an advance payment for the purpose of convenience and facility to the consumer and shall thereafter be added to the price of the motor fuel and

recovered from the ultimate or retail consumer, regardless of where or how the taxable fuel is ultimately consumed. In the event such taxes and assessments are not otherwise precollected, they shall be collected from the ultimate consumer in accordance with regulations promulgated by the Oklahoma Tax Commission, for the use of motor fuel or diesel fuel on the highways by any consumer, unless such person is otherwise exempted from such taxes or assessments by law.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 532 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. Sales of motor fuel or diesel fuel by any federally recognized Indian tribe shall not be subject to the levy of any taxes or assessments imposed by law if the tribal government files with the Oklahoma Tax Commission a declaration, approved by the tribe's governing body, which provides as follows:

1. The declarant is a federally recognized Indian tribe engaged in the purchase, sale, storage and transportation of motor fuel or diesel fuel to, from and on Indian country;

2. The location and legal description of each facility at which motor fuel or diesel fuel is or will be sold;

3. The declarant agrees to make payments to the State of Oklahoma in lieu of state motor fuel taxes in the amount of six and three-eighths cents ($0.06375) on each gallon of gasoline and five and one-quarter cents ($0.0525) on each gallon of diesel fuel purchased for resale at each of its facilities which shall be included in the amount paid by the tribe to its supplier or distributor and copies of the records of said purchases to be provided to the Oklahoma Tax Commission;

4. The declarant agrees to impose, at all times, a tribal fuel tax on all motor fuel and diesel fuel sales, the amount of which, when added to the payment in lieu of taxes provided in paragraph 3 of this subsection, will be equal to the tax imposed by the State of

Oklahoma on other consumers and will adjust the amount of the tax as the State of Oklahoma adjusts the amount of its tax to assure that the sum total of the tribal tax and the payments to the state always equal the amount of the state's motor fuel tax on other consumers;

5. The proceeds of fuel tax imposed by the tribe shall be earmarked for and shall not be used for any purposes except tribal governmental programs including but not limited to social services, health, education, law enforcement, joint public projects with state and local government and economic development unrelated to the sale and distribution of motor fuels; and

6. That the tribe does not by filing and adhering to the promises, terms and conditions of the declaration waive any of its sovereignty or concede that the fuel tax laws of the State of Oklahoma apply to it nor does it interpret the acceptance of the declaration and the exemption thereby provided by this section to mean that the state agrees that the laws would otherwise not apply to the Indian tribe and that this section, the filing of the declaration, and payments made pursuant thereto arise out of compromise and the spirit of tribal-state cooperation as a means to resolve the serious and prolonged state-tribal dispute regarding imposition of state motor fuel taxes in Indian country.

B. The declaration provided by subsection A of this section shall be accompanied by appropriate resolution or legislation adopted by the tribe's governing body, certified by the tribe's chief executive officer, which imposes the tribal tax on sales of motor fuels referred to in paragraph 4 of subsection A of this section. Upon receipt of the declaration, the Oklahoma Tax Commission shall issue a certificate of exemption to the tribe. The certificate shall evidence the exemption provided by this section and copies thereof shall be provided, upon request, to any distributor, refiner, transporter, or other person or firm providing motor fuels to tribally owned businesses.

C. The declaration may be amended from time to time to include the location and legal descriptions of other motor fuel outlets, stores, or facilities.

D. Indian tribes who file a declaration under this section shall be accorded full faith and credit for taxes and assessments paid to the tribe and in lieu payments made to the state under the declaration in assessing road use taxes to motor fuel consumers at tribal outlets in order that consumers subject to state highway use taxes are treated in the same manner and have the same proportionate liability for the taxes and assessments as those consumers who purchase motor fuels at nontribal outlets. The state shall give purchasers of motor fuels from the tribe credit for taxes and payments in lieu of taxes that are included in the price of the fuel for the purpose of apportioning any motor fuel tax liability the purchaser might have by reason of being engaged in trucking or other transportation activity in interstate commerce just as it apportions its taxes with regard to purchases by such purchasers made in other states.

E. "Indian country", as used in this section, means:

1. Land held in trust by the United States of America for the benefit of a federally recognized Indian tribe as evidenced by a deed or other instrument of conveyance filed in the county clerk's office;

2. All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, including rights-of-way running through the reservation;

3. All dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; or

4. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

F. This section shall not apply to any tribal government who makes the declaration contained herein in subsection A and who subsequently defaults in the promises, terms and conditions in the declaration. Default shall be a willful, material variance from the terms of the declaration. Should the Oklahoma Tax Commission seek to declare a tribal declarant in default, it shall notify the chief executive officer of the tribe in writing that the Commission has, by a majority vote, determined the tribe to be in default, citing the specific defaulting event or events. The tribal declarant shall have sixty (60) days from the receipt of the notice to cure said default. Should the tribal declarant choose to contest a finding of default or, in the event the Commission and the tribe fail to agree that a default has been timely cured, the matter shall be submitted to arbitration by three arbitrators under the rules of the American Arbitration Association. Each party shall select one arbitrator and the two selected by the parties shall agree on the third arbitrator. The decision of the arbitrators shall be final unless the decision is arbitrary and capricious, unsupported by a preponderance of the evidence, or arrived at without adherence to the rules. In the event one of the latter circumstances exists, either party aggrieved by the decision may seek review of the decision and appropriate equitable relief in the United States District Courts. The declaration shall remain in full force and effect until a final determination of default is had in the appropriate forum.

G. The exemption provided in this section shall be in lieu of motor fuel tax exemptions for the members of the tribe provided by Section 3 of this act. However, Indian tribes purchasing motor fuels for use in tribally owned and operated vehicles shall be entitled to the exemptions provided by Section 3 of this act notwithstanding that the tribe has filed a declaration.

H. In the event an Indian tribal government files the declaration referred to in subsection A of this section and subsequently elects to withdraw the declaration or causes said declaration to be voided by defaulting in its terms, the act of having filed the declaration shall not be interpreted to be a waiver of any legal defenses or claims the tribe, its members, agents, officers, employees, vendors, distributors, transporters or customers would otherwise have asserted in any proceedings involving enforcement of this act had said declaration not been filed.

I. Absent a waiver by the parties of the rights provided by this section, an amendment, modification, or repeal of this section shall not void any declarations and their attendant rights and obligations which are operative at the time of said amendment, modification or repeal.

J. The payments authorized pursuant to paragraph 3 of subsection A of this section shall be apportioned in the same manner and in the same proportions as are other motor fuel and diesel fuel taxes and assessments.

K. The Tax Commission shall promulgate rules necessary to implement the provisions of this section.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 533 of Title 68, unless there is created a duplication in numbering, reads as follows:

Motor fuel and diesel fuel sold within Indian country by a federally recognized Indian tribe to a member of that tribe and motor fuel used solely and exclusively as fuel to propel motor vehicles on the public roads and highways of this state, when leased or owned and being operated for the sole benefit of a federally recognized Indian tribe, shall be exempt from the excise taxes levied by Sections 502, 502.1, 502.2, 502.3, 502.4, 502.5, 502.6, 502.7, 516, 520, 522 and 522.1 of Title 68 of the Oklahoma Statutes

and the assessment on motor fuel and diesel fuel levied by Section 354 of Title 17 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 68 O.S. 1991, Section 505, as amended by Section 16, Chapter 146, O.S.L. 1993 (68 O.S. Supp. 1995, Section 505), is amended to read as follows:

Section 505. A. The ~~tax~~ taxes levied by Sections 502, 502.1 and 522.1 of this title are due and payable on the first day of each month for the preceding calendar month, and if not paid on or before the twenty-fifth day of each month shall thereafter be delinquent.

B. Every distributor shall make and transmit to the Tax Commission on or before the twenty-fifth day of each calendar month, upon a form prescribed or furnished by the Tax Commission, an itemized and verified report showing the quantity of motor fuel, diesel fuel or blending material imported, produced, refined, manufactured, or compounded within this state, the number of gallons of motor fuel, diesel fuel or blending material received, as shown by the shipper's invoice thereof, by such distributor in this state, from any source during the preceding month, the number of gallons of motor fuel, diesel fuel or blending material purchased, received or accepted in this state in the original package or container in which same was imported into this state, the amount purchased, the date of each purchase, the name of the person from whom purchased, the manifest, bill of lading or delivery invoice number of each shipment, which number shall be the number used by the original supplier as shown on the basic shipping records which accompany the shipment, the date of receipt of such shipment of motor fuel, diesel fuel or blending material, the point of origin, point of destination of each shipment, the quantity of each of said purchases or shipments, the tank car number and initials of the car, if shipped by rail, or the name or the O.T.C. license number of the transporter if shipped by truck. The report must also include the number of gallons of motor fuel, diesel fuel or blending material sold or

withdrawn from storage for sale or use in this state during the preceding month, the date of each such sale, or use or withdrawal for the sale, the quantity of each sale, or amount used, the name and address of each purchaser, the manifest, bill of lading, or delivery invoice number, which number shall be the number as shown on the basic shipping or delivery records which accompany the delivery, the tank car initial and number of the car in which same was shipped, if transported by rail, or the name or the O.T.C. license number of the transporter, if shipped by truck. Provided that, if it is determined by the Tax Commission that a detailed record including delivery invoice of each and every sale of motor fuel, diesel fuel or blending material is being kept in accordance with the provisions of this article, the Tax Commission may require in lieu of the detailed schedule of sales, a report of the total gallons of motor fuel, diesel fuel or blending material sold or used by each bulk station, together with a detailed listing of all sales on which exemption is claimed showing the date, seller's invoice number, exemption invoice number, name and address and exemption permit number of the purchaser and number of gallons of each sale. Provided, however, that all persons engaged in producing, refining, preparing, distilling, blending, manufacturing, or compounding motor fuel, diesel fuel or blending material, must include the required detailed schedule of withdrawals from storage for sale or use in the monthly reports covering such producing, refining, preparing, distilling, blending, manufacturing, or compounding operations. The report must also include the amount of motor fuel, diesel fuel or blending material on hand at the beginning and close of the month as shown by the physical inventory taken on those dates, and such other information pertaining to such production, receipts, sales, or use of motor fuel, diesel fuel or blending material ordered as the Tax Commission may require. In order to compute the net gallonage of diesel fuel taxable under this act, there shall be allowed a

deduction from the total number of gallons of diesel fuel sold the amount of diesel fuel used exclusively for purposes other than to propel motor vehicles over the public highways of this state. In the event it would be either more practicable or more accurate to determine the amount of diesel fuel so used on a mileage, idling time or other basis, the Tax Commission is authorized to approve and accept such basis.

C. Every distributor, at the time of making the monthly reports required by this section, shall remit to the Tax Commission the amount of tax due.

It shall be unlawful for any distributor, retailer or dealer to sell or offer for sale in this state, motor fuel or diesel fuel while delinquent in the payment of any excise tax due the state.

Motor fuel taxes remitted by a distributor on behalf of a ~~licensed retailer of the distributor or collected on behalf of a nonlicensed purchaser of motor fuel~~ consumer that are subsequently determined to be uncollectible by the distributor may be credited against subsequent motor fuel tax liability imposed by law upon such distributor. For purposes of this subsection, motor fuel taxes collected on behalf of a licensed retailer of the distributor or collected on behalf of a nonlicensed purchaser shall be deemed uncollectible if such taxes are deducted for purposes of calculating the federal income tax liability of the distributor. The method for crediting uncollectible motor fuel taxes as provided by this subsection shall be prescribed in rules and regulations of the Oklahoma Tax Commission.

D. Reports and remittances as required herein, which are received by the Tax Commission subsequent to the twenty-fifth of the month but which were mailed on or before the twenty-fifth of the month in which payable, shall be deemed to have been received by the Tax Commission before becoming delinquent. Postmark or registry

receipt showing deposit in the U.S. mails shall be conclusive evidence of the date of mailing.

The time for filing returns and paying the tax levied by this article shall not be extended.

E. Any retailer or dealer as defined in Section 501 of this title shall, at its option, pay to the distributor, for the benefit of the state, all taxes due on all diesel fuel purchased from distributors or may procure a distributor's license as provided in Section 510 of this title and be subject to the reporting requirements of this section.

F. When any person shall fail to submit or remit to the Tax Commission any reports or taxes required hereunder for the tax levied in Sections 502.1 and 522.1 of this title within twenty-five (25) days from the date they are due, the Tax Commission may assess the following additional penalties:

A penalty of ten percent (10%) of the total tax due may be assessed on the thirtieth day from the day the taxes or reports are due.

Should the taxes or reports required hereunder not be submitted or remitted after the thirtieth day from the day they are due, action may be initiated to cancel such person's license under the provisions of Section 212 of this title.

SECTION 5. This act shall become effective July 1, 1996."

Passed the Senate the 16th day of April, 1996.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1996.

Speaker of the House of Representatives