

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 CONFERENCE COMMITTEE  
4 SUBSTITUTE  
5 FOR ENGROSSED  
6 HOUSE BILL NO. 1916

By: Richardson, Dorman, Hoskin,  
Kiesel and Renegar of the  
House

and

Justice, Barrington and  
Schulz of the Senate

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11 CONFERENCE COMMITTEE SUBSTITUTE

12 An Act relating to fuel; providing exemptions from  
13 certain Corporation Commission rules for certain  
14 entities under certain circumstances; directing  
15 Corporation Commission to promulgate certain rules;  
16 amending 68 O.S. 2001, Section 500.10, which relates  
17 to motor fuel tax; adding exemption for certain  
18 biofuel and biodiesel producers; limiting scope of  
19 exemption; amending Section 1, Chapter 287, O.S.L.  
20 2005 (68 O.S. Supp. 2006, Section 2357.67), which  
21 relates to tax credits for biodiesel production;  
22 extending period of eligibility for credit; providing  
23 for codification; providing an effective date; and  
24 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 304.1 of Title 17, unless there  
is created a duplication in numbering, reads as follows:

1       A. All aboveground storage tanks utilized by marinas which are  
2 required to be upgraded before July 15, 2007, pursuant to the  
3 provisions of permanent Rule OAC 165:26-8-2 and required to meet  
4 certain design requirements pursuant to the provisions of permanent  
5 Rule OAC 165:26-2-1.3, shall be exempt from such requirements until  
6 the Corporation Commission promulgates new rules if the marina is  
7 using an underground storage tank with secondary containment, the  
8 risk to the environment and human health, safety, and welfare is  
9 minimal, and compliance with the upgrade requirements would result  
10 in closure of the storage tank system or cause economic hardship to  
11 the owner of the storage tank system.

12       B. All aboveground storage tanks utilized by retail facilities  
13 which are required to meet Underwriters Laboratories (UL) or  
14 American Petroleum Institute (API) standards for aboveground fuel  
15 storage tanks pursuant to the provisions of permanent Rule OAC  
16 165:26-10-2 and are required to meet certain design requirements  
17 pursuant to the provisions of permanent Rule OAC 165:26-2-1.3, shall  
18 be exempt from such requirements until the Corporation Commission  
19 promulgates new rules, if the retail facility is using an  
20 underground storage tank with secondary containment, the risk to the  
21 environment and human health, safety and welfare is minimal, and  
22 compliance with the tank requirements would result in closure of the  
23 storage tank system or cause economic hardship to the owner of the  
24 storage tank system.

1 C. All aboveground storage tanks utilized by fleet and  
2 commercial facilities which are required to meet Underwriters  
3 Laboratories (UL) or American Petroleum Institute (API) standards  
4 for aboveground fuel storage tanks pursuant to the provisions of  
5 permanent Rule OAC 165:26-12-2 and are required to meet certain  
6 design requirements pursuant to the provisions of permanent Rule OAC  
7 165:26-2-1.3, shall be exempt from such requirements until the  
8 Corporation Commission promulgates new rules, if the fleet or  
9 commercial facility is using an underground storage tank with  
10 secondary containment, the risk to the environment and human health,  
11 safety and welfare is minimal, and compliance with the tank  
12 requirements would result in closure of the storage tank system or  
13 cause economic hardship to the owner of the storage tank system.

14 D. Any rules promulgated by the Corporation Commission  
15 governing the design and labeling of aboveground storage tanks shall  
16 be amended to allow storage tanks designed and built for underground  
17 use to be used as aboveground storage tanks if used with secondary  
18 containment. Any rules promulgated by the Commission shall not be  
19 more stringent than any Environmental Protection Agency standards or  
20 regulations relating to aboveground storage tank design.

21 SECTION 2. AMENDATORY 68 O.S. 2001, Section 500.10, is  
22 amended to read as follows:

23 Section 500.10 Subject to the procedural requirements and  
24 conditions set out in this section and Sections 500.11 through

1 500.17 of this title, the following are exempt from the tax imposed  
2 by Section 500.4 of this title on motor fuel:

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

5 a. exported by a supplier who is licensed in the  
6 destination state, or

7 b. sold by a supplier to a licensed exporter for  
8 immediate export;

9 2. Motor fuel which was acquired by an unlicensed exporter and  
10 as to which the tax imposed by Section 500.4 of this title has  
11 previously been paid or accrued and was subsequently exported by  
12 transport truck by or on behalf of the licensed exporter in a  
13 diversion across state boundaries properly reported in conformity  
14 with Section 500.46 of this title;

15 3. Motor fuel exported out of a bulk plant in this state in a  
16 tank wagon if the destination of that vehicle does not exceed  
17 twenty-five (25) miles from the border of this state and as to which  
18 the tax imposed by Section 500.4 of this title has previously been  
19 paid or accrued, subject to gallonage limits and other conditions  
20 established by the Oklahoma Tax Commission;

21 4. K-1 kerosene sold at retail through dispensers which have  
22 been designed and constructed to prevent delivery directly from the  
23 dispenser into a vehicle fuel supply tank, and K-1 kerosene sold at  
24 retail through nonbarricaded dispensers in quantities of not more

1 than twenty-one (21) gallons for use other than for highway  
2 purposes, under such rules as the Tax Commission shall reasonably  
3 require;

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

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

13 7. Motor fuel used solely and exclusively as fuel to propel  
14 motor vehicles on the public roads and highways of this state, when  
15 leased or owned and being operated for the sole benefit of a county,  
16 city, town, a volunteer fire department with a state certification  
17 and rating, rural electric cooperatives, rural water and sewer  
18 districts, rural ambulance service districts, or federally  
19 recognized Indian tribes;

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

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

6 10. Motor fuel sold within an Indian reservation or within  
7 Indian country by a federally recognized Indian tribe to a member of  
8 that tribe and used in motor vehicles owned by that member of the  
9 tribe. This exemption does not apply to sales within an Indian  
10 reservation or within Indian country by a federally recognized  
11 Indian tribe to non-Indian consumers or to Indian consumers who are  
12 not members of the tribe selling the motor fuel;

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

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

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

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

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

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

10 16. Dyed diesel fuel; ~~and~~

11 17. Motor fuel sold to the Oklahoma Space Industry Development  
12 Authority or any spaceport user as defined in the Oklahoma Space  
13 Industry Development Act; and

14 18. Biofuels or biodiesel produced by an individual with crops  
15 grown on property owned by the same individual and used in a vehicle  
16 owned by the same individual on the public roads and highways of  
17 this state.

18 SECTION 3. AMENDATORY Section 1, Chapter 287, O.S.L.  
19 2005 (68 O.S. Supp. 2006, Section 2357.67), is amended to read as  
20 follows:

21 Section 2357.67 A. For tax years beginning after December 31,  
22 2004, and before January 1, 2012, there shall be allowed a credit  
23 against the tax imposed by Section 2355 of ~~Title 68 of the Oklahoma~~  
24 ~~Statutes~~ this title for any biodiesel facility which is in

1 production at the rate of at least twenty-five percent (25%) of its  
2 name plate design capacity for the production of biodiesel, on or  
3 before December 31, ~~2007~~ 2008. The completion of the construction  
4 of such facilities must be after the date of this act. The credit  
5 shall be in the amount of twenty cents (\$0.20) per gallon of  
6 biodiesel produced and shall be allowed for sixty (60) months  
7 beginning with the first month for which the facility is eligible to  
8 receive such credit and ending not later than December 31, 2011.  
9 The credit may only be claimed if the biodiesel facility maintains  
10 an average production rate of at least twenty-five percent (25%) of  
11 its name plate design capacity for at least six (6) months after the  
12 first month for which it is eligible to receive such credit.

13 B. As used in this section:

14 1. "Biodiesel facility" means a plant or facility located  
15 within the State of Oklahoma and primarily engaged in the production  
16 of biodiesel derived from animal fats, grain components, coproducts,  
17 or byproducts; and

18 2. "Name plate design capacity" means the original designed  
19 capacity of a biodiesel facility. Capacity may be specified as  
20 gallons of biodiesel produced per year.

21 C. Any biodiesel facility eligible for a tax credit under  
22 subsection A of this section shall also receive a credit against the  
23 tax imposed by Section 2355 of ~~Title 68 of the Oklahoma Statutes~~  
24 this title in the amount of twenty cents (\$0.20) per gallon of

1 biodiesel produced in excess of the original name plate design  
2 capacity which results from expansion of the facility completed on  
3 or after the effective date of this act and before December 31, ~~2007~~  
4 2008. Such tax credit shall be allowed for sixty (60) months  
5 beginning with the first month for which production from the  
6 expanded facility is eligible to receive such tax credit and ending  
7 not later than December 31, 2011.

8 D. 1. Beginning January 1, 2012, a biodiesel facility shall  
9 receive a credit against the tax imposed by Section 2355 of ~~Title 68~~  
10 ~~of the Oklahoma Statutes~~ this title in the amount of seven and one-  
11 half cents (\$0.075) per gallon of biodiesel, for new production for  
12 a period not to exceed thirty-six (36) consecutive months.

13 2. For purposes of this subsection, "new production" means  
14 production which results from a new facility, a facility which has  
15 not received credits prior to January 1, 2012, or the expansion of  
16 the capacity of an existing facility by at least two million  
17 (2,000,000) gallons first placed into service after January 1, 2012,  
18 as certified by the design engineer of the facility to the Oklahoma  
19 Tax Commission.

20 3. For expansion of the capacity of an existing facility, "new  
21 production" means annual production in excess of twelve times the  
22 monthly average of the highest three (3) months of biodiesel  
23 production at a biodiesel facility during the twenty-four-month  
24

1 period immediately preceding certification of the facility by the  
2 design engineer.

3 4. No credits shall be allowed under this subsection for  
4 expansion of the capacity of an existing facility until production  
5 is in excess of twelve times the three-month average amount  
6 determined under this subsection during any twelve-consecutive-month  
7 period beginning no sooner than January 1, 2012.

8 5. The amount of a credit granted pursuant to this section  
9 based on new production shall be approved by the Tax Commission  
10 based on such biodiesel production records as may be necessary to  
11 reasonably determine the level of new production.

12 E. 1. The credits described in this section shall be given  
13 only for biodiesel produced at a plant in this state at which all  
14 biodiesel esterification takes place.

15 2. Not more than twenty-five million (25,000,000) gallons of  
16 biodiesel produced annually at a biodiesel facility shall be  
17 eligible for the credits in subsections A and C of this section, and  
18 the credits may only be claimed by a producer for the periods  
19 specified in subsections A and C of this section.

20 3. Not more than ten million (10,000,000) gallons of biodiesel  
21 produced during any twelve-consecutive-month period at a biodiesel  
22 facility shall be eligible for the credit described in subsection D  
23 of this section, and the credit may only be claimed by a producer  
24 for the periods specified in subsection D of this section.

1 4. Not more than one hundred twenty-five million (125,000,000)  
2 gallons of biodiesel produced at a biodiesel facility by the end of  
3 the sixty-month period set forth in subsection A or C of this  
4 section shall be eligible for the credit under such subsection. A  
5 biodiesel facility which receives a credit for biodiesel produced  
6 under subsection A or C of this section shall not receive a credit  
7 under subsection D of this section until its eligibility to receive  
8 a credit under subsection A or C of this section has been completed.

9 F. The Tax Commission shall prescribe an application form and  
10 promulgate rules for claiming credits under this section.

11 G. For purposes of ascertaining the correctness of any  
12 application for claiming a credit provided in this section, the Tax  
13 Commission may examine or cause to have examined, by any agent or  
14 representative designated for that purpose, any books, papers,  
15 records, or memoranda bearing upon such matters.

16 SECTION 4. Sections 2 and 3 of this act shall become effective  
17 January 1, 2008.

18 SECTION 5. It being immediately necessary for the preservation  
19 of the public peace, health and safety, an emergency is hereby  
20 declared to exist, by reason whereof this act shall take effect and  
21 be in full force from and after its passage and approval.

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23 51-1-8164 CJB/KB 05/22/07  
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