

By: Ritter

H.B. No. 3263

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to taxes administered by the comptroller of public  
3 accounts.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 151.011(a), Tax Code, is amended to read  
6 as follows:

7 (a) Except as provided by Subsection (c) of this section,  
8 "use" means the exercise of a right or power incidental to the  
9 ownership of tangible personal property over tangible personal  
10 property including tangible personal property that has been  
11 processed, fabricated, or manufactured into other property or  
12 attached to or incorporated into other property transported into  
13 this state and, except as provided by Section 151.056(b) of this  
14 code, includes the incorporation of tangible personal property into  
15 real estate or into improvements of real estate whether or not the  
16 real estate is subsequently sold.

17 SECTION 2. Section 151.302, Tax Code, is amended by adding  
18 subsections (e) and (f) to read as follows:

19 (e) Except as provided by Section 151.056(b), a sale for  
20 resale does not include a sale of tangible personal property to a  
21 purchaser who uses or consumes the property while performing a  
22 contract, regardless of whether title transfers to the purchaser's  
23 customer under a contract, regulation, or other law.

24 (f) A sale for resale does not include a sale of a taxable

1 service to a purchaser who uses or consumes the service while  
2 performing a contract unless the service is:

- 3 (i) integral to performing another taxable service; or  
4 (ii) performed on tangible personal property or real  
5 property owned or leased by the purchaser's customer.

6 SECTION 3. Section 153.119(d), Tax Code, is amended to read  
7 as follows:

8 (d) If the quantity of gasoline used in Texas by auxiliary  
9 power units or power take-off equipment on any motor vehicle can be  
10 accurately measured while the motor vehicle is stationary by any  
11 metering or other measuring device or method designed to measure  
12 the fuel separately from fuel used to propel the motor vehicle, the  
13 comptroller may approve and adopt the use of any device as a basis  
14 for determining the quantity of gasoline consumed in those  
15 operations for tax credit or tax refund. The climate-control air  
16 conditioning or heating system of a motor vehicle with a primary  
17 purpose of providing for the convenience or comfort of the operator  
18 or passengers is not a power take-off system and no refund will be  
19 allowed for the gasoline tax paid on any portion of the gasoline  
20 that is used for this purpose.

21 SECTION 4. Section 153.222(d), Tax Code, is amended to read  
22 as follows:

23 (d) If the quantity of diesel fuel used in Texas by  
24 auxiliary power units or power take-off equipment on any motor  
25 vehicle can be accurately measured while the motor vehicle is  
26 stationary by any metering or other measuring device or method  
27 designed to measure the fuel separately from fuel used to propel the

1 motor vehicle, the comptroller may approve and adopt the use of any  
2 device as a basis for determining the quantity of diesel fuel  
3 consumed in those operations for tax credit or tax refund. If no  
4 separate metering device or other approved measuring method is  
5 provided, the following credit or refund procedures are authorized.  
6 A permitted supplier, a dyed diesel fuel bonded user, or an  
7 agricultural bonded user who operates diesel-powered motor  
8 vehicles equipped with a power take-off or a diesel-powered  
9 auxiliary power unit mounted on the motor vehicle and using the fuel  
10 supply tank of the motor vehicle may be allowed a deduction from the  
11 taxable gallons used in this state in each motor vehicle so  
12 equipped. The comptroller shall determine the percentage of the  
13 deduction. A user who is required to pay the tax on diesel fuel used  
14 in motor vehicles so equipped may file a claim for a refund not to  
15 exceed the percentage allowed by the comptroller of the total  
16 taxable fuel used in this state in each motor vehicle so equipped.  
17 The climate-control air conditioning or heating system of a motor  
18 vehicle with a primary purpose of providing for the convenience or  
19 comfort of the operator or passengers is not a power take-off system  
20 and no refund will be allowed for the diesel fuel tax paid on any  
21 portion of the diesel fuel that is used for this purpose.

22 SECTION 5. Section 201.057, Tax Code, is amended by  
23 amending subsection (e) and adding subsection (k), to read as  
24 follows:

25 (e) The operator of a proposed or existing gas well,  
26 including a gas well that has not been completed, or the operator of  
27 any proposed or existing oil or gas well within a commission

1 approved co-production project, may apply to the commission for  
2 certification that the well produces or will produce high-cost gas.  
3 Such application, if seeking certification as high-cost gas  
4 according to Subsection (a)(2)(A), [~~may be made at any time~~] must be  
5 made in writing not later than one year after the first day of  
6 production. The application may be made but is not required to be  
7 made concurrently with a request for a determination that gas  
8 produced from the well is high-cost natural gas for purposes of the  
9 Natural Gas Policy Act of 1978 (15 U.S.C. Section 3301 et seq.) or  
10 with a request for commission approval of a co-production project.  
11 The commission may require an applicant to provide the commission  
12 with any relevant information required to administer this section.  
13 For purposes of this section, a determination that gas is high-cost  
14 natural gas according to Subsection (a)(2)(A) or a determination  
15 that gas is produced from within a commission approved  
16 co-production project is a certification that the gas is high-cost  
17 gas for purposes of this section, and in that event additional  
18 certification is not required to qualify for the exemption or tax  
19 reduction provided by this section.

20 (f) To qualify for the exemption or tax reduction provided  
21 by this section, the person responsible for paying the tax must  
22 apply to the comptroller. The application must contain the  
23 certification of the commission that the well produces high-cost  
24 gas and, if the application is for a well spudded or completed after  
25 September 1, 1995, must contain a report of drilling and completion  
26 costs incurred for each well on a form and in the detail as  
27 determined by the comptroller. Drilling and completion costs for a

1 recompletion shall only include current and contemporaneous costs  
2 associated with the recompletion. Notwithstanding any other  
3 provision of this section, to obtain the maximum tax exemption or  
4 tax deduction, an application to the comptroller for certification  
5 according to Subsection (a)(2)(A) must be filed with the  
6 comptroller not later than one year after the first date of  
7 production. [~~at the later of the 180th day after the date of first~~  
8 ~~production. or the 45th day after the date of approval by the~~  
9 ~~commission. If the application is not filed by the applicable~~  
10 ~~deadline, the tax exemption or tax deduction is reduced by 10~~  
11 ~~percent for the period beginning on the 180th day after the first~~  
12 ~~day of production and ending on the date on which the application is~~  
13 ~~filed with the comptroller. An application to the comptroller for~~  
14 ~~certification according to Subsection (a)(2)(B) may not be filed~~  
15 ~~before January 1, 1990, or after December 31, 1998]. The  
16 comptroller shall approve the application of a person who  
17 demonstrates that the gas is eligible for the exemption or tax  
18 reduction. The comptroller may require a person applying for the  
19 exemption or tax reduction to provide any relevant information in  
20 the person's monthly report that the comptroller considers  
21 necessary to administer this section. The commission shall notify  
22 the comptroller in writing immediately if it determines that an oil  
23 or gas well previously certified as producing high-cost gas does  
24 not produce high-cost gas or if it takes any action or discovers any  
25 information that affects the eligibility of gas for an exemption or  
26 tax reduction under this section.~~

27 (k) A person who, on September 1, 2003, otherwise meets the

1 requirements necessary to file an application with the commission  
2 and the comptroller for certification, except for the requirement  
3 that it be made no later than the first anniversary after the first  
4 day of production, must submit the application for certification  
5 before March 1, 2004 to be eligible for the tax exemption or tax  
6 deduction provided by this section. This subsection expires March  
7 1, 2004.

8 SECTION 6. Section 201.101, Tax Code, is amended to read as  
9 follows:

10 Sec. 201.101. MARKET VALUE. (a) The market value of gas  
11 is its value at the mouth of the well from which it is produced. It  
12 is computed by taking the producer's gross receipts for the gas and  
13 deducting allowable marketing costs enumerated in subsection (b)  
14 incurred by the producer to transport the gas from the outlet of a  
15 least separator to the market.

16 (b) "Allowable marketing costs" means:

- 17 (1) direct costs for compressing the gas sold;  
18 (2) direct costs for dehydrating the gas sold;  
19 (3) direct costs for sweetening the gas sold; and  
20 (4) direct costs for delivering the gas to the  
21 purchaser.

22 (c) For purpose of this section, "direct costs" means the  
23 cost of equipment that physically performs the activity and the  
24 direct labor associated with the activity.

25 SECTION 7. Section 201.102, Tax Code, is amended to read as  
26 follows:

27 Sec. 201.102. CASH SALES. If gas is sold for cash only, the

1 tax shall be computed on the producer's gross cash receipts.  
2 Payments from a purchaser of gas to a producer for the purpose of  
3 reimbursing the producer for taxes due under this chapter or for the  
4 purpose of reimbursing the producer for costs incurred are [~~not~~]  
5 part of the gross cash receipts unless the reimbursement amount for  
6 taxes due under this chapter is separately stated in a contract.

7 SECTION 8. Effective dates.

8 (a) SECTIONS 1 and 2 of this Act take effect October 1, 2003.

9 (b) SECTIONS 3 and 4 of this Act take effect September 1,  
10 2003, and apply to all fuel used on or after that date for climate  
11 control air conditioning or heating in a motor vehicle.

12 (c) Sections 5, 6, and 7 of this Act take effect September 1,  
13 2003.