

Amend CSHB 2458 as follows:

(1) On page 5, line 23, amend Section 162.001, subsection (21) to read as follows: "(21) 'Distributor' means a person who acquires motor fuel from a licensed supplier, permissive supplier, or another licensed distributor and makes sales at wholesale and whose activities may also include sales at retail."

(2) On page 9, line 13, amend subsection (43) to read as follows: "'Licensee' means any person licensed by the comptroller pursuant to Section 162.106, 162.206, 162.304, 162.305, and 162.306."

(3) On page 37, line 16, amend Section 162.105, subsection (4) to read as follows: "(4) All gasoline exported by either a licensed supplier or licensed exporter from this state to any other state, provided that the bill of lading indicates the destination state, the gasoline is subsequently exported and the exporter is licensed in the destination state to pay that state's tax and has a Texas exporter's license in accordance with Section 162.109(d). If the exporter does not have a Texas exporter's license, the Texas state tax must be collected. This exception shall not apply to any gasoline that is transported and delivered outside this state in the motor fuel supply tank of a motor vehicle other than an interstate trucker. Section 162.105(4) shall only be in effect if the destination state does not recognize, by agreement with the State of Texas or by statute, the out of state supplier as a valid taxpayer for the motor fuel being exported to such state from Texas."

(4) On page 37, line 23, add Section 162.105, subsection (5) to read as follows and renumber subsequent sections appropriately: "(5) All gasoline exported by either a licensed supplier or licensed exporter from this state to any other state, provided that the bill of lading indicates the destination state and the supplier collects the destination state tax. This exception shall not apply to any gasoline that is transported and delivered outside this state in the motor fuel supply tank of a motor vehicle other than an interstate trucker. Section 162.105(5) shall only be in effect if the destination state recognizes, by agreement with the State of Texas or by statute, the out of state supplier as a

valid taxpayer for the motor fuel being exported to such state from Texas, or until January 1, 2006, whichever is earlier."

(5) On page 37, line 26, after "terminal." insert "The removal from the second terminal rack will be subject to the tax imposed by this subchapter."

(6) On page 39, line 15, replace the word "permit" with the word "license."

(7) On page 39, line 26, after the word "trucker's" insert the word "license."

(8) On page 44, line 23, strike the words "is exempted from the bond or other security requirements of this subchapter and."

(9) On page 47, line 26, after the word "gasoline" delete the word "fuel."

(10) On page 48, line 9, strike Section 162.114, subsection (a) and substitute the following: "(a) Each licensed distributor and licensed importer shall remit to the supplier or permissive supplier, as applicable, the tax imposed by Section 162.101 for gasoline removed at a terminal rack. A licensed distributor or licensed importer may elect to defer payment of the tax to the supplier or permissive supplier until two days prior to the date the supplier or permissive supplier is required to remit the tax to this state and the payment shall be by electronic funds transfer. A supplier, permissive supplier, or their representative which conducts electronic transactions to draft account of licensed distributors or licensed importers for the payment of taxes due under this subsection shall provide at least two days notice via electronic means of the amount to be drafted from the account of the licensed distributor or licensed importer, as well as the account number to be drafted. If the supplier or permissive supplier is unable to secure payment of taxes from the licensed distributor or licensed importer due for gasoline removed from the terminal during the previous period and the supplier elects to take a credit against a subsequent payment of gasoline tax to the state for the taxes not remitted to the supplier or permissive supplier by the licensed distributor or licensed importer, the supplier or permissive supplier shall notify the comptroller of the licensed distributor's or licensed importer's failure to remit tax in conjunction with the

report requesting a credit. The supplier shall have the right, after notifying the comptroller of the licensed distributor's or licensed importer's failure to remit taxes under this subsection, to terminate the ability of the licensed distributor or licensed importer to defer the payment of gasoline tax. The right of the licensed distributor or licensed importer to defer the payment of gasoline tax shall be reinstated by the supplier or permissive supplier after notice has been issued by the comptroller that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of state gasoline tax."

(11) On page 49, line 26, delete the sentence "The comptroller may cancel as provided in Section 162.005 the license of a distributor, exporter, or importer who fails to pay the full amount of tax required by this subchapter." and replace it with subsection (c) to read as follows: "(c) The comptroller may cancel as provided in Section 162.005 the license of a distributor, exporter, or importer who fails to pay the full amount of tax required by this subchapter."

(12) On page 58, line 1, delete "Sec. 162.104" and replace it with "Sec. 162.114."

(13) On page 58, line 8, after the word "tax" insert "plus a penalty of ten percent of the amount of unpaid taxes in interest at the rate provided by Sec. 111.060 beginning on the date that the credit was taken or the refund was issued."

(14) On page 58, line 21, insert subsection (d) to read as follows: "(d) To determine the amount of credit per tax, all payments or credits in reduction of a customer's account must be applied ratably between motor fuels and other goods sold to the customer, and the credit allowed will be the tax on the number of gallons represented by the motor fuel portion of the credit."

(15) On page 59, line 6, amend Section 162.119, subsection (3) to read as follows: "(3) the number of net gallons of gasoline removed by the distributor during the month for export, sorted by product code, terminal code, bulk plant address, destination state and carrier. Proof of payment of tax to the destination state must be supplied in a form acceptable to the comptroller."

(16) On page 61, line 12, after the word "RETURN" insert "AND

PAYMENT OF TAX ON EXPORTS."

(17) On page 61, line 13, before "The" insert "(a)."

(18) On page 61, line 23, amend Section 162.123 by adding subsection (4) to read as follows: "(4) Proof of payment of the tax to the destination state in a form acceptable to the comptroller."

(19) On page 61, line 24, add subsection (b) to read as follows: "(b) If an exporter fails to provide the proof required by subsection (a) of this section within the time period required by the comptroller, the exporter shall report and pay the tax imposed by this subchapter on the exported gasoline to the state. If the exporter fails to provide proof of payment of the destination state taxes to the comptroller and fails to pay the tax imposed by this subchapter, the comptroller shall assess the tax imposed by this subchapter on the exported gasoline against the exporter."

(20) On page 62, line 21, amend Section 162.126 title to read as follows: "REFUNDS OF TAXES PAID ON EXCEPTED USES OR OTHERWISE EXEMPT SALES OF GASOLINE."

(21) On page 62, lines 22 through 26, amend Section 162.126(a) to read as follows: "(a) A licensee may take a credit on a return for the period in which the sale occurred if the licensee paid tax on the purchase of gasoline and subsequently resells the gasoline without collection of the tax to:"

(22) On page 63, line 23, after new subsection (7), add new subsection (8) to read as follows: "(8) Gasoline used in motor vehicles that are operated exclusively off the public highways, except for incidental travel on the public highways as determined by the comptroller, but not for that portion used in the incidental highway travel."

(23) On page 64, line 18, replace "162.128" with "162.129."

(24) On page 65, line 7, add new subsection (7), to read as follows: "(7) Uses the gasoline in off highway equipment, and stationary engines, or for other non-highway purposes and not in a motor vehicle operated or intended to be operated on the public highways;"

(25) On page 65, line 7, after new subsection (7), add new subsection (8), to read as follows: "(8) Uses the gasoline in a motor vehicle that is operated exclusively off the public highways,"

except for incidental travel on the public highways as determined by the comptroller, provided that a refund may not be allowed for the portion used in the incidental highway travel."

(26) On page 65, line 9, after "by the comptroller." insert the following: "For the purposes of this section, a distributor shall meet the requirement of filing a valid refund claim by designating the gallons of gasoline sold or used as described in Section 162.126(b) on the monthly report submitted by the distributor to the comptroller's office."

(27) On page 65, line 15, replace "162.128" with "162.129."

(28) On page 65, line 25, replace "permitted" with "licensed."

(29) On page 66, line 4, strike section 126.127 (a) (3) and renumber the subsequent subsections appropriately.

(30) On page 66, line 5, replace "permit" with "license."

(31) On page 66, line 9, delete "terminal" and after the word "supplier" insert "or permissive supplier."

(32) On page 66, line 11, delete "terminal" and after the word "supplier" insert "or permissive supplier."

(33) On page 66, line 16, delete "terminal" and after the word "supplier" insert "or permissive supplier."

(34) On page 66, line 16, replace the word "permit" with the word "license."

(35) On page 66, line 18, amend section 126.127 (c) to read as follows: "The return on which the credit is taken or the refund claimed must state, if applicable, the permit number of the person whose account has been written off as a bad debt and any other information required by the comptroller. The amount of the refund that may be claimed under Subsection (a) or (b) may equal but may not exceed the amount of taxes paid on the gasoline to which the written-off account applies."

(36) On page 67, line 2, delete "terminal" and after the word "supplier" insert "or permissive supplier."

(37) On page 67, line 14, delete "A credit under this section must be taken on either the first or second monthly report of a terminal supplier following the monthly report following the monthly report on which the terminal supplier paid the tax."

(38) On page 74, line 7, strike subsection (4) of section 126.162.205 and substitute the following: "(4) All diesel fuel exported by either a licensed supplier or licensed exporter from this state to any other state, provided that the bill of lading indicates the destination state, the diesel fuel is subsequently exported and the exporter is licensed in the destination state to pay that state's tax and has a Texas exporter's license in accordance with Section 162.210(d). If the exporter does not have a Texas exporter's license, the Texas state tax must be collected. This exception shall not apply to any diesel that is transported and delivered outside this state in the motor fuel supply tank of a motor vehicle other than an interstate trucker. Section 162.205(4) shall only be in effect if the destination state does not recognize, by agreement with the State of Texas or by statute, the out of state supplier as a valid taxpayer for the motor fuel being exported to such state from Texas , or until January 2, 2006, whichever is earlier."

(39) On page 74, line 14, at the end of subsection (4) add subsection (5) and renumber subsequent subsection appropriately to read as follows: "(5) All diesel fuel exported by either a licensed supplier or licensed exporter from this state to any other state, provided that the bill of lading indicates the destination state and the supplier collects the destination state tax. This exception shall not apply to any diesel that is transported and delivered outside this state in the motor fuel supply tank of a motor vehicle other than an interstate trucker. Section 162.205(5) shall only be in effect if the destination state recognizes, by agreement with the State of Texas or by statute, the out of state supplier as a valid taxpayer for the motor fuel being exported to such state from Texas, or until January 1, 2006, whichever is earlier."

(40) On page 75, line 2, strike subsections (8), (9), and (10) and renumber the subsequent sections appropriately.add the word "Dyed" before the words "diesel fuel."

(41) On page 75, line 6, add the word "Dyed" before the word "kerosene."

(42) On page 75, line 10, strike "sold by a supplier or distributor to" and replace with "used by."

(43) On page 78, line 15, strike "or the licensed supplier has previously sold to that purchaser more than 15,000 gallons of dyed diesel fuel".

(44) On page 78, line 17, delete the ":" and replace it with a ." and delete subsections "(A)" and "(B)" on lines 18 through 24.

(45) On page 80, line 15, replace the word "permit" with the word "license."

(46) On page 83, line 24, replace subsection (f) to read as follows: "(f) An application for license as a dyed diesel fuel bonded user is required for any purchase of dyed diesel fuel in the excess of the limitations in section 162.207(c). This section does not affect the right of a purchaser to purchase not more than 15,000 of dyed diesel fuel for the purchaser's own use using a signed statement under section 162.207."

(47) On page 89, line 19, strike section 162.215 (a) and substitute with the following: "(a) Each licensed distributor and licensed importer shall remit to the supplier or permissive supplier, as applicable, the tax imposed by Section 162.201 for diesel fuel removed at a terminal rack. A licensed distributor or licensed importer may elect to defer payment of the tax to the supplier or permissive supplier until two days prior to the date the supplier or permissive supplier is required to remit the tax to this state and the payment shall be by electronic funds transfer. A supplier, permissive supplier, or their representative which conducts electronic transactions to draft account of licensed distributors or licensed importers for the payment of taxes due under this subsection shall provide at least two days notice via electronic means of the amount to be drafted form the account of the licensed distributor or licensed importer, as well as the account number to be drafted. If the supplier or permissive supplier is unable to secure payment of taxes from the licensed distributor or licensed importer due for diesel fuel removed from the terminal during the previous period and the supplier elects to take a credit against a subsequent payment of diesel fuel tax to the state for the taxes not remitted to the supplier or permissive supplier by the licensed distributor or licensed importer, the supplier or permissive supplier shall notify the comptroller of the licensed

distributor's or licensed importer's failure to remit tax in conjunction with the report requesting a credit. The supplier shall have the right, after notifying the comptroller of the licensed distributor's or licensed importer's failure to remit taxes under this subsection, to terminate the ability of the licensed distributor or licensed importer to defer the payment of diesel fuel tax. The right of the licensed distributor or licensed importer to defer the payment of diesel fuel tax shall be reinstated by the supplier or permissive supplier after notice has been issued by the comptroller that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of state diesel fuels tax."

(48) On page 91, line 7, between "payments and "is", insert "of the Texas diesel fuel tax".

(49) On page 100, line 4, after the word "tax" insert "plus a penalty of ten percent of the amount of the unpaid taxes in interest at the rate provided by Section 111.060 beginning on the day that the credit was taken or the refund was issued."

(50) On page 100, line 5, insert a new subsection (d) to read as follows: "(d) To determine the amount of credit per tax, all payments or credits in reduction of a customer's account must be applied ratably between motor fuels and other goods sold to the customer, and the credit allowed will be the tax on the number of gallons represented by the motor fuel portion of the credit."

(51) On page 101, line 5, strike ";" and insert ". Proof of payment of tax to the destination state must be supplied in a form acceptable to the comptroller;"

(52) On page 103, line 12, after the word "RETURN" insert "AND PAYMENT OF TAX ON EXPORTS."

(53) On page 103, line 21, at the end of Section 162.224 (c) insert "(d) Proof of payment of the tax to the destination state in a form acceptable to the comptroller."

(54) On page 103, line 22, before "The" insert "(a)."

(55) On page 104, line 7, add subsection (b) to read as follows: "(b) If an exporter fails to provide the proof required by subsection (a) of this section within the time period required by the comptroller, the exporter shall report and pay the tax imposed



by this subchapter on the exported gasoline to the state. If the exporter fails to provide proof of payment of the destination state taxes to the comptroller and fails to pay the tax imposed by this subchapter, the comptroller shall assess the tax imposed by this subchapter on the exported gasoline against the exporter."

(56) On page 105, line 2, amend section 162.228 title to read: "REFUNDS OF TAXES PAID ON EXCEPTED USES OR OTHERWISE EXEMPT SALES OF DIESEL FUEL."

(57) On page 105, line 3, amend subsection 162.228(a) to read as follows: "(a) A licensee may take a credit on a return for the period in which the sale occurred if the licensee pays tax on the purchase of diesel fuel and subsequently resells the diesel fuel without collection of the tax to:"

(58) On page 105, line 15, strike subsection (a) (3) and substitute the following: "(3) sale by a licensed distributor to a licensed exporter, who is registered in accordance with Section 162.210(d), and who subsequently exports the diesel fuel to another state."

(59) On page 106, line 26, replace "162.229" with "162.131."

(60) On page 106, line 27, insert the word "Dyed" before the words "Diesel fuel."

(61) On page 107, line 17, after "by the comptroller." insert the following: "For the purposes of this section, a distributor shall meet the requirement of filing a valid refund claim by designating the gallons of diesel fuel sold or used as described in Section 162.228(b) on the monthly report submitted by the distributor to the comptroller's office."

(62) On page 107, line 23, replace "162.229" with "162.131."

(63) On page 107, line 26, insert subsection (f) and renumber the subsequent subsections appropriately to read as follows: "(f) A commercial transit company who paid tax on the purchase of diesel fuel may seek a refund with the comptroller of one-half of one cent per gallon for diesel fuel used in transit vehicles."

(64) On page 108, line 2, replace "REFUNDS/CREDITS FOR BAD DEBTS" with "CREDITS AND REFUNDS FOR BAD DEBTS."

(65) On page 108, line 3, replace "permitted" with "licensed."

(66) On page 108, line 9, strike all of subsection (3) and renumber the following subsections appropriately.

(67) On page 108, line 14, delete "terminal" and after "supplier", add "or permissive supplier."

(68) On page 108, line 16, delete "terminal" and after "supplier", add "or permissive supplier."

(69) On page 108, line 18, delete "terminal" and after "supplier", add "or permissive supplier."

(70) On page 108, line 19, delete "terminal" and after "supplier", add "or permissive supplier."

(71) On page 108, line 21, delete "terminal" and after "supplier", add "or permissive supplier."

(72) On page 108, line 21, replace the word "permit" with the word "license."

(73) On page 108, line 24, replace the word "permit" with the word "license."

(74) On page 108, line 24, between "state" and "the", insert ", if applicable".

(75) On page 112, line 25, replace "162.226" with "162.228."

(76) On page 109, line 19, delete the sentence "A credit under this section must be taken on either the first or second monthly report of a terminal supplier following the monthly report on which the terminal supplier paid the tax."

(77) On page 110, delete subsection (j) on lines 8 through 11.

(78) On page 112, line 25, replace "162.226" with "162.228."

(79) On page 138, line 17, replace "This Act takes effect September 1, 2003." with "(a) This Act takes effect January 1, 2004."

(80) On page 138, line 17, add new subsection (b) to read as follows: "(b) On or before the 25th day of the month following the effective date of this Act each person who possessed gasoline or undyed diesel fuel on which the taxes imposed by Chapter 162, Tax Code have not been paid shall report and pay to the comptroller the tax imposed by that chapter on the volume of tax-free gasoline or undyed diesel fuel in the person's possession if the person held a permit under Chapter 153, Tax Code and:

(1) the person is a gasoline distributor;

(2) the person is a diesel fuel supplier;

(3) the person is a agricultural bonded user; or

(4) the person is a diesel tax prepaid user and the volume of tax-free undyed diesel fuel in the person's possession is 2,000 or more gallons.

(c) A person that possessed gasoline or undyed diesel fuel on which the taxes imposed by Chapter 162, Tax Code have not been paid on the effective date of this Act shall not be required to report and pay to the comptroller the tax imposed by Chapter 162, Tax Code if:

(1) the person is a licensed supplier, permissive supplier, or aviation fuel dealer as provided by Chapter 162, Tax Code; or

(2) the person held an active agricultural exemption number as previously provided under Chapter 153; or

(3) the person is exempt from the tax as provided by Section 162.105 (1)(2)(3) and (6) and Section 165.205 (1)(2)(3)(9) and (10)."

(81) On page 138, line 5, add new section 162.5045 to read as follows: "Section 162.5045 TAX PAID ON UNDYED DIESEL USED OFF HIGHWAY. On or before the fifth work day after the end of each month, the comptroller shall determine as accurately as possible, for the period since the latest determination under this subsection, the number of gallons of undyed diesel fuel used off road on which the diesel fuel tax was paid to the state. From the number of gallons so determined, the comptroller shall compute the amount of tax and shall deposit this amount to the credit of the general revenue fund."