

By: Martinez

H.B. No. 2074

A BILL TO BE ENTITLED

AN ACT

relating to the exemption from the motor fuel tax for railway engines and the allocation of revenue; providing a penalty.

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

SECTION 1. Section 162.204, Tax Code, is amended by amending Subsection (a) and adding Subsection (g) 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

1 Subsection (d), the bill of lading indicates the destination state  
2 and the supplier collects the destination state tax; or

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

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

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

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

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

1           (9) the volume of water, fuel ethanol, renewable  
2 diesel, biodiesel, or mixtures thereof that are blended together  
3 with taxable diesel fuel when the finished product sold or used is  
4 clearly identified on the retail pump, storage tank, and sales  
5 invoice as a combination of diesel fuel and water, fuel ethanol,  
6 renewable diesel, biodiesel, or mixtures thereof;

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

10           (11) dyed diesel fuel delivered by a license holder  
11 into the fuel supply tanks of [~~railway engines,~~] motorboats[~~7~~] or  
12 refrigeration units or other stationary equipment powered by a  
13 separate motor from a separate fuel supply tank;

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

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

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

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

27           (14) diesel fuel sold to a volunteer fire department

1 in this state for the department's exclusive use.

2 (g) Notwithstanding any other provision of this chapter, a  
3 person may not make a tax-free purchase of dyed diesel fuel for  
4 delivery into the fuel supply tank of a railway engine. Sections  
5 162.205(b), 162.206, 162.231, 162.233, and 162.403(32) do not apply  
6 to a purchase described by this subsection.

7 SECTION 2. Section 162.227, Tax Code, is amended by adding  
8 Subsection (i) to read as follows:

9 (i) A person who paid tax on diesel fuel delivered into the  
10 fuel supply tank of a railway engine may claim a credit or seek a  
11 refund with the comptroller if the person uses the diesel fuel to  
12 operate the railway engine in another state.

13 SECTION 3. Section 162.504, Tax Code, is amended to read as  
14 follows:

15 Sec. 162.504. ALLOCATION OF DIESEL FUEL TAX. (a) On or  
16 before the fifth workday after the end of each month, the  
17 comptroller, after making deductions for refund purposes, for the  
18 administration and enforcement of this chapter, and for the amounts  
19 allocated under Subsection (b) and Section 162.5025, shall allocate  
20 the remainder of the taxes collected under Subchapter C as follows:

21 (1) one-fourth of the taxes shall be deposited to the  
22 credit of the available school fund; and

23 (2) three-fourths of the taxes shall be deposited to  
24 the credit of the state highway fund.

25 (b) On or before the fifth workday after the end of each  
26 month, the comptroller, after making deductions for refund  
27 purposes, shall allocate taxes collected under Subchapter C on dyed

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1 or undyed diesel fuel delivered into the fuel tanks of railway  
2 engines to the credit of the Texas rail relocation and improvement  
3 fund.

4           SECTION 4.   This Act takes effect September 1, 2011.