

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 747

By: Bingman

6
7 COMMITTEE SUBSTITUTE

8 [waste tires - tire recycling fees -
9 emergency]

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11
12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY 27A O.S. 2001, Section 2-11-403,
14 as renumbered by Section 9, Chapter 230, O.S.L. 2005, and as last
15 amended by Section 1, Chapter 295, O.S.L. 2006 (27A O.S. Supp. 2006,
16 Section 2-11-401.2), is amended to read as follows:

17 Section 2-11-401.2 A. 1. Except as otherwise provided by this
18 section, the following assessments shall be made for tires for use on
19 motor vehicles.

20 a. At the time any tire:

- 21 (1) with a rim diameter of seventeen and one-half (17
22 1/2) inches rim diameter or less is sold by a tire
23 dealer, there shall be assessed a waste tire
24 recycling fee of One Dollar (\$1.00) per tire,

1 (2) with a rim diameter greater than seventeen and
2 one-half (17 1/2) inches but less than or equal to
3 nineteen and one-half (19 1/2) inches is sold by a
4 tire dealer, there shall be assessed a waste tire
5 recycling fee of Two Dollars and fifty cents
6 (\$2.50) per tire,

7 (3) with a rim diameter greater than ~~seventeen and~~
8 ~~one half (17 1/2)~~ nineteen and one-half (19 1/2)
9 inches is sold by a tire dealer, there shall be
10 assessed a waste tire recycling fee of Three
11 Dollars and fifty cents (\$3.50) per tire, and

12 ~~(3)~~

13 (4) is sold by a tire dealer for use on a motorcycle,
14 motor-driven cycle or motorized bicycle, there
15 shall be assessed a waste tire recycling fee of
16 One Dollar (\$1.00) per tire.

17 b. At any time a motor vehicle with a tire rim diameter
18 of seventeen and one-half (17 1/2) inches or less is
19 first registered in this state, there shall be
20 assessed a waste tire recycling fee of One Dollar
21 (\$1.00) per tire.

22 c. At any time a motor vehicle with a tire rim diameter
23 of greater than seventeen and one-half (17 1/2) inches
24 but less than or equal to nineteen and one-half (19

1 1/2) inches is first registered in this state, there
2 shall be assessed a waste tire recycling fee of Two
3 Dollars and fifty cents (\$2.50) per tire, except as
4 otherwise provided by subparagraph e of this
5 paragraph.

6 d. At any time a motor vehicle with a tire rim diameter
7 of greater than ~~seventeen and one-half (17 1/2)~~
8 nineteen and one-half (19 1/2) inches is first
9 registered in this state, there shall be assessed a
10 waste tire recycling fee of Three Dollars and fifty
11 cents (\$3.50) per tire, except as otherwise provided
12 by subparagraph ~~d~~ e of this paragraph.

13 ~~d.~~ e. At any time a motorcycle, motor-driven cycle or
14 motorized bicycle is first registered in this state,
15 there shall be assessed a waste tire recycling fee of
16 One Dollar (\$1.00) per tire.

17 2. Motor vehicles registered pursuant to Section 1120 of Title
18 47 of the Oklahoma Statutes shall be exempt from the provisions of
19 this subsection.

20 3. No fee shall be assessed by a tire dealer for used tires or
21 retreaded tires for which the tire dealer can document that the
22 recycling fee has been previously paid.

23 4. All-terrain vehicles and off-road motorcycles registered
24 pursuant to the provisions of Section 1132 of Title 47 of the

1 Oklahoma Statutes shall be exempt from the provisions of this
2 section.

3 B. 1. The tire dealer and motor license agent shall remit such
4 fee to the Oklahoma Tax Commission in the same manner as provided by
5 Section 1365 of Title 68 of the Oklahoma Statutes.

6 2. Except as otherwise provided by this section, the tire dealer
7 shall remit to the Tax Commission ninety-seven and three-quarters
8 percent (97.75%) of the fee due pursuant to this section at the time
9 of filing any report as required by the Tax Commission.

10 3. Motor license agents shall remit all but One Dollar (\$1.00)
11 of the fee assessed on each vehicle registered.

12 4. Failure to remit the fee at the time of filing the returns
13 shall cause the fee to become delinquent. If the fee becomes
14 delinquent the tire dealer or motor license agent forfeits any claim
15 to the discount authorized by this section and shall remit to the Tax
16 Commission one hundred percent (100%) of the amount of the fee due
17 plus any penalty due.

18 C. If the fee imposed or levied by subsection A of this section,
19 or any part of such amount, is not paid before the fee becomes
20 delinquent, there shall be collected on the total delinquent fee
21 interest at the rate of one and one-quarter percent (1 1/4%) per
22 month from the date of the delinquency until paid.

23 D. If any fee due under subsection A of this section, or any
24 part thereof, is not paid within fifteen (15) days after the fee

1 becomes delinquent, a penalty of ten percent (10%) on the total
2 amount of fee due and delinquent shall be added and paid.

3 E. All penalties or interest imposed by this section shall be
4 recoverable by the Tax Commission as a part of the fee imposed and
5 all penalties and interest shall be apportioned the same as the fee
6 on which the penalties or interest are collected.

7 SECTION 2. AMENDATORY 27A O.S. 2001, Section 2-11-405,
8 as amended by Section 3, Chapter 230, O.S.L. 2005, and as renumbered
9 by Section 11, Chapter 230, O.S.L. 2005 (27A O.S. Supp. 2006,
10 Section 2-11-401.4), is amended to read as follows:

11 Section 2-11-401.4 A. Compensation to waste tire facilities
12 and tire-derived fuel or TDF facilities pursuant to this section
13 shall be limited to facilities located in Oklahoma. Compensation
14 for waste tire activities pursuant to this section shall be limited
15 to waste tires from Oklahoma. To be eligible, applicants for
16 compensation shall be in compliance with the Oklahoma Waste Tire
17 Recycling Act.

18 B. The monies accruing annually to the Waste Tire Recycling
19 Indemnity Fund shall be allocated first to the following:

20 1. ~~Four and one half percent (4.5%)~~ Two percent (2%) to the
21 Oklahoma Tax Commission and ~~three and one half percent (3.5%)~~ six
22 percent (6%) to the Department of Environmental Quality for the
23 purpose of administering the requirements of the Oklahoma Waste Tire
24 Recycling Act;

1 2. An amount not to exceed Fifty Thousand Dollars (\$50,000.00)
2 per audit to the State Auditor and Inspector for the purpose of
3 conducting audits of the Oklahoma Waste Tire Recycling Program
4 pursuant to Section 2-11-401.6 of this title; and

5 3. Up to ten percent (10%) for capital investment reimbursement
6 to waste tire facilities and TDF facilities for the purchase of
7 equipment necessary to utilize waste tires. Only equipment
8 purchased on or after January 1, 1995, shall be eligible. The
9 facilities are eligible for compensation at a rate of Twenty Dollars
10 (\$20.00) per ton of waste tires used. Total reimbursement shall not
11 exceed one hundred percent (100%) of the capital investment in
12 eligible equipment. The facilities may apply for compensation
13 monthly to the Commission, and shall supply any information required
14 by the Commission.

15 C. After the allocations under subsection B of this section are
16 made, the balance of monies in the Fund shall be available for
17 compensation pursuant to the provisions of the Oklahoma Waste Tire
18 Recycling Act as follows:

19 1. Compensation to waste tire facilities for waste tire
20 processing, at the rate of Fifty-four Dollars (\$54.00) per ton of
21 processed tire material. For compensation the following conditions
22 shall apply:

- 23 a. facilities that process waste tires by altering the
24 form of the waste tires but do not produce crumb

- 1 rubber shall not receive compensation until the
2 facility documents the sale and movement of the
3 processed tire material off-site to a third party,
- 4 b. facilities shall report and certify tire processing
5 activity in terms of weight. The facility shall by
6 sworn affidavit provide to the Tax Commission
7 sufficient information to verify that the facility has
8 processed tires and sold processed tires for actual
9 recycling or reuse in accordance with the purposes of
10 the Oklahoma Waste Tire Recycling Act, and
- 11 c. to be eligible for compensation, a facility shall not
12 have accumulated more processed material than the
13 amount for which the facility has provided financial
14 assurance under its solid waste permit or the amount
15 accumulated from three (3) years of operation,
16 whichever is less;
- 17 2. a. Compensation to waste tire facilities or TDF
18 facilities at the rate of Fifty-three Dollars (\$53.00)
19 per ton of whole waste tires for the collection and
20 transportation of waste tires from Oklahoma tire
21 dealers, automotive dismantlers and parts recyclers,
22 solid waste landfill sites, and dumps certified by the
23 Department priority cleanup list, and delivering the
24 tires to a waste tire facility or TDF facility. The

1 collection and transportation of waste tires shall be
2 provided by the waste tire facility or TDF facility at
3 no additional cost to the tire dealer or automotive
4 dismantler and parts recycler or to the Fund. The
5 waste tire facility or TDF facility shall collect from
6 any location at which there are at least three hundred
7 waste tires.

8 b. Compensation under this paragraph shall not be payable
9 until the waste tires have been actually processed
10 according to the solid waste permit for the facility
11 or actually used for energy or fuel recovery. A TDF
12 facility that collects and transports whole waste
13 tires shall be eligible for compensation under this
14 paragraph only for those whole waste tires consumed by
15 that facility.

16 c. No tire dealer shall charge any customer any
17 additional fee for the management, recycling, or
18 disposal of any waste tire upon which the waste tire
19 recycling fee has been remitted to the Tax Commission.
20 For customers who choose not to leave a waste tire
21 upon which the waste tire recycling fee has been
22 remitted to the Tax Commission, the tire dealer shall
23 issue a receipt which entitles the customer to deliver
24 the waste tire to the dealer at a later date.

1 d. To be eligible for compensation pursuant to this
2 paragraph, the waste tire facility or TDF facility
3 shall:

4 (1) demonstrate to the satisfaction of the Department
5 that the facility is regularly engaged in the
6 collection, transportation and delivery of waste
7 tires to a waste tire facility or to a TDF
8 facility, on a statewide basis, and from each
9 county of the state,

10 (2) provide documentation to the Tax Commission,
11 signed by a dealer at the time of collection,
12 which certifies by sworn affidavit the total
13 amount of waste tire recycling fees, itemized by
14 month, remitted by the dealer since the date the
15 waste tires of the dealer were last collected,
16 and

17 (3) annually demonstrate that at least five percent
18 (5%) of the tires were collected from tire dumps
19 or landfills on the Department priority cleanup
20 list or community-wide cleanup events approved by
21 the Department.

22 e. In lieu of proof of remitted tire recycling fees, the
23 waste tire facility or TDF facility shall accept proof
24 of purchase of a salvage vehicle registered in

1 Oklahoma by an automotive dismantler and parts
2 recycler, licensed pursuant to the Automotive
3 Dismantlers and Parts Recycler Act, for the collection
4 and transportation of up to five waste tires per
5 salvage vehicle purchased on or after January 1, 1996;

6 3. a. Compensation to a person, corporation or other legal
7 entity who has obtained a permit or other
8 authorization from the United States Army Corps of
9 Engineers or a local Conservation District to provide
10 services for erosion control projects. Compensation
11 shall be at the rate of Two Dollars and eighty cents
12 (\$2.80) per tire for waste tires having a tire rim
13 diameter of greater than seventeen and one-half (17
14 1/2) inches, and eighty cents (\$0.80) per tire for
15 tires having a rim diameter less than or equal to
16 seventeen and one-half (17 1/2) inches.

17 b. Reimbursement under this paragraph shall be subject to
18 the following:

19 (1) the applicant for reimbursement collects or
20 provides for the collection and utilization of
21 waste tires in an erosion control project in
22 Oklahoma in accordance with a written plan
23 approved by the United States Army Corps of
24 Engineers or by a local Conservation District,

- 1 (2) the tires are collected and transported to the
2 site of the erosion control project,
- 3 (3) the site landowner agrees to plant trees or other
4 suitable vegetation in accordance with a planting
5 plan developed in conjunction with the Division
6 of Forestry of the ~~State~~ Oklahoma Department of
7 Agriculture, Food, and Forestry,
- 8 (4) the applicant reports and certifies the number of
9 tires utilized. The applicant shall by sworn
10 affidavit provide to the Tax Commission
11 sufficient information to verify that the
12 applicant has utilized the tires in accordance
13 with the purposes of the Oklahoma Waste Tire
14 Recycling Act,
- 15 (5) the applicant annually demonstrates that at least
16 five percent (5%) of the tires utilized by the
17 applicant for which compensation is requested
18 were collected from tire dumps or landfills on
19 the Department priority cleanup list or
20 community-wide cleanup events approved by the
21 Department,
- 22 (6) the applicant demonstrates to the satisfaction of
23 the Department that the applicant is regularly
24 engaged in the collection, transportation and

1 delivery to erosion control projects of waste
2 tires, on a statewide basis, and from each county
3 of the state, at no additional cost to the tire
4 dealer or automotive dismantler and parts
5 recycler or to the Fund, and

6 (7) the applicant provides documentation to the Tax
7 Commission, signed by a dealer at the time of
8 collection, which certifies by sworn affidavit
9 the total amount of waste tire recycling fees,
10 itemized by month, remitted by the dealer since
11 the date the waste tires of the dealer were last
12 collected.

13 c. In lieu of proof of remitted tire recycling fees, the
14 applicant shall accept proof of purchase of a salvage
15 vehicle registered in Oklahoma by an automotive
16 dismantler and parts recycler, licensed pursuant to
17 the Automotive Dismantlers and Parts Recycler Act, for
18 the collection and transportation of up to five waste
19 tires per salvage vehicle purchased on or after
20 January 1, 1996.

21 d. Compensation pursuant to this paragraph shall be
22 payable only for the tires collected and utilized in
23 accordance with the purposes of the Oklahoma Waste
24 Tire Recycling Act and as authorized by the

1 Department. During the course of the erosion control
2 project, the Department may determine the amount of
3 and authorize partial compensation, as tires are
4 utilized in accordance with the written plan.

5 e. Any entity deemed eligible for reimbursement under the
6 provisions of this paragraph shall be liable for the
7 erosion control project for a period of five (5)
8 years. During the five-year period, if additional
9 cleanup or remediation of an erosion control project
10 is required due to failure or negligence on the part
11 of the original contractor, the original contractor
12 shall be responsible for cleanup costs and shall not
13 be eligible for any additional compensation from the
14 Fund for costs related to that erosion control
15 project;

16 4. a. Compensation to a unit of local or county government
17 that submits to the Department for approval a plan for
18 the use of baled waste tires in an engineering
19 project. Compensation shall be at the rate of fifty
20 cents (\$0.50) per tire.

21 b. The plan shall be approved by the Department before
22 construction of the project begins.

23 c. Any unit of local or county government baling waste
24 tires shall not accumulate more than fifty waste tire

1 bales prior to beginning construction of an approved
2 project.

3 d. Waste tires baled pursuant to this paragraph cannot be
4 obtained from tire manufacturers, retailers,
5 wholesalers, retreaders, or automotive dismantlers and
6 parts recyclers.

7 e. Any unit of local or county government authorized to
8 receive reimbursement for the use of baled waste tires
9 in an engineering project shall report and certify
10 whole waste tires by number. The governmental unit
11 shall by sworn affidavit provide sufficient
12 information to the Tax Commission to verify that the
13 unit has utilized the tires in accordance with the
14 purposes of the Oklahoma Waste Tire Recycling Act; and

15 5. If the Fund contains insufficient funds in any month to
16 satisfy the eligible reimbursements under this subsection, the Tax
17 Commission shall apportion the payments among the qualified
18 applicants under this subsection according to the percentage of
19 waste tires processed, collected and transported, or utilized.

20 D. 1. After the allocations under subsections B and C of this
21 section are made, any remaining monies in the Fund shall be
22 available for TDF facilities and waste tire facilities that produce
23 crumb rubber for compensation at the rate of Twenty-nine Dollars
24

1 (\$29.00) per ton of processed or whole waste tires used for energy
2 or fuel recovery or the production of crumb rubber.

3 2. The production of crumb rubber shall be considered a
4 compensable event separate from and in addition to any compensation
5 for waste tire processing under subsection C of this section.

6 3. TDF facilities and waste tire facilities authorized to
7 receive reimbursement under this subsection shall report and certify
8 tire material used by weight.

9 4. The facilities shall by sworn affidavit provide to the Tax
10 Commission sufficient information to verify that the facility has
11 used the tires in accordance with the purposes of the Oklahoma Waste
12 Tire Recycling Act.

13 5. If the Fund contains insufficient funds in any month to
14 satisfy the eligible reimbursements under this subsection, the Tax
15 Commission shall apportion the payments among the qualified
16 applicants according to the percentage of waste tires used for
17 energy or fuel recovery or the production of crumb rubber.

18 E. After the allocations under subsections B, C and D of this
19 section are made, any remaining monies in the Fund shall be
20 disbursed as additional compensation to waste tire facilities or TDF
21 facilities for the collection and transportation of waste tires from
22 Oklahoma tire dealers, automotive dismantlers and parts recyclers,
23 solid waste landfill sites, and dumps certified by the Department
24 priority cleanup list, and delivering the tires to a waste tire

1 facility or a TDF facility. The Tax Commission shall apportion the
2 payments under this subsection among the qualified applicants
3 according to the percentage of waste tires collected and
4 transported.

5 F. Waste tire facilities, TDF facilities, or persons,
6 corporations or other legal entities authorized by the provisions of
7 the Oklahoma Waste Tire Recycling Act to receive reimbursement shall
8 demonstrate that the facilities or legal entities have successfully
9 complied with the requirements of the Oklahoma Waste Tire Recycling
10 Act through the filing of appropriate applications, reports, and
11 other documentation that may be required by the Tax Commission and
12 the Department.

13 SECTION 3. AMENDATORY 27A O.S. 2001, Section 2-11-409,
14 as amended by Section 4, Chapter 230, O.S.L. 2005, and as renumbered
15 by Section 13, Chapter 230, O.S.L. 2005 (27A O.S. Supp. 2006,
16 Section 2-11-401.6), is amended to read as follows:

17 Section 2-11-401.6 A. 1. The Oklahoma Tax Commission shall
18 promulgate rules to carry out the provisions of the Oklahoma Waste
19 Tire Recycling Act which pertain to the remittance of fees and to
20 the allocation of monies accruing to the Waste Tire Recycling
21 Indemnity Fund.

22 2. The Tax Commission shall prescribe forms, containing
23 documentation as required by the Oklahoma Waste Tire Recycling Act,
24 to be used by a waste tire facility, TDF facility, or person,

1 corporation or other legal entity authorized to receive
2 reimbursement.

3 3. On at least a monthly basis, the Tax Commission shall
4 evaluate and process applications.

5 4. The Tax Commission shall make periodic inspections of ~~tire~~
6 ~~dealers and motor license agents to ensure compliance with the~~
7 ~~provisions of Section 2-11-401.2 of this title, and shall make~~
8 ~~periodic inspections of~~ applicants for compensation to ensure
9 compliance with the provisions of Section 2-11-401.4 of this title.
10 The Tax Commission shall submit a summary of the results of those
11 inspections in an annual report to the office of the State Auditor
12 and Inspector.

13 5. Upon receipt of any referral from the Department of
14 Environmental Quality, as set out in paragraph 4 of subsection B of
15 this section, it shall be the duty of the Tax Commission to promptly
16 undertake proceedings in accordance with the recommendations of the
17 Department. The Tax Commission shall timely report the results of
18 the proceedings to the Department.

19 B. 1. The Environmental Quality Board shall promulgate rules
20 for the permitting of waste tire facilities under the Oklahoma Solid
21 Waste Management Act and for the certification of any entity to
22 receive compensation under the provisions of the Oklahoma Waste Tire
23 Recycling Act.

24

1 2. The Department ~~of Environmental Quality~~ shall file a report
2 with the Legislature and the Governor detailing the administration
3 of the Oklahoma Waste Tire Recycling Act and its effectiveness in
4 bringing about the cleanup of existing waste tire dumps and in
5 preventing the development of new dumps. The first report shall be
6 filed by no later than December 31, 1992. Subsequent reports shall
7 be filed every three (3) years thereafter.

8 3. In developing the priority cleanup list, the Department
9 shall prioritize those dumps where the landowner was a victim of
10 illegal dumping. Any other tire dump may be placed on the priority
11 cleanup list in cases where the administrative enforcement process
12 has been exhausted, and in such case, the Department may provide for
13 the cleanup of the dump pursuant to Section 2-11-401.7 of this
14 title.

15 4. The Department shall make periodic inspections of tire
16 dealers and motor license agents throughout this state to ensure
17 compliance with the provisions of Section 2-11-401.2 of this title.
18 Upon a finding of any failure to properly remit the appropriate fee
19 to the Tax Commission, the Department shall give written notice to
20 the alleged violator and may commence administrative enforcement
21 proceedings or civil proceedings in comformance with the provisions
22 of Sections 2-3-502 and 2-3-504 of this title. If the Department
23 determines that the fee has not been paid and there is no reasonable
24 cause for the nonpayment, the Department may assess a penalty of

1 double the amount that should have been remitted, to be added to the
2 delinquent fee. If the Department determines any tire dealer or
3 motor license agent has demonstrated a flagrant or repeated
4 disregard of the provisions of Section 2-11-401.2 of this title, it
5 shall refer such determination to the Tax Commission.

6 C. 1. By August 1, 1994, and every even year thereafter, the
7 State Auditor and Inspector shall conduct or shall contract with an
8 auditor or auditing company to conduct an independent audit of the
9 books, records, files and other such documents of the Commission and
10 the Department pertaining to the administration of the Fund. The
11 audit shall include, but shall not be limited to, a review of agency
12 and claimant compliance with state statutes regarding the Fund,
13 internal control procedures, adequacy of claim process expenditures
14 from and debits of the Fund regarding reimbursements,
15 administration, personnel, operating and other expenses charged by
16 the Tax Commission and Department, and the duties performed in
17 detail by agency personnel and Fund personnel for which payment is
18 made from the Fund. In addition the audit shall include
19 recommendations for improving claim processing, equipment needed for
20 claim processing, internal control or structure for administering
21 the Fund, and such other areas deemed necessary by the State Auditor
22 and Inspector.

23 2. The cost of the audit shall be borne by the Fund, pursuant
24 to the limits and provisions of Section 2-11-401.4 of this title.

1 3. Copies of the audit shall be submitted to the Governor, the
2 Speaker of the House of Representatives, the President Pro Tempore
3 of the Senate and the Chairs of the Appropriations Committee of both
4 the Oklahoma House of Representatives and the Oklahoma State Senate.

5 SECTION 4. This act shall become effective July 1, 2007.

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

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