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1 **State of Arkansas**

2 **80th General Assembly**

3 **Regular Session, 1995**

4 **By: Senators Dowd, Bookout, Hoofinan, Wilson, and Mahony**

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For An Act To Be Entitled

8 "LEVIES A WHOLESALE EXCISE TAX OF SIX AND ONE-HALF PERCENT
9 ON GROSS RECEIPTS OF MOTOR FUEL SOLD BY POSITION HOLDERS
10 IN ARKANSAS AND ON PURCHASE PRICE OF MOTOR FUEL IMPORTED
11 FOR SALE, USE, STORAGE, DISTRIBUTION, OR CONSUMPTION IN
12 ARKANSAS; DESIGNATES THE TAX AS SPECIAL REVENUES FOR USE
13 IN PARTIAL REPAYMENT OF GENERAL OBLIGATIONS BONDS FOR
14 *HIGHWAY CONSTRUCTION AND FOR UTILIZATION BY THE COUNTIES*
15 *AND MUNICIPALITIES ON COUNTY ROADS AND MUNICIPAL STREETS;*
16 *TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES."*

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Subtitle

19 "LEVIES 6.5% WHOLESALE MOTOR FUEL EXCISE
20 TAX ON SALE OF MOTOR FUEL BY POSITION
21 HOLDERS AND IMPORTATION OF MOTOR FUEL BY
22 IMPORTERS FOR PARTIAL REPAYMENT OF
23 GENERAL OBLIGATION HIGHWAY BONDS."

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

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28 SECTION 1. Title 26, Chapter 57 of the Arkansas Code Annotated is
29 amended to add a new subchapter as follows:

30 "26-57-1101. Definitions. As used in this act:

31 (a) Director means the Director of the Department of Finance and
32 Administration.

33 (b) Export means with respect to a position holder or his agent, or
34 with respect to an exporter, or his agent, the delivery of motor fuel out of
35 this state.

36 (c) Exporter means any person who acquires motor fuel Arkansas for

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1 the purpose of transporting or delivering the fuel to another state or
2 country.

3 (d) Gross receipts or gross proceeds means:

4 (1) the total amount of consideration for the sale of motor fuel
5 including federal motor fuel excise tax less deductions for state motor fuel
6 gallonage tax levied and collected pursuant to Title 26, Chapter 55 and
7 transportation charges; and,

8 (2) the value of motor fuel, including any federal motor fuel
9 excise tax, withdrawn from the stock of a position holder for distribution or
10 use by the position holder. The value is deemed equal to the price per
11 gallon, including any federal motor fuel excise tax, allocated to the
12 withdrawal by the position holder as reflected on the bill of lading or
13 manifest.

14 (e) Import means with respect to a position holder or his agent, or
15 with respect to an importer or his agent, the delivery of motor fuel into
16 Arkansas from out of state.

17 (f) Importer means any person who imports motor fuel to a location in
18 Arkansas other than to position holder at a terminal or refinery.

19 (g) Motor fuel means all products commonly or commercially known or
20 sold as gasoline regardless of their classification or uses. This definition
21 includes casinghead, absorption, and natural gasoline and condensate when used
22 without blending as a motor fuel or is sold for use in motors directly, or is
23 sold to those who blend for their own use. However, this definition shall not
24 include casinghead, absorption, and natural gasoline and condensate when sold
25 to be blended or compounded with other less volatile liquids in the
26 manufacture of commercial gasoline for motor fuel;

27 (h) Person includes any individual, company, partnership, joint
28 venture, joint agreement, mutual or other association, corporation, limited
29 liability company, estate, trust, business trust, receiver, or trustee
30 appointed by any state, federal, or other court, syndicate, this state, any
31 county, city, municipality, school district, or any other political
32 subdivision of this state or group or combination acting as a unit, in the
33 plural or singular number;

34 (i) Position holder means a person that imports or acquires
35 immediately upon import into Arkansas motor fuel by pipeline, marine vessel or

1 other form of delivery from within a state, territory or possession of the
2 United States into a terminal or refinery or that imports motor fuel into
3 Arkansas from a foreign country, or that produces, manufactures, or refines
4 motor fuel within Arkansas or that owns motor fuel in the pipeline and
5 terminal distribution system in Arkansas and is subject to the general taxing
6 or police jurisdiction of Arkansas and in any case is also registered under
7 Internal Revenue Code §4101 as in effect on the effective date of this Act for
8 transactions in taxable motor fuel in the bulk distribution system. A
9 terminal operator shall not be considered a position holder merely because the
10 terminal operator handles motor fuel or distillate special fuel consigned to
11 it within a terminal.

12 (j) Purchase price means the total consideration for the purchase of
13 motor fuel including federal motor fuel excise tax less deductions for state
14 motor fuel gallonage tax levied and collected pursuant to Title 26, Chapter 55
15 and transportation charges.

16 (k) Rack means a dock, platform, or an open bay with a series of
17 metered pumps and hoses for delivering motor fuel from a refinery or terminal
18 into a motor vehicle or other means of conveyance.

19 (l) Terminal means a fuel storage and distribution facility that is
20 supplied by pipeline, marine vessel or other source, and from which motor fuel
21 may be removed at a rack.

22 (m) Terminal Operator means the person who by ownership or
23 contractual agreement is charged with the responsibility and physical control
24 over the operation of a terminal. However, there shall be only one (1) person
25 charged with responsibility as operator at each terminal for purposes of this
26 Act.

27 26-57-1102. There is hereby levied a wholesale excise tax of 6.5% on:

28 (a) the gross receipts or gross proceeds derived from all sales of
29 motor fuel by position holders to any person in the State of Arkansas; and,

30 (b) the purchase price of motor fuel purchased by an importer for sale,
31 storage, use, distribution or consumption within this state.

32 26-57-1103 There is specifically exempted from the tax imposed by this
33 Act the following:

34 (a) The gross receipts or gross proceeds derived from sales to the
35 United States government.

1 (b) The gross receipts or gross proceeds derived from sales for export
2 outside of Arkansas.

3 (c) Motor fuel imported into Arkansas in the fuel tank of a motor
4 vehicle.

5 26-57-1104. (a) The importer or position holder subject to the taxes
6 levied by this Act shall file a monthly return and remit the tax for the month
7 to the director on or before the fifteenth day of the month next following the
8 month in which the sale was made.

9 (b) The returns shall be made upon forms prescribed and furnished by
10 the director and signed by the person required to collect and remit the tax or
11 his agent. The return shall contain such information as the director shall
12 require for the proper administration of this subchapter.

13 (c) This act is to be administered in all respects in accordance with
14 the Arkansas Tax Procedure Act, §26-18-101 et seq., unless otherwise provided.

15 26-57-1105. Every importer and position holder subject to the tax
16 levied by this Act shall register with the Director and obtain a tax reporting
17 number.

18 26-57-1106. *Each retail dealer or bulk consumer purchasing motor fuel*
19 *shall be entitled to a refund equal to two cents (\$0.02) per gallon on the*
20 *total amount of motor fuel delivered during each calendar quarter into the*
21 *dealer's or bulk consumer's tanks which are located in cities, incorporated*
22 *towns or planned communities defined in § 26-55-210. Claims for refund shall*
23 *be filed for each calendar quarter in such manner and on such forms as*
24 *required by the director. The refunds shall be paid from the revolving*
25 *account in the Gasoline Tax Refund Account."*

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27 SECTION 2. Ark. Code Ann. §26-52-401(11) is amended to read as follows:

28 "(11) Gross receipts or gross proceeds derived from the sale of
29 gasoline or motor vehicle fuel on which the motor vehicle fuel or gasoline tax
30 has been paid to the State of Arkansas and special fuel or petroleum products
31 sold for consumption by vessels, barges, and other commercial watercraft and
32 railroads. Nothing in this subsection shall exempt gasoline from the
33 wholesale gross receipts tax imposed pursuant to §26-57-1101, et seq."

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35 SECTION 3. (a) There is hereby created on the books of the Treasurer of

1 the State a special account within the State Highway and Transportation
2 Department Fund to be designated as the 1995 Arkansas Highway Construction and
3 Improvement Bond Account. The additional excise tax collected pursuant to
4 Ark. Code Ann. §26-57-1101, et seq. shall be classified as special revenues
5 pursuant to Ark. Code Ann. §19-6-301 and shall be deposited into the State
6 Treasury and shall be distributed pursuant to Ark. Code Ann. § 27-70-206;
7 provided, however, that notwithstanding the provisions of Ark. Code Ann. § 27-
8 70-206 (3), seventy percent (70%) of such revenues available after the
9 deposits required by Ark. Code Ann. § 27-70-206(1) and (2) shall be deposited
10 in the 1995 Arkansas Highway Construction and Improvement bond Account of the
11 State Highway and Transportation Department Fund, fifteen percent (15%) of
12 such revenues, after such deposits, shall be transferred to the County Aid
13 Fund for distribution and utilization pursuant to Ark. Code Ann. §27-70-207,
14 and fifteen percent (15%) of such revenues, after such deposits, shall be
15 transferred to the Municipal Aid Fund for distribution and utilization
16 pursuant to Ark. Code Ann. § 27-70-207.

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18 SECTION 4. EFFECTIVE DATE. The taxes levied by Ark. Code Ann. §26-57-
19 1101, et seq. shall not become effective until after a majority of the
20 qualified electors of the state voting on the question approve the issuance of
21 highway construction and improvement general obligation bonds to be repaid in
22 part by the taxes levied by Ark. Code Ann. §26-57-1101, et seq. and deposited
23 to the 1995 Arkansas Highway Improvement Bond Account in the State Highway and
24 Transportation Department Fund in accordance with the Arkansas Highway General
25 Obligation Bond Act of 1995. If such election is called by the Governor and
26 the bond issue approved, the taxes levied by Ark. Code Ann. § 26-57-1101, et
27 seq. shall be effective on the first day of the calendar month following
28 ninety (90) days after publication of the Governor_s proclamation of the
29 election results.

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31 SECTION 5. TERMINATION OF TAX.

32 a. If bonds are issued pursuant to the Arkansas Highway General
33 Obligation Bond Act of 1995 (the "1995 Act"), the taxes levied by Ark. Code
34 Ann. §26-57-1101, et seq. shall be abolished when there are no bonds
35 outstanding to which tax collections are pledged as provided in the 1995 Act.

1 b. In order to provide for the accomplishment of the administrative
2 duties of the Director of the Department of Finance and Administration and to
3 protect the owners of the bonds, the tax shall be abolished on the first day
4 of the calendar month subsequent to the expiration of thirty (30) days from
5 the date there is filed with the Director a written statement signed by the
6 Governor and by the trustee for the bondholders, if a trustee is serving in
7 such capacity, identifying the tax and the bonds, wherein either:

8 (A) The trustee certifies that the trustee has or will have sufficient
9 funds set aside to pay the principal of and interest on the bonds when due at
10 maturity or at redemption prior to maturity and the Governor certifies that
11 the tax is not pledged to any other bonds; or

12 (B) The Governor certifies that there are no longer any bonds
13 outstanding payable from tax collections.

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

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19 SECTION 7. If any provision of this act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 act are declared to be severable.

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25 SECTION 8. All laws and parts of laws in conflict with this act are
26 hereby repealed.

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28 SECTION 9. EMERGENCY CLAUSE. It is hereby found and determined that
29 the Arkansas state highway system is in desperate need of improvement, repair,
30 and expansion; that the county road systems and municipal street systems are
31 in desperate need of improvement, rehabilitation, and repair; that the
32 Arkansas State Highway and Transportation Department is without sufficient
33 funds for state-wide highway improvement projects; that necessary funding may
34 be obtained by the issuance of bonds secured by an increase in fuel excise
35 taxes for such highway projects; that necessary funding may also be obtained

1 by an increase in such fuel excise taxes for county road and municipal street
2 projects; and, that this act is designed to provide the necessary revenues for
3 such highway, road and street projects. Therefore, an emergency is declared
4 to exist and this act, being necessary for the immediate preservation of the
5 public peace, health, and safety, shall be in full force and effective from
6 and after passage and approval.

7 */s/Dowd et al*

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9 APPROVED: 4-7-95

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