

ENROLLED HOUSE
BILL NO. 1916

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

and

Justice, Barrington and
Schulz of the Senate

An Act relating to fuel; providing exemptions from certain Corporation Commission rules for certain entities under certain circumstances; directing Corporation Commission to promulgate certain rules; amending 68 O.S. 2001, Section 500.10, which relates to motor fuel tax; adding exemption for certain biofuel and biodiesel producers; limiting scope of exemption; amending Section 1, Chapter 287, O.S.L. 2005 (68 O.S. Supp. 2006, Section 2357.67), which relates to tax credits for biodiesel production; extending period of eligibility for credit; providing for codification; providing an effective date; and 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:

A. All aboveground storage tanks utilized by marinas which are required to be upgraded before July 15, 2007, pursuant to the provisions of permanent Rule OAC 165:26-8-2 and required to meet certain design requirements pursuant to the provisions of permanent Rule OAC 165:26-2-1.3, shall be exempt from such requirements until the Corporation Commission promulgates new rules if the marina is using an underground storage tank with secondary containment, the

risk to the environment and human health, safety, and welfare is minimal, and compliance with the upgrade requirements would result in closure of the storage tank system or cause economic hardship to the owner of the storage tank system.

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

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

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

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

Section 500.10 Subject to the procedural requirements and conditions set out in this section and Sections 500.11 through 500.17 of this title, the following are exempt from the tax imposed by Section 500.4 of this 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 Section 500.4 of this title 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 500.46 of this 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 Section 500.4 of this title has previously been paid or accrued, subject to gallonage limits and other conditions established by the Oklahoma Tax 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 Tax 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 500.4 of this 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 500.4 of this 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 Tax 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;

16. Dyed diesel fuel; ~~and~~

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

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

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

Section 2357.67 A. For tax years beginning after December 31, 2004, and before January 1, 2012, there shall be allowed a credit against the tax imposed by Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title for any biodiesel facility which is in production at the rate of at least twenty-five percent (25%) of its name plate design capacity for the production of biodiesel, on or before December 31, ~~2007~~ 2008. The completion of the construction of such facilities must be after the date of this act. The credit shall be in the amount of twenty cents (\$0.20) per gallon of biodiesel produced and shall be allowed for sixty (60) months beginning with the first month for which the facility is eligible to receive such credit and ending not later than December 31, 2011. The credit may only be claimed if the biodiesel facility maintains an average production rate of at least twenty-five percent (25%) of

its name plate design capacity for at least six (6) months after the first month for which it is eligible to receive such credit.

B. As used in this section:

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

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

C. Any biodiesel facility eligible for a tax credit under subsection A of this section shall also receive a credit against the tax imposed by Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title in the amount of twenty cents (\$0.20) per gallon of biodiesel produced in excess of the original name plate design capacity which results from expansion of the facility completed on or after the effective date of this act and before December 31, ~~2007~~ 2008. Such tax credit shall be allowed for sixty (60) months beginning with the first month for which production from the expanded facility is eligible to receive such tax credit and ending not later than December 31, 2011.

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

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

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

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

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

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

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

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

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

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

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

G. For purposes of ascertaining the correctness of any application for claiming a credit provided in this section, the Tax Commission may examine or cause to have examined, by any agent or

representative designated for that purpose, any books, papers, records, or memoranda bearing upon such matters.

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

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

Passed the House of Representatives the 24th day of May, 2007.

Presiding Officer of the House of
Representatives

Passed the Senate the 24th day of May, 2007.

Presiding Officer of the Senate