

By: Janek

S.B. No. 1728

A BILL TO BE ENTITLED

AN ACT

relating to the collection of motor fuels taxes.

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

SECTION 1. Sections 162.001(20) and (43), Tax Code, are amended to read as follows:

(20) "Distributor" means a person who acquires motor fuel from a licensed supplier, permissive supplier, or another licensed distributor and who makes sales at wholesale and whose activities may also include sales at retail. The term includes a person engaged in the tax-free sale of dyed diesel fuel to marine vessels.

(43) "Motor fuel transporter" means a person who transports gasoline, diesel fuel, or gasoline blended fuel outside the bulk transfer/terminal system by means of a transport vehicle, a railroad tank car, or a marine vessel for hire.

SECTION 2. Section 162.116(d), Tax Code, is amended to read as follows:

(d) For purposes of Subsection (c), all payments or credits in reduction of a customer's account must be applied ratably between motor fuels and other goods sold to the customer, and the credit allowed will be the tax on the number of gallons represented by the motor fuel portion of the credit. The comptroller may not require a supplier or permissive supplier to remit from a payment or credit in reduction of a customer's account any tax for which the

1 supplier or permissive supplier was allowed to take a credit.

2 SECTION 3. Section 162.118, Tax Code, is amended to read as
3 follows:

4 Sec. 162.118. INFORMATION REQUIRED ON DISTRIBUTOR'S
5 RETURN. The monthly return and supplements of each distributor
6 shall contain for the period covered by the return:

7 (1) the number of net gallons of gasoline received by
8 the distributor during the month, sorted by product code and~~[,~~
9 ~~seller[, point of origin, destination state, carrier, and receipt~~
10 ~~date]~~;

11 (2) the number of net gallons of gasoline removed at a
12 terminal rack by the distributor during the month, sorted by
13 product code, seller, and terminal code~~[, and carrier]~~;

14 (3) the number of net gallons of gasoline removed by
15 the distributor during the month for export, sorted by product
16 code, terminal code, bulk plant address, destination state, and
17 carrier;

18 (4) the number of net gallons of gasoline removed by
19 the distributor during the month from a terminal located in another
20 state for conveyance to this state, as indicated on the shipping
21 document for the gasoline, sorted by product code, seller, terminal
22 code, bulk plant address, and carrier;

23 (5) the number of net gallons of gasoline the
24 distributor sold during the month in transactions exempt under
25 Section 162.104, sorted by product code and purchaser; and

26 (6) any other information required by the comptroller.

27 SECTION 4. Section 162.126(d), Tax Code, is amended to read

1 as follows:

2 (d) If, after a refund is received under Subsection (a) or a
3 credit is taken under Subsection (b), the account on which the
4 refund [~~or credit~~] was based is paid[~~r~~] or [~~if~~] the comptroller
5 [~~otherwise~~] determines that the refund or credit was not authorized
6 by Subsection (a) or (b), the unpaid taxes shall be paid by the
7 distributor receiving the refund or the supplier or permissive
8 supplier taking the credit, plus a penalty of 10 percent of the
9 amount of the unpaid taxes and interest at the rate provided by
10 Section 111.060 beginning on the day the refund was issued.

11 SECTION 5. Section 162.127, Tax Code, is amended by adding
12 Subsection (g) to read as follows:

13 (g) The comptroller shall issue a refund warrant to a
14 distributor not later than the 30th day after the date the
15 comptroller receives a valid refund claim from the distributor. If
16 the comptroller does not issue the refund warrant by that date, the
17 amount of the refund draws interest at the rate provided by Section
18 111.060 beginning on the 31st day after the date the comptroller
19 receives the valid refund claim and ending on the date the
20 comptroller issues the refund warrant.

21 SECTION 6. Section 162.128(a), Tax Code, is amended to read
22 as follows:

23 (a) Except as otherwise provided by this section, a claim
24 for a refund must be filed with the comptroller before the fourth
25 [~~first~~] anniversary of the first day of the calendar month
26 following the purchase, use, delivery, or export, or loss by fire,
27 theft, or accident of gasoline, whichever period expires latest.

1 SECTION 7. Section 162.206, Tax Code, is amended by
2 amending Subsection (c) and adding Subsection (h-1) to read as
3 follows:

4 (c) A person may not make a tax-free purchase and a licensed
5 supplier or distributor may not make a tax-free sale to a purchaser
6 of any dyed diesel fuel under this section using a signed
7 statement[+]

8 ~~[(1) for the purchase or the sale of more than 7,400~~
9 ~~gallons of dyed diesel fuel in a single delivery; or~~

10 ~~[(2)]~~ in a calendar month in which the person has
11 previously purchased from all sources or in which the licensed
12 supplier has previously sold to that purchaser more than:

13 (1) ~~[(A)]~~ 10,000 gallons of dyed diesel fuel;

14 (2) ~~[(B)]~~ 25,000 gallons of dyed diesel fuel if the
15 purchaser stipulates in the signed statement that all of the fuel
16 will be consumed by the purchaser in the original production of, or
17 to increase the production of, oil or gas and furnishes the supplier
18 with a letter of exception issued by the comptroller; or

19 (3) ~~[(C)]~~ 25,000 gallons of dyed diesel fuel if the
20 purchaser stipulates in the signed statement that all of the fuel
21 will be consumed by the purchaser in agricultural off-highway
22 equipment.

23 (h-1) For purposes of this section, the purchaser is
24 considered to have furnished the signed statement to the licensed
25 supplier or distributor if the supplier or distributor verifies
26 that the purchaser has an end user number issued by the comptroller.
27 The licensed supplier or distributor may use the comptroller's

1 Internet website to verify this information.

2 SECTION 8. Section 162.217(d), Tax Code, is amended to read
3 as follows:

4 (d) For the purpose of Subsection (c), all payments or
5 credits in reduction of a customer's account must be applied
6 ratably between motor fuels and other goods sold to the customer,
7 and the credit allowed will be the tax on the number of gallons
8 represented by the motor fuel portion of the credit. The
9 comptroller may not require a supplier or permissive supplier to
10 remit from a payment or credit in reduction of a customer's account
11 any tax for which the supplier or permissive supplier was allowed to
12 take a credit.

13 SECTION 9. Section 162.219, Tax Code, is amended to read as
14 follows:

15 Sec. 162.219. INFORMATION REQUIRED ON DISTRIBUTOR'S
16 RETURN. The monthly return and supplements of each distributor
17 shall contain for the period covered by the return:

18 (1) the number of net gallons of diesel fuel received
19 by the distributor during the month, sorted by product code and[7]
20 seller [~~7, point of origin, destination state, carrier, and receipt~~
21 ~~date~~];

22 (2) the number of net gallons of diesel fuel removed at
23 a terminal rack by the distributor during the month, sorted by
24 product code, seller, and terminal code [~~7, and carrier~~];

25 (3) the number of net gallons of diesel fuel removed by
26 the distributor during the month for export, sorted by product
27 code, terminal code, bulk plant address, destination state, and

1 carrier;

2 (4) the number of net gallons of diesel fuel removed by
3 the distributor during the month from a terminal located in another
4 state for conveyance to this state, as indicated on the shipping
5 document for the diesel fuel, sorted by product code, seller,
6 terminal code, bulk plant address, and carrier;

7 (5) the number of net gallons of diesel fuel the
8 distributor sold during the month in transactions exempt under
9 Section 162.204;

10 (6) the number of net gallons of ~~[]~~ dyed diesel fuel
11 sold to a purchaser under a signed statement ~~[]~~ or dyed diesel fuel
12 sold to a dyed diesel fuel bonded user, sorted by product code and
13 by the entity receiving the diesel fuel; and

14 (7) ~~[(6)]~~ any other information required by the
15 comptroller.

16 SECTION 10. Section 162.228(d), Tax Code, is amended to
17 read as follows:

18 (d) If, after a refund is received under Subsection (a) or a
19 credit is taken under Subsection (b), the account on which the
20 refund ~~[or credit]~~ was based is paid ~~[]~~ or ~~[if]~~ the comptroller
21 ~~[otherwise]~~ determines that the refund or credit was not authorized
22 by Subsection (a) or (b), the unpaid taxes shall be paid by the
23 distributor receiving the refund or the supplier or permissive
24 supplier taking the credit, plus a penalty of 10 percent of the
25 amount of the unpaid taxes and interest at the rate provided by
26 Section 111.060 beginning on the day the refund was issued.

27 SECTION 11. Section 162.229, Tax Code, is amended by adding

1 Subsection (g) to read as follows:

2 (g) The comptroller shall issue a refund warrant to a
3 distributor not later than the 30th day after the date the
4 comptroller receives a valid refund claim from the distributor. If
5 the comptroller does not issue the refund warrant by that date, the
6 amount of the refund draws interest at the rate provided by Section
7 111.060 beginning on the 31st day after the date the comptroller
8 receives the valid refund claim and ending on the date the
9 comptroller issues the refund warrant.

10 SECTION 12. Section 162.230(a), Tax Code, is amended to
11 read as follows:

12 (a) Except as otherwise provided by this section, a claim
13 for a refund must be filed with the comptroller before the fourth
14 [~~first~~] anniversary of the first day of the calendar month
15 following the purchase, use, delivery, or export, or loss by fire,
16 theft, or accident of diesel fuel, whichever period expires latest.

17 SECTION 13. This Act applies only to taxes imposed on or
18 after the effective date of this Act. Taxes imposed before the
19 effective date of this Act are governed by the law in effect on the
20 date the taxes were imposed, and that law is continued in effect for
21 that purpose.

22 SECTION 14. This Act takes effect September 1, 2005.