

By: Zaffirini

S.B. No. 2257

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the exemption of certain counties from gasoline and
3 diesel fuel taxes.

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

5 SECTION 1. Section 162.104(a), Tax Code, is amended to read
6 as follows:

7 Sec. 162.104. EXEMPTIONS. (a) The tax imposed by this
8 subchapter does not apply to gasoline:

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

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

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

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

23 (A) for gasoline in a situation described by
24 Subsection (d), the bill of lading indicates the destination state

1 and the supplier collects the destination state tax; or

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

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

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

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

22 (8) sold to a county in this state that has a total
23 area of more than 3,000 square miles for the county's exclusive use.

24 SECTION 2. Sections 162.125(a) and (c), Tax Code, are
25 amended to read as follows:

26 (a) A license holder may take a credit on a return for the
27 period in which the sale occurred if the license holder paid tax on

1 the purchase of gasoline and subsequently resells the gasoline
2 without collecting the tax to:

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

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

8 (3) an exporter licensed under this subchapter if the
9 seller is a licensed supplier or distributor and the exporter
10 subsequently exports the gasoline to another state;

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

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

19 (6) a county in this state that has a total area of
20 more than 3,000 square miles for the county's exclusive use.

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

27 (1) is the United States government and the gasoline

1 is for its exclusive use, provided that a credit or refund is not
2 allowed for gasoline used by a license holder or person operating
3 under a contract with the United States;

4 (2) is a public school district in this state and the
5 gasoline is for the district's exclusive use;

6 (3) is a commercial transportation company that
7 provides public school transportation services to a school district
8 under Section 34.008, Education Code, and the gasoline is used
9 exclusively to provide those services;

10 (4) uses the gasoline in off-highway equipment, in
11 stationary engines, or for other nonhighway purposes and not in a
12 motor vehicle operated or intended to be operated on the public
13 highways;

14 (5) uses the gasoline in a motor vehicle that is
15 operated exclusively off the public highways, except for incidental
16 travel on the public highways as determined by the comptroller,
17 provided that a credit or refund may not be allowed for the portion
18 used in the incidental highway travel; ~~[or]~~

19 (6) is a licensed aviation fuel dealer who delivers
20 the gasoline into the fuel supply tanks of aircraft or aircraft
21 servicing equipment; or

22 (7) is a county in this state that has a total area of
23 more than 3,000 square miles and the gasoline is for the county's
24 exclusive use.

25 SECTION 3. Section 162.204(a), Tax Code, is amended to read
26 as follows:

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

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

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

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

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

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

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

24 (5) diesel fuel moved by truck or railcar between
25 licensed suppliers or licensed permissive suppliers and in which
26 the diesel fuel removed from the first terminal comes to rest in the
27 second terminal, provided that the removal from the second terminal

1 rack is subject to the tax imposed by this subchapter;

2 (6) diesel fuel delivered or sold into a storage
3 facility of a licensed aviation fuel dealer from which the diesel
4 fuel will be delivered solely into the fuel supply tanks of aircraft
5 or aircraft servicing equipment, or sold from one licensed aviation
6 fuel dealer to another licensed aviation fuel dealer who will
7 deliver the diesel fuel exclusively into the fuel supply tanks of
8 aircraft or aircraft servicing equipment;

9 (7) diesel fuel exported to a foreign country if the
10 bill of lading indicates the foreign destination and the fuel is
11 actually exported to the foreign country;

12 (8) dyed diesel fuel sold or delivered by a supplier to
13 another supplier and dyed diesel fuel sold or delivered by a
14 supplier or distributor into the bulk storage facility of a dyed
15 diesel fuel bonded user or to a purchaser who provides a signed
16 statement as provided by Section 162.206;

17 (9) the volume of water, fuel ethanol, biodiesel, or
18 mixtures thereof that are blended together with taxable diesel fuel
19 when the finished product sold or used is clearly identified on the
20 retail pump, storage tank, and sales invoice as a combination of
21 diesel fuel and water, fuel ethanol, biodiesel, or mixtures
22 thereof;

23 (10) dyed diesel fuel sold by a supplier or permissive
24 supplier to a distributor, or by a distributor to another
25 distributor;

26 (11) dyed diesel fuel delivered by a license holder
27 into the fuel supply tanks of railway engines, motorboats, or

1 refrigeration units or other stationary equipment powered by a
2 separate motor from a separate fuel supply tank;

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

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

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

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

16 (14) diesel fuel sold to a county in this state that
17 has a total area of more than 3,000 square miles for the county's
18 exclusive use.

19 SECTION 4. Sections 162.227(a) and (c), Tax Code, are
20 amended to read as follows:

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

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

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

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

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

8 (5) a commercial transportation company or a
9 metropolitan rapid transit authority operating under Chapter 451,
10 Transportation Code, that provides public school transportation
11 services to a school district under Section 34.008, Education Code,
12 and that uses the diesel fuel exclusively to provide those
13 services; or

14 (6) a county in this state that has a total area of
15 more than 3,000 square miles for the county's exclusive use.

16 (c) A license holder may take a credit on a return for the
17 period in which the purchase occurred, and a person who does not
18 hold a license under this subchapter, other than a license as an
19 aviation fuel dealer, may file a refund claim with the comptroller
20 if the license holder or person paid tax on diesel fuel and the
21 license holder or person:

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

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

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

5 (4) is a licensed aviation fuel dealer who delivers
6 the diesel fuel into the fuel supply tanks of aircraft or aircraft
7 servicing equipment; or

8 (5) is a county in this state that has a total area of
9 more than 3,000 square miles and the diesel fuel is for the county's
10 exclusive use.

11 SECTION 5. The change in law made by this Act does not
12 affect tax liability accruing before the effective date of this
13 Act. That liability continues in effect as if this Act had not been
14 enacted, and the former law is continued in effect for the
15 collection of taxes due and for civil and criminal enforcement of
16 the liability for those taxes.

17 SECTION 6. This Act takes effect immediately if it receives
18 a vote of two-thirds of all the members elected to each house, as
19 provided by Section 39, Article III, Texas Constitution. If this
20 Act does not receive the vote necessary for immediate effect, this
21 Act takes effect September 1, 2009.