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2 88th General Assembly
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4
5 By: Senator Files

As Engrossed: S3/1/11
A Bill

SENATE BILL 377

For An Act To Be Entitled

8 AN ACT TO AMEND THE MOTOR FUEL TAX LAW, TO REPEAL
9 MOTOR FUEL TAX PROVISIONS SUPERSEDED BY THE ARKANSAS
10 TAX PROCEDURE ACT; TO REPEAL THE DISTILLATE SPECIAL
11 FUEL EXEMPTION FOR PURCHASES OF SIXTY GALLONS OR LESS
12 FOR OTHER THAN MOTOR VEHICLE USE; TO PROHIBIT
13 LICENSED FIRST RECEIVERS OF MOTOR FUEL FROM SELLING
14 UNTAXED MOTOR FUEL TO ANOTHER FIRST RECEIVER UNLESS A
15 SPECIFIC EXEMPTION APPLIES; TO PROVIDE AN EXEMPTION
16 TO ALLOW DISCLOSURE OF MOTOR FUEL, DISTILLATE SPECIAL
17 FUEL, AND LIQUIFIED GAS SPECIAL FUEL TAX INFORMATION
18 REGARDING DELINQUENT TAX TO BONDING COMPANIES; AND
19 FOR OTHER PURPOSES.

Subtitle

22 TO AMEND MOTOR FUEL, DISTILLATE SPECIAL
23 FUEL, AND LIQUIFIED GAS SPECIAL FUEL
24 PROVISIONS AND TO PROVIDE AN EXEMPTION TO
25 ALLOW DISCLOSURE OF MOTOR FUEL TAX
26 INFORMATION TO BONDING COMPANIES.
27

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29
30 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

31
32 SECTION 1. Arkansas Code § 26-18-212 is amended to read as follows:
33 26-18-212. Failure to file a return after notification.

34 If a taxpayer has previously been advised that he has not complied with
35 the provisions of §§ 26-51-804(a), 26-51-908(g)(2), 26-52-501(a), 26-53-
36 125(a)(1), or 26-55-229(b), ~~or 26-56-106(a),~~ because he has not filed a



1 return or notified the Director of the Department of Finance and
2 Administration that he is no longer required to file a return, even though no
3 tax is due, and he continues to disregard those provisions, there shall be
4 assessed a penalty of fifty dollars (\$50.00) per return, unless the failure
5 is due to reasonable cause and not due to willful neglect.

6
7 SECTION 2. Arkansas Code § 26-18-303(b), concerning the
8 confidentiality of tax records, is amended to add additional subdivisions to
9 read as follows:

10 (22) Disclosure of information, including disclosure as required
11 under § 26-55-232, regarding delinquent motor fuel excise tax levied by the
12 Motor Fuel Tax Law, § 26-55-201 et seq. and by § 26-56-601 et seq., to a
13 bonding company that provides the surety bond required by § 26-55-222, for
14 the taxpayer that owes the delinquent tax;

15 (23) Disclosure of information regarding delinquent distillate
16 special fuel tax levied by § 26-56-201 et seq., and by § 26-56-601 et seq. to
17 a bonding company that provides the surety bond required by § 26-56-204 for
18 the taxpayer that owes the delinquent tax; and

19 (24) Disclosure of information regarding delinquent liquefied
20 gas special fuel tax levied by § 26-56-301 et seq. and by § 26-56-601 et seq.
21 to a bonding company that provides the surety bond required by § 26-56-303
22 for the taxpayer that owes the delinquent tax.

23
24 SECTION 3. Arkansas Code § 26-55-232 is amended to read as follows:

25 26-55-232. Failure to report or pay taxes promptly – Penalties.

26 (a) When any distributor fails to file its monthly report with the
27 Director of the Department of Finance and Administration on or before the
28 time fixed in this subchapter for the filing thereof or when the distributor
29 fails to submit the data outlined in §§ 26-55-229 and 26-55-230 in the
30 monthly report, or when the distributor fails to pay to the director the
31 amount of excise taxes due to the State of Arkansas when the excise taxes are
32 payable, the distributor shall ~~forfeit two percent (2%) of the amount due if~~
33 ~~the taxes are not remitted or paid within ten (10) days after the due date,~~
34 ~~and an additional eight percent (8%) shall be forfeited if the taxes are not~~
35 ~~remitted or paid on or before the thirtieth day after the taxes become due~~ be
36 subject to applicable penalty and interest provisions of the Arkansas Tax

1 Procedure Act, § 26-18-101 et seq.

2 ~~(b)(1) If the tax and penalty are~~ excise tax is not paid within sixty
3 (60) days after the ~~tax and penalty become~~ date the excise tax is due, then
4 the director shall suspend the license of the distributor ~~shall be suspended.~~

5 ~~(2) Thereafter the tax and penalty shall bear interest at the~~
6 ~~rate of one percent (1%) per month until paid.~~

7 ~~(3) At the end of the sixty (60) days, the director shall notify~~
8 ~~the bonding company of the delinquency and declare the bond forfeited and~~
9 ~~shall certify the delinquent account to the Office of Revenue Legal Counsel~~
10 ~~of the Revenue Division of the Department of Finance and Administration for~~
11 ~~collection.~~

12 ~~(c) However, when failure to pay the tax or file the sworn reports~~
13 ~~required by this subchapter within the time prescribed by law or when errors~~
14 ~~or omissions in the reports or payments are the result of mistake or arise~~
15 ~~from circumstances beyond the control of the licensed distributor and the~~
16 ~~delinquency or inaccuracy was unavoidable and devoid of intent to evade the~~
17 ~~tax, the director in his or her discretion may waive the additional eight~~
18 ~~percent (8%) penalty and the interest prescribed in this section.~~

19 ~~(d) Deposit in the United States mails, with postage prepaid of the~~
20 ~~report or remittance in payment of the taxes, in sufficient time to reach the~~
21 ~~director in the ordinary course of the mails on or before the twenty-fifth~~
22 ~~day of the month, shall be deemed compliance with this section, even though~~
23 ~~the report or remittance in fact shall not reach the director until after the~~
24 ~~twenty-fifth day of the month.~~

25 (2)(A) When the director issues a notice of proposed assessment
26 to the distributor under § 26-18-403, the director may notify the bonding
27 company of the excise tax delinquency.

28 *(B) At the end of the ten-day demand for payment period*
29 *that begins on the date a final assessment is issued under § 26-18-401, the*
30 *director shall notify the bonding company of the excise tax delinquency and*
31 *declare the bond forfeited.*

32
33 SECTION 4. Arkansas Code § 26-55-233 is repealed.

34 ~~26-55-233. Failure to file report—Assessment and collection of tax.~~

35 ~~(a) Whenever any distributor neglects or refuses to make and file any~~
36 ~~report for any calendar month as required by this subchapter or files an~~

1 ~~incorrect or fraudulent report, then the Director of the Department of~~
2 ~~Finance and Administration shall:~~

3 ~~(1) Determine upon such information as may be available to the~~
4 ~~director the number of gallons of motor fuel with respect to which the~~
5 ~~distributor has incurred liability under the motor fuel tax laws of the State~~
6 ~~of Arkansas for any particular month; and~~

7 ~~(2) Fix the amount of taxes and penalties payable to the~~
8 ~~director by the distributor under this subchapter accordingly.~~

9 ~~(b)(1) In any action or proceeding for the collection of the motor~~
10 ~~fuel tax or any penalties or interest imposed in connection therewith, an~~
11 ~~assessment by the director of the amount of tax due or interest or penalties~~
12 ~~due to the state shall constitute prima facie evidence of the claim of the~~
13 ~~state and the burden of proof shall be upon the distributor to show that the~~
14 ~~assessment was incorrect and contrary to law.~~

15 ~~(2) However, no assessment shall be made for any month after the~~
16 ~~expiration of three (3) years from the date set for the filing of the monthly~~
17 ~~return, except that, in case of a false or fraudulent report with intent to~~
18 ~~evade tax or of failure to file a report, assessment may be made at any time.~~

19
20 SECTION 5. Arkansas Code § 26-55-237 is repealed.

21 ~~26-55-237. Retention of records by distributors and dealers—Penalty~~
22 ~~for noncompliance.~~

23 ~~(a) Each distributor shall maintain and keep for a period of two (2)~~
24 ~~years records of motor fuel received, used, sold, or delivered, within this~~
25 ~~state by the distributor, together with invoices, bills of lading, and other~~
26 ~~pertinent records and papers as may be required by the Director of the~~
27 ~~Department of Finance and Administration for the reasonable administration of~~
28 ~~this subchapter.~~

29 ~~(b) It shall be the duty of every dealer receiving motor fuel in this~~
30 ~~state to maintain and keep for a period of two (2) years a record of motor~~
31 ~~fuel received and the purchase price, together with delivery tickets,~~
32 ~~invoices, and bills of lading, and such other records as the director shall~~
33 ~~require.~~

34 ~~(c) Records ordinarily kept outside the State of Arkansas by any~~
35 ~~distributor in the usual course of business shall be produced within the~~
36 ~~State of Arkansas upon proper demand of the director.~~

1 ~~(d) Upon conviction, a person knowingly violating this section is~~
2 ~~guilty of an unclassified misdemeanor and shall be sentenced to pay a fine of~~
3 ~~one thousand dollars (\$1,000) and costs of prosecution or to undergo~~
4 ~~imprisonment for not more than one (1) year, or both.~~

5
6 SECTION 6. Arkansas Code § 26-55-238 is repealed.

7 ~~26-55-238. Inspection of records, books, etc.—Examination of~~
8 ~~witnesses.~~

9 ~~(a) The Director of the Department of Finance and Administration shall~~
10 ~~have the power to require any person, firm, corporation, or association of~~
11 ~~persons engaged in the handling, sale, or distribution of gasoline or motor~~
12 ~~vehicle fuel, either as a distributor or as a retailer, to furnish any~~
13 ~~information other than the statements mentioned in § 26-55-237 by the~~
14 ~~director, deemed to be necessary for the purpose of enforcing the collection~~
15 ~~of the tax. For this purpose the director shall have authority to examine the~~
16 ~~books, records, papers, and files and storage tanks and any other equipment~~
17 ~~of such persons, firms, corporations, or associations of persons.~~

18 ~~(b)(1) To this end, the director shall have the power and authority to~~
19 ~~administer oaths and examine witnesses.~~

20 ~~(2)(A) If any witness fails or refuses to appear at the request~~
21 ~~of the director and give evidence under oath or refuses access to books,~~
22 ~~records, papers, and files and storage and any other equipment, the director~~
23 ~~shall certify the facts and the names of the witnesses failing and refusing~~
24 ~~to appear, refusing to give evidence, or refusing access to the books,~~
25 ~~papers, records, files, and storage tanks to the judge of the circuit court~~
26 ~~of this state having jurisdiction over the witness or witnesses.~~

27 ~~(B) Thereupon, the judge shall direct that a summons issue~~
28 ~~out of the court directed to the witnesses commanding their appearance in the~~
29 ~~court on a day to be fixed and to be continued as occasion may require, and~~
30 ~~there give evidence, if within the knowledge of the witnesses, and produce~~
31 ~~and open for inspection the books, papers, records, and files as may be~~
32 ~~required for the purpose of ascertaining any facts necessary for the~~
33 ~~enforcement of the collection of the tax provided for in this subchapter.~~

34 ~~(C) Upon the failure of the witnesses to appear in~~
35 ~~obedience to the summons, to give evidence and produce and open for~~
36 ~~inspection the books, records, papers, and files, and permit access to the~~

1 ~~storage tanks without satisfactory excuse, the witness shall be deemed guilty~~
2 ~~of contempt of court and shall be punished in the manner provided for that~~
3 ~~offense.~~

4
5 SECTION 7. Arkansas Code § 26-55-241(b), concerning motor fuel tax
6 liens, is amended to read as follows:

7 (b)(1) The lien may be enforced by the Director of the Department of
8 Finance and Administration by filing a certificate of indebtedness as
9 provided for in ~~§ 26-55-243~~ § 26-18-701 or by any other legal means.

10 (2) The action of the director in attempting to collect the
11 delinquent taxes by issuing the certificate of indebtedness shall not be
12 construed to be an election of remedies.

13
14 SECTION 8. Arkansas Code § 26-55-243 is repealed.

15 ~~26-55-243. Delinquent tax payments—Collection procedure.~~

16 ~~(a) If any distributor of motor fuel shall become delinquent in the~~
17 ~~payment of any tax prescribed by law on motor fuel, it shall be the duty of~~
18 ~~the Director of the Department of Finance and Administration when the tax is~~
19 ~~determined, either by the report of the distributor or by such investigations~~
20 ~~as the director may have made, to assess the tax so determined against the~~
21 ~~delinquent taxpayer, together with a penalty of twenty percent (20%) on the~~
22 ~~amount of the tax, and to certify the amount of the tax and penalty to the~~
23 ~~Treasurer of State.~~

24 ~~(b)(1) The director also at the same time shall certify the amount of~~
25 ~~the tax and penalty to the clerk of the circuit court of the county where the~~
26 ~~tax or any part thereof accrued.~~

27 ~~(2) It shall be the duty of the clerk to file the certificate of~~
28 ~~record and to enter the same in the circuit court for judgment and decrees~~
29 ~~under the procedure prescribed for filing transcripts of judgments by § 16-~~
30 ~~19-1011.~~

31 ~~(c) Execution shall thereupon be issuable forthwith by the clerk of~~
32 ~~the circuit court directed to the sheriff, who shall make a levy on any~~
33 ~~property, assets, and effects of the distributor against whom the tax is~~
34 ~~assessed.~~

35
36 SECTION 9. Arkansas Code § 26-55-244 is repealed.

1 ~~26-55-244. Refunds on excess gallonage reported.~~

2 ~~(a)(1) Whenever it shall appear upon the filing of the monthly report~~
3 ~~by any distributor that the distributor during the period covered by such~~
4 ~~report has sold or otherwise disposed of or used during such period, an~~
5 ~~amount of motor fuel as set forth in §§ 26-55-205, 26-55-207, 26-55-210, and~~
6 ~~26-55-212, in excess of the amount of motor fuel received by the distributor~~
7 ~~within the State of Arkansas during the period, the distributor shall be~~
8 ~~entitled thereupon to a refund upon the excess gallonage at the rate per~~
9 ~~gallon provided in § 26-55-205 if the distributor claiming the refund has~~
10 ~~paid a tax at the rate provided in § 26-55-205 on each gallon of motor fuel~~
11 ~~in storage or in the possession of the distributor at the beginning of such~~
12 ~~reporting period.~~

13 ~~(2) However, the Director of the Department of Finance and~~
14 ~~Administration may deduct from the refund a sum equivalent to the one percent~~
15 ~~(1%) evaporation loss claimed by the distributor in reports made prior to the~~
16 ~~reporting period.~~

17 ~~(b) In the event any distributor shall be in default in the payment of~~
18 ~~the distributor's motor fuel tax or any penalties or interest thereunder, the~~
19 ~~refunds provided for in this section shall be reduced by the amount of the~~
20 ~~default.~~

21 ~~(c) Whenever the director determines that any distributor is entitled~~
22 ~~to a refund under any of the provisions of this section, the director shall~~
23 ~~certify the amount of the refund and authorize and permit the distributor to~~
24 ~~deduct the same amount from the distributor's next motor fuel tax payment to~~
25 ~~the State of Arkansas.~~

26
27 SECTION 10. Arkansas Code § 26-56-106 is repealed.

28 ~~26-56-106. Failure, refusal, etc., to make report or pay tax—~~
29 ~~Penalties, interest—Attorney's fees.~~

30 ~~(a)(1) Once a supplier, dealer, or user of distillate special fuel or~~
31 ~~liquefied gas special fuels has become liable to file a report with the~~
32 ~~Director of the Department of Finance and Administration, he or she must~~
33 ~~continue to file a report, even though no tax is due, until such time as he~~
34 ~~or she notifies the director in writing that he or she is no longer liable~~
35 ~~for those reports.~~

36 ~~(2) Any supplier, dealer, or user of distillate special fuel or~~

1 ~~liquefied gas special fuels who fails, neglects, or refuses to make any~~
2 ~~report required by this chapter or to pay any tax levied at the time and in~~
3 ~~the manner required in this chapter in addition to any other penalty provided~~
4 ~~in this chapter shall be liable for the amount of the tax due, plus any~~
5 ~~penalties allowed by law.~~

6 ~~(b) If the tax, penalty, and interest are collected by proceedings in~~
7 ~~court, an additional penalty of twenty percent (20%) of the tax shall be~~
8 ~~imposed and collected as attorney's fees.~~

9
10 SECTION 11. Arkansas Code § 26-56-108 is repealed.

11 ~~26-56-108. Assessment of delinquent tax—Time limitations.~~
12 ~~No assessment of delinquent distillate special fuel tax or liquefied gas~~
13 ~~special fuel tax or penalties or interest shall be made for any month after~~
14 ~~the expiration of three (3) years from the date set for the filing of such~~
15 ~~monthly return. However, that in case of a false or fraudulent report with~~
16 ~~intent to evade tax or of failure to file a report, assessment may be made at~~
17 ~~any time.~~

18
19 SECTION 12. Arkansas Code § 26-56-201(b), concerning exemptions from
20 imposition of distillate special fuel excise tax, is amended to read as
21 follows:

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

- 24 (1) Sales to the United States Government;
- 25 (2) Sales to dealers, users, or off-road consumers for off-road
26 use ~~if and~~ only if the distillate special fuel was delivered by the supplier
27 into storage facilities clearly marked "NOT FOR MOTOR VEHICLE USE";
- 28 (3) Sales of distillate special fuel by a licensed supplier for
29 export from the State of Arkansas when shipped by common carrier f.o.b.
30 destination to any other state or territory or to any foreign country, or the
31 export of distillate special fuel by a licensed supplier from the State of
32 Arkansas to any other state or territory or to any foreign country, ~~provided~~
33 ~~that~~ if satisfactory proof of actual exportation of all such distillate
34 special fuel is furnished at the time and in the manner prescribed by the
35 Director of the Department of Finance and Administration; and
- 36 (4) Sales of distillate special fuel by a pipeline importer who

1 has first received the distillate special fuel in this state or to a licensed
2 first receiver in this state, ~~and.~~

3 ~~(5) Sales for other than motor vehicle use in quantities of~~
4 ~~sixty gallons (60 gals.) or less.~~

5
6 SECTION 13. Arkansas Code § 26-56-210 is repealed.

7 ~~26-56-210. Prima facie presumptions—Failure to keep records, issue~~
8 ~~invoices, or file reports—Tax, penalties, and interest.~~

9 ~~(a) Any supplier, dealer, or user who fails to keep the records, issue~~
10 ~~the invoices, or file the reports required by this subchapter shall be prima~~
11 ~~facie presumed to have sold, delivered, or used for taxable purposes all~~
12 ~~distillate special fuel shown by a verified audit by the Director of the~~
13 ~~Department of Finance and Administration or any authorized representative, to~~
14 ~~have been delivered to such supplier, dealer, or user and unaccounted for at~~
15 ~~each place of business or place of storage from which distillate special fuel~~
16 ~~is sold, delivered, or used for any taxable purposes.~~

17 ~~(b)(1) The director is authorized to fix or establish the amount of~~
18 ~~taxes, penalties, and interest due the State of Arkansas from such records of~~
19 ~~deliveries or from any records or information available to the director, and~~
20 ~~if the tax claim as developed from that procedure is not paid, the claim and~~
21 ~~any audit made by the director or an authorized representative, or any report~~
22 ~~filed by such supplier, dealer, or user, shall be admissible in evidence in~~
23 ~~any suit or judicial proceedings filed by the director and shall be prima~~
24 ~~facie evidence of the correctness of said claim or audit.~~

25 ~~(2) However, the prima facie presumption of the correctness of~~
26 ~~the claim may be overcome by evidence adduced by the supplier, dealer, or~~
27 ~~user.~~

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