

State of Arkansas

76th General Assembly

Regular Session, 1987 AS ENGROSSED 3/3/87

HOUSE BILL1791

By: Representative Lipton AS ENGROSSED 3/6/87

Representative King AS ENGROSSED 4/7/87

"AN ACT TO AMEND ACT 40 OF 1965, FIRST EXTRAORDINARY SESSION,
AS AMENDED [ARK. STAT. ANN. §75-1239 ET SEQ.], TO PROVIDE
FOR MORE EFFICIENT COLLECTION AND ADMINISTRATION OF THE
DISTILLATE SPECIAL FUEL TAX; AND FOR OTHER PURPOSES."

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

SECTION 1. Except as otherwise specifically provided in this Act, all terms and phrases used herein will have the same meaning as ascribed to them under Act 40 of 1965, First Extraordinary Session, as amended [Ark. Stat. Ann. §75-1239 et seq.].

SECTION 2. Subsection (a) of Section 2 of Chapter 1 of Act 40 of 1965, First Extraordinary Session, as amended [Ark. Stat. Ann. §75-1240(a)], is hereby amended to read as follows:

"(a) 'Bulk', as used in connection with the sale and handling of distillate special fuels, means a quantity of distillate fuel in excess of sixty (60) gallons, and, as used in connection with the sale and handling of liquefied gas, special fuels means any quantity of liquefied gas other than in cylinders containing one hundred (100) pounds or less."

SECTION 3. Subsections (d) and (e) of Section 2 of Chapter 1 of Act 40 of 1965, First Extraordinary Session, as amended [Ark. Stat. Ann. §75-1240(d) and (e)], are hereby amended to read as follows:

"(d) 'Exporting' means taking distillate special fuels or liquefied gas special fuels out of this State.

(e) 'Importing' means bring distillate or liquefied gas special fuels into this State."

SECTION 4. Subsection (k) of Section 2 of Chapter 1 of Act 40 of 1965, First Extraordinary Session, as amended [Ark. Stat. Ann. §75-1240(k)], is hereby amended to read as follows:

"(k) 'Supplier' means any person who is customarily in the wholesale business of offering distillate special fuels and/or liquefied gas special fuels for resale or use to any person in this State, and who makes bulk sales of fuel."

SECTION 5. Section 2 of Chapter 1 of Act 40 of 1965, First Extraordinary Session, as amended [Ark. Stat. Ann. §75-1240] is hereby amended by adding thereto the following new subsections:

"(n) 'Gallon' means one (1) U. S. gallon adjusted in volume at a temperature of 60 degrees Fahrenheit.

(o) 'Received' shall mean and include:

(1) Distillate special fuels produced, refined, prepared, distilled, manufactured, blended or compounded at any refinery at any place in the State of Arkansas by any person shall be deemed to be 'received' by such person thereat when the same shall have been loaded at such refinery or other place into tank cars, ships or barges, or when the same shall have been placed in any tank at or by such refinery from which any withdrawals are made directly into tank trucks, tank wagons, pipe lines, or other types of transportation equipment, containers or facilities (other than tank cars, ships or barges), or from which any sales or deliveries not involving transportation are made directly.

(2) Distillate special fuels imported in the State of Arkansas from any other state, territory or foreign country by vessel, and delivered in such vessel to any person, at a marine terminal in the State for storage, or so imported by pipe line and delivered to any person by such pipe line or a connecting pipe line at a pipe line terminal or pipe line tank farm in the State for storage, shall be deemed to have been 'received' by such person thereat when the same shall have been loaded into tank cars, ships or barges at such marine or pipe line terminal or tank farm for any purpose, or when the same shall have been placed in any tank of less than one hundred thousand (100,000) gallons capacity thereat, or elsewhere by such person, or when the same shall have been placed in any tank thereat, or elsewhere by such person, from which any withdrawals are made direct into tank trucks, tank wagons, pipe lines or

other types of transportation equipment, containers or facilities (other than tank cars, ships or barges) or from which tank any sales or deliveries not involving transportation are made directly, but not before.

(3) Distillate special fuels purchased in a tank car which shall be unloaded in the State of Arkansas, shall be deemed to be 'received' at the time when and place where such tank car is unloaded but not before.

(4) Distillate special fuels imported by any person into the State from any other state, territory or foreign country, other than by vessel for storage at marine terminals as hereinbefore set forth, or by pipe line for storage at pipe line terminals or pipe line tank farms as hereinbefore set forth, or by tank car, shall be deemed to be 'received', in the case of distillate special fuels imported from a foreign country, at the time when and the place where the same shall be withdrawn from the original container in which the same was imported, but not before, and shall be deemed to be 'received' in the case of distillate special fuels imported from another state or territory of the United States, at the time when and the place where the interstate transportation of such distillate special fuels shall have been completed within the State, but not before.

(5) Distillate special fuels purchased by one duly licensed supplier from another duly licensed supplier shall be deemed to be 'received' by the supplier purchasing such distillate special fuels at the time possession of such distillate special fuel passes.

(p) 'Off-Road Consumer' means any person who purchases distillate special fuel in bulk quantities and not for motor vehicle use.

(q) 'Sale' shall include any exchange, gift, or other disposition, and 'purchase' shall include any acquisition of ownership.

(r) 'Pipeline importer' means a supplier who imports distillate special fuel by common carrier pipeline, barge or rail. A supplier who imports distillate special fuel exclusively by motor vehicle tank truck is not a pipeline importer."

SECTION 6. Section 1 of Chapter 2 of Act 40 of 1965, First Extraordinary Session, as amended [Ark. Stat. Ann. §75-1241], is hereby amended to read as follows:

"Section 1. There is hereby levied an excise tax at the rate of nine and one-half (9 1/2) cents per gallon on all distillate special fuels sold, or

used in this State, or purchased for sale or use in this State. The additional levies provided for in Section 1 of Act 445 of 1973 [Ark. Stat. Ann. §75-1269] and Section 1 of Act 456 of 1985 [Ark. Stat. Ann. §75-1278] are specifically intended to apply to the tax levied by this Section as amended by this Act and shall remain effective."

SECTION 7. The following are hereby exempted from the tax levied by Section 1 of Chapter 2 of Act 40 of 1965, First Extraordinary Session, as amended [Ark. Stat. Ann. §75-1241]:

(a) Sales to the United States Government;

(b) Sales to dealers, users or off-road consumers for off-road use if and only if:

(1) Such fuel was delivered by the supplier into storage facilities clearly marked "Not for Motor Vehicle Use"; and

(2) Such fuel was sold and delivered by the supplier to dealers, users, or off-road consumers who were, at the time of sale and delivery, except as provided in Section 10 of this Act, holders of licenses or permits issued by the Commissioner which entitle such dealers, users or off-road consumers to purchase fuel tax-free for off-road use, and such purchaser furnishes the supplier with an off-road exemption certificate which has been issued by the Commissioner.

(c) Sales of distillate special fuels by a duly licensed supplier for export from the State of Arkansas, and shipped by common carrier f.o.b. destination to any other state or territory or to any foreign country, or the export of distillate special fuels by a duly licensed supplier from the State of Arkansas to any other state or territory or to any foreign country provided that satisfactory proof of actual exportation of all such distillate special fuels is furnished at the time and in the manner prescribed by the Commissioner.

(d) Sales of distillate special fuels by a pipeline importer who has first received such fuels into this State via common carrier pipeline, barge or rail to a duly licensed supplier in this State.

(e) Sales for other than motor vehicle use in quantities of sixty (60) gallons or less.

SECTION 8. When filing the report and paying the tax to the Commissioner

as required hereunder, the supplier shall be entitled to deduct, from the total number of gallons upon which the tax levied hereunder is due, the number of gallons:

(a) purchased during the preceding calendar month from another licensed supplier upon which the tax levied hereunder was paid at the time of such purchase;

(b) received and placed in a tank, but which had not been withdrawn therefrom at the close of the next preceding calendar month;

(c) lost due to fire, flood, storm, theft or other cause beyond his control, other than through evaporation. The deduction for such loss may be included in the report filed for the month in which such loss occurred or in any subsequent report filed within a period of one year.

SECTION 9. Subsection (a) of Section 3 of Chapter 2 of Act 40 of 1965, First Extraordinary Session, as amended [Ark. Stat. Ann. §75-1243], is hereby amended to read as follows:

"(a) The tax levied hereunder shall be collected and paid by suppliers."

SECTION 10. Section 5 of Chapter 2 of Act 40 of 1965, First Extraordinary Session [Ark. Stat. Ann. §75-1245], is hereby amended to read as follows:

"Section 5. It shall be unlawful to make tax-free bulk sales of distillate special fuels to any user, dealer or off-road consumer who is not licensed by the Commissioner. Provided, however, that such a sale shall be lawful if, at the time of sale and delivery, the supplier obtains from the purchaser a fully executed application for such a license, and said supplier then files the application with the Commissioner at the same time as the supplier's monthly report which accounts for the sale so made. When a user, dealer or off-road consumer license has been revoked and written notice of the revocation has been received by the supplier from the Commissioner, it shall be unlawful for the supplier to make bulk sales or deliveries to such user, dealer or off-road consumer of distillate special fuels on which the tax has not been paid."

SECTION 11. Subsection (a) of Section 6 of Chapter 2 of Act 40 of 1965, First Extraordinary Session [Ark. Stat. Ann. §75-1246], is hereby amended to

read as follows:

"(a) Every person required by law to secure a license under any motor fuel or distillate special fuel tax law shall keep records in the time and manner and subject to inspection and audit as required by Act 401 of 1979, as amended [Ark. Stat. Ann. §84-4701 et seq.], for each place of business or place of storage in Arkansas, including a complete record of all distillate special fuels purchased or received and sold, delivered or used by him showing for each purchase, receipt, sale, delivery or use (1) the date, (2) the name and address of the seller or of the persons from whom received, and if sold or delivered in bulk quantities, the name and address of the purchaser or recipient,

(3) an accurate record of the number of gallons of each product used for taxable purposes with quantities measured by a meter, and (4) inventories of distillate special fuels on hand at the end of each month except for those distillate special fuels in a tank marked 'not for motor vehicle use'."

SECTION 12. Subsections (a), (b), and (c) of Section 7 of Chapter 2 of Act 40 of 1965, First Extraordinary Session, as amended [Ark. Stat. Ann. §75-1247(a), (b), and (c)], are hereby amended to read as follows:

"(a) No person shall commence operations as a supplier, dealer, user or off-road consumer of distillate special fuels without first procuring a license for that purpose from the Commissioner, which license shall be issued and remain in effect until revoked as hereinafter provided.

(b) Each application for a license as a supplier, dealer, user or off-road consumer of distillate special fuels and each such license shall have as a condition that the applicant and holder shall comply with the provisions of this Act. Each application for a license as a dealer, user, or off-road consumer, and each such license, shall have as a further condition that the applicant and holder shall not deliver or permit delivery into the fuel supply tanks of motor vehicles any distillate special fuels which have been purchased tax free by the applicant or holder. A taxable use of distillate special fuels purchased tax free by an applicant for, or holder of, a dealer, user or off-road consumer license, in addition to the penal provisions hereafter prescribed, shall at the discretion of the Commissioner forfeit the right of the applicant or holder to purchase distillate special fuels tax free.

(c) (1) Every supplier shall file with the Commissioner a surety bond not

less than one and one-half times (or 150%) of the prior six months average distillate special fuel tax due, based upon the gallonage of distillate special fuel to be sold or distributed as shown by the application for a license if applicant has not heretofore been engaged in the business of a supplier, or shown by sales for the previous year if the applicant theretofore has been engaged in such business in this State; provided, no bond shall be filed for less than one thousand dollars (\$1,000.00). If the Commissioner deems it necessary to protect the State in the collection of distillate special fuel taxes, he may require any supplier to post a bond in an amount up to three times (or 300%) of the prior six months average distillate special fuel tax due. Provided further, the Commissioner is authorized to waive the posting of bond by any licensed supplier organized and operating under the laws of Arkansas and wholly owned by residents of this State and who has been licensed for a period of at least three years and who has not been delinquent in remitting distillate special fuel taxes during the three year period immediately preceding application by the supplier for waiver of bond. If any supplier whose bond has been waived by the Commissioner as authorized in this paragraph subsequently becomes delinquent in remitting distillate special fuel tax to the Commissioner, the Commissioner may require that such supplier post a bond in the amount required in this Section and such supplier shall not be eligible to petition for a waiver of bond for a period of three years thereafter.

Each application of an interstate user for a license shall be accompanied by a surety bond of a surety company authorized to do business in this State, in favor of the Commissioner, and satisfactory to him, and in an amount to be fixed by him of not less than \$1,000.00 nor more than \$50,000.00, guaranteeing the payment of any and all taxes, penalties, interest, attorney fees and costs levied by, accrued or accruing under this Act. Any violation of this Act shall be cause for revocation of any license issued hereunder.

(2) Such bond or bonds shall be issued by a surety company, duly qualified to do business in Arkansas, which shall be executed by such supplier or interstate user as the principal obligor and shall be made payable to the State of Arkansas as the obligee. Such bond shall be conditioned upon the prompt filing of true reports and the payment by such supplier or interstate user to the Commissioner of any and all distillate special fuel taxes which are now or which hereafter may be levied or imposed by the State of Arkansas,

together with any and all penalties and interest thereon, and generally upon faithful compliance with the provisions of this Act.

(3) In the event that liability upon the bond thus filed by the supplier or interstate user with the Commissioner shall be discharged or reduced, whether by judgment rendered, payment made or otherwise, or if in the opinion of the Commissioner any surety on the bond shall have become unsatisfactory or unacceptable, then the Commissioner may require the filing of a new bond with a satisfactory surety in the same form and amount, failing which the Commissioner shall forthwith cancel the license of said supplier or interstate user. If such new bond shall be furnished, the Commissioner shall cancel the bonds for which such new bond shall be substituted.

(4) In the event that upon hearing, of which the supplier or interstate user shall be given five (5) days notice in writing, the Commissioner shall decide that the amount of the existing bond is insufficient to insure payment to the State of Arkansas of the amount of the tax and any penalties and interest for which said supplier or interstate user is or may at any time become liable, then the supplier or interstate user shall forthwith, upon written demand of the Commissioner, file an additional bond in the same manner and form with a surety company thereon approved by the Commissioner in any amount determined by the Commissioner to be necessary to secure at all times the payment to the State of Arkansas of all taxes, penalties and interest due under the provisions of this Act, failing which, the Commissioner shall forthwith cancel the license of said supplier or interstate user.

(5) Any surety on any bond furnished as above provided shall be released and discharged from any and all liability to the State of Arkansas accruing on such bond after the expiration of sixty (60) days from the date upon which such surety shall have lodged with the Commissioner written request to be released and discharged. Provided, however, that such request shall not operate to relieve, release or discharge such surety from any liability already accrued, or which shall accrue, before the expiration of said 60 day period. The Commissioner shall promptly on receipt of notice of such request notify the supplier or interstate user who furnished such bond, and unless such supplier or interstate user shall on or before the expiration of such 60 day period file with the Commissioner a new bond with a surety company satisfactory to the Commissioner in the amount and form hereinbefore in this Section provided, the Commissioner shall forthwith cancel the license of said

supplier or interstate user. If such new bond shall be furnished as above provided, the Commissioner shall cancel the bond for which such new bond shall be substituted.

(6) In lieu of furnishing a bond or bonds executed by a surety company, as hereinbefore provided, any supplier or interstate user may furnish a bond or other instrument, in form prescribed by the Commissioner, of equal full amount to the amount of the bond or bonds required by this Section, which will provide security or payment of all amounts as hereinbefore described and compliance with all provisions of this Act."

SECTION 13. Subsection (a) of Section 8 of Chapter 2 of Act 40 of 1965, First Extraordinary Session, as amended [Ark. Stat. Ann. §75-1248(a)], is hereby amended to read as follows:

"(a) Every supplier shall, on or before the twenty-fifth (25th) day of each calendar month, file with the Commissioner, on forms prescribed by him, a report accounting for the distillate special fuels handled during the preceding month. The supplier shall file supporting documents necessary to assure accurate reporting. The reports shall include the following:

(1) An itemized statement of the number of gallons of distillate special fuel received during the next preceding calendar month by the supplier.

(2) An itemized statement of the number of gallons of distillate special fuel deducted in accordance with this Act in making any previous monthly report with respect to which the tax has not theretofore been paid.

(3) An itemized statement of the number of gallons of distillate special fuel received or sold during the next preceding calendar month and entitled to deduction or exemption under the provisions of this Act.

(4) Such other documents as the Commissioner requires. The Commissioner by regulation shall provide for the payment and collection of the distillate special fuels tax where same is due, but which under the terms of this Act are not required to be remitted by the supplier.

In computing the taxes due, a supplier may deduct approved refunds or credits allowed an interstate user upon the excess of exportations over importations of tax paid distillate special fuels, as such refunds or credits are authorized in Section 11 of Chapter 2 of Act 40 of 1965, First Extraordinary Session, as amended."

SECTION 14. (a) Every pipeline company, water transportation company and common carrier transporting distillate special fuel to points within Arkansas shall report under oath to the Commissioner, on forms prescribed by him, all deliveries of distillate special fuel so made to points within Arkansas.

(b) Such reports shall cover monthly periods and shall be submitted within twenty (20) days after the close of the month covered by the report. Such report shall show the name and address of each person to whom deliveries of fuel have actually been made; the name and address of each originally named consignee if fuel has been delivered to anyone other than the originally named consignee; the point of origin, point of delivery and date of delivery, as well as the name of the boat, barge or vessel and the number of gallons contained therein if shipped by water; the license number of each tank truck and the number of gallons contained therein if transported by motor truck; and the manner, if delivered by other means, in which such delivery is made. Such reports shall also show such additional information relative to shipments of distillate special fuel as the Commissioner may require.

SECTION 15. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end, the provisions of this Act are declared to be severable.

SECTION 16. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 17. It is hereby found and determined by the General Assembly that the State of Arkansas is in serious danger of losing revenues which are necessary to provide adequate funding for essential needs of the citizens of this State and the provisions of this Act are necessary to avoid a substantial reduction in State revenues. Therefore, an emergency is hereby declared to exist and this Act, being 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/ John M. Lipton et al