

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007  
4

As Engrossed: H1/25/07 S2/7/07

## A Bill

HOUSE BILL 1202

5 By: Representatives Thyer, Petrus, Sullivan, Wells, Walters, J. Brown, L. Cowling, L. Evans, Hall,  
6 Kenney, Kidd, Norton, Pierce, Reep, R. Green, Pace, Ragland, Maloch, Patterson, Hoyt, Stewart, Pate,  
7 Reynolds, Abernathy, Rogers, Garner, E. Brown, Lowery, Dunn, Saunders, S. Dobbins, George,  
8 Hardwick, Cornwell, T. Baker, Medley, Pennartz, Cash, Anderson, J. Roebuck, Moore, D. Evans, J.  
9 Johnson, Cook, Cooper  
10 By: Senators Malone, R. Thompson, Bookout, *Capps, Faris, Hill, Glover*

### For An Act To Be Entitled

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13 *AN ACT TO EXEMPT DYED DISTILLATE SPECIAL FUEL*  
14 *FROM THE SALES AND USE TAX; TO IMPOSE A GALLONAGE*  
15 *TAX ON DYED DISTILLATE SPECIAL FUEL; TO EXCLUDE*  
16 *BIODIESEL FUEL FROM THE GALLONAGE TAX AND THE*  
17 *SALES AND USE TAX; AND FOR OTHER PURPOSES.*  
18

### Subtitle

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21 *TO EXEMPT DYED DISTILLATE SPECIAL FUEL*  
22 *FROM SALES AND USE TAX; TO IMPOSE A*  
23 *GALLONAGE TAX ON DYED DISTILLATE SPECIAL*  
24 *FUEL; TO EXCLUDE BIODIESEL FUEL FROM THE*  
25 *GALLONAGE TAX AND THE SALES AND USE TAX.*  
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

29  
30 *SECTION 1. Arkansas Code § 26-52-401(11)(A), concerning exemptions*  
31 *from tax, is amended to read as follows:*

32 *(11)(A) Gross receipts or gross proceeds derived from the sale*  
33 *of:*

34 *(i) Gasoline or motor vehicle fuel on which the motor*  
35 *vehicle fuel or gasoline tax has been paid to the State of Arkansas; ~~and~~*

36 *(ii) Special fuel or petroleum products sold for*



1 consumption by vessels, barges, and other commercial watercraft and  
2 railroads;

3 (iii) Dyed distillate special fuel on which the tax  
4 levied by § 26-56-224 has been paid; and

5 (iv)(a) Biodiesel fuel.

6 (b) As used in this subdivision (11)(A)(iv)  
7 "biodiesel fuel" means a diesel fuel substitute produced from nonpetroleum  
8 renewable resources.

9  
10 SECTION 2. Arkansas Code § 26-56-224 is amended to read as follows:

11 26-56-224. ~~Fuel used for off-road purposes.~~ Fuel used for off-road  
12 purposes - Imposition of tax on dyed distillate special fuel.

13 (a) All distillate special fuel sold, used, or utilized in this state  
14 for off-road purposes, and not for the purpose of fueling motor vehicles,  
15 shall be dyed by the person or entity authorized to dye such fuels in  
16 accordance and in conformance with P.L. 103-66 and the Internal Revenue  
17 Service Regulation made and promulgated pursuant to P.L. 103-66 which are in  
18 effect on April 6, 1995.

19 (b)(1) There is levied an excise tax at the rate of six cents (6¢) per  
20 gallon on all dyed distillate special fuel sold, used, or utilized in this  
21 state.

22 (2)(A) If the dyed distillate special fuel contains biodiesel  
23 fuel, the excise tax in this subsection is levied only on the portion of the  
24 fuel that is not biodiesel fuel.

25 (B) As used in this subdivision (b)(2), "biodiesel fuel"  
26 means a diesel fuel substitute produced from nonpetroleum renewable  
27 resources.

28 (c) The excise tax levied in subsection (b) of this section shall be  
29 deposited as follows:

30 (1) Seventy-six and six-tenths percent (76.6%) shall be  
31 deposited as general revenues;

32 (2) Eight and one-half percent (8.5%) shall be deposited into  
33 the Property Tax Relief Trust Fund; and

34 (3) Fourteen and nine-tenths percent (14.9%) shall be deposited  
35 into the Educational Adequacy Fund.

36 (d)(1) The excise taxes levied by subsection (b) of this section shall

1 be collected and remitted by suppliers of dyed distillate special fuel that  
 2 are required to be licensed pursuant to § 26-56-204.

3 (2) The excise tax levied by subsection (b) of this section  
 4 shall be paid by any person that uses dyed distillate special fuel on which  
 5 the excise tax levied by subsection (b) of this section has not been paid.

6 (e) The excise taxes levied by subsection (b) of this section shall  
 7 not apply to dyed distillate special fuel sold for consumption by:

8 (1) Vessels, barges, and other commercial watercraft;

9 (2) Railroads;

10 (3) Municipal buses as described in § 26-52-417; or

11 (4) To fuel sold to the United States Government.

12 (f) The excise taxes levied by subsection (b) of this section shall be  
 13 reported and paid on or before the twentieth day of each month by electronic  
 14 funds transfer as authorized pursuant to § 26-19-101 et seq., on forms to be  
 15 prescribed by the Director of the Department of Finance and Administration.

16 ~~(b)~~(g) All distillate special fuel which has not been dyed in  
 17 accordance with subsection (a) of this section and which is sold, used, or  
 18 utilized in this state for any purpose or purposes shall be taxable at the  
 19 total per-gallon tax rates as set out in this chapter.

20 ~~(e)~~(h) Off-road consumers purchasing dyed distillate special fuel shall  
 21 not be required to obtain the annual off-road consumer permits required by §  
 22 26-56-204(a), and bulk sales of such dyed distillate special fuel may be made  
 23 to such off-road consumers notwithstanding the provisions of § 26-56-218.”  
 24

25 SECTION 3. Arkansas Code § 26-56-109 is amended to read as follows:  
 26 26-56-109. Distribution of revenues.

27 Except as provided in § 26-56-224(b) – (f), all All taxes, penalties,  
 28 and other amounts collected under the provisions of this chapter shall be  
 29 classified as special revenues, and the net amount shall be distributed as  
 30 provided by the Arkansas Highway Revenue Distribution Law, §§ 27-70-201 - 27-  
 31 70-203, 27-70-206, and 27-70-207.  
 32

33 SECTION 4. Arkansas Code § 26-56-230 is amended to read as follows:  
 34 26-56-230. Disposition of taxes, fees, and other revenues.

35 Except as provided in § 26-56-224(b) – (f), all All taxes, fees,  
 36 penalties, and other amounts collected under the provisions of §§ 26-56-223 -

1 26-56-231 shall be classified as special revenues, and the net amount shall  
2 be distributed as provided by the Arkansas Highway Revenue Distribution Law,  
3 §§ 27-70-201 - 27-70-203, 27-70-206, and 27-70-207.

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5 SECTION 5. Arkansas Code § 26-56-209(d), concerning deliveries of  
6 distillate special fuels, is amended to read as follows:

7 (d) On all deliveries of distillate special fuels to a user by common  
8 or contract carriers, the shipper shall stamp on the manifest or bill of  
9 lading in letters not less than one-quarter inch (1/4") high "TAX PAID"  
10 whenever the tax levied under this subchapter, other than the tax levied by §  
11 26-56-224(b)-(f), has been paid, and "NOT FOR MOTOR VEHICLE USE" whenever the  
12 tax levied under this subchapter has not been paid or if the fuel is dyed  
13 distillate special fuel. It shall be a violation of this chapter for any  
14 driver for a carrier to deliver distillate special fuels covered by a  
15 manifest or bill of lading stamped "NOT FOR MOTOR VEHICLE USE" into a tank  
16 marked "TAX-PAID SPECIAL FUELS".

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18 SECTION 6. Arkansas Code § 26-56-217(a)(1), concerning use and storage  
19 of distillate special fuels, is amended to read as follows:

20 (a)(1) All users, except suppliers of distillate special fuels who  
21 maintain their own storage tanks in the state, are required to have a  
22 separate storage tank for taxable distillate special fuels, other than dyed  
23 distillate special fuels, which tanks are to be physically separate and apart  
24 from any other tanks or fueling units, and to indicate it by placing thereon  
25 in a conspicuous place the words "TAX-PAID FUELS" in letters not less than  
26 five inches (5") high.

27  
28 SECTION 7. Arkansas Code § 26-56-217(b)(1), concerning use and storage  
29 of distillate special fuels, is amended to read as follows:

30 (b)(1) All users who have facilities for storing distillate special  
31 fuels intended for other than highway use and which facilities are suitable  
32 to fuel motor vehicles using distillate special fuels, except those  
33 facilities used for residential purposes, shall mark the storage facilities  
34 with the words "NOT FOR MOTOR VEHICLE USE" in letters not less than five  
35 inches (5") high, and suppliers may deliver into such storage without  
36 collecting the tax levied in this subchapter, other than the tax levied by §

1 26-56-224(b)-(f).

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SECTION 8. EMERGENCY CLAUSE. It is found and determined by the General Assembly that due to sharp increases in oil prices, traditional fuel taxation has become a large percentage of the cost of production for Arkansas farmers thereby creating burdensome price increases for Arkansas consumers; that a change in the manner in which tax is paid on dyed diesel fuel is necessary to reduce the cost of production for Arkansas farmers; and that this act is necessary in order to provide tax relief as soon as reasonably possible. Therefore, an emergency is declared to exist and this act being necessary for the preservation of public peace, health, and safety shall become effective on July 1, 2007.

/s/ Thyer