

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 3698

By: Calvey

AS INTRODUCED

An Act relating to revenue and taxation; stating purpose; imposing tax on gasoline and diesel fuel; establishing amount of tax per gallon; requiring deposit of certain revenue, penalties and interest in certain fund; amending 68 O.S. 2011, Section 500.10, which relates to exemption from motor fuels tax; extending exemptions to additional tax levy; amending 69 O.S. 2011, Section 1521, as last amended by Section 93, Chapter 15, O.S.L. 2013 (69 O.S. Supp. 2017, Section 1521), which relates to the Rebuilding Oklahoma Access and Driver Safety Fund; modifying calculation of certain annual apportionments; creating tax credit for certain motor fuel tax expenses; providing credit calculation method; limiting eligibility for credit; requiring certain periodic estimations; requiring certain publication of estimates; defining phrase; and providing for codification.

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 500.4B of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For the purpose of providing revenue for the support of the functions of state government, in addition to the tax imposed by

1 Section 500.4 of Title 68 of the Oklahoma Statutes, there is hereby
2 imposed a tax on all gasoline and diesel fuel used or consumed in
3 this state as follows:

4 1. Gasoline, four cents (\$0.04) per gallon;

5 2. Diesel fuel, seven cents (\$0.07) per gallon;

6 B. All remaining revenue from the tax imposed by subsection A
7 of this section and penalties and interest thereon collected by the
8 Oklahoma Tax Commission, after the requirements of Section 500.63 of
9 Title 68 of the Oklahoma Statutes have been fulfilled, shall be
10 deposited in the State Treasury to the credit of the Rebuilding
11 Oklahoma Access and Driver Safety Fund created in Section 1521 of
12 Title 69 of the Oklahoma Statutes.

13 SECTION 2. AMENDATORY 68 O.S. 2011, Section 500.10, is
14 amended to read as follows:

15 Section 500.10 Subject to the procedural requirements and
16 conditions set out in this section and Sections 500.11 through
17 500.17 of this title, the following are exempt from the ~~tax~~ taxes on
18 motor fuel imposed by Section 500.4 of this title ~~on motor fuel and~~
19 Section 1 of this act:

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

22 a. exported by a supplier who is licensed in the
23 destination state, or
24

1 b. sold by a supplier to a licensed exporter for
2 immediate export;

3 2. Motor fuel which was acquired by an unlicensed exporter and
4 as to which the tax imposed by Section 500.4 of this title has
5 previously been paid or accrued and was subsequently exported by
6 transport truck by or on behalf of the licensed exporter in a
7 diversion across state boundaries properly reported in conformity
8 with Section 500.46 of this title;

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

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

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

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

8 7. Motor fuel used solely and exclusively as fuel to propel
9 motor vehicles on the public roads and highways of this state, when
10 leased or owned and being operated for the sole benefit of a county,
11 city, town, a volunteer fire department with a state certification
12 and rating, rural electric cooperatives, rural water and sewer
13 districts, rural irrigation districts organized under the Oklahoma
14 Irrigation District Act, conservancy districts and master
15 conservancy districts organized under the Conservancy Act of
16 Oklahoma, rural ambulance service districts, or federally recognized
17 Indian tribes;

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

23 9. Gasoline, diesel fuel and kerosene sold for use as fuel to
24 generate power in aircraft engines, whether in aircraft or for

1 training, testing or research purposes of aircraft engines, except
2 as to eight one-hundredths of one cent (\$0.0008) per gallon as
3 provided in subsection B of Section 500.4 of this title;

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

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

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

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

23 13. Diesel fuel used as heating oil, or in railroad locomotives
24 or any other motorized flanged-wheel rail equipment, or used for

1 other nonhighway purposes other than as expressly exempted under
2 another provision;

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

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

8 16. Dyed diesel fuel;

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

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

16 SECTION 3. AMENDATORY 69 O.S. 2011, Section 1521, as
17 last amended by Section 93, Chapter 15, O.S.L. 2013 (69 O.S. Supp.
18 2017, Section 1521), is amended to read as follows:

19 Section 1521. A. There is hereby created in the State Treasury
20 a fund to be known as the "Rebuilding Oklahoma Access and Driver
21 Safety Fund". The fund shall be a continuing fund, not subject to
22 fiscal year limitations, and shall consist of all appropriations and
23 transfers made by the Legislature. All monies accruing to the
24 credit of the fund are hereby appropriated and may be budgeted and

1 expended each fiscal year by the Department of Transportation for
2 the purposes authorized by subsection G of this section.

3 Expenditures from the fund shall be made upon warrants issued by the
4 State Treasurer against claims filed as prescribed by law with the
5 Director of the Office of Management and Enterprise Services for
6 approval and payment.

7 B. ~~There~~ Beginning the effective date of this act, except for
8 an amount equivalent to the amount of revenue apportioned pursuant
9 to Section 1 of this act, there shall be apportioned to the funds
10 specified in this subsection from the monies that would otherwise be
11 apportioned to the General Revenue Fund by Section 2352 of Title 68
12 of the Oklahoma Statutes from the revenues derived pursuant to
13 subsections A, B and E of Section 2355 of Title 68 of the Oklahoma
14 Statutes amounts as follows:

15 1. For each fiscal year, subject to the provisions of paragraph
16 3 of this subsection, and, except for the amount prescribed by
17 subparagraph a of this paragraph, subject to any reductions required
18 by subsection F of this section, there shall be apportioned to the
19 Rebuilding Oklahoma Access and Driver Safety Fund:

- 20 a. for the fiscal year beginning July 1, 2011, the first
21 Thirty-five Million Seven Hundred Thousand Dollars
22 (\$35,700,000.00), for the fiscal year beginning July
23 1, 2012, the first Forty-one Million Seven Hundred
24 Thousand Dollars (\$41,700,000.00) and for the fiscal

1 year beginning July 1, 2013, and for each fiscal year
2 thereafter, Fifty-nine Million Seven Hundred Thousand
3 Dollars (\$59,700,000.00), which shall be allocated and
4 used by the Department of Transportation first for the
5 purpose of making any required payments for principal,
6 interest or other costs of borrowing with respect to
7 the obligations issued pursuant to Section 341 of
8 Title 73 of the Oklahoma Statutes and after any such
9 required payment has been made then for the purposes
10 otherwise authorized by this section, plus

11 b. the total amount apportioned to the Rebuilding
12 Oklahoma Access and Driver Safety Fund for the
13 preceding fiscal year which, except for the amount
14 prescribed by subparagraph a of this paragraph, shall
15 be apportioned before any other amount is apportioned
16 pursuant to Section 2352 of Title 68 of the Oklahoma
17 Statutes, plus

18 c. an additional incremental amount which shall not be in
19 excess of the amount prescribed by subparagraph a of
20 this paragraph and that is required in order for the
21 total apportionment to the Rebuilding Oklahoma Access
22 and Driver Safety Fund from all sources for such
23 fiscal year to equal Five Hundred Seventy-five Million
24 Dollars (\$575,000,000.00).

1 All amounts apportioned pursuant to this paragraph shall be
2 divided into twelve equal amounts to be apportioned each month
3 during the fiscal year except the amount specified in subparagraph a
4 of this paragraph which amount shall be allocated in its full amount
5 in cash not later than July 30 each year or such later date as may
6 be required in order for the amount to be allocated in cash;

7 2. For each fiscal year after the apportionments required by
8 paragraph 1 of this subsection have been made:

9 a. the next Two Million Dollars (\$2,000,000.00) shall be
10 apportioned to the Oklahoma Tourism and Passenger Rail
11 Revolving Fund created pursuant to Section 325 of
12 Title 66 of the Oklahoma Statutes to be used for
13 capital and operating costs for the "Heartland Flyer"
14 rail project, and

15 b. the next Three Million Dollars (\$3,000,000.00) shall
16 be apportioned to the Public Transit Revolving Fund
17 created pursuant to Section 4031 of this title to be
18 used for purposes authorized by law other than the
19 purpose described by subparagraph a of this paragraph.

20 All amounts apportioned pursuant to this paragraph shall be
21 divided into twelve equal amounts to be apportioned each month
22 during the fiscal year; and

23 3. For each fiscal year after the first fiscal year in which
24 the total apportionment to the Rebuilding Oklahoma Access and Driver

1 Safety Fund as provided by paragraph 1 of this subsection and from
2 other sources equals Five Hundred Seventy-five Million Dollars
3 (\$575,000,000.00), except for an amount equivalent to the amount of
4 revenue apportioned pursuant to Section 1 of this act, the first
5 Five Hundred Seventy-five Million Dollars (\$575,000,000.00)
6 collected pursuant to subsections A, B and E of Section 2355 of
7 Title 68 of the Oklahoma Statutes and apportioned pursuant to
8 Section 2352 of Title 68 of the Oklahoma Statutes that would
9 otherwise be apportioned to the General Revenue Fund shall be
10 apportioned to the Rebuilding Oklahoma Access and Driver Safety
11 Fund. With the exception of the amount prescribed by subparagraph a
12 of paragraph 1 of this subsection, all amounts apportioned pursuant
13 to this paragraph shall be divided into twelve equal amounts to be
14 apportioned each month during the fiscal year.

15 C. The apportionments of revenues required by subparagraphs a,
16 b and c of paragraph 1 of subsection B of this section shall be made
17 until the total annual apportionment from such sources in addition
18 to the apportionment made pursuant to Section 1 of this act to the
19 Rebuilding Oklahoma Access and Driver Safety Fund equals Five
20 Hundred Seventy-five Million Dollars (\$575,000,000.00). After such
21 annual apportionment level is reached, the apportionment to the fund
22 shall be governed by the provisions of paragraph 3 of subsection B
23 of this section.

1 D. The monies apportioned to the Rebuilding Oklahoma Access and
2 Driver Safety Fund shall not be used to supplant or replace existing
3 state funds used for transportation purposes.

4 E. In order to ensure that the funds from the ROADS Fund are
5 used to enhance and not supplant state funding for the Department of
6 Transportation, the State Board of Equalization shall examine and
7 investigate expenditures from the fund each year. For purposes of
8 this examination, monies used to retire outstanding debt obligations
9 for which the Department of Transportation is responsible shall be
10 excluded. At the meeting of the State Board of Equalization held
11 within five (5) days after the monthly apportionment in February of
12 each year, the State Board of Equalization shall issue a finding and
13 report which shall state whether expenditures from the ROADS Fund
14 were used to enhance or supplant state funding for the Department of
15 Transportation. If the State Board of Equalization finds that state
16 funding for the Department of Transportation was supplanted by funds
17 from the ROADS Fund, the Board shall specify the amount by which
18 such funding was supplanted. In this event, the Legislature shall
19 not make any appropriations for the ensuing fiscal year until an
20 appropriation in that amount is made to replenish state funding for
21 the Department of Transportation.

22 F. In the event that the Director of the Office of Management
23 and Enterprise Services declares a General Revenue Fund revenue
24 failure pursuant to Section 34.49 of Title 62 of the Oklahoma

1 Statutes, and agency allocations are reduced pursuant to the
2 provisions of Section 34.49 of Title 62 of the Oklahoma Statutes,
3 the amounts that would otherwise be apportioned to the ROADS Fund
4 by:

5 1. Subparagraph a of paragraph 1 of subsection B of this
6 section, only to the extent that the amount is not required for debt
7 service related to the obligations authorized pursuant to Section
8 341 of Title 73 of the Oklahoma Statutes;

9 2. Subparagraphs b and c of paragraph 1 of subsection B of this
10 section; and

11 3. Subparagraphs a and b of paragraph 2 of subsection B of this
12 section,
13 shall be reduced by a percentage equal to that required of the
14 General Revenue Fund appropriations to state agencies and such
15 reductions shall occur during the entire fiscal year and for any
16 month during which such reductions are required by the Office of
17 Management and Enterprise Services and by the same percentage as
18 that required of the agencies for such General Revenue Fund
19 appropriations.

20 G. The Department of Transportation shall use the monies in the
21 Rebuilding Oklahoma Access and Driver Safety Fund for:

22 1. The construction and maintenance of state roads, bridges and
23 highways;

1 2. The direct expenses of operating and maintaining the state
2 highway system, including bridges;

3 3. Direct expenses incurred in constructing, repairing, and
4 maintaining state highways, farm-to-market roads, county highways
5 and bridges as authorized by law;

6 4. Matching federal funds;

7 5. The purchase of materials, tools, machinery, motor vehicles,
8 and equipment necessary or convenient for the construction and
9 maintenance of the state highway system and bridges;

10 6. Debt service incurred prior to January 1, 2006, for Capital
11 Improvement Program bonds sold pursuant to Section 2001 of this
12 title; and

13 7. Debt service incurred on or after July 1, 2009, with respect
14 to obligations authorized to be issued pursuant to Section 341 of
15 Title 73 of the Oklahoma Statutes.

16 H. From the monies allocated pursuant to the provisions of
17 subparagraph a of paragraph 1 of subsection B of this section each
18 fiscal year, the Department of Transportation shall make payments
19 required for the payment of principal, interest and other costs
20 related to the obligations issued by the Oklahoma Capitol
21 Improvement Authority as authorized by Section 341 of Title 73 of
22 the Oklahoma Statutes and such payments shall be made by the
23 Department each fiscal year before such monies are used for any
24 other purpose.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2357.1B of Title 68, unless
3 there is created a duplication in numbering, reads as follows:

4 A. There shall be allowed a credit against the tax imposed by
5 Section 2355 of this title for eligible expenses incurred by
6 entities related to motor fuel taxes on gasoline and diesel fuel
7 purchased in the state.

8 B. The credit allowed by subsection A of this section shall be
9 calculated as follows:

10 1. For a filer that would be eligible to otherwise itemize the
11 cost of fuel as a business expense on their return, the credit shall
12 be calculated as the applicable rate of taxation provided in Section
13 1 of this act against the filer's actual number of gallons of such
14 fuel purchased during the tax year; and

15 2. For a filer that would not be eligible to otherwise itemize
16 the cost of fuel as a business expense on their return, the credit
17 shall be calculated as the applicable rate of taxation provided in
18 Section 1 of this act against the applicable average number of
19 gallons consumed during the tax year, as published by the Tax
20 Commission pursuant to subsection D of this section.

21 C. Such credit shall not be allowed for any amounts for which
22 the entity claims or receives a different income tax credit,
23 exemption or deduction.

1 D. Quarterly, the Tax Commission shall estimate and publish on
2 the Tax Commission website the average number of gallons of gasoline
3 consumed and the average number of gallons of diesel consumed in the
4 state per vehicle in the previous calendar quarter.

5 E. For purposes of this section the phrase "average number of
6 gallons consumed during the tax year" shall mean the sum of the four
7 applicable per quarter estimates published pursuant to subsection D
8 of this section that constitute the filer's tax year.

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