

## **BILL ANALYSIS**

S.B. 1886  
By: Williams  
Ways & Means  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

SB 1886 provides guidance on state motor fuel tax issues and provides mechanisms for addressing motor fuel tax fraud. Some of these motor fuel tax issues, identified by the comptroller, include:

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

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**

SECTION 1. Amends Section 101.009(b), Tax Code, as follows:

(b) Requires cigarette tax revenue allocated under Section 154.603(b) (relating to the allocation of certain remaining revenue to the general revenue fund) to be allocated as provided by Section 154.603 (Disposition of Revenue), subject to Section 154.6035 (Allocation of Certain Revenue to Property Tax Relief Fund). Requires motor fuel tax revenue to be allocated and deposited as provided by Subchapter F (Allocation of Taxes), Chapter 162, rather than Chapter 153.

SECTION 2. Amends Section 111.006(g), Tax Code, to make conforming changes.

SECTION 3. Amends Section 111.060(d), Tax Code, to provide that Subsection (c) does not apply to the taxes under an agreement made under Section 162.003 (Cooperative Agreements With Other States), rather than Section 153.017.

SECTION 4. Amends Section 111.064(d), Tax Code, to making a conforming change.

SECTION 5. Amends Section 111.107(a), Tax Code, to authorize a person to request a refund or a credit during a certain time period unless the refund or credit is requested under certain provisions.

SECTION 6. Amends Section 151.308, Tax Code, to make conforming changes.

SECTION 7. Amends Sections 162.001(9), (19), (20), (29), (31), (42), (43), and (55), Tax Code, to redefine "blending," "diesel fuel," "distributor," "gasoline," "gasoline blended fuel," "motor fuel," "motor fuel transporter," and "shipping document."

SECTION 8. Amends Section 162.004, Tax Code, by amending Subsections (a) and (b) and adding Subsections (a-1) and (h), as follows:

(a) Creates subsection (a-1) from part of this existing subsection.

(a-1) Creates this subsection from part of existing Subsection (a).

(b) Requires a shipping document, rather than the shipping document issued by the terminal operator or operator of a bulk plant, to contain certain information. Deletes existing text requiring the shipping document to contain the license number of the purchaser.

(h) Provides that this section (Motor Fuel Transportation: Required Documents) does not apply to motor fuel that is delivered into the fuel supply tank of a motor vehicle.

SECTION 9. Amends Sections 162.016(a), (b), (d), and (e), Tax Code, as follows:

(a) Requires the shipping document to include certain information, including 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. Deletes existing text requiring the shipping document to include the federal employer identification number, the Social Security number, or the license number of the carrier. Makes a conforming change.

(b) Makes conforming changes.

(d) Requires a seller, transporter, or receive of motor fuel, rather than a terminal, a bulk plant, the carrier, the licensed distributor or supplier, and the person that received the motor fuel, to retain a copy of the shipping document for a certain time period and to provide a copy of the shipping document to certain individuals.

(e) Makes a conforming change.

SECTION 10. Amends Sections 162.101(a) through (e), Tax Code, as follows:

- (a) Requires the supplier or permissive supplier to be liable for and collect the tax imposed by this subchapter (Gasoline Tax) from the person who orders the withdrawal at the terminal rack.
- (b) Requires the supplier or permissive supplier to be liable for and to collect the tax imposed by this subchapter from the person who imports the gasoline into this state. Makes conforming changes.
- (c) Provides that a tax is imposed on the removal, rather than the sale or transfer, of gasoline from, rather than in, the bulk transfer/terminal system in this state and deletes existing text providing that the tax is imposed by a supplier to a person who does not hold a supplier's license. Makes conforming changes.
- (d) Requires the interstate trucker to be liable for and to pay the tax.
- (e) Makes a conforming change.

SECTION 11. Amends Section 162.103(d), Tax Code, to require a person who sells gasoline in Texas, other than by bulk transfer, on which tax has not been paid for any purpose other than a purpose exempt under Section 162.104 (Exemptions) to at the time of sale collect the tax from the purchaser or recipient of gasoline in addition to the selling price and provides that the person is liable to this state for the taxes imposed, rather than taxes collected at the time, in the manner provided by this chapter (Motor Fuel Taxes).

SECTION 12. Amends Sections 162.104(a) and (f), Tax Code, as follows:

- (a) Provides that the tax imposed by this subchapter (Gasoline Tax) does not apply to certain supplies of gasoline , including certain supplies of aviation gasoline.
- (f) Provides that the exemption provided by Subsection (a)(4)(A) 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 gasoline is removed from the terminal.

SECTION 13. Amends Sections 162.112(b) and (c), Tax Code, as follows:

- (b) Provides that a licensed supplier, permissive supplier, or distributor who sells gasoline tax-free to a person whose supplier's, permissive supplier's, or aviation fuel dealer'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) Makes conforming changes.

SECTION 14. Amends Section 162.115, Tax Code, by adding Subsection (n), to require a license holder to keep any other record required by the comptroller of public accounts (comptroller), in addition to the records specifically required by this section (Records).

SECTION 15. Amends Section 162.116(a), Tax Code, to delete existing text to require the monthly return and supplements of each supplier and permissive supplier to contain for the period covered by the return the number of net gallons of gasoline received during the month, sorted by product code, seller, point-of-origin, destination state, carrier, and receipt date and the number of net gallons of gasoline sold in the bulk transfer/terminal system in this state to any person not holding a supplier's permissive supplier's license. Makes conforming changes.

SECTION 16. Amends Section 162.118, Tax Code, to require the monthly return and supplements of each distributor to contain for the period covered by the return the number of net gallons of gasoline received by the distributor during the month, sorted by product code and seller, rather than sorted by product code, seller, point-of-origin, destination state, carrier, and

receipt date, and the number of net gallons of gasoline removed at a terminal rack by the distributor during the month, sorted by product code, seller, and terminal code, rather than sorted by product code, seller, terminal code, and carrier.

SECTION 17. Amends Section 162.125, Tax Code, by adding Subsection (j), as follows:

(j) Authorizes a license holder to take a credit on a return for the tax included in the retail purchase price of gasoline for the period in which the purchase occurred when made by certain purchasers, if the purchase was made by acceptance of a credit card not issued by the license holder, the credit card issuer did not collect the tax from the purchaser, and the license holder reimbursed the credit card issuer for the amount of tax included in the retail purchase price.

SECTION 18. Amends Section 162.128(d), Tax Code, to authorize a supplier, permissive supplier, distributor, importer, exporter, or blender 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.

SECTION 19. Amends Sections 162.201(a) through (e), Tax Code, as follows:

(a) Requires the supplier or permissive supplier to be liable for and collect the tax imposed by this subchapter (Diesel Fuel Tax) from the person who orders the withdrawal at the terminal rack.

(b) Requires the supplier or permissive supplier to be liable for and to collect the tax imposed by this subchapter from the person who imports the diesel fuel into this state. Makes conforming changes.

(c) Provides that a tax is imposed on the removal, rather than the sale or transfer, of diesel fuel from, rather than in, the bulk transfer/terminal system in this state and deletes existing text providing that the tax is imposed by a supplier to a person who does not hold a supplier's license. Makes conforming changes.

(d) Requires the interstate trucker to be liable for and to pay the tax.

(e) Makes a conforming change.

SECTION 20. Amends Section 162.203(d), Tax Code, to require a person who sells diesel fuel in Texas, other than by bulk transfer, on which tax has not been paid for any purpose other than a purpose exempt under Section 162.204 (Exemptions) 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 imposed, rather than taxes collected at the time, in the manner provided by this chapter (Motor Fuel Taxes).

SECTION 21. Amends Sections 162.204(a) and (f), Tax Code, as follows:

(a) Provides that the tax imposed by this subchapter (Diesel Fuel Tax) does not apply to certain supplies of diesel fuel, including certain supplies of aviation jet fuel.

(f) Provides that the exemption provided by Subsection (a)(4)(A) 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 gasoline is removed from the terminal.

SECTION 22. Amends Section 162.206, Tax Code, by amending Subsection (c) and adding Subsections (c-1), (g-1), and (k), as follows:

(c) Prohibits a person from making a tax-free purchase and prohibits a licensed supplier or distributor from making a tax-free sale to a purchaser of any dyed diesel fuel under this

section (Statement for Purchase of Dyed Diesel Fuel) using a signed statement for the first sale of purchase and for any subsequent sale or purchase in a calendar month for a certain number of gallons of dyed diesel fuel.

(c-1) Provides that the monthly limitations prescribed by Subsection (c) apply regardless of whether the dyed diesel fuel is purchased in a single transaction during that month or in multiple transactions during that month.

(g-1) Provides that, for purposes of this section, the purchaser is considered to have temporarily furnished the signed statement to the licensed supplier or distributor if the supplier or distributor verifies that the purchaser has an end user number issued by the comptroller. Requires the licensed supplier or distributor to use the comptroller's Internet website or other materials provided or produced by the comptroller to verify this information until the purchaser provides to the supplier or distributor a completed signed statement.

(k) Provides that completed signed statements should be in the possession of the licensed supplier or distributor at the time the sale of dyed diesel fuel occurs. Requires exempt sales claimed by the licensed supplier or distributor that require delivery of the signed statements to be disallowed if the licensed supplier or distributor is not in possession of the signed statements within 60 days after the date written notice requiring possession of them is given by the comptroller. Authorizes the comptroller, if the licensed supplier or distributor delivers the signed statements within the 60-day period, to verify the reason or basis for the signed statements before allowing the exempt sales. Prohibits an exempt sale from being granted on the basis of signed statements delivered to the comptroller after the 60-day period.

SECTION 23. Amends Sections 162.213(b) and (c), Tax Code, to make conforming changes.

SECTION 24. Amends Section 162.216, Tax Code, by adding Subsection (c), to require a license holder to keep any other record required by the comptroller, in addition to the records specifically required by this section (Records).

SECTION 25. Amends Section 162.217(a), Tax Code, to delete existing text to require the monthly return and supplements of each supplier and permissive supplier to contain for the period covered by the return the number of net gallons of diesel fuel received during the month, sorted by product code, seller, point-of-origin, destination state, carrier, and receipt date and the number of net gallons of diesel fuel sold in the bulk transfer/terminal system in this state to any person not holding a supplier's or permissive supplier's license. Makes conforming changes.

SECTION 26. Amends Section 162.219, Tax Code, to require the monthly return and supplements of each distributor to contain for the period covered by the return the number of net gallons of diesel fuel received by the distributor during the month, sorted by product code and seller, rather than sorted by product code, seller, point-of-origin, destination state, carrier, and receipt date, the number of net gallons of diesel fuel removed at a terminal rack by the distributor during the month, sorted by product code, seller, and terminal code, rather than sorted by product code, seller, terminal code, and carrier, and the number of net gallons of diesel fuel the distributor sold during the month in transactions exempt under Section 162.204, sorted by product code and by the entity receiving the fuel.

SECTION 27. Amends Section 162.227, Tax Code, by adding Subsection (j), as follows:

(j) Authorizes a license holder to take a credit on a return for the tax included in the retail purchase price of diesel fuel for the period in which the purchase occurred when made by certain purchasers, if the purchase was made by acceptance of a credit card not issued by the license holder, the credit card issuer did not collect the tax from the purchaser, and the license holder reimbursed the credit card issuer for the amount of tax included in the retail purchase price.

SECTION 28. Amends Section 162.230(d), Tax Code, to authorize a supplier, permissive supplier, distributor, importer, exporter, or blender 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.

SECTION 29. Amends Sections 162.402(a) and (d), Tax Code, as follows:

(a) Deletes existing text providing that a person forfeits to the state a civil penalty of not less than \$25 and not more than \$200 if the person is an importer who does not obtain an import verification number when required by this chapter. Makes a conforming change.

SECTION 30. Amends Section 162.403, Tax Code, as follows:

Sec. 162.403. CRIMINAL OFFENSES. Deletes existing text providing that a person who is an importer who does not obtain an import verification number when required by this chapter commits an offense. Redesignates existing Subsections (18) through (39) as Subsections (17) through (38).

SECTION 31. Amends Sections 162.404(c) and (d), Tax Code, to make conforming and nonsubstantive changes.

SECTION 32. Amends Sections 162.405(b) through (f), Tax Code, to make conforming changes.

SECTION 33. Amends the heading to Section 162.409, Tax Code, to read as follows:

Sec. 162.409. ISSUANCE OF BAD CHECK TO LICENSED DISTRIBUTOR, LICENSED SUPPLIER, OR PERMISSIVE SUPPLIER.

SECTION 34. Amends Sections 162.409(a) and (d), Tax Code, to make conforming changes.

SECTION 35. Amends Subchapter E, Chapter 162, Tax Code, by adding Section 162.410, as follows:

Sec. 162.410. ELECTION OF OFFENSES. Authorizes the state to elect an offense for which it will prosecute the person if a violation of a criminal offense provision of this chapter by a person constitutes another offense under the laws of this state.

SECTION 36. Amends Article 12.01, Code of Criminal Procedure, to make a conforming change.

SECTION 37. Amends Sections 20.002(b) and (d), Transportation Code, as follows:

(b) Provides that this section (School Fund Benefit Fee on Diesel Fuel Used by Certain Motor Vehicles) applies to certain individuals, including a person who is exempt from the state diesel fuel tax under Section 162.204 (Exemptions), rather than 153.203, Tax Code.

(d) Provides that the fee imposed by this section is equal to 25 percent of the diesel fuel tax rate imposed under Section 162.202 (Tax Rate), rather than 153.202(b), Tax Code.

SECTION 38. Amends Section 26.3574(o), Water Code, to provide that Chapters 101 (General Provisions) and 111-113 (Collection Procedures, Taxpayers' Suits, and Tax Liens), and Sections 162.005 (Cancellation or Refusal of License), 162.007 (Enforcement of License Cancellation, Suspension, or Refusal), and 162.111 (Sale of Seized Property), rather than 153.006, 153.007, and 153.116(b)-(j), Tax Code, apply to administration, payment, collection, and enforcement of fees under this section in the same manner that those chapters apply under Title 2 (State Taxation), Tax Code.

SECTION 39. Repealer: Sections 162.001(34) (defining "import verification number") and 162.016(c) (relating to the documentation of split loads of fuel deliveries) and (h) (relating to the acquisition of an import verification number before importing motor fuel by cargo tank), Tax Code.

S.B. 1886 80(R)

SECTION 40. Makes application of this Act prospective.

SECTION 41. Makes application of this Act prospective.

SECTION 42. Effective date: September 1, 2007.

**EFFECTIVE DATE**

September 1, 2007.