

State of Arkansas

76th General Assembly

Regular Session, 1987 AS ENGROSSED 2/11/87

HOUSE BILL 1359

By: Representative Bryan

"AN ACT TO CHANGE REPORTING DATES AND METHODS OF CALCULATION USED BY INTERSTATE USERS OF MOTOR FUEL AND DISTILLATE SPECIAL FUEL TO REPORT TAX AND CLAIM REFUNDS OF TAX PAID ON FUEL USED IN ARKANSAS; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 7 of Act 112 of 1953, as amended, the same being Ark. Stat. Ann. §75-1155 is hereby amended to read as follows:

"Section 7. Every person, firm or corporation licensed under this Act shall, on or before the last day of the month following the end of each calendar quarter, file with the Commissioner, on forms prescribed by him, a report showing the quantities of gasoline purchased and used in this State during the preceding calendar quarter, together with payment of the tax due thereon. The number of gallons of motor fuel upon which the tax has been paid by an interstate user shall be determined from the form obtained by the interstate user from a licensed dealer or licensed bulk distributor within the state. If it shall be determined by the quarterly reports filed with the Commissioner of Revenues that the interstate user has used more gallons of gasoline in this State than the gasoline tax due thereon has been paid, such interstate user shall remit to the Commissioner an excise tax of thirteen and one-half cents (13½) per gallon on such gasoline. Interstate users may not take credit on reports at a tax rate in excess of that actually paid.

For the purpose of determining whether a licensed interstate user owes tax or is entitled to a credit or refund, the licensed interstate user shall determine the average miles per gallon of fuel used. The average miles per gallon shall be determined by dividing total miles traveled in all jurisdictions by the total gallons of fuel used in all jurisdictions. The licensed

interstate user shall then determine the total amount of fuel used within the State of Arkansas by dividing the total number of miles traveled within the State of Arkansas by the average miles per gallon. The taxpayer's tax liability shall be calculated by multiplying the number of gallons of fuel used within the State of Arkansas by thirteen and one-half cents (13½) per gallon. A taxpayer shall be entitled to credits against his tax liability for tax paid fuel purchased within the State of Arkansas.

Any licensed interstate user who fails to maintain adequate mileage or fuel records, as required by Section 8 of Act 112 of 1953, for the purpose of determining the amount such interstate user owes the State of Arkansas for tax on motor fuel used in this State as provided hereinabove, the number of gallons of motor fuel used in this State shall be determined by an assessment based on the following mileage factors per gallon of motor fuel as compared to the appropriate class of vehicle hereinafter set out to wit: for the purposes of this Section all automobiles, except buses, with a capacity of less than eight (8) passengers shall be deemed to be Class A vehicles; all truck type vehicles, except buses, with a factory rating and gross loaded weight of less than twenty-two thousand five hundred (22,500) pounds, shall be deemed to be Class B vehicles; all other vehicles except buses, with a factory rating in excess of twenty-two thousand five hundred (22,500) pounds, or whose total gross loaded weight exceeds twenty-two thousand five hundred (22,500) pounds shall be deemed to be Class C vehicles. For the purposes of this Section, all buses rated and licensed as such shall be deemed to be Class D vehicles. The mileage factor per gallon of motor fuel for Class A vehicles shall be twelve (12) miles, for Class B vehicles shall be eight (8) miles, for Class C vehicles shall be five (5) miles, and for Class D vehicles shall be six (6) miles.

These mileage factors shall be utilized in conjunction with the Arkansas mileage as determined through an audit and based upon the best records available regardless of source.

For the purposes of determining the amount any unlicensed or unbonded user owes the State of Arkansas for tax on motor fuel used in this State, only the above mileage factors per gallon of motor fuel for the applicable vehicle shall be utilized.

If a quarterly report of an interstate user results in a net credit, the interstate user may elect to have the credit carried forward and applied

against the motor fuel tax due for the succeeding eight (8) quarters or until the credit is completely used, whichever occurs first. In the alternative, a taxpayer who is entitled to a net credit on his quarterly fuel use tax report may elect to have the amount of credit refunded to him.

An interstate user who had a total tax liability for motor fuel taxes during the previous calendar year of less than \$100.00 may, upon application to the Commissioner, obtain permission to report his motor fuel tax liability on an annual basis. Such annual report shall be due on or before the last day of the month following the end of each fiscal year.

The Commissioner shall prescribe the appropriate forms necessary for the administration of this Act. The Commissioner may make appropriate rules and regulations necessary to insure the accurate reporting of mileage traveled and gallons used and purchased by the licensed interstate users."

SECTION 2. Subsection (4) of Section (b) of Section 2 of Act 51 of 1977, as amended, the same being Ark. Stat. Ann. §75-1155.1(b)(4), is hereby amended to read as follows:

"(4) Each quarterly report filed by a licensed interstate user of motor fuels, or special motor fuels with the Department, shall reflect thereon the amount of motor fuels or special motor fuels purchased for use in Arkansas during said quarter, the number of gallons of motor fuels or special motor fuels upon which taxes are due the State of Arkansas for said quarter, and the excess gallonage upon which the interstate user is entitled to refunds. At the end of each calendar quarter, the licensed interstate user may make application for refund with respect to the number of gallons of motor fuels or special motor fuels upon which the motor fuels and special motor fuels taxes have been paid during such calendar quarter for which the interstate user is entitled to refund."

SECTION 3. Subsection (5) of Section (b) of Section 2 of Act 51 of 1977, as amended, the same being Ark. Stat. Ann. §75-1155.1(b)(5), is hereby repealed.

SECTION 4. Section 3 of Act 51 of 1977, the same being Ark. Stat. Ann., §75-1155.2, is hereby repealed.

SECTION 5. Subsections (b) and (c) of Section 11 of Chapter 2 of Act 40 of 1965 (First Extraordinary Session), as amended, the same being Ark. Stats. Ann. §75-1251(b) and (c) are hereby amended to read as follows:

"(b) For the purpose of determining whether an interstate distillate special fuels user owes special motor fuel tax or is entitled to a credit or refund, the licensed interstate distillate special fuels user shall file a quarterly report on or before the last day of the month following the end of each calendar quarter. If it shall be determined by the quarterly report that the interstate user has used distillate special fuels in this State in excess of the number of gallons of such fuel upon which the Arkansas tax had been paid, such interstate user shall remit to the Commissioner at the time of filing such report, an excise tax of twelve and one-half cents (12½) per gallon of such excess gallonage used. If it shall be determined that the interstate user has purchased more gallons of distillate special fuels in this State than he has used in this State, then such user shall be entitled to a credit or refund of twelve and one-half cents (12½) per gallon of such excess gallonage purchased in the state.

(c) The quarterly report required by this Act (§§75-1239 - 75-1268) shall be filed on or before the last day of the month following the end of each calendar quarter and shall be made on forms prescribed by the Commissioner and shall include such information as the Commissioner may require."

SECTION 6. Subsection (b) of Section 8 of Chapter 2 of Act 40 of 1965 (First Extraordinary Session), as amended, the same being Ark. Stat. Ann. §75-1248(b) is hereby amended to read as follows:

"(b) Every interstate user, on or before the last day of the month following the end of each calendar quarter, shall file with the Commissioner, on forms prescribed by the Commissioner, an itemized report showing the quantities of distillate special fuels purchased and used in this State during the preceding calendar quarter, together with payments of the tax due thereon."

SECTION 7. Subsection (d) of Section 11 of Chapter 2 of Act 40 of 1965 (First Extraordinary Session), as amended, the same being Ark. Stat. Ann. §75-1251(d) is hereby amended to read as follows:

"(d) For the purpose of determining whether a distillate special fuel

user owes tax or is entitled to a credit or refund as provided in Subsection (b) of this Section, the distillate special fuel user shall file with the Commissioner, a report showing the quantities of special motor fuels used in this State during the preceding calendar quarter. This report shall be due on or before the last day of the month following the end of each calendar quarter. If it shall be determined by the quarterly report filed with the Commissioner of Revenues that the distillate special fuel user has used more gallons of special motor fuel in this state than the special motor fuel tax due thereon has been paid, such distillate special fuel user shall remit to the Commissioner an excise tax of twelve and one-half cents (12½) per gallon of special motor fuel. Distillate special fuel users may not take credit on reports at a tax rate in excess of that actually paid.

For the purpose of determining whether a distillate special fuel user owes tax or is entitled to a credit or refund, the distillate special fuel user shall determine the average miles per gallon of fuel used. The average miles per gallon shall be determined by dividing total miles traveled in all jurisdictions by the total gallons of fuel used in all jurisdictions. The distillate special fuel user shall then determine the total amount of fuel used within the State of Arkansas by dividing the total number of miles traveled within the State of Arkansas by the average miles per gallon. the taxpayer's tax liability shall be calculated by multiplying the number of gallons of fuel used within the State of Arkansas by twelve and one-half cents (12½) per gallon. A taxpayer shall be entitled to credits against his tax liability for tax paid fuel purchased within the State of Arkansas.

Any licensed interstate user who fails to maintain adequate mileage or fuel records, for the purpose of determining the amount such interstate user owes the State of Arkansas for tax on distillate special fuel used in this State as provided hereinabove, the number of gallons of distillate special fuel used in this State shall be determined by an assessment based on the following mileage factors per gallon of distillate special fuel as compared to the appropriate class of vehicle hereinafter set out to wit: for the purposes of this Section all automobiles, except buses, with a capacity of less than eight (8) passengers shall be deemed to be Class A vehicles; all truck type vehicles, except buses, with a factory rating and gross loaded weight of less than twenty-two thousand five hundred (22,500) pounds, shall be deemed to be Class B vehicles; all other vehicles, except buses, with a factory rating in

excess of twenty-two thousand five hundred (22,500) pounds, or whose total gross loaded weight exceeds twenty-two thousand five hundred (22,500) pounds shall be deemed to be Class C vehicles. For the purposes of this Section, all busses rated and licensed as such shall be deemed to be Class D vehicles. The mileage factor per gallon of distillate special fuel for Class A vehicles shall be twelve (12) miles, for Class B vehicles shall be eight (8) miles, for Class C vehicles shall be five (5) miles, and for Class D vehicles shall be six (6) miles. These mileage factors shall be utilized in conjunction with the Arkansas mileage as determined through an audit and based upon the best records available regardless of source.

For the purposes of determining the amount any unlicensed or unbonded user owes the State of Arkansas for tax on distillate special fuel used in this State, only the above mileage factors per gallon of distillate special fuel for the applicable vehicles shall be utilized.

If a quarterly report of a distillate special fuel user results in a net credit, the distillate special fuel user may elect to have the credit carried forward and applied against the special motor fuel tax due for the succeeding eight (8) quarters or until the credit is completely used, whichever occurs first. In the alternative, a taxpayer who is entitled to a net credit on his quarterly fuel use tax report may elect to have the amount of credit refunded to him.

A distillate special fuel user who has a total tax liability for special motor fuel tax during the previous calendar year of less than one hundred dollars (\$100.00) may, upon application to the Commissioner obtain permission to report his motor fuel tax liability on an annual basis. Such annual report shall be due on or before the last day of the month following the end of each fiscal year.

The Commissioner shall prescribe the appropriate forms necessary for the administration of this Act. The Commissioner may make appropriate rules and regulations necessary to insure the accurate reporting of the special motor fuel tax."

SECTION 8. Act 909 of 1979, the same being Ark. Stats. Ann. §§75-1243.2, 75-1243.3 and 75-1243.4, which allows a taxpayer to elect a credit or refund of excess special motor fuel taxes paid and provides incentives to purchase tax paid diesel within the State of Arkansas, is hereby repealed.

SECTION 9. The first paragraph of Section 1 of Act 573 of 1965, the same being Ark. Stat. Ann. §75-1172, is hereby amended to read as follows:

"All unlicensed motor fuel user and distillate special fuel user out-of-state trucks entering the State of Arkansas, shall, at the port of entry, secure a copy of an Entry Slip from the Commissioner of Revenues or his authorized agent or employee, said Entry Slip being signed by the Commissioner of Revenues or his authorized agent or employee, and said Entry Slip also being signed by the driver of said vehicle, and said Entry Slip to contain the following information: Name and address of owner or operator of vehicle, state of registration, license number, speedometer reading, destination and point of leaving State, and description of vehicle. This said Entry Slip shall remain in the vehicle for the remainder of the trip over the highways of this State, and shall be produced for the inspection of the Commissioner of Revenues, or his authorized employee or representative, at any point within the State, and shall also be produced at the Port of Exit to the Commissioner of Revenues or his authorized agent or employee, for determination of any fuel taxes due the State. For the purpose of determining the amount such interstate user owes the State of Arkansas for tax on motor fuel or distillate special fuel used in this State as provided hereinabove, the number of gallons of motor fuel or distillate special fuel used in this State shall be determined by an assessment based on the following mileage factors per gallon of motor fuel or distillate special fuel as compared to the appropriate class of vehicle hereinafter set out to wit: for the purposes of this Section all automobiles, except buses, with a capacity of less than eight (8) passengers shall be deemed to be Class A vehicles; all truck type vehicles, except buses, with a factory rating and gross loaded weight of less than twenty-two thousand five hundred (22,500) pounds, shall be deemed to be Class B vehicles; all other vehicles except buses, with a factory rating in excess of twenty-two thousand five hundred (22,500) pounds, or whose total gross loaded weight exceeds twenty-two thousand five hundred (22,500) pounds shall be deemed to be Class C vehicles. For the purposes of this Section, all buses rated and licensed as such shall be deemed to be Class D vehicles. The mileage factor per gallon of motor fuel or distillate special fuel for Class A vehicles shall be twelve (12) miles, for Class B vehicles shall be eight (8) miles, for Class C vehicles shall be five (5) miles, and for Class D vehicles shall be six (6)

miles. The motor fuel tax and distillate special fuel tax levied by this State shall be paid upon all such fuel used to propel out-of-state trucks upon the highways of this State. The tax shall be paid by the owner or operator of such truck or trucks or vehicle in either of the following ways, at the option of the owner or operator:"

SECTION 10. Section 9 of Act 112 of 1953, as amended, the same being Ark. Stat. Ann. §75-1157, is hereby repealed.

SECTION 11. Section 12 of Chapter 2 of Act 40 of 1965 (First Extraordinary Session), the same being Ark. Stat. Ann. §75-1252, is hereby repealed.

SECTION 12. Section 1 of Act 354 of 1977, the same being Ark. Stat. Ann. §75-1187, is hereby repealed.

SECTION 13. All laws or parts of laws in conflict with this Act are hereby repealed.

SECTION 14. It is hereby found and determined by the General Assembly that this Act makes various changes in the motor fuel tax law and the special motor fuel tax law; that such changes should go into effect at the beginning of the next fiscal year; and that unless this emergency clause is adopted, this Act may not go into effect until after the beginning of the next fiscal year. 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 on and after July 1, 1987.

/s/L. L. Bryan

