HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1815 By: Morgan of the House

and

Marlatt of the Senate

COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; making findings regarding administration of motor fuel taxation; stating legislative intent with respect to the provisions of Section 33 of Article V of the Oklahoma Constitution; amending 68 O.S. 2001, Sections 500.3, as amended by Section 2, Chapter 327, O.S.L. 2006, 500.4, 500.6, as last amended by Section 1, Chapter 256, O.S.L. 2010, 500.28, as amended by Section 3, Chapter 327, O.S.L. 2006, 500.33, 701 and 723 (68 O.S. Supp. 2010, Sections 500.3, 500.6 and 500.28), which relate to motor fuel taxation; modifying definitions; defining compressed natural gas; providing for levy of tax on compressed natural gas; providing for modification of levy based on expiration of certain tax credit; providing for apportionment of revenue; modifying statutory references; providing for collection of tax on compressed natural gas; modifying definition of special fuel; excluding compressed natural gas from definition of special fuel; eliminating references to compressed natural gas for purposes of tax decal; requiring fuel vendor license; providing for presumption regarding delivery of compressed natural gas until specified date; providing for noncodification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. The Legislature finds that the existing taxation system for compressed natural gas requires modification to promote fairness and improved administration of motor fuel taxation by the Oklahoma Tax Commission.

B. The existing system for motor fuel taxation would require the levy of sixteen cents ($0.16) per gallon or gasoline gallons equivalent (gge) for compressed natural gas except for the in lieu treatment authorized by Section 723 of Title 68 of the Oklahoma Statutes.

C. The Legislature finds that it would promote the development of desirable alternative energy sources to modify the existing taxation scheme for compressed natural gas by lowering the nominal rate of motor fuel taxation for compressed natural gas to thirteen cents ($0.13) per gasoline gallons equivalent (gge), but to have a rate of tax imposed at five cents ($0.05) per gasoline gallons equivalent for a period of time sufficient to allow the development of compressed natural gas distribution systems.

D. The Legislature hereby finds that the principal purpose of this act is not for raising revenue within the meaning of Section 33 of Article V of the Oklahoma Constitution even if revenue

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collections associated with the levy upon compressed natural gas would increase over time due to increased demand for compressed natural gas as an alternative energy source on and after the effective date of this act.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 500.3, as amended by Section 2, Chapter 327, O.S.L. 2006 (68 O.S. Supp. 2010, Section 500.3), is amended to read as follows:

Section 500.3 As used in Section 500.1 et seq. of this title:

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. “Biodiesel” means a fuel comprised of mono-alkyl esters of long chain fatty acids generally derived from vegetable oils or animal fats, commonly known as “B100”, that is commonly and commercially known or sold as a fuel that is suitable for use in a

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highway vehicle. The fuel meets this requirement if, without further processing or blending, the fuel is a fluid and has practical and commercial fitness for use in the propulsion of a highway vehicle;

4. “Biodiesel blend” means a blend of biodiesel fuel with petroleum-based diesel fuel, commonly designated as “Bxx”, where “xx” represents the volume percentage of biodiesel fuel in the blend, and that is commonly and commercially known or sold as a fuel that is suitable for use in a highway vehicle. The fuel meets this requirement if, without further processing or blending, the fuel is a fluid and has practical and commercial fitness for use in the propulsion of a highway vehicle;

5. "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;

6. "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

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can be used as a fuel in a highway vehicle. This term includes gasohol, ethanol and fuel grade ethanol;

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

8. "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;

9. "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;

10. "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;

11. "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;

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12. "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;

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

14. <u>"Compressed natural gas" means a volume of natural gas consisting primarily of methane which has been reduced to approximately one percent (1%) of its original volume for purposes of storage and for use as a fuel in motor vehicles;</u>

<u>15.</u> "Consumer" means the user of the motor fuel on the public highways of this state;

~~15.~~ <u>16.</u> "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 Section 500.1 et seq. of this title, 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;

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~~16.~~ 17. "Delivery" means the placing of motor fuel or any liquid into the fuel tank of a motor vehicle;

~~17.~~ 18. "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;

~~18.~~ 19. "Diesel fuel" means any liquid, including but not limited to, biodiesel, biodiesel blend or other diesel blended fuel, 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 500.4 of this 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;

~~19.~~ 20. "Diesel-powered highway vehicle" means a motor vehicle operated on a highway that is propelled by a diesel-powered engine;

~~20.~~ 21. "Distributor" means a person who acquires motor fuel from a supplier or from another distributor for subsequent sale or use;

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~~21.~~ 22. "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;

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

~~23.~~ 24. "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;

~~24.~~ 25. "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;

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~~25.~~ 26. "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;

~~26.~~ 27. "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;

~~27.~~ 28. "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;

~~28.~~ 29. "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;

~~29.~~ 30. "Gasoline" means all products, including but not limited to, gasoline blend stocks, 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-

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five (75) as determined by the "motor method". Except as provided in subsection B of Section 500.4 of this 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;

~~30.~~ 31. "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 55 gallons or less at the time of the removal or sale;

~~31.~~ 32. "Gross gallons" means the total measured motor fuel, exclusive of any temperature or pressure adjustments, in U.S. gallons;

~~32.~~ 33. "Heating oil" means a motor fuel that is burned in a boiler, furnace, or stove for heating or industrial processing purposes;

~~33.~~ 34. "Highway vehicle" means a self-propelled vehicle that is designed for use on a highway;

~~34.~~ 35. "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

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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;

~~35.~~ 36. "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;

~~36.~~ 37. "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;

~~37.~~ 38. "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

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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;

~~38.~~ 39. "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;

~~39.~~ 40. "Invoiced gallons" means the gallons actually billed on an invoice in payment to a supplier;

~~40.~~ 41. "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;

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~~41.~~ 42. "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;

~~42.~~ 43. "Motor fuel" means gasoline, diesel fuel and blended fuel;

~~43.~~ 44. "Motor fuel transporter" means a person who transports motor fuel outside the bulk terminal/transfer system by transport truck or railroad tank car;

~~44.~~ 45. "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;

~~45.~~ 46. "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);

~~46.~~ 47. "Permissive supplier" means an out-of-state supplier that elects, but is not required, to have a supplier's license pursuant to Section 500.1 et seq. of this title;

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~~47.~~ 48. "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;

~~48.~~ 49. "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;

~~49.~~ 50. "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;

~~50.~~ 51. "Qualified terminal" means a terminal designated as a qualified terminal pursuant to the Internal Revenue Code, regulation

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and practices and which has been assigned a terminal control number ("tcn") by the Internal Revenue Service;

~~51.~~ 52. "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;

~~52.~~ 53. "Refiner" means any person that owns, operates, or otherwise controls a refinery within the United States;

~~53.~~ 54. "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;

~~54.~~ 55. "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;

~~55.~~ 56. "Retailer" means a person that engages in the business of selling or distributing to the consumer within this state;

~~56.~~ 57. "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

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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;

~~57.~~ 58. "Tank wagon" means a straight truck having multiple compartments designed or used to carry motor fuel;

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~~58.~~ 59. "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;

~~59.~~ 60. "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;

~~60.~~ 61. "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;

~~61.~~ 62. "Throughputter" means any person that:

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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;

~~62.~~ 63. "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;

~~63.~~ 64. "Transport truck" means a semitrailer combination rig designed or used for the purpose of transporting motor fuel over the highways;

~~64.~~ 65. "Transporter" means any operator of a pipeline, barge, railroad or transport truck engaged in the business of transporting motor fuels;

~~65.~~ 66. "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:

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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;

~~66.~~ 67. "Ultimate vendor" means a person that sells motor fuel to the consumer;

~~67.~~ 68. "Undyed diesel fuel" means diesel fuel that is not subject to the United States Environmental Projection Agency dyeing requirements, or has not been dyed in accordance with Internal Revenue Service fuel dyeing provisions;

~~68.~~ 69. "Vehicle fuel tank" means any receptacle on a motor vehicle from which fuel is supplied for the propulsion of the motor vehicle; and

~~69.~~ 70. "Wholesaler" means a person that acquires motor fuel from a supplier or from another wholesaler for subsequent sale and distribution at wholesale.

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SECTION 3. AMENDATORY 68 O.S. 2001, Section 500.4, is amended to read as follows:

Section 500.4 A. A tax is imposed on all gasoline, compressed natural gas, and all diesel fuel used or consumed in this state as follows:

1. Gasoline, sixteen cents ($0.16) per gallon; ~~and~~

2. Diesel fuel, thirteen cents ($0.13) per gallon; and

3. Compressed natural gas, five cents ($0.05) per gasoline gallons equivalent (gge) until the credit authorized pursuant to the provisions of paragraph 1 of subsection A of Section 2357.22 of this title expires. Upon the expiration of the credit authorized pursuant to the provisions of paragraph 1 of subsection A of Section 2357.22 of this title, the rate of tax imposed upon compressed natural gas shall be equal to the tax rate imposed on diesel fuel using gasoline gallons equivalent (gge).

B. A tax is imposed on all gasoline, diesel fuel and kerosene used or consumed in this state for use as fuel to generate power in aircraft engines or for training, testing or research on aircraft engines in the amount of eight one-hundredths of one cent ($0.0008) per gallon. All gasoline, diesel fuel and kerosene sold for use under this subsection shall not be subject to the excise tax levied in subsection A of this section.

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C. Notwithstanding any exemption provided in Section 500.1 et seq. of this title, all gasoline used or consumed in this state for use as fuel for farm tractors or stationary engines and used exclusively for agricultural purposes shall be subject to a tax in the amount of two and eight one-hundredths cents ($0.0208) per gallon. All gasoline sold for use pursuant to this subsection shall not be subject to the excise tax levied in subsection A of this section. The term "farm tractor", as used herein, shall include 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 under the Oklahoma Vehicle License and Registration Act.

D. It is the intent of this section to amend, revise, incorporate and recodify the tax imposed on motor fuel and that the tax shall be conclusively presumed to be a direct tax and shall be a direct tax on the retail or ultimate consumer precollected for the purpose of convenience and facility to the consumer. The levy and assessment on other persons as specified in this act shall be as agents of the state for the precollection of the tax. The provisions of this section shall in no way affect the method of collecting the tax as provided in this act. The tax imposed by this

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section shall be collected and paid at those times, in the manner, and by those persons specified in this act.

SECTION 4. AMENDATORY 68 O.S. 2001, Section 500.6, as last amended by Section 1, Chapter 256, O.S.L. 2010 (68 O.S. Supp. 2010, Section 500.6), is amended to read as follows:

Section 500.6 A. The tax of sixteen cents ($0.16) per gallon of gasoline that is levied by paragraph 1 of subsection A of Section 500.4 of this title, <u>the tax upon compressed natural gas levied by paragraph 3 of subsection A of Section 500.4 of this title,</u> and the tax of two and eight one-hundredths cents ($0.0208) per gallon of gasoline that is levied by subsection C of Section 500.4 of this title, and penalties and interest thereon, collected by the Oklahoma Tax Commission under the levy shall be apportioned and distributed monthly as follows:

1. The first Two Hundred Fifty Thousand Dollars ($250,000.00) of the levy collected each month shall be deposited in the State Treasury to the credit of the State Transportation Fund;

2. One and six hundred twenty-five one-thousandths percent (1.625%) of the levy shall be remitted to the State Treasurer to the credit of the High Priority State Bridge Revolving Fund as created in Section 506 of Title 69 of the Oklahoma Statutes;

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3. Sixty-three and seventy-five one-hundredths percent (63.75%) of the levy shall be deposited in the State Treasury to the credit of the State Transportation Fund to be apportioned as follows:

a. the first Eight Hundred Fifty Thousand Dollars ($850,000.00) collected each fiscal year shall be transferred to the Public Transit Revolving Fund, created in Section 4031 of Title 69 of the Oklahoma Statutes, and

b. the second Eight Hundred Fifty Thousand Dollars ($850,000.00) collected each fiscal year shall be transferred to the Oklahoma Tourism and Passenger Rail Revolving Fund and shall be used by the Department of Transportation:

(1) to contract railroad passenger services, including but not limited to a route linking stations in Oklahoma and Tulsa Counties with other primary points in the national railroad passenger system and passenger rail service within the state, and a route beginning at a station in Oklahoma County and extending north to the Kansas state line in Kay County, and

(2) to provide necessary facility, signaling, and track improvements for those contracted services,

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c. forty-one and two-tenths percent (41.2%) of the monies apportioned to the State Transportation Fund shall be used for any purpose provided for in Section 1502 of Title 69 of the Oklahoma Statutes,

d. nine and eight-tenths percent (9.8%) of the monies apportioned to the State Transportation Fund shall be used to provide funds for the construction and maintenance of farm-to-market roads on the state highway system, and other rural farm-to-market roads and bridges, and

e. any remaining amount of the apportionment shall be deposited into the State Transportation Fund;

4. Twenty-seven percent (27%) of the levy shall be transmitted by the Tax Commission to the various counties of the state, to be apportioned and used as follows:

a. sixty-five and three-tenths percent (65.3%) of the monies apportioned under this paragraph shall be used on the following basis:

(1) forty percent (40%) of such sum shall be distributed to the various counties in the proportion which the county road mileage of each county bears to the entire state road mileage as certified by the Transportation Commission, and

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(2) the remaining sixty percent (60%) of such sum shall be distributed to the various counties on the basis which the population and area of each county bears to the total population and area of the state. The population shall be as shown by the last Federal Decennial Census or the most recent annual estimate provided by the U.S. Bureau of the Census,

b. twenty-three and one-tenth percent (23.1%) of the monies apportioned under this paragraph shall be distributed to the counties in the following manner: One-third (1/3) on area; one-third (1/3) on rural population, defined as including the population of all municipalities with a population of less than five thousand (5,000) according to the latest Federal Decennial Census; and one-third (1/3) on county road mileage, as last certified by the Department of Transportation, as each county bears to the entire area, rural population and road mileage of the state, and

c. eleven and six-tenths percent (11.6%) of the monies apportioned under this paragraph shall be distributed to the various counties of the state based on a

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formula developed by the Department of Transportation and approved by the Department of Transportation County Advisory Board created pursuant to Section 302.1 of Title 69 of the Oklahoma Statutes. The formula shall be similar to the formula currently used for the distribution of monies in the County Bridge Program funds, but shall also take into consideration the effect of the terrain and traffic volume as related to county road improvement and maintenance costs;

5. Three and one hundred twenty-five one-thousandths percent (3.125%) of the levy shall be distributed to the various counties of the state based on a formula developed by the Department of Transportation and approved by the Department of Transportation County Advisory Board created pursuant to Section 302.1 of Title 69 of the Oklahoma Statutes. The formula shall be similar to the formula currently used for the distribution of monies in the County Bridge Program funds, but shall also take into consideration the effect of the terrain and traffic volume as related to county road improvement and maintenance costs;

6. Two and two hundred ninety-seven one-thousandths percent (2.297%) of the levy shall be distributed to the various counties of the state for deposit into the County Bridge and Road Improvement

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Fund of each county based on a formula developed by the Department of Transportation and approved by the Department of Transportation County Advisory Board created pursuant to Section 302.1 of Title 69 of the Oklahoma Statutes to be used for the purposes set forth in the County Bridge and Road Improvement Act. The formula shall be similar to the formula currently used for the distribution of monies in the County Bridge Program funds, but shall also take into consideration the effect of the terrain and traffic volume as related to county road improvement and maintenance costs;

7. One and eight hundred seventy-five one-thousandths percent (1.875%) of the levy shall be transmitted by the Tax Commission to the treasurers of the various incorporated cities and towns of the state in the percentage which the population, as shown by the last Federal Decennial Census or the most recent annual estimate provided by the U.S. Bureau of the Census, bears to the total population of all the incorporated cities and towns in this state. The funds shall be expended for the construction, repair and maintenance of the streets and alleys of the incorporated cities and towns of this state; and

8. Three hundred twenty-eight one-thousandths percent (0.328%) of the levy shall be transmitted by the Tax Commission to the Statewide Circuit Engineering District Revolving Fund as created in Section 687.2 of Title 69 of the Oklahoma Statutes.

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B. 1. The funds apportioned or transmitted pursuant to subparagraphs a, b, and c of paragraph 4 of subsection A of this section, subsection B of Section 500.7 of this title, subsection B of Section 704 of this title, Section 706 of this title, and paragraph 2 of subsection D of Section 707.3 of this title shall be sent to the respective county treasurers and deposited in the county highway fund to be used by the county commissioners for the purpose of constructing and maintaining county highways and bridges.

2. The funds received by any county shall not be diverted to any other county of the state, and shall only be expended under the direction and control of the board of county commissioners in the county to which the funds are appropriated. If any part of the funds is diverted for any other purpose, the county commissioners shall be liable on their bond for double the amount of the money so diverted. This paragraph shall not prohibit counties from entering into cooperative agreements pertaining to the maintenance and construction of roads and bridges.

3. Where any county highway has been laid out over a road already constructed in any county by the use of money raised from county bond issues for that purpose, either alone or by the use of federal or state aid, or both, the county commissioners may set aside out of the funds apportioned to that county, as provided in this section, an amount of money equal to the value of any part

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thereof, of the interest of such county in such highway or bridge, which amount of money shall be considered by the excise board in reducing the levy for the purpose of retiring the bonded indebtedness and interest thereon of the county, and shall be used for investment or deposit in the same manner as provided by law for the disposition of other sinking fund money.

4. In all counties where the county excise board may find it necessary, because of insufficient revenue, to maintain county government out of the general fund, after a levy of ten (10) mills has been made for any fiscal year, the county excise board may appropriate out of any such funds apportioned to the county an amount sufficient to pay the salaries of the county commissioners of the county for the fiscal year.

5. Counties may use funds deposited in the county highway fund for the purpose of matching federal or state funds, provided such funds are available, as necessary to secure assistance in the construction or improvement of the county road system.

C. With regards to the apportionment of the levy as set forth in paragraph 5 of subsection A of this section, paragraph 5 of subsection A of Section 500.7 of this title, and subsection C of Section 707.2 of this title:

1. If any county has an accrued balance of funds which were appropriated to or otherwise accrued in a restricted road

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maintenance fund, such funds shall be deposited directly to the county highway fund of the county;

2. If any county has an accrued balance of funds which were appropriated to or otherwise accrued in the County Road Improvement Fund, or the County Bridge Improvement Fund, such funds shall, by resolution approved by a majority of the board of county commissioners and filed with the Department of Transportation, be deposited in the county highway fund of the county;

3. If any county has an accrued balance of funds which were appropriated to or otherwise accrued in the County Bridge and Road Improvement Fund, ninety-nine percent (99%) of such funds shall be remitted to the respective county treasurer for deposit in the appropriate County Bridge and Road Improvement Fund to be used for the purpose set forth in the County Bridge and Road Improvement Act. The remaining one percent (1%) of such funds will be remitted to the Statewide Circuit Engineering District Revolving Fund; and

4. If any county has an advanced funding agreement with the Department of Transportation, the Department of Transportation shall notify the Tax Commission as to the amount the county is obligated to pay according to the terms of the advanced funding agreement. The obligated amount shall be transferred each month by the Tax Commission to the Department of Transportation to the credit of the County Bridge and Road Improvement Fund from the funds apportioned

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to the county pursuant to paragraph 5 of subsection A of this section. A county may elect to increase the monthly amount to be repaid pursuant to the advanced funding agreement from the funds apportioned to the county, but a county shall not be permitted to reduce the amount agreed to pursuant to the advanced funding agreement.

D. The tax levied on gasoline pursuant to Section 500.4A of this title, and the penalties and interest thereon, collected by the Tax Commission under the levy shall be apportioned and distributed on a monthly basis to the State Highway Construction and Maintenance Fund for the purposes authorized by Section 1502 of Title 69 of the Oklahoma Statutes.

SECTION 5. AMENDATORY 68 O.S. 2001, Section 500.28, as amended by Section 3, Chapter 327, O.S.L. 2006 (68 O.S. Supp. 2010, Section 500.28), is amended to read as follows:

Section 500.28 A. In the event the tax imposed by Section 500.4 of this title is not otherwise precollected, the tax shall be collected:

1. Upon the first receipt of motor fuel when received from a source outside of the state by any wholesaler, retailer or end-user and the tax is imposed upon, and shall be the liability of, any such wholesaler, retailer or end-user who first received the motor fuel into the state; ~~and~~

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2. Upon the first sale or use of motor fuel when produced in this state by any person and the tax is imposed upon the first sale or use by such person. The tax is imposed upon, and shall be the liability of, the producer of the motor fuel; and

3. Upon the first sale of compressed natural gas by a wholesaler to a retailer or end-user and the tax is imposed upon, and shall be the liability of any such wholesaler to remit the same to the Tax Commission on or before the same date and in the same manner as provided in Section 500.20 of this title.

B. In the event the tax imposed by Section 500.4 of this title is not otherwise precollected or collected pursuant to the provisions of subsection A of this section, it shall be collected from the ultimate consumer in accordance with regulations promulgated by the Commission, for the use of motor fuel on the highways by any consumer, unless such person is otherwise exempted pursuant to paragraphs 5, 6 and 7 of Section 500.10 of this title, upon the delivery into the fuel supply tank of a highway vehicle of, including, but not limited to:

1. Any diesel fuel that contains a dye; or

2. Any motor fuel on which a claim for refund has been made.

C. The ultimate vendor of motor fuel, other than a federally recognized Indian tribe, shall be jointly and severally liable for the backup tax precollected by subsection A of this section if the

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ultimate vendor knows or has reason to know that the motor fuel, as to which tax imposed by this act has not been paid, is or will be consumed in a nonexempt use.

SECTION 6. AMENDATORY 68 O.S. 2001, Section 500.33, is amended to read as follows:

Section 500.33 A. Each supplier engaged in business in this state as a supplier shall first obtain a supplier's license.

B. Any person who desires to precollect the tax imposed by this act as a supplier and who meets the definition of a permissive supplier may obtain a permissive supplier's license. Application for or possession of a permissive supplier's license shall not in itself subject the applicant or licensee to the jurisdiction of this state for any other purpose than administration and enforcement of this act.

C. Each terminal operator, other than a supplier licensed under subsection A of this section, engaged in business in this state as a terminal operator shall first obtain a terminal operator's license for each terminal site.

D. Each person, except suppliers, desiring to export motor fuel to a destination outside of this state shall first obtain an exporter's license. The state shall require that any exporter who exports product to another state without first paying the motor fuel

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tax of that destination state to the supplier shall first obtain an exporter's license.

E. Each person who is not licensed as a supplier or bonded importer shall obtain a transporter's license before transporting motor fuel by whatever manner from a point outside this state to a point inside this state, or from a point inside this state to a point outside this state, regardless of whether the person is engaged for hire in interstate commerce or for hire in intrastate commerce.

F. 1. Each person desiring to deliver motor fuel into this state on behalf of such person, for the account of that person, or for resale to a purchaser in this state, from another state in a fuel transport truck or in a pipeline or barge shipment into storage facilities other than a qualified terminal, shall first make application for and obtain either an occasional importer's license, or a bonded importer's license.

2. Paragraph 1 of this subsection shall not apply to persons who exclusively import motor fuel which is exempted because in accordance with paragraph 16 of Section ~~10~~ 500.10 of this ~~act~~ title it has been dyed.

3. Paragraph 1 of this subsection shall not apply to persons who import nonexempt motor fuels meeting the following conditions:

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a. all of the motor fuel is subject to one or more tax precollection agreements with suppliers as provided under Section ~~19~~ 500.19 of this ~~act~~ title,

b. all of the motor fuel tax precollected by the supplier is expressly evidenced on the terminal-issued shipping paper as more specifically provided under Section ~~44~~ 500.44 of this ~~act~~ title, and

c. the Commission has determined that all border states have adopted terminal reporting requirements adequate for the mutual enforcement of this act.

4. A person desiring to import motor fuel to a destination in this state from another specific terminal source state, and who has not entered into an agreement to prepay the motor fuel tax of this state to the supplier or permissive supplier with respect to the imports, shall obtain a valid occasional importer's license, or subject to the bonding requirements of subsection B of Section ~~35~~ 500.35 of this ~~act~~ title, a valid bonded importer's license under paragraph 1 of this subsection. In either event, the person shall:

a. obtain an import verification number from the Commission no sooner than twenty-four (24) hours prior to entering the state for each separate import into this state, but in any event the number shall be obtained prior to entering this state, and

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b. display the handwritten import verification number on the terminal-issued shipping document required under Section ~~50~~ 500.50 of this ~~act~~ title, and

c. comply with the payment requirements under Section ~~18~~ 500.18 of this ~~act~~ title, whichever is applicable.

5. The importers' licenses issued pursuant to this section shall be specific to each source of supply state, and in the event that the other terminal source of supply state shall have adopted reciprocal legislation, or a multi-state compact, providing for collection of destination state tax by the terminal supplier in accordance with terminal-issued shipping papers designating the intended state of destination, then the importer shall be ineligible for a license to import motor fuel outside the bulk transfer system from the other state, and any license to so import from the other state shall be rendered invalid.

G. Each person who is an importer of motor fuel into this state by a tank wagon operating out of or controlling a bulk plant in another state, if the destination of that tank wagon is within twenty-five (25) miles of the border of this state, shall make application for and obtain a license from the Commission prior to engaging in such importation activities. However, registration as a tank wagon operator-importer shall not constitute authorization of such persons to acquire nonexempt motor fuel free of the tax imposed

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by this act at a terminal either within this state or without this state for direct delivery to a location in this state. Any person who possesses a valid importer's license shall be eligible as a tank wagon operator-importer without issuance of a separate license provided the importer also operates one or more bulk plants outside this state. Operators of a tank wagon delivering a product into this state more than twenty-five (25) miles from the border shall be required to apply for an importer's license under subsection F of this section.

H. 1. Each person who engages in the business of selling motor fuel <u>or compressed natural gas</u> at wholesale or retail, or storing or distributing motor fuel <u>or compressed natural gas</u> for resale within this state, shall first obtain a fuel vendor license which shall be operative for all locations controlled or operated by that licensee in this state or in any other state from which the person removes fuel for delivery and use in this state.

2. Each fuel vendor shall maintain detailed records of all purchases and sales for a period of not less than three (3) years.

3. All fuel vendor records shall be maintained in English and Arabic numerals or language acceptable to electronic formats.

4. The Commission may, in its discretion, exempt from paragraph 1 of this subsection any or all classes of persons who possess a

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valid supplier, terminal operator, carrier, importer, tank wagon operator or exporter license.

SECTION 7. AMENDATORY 68 O.S. 2001, Section 701, is amended to read as follows:

Section 701. The following words and phrases when used in this act are hereby defined as follows:

(a) The term "motor vehicle" or "vehicle" means and includes any automobile, truck, truck-tractor, bus, vehicle or mechanical contrivance which is propelled by an internal combustion engine or motor and not used in the air or upon fixed rails or tracks.

(b) The term "person" means and includes every natural person, fiduciary, individual, partnership, firm, association, limited liability company, corporation, business trust, or combination acting as a unit, or any receiver appointed by any state or federal court, and the use of the singular number shall include the plural. Whenever used in any clause prescribing and imposing a fine or imprisonment or both, the term "person" as applied to an association means and includes the parties or members thereof, and as applied to corporations, the officers thereof.

(c) "Commission" or "Tax Commission" means the Oklahoma Tax Commission.

(d) The term "special fuel" or "fuel" means and includes all combustible gases and liquids, including liquefied gases, which

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exist in the gaseous state at a temperature of sixty (60) degrees Fahrenheit and at a pressure of fourteen and seven-tenths (14.7) pounds per square inch absolute, but the term does not include compressed natural gas subject to the levy of tax pursuant to paragraph 3 of subsection A of Section 500.4 of this title.

(e) The term "use" shall mean and include the following: (1) the delivery or placing of special fuel into the fuel supply tank or tanks of any motor vehicle in this state for use in whole or in part to propel such vehicle on the public highways of this state; (2) the consumption on the public highways of Oklahoma of any special fuel imported into this state in the fuel supply tank or tanks of any motor vehicle using the public highways of this state for commercial purposes; (3) the consumption of special fuel in any type of motor vehicle on the public highways of this state for any purpose by any person who refuses to divulge the source of such fuel.

(f) The term "public highway" means and includes every road, highway, street, way or place within this state, of whatever nature, generally open to the use of the public as a matter of right for the purposes of vehicular travel, including a toll highway, and including streets and alleys of any town or city, notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance, or repair.

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(g) The term "gallon" means one (1) United States standard gallon at a temperature of sixty (60) degrees Fahrenheit.

(h) The term "special fuel dealer" shall mean any person engaged in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of any motor vehicle.

(i) The term "special fuel user" shall mean and include any person other than a special fuel dealer, who uses special fuel in this state, within the meanings of the word "use" as defined in this act, and shall include any person who consumes special fuel to propel a motor vehicle upon the public highways of this state when such special fuel has been purchased or obtained from any source free from the payment to this state of the tax levied by this act.

SECTION 8. AMENDATORY 68 O.S. 2001, Section 723, is amended to read as follows:

Section 723. A. In lieu of the special fuel tax imposed by Sections 703, 705, 707.1, 707.2 and 707.3 of this title, there is hereby levied a flat fee of Fifty Dollars ($50.00) on each passenger automobile, and on each pickup truck or van not exceeding one (1) ton in capacity, using liquefied petroleum gas or natural gas as fuel, except that no such fee shall be levied on any vehicle which is the subject of an exemption pursuant to Section 708 of this title. Provided that, should the passenger automobile, pickup truck

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or van have been acquired or should the liquefied petroleum gas or natural gas system be installed on or after July 1, the flat fee shall be Twenty-five Dollars ($25.00) for the remainder of the calendar year, except as hereinafter provided.

B. Beginning January 1, 1991, in lieu of the special fuel tax imposed by Sections 703, 705, 707.1, 707.2 and 707.3 of this title, there is hereby levied a flat fee of One Hundred Dollars ($100.00) on each passenger automobile, and on each pickup truck or van not exceeding one (1) ton in capacity, using ~~compressed natural gas,~~ liquefied natural gas, methanol or "M-85" which is a mixture of methanol and gasoline containing at least eighty-five percent (85%) methanol as fuel, except that no such fee shall be levied on any vehicle which is the subject of an exemption pursuant to Section 708 of this title. Provided that, should the passenger automobile, pickup truck or van have been acquired or should the ~~compressed natural gas,~~ liquefied natural gas, methanol or "M-85" system be installed on or after July 1, the flat fee shall be Fifty Dollars ($50.00) for the remainder of the calendar year, except as hereinafter provided.

C. ~~Beginning January 1, 1993, in~~ In lieu of the special fuel tax imposed by Sections 703, 705, 707.1, 707.2 and 707.3 of this title, there is hereby levied a flat fee of One Hundred Fifty Dollars ($150.00) on each vehicle exceeding one (1) ton in capacity,

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using liquefied petroleum gas, ~~compressed natural gas,~~ liquefied natural gas, methanol or "M-85" as fuel, except that no such fee shall be levied on any vehicle which is the subject of an exemption pursuant to Section 708 of this title. Provided that, should the vehicle be acquired or should the ~~compressed natural gas,~~ liquefied natural gas, methanol or "M-85" system be installed on or after July 1, the flat fee shall be Seventy-five Dollars ($75.00) for the remainder of the calendar year, except as hereinafter provided.

D. Every person operating a vehicle using liquefied petroleum gas, liquefied natural gas, ~~compressed natural gas,~~ methanol or "M-85" as fuel shall make application for and obtain a decal to be issued on a yearly basis by the Oklahoma Tax Commission on forms prescribed and furnished by the Tax Commission.

E. Every person required to make application for and receive a decal under this section shall, at the time of making said application, remit to the Tax Commission the total amount of the fee due.

F. Each decal issued by the Tax Commission pursuant to the provisions of this section, shall expire on December 31 of every year, and in addition thereto said decals shall be displayed in the lower right hand corner of the front windshield of said vehicle. Upon receipt of satisfactory proof by the Tax Commission that it has become necessary to replace the windshield of the vehicle for which

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the decal was issued, another decal shall be issued by the Tax Commission as a replacement for a fee of One Dollar ($1.00).

G. When any vehicle using liquefied petroleum gas, liquefied natural gas, ~~compressed natural gas,~~ methanol or "M-85" as fuel and displaying a current decal as provided in this section is sold, such decal shall remain with the vehicle sold, unless the equipment installed to enable the vehicle to use liquefied petroleum gas, liquefied natural gas, ~~compressed natural gas,~~ methanol or "M-85" has been removed from the vehicle before the sale.

H. When the aforementioned equipment has been removed before the sale, the seller of the vehicle shall also remove the decal required of vehicles using liquefied petroleum gas, liquefied natural gas, ~~compressed natural gas,~~ methanol or "M-85". The removed decal, a receipt from the Oklahoma Tax Commission showing that the fee required has been paid for the current year, and the payment of a one-dollar fee for duplicate decal shall entitle the seller to make application for and obtain a new decal to be used for the remainder of the year on any vehicle using liquefied petroleum gas, liquefied natural gas, ~~compressed natural gas,~~ methanol or "M-85" in accordance with the provisions of this section.

I. Provisions contained in Sections 701 through 721 of this title shall not apply to any vehicle using liquefied petroleum gas, liquefied natural gas, ~~compressed natural gas,~~ methanol or "M-85".

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J. All funds derived from the fee imposed by subsection A of this section shall be deposited annually in the General Revenue Fund of the State Treasury by the Tax Commission. When any person fails to obtain a current decal within thirty (30) days of the date said decal is required as provided in this section, there shall become due and payable a penalty of twenty percent (20%) of the fee in addition to the fee. Said penalty to be deposited in the same manner as the fee pursuant to this subsection.

K. All funds derived from the fee imposed by subsections B and C of this section shall be collected by the Oklahoma Tax Commission and apportioned annually to the State Transportation Fund. When any person fails to obtain a current decal within thirty (30) days of the date such decal is required as provided in this section, there shall become due and payable a penalty of twenty percent (20%) of the fee in addition to the fee. Such penalty shall be deposited in the same manner as the fee pursuant to this subsection.

SECTION 9. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

Until the effective date of this act, the Oklahoma Tax Commission shall presume that all sales of compressed natural gas for use in a vehicle for fuel shall have been delivered into the fuel supply system of a vehicle bearing a decal issued by the Tax

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Commission pursuant to the provisions of Section 723 of Title 68 of the Oklahoma Statutes.

SECTION 10. This act shall become effective January 1, 2012.

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated 03-03-2011 - DO PASS, As Amended and Coauthored.

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