

State of Arkansas

76th General Assembly

Second Extraordinary Session, 1987

SENATE BILL 2

By: Senator Hoofman

"AN ACT TO PROVIDE A TAX TO BE IMPOSED ON ALL VEHICLES, WITH CERTAIN EXCEPTIONS, WHICH THE USERS OF SUCH VEHICLES ELECT TO OPERATE ON THE HIGHWAYS, ROADS AND STREETS OF THIS STATE HAVING DECLARED GROSS WEIGHTS IN EXCESS OF 73,280 POUNDS; TO REPEAL ACT 685 OF 1983; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Any motor vehicle registered in Arkansas at the maximum registration fee for 68,001 to 73,280 pounds, as provided in Subsection (7) of Subsection (C) of Section 24 of Act 65 of 1929, as amended, including any motor vehicle registered under the International Registration Plan at the maximum fee for its Arkansas apportioned mileage or any motor vehicle registered in any non-IRP state to carry in excess of 73,280 pounds, shall be authorized to operate in this State with a gross loaded weight of up to 80,000 pounds, in accordance with Act 7 of 1983, provided said vehicle complies with the appropriate Subsections of the following Section 2 of this Act and, for the qualification year beginning July 1, 1988 and for each year thereafter, with the appropriate Subsections of the following Section 3 of this Act and the laws of this State concerning Motor Vehicle Registration and Licensing.

SECTION 2. (a) As used in this Section of this Act, the following terms shall have the following meanings:

(1) "Department" means the Arkansas State Highway and Transportation Department;

(2) "Motor Vehicle", as used herein, means all cargo vehicles required to be registered for use upon the public highways of this State, designed, used or maintained primarily for the transportation of property and having a declared gross weight of 73,281 pounds or more. For the purpose

hereof, truck-tractors, single unit trucks, semi-trailers and trailers operated in combination thereof shall constitute a single vehicle. The person having the use or control, or the right to the use or control of the part of such a vehicle furnishing the motive power is the highway user with respect to the entire vehicle and is accordingly subject as such to the provisions of this Section of this Act;

(3) "Truck" includes the terms "truck" or "truck-tractor" and "semi-trailer" or combinations of "trailers" or "semi-trailers" when operated in combination with a truck or truck-tractor;

(4) "User" means any person or entity having the use and control, or the right to the use and control, of any motor vehicle. Use and control of a motor vehicle includes vehicles under a long-term lease and not vehicles under a trip lease;

(5) "Highway" includes all highways, roads, and streets of this State generally open to the use of the public as a way for vehicular traffic;

(6) "Gross weight" means the actual weight of the truck or truck-tractor, plus the actual weight of the heaviest semi-trailer or trailer or combinations thereof with which it is to be operated in combination plus the actual weight of the heaviest load to be carried thereon; and

(7) "Arkansas Registered Vehicle" or "Arkansas Registered Truck" means a vehicle registered in Arkansas by a user who is an Arkansas resident, and bearing an Arkansas license plate.

(b) A tax is hereby imposed upon all users, as defined in Subsection (a), above, of motor vehicles, as herein defined, in compensation for the use of the highways of this State. Such tax shall be in addition to all other taxes and fees now required to be paid on such vehicles.

(c) The 1987 Tax shall not apply to any motor vehicle whose declared gross weight, as defined in Subsection (a), above, is 73,280 pounds or less, nor to vehicles licensed exclusively for hauling unfinished and unprocessed farm products, forest products, and clay minerals and ores, from the point of production, harvesting or severance to the point at which the same shall first undergo any processing, preparation for processing, conversion or transformation from their raw, natural or severed state, nor to vehicles used exclusively for hauling animal feed by owners of livestock or poultry for consumption by livestock or poultry owned by them, nor to any vehicle owned and operated by the United States of America or the State of Arkansas, or any political

subdivision thereof.

(d) The provisions of this Section of this Act shall not apply to any motor vehicle used on an interstate trip with an origin or destination within 10 miles of the geographic boundaries of this State, provided the one-way travel distance in this State is not over 10 miles.

(e) (1) The user of every vehicle subject to this Section of this Act, before operating such vehicle over the highways of this State, shall qualify such vehicle with the Department. Qualifications shall be made by application to the Department on forms to be provided by said Department. The Department may accept applications from owners of leasing and rental companies that lease vehicles under long term leases to customer lessees.

(2) Upon receipt of such application and payment of the tax as hereinafter determined, the Department shall make appropriate record of the vehicle qualified and certify such qualification on the applicant's 1987 Tax cab card, one of which is to be carried in the cab of the vehicle at all times. The Department shall also issue a decal to the user, which shall, by the user, be affixed to the cab of such vehicle.

(3) Any user qualifying a motor vehicle within his fleet shall be responsible for the removal of the decal and cab card when that vehicle is terminated from the user's fleet; failure to remove such decal and cab card, which shall be retained by the user as proof of removal, shall result in a penalty of twenty dollars (\$20.00) per month for the remaining months of the qualification period after the vehicle was terminated from that user's fleet.

(f) (1) The tax hereby imposed on all "users" of "motor vehicles", as such terms are defined in this Section of this Act, shall be applicable from and after the effective date of this Act, provided, all users who have qualified vehicles pursuant to Act 685 of 1983 and have paid taxes for the qualification year beginning July 1, 1987 and ending June 30, 1988 on such vehicles pursuant to that Act shall be allowed to operate on the highways, roads and streets of this State until July 1, 1988 without payment of any additional taxes on those previously qualified vehicles that may be due pursuant to this Section of this Act, provided, further, that all other users of motor vehicles shall be subject to the provisions of this Section of this Act.

(2) At the time of such qualification of any additional vehicle subject to this tax, the Department shall apply the mileage rate, utilizing the gross weight declared in the application for the vehicle, according to the

following table:

Vehicle Weight (pounds)	Mileage Rate (dollars)
73,281 - 80,000	\$.03

The tax determined under this provision for every additional vehicle subject to the tax shall be three cents (\$.03) per mile for all miles estimated to be traveled in Arkansas for the period from qualification with the Department through June 30, 1988. Vehicles added to the fleet during such qualification period must qualify by paying three cents (\$.03) per mile for miles to be traveled in the remainder of the qualifying period. Underpayments and overpayments for additionally qualified vehicles shall be reconciled based upon actual mileage traveled in the State during the qualification period with the mileage estimated for the period and an amended application submitted for refund or with any additional taxes due.

(g) (1) The Department is hereby authorized to collect those taxes and fees imposed by this Section upon all users subject to the provisions of this Act, to make timely deposits into the State Treasury of all such monies collected by the Department, and to administer the provisions of this section of this Act, including the right to inspect and audit at reasonable times, at any place, without prior notice, the books, records and documents of any user or other qualifying person required to pay the 1987 Tax hereby imposed. On any audits conducted by the Department, the user must provide the requested records at a location within the State of Arkansas or pay the expenses for a Departmental auditor to travel to the location of such requested records, provided, such expenses shall be charged only when the audit results in the assessment of additional taxes.

(2) No assessment shall be made upon any user under the 1987 Tax Law after the expiration of three years from the date the user's application for qualification was made, provided, in those cases where such an application is deemed to have been fraudulently made, an assessment may be made for any prior qualification period or periods.

(h) The user of any motor vehicle subject to the provisions of this Section, may, in lieu of qualification in accordance with the provisions of Subsection (e) of this Section, pay a trip permit fee, provided, no Arkansas registered vehicle shall be allowed to utilize such a trip permit. If the user elects to utilize a trip permit, such trip permit for trucks with a declared gross weight of 73,281 pounds through 80,000 pounds shall be issued

at a fee of eight dollars (\$8.00) for each 100 miles of travel, rounded to the nearest 100 miles, whether loaded or unloaded. Said permits shall be issued by the Department on such forms as it deems appropriate and shall be retained by the user for a period of three (3) years as proof of payment of any liability determined through audit.

(i) The tax provided for in this Section of this Act must be paid by the users of all applicable vehicles using the highways of this State, and no reciprocal agreement or agreement of any nature heretofore or hereafter entered into between officials of this State and those of any other State may exempt any user of such vehicles using the highways of this State from the provisions of this Section of this Act and payment of the tax levied by this Section of this Act.

(j) Any user, or other qualifying person, of any vehicle subject to the provisions of this Section of this Act found operating over the highways of this State without complying with this Section or without having available in or on the cab thereof the appropriate cab card and decal or trip permit required by this Section, shall be guilty of a misdemeanor and upon conviction thereof shall each be punished by a fine of no less than two hundred dollars (\$200.00) and not more than five hundred dollars (\$500.00) for the first offense and of no less than five hundred dollars (\$500.00) and not more than one thousand dollars (\$1000.00) for each subsequent offense.

(k) This Section of this Act shall be liberally construed to effectuate the purpose thereof.

(l) All fees, taxes, penalties and interest collected under the provisions of this Section of this Act shall be classified as "special revenues" and shall be deposited in the State Treasury, and the State Treasurer shall, after deducting therefrom the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, transfer on the last business day of each month: 15% of the amount thereof, to the County Aid Fund; 15% of the amount thereof, to the Municipal Aid Fund; and 70% of the amount thereof, to the State Highway Department Fund, such funds to be further disbursed in the same manner and used for the same purposes as set out in the "Arkansas Highway Revenue Distribution Law".

SECTION 3. (a) As used in this Section of this Act, the following terms

shall have the following meanings:

(1) "Department" means the Arkansas State Highway and Transportation Department;

(2) "Motor Vehicle", as used herein, means all cargo vehicles required to be registered for use upon the public highways of this State, designed, used or maintained primarily for the transportation of property and having a declared gross weight of 73,281 pounds or more. For the purpose hereof, truck-tractors, single unit trucks, semi-trailers and trailers operated in combination thereof shall constitute a single vehicle. The person having the use or control, or the right to the use or control of the part of such a vehicle furnishing the motive power is the highway user with respect to the entire vehicle and is accordingly subject as such to the provisions of this Section of this Act;

(3) "Truck" includes the terms "truck" or "truck-tractor" and "semi-trailer" or combinations of "trailers" or "semi-trailers" when operated in combination with a truck or truck-tractor;

(4) "User" means any person or entity having the use and control, or the right to the use and control, of any motor vehicle. Use and control of a motor vehicle includes vehicles under a long-term lease and not vehicles under a trip lease;

(5) "Highway" includes all highways, roads, and streets of this State generally open to the use of the public as a way for vehicular traffic;

(6) "Declared Gross Weight" means the maximum gross weight at which a vehicle is authorized to operate, as shown on the vehicle license registration.

(7) "Gross weight" means the actual weight of the truck or truck-tractor, plus the actual weight of the heaviest semi-trailer or trailer or combinations thereof with which it is to be operated in combination plus the actual weight of the heaviest load to be carried thereon;

(8) "Arkansas Registered Vehicle" or "Arkansas Registered Truck" means a vehicle registered in Arkansas by a user who is an Arkansas resident, and bearing an Arkansas license plate;

(9) "Net Laden Miles" as used in this Section shall mean the total miles driven in Arkansas by the user vehicle less the total unladen miles traveled in Arkansas by the user vehicle; and

(10) "Unladen Miles" means those miles traveled with the vehicle totally

empty and free of cargo.

(b) (1) An annual tax is hereby imposed upon all users, as defined in Subsection (a), above, of motor vehicles, as herein defined, in compensation for the use of the highways of this State. Such tax shall be in addition to all other taxes and fees now required to be paid on such vehicles.

(2) Any Arkansas registered vehicle user who desires to haul in excess of 73,280 pounds shall notify the Arkansas Department of Finance and Administration at the time of license registration. The Arkansas Department of Finance and Administration shall then record the maximum declared gross weight on the vehicle license registration and notify the Arkansas State Highway and Transportation Department, in writing, of those vehicles registered in excess of 73,280 pounds.

(c) The Tax imposed by this Act shall not apply to any motor vehicle whose declared gross weight, as defined in Subsection (a), above, is 73,280 pounds or less, nor to vehicles licensed exclusively for hauling unfinished and unprocessed farm products, forest products, and clay minerals and ores, from the point of production, harvesting or severance to the point at which the same shall first undergo any processing, preparation for processing, conversion or transformation from their raw, natural or severed state, nor to vehicles used exclusively for hauling animal feed by owners of livestock or poultry for consumption by livestock or poultry owned by them, nor to any vehicle owned and operated by the United States of America or the State of Arkansas, or any political subdivision thereof.

(d) The provisions of this Section of this Act shall not apply to any motor vehicle used on an interstate trip with an origin or destination within 10 miles of the geographic boundaries of this State, provided the one-way travel distance in this State is not over 10 miles.

(e) (1) The user of every vehicle subject to this Section of this Act, before operating such vehicle over the highways of this State, shall annually qualify such vehicle with the Department. Qualifications shall be made by application to the Department on forms to be provided by said Department. The Department may accept applications from owners of leasing and rental companies that lease vehicles under long term leases to customer lessees.

(2) Upon receipt of such application and payment of the tax as hereinafter determined, and in the manner hereinafter provided, the Department shall make appropriate record of the vehicle qualified and certify such annual

qualification on the applicant's Tax cab card, one of which is to be carried in the cab of the vehicle at all times. The Department shall also issue a decal to the user, which shall, by the user, be affixed to the cab of such vehicle.

(3) Any user qualifying a motor vehicle within his fleet shall be responsible for the removal of the decal and cab card when that vehicle is terminated from the user's fleet; failure to remove such decal and cab card, which shall be retained by the user as proof of removal, shall result in a penalty of twenty-five dollars (\$25.00) per month for the remaining months of the qualification period after the vehicle was terminated from that user's fleet.

(f) At the time of such qualification of any vehicle subject to this tax, the Department shall apply the mileage rate, utilizing the gross weight declared in the application for the vehicle, according to the following table:

Vehicle Weight (pounds)	Mileage Rate (dollars)
73,281 - 80,000	\$.03

The tax determined under this provision for every vehicle subject to the tax shall be three cents (\$.03) per mile for the Net Laden Miles estimated to be traveled in Arkansas for the forthcoming twelve months (July 1 through June 30). The user may, at his option, pursuant to regulations promulgated by the Department, elect to make equal quarterly payments of his annual tax liability. Vehicles added to the fleet during such twelve month qualification period must qualify by paying three cents (\$.03) per mile for the estimated net laden miles to be traveled in Arkansas in the remainder of the qualifying year, in the manner allowed under regulations promulgated by the Department. Underpayments and overpayments may be reconciled at the time of any quarterly estimate payment, or as otherwise allowed by regulation, based upon actual net laden miles traveled in the State during the qualification year with the mileage estimated for the year and an amended application submitted for refund (or credit), or with any additional taxes due. Failure to make any quarterly payment as provided by regulation shall result in the cancellation by the Department of the user's authority to operate in this State. Any user qualifying a motor vehicle with the Department must, at the end of the qualification period, submit to the Department such records as the Department deems appropriate according to regulations promulgated by the Department indicating the total number of miles traveled through the State, both laden and unladen



by the users vehicle or vehicles. Such summary records submitted by the user must be supported by source documents retained by the user. In all cases specific records must be maintained by the user indicating the above information for every trip whether laden or unladen, pursuant to rules and regulations to be promulgated by the Department. Such mileage reports and records shall be subject to inspection and audit by the Department in the same manner as other books, records and documents of the user are subject to inspection and audit as provided by this Section of this Act. Any claims made by the user on the applications and the initial acceptance by the Department of those claims, for application purposes, does not preclude a later decision by the Department based on specific audit findings during an audit of the user. Any user who shall falsify any records required by this Section of this Act shall be guilty of a Class A misdemeanor.

(g) (1) The Department is hereby authorized to collect those taxes and fees imposed by this Section upon all users subject to the provisions of this Act, to make timely deposits into the State Treasury of all such monies collected by the Department, and to administer the provisions of this Section of this Act, including the right to inspect and audit at reasonable times, at any place, without prior notice, the books, records and documents of any user or other qualifying person required to pay the Tax hereby imposed. On any audits conducted by the Department, the user must provide the requested records at a location within the State of Arkansas or pay the expenses for a Departmental auditor to travel to the location of such requested records, provided, such expenses shall be charged only when the audit results in the assessment of additional taxes.

(2) No assessment shall be made upon any user under the Tax imposed by this Act after the expiration of three years from the date the user's application for qualification was made, provided, in those cases where such an application is deemed to have been fraudulently made, an assessment may be made for any prior qualification period or periods.

(3) Any user who neglects or refuses to pay the Tax imposed by this Act as so provided herein shall be liable for the full tax amount owed plus interest at a rate based on the United States Federal Reserve Prime interest lending rate applicable at the end of the calendar quarter prior to the determination of the actual liability plus three percent (3%). If such liability, at the end of the qualification period, based upon the difference between the

"estimated" net laden miles and the actual net laden miles supported by the users records, exceeds ten percent (10%), a twenty percent (20%) penalty shall also be imposed. Any user making quarterly payments who fails to make such quarterly payments, as provided by regulation, shall be assessed a 5% penalty in addition to an interest charge to be calculated in the same manner as provided above. Delinquent taxes are a lien on all motor vehicles owned or operated by the user for payment of the tax. If any tax remains delinquent for thirty (30) days or if any motor vehicle subject to the lien is about to be removed from the State, the Department may impound the motor vehicle subject to payment of the delinquent taxes due.

(h) The user of any motor vehicle subject to the provisions of this Section, may, in lieu of qualification in accordance with the provisions of Subsection (e) of this Section, pay a trip permit fee, provided, no Arkansas registered vehicle shall be allowed to utilize a trip permit, such trip permit for trucks with a declared gross weight of 73,281 pounds through 80,000 pounds shall be issued at a fee of eight dollars (\$8.00) for each 100 miles of travel, rounded to the nearest 100 miles, provided, motor vehicle travel in the State, unladen, as that term is defined in Subsection (a), above, shall be exempt from payment of the trip permit fee. Said permits shall be issued by the Department pursuant to regulations to be promulgated by the Department on such forms as it deems appropriate and shall be retained by the user for a period of three (3) years as proof of payment of any liability determined through audit.

(i) The tax provided for in this Section of this Act must be paid by the users of all applicable vehicles using the highways of this State, and no reciprocal agreement or agreement of any nature heretofore or hereafter entered into between officials of this State and those of any other State may exempt any user of such vehicles using the highways of this State from the provisions of this Section of this Act and payment of the tax levied by this Section of this Act.

(j) Any user, or other qualifying person, of any vehicle subject to the provisions of this Section of this Act found operating over the highways of this State without complying with this Section or without having available in or on the cab thereof the appropriate cab card and decal or trip permit required by this Section, shall be guilty of a misdemeanor and upon conviction thereof shall each be punished by a fine of no less than two hundred dollars

(\$200.00) and not more than five hundred dollars (\$500.00) for the first offense and of no less than five hundred dollars (\$500.00) and not more than one thousand dollars (\$1,000.00) for each subsequent offense.

(k) The annual tax hereby imposed on all "users" of "motor vehicles", as such terms are defined in this Section of this Act, shall be applicable for the qualification year beginning July 1, 1988 and ending June 30, 1989 and for each year thereafter.

(l) This Section of this Act shall be liberally construed to effectuate the purposes thereof.

(m) All fees, taxes, penalties and interest collected under the provisions of this Section of this Act shall be classified as "special revenues" and shall be deposited in the State Treasury, and the State Treasurer shall, after deducting therefrom the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, transfer on the last business day of each month: 15% of the amount thereof, to the County Aid Fund; 15% of the amount thereof, to the Municipal Aid Fund; and 70% of the amount thereof, to the State Highway Department Fund, such funds to be further disbursed in the same manner and used for the same purposes as set out in the "Arkansas Highway Revenue Distribution Law".

SECTION 4. The Director of the Department shall, immediately following the passage and approval of this Act, promulgate reasonable rules and regulations and take all appropriate action the Director deems necessary, as hereby authorized, in order to ensure that all provisions of this Act may be effectuated as soon as practicable following the passage and approval of this Act.

SECTION 5. The Taxes, imposed by this Act, shall be exempt from the provisions of the Arkansas Tax Procedure Act, Act 401 of 1979, as amended. The Director of the Department shall appoint a hearing officer to review all written protests of tax assessments, hold hearings and make written findings of tax assessments. Hearings and appeals shall be governed by the Arkansas Administrative Procedure Act, Act 434 of 1967, as amended.

SECTION 6. Subsection (b) of Section 8 of Act 98 of 1955, the same being

Ark. Stat. 75-819(b), is hereby amended to read as follows:

"(b) Provided further that if the weight of the vehicle and load exceeds the maximum as prescribed by this Act or the gross weight as provided by a special permit, the operator or any owner, principal, employer, lessor, lessee, agent or officer of any firm or corporation who permits such operator to exceed the weight load herein provided or as provided by a special permit shall, in addition, pay a penalty to be computed as follows:

(1) Overweight one thousand (1,000) pounds or less, a minimum penalty of ten dollars (\$10.00), or a maximum penalty of not more than two cents (\$.02) per pound of excess weight;

(2) Overweight more than one thousand (1,000) pounds and not more than two thousand (2,000) pounds, a penalty of not more than three cents (\$.03) per pound of excess weight;

(3) Overweight more than two thousand (2,000) pounds and not more than three thousand (3,000) pounds, a penalty of not more than four cents (\$.04) per pound of excess weight;

(4) Overweight more than three thousand (3,000) pounds, a penalty of not more than five cents (\$.05) per pound for each pound of excess weight.

Provided, further, where the operator of an overloaded truck is found to have willfully avoided being weighed at a weigh station in this State, the penalty shall be computed by doubling the otherwise appropriate penalty set out in (1), (2), (3), or (4), above."

SECTION 7. (a) For the purpose of this Act, "retaliatory tax" means an amount assessed by another state against a motor vehicle user in direct retaliation to and as a direct result of the imposition of the tax imposed pursuant to this Act which would not have been assessed in the absence of the tax imposed pursuant to this Act.

(b) Any motor vehicle user who has been assessed a retaliatory tax by another state after the effective date of this Act, and who has paid the tax, shall be entitled to reimbursement by the State of Arkansas for the tax so paid. Any person desiring reimbursement as provided herein shall apply to the Arkansas Highway and Transportation Department, and shall furnish the Department a copy of the receipt for the payment of the retaliatory tax for which reimbursement is requested, together with such other information as the Department may reasonably request in order to verify that the applicant is

entitled to reimbursement.

(c) When the Department determines that any applicant for reimbursement under this Act is entitled to such reimbursement, the Department is authorized to make such reimbursement out of any funds on hand which were received by the Department from the Tax levied by this Act.

SECTION 8. If any provisions of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application thereof, and to this end the provisions of this Act are declared to be severable.

SECTION 9. Act 685 of 1983 is hereby repealed and all laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 10. EMERGENCY. It is hereby found and determined by the General Assembly that the Seventy-fourth General Assembly enacted legislation increasing the maximum weight limit on heavy trucks in this State from 73,280 pounds to 80,000 pounds, and also enacted a Highway Use Equalization Tax law designed to produce additional revenues to help offset the additional cost of constructing and maintaining the State highway system at standards to accommodate the increased truck weight; that a recent decision of the United States Supreme Court involving the axle tax in Pennsylvania has raised questions with respect to the constitutionality of the Highway Use Equalization Tax as imposed by the Seventy-fourth General Assembly; that the loss of such revenues in the event of an adverse court decision would jeopardize the investment in the State's highways, necessitating the annual expenditure of additional monies to negate the damage caused by the increased weight law; and that only by the immediate passage of this Act may Highway User taxes and fees be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.

