

BILL ANALYSIS

S.B. 1495
By: Williams
Ways & Means
Committee Report (Unamended)

BACKGROUND AND PURPOSE

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. 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 been increased.

As proposed, S.B. 1495 provides guidance on state motor fuel tax issues and provides mechanisms for addressing motor fuel tax fraud.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Section 101.009(b), Tax Code, to require that cigarette tax revenue allocated under Section 154.603(b) (relating to revenue remaining after deductions), rather than of this code, be allocated as provided by Section 154.603 (Disposition of Revenue), rather than of this code. Requires that motor fuel tax revenue be allocated and deposited as provided by Subchapter F (Allocation of Taxes), Chapter 162 (Motor Fuel Taxes), rather than of Chapter 153 (Motor Fuel Taxes [Repealed]) of this code.

SECTION 2. Amends Section 111.006(g), Tax Code, to authorize information made confidential by Subsection (a)(2) (relating to all information secured, derived, or obtained by the Office of the Comptroller of Public Accounts (comptroller) or the attorney general during the course of an examination of the taxpayer's business materials) that relates to a taxpayer's responsibilities under Chapter 162, rather than Chapter 153, to be examined by an official of another state or of the United States if the official has information that would assist the comptroller in administering Chapter 162, rather than Chapter 153.

SECTION 3. Amends Section 111.060(d), Tax Code, to provide that Subsection (c) does not apply to the taxes imposed by Chapters 152 (Taxes On Sale, Rental, and Use of Motor Vehicles) and 211 (Inheritance Taxes) or under an agreement made under Section 162.003 (Cooperative Agreements With Other States), rather than Section 153.017 (related to cooperative agreements with other states).

SECTION 4. Amends Section 111.064(d), Tax Code, to provide that this section does not apply to an amount paid to the comptroller under Title 6 (Unclaimed Property), Property Code, or under an agreement made under Section 162.003, rather than Section 153.017.

SECTION 5. Amends Section 111.107(a), Tax Code, to authorize a person, except as otherwise expressly provided, to request a refund or a credit or to authorize the comptroller to make a refund or issue a credit for overpayment of a tax imposed by this title at any time before the

expiration of the period during which the comptroller is authorized to assess a deficiency for the tax and not thereafter unless the refund or credit is requested under Chapter 162, except Sections 162.126(f) (related to requiring a refund be claimed at the time the account is written off as bad debt before expiration), 162.128(d) (relating to a credit supplier or a permissive supplier that determines taxes were erroneously reported and remitted or more taxes were paid than were due), 162.228(f) (relating to requiring a refund to be claimed at the time the account is written off as a bad debt), or 162.230(d) (relating to a supplier or permissive supplier determination of taxes erroneously reported and remitted). Deletes existing text authorizing a refund or credit under Chapter 153, except Sections 153.1195(e) ([Repealed] related to credit for bad debts), 153.121(d) ([Repealed] related to when a line tax refund may be filed), 153.2225(e) ([Repealed] related to credits for bad debts) or 153.224(d) ([Repealed] related to when diesel fuel tax refunds are authorized to be filed).

SECTION 6. Amends Section 151.308, Tax Code, as follows:

Sec. 151.308. ITEMS TAXED BY OTHER LAW. (a) Exempts the following from the taxes imposed by this chapter: motor fuels and special fuels as defined, taxed, or exempted by Chapter 162, rather than Chapter 153.

(b) Provides that natural gas is exempted under Subsection (a)(3) only to the extent that the gas is taxed as a motor fuel under Chapter 162, rather than Chapter 153.

SECTION 7. Amends Section 162.001, Tax Code, by amending Subdivisions (9), (19), (20), (29), (31), (42), (43), and (55) and adding Subdivision (10-a), to define "bulk storage" and 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) Makes no changes to this subsection.

(a-1) Creates this subsection from existing text.

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

(h) Provides that this section 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 that the shipping document 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. Deletes existing text prohibiting a person from importing motor fuel to a destination in this state or exporting motor fuel to a destination outside this state by any means unless the person possesses a shipping document for that fuel created by the terminal or bulk plant at which the fuel was received. Deletes existing text requiring the document to include the name and federal employer identification number, or the social security number if the employer identification number is not available, of the carrier transporting the motor fuel, and the name, federal employer identification number, license number, and physical address of the purchaser of the motor fuel. Makes nonsubstantive changes.

(b) Requires that the shipping documents be provided to the importer or exporter, rather than requiring the terminal or bulk plant to provide the shipping documents to the importer or exporter.

(d) Requires a seller, transporter, or receiver of motor fuel to retain a copy of the shipping document until at least the fourth anniversary of the date the fuel is received and

provide a copy of the document to the comptroller or any law enforcement officer not later than the 10th working day after a request for the copy is received. Deletes existing text that requires a terminal, a bulk plant, the carrier, the licensed distributor or supplier, and the person that received the motor fuel to retain and provide copies of certain information related to the motor fuel.

(e) Deletes existing text that requires an importer or exporter to keep in the person's possession the shipping document, issued by the terminal or bulk plant when transporting motor fuel imported into this state or for export from this state.

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

(a) Provides that the supplier or permissive supplier is liable for and is required to collect the tax imposed by this subchapter from the person who orders the withdrawal at the terminal rack.

(b) 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, rather than by a supplier to a person who does not hold a supplier's license. Provides that the supplier is liable for and required to collect the tax imposed by this subchapter from the person who orders the removal from, rather than the sale or transfer in, the bulk transfer terminal system.

(d) Provides that the interstate trucker is liable for and required to pay the tax.

(e) Provides that the blender is liable for and required to pay the tax.

SECTION 11. Amends Section 162.103(d), Tax Code, to require a person who sells gasoline in this state, other than by a 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 is liable to this state for the taxes imposed, rather than collected at the time, in the manner provided by this chapter.

SECTION 12. 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. Makes nonsubstantive changes.

(c) Makes a conforming change.

SECTION 13. Amends Section 162.115, Tax Code, by adding Subsection (n), to require a license holder to keep any other record required by the comptroller in addition to the records specifically required by this section.

SECTION 14. 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 15. Amends Sections 162.201(a)-(e), Tax Code, as follows:

(a) Provides that the supplier or permissive supplier is liable for and required to collect the tax imposed by this subchapter from the person who orders the withdrawal at the terminal rack, rather than shall collect the tax.

(b) Makes conforming changes.

(c) Provides that a tax is imposed on the removal of diesel fuel from the bulk transfer/terminal system in this state. Deletes existing text imposing a tax on the sale or transfer of diesel in the bulk transfer/terminal system in this state by a supplier to a person who does not hold a supplier's license. Provides that the supplier is liable for and required to collect the tax imposed by this subchapter from the person who orders the removal from, rather than the sale or transfer in, the bulk transfer/terminal system.

(d) Provides that the interstate trucker is liable for and required to pay the tax.

(e) Provides that the blender is liable for and required to pay the tax.

SECTION 16. Amends Section 162.203(d), Tax Code, to require a person who sells diesel fuel in this state, other than by bulk transfer, on which tax has not been paid for any purpose other than a purpose exempt under Section 162.204 at the time of sale to 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 collected at the time, in the manner provided by this chapter.

SECTION 17. Amends Section 162.205(b), Tax Code, to provide that this subsection does not affect the right of the purchaser to purchase not more than the number of gallons of dyed diesel fuel prescribed by Section 162.206(c) (relating to prohibiting tax-free purchase of dyed diesel fuel under certain conditions) each month for the purchaser's own use using a signed statement. Deletes existing text that provides that this subsection does not affect the right of the purchaser to purchase not more than 10,000 gallons of dyed diesel fuel each month for the purchaser's own use using a signed statement under Section 162.206 (Statement for Purchase of Dyed Diesel).

SECTION 18. Amends Section 162.206, Tax Code, by amending Subsections (c), (d), and (j) and adding Subsections (c-1), (g-1), and (k), as follows:

(c) Prohibits a person from making a tax-free purchase and a licensed supplier or distributor from making a tax-free sale to a purchaser of any dyed diesel fuel under this section using a signed statement for the first sale or purchase and for any subsequent sale or purchase in a calendar month for more than a certain number of gallons of dyed diesel fuel. Deletes existing text prohibiting a person from making a tax-free purchase and a licensed supplier or distributor from making a tax-free sale to a purchaser of any dyed diesel fuel under this section using a signed statement for the purchase or the sale of more than 7,400 gallons of dyed diesel fuel in a single delivery or in a calendar month in which the person has previously purchased from all sources or in which the licensed supplier has previously sold to that purchaser more than a certain amount of diesel fuel. Makes conforming and nonsubstantive changes.

(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.

(d) Deletes existing text authorizing the purchaser paying the tax on dyed diesel fuel in excess of the limitations prescribed by Subsection (c) to claim a refund of the tax paid on any dyed diesel fuel used for nonhighway purposes under Section 162.227 (Refund or Credit for Certain Taxes Paid).

(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.

(j) Deletes existing text authorizing a person to claim a refund of the tax paid on any dyed diesel fuel used for nonhighway purposes under Section 162.227.

(k) Provides that properly 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 that exempt sales claimed by the licensed supplier or distributor that require delivery of the signed statements 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 to the licensed supplier or distributor by the comptroller. Authorizes the comptroller, if the licensed supplier or distributor delivers the signed statements to the comptroller 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 19. Amends Sections 162.213(b) and (c), Tax Code, as follows:

(b) Provides that a licensed supplier or permissive supplier who sells diesel fuel tax-free to a supplier, permissive supplier, or aviation fuel dealer whose license has been canceled or revoked under this chapter, or who sells dyed diesel fuel to a distributor or dyed diesel fuel bonded user whose license has been canceled or revoked under this chapter, is liable for any tax due on diesel fuel sold after receiving notice of the cancellation or revocation. Makes a nonsubstantive change.

(c) Makes a conforming change.

SECTION 20. Amends Section 162.216, Tax Code, by adding Subsection (o), to require a license holder, in addition to the records specifically required by this section, to keep any other record required by the comptroller.

SECTION 21. 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 to 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 22. Amends Sections 162.402(a) and (d), Tax Code, as follows:

(a) Provides that a person forfeits to the state a civil penalty of not less than \$25 and not more than \$200 if the person furnishes to a licensed supplier or distributor a signed statement for purchasing diesel fuel tax-free and then uses the tax-free diesel fuel to operate a diesel-powered motor vehicle on a public highway.

(d) Provides that a person, rather than a person operating a bulk plant or terminal, who issues a shipping document that does not conform with the requirements of Section 162.016(a) is liable to this state for a civil penalty of \$2,000 or five times the amount of the unpaid tax, whichever is greater, for each occurrence.

SECTION 23. Amends Section 162.403, Tax Code, as follows:

Sec. 162.403. **CRIMINAL OFFENSES.** Provides that except as provided by Section 162.404, a person commits an offense if the person furnishes to a licensed supplier or distributor a signed statement for purchasing diesel fuel tax-free and then uses the tax-free diesel fuel to operate a diesel-powered motor vehicle on a public highway; or makes a sale of a dyed diesel fuel tax-free into a storage facility of a person who is not licensed as a distributor, as an aviation fuel dealer, or as a dyed diesel fuel bonded user or does not furnish to the licensed supplier or distributor a signed statement prescribed in Section 162.206.

SECTION 24. 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 25. Amends Sections 162.409(a) and (d), Tax Code, as follows:

(a) Provides that a person commits an offense if the payee on the check or order is a licensed distributor, licensed supplier, or permissive supplier and the payment is for an obligation or debt that includes a tax under this chapter to be collected by the licensed distributor, licensed supplier, or permissive supplier. Makes nonsubstantive changes.

(d) Makes conforming changes.

SECTION 26. Amends Subchapter E, Chapter 162, Tax Code, by adding Section 162.410, as follows:

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

SECTION 27. Amends Sections 20.002(b) and (d), Transportation Code, as follows:

(b) Provides that this section applies to a person, other than a political subdivision, who is exempt from the state diesel fuel tax under Section 162.204, rather than Section 153.203 ([Repealed] relating to providing exceptions to the diesel fuel tax), 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 Section 153.202(b) ([Repealed] related to diesel fuel tax rates), Tax Code.

SECTION 28. 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(b)-(k) (relating to bond and other security for taxes), rather than Sections 153.006 ([Repealed] related to cancellation or refusal of permit), 153.007 ([Repealed] related to enforcement of permit cancellation, suspension or refusal), and 153.116(b)-(j) ([Repealed] related to bonds and other security for taxes), Tax Code, apply to the administration, payment, collection, and enforcement of fees under this section in the same manner that those chapters apply to the administration, payment, collection, and enforcement of Taxes under Title 2 (State Taxation), Tax Code.

SECTION 29. (a) Provides that the change in law made by this Act applies only to an offense committed on or after the effective date of this Act. Provides that for purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

(b) Provides an offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 30. Provides that the change in law made by this Act does not affect tax liability accruing before the effective date of this Act. Provides that liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 31. Effective date: September 1, 2009.

EFFECTIVE DATE

September 1, 2009

