

By: Aycock

H.B. No. 64

A BILL TO BE ENTITLED

AN ACT

relating to the exemption of counties from the diesel fuel tax.

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

SECTION 1. Section 162.204(a), Tax Code, is amended to read as follows:

(a) The tax imposed by this subchapter does not apply to:

(1) diesel fuel sold to the United States for its exclusive use, provided that the exemption does not apply to diesel fuel sold or delivered to a person operating under a contract with the United States;

(2) diesel fuel sold to a public school district in this state for the district's exclusive use;

(3) diesel fuel sold to a commercial transportation company or a metropolitan rapid transit authority operating under Chapter 451, Transportation Code, that provides public school transportation services to a school district under Section 34.008, Education Code, and that uses the diesel fuel only to provide those services;

(4) diesel fuel exported by either a licensed supplier or a licensed exporter from this state to any other state, provided that:

(A) for diesel fuel in a situation described by Subsection (d), the bill of lading indicates the destination state and the supplier collects the destination state tax; or

1 (B) for diesel fuel in a situation described by
2 Subsection (e), the bill of lading indicates the destination state,
3 the diesel fuel is subsequently exported, and the exporter is
4 licensed in the destination state to pay that state's tax and has an
5 exporter's license issued under this subchapter;

6 (5) diesel fuel moved by truck or railcar between
7 licensed suppliers or licensed permissive suppliers and in which
8 the diesel fuel removed from the first terminal comes to rest in the
9 second terminal, provided that the removal from the second terminal
10 rack is subject to the tax imposed by this subchapter;

11 (6) diesel fuel delivered or sold into a storage
12 facility of a licensed aviation fuel dealer from which the diesel
13 fuel will be delivered solely into the fuel supply tanks of aircraft
14 or aircraft servicing equipment, or sold from one licensed aviation
15 fuel dealer to another licensed aviation fuel dealer who will
16 deliver the diesel fuel exclusively into the fuel supply tanks of
17 aircraft or aircraft servicing equipment;

18 (7) diesel fuel exported to a foreign country if the
19 bill of lading indicates the foreign destination and the fuel is
20 actually exported to the foreign country;

21 (8) dyed diesel fuel sold or delivered by a supplier to
22 another supplier and dyed diesel fuel sold or delivered by a
23 supplier or distributor into the bulk storage facility of a dyed
24 diesel fuel bonded user or to a purchaser who provides a signed
25 statement as provided by Section 162.206;

26 (9) the volume of water, fuel ethanol, biodiesel, or
27 mixtures thereof that are blended together with taxable diesel fuel

1 when the finished product sold or used is clearly identified on the
2 retail pump, storage tank, and sales invoice as a combination of
3 diesel fuel and water, fuel ethanol, biodiesel, or mixtures
4 thereof;

5 (10) dyed diesel fuel sold by a supplier or permissive
6 supplier to a distributor, or by a distributor to another
7 distributor;

8 (11) dyed diesel fuel delivered by a license holder
9 into the fuel supply tanks of railway engines, motorboats, or
10 refrigeration units or other stationary equipment powered by a
11 separate motor from a separate fuel supply tank;

12 (12) dyed kerosene when delivered by a supplier,
13 distributor, or importer into a storage facility at a retail
14 business from which all deliveries are exclusively for heating,
15 cooking, lighting, or similar nonhighway use; [~~or~~]

16 (13) diesel fuel used by a person, other than a
17 political subdivision, who owns, controls, operates, or manages a
18 commercial motor vehicle as defined by Section 548.001,
19 Transportation Code, if the fuel:

20 (A) is delivered exclusively into the fuel supply
21 tank of the commercial motor vehicle; and

22 (B) is used exclusively to transport passengers
23 for compensation or hire between points in this state on a fixed
24 route or schedule; or

25 (14) diesel fuel sold to a county in this state for the
26 county's exclusive use.

27 SECTION 2. Sections 162.227(a) and (c), Tax Code, are

1 amended to read as follows:

2 (a) A license holder may take a credit on a return for the
3 period in which the sale occurred if the license holder paid tax on
4 the purchase of diesel fuel and subsequently resells the diesel
5 fuel without collecting the tax to:

6 (1) the United States government for its exclusive
7 use, provided that a credit is not allowed for gasoline used by a
8 person operating under a contract with the United States;

9 (2) a public school district in this state for the
10 district's exclusive use;

11 (3) an exporter licensed under this subchapter if the
12 seller is a licensed supplier or distributor and the exporter
13 subsequently exports the diesel fuel to another state;

14 (4) a licensed aviation fuel dealer if the seller is a
15 licensed distributor; ~~[or]~~

16 (5) a commercial transportation company or a
17 metropolitan rapid transit authority operating under Chapter 451,
18 Transportation Code, that provides public school transportation
19 services to a school district under Section 34.008, Education Code,
20 and that uses the diesel fuel exclusively to provide those
21 services; or

22 (6) a county in this state for the county's exclusive
23 use.

24 (c) A license holder may take a credit on a return for the
25 period in which the purchase occurred, and a person who does not
26 hold a license under this subchapter, other than a license as an
27 aviation fuel dealer, may file a refund claim with the comptroller

1 if the license holder or person paid tax on diesel fuel and the
2 license holder or person:

3 (1) is the United States government and the diesel
4 fuel is for its exclusive use, provided that a credit or refund is
5 not allowed for diesel fuel used by a license holder or person
6 operating under a contract with the United States;

7 (2) is a public school district in this state and the
8 diesel fuel is for the district's exclusive use;

9 (3) is a commercial transportation company that
10 provides public school transportation services to a school district
11 under Section 34.008, Education Code, and the diesel fuel is used
12 exclusively to provide those services; ~~or~~

13 (4) is a licensed aviation fuel dealer who delivers
14 the diesel fuel into the fuel supply tanks of aircraft or aircraft
15 servicing equipment; or

16 (5) is a county in this state and the diesel fuel is
17 for the county's exclusive use.

18 SECTION 3. The change in law made by this Act does not
19 affect tax liability accruing before the effective date of this
20 Act. That liability continues in effect as if this Act had not been
21 enacted, and the former law is continued in effect for the
22 collection of taxes due and for civil and criminal enforcement of
23 the liability for those taxes.

24 SECTION 4. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2009.