

BILL ANALYSIS

S.B. 1782
By: Hinojosa
Ways & Means
Committee Report (Unamended)

BACKGROUND AND PURPOSE

H.B. 2458 (78th Legislature, Regular Session, 2003) moved the point of collection for motor fuels taxes from the distributor level to the supplier. The net effect was that motor fuels taxes are assessed when a distributor removes fuel from a fuel terminal. This change is commonly referred to as "back to the rack," where the point of collection moved to the rack where fuels are dispensed. Prior to this change, fuels taxes were assessed when a distributor made a taxable sale to an end user.

H.B. 2458 created a new chapter in the Tax Code, Chapter 162 (Motor Fuels Taxes), providing for the remittance and collection of motor fuels taxes. Many of the provisions in Chapter 162 were taken from Chapter 153 (Motor Fuel Taxes [*Repealed*]), where motor fuels tax law was previously found.

In the process of moving statutory provisions from Chapter 153 to Chapter 162, H.B. 2458 inadvertently included two different statutory provisions for addressing tax credits taken by a motor fuels supplier following a distributor's default of motor fuels taxes. Specifically, identical provisions currently found in Sections 162.116(d) (relating to ratable application of payments or credits in reduction of a customer's account between motor fuels and other goods sold to the customer) and 162.217(d) (relating to ratable application of payments or credits in reduction of a customer's account between motor fuels and other goods sold to the customer), Tax Code, include a requirement that the tax resulting from the sale of motor fuels and other goods be apportioned. Because motor fuels are the only goods exchanged, these provisions are no longer applicable to the relationship between distributors and suppliers under Chapter 162.

S.B. 1782 amends current law relating to the deferral by a licensed distributor or importer of payment of gasoline and diesel fuel taxes and credits authorized for certain of those deferrals.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Section 162.113, Tax Code, by amending Subsection (d) and adding Subsection (d-1), as follows:

(d) Requires the supplier or permissive supplier, after requesting a credit under this section, to terminate the ability of the licensed distributor or licensed importer to defer the payment of gasoline tax, rather than provides that the supplier or permissive supplier has the right, after notifying the comptroller of public accounts (comptroller) of the licensed distributor's or licensed importer's failure to remit taxes under this section, to terminate the ability of the licensed distributor or licensed importer to defer the payment of gasoline tax. Prohibits the supplier or permissive supplier from reinstating, rather than requires the supplier or permissive supplier to reinstate without delay, the right of the licensed distributor or licensed importer to defer the payment of gasoline tax until the first anniversary of the date the supplier or permissive supplier requested the credit, subject to Subsection (d-1).

(d-1) Authorizes a supplier or permissive supplier to reinstate the right of a licensed distributor or licensed importer to defer the payment of gasoline tax before the date prescribed by Subsection (d) if the comptroller determines that:

(1) the supplier or permissive supplier erroneously requested the credit that resulted in the termination of the licensed distributor's or licensed importer's right to defer payment; or

(2) the licensed distributor or licensed importer failed to pay gasoline taxes due because of circumstances that may have been outside the distributor's or importer's control, rather than after the comptroller provides to the supplier or permissive supplier notice that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of the gasoline tax imposed under this subchapter.

SECTION 2. Amends Section 162.116(c), Tax Code, to provide that the supplier or permissive supplier is eligible to take the credit if the comptroller is notified of the default within 15 days, rather than 60 days, after the default occurs.

SECTION 3. Amends Section 162.214, Tax Code, by amending Subsection (d) and adding Subsection (d-1), as follows:

(d) Requires the supplier or permissive supplier after requesting a credit under this section, to terminate the ability of the licensed distributor or licensed importer to defer the payment of diesel fuel tax, rather than provides the supplier or permissive supplier has the right, after notifying the comptroller that of the licensed distributor's or licensed importer's failure to remit taxes under this section, to terminate the ability of the licensed distributor or licensed importer to defer the payment of diesel fuel tax. Prohibits the supplier or permissive supplier from reinstating, rather than requires the supplier or permissive supplier to reinstate without delay, the right of the licensed distributor or licensed importer to defer the payment of diesel fuel tax until the first anniversary of the date the supplier or permissive supplier requested the credit, subject to Subsection (d-1).

(d-1) Authorizes a supplier or permissive supplier to reinstate the right of a licensed distributor or licensed importer to defer the payment of diesel fuel tax before the date prescribed by Subsection (d) if the comptroller determines that:

(1) the supplier or permissive supplier erroneously requested the credit that resulted in the termination of the licensed distributor's or licensed importer's right to defer payment; or

(2) the licensed distributor or licensed importer failed to pay diesel fuel taxes due because of circumstances that may have been outside the distributor's or importer's control, rather than after the comptroller provides to the supplier or permissive supplier notice that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of the diesel fuel tax imposed under this subchapter.

SECTION 4. Amends Section 162.217(c), Tax Code, to provide that the supplier or permissive supplier is eligible to take the credit if the comptroller is notified of the default within 15 days, rather than 60 days, after the default occurs.

SECTION 5. Repealer: Sections 162.116(d) (relating to ratable application of payments or credits in reduction of a customer's account between motor fuels and other goods sold to the customer) and 162.217(d) (relating to the requirement that all payments or credits in reduction of a customer's account be applied in a certain manner), Tax Code.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: upon passage or September 1, 2009.

EFFECTIVE DATE

Takes immediate effect if it receive two-thirds vote from both houses or September 1, 2009.