

## **Chapter 56.**

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**A.C.R.C. Notes.** References to "this chapter" in subchapters 1-6 may not apply to subchapter 7 which was enacted subsequently.

### RESEARCH REFERENCES

**AM. Jur.** 72 Am. Jur. 2d, State Tax., § 616 et seq.

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## Subchapter 1. General Provisions.

**Effective dates.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 7: June 10, 1965. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing highway user tax laws of this State are inadequate to provide sufficient funds to properly construct, reconstruct and maintain the State highways, county roads and city streets of this State; that the existing investment of millions of dollars in public roads, streets and bridges is in jeopardy if additional funds are not provided; that increased motor vehicle traffic poses a serious threat to public safety unless immediate steps are taken to provide a more adequate and better maintained system of public roads, streets and bridges; that the existing Special Motor Fuels Tax Law of this State is not conducive to proper enforcement, and immediate steps must be taken to provide for a more enforceable law in order to avoid tax evasion; and, that the immediate passage of this Act is necessary to correct the aforementioned circumstances. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1967, No. 199, §§ 2, 3: July 1, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that a limitation period for collection of taxes, penalties and interest is necessary to the economic welfare of suppliers, dealers and users of special motor fuel in this State; that it is an undue burden and hardship on such suppliers, dealers and users to maintain records for an indefinite period, and that this Act is immediately necessary to establish a limitation on the collection of such taxes and to thereby remove an undue burden on such suppliers, dealers and users. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall take effect on the date of its passage and approval." Approved March 6, 1967.

Acts 1987, No. 985, § 17, as revised by Acts 1987 (1st Ex. Sess.), No. 20, § 7: Aug. 1, 1987. Acts 1987, No. 985, § 17 provided: "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." However, Acts 1987 (1st Ex. Sess.), No. 20, § 7 provided: "Act 985 of 1987 shall not be in effect on and after July 1, 1987, as stated in Section 17 of Act 985 of 1987 but shall be in full force and effect on and after August 1, 1987."

Acts 1987 (1st Ex. Sess.), No. 20, § 10: June 12, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that, for the purpose of administering the distillate special fuel tax to increase revenues necessary for essential services required by the citizens of this State, it is necessary to remove the requirement of an exemption certificate for purchasers of distillate special fuel for off-road use. 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 from and after its passage and approval."

Acts 1991, No. 688, § 10: Mar. 21, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that some taxpayers are not properly completing and timely filing

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tax returns; that these failures create an administrative burden upon the Department of Finance and Administration; and that this act is designed to impose a fifty dollar (\$50) penalty for failure to timely file returns, even if no tax is due, or if returns are not properly completed. Therefore, an emergency is hereby declared to exist and this act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1026, § 9: Apr. 12, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that confusion exists among wholesalers of diesel fuel with respect to the reporting of inventories of diesel fuel for taxation purposes pursuant to the "Special Motor Fuels Tax Law" and as a consequence diesel fuel tax revenues may be due the state at an earlier date than some wholesalers are remitting them. It is also found that such fuel tax revenues are greatly needed by the state in a timely manner as contemplated by the current diesel fuel tax laws in order that improvements may be expeditiously made to the State Highway System, the county roads, and the municipal streets. It is further found that the amendments contained in this act clarifying the "Special Motor Fuels Tax Law" are necessary to correct the aforementioned problems. 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 from and after its passage and approval."

Acts 1995, No. 1160, § 46: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain changes are necessary to the Arkansas tax laws; that these changes are necessary immediately in order to maintain the efficient administration of the Arkansas income tax laws; and that this act is necessary to effectuate that purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

### **26-56-101. Title.**

This chapter may be known and cited as the "Special Motor Fuels Tax Law."

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 1, § 1; A.S.A. 1947, § 75-1239.

### **26-56-102. Definitions.**

For the purposes of this chapter, the following words and terms shall have the following meanings unless the context clearly indicates a different meaning:

(1) "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 gas in cylinders containing one hundred (100) pounds or less;

(2) "Director" means the Director of the Department of Finance and Administration or his duly authorized agents;

(3) "Dealer" means and includes every person who sells distillate special fuels or liquefied gas special fuels at retail and delivers such special fuels into the special fuel tanks of motor vehicles;

(4) "Exporting" means taking distillate special fuels or liquefied gas special fuels out of this state;

(5) "Importing" means bringing distillate or liquefied gas special fuels into this state;

(6) "Interstate user" means any person who imports or exports distillate special fuels into or out of this state in the fuel supply tanks of motor vehicles owned or operated by him;

(7) "Motor vehicles" means and includes any automobile, truck, truck-tractor, tractor, bus, vehicle, or other conveyance which is propelled by an internal combustion engine or motor and is licensed or required to be licensed for highway use;

(8) "Person" means every natural person, fiduciary, partnership, limited liability company, firm, association, corporation, business trust combination acting as a unit, any receiver appointed by any state or federal court, or any municipality, county, or any subdivision, department, agency, board, commission, or other instrumentality of this state, except the Arkansas State Highway and Transportation Department;

(9) "Distillate special fuel" means and includes all liquids or combination of liquids used or suitable for use in an internal combustion engine or motor for the generation of power for motor vehicles, except fuels subject to the tax levied by the Motor Fuel Tax Law, § 26-55-201 et seq., or liquefied gas special fuels as defined herein. "Distillate special fuel" shall include products commonly referred to as diesel, kerosene, jet fuel, heating oil or fuel oil, cutter stock, and light cycle oil;

(10) "Liquefied gas special fuels" means and includes all combustion gases derived from petroleum or natural gas which are in a gaseous state at normal atmospheric temperature and pressure but which may be maintained in a liquefied state at normal atmospheric temperature by the application of sufficient pressure, used or suitable for use in an internal combustion engine or motor for the generation of power for motor vehicles, and shall not include fuel subject to the tax levied by the Motor Fuel Tax Law, and shall not include distillate special fuels as defined in subdivision (9) of this section;

(11) "Supplier" means any person who is customarily in the wholesale business of offering distillate special fuels or liquefied gas special fuels for resale or use to any person in this state and who makes bulk sales of fuel. The term "supplier" shall include pipeline importers and first receivers;

(12) "Use" or "used" means:

(A) Keeping distillate special fuels or liquefied gas special fuels in storage and selling, using, or otherwise disposing of the same for the operation of motor vehicles;

(B) Selling distillate special fuels or liquefied gas special fuels in this state to be used for operating motor vehicles;

(C) Operating a motor vehicle in this state with distillate special fuels or liquefied gas special fuels;

(D) Importing distillate special fuels or liquefied gas special fuels into this state;

(13) "User" means and includes every person who delivers or causes to be delivered any distillate special fuels or any liquefied gas special fuels into the supply tank of motor vehicles used or operated by him;

(14) "Gallon" means one (1) U.S. gallon adjusted in volume at a temperature of sixty degrees Fahrenheit (60° F);

(15) "Received" means and includes the following:

(A) Distillate special fuels which are 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 distillate special fuels shall have been loaded at such refinery or other place into tank cars, ships, or barges, or when the distillate special fuels shall have been placed in any tank at or by such refinery and from which any withdrawals are made directly into tank trucks, tank wagons, pipelines, 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;

(B) Distillate special fuels which are imported into the State of Arkansas from any other state, territory, or foreign country by vessel and delivered in that vessel to any person at a marine terminal in this state for storage or imported into this state by pipeline and delivered to any person by that pipeline or a connecting pipeline at a pipeline terminal or pipeline tank farm in this state for storage shall be deemed to have been "received" by such person thereat when the distillate special fuels shall have been loaded into tank cars, ships, or barges at such marine or pipeline terminal or tank farm for any purpose, or when the distillate special fuels 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 distillate special fuels shall have been placed in any tank thereat, or elsewhere by such person, and from which any withdrawals are made directly into tank trucks, tank wagons, pipelines, 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;

(C) 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 the tank car is unloaded but not before;

(D) Distillate special fuels imported by any person into this state from any other state, territory, or foreign country, other than by vessel for storage at marine terminals as provided in this section, or by pipeline for storage at pipeline terminals or pipeline tank farms as provided in this section, 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 distillate special fuels 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 this state, but not before;

(E) Distillate special fuels purchased by one licensed supplier from another licensed supplier shall be deemed to be "received" by the supplier purchasing the distillate special fuels at the time possession of the distillate special fuel passes;

(16) "Off-road consumer" means any person who purchases distillate special fuels in bulk quantities and not for motor vehicle use;

(17) "Sale" shall include any exchange, gift, or other disposition;

(18) "Purchase" shall include any acquisition of ownership;

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

(20) "First receiver" shall mean a supplier who purchases distillate special fuel from a pipeline importer or who imports distillate special fuel into the state by motor vehicle tank truck;

(21) [Repealed.]

(22) "Terminal" means and includes every person in the business of withdrawing or removing distillate special fuels from any pipeline outlet in this state and then storing such distillate special fuels in any type of storage container;

(23) "Bill of lading" means and includes any serially numbered document which shall clearly indicate the following:

(A) The seller's supplier license number;

(B) The origin of the transport trip;



(C) The approximate destination or destinations of the transport trip;

(D) The type or types of distillate special fuels being transported and the quantity or quantities of distillate special fuels to be delivered to each destination;

(E) The person or persons responsible for the payment of the distillate special fuels tax; and

(F) Such other information or forms as the director by regulation may adopt or require to implement the intent of this subchapter; and

(24) "Bulk storage facility" means an above-ground or below-ground storage tank connected to a fueling rack customarily used for making wholesale sales, but shall not mean or include any storage tanks or facilities located at any retail outlet of distillate special fuels owned by that supplier nor any storage tanks or facilities located at any other retail outlet of such fuels.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 1, § 2; 1979, No. 591, § 1; A.S.A. 1947, § 75-1240; Acts 1987, No. 985, §§ 2-5; 1987 (1st Ex. Sess.), No. 20, §§ 2, 3; 1993, No. 618, § 1; 1993, No. 1026, § 1; 1993, No. 1029, § 4; 1995, No. 1160, § 29; 1997, No. 1212, §§ 1, 2.

**Publisher's Notes.** Acts 1987, No. 985, § 1, provided: "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."

Acts 1993, No. 1026, § 5, provided: "The Director of the Department of Finance and Administration is hereby authorized to make and promulgate all rules and regulations deemed necessary or desirable by that Director in order that the amendments contained in this act be effectuated as soon as practicable following the passage and approval of this act."

Acts 1993, No. 1029, § 7, provided: "The Director of the Department of Finance and Administration is hereby directed, with the advise and concurrence of the Director of Highways and Transportation, or his designee, to make and promulgate all rules and regulations deemed necessary or desirable by such Directors in order that the amendments contained in this Act be effectuated by July 1, 1993."

**Amendments.** The 1993 amendment by No. 618, in (9), substituted "Distillate special fuel" for "Distillate special fuels," added "or combination of liquids" following "§ 26-55-201 et seq.," substituted "or" for "and except," added the second sentence, and made other minor changes.

The 1993 amendment by No. 1026 added (24).

The 1993 amendment by No. 1029 added (22) and (23).

The 1995 amendment inserted "limited liability company" in (8).

The 1997 amendment substituted "importers and first receivers" for "importers, first receivers, and second receivers" in the second sentence of (11); and repealed (21).

**Meaning of "this act".** Acts 1993, No. 618, codified as §§ 26-56-102, 26-56-201, 26-56-204, 26-56-218, 26-55-702, 26-55-705, 26-55-708, 26-55-803 and 19-5-501.

### **26-56-103. Penalties.**

Any person who violates or fails or refuses to comply with any provision of this chapter for which a specific penalty is not otherwise prescribed shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned not less than ten (10) days nor more than sixty (60) days, or both so fined and imprisoned.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 3; 1967, No. 199, § 1; A.S.A. 1947, § 75-1268.

### **26-56-104. Rules and regulations.**

The director is authorized and empowered to promulgate such rules and regulations, not inconsistent with this chapter, as he shall deem necessary and desirable to facilitate the collection of the taxes levied in this chapter and to otherwise effectuate the purposes of this chapter, and these rules and regulations shall have the same effect as if specifically set forth in this chapter.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 1; A.S.A. 1947, § 75-1266.

### **26-56-105. Payment of tax by the Arkansas State Highway and Transportation Department.**

(a) The Arkansas State Highway and Transportation Department shall pay the special motor fuel tax established by this chapter on the special motor fuels used in its motor vehicles as defined in § 26-56-102(7).

(b) The department shall remit this tax each month to the director who will distribute the tax as outlined in this chapter.

(c) For purposes of computing this tax, the department shall use its fuel consumption reports and shall file with the director an appropriate monthly report stating the gallons used in the department's motor vehicles and the tax due and payable.

(d) The department shall not be required to maintain separate special fuel storage facilities for fuel used in its motor vehicles and in its off-the-road equipment.

**History.** Acts 1979, No. 591, § 2; A.S.A. 1947, § 75-1243.1.

**26-56-106. Failure, refusal, etc., to make report or pay tax - Penalties, interest - Attorneys' fees.**

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

(2) Any supplier, dealer, or user of distillate special fuel or liquefied gas special fuel who fails, neglects, or refuses to make any report required by this chapter or to pay any tax levied at the time and in the manner required in this chapter shall, in addition to any other penalty provided in this chapter, be liable for the amount of the tax due, plus any penalties allowed by law.

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

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 3; 1967, No. 199, § 1; A.S.A. 1947, § 75-1268; Acts 1991, No. 688, § 4.

**26-56-107. False or fraudulent reports - Fraudulent avoidance of tax - Penalty.**

Any person who makes a false or fraudulent report hereunder or who fraudulently attempts to avoid the payment of the tax herein levied on any distillate special fuel or liquefied gas special fuel shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000) or by imprisonment for not less than thirty (30) days nor more than six (6) months, or both so fined and imprisoned.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 3; 1967, No. 199, § 1; A.S.A. 1947, § 75-1268.

**26-56-108. Assessment of delinquent tax - Time limitations.**

No assessment of delinquent distillate special fuel tax or liquefied gas special fuel tax or penalties or interest shall be made for any month after the expiration of three (3) years from the date set for the filing of such monthly return. However, that in case of a false or fraudulent report with intent to evade tax or of failure to file a report, assessment may be made at any time.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 3; 1967, No. 199, § 1; A.S.A. 1947, § 75-1268.

**26-56-109. Distribution of revenues.**

All taxes, penalties, and other amounts collected under the provisions of this chapter shall be classified as special revenues, and the net amount shall be distributed as provided by the Arkansas Highway Revenue Distribution Law, §§ 27-70-201 - 27-70-203, 27-70-206, and 27-70-207.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 2; A.S.A. 1947, § 75-1267.

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## Subchapter 2. Distillate Special Fuels.

**A.C.R.C. Notes.** References to "this subchapter" in §§ 26-56-201 - 26-56-221, and 26-56-223 - 26-56-231 may not apply to §§ 26-56-227 and 26-56-223 which were enacted subsequently.

**Preambles.** Acts 1968 (1st Ex. Sess.), No. 35 contained a preamble which read: "Whereas, Section 11 of Act 40 of the First Extraordinary Session of 1965 provides that in determining whether a distillate special fuel user is entitled to a refund or owes the state tax on distillate special fuels for the monthly reporting period, the number of gallons of distillate special fuel used in the State by such user shall be determined upon the basis of five (5) miles per gallon of fuel consumed; and

"Whereas, the Arkansas Supreme Court, in the case of Larey, Commr. v. Continental Southern Lines, Inc., et al (October 23, 1967) held that the prescribed method of computing the tax due on distillate special fuel by interstate users results in discrimination against certain interstate users and in favor of similar intrastate users and is therefore unconstitutional; and

"Whereas, it is believed that legislation is immediately necessary to prescribe the method of computing such tax liability or tax credit;

"Now, therefore. . . ."

**Effective dates.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 7: June 10, 1965. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing highway user tax laws of this State are inadequate to provide sufficient funds to properly construct, reconstruct and maintain the State highways, county roads and city streets of this State; that the existing investment of millions of dollars in public roads, streets and bridges is in jeopardy if additional funds are not provided; that increased motor vehicle traffic poses a serious threat to public safety unless immediate steps are taken to provide a more adequate and better maintained system of public roads, streets and bridges; that the existing Special Motor Fuels Tax Law of this State is not conducive to proper enforcement, and immediate steps must be taken to provide for a more enforceable law in order to avoid tax evasion; and, that the immediate passage of this Act is necessary to correct the aforementioned circumstances. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1967, No. 138, § 2: July 1, 1967.

Acts 1967, No. 357, § 12: Mar. 15, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State levying a tax upon special motor fuels and prescribing the procedure for collecting the same are confusing and difficult of enforcement and that this Act is immediately necessary to clarify the laws levying the special motor fuel tax in order that said tax may be more effectively and efficiently enforced. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

Acts 1973, No. 445, § 26: July 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that immediate steps must be taken to provide additional State funds, and to allocate federal revenue sharing funds, for the construction of State highways which are essential to the public health, safety, and welfare and that the immediate passage of this Act is necessary in order that fiscal officials of the State may make plans to prepare for the collection of additional highway revenues effective from and after July 1, 1973. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1973."

Acts 1977, No. 51, § 5: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1977 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1977 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1977."

Acts 1977, No. 354, § 5: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the State of Arkansas is in need of additional funds for the construction and maintenance of the State Highway System, the county roads, and municipal streets of this State; that the present laws governing the rate of tax to be computed upon the use of highways in this State with respect to the class of motor carriers covered by the provisions of this Act, do not adequately apportion to each class of user a mileage factor reasonably approximating the actual miles per gallon of fuel used in this State, and that by the enactment of this Act the State of Arkansas will obtain its fair and reasonable share of taxes due from said classes of motor carriers at the existing rates of tax, and will also gain the benefits of penalty for failure of motor carriers to comply with the motor fuel and distillate motor fuel tax laws in reporting and paying taxes upon which Arkansas motor fuel or distillate special fuel taxes have not been collected, and that the immediate passage of this Act is necessary to correct this situation. 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 from and after July 1, 1977."

Acts 1979, No. 437, § 8: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that existing highway user revenue sources do not provide for the adequate maintenance, repair, construction and reconstruction of state highways, county roads and city streets; that the motor vehicular traffic on the public highways and streets of this State makes it immediately necessary that additional funds be provided in order to finance adequate highway, road and street maintenance and construction programs; that the continued economic expansion and growth of this State will be jeopardized if an adequate system of public roads and streets is not provided; and that only by the immediate passage of this Act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after July first of 1979."

Acts 1979, No. 764, § 5: July 1, 1979.

Acts 1980 (1st Ex. Sess.), No. 46, § 2: Jan. 30, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the increased tax liabilities accrued by interstate users of distillate special fuels through the lengthening of their tax reporting period from monthly to quarterly by Act 764 of 1979, the maximum surety bond required of interstate users may not

adequately protect the state from revenue losses, it is necessary to the public peace, health, and safety that the maximum amount of such bonds be raised without delay. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 830, § 5: Mar. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the orderly administration of the motor fuel tax laws is essential for the effective collection of these taxes; that some uncertainty exists regarding the sale of fuels to the United States and, that this Act is necessary to clarify this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 803, § 14: July 1, 1987. Emergency clause provided: "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."

Acts 1987, No. 985, § 17, as revised by Acts 1987 (1st Ex. Sess.), No. 20, § 7: Aug. 1, 1987. Acts 1987, No. 985, § 17 provided: "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." However, Acts 1987 (1st Ex. Sess.), No. 20, § 7 provided: "Act 985 of 1987 shall not be in effect on and after July 1, 1987, as stated in Section 17 of Act 985 of 1987 but shall be in full force and effect on and after August 1, 1987."

Acts 1987 (1st Ex. Sess.), No. 20, § 10: June 12, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that, for the purpose of administering the distillate special fuel tax to increase revenues necessary for essential services required by the citizens of this State, it is necessary to remove the requirement of an exemption certificate for purchasers of distillate special fuel for off-road use. 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 from and after its passage and approval."

Acts 1991, No. 219, § 10: Feb. 22, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after the first day of the first month immediately following its passage and approval."

Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper

maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. 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 the first day of the first month immediately following its passage and approval."

Acts 1993, No. 1026, § 9: Apr. 12, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that confusion exists among wholesalers of diesel fuel with respect to the reporting of inventories of diesel fuel for taxation purposes pursuant to the "Special Motor Fuels Tax Law" and as a consequence diesel fuel tax revenues may be due the state at an earlier date than some wholesalers are remitting them. It is also found that such fuel tax revenues are greatly needed by the state in a timely manner as contemplated by the current diesel fuel tax laws in order that improvements may be expeditiously made to the State Highway System, the county roads, and the municipal streets. It is further found that the amendments contained in this act clarifying the "Special Motor Fuels Tax Law" are necessary to correct the aforementioned problems. 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 from and after its passage and approval."

Acts 1995, No. 777, § 13: July 1, 1995. Emergency clause provided: "It is found and determined by the Eightieth General Assembly of the State of Arkansas that current laws allowing for a refund of tax paid on gasoline used for agricultural purposes is an inefficient and impractical method of providing tax relief to farmers; that current laws collecting motor fuel tax on liquefied petroleum gas based upon a flat fee is inequitable and imposes an undue burden on some taxpayers in this State; that current licensing and bonding requirements on motor fuel and distillate special fuel dealers are unnecessary and contrary to federal law; that this bill is designed to correct each of these deficiencies in current law and this Act should be effective on July 1, 1995. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect on and after July 1, 1995."

Acts 1995, No. 954, § 6: Apr. 6, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly that the United States Congress, through the passage of P.L. 103-66, has adopted legislation to curtail the illegal usage of diesel fuel that has not been taxed for federal taxation purposes by requiring the bulk of off-road non taxed diesel fuels be dyed and by requiring the bulk of on-road taxable diesel fuels be undyed; that confusion has arisen in this State due to the federal dyeing requirements and usage of dyed and undyed diesel fuel and Arkansas laws, which are silent in the area of dyed diesel fuels; that the federal government is experiencing success in curtailing the abuse of nontaxable diesel fuels, due to the dyeing requirements, and this State should realize more fuel tax revenues by adopting mechanisms to curtail such abuses with regard to state fuel taxes by adopting similar requirements; that the adoption of such mechanisms will more equitably insure that highway users pay their fair share for the construction, reconstruction and maintenance of highways and bridges in the State, county and municipal highway, road, and street systems; and that the provisions of this Act are essential to the continued operation of State government. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect on and after its passage and approval."

Acts 1999, No. 1028, § 9: Apr. 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that existing highway user revenue sources do not provide sufficient funds for the necessary maintenance, repair, construction and reconstruction of state highways, county roads and municipal streets; that there is an immediate and urgent need for adequate state highways, county roads and municipal streets; that the continued economic expansion and growth of this state will be jeopardized if an adequate system of state highways, county roads and municipal



streets is not provided; and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve these problems. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 685, § 4: Mar. 9, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need for the construction, reconstruction, and renovation of highways and roads comprising the federal interstate road system within the State of Arkansas; that a construction program cannot be accomplished without the issuance of bonds secured by federal highway assistance payments to finance the program; and that this act is immediately necessary in order to begin the process of facilitating the issuance of bonds. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

### **26-56-201. Imposition of tax - Exemptions.**

(a)(1)(A) There is levied an excise tax at the rate of nine and one-half cents (9 1/2¢) per gallon on all distillate special fuels, except fuel utilized in propelling jet aircraft, sold or used in this state, or purchased for sale or use in this state.

(B) The additional levies provided in subdivision (a)(2) of this section and § 26-56-502 are specifically intended to apply to the taxes levied by this section and shall remain effective.

(2) In addition to the tax levied in subdivision (a)(1) of this section, there is levied an excise tax of one cent (1¢) for each gallon of distillate special motor fuels, as defined in § 26-56-102, sold or used in this state, or purchased for sale or use in this state, to be computed in the manner set forth in this section.

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

(1) Sales to the United States Government;

(2) Sales to dealers, users, or off-road consumers for off-road use if, and only, if the fuel was delivered by the supplier into storage facilities clearly marked "NOT FOR MOTOR VEHICLE USE";

(3) Sales of distillate special fuels by a licensed supplier for export from the State of Arkansas when 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 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 Director of the Department of Finance and Administration;

(4) Sales of distillate special fuels by a pipeline importer who has first received the fuels in this state or to a licensed first receiver in this state; and

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

(c) A licensed first receiver shall not sell untaxed distillate special motor fuel to another licensed first receiver or pipeline importer, unless a specific exemption is available under subsection (b) of this section.

(d)(1) In addition to the taxes levied on distillate special fuels in this section and § 26-56-502, there is levied an additional excise tax of four cents (4¢) per gallon upon all distillate special fuels subject to the taxes levied in this section and § 26-56-502.

(2) This additional excise tax shall be levied, collected, reported, and paid in the same manner and at the same time as is prescribed by law for the levying, collection, reporting, and payment of the other distillate special fuels taxes under Arkansas law.

(e)(1)(A) In addition to the taxes levied on distillate special fuels in this section and §§ 26-56-502 and 26-56-601, there is levied an excise tax of two cents (2¢) per gallon upon all distillate special fuels subject to the taxes levied in this section and §§ 26-56-502 and 26-56-601.

(B) Effective one (1) year after April 1, 1999, the additional tax levied by this subsection shall be increased by an additional two cents (2¢) per gallon.

(2) This additional excise tax shall be levied, collected, reported, and paid in the same manner and at the same time as is prescribed by law for the levying, collection, reporting, and payment of the other distillate special fuels taxes under Arkansas law.

(3) The additional tax levied by this subsection shall be taken into consideration and used when calculating tax credits or additional tax due under § 26-56-214.

(f) The additional taxes collected pursuant to this section shall be considered special revenues and shall be distributed as set forth in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq. subject to any requirements for the repayment of bonds issued under the Arkansas Highway Financing Act of 1999, § 27-64-201 et seq., and the Arkansas Interstate Highway Financing Act of 2005, § 27-64-301 et seq.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 1; 1967, No. 357, § 1; 1973, No. 445, § 1; 1979, No. 437, § 2; A.S.A. 1947, §§ 75-1241, 75-1269; Acts 1987, No. 985, §§ 6, 7; 1987 (1st Ex. Sess.), No. 20, §§ 1, 4-6; 1989, No. 821, § 10; 1991, No. 219, § 3; 1993, No. 618, §§ 2, 3; 1997, No. 1212, § 3; 1999, No. 1028, §§ 2, 4; 2005, No. 685, § 2.

**A.C.R.C. Notes.** As enacted by Acts 1991, No. 219, § 3, subdivision (d)(1) of this section began: "On and after the effective date of this act,". Pursuant to Acts 1991, No. 219, § 10, the effective date of the act was March 1, 1991.

As enacted by Acts 1999, No. 1028, § 2, present subdivision (e)(1)(A) of this section began: "On and after the effective date of this act,". Pursuant to Acts 1999, No. 1028, § 9, the effective date of the act was April 1, 1999.

**Publisher's Notes.** Acts 1987, No. 985, § 1, provided: "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."

Acts 1999, No. 1028, § 1 provided: "This act may be referred to and cited as the 'Arkansas Distillate Special Fuels Excise Act of 1999' and the 'Motor Fuel Excise Tax Act of 1999.'"

**Amendments.** The 1993 amendment, in (a)(1), inserted "except fuel utilized in propelling jet aircraft" and made other minor changes; and in (b)(2)(B), deleted "were" following "who," substituted "had completed an annual registration for purchases of tax free distillate special fuel" for "holders of all licenses or permits issued by the director" and substituted "entitled" for "entitle."

The 1997 amendment rewrote (b)(2); deleted "or licensed second receiver" following "first receiver" in (b)(4); deleted (b)(6) and (c)(2); redesignated (c)(1) as (c); and made minor stylistic changes throughout.

The 1999 amendment added (e) and (f); and made stylistic changes.

The 2005 amendment deleted former (f)(2); redesignated former (f)(1) as present (f); and inserted "subject to any requirements . . . § 27-64-301 et seq." in present (f).

**Meaning of "this act".** Acts 1987, No. 985, codified as §§ 26-56-102, 26-56-201, 26-56-202, 26-56-204, 26-56-208, 26-56-209, 26-56-218, and notes thereto.

### **26-56-202. Collection and payment of tax.**

(a) The tax levied by this subchapter shall be collected and paid by suppliers.

(b) The tax levied by this subchapter shall be paid by an interstate user on distillate fuels imported into this state by them as provided by §§ 26-56-211 [repealed] and 26-56-214.

(c) The tax levied by this subchapter shall be paid by any person who uses distillate special fuels in this state on which the tax levied in this subchapter has not been paid in accordance with the provisions of §§ 26-56-211 [repealed] and 26-56-214.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 3; 1967, No. 138, § 1; 1967, No. 357, § 8; A.S.A. 1947, § 75-1243; Acts 1987, No. 985, § 9.

**Publisher's Notes.** As to Acts 1987, No. 985, § 1, see Publisher's Notes, § 26-56-201.

Section 26-56-211, referred to in this section, was repealed by Acts 1987, No. 803, § 11.

### **26-56-203. [Repealed.]**

**Publisher's Notes.** This section, concerning tax credit options, was repealed by Acts 1987, No. 803, § 8. The section was derived from Acts 1979, No. 909, §§ 1-3; A.S.A. 1947, §§ 75-1243.2 - 75-1243.4.

### **26-56-204. Licenses and bonds for suppliers and users, etc., generally.**

(a)(1)(A) No person shall commence operations as a supplier, user, or off-road consumer of distillate special fuels without first procuring a license for that purpose from the director. The license shall be issued and remain in effect until revoked as provided in this section.

(B)(i) Any person holding or applying for a supplier's license after August 1, 1987, shall make an election to operate either as a pipeline importer or first receiver. Once having made an election in writing filed with the director, the election will remain in force until such time as the supplier makes another written election to change his status.

(ii) The election and any change therein shall take effect on the first month following filing of the election.

(iii) The director may promulgate such forms and regulations as may be necessary to ensure uniformity with federal usage of exemption certificates issued for nonhighway diesel purchases.

(b)(1) Each application for a license or registration as a supplier, user, or off-road consumer of distillate special fuels, and each license or registration, shall have as a condition that the applicant and holder shall comply with the provisions of this subchapter.

(2)(A) Each annual registration as a user or off-road consumer shall have as a further condition that the applicant 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.

(B) A taxable use of distillate special fuels purchased tax-free by an applicant for an annual registration as a user or off-road consumer, in addition to the penal provisions prescribed in this

subchapter, shall, at the discretion of the director, forfeit the right of the applicant to purchase distillate special fuels tax-free.

(c)(1) Every supplier shall file with the director a surety bond of not less than one and one-half ( $1\frac{1}{2}$ ) times or one hundred fifty percent (150%) of the prior six (6) months average distillate special fuel tax due which is based upon the gallonage of distillate special fuel to be sold or distributed as shown by the application for a license if the applicant has not previously been engaged in the business of a supplier, or as shown by sales for the previous year if the applicant previously has been engaged in such business in this state. However, no bond shall be filed for less than one thousand dollars (\$1,000).

(2) If the director 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 (3) times or three hundred percent (300%) of the prior six (6) months average distillate special fuel tax due.

(3)(A) However, the director 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 who has been licensed for a period of at least three (3) years and who has not been delinquent in remitting distillate special fuels taxes during the three-year period immediately preceding application by the supplier for waiver of bond.

(B) If any supplier whose bond has been waived by the director as authorized in subdivision (c)(3)(A) of this section, subsequently becomes delinquent in remitting distillate special fuels taxes to the director, the director may require that the supplier post a bond in the amount required in this section, and the supplier shall not be eligible to petition for a waiver of bond for a period of three (3) years thereafter.

(d) 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 director, satisfactory to him, and in an amount to be fixed by him of not less than one thousand dollars (\$1,000) nor more than fifty thousand dollars (\$50,000), guaranteeing the payment of any and all taxes, penalties, interest, attorney fees, and costs levied by, accrued or accruing under this subchapter. Any violation of this subchapter shall be cause for revocation of any license issued under this subchapter.

(e)(1) The bond or bonds shall be issued by a surety company qualified to do business in Arkansas, which shall be executed by the supplier or interstate user as the principal obligor and shall be made payable to the State of Arkansas as the obligee.

(2) The bond shall be conditioned upon the prompt filing of true reports and the payment by the supplier or interstate user to the director of any and all distillate special fuel taxes which are 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 subchapter.

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

(g) In the event that, upon hearing, of which the supplier or interstate user shall be given five (5) days' notice in writing, the director 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 immediately, upon written demand of the director, file an additional bond in the same manner and form and with a surety company thereon approved by the director in any amount determined by the director 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 section; failing which, the director shall immediately cancel the license of the supplier or interstate user.

(h)(1) Any surety on any bond furnished as provided in this section shall be released and discharged from any and all liability to the State of Arkansas accruing on the bond after the expiration of sixty (60) days from the date upon which a surety shall have lodged with the director written request to be released and discharged. However, the request shall not operate to relieve, release, or discharge the surety from any liability already accrued, or which shall accrue, before the expiration of the sixty-day period.

(2) Upon receipt of notice of such request, the director shall promptly notify the supplier or interstate user who furnished the bond, and unless the supplier or interstate user, on or before the expiration of the sixty-day period, files with the director a new bond with a surety company satisfactory to the director in the amount and form as provided in this section, the director shall immediately cancel the license of that supplier or interstate user.

(3) If a new bond shall be furnished as provided in this section, the director shall cancel the bond for which the new bond shall be substituted.

(i) In lieu of furnishing a bond or bonds executed by a surety company, as provided in this section, any supplier or interstate user may furnish a bond or other instrument, in form prescribed by the director, 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 described in this section and in compliance with all provisions of this subchapter.

(j)(1) A supplier may operate under his supplier's license as a dealer or as a user without securing a separate license, but he shall be subject to all other conditions, requirements, and

liabilities imposed by this subchapter upon a dealer or a user.

(2) A licensed supplier, but not a dealer, may use distillate special fuels in motor vehicles owned or operated by him without securing a separate license as a user, subject to all conditions, requirements, and liabilities imposed herein upon a user.

(k)(1) Any violation of this subchapter shall be cause for revocation of any license issued pursuant to this subchapter.

(2) Should his license be revoked, any supplier or user may bring an action against the director in the chancery court of the county of his domicile within fifteen (15) days of the date of revocation to determine whether or not the supplier or user has in fact violated any of the provisions of this chapter. If the court determines that the provisions of the law have been violated by the supplier or user, it shall affirm the director's action in revoking the license.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, §§ 7, 8; 1967, No. 357, § 2; 1980 (1st Ex. Sess.), No. 46, § 1; A.S.A. 1947, §§ 75-1247, 75-1248; Acts 1987, No. 985, § 12; 1987 (1st Ex. Sess.), No. 20, § 8; 1993, No. 618, §§ 4, 5; 1993, No. 1026, § 2; 1995, No. 777, §§ 4-6; 1997, No. 1212, §§ 4, 5.

**Publisher's Notes.** As to Acts 1987, No. 985, § 1, see Publisher's Notes, § 26-56-201.

Acts 1993, No. 1026, § 5, provided: "The Director of the Department of Finance and Administration is hereby authorized to make and promulgate all rules and regulations deemed necessary or desirable by that Director in order that the amendments contained in this act be effectuated as soon as practicable following the passage and approval of this act."

**Amendments.** The 1993 amendment by No. 618 substituted "The" for "This" in the second sentence of (a)(1); added (a)(2); inserted "or registration" twice in (b)(1); and rewrote (b)(2)(A).

The 1993 amendment by No. 1026 added (j)(3).

The 1995 amendment deleted "dealer" following "supplier" in the beginning in (a)(1) and (b)(1), three times in (k)(2), and preceding "user" in (b)(2)(A) and (B).

The 1997 amendment substituted "importer or first receiver" for "importer, first receiver, or second receiver" in (a)(1)(B)(i); deleted (a)(2)(A), (B) and (C)(i); and redesignated former (a)(2)(C)(ii) as present (a)(1)(B)(iii); and deleted (j)(3).

### **26-56-205. [Repealed.]**

**Publisher's Notes.** This section, concerning dealers' licenses and bonds generally, was repealed by © 2005 by The State of Arkansas and Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

Acts 1995, No. 777, § 7. The section was derived from Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 7; 1967, No. 357, § 3; A.S.A. 1947, § 75-1247; Acts 1993, No. 344, § 1.

### **26-56-206. Dealers' licenses and bonds - Municipal taxes.**

Nothing in §§ 26-56-204 and 26-56-205 [repealed] shall be construed so as to prevent the collection of any privilege or occupation taxes by any municipality of this state for engaging in the business of dealer within the limits of the municipality.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 7; 1967, No. 357, § 3; A.S.A. 1947, § 75-1247.

**Publisher's Notes.** Section 26-56-205 referred to in this section was repealed by Acts 1995, No. 777, § 7.

### **26-56-207. [Repealed.]**

**Publisher's Notes.** This section, concerning sales tickets, was repealed by Acts 1995, No. 777, § 7. The section was derived from Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 7; 1967, No. 357, § 3; 1968 (1st Ex. Sess.), No. 35, § 2; A.S.A. 1947, §§ 75-1247, 75-1251.1.

### **26-56-208. Suppliers' and users' reports - Computation and remittance of tax.**

(a)(1) On or before the twenty-fifth day of each calendar month on forms prescribed by the Director of the Department of Finance and Administration, every supplier shall file with the director a report accounting for the distillate special fuels handled during the preceding month.

(2) The supplier shall file supporting documents necessary to assure accurate reporting.

(3) The report shall include the following:

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

(B) 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 subchapter;

(C) The total number of gallons of dyed distillate special fuel sold to users during the next-preceding calendar month but the report shall not contain an itemized listing identifying each purchaser; and

(D) Such other documents as the director requires.

(b)(1) When filing the report and paying the tax to the director as required in this section, the supplier shall be entitled to deduct from the total number of gallons upon which the tax levied under this chapter is due, the number of gallons:

(A) Purchased during the preceding calendar month from another licensed supplier and upon which the tax levied under this chapter was paid at the time of that purchase; and

(B) Lost due to fire, flood, storm, theft, or other cause beyond the supplier's control, other than through evaporation.

(2) The deduction for the loss may be included in the report filed for the month in which the loss occurred or in any subsequent report filed within a period of one (1) year.

(c)(1) On forms prescribed by the director, every pipeline company, water transportation company, and common carrier transporting distillate special fuel to points within Arkansas shall report under oath to the director all deliveries of distillate special fuel so made to points within Arkansas.

(2)(A) The report shall cover a monthly period and shall be submitted within twenty-five (25) days after the close of the month covered by the report.

(B) The report shall show:

(i) The name and address of each person to whom deliveries of distillate special fuel have actually been made;

(ii) The name and address of each originally named consignee if distillate special fuel has been delivered to anyone other than the originally named consignee;

(iii) The point of origin, point of delivery, and date of delivery, as well as the name of the boat, barge, or vessel;

(iv) The number of gallons contained in the vessel, if shipped by water;

(v) The license number of each tank truck;

(vi) The number of gallons contained in the tank if transported by motor truck;

(vii) The point of origin, the name and address of the person or terminal to whom the delivery was made, the date of the delivery, and the quantity of distillate special fuel delivered if shipped by pipeline company; and

(viii) The manner and quantities if delivered by other means when such delivery is made.

(C) The report shall also show such additional information relative to a shipment of distillate special fuel as the director may require.

(d)(1) Every terminal purchasing or otherwise acquiring distillate special fuel by pipeline and selling, using, or otherwise disposing of the distillate special fuel for delivery in Arkansas and not required by a provision of this subchapter to be licensed as a supplier in distillate special fuel shall file a statement setting forth the:

(A) Name under which the terminal is transacting business within the State of Arkansas;

(B) Location with the street number address of the terminal's principal office or place of business within the state;

(C) Name and address of the owner or the names and addresses of the partners if the terminal is a partnership; or

(D) Names and addresses of the principal officers if the terminal is a corporation or association.

(2) On or before the twenty-fifth day of each calendar month on forms prescribed by the director, the terminal shall report to the director all purchases or other acquisitions and sales or other disposition of distillate special fuel during the next-preceding calendar month, which report shall include the following:

(A) Beginning inventories in gallons of distillate special fuel in storage;

(B) Ending inventories in gallons of distillate special fuel in storage;

(C) Withdrawals of distillate special fuel in gallons from the pipeline outlet resulting in additions of distillate special fuel to storage, including the name of the supplier licensed as an importer who requested the placement of the distillate special fuel into storage; and

(D) Removals of distillate special fuel from storage, specifically including:

(i) Bill of lading numbers which represent physical movements of the distillate special fuel;

(ii) The date of each removal;

(iii) The quantity in gallons of distillate special fuel so removed;

(iv) The person who had the distillate special fuel available for that particular removal; and

(v) The person possessing a license from the director who requested the removal of the distillate special fuel from that storage.

(3) When any terminal purchasing or otherwise acquiring distillate special fuel by pipeline and selling or otherwise disposing of the distillate special fuel for delivery in Arkansas and not required by a provision of this subchapter to register as a supplier in distillate special fuel, fails to submit the terminal's monthly report to the director by the twenty-fifth day of each calendar month or when the terminal fails to submit in the monthly report the data required by this subchapter, the terminal shall be guilty of a violation and shall be fined an amount not greater than one hundred dollars (\$100) for the first offense and shall be fined an amount not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each subsequent offense.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 8; 1967, No. 497, § 1; A.S.A. 1947, § 75-1248; Acts 1987, No. 803, § 6; 1987, No. 985, §§ 8, 13, 14; 1993, No. 1026, § 3; 1993, No. 1029, §§ 5, 6; 1997, No. 1212, § 6; 2001, No. 777, § 1; 2005, No. 1994, § 176.

**Publisher's Notes.** As to Acts 1987, No. 985, § 1, see Publisher's Notes, § 26-56-201.

Acts 1993, No. 1026, § 5, provided: "The Director of the Department of Finance and Administration is hereby authorized to make and promulgate all rules and regulations deemed necessary or desirable by that Director in order that the amendments contained in this act be effectuated as soon as practicable following the passage and approval of this act."

Acts 1993, No. 1029, § 7, provided: "The Director of the Department of Finance and Administration is hereby directed, with the advise and concurrence of the Director of Highways and Transportation, or his designee, to make and promulgate all rules and regulations deemed necessary or desirable by such Directors in order that the amendments contained in this Act be effectuated by July 1, 1993."

**Amendments.** The 1993 amendment by No. 1026, in (d)(1)(B), inserted "at bulk storage facilities" and added "and" at the end.

The 1993 amendment by No. 1029 substituted "twenty-five (25) days" for "twenty (20) days" in (e)(2)(A); inserted present (e)(2)(B)(vii) and redesignated former (e)(2)(B)(vii) as (e)(2)(B)(viii); and added (f).

The 1997 amendment deleted (a)(1)(B); redesignated former (a)(1)(C) and (a)(1)(D) as present (a)(1)(B) and (a)(1)(C); deleted (b) and (c); redesignated former (d)-(f) as present (b)-(d); in present (b)(1) deleted (B), and redesignated former (C) as present (B); and made minor stylistic changes.

The 2001 amendment added (a)(1)(D) and made minor stylistic changes.

The 2005 amendment redesignated former (a)(1) and (a)(1)(A)-(D) as present (a) and (a)(1)-(4); and substituted "violation" for "misdemeanor" in (d)(3).

### **26-56-209. Records required - Invoices - Falsification of records.**

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(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 § 26-18-101 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 at bulk storage facilities.

(b)(1) For each bulk sale and delivery of distillate special fuels, whether or not subject to tax under this subchapter, the record required shall include an invoice with serial numbers printed thereon showing the name and address of both the supplier and the purchaser, and the complete information set out in subsection (a) of this section for each such sale, one (1) counterpart of which shall be delivered to the purchaser and another counterpart kept by the supplier or dealer for the period of time and purpose provided in subsection (a) of this section.

(2)(A) For each delivery of distillate special fuels into the fuel supply tank of a motor vehicle, the required record shall include a serially-numbered invoice issued in not less than duplicate counterparts on which shall be printed or stamped with a rubber stamp the name and address of the supplier, dealer, or user making such delivery and on which shall be shown, in spaces to be provided on that invoice, the date of delivery, the number of gallons and kind of distillate special fuels so delivered, the total mileage recorded on the speedometer or hub meter of the motor vehicle into which delivered, and the motor vehicle registration number of the motor vehicle.

(B) The invoice shall reflect that the tax has been paid or accounted for on each of the products delivered.

(C) One (1) counterpart of the invoice shall be kept by the supplier, dealer, or user making such delivery as a part of his record and for the period of time and purposes provided in subsection (a) of this section. Another counterpart shall be delivered to the operator of the motor vehicle and carried in the cab compartment of the motor vehicle for inspection by the director or his representatives until the fuel it covers has been consumed.

(c)(1) Every person who operates a motor vehicle that is equipped to use motor fuels taxable under the Motor Fuel Tax Law, § 26-55-201 et seq., and distillate special fuels interchangeably in

the propulsion of the motor vehicle shall carry in the cab compartment of the motor vehicle for inspection by the director or his representative, not only the counterpart of the serially-numbered invoice required under subsection (b) of this section for the delivery of distillate special fuels into the fuel supply tanks of the motor vehicle but also an invoice or receipt from the seller for each delivery into the fuel supply tanks of the motor vehicle of motor fuels taxable under the Motor Fuel Tax Law, which latter invoice or receipt shall show the same information as to date of delivery, quantity, speedometer or hub meter mileage, and motor vehicle registration number as is required for the invoice covering distillate special fuels.

(2) These invoices shall be carried with the motor vehicle until the kinds of fuels covered thereby have been consumed.

(d) On all deliveries of distillate special fuels to a user by common or contract carriers, the shipper shall stamp on the manifest or bill of lading in letters not less than one-quarter inch ( $1/4$ " ) high "TAX PAID" whenever the tax levied under this subchapter has been paid, and "NOT FOR MOTOR VEHICLE USE" whenever the tax levied under this subchapter has not been paid. It shall be a violation of this chapter for any driver for a carrier to deliver distillate special fuels covered by a manifest or bill of lading stamped "NOT FOR MOTOR VEHICLE USE" into a tank marked "TAX-PAID SPECIAL FUELS".

(e) The willful issuance of any invoice, bill of sale, or receipt which is false, untrue, or incorrect in any material particular, or the alteration or changing except for errors, or forging any such invoice, bill of sale, or receipt, or any duplicate of any such receipt pertaining to distillate special fuels, shall constitute a violation of this chapter.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 6; A.S.A. 1947, § 75-1246; Acts 1987, No. 985, § 11; 1993, No. 1026, § 4.

**Publisher's Notes.** As to Acts 1987, No. 985, § 1, see Publisher's Notes, § 26-56-201.

Acts 1993, No. 1026, § 5, provided: "The Director of the Department of Finance and Administration is hereby authorized to make and promulgate all rules and regulations deemed necessary or desirable by that Director in order that the amendments contained in this act be effectuated as soon as practicable following the passage and approval of this act."

**Amendments.** The 1993 amendment substituted "except for those distillate special fuels in a tank marked 'NOT FOR MOTOR VEHICLE USE'" for "at bulk storage facilities" in (a)(4).

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

(a) Any supplier, dealer, or user who fails to keep the records, issue the invoices, or file the reports required by this subchapter shall be prima facie presumed to have sold, delivered, or used for taxable purposes all distillate special fuels shown by a verified audit by the director, or any authorized representative, to have been delivered to such supplier, dealer, or user and unaccounted for at each place of business or place of storage from which distillate special fuels are sold, delivered, or used for any taxable purposes.

(b) The director is authorized to fix or establish the amount of taxes, penalties, and interest due the State of Arkansas from such records of deliveries or from any records or information available to him, and if the tax claim as developed from that procedure is not paid, the claim and any audit made by the director or an authorized representative, or any report filed by such supplier, dealer, or user, shall be admissible in evidence in any suit or judicial proceedings filed by the director and shall be prima facie evidence of the correctness of said claim or audit. However, the prima facie presumption of the correctness of the claim may be overcome by evidence adduced by the supplier, dealer, or user.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 10; A.S.A. 1947, § 75-1250.

## CASE NOTES

### Analysis

Purpose.

Audits.

Burden of Proof.

Presumptions.

### Purpose.

This section is intended to require dealers to preserve their records and invoices so that the state can verify the payment of motor fuel taxes, if such taxes are due. *Ragland v. Gulf Oil Corp.*, 288 Ark. 182, 705 S.W.2d 15 (1986).

### Audits.

The only purpose of the audit requirement in this section is to provide an approved method to determine the quantity of fuel delivered to a dealer before it can be charged with that amount under the statute. *Ragland v. Gulf Oil Corp.*, 288 Ark. 182, 703 S.W.2d 449 (1986).

Where an audit of oil company established the delivery of 370,312 gallons, for which distributor could not account, and where the amount of fuel delivered to the distributor was never in dispute, and was effectively waived by distributor throughout the proceedings, the point was equally waived for purposes of this section; hence, the contention that this section required an audit before the presumption could arise was without merit. *Ragland v. Gulf Oil Corp.*, 288 Ark. 182, 703 S.W.2d 449 (1986).

### **Burden of Proof.**

The burden is not on the state to show what use was made of the fuel when the dealer fails to keep the records required under the law; rather, the burden is on the dealer to show that the sales were not for taxable purposes. *Ragland v. Gulf Oil Corp.*, 288 Ark. 182, 705 S.W.2d 15 (1986).

### **Presumptions.**

This section creates a prima facie presumption that the fuel at issue was used for taxable purposes where distributor admittedly destroyed its records. *Ragland v. Gulf Oil Corp.*, 288 Ark. 182, 703 S.W.2d 449 (1986).

This section requires proof of specific transactions not subject to the tax in order to rebut the presumption of liability. *Ragland v. Gulf Oil Corp.*, 288 Ark. 182, 705 S.W.2d 15 (1986).

### **26-56-211. [Repealed.]**

**Publisher's Notes.** This section, concerning unlicensed importers, was repealed by Acts 1987, No. 803, § 11. The section was derived from Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, §§ 12, 13; 1967, No. 357, §§ 5, 7; A.S.A. 1947, §§ 75-1252, 75-1253.

### **26-56-212. Bonded and unbonded interstate users - Penalty for insufficient purchase.**

Any distillate special fuel user who is a bonded or unbonded interstate distillate fuel user operating Class B vehicles as described in § 26-56-214, who shall, upon arriving at a point of exit from this state, have failed to purchase sufficient gallons of distillate special fuel in this state and pay the tax thereon as required by law, as determined in this subchapter, calculated at the rate of four (4) miles per gallon for each mile traveled in this state:

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(1) The unbonded distillate special fuel user shall pay a penalty of four cents (4¢) per gallon on each gallon of fuel which he failed to buy in this state, in addition to paying the tax on the fuel at the point of exit from this state upon which the tax has not been paid; and

(2) Any bonded distillate special fuel user shall pay a penalty of four cents (4¢) per gallon of the total number of gallons of fuel which he failed to buy in this state during each report period, in addition to paying the tax upon the fuel upon which tax has not been paid.

**History.** Acts 1977, No. 354, § 2; A.S.A. 1947, § 75-1187.1.

**Publisher's Notes.** Acts 1977, No. 354, § 4, provided in part that the act would be supplemental to the Special Motor Fuels Tax Law, § 26-56-101 et seq.

**26-56-213. Bonded and unbonded users - Knowing and intentional failure to pay tax or penalty.**

Any bonded or unbonded distillate special fuel user who knowingly and intentionally fails to pay the Arkansas gallonage tax due the State of Arkansas on motor fuel and distillate special fuel used on the highways of this state as required in § 26-56-214 with respect to distillate special fuel tax used on Class B vehicles, and knowingly and intentionally fails to pay the penalty on the fuel on which the Arkansas distillate special fuel tax has not been paid, as required in § 26-56-214, shall be guilty of a Class A misdemeanor and upon conviction shall be punished in the manner provided by law.

**History.** Acts 1977, No. 354, § 3; A.S.A. 1947, § 75-1187.2.

**Publisher's Notes.** Acts 1977, No. 354, § 4, provided in part that the act would be supplemental to the Special Motor Fuels Tax Law, § 26-56-101 et seq.

**26-56-214. Interstate users - Reports - Computation of tax and refunds.**

(a) Whenever an interstate user of distillate special fuels who is a bonded user of such fuels in all states in which he operates has exportations in excess of importations of tax-paid distillate special fuels in the fuel supply tanks of motor vehicles which fuels were delivered by a supplier



into bulk storage facilities of the user within the State of Arkansas, the supplier may make a refund or allow a credit for the amount of the tax upon such excess upon approval by the director of a statement from the user to the effect that the tax-paid fuel was exported.

(b)(1) 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.

(2) 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 the fuel upon which the Arkansas tax had been paid, the interstate user shall remit to the director, at the time of filing the report, an excise tax of eighteen and one-half cents (\$.185) per gallon of the excess gallonage used.

(3) 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 the user shall be entitled to a credit or refund of eighteen and one-half cents (\$.185) per gallon of the excess gallonage purchased in the state.

(c) The quarterly report required by this subchapter 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 director and shall include such information as the director may require.

(d)(1) 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 director 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.

(2) If it shall be determined by the quarterly report filed with the director 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, the distillate special fuel user shall remit to the director an excise tax of eighteen and one-half cents (\$.185) per gallon of special motor fuel.

(3) Distillate special fuel users may not take credit on reports at a tax rate in excess of that actually paid.

(e)(1) 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 number of gallons of distillate special fuels upon which the tax has been paid by an interstate user shall be determined from the form obtained by the interstate user from a dealer or

licensed bulk supplier on forms containing information prescribed by § 26-56-209.

(2) The taxpayer's tax liability shall be calculated by multiplying the number of gallons of fuel used within the State of Arkansas by eighteen and one-half cents (\$.185) per gallon. A taxpayer shall be entitled to credits against his tax liability for tax-paid fuel purchased within the State of Arkansas.

(f)(1) Any licensed interstate user who fails to maintain adequate mileage or fuel records, for the purpose of determining the amount the interstate user owes the State of Arkansas for tax on distillate special fuel used in this state as provided in this section, 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 set out in subdivision (2) of this subsection.

(2) For the purposes of this section:

(A) All automobiles, except buses, with a capacity of less than eight (8) passengers shall be deemed to be Class A vehicles;

(B) All truck-type vehicles, except buses, with a factory rating and gross loaded weight of less than twenty-two thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class B vehicles;

(C) All other vehicles, except buses, with a factory rating in excess of twenty-two thousand five hundred pounds (22,500 lbs.), or whose total gross loaded weight exceeds twenty-two thousand five hundred pounds (22,500 lbs.), shall be deemed to be Class C vehicles; and

(D) All buses rated and licensed as such shall be deemed to be Class D vehicles.

(3) The mileage factor per gallon of distillate special fuel for:

(A) Class A vehicles shall be twelve (12) miles;

(B) Class B vehicles shall be eight (8) miles;

(C) Class C vehicles shall be five (5) miles; and

(D) Class D vehicles shall be six (6) miles.

(4) 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.

(g) 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.

(h)(1) 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.

(2) 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) may, upon application to the director, obtain permission to report his motor fuel tax liability on an annual basis. The annual report shall be due on or before the last day of the month following the end of each fiscal year.

(i)(1) The director shall prescribe the appropriate forms necessary for the administration of this subchapter.

(2) The director may make appropriate rules and regulations necessary to insure the accurate reporting of the special motor fuel tax.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 11; 1967, No. 357, §§ 4, 9; 1968 (1st Ex. Sess.), No. 35, § 1; 1977, No. 354, § 1; 1979, No. 764, § 2; A.S.A. 1947, §§ 75-1187, 75-1251, 75-1251n; Acts 1987, No. 803, §§ 5, 7; 1991, No. 364, § 3; 1991, No. 382, § 3; 1995, No. 777, § 8.

**A.C.R.C. Notes.** Acts 1991, No. 219, § 4 provided: "(a) Whenever an interstate user of distillate special fuels who is a bonded user of such fuels in all states in which he operates has exportations in excess of importations of tax-paid distillate special fuels in the fuel supply tanks of motor vehicles which fuels were delivered by a supplier into bulk storage facilities of the user within the State of Arkansas, the supplier may make a refund or allow a credit for the amount of the tax upon such excess upon approval by the director of a statement from the user to the effect that the tax-paid fuel was exported.

"(b)(1) 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.

"(2) 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 the fuel upon which the Arkansas tax had been paid, the interstate user shall remit to the director, at the time of filing the report, an excise tax of sixteen and one-half cents (16 1/2 ¢) per gallon of the excess gallonage used.

"(3) 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 the user shall be entitled to a credit or refund of sixteen and one-half cents (16 1/2 ¢) per gallon of the excess gallonage purchased in the state.

"(c) The quarterly report required by this subchapter 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 director and shall include such information as the director may require.

"(d)(1) 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 director 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.

"(2) If it shall be determined by the quarterly report filed with the director 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, the distillate special fuel user shall remit to the director an excise tax of sixteen and one-half cents (16 1/2 ¢) per gallon of special motor fuel.

"(3) Distillate special fuel users may not take credit on reports at a tax rate in excess of that actually paid.

"(e)(1) 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.

"(2) The taxpayer's tax liability shall be calculated by multiplying the number of gallons of fuel used within the State of Arkansas by sixteen and one-half cents (16 1/2 ¢) per gallon. A taxpayer shall be entitled to credits against his tax liability for tax-paid fuel purchased within the State of Arkansas.

"(f)(1) Any licensed interstate user who fails to maintain adequate mileage or fuel records, for the purpose of determining the amount the interstate user owes the State of Arkansas for tax on distillate special fuel used in this state as provided in this section, 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 set out in subdivision (2) of this subsection.

"(2) For the purposes of this section:

"(A) All automobiles, except buses, with a capacity of less than eight (8) passengers shall be deemed to be Class A vehicles;

"(B) All truck-type vehicles, except buses, with a factory rating and gross loaded weight of less than twenty-two thousand five hundred pounds (22,500 lbs.), shall be deemed to be Class B vehicles;

"(C) All other vehicles, except buses, with a factory rating in excess of twenty-two thousand five hundred pounds (22,500 lbs.), or whose total gross loaded weight exceeds twenty-two thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class C vehicles; and

"(D) All buses rated and licensed as such shall be deemed to be Class D vehicles.

"(3) The mileage factor per gallon of distillate special fuel for:

"(A) Class A vehicles shall be twelve (12) miles;

"(B) Class B vehicles shall be eight (8) miles;

"(C) Class C vehicles shall be five (5) miles; and

"(D) Class D vehicles shall be six (6) miles.

"(4) 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.

"(g) 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.

"(h)(1) 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.

"(2) 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) may, upon application to the director, obtain permission to report his motor fuel tax liability on an annual basis. The annual report shall be due on or before the last day of the month following the end of each fiscal year.

"(i) The director shall prescribe the appropriate forms necessary for the administration of this subchapter. The director may make appropriate rules and regulations necessary to insure the accurate reporting of the special motor fuel tax."

Acts 1991, No. 364, § 5 as amended by identical Acts 1991, Nos. 1040 and 1239, §§ 5 and 6, and Acts 1991, No. 382, § 5, as amended by Acts 1991, identical acts Nos. 1040 and 1239, §§ 7 and 8, provided:

"(a) All of the additional taxes, fees, penalties and interest collected under the provisions of this subchapter and §§ 26-55-710, 26-56-214, and 26-56-304 shall be classified as special revenues and shall be deposited in the State Treasury. After deducting therefrom the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

"(A) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

"(B) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

"Seventy percent (70%) of the amount thereof to a special account in the State Highway and Transportation Department Fund to be designated the "1991 Highway Construction and Maintenance Account".

"(b) The funds in the 1991 Highway Construction and Maintenance Account shall be held, managed, and used in the same manner and for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., excluding, however, § 27-70-206;

"(c) Provided that, in keeping with the spirit of section 105 of Public Law 97-424 and the Arkansas State Highway Commission's goals for encouraging the participation of disadvantaged business enterprises in entering into and performing contracts with the commission, including the purchasing of supplies and equipment by the commission and for the construction, reconstruction, and maintenance of highways and bridges in the state highway system, the Arkansas State Highway Commission is authorized to expend up to ten percent (10%) of the total funds and revenues available and disbursed to the commission pursuant to this section for the purposes of achieving those goals."

**Publisher's Notes.** Acts 1977, No. 354, § 4, provided in part that the act would be supplemental to

the Special Motor Fuels Tax Law, § 26-56-101 et seq.

**Amendments.** The 1995 amendment added the last sentence in (e)(1).

**Cross References.** Tax refund procedure for taxes paid on motor fuel and on special motor fuels by interstate users, § 26-55-714.

## CASE NOTES

### Constitutionality.

Application of the formula of five miles per gallon to interstate bus companies that actually obtain an average of 6.3 miles per gallon of distillate fuel was arbitrary, unreasonable, discriminatory, and unconstitutional, violating Ark. Const., Art. 2, § 3, and Art. 16, § 5, and U.S. Const., Art. 4, § 2, cl. 1, and Amend. 14, § 1, and constitutes an undue burden on interstate commerce in violation of U.S. Const., Art. 1, § 8, cl. 3. *Larey v. Continental Southern Lines, Inc.*, 243 Ark. 278, 419 S.W.2d 610 (1967) (decision prior to 1968 amendment),.

### **26-56-215. Interstate users - Tax refund procedure.**

(a)(1) The director shall quarterly estimate the amount necessary to pay refunds to interstate users of special motor fuels who are entitled to refunds with respect to special motor fuel taxes paid in this state as authorized in § 26-56-214, and, upon certification by the director, the State Treasurer shall transfer from the gross amount of special motor fuel taxes collected each month the amount so certified and shall credit the amount to the Interstate Motor Fuel Tax Refund Fund, which is established on the books of the State Treasury, from which the Department of Finance and Administration shall make refunds as provided by law.

(2) The transfers from the gross motor fuel taxes and special motor fuel taxes collected each month shall be after deducting allowances for bad checks or claims but before making any other distribution as provided by law.

(b) All warrants drawn against the Interstate Motor Fuel Tax Refund Fund which are not presented for payment within one (1) year of issuance shall be void.

(c) Neither the director nor any member or employee of the department shall be held personally liable for making any refund by reason of a fraudulent claim being filed as a basis for

such refund.

(d) The director is authorized to promulgate rules and regulations and to prescribe the necessary forms required for the administration of claims for tax refunds from interstate users of special motor fuels in this state as authorized by law, which rules and regulations shall be in conformance with the following requirements:

(1) The director shall first determine, with respect to each refund claim filed, that the bond of the interstate user is adequate to compensate the State of Arkansas for any losses with respect to the recovery of any refunds illegally claimed by the interstate user, and he may require the increase of the bond if he determines it to be inadequate before approving any such claim for refund;

(2) Each interstate user of motor fuels and special motor fuels claiming refunds shall maintain adequate records to substantiate each claim for refund, and the director may reject any claim for refund if he determines the applicant has not maintained adequate records or has not conformed to the rules and regulations of the department in filing the claim therefor;

(3) Each claim for refund must be upon the request of the interstate user, which shall be verified by the interstate user as to its accuracy and validity;

(4)(A) Each quarterly report filed by a licensed interstate user of special motor fuels with the department shall reflect thereon the amount of special motor fuels purchased for use in Arkansas during the quarter, the number of gallons of special motor fuels upon which taxes are due the State of Arkansas for the quarter, and the excess gallonage upon which the interstate user is entitled to refunds.

(B) At the end of each calendar quarter, the licensed interstate user may make application for refund with respect to the number of gallons of special motor fuels upon which the special motor fuels taxes have been paid during the calendar quarter for which the interstate user is entitled to refund.

**History.** Acts 1977, No. 51, §§ 2, 3; 1983, No. 830, § 3; A.S.A. 1947, §§ 75-1155.1, 75-1155.2; Acts 1987, No. 803, §§ 2-4.

**Publisher's Notes.** Acts 1977, No. 51, §§ 2, 3, as amended, are also codified as § 26-55-714.

#### **26-56-216. Power to stop, investigate, and impound vehicles - Assessment of tax.**

(a) In order to enforce the provisions of this subchapter, the director or his authorized representative is empowered to stop any motor vehicle which appears to be operating with

distillate special fuels for the purpose of examining the invoices and for such other investigative purposes reasonably necessary to determine whether the taxes imposed by this subchapter have been paid, or whether the vehicle is being operated in compliance with the provisions of this subchapter.

(b) If, after examination or investigation, it is determined by the director or his authorized representative that the tax imposed by this subchapter has not been paid with respect to the fuels being used in the vehicle, the director or his representative shall immediately assess the tax due, together with the penalty hereinafter provided, to the owner of the vehicle, and give the owner written notice of the assessment by handing it to the driver of the vehicle.

(c) The director or his representative is empowered to impound any vehicle found to be operating in violation of this chapter by a person other than one who has furnished the bond required of users by § 26-56-204(c) until such time as any tax assessed as provided herein has been paid.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 9; A.S.A. 1947, § 75-1249.

**26-56-217. Separate storage tanks for taxable distillate special fuels and for tax-free storage.**

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

(2) Suppliers are required to collect the tax on all distillate special fuels delivered into those tanks.

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

(2) If users do not provide such tanks, then all distillate special fuels delivered by a supplier into storage tanks suitable for fueling motor vehicles become taxable, provided, however, that any city or county using a computerized fuel dispensing system that will automatically record each transaction as to pump operator and specific vehicle to which the fuel is dispensed may have taxable and nontaxable distillate special fuels delivered into the same tank. The distributor shall collect the tax on the taxable portion of each purchase based upon the sworn statement of the



purchaser as to the amount of taxable fuel purchased. Each city or county shall file a report with the Director of the Department of Finance and Administration accounting for the taxable and nontaxable fuel used and miles driven by each vehicle which requires taxable fuel in such a manner, at such time, and on such forms as shall be prescribed by the director. The director may promulgate regulations to establish a system to periodically reconcile the taxable fuel purchased and actual taxable fuel used by the city or county.

(3) However, where a user has one (1) or more storage tanks used for the storage of distillate special fuels within the meaning of this chapter, and the user does not own, possess, lease, or otherwise operate a motor vehicle licensed or required to be licensed for use upon the public highway and capable of using said fuel, the requirement for marking such storage facilities "NOT FOR MOTOR FUEL USE" shall be waived.

(c) Nothing in this section shall be construed to amend or change the meaning of any other section of this chapter.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 4; 1973, No. 307, §§ 1, 2; A.S.A. 1947, §§ 75-1244, 75-1244.1; Acts 1991, No. 348, § 1.

#### **26-56-218. Bulk sales.**

(a) It shall be unlawful to make tax-free bulk sales of distillate special fuels to any user, dealer, or off-road consumer who has not filed with his supplier an annual registration for purchases of tax-free distillate special fuel.

(b) However, a sale shall be lawful if:

(1) At the time of sale and delivery, the supplier obtains from the purchaser a fully executed annual registration for purchases of tax-free distillate special fuel; and

(2) The supplier maintains the registration form for a period of six (6) years.

(c) When a user, dealer, or off-road consumer registration has been revoked and written notice of the revocation has been received by the supplier from the director, it shall be unlawful for the supplier to make bulk sales or deliveries to the user, dealer, or off-road consumer of distillate special fuels on which the tax has not been paid.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 5; A.S.A. 1947, § 75-1245; Acts 1987, No. 985, § 10; 1993, No. 618, § 6.

**Publisher's Notes.** As to Acts 1987, No. 985, § 1, see Publisher's Notes, § 26-56-201.

**Amendments.** The 1993 amendment substituted "has not filed... special fuel" for "is not licensed by the director" in (a); deleted former (a)(2); redesignated former (a)(1) as present (b) and (b)(1); added present (b)(2); redesignated former (b) as (c); substituted "annual registration for purchases of tax-free distillate special fuel" for "application for the license" in (b)(1); substituted "registration" for "license" in (c); and made stylistic changes.

### **26-56-219. Cargo tank to carburetor connections unlawful - Penalties.**

(a) It is unlawful to transport distillate special fuels within the State of Arkansas in any cargo tank from which distillate special fuels are sold or delivered which has a connection by pipe, tube, valve, or otherwise with the carburetor or with the fuel supply tank feeding the carburetor of the motor vehicle transporting the products.

(b)(1) In addition to any other penalties which may be incurred there is levied a specific penalty of twenty-five dollars (\$25.00) for each violation of the provisions of this section.

(2) This penalty shall be assessed by the director or his representative and shall be collected in the same manner as is provided for the collection of tax in § 26-56-216.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 13; A.S.A. 1947, § 75-1253.

### **26-56-220. Unlawful activities regarding operation of motor vehicles.**

(a) It is unlawful and a violation of this chapter to operate with distillate special fuels any motor vehicle licensed for highway operation on which a speedometer, odometer, or hub meter is not kept at all times in good operating condition to correctly measure and register the miles traveled by the motor vehicle.

(b) It shall be unlawful for any user of distillate special fuels to operate a truck in the State of Arkansas without the true owner's name and address or adequate identification on the outside of both right and left cab doors in letters not less than two inches (2") high, as near the center on the outside of the doors as possible. The name and address of the owner must be legible at a distance of twenty-five feet (25').

(c) It shall be unlawful for any person to operate with distillate special fuels any vehicle of Arkansas domestic registry unless he has in his possession an invoice for the fuel and the invoice meets the requirements of § 26-56-209.

(d)(1) In addition to any other penalties which may be incurred there is levied a specific penalty of twenty-five dollars (\$25.00) for each violation of the provisions of this section.

(2) This penalty shall be assessed by the director or his representative and shall be collected in the same manner as is provided for the collection of tax in § 26-56-216.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 2, § 13; 1967, No. 357, § 6; A.S.A. 1947, § 75-1253.

#### **26-56-221. Distribution of taxes.**

Of the one cent (1¢) additional tax levied on all distillate special fuels under the provisions of Acts 1979, No. 437, § 2, the tax shall be remitted to the State Treasurer separate and apart from other distillate special fuel taxes, and the gross amount thereof, without making any deduction therefrom for credit to the Constitutional and Fiscal Agencies Fund, shall be distributed as provided by the Arkansas Highway Revenue Distribution Law, §§ 27-70-201 - 27-70-203, 27-70-206, and 27-70-207.

**History.** Acts 1979, No. 437, § 3; A.S.A. 1947, § 75-1241.1.

#### **26-56-222. Disposition of funds collected under §§ 26-56-201, 26-56-214, and 27-14-601.**

(a) All of the additional taxes, fees, penalties, and interest collected under §§ 26-56-201, 26-56-214, and 27-14-601 shall be classified as special revenues and shall be deposited in the State Treasury.

(b) After deducting the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided under the Revenue Stabilization Law, §§ 19-5-101 et seq., the State Treasurer shall transfer on the last business day of each month:

(1) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

(2) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

(3) Seventy percent (70%) of the amount thereof to the State Highway and Transportation Department Fund.

(c) The funds shall be further disbursed in the same manner and used for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq.

**History.** Acts 1991, No. 219, § 6.

**A.C.R.C. Notes.** References to "this subchapter" in §§ 26-56-201 - 26-56-221 and §§ 26-56-224 - 26-56-231 may not apply to this section, which was enacted subsequently.

Acts 1991, No. 219, § 9 provided: "Provided, nothing in this act shall be construed to amend, abrogate, modify, or repeal any of the provisions of the 'Petroleum Storage Tank Trust Fund Act', Arkansas Code § 8-7-901 et seq., and the fees levied by that act on each gallon of motor fuel or distillate special fuels shall continue to be collected as provided by those Code sections in addition to all taxes and fees imposed by other sections of the Code on such fuel or fuels as well as those additional taxes and fees imposed by this act."

Acts 1992 (1st Ex. Sess.), Nos. 68 and 69, § 9 provided: "All laws and parts of laws in conflict with this Act are hereby repealed, however, it is declared to be the intent of the General Assembly in amending subsection (d) of Arkansas Code § 27-14-601 by this Act to not only dedicate a portion of the fees to the State Highway and Transportation Department Fund collected for the separate registration of certain vehicles utilized or intended to be utilized to transport compacted seed cotton, under certain restrictions set out in this Act, but also to clarify the intent of the General Assembly that all other taxes, fees, penalties, interest and other amounts collected under Arkansas Code § 27-14-601 be distributed in the same manner and utilized for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, Arkansas Code § 27-70-201, et seq., including an initial distribution of such taxes, fees, penalties, interest and other amounts to the County Aid Fund, the Municipal Aid Fund, and the State Highway and Transportation Department Fund. It is further declared by the General Assembly that the amendment contained in this Act to subsection (d) of Arkansas Code § 27-14-601 is in no way intended to repeal, amend, or abrogate the provisions of Arkansas Code § 26-56-222."

**Publisher's Notes.** Act 1991, No. 219, § 6, is also codified as § 27-14-601.

### **26-56-223. Definitions.**

For the purposes of this section and §§ 26-56-224 - 26-56-231:

(1) The words and terms utilized herein, which words and terms are ascribed meanings in § 26-56-102, shall have the same meanings ascribed to such words and terms as are set out in § 26-56-102 unless the context clearly indicates a different meaning;

(2) Provided, the term "distillate special fuel", as used in this section and §§ 26-56-224 - 26-56-231, shall have the same meaning as is set out in § 26-56-102 and shall include diesel, but shall not include products commonly referred to as kerosene, jet fuel, cutter stock, or light cycle

oil.

**History.** Acts 1995, No. 954, § 1.

**26-56-224. Fuel used for off-road purposes.**

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

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

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

**History.** Acts 1995, No. 954, § 1.

**U.S. Code.** Pub.L. 103-66, referred to in this section, is codified throughout the U.S. Code. The provisions of Pub.L. 103-66 relating to the dyeing of fuel are codified as 26 U.S.C. §§ 4082 and 6714.

**26-56-225. Use of dyed distillate special fuel.**

Dyed distillate special fuel shall not be used or utilized in the fuel supply tank of any motor vehicle with the exception of:

- (1) State and local government vehicles;
- (2) Local transit buses;
- (3) Intercity buses;
- (4) School buses;

- (5) Vehicles owned by aircraft museums;
- (6) Vehicles used by nonprofit educational organizations; and
- (7) Red Cross vehicles;

as such vehicles and buses are defined in Pub.L. 103-66 and the Internal Revenue Service Regulations made and promulgated pursuant to Pub.L. 103-66 which are in effect on April 6, 1995.

**History.** Acts 1995, No. 954, § 1.

**U.S. Code.** Pub.L. 103-66, referred to in this section, is codified throughout the U.S. Code. The provisions of Pub.L. 103-66 relating to fuels not used for taxable purposes is codified as 26 U.S.C. § 6427.

#### **26-56-226. Penalty for improper use of dyed distillate special fuel.**

(a)(1) The director, upon finding a motor vehicle using or utilizing dyed distillate special fuel for the purpose of operating that motor vehicle not excepted in § 26-56-225, shall:

(A) Assess all taxes due the state at the total per-gallon tax rates set out in this chapter upon all fuel that could be contained in the fuel supply tank or tanks of that motor vehicle, if filled to capacity; and,

(B) Assess a penalty of ten dollars (\$10.00) per gallon on all such fuel that could be contained in the fuel supply tank or tanks of such motor vehicle, if filled to capacity;

(2) Further, if any dyed distillate special fuel is found in any fuel storage tank or fuel storage facility outside of the terminal utilized by the operator of that motor vehicle, or any other person, for the purpose of fueling that motor vehicle, the director shall:

(A) For taxation purposes, make an assessment based on the entire amount of such fuel that could be contained in such fuel storage tank or fuel storage facility, if filled to capacity, at the total per-gallon tax rates set out in this chapter; and

(B) Assess a penalty of ten dollars (\$10.00) per gallon on all such fuels that could be contained in any such fuel storage tank or fuel storage facility, if filled to capacity, if such fuels are utilized by the operator of that motor vehicle, or are utilized by any other person, for the purpose of fueling that motor vehicle.

(b)(1) The presence of any amount of dyed distillate special fuel in the fuel supply tank of any motor vehicle not excepted in § 26-56-225, or in a fuel storage tank or fuel storage facility outside of the terminal utilized by the operator of such motor vehicle, or any other person, for the purpose of fueling that motor vehicle shall create a rebuttable presumption that the entire amount of fuel that could be contained in the fuel supply tank of such motor vehicle, or that could be contained in such fuel storage tank or fuel storage facility, has been, or is being, used or utilized for taxable purposes; thus, the entire amount of such fuel that could be contained in such tank and facility, if filled to capacity, shall be susceptible to full distillate special fuel taxation.

(2) Such assessments shall be made against the operator or any other person the director deems responsible for the usage or utilization of such dyed distillate special fuel in that motor vehicle.

(c) All penalties authorized by this section shall be in addition to all other penalties provided in this chapter and in the Arkansas Tax Procedure Act, § 26-18-101 et seq.

**History.** Acts 1995, No. 954, § 1.

#### **26-56-227. Mixed dyed and undyed distillate special fuel - Additional penalty.**

(a) Dyed distillate special fuel shall not be mixed with undyed distillate special fuel in the fuel supply tank of any motor vehicle, other than in the fuel supply tank of a motor vehicle excepted in § 26-56-225, or in any fuel storage tank or fuel storage facility, other than fuel storage tanks or fuel storage facilities utilized exclusively for the purpose of fueling motor vehicles excepted in § 26-56-225.

(b)(1) The director, upon finding any fuel supply tank of a motor vehicle, fuel storage tank, or fuel storage facility outside of the terminal containing mixed dyed and undyed distillate special fuel, which fuel is being used or utilized in a motor vehicle or is being stored for ultimate usage or utilization in a motor vehicle not excepted in § 26-56-225 shall:

(A) Assess, for taxation purposes, the entire number of gallons of such fuel that could be contained in those fuel supply tanks, fuel storage tanks, or fuel storage facilities, if such tanks or facilities were filled to capacity, as taxable gallons at the total per-gallon tax rates set out in this chapter; and

(B) Assess a penalty of ten dollars (\$10.00) per gallon on all such fuel.

(2) The presence of any amount of dyed distillate special fuel in the fuel supply tank of any motor vehicle not excepted in § 26-56-225 or in a fuel storage tank or fuel storage facility outside of the terminal utilized by the operator of such motor vehicle, or any other person, for the purpose

of fueling that motor vehicle, shall create a rebuttable presumption that the entire amount of fuel that could be contained in the fuel supply tank of such motor vehicle, or of a fuel storage tank or fuel storage facility, if mixed, has been, or is being, used or utilized for taxable purposes; thus, the entire amount of such fuel that could be contained in such tanks and facilities, if filled to capacity, shall be susceptible to full distillate special fuel taxation.

(3) Such assessments shall be made against the operator of any motor vehicle, or owner or operator of such fuel storage tank or fuel storage facility outside of the terminal, or any other person the director deems responsible for the usage or utilization of such distillate special fuel in any motor vehicle involved in the assessment.

(c) All penalties authorized by this section shall be in addition to all other penalties provided in this chapter and in the Arkansas Tax Procedure Act, § 26-18-101 et seq.

**History.** Acts 1995, No. 954, § 1.

**26-56-228. Authority of director.**

(a)(1) The director shall have the authority to:

(A) Stop motor vehicles;

(B) Take samples of the fuel used or utilized for the operation of those motor vehicles;

(C) Measure the amounts of fuel that could be contained in the supply tanks of such motor vehicles; and

(D) Test such fuel, regardless of the location of such motor vehicles.

(2) The director shall have the authority to:

(A) Take samples of distillate special fuel stored in fuel storage tanks or fuel storage facilities outside of the terminal, which fuel may be used or utilized in motor vehicles;

(B) Measure the amount of fuel that could be contained in such tanks or facilities, if filled to capacity; and

(C) Test such fuel, regardless of the location of such tanks or facilities.

(b)(1)(A) Any person who shall refuse to allow the director to sample, test, and measure the fuel that could be contained in any fuel supply tank of a motor vehicle, or in any fuel storage tank, or in any fuel storage facility outside of the terminal shall be assessed taxes at the total per-gallon tax rates set out in this chapter upon all fuels, as determined by the director, that could be



contained in such fuel supply tank, fuel storage tank, or fuel storage facility, if filled to capacity.

(B) Additionally, a penalty of ten dollars (\$10.00) per gallon on all such fuel shall be assessed.

(2)(A) It shall be prima facie evidence that the entire amount of such fuel in the fuel supply tank, fuel storage tank, or fuel storage facility outside of the terminal is taxable and that, by the refusal to allow such sampling, measuring, or testing, distillate special fuel taxes have not been paid on such fuel.

(B) The director shall add a penalty of twenty percent (20%) of the total amount of the assessed taxes, excluding the ten dollars (\$10.00) per-gallon penalty, to the total amount assessed for willful refusal to allow such sampling, measuring, or testing, which penalty shall be in addition to all other penalties provided in this section, this chapter, and in the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(3) Such assessments shall be made against the operator of any motor vehicle, fuel storage tank, or fuel storage facility outside of the terminal involved in the assessment or against any other person the director deems responsible for the use or utilization of such fuel in any motor vehicle involved in the assessment.

**History.** Acts 1995, No. 954, § 1.

#### **26-56-229. Multiple violations.**

(a)(1) In the event that assessments are made by the director against the same operator or the same person for violating the provisions of § 26-56-226, § 26-56-227, or § 26-56-228 within three (3) years of any assessment made by the director for previous violations of any of those provisions, the director shall assess a penalty of twenty dollars (\$20.00) per gallon on all such fuel assessed, and for third and subsequent violations within a three-year period by the same operator or the same person, the director shall assess a penalty of thirty dollars (\$30.00) per gallon on all such fuel assessed.

(2) All assessments made pursuant to this section shall be in lieu of the ten dollars (\$10.00) per-gallon penalty otherwise provided in §§ 26-56-226 - 26-56-228, but shall be in addition to all other penalties provided therein.

(b) All assessments and procedures related to assessments authorized by §§ 26-56-223 - 26-56-231 shall be conducted in accordance with and pursuant to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

**History.** Acts 1995, No. 954, § 1.

**26-56-230. Disposition of taxes, fees, and other revenues.**

All taxes, fees, penalties, and other amounts collected under the provisions of §§ 26-56-223 - 26-56-231 shall be classified as special revenues, and the net amount shall be distributed as provided by the Arkansas Highway Revenue Distribution Law, §§ 27-70-201 - 27-70-203, 27-70-206, and 27-70-207.

**History.** Acts 1995, No. 954, § 1.

**26-56-231. Rules and regulations.**

(a) The Director of the Department of Finance and Administration, in consultation with the Director of State Highways and Transportation, shall have the authority to make and promulgate rules and regulations to fully implement and enforce the provisions of §§ 26-56-223 - 26-56-230.

(b) Provisions shall be included in such rules and regulations to allow any user enumerated in § 26-56-225, upon proper notice and certification to the director that dyed distillate special fuel is unavailable to that user at that time, to utilize untaxed, undyed distillate special fuels in motor vehicles belonging to such users.

**History.** Acts 1995, No. 954, § 1.

**26-56-232. Electronic reports - Electronic funds transfer.**

(a) The Director of the Department of Finance and Administration shall make all necessary preparations in order that all reports submitted beginning July 1, 1997, and thereafter, or beginning before that date, if possible, by: distributors of motor fuel, as required by the Motor Fuel Tax Law, § 26-55-201 et seq.; suppliers of distillate special fuels and liquefied gas special fuels, as required by the Special Motor Fuels Tax Law, § 26-56-101 et seq.; alternative fuel suppliers, as required by the Alternative Fuels Tax Law, § 26-62-101 et seq.; and all other persons required to submit any type reports to the director pursuant to those tax laws shall be submitted

by electronic means and to ensure that such reports shall be processed electronically by the Department of Finance and Administration.

(b) The director shall also make and promulgate rules and regulations to ensure that such distributors, suppliers, and alternative fuel suppliers, beginning July 1, 1997, and thereafter, or beginning before that date, if possible, remit all taxes due the state pursuant to those tax laws by electronic funds transfer.

**History.** Acts 1995, No. 954, § 2.

**A.C.R.C. Notes.** References to "this subchapter" in §§ 26-56-201 - 26-56-221 and §§ 26-56-223 - 26-56-231 may not apply to this section which was enacted subsequently.

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### **Subchapter 3. Liquefied Gas.**

**Effective dates.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 4, § 7: June 10, 1965. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing highway user tax laws of this State are inadequate to provide sufficient funds to properly construct, reconstruct and maintain the State highways, county roads and city streets of this State; that the existing investment of millions of dollars in public roads, streets and bridges is in jeopardy if additional funds are not provided; that increased motor vehicle traffic poses a serious threat to public safety unless immediate steps are taken to provide a more adequate and better maintained system of public roads, streets and bridges; that the existing Special Motor Fuels Tax Law of this State is not conducive to proper enforcement, and immediate steps must be taken to provide for a more enforceable law in order to avoid tax evasion; and, that the immediate passage of this Act is necessary to correct the aforementioned circumstances. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 764, § 5: July 1, 1979.

Acts 1981, No. 818, § 3: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that liquefied gas special fuel user's permits expire on June 30th of each year and that this Act needs go into effect on the first day of the new permit periods and that therefore this Act needs to become effective on July 1, 1981. 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 from and after July 1, 1981."

Acts 1983, No. 830, § 5: Mar. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the orderly administration of the motor fuel tax laws is essential for the effective collection of these taxes; that some uncertainty exists regarding the sale of fuels to the United States and, that this Act is necessary to clarify this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. 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 the first day of the first month immediately following its passage and approval."

#### **26-56-301. Levy and imposition of tax - Alternative payment of fees.**

(a) There is levied and imposed an excise tax of seven and one-half cents ( $7\frac{1}{2}\text{¢}$ ) per gallon upon the use, as defined in § 26-56-102(12), of all liquefied gas special fuels within this state. Such use of liquefied gas special fuels shall constitute and is declared to be the taxable incident of this levy.

(b) However, in lieu of the gallonage tax levied in this section with respect to liquefied gas special fuels used under this subchapter, the director shall, except as otherwise provided herein, require the payment of the fees prescribed in §§ 26-56-304 in the case of all vehicles required to obtain liquefied gas special fuel user's permits under this subchapter, except licensed liquefied gas special fuel suppliers.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 1; A.S.A. 1947, § 75-1254.

### **26-56-302. Exemptions.**

The tax levied by this subchapter shall not be applicable to the sale of liquefied gas special fuels to official United States Government agencies for use in official United States Government vehicles.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 2; 1983, No. 830, § 2; A.S.A. 1947, § 75-1255.

### **26-56-303. Suppliers and dealers - Licenses and bonds.**

(a) No person shall engage in the business of a liquefied gas special fuel supplier or dealer in this state until that person has filed an application for and obtained a liquefied gas special fuel supplier's or dealer's license.

(b)(1) Application for licenses shall be filed on a form prescribed by the director, and verified by affidavit, and shall show the name, address, and kind of business of the applicant, a designation of the applicant's principal place of business, and such other pertinent information as the director may require.

(2) The application must also contain, as a condition to the issuance of the license, an agreement under oath by the applicant to comply with the requirements of this subchapter and the

rules and regulations of the director of the State of Arkansas.

(c)(1) Before any such application may be approved by the director, the applicant shall file a bond with surety satisfactory to the director, payable to the State of Arkansas, and conditioned upon the applicant's compliance with the provisions of this subchapter and the rules and regulations of the director.

(2) The bond is to be in the sum of not less than five hundred dollars (\$500) and not more than twenty thousand dollars (\$20,000), the amount to be in each case fixed by the director. However, the amount of the bond may be increased or decreased within the aforementioned limits by the director at any time.

(3) No bond shall be cancelled by the sureties thereon until the expiration of sixty (60) days after receipt of notice of the cancellation by the director, and such cancellation shall have no retroactive effect.

(d) Upon approval of the application and bond, the director shall issue to the applicant a nontransferable liquefied gas special fuel supplier's license or dealer's license, as the case may be, bearing a distinctive number.

(e) The license shall remain in full force until surrendered, suspended, revoked, or cancelled in the manner provided in this subchapter.

(f)(1) Each liquefied gas special fuel supplier or dealer shall make application for and secure a duplicate of his license for each station or facility operated by such supplier or dealer at which liquefied gas special fuel is sold or used.

(2) The application shall be made on a form prescribed by the director showing the name, address, and the supplier or dealer license number of the applicant, the location of the station or facility for which the duplicate is applied, and such other pertinent information as the director may require.

(3) Upon approval of the application, the director shall issue to the applicant a nontransferable duplicate of the liquefied gas special fuel supplier's or dealer's license.

(g) There shall be displayed, in a conspicuous place at each station or facility where liquefied gas special fuel is sold or used, the original or duplicate liquefied gas special fuel supplier's or dealer's license under which the station or facility is operated.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 3; A.S.A. 1947, § 75-1256.

#### **26-56-304. Users' permits generally.**

(a) Each liquefied gas special fuel user, including licensed liquefied gas special fuel suppliers and dealers who use liquefied gas special fuels in vehicles owned by the supplier or dealer, shall make application for and secure a liquefied gas special fuel user's permit for each vehicle owned and operated which uses liquefied gas special fuel.

(b) The application must be made on a form prescribed by the director, showing the name, address, and user license number or supplier or dealer license number of the applicant, the make, model, and motor number of the vehicle involved, the type of fuel used therein, and such other pertinent information as the director may require.

(c) The fuel user's permit shall be obtained annually before the director shall register and issue a motor vehicle license for the vehicle.

(d)(1) At the time of applying for such permit and prior to the registration and issuance of a motor vehicle license for the vehicle, each applicant, except licensed liquefied gas special fuel suppliers, shall remit to the director, in addition to the regular fee prescribed by law for the registration and licensing of the vehicle, an additional fee in an amount which is determined by the General Assembly, based upon information available from statistical studies of the motor vehicular use of liquefied gas special fuels by various classes of users, as follows:

### Nonfarm Vehicles

**Annual Additional Fee**

Passenger cars and motor homes .....	\$ 164.00
Pickup trucks, one-half (1/2) and three-quarter (3/4) ton .....	195.00
Pickup trucks, one (1) ton .....	251.00
Trucks, maximum gross loaded weight in excess of one (1) ton but not exceeding 22,500 pounds .....	520.00
Passenger buses except school buses manufactured and licensed as such .....	520.00
School buses manufactured and licensed as such .....	260.00
Trucks, maximum gross loaded weight in excess of 22,500 pounds ..	609.00

### Farm Vehicles

In order to aid in the production of farm products and to eliminate apparent

inequities in liquefied gas special fuel fees which are in lieu of the gallonage tax on such fuel used in vehicles operated primarily on farms and not on the main highway system of this state, a special classification is created for farm vehicles using liquefied gas special fuel and entitled to be registered and licensed as natural resources farm vehicles. The flat fee in lieu of the gallonage tax on the fuel used in such vehicle shall be as follows:

Pickup trucks, one-half (1/2) and three-quarter (3/4) ton ...	\$ 130.00
Pickup trucks, one (1) ton .....	156.00
Trucks, maximum gross loaded weight in excess of one (1) ton but not exceeding 22,500 pounds .....	178.00
Trucks, maximum gross loaded weight in excess of 22,500 pounds ..	260.00

(2) If the director determines that the flat fee provided herein in lieu of the gallonage tax on liquefied gas special fuel is, in the case of common or contract carriers or other vehicles for hire, inadequate to compensate for the gallonage tax, the director may require such common or contract carriers or owners of other vehicles for hire to pay a fee based upon the actual mileage of the common or contract carrier or vehicle for hire for the previous year, the current year, or any other reasonable basis.

(3) The director shall establish regulations for computing the fees and for the enforcement of the collection thereof.

(4) If any new liquefied gas special fuel vehicle is placed in operation or any other vehicle shall be converted to a liquefied gas special fuel vehicle during the registration year, the owner shall be permitted to pay a proportionate part of the special fuel user's permit fee for such vehicle for the remainder of the current registration year based upon one-twelfth ( $1/12$ ) of the annual fee for such vehicle for each calendar month or fraction thereof remaining in the current registration year.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 3; 1967, No. 316, § 1; 1981, No. 789, § 1; A.S.A. 1947, § 75-1256; Acts 1991, No. 364, § 4; 1991, No. 382, § 4.

**A.C.R.C. Notes.** Acts 1991, No. 219, § 4 provided: "(a) Whenever an interstate user of distillate special fuels who is a bonded user of such fuels in all states in which he operates has exportations in excess of importations of tax-paid distillate special fuels in the fuel supply tanks of motor vehicles which fuels were delivered by a supplier into bulk storage facilities of the user within the State of Arkansas, the supplier may make a refund or allow a credit for the amount of the tax upon such excess upon approval by the director of a statement from the user to the effect that the tax-paid fuel was exported.

"(b)(1) 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.



"(2) 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 the fuel upon which the Arkansas tax had been paid, the interstate user shall remit to the director, at the time of filing the report, an excise tax of sixteen and one-half cents (16 1/2 ¢) per gallon of the excess gallonage used.

"(3) 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 the user shall be entitled to a credit or refund of sixteen and one-half cents (16 1/2 ¢) per gallon of the excess gallonage purchased in the state.

"(c) The quarterly report required by this subchapter 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 director and shall include such information as the director may require.

"(d)(1) 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 director 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.

"(2) If it shall be determined by the quarterly report filed with the director 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, the distillate special fuel user shall remit to the director an excise tax of sixteen and one-half cents (16 1/2 ¢) per gallon of special motor fuel.

"(3) Distillate special fuel users may not take credit on reports at a tax rate in excess of that actually paid.

"(e)(1) 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.

"(2) The taxpayer's tax liability shall be calculated by multiplying the number of gallons of fuel used within the State of Arkansas by sixteen and one-half cents (16 1/2 ¢) per gallon. A taxpayer shall be entitled to credits against his tax liability for tax-paid fuel purchased within the State of Arkansas.

"(f)(1) Any licensed interstate user who fails to maintain adequate mileage or fuel records, for the purpose of determining the amount the interstate user owes the State of Arkansas for tax on distillate special fuel used in this state as provided in this section, 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 set out in subdivision (2) of this subsection.

"(2) For the purposes of this section:

"(A) All automobiles, except buses, with a capacity of less than eight (8) passengers shall be deemed to be Class A vehicles;

"(B) All truck-type vehicles, except buses, with a factory rating and gross loaded weight of less than twenty-two thousand five hundred pounds (22,500 lbs.), shall be deemed to be Class B vehicles;

"(C) All other vehicles, except buses, with a factory rating in excess of twenty-two thousand five hundred pounds (22,500 lbs.), or whose total gross loaded weight exceeds twenty-two thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class C vehicles; and

"(D) All buses rated and licensed as such shall be deemed to be Class D vehicles.

"(3) The mileage factor per gallon of distillate special fuel for:

"(A) Class A vehicles shall be twelve (12) miles;

"(B) Class B vehicles shall be eight (8) miles;

"(C) Class C vehicles shall be five (5) miles; and

"(D) Class D vehicles shall be six (6) miles.

"(4) 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.

"(g) 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.

"(h)(1) 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.

"(2) 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) may, upon application to the director, obtain permission to report his motor fuel tax liability on an annual basis. The annual report shall be due on or before the last day of the month following the end of each fiscal year.

"(i) The director shall prescribe the appropriate forms necessary for the administration of this subchapter. The director may make appropriate rules and regulations necessary to insure the accurate reporting of the special motor fuel tax."

Acts 1991, No. 364, § 5 as amended by identical Acts 1991, Nos. 1040 and 1239, §§ 5 and 6, and Acts 1991, No. 382, § 5, as amended by Acts 1991, identical acts Nos. 1040 and 1239, §§ 7 and 8, provided:

"(a) All of the additional taxes, fees, penalties and interest collected under the provisions of this subchapter and §§ 26-55-710, 26-56-214, and 26-56-304 shall be classified as special revenues and shall be deposited in the State Treasury. After deducting therefrom the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

"(A) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

"(B) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

"Seventy percent (70%) of the amount thereof to a special account in the State Highway and

Transportation Department Fund to be designated the "1991 Highway Construction and Maintenance Account".

"(b) The funds in the 1991 Highway Construction and Maintenance Account shall be held, managed, and used in the same manner and for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., excluding, however, § 27-70-206;

"(c) Provided that, in keeping with the spirit of section 105 of Public Law 97-424 and the Arkansas State Highway Commission's goals for encouraging the participation of disadvantaged business enterprises in entering into and performing contracts with the commission, including the purchasing of supplies and equipment by the commission and for the construction, reconstruction, and maintenance of highways and bridges in the state highway system, the Arkansas State Highway Commission is authorized to expend up to ten percent (10%) of the total funds and revenues available and disbursed to the commission pursuant to this section for the purposes of achieving those goals."

### **26-56-305. Users' permits - Transfer.**

When a motor vehicle permitted to use liquefied gas under this subchapter is altered to operate on a fuel other than liquefied gas or destroyed prior to the expiration of the permit period, the director, upon the request of the motor vehicle owner within ten (10) days of the conversion or destruction and the payment of a two dollar (\$2.00) transfer fee, shall transfer the permit for the remainder of the permit period to another motor vehicle operating on liquefied gas owned by the person.

**History.** Acts 1981, No. 818, § 1; A.S.A. 1947, § 75-1265.1.

### **26-56-306. Users' permits - Window decals.**

(a) The director shall promulgate special serially numbered window decals to be issued for motor vehicles for which liquefied gas special fuel user's permits are issued, except vehicles of licensed liquefied gas special fuel suppliers, which distinctive window decals shall evidence not only the registration of the vehicle but shall evidence the fact that the special permit fee charged under § 26-56-304 has been paid.

(b) Each motor vehicle bearing such special and distinctive window decals shall entitle the owner or user of the motor vehicle to purchase liquefied gas special fuels from licensed liquefied gas special fuel suppliers only without the necessity of paying the gallonage tax levied thereon under § 26-56-301, it being the intent of that section that the payment of the special fee levied by § 26-56-304 shall be in lieu of and in full satisfaction of the liquefied gas special fuels gallonage taxes that would have otherwise been due on liquefied gas special fuels used in the vehicle during

the period for which the license and permit is issued.

(c) When a vehicle bearing a special and distinctive liquefied gas special fuel window decal is transferred, the liquefied gas special fuel window decal shall remain with the vehicle, and, when the registration of the vehicle is transferred to the new owner, such new owner shall be entitled to purchase liquefied gas special fuel for the vehicle without payment of the gallonage tax thereon the same as the former owner.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 3; 1967, No. 316, § 1; 1981, No. 789, § 1; A.S.A. 1947, § 75-1256.

**26-56-307. Suppliers or interstate users - Computation, reporting, and payment of tax.**

(a) Each licensed liquefied gas special fuel supplier or interstate user shall compute, report, and pay the tax on all liquefied gas special fuel used in each vehicle owned or operated by him in this state on which the tax levied by this subchapter has not been paid by ascertaining the total highway miles driven in this state and dividing this total by the applicable mileage factor, as set forth below, to compute the quantity of special fuel used upon which the tax levied in § 26-56-301 is applicable.

(b)(1) For the purpose of this section, all automobiles with a capacity of fewer than eight (8) passengers shall be deemed to be Class A vehicles.

(2) All truck-type vehicles with a factory rating and gross loaded weight of less than twenty-two thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class B vehicles.

(3) All vehicles with a factory rating in excess of twenty-two thousand five hundred pounds (22,500 lbs.) or whose total gross loaded weight exceeds twenty-two thousand five hundred pounds (22,500 lbs.) shall be deemed to be Class C vehicles.

(c) The mileage factor per gallon of special fuel for Class A vehicles shall be twelve (12) miles, for Class B vehicles eight (8) miles, and for Class C vehicles four (4) miles.

(d) When calculating the number of gallons of liquefied gas special fuels on which the gallonage tax levied by § 26-56-301 is due, the suppliers and users shall be allowed a credit equal to the amount of the tax paid on each gallon of liquefied gas special fuel purchased or received in this state when each such credit is supported by a copy of the purchase invoice showing the amount of tax paid, signed by the supplier or dealer from which the liquefied gas special fuel was purchased or delivered.

(e) The due date of the interstate user reports shall be the twenty-fifth day following each

calendar quarter.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 4; 1979, No. 764, § 3; A.S.A. 1947, § 75-1257.

### **26-56-308. Reports and payment of tax by suppliers.**

(a) On or before the twenty-fifth day of each calendar month next following the calendar month for which the report is made, each liquefied gas special fuel supplier shall report to the director:

(1) The total gallons of liquefied gas special fuel sold or delivered to each liquefied gas special fuel dealer, the name and address and dealer license number of each dealer, and the tax collected thereon;

(2) The number of gallons of liquefied gas special fuel sold or delivered to liquefied gas special fuel users other than dealers, the name and address of each user, the quantity sold or delivered to each user, and the tax collected thereon; and

(3) If the fuel is delivered into the supply tanks of any vehicle for which the flat fee provided for in § 26-56-304 has been paid, the vehicle license number of the vehicle; and

(4) The number of gallons of such fuel used by such supplier for his own purposes, and the quantity thereof subject to the tax levied; and

(5) The quantity of the fuel otherwise disposed of by the supplier and the portion thereof subject to the tax levied in § 26-56-304; and

(6) Such other information as the director may by regulation require.

(b) The report shall be made even though no tax is due.

(c) Each liquefied gas special supplier shall, at the time of filing the monthly report required by this section, remit to the director any and all taxes due on liquefied gas special fuel covered by the report.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 7; A.S.A. 1947, § 75-1260.

### **26-56-309. Reports by dealers.**

Every liquefied gas special fuel dealer shall monthly, on or before the twenty-fifth day of the month, file a report with the director for the preceding calendar month, showing all liquefied gas special fuel sold, delivered, or used by such dealer, whether the fuel is sold or delivered for a taxable or nontaxable use, the name and address of the purchasers, the quantity purchased by each, and, in the case of liquefied gas special fuel delivered into the supply tanks of vehicles on which the flat fee provided in this subchapter has been paid, the name, address, and vehicle license number of the purchaser.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 8; A.S.A. 1947, § 75-1261.

#### **26-56-310. Surrender of license or permit - Discontinuance of business.**

(a) Whenever any person to whom a liquefied gas special fuel supplier's license, dealer's license, or liquefied gas special fuel user's permit has been issued, discontinues to supply, sell, or use liquefied gas special fuel within the state, such person shall notify the director in writing of that fact within thirty (30) days thereafter and surrender his license or permit to the director.

(b) No person surrendering any such license or permit shall be entitled to any refund of any of the fees previously paid.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 9; A.S.A. 1947, § 75-1262.

#### **26-56-311. Revocation of supplier's or dealer's license.**

(a) If a licensed liquefied gas special fuel supplier or dealer fails to file any report required by this subchapter, or falsely or fraudulently files a report, or fails to pay the full amount of the tax levied by this subchapter, or if at any time the surety on such licensee's bond becomes unsatisfactory or inaccessible to the director or the bond is discharged or cancelled, and a new bond is not furnished by the licensee within five (5) days after the demand of the director, the director may give notice to the licensee of an intention to revoke his license.

(b) The licensee shall be entitled to a period of ten (10) days after the mailing of the notice within which to apply for a hearing on the question of having his license revoked, and the director shall designate a time and place for the hearing, giving the licensee five (5) days' notice thereof.

(c) After the hearing at which the licensee shall be entitled to present evidence and be

represented by counsel, the director shall determine whether the licensee's license shall be revoked.

(d)(1) Upon the issuance of an order revoking the license, the licensee shall be entitled to appeal to the chancery court in any county in which he may do business where the question shall be tried de novo, but the director's order shall be affirmed if supported by substantial evidence.

(2) An appeal may be had from the judgment of the chancery court as in other cases as provided by law.

(e) If the licensee fails to apply for a hearing within the prescribed time, the director may immediately revoke the license of the licensee and notify the licensee by registered mail, addressed to the last known address of the licensee appearing in the files of the director. The director shall also notify the surety company on the licensee's bond in like manner.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 9; A.S.A. 1947, § 75-1262.

#### **26-56-312. Importation or use by unlicensed persons.**

(a) Any person operating a motor vehicle on the highways of this state who for the first time imports liquefied gas special fuels into the state in the supply tank of a motor vehicle but who has not obtained a liquefied gas special fuel user's permit from this state or who is not a bonded liquefied gas special fuel supplier in this state shall nevertheless be deemed a special fuel user.

(b) For the purposes of determining the number of gallons of liquefied gas special fuel consumed in operating on the highways of this state, the special fuel user shall be required to pay to the director the tax levied by this subchapter on each gallon of liquefied gas special fuel contained in the supply tank of the vehicle at the time of entry into the state and upon all such fuel used in this state upon which the tax levied in this subchapter has not been paid.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 5; A.S.A. 1947, § 75-1258.

#### **26-56-313. Purchases by unlicensed persons - Payment of tax.**

(a) Any person purchasing liquefied gas special fuels for delivery into the supply tanks of the motor vehicle of such person, if such person does not have a liquefied gas special fuel user's permit as evidenced by the appropriate license issued therefor as provided in this subchapter or if such person is not a bonded licensed liquefied gas special fuel supplier, shall pay to the supplier or

dealer at the time of purchase of liquefied gas special fuels the gallonage tax levied in § 26-56-301 on each gallon of liquefied gas special fuels so delivered into the supply tanks of the motor vehicle.

(b)(1) At the time of making the delivery, the supplier or dealer shall prepare in duplicate a receipt reflecting the name and address of the purchaser, and the make, model, and license number of the vehicle in which the fuel is delivered, the total amount of gallons delivered, and the tax collected thereon.

(2) The supplier or dealer shall deliver the original copy to the purchaser and shall retain the duplicate copy for a period of two (2) years for inspection by the director or his designated agents.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 6; A.S.A. 1947, § 75-1259.

#### **26-56-314. Nonresident users.**

If the director deems it necessary for the proper enforcement and collection of the tax on liquefied gas special fuels used in this state against nonresident users, other than occasional nonresident users, he may require the nonresident users to obtain a permit, post bond, and report and remit the tax in the same manner as is required in this subchapter for liquefied gas special fuel suppliers.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, § 5; A.S.A. 1947, § 75-1258.

#### **26-56-315. Conversion of vehicles for use of liquefied gas special fuel.**

(a)(1) Any liquefied gas special fuels dealer, garage, mechanic, owner, or operator of a motor vehicle who converts or causes a vehicle to be converted to enable the vehicle to be operated on liquefied gas special fuel shall report the conversion to the director, on forms prescribed by the director, within ten (10) days after the conversion.

(2) If any owner or operator fails to report a conversion to the director within the time prescribed above, such person shall be assessed a penalty of fifty dollars (\$50.00) which shall be in addition to any criminal penalty provided in this chapter.



(b) No person shall convert or equip any motor vehicle for the use of liquefied gas special fuel unless the person is licensed to do so by the Liquefied Petroleum Gas Board and has also made application for and obtained a license as a liquefied gas special fuel converter from the director and posted a bond in an amount determined by the director conditioned that the person will report to the director all vehicles so converted by him as required by this section.

(c) It shall be unlawful for any person to operate any vehicle which has been converted or equipped to use liquefied gas special fuel unless the vehicle has been reported to the director and a liquefied gas special fuel user's permit has been obtained therefor as required.

**History.** Acts 1965 (1st Ex. Sess.), No. 40, ch. 3, §§ 10-12; A.S.A. 1947, §§ 75-1263 - 75-1265.

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## **Subchapter 4. Diesel-Powered Vehicles.**

**Effective dates.** Acts 1979, No. 903, § 9: Apr. 16, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws relating to the collection of special motor fuel taxes for fuel used by certain classes of users are not adequate to assure the effective enforcement of such laws; that this Act is designed to correct this situation and should be given effect immediately to avoid further loss of revenues. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

### **§ 26-56-401 - 26-56-404. [Repealed.]**

**Publisher's Notes.** These sections, concerning purchase of tax-free diesel fuel and permits for diesel-powered vehicles, were repealed by Acts 1993, No. 618, § 7. The sections were derived from the following sources:

26-56-401. Acts 1979, No. 903, § 3; A.S.A. 1947, § 75-1274.

26-56-402. Acts 1979, No. 903, § 1; A.S.A. 1947, § 75-1272.

26-56-403. Acts 1979, No. 903, § 4; A.S.A. 1947, § 75-1275.

26-56-404. Acts 1979, No. 903, § 5; A.S.A. 1947, § 75-1276; Acts 1987, No. 640, § 1.

### **26-56-405. Payment of tax by Arkansas State Highway and Transportation Department.**

(a) The Arkansas State Highway and Transportation Department shall continue to pay the special motor fuel tax established by this chapter on all diesel-powered motor vehicles as defined in § 26-56-102 owned by the department.

(b) For purposes of computing this tax, the department shall use its fuel consumption reports and shall file with the director an appropriate monthly report stating the gallons used in the department's motor vehicles and the tax due and payable.

(c) The department shall remit the tax due each month to the director.

**History.** Acts 1979, No. 903, § 5; A.S.A. 1947, § 75-1276.

**§ 26-56-406 - 26-56-408. [Repealed.]**

**Publisher's Notes.** These sections, concerning permit holder tax refund, diesel fuel sales tax liability, and disposition of fees and fines, were repealed by Acts 1993, No. 618, § 7. The sections were derived from the following sources:

26-56-406. Acts 1979, No. 903, § 2; A.S.A. 1947, § 75-1273.

26-56-407. Acts 1979, No. 903, § 3; A.S.A. 1947, § 75-1274.

26-56-408. Acts 1979, No. 903, § 6; A.S.A. 1947, § 75-1277.

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## **Subchapter 5. Additional Taxes and Fees.**

**Effective dates.** Acts 1985, No. 456, § 6. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the rural roads, highways, roads and streets in this State are operationally hazardous and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction and reconstruction of such roads, highways and streets is essential to the public health, welfare and safety of the people of this State and that only by the immediate passage of this Act may such vitally needed additional funds be provided to solve the aforementioned problem. 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 from and after its passage and approval." Vetoed, Mar. 19, 1985 and passed over veto Mar. 20, 1985.

### **26-56-501. Applicability.**

The additional taxes and fees levied in this subchapter on motor fuel, distillate special fuels, liquefied petroleum gas special fuel, and vehicles using LP gas special fuel shall be applicable to motor fuel and distillate special motor fuels sold and liquefied petroleum gas vehicles which are registered or for which registration is renewed on and after April 1, 1985.

**History.** Acts 1985, No. 456, § 4; A.S.A. 1947, § 75-1281.

**Publisher's Notes.** Acts 1985, No. 456, §§ 1-4, are also codified as § 26-55-1001 et seq.

### **26-56-502. Additional tax levied on distillate special motor fuels.**

(a) In addition to the tax levied upon distillate special motor fuels in § 26-56-201 and upon liquefied gas special fuels in § 26-56-301, there is levied an excise tax of four cents (4¢) per gallon upon all liquefied petroleum gas special fuels and two cents (2¢) per gallon upon all distillate special motor fuels, subject to the tax levied in those sections.

(b) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of other distillate special fuel taxes.

**History.** Acts 1985, No. 456, § 1; A.S.A. 1947, § 75-1278; Acts 1989, No. 821, § 10.

**26-56-503. [Repealed.]**

**Publisher's Notes.** This section, concerning additional fees for vehicles using liquefied gas special fuel, was repealed by Acts 1991, Nos. 364 and 382, § 6. The section was derived from Acts 1985, No. 456, § 2; A.S.A. 1947, § 75-1279.

**26-56-504. Disposition of revenues.**

(a)(1) All taxes, interest, penalties, and costs received by the Director of the Department of Finance and Administration from the additional taxes and fees levied by this subchapter shall be classified as special revenues and shall be deposited in the State Treasury.

(2) The net amount thereof shall be transferred by the State Treasurer on the last business day of each month, as follows:

(A) Fifteen percent (15%) of the amount to the County Aid Fund;

(B) Fifteen percent (15%) of the amount to the Municipal Aid Fund; and

(C) Seventy percent (70%) of the amount to the State Highway Department Fund.

(b)(1) All such funds credited to the State Highway and Transportation Department Fund shall be used for construction, reconstruction, and maintenance of the rural state highways of the state and their extensions into municipalities and industrial access roads.

(2) The State Highway Commission shall provide to each member of the General Assembly on January 1, 1986, and annually thereafter, a report indicating how the money provided by this subchapter was spent, which roads were worked on, and what other progress was made regarding the plan outlined to the General Assembly by the commission during the debate on this subchapter.

**History.** Acts 1985, No. 456, § 3; A.S.A. 1947, § 75-1280.

## **Subchapter 6.**

### **Additional Taxes on Motor Fuel, Distillate Special Fuels, and Liquefied Gas Special Fuels.**

**Effective dates.** Acts 1991, Nos. 364 and 382, § 9: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that many of the highways, roads and streets in this state are operationally inadequate and immediate steps must be taken to provide additional funds for the maintenance, construction and reconstruction of such highways, roads and streets; that proper maintenance, construction, and reconstruction of such highways, roads and streets is essential to the public health, welfare and safety of the people of this state and that only by the immediate passage of this act may such vitally needed additional funds be provided to solve the aforementioned problems. 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 the first day of the first month immediately following its passage and approval."

Acts 1991, Nos. 1040 and 1239, § 11: April 8, 1991, and Apr. 10, 1991, respectively. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that there is an immediate need for the construction and repair of the State Highway System. For these reasons, it is declared necessary for the preservation of the public peace, health, and safety that this Act become effective without delay. It is, therefore, declared that an emergency exists, and this Act shall take effect from the date of its passage and approval."

#### **26-56-601. Excise tax levied.**

(a) On and after March 6, 1991, in addition to the taxes levied upon motor fuel in §§ 26-55-205 and 26-55-1002 and upon distillate special fuels in §§ 26-56-201 and 26-56-502 and upon liquefied gas special fuels in §§ 26-56-301 and 26-56-502, and in addition to any other taxes levied on such fuel or fuels during the Seventy-eighth regular session of the General Assembly, there is hereby levied an excise tax of five cents (\$.05) per gallon upon all motor fuel and liquefied gas special fuels and an excise tax of two cents (\$.02) per gallon upon all distillate special fuels subject to the taxes levied in those Code sections.

(b) Such additional taxes shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of other motor fuel taxes, distillate special fuels taxes, and liquefied gas special fuels taxes.

**History.** Acts 1991, No. 364, § 1; 1991, No. 382, § 1.

**Publisher's Notes.** Identical Acts Nos. 364 and 382, § 1, are also codified as § 26-55-1201.

**26-56-602. Additional funds deposited in State Treasury.**

(a) All of the additional taxes, fees, penalties and interest collected under the provisions of this subchapter and §§ 26-55-710, 26-56-214, and 26-56-304 shall be classified as special revenues and shall be deposited in the State Treasury. After deducting therefrom the amount to be credited to the Constitutional Officers Fund and the State Central Services Fund as provided in the Revenue Stabilization Law, § 19-5-101 et seq., the Treasurer of State shall transfer on the last business day of each month:

(1) Fifteen percent (15%) of the amount thereof to the County Aid Fund;

(2) Fifteen percent (15%) of the amount thereof to the Municipal Aid Fund; and

(3) Seventy percent (70%) of the amount thereof to a special account in the State Highway and Transportation Department Fund to be designated the "1991 Highway Construction and Maintenance Account".

(b) The funds in the 1991 Highway Construction and Maintenance Account shall be held, managed, and used in the same manner and for the same purposes as set out in the Arkansas Highway Revenue Distribution Law, § 27-70-201 et seq., excluding however, § 27-70-206;

(c) Provided that, in keeping with the spirit of section 105 of Public Law 97-424 and the Arkansas State Highway Commission's goals for encouraging the participation of disadvantaged business enterprises in entering into and performing contracts with the commission, including the purchasing of supplies and equipment by the commission and for the construction, reconstruction, and maintenance of highways and bridges in the state highway system, the Arkansas State Highway Commission is authorized to expend up to ten percent (10%) of the total funds and revenues available and disbursed to the commission pursuant to this act for the purposes of achieving those goals.

**History.** Acts 1991, No. 364, § 5; 1991, No. 382, § 5; 1991, No. 1040, §§ 5-8; 1991, No. 1239, §§ 5-8.

**Publisher's Notes.** Identical Acts 1991, Nos. 364 and 382, § 5, are also codified as § 26-55-1202.

Identical Acts 1991, Nos. 1040 and 1239, § 4, provided: "(a) This Act shall be liberally construed to accomplish the purposes thereof. This Act shall constitute the sole authority necessary to accomplish the purposes hereof, and to this end it shall not be necessary that the provisions of other laws pertaining to the development of public facilities and properties and the financing thereof be complied with.

"(b) This Act shall be interpreted to supplement existing laws conferring rights and powers upon the Authority and the Commission, and the rights and powers set forth herein shall be regarded as alternative methods for the accomplishment of the purposes of this Act."

**Meaning of "this act".** Identical Acts 1991, Nos. 364 and 382, as amended by identical Acts 1991, Nos. 1040 and 1239, codified as §§ 26-55-710, 26-55-1201, 26-55-1202, 26-56-214, 26-56-304, 26-56-601, and 26-56-602.

**U.S. Code.** Public Law 97-424, referred to in this section, is codified primarily as 23 U.S.C. § 101 et seq., 26 U.S.C. § 4041 et seq., and 26 U.S.C. § 6411 et seq.

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## **Subchapter 7. Refunds - Motor Fuels Used by Fire Departments.**

**A.C.R.C. Notes.** References to "this chapter" in subchapters 1 through 6 may not apply to this subchapter which was enacted subsequently.

### **26-56-701. Definitions.**

As used in this subchapter:

(1) "Director" means the Director of the Department of Finance and Administration or any of his or her deputies, employees, or agents;

(2) "Distillate special fuel" means distillate special fuel as defined in § 26-56-102;

(3)(A) "Fire truck" means fire department-owned fire fighting apparatus used to respond to fire alarms, including, but not limited to, tanker trucks, pumper trucks, and equipment trucks.

(B) "Fire truck" does not include passenger vehicles and ambulances; and

(4) "Motor fuel" means motor fuel as defined in § 26-55-202.

**History.** Acts 2001, No. 419, § 1.

**A.C.R.C. Notes.** Acts 2001, No. 419, § 1, is also codified as § 26-55-1301.

### **26-56-702. Applicability.**

Any fire department that purchases motor fuel or distillate special fuel for use in fire trucks shall be entitled to a refund of the motor fuel tax or distillate special motor fuel tax paid.

**History.** Acts 2001, No. 419, § 2.

**A.C.R.C. Notes.** Acts 2001, No. 419, § 2, is also codified as § 26-55-1302.

### **26-56-703. Refund permit.**

(a) No fire department shall secure a refund of tax under this subchapter unless the fire department is the holder of an unrevoked permit which was issued by the Director of the Department of Finance and Administration before the purchase of the motor fuel or the distillate special fuel.

(b) The permit shall be numbered and shall entitle the fire department to make an annual application for refund under this subchapter.

(c) An application for the permit shall be filed with the director on forms prescribed by the director and shall contain such information as the director may require.

(d) No person shall knowingly make a false or fraudulent statement in an application for a refund permit or in an application for a refund of any taxes under this subchapter.

(e) The refund permit of any person who violates any provision of this subchapter shall be revoked by the director and shall not be reissued until two (2) years have elapsed after the date of the revocation.

**History.** Acts 2001, No. 419, § 3.

**A.C.R.C. Notes.** Acts 2001, No. 419, § 3, is also codified as § 26-55-1303.

### **26-56-704. Applications for refund.**

(a) The refund permit holder shall file with the Director of the Department of Finance and Administration an application for refund on forms furnished by the director which shall include, but not be limited to, the following information:

(1) The quantity of motor fuel and distillate special fuel purchased for use in its fire trucks;

(2) A statement that the motor fuel and distillate special fuel have been used exclusively in its fire trucks;

(3) The amount of the tax claimed to be refunded;

(4) The name, post office, and resident address of the fire department;

(5) The name and address of the sellers from whom the motor fuel and distillate special fuel were purchased; and

(6) Other information as the director shall require.

(b)(1) An application for a refund shall be accompanied by a paid receipt for the purchase price of motor fuel and distillate special fuel on which the refund is sought.

(2) The application shall be notarized and made to the director.

(c) All claims for a refund under the provisions of this subchapter shall be subject to the Arkansas Tax Procedure Act, § 26-18-101 et seq.

(d)(1) The director shall promulgate a rule establishing the annual date for claiming a refund pursuant to this subchapter.

(2) A refund shall only be granted for a purchase of motor fuel and distillate special fuel made within one (1) calendar year of the annual date for claiming the refund.

**History.** Acts 2001, No. 419, § 4.

**A.C.R.C. Notes.** Acts 2001, No. 419, § 4, is also codified as § 26-55-1304.

#### **26-56-705. Refund paid from Gasoline Tax Refund Fund.**

(a) All valid claims for refund of the motor fuel tax under the provisions of this subchapter shall be paid from the Gasoline Tax Refund Fund and shall be subject to the same conditions and limitations as provided under § 26-55-407, except that all the motor fuels covered by the provisions of this subchapter shall be subject to the full refund of the motor fuel taxes paid.

(b)(1)(A) The Director of the Department of Finance and Administration shall annually estimate the amount necessary to pay refunds to the users of distillate special fuel who are entitled to refunds with respect to distillate special fuel taxes paid in this state as authorized in this subchapter.

(B) Upon certification by the director, the Treasurer of State shall transfer from the gross amount of distillate special fuel taxes collected each month the amount so certified and shall credit the amount to the fund.

(2) The transfers from the distillate special fuel taxes collected each month shall be made after

deducting allowances for bad checks or claims but before making any other distribution as provided by law.

(c)(1) All valid claims for refund of the distillate special fuel tax under the provisions of this subchapter shall be paid from the fund.

(2) The refund for purchases of distillate special fuel tax shall not include the moneys which have been pledged to the repayment of highway bonds under § 26-56-201.

(d) All warrants drawn against the fund that are not presented for payment within one (1) year after issuance shall be void.

(e) Neither the director nor any member or employee of the Department of Finance and Administration shall be held personally liable for making any refund by reason of a fraudulent claim filed as a basis for such a refund.

**History.** Acts 2001, No. 419, § 5.

**A.C.R.C. Notes.** Acts 2001, No. 419, § 5, is also codified as § 26-55-1305.

#### **26-56-706. Records - Inspection.**

(a) The Director of the Department of Finance and Administration shall keep a permanent record by fire department of the amount of refund claimed and paid to each claimant.

(b) The records shall be open to public inspection.

**History.** Acts 2001, No. 419, § 6.

**A.C.R.C. Notes.** Acts 2001, No. 419, § 6, is also codified as § 26-55-1306.

#### **26-56-707. Construction.**

Nothing in this subchapter shall be construed as an impairment of the obligation existing between the State of Arkansas and the holders of Arkansas state highway bonds whether the bonds have already been issued or may be issued in the future.

**History.** Acts 2001, No. 419, § 7.

**A.C.R.C. Notes.** Acts 2001, No. 419, § 7, is also codified as § 26-55-1307.

**26-56-708. Director's powers.**

The Director of the Department of Finance and Administration may make, amend, and enforce regulations, subpoena witnesses and documents, administer oaths, and do and perform all other acts necessary to carry out the purpose and intent of this subchapter.

**History.** Acts 2001, No. 419, § 8.

**A.C.R.C. Notes.** Acts 2001, No. 419, § 8, is also codified as § 26-55-1308.

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