

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2355

By: Covey

AS INTRODUCED

An Act relating to revenue and taxation; amending Section 3, Chapter 345, O.S.L. 1996, Section 9, Chapter 345, O.S.L. 1996, Section 10, Chapter 345, O.S.L. 1996, Section 13, Chapter 345, O.S.L. 1996, Section 14, Chapter 345, O.S.L. 1996, Section 15, Chapter 345, O.S.L. 1996, Section 21, Chapter 345, O.S.L. 1996, Section 37, Chapter 345, O.S.L. 1996, Section 41, Chapter 345, O.S.L. 1996, Section 48, Chapter 345, O.S.L. 1996, Section 49, Chapter 345, O.S.L. 1996, Section 55, Chapter 345, O.S.L. 1996, Section 57, Chapter 345, O.S.L. 1996, and Section 62, Chapter 345, O.S.L. 1996 (68 O.S. Supp. 1997, Sections 500.3, 500.9, 500.10, 500.13, 500.14, 500.15, 500.21, 500.37, 500.41, 500.48, 500.49, 500.55, 500.57, and 500.62), which relate to the Motor Fuel Tax Code; adding definition of dyed gasoline; providing for deduction of certain inventory of dyed gasoline; providing exemption from motor fuel tax for dyed gasoline; providing in lieu of procedure for dyed gasoline for certain tax-exempt users; permitting importer to take certain deduction for dyed gasoline; providing for joint and several liability in connection with dyed gasoline; requiring certain supplier and exporter

reports regarding dyed gasoline; providing exception for dyed gasoline for certain sales or use; requiring certain statement on shipping papers regarding dyed gasoline; requiring certain posted notice regarding dyed gasoline; providing for liability for sale or use of dyed gasoline; prohibiting tax on inventory of dyed gasoline; and providing an effective date.

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

SECTION 1. AMENDATORY Section 3, Chapter 345, O.S.L. 1996 (68 O.S. Supp. 1997, Section 500.3), is amended to read as follows:

Section 500.3 As used in this act:

1. "Act" or "this act" means the Motor Fuel Tax Code;
2. "Agricultural purposes" means clearing, terracing or otherwise preparing the ground on a farm; preparing soil for planting and fertilizing, cultivating, raising and harvesting crops; raising and feeding livestock and poultry; 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 a farm; producing electricity for use on a 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;
3. "Blend stock" means any petroleum product component of gasoline, such as naphtha, reformate, or toluene, that can be blended for use in a motor fuel without further processing. However, the term does not include any substance that:

- a. will be ultimately used for consumer nonmotor-fuel use, and
- b. is sold or removed in drum quantities (55 gallons) or less at the time of the removal or sale;

4. "Blended fuel" means a mixture composed of gasoline or diesel fuel and another liquid, other than a de minimis amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle. This term includes gasohol, ethanol and fuel grade ethanol;

5. "Blender" means any person that produces blended motor fuel outside the bulk transfer/terminal system;

6. "Blending" means the mixing of one or more petroleum products, with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use or otherwise sold for use in the generation of power for the propulsion of a motor vehicle, an airplane, or a motorboat. The term does not include that blending that occurs in the process of refining by the original refiner of crude petroleum or the blending or products known as lubricating oil and greases;

7. "Bulk end user" means a person who receives into the person's own storage facilities in transport truck lots of motor fuel for the person's own consumption;

8. "Bulk plant" means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack;

9. "Bulk transfer" means any transfer of motor fuel from one location to another by pipeline tender or marine delivery within the bulk transfer/terminal system;

10. "Bulk transfer/terminal system" means the motor fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Gasoline in a refinery, pipeline, vessel, or

terminal is in the bulk transfer/terminal system. Motor fuel in the fuel supply tank of any engine, or in any tank car, rail car, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer/terminal system;

11. "Tax Commission" or "Commission" means the Oklahoma Tax Commission;

12. "Consumer" means the user of the motor fuel on the public highways of this state;

13. "Dead storage" means the amount of motor fuel that will not be pumped out of a storage tank because the motor fuel is below the mouth of the draw pipe. For purposes of this act, a dealer may assume that the amount of motor fuel in dead storage is two hundred (200) gallons for a tank with a capacity of less than ten thousand (10,000) gallons and four hundred (400) gallons for a tank with a capacity of ten thousand (10,000) gallons or more;

14. "Delivery" means the placing of motor fuel or any liquid into the fuel tank of a motor vehicle;

15. "Destination state" means the state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use;

16. "Diesel fuel" means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle. Except as provided in subsection B of Section 4 500.4 of this ~~act~~ title, "diesel fuel" does not include jet fuel sold to a buyer who is registered with and certified by the Internal Revenue Service to purchase jet fuel subject to the Internal Revenue Service;

17. "Diesel-powered highway vehicle" means a motor vehicle operated on a highway that is propelled by a diesel-powered engine;

18. "Distributor" means a person who acquires motor fuel from a supplier or from another distributor for subsequent sale or use;

19. "Dyed diesel fuel" means diesel fuel that is required to be dyed pursuant to United States Environmental Protection Agency rules or is dyed pursuant to Internal Revenue Service rules or pursuant to any other requirements subsequently set by the United States Environmental Protection Agency or Internal Revenue Service including any invisible marker requirements;

20. "Dyed gasoline" means gasoline which may be dyed pursuant to United States Environmental Protection Agency rules or is dyed pursuant to Internal Revenue Service rules or pursuant to any other requirements subsequently set by the United States Environmental Protection Agency or Internal Revenue Service including any invisible marker requirements or any requirement by this state;

21. "Eligible purchaser" means a person who has been authorized by the Commission pursuant to Section ~~23~~ 500.23 of this ~~act~~ title to make the election pursuant to Section ~~22~~ 500.22 of this ~~act~~ title;

~~21.~~ 22. "Enterer" includes any person who is the importer of record, pursuant to federal customs law, with respect to motor fuel. If the importer of record is acting as an agent, the person for whom the agent is acting is the enterer. If there is no importer of record of motor fuel entered into this state, the owner of the motor fuel at the time it is brought into this state is the enterer;

~~22.~~ 23. "Entry" means the importing of motor fuel into this state. Motor fuel brought into this state in the fuel tank of a motor vehicle shall not be deemed to be an "entry" if not removed from the fuel tank except as used for the propulsion of that motor vehicle, except to the extent that motor fuel was acquired tax free for export or a refund of tax was claimed as a result of exportation

from the state from which that motor fuel was transported into this state;

~~23.~~ 24. "Export" means to obtain motor fuel in this state for sale or other distribution in another state. In applying this definition, motor fuel delivered out of state by or for the seller constitutes an export by the seller and motor fuel delivered out of state by or for the purchaser constitutes an export by the purchaser;

~~24.~~ 25. "Exporter" means any person, other than a supplier, who purchases motor fuel in this state for the purpose of transporting or delivering the fuel to another state or country;

~~25.~~ 26. "Farm tractor" means 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 pursuant to the provisions of the motor vehicle license and registration laws of this state;

~~26.~~ 27. "Fuel transportation vehicle" means any vehicle designed for highway use which is also designed or used to transport motor fuels and includes transport trucks and tank wagons;

~~27.~~ 28. "Gasoline" means all products commonly or commercially known or sold as gasoline that are suitable for use as a motor fuel. Gasoline does not include products that have an American Society for Testing Materials ("A.S.T.M.") octane number of less than seventy-five (75) as determined by the "motor method". Except as provided in subsection B of Section 4 500.4 of this ~~act~~ title, "gasoline" does not include aviation gasoline provided that the buyer is registered to purchase aviation gasoline free of tax and the seller obtains certification of such fact satisfactory to the Commission prior to making the sale;

~~28.~~ 29. "Gasoline blend stocks" includes any petroleum product component of gasoline, such as naphtha, reformate, or toluene, that

can be blended for use in a motor fuel. The term shall not include any substance that will be ultimately used for consumer nonmotor-fuel use and is sold or removed in drum quantities of fifty-five (55) gallons or less at the time of the removal or sale;

~~29.~~ 30. "Gross gallons" means the total measured motor fuel, exclusive of any temperature or pressure adjustments, in U.S. gallons;

~~30.~~ 31. "Heating oil" means a motor fuel that is burned in a boiler, furnace, or stove for heating or industrial processing purposes;

~~31.~~ 32. "Highway vehicle" means a self-propelled vehicle that is designed for use on a highway;

~~32.~~ 33. "Import" means to bring motor fuel into this state by any means of conveyance other than in the fuel supply tank of a motor vehicle. In applying this definition, motor fuel delivered into this state from out of state by or for the seller constitutes an import by the seller, and motor fuel delivered into this state from out of state by or for the purchaser constitutes an import by the purchaser;

~~33.~~ 34. "Import verification number" means the number assigned by the Commission with respect to a single transport truck delivery into this state from another state upon request for an assigned number by an importer or the transporter carrying motor fuel into this state for the account of an importer;

~~34.~~ 35. "In this state" means the area within the border of this state, including all land within the borders of this state owned by the United States of America;

~~35.~~ 36. "Indian country" means:

- a. land held in trust by the United States of America for the benefit of a federally recognized Indian tribe or nation,

- b. all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation,
- c. 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, and
- d. all Indian allotments, the Indian titles to which have not been extinguished, including individual allotments held in trust by the United States or allotments owned in fee by individual Indians subject to federal law restrictions regarding disposition of said allotments and including rights-of-way running through the same.

The term shall also include the definition of Indian country as found in 18 U.S.C., Section 1151;

~~36.~~ 37. "Indian tribe", "tribes", or "federally recognized Indian tribe or nation" means an Indian tribal entity which is recognized by the United States Bureau of Indian Affairs as having a special relationship with the United States. The term shall also include the definition of a tribe as defined in 25 U.S.C., Section 479a;

~~37.~~ 38. "Invoiced gallons" means the gallons actually billed on an invoice in payment to a supplier;

~~38.~~ 39. "K-1 kerosene" means a petroleum product having an A.P.I. gravity of not less than forty degrees (40°), at a temperature of sixty degrees (60°) Fahrenheit and a minimum flash point of one hundred degrees (100°) Fahrenheit with a sulphur content not exceeding five one-hundredths percent (0.05%) by weight;

~~39.~~ 40. "Liquid" means any substance that is liquid in excess of sixty degrees (60°) Fahrenheit and a pressure of fourteen and seven-tenths (14.7) pounds per square inch absolute;

~~40.~~ 41. "Motor fuel" means gasoline, diesel fuel and blended fuel;

~~41.~~ 42. "Motor fuel transporter" means a person who transports motor fuel outside the bulk terminal/transfer system by transport truck or railroad tank car;

~~42.~~ 43. "Motor vehicle" means every automobile, truck, truck-tractor or any motor bus or self-propelled vehicle not operated or driven upon fixed rails or tracks. The term does not include:

- a. farm tractors or machinery including tractors and machinery designed for off-road use but capable of movement on roads at low speeds,
- b. a vehicle operated on rails, or
- c. machinery designed principally for off-road use;

~~43.~~ 44. "Net gallons" means the motor fuel, measured in U.S. gallons, when corrected to a temperature of sixty degrees (60°) Fahrenheit (13° Celsius) and a pressure of fourteen and seven-tenths (14.7) pounds per square inch (psi);

~~44.~~ 45. "Permissive supplier" means an out-of-state supplier that elects, but is not required, to have a supplier's license pursuant to this act;

~~45.~~ 46. "Person" means natural persons, individuals, partnerships, firms, associations, corporations, estates, trustees, business trusts, syndicates, this state, any county, city, municipality, school district or other political subdivision of the state, federally recognized Indian tribe, or any corporation or combination acting as a unit or any receiver appointed by any state or federal court;

~~46.~~ 47. "Position holder" means the person who holds the inventory position in motor fuel in a terminal, as reflected on the

records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal;

~~47.~~ 48. "Public highway" means every road, toll road, highway, street, way or place generally open to the use of the public as a matter of right for the purposes of vehicular travel, including streets and alleys of any town or city notwithstanding that the same may be temporarily closed for construction, reconstruction, maintenance or repair;

~~48.~~ 49. "Qualified terminal" means a terminal designated as a qualified terminal pursuant to the Internal Revenue Code, regulation and practices and which has been assigned a terminal control number ("tcn") by the Internal Revenue Service;

~~49.~~ 50. "Rack" means a mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a railroad tank car, a transport truck or other means of bulk transfer outside of the bulk transfer/terminal system;

~~50.~~ 51. "Refiner" means any person that owns, operates, or otherwise controls a refinery within the United States;

~~51.~~ 52. "Refinery" means a facility used to produce motor fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons and from which motor fuel may be removed by pipeline, by vessel, or at a rack;

~~52.~~ 53. "Removal" means any physical transfer other than by evaporation, loss, or destruction of motor fuel from a terminal, manufacturing plant, customs custody, pipeline, marine vessel such as a barge or tanker, refinery or any receptacle that stores motor fuel;

~~53.~~ 54. "Retailer" means a person that engages in the business of selling or distributing to the consumer within this state;

~~54.~~ 55. "Supplier" means a person that is:

a. registered pursuant to Section 4101 of the Internal Revenue Code for transactions in motor fuels in the bulk transfer/terminal distribution system, and

b. one of the following:

(1) the position holder in a terminal or refinery in this state,

(2) imports motor fuel into this state from a foreign country,

(3) acquires motor fuel from a terminal or refinery in this state from a position holder pursuant to a two-party exchange, or

(4) the position holder in a terminal or refinery outside this state with respect to motor fuel which that person imports into this state on the account of that person.

A terminal operator shall not be considered a supplier based solely on the fact that the terminal operator handles motor fuel consigned to it within a terminal. "Supplier" also means a person that produces alcohol or alcohol derivative substances in this state, produces alcohol or alcohol derivative substances for import to this state into a terminal, or acquires upon import by truck, railcar or barge into a terminal or refinery, alcohol or alcohol derivative substances. "Supplier" includes a permissive supplier unless specifically provided otherwise;

~~55.~~ 56. "Tank wagon" means a straight truck having multiple compartments designed or used to carry motor fuel;

~~56.~~ 57. "Terminal" means a storage and distribution facility for motor fuel, supplied by pipeline or marine vessel which is registered as a qualified terminal by the Internal Revenue Service and from which motor fuel may be removed at a rack;

~~57.~~ 58. "Terminal bulk transfers" include but are not limited to the following:

- a. a marine barge movement of fuel from a refinery or terminal to a terminal,
- b. pipeline movements of fuel from a refinery or terminal to a terminal,
- c. book transfers of product within a terminal between suppliers prior to completion of removal across the rack, and
- d. two-party exchanges between licensed suppliers;

~~58.~~ 59. "Terminal operator" means any person that owns, operates, or otherwise controls a terminal, and does not use a substantial portion of the motor fuel that is transferred through or stored in the terminal for its own use or consumption or in the manufacture of products other than motor fuel. A terminal operator may own the motor fuel that is transferred through or stored in the terminal;

~~59.~~ 60. "Throughputter" means any person that:

- a. receives transfer of motor fuel from refiners, importers, terminal operators, or other throughputters,
- b. stores the motor fuel in a terminal, and
- c. owns the motor fuel or holds the inventory position to the motor fuel, as reflected on the records of the terminal operator, at the time of removal or sale from a terminal;

~~60.~~ 61. "Transmix" means the buffer or interface between two different products in a pipeline shipment, or a mix of two different products within a refinery or terminal that results in an off-grade mixture;

~~61.~~ 62. "Transport truck" means a semitrailer combination rig designed or used for the purpose of transporting motor fuel over the highways;

~~62.~~ 63. "Transporter" means any operator of a pipeline, barge, railroad or transport truck engaged in the business of transporting motor fuels;

~~63.~~ 64. "Two-party exchange" means a transaction in which the motor fuel is transferred from one licensed supplier or licensed permissive supplier to another licensed supplier or licensed permissive supplier and:

- a. which transaction includes a transfer from the person that holds the original inventory position for motor fuel in the terminal as reflected on the records of the terminal operator, and
- b. the exchange transaction is simultaneous with removal from the terminal by the receiving exchange partner.

However, in any event, the terminal operator in the books and records of such terminal operator treats the receiving exchange party as the supplier which removes the product across a terminal rack for purposes of reporting such events to this state;

~~64.~~ 65. "Ultimate vendor" means a person that sells motor fuel to the consumer;

~~65.~~ 66. "Undyed diesel fuel" means diesel fuel that is not subject to the United States Environmental Protection Agency dyeing requirements, or has not been dyed in accordance with Internal Revenue Service fuel dyeing provisions;

~~66.~~ 67. "Vehicle fuel tank" means any receptacle on a motor vehicle from which fuel is supplied for the propulsion of the motor vehicle; and

~~67.~~ 68. "Wholesaler" means a person that acquires motor fuel from a supplier or from another wholesaler for subsequent sale and distribution at wholesale.

SECTION 2. AMENDATORY Section 9, Chapter 345, O.S.L. 1996 (68 O.S. Supp. 1997, Section 500.9), is amended to read as follows:

Section 500.9 A. The tax imposed by Section 4 500.4 of this ~~act~~ title on the date of an increase in the tax rate set out in Section 4 500.4 of this ~~act~~ title shall be applicable to previously taxed motor fuel:

1. In excess of one thousand (1,000) gallons held in storage by a bulk end user or a consumer; and

2. Inventory held for sale by a fuel vendor.

B. Persons in possession of motor fuel subject to this section:

1. Shall take an inventory to determine the gallons in storage for purposes of determining the tax on inventory in determining the amount of motor fuel tax due under this section;

2. May deduct the amount of motor fuel in dead storage;

3. May deduct these gallons in which tax at the full rate has previously been paid;

4. May take a deduction for gallons of dyed diesel fuel or dyed gasoline; and

5. Report the gallons listed in paragraph 1 of this subsection on forms provided by the Commission.

C. The amount of the inventory tax is equal to the inventory tax rate times the gallons in storage as determined pursuant to the provisions of this section. The inventory tax rate is equal to the difference between the increased tax rate minus the previous tax rate to which those gallons were previously subjected to tax.

D. The inventory tax report required by this section shall be accompanied by payment of the inventory tax calculated in accordance with this section, and payment made on or before the due date of the report.

SECTION 3. AMENDATORY Section 10, Chapter 345, O.S.L. 1996 (68 O.S. Supp. 1997, Section 500.10), is amended to read as follows:

Section 500.10 Subject to the procedural requirements and conditions set out in Sections ~~10~~ 500.10 through ~~17~~ 500.17 of this ~~act~~ title, the following are exempt from the tax imposed by Section ~~4~~ 500.4 of this ~~act~~ title on motor fuel:

1. Motor fuel for which proof of export is available in the form of a terminal-issued destination state shipping paper:

- a. exported by a supplier who is licensed in the destination state, or
- b. sold by a supplier to a licensed exporter for immediate export;

2. Motor fuel which was acquired by an unlicensed exporter and as to which the tax imposed by this act has previously been paid or accrued and was subsequently exported by transport truck by or on behalf of the licensed exporter in a diversion across state boundaries properly reported in conformity with Section ~~46~~ 500.46 of this ~~act~~ title;

3. Motor fuel exported out of a bulk plant in this state in a tank wagon if the destination of that vehicle does not exceed twenty-five (25) miles from the border of this state and as to which the tax imposed by this act has previously been paid or accrued, subject to gallonage limits and other conditions established by the Commission;

4. K-1 kerosene sold at retail through dispensers which have been designed and constructed to prevent delivery directly from the dispenser into a vehicle fuel supply tank, and K-1 kerosene sold at retail through nonbarricaded dispensers in quantities of not more than twenty-one (21) gallons for use other than for highway purposes, under such rules as the Commission shall reasonably require;

5. Motor fuel sold to the United States or any agency or instrumentality thereof;

6. Motor fuel used solely and exclusively in district-owned public school vehicles or FFA and 4-H Club trucks for the purpose of legally transporting public school children, and motor fuel purchased by any school district for use exclusively in school buses leased or hired for the purpose of legally transporting public school children, or in the operation of vehicles used in driver training;

7. 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 county, city, town, a volunteer fire department with a state certification and rating, rural electric cooperatives, rural water and sewer districts, rural ambulance service districts, or federally recognized Indian tribes;

8. Motor fuel used as fuel for farm tractors or stationary engines owned or leased and operated by any person and used exclusively for agricultural purposes, except as to two and eight one-hundredths cents (\$0.0208) per gallon of gasoline as provided in subsection C of Section 4 500.4 of this ~~act~~ title;

9. Gasoline, diesel fuel and kerosene sold for use as fuel to generate power in aircraft engines, whether in aircraft or for training, testing or research purposes of aircraft engines, except as to eight one-hundredths of one cent (\$0.0008) per gallon as provided in subsection B of Section 4 500.4 of this ~~act~~ title;

10. Motor fuel sold within an Indian reservation or within Indian country by a federally recognized Indian tribe to a member of that tribe and used in motor vehicles owned by that member of the tribe. This exemption does not apply to sales within an Indian reservation or within Indian country by a federally recognized

Indian tribe to non-Indian consumers or to Indian consumers who are not members of the tribe selling the motor fuel;

11. Subject to determination by the Commission, that portion of diesel fuel:

- a. used to operate equipment attached to a motor vehicle, if the diesel fuel was placed into the fuel supply tank of a motor vehicle that has a common fuel reservoir for travel on a highway and for the operation of equipment, or
- b. consumed by the vehicle while the vehicle is parked off the highways of this state;

12. Motor fuel acquired by a consumer out of state and carried into this state, retained within and consumed from the same vehicle fuel supply tank within which it was imported;

13. Diesel fuel used as heating oil, or in railroad locomotives or any other motorized flanged-wheel rail equipment, or used for other nonhighway purposes other than as expressly exempted under another provision;

14. Motor fuel which was lost or destroyed as a direct result of a sudden and unexpected casualty;

15. Taxable diesel which had been accidentally contaminated by dye so as to be unsaleable as highway fuel as proved by proper documentation; and

16. Dyed diesel fuel or dyed gasoline.

SECTION 4. AMENDATORY Section 13, Chapter 345, O.S.L. 1996 (68 O.S. Supp. 1997, Section 500.13), is amended to read as follows:

Section 500.13 A. The exemption for sales of motor fuel for use by the United States or any agency or instrumentality thereof, as provided in paragraph 5 of Section ~~40~~ 500.10 of this ~~act~~ title, district-owned public school vehicles and buses or FFA and 4-H Club trucks used for the purpose of legally transporting public school

children and in the operation of vehicles used in driver training, as provided in paragraph 6 of Section ~~40~~ 500.10 of this ~~act~~ title, and for use by a county, city, town, volunteer fire department, rural electric cooperative, rural water and sewer district, rural ambulance service district, or federally recognized Indian tribe, as provided in paragraph 7 of Section ~~40~~ 500.10 of this ~~act~~ title, shall be perfected as follows:

1. The ultimate vendor shall obtain a certificate signed by the purchasing entity listed in this section setting forth:

- a. the name and address of the purchasing entity,
- b. the quantity of motor fuel, or if the certificate is for all the motor fuel purchased by the purchasing entity, the certificate shall be for a period not to exceed three (3) years,
- c. the exempt use of the motor fuel,
- d. the name and address of the ultimate vendor from whom the motor fuel was purchased,
- e. the federal employer identification number of the purchasing entity, and
- f. a statement that the purchasing entity understands that the fraudulent use of the certificate to obtain fuel without paying the tax levied pursuant to this act shall result in the purchaser paying the tax, with penalties and interest, as well as such other penalties provided in this act;

2. The ultimate vendor, having obtained from the purchasing entity the certificate, which the ultimate vendor shall retain for a period of not less than three (3) years, shall execute an ultimate vendor certificate which shall contain the following information:

- a. the name and address of the ultimate vendor,
- b. the federal employment identification number of the ultimate vendor,

- c. the quantity of motor fuel sold and the date of the sale,
- d. a certification that the ultimate vendor sold motor fuel to the purchasing entity for the exempt purpose,
- e. that the ultimate vendor has the necessary records to support the sale of the motor fuel, and
- f. that the ultimate vendor understands and agrees that the fraudulent use of the certificate to obtain fuel without paying the tax levied pursuant to this act, or paying a refund of the tax, whether for the ultimate vendor or others, shall result in the payment of the tax by the ultimate vendor, with penalties and interest, as well as such other penalties provided in this act;

3. The ultimate vendor shall give the executed ultimate vendor certificate to the supplier who, having made reasonable commercial inquiries into the accuracy of the information in the certificate, shall be eligible to claim a credit against the tax liability on the ensuing monthly report of the supplier. As a condition of obtaining the credit, the supplier shall credit or refund the tax to the ultimate vendor who made the sale to the purchasing entity. If there is an intermediate vendor, or vendors, in the distribution chain between the supplier and the ultimate vendor, each vendor shall endorse the certificate, subject to rules promulgated by the Commission, and transmit the certificate to the supplier and remit the credit, once received, to the customer of the intermediate vendor. The supplier and all vendors, if they accept the certificate in good faith and make a reasonable inquiry as to the accuracy of the information contained in the certificate, shall be held harmless if the purchasing entity has made a fraudulent claim; and

4. If the sale of motor fuel to the purchasing entity occurs at a fixed retail pump available to the general public, the ultimate vendor, having made the sale to the purchasing entity without the tax, may apply for a refund from the Commission by submitting the application and supporting documentation as the Commission shall reasonably prescribe by regulation. However, if the purchase is charged to a fleet or government fueling credit card, or to an oil company credit card issued to the purchasing entity, the ultimate vendor may bill the purchasing entity without the tax and seek a refund, or utilize the provisions of paragraph 1, 2, or 3 of this ~~section~~ subsection if the issuer of the card is a supplier.

B. In lieu of the procedure set forth in subsection A of this section, the purchasing entities set forth in subsection A of this section may purchase dyed gasoline.

SECTION 5. AMENDATORY Section 14, Chapter 345, O.S.L. 1996 (68 O.S. Supp. 1997, Section 500.14), is amended to read as follows:

Section 500.14 A. The exemption for use pursuant to paragraph 11 of Section ~~40~~ 500.10 of this ~~act~~ title shall be perfected by a refund claim filed by the consumer who shall provide evidence of an allocation of use satisfactory to the Commission.

B. The exemption for motor fuel pursuant to paragraphs 14 and 15 of Section ~~40~~ 500.10 of this ~~act~~ title which fuel was purchased tax paid for a taxable use and was, after the purchase, contaminated by the presence of a dye or marker or subject to a sudden and unexpected casualty loss shall be refunded to the person responsible for the contamination or loss event upon application therefor and on proof shown acceptable to the Commission.

C. Motor fuel tax that has otherwise been erroneously paid by a person shall be refunded by the Commission upon proof shown satisfactory to the Commission. The authority of the Commission

under this section shall be broadly construed to prevent unjust and unintended payment of taxes on exempt uses or by exempt users.

D. The consumer shall apply for a refund with respect to motor fuel purchased by the consumer for consumption in an exempt use described under paragraphs 8 and 13 of Section ~~40~~ 500.10 of this ~~act~~ title as to which the tax imposed by this act had been previously paid and no refund previously issued. However, in lieu of applying for a refund with respect to motor fuel purchased by the consumer for consumption in an exempt use described under paragraph 8 of Section 500.10 of this title, the consumer may purchase dyed gasoline.

E. The exemption from taxation set forth in paragraph 10 of Section ~~40~~ 500.10 of this ~~act~~ title shall be perfected by the consumer applying for a refund with respect to motor fuel purchased by the consumer for consumption as to which the tax imposed by this act had been previously paid and no refund previously issued. The Commission shall promulgate any necessary rules to administer this exemption.

F. Motor fuel tax that has been paid more than once with respect to the same gallon of motor fuel shall be refunded by the Commission to the person who last paid the tax upon proof satisfactory to the Commission.

SECTION 6. AMENDATORY Section 15, Chapter 345, O.S.L. 1996 (68 O.S. Supp. 1997, Section 500.15), is amended to read as follows:

Section 500.15 All exemptions under Section ~~40~~ 500.10 of this ~~act~~ title, not expressly covered under Sections ~~11~~ 500.11 through ~~14~~ 500.14 of this ~~act~~ title, shall be perfected as follows:

1. A supplier or tank wagon importer shall take a deduction against motor fuel shown on the monthly report for those gallons of diesel fuel or gasoline removed from a terminal or refinery destined for delivery to a point in this state as shown on the shipping

papers, as to which dye was added in a manner which conforms to federal requirements established by the Internal Revenue Code and regulations issued thereunder; or

2. An importer shall take a deduction against tax owed under Section ~~48~~ 500.18 of this ~~act~~ title for dyed diesel fuel or dyed gasoline if such diesel fuel or gasoline would have met the requirements of paragraph 1 of this section.

SECTION 7. AMENDATORY Section 21, Chapter 345, O.S.L. 1996 (68 O.S. Supp. 1997, Section 500.21), is amended to read as follows:

Section 500.21 The terminal operator of a terminal in this state is jointly and severally liable for the tax imposed under Section ~~4~~ 500.4 of this ~~act~~ title and shall remit payment to this state upon discovery of either of the following conditions:

1. The supplier, with respect to the motor fuel, is a person other than the terminal operator and is not a licensed supplier. However, the terminal operator shall be relieved of liability if the terminal operator establishes all of the following:

- a. the terminal operator has a valid terminal operator's license issued for the facility from which the motor fuel is withdrawn,
- b. the terminal operator has an unexpired notification certificate from the supplier as required by the Commission or the Internal Revenue Service, and
- c. the terminal operator has no reason to believe that any information on the certificate is false; or

2. In connection with the removal of diesel fuel or gasoline that is not dyed and marked in accordance with Internal Revenue Service requirements, the terminal operator provides any person with any bill of lading, shipping paper, or similar document indicating that the diesel fuel or gasoline is dyed and marked in accordance with Internal Revenue Service requirements.

SECTION 8. AMENDATORY Section 37, Chapter 345, O.S.L. 1996 (68 O.S. Supp. 1997, Section 500.37), is amended to read as follows:

Section 500.37 A. For the purpose of determining the amount of precollected motor fuel tax due, every supplier shall file with the Commission, on forms prescribed and furnished by the Commission, a verified statement. The Commission may require the reporting of any information reasonably necessary to determine the amount of precollected motor fuel tax due.

B. The reports required by this section shall be filed with respect to information for the preceding calendar month on or before the twenty-seventh day of the current month.

C. The supplier report required by this section shall include the following information with respect to billed gallons of motor fuel, for all products in the aggregate provided the supplier shall identify if billed gallon is net or gross:

1. Removal of gallons of motor fuel by the reporting supplier from the bulk transfer/terminal system in this state as to which the tax imposed by this act has been precollected or accrued by the reporting supplier;

2. Removal of gallons of diesel fuel, gasoline or heating oil from terminals in this state by the reporting supplier, tax exempt, as to which dye has been added in accordance with paragraph 16 of Section ~~40~~ 500.10 of this ~~act~~ title;

3. Removal of gallons of motor fuel from terminals in this state by the reporting supplier, tax exempt, for export from this state by that supplier, sorted by state of destination;

4. Removal of gallons of motor fuel from terminals in this state by the reporting supplier, tax exempt, for sale to licensed exporters, sorted by state of destination;

5. Removal of gallons of motor fuel from terminals within this state for sale by the reporting supplier directly to the United States government or any agency or instrumentality thereof;

6. Removal of gallons of motor fuel from terminals within this state for sale by the reporting supplier directly to consumers other than the federal government, or any agencies and instrumentalities thereof, for any other exempt use for which the consumers have properly assigned refund claims to the ultimate vendor and each distributor in the chain including the reporting supplier;

7. Total removals in this state;

8. Removal of gallons of motor fuel from a terminal in another state by the reporting supplier, for sale to a licensed importer, tax exempt, for import into this state by that licensed importer;

9. Removal of gallons of motor fuel from a terminal in another state by the reporting supplier for import other than by bulk transfer by that supplier into this state, or for sale by the reporting supplier to a person for import into this state by that person, and in either case, as to which the tax in this state was accrued by the reporting supplier at the time of removal from the out-of-state terminal;

10. Removal of gallons of diesel fuel, gasoline or heating oil from a terminal in another state by the reporting supplier, for import or for sale for import into this state, as to which dye has been added in accordance with paragraph 16 of Section ~~40~~ 500.10 of this ~~act~~ title;

11. Total removals from out-of-state terminals with this state as the state of destination;

12. Corrections made by the supplier pursuant to Section 17 of this act for changes in destination state which affect the tax liability of the supplier or the customer of the supplier to this state; and

13. Such other information which the Commission in its discretion determines is reasonably required to determine tax liability under this act.

D. Every licensed supplier or permissive supplier shall separately disclose and identify, in a written statement to the Commission with the supplier or permissive supplier report, any removal and sale from the bulk transfer/terminal system in another state by that supplier to a person other than a licensed supplier, permissive supplier or importer of gallons of motor fuel, other than diesel fuel or gasoline dyed in accordance with paragraph 16 of Section ~~40~~ 500.10 of this ~~act~~ title, and which gallons are destined for this state, as shown by the terminal-issued shipping paper, and as to which gallons the tax imposed by this act has not been collected or accrued by the supplier upon the removal. Any person who knowingly violates or knowingly aids or abets another to violate this provision shall 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, or both such fine and imprisonment.

E. Each supplier shall separately identify each sale of K-1 kerosene, other than dyed diesel fuel or dyed gasoline, sold free of tax in accordance with reporting requirements established by the Commission.

SECTION 9. AMENDATORY Section 41, Chapter 345, O.S.L. 1996 (68 O.S. Supp. 1997, Section 500.41), is amended to read as follows:

Section 500.41 A. Each person licensed as an exporter shall file by the twenty-seventh day of each month reports with the Commission on forms prescribed and furnished by the Commission concerning the amount of motor fuel exported from this state.

B. The report shall contain the following information with respect to motor fuel other than diesel fuel or gasoline dyed in accordance with the Internal Revenue Code:

1. All shipments of motor fuel removed from a terminal in this state for direct delivery outside of this state by the licensed exporter, sorted by state of destination;

2. The gallons delivered to taxing jurisdictions outside this state out of bulk plant storage, and whether by transport truck or tank wagon;

3. The name and federal employer identification number of the person receiving the exported motor fuel from the exporter;

4. The date of the shipments; and

5. The carrier name or alpha code and carrier federal identification number.

The Commission may, in addition, require the reporting of any other information it considers reasonably necessary to the enforcement of this act. The Commission may waive this reporting requirement if it finds the reports unnecessary to the administration of this act.

SECTION 10. AMENDATORY Section 48, Chapter 345, O.S.L. 1996 (68 O.S. Supp. 1997, Section 500.48), is amended to read as follows:

Section 500.48 A. Except as expressly provided in subsection B of this section, no person shall sell, use, deliver, or store in this state, or import for sale, use, delivery or storage in this state, motor fuel as to which the tax imposed by Section 4 500.4 of this ~~act~~ title has not been previously paid to or accrued by either a licensed supplier, or permissive supplier, at the time of removal from a terminal, or a licensed importer provided all the conditions of Section ~~50~~ 500.50 of this ~~act~~ title applicable to lawful import by the importer shall have been met.

B. The provisions of subsection A of this section shall not apply to:

1. A supplier with respect to motor fuel held within the bulk transfer/terminal system in this state which was manufactured in this state or imported into this state in a bulk transfer;

2. A consumer with respect to motor fuel placed in the vehicle supply tank of that person outside of this state;

3. Diesel fuel or gasoline dyed in accordance with paragraph 16 of Section ~~40~~ 500.10 of this ~~act~~ title;

4. Motor fuel in the process of exportation by a supplier or a licensed exporter in accordance with the shipping papers required by Section ~~45~~ 500.45 of this ~~act~~ title and a statement meeting the requirements of ~~paragraph 2 of~~ subsection A of Section ~~49~~ 500.49 of this ~~act~~ title is shown on the shipping papers;

5. Gasoline, diesel fuel and kerosene used in aircraft subject to the conditions and exceptions in paragraph 9 of Section ~~40~~ 500.10 of this ~~act~~ title;

6. Fuel in possession of a consumer as to which a refund has been issued;

7. Government and other exempt fuel under paragraphs 5, 6 and 7 of Section ~~40~~ 500.10 of this ~~act~~ title; or

8. A licensed importer who has met the conditions of Section ~~49~~ 500.49 of this ~~act~~ title.

C. A person who violates this section shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than One Thousand Dollars (\$1,000.00), or be sentenced to a term of not more than one (1) year in the county jail, or shall be punishable by both such fine and imprisonment and shall be subject to the provisions of Section ~~59~~ 500.59 of this ~~act~~ title.

SECTION 11. AMENDATORY Section 49, Chapter 345, O.S.L. 1996 (68 O.S. Supp. 1997, Section 500.49), is amended to read as follows:

Section 500.49 A. Except as provided in subsections C and D of this section, no person shall operate a transport truck that is

engaged in the shipment of motor fuel on the public highways of this state without having on board a terminal-issued shipping paper bearing, in addition to the requirements of subsection A of Section 45 500.45 of this ~~act~~ title, a notation indicating that, with respect to diesel fuel acquired under claim of exempt use, a statement indicating the fuel is "DYED DIESEL FUEL OR DYED GASOLINE, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" for the load or the appropriate portion of the load.

B. A person is in violation of subsection A of this section upon boarding the vehicle with a shipping paper which does not meet the requirements set forth in this section.

C. The Commission may in its discretion provide an advance notification procedure with respect to documentation for imported motor fuel as to which the importer is unable to obtain terminal-issued shipping papers which comply with this section.

D. Any person who knowingly violates any part of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than One Thousand Dollars (\$1,000.00), or be sentenced to a term of not more than six (6) months in the county jail, or shall be punishable by both such fine and imprisonment.

E. The Commission, its appointee, or representative may seize, confiscate and dispose of any motor fuel which should be accompanied by a shipping paper meeting the requirements of this section which is not accompanied by the required shipping paper.

SECTION 12. AMENDATORY Section 55, Chapter 345, O.S.L. 1996 (68 O.S. Supp. 1997, Section 500.55), is amended to read as follows:

Section 500.55 A notice stating "DYED DIESEL FUEL OR DYED GASOLINE, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" shall be:

1. Provided by the terminal operator to any person that receives dyed diesel fuel or dyed gasoline at a terminal rack of that terminal operator;

2. Provided by any seller of dyed diesel fuel or dyed gasoline to its buyer if the diesel fuel or gasoline is located outside the bulk transfer/terminal system and is not sold from a retail pump posted in accordance with the requirements of paragraph 3 of this section; and

3. Posted by a seller on any retail pump where it sells dyed diesel fuel or dyed gasoline for use by its buyer.

The form of notice required under paragraphs 1 and 2 of this section shall be provided by the time of the removal or sale and shall appear on shipping papers, bills of lading, and invoices accompanying the sale or removal of the dyed diesel fuel or dyed gasoline.

SECTION 13. AMENDATORY Section 57, Chapter 345, O.S.L. 1996 (68 O.S. Supp. 1997, Section 500.57), is amended to read as follows:

Section 500.57 A. No person shall sell or hold for sale dyed diesel fuel or dyed gasoline for any use that the person knows or has reason to know is not a nontaxable use of the diesel fuel or gasoline.

B. No person shall use or hold for use any dyed diesel fuel or dyed gasoline for a use other than a nontaxable use and the person knew or had reason to know that the diesel fuel or gasoline was so dyed.

C. No person shall willfully, with intent to evade tax, alter or attempt to alter the strength or composition of any dye or marker in any dyed diesel fuel or dyed gasoline.

D. Any business entity, each officer, employee, or agent of the entity who willfully participates in any act in violation of this section shall be jointly and severally liable with the entity for the penalty which shall be the same as imposed pursuant to 26 U.S.C., Section 6714.

SECTION 14. AMENDATORY Section 62, Chapter 345, O.S.L. 1996 (68 O.S. Supp. 1997, Section 500.62), is amended to read as follows:

Section 500.62 The tax imposed by Section 4 500.4 of this ~~act~~ title shall be applicable to all nonexempt inventory held by any person outside of the bulk transfer system in this state in quantities which, in the aggregate with respect to such person, exceed one thousand (1,000) gallons, to the extent the inventory has not previously been subject to the tax imposed by this state under the predecessor motor fuel tax statute. However, no tax shall be payable with respect to motor fuel which is dyed diesel fuel or dyed gasoline or held by an exempt user. The inventory tax imposed on inventory held outside of the bulk transfer system on the effective date of this act reportable under this section shall be payable in two equal annual installments beginning twelve (12) months after the effective date of this act.

SECTION 15. This act shall become effective November 1, 1998.

46-2-8772

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