

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

## A Bill

ACT 1212 OF 1997  
HOUSE BILL 2118

4  
5 By: Representative Cunningham  
6  
7

### For An Act To Be Entitled

8  
9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE SPECIAL MOTOR  
10 FUELS TAX LAW TO ABOLISH THE CLASSIFICATION OF SECOND  
11 RECEIVER DIESEL SUPPLIERS; TO PROVIDE THAT DISTILLATE  
12 SPECIAL FUELS ARE TAXED AT THE TIME OF RECEIPT; AND FOR  
13 OTHER PURPOSES."

### Subtitle

14  
15  
16 "TO AMEND THE SPECIAL MOTOR FUELS TAX  
17 LAW TO ABOLISH THE CLASSIFICATION OF  
18 SECOND RECEIVER DIESEL SUPPLIERS AND TO  
19 PROVIDE THAT DISTILLATE SPECIAL FUELS  
20 ARE TAXED AT THE TIME OF RECEIPT."  
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
23

24 SECTION 1. Arkansas Code 26-56-102(11), pertaining to the definition of  
25 ~~supplier~~ under the Special Motor Fuels Tax Law, is amended to read as  
26 follows:

27 "(11) Supplier means any person who is customarily in the wholesale  
28 business of offering distillate special fuels or liquefied gas special fuels  
29 for resale or use to any person in this state and who makes bulk sales of  
30 fuel. The term supplier shall include pipeline importers, and first  
31 ~~receivers, and second receivers;~~"  
32

33 SECTION 2. Arkansas Code 26-56-102(21), pertaining to the definition of  
34 "second receiver" under the Special Motor Fuels Tax Law, is repealed.

35 "~~(21) Second receiver means a supplier who purchases distillate special~~  
36 ~~fuel from a pipeline importer or first receiver or who imports distillate~~"

1 ~~special fuel into this state by motor vehicle tank truck;~~"

2

3 SECTION 3. Arkansas Code 26-56-201 is amended to read as follows:

4 "26-56-201. Imposition of tax ) Exemptions.

5 (a)(1) There is levied an excise tax at the rate of nine and one-half  
6 cents (9 ~~00~~) per gallon on all distillate special fuels, except fuel utilized  
7 in propelling jet aircraft, sold or used in this state, or purchased for sale  
8 or use in this state. The additional levies provided in subdivision (a)(2) of  
9 this section and ~~§~~ 26-56-502 are specifically intended to apply to the taxes  
10 levied by this section as amended by this act and shall remain effective.

11 (2) In addition to the tax levied in subdivision (a)(1) of this  
12 section, there is levied an excise tax of one cent (1~~00~~) for each gallon of  
13 distillate special motor fuels, as defined in ~~§~~ 26-56-102(9), sold or used in  
14 this state, or purchased for sale or use in this state, to be computed in the  
15 manner hereinafter set forth.

16 (b) The following are exempted from the tax levied by subsection (a) of  
17 this section:

18 (1) Sales to the United States Government;

19 (2) Sales to dealers, users, or off-road consumers for off-road  
20 use if, and only if: ~~(A) The the~~ the fuel was delivered by the supplier into  
21 storage facilities clearly marked ~~Ⓢ~~ NOT FOR MOTOR VEHICLE USE~~;~~ and

22 ~~(B) The fuel was sold and delivered by the supplier to~~  
23 ~~dealers, users, or off-road consumers who at the time of sale and delivery,~~  
24 ~~except as provided in ~~§~~ 26-56-218, had completed an annual registration for~~  
25 ~~purchases of tax-free distillate special fuel which entitled the dealers,~~  
26 ~~users, or off-road consumers to purchase fuel tax-free for off-road use;~~

27 (3) Sales of distillate special fuels by a licensed supplier for  
28 export from the State of Arkansas when shipped by common carrier f.o.b.  
29 destination to any other state or territory or to any foreign country; or the  
30 export of distillate special fuels by a licensed supplier from the State of  
31 Arkansas to any other state or territory or to any foreign country provided  
32 that satisfactory proof of actual exportation of all such distillate special  
33 fuels is furnished at the time and in the manner prescribed by the director;

34 (4) Sales of distillate special fuels by a pipeline importer, who  
35 has first received the fuels in this state, or to a licensed first receiver ~~or~~  
36 ~~licensed second receiver~~ in this state;

1 (5) Sales for other than motor vehicle use in quantities of sixty  
 2 (60) gallons or less+.

3 ~~\_\_\_\_\_ (6) Sales of distillate special fuels by a licensed first receiver~~  
 4 ~~in this state to a licensed second receiver within this state.~~

5 (c)(1) A licensed first receiver shall not sell untaxed distillate  
 6 special motor fuel to another licensed first receiver or pipeline importer  
 7 unless a specific exemption is available under subsection (b) of this section.

8 ~~(2) A licensed second receiver shall not sell untaxed distillate~~  
 9 ~~special motor fuel unless a specific exemption is available under subsection~~  
 10 ~~(b) of this section.~~

11 (d)(1) On and after March 1, 1991, in addition to the taxes levied on  
 12 distillate special fuels in this section and § 26-56-502, there is hereby  
 13 levied an additional excise tax of four cents (4¢) per gallon upon all  
 14 distillate special fuels subject to the taxes levied in those code sections.

15 (2) This additional excise tax shall be levied, collected,  
 16 reported, and paid in the same manner and at the same time as is prescribed by  
 17 law for the levying, collection, reporting, and payment of the other  
 18 distillate special fuels taxes under Arkansas law."

19

20 SECTION 4. Arkansas Code 26-56-204(a), pertaining to licenses and bonds  
 21 for suppliers and users, is amended to read as follows:

22 "(a)(1)(A) No person shall commence operations as a supplier, user, or  
 23 off-road consumer of distillate special fuels without first procuring a  
 24 license for that purpose from the director. The license shall be issued and  
 25 remain in effect until revoked as provided in this section.

26 (B)(i) Any person holding or applying for a supplier's  
 27 license after August 1, 1987, shall make an election to operate either as a  
 28 pipeline importer, or first receiver, ~~or second receiver~~. Once having made an  
 29 election in writing filed with the director, the election will remain in force  
 30 until such time as the supplier makes another written election to change his  
 31 status.

32 (ii) The election and any change therein shall take  
 33 effect on the first month following filing of the election.

34 ~~(2)(A) Notwithstanding the provisions of subdivision (a)(1) of~~  
 35 ~~this section, the director shall not be required to issue off-road consumer~~  
 36 ~~and off-road dealer permits.~~

1 ~~\_\_\_\_\_ (B) Off-road consumers and off-road dealers shall file with~~  
 2 ~~their suppliers an annual registration for purchase of tax-free distillate~~  
 3 ~~special fuel.~~

4 ~~\_\_\_\_\_ (C)(i) A copy of the annual registration shall be forwarded by~~  
 5 ~~the supplier to the Director of the Department of Finance and Administration.~~

6 ~~\_\_\_\_\_ (ii) (iii) The director may promulgate such forms and~~  
 7 ~~regulations as may be necessary to ensure uniformity with federal usage of~~  
 8 ~~exemption certificates issued for nonhighway diesel purchases."~~

9

10 SECTION 5. Arkansas Code 26-56-204(j), pertaining to licenses and bonds  
 11 for suppliers and users, is amended to read as follows:

12 "(j)(1) A supplier may operate under his supplier's license as a dealer  
 13 or as a user without securing a separate license, but he shall be subject to  
 14 all other conditions, requirements, and liabilities imposed by this subchapter  
 15 upon a dealer or a user.

16 (2) A licensed supplier, but not a dealer, may use distillate  
 17 special fuels in motor vehicles owned or operated by him without securing a  
 18 separate license as a user, subject to all conditions, requirements, and  
 19 liabilities imposed herein upon a user.

20 ~~(3) A licensed supplier shall only include distillate special~~  
 21 ~~fuels in bulk storage facilities of the supplier as a part of beginning or~~  
 22 ~~ending inventories required to be reported by such supplier in accordance with~~  
 23 ~~§ 26-56-208(d)(1)(B)."~~

24

25 SECTION 6. Arkansas Code 26-56-208 is amended to read as follows:

26 "26-56-208. Suppliers' and users' reports ) Computation and remittance  
 27 of tax.

28 (a)(1) Every supplier shall, on or before the twenty-fifth day of each  
 29 calendar month, file with the director, on forms prescribed by him, a report  
 30 accounting for the distillate special fuels handled during the preceding  
 31 month. The supplier shall file supporting documents necessary to assure  
 32 accurate reporting. The reports shall include the following:

33 (A) An itemized statement of the number of gallons of  
 34 distillate special fuel received during the next-preceding calendar month by  
 35 the supplier;

36 ~~\_\_\_\_\_ (B) An itemized statement of the number of gallons of~~

1 ~~distillate special fuel deducted in accordance with this subchapter in making~~  
 2 ~~any previous monthly report with respect to which the tax has not theretofore~~  
 3 ~~been paid;~~

4 ~~\_\_\_\_\_ (C) (B) An itemized statement of the number of gallons of~~  
 5 ~~distillate special fuel received or sold during the next-preceding calendar~~  
 6 ~~month and entitled to deduction or exemption under the provisions of this~~  
 7 ~~subchapter;~~

8 ~~\_\_\_\_\_ (D) (C) Such other documents as the director requires.~~

9 (2) The director by regulation shall provide for the payment and  
 10 collection of the distillate special fuels tax where same is due, but which  
 11 under the terms of this subchapter are not required to be remitted by the  
 12 supplier.

13 ~~— (b) Every interstate user, on or before the last day of the month~~  
 14 ~~following the end of each calendar quarter, shall file with the director, on~~  
 15 ~~forms prescribed by the director, an itemized report showing the quantities of~~  
 16 ~~distillate special fuels purchased and used in this state during the preceding~~  
 17 ~~calendar quarter, together with payments of the tax due thereon.~~

18 ~~— (c) In computing the taxes due, a supplier may deduct approved refunds or~~  
 19 ~~credits allowed an interstate user upon the excess of exportations over~~  
 20 ~~importations of tax-paid distillate special fuels, as such refunds or credits~~  
 21 ~~are authorized in ~~§ 26-56-214.~~~~

22 ~~(d)(b)(1)~~ When filing the report and paying the tax to the director as  
 23 required in this section, the supplier shall be entitled to deduct from the  
 24 total number of gallons upon which the tax levied hereunder is due, the number  
 25 of gallons:

26 (A) Purchased during the preceding calendar month from  
 27 another licensed supplier and upon which the tax levied hereunder was paid at  
 28 the time of that purchase; and

29 ~~(B) Received and placed in a tank at bulk storage~~  
 30 ~~facilities, but which had not been withdrawn therefrom at the close of the~~  
 31 ~~next-preceding calendar month; and~~

32 ~~\_\_\_\_\_ (C) (B) Lost due to fire, flood, storm, theft, or other~~  
 33 ~~cause beyond the supplier's control, other than through evaporation.~~

34 (2) The deduction for the loss may be included in the report filed  
 35 for the month in which such loss occurred or in any subsequent report filed  
 36 within a period of one (1) year.

1     — ~~(e)~~ (c)(1) Every pipeline company, water transportation company, and  
 2 common carrier transporting distillate special fuels to points within Arkansas  
 3 shall report under oath to the director, on forms prescribed by him, all  
 4 deliveries of distillate special fuels so made to points within Arkansas.

5             (2)(A) The reports shall cover monthly periods and shall be  
 6 submitted within twenty-five (25) days after the close of the month covered by  
 7 the report.

8                     (B) The report shall show:

9                             (i) The name and address of each person to whom  
 10 deliveries of fuel have actually been made;

11                            (ii) The name and address of each originally named  
 12 consignee if fuel has been delivered to anyone other than the originally named  
 13 consignee;

14                            (iii) The point of origin, point of delivery, and date  
 15 of delivery, as well as the name of the boat, barge, or vessel;

16                            (iv) The number of gallons contained in the vessel, if  
 17 shipped by water;

18                            (v) The license number of each tank truck;

19                            (vi) The number of gallons contained in the tank if  
 20 transported by motor truck;

21                            (vii) The point of origin, the name and address of the  
 22 person or terminal to whom the delivery was made, the date of the delivery,  
 23 and the quantity of distillate special fuels delivered, if shipped by pipeline  
 24 company; and

25                            (viii) The manner and quantities, if delivered by  
 26 other means, in which such delivery is made.

27                     (C) The reports shall also show such additional information  
 28 relative to shipments of distillate special fuels as the director may require.

29     — ~~(f)~~ (d)(1) Every terminal purchasing or otherwise acquiring distillate  
 30 special fuels by pipeline and selling, using, or otherwise disposing of the  
 31 distillate special fuels for delivery in Arkansas not required by the  
 32 provisions of this subchapter to be licensed as a supplier in distillate  
 33 special fuels shall file a statement setting forth the name under which the  
 34 terminal is transacting business within the State of Arkansas, the location  
 35 with the street number address of that terminal's principal office or place of  
 36 business within the state, the name and address of the owner or the names and

1 addresses of the partners if the terminal is a partnership, or the names and  
 2 addresses of the principal officers if the terminal is a corporation or  
 3 association.

4 (2) On or before the twenty-fifth day of each calendar month, the  
 5 terminal shall, on forms prescribed by the Director of the Department of  
 6 Finance and Administration, report to the director all purchases or other  
 7 acquisitions and sales or other disposition of distillate special fuels during  
 8 the next-preceding calendar month, which report shall include the following:

9 (A) Beginning inventories in gallons of distillate special  
 10 fuels in storage;

11 (B) Ending inventories in gallons of distillate special  
 12 fuels in storage;

13 (C) Withdrawals of distillate special fuels in gallons from  
 14 the pipeline outlet resulting in additions of distillate special fuels to  
 15 storage, including the name of the supplier licensed as an importer who  
 16 requested the placement of such distillate special fuels into storage;

17 (D) Removals of distillate special fuels from storage,  
 18 specifically including:

19 (i) Bill of lading numbers which represent physical  
 20 movements of the distillate special fuels;

21 (ii) The date of each removal;

22 (iii) The quantity in gallons of distillate special  
 23 fuels so removed;

24 (iv) The person who had the distillate special fuels  
 25 available for that particular removal; and

26 (v) The person possessing a license from the Director  
 27 of the Department of Finance and Administration who requested the removal of  
 28 such distillate special fuels from that storage.

29 (3) When any terminal not required by the provisions of this  
 30 subchapter to register as a supplier in distillate special fuels, purchasing  
 31 or otherwise acquiring distillate special fuels by pipeline and selling or  
 32 otherwise disposing of the distillate special fuels for delivery in Arkansas,  
 33 fails to submit his monthly report to the director by the twenty-fifth day of  
 34 each calendar month, or when the terminal fails to submit in the monthly  
 35 report the data required by this subchapter, the terminal shall be guilty of a  
 36 misdemeanor and shall be fined an amount not greater than one hundred dollars

1 (\$100) for the first offense and shall be fined an amount not less than one  
2 hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each  
3 subsequent offense."

4

5 SECTION 7. All provisions of this act of a general and permanent nature  
6 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
7 Revision Commission shall incorporate the same in the Code.

8

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

14

15 SECTION 9. All laws and parts of laws in conflict with this act are  
16 hereby repealed.

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19 APPROVED:4-08-97

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