

BILL ANALYSIS

Senate Research Center
78R17085 CBH-F

C.S.H.B. 2458
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Finance
5/23/2003
Committee Report (Substituted)

DIGEST 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 plus 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

Rulemaking authority is granted to the comptroller of public accounts throughout this bill including in SECTION 1 (Sections 162.015, 162.125, 162.206, 162.227, and 162.5025, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle E, Title 2, Tax Code, by adding Chapter 162 as follows:

Sec. 162.001. DEFINITIONS. Defines "agricultural purpose," "alcohol," "aviation fuel," "aviation fuel dealer," "aviation gasoline," "aviation jet fuel," "biodiesel fuel," "blender," "blending," "bulk plant," "bulk transfer," "bulk transfer/terminal system," "bulk user," "cargo tank," "carrier," "compressed natural gas," "dealer," "destination state," "diesel fuel," "distributor," "diversion number," "dyed diesel fuel," "export," "exporter," "fuel grade ethanol," "fuel supply tank," "gallon," "gasohol," "gasoline," "gasoline blend stocks," "gasoline blended fuel," "gross gallons," "import," "import verification number," "importer," "interstate trucker," "lessor," "license holder," "liquefied gas," "liquefied gas tax decal user," "motor carrier," "motor fuel," "motor fuel transporter," "motor vehicle," "net gallons," "permissive supplier," "position holder," "public highway," "racing gasoline," "rack," "refinery," "registered gross weight," "removal," "sale," "shipping document," "solid waste refuse vehicle," "supplier," "terminal," "terminal operator," "transit company," "transport vehicle," and "two-party exchange."

Sec. 162.002. TAX LIABILITY ON LEASED VEHICLES. (a) Provides that a user or interstate trucker is liable for the tax on motor fuel imported into this state in fuel supply tanks of leased motor vehicles and used on the public highways of this state to the same extent and in the same manner as motor fuel imported in the user's or interstate trucker's own motor vehicles and used on the public highways of this state, unless the person who owns the leased motor vehicles is liable under Subsection (b). Authorizes the user or interstate trucker, if the owner of the leased motor vehicles is liable, to exclude the leased motor vehicles from the person's return.

(b) Authorizes a person who, in the regular course of business and for consideration,

leases motor vehicles and equipment to motor carriers or others for interstate operation may be considered to be the user or interstate trucker under this chapter if the person supplies or pays for the motor fuel consumed in those leased motor vehicles or equipment, and the person to be issued a license as an interstate trucker by the comptroller of public accounts (comptroller). Authorizes an application for an interstate trucker license to be accompanied by one copy of the form-lease or service contract entered into with various lessees. Authorizes the person, on receipt of the interstate trucker license, to assign to each motor vehicle leased for interstate operation a photocopy of the license to be carried in the cab compartment of the motor vehicle. Requires the photocopy of the license to have typed or printed on the back the unit or motor number of the motor vehicle to which it is assigned and the name of the lessee. Provides that the lessor is responsible for the proper use of the photocopy of the license issued to the lessor and for its return with the motor vehicle to which it is assigned.

Sec. 162.003. COOPERATIVE AGREEMENTS WITH OTHER STATES. (a) Authorizes the comptroller to enter into a cooperative agreement with another state for the collection of motor fuel taxes, the exchange of information, the auditing of users of motor fuel used in fleets of motor vehicles operated or intended for interstate operation, and the auditing of importers and exporters. Prohibits an agreement or amendment of an agreement takes effect according to its terms, except that an agreement or amendment from taking effect until the proposed agreement or amendment is published in the Texas Register.

(b) Authorizes an agreement to provide for certain information.

(c) Authorizes the comptroller to, as required by the terms of an agreement, forward to an officer of another state any information in the comptroller's possession relating to the manufacture, receipts, sale, use, transportation, or shipment of motor fuel by any person. Authorizes the comptroller to disclose to an officer of another state the location of officers, motor vehicles, and other real and personal property of users, importers, and exporters of motor fuel.

(d) Authorizes an agreement to provide for each state to audit the records of a person based in this state to determine if the motor fuel taxes due each state that is a party to the agreement are properly reported and paid. Authorizes an agreement to provide for each state to forward the findings of an audit performed on a person based in this state to each other state in which the person has taxable use of motor fuel, from which the person imports motor fuel into this state, or to which the person exports motor fuel from this state. Authorizes the comptroller, for a person who is not based in this state and who has taxable use of motor fuel in this state or an import into or export out of this state, to use an audit performed by another state that is a party to an agreement with this state to make an assessment of motor fuel taxes against the person.

(e) Provides that an agreement entered into under this section does not affect the authority of the comptroller to audit any person under any other law.

(f) Provides that an agreement entered into under this section prevails over an inconsistent rule of the comptroller. Provides that except as otherwise provided by this section, a statute of this state prevails over an inconsistent provision of an agreement entered into under this section.

(g) Authorizes the comptroller to segregate in a separate fund or account the amount of motor fuel taxes, other than penalties, estimated to be due to other jurisdictions, motor fuel taxes subject to refund during the fiscal year, licensing fees, and other costs collected under the agreement. Authorizes the comptroller, on a determination of an amount held that is due to be remitted to another jurisdiction, the comptroller may issue

a warrant or make an electronic transfer of the amount as necessary to carry out the purposes of the agreement. Authorizes an auditing cost, membership fee, and other cost associated with the agreement to be paid from interest earned on funds segregated under this subsection. Requires any interest earnings in excess of the costs associated with the agreement to be credited to general revenue.

(h) Provides that the legislature finds that it is in the public interest to enter into motor fuel tax agreements with other jurisdictions that may provide for the temporary remittal of amounts due other jurisdictions that exceed the amounts collected and for cooperation with other jurisdictions for the collection of taxes imposed by this state and other jurisdictions on motor fuel that is imported into or exported out of this state. Requires the comptroller to ensure that reasonable measures are developed to recover motor fuel taxes and other amounts due this state during each biennium.

(i) Requires the comptroller to attempt to enter into a cooperative agreement with each state that borders this state to provide for the collection of taxes imposed by this state and the bordering state on motor fuel that is imported into this state from or exported from this state to the bordering state. Provides that the comptroller is encouraged to attempt to enter into similar cooperative agreements with states that do not border this state.

Sec. 162.004. MOTOR FUEL TRANSPORTATION: REQUIRED DOCUMENTS. (a) Prohibits a person from transporting in this state any motor fuel by barge, vessel, railroad tank car, or transport vehicle unless the person has a shipping document for the motor fuel that complies with this section. Requires a terminal operator or operator of a bulk plant to give a shipping document to the person who operates the barge, vessel, railroad tank car, or transport vehicle into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) Requires the shipping document issued by the terminal operator or operator of a bulk plant shall contain certain information and any other information required by the comptroller.

(c) Requires a manually prepared shipping document that contains all of the information required by Subsection (b) to be substituted for the machine-generated shipping document, in the event of an extraordinary circumstance, including an act of God, that temporarily interferes with the ability to issue an automated machine-generated shipping document.

(d) Authorizes a terminal operator or bulk plant operator to rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. Provides that a purchaser is liable for any tax due as a result of the purchaser's diversion of motor fuel from the represented destination state.

(e) Requires a person to whom a shipping document was issued to take certain actions.

(f) Provides that the purchaser is responsible for paying the applicable destination state taxes along with filing a refund with the origin state. Prohibits the supplier from refunding any taxes due to the diversion of a product.

(g) Prohibits the person to whom motor fuel is delivered by barge, vessel, railroad tank car, or transport vehicle from accepting delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than this state, except that the person may accept that delivery if the document contains a diversion number authorized by the comptroller and destination state, if applicable. Requires the

person to whom the motor fuel is delivered to examine the shipping document to determine that the destination state is this state, and to retain a copy of the shipping document at the delivery location or another place until the fourth anniversary of the date of delivery.

Sec. 162.005. CANCELLATION OR REFUSAL OF LICENSE. (a) Authorizes the comptroller to cancel or refuse to issue or reissue a motor fuel license to any person who has violated or has failed to comply with a provision of this chapter or a rule of the comptroller.

(b) Requires the comptroller, before a license may be canceled, or the issuance or reissuance refused, to give the license holder or license applicant not less than 10 days' notice of a hearing at the office of the comptroller in Austin or at a specified comptroller's field office, granting the license holder or applicant an opportunity to show cause before the comptroller why the proposed action should not be taken. Provides that if a license is in effect, the license remains in force pending the determination of the show-cause hearing. Requires notice to be in writing and authorizes notice to be mailed by United States registered mail or certified mail to the license holder or applicant at the person's last known address, or to be delivered by the comptroller to the license holder or applicant, and no other notice is necessary. Provides that in case of service by mail of a notice required by this chapter, the service is complete at the time of deposit in the United States Post Office.

(c) Authorizes the comptroller to prescribe rules of procedure and evidence for the hearings in accordance with Chapter 2001, Government Code.

(d) Requires all taxes that have been collected or that have accrued, although the taxes are not then due and payable to the state, except by the provisions of this chapter, to become due and payable concurrently with the notice of cancellation of the license, if, after the hearing or the opportunity to be heard, the license is canceled or the issuance or reissuance refused by the comptroller. Requires the license holder to within five days make a report covering the period not covered by preceding reports filed by the license holder and ending with the date of cancellation, and to remit and pay to the comptroller all taxes that have been collected and that have accrued from the sale, use, or distribution of motor fuel in this state.

(e) Authorizes the comptroller to revoke a license if the license holder purchases for export motor fuel on which the tax was not paid under this chapter and subsequently diverts or causes the motor fuel to be diverted to a destination in this state or to any destination other than the originally designated state or country without first obtaining a diversion number.

Sec. 162.006. SUMMARY SUSPENSION OF LICENSE. (a) Authorizes the comptroller to suspend a person's license without notice or a hearing for the person's failure to comply with this chapter or a rule adopted under this chapter if the person's continued operation constitutes an immediate and substantial threat to the collection of taxes imposed by this chapter and attributable to the person's operation.

(b) Requires proceedings for a preliminary hearing before the comptroller or the comptroller's representative must be initiated simultaneously with the summary suspension, if the comptroller summarily suspends a person's license. Requires the preliminary hearing to be set for a date that is not later than the 10th day after the date of the summary suspension, unless the parties agree to a later date.

(c) Requires the license holder, at the preliminary hearing, to show cause why the license should not remain suspended pending a final hearing on suspension or

revocation.

(d) Provides that Chapter 2001, Government Code, does not apply to a summary suspension under this section.

(e) Requires the comptroller, to initiate a proceeding to suspend summarily a person's license, to serve notice on the license holder informing the license holder of the right to a preliminary hearing before the comptroller or the comptroller's representative and of the time and place of the preliminary hearing. Requires the notice to be personally served on the license holder or an officer, employee, or agent of the license holder, or sent by certified or registered mail, return receipt requested, to the license holder's mailing address as it appears on the comptroller's records. Requires the notice to state the alleged violations that constitute the grounds for summary suspension. The suspension is effective at the time the notice is served. Requires the license holder, if the notice is served in person, to immediately surrender the license to the comptroller or to the comptroller's representative. Requires the license holder, if notice is served by mail, the license holder to immediately return the license to the comptroller.

(f) Provides that Section 162.005, governing hearings for license cancellation or refusal to issue a license under this chapter, governs a final administrative hearing under this section.

Sec. 162.007. ENFORCEMENT OF LICENSE CANCELLATION, SUSPENSION, OR REFUSAL. (a) Authorizes the comptroller to examine any books and records incident to the conduct of the business of a person whose license has been canceled or suspended on the person's failure to file the reports required by this chapter or to remit all taxes due. Requires the comptroller, if necessary, to issue an audit deficiency determination for any tax amount due. Requires the bond or other security required under this chapter to be forfeited, If the amount is not paid on or before the 15th day after the deficiency determination becomes final. Requires the demand for payment to be addressed to both the surety or sureties and the person who owes the delinquency.

(b) Requires the comptroller, if the forfeiture of the bond or other security does not satisfy the delinquency, to certify the taxes, penalty, and interest delinquent to the attorney general, who may file suit against the person or the person's surety, or both, to collect the amount due. Requires it, after being given notice of an order of cancellation or summary suspension, to be unlawful for any person to continue to operate the person's business under a canceled or suspended license. Authorizes the attorney general to file suit to enjoin the person from operating under the canceled or suspended license until the comptroller reissues a license.

(c) Authorizes an appeal from an order of the comptroller canceling or suspending or refusing the issuance or reissuance of a license to be taken to a district court of Travis County by the aggrieved license holder or applicant. Requires the trial to be de novo under the same rules as ordinary civil suits, except that an appeal must be perfected and filed within 30 days after the effective date of the order, decision, or ruling of the comptroller, the trial of the case shall begin within 10 days after its filing, and the order, decision, or ruling of the comptroller may be suspended or modified by the court pending a trial on the merits.

Sec. 162.008. INSPECTION OF PREMISES AND RECORDS. Authorizes the comptroller, for the purpose of determining the amount of tax collected and payable to this state, the amount of tax accruing and due, and whether a tax liability has been incurred under this chapter, to take certain actions.

Sec. 162.009. **AUTHORITY TO STOP AND EXAMINE.** Authorizes the comptroller or a peace officer, to enforce this chapter, to stop a motor vehicle that appears to be operating with or transporting motor fuel to examine the shipping document, cargo manifest, or invoices required to be carried, examine a license or copy of a license that may be required to be carried, take samples from the fuel supply or cargo tanks, and make any other investigation that could reasonably be made to determine whether the taxes have been paid or accounted for by a license holder or a person required to be licensed. Authorizes the comptroller, a peace officer, an employee of the attorney general's office, an employee of the Texas Commission on Environmental Quality, or an employee of the Department of Agriculture to take samples of motor fuel from a storage tank or container to determine if the fuel contains hazardous waste or is adulterated or allow the comptroller to determine whether taxes on the fuel have been paid or accounted for to this state.

Sec. 162.010. **IMPOUNDMENT AND SEIZURE.** (a) Authorizes the comptroller or peace officer, if after examination or other investigation, the comptroller believes that the owner or operator of a motor vehicle or cargo tank, or a person receiving, possessing, delivering, or selling gasoline or diesel fuel, has not paid all motor fuel taxes due, or does not have a valid license entitling that person to possess or transport tax-free motor fuel, to impound the fuel, the motor vehicle, cargo tank, storage tank, equipment, paraphernalia, or other tangible personal property used for or incident to the storage, sale, or transportation of that motor fuel. Authorizes the comptroller, unless proof is produced within three working days after the beginning of impoundment that the owner, operator, or other person has paid the taxes established by the comptroller to be due on the gasoline or diesel fuel stored, sold, used, or transported and any other taxes due to this state, or that the owner, operator, or other person holds a valid license to possess or transport tax-free motor fuel, to demand payment of all taxes, penalties, and interest due to this state, and all costs of impoundment.

(b) Authorizes the comptroller, if the owner or operator does not produce the required documentation or required license or pay the taxes, penalties, interest, and costs due within three working days after the beginning of the impoundment, to seize the impounded property to satisfy the tax liability.

(c) Authorizes the comptroller to seize certain possessions.

Sec. 162.011. **SALE OF SEIZED PROPERTY.** (a) Authorizes the comptroller to sell property seized under Section 162.010.

(b) Requires notice of the time and place of a sale to be given to the delinquent person in writing by certified mail at least 20 days before the date set for the sale. Requires the notice to be enclosed in an envelope addressed to the person at the person's last known address or place of business. Requires it to be deposited in the United States mail, postage prepaid. Requires the notice to also be published once a week for two consecutive weeks before the date of the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. Requires notice, if there is no newspaper of general circulation in the county, to be posted in three public places in the county 14 days before the date set for the sale. Requires the notice to contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due, interest, penalties, and costs are paid on or before the time fixed in the notice for the sale, the property, or as much of it as may be necessary, will be sold at public auction in accordance with the law and the notice.

(c) Requires the comptroller, at the sale, to sell the property and to deliver to the purchaser a bill of sale for personal property and a deed for real property sold. The bill of sale or deed vests the interest or title of the person liable for the amount in the

purchaser. Authorizes the unsold portion of any property seized to be left at the place of sale at the risk of the person liable for the amount.

(d) Requires the proceeds of a sale to be allocated according to certain priorities.

Sec. 162.012. PRESUMPTIONS. (a) Provides that a person licensed under this chapter or required to be licensed under this chapter, or other user, who fails to keep a record, issue an invoice, or file a return or report required by this chapter is presumed to have sold or used for taxable purposes all motor fuel shown by an audit by the comptroller to have been sold to the license holder or other user. Provides that motor fuel unaccounted for is presumed to have been sold or used for taxable purposes. Provides that if an exporter claims an exemption under Section 162.104(a)(4)(B) or 162.204(a)(4)(B) and fails to produce proof of payment of tax to the destination state or proof that the transaction was exempt in the destination state, the exporter is presumed to have not paid the destination state's tax or this state's tax on the exported motor fuel and requires the comptroller to assess the tax imposed by this chapter on the exported motor fuel against the exporter. Authorizes the comptroller to fix or establish the amount of taxes, penalties, and interest due this state from the records of deliveries or from any records or information available. Provides that if a tax claim, as developed from this procedure, is not paid, after the opportunity to request a redetermination, the claim and any audit made by the comptroller or any report filed by the license holder or other user is evidence in any suit or judicial proceedings filed by the attorney general and is prima facie evidence of the correctness of the claim or audit. Authorizes a prima facie presumption of the correctness of the claim to be overcome at the trial by evidence adduced by the license holder or other user.

(b) Provides that in the absence of records showing the number of miles actually operated per gallon of motor fuel consumed, it is presumed that not less than one gallon of motor fuel was consumed for every four miles traveled. Authorizes an interstate trucker to produce evidence of motor fuel consumption to establish another mileage factor. Provides that if an examination or audit made by the comptroller from the records of an interstate trucker shows that a greater amount of motor fuel was consumed than was reported by the interstate trucker for tax purposes, the interstate trucker is liable for the tax, penalties, and interest on the additional amount shown or the trucker is entitled to a credit or refund on overpayments of tax established by the audit.

Sec. 162.013. VENUE OF TAX COLLECTION SUITS. Provides that the venue of a suit, injunction, or other proceeding at law available for the establishment or collection of a claim for delinquent taxes, penalties, or interest accruing under this chapter and the enforcement of the terms and provisions of this chapter is in Travis County or in any other county having venue under existing venue statutes.

Sec. 162.014. OTHER MOTOR FUEL TAXES PROHIBITED. Provides that the taxes imposed by this chapter are in lieu of any other excise or occupation tax imposed by a political subdivision of this state on the sale, use, or distribution of gasoline, diesel fuel, or liquefied gas.

Sec. 162.015. ADDITIONAL TAX APPLIES TO INVENTORIES. (a) Requires a distributor or dealer that possesses for the purpose of sale 2,000 or more gallons of gasoline or diesel fuel at each business location on which the taxes imposed by this chapter at a previous rate have been paid, on the effective date of an increase in the rates of the taxes imposed by this chapter, to report to the comptroller the volume of that gasoline and diesel fuel, and at the time of the report to pay a tax on that gasoline and diesel fuel at a rate equal to the rate of the tax increase.

(b) Provides that on the effective date of a reduction of the rates of taxes imposed by this chapter, a distributor or dealer that possesses for the purpose of sale 2,000 or more gallons of gasoline or diesel fuel at each business location on which the taxes

imposed by this chapter at the previous rate have been paid becomes entitled to a refund in an amount equal to the difference in the amount of taxes paid on that gasoline or diesel fuel at the previous rate and at the rate in effect on the effective date of the reduction in the tax rates. Requires the rules of the comptroller to provide for the method of claiming a refund under this chapter and may require that the refund for the dealer be paid through the distributor or supplier from whom the dealer received the fuel.

Sec. 162.016. IMPORTATION AND EXPORTATION OF MOTOR FUEL. (a) Prohibits a person from importing motor fuel to a destination in this state or export motor fuel to a destination outside this state by any means unless the person possesses a shipping document for that fuel created by the terminal or bulk plant at which the fuel was received. Requires the shipping document to include certain information.

(b) Requires the terminal or bulk plant to provide the shipping documents to the importer or exporter.

(c) Requires the terminal, if motor fuel is to be delivered to more than one state, to document the split loads by issuing shipping documents that list the destination state of each portion of the motor fuel.

(d) Requires a terminal, a bulk plant, the carrier, the licensed distributor or supplier, and the person that received the motor fuel shall retain a copy of the shipping document until at least the fourth anniversary of the date the fuel is received and provide a copy of the document to the comptroller or any law enforcement officer not later than the 10th working day after the date a request for the copy is received.

(e) Requires an importer or exporter to keep in the person's possession the shipping document issued by the terminal or bulk plant when transporting motor fuel imported into this state or for export from this state. Requires the importer or exporter to show the document to the comptroller or a peace officer on request. Authorizes the comptroller to delegate authority to inspect the document to other governmental agencies. Requires the importer or exporter to provide a copy of the shipping document to the person that receives the fuel when it is delivered.

(f) Authorizes the importer or exporter to deliver motor fuel only to the destination state or states indicated on the shipping document.

(g) Requires an importer or exporter who wants to divert the delivery of a single cargo tank of motor fuel from the destination state printed on the shipping document to obtain a diversion number from the comptroller before diverting the delivery. Requires the importer, exporter, or motor fuel transporter to write the diversion number on the shipping document issued for the fuel. Provides that a diversion number is required for each diverted delivery. Authorizes the comptroller to appoint a person to assign diversion numbers or to delegate that authority to another person.

(h) Requires an importer that acquires motor fuel for import by cargo tank to obtain an import verification number from the comptroller before importing the motor fuel. Requires the importer to write the import verification number on the shipping document issued for the fuel. Requires the importer to obtain a separate import confirmation number for each cargo tank delivery of motor fuel into this state. Authorizes the comptroller to appoint a person to assign import verification numbers or to delegate that authority to another person.

(i) Requires each terminal or bulk plant to post a notice in a conspicuous location

proximate to the point of receipt of shipping papers that describes the duties of importers and exporters under this section. Authorizes the comptroller to prescribe the language, type, style, and format of the notice.

[Sections 162.017-162.100 reserved for expansion]

SUBCHAPTER B. GASOLINE TAX

Sec. 162.101. POINT OF IMPOSITION OF GASOLINE TAX. (a) Provides that a tax is imposed on the removal of gasoline from the terminal using the terminal rack, other than by bulk transfer. Requires the supplier or permissive supplier to collect the tax imposed by this subchapter from the person who orders the withdrawal at the terminal rack.

(b) Provides that a tax is imposed at the time gasoline is imported into this state, other than by a bulk transfer, for delivery to a destination in this state. Requires the permissive supplier to collect the tax imposed by this subchapter from the person who imports the gasoline into this state. Requires the person who imports the gasoline into this state to pay the tax, if the seller is not a permissive supplier.

(c) Provides that a tax is imposed on the sale or transfer of gasoline in the bulk transfer/terminal system in this state by a supplier to a person who does not hold a supplier's license. Requires the supplier to collect the tax imposed by this subchapter from the person who orders the sale or transfer in the bulk transfer terminal system.

(d) Provides that a tax is imposed on gasoline brought into this state in a motor fuel supply tank or tanks of a motor vehicle operated by a person required to be licensed as an interstate trucker.

(e) Provides that a tax is imposed on the blending of gasoline at the point gasoline blended fuel is made in this state outside the bulk transfer/terminal system. Requires the blender to pay the tax. Provides that the number of gallons of gasoline blended fuel on which the tax is imposed is equal to the difference between the number of gallons of blended fuel made and the number of gallons of previously taxed gasoline used to make the blended fuel.

(f) Provides that a terminal operator in this state is considered a supplier for the purpose of the tax imposed under this subchapter unless at the time of removal the terminal operator has a terminal operator's license issued for the facility from which the gasoline is withdrawn, the terminal operator verifies that the person who removes the gasoline has a supplier's license, and the terminal operator does not have a reason to believe that the supplier's license is not valid.

(g) Requires the amount of the tax, in each subsequent sale of gasoline on which the tax has been paid, to be added to the selling price so that the tax is paid ultimately by the person using or consuming the gasoline. Provides that gasoline is considered to be used when it is delivered into a fuel supply tank.

Sec. 162.102. TAX RATE. Provides that the gasoline tax rate is 20 cents for each net gallon or fractional part on which the tax is imposed under Section 162.101.

Sec. 162.103. BACKUP TAX; LIABILITY. (a) Provides that a backup tax is imposed at the rate prescribed by Section 162.102 on certain persons.

(b) Requires the tax, if the motor vehicle described by Subsection (a)(2) is owned or leased by a person other than the operator, to be paid by either the operator or the motor vehicle's owner or lessee.

(c) Provides that the tax imposed under Subsection (a)(3) is also imposed on the ultimate consumer.

(d) Requires a person who sells gasoline in this state on which tax has not been paid for any purpose other than a purpose exempt under Section 162.104 to at the time of sale collect the tax from the purchaser or recipient of gasoline in addition to the selling price and provide that the person is liable to this state for the taxes collected at the time and in the manner provided by this chapter.

(e) Provides tat the tax liability imposed by this section is in addition to any penalty imposed under this chapter.

Sec. 162.104. EXEMPTIONS. (a) Provides that the tax imposed by this subchapter does not apply to certain gasoline.

(b) Provides that the exemption provided by Subsection (a)(4) does not apply to gasoline that is transported and delivered outside this state in the motor fuel supply tank of a motor vehicle other than an interstate trucker.

(c) Requires the supplier, if an exporter described by Subsection (a)(4)(B) does not have an exporter's license issued under this subchapter, to collect the tax imposed under this subchapter.

(d) Provides that Subsection (a)(4)(A) applies only if the destination state recognizes, by agreement with this state or by statute or rule, a supplier in this state as a valid taxpayer for the motor fuel being exported to that state from this state. Requires the comptroller to publish a list that specifies for each state, other than this state, whether that state does or does not qualify under this subsection.

(e) Provides that Subsection (a)(4)(B) applies only until the date the destination state recognizes, by agreement with this state or by statute, the out-of-state supplier as a valid taxpayer for the motor fuel being exported to that state from this state, or until January 1, 2006, whichever date is earlier.

(f) Provides that the exemption provided by Subsection (a)(4)(A) does not apply to a sale by a distributor.

Sec. 162.105. PERSONS REQUIRED TO BE LICENSED. Requires a person to obtain the appropriate license or licenses issued by the comptroller before conducting certain activities.

Sec. 162.106. TRIP PERMITS. (a) Authorizes a person bringing a motor vehicle described by Section 162.001(36) into this state for commercial purposes may, instead of an annual interstate trucker's license obtain a trip permit. Requires the trip permit to be obtained before or at the time of entry into this state.

(b) Authorizes not more than five trip permits for each person to be issued during a calendar year.

(c) Requires a fee for each trip permit to be collected from the applicant and to be in the amount of \$50 for each vehicle for each trip.

(d) Provides that a report is not required with respect to the vehicle.

(e) Authorizes operating a motor vehicle without a valid interstate trucker's license or trip

permit to subject the operator to a penalty under Section 162.402.

Sec. 162.107. PERMISSIVE SUPPLIER REQUIREMENTS ON OUT-OF-STATE REMOVALS. (a) Authorizes a person may elect to obtain a permissive supplier license to collect the tax imposed under this subchapter for gasoline that is removed at a terminal in another state and has this state as the destination state.

(b) Requires a licensed permissive supplier, with respect to gasoline that is removed by the licensed permissive supplier at a terminal located in another state and that has this state as the destination state, to take certain actions.

(c) Requires a permissive supplier to acknowledge in the person's license application that this state imposes the requirements listed in Subsection (b) under this state's general police power and that the permissive supplier submits to the jurisdiction of this state only for purposes related to the administration of this chapter.

Sec. 162.108. LICENSE APPLICATION PROCEDURE. (a) Requires an applicant, to obtain a license under this subchapter, to file an application using a form adopted by the comptroller. Requires the application to contain certain information.

(b) Requires an applicant for a license as a supplier, permissive supplier, or terminal operator to have a federal certificate of registry issued under 26 U.S.C. Section 4101 that authorizes the applicant to enter into federal tax-free transactions of gasoline in the bulk terminal/transfer system. Requires an applicant that is required to have a federal certificate of registry to include the registration number of the certificate on the application for a license. Requires an applicant for a license as an importer, an exporter, or a distributor who has a federal certificate of registry issued under 26 U.S.C. Section 4101 to include the registration number of the certificate on the application for a license.

(c) Requires an applicant for a license as an importer or distributor to list on the application each state from which the applicant intends to import gasoline and, if required by a listed state, to be licensed or registered for gasoline tax purposes in that state. Requires the applicant, if a listed state requires the applicant to be licensed or registered, to provide the applicant's license or registration number from that state.

(d) Requires an applicant for a license as an exporter to designate an agent located in this state for service of process and provide the agent's name and address. Requires an applicant for a license as an exporter or distributor to list on the application each state to which the applicant intends to export gasoline received in this state by means of a transfer that is outside the bulk transfer/terminal system and must be licensed or registered for gasoline tax purposes in that state. Requires the applicant to provide the applicant's license or registration number from that state.

(e) Requires an applicant for a license as a motor fuel transporter to list on the application each state from which and to which the applicant intends to transport motor fuel and, if required by a listed state, must be licensed or registered for gasoline tax purposes in that state. Requires the applicant, if a listed state requires the applicant to be licensed or registered, to provide the applicant's license or registration number from that state.

Sec. 162.109. ISSUANCE AND DISPLAY OF LICENSE. (a) Requires the comptroller, if the comptroller approves a license application, to issue a license to the applicant. Requires a license to be posted in a conspicuous place or kept available for inspection at the principal place of business of the license holder. Requires a copy of the license to be kept at each place of business or other place of storage from which gasoline is sold, distributed, or used and in each motor vehicle used by the license holder to transport gasoline purchased by the license

holder for resale, distribution, or use.

- (b) Requires a person holding an interstate trucker's license to reproduce the license and carry a photocopy with each motor vehicle being operated into or from this state.

Sec. 162.110. LICENSES AND TRIP PERMITS; PERIODS OF VALIDITY. (a) Provides that the license issued to a supplier, permissive supplier, distributor, importer, exporter, terminal operator, blender, or motor fuel transporter is permanent and is valid during the period the license holder has in force and effect the required bond or security and furnishes timely reports and supplements as required, or until the license is surrendered by the holder or canceled by the comptroller. Requires the comptroller to cancel a license under this subsection if a purchase, sale, or use of gasoline has not been reported by the license holder during the previous nine months.

- (b) Provides that the license issued to an aviation fuel dealer is permanent and is valid until the license is surrendered by the holder or canceled by the comptroller.
- (c) Provides that the license issued to an interstate trucker is valid from the date of its issuance through December 31 of each calendar year or until the license is surrendered by the holder or canceled by the comptroller. Authorizes the comptroller to renew the license for each ensuing calendar year if the license holder furnishes timely reports as required.
- (d) Provides that the trip permit is valid for the period stated on the permit as determined by the comptroller.
- (e) Provides that a license issued under this subchapter is not transferable.

Sec. 162.111. BOND AND OTHER SECURITY FOR TAXES. (a) Requires the comptroller to determine the amount of security required of a supplier, permissive supplier, distributor, exporter, importer, or blender, taking into consideration the amount of tax that has or is expected to become due from the person, any past history of the person as a license holder under this chapter or its predecessor, and the necessity to protect this state against the failure to pay the tax as the tax becomes due.

- (b) Authorizes the comptroller, if it is determined that the posting of security is necessary to protect this state, to require a license holder to post a bond. Requires a license holder to post a bond equal to two times the maximum amount of tax that could accrue on tax-free gasoline purchased or acquired during a reporting period. Provides that the minimum bond is \$30,000. Provides that the maximum bond is \$600,000 unless the comptroller believes there is undue risk of loss of tax revenues, in which event the comptroller is authorized to require one or more bonds or securities in a total amount exceeding \$600,000.
- (c) Entitles a license holder who has filed a bond or other security under this subchapter, on request, to have the comptroller return, refund, or release the bond or security if in the judgment of the comptroller the person has for four consecutive years continuously complied with the conditions of the bond or other security filed under this subchapter. Provides, however, that if the comptroller determines that the revenues of this state would be jeopardized by the return, refund, or release of the bond or security, the comptroller may elect not to return, refund, or release the bond or security and may reimpose a requirement of a bond or other security as the comptroller determines necessary to protect the revenues of this state.
- (d) Requires a bond to be a continuing instrument, to constitute a new and separate

obligation in the penal sum named in the bond for each calendar year or portion of a year while the bond is in force, and to remain in effect until the surety on the bond is released and discharged.

(e) Authorizes an applicant for a license, instead of filing a surety bond, to substitute one of certain other securities.

(f) Authorizes the comptroller, if the amount of an existing bond becomes insufficient or a security becomes unsatisfactory or unacceptable, to require the filing of a new or of an additional bond or security.

(g) Prohibits a surety bond or other form of security from being released until it is determined by examination or audit that a tax, penalty, or interest liability does not exist. Requires the cash or securities to be released within 60 days after the comptroller determines that liability does not exist.

(h) Authorizes the comptroller to use the cash or certificate of deposit security to satisfy a final determination of delinquent liability or a judgment secured in any action by this state to recover gasoline taxes, costs, penalties, and interest found to be due to this state by a person in whose behalf the cash or certificate security was deposited.

(i) Requires that a surety on a bond furnished by a license holder be released and discharged from liability to this state accruing on the bond on the 31st day after the date on which the surety files with the comptroller a written request to be released and discharged. Provides that the request does not relieve, release, or discharge the surety from a liability that already accrued or that accrues before the expiration of the 30-day period. Requires the comptroller, promptly on receipt of the request, to notify the license holder who furnished the bond, and unless the license holder, before the expiration date of the existing security, files with the comptroller a new bond with a surety company duly authorized to do business under the laws of this state, or other authorized security, in the amount required by this section, the comptroller is required to cancel the license in the manner provided by this chapter.

(j) Requires the comptroller to notify immediately the issuer of a letter of credit of a final determination of the license holder's delinquent liability or a judgment secured in any action by this state to recover gasoline taxes, costs, penalties, and interest found to be due this state by a license holder in whose behalf the letter of credit was issued. Requires the letter of credit allowed as security for the remittance of taxes under this subchapter to contain a statement that the issuer agrees to respond to the comptroller's notice of liability with amounts to satisfy the comptroller's delinquency claim against the license holder.

(k) Authorizes a license holder to request an examination or audit to obtain release of the security when the license holder relinquishes the license or when the license holder wants to substitute one form of security for an existing one.

Sec. 162.112. LICENSE HOLDER STATUS LIST. (a) Requires the comptroller, on or before December 20 of each year, to make available to all license holders an alphabetical list of licensed suppliers, permissive suppliers, distributors, aviation fuel dealers, importers, exporters, blenders, and terminal operators. Requires a supplemental list of additions and deletions to be made available to the license holders each month. Provides that a current and effective license or the list furnished by the comptroller is evidence of the validity of the license until the comptroller notifies license holders of a change in the status of a license holder.

(b) Provides that a licensed supplier or permissive supplier who sells gasoline tax-free

to a person whose supplier's or permissive supplier's license has been canceled or revoked under this chapter is liable for any tax due on gasoline sold after receiving notice of the cancellation or revocation.

(c) Requires the comptroller to notify all license holders under this chapter when a canceled or revoked license is subsequently reinstated and include in the notice the effective date of the reinstatement. Authorizes sales to the supplier or permissive supplier after the effective date of the reinstatement to be made tax-free.

Sec. 162.113. REMITTANCE OF TAX TO SUPPLIER OR PERMISSIVE SUPPLIER; ALLOWANCES. (a) Requires each licensed distributor and licensed importer to remit to the supplier or permissive supplier, as applicable, the tax imposed by Section 162.101 for gasoline removed at a terminal rack. Authorizes a licensed distributor or licensed importer to elect to defer payment of the tax to the supplier or permissive supplier until two days before the date the supplier or permissive supplier is required to remit the tax to this state. Requires the distributor or importer to pay the taxes by electronic funds transfer.

(b) Requires a supplier, a permissive supplier, or its representative that conducts electronic transactions to draft an account of a licensed distributor or licensed importer for the payment of taxes due under this section to provide at least two days' notice using an electronic means of the amount to be drafted from the account of the licensed distributor or licensed importer and the number of the account to be drafted from.

(c) Provides that if the supplier or permissive supplier cannot secure from the licensed distributor or licensed importer payment of taxes due for gasoline removed from the terminal during the previous reporting period and the supplier elects to take a credit against a subsequent payment of gasoline tax to this state for the taxes not remitted to the supplier or permissive supplier by the licensed distributor or licensed importer, the supplier or permissive supplier is required to notify the comptroller of the licensed distributor's or licensed importer's failure to remit tax in conjunction with the report requesting a credit.

(d) Provides that the supplier or permissive supplier has the right, after notifying the comptroller of the licensed distributor's or licensed importer's failure to remit taxes under this section, to terminate the ability of the licensed distributor or licensed importer to defer the payment of gasoline tax. Requires the supplier or permissive supplier to reinstate without delay the right of the licensed distributor or licensed importer to defer the payment of gasoline tax after the comptroller provides to the supplier or permissive supplier notice that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of the gasoline tax imposed under this subchapter.

(e) Provides that a licensed distributor or licensed importer who makes timely payments of the gasoline tax imposed under this subchapter is entitled to retain an amount equal to 1.75 percent of the total taxes to be paid to the supplier or permissive supplier to cover administrative expenses.

(f) Provides that the license of a distributor, exporter, or importer who fails to pay the full amount of tax required by this subchapter is subject to cancellation as provided by Section 162.005.

Sec. 162.114. RETURNS AND PAYMENTS. (a) Requires that, except as provided by Subsection (b), each person who is liable for the tax imposed by this subchapter, a terminal operator, and a licensed distributor file a return on or before the 25th day of the month following the end of each calendar month.

- (b) Requires a motor fuel transporter and an interstate trucker to file a return on or before the 25th day of the month following the end of the calendar quarter.
- (c) Requires the return required by this section to be accompanied by a payment for the amount of tax reported due.
- (d) Provides that an aviation fuel dealer is not required to file a return.

Sec. 162.115. RECORDS. (a) Requires a supplier and permissive supplier to keep a record showing the number of gallons of all gasoline inventories on hand at the first of each month, all gasoline refined, compounded, or blended, all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt, all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use, and all gasoline lost by fire, theft, or accident and an itemized statement showing by load the number of gallons of all gasoline received during the preceding calendar month for export and the location of the loading, exported from this state by destination state or country, and imported during the preceding calendar month by state or country of origin.

- (b) Requires a distributor to keep a records with certain informatoin, an itemized statement with certain information, and for gasoline exported from this state, proof of payment of tax to the destination state in a form acceptable to the comptroller.
- (c) Requires an importer to keep a record with certain information and an itemized statement showing certain information.
- (d) Requires an exporter to keep a record with certain information, an itemized showing certain information, proof of payment of tax to the destination state in a form acceptable to the comptroller, and, if an exemption under Section 162.104(a)(4)(B) is claimed, proof of payment of tax to the destination state or proof that the transaction was exempt in the destination state, in a form acceptable to the comptroller.
- (e) Requires a blender to keep a record showing certain information.
- (f) Requires a terminal operator to keep a record showing certain information and an itemized statement showing certain information.
- (g) Requires a motor fuel transporter to keep a complete and separate record of each intrastate and interstate transportation of gasoline, showing certain information.
- (h) Requires a dealer to keep a record showing certain information.
- (i) Requires an interstate trucker to keep a record of certain information.
- (j) Requires an aviation fuel dealer to keep a record showing certain information.
- (k) Requires the records of an aviation fuel dealer made under Subsection (j)(3) to show certain information.
- (l) Authorizes the comptroller to require selective schedules from a supplier, permissive supplier, distributor, importer, exporter, blender, terminal operator, motor fuel transporter, dealer, aviation fuel dealer, and interstate trucker for any purchase, sale, or delivery of gasoline if the schedules are not inconsistent with the requirements of this chapter.
- (m) Requires the records required by this section to be kept until the fourth anniversary

of the date they are created and provides that they are open to inspection at all times by the comptroller and the attorney general.

Sec. 162.116. INFORMATION REQUIRED ON SUPPLIER'S AND PERMISSIVE SUPPLIER'S RETURN; CREDITS AND ALLOWANCES. (a) Requires the monthly return and supplements of each supplier and permissive supplier to contain certain information for the period covered by the return.

(b) Authorizes a supplier or permissive supplier that timely pays the tax to this state to deduct from the amount of tax due a collection allowance equal to two percent of the amount of tax payable to this state.

(c) Authorizes a supplier or permissive supplier to take a credit for any taxes that were not remitted in a previous period to the supplier or permissive supplier by a licensed distributor or licensed importer as required by Section 162.113. Provides that the supplier or permissive supplier is eligible to take the credit if the comptroller is notified of the default within 60 days after the default occurs. Provides that if a license holder pays to a supplier or permissive supplier the tax owed, but the payment occurs after the supplier or permissive supplier has taken a credit on its return, the supplier or permissive supplier is required to remit the payment to the comptroller with the next monthly return after receipt of the tax, plus a penalty of 10 percent of the amount of unpaid taxes and interest at the rate provided by Section 111.060 beginning on the date the credit was taken.

(d) Requires all payments or credits in reduction of a customer's account, for purposes of Subsection (c), to be applied ratably between motor fuels and other goods sold to the customer, and provides that the credit allowed will be the tax on the number of gallons represented by the motor fuel portion of the credit.

Sec. 162.117. DUTIES OF SUPPLIER OR PERMISSIVE SUPPLIER. (a) Provides that a supplier or permissive supplier who receives or collects tax holds the amount received or collected in trust for the benefit of this state and has a fiduciary duty to remit to the comptroller the amount of tax received or collected.

(b) Requires a supplier or permissive supplier to furnish the purchaser with an invoice, bill of lading, or other documentation as evidence of the number of gallons received by the purchaser.

(c) Prohibits a supplier or permissive supplier who receives a payment of tax from applying the payment of tax to a debt that the person making the payment owes for gasoline purchased from the supplier or permissive supplier.

Sec. 162.118. INFORMATION REQUIRED ON DISTRIBUTOR'S RETURN. Requires the monthly return and supplements of each distributor to contain certain information for the period covered by the return.

Sec. 162.119. INFORMATION REQUIRED ON IMPORTER'S RETURN; ALLOWANCES. (a) Requires the monthly return and supplements of an importer to contain certain information for the period covered by the return.

(b) Authorize an importer of gasoline that timely files a return and payment to deduct from the amount of tax payable with the return a collection allowance equal to two percent of the amount of tax payable to this state.

Sec. 162.120. INFORMATION REQUIRED ON TERMINAL OPERATOR'S RETURN.

(a) Requires a terminal operator to file with the comptroller a monthly information return and supplement showing the amount of gasoline received and removed from the terminal during the month. Requires the return also to contain certain summary information.

(b) Authorizes the comptroller to accept the Federal ExSTARS terminal operator report provided to the Internal Revenue Service instead of the required state terminal operator report.

Sec. 162.121. INFORMATION REQUIRED ON MOTOR FUEL TRANSPORTER'S RETURN. Requires the quarterly return and supplements of a motor fuel transporter to contain certain information for the period covered by the return

Sec. 162.122. INFORMATION REQUIRED ON EXPORTER'S RETURN AND PAYMENT OF TAX ON EXPORTS. Requires the monthly return and supplements of an exporter to contain certain information for the period covered by the return.

Sec. 162.123. INFORMATION REQUIRED ON BLENDER'S RETURN. Requires the monthly return and supplements of each blender to contain certain for the period covered by the return.

Sec. 162.124. INFORMATION REQUIRED ON INTERSTATE TRUCKER'S RETURN. Requires the quarterly return and supplements of each interstate trucker to contain certain information for the period covered by the return.

Sec. 162.125. REFUND OR CREDIT FOR CERTAIN TAXES PAID. (a) Authorizes a license holder to take a credit on a return for the period in which the sale occurred if the license holder paid tax on the purchase of gasoline and subsequently resells the gasoline without collecting the tax to certain entities or persons.

(b) Authorizes the license holder who receives the gasoline in the second terminal, for truck or railcar movements between licensed suppliers or licensed permissive suppliers in which the gasoline removed from the first terminal comes to rest in the second terminal and tax was paid on the first removal, to take the credit.

(c) Authorizes a license holder to take a credit on a return for the period in which the purchase occurred, and authorizes a person who does not hold a license under this subchapter, other than a license as an aviation fuel dealer, to file a refund claim with the comptroller if the license holder or person paid tax on gasoline and the license holder or person fulfills certain criteria.

(d) Authorizes a license holder to take a credit on a return for the period in which the purchase occurred if the license holder paid tax on gasoline and the license holder is a licensed interstate trucker who uses the gasoline outside this state in commercial vehicles operated under an interstate trucker license, provided that a credit or refund claimed under this subsection must be taken or filed within the limitation period provided by Section 162.128.

(e) Authorizes a license holder to take credit on a return for the period in which the purchase occurred, and authorizes a person who does not hold a license to file a refund claim with the comptroller, if the license holder or person paid tax on gasoline and the gasoline is used in this state by auxiliary power units or power take-off equipment on any motor vehicle, if that use can be accurately measured while the motor vehicle is stationary by any metering or other measuring device or method designed to measure the fuel separately from fuel used to propel or idle the motor vehicle. Authorizes the comptroller to approve and adopt the use of any device as a basis for determining the

quantity of gasoline consumed in those operations for tax credit or tax refund. Provides that the climate-control air conditioning or heating system of a motor vehicle that has a primary purpose of providing for the convenience or comfort of the operator or passengers is not a power take-off system, and prohibits a credit or refund from being allowed for the gasoline tax paid on any portion of the gasoline that is used for that purpose. Prohibits a credit or refund from being allowed for the gasoline tax paid on that portion of the gasoline used for idling.

(f) Authorizes a person who paid tax on the purchase of gasoline to claim a credit or seek a refund with the comptroller if 100 or more gallons of gasoline is subsequently exported or lost by fire, theft, or accident. Requires a credit or refund claimed under this subsection to be taken or filed within the limitation period provided by Section 162.128.

(g) Authorizes a transit company that paid tax on the purchase of gasoline to seek a refund with the comptroller in an amount equal to one cent per gallon for gasoline used in transit vehicles.

(h) Provides that the right to receive a refund or take a credit under this section is not assignable.

(i) Authorizes the comptroller to adopt rules specifying procedures and requirements that must be followed to claim a credit or refund under this section.

Sec. 162.126. REFUND FOR BAD DEBTS; CREDIT FOR NONPAYMENT. (a) Authorizes a licensed distributor to file a refund claim with the comptroller under certain circumstances.

(b) Authorizes a licensed supplier or permissive supplier to take a credit on the monthly report to be filed with the comptroller under certain circumstances.

(c) Requires the return on which the refund is claimed or the credit is taken to state, if applicable, the license number of the person whose account has been written off as a bad debt, or who failed to remit the tax, and any other information required by the comptroller. Authorizes the amount of the refund or credit that is authorized to be claimed under Subsection (a) or (b) to equal but is prohibited from exceeding the amount of taxes paid on the gasoline to which the written-off account or unpaid taxes apply.

(d) Requires the unpaid taxes, if, after a refund is received under Subsection (a) or a credit is taken under Subsection (b), the account on which the refund or credit was based is paid, or if the comptroller otherwise determines that the refund or credit was not authorized by Subsection (a) or (b), to be paid by the distributor receiving the refund or the supplier or permissive supplier taking the credit, plus a penalty of 10 percent of the amount of the unpaid taxes and interest at the rate provided by Section 111.060 beginning on the day the refund was issued.

(e) Provides that this section does not apply to a sale of gasoline that is delivered into the fuel supply tank of a motor vehicle or motorboat and for which payment is made through the use and acceptance of a credit card.

(f) Requires a refund under this section to be claimed at the time the account is written off as a bad debt, but authorizes it only to be claimed before the expiration of the applicable limitation period as provided by Chapter 111.

(g) Authorizes the comptroller to take action against a person in relation to whom a distributor, supplier, or permissive supplier has made a refund claim or taken a credit for collection of the tax owed and for penalty and interest as provided by Chapter 111.

Sec. 162.127. CLAIMS FOR REFUNDS. (a) Requires a refund claim to be filed on a form provided by the comptroller, be supported by the original invoice issued by the seller, and contain certain information.

(b) Requires the purchaser to obtain the original invoice from the seller of the gasoline not later than the 30th day after the date the gasoline is delivered to the purchaser. Authorizes one invoice to be issued at the time of billing that covers multiple purchases made during a 30-day billing cycle, if the delivery of gasoline is made through an automated method in which the purchase is automatically applied to the purchaser's account.

(c) Requires a distribution log filed with the comptroller to support the number of gallons of gasoline removed from a bulk user's own bulk storage to contain the name and address of the bulk user making the delivery stamped or preprinted on it and for each individual delivery from the bulk storage:

- (1) the date of delivery;
- (2) the number of gallons of gasoline delivered;
- (3) the signature of the bulk user; and
- (4) the type or description of off-highway equipment into which the gasoline was delivered, or the type of licensed motor vehicle into which the gasoline was delivered, including the state highway license plate number or vehicle identification number and odometer or hubmeter reading.

(d) Requires a distributor or person who does not hold a license who files a valid refund claim with the comptroller to be paid by a warrant issued by the comptroller. Provides that for purposes of this section, a distributor meets the requirement of filing a valid refund claim if the distributor designates the gallons of gasoline sold or used that are the subject of the refund claim on the monthly report submitted by the distributor to the comptroller.

(e) Provides that a person who files a claim for a tax refund on gasoline used for a purpose for which a tax refund is not authorized or who files an invoice supporting a refund claim on which the date, figures, or any material information has been falsified or altered forfeits the person's right to the entire amount of the refund claim filed unless the claimant provides proof satisfactory to the comptroller that the incorrect refund claim filed was due to a clerical or mathematical calculation error.

(f) Requires the comptroller, after examination of the refund claim, before issuing a refund warrant, to deduct from the amount of the refund the two percent deducted originally by the license holder on the first sale or distribution of the gasoline.

Sec. 162.128. WHEN GASOLINE TAX REFUND OR CREDIT MAY BE FILED. (a) Requires a claim for a refund to be filed with the comptroller before the first anniversary of the first day of the calendar month following the purchase, use, delivery, or export, or loss by fire, theft, or accident of gasoline, whichever period expires latest, except as otherwise provided by this section

(b) Authorizes the excess credit amount to be claimed on any of three successive quarterly returns following the period in which the credit was established, or the interstate trucker may seek a refund from the comptroller on or before the due date of

the third successive quarterly return following the period in which the credit was established. Provides a credit that is not claimed within the period prescribed by this subsection expires.

(c) Authorizes the purchaser, if the comptroller assesses a supplier or permissive supplier for a tax-free sale that is taxable, and the supplier or permissive supplier subsequently collects the tax from the purchaser, to file a refund claim before the first anniversary of the date the supplier's or permissive supplier's deficiency assessment becomes final if the purchaser used the gasoline in an exempt manner.

(d) Authorizes a supplier or permissive supplier that determines taxes were erroneously reported and remitted or that paid more taxes than were due this state because of a mistake of fact or law to take a credit on the monthly tax report on which the error has occurred and tax payment made to the comptroller. Requires the credit to be taken before the expiration of the applicable period of limitation as provided by Chapter 111.

[Reserves Sections 162.129-162.200 for expansion.]

SUBCHAPTER C. DIESEL FUEL TAX

Sec. 162.201. POINT OF IMPOSITION OF DIESEL FUEL TAX. (a) Provides that a tax is imposed on the removal of diesel fuel from the terminal using the terminal rack other than by bulk transfer. Requires the supplier or permissive supplier to collect the tax imposed by this subchapter from the person who orders the withdrawal at the terminal rack.

(b) Provides that a tax is imposed at the time diesel fuel is imported into this state, other than by a bulk transfer, for delivery to a destination in this state. Requires the permissive supplier to collect the tax imposed by this subchapter from the person who imports the diesel fuel into this state. Requires the person who imports the diesel fuel into this state, if the seller is not a permissive supplier, to pay the tax.

(c) Provides that a tax is imposed on the sale or transfer of diesel fuel in the bulk transfer/terminal system in this state by a supplier to a person who does not hold a supplier's license. Requires the supplier to collect the tax imposed by this subchapter from the person who orders the sale or transfer in the bulk transfer/terminal system.

(d) Provides that a tax is imposed on diesel fuel brought into this state in the motor fuel supply tank or tanks of a motor vehicle operated by a person required to be licensed as an interstate trucker.

(e) Provides that a tax is imposed on the blending of diesel fuel at the point blended diesel fuel is made in this state outside the bulk transfer/terminal system. Requires the blender to pay the tax. Provides that the number of gallons of blended diesel fuel on which the tax is imposed is equal to the difference between the number of gallons of blended fuel made and the number of gallons of previously taxed diesel fuel used to make the blended fuel.

(f) Provides that the terminal operator in this state is considered a supplier for the purpose of the tax imposed under this subchapter unless at the time of removal the terminal operator has a terminal operator's license issued for the facility from which the diesel fuel is withdrawn, the terminal operator verifies that the person who removes the diesel fuel has a supplier's license, and the terminal operator does not have a reason to believe that the supplier's license is not valid.

(g) Requires the amount of the tax, in each subsequent sale of diesel fuel on which the

tax has been paid, to be added to the selling price so that the tax is paid ultimately by the person using or consuming the diesel fuel. Provides that diesel fuel is considered to be used when it is delivered into a fuel supply tank.

Sec. 162.202. TAX RATE. Provides that the diesel fuel tax rate is 20 cents for each net gallon or fractional part on which the tax is imposed under Section 162.201.

Sec. 162.203. BACKUP TAX; LIABILITY. (a) Provides that a backup tax is imposed at the rate prescribed by Section 162.202 on certain persons.

(b) Requires the tax, if the motor vehicle described by Subsection (a)(2) is owned or leased by a person other than the operator, to be paid by either the operator or the motor vehicle's owner or lessee.

(c) Provides that the tax imposed under Subsection (a)(3) is also imposed on the ultimate consumer.

(d) Requires a person who sells diesel fuel in this state on which tax has not been paid for any purpose other than a purpose exempt under Section 162.204 to at the time of sale collect the tax from the purchaser or recipient of diesel fuel in addition to the selling price and is liable to this state for the taxes collected at the time and in the manner provided by this chapter.

(e) Provides that the tax liability imposed by this section is in addition to any penalty imposed under this chapter.

Sec. 162.204. EXEMPTIONS. (a) Provides that the tax imposed by this subchapter does not apply to certain fuels.

(b) Provides that the exemption provided by Subsection (a)(4) does not apply to diesel fuel that is transported and delivered outside this state in the motor fuel supply tank of a motor vehicle other than an interstate trucker.

(c) Requires the supplier, if an exporter described by Subsection (a)(4)(B) does not have an exporter's license issued under this subchapter, to collect the tax imposed under this subchapter.

(d) Provides that Subsection (a)(4)(A) applies only if the destination state recognizes, by agreement with this state or by statute or rule, a supplier in this state as a valid taxpayer for the motor fuel being exported to that state from this state. Requires the comptroller to publish a list that specifies for each state, other than this state, whether that state does or does not qualify under this subsection.

(e) Provides that Subsection (a)(4)(B) applies only until the date the destination state recognizes, by agreement with this state or by statute, the out-of-state supplier as a valid taxpayer for the motor fuel being exported to that state from this state, or until January 1, 2006, whichever date is earlier.

(f) Provides that the exemption provided by Subsection (a)(4)(A) does not apply to a sale by a distributor.

Sec. 162.205. PERSONS REQUIRED TO BE LICENSED. (a) Requires a person to obtain the appropriate license or licenses issued by the comptroller before conducting certain activities.

(b) Requires a person to obtain a license as a dyed diesel fuel bonded user to purchase dyed diesel fuel in amounts that exceed the limitations prescribed by Section 162.206(c). Provides that this subsection does not affect the right of a purchaser to purchase not more than 10,000 gallons of dyed diesel fuel each month for the purchaser's own use using a signed statement under Section 162.206.

Sec. 162.206. STATEMENT FOR PURCHASE OF DYED DIESEL FUEL. (a) Provides that the first removal of diesel fuel from a terminal in this state is taxable, except the sale of dyed diesel fuel may be made without collecting the tax if the purchaser furnishes to a licensed supplier or distributor a signed statement that includes an end user number issued by the comptroller. Requires a person who wants to use a signed statement to purchase dyed diesel fuel to apply to the comptroller for an end user number to be used in conjunction with a signed statement. Prohibits a licensed supplier or distributor from making a tax-free sale of any diesel fuel to a purchaser using a signed statement unless the purchaser has an end user number issued by the comptroller under this section. Prohibits a taxable sale or removal of dyed diesel fuel from being made under this chapter, except as prescribed by Subsection (d).

(b) Authorizes a sale of dyed diesel fuel to be made without collecting the tax if the purchaser furnishes to a licensed supplier or distributor a signed statement, including an end user number issued by the comptroller, that stipulates certain information.

(c) Prohibits a person from making a tax-free purchase and a licensed supplier or distributor from making a tax-free sale to a purchaser of any dyed diesel fuel under this section using a certain signed statement.

(d) Provides that any gallons purchased or sold in excess of the limitations prescribed by Subsection (c) constitute a taxable purchase or sale. Authorizes the purchaser paying the tax on dyed diesel fuel in excess of the limitations prescribed by Subsection (c) to claim a refund of the tax paid on any dyed diesel fuel used for nonhighway purposes under Section 162.227. Requires a purchaser that exceeds the limitations prescribed by Subsection (c) to be required to obtain a dyed diesel fuel bonded user license.

(e) Provides that the signed statement and end user number from the purchaser relieves the licensed supplier or distributor from the burden of proof that the sale of dyed diesel fuel for a nonhighway purpose was not taxable to the purchaser and remains in effect unless certain conditions exist.

(f) Provides that for purposes of Subsection (e)(3), a licensed supplier or distributor is not put on notice when taxable sales of dyed diesel fuel are made in accordance with Subsection (d).

(g) Requires the statement to be signed by the purchaser or the purchaser's representative.

(h) Authorizes the comptroller by rule to allow separate operating divisions of a corporation to give separate signed statements as if the divisions were different legal entities.

(i) Authorizes the comptroller to adopt necessary forms and rules to administer and enforce this section.

(j) Requires a taxable use of any part of the dyed diesel fuel purchased under a signed statement to, in addition to application of any criminal penalty, forfeit the right of the person to purchase dyed diesel fuel tax-free for a period of one year from the date of

the offense. Provides that any tax, interest, and penalty found to be due through false or erroneous execution or continuance of a promissory statement by the purchaser, if assessed to the licensed supplier or distributor, is a debt of the purchaser to the licensed supplier or distributor until paid and is recoverable at law in the same manner as the purchase price of the fuel. Authorizes the person to, however, claim a refund of the tax paid on any dyed diesel fuel used for nonhighway purposes under Section 162.227.

Sec. 162.207. TRIP PERMITS. (a) Authorizes a person bringing a motor vehicle described by Section 162.001(36) into this state for commercial purposes, instead of an annual interstate trucker's license, to obtain a trip permit. Requires the trip permit to be obtained before or at the time of entry into this state.

(b) Authorizes not more than five trip permits for each person to be issued during a calendar year.

(c) Requires a fee for each trip permit to be collected from the applicant and to be in the amount of \$50 for each vehicle for each trip.

(d) Provides that a report is not required with respect to the vehicle.

(e) Authorizes operating a motor vehicle without a valid interstate trucker's license or trip permit to subject the operator to a penalty under Section 162.402.

Sec. 162.208. PERMISSIVE SUPPLIER REQUIREMENTS ON OUT-OF-STATE REMOVALS. (a) Authorizes a person to elect to obtain a permissive supplier license to collect the tax imposed under this subchapter for diesel fuel that is removed at a terminal in another state and has this state as the destination state.

(b) Requires a licensed permissive supplier, with respect to diesel fuel that is removed by the licensed permissive supplier at a terminal located in another state and that has this state as the destination state, a licensed permissive supplier, to perform certain acts.

(c) Requires a permissive supplier to acknowledge in the supplier's license application that this state imposes the requirements listed in Subsection (b) under this state's general police power and that the permissive supplier submits to the jurisdiction of this state only for purposes related to the administration of this chapter.

Sec. 162.209. LICENSE APPLICATION PROCEDURE. (a) Requires an applicant to file an application using a form adopted by the comptroller. Requires the application to contain certain information.

(b) Requires an applicant for a license as a supplier, permissive supplier, or terminal operator to have a federal certificate of registry issued under 26 U.S.C. Section 4101 that authorizes the applicant to enter into federal tax-free transactions of diesel fuel in the bulk terminal and transfer system. Requires an applicant that is required to have a federal certificate of registry to include the registration number of the certificate on the application for a license. Requires an applicant for a license as an importer, exporter, or distributor who has a federal certificate of registry issued under 26 U.S.C. Section 4101 to include the registration number of the certificate on the application for a license.

(c) Requires an applicant for a license as an importer or distributor to list on the application each state from which the applicant intends to import diesel fuel and, if required by a listed state, to be licensed or registered for diesel fuel tax purposes in that state. Requires the applicant, if a listed state requires the applicant to be licensed or registered, to provide the applicant's license or registration number from that state.

(d) Requires an applicant for a license as an exporter to designate an agent located in this state for service of process and provide the agent's name and address. Requires an applicant for a license as an exporter or distributor to list on the application each state to which the applicant intends to export diesel fuel received in this state by means of a transfer that is outside the bulk terminal and transfer system and to be licensed or registered for diesel fuel tax purposes in that state. Requires the applicant to provide the applicant's license or registration number from that state.

(e) Requires an applicant for a license as a motor fuel transporter to list on the application each state from which and to which the applicant intends to transport motor fuel and, if required by a listed state, to be licensed or registered for diesel fuel tax purposes in that state. Requires the applicant, if a listed state requires the applicant to be licensed or registered, to provide the applicant's license or registration number from that state.

Sec. 162.210. ISSUANCE AND DISPLAY OF LICENSE. (a) Requires the comptroller, if the comptroller approves a license application, to issue a license to the applicant. Requires a license to be posted in a conspicuous place or kept available for inspection at the principal place of business of the license holder. Requires a copy of the license to be kept at each place of business or other place of storage from which diesel fuel is sold, distributed, or used, and in each motor vehicle used by the license holder to transport diesel fuel purchased by the license holder for resale, distribution, or use.

(b) Requires a person holding an interstate trucker's license to reproduce the license and carry a photocopy with each motor vehicle being operated into or from this state.

Sec. 162.211. LICENSES AND TRIP PERMITS; PERIODS OF VALIDITY. (a) Provides that the license issued to a supplier, permissive supplier, distributor, importer, terminal supplier, exporter, blender, motor fuel transporter, or dyed diesel fuel bonded user is permanent and is valid during the period the license holder has in force and effect the required bond or security and furnishes timely reports and supplements as required, or until the license is surrendered by the holder or canceled by the comptroller. Requires the comptroller to cancel a license under this subsection if a purchase, sale, or use of diesel fuel has not been reported by the license holder during the previous nine months.

(b) Provides that the license issued to an aviation fuel dealer is permanent and is valid until the license is surrendered by the holder or canceled by the comptroller.

(c) Provides that the license issued to an interstate trucker is valid from the date of its issuance through December 31 of each calendar year or until the license is surrendered by the holder or canceled by the comptroller. Authorizes the comptroller to renew the license for each ensuing calendar year if the license holder furnishes timely reports as required.

(d) Provides that a trip permit is valid for the period stated on the permit as determined by the comptroller.

(e) Provides that a license issued under this subchapter is not transferable.

Sec. 162.212. BOND AND OTHER SECURITY FOR TAXES. (a) Requires the comptroller to determine the amount of security required of a supplier, permissive supplier, distributor, exporter, importer, blender, or dyed diesel fuel bonded user, taking into consideration the amount of tax that has or is expected to become due from the person, any past history of the person as a license holder under this chapter and its predecessor, and the

necessity to protect this state against the failure to pay the tax as the tax becomes due.

(b) Authorizes the comptroller, if it is determined that the posting of security is necessary to protect this state, to require a license holder to post a bond. Requires a license holder to post a bond equal to two times the maximum amount of tax that could accrue on tax-free diesel fuel purchased or acquired during a reporting period. Provides that the minimum bond is \$30,000, except that for a dyed diesel fuel bonded user the minimum bond is \$10,000. Provides that the maximum bond is \$600,000 unless the comptroller believes there is undue risk of loss of tax revenues, in which event the comptroller may require one or more bonds or securities in a total amount exceeding \$600,000.

(c) Provides that a license holder who has filed a bond or other security under this subchapter is entitled, on request, to have the comptroller return, refund, or release the bond or security if in the judgment of the comptroller the person has for four consecutive years continuously complied with the conditions of the bond or other security filed under this subchapter. Authorizes the comptroller, however, if the comptroller determines that the revenues of this state would be jeopardized by the return, refund, or release of the bond or security, to elect not to return, refund, or release the bond or security and to reimpose a requirement of a bond or other security as the comptroller determines necessary to protect the revenues of this state.

(d) Requires a bond to be a continuing instrument, to constitute a new and separate obligation in the penal sum named in the bond for each calendar year or portion of a year while the bond is in force, and to remain in effect until the surety on the bond is released and discharged.

(e) Authorizes an applicant for a license, instead of filing a surety bond, to substitute certain security.

(f) Authorizes the comptroller to require the filing of a new or additional bond or security.

(g) Prohibits a surety bond or other form of security from being released until it is determined by examination or audit that a tax, penalty, or interest liability does not exist. Requires the cash or securities to be released within 60 days after the comptroller determines that liability does not exist.

(h) Authorizes the comptroller to use the cash or certificate of deposit security to satisfy a final determination of delinquent liability or a judgment secured in any action by this state to recover diesel fuel taxes, costs, penalties, and interest found to be due to this state by a person in whose behalf the cash or certificate security was deposited.

(i) Requires a surety on a bond furnished by a license holder to be released and discharged from liability to this state accruing on the bond on the 31st day after the date the surety files with the comptroller a written request to be released and discharged. Provides that the request does not relieve, release, or discharge the surety from a liability already accrued, or that accrues before the expiration of the 30-day period. Requires the comptroller, promptly on receipt of the request, to notify the license holder who furnished the bond, and unless the license holder, before the expiration date of the existing security, files with the comptroller a new bond with a surety company duly authorized to do business under the laws of this state, or other authorized security, in the amount required in this section, requires the comptroller to cancel the license in the manner provided by this chapter.

- (j) Requires the comptroller to notify immediately the issuer of a letter of credit of a final determination of the license holder's delinquent liability or a judgment secured in any action by this state to recover diesel fuel taxes, costs, penalties, and interest found to be due this state by a license holder in whose behalf the letter of credit was issued. Requires the letter of credit allowed as security for the remittance of taxes under this subchapter to contain a statement that the issuer agrees to respond to the comptroller's notice of liability with amounts to satisfy the comptroller's delinquency claim against the license holder.
- (k) Authorizes a license holder to request an examination or audit to obtain release of the security when the license holder relinquishes the license or when the license holder wants to substitute one form of security for an existing one.

Sec. 162.213. LICENSE HOLDER STATUS LIST. (a) Requires the comptroller, on or before December 20 of each year, to make available to all license holders an alphabetical list of licensed suppliers, permissive suppliers, distributors, aviation fuel dealers, importers, exporters, blenders, terminal operators, and dyed diesel fuel bonded users. Requires a supplemental list of additions and deletions to be made available to the license holders each month. Provides that a current and effective license or the list furnished by the comptroller is evidence of the validity of the license until the comptroller notifies license holders of a change in the status of a license holder.

- (b) Provides that a licensed supplier or permissive supplier who sells diesel fuel tax-free to a supplier or permissive supplier whose license has been canceled or revoked under this chapter, or who sells dyed diesel fuel to a dyed diesel fuel bonded user whose license has been canceled or revoked under this chapter, is liable for any tax due on diesel fuel sold after receiving notice of the cancellation or revocation.
- (c) Requires the comptroller to notify all license holders under this chapter when a canceled or revoked license is subsequently reinstated and include in the notice the effective date of the reinstatement. Authorizes sales to a supplier, permissive supplier, distributor, or dyed diesel fuel bonded user after the effective date of the reinstatement to be made tax-free.

Sec. 162.214. REMITTANCE OF TAX TO SUPPLIER OR PERMISSIVE SUPPLIER; ALLOWANCES. (a) Requires each licensed distributor and licensed importer to remit to the supplier or permissive supplier, as applicable, the tax imposed by Section 162.201 for diesel fuel removed at a terminal rack. Authorizes a licensed distributor or licensed importer to elect to defer payment of the tax to the supplier or permissive supplier until two days before the date the supplier or permissive supplier is required to remit the tax to this state. Requires the distributor or importer to pay the taxes by electronic funds transfer.

- (b) Requires a supplier, a permissive supplier, or its representative that conducts electronic transactions to draft an account of a licensed distributor or licensed importer for the payment of taxes due under this section to provide at least two days' notice using an electronic means of the amount to be drafted from the account of the licensed distributor or licensed importer and the number of the account to be drafted from.
- (c) Requires the supplier or permissive supplier to notify the comptroller of the licensed distributor's or licensed importer's failure to remit tax in conjunction with the report requesting a credit, if the supplier or permissive supplier cannot secure from the licensed distributor or licensed importer payment of taxes due for diesel fuel removed from the terminal during the previous reporting period and the supplier elects to take a credit against a subsequent payment of diesel fuel tax to this state for the taxes not remitted to the supplier or permissive supplier by the licensed distributor or licensed importer.

(d) Provides that the supplier or permissive supplier has the right, after notifying the comptroller of the licensed distributor's or licensed importer's failure to remit taxes under this section, to terminate the ability of the licensed distributor or licensed importer to defer the payment of diesel fuel tax. Requires the supplier or permissive supplier to reinstate without delay the right of the licensed distributor or licensed importer to defer the payment of diesel fuel tax after the comptroller provides to the supplier or permissive supplier notice that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of diesel fuel tax imposed under this subchapter.

(e) Provides that a licensed distributor or licensed importer who makes timely payments of the diesel fuel tax imposed under this subchapter is entitled to retain an amount equal to 1.75 percent of the total taxes to be paid to the supplier or permissive supplier to cover administrative expenses.

(f) Provides that the license of a distributor, exporter, or importer who fails to pay the full amount of tax required by this subchapter is subject to cancellation as provided by Section 162.005.

Sec. 162.215. RETURNS AND PAYMENTS. (a) Requires that each person who is liable for the tax imposed by this subchapter, a terminal operator, and a licensed distributor, except as provided by Subsection (b), to file a return on or before the 25th day of the month following the end of each calendar month.

(b) Requires a motor fuel transporter, interstate trucker, and dyed diesel fuel bonded user to file a return on or before the 25th day of the month following the end of the calendar quarter.

(c) Requires the return required by this section to be accompanied by a payment for the amount of tax reported due.

(d) Provides that an aviation fuel dealer is not required to file a return.

Sec. 162.216. RECORDS. (a) Requires a supplier and permissive supplier to keep certain information.

(b) Requires a distributor to keep certain information.

(c) Requires an importer to keep certain information.

(d) Requires an exporter to keep certain information.

(e) Requires a blender to keep a record showing a certain number of gallons.

(f) Requires a terminal operator to keep certain information.

(g) Requires a motor fuel transporter to keep a complete and separate record of each intrastate and interstate transportation of diesel fuel, showing certain information.

(h) Requires a dealer to keep a record showing a certain number of gallons.

(i) Requires an interstate trucker to keep a record of certain miles traveled.

(j) Requires an aviation fuel dealer to keep a record showing a certain number of

gallons of diesel fuel.

(k) Requires the records of an aviation fuel dealer made under Subsection (j)(3) to show certain information.

(l) Requires a dyed diesel fuel bonded user to keep a record showing a certain number of gallons of dyed and undyed diesel fuel.

(m) Authorizes the comptroller to require selective schedules from a supplier, permissive supplier, distributor, importer, exporter, blender, terminal operator, motor fuel transporter, dealer, aviation fuel dealer, dyed diesel fuel bonded user, and interstate trucker for any purchase, sale, or delivery of diesel fuel if the schedules are not inconsistent with the requirements of this chapter.

(n) Requires the records required by this section to be kept until the fourth anniversary of the date they are created and are open to inspection at all times by the comptroller and the attorney general.

Sec. 162.217. INFORMATION REQUIRED ON SUPPLIER'S AND PERMISSIVE SUPPLIER'S RETURN; CREDITS AND ALLOWANCES. (a) Requires the monthly return and supplements of each supplier and permissive supplier to contain certain information for the period covered by the return:

(b) Authorizes a supplier or permissive supplier that timely pays the tax to this state to deduct from the amount of tax due a collection allowance equal to two percent of the amount of tax payable to this state.

(c) Authorizes a supplier or permissive supplier to take a credit for any taxes that were not remitted in a previous period to the supplier or permissive supplier by a licensed distributor or licensed importer as required by Section 162.214. Provides that the supplier or permissive supplier is eligible to take this credit if the comptroller is notified of the default within 60 days after the default occurs. Requires the supplier or permissive supplier to remit the payment to the comptroller with the next monthly return after receipt of the tax, plus a penalty of 10 percent of the amount of unpaid taxes and interest at the rate provided by Section 111.060 beginning on the date the credit is taken, if a license holder pays to a supplier or permissive supplier the tax owed, but the payment occurs after the supplier or permissive supplier has taken a credit on its return.

(d) Requires all payments or credits in reduction of a customer's account, for the purpose of Subsection (c), to be applied ratably between motor fuels and other goods sold to the customer, and provides the credit allowed will be the tax on the number of gallons represented by the motor fuel portion of the credit.

Sec. 162.218. DUTIES OF SUPPLIER OR PERMISSIVE SUPPLIER. (a) Provides that a supplier or permissive supplier who receives or collects tax holds the amount received or collected in trust for the benefit of this state and has a fiduciary duty to remit to the comptroller the amount of tax received or collected.

(b) Requires a supplier or permissive supplier to furnish the purchaser with an invoice, bill of lading, or other documentation as evidence of the number of gallons received by the purchaser.

(c) Prohibits a supplier or permissive supplier who receives a payment of tax from applying the payment of tax to a debt that the person making the payment owes for

diesel fuel purchased from the supplier or permissive supplier.

Sec. 162.219. INFORMATION REQUIRED ON DISTRIBUTOR'S RETURN. Requires the monthly return and supplements of each distributor to contain certain information for the period covered by the return.

Sec. 162.220. INFORMATION REQUIRED ON IMPORTER'S RETURN; ALLOWANCES. (a) Requires the monthly return and supplements of an importer to contain certain information for the period covered by the return.

(b) Authorizes an importer of diesel fuel that timely files a return and payment to deduct from the amount of tax payable with the return a collection allowance equal to two percent of the amount of tax payable to this state.

Sec. 162.221. INFORMATION REQUIRED ON TERMINAL OPERATOR'S RETURN.

(a) Requires a terminal operator to file with the comptroller a monthly information return and supplement showing the amount of diesel fuel received and removed from the terminal during the month. Requires the return also to contain certain summary information.

(b) Authorizes the comptroller to accept the Federal ExSTARS terminal operator report provided to the Internal Revenue Service instead of the required state terminal operator report.

Sec. 162.222. INFORMATION REQUIRED ON MOTOR FUEL TRANSPORTER'S RETURN. Requires the quarterly return and supplements of a motor fuel transporter to contain certain information for the period covered by the return.

Sec. 162.223. INFORMATION REQUIRED ON EXPORTER'S RETURN AND PAYMENT OF TAX ON IMPORTS. Requires the monthly return and supplements of an exporter to contain certain information for the period covered by the return.

Sec. 162.224. INFORMATION REQUIRED ON BLENDER'S RETURN. Requires the monthly return and supplements of each blender to contain certain information for the period covered by the return.

Sec. 162.225. INFORMATION REQUIRED ON INTERSTATE TRUCKER'S RETURN. Requires the quarterly return and supplements of each interstate trucker to contain certain information for the period covered by the return.

Sec. 162.226. INFORMATION REQUIRED ON DYED DIESEL FUEL BONDED USER'S RETURN. Requires the quarterly return and supplements of each dyed diesel fuel bonded user to contain certain information for the period covered by the return.

Sec. 162.227. REFUND OR CREDIT FOR CERTAIN TAXES PAID. (a) Authorizes a license holder to take a credit on a return for the period in which the sale occurred if the license holder paid tax on the purchase of diesel fuel and subsequently resells the diesel fuel without collecting the tax to certain entities.

(b) Provides that for truck or railcar movements between licensed suppliers or licensed permissive suppliers in which the diesel fuel removed from the first terminal comes to rest in the second terminal and tax was paid on the first removal, the license holder who receives the diesel fuel in the second terminal may take the credit.

(c) Authorizes a license holder to take a credit on a return for the period in which the purchase occurred, and authorizes a person who does not hold a license under this

subchapter, other than a license as an aviation fuel dealer, to file a refund claim with the comptroller if the license holder or person paid tax on diesel fuel and the license holder or person is a certain entity.

(d) Authorizes a license holder to take a credit on a return for the period in which the purchase occurred if the license holder paid tax on the diesel fuel and the license holder is a licensed interstate trucker who uses the diesel fuel outside this state in commercial vehicles operated under an interstate trucker license, provided that a credit or refund claimed under this subdivision must be taken or filed within the limitations period as provided by Section 162.230.

(e) Authorizes a person who paid tax on the purchase of diesel fuel to claim a credit or seek a refund with the comptroller if 100 or more gallons of diesel fuel is subsequently exported or lost by fire, theft, or accident. Requires a credit or refund claimed under this subsection to be taken or filed within the limitations period provided by Section 162.230.

(f) Authorizes a transit company who paid tax on the purchase of diesel fuel to seek a refund with the comptroller of one-half of one cent per gallon for diesel fuel used in transit vehicles.

(g) Provides that the right to receive a refund or take a credit under this section is not assignable.

(h) Authorizes the comptroller to adopt rules specifying procedures and requirements that must be followed to claim a credit or refund under this section.

(i) Authorizes a license holder to take a credit on a return for the period in which the purchase occurred, and authorizes a person who does not hold a license under this subchapter to file a refund claim with the comptroller, if the license holder or person paid tax on diesel fuel and the license holder or person uses the diesel fuel in off-highway equipment, in stationary engines, or for other nonhighway purposes and not in a motor vehicle operated or intended to be operated on the public highways or uses the diesel fuel 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. Provides that this subsection expires January 1, 2005.

Sec. 162.228. REFUND FOR BAD DEBTS; CREDIT FOR NONPAYMENT. (a)

Authorizes a licensed distributor to file a refund claim with the comptroller if the distributor has paid the taxes imposed by this subchapter on diesel fuel sold on account, the distributor determines that the account is uncollectible and worthless, and the account is written off as a bad debt on the accounting books of the distributor.

(b) Authorizes a licensed supplier or permissive supplier to take a credit on the monthly report to be filed with the comptroller if on a previous report, the supplier or permissive supplier paid the taxes imposed by this subchapter on diesel fuel sold on account, the person to whom the supplier or permissive supplier sold the diesel fuel has not remitted the tax to the supplier or permissive supplier, and at the time of the transaction, the person to whom the supplier or permissive supplier sold the diesel fuel held a license issued by the comptroller.

(c) Requires that the return on which the refund is claimed or the credit is taken state, if applicable, the license number of the person whose account has been written off as a bad debt, or who failed to remit the tax, and any other information required by the

comptroller. Provides that the amount of the refund or credit that may be claimed under Subsection (a) or (b) may equal but may not exceed the amount of taxes paid on the diesel fuel to which the written-off account or unpaid taxes apply.

(d) Requires that if, after a refund is received under Subsection (a) or a credit is taken under Subsection (b), the account on which the refund or credit was based is paid, or if the comptroller otherwise determines that the refund or credit was not authorized by Subsection (a) or (b), the unpaid taxes be paid by the distributor receiving the refund or the supplier or permissive supplier taking the credit, plus a penalty of 10 percent of the amount of the unpaid taxes and interest at the rate provided by Section 111.060 beginning on the day the refund was issued.

(e) Provides that this section does not apply to a sale of diesel fuel that is delivered into the fuel supply tank of a motor vehicle or motorboat and for which payment is made through the use and acceptance of a credit card.

(f) Requires a refund under this section to be claimed at the time the account is written off as a bad debt, but authorizes it only to be claimed before the expiration of the applicable limitation period as provided by Chapter 111.

(g) Authorizes the comptroller to take action against a person in relation to whom a distributor, supplier, or permissive supplier has made a refund claim or taken a credit for collection of the tax owed and for penalty and interest as provided by Chapter 111.

Sec. 162.229. CLAIMS FOR REFUNDS. (a) Requires that a refund claim be filed on a form provided by the comptroller, be supported by the original invoice issued by the seller, and contain certain information.

(b) Requires the purchaser to obtain the original invoice from the seller of diesel fuel not later than the 30th day after the date the diesel fuel is delivered to the purchaser. Provides that if the delivery of diesel fuel is made through an automated method in which the purchase is automatically applied to the purchaser's account, one invoice may be issued at the time of billing that covers multiple purchases made during a 30-day billing cycle.

(c) Requires a distribution log filed with the comptroller to support the number of gallons of diesel fuel removed from a bulk user's own bulk storage to contain the name and address of the bulk user making the delivery stamped or preprinted on the log and, for each individual delivery from the bulk storage, certain other information.

(d) Requires that a distributor or person who does not hold a license who files a valid refund claim with the comptroller be paid by a warrant issued by the comptroller. Provides that for purposes of this section, a distributor meets the requirement of filing a valid refund claim if the distributor designates the gallons of diesel fuel sold or used that are the subject of the refund claim on the monthly report submitted by the distributor to the comptroller.

(e) Provides that a person who files a claim for a tax refund on diesel fuel used for a purpose for which a tax refund is not authorized or who files an invoice supporting a refund claim on which the date, figures, or any material information has been falsified or altered forfeits the person's right to the entire amount of the refund claim filed unless the claimant provides proof satisfactory to the comptroller that the incorrect refund claim filed was due to a clerical or mathematical calculation error.

(f) Requires the comptroller, before issuing a refund warrant, after examination of the

refund claim, to deduct from the amount of the refund the two percent deducted originally by the license holder on the first sale or distribution of the diesel fuel.

Sec. 162.230. WHEN DIESEL FUEL TAX REFUND OR CREDIT MAY BE FILED. (a) Provides that, except as otherwise provided by this section, a claim for a refund must be filed with the comptroller before the first anniversary of the first day of the calendar month following the purchase, use, delivery, or export, or loss by fire, theft, or accident of diesel fuel, whichever period expires latest.

(b) Provides that if the amount of credit that an interstate trucker is entitled to take under Section 162.227 exceeds the amount of tax due on that reporting period, the excess credit amount may be claimed on any of the three successive quarterly returns following the period in which the credit was established or the interstate trucker may file a refund claim with the comptroller on or before the due date of the third successive quarterly return following the period in which the credit was established. Provides that a credit that is not claimed within the period prescribed by this subsection expires.

(c) Authorizes a purchaser, if the comptroller assesses a supplier or permissive supplier for a tax-free sale that is taxable, and the supplier or permissive supplier subsequently collects the tax from the purchaser, to file a refund claim before the first anniversary of the date the supplier's or permissive supplier's deficiency assessment becomes final if the purchaser used the diesel fuel in an exempt manner.

(d) Authorizes a supplier or permissive supplier that determines taxes were erroneously reported and remitted or that paid more taxes than were due to this state because of a mistake of fact or law to take a credit on the monthly tax report on which the error has occurred and tax payment made to the comptroller. Requires the credit to be taken before the expiration of the applicable period of limitation as provided by Chapter 111.

Sec. 162.231. NOTICE REGARDING DYED DIESEL FUEL. Requires a notice stating "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" to meet certain requirements.

Sec. 162.232. DYED DIESEL FUEL NOTICE REQUIRED ON SHIPPING DOCUMENTS, BILLS OF LADING, AND INVOICES. Requires the form of notice required by Sections 162.231(1) and (2) to be provided when the dyed diesel fuel is removed or sold and to appear on each shipping document, bill of lading, cargo manifest, and invoice accompanying the sale or removal of the dyed diesel fuel.

Sec. 162.233. UNAUTHORIZED SALE OR USE OF DYED DIESEL FUEL. (a) Prohibits a person from selling or holding for sale dyed diesel fuel for any use that the person knows or has reason to know is a taxable use of the diesel fuel.

(b) Prohibits a person from using or holding for use dyed diesel fuel for a use other than a nontaxable use if the person knows or has reason to know that the diesel fuel is dyed diesel fuel.

Sec. 162.234. ALTERATION OF DYE OR MARKER IN DYED DIESEL FUEL PROHIBITED. Prohibits a person, with the intent to evade payment of tax, from altering or attempting to alter the strength or composition of a dye or marker in dyed diesel fuel.

Sec. 162.235. USE OF DYED FUEL PROHIBITED. (a) Prohibits a person from operating a motor vehicle on a public highway in this state with taxable motor fuel that contains dye in the fuel supply tank of the motor vehicle.

(b) Provides that this section does not apply to a use of dyed fuel that is lawful under the Internal Revenue Code and implementing regulations, including use in state and local government vehicles or buses, unless otherwise prohibited by this chapter.

[Reserves Sections 162.236-162.300 for expansion.]

SUBCHAPTER D. LIQUEFIED GAS TAX

Sec. 162.301. TAX IMPOSED; RATE. (a) Provides that a tax is imposed on the use of liquefied gas for the propulsion of motor vehicles on the public highways of this state.

(b) Provides that the liquefied gas tax rate is 15 cents a gallon.

Sec. 162.302. PAYMENT OF TAX. (a) Requires a person using a liquefied gas-propelled motor vehicle, including a motor vehicle equipped to use liquefied gas interchangeably with another motor fuel, that is required to be licensed in this state for use on the public highways of this state to prepay the liquefied gas tax to the comptroller on an annual basis. Requires a person holding a motor vehicle dealer's liquefied gas tax decal or an interstate trucker whose vehicle is registered in this state but may operate in other states under a multistate tax agreement to pay the tax to a licensed dealer at the time the fuel is delivered into the fuel supply tank of a motor vehicle.

(b) Requires an interstate trucker operating a motor vehicle licensed in a base state other than this state and any other out-of-state user to pay the excise tax on delivery of the liquefied gas into the fuel supply tanks of a motor vehicle.

Sec. 162.3021. SCHOOL DISTRICT TRANSPORTATION AND COUNTY EXEMPTION. (a) Provides that the tax imposed by this subchapter does not apply to the sale of liquefied petroleum gas to a public school district or county in this state or to the use of liquefied petroleum gas by a public school district or county in this state. Provides that a motor vehicle that uses liquefied petroleum gas and that is operated by a public school district or county in this state is not required to have a liquefied gas tax decal or a special use liquefied gas tax decal.

(b) Provides that the tax imposed by this subchapter does not apply to the sale of liquefied petroleum gas to a commercial transportation company that uses the gas exclusively to provide public school transportation services to a school district under Section 34.008, Education Code, or to the use of liquefied petroleum gas by that company for that purpose. Provides that a motor vehicle that uses liquefied petroleum gas and that is owned by a commercial transportation company and used exclusively to provide public school transportation services to a school district under Section 34.008, Education Code, is not required to have a liquefied gas tax decal or a special use liquefied gas tax decal.

Sec. 162.303. LICENSE; APPLICATION; DISPLAY. (a) Requires a dealer who sells taxable liquefied gas, an interstate trucker, a liquefied gas tax decal user, or a motor vehicle dealer's liquefied gas tax decal license holder to file an application with the comptroller for the kind and class of a nonassignable license required by this subchapter.

(b) Requires an application for a license to be filed on a form provided by the comptroller showing the kind and class of license desired, the odometer reading of a Class A through F motor vehicle, and other information required by the comptroller.

(c) Requires a license to be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner. Requires a license holder to

reproduce the license and keep a copy on display at each additional place of business from which liquefied gas is sold, delivered, or used in motor vehicles. Requires a person holding an interstate trucker's license to reproduce the license and carry a copy with each motor vehicle being operated into or from this state. Requires the liquefied gas tax decal user to affix the decal in the lower right corner of the front windshield of the passenger side of the vehicle.

Sec. 162.304. DEALER'S LICENSE. Provides that a dealer's license authorizes a dealer to collect and remit taxes on liquefied gas delivered into the fuel supply tanks of motor vehicles displaying an out-of-state license plate, the motor vehicle of an interstate trucker licensed under an agreement entered into under Section 162.003, or a motor vehicle displaying a motor vehicle dealer's liquefied gas tax decal.

Sec. 162.305. LIQUEFIED GAS TAX DECAL LICENSE. (a) Requires a user of liquefied gas for the propulsion of a motor vehicle on the public highways of this state to pay in advance annually on each motor vehicle owned, operated, and licensed in this state by that person a tax based on the registered gross weight and mileage driven the previous year in a certain schedule.

(b) Requires the first issuance of a liquefied gas tax decal for a Class A through F motor vehicle to be issued on a basis of estimated miles that will be driven during the one-year period following the date of issuance of the decal.

(c) Requires the following special-use liquefied gas tax decal and tax to be required for certain types of vehicles.

(d) Authorizes an entity holding a registration under Chapter 503, Transportation Code, to obtain a decal for each liquefied gas-powered motor vehicle held for sale or resale and pay the tax per gallon to a licensed dealer on each delivery of liquefied gas into the fuel supply tank of the motor vehicle.

(e) Provides that an interstate trucker is not required to prepay the tax under Subsection (a) for a motor vehicle operated for commercial purposes and described by Section 162.001(36).

Sec. 162.306. INTERSTATE TRUCKER'S LICENSE. Provides that an interstate trucker's license authorizes a person who imports liquefied gas into this state in the fuel supply tanks of a motor vehicle owned or operated for commercial purposes and described by Section 162.001(36) to report and pay the tax due and to make sales or distributions in this state from the vehicle's cargo tanks, but prohibits a delivery from being made in this state into the fuel supply tanks of motor vehicles that do not bear a current liquefied gas tax decal without first obtaining the required dealer's license to make taxable sales.

Sec. 162.307. LICENSES: PERIODS OF VALIDITY. (a) Provides that a dealer's license is permanent and valid during the period the license holder furnishes timely reports as required or until the license is surrendered by the holder or canceled by the comptroller.

(b) Provides that an interstate trucker's license is valid from the date of its issuance through December 31 of each calendar year or until the license is surrendered by the holder or canceled by the comptroller. Authorizes the comptroller to renew the license for each ensuing calendar year if the license holder furnishes timely reports as required.

(c) Provides that a liquefied gas tax decal license is valid from the date of its initial issuance through the last day of the same month of the year following the year it was issued unless the motor vehicle for which the tax is prepaid is sold or is no longer used on a public highway. Requires a liquefied gas tax decal license, after its initial issuance,

to be issued annually and provides that it is valid for one year from the date of its issuance unless the motor vehicle for which the tax is prepaid is sold or is no longer used on the public highway. Requires a liquefied gas tax decal license holder to apply for a new license each year. Requires the ending odometer reading to be provided on the renewal application. Provides that, in the absence of an ending odometer reading, the previous year's mileage of the motor vehicle shall be presumed to be at least 15,000 miles.

(d) Requires that a motor vehicle dealer's liquefied gas tax decal license be issued annually and provides that it is valid from the date of its issuance through December 31 of each calendar year unless the motor vehicle is sold, at which time the decal shall be removed by the dealer from the motor vehicle. Requires a motor vehicle dealer's liquefied gas tax decal license holder to apply for a new license each year.

Sec. 162.308. COMPUTATION OF TAXES; ALLOWANCES. (a) Provides that a licensed dealer who makes a sale or delivery of liquefied gas into a fuel supply tank of a motor vehicle on which the tax is required to be collected is liable to this state for the tax imposed and shall report and pay the tax in the manner required by this subchapter.

(b) Requires a licensed interstate trucker to report and pay to this state the tax at the rate imposed on each gallon of liquefied gas delivered by the trucker into the fuel supply tank of a motor vehicle, unless the tax has been paid to a licensed dealer, and to report and pay the tax on each gallon of liquefied gas imported into this state in the fuel supply tanks of motor vehicles owned or operated by the trucker and consumed in the operation of the motor vehicles on the public highways of this state.

(c) Requires the tax on one percent of the taxable gallons of liquefied gas sold in this state to be allocated to the licensed dealer making the sale for the expense of collecting, accounting for, reporting, and timely remitting the taxes collected and for keeping the records. Requires the allocation allowance to be deducted by the licensed dealer when paying the tax to this state.

(d) Requires the tax of one-half of one percent of the taxable gallons of liquefied gas used in this state by persons licensed as interstate truckers to be allocated to the interstate trucker making the use of the liquefied gas for the expense of accounting for, reporting, and timely remitting the taxes due.

Sec. 162.309. RECORDS. (a) Requires a dealer to keep for four years, open to inspection at all times by the comptroller and the attorney general, a complete record of all liquefied gas sold or delivered for taxable purposes.

(b) Requires an interstate trucker to keep for four years, open to inspection by the comptroller and the attorney general, certain records.

(c) Requires each taxable sale or delivery of liquefied gas into the fuel supply tanks of a motor vehicle, including deliveries by interstate truckers from bulk storage, to be covered by an invoice. Requires that the invoice be printed and contain certain information.

(d) Requires the invoice to be carried with the vehicle and provides that it will serve as a trip permit.

(e) Authorizes a liquefied gas tax decal license holder required to report beginning and ending odometer readings to deduct the miles traveled outside this state from the total miles traveled. Requires a record of miles traveled by the vehicle in states other than

this state to be maintained and submitted with the renewal each year. Prohibits a decal from being renewed for an amount that is less than the rate for 4,999 miles annually.

Sec. 162.310. REPORTS AND PAYMENTS. (a) Requires a licensed dealer, on or before the 25th day of the month following the end of each calendar quarter, to file a report and remit the amount of tax due. Requires a licensed dealer who has not made taxable sales during the reporting period to file with the comptroller a report that includes those facts or that information.

(b) Requires every licensed interstate trucker, on or before the 25th day of the month following the end of each calendar quarter, to file a report and remit the amount of tax due. Requires a report to be filed with the comptroller on forms provided for that purpose and to contain the number of miles traveled in this state, the number of miles traveled outside this state, and other information required by the comptroller. Requires an interstate trucker who is required to file a report under this section and who has not made interstate trips or used liquefied gas in motor vehicles in this state during the reporting period to file with the comptroller a report that includes those facts or that information.

Sec. 162.311. REFUNDS; TRANSFER OF DECALS. (a) Requires a seller and purchaser, if a motor vehicle bearing a liquefied gas tax decal is sold or transferred, to promptly notify the comptroller of the sale or transfer and requires a new decal to be issued in the new purchaser's name.

(b) Provides that if a motor vehicle bearing a liquefied gas tax decal is destroyed or the liquefied gas carburetor system is removed, the owner is entitled to a refund of the unused portion of the advance taxes paid for that year. Requires the owner or operator to submit to the comptroller an affidavit identifying the vehicle, the license number of the vehicle, the decal number assigned to the vehicle, the circumstances entitling the owner to a refund, and all other information required by the comptroller. Requires the comptroller, on receipt of the affidavit and when satisfied as to the circumstances, to refund that portion of the tax payment that corresponds to the number of complete months remaining in the year for which the tax has been paid, beginning with the month following the date on which the vehicle or the liquefied gas carburetor was no longer used. Prohibits a refund from being made if the use of the vehicle ceased during the last month of the year.

(c) Entitles a licensed interstate trucker to a refund of the amount of the liquefied gas tax paid under this subchapter on each gallon of liquefied gas subsequently used outside this state. Requires the comptroller, on verification by the comptroller that the interstate trucker's report was timely filed with all information required, to issue a warrant to the interstate trucker for the amount of the refund less the one percent deducted originally by the licensed dealer making the sale. Provides that an interstate trucker who fails to file an interstate trucker report by the 25th day of the month following the end of a calendar quarter forfeits the right to a refund.

[Reserves Sections 162.312-162.400 for expansion.]

SUBCHAPTER E. PENALTIES AND OFFENSES

Sec. 162.401. FAILURE TO PAY TAX OR FILE REPORT. (a) Provides that if a person having a license, or a person required to have a license, fails to file a report as required by this chapter or fails to pay a tax imposed by this chapter when due, the person forfeits five percent of the amount due as a penalty, and if the person fails to file the report or pay the tax within 30 days after the day on which the tax or report is due, the person forfeits an additional five

percent.

(b) Authorizes the comptroller to add a penalty of 75 percent of the amount of taxes, penalties, and interest due if failure to file the report or pay the tax when it becomes due is attributable to fraud or an intent to evade the application of this chapter or a rule adopted under this chapter or Chapter 111.

Sec. 162.402. PROHIBITED ACTS; CIVIL PENALTIES. (a) Provides that a person forfeits to the state a civil penalty of not less than \$25 and not more than \$200 if the person performs certain actions.

(b) Provides that an importer or exporter that violates a requirement of Section 162.016 is liable to this state for a civil penalty of \$2,000 or five times the amount of the unpaid tax, whichever is greater, for each violation.

(c) Provides that a person receiving motor fuel who accepts a shipping document that does not conform with the requirements of Section 162.016(a) is liable to this state for a civil penalty of \$2,000 or five times the amount of the unpaid tax, whichever is greater, for each occurrence.

(d) Provides that a person operating a bulk plant or terminal who issues a shipping document that does not conform with the requirements of Section 162.016(a) is liable to this state for a civil penalty of \$2,000 or five times the amount of the unpaid tax, whichever is greater, for each occurrence.

(e) Provides that a person operating a terminal or bulk plant who does not post notice as required by Section 162.016(i) is liable to this state for a civil penalty of \$100 for each day the notice is not posted as required by Section 162.016(i).

Sec. 162.403. CRIMINAL OFFENSES. Provides that, except as provided by Section 162.404, a person commits an offense if the person performs certain actions.

Sec. 162.404. CRIMINAL OFFENSES: SPECIAL PROVISIONS AND EXCEPTIONS.

(a) Provides that a person does not commit an offense under Section 162.403 unless the person intentionally or knowingly engaged in conduct as the definition of the offense requires, except that no culpable mental state is required for an offense under Section 162.403(6).

(b) Provides that each day that a refusal prohibited under Section 162.403(13), (14), or (15) continues is a separate offense.

(c) Provides that the prohibition under Section 162.403(32) does not apply to the tax-free sale or distribution of diesel fuel authorized by Section 162.204(1), (2), or (3).

(d) Provides that the prohibition under Section 162.403(33) does not apply to the tax-free sale or distribution of gasoline under Section 162.104(1), (2), or (3).

Sec. 162.405. CRIMINAL PENALTIES. (a) Provides that an offense under Section 162.403(1), (2), (3), (4), (5), (6), (7), or (8) is a Class C misdemeanor.

(b) Provides that an offense under Section 162.403(9), (10), (11), (12), (13), (14), (15), (16), (17), or (18) is a Class B misdemeanor.

(c) Provides that an offense under Section 162.403(19), (20), or (21) is a Class A misdemeanor.

(d) Provides that an offense under Section 162.403(22), (23), (24), (25), (26), (27), (28), or (29) is a felony of the third degree.

(e) Provides that an offense under Section 162.403(30), (31), (32), (33), (34), (35), (36), (37), (38), or (39) is a felony of the second degree.

(f) Provides that violations of three or more separate offenses under Sections 162.403(22) through (29) committed pursuant to one scheme or continuous course of conduct may be considered as one offense and punished as a felony of the second degree.

Sec. 162.406. CRIMINAL PENALTIES: CORPORATIONS AND ASSOCIATIONS.

(a) Provides that, except as provided by Subsection (b), Subchapter E, Chapter 12, Penal Code, applies to offenses under this chapter committed by a corporation or association.

(b) Prohibits the court from fining a corporation or association under Section 12.51(c), Penal Code, unless the amount of the fine under that subsection is greater than the amount that could be fixed by the court under Section 12.51(b), Penal Code.

(c) Requires the court, in addition to a sentence imposed on a corporation, to give notice of the conviction to the attorney general as required by Article 17A.09, Code of Criminal Procedure.

Sec. 162.407. VENUE OF CRIMINAL PROSECUTIONS. Provides that the venue for a prosecution under this subchapter is in Travis County or in the county where the offense occurred.

Sec. 162.408. NEGATION OF EXCEPTION: INFORMATION, COMPLAINT, OR INDICTMENT. Provides that an information, complaint, or indictment charging a violation of this chapter need not negate an exception to an act prohibited by this chapter, but authorizes the exception to be urged by the defendant as a defense to the offense charged.

Sec. 162.409. ISSUANCE OF BAD CHECK TO LICENSED DISTRIBUTOR OR LICENSED SUPPLIER. (a) Sets forth circumstances under which a person commits an offense.

(b) Provides that Sections 32.41(b), (c), (d), (e), and (g), Penal Code, apply to an offense under this section in the same manner as those provisions are applicable to the offense under Section 32.41(a), Penal Code.

(c) Provides that an offense under this section is a Class C misdemeanor.

(d) Provides that a person who makes payment on an obligation or debt that includes a tax under this chapter and pays with an insufficient funds check issued to a licensed distributor or licensed supplier may be held liable for a penalty equal to the total amount of tax not paid to the licensed distributor or licensed supplier.

[Reserves Sections 162.410-162.500 for expansion.]

SUBCHAPTER F. ALLOCATION OF TAXES

Sec. 162.501. TAX ADMINISTRATION FUND. (a) Provides that, before any other allocation of the taxes collected under this chapter is made, one percent of the gross amount of the taxes shall be deposited in the state treasury in a special fund, subject to the use of the comptroller in the administration and enforcement of this chapter.

- (b) Requires the unexpended portion of the special fund to revert, at the end of the fiscal year, to the other funds to which revenue is allocated by this subchapter in proportion to the amounts originally derived from the respective sources.

Sec. 162.502. ALLOCATION OF UNCLAIMED REFUNDABLE GASOLINE TAXES.

(a) Requires the comptroller, on or before the fifth workday after the end of each month, after making the deductions for refund purposes, to determine as accurately as possible, for the period since the latest determination under this subsection, the number of gallons of fuel used in motorboats on which the gasoline tax has been paid to this state, on which refund of the tax has not been made, and against which limitation has run for filing claim for refund of the tax. Requires the comptroller to compute the amount of taxes that would have been refunded under the law had refund claims been filed in accordance with the law from the number of gallons so determined.

- (b) Requires the comptroller to allocate and deposit these unclaimed refunds in a certain manner.
- (c) Provides that money deposited to the credit of the general revenue fund under Subsection (b)(2) may be appropriated only to the Parks and Wildlife Department for any lawful purpose.

Sec. 162.5025. ALLOCATION OF OTHER UNCLAIMED REFUNDABLE

NONDEDICATED TAXES. (a) Requires the comptroller by rule to devise a method of determining as accurately as possible the number of gallons of fuel that are not used to propel a motor vehicle on the public highways, and the amount of taxes collected under this chapter from fuel that is not used to propel a motor vehicle on the public highways that would have been refunded under this chapter if refund claims had been filed in accordance with this chapter and that is not subject to allocation under Section 162.502.

- (b) Requires the comptroller to allocate to the general revenue fund the amount determined under Subsection (a)(2).
- (c) Requires that the determination and allocation be made periodically as prescribed by rule.

Sec. 162.503. ALLOCATION OF GASOLINE TAX. Requires the comptroller, on or before the fifth workday after the end of each month, after making all deductions for refund purposes and for the amounts allocated under Sections 162.502 and 162.5025, to allocate the net remainder of the taxes collected under Subchapter B in a certain manner.

Sec. 162.504. ALLOCATION OF DIESEL FUEL TAX. Requires the comptroller, on or before the fifth workday after the end of each month, after making deductions for refund purposes, for the administration and enforcement of this chapter, and for the amounts allocated under Section 162.5025, to allocate the remainder of the taxes collected under Subchapter C in a certain manner.

Sec. 162.5045. ALLOCATION OF TAXES PAID ON UNDYED DIESEL FUEL USED OFF-HIGHWAY. Requires the comptroller, on or before the fifth workday after the end of each month, to determine as accurately as possible for the period since the latest determination under this section the number of gallons of undyed diesel fuel used for purposes other than to propel a motor vehicle on the public highways of this state. Requires the comptroller, from the number of gallons so determined, to compute the amount of taxes that were paid on that undyed diesel fuel and shall allocate and deposit that amount to the credit of the general revenue fund.

Sec. 162.505. ALLOCATION OF LIQUEFIED GAS TAX. Requires the comptroller, on or before the fifth workday after the end of each month, after making deductions for refund purposes and for the administration and enforcement of this chapter, to allocate the remainder of the taxes collected under Subchapter D in a certain manner.

SECTION 2. Repealer: Chapter 153 (Motor Fuel Taxes), Tax Code. Provides that a reference in law to Chapter 153, Tax Code, means Chapter 162, Tax Code, as added by this Act.

SECTION 3. (a) Requires the comptroller, not later than January 1, 2004, to report to the legislature on the comptroller's efforts during 2003 to enter into cooperative agreements under Section 153.017, Tax Code. Requires the report to include a summary of the terms of any agreements the comptroller entered into during 2003.

(b) Requires the comptroller, not later than January 1, 2005, to report to the legislature on the comptroller's efforts during 2004 to enter into cooperative agreements under Section 162.003, Tax Code, as added by this Act. Requires the report to include a summary of the terms of any agreements the comptroller entered into during 2004.

(c) Provides that this section takes effect September 1, 2003.

SECTION 4. (a) Effective date: except as provided by Section 3 of this Act, January 1, 2004.

(b) Requires each person who possessed gasoline or undyed diesel fuel on which the taxes imposed by Chapter 162, Tax Code, as added by this Act, have not been paid, on or before February 25, 2004, to 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, as that chapter existed on December 31, 2003, and the person meets certain criteria.

(c) Provides that a person that possessed gasoline or undyed diesel fuel on which the taxes imposed by Chapter 162, Tax Code, as added by this Act, have not been paid on the effective date of this Act may not be required to report and pay to the comptroller the tax imposed by that chapter if the person meets certain criteria.