

BILL ANALYSIS

C.S.H.B. 3320
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

C.S.H.B. 3320 provides guidance on state motor fuel tax issues and provides mechanisms for addressing motor fuel tax fraud. The Travis County District Attorneys Office has experienced difficulties prosecuting motor fuel tax fraud cases where the fuel transported, sold, or offered for sale by the defendant failed to meet American Standard for Testing and Materials (ASTM) standards. Many of the changes proposed in this bill will assist in the criminal prosecution of motor fuel tax fraud even when the product sold or offered for sale as motor fuel does not meet ASTM standards

Currently, certain transactions are allowed to be made tax-free within the bulk terminal/transfer system if the proper license is held. Eliminating the requirement to obtain a license to only conduct transactions within the bulk terminal/transfer system will reduce the number of license holders required to report transactions where there is no tax due. This does not affect the collection of taxes. Tax is collected when the motor fuel is removed from the bulk terminal/transfer system.

An importer of motor fuel is required to obtain an import verification number. Eliminating the requirement to obtain an import verification and relieves industry of having to report the same information twice; first when obtaining the import verification number and again when filing the monthly tax return.

Presently licensed aviation fuel dealers are authorized to purchase tax-free aviation fuel for airport operations. However, the statute does not allow wholesalers to buy the aviation fuel tax-free. This results in the wholesaler paying the tax and requesting a refund from the comptroller. This change would allow the wholesalers to also purchase the aviation fuel tax-free. This change would allow aviation gasoline and jet fuel to move from the terminal to the airport tax-free.

Motor fuel removed from terminal destined for export under certain circumstances both the destination state tax and Texas tax is required to be collected from the exporter.

On certain sales for export the seller is required to collect both the Texas and destination state tax when the fuel is removed from a Texas terminal. The change would allow a licensed distributor to collect the destination state tax when all other requirements for exporting fuel are satisfied

Major oil companies are allowed to take a credit for tax remitted to the state when fuel is sold to an exempted entity such as the federal government or Texas public school district. The change will codify a long-standing Comptroller policy.

The current signed statement limitations have been burdensome on industry. The signed statement limitations have been determined by the number of gallons that a normal fuel transport truck can deliver. Industry has changed and transport capacities have increased. The bill recognizes changes in the transportation industry.

RULEMAKING AUTHORITY

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

ANALYSIS

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The bill makes statutory references and has changed Chapter 153, Tax Code to Chapter 162, Tax Code for the purposes of re-codification.

This bill amends definitions for “blending,” “diesel fuel,” distributor,” “gasoline,” “gasoline blended fuel,” “motor fuel,” “motor fuel transporter,” and “shipping document” in Section 162.001, Tax Code. These changes will allow criminal prosecution of motor fuel tax fraud even when the product sold or offered for sale as motor fuel does not meet ASTM standards.

This bill amends Section 162.004, Tax Code to require that all shipping documents, not just those issued by a terminal or bulk plant operator, comply with the section’s requirements. This helps ensure that prosecution of criminal motor fuel cases will not be hindered when the origin of the motor fuel is not a terminal or bulk plant. The bill eliminates requirement that shipping documents contain purchaser’s license number. This section does not apply to motor fuel that is delivered to into the fuel supply tank of a motor vehicle.

This bill requires that importers/exporters of motor fuel possess a shipping document and that it include the destination state of each portion of a split load of motor fuel if the motor fuel is to be delivered to more than one state. Shipping document not required to contain federal employer identification number, or the social security number of the carrier transporting motor fuel or the purchaser of the motor fuel. This bill requires that sellers, receivers and transporters of motor fuel retain a copy of the shipping document and provide the document to the comptroller or law enforcement upon request.

This bill amends Section 162.101, Tax Code, clarifying that suppliers and permissive suppliers are responsible for collecting gasoline taxes. Suppliers and permissive suppliers are both liable for and shall collect the tax from the person who imports the gasoline into this state. If the seller is not a supplier or permissive supplier, then the person who imports the gasoline into this state is liable for and shall pay the tax. The amendment is designed to treat suppliers and permissive suppliers the same as out of state terminals.

This bill clarifies that the back up tax is not required on sales of gasoline within the bulk terminal and transfer system.

This bill allows tax-free sales of aviation gasoline and jet fuel between licensed suppliers, permissive suppliers and distributors. Exemption does not apply to a sale by a distributor unless the sale is to a licensed exporter; the supplier collects the destination state tax from the distributor; the distributor collects the destination state tax from the exporter; and the contract for the sale is signed before the gas is removed from the terminal. Current law requires that aviation gasoline and jet fuel be taxed when removed from the terminal rack even when sold to other license holders.

This bill amends Section 162.112, Tax Code, to provide that a licensed supplier, permissive supplier, or a distributor who sells tax-free gas to a person whose supplier’s license, permissive supplier’s license, or aviation fuel dealer’s license has been canceled is liable for any tax due on gas sold after receiving notice of the cancellation or revocation.

This bill amends Section 162.115, Tax Code to require that a license holder keep any other record required by the comptroller.

This bill eliminates requirement that a supplier’s return under 162.116, Tax Code to include the number of net gallons of gasoline received during the month and the number of net gallons of gas sold in the bulk transfer/terminal system in this state to any person not holding a supplier’s or permissive supplier’s license. This bill requires that the number of net gallons of diesel fuel sold in transactions exempt under Section 162.104 be sorted only by purchaser.

This bill requires that the number of net gallons of gas received by the distributor included in the distributor’s return under 162.118, Tax Code to be sorted only by product code and seller, and not by point of origin, destination state, carrier, or receipt date. Also, the number of net gallons of gas removed at a terminal rack by the distributor need only be sorted by product code, seller, and terminal code, and not by carrier.

This bill allows a supplier to take credit for tax-free sales of gasoline to exempt entities when payment by entity to a retailer is by way of third party credit card and where a license holder reimburses the credit card issuer for the amount of tax included in the retail purchase price.

This bill amends Section 162.128(d), Tax Code, to allow distributors, importers, exports, and blender license holders who have erroneously paid tax the same amount of time, four years, to amend returns as a licensed supplier or permissive supplier.

This bill amends Section 162.201, Tax Code by providing that the supplier or permissive supplier is liable for and shall collect the diesel fuel tax from the person who orders the withdrawal at the terminal rack. It also imposes a tax on the removal of diesel fuel, as opposed to the sale or transfer, from the bulk transfer and terminal system in this state and provides that the supplier is liable for and must collect the tax from the person who orders the removal, as opposed to sale or transfer, from the bulk transfer terminal system. Holds blenders and interstate truckers liable and allows tax-free transactions within the bulk terminal transfer system without a Texas supplier or permissive supplier license.

This bill amends Section 162.203(d), Tax Code adding the "other than by a bulk transfer language" to clarify that the back up tax is not required on sales of diesel fuel within the bulk terminal/transfer system.

This bill allows tax-free sales of aviation jet fuel and diesel fuel between licensed suppliers, permissive suppliers and distributors. The exemption does not apply to a sale by a distributor unless the sale is to a licensed exporter; the supplier collects the destination state tax from the distributor; the distributor collects the destination state tax from the exporter; and the contract for the sale is signed before the diesel fuel is removed from the terminal.

This bill amends Section 162.206, Tax Code, to provide that a person may not make a tax-free purchase, and a licensed supplier or distributor may not make a tax-free sale to a purchaser of any dyed diesel fuel using a signed statement for the first sale or purchase and for any subsequent sale or purchase in a calendar month, whether fuel was purchased in a single transaction during that month or in multiple transactions, for more than 10,000 gallons of dyed diesel fuel or 25,000 gallons under certain conditions. Subsection g-1 provides that the purchaser is considered to have furnished the signed statement to the licensed supplier or distributor if he/she verifies that the purchaser has an end user number issued by the comptroller. The amendment requires the supplier/distributor to use the comptroller's website or other materials produced by the comptroller in verifying the information. Subsection (k) requires that a licensed supplier or distributor be in possession of signed statements for purchase of dyed diesel fuel at the time the sale occurs and disallows exemptions where suppliers are not in possession of them within 60 days of the comptroller's written notice.

This bill amends Section 162.213, Tax Code, to hold a licensed supplier or permissive supplier liable for the tax on sales of diesel fuel made tax-free to an aviation fuel dealer or sales of dyed diesel fuel to a distributor or distributor who sells to an aviation fuel dealer after notice of cancellation or revocation of the aviation fuel dealer's license has been provided. Subsection (c) allows tax-free sales to aviation fuel dealers after the effective date of reinstatement of the license.

This bill requires a license holder to keep any record required by the comptroller.

This bill removes the requirements in Section 162.217, Tax Code, that the number of net gallons of diesel fuel received or sold in the bulk transfer/terminal system in this state to any person not holding a supplier's or permissive supplier's license be included in the supplier or permissive supplier's monthly return. This bill requires that the number of net gallons of diesel fuel sold in transactions exempt under Section 162.204 be sorted only by purchaser.

This bill changes information required on a distributor's return in 162.219, Tax Code. The number of net gallons of diesel fuel received by the distributor should only be sorted by product code and seller. The number of net gallons of diesel fuel removed at a terminal rack by the distributor should be sorted only by product code, seller, and terminal code, and not by carrier. The report shall also contain number of net gallons of diesel fuel the distributor sold during the

month in certain exempt transactions and sorted by product code and by entity receiving the diesel fuel. The return must include the number of net gallons of dyed diesel fuel sold to a purchaser under a signed statement or dyed diesel fuel sold to a dyed diesel fuel bonded user.

This bill allows a supplier to take a credit for tax-free sales of diesel fuel to exempt entities when payment by entity to a retailer is by way of third party credit card and where license holder reimburses the credit card issuer for the amount of tax included in the retail purchase price.

This bill clarifies that suppliers, permissive suppliers, distributors, importers, exporters and blenders that determine taxes were erroneously reported and remitted or that paid more taxes than were due because of a mistake of fact or law have four years to take a credit under Chapter 111, Tax Code.

This bill eliminates Section 162.402(a)(14), Tax Code, the civil penalty for importers who do not obtain an import verification number. This holds any person, as opposed to one operating a bulk plant or terminal, who issues a shipping document that does not conform with the requirements of Section 162.016(a), Tax Code (Import/Export of Motor Fuel) liable to the state for a civil penalty.

This bill eliminates the Class B misdemeanor offense related to the failure of an importer to obtain an import verification number under Section 162.403(17), Tax Code

This bill cleans up to recognize the removal of the offense for failing to obtain an import verification number.

This bill amends Sections 162.405(d) through (f), Tax Code by eliminating Section 162.403(17), Tax Code relating to the failure of an importer to obtain an import verification number, from the list of Class B misdemeanor offenses. The remaining offenses are renumbered accordingly.

This bill amends the heading to Section 162.409, Tax Code by adding permissive supplier.

This bill amends Sections 162.409(a) and (d), Tax Code by making it an offense to issue a bad check to a permissive supplier. Current law only creates an offense when the payee is a licensed distributor or licensed supplier.

This bill adds Section 162.410, Tax Code to allow the state to elect the offense for which it will prosecute a person where a violation of a criminal provision of Chapter 162, Tax Code constitutes another offense under the laws of this state.

This bill amends Article 12.01, Code of Criminal Procedure, to correspond with codification changes in the Tax Code made by this act. The reference to Sections 162.403(22) – (39), Tax Code have been changed to Sections 162.403(21) – (38), Tax Code.

This bill amends Section 20.002(b) and (d), Transportation Code to correspond with codification changes in the Tax Code. References to Chapter 153, Tax Code have been changed to Chapter 162, Tax Code.

This bill amends Section 26.3574(o), Water Code to correspond with codification changes in the Tax Code. References to Chapter 153, Tax Code have been changed to Chapter 162, Tax Code.

This bill repeals Sections 162.001(34) and 162.016(c) and (h), Tax Code, dealing with the documenting of split loads of motor fuel and the requirement that an importer must obtain an import verification number.

This bill provides that a change in law made by this act applies only to an offense committed on or after the effective date of this act. It also provides that a change in law made by this act does not affect tax liability accruing before the effective date of this act.

This Act takes effect September 1, 2007.

EFFECTIVE DATE

C.S.H.B. 3320 80(R)

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute amends the definition of “motor fuel transporter” under Sections 162.001(43), Tax Code, so that the term does not include person who is licensed under chapter 162, Tax Code, as a supplier, permissive supplier, or distributor; and exclusively transports gasoline, diesel fuel, gasoline blended fuel, or any other motor fuel to which the person retains ownership while the fuel is being transported by the person.

The substitute removes the requirement that potentially sensitive information such as the purchaser’s license number and the purchaser’s or carrier’s federal employer identification number or social security number be included in the shipping document.

The substitute requires that the number of net gallons of diesel fuel sold in transactions exempt under Sections 162.104 and 162.204, Tax Code be sorted by product code and purchaser, instead of only by purchaser as originally proposed in the filed bill.

The substitute adds language to the filed bill’s amendment of Section 162.206, Tax Code. Subsection (g-1) would require suppliers/distributors to use the comptroller’s website or other materials produced by the comptroller to verify the end user number until the purchaser provides to the supplier or distributor a completed signed statement.

The substitute also eliminates SECTIONS 18 and 29 of the filed bill which provided that the credit card exception applicable to suppliers’ and distributors’ bad debt refund claims under Section 162.228, Tax Code, did not apply when the credit card was issued by the distributor filing the refund claim.