

By: Gallego

H.B. No. 3269

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 no later than the first anniversary after the first
6 day of production. The application may be made but is not required
7 to be 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 The commission must act on the application within one year of the
14 date it was filed. The commission may by order extend the due date
15 for its issuance of a determination for a period not longer than 180
16 days. For purposes of this section, a determination that gas is
17 high-cost natural gas according to Subsection (a)(2)(A) or a
18 determination that gas is produced from within a commission
19 approved co-production project is a certification that the gas is
20 high-cost gas for purposes of this section, and in that event
21 additional certification is not required to qualify for the
22 exemption or tax reduction provided by this section.

23 (f) To qualify for the exemption or tax reduction provided
24 by this section, the person responsible for paying the tax must
25 apply to the comptroller. The application must contain the
26 certification of the commission that the well produces high-cost
27 gas and, if the application is for a well spudded or completed after

1 September 1, 1995, must contain a report of drilling and completion
2 costs incurred for each well on a form and in the detail as
3 determined by the comptroller. Drilling and completion costs for a
4 recompletion shall only include current and contemporaneous costs
5 associated with the recompletion. Notwithstanding any other
6 provision of this section, to obtain the maximum tax exemption or
7 tax deduction, an application to the comptroller for certification
8 according to Subsection (a)(2)(A) must be filed with the
9 comptroller not later than one year after the date of first
10 production [~~at the later of the 180th day after the date of first~~
11 ~~production or the 45th day after the date of approval by the~~
12 ~~commission. If the application is not filed by the applicable~~
13 ~~deadline, the tax exemption or tax deduction is reduced by 10~~
14 ~~percent for the period beginning on the 180th day after the first~~
15 ~~day of production and ending on the date on which the application is~~
16 ~~filed with the comptroller. An application to the comptroller for~~
17 ~~certification according to Subsection (a)(2)(B) may not be filed~~
18 ~~before January 1, 1990, or after December 31, 1998]. The~~

19 comptroller shall approve the application of a person who
20 demonstrates that the gas is eligible for the exemption or tax
21 reduction. The comptroller may require a person applying for the
22 exemption or tax reduction to provide any relevant information in
23 the person's monthly report that the comptroller considers
24 necessary to administer this section. The commission shall notify
25 the comptroller in writing immediately if it determines that an oil
26 or gas well previously certified as producing high-cost gas does
27 not produce high-cost gas or if it takes any action or discovers any

1 information that affects the eligibility of gas for an exemption or
2 tax reduction under this section.

3 (k) A person who, on September 1, 2003, otherwise meets the
4 requirements necessary to file an application with the commission
5 and the comptroller for certification, except for the requirement
6 that it be made no later than the first anniversary after the first
7 day of production, must submit the application for certification
8 before March 1, 2004 to be eligible for the tax exemption or tax
9 deduction provided by this section. This subsection expires March
10 1, 2004.

11 SECTION 6. Section 201.101, Tax Code, is amended to read as
12 follows:

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

19 (b) "Allowable marketing costs" means:

- 20 (1) direct costs for compressing the gas sold;
21 (2) direct costs for dehydrating the gas sold;
22 (3) direct costs for sweetening the gas sold; and
23 (4) direct cost for delivering the gas to the
24 purchaser.

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. (a) SECTIONS 1 and 2 of this
8 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.