

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Senators Wilson and Mahony**

A Bill

ACT 954 OF 1995
SENATE BILL 672

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE TITLE 26, CHAPTER 56,
9 SUBCHAPTER 2 TO REQUIRE THAT ALL DIESEL FUEL SOLD, USED OR
10 UTILIZED IN THIS STATE FOR OFF-ROAD PURPOSES SHALL BE
11 DYED; TO REQUIRE THAT ALL DIESEL FUEL SOLD, USED OR
12 UTILIZED IN THIS STATE THAT HAS NOT BEEN DYED SHALL BE
13 TAXED; TO PROVIDE FOR THE ASSESSMENT OF TAXES AND
14 PENALTIES FOR THE MISUSE OF DYED DIESEL FUELS; AND TO
15 REQUIRE ON OR BEFORE JULY 1, 1997 THAT ALL REPORTS AND
16 TAXES REQUIRED TO BE FILED AND REMITTED WITH AND TO THE
17 DIRECTOR OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION
18 PURSUANT TO THE FUEL TAX LAWS OF THIS STATE BE FILED AND
19 REMITTED BY ELECTRONIC MEANS; TO DECLARE AN EMERGENCY; AND
20 FOR OTHER PURPOSES."

Subtitle

23 "AN ACT PERTAINING TO THE DYEING OF OFF-
24 ROAD DIESEL FUEL AND ELECTRONIC
25 REPORTING AND REMITTING OF FUEL TAXES
26 AND REPORTS."

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

30 SECTION 1. Arkansas Code Annotated Title 26, Chapter 56, Subchapter 2
31 is hereby amended by inserting the following additional sections to read as
32 follows:

33 "§26-56-223. For the purposes of this section through §26-56-231, the
34 words and terms utilized herein, which words and terms are ascribed meanings
35 in §26-56-102 shall have the same meanings ascribed to such words and terms as
36 set out in §26-56-102 unless the context clearly indicates a different

1 meaning, provided, the term *_distillate special fuel,_* as used in this section
2 through §26-56-231, shall have the same meaning as set out in §26-56-102 and
3 shall include diesel, but shall not include products commonly referred to as
4 kerosene, jet fuel, cutter stock nor light cycle oil.

5 §26-56-224.(a)All distillate special fuel sold, used or utilized in this
6 State for off-road purposes, and not for the purpose of fueling motor
7 vehicles, shall be dyed by the person or entity authorized to dye such fuels
8 in accordance and in conformance with Public Law 103-66, and United States
9 Internal Revenue Service Regulations made and promulgated pursuant to that
10 Public Law in effect on the effective date of this Act.

11 (b)All distillate special fuel which has not been dyed in accordance
12 with (a), above, and which is sold, used or utilized in this State for any
13 purpose or purposes shall be taxable at the total per gallon tax rates as set
14 out in this chapter.

15 (c) Off-road consumers purchasing dyed distillate special fuel shall
16 not be required to obtain the annual off-road consumer permits required by §
17 26-56-204(a) (2) and bulk sales of such dyed distillate special fuel may be
18 made to such off-road consumers notwithstanding the provisions of § 26-56-218.

19 §26-56-225.Dyed distillate special fuel shall not be used nor utilized
20 in the fuel supply tank of any motor vehicle with the exception of: state and
21 local government vehicles; local transit buses; intercity buses; school buses;
22 vehicles owned by aircraft museums; vehicles used by nonprofit educational
23 organizations; and Red Cross vehicles, as such vehicles and buses are defined
24 in Public Law 103-66 and United States Internal Revenue Service Regulations
25 made and promulgated pursuant to that Public Law in effect on the effective
26 date of this Act.

27 §26-56-226.The Director, upon finding a motor vehicle using or utilizing
28 dyed distillate special fuel for the purpose of operating that motor vehicle
29 not excepted in §26-56-225, shall assess all taxes due the State at the total
30 per gallon tax rates set out in this chapter upon all fuel that could be
31 contained in the fuel supply tank or tanks of that motor vehicle, if filled to
32 capacity, and, additionally, shall assess a penalty of ten dollars (\$10.00)
33 per gallon on all such fuel that could be contained in the fuel supply tank or
34 tanks of such motor vehicle, if filled to capacity. Further, if any dyed
35 distillate special fuel is found in any fuel storage tank or fuel storage

1 facility outside of the terminal utilized by the operator of that motor
2 vehicle, or any other person, for the purpose of fueling that motor vehicle,
3 the Director shall, for taxation purposes, make an assessment based on the
4 entire amount of such fuel that could be contained in such fuel storage tank
5 or fuel storage facility, if filled to capacity, at the total per gallon tax
6 rates set out in this chapter. Additionally, the Director shall assess a
7 penalty of ten dollars (\$10.00) per gallon on all such fuels that could be
8 contained in any such fuel storage tank or fuel storage facility, if filled to
9 capacity, if such fuels are utilized by the operator of that motor vehicle, or
10 are utilized by any other person, for the purpose of fueling that motor
11 vehicle. The presence of any amount of dyed distillate special fuel in the
12 fuel supply tank of any motor vehicle not excepted in §26-56-225, or in a fuel
13 storage tank or fuel storage facility outside of the terminal utilized by the
14 operator of such motor vehicle, or any other person, for the purpose of
15 fueling that motor vehicle shall create a rebuttable presumption that the
16 entire amount of fuel that could be contained in the fuel supply tank of such
17 motor vehicle, or that could be contained in such fuel storage tank or fuel
18 storage facility, has been, or is being, used or utilized for taxable
19 purposes; thus, the entire amount of such fuel that could be contained in such
20 tanks and facilities, if filled to capacity, shall be susceptible to full
21 distillate special fuel taxation. Such assessments shall be made against the
22 operator or any other person the Director deems responsible for the usage or
23 utilization of such dyed distillate special fuel in that motor vehicle. All
24 penalties authorized by this section shall be in addition to all other
25 penalties provided in this chapter and in the Arkansas Tax Procedure Act
26 (§26-18-101, et seq.).

27 §26-56-227. (a) Dyed distillate special fuel shall not be mixed with
28 undyed distillate special fuel in the fuel supply tank of any motor vehicle,
29 other than in the fuel supply tank of a motor vehicle excepted in §26-56-225,
30 nor in any fuel storage tank nor fuel storage facility, other than fuel
31 storage tanks or fuel storage facilities utilized exclusively for the purpose
32 of fueling motor vehicles excepted in §26-56-225.

33 (b) The Director, upon finding any fuel supply tank of a motor vehicle,
34 fuel storage tank or fuel storage facility outside of the terminal containing
35 mixed dyed and undyed distillate special fuel, which fuel is being used or

1 utilized in a motor vehicle, or, is being stored for ultimate usage or
2 utilization in a motor vehicle not excepted in §26-56-225, shall assess, for
3 taxation purposes, the entire number of gallons of such fuel that could be
4 contained in those fuel supply tanks, fuel storage tanks, or fuel storage
5 facilities, if such tanks or facilities were filled to capacity, as taxable
6 gallons at the total per gallon tax rates set out in this chapter and,
7 additionally, shall assess a penalty of ten dollars (\$10.00) per gallon on all
8 such fuel. The presence of any amount of dyed distillate special fuel in the
9 fuel supply tank of any motor vehicle not excepted in §26-56-225 or in a fuel
10 storage tank or fuel storage facility outside of the terminal utilized by the
11 operator of such motor vehicle, or any other person, for the purpose of
12 fueling that motor vehicle, shall create a rebuttable presumption that the
13 entire amount of fuel that could be contained in the fuel supply tank of such
14 motor vehicle, or of a fuel storage tank or fuel storage facility, if mixed,
15 has been, or is being used or utilized for taxable purposes; thus, the entire
16 amount of such fuel that could be contained in such tanks and facilities, if
17 filled to capacity, shall be susceptible to full distillate special fuel
18 taxation. Such assessments shall be made against the operator of any motor
19 vehicle, or owner or operator of such fuel storage tank or fuel storage
20 facility, outside of the terminal, or any other person the Director deems
21 responsible for the usage or utilization of such distillate special fuel in
22 any motor vehicle involved in the assessment. All penalties authorized by
23 this section shall be in addition to all other penalties provided in this
24 chapter and in the Arkansas Tax Procedure Act (§26-18-101, et seq.).

25 §26-56-228. (a) The Director shall have the authority to stop motor
26 vehicles, take samples of the fuel used or utilized for the operation of those
27 motor vehicles, measure the amounts of fuel that could be contained in the
28 supply tanks of such motor vehicles, and test such fuel, regardless of the
29 location of such motor vehicles.

30 (b) The Director shall have the authority to take samples of distillate
31 special fuel stored in fuel storage tanks or fuel storage facilities, outside
32 of the terminal, which fuel may be used or utilized in motor vehicles, and
33 shall also have the authority to measure the amount of fuel that could be
34 contained in such tanks or facilities, if filled to capacity, and to test such
35 fuel, regardless of the location of such tanks or facilities.

1 (c)Any person who shall refuse to allow the Director to sample, test,
2 and measure the fuel that could be contained in any fuel supply tank of a
3 motor vehicle, or in any fuel storage tank, or in any fuel storage facility,
4 outside of the terminal, shall be assessed taxes at the total per gallon tax
5 rates set out in this chapter upon all fuels, as determined by the Director,
6 that could be contained in such fuel supply tank, fuel storage tank or fuel
7 storage facility, if filled to capacity. Additionally, a penalty of ten
8 dollars (\$10.00) per gallon on all such fuel shall be assessed. It shall be
9 prima facie evidence that the entire amount of such fuel in the fuel supply
10 tank, fuel storage tank or fuel storage facility outside of the terminal is
11 taxable and that, by the refusal to allow such sampling, measuring or testing,
12 distillate special fuel taxes have not been paid on such fuel. Further, the
13 Director shall add a penalty of twenty percent (20%) of the total amount of
14 the assessed taxes, excluding the ten dollars per gallon penalty, to the total
15 amount assessed for willful refusal to allow such sampling, measuring or
16 testing, which penalty shall be in addition to all other penalties provided
17 herein and provided in this chapter and in the Arkansas Tax Procedure Act
18 (§26-18-101, et seq.). Such assessments shall be made against the operator of
19 any motor vehicle, fuel storage tank, or fuel storage facility outside of the
20 terminal involved in the assessment, or any other person the Director deems
21 responsible for the use or utilization of such fuel in any motor vehicle
22 involved in the assessment.

23 §26-56-229. (a)In the event that assessments are made by the Director
24 against the same operator or the same person for violating the provisions of
25 §26-56-226, §26-56-227, or §26-56-228 within three (3) years of any assessment
26 made by the Director for previous violations of any of those provisions, the
27 Director shall assess a penalty of twenty dollars (\$20.00) per gallon on all
28 such fuel assessed and, for third and subsequent violations within a three (3)
29 year period by the same operator or the same person, the Director shall assess
30 a penalty of thirty dollars (\$30.00) per gallon on all such fuel assessed.
31 All assessments made pursuant to this paragraph shall be in lieu of the ten
32 dollars (\$10.00) per gallon penalty otherwise provided in §26-56-226, §26-56-
33 227 and §26-56-228, but shall be in addition to all other penalties provided
34 therein.

35 (b)All assessments and procedures related to assessments authorized by

1 §26-56-223, et seq., shall be conducted in accordance with and pursuant to the
2 "Arkansas Tax Procedure Act" (§26-18-101, et seq.).

3 §26-56-230. All taxes, fees, penalties and other amounts collected under
4 the provisions of §26-56-223 through §26-56-231 shall be classified as
5 special revenues and the net amount shall be distributed as provided by the
6 Arkansas Highway Revenue Distribution Law, Arkansas Code Annotated §§27-70-201
7 to -203, -206, and -207.

8 §26-56-231. The Director of the Department of Finance and Administration,
9 in consultation with the Director of Highways and Transportation, shall have
10 the authority to make and promulgate rules and regulations to fully implement
11 and enforce the provisions of §§26-56-223 through 26-56-230. Provisions shall
12 be included in such rules and regulations to allow any user enumerated in §26-
13 56-225, upon proper notice and certification to the director that dyed
14 distillate special fuel is unavailable to that user at that time, to utilize
15 untaxed undyed distillate special fuels in motor vehicles belonging to such
16 users."

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18 SECTION 2. (a) The Director of the Department of Finance and
19 Administration shall make all necessary preparations in order that all reports
20 submitted beginning July 1, 1997, and thereafter, or beginning before that
21 date, if possible, by: distributors of motor fuel, as required by the Motor
22 Fuel Tax Law (Ark. Code Ann. §26-55-201, et seq.); suppliers of distillate
23 special fuels and liquefied gas special fuels, as required by the Special
24 Motor Fuels Tax Law (Ark. Code Ann. §26-56-101, et seq.); alternative fuel
25 suppliers, as required by the Alternative Fuels Tax Law (Ark. Code Ann. §26-
26 62-101, et seq.) and; all other persons required to submit any type reports to
27 the Director pursuant to those tax laws shall be submitted by electronic means
28 and to insure that such reports shall be processed electronically by the
29 Department of Finance and Administration.

30 (b) The Director shall also make and promulgate rules and regulations to
31 insure that such distributors, suppliers and alternative fuel suppliers
32 beginning July 1, 1997, and thereafter, or beginning before that date, if
33 possible, remit all taxes due the State pursuant to those tax laws by
34 electronic funds transfer.

35

1 SECTION 3. All laws and parts of laws in conflict with this Act are
2 hereby repealed.

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4 SECTION 4. All provisions of this act of a general and permanent
5 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
6 Code Revision Commission shall incorporate the same in the Code.

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8 SECTION 5. If any provision of this act or the application thereof to
9 any person or circumstance is held invalid, such invalidity shall not affect
10 other provisions or applications of the act which can be given effect without
11 the invalid provision or application, and to this end the provisions of this
12 act are declared to be severable.

13

14 SECTION 6. EMERGENCY CLAUSE. It is hereby found and determined by the
15 Eightieth General Assembly that the United States Congress, through the
16 passage of Public Law 103-66, has adopted legislation to curtail the illegal
17 usage of diesel fuel that has not been taxed for federal taxation purposes by
18 requiring the bulk of off-road non taxed diesel fuels be dyed and by requiring
19 the bulk of on-road taxable diesel fuels be undyed; that confusion has arisen
20 in this State due to the federal dyeing requirements and usage of dyed and
21 undyed diesel fuel and Arkansas laws, which are silent in the area of dyed
22 diesel fuels; that the federal government is experiencing success in
23 curtailing the abuse of nontaxable diesel fuels, due to the dyeing
24 requirements, and this State should realize more fuel tax revenues by adopting
25 mechanisms to curtail such abuses with regard to state fuel taxes by adopting
26 similar requirements; that the adoption of such mechanisms will more equitably
27 insure that highway users pay their fair share for the construction,
28 reconstruction and maintenance of highways and bridges in the State, county
29 and municipal highway, road, and street systems; and that the provisions of
30 this Act are essential to the continued operation of State government.
31 Therefore, an emergency is hereby declared to exist, and this act being
32 necessary for the immediate preservation of the public peace, health and
33 safety shall be in full force and effect on and after its passage and
34 approval.

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/s/Wilson and Mahony

As Engrossed: 3/14/95 4/4/95

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APPROVED: 4-6-95