

1 STATE OF OKLAHOMA

2 2nd Session of the 50th Legislature (2006)

3 FLOOR SUBSTITUTE

4 FOR

5 SENATE BILL NO. 2X

6 By: Morgan

7 FLOOR SUBSTITUTE

8 An Act relating to revenue and taxation; creating the
9 Emergency Fuel Tax Relief Act; providing short title;
10 suspending levy of specified fuel taxes and
11 collection of certain assessment during certain time
12 period; authorizing Oklahoma Tax Commission to
13 promulgate rules; providing for construction of
14 provision; making an appropriation to the Emergency
15 Fuel Tax Relief Act Revolving Fund from the
16 Constitutional Reserve Fund subject to certain
17 declaration; creating Emergency Fuel Tax Relief Act
18 Revolving Fund for the Oklahoma Tax Commission and
19 providing for apportionment of funds based on certain
20 determination; amending 17 O.S. 2001, Section 354,
21 which relates to assessment on motor fuel, diesel
22 fuel and blending materials; providing exception to
23 assessment; amending 68 O.S. 2001, Sections 500.4 and
24 603, which relate to tax levy on gasoline and diesel
25 fuel; providing exception to tax levy; providing for
26 codification; providing for noncodification; and
27 declaring an emergency.

28 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

29 SECTION 1. NEW LAW A new section of law to be codified
30 in the Oklahoma Statutes as Section 500 of Title 68, unless there is
31 created a duplication in numbering, reads as follows:

32 This act shall be known and may be cited as the "Emergency Fuel
Tax Relief Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 500a of Title 68, unless there
is created a duplication in numbering, reads as follows:

A. From October 1, 2005, through December 31, 2005, no motor
fuel tax levied pursuant to Sections 500.4 or 603 of Title 68 of the
Oklahoma Statutes shall be levied and no assessment made pursuant to
Section 354 of Title 17 of the Oklahoma Statutes shall be collected.

1 B. The Oklahoma Tax Commission shall promulgate any rules
2 necessary to implement the provisions of this act. The suspension
3 of motor fuel taxes and assessments provided for in this section
4 shall be construed to suspend the remittance of those taxes and
5 assessments which are required to be remitted to the Tax Commission
6 by virtue of a sale or other action which occurs between October 1,
7 2005, and December 31, 2005, regardless of when such taxes are due
8 and regardless of when such motor fuel is actually purchased by the
9 ultimate consumer.

10 SECTION 3. NEW LAW A new section of law not to be
11 codified in the Oklahoma Statutes reads as follows:

12 There is hereby appropriated to the Emergency Fuel Tax Relief
13 Act Revolving Fund of the Oklahoma Tax Commission, created pursuant
14 to Section 4 of this act, from any monies not otherwise appropriated
15 from the Constitutional Reserve Fund of the State Treasury, the sum
16 of One Hundred Three Million Five Hundred Sixty-one Thousand Dollars
17 (\$103,561,000.00) for the purpose of providing substitute funding
18 for entities whose funding is reduced due to the suspension of the
19 tax levies and assessment directed by Section 2 of this act.

20 SECTION 4. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 500b of Title 68, unless there
22 is created a duplication in numbering, reads as follows:

23 There is hereby created in the State Treasury a revolving fund
24 for the Oklahoma Tax Commission to be designated the "Emergency Fuel
25 Tax Relief Act Revolving Fund". The fund shall be a continuing
26 fund, not subject to fiscal year limitations, and shall consist of
27 monies transferred from the Constitutional Reserve Fund pursuant to
28 Section 3 of this act. All monies accruing to the credit of the
29 fund shall be apportioned by the Tax Commission in the manner set
30 forth in Sections 500.6, 500.6a and 500.7 of Title 68 of the
31 Oklahoma Statutes and Section 354 of Title 17 of the Oklahoma
32 Statutes. The amount of monies apportioned pursuant to each section

1 shall be based on a determination by the Tax Commission of the
2 historical proportion of total revenue derived from each tax and
3 assessment.

4 SECTION 5. AMENDATORY 17 O.S. 2001, Section 354, is
5 amended to read as follows:

6 Section 354. A. Except as otherwise provided by this section
7 and Section 2 of this act, there shall be an assessment of one cent
8 (\$0.01) per gallon upon the sale of each gallon of motor fuel,
9 diesel fuel and blending materials used or consumed in this state.
10 The assessment imposed pursuant to the provisions of this section
11 shall be for the purposes of providing revenue to:

12 1. The Oklahoma Corporation Commission Revolving Fund pursuant
13 to paragraph 1 of subsection C of this section;

14 2. The Petroleum Storage Tank Release Environmental Cleanup
15 Indemnity Fund pursuant to paragraphs 2, 3 and 4 of subsection C of
16 this section;

17 3. The State Transportation Fund pursuant to subparagraph c of
18 paragraph 5 of subsection C of this section;

19 4. The Corporation Commission pursuant to subparagraph a of
20 paragraph 5 of subsection C of this section;

21 5. The Environmental Trust Revolving Fund pursuant to
22 subparagraph b of paragraph 5 of subsection C of this section; and

23 6. The Higher Education Facilities Revolving Fund pursuant to
24 paragraphs 2 and 3 of subsection C of this section.

25 The assessment shall be imposed at the time of the sale of the
26 motor fuel, diesel fuel and blending materials and shall be
27 precollected and remitted to the Oklahoma Tax Commission in
28 accordance with Section 500.1 et seq. of Title 68 of the Oklahoma
29 Statutes and as provided by Section 355 of this title.

30 B. 1. Exempt from the assessment imposed pursuant to
31 subsection A of this section are:

32 a. the state government,

- b. the federal government,
- c. class I and class II railroads, and
- d. sales for exportation outside of this state by a licensed exporter.

2. Exempt from the assessment imposed for purposes specified in paragraph 3 of subsection A of this section are sales of:

- a. motor fuel, diesel fuel and blending materials used solely and exclusively in district-owned or leased public school buses, FFA and 4-H club trucks for the purposes of legally transporting public school children, or in the operation of vehicles used in driver training,
- b. motor fuels, diesel fuels and blending materials used solely and exclusively to propel motor vehicles on the public roads and highways of this state when leased or owned and being operated for the sole benefit of a county, city, town, volunteer fire department with a state certification and rating, rural electric cooperative, rural water and sewer district, rural ambulance service district, or federally recognized Indian tribe as specified by Section 500.10 of Title 68 of the Oklahoma Statutes,
- c. motor fuel, diesel fuel and blending materials to counties and cities and towns,
- d. diesel fuel for off-road purposes specified by Section 500.10 of Title 68 of the Oklahoma Statutes,
- e. motor fuel, diesel fuel and blending materials used for agricultural purposes specified by Section 500.10 of Title 68 of the Oklahoma Statutes, and
- f. motor fuel, diesel fuel and blending materials used in aircraft or in aircraft engines pursuant to Section 500.10 of Title 68 of the Oklahoma Statutes.

1 C. The assessment imposed by subsection A of this section shall
2 be distributed in the following manner:

3 1. The first One Million Dollars (\$1,000,000.00) collected
4 during each fiscal year shall be deposited into the Oklahoma
5 Corporation Commission Revolving Fund created in Section 180.7 of
6 this title;

7 2. From July 1, 2002, until June 30, 2004, fifty percent (50%)
8 of all revenue from the assessment received over the amount required
9 by paragraph 1 of this subsection shall be deposited in the Higher
10 Education Facilities Revolving Fund and fifty percent (50%) of all
11 revenue from the assessment received over the amount required by
12 paragraph 1 of this subsection shall be deposited in the Petroleum
13 Storage Tank Release Environmental Cleanup Indemnity Fund created in
14 Section 353 of this title;

15 3. From July 1, 2004, until the total amount deposited since
16 July 1, 2002, in the Higher Education Facilities Revolving Fund
17 totals Thirty-eight Million Dollars (\$38,000,000.00) twenty-five
18 percent (25%) of all revenue from the assessment received over the
19 amount required by paragraph 1 of this subsection shall be deposited
20 in the Higher Education Facilities Revolving Fund and seventy-five
21 percent (75%) of all revenue from the assessment received over the
22 amount required by paragraph 1 of this subsection shall be deposited
23 in the Petroleum Storage Tank Release Environmental Cleanup
24 Indemnity Fund created in Section 353 of this title;

25 4. After the total amount deposited in the Higher Education
26 Facilities Revolving Fund totals Thirty-eight Million Dollars
27 (\$38,000,000.00), any revenue from the assessment received over the
28 amount required in paragraph 1 of this subsection, shall be
29 deposited in the Petroleum Storage Tank Release Environmental
30 Cleanup Indemnity Fund created in Section 353 of this title in
31 amounts necessary to maintain the maintenance level of the Indemnity
32 Fund pursuant to subsection D of this section; and

1 5. The balance of any revenue from the assessment remaining
2 above the amount required in paragraphs 1 through 4 of this
3 subsection shall be deposited as follows:

4 a. the first One Million Dollars (\$1,000,000.00)
5 collected during each fiscal year shall be deposited
6 in the Corporation Commission Storage Tank Regulation
7 Revolving Fund for the purpose of implementing the
8 provisions of the Oklahoma Storage Tank Regulation Act
9 and the rules promulgated thereunder,

10 b. the second One Million Dollars (\$1,000,000.00)
11 collected during each fiscal year shall be deposited
12 in the Environmental Trust Revolving Fund created in
13 Section 2-3-403 of Title 27A of the Oklahoma Statutes,
14 to be used solely for the cleanup of abandoned oil and
15 gas processing and refining sites, and

16 c. the balance of the monies collected during each fiscal
17 year shall be deposited in the State Transportation
18 Fund and shall be used solely for the purpose of
19 matching Federal-Aid funds for the construction of
20 highways and roads in this state.

21 D. 1. If at any time the Petroleum Storage Tank Release
22 Environmental Cleanup Indemnity Fund falls below the required
23 maintenance level on or before December 31, 2012, the Administrator
24 shall notify the Tax Commission that the Indemnity Fund has fallen
25 below the required maintenance level and that the assessment is to
26 be deposited into the Indemnity Fund for at least three (3) calendar
27 months pursuant to the provisions of paragraph 2 of this subsection.

28 2. At least fifteen (15) days prior to the calendar month in
29 which the assessment is to be collected for credit to the Indemnity
30 Fund, the Tax Commission, upon notification by the Administrator
31 that the Indemnity Fund has fallen below the required maintenance
32 level, shall notify the suppliers, licensed importers or other

1 appropriate persons that the assessment is being imposed for
2 purposes of maintaining the Indemnity Fund. The notice shall
3 include a date certain upon which to begin collecting the assessment
4 for credit to the Indemnity Fund and a date certain for ending the
5 assessment for credit to the Indemnity Fund. Upon notice by the Tax
6 Commission that the assessment imposed is for credit to the
7 Indemnity Fund, the supplier, licensed importer or other appropriate
8 person shall also assess, for the specified period required by the
9 Tax Commission, the sales of:

- 10 a. motor fuel, diesel fuel and blending materials used
11 solely and exclusively in district-owned or leased
12 public school buses, FFA and 4-H Club trucks for the
13 purposes of legally transporting public school
14 children or in the operation of vehicles used in
15 driver's training,
- 16 b. motor fuels, diesel fuels and blending materials used
17 solely and exclusively to propel motor vehicles on the
18 public roads and highways of the state when leased or
19 owned and being operated for the sole benefit of a
20 county, city or town, volunteer fire department with a
21 state certification and rating, rural electric
22 cooperative, rural water and sewer district, rural
23 ambulance service district, or federally recognized
24 Indian tribe as specified by Section 500.10 of Title
25 68 of the Oklahoma Statutes,
- 26 c. motor fuel, diesel fuel and blending materials to
27 counties and cities and towns,
- 28 d. diesel fuel for off-road purposes specified by Section
29 500.10 of Title 68 of the Oklahoma Statutes,
- 30 e. motor fuel, diesel fuel and blending materials used
31 for agricultural purposes specified by Section 500.10
32 of Title 68 of the Oklahoma Statutes, and

1 f. motor fuel, diesel fuel and blending materials used in
2 aircraft and aircraft engines pursuant to Section
3 500.10 of Title 68 of the Oklahoma Statutes.

4 3. After the collection period required by this subsection has
5 expired, the revenue collected from the assessment shall be again
6 deposited in the Corporation Commission Revolving Fund, the
7 Environmental Trust Revolving Fund, and the State Transportation
8 Fund as provided in subsection C of this section.

9 SECTION 6. AMENDATORY 68 O.S. 2001, Section 500.4, is
10 amended to read as follows:

11 Section 500.4 A. A Except as provided in Section 2 of this
12 act, a tax is imposed on all gasoline and all diesel fuel used or
13 consumed in this state as follows:

- 14 1. Gasoline, sixteen cents (\$0.16) per gallon; and
- 15 2. Diesel fuel, thirteen cents (\$0.13) per gallon.

16 B. A Except as provided in Section 2 of this act, a tax is
17 imposed on all gasoline, diesel fuel and kerosene used or consumed
18 in this state for use as fuel to generate power in aircraft engines
19 or for training, testing or research on aircraft engines in the
20 amount of eight one-hundredths of one cent (\$0.0008) per gallon.
21 All gasoline, diesel fuel and kerosene sold for use under this
22 subsection shall not be subject to the excise tax levied in
23 subsection A of this section.

24 C. Notwithstanding any exemption provided in Section 500.1 et
25 seq. of this title and except as provided in Section 2 of this act,
26 all gasoline used or consumed in this state for use as fuel for farm
27 tractors or stationary engines and used exclusively for agricultural
28 purposes shall be subject to a tax in the amount of two and eight
29 one-hundredths cents (\$0.0208) per gallon. All gasoline sold for
30 use pursuant to this subsection shall not be subject to the excise
31 tax levied in subsection A of this section. The term "farm
32 tractor", as used herein, shall include all tractor-type, motorized

1 farm implements and equipment but shall not include motor vehicles
2 of the truck-type, pickup truck-type, automobiles and other motor
3 vehicles required to be registered and licensed each year under the
4 Oklahoma Vehicle License and Registration Act.

5 D. It is the intent of this section to amend, revise,
6 incorporate and recodify the tax imposed on motor fuel and that the
7 tax shall be conclusively presumed to be a direct tax and shall be a
8 direct tax on the retail or ultimate consumer precollected for the
9 purpose of convenience and facility to the consumer. The levy and
10 assessment on other persons as specified in this act shall be as
11 agents of the state for the precollection of the tax. The
12 provisions of this section shall in no way affect the method of
13 collecting the tax as provided in this act. The tax imposed by this
14 section shall be collected and paid at those times, in the manner,
15 and by those persons specified in this act.

16 SECTION 7. AMENDATORY 68 O.S. 2001, Section 603, is
17 amended to read as follows:

18 Section 603. A. In consideration of the use of the highways of
19 this state, and in addition to all other taxes levied for such
20 purposes, all persons who import gasoline and diesel fuel into this
21 state in the fuel supply tank or tanks of motor vehicles or in any
22 other containers for use in propelling such vehicles on the highways
23 for commercial purposes, shall report and pay to the Oklahoma Tax
24 Commission a tax for such use of the highways as provided in this
25 section. ~~The~~ Except as provided in Section 2 of this act, a tax
26 shall be levied and imposed as follows:

- 27 1. Gasoline, sixteen cents (\$0.16) per gallon; and
- 28 2. Diesel fuel, thirteen cents (\$0.13) per gallon.

29 The tax levied and imposed shall be measured and determined by the
30 number of gallons of gasoline and diesel fuel so imported and
31 actually used on the highways of this state. No gasoline or diesel
32 fuel on which the tax levied by the Motor Fuel Tax Code has been

1 paid to this state shall be used in computing the tax imposed by
2 this section. In the event the tax levied by this section can be
3 more accurately determined on a mileage basis, that is, by
4 determining and using the total number of miles traveled in
5 Oklahoma, or in case it is practicable to so determine the tax, the
6 Tax Commission is authorized to accept and approve such basis.

7 B. Each person licensed pursuant to Section 607 of this title
8 who properly remits the tax pursuant to this act shall be entitled
9 to retain one and twenty-five one-hundredths percent (1.25%) of the
10 tax imposed on gasoline by this section and remitted by that
11 licensee and one and fifty-four one-hundredths percent (1.54%) of
12 the tax imposed on diesel fuel by this section and remitted by the
13 licensee to cover the costs of administration imposed by this act
14 including record keeping, report filing, and remitting of the tax.
15 The retention of a percentage of the tax permitted by this section
16 shall not be allowed by a licensee if any report or the tax
17 remittance is delinquent.

18 SECTION 8. It being immediately necessary for the preservation
19 of the public peace, health and safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.

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