

BILL ANALYSIS

C.S.H.B. 2458
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The objective of C.S.H.B. 2458 is to increase motor fuel tax revenue and Federal highway matching funds, without increasing the tax rate, by moving the point of collection to the highest point in the marketing chain, the terminal loading rack; utilizing the automated systems of the terminals to calculate and remit tax in order to decrease the opportunity for human error; increasing efficiency in tax collection by reducing the number of persons who remit tax to the comptroller's office from the current 2,000+ to fewer than 100; requiring persons in the fuel marketing chain to file reports with the comptroller that will enable the comptroller to verify the reports of others in the marketing chain without field audits; encouraging the sale and purchase of dyed diesel fuel for use in off-highway vehicles and equipment; and furthering national efforts to coordinate fuel tax systems among the states.

RULEMAKING AUTHORITY

It is the opinion of this office that this bill does not grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Section 162.001. This Section provides the general definitions of terms used in this chapter.

Section 162.002. This Section provides for the treatment of taxable motor fuels brought into this state in the fuels supply tanks of certain leased vehicles used for interstate operations. The Section also provides specific direction for tax compliance to both persons operating leased interstate vehicles in this state for commercial purposes and to those who lease vehicles and other equipment to be used in interstate operation and have responsibility for the fuels taxes.

Section. 162.003. This Section delegates to the comptroller of public accounts, the authority to enter into interstate agreements for sharing information and other resources to aid in the effective and efficient administration of motor fuels taxes.

Section 162.004. This Section provides the documentation requirements for transporting motor fuels in this state.

Section 162.005. This Section provides for the refusal to reissue and cancellation of a person's licenses by the comptroller of public accounts to any person who has violated or has failed to comply with the provisions of the chapter or a rule of the comptroller.

Section 162.006. This Section provides for the summary suspension of a person's license without notice under conditions that constitute an immediate and substantial threat to the collection of taxes imposed by the chapter.

Section 162.007. This Section provides for the accelerated collection of unpaid taxes by the comptroller of public accounts while enforcing the cancellation, suspension or refusal of a license.

Section 162.008. This Section provides the comptroller of public accounts with the specific authority to inspect and examine the premises, storage facilities, books and records of any person licensed or required to be licensed or any person selling, receiving or possessing motor fuels or other petroleum products and blending agents or natural gas, its derivatives or other by-products to determine the amount of tax due and payable to the state of Texas.

Section 162.009. This Section provides the comptroller of public accounts or a peace officer with the specific authority to stop and inspect motor vehicles operating with or transporting motor fuel to inspect and examine licenses and or required documentation and to take samples of the motor fuels to determine whether taxes have been paid or accounted for to the state.

Section 162.010. This Section provides the comptroller of public accounts with the specific authority for impoundment and seizure of vehicles inspected under Section 162.009 when the operator, owner, fuel or product in possession are determined to be in violation of this chapter or a rule of the comptroller.

Section 162.011. This Section provides for the sale of property seized under Section 162.010.

Section 162.012. This Section provides the presumption to be applied by the comptroller of public accounts in the determining the taxability of motor fuel when a person licensed or required to be license under this chapter fails to keep adequate records, issue invoices, file returns or properly report and pay tax.

Section 162.013. This Section provides for the venue of tax collection suits.

Section 162.014. This Section prohibits the imposition of an excise or occupation tax on the sale, use or distribution of motor fuels by any political subdivision of this state.

Section 162.015. This Section provides for the application of tax rate changes on existing inventories of tax paid fuel (2,000 gallons or greater) possessed for the purpose of sale.

Section 162.016. This Section provides for the specific shipping document requirements for sellers, exporters, and importers of motor fuels.

SectionS 162.017 -162.100. These Sections are reserved for expansion.

Section 162.101. This Section imposes a tax on gasoline removed from a terminal rack or imported into this state or blended outside of the bulk transfer/terminal system, sold to a non-licensed supplier in the bulk transfer/terminal system, or used by certain commercial interstate motor vehicles. The licensed supplier, permissive supplier, importer, interstate trucker, blender, or terminal operator collects the tax.

Section 162.102. This Section sets forth the tax rate at 20 cents on each net gallon of gasoline and 19 cents on each net gallon of gasoline sold to a commercial transit company.

Section 162.103. This Section requires that the tax be computed and paid to the state on the net gallons of gasoline.

Section 162.104. This Section imposes a backup tax at the rate provided in Section 162.102 on gasoline used to operate a motor vehicle on a highway or sold for a nonexempt purpose on which the tax has not been paid.

Section 162.105. This Section sets forth eligible exempt sales and exempt uses of gasoline.

Section 162.106. This Section requires a person to obtain the appropriate license before conducting the activities of a supplier, distributor, importer, blender, motor fuel transporter, terminal operator,

exporter, aviation fuel dealer, or interstate trucker.
A person may elect to obtain a permissive supplier license.

Section 162.107. This Section provides that in lieu of an interstate trucker's permit a person may obtain a temporary trip permit.

Section 162.108. This Section allows a person to obtain a permissive supplier license for the purpose of collecting the tax imposed by this chapter on gasoline removed at a terminal located in another state and Texas is the destination state.

Section 162.109. This Section specifies the information required on a gasoline tax license application.

Section 162.110. This Section requires that a license be displayed at each place of business or other place of storage in which gasoline is sold and in motor vehicles that transport gasoline.

Section 162.111. This Section provides that a gasoline license is valid until surrendered by the licensee or cancelled by the comptroller, except that an interstate trucker's license expires December 31 of each calendar year. This Section provides that licenses are not transferable.

Section 162.112. This Section allows the comptroller to require a bond accompany the issuance of a license. The bond is not less than \$30,000 for all licenses. The Section also delineates the bond attributes.

Section 162.113. This Section requires the comptroller to make available a list of active gasoline licensees.

Section 162.114. This Section requires a distributor or importer to remit the tax due to a supplier or permissive supplier by electronic funds transfer two days prior to the date the supplier or permissive supplier is required to remit the tax to the state. This Section allows a supplier or permissive supplier to cancel the distributor or importer deferred payment of tax and take a credit against subsequent payment of tax to the state if the distributor or importer fails to remit tax to the supplier or permissive supplier. This Section allows a distributor or importer to retain 1.75 percent of the tax timely paid to the supplier or permissive supplier to cover administrative expenses.

Section 162.115. This Section requires a licensee to file a tax report with the comptroller on or before the 25th of each month, except a motor fuel transporter and interstate trucker which shall file on or before the 25th of the month following the end of each calendar quarter.

Section 162.116. This Section specifies the records required to be maintained by a licensee and dealer.

Section 162.117. This Section specifies the information required on a supplier's and permissive supplier's report.

Section 162.118. This Section provides that the tax collected by a supplier or permissive supplier is held in trust for the benefit of the state. This Section requires a supplier or permissive supplier to furnish an invoice or other document as evidence of the number of gallons of gasoline received by the purchaser.

Section 162.119. This Section specifies the information required on a distributor's return.

Section 162.120. This Section specifies the information required on an importer's return.

Section 162.121. This Section specifies the information required on a terminal operator's return.

Section 162.122. This Section specifies the information required on a motor fuel transporter's return.

Section 162.123. This Section specifies the information required on an exporter's return.

Section 162.124. This Section specifies the information required on a blender's return.

Section 162.125. This Section specifies the information required on an interstate trucker's return.

Section 162.126. This Section allows refund of tax paid on gasoline sold to an exempt entity or used in an exempt manner.

Section 162.127. This Section allows a permitted distributor and a terminal supplier a refund or credit for bad debts.

Section 162.128. This Section sets forth the documentation required to support a claim for refund.

Section 162.129. This Section sets forth the time period for filing a gasoline tax refund claim or taking a credit for taxes erroneously paid.

Section 162.201. This Section imposes a tax on diesel fuel removed from a terminal rack or imported into this state or blended outside of the bulk transfer/terminal system, sold to a non-licensed supplier in the bulk transfer/terminal system, or used by certain commercial interstate motor vehicles. The licensed supplier, permissive supplier, importer, interstate trucker, blender, or terminal operator collects the tax.

Section 162.202. This Section sets forth the tax rate at 20 cents on each net gallon of diesel fuel and 19.5 cents on each net gallon of diesel fuel sold to a commercial transit company.

Section 162.203. This Section requires that the tax be computed and paid to the state on the net gallons.

Section 162.204. This Section imposes a backup tax at the rate provided in Section 162.202 on diesel fuel used to operate a motor vehicle on a highway or sold for a nonexempt purpose on which the tax has not been paid.

Section 162.205. This Section sets forth eligible exempt sales and exempt uses of diesel fuel.

Section 162.206. This Section requires a person to obtain the appropriate license before conducting the activities of a supplier, distributor, importer, motor fuel transporter, terminal operator, exporter, blender, aviation fuel dealer, interstate trucker, or dyed diesel fuel bonded user license. A person may elect to obtain a permissive supplier license.

Section 162.207. This Section allows a licensed supplier or distributor to sell dyed diesel fuel in limited quantities to a person registered with the comptroller as an end user and that furnishes to the seller a signed statement and end user number.

Section 162.208. This Section provides that in lieu of an interstate trucker's permit a person may obtain a temporary trip permit.

Section 162.209. This Section allows a person to obtain a permissive supplier license for the purpose of collecting the tax imposed by this chapter on diesel fuel removed at a terminal located in another state and Texas is the destination state.

Section 162.210. This Section specifies the information required on a diesel fuel tax license application.

Section 162.211. This Section requires that a license be displayed at each place of business or other

place of storage in which diesel fuel is sold and in motor vehicles that transport diesel fuel.

Section 162.212. This Section provides that a diesel fuel license is valid until surrendered by the licensee or cancelled by the comptroller, except that an interstate trucker's license expires December 31 of each calendar year. This Section states that licenses are not transferable.

Section 162.213. This Section allows the comptroller to require a bond accompany the issuance of a license. The bond is not less than \$30,000 for all licenses except the dyed diesel fuel bonded user minimum bond which is \$10,000. The section also delineates the bond attributes.

Section 162.214. This Section requires the comptroller to make available a list of active diesel fuel licensees.

Section 162.215. This Section requires a distributor or importer to remit the tax due to a supplier or permissive supplier by electronic funds transfer two days prior to the date the supplier or permissive supplier is required to remit the tax to the state. This Section allows a supplier or permissive supplier to cancel the distributor or importer deferred payment of tax and take a credit against subsequent payment of tax to the state if the distributor or importer fails to remit tax to the supplier or permissive supplier. This Section allows a distributor or importer to retain 1.75 percent of the tax timely paid to the supplier or permissive supplier to cover administrative expenses.

Section 162.216. This Section requires a licensee to file a tax report with the comptroller on or before the 25th of each month, except a motor fuel transporter, interstate trucker and dyed diesel fuel bonded user which shall be filed on or before the 25th of the month following the end of each calendar quarter.

Section 162.217. This Section specifies the records required to be maintained by a supplier and permissive supplier.

Section 162.218. This Section specifies the information required on a supplier's and permissive supplier's report.

Section 162.219. This Section provides that the tax collected by a supplier or permissive supplier is held in trust for the benefit of the state. This Section requires a supplier or permissive supplier to furnish an invoice or other document as evidence of the number of gallons received by the purchaser.

Section 162.220. This Section specifies the information required on a distributor's return.

Section 162.221. This Section specifies the information required on an importer's return.

Section 162.222. This Section specifies the information required on a terminal operator's return.

Section 162.223. This Section specifies the information required on a motor fuel transporter's return.

Section 162.224. This Section specifies the information required on an exporter's return.

Section 162.225. This Section specifies the information required on a blender's return.

Section 162.226. This Section specifies the information required on an interstate trucker's return.

Section 162.227. This Section specifies the information required on a dyed diesel fuel bonded user's return.

Section 162.228. This Section allows refund of tax paid on diesel fuel sold to an exempt entity or used in an exempt manner.

Section 162.229. This Section allows a supplier, permissive supplier and distributor a refund or credit for bad debts.

Section 162.230. This Section sets forth the documentation required to support a claim for refund.

Section 162.231. This Section sets forth the time period for filing a diesel fuel tax refund claim or taking a credit for taxes erroneously paid.

Section 162.232. This Section requires a supplier, permissive supplier, distributor or other seller of dyed diesel fuel to post a notice on a retail pump or bulk plant.

Section 162.233. This Section requires that all shipping documents, bills of lading, and invoices identify the product as dyed diesel fuel.

Section 162.234. This Section makes it unlawful to sell or hold for sale or use or hold for use dyed diesel fuel that the person knows will be used in a taxable manner.

Section 162.235. This Section makes it unlawful to alter or attempt to alter the strength or composition of the dye or marker in dyed diesel fuel with the intent to evade payment of tax.

Section 162.236. This Section makes it unlawful to operate a motor vehicle on a public highway in this state that contains dye with stated exceptions of state and local government vehicles.

Section 162.237 - 162.300. These Sections are reserved for expansion.

Section 162.301. This Section imposes a tax at a rate of 15 cents per gallon on liquefied gas used in a motor vehicle on the public highways.

Section 162.302. This Section requires that a person using a motor vehicle licensed in Texas that is equipped to use liquefied gas prepay the tax. This Section provides that the holder of a motor vehicle dealer decal or interstate trucker license must pay the tax at the time liquefied gas is delivered into a motor vehicle.

Section 162.3021. This Section provides an exemption to Texas public school districts and counties.

Section 162.303. This Section requires that a person obtain the appropriate license to make taxable sells or uses of liquefied gas. This Section provides that a liquefied gas license is not transferable and must be displayed at each place of business or carried in each motor vehicle using liquefied gas.

Section 162.304. This Section authorizes the holder of a dealer's license to collect and remit taxes on liquefied gas delivered into motor vehicles displaying an out-of-state license plant, an International Fuel Tax Agreement license, or motor vehicle dealer's decal.

Section 162.305. This Section sets forth the tax rate prepaid according to each motor vehicle's registered gross weight and mileage driven in the previous year.

Section 162.306. This Section requires an interstate truck to remit the tax on liquefied gas used in this state by their commercial motor vehicles. This Section allows an interstate trucker to deliver liquefied gas into motor vehicles bearing a current liquefied gas tax decal.

Section 162.307. This Section provides that a dealer's license is valid until surrendered by the licensee or cancelled by the comptroller, except an interstate trucker's license expires December 31 each calendar year and a liquefied gas tax decal expires one year after its issuance.

Section 162.308. This Section requires a dealer or interstate trucker to remit the tax imposed by this

chapter to the comptroller. This Section allows the dealer to retain one percent of the tax due and the interstate trucker to retain one-half of one percent of the tax due to cover the cost of administrative expenses.

Section 162.309. This Section specifies the records that a dealer and an interstate trucker must maintain.

Section 162.310. This Section requires that a dealer and interstate trucker file a report on or before the 25th day of the month following the end of each calendar quarter.

Section 162.311. This Section allows a refund on the unused portion of the taxes paid in advance if the comptroller is notified when a vehicle is sold or destroyed. This Section allows the refund of the tax paid by an interstate trucker on liquefied gas used outside this state.

Section 162.312 - 162.400. These Sections are reserved for expansion.

Section 162.401. This Section allows the comptroller to assess penalties for failure to file reports or pay taxes as required, and allows the comptroller to assess a 75% penalty if such failure to file or pay the tax due is attributable to fraud.

Section 162.402. This Section provides for civil penalties for certain violations of the Tax Code or rule promulgated under this chapter.

Section 162.403. This Section provides for criminal penalties for violations of the Tax Code, except that subSection (7) makes it a misdemeanor to sell or deliver dyed diesel fuel for use on a public highway, and subSection (8) provides an exception to use of dyed diesel fuel on the public highway.

Section 162.404. This Section provides special provisions and exceptions to Sec. 162.403.

Section 162.405. This Section provides the classification of offenses under Sec. 162.403.

Section 162.406. This Section provides the criminal penalties for corporations and associations for violations of Sec. 162.403.

Section 162.407. This Section provides that venue for prosecution under Sec. 162.403 is in Travis County or the county where the offense occurred.

Section 162.408. This Section provides that charging instruments need not negate exceptions to prohibited acts, and the use of exceptions by the defense.

Section 162.409. This Section provides that the issuance of a bad check to licensed suppliers and distributors is an offense.

SectionS 162.410 - 162.500. These Sections are reserved for expansion.

Section 162.501. This Section provides for the allocation of one percent of the gross taxes collected for use by the comptroller in the administration and enforcement of this chapter.

Section 162.502. This Section provides for an allocation of the unclaimed motorboat gasoline taxes.

Section 162.5025. This Section provides for an allocation of the unclaimed off-highway equipment taxes.

Section 162.503. This Section provides for allocation of the gasoline tax.

Section 162.504. This Section provides for allocation of the diesel fuel tax.

Section 162.505. This Section provides for allocation of the liquefied gas tax.

SECTION 2. This Section repeals Chapter 153, Tax Code.

SECTION 3. This Section provides a bill effective date of September 1, 2003.

EFFECTIVE DATE

This act takes effect September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The filed bill is a revision of the current motor fuels tax law. The substitute bill repeals the current law and enacts a new motor fuels tax law.

The filed bill retains the current tax on the use of motor fuel on Texas highways but moves the point of collection of the tax to the terminal rack, the highest point in the distribution chain. Under current law, the tax is collected and remitted to the comptroller by distributors. Under the filed bill, the tax would be collected and remitted by the person who removes fuel from the terminal/refinery system.

The substitute bill repeals the tax on use of motor fuel and imposes a new tax on the removal of motor fuel from the terminal/refinery system in Texas. The tax would be collected and remitted by the person who removes fuel from the terminal/refinery system. The substitute also imposes a "backup tax" on motor fuel that is used on Texas highways, which only applies if tax was not paid on the fuel at the terminal rack.