

## **BILL ANALYSIS**

C.S.H.B. 311  
By: Guillen  
Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

According to interested parties, transportation observers and experts recognize Texas as having one of the best rural and small urban transit systems in the nation in terms of quality, efficiency, and service delivery area. These systems provide invaluable assistance to seniors who cannot transport themselves otherwise. The parties note that current law requires certain transit districts to pay state motor fuel taxes, which means they are paying the tax with the same tax funds appropriated to them by the legislature. C.S.H.B. 311 seeks to address this issue and align the treatment of transit districts in regard to the payment of motor fuel taxes with that accorded to various metropolitan transportation authorities by exempting certain transit districts from motor fuel taxes.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 7 of this bill.

### **ANALYSIS**

C.S.H.B. 311 amends the Tax Code to exempt gasoline and diesel fuel sold to a transit district that uses the fuel exclusively to provide public transportation from the gasoline tax and the diesel fuel tax, respectively. The bill authorizes a holder of a license issued by the comptroller of public accounts relating to the sale of gasoline or diesel fuel to take a credit on a return for the period in which such a sale occurred if the license holder paid tax on the purchase of gasoline or diesel fuel and subsequently resells the fuel without collecting the tax to a transit district that uses the fuel exclusively to provide public transportation. The bill specifies that for a transit company that paid tax on the purchase of gasoline or diesel fuel to be authorized to seek a refund with the comptroller for fuel used in transit vehicles the company cannot be otherwise entitled to a refund of the gasoline or diesel fuel tax.

C.S.H.B. 311 entitles a transit district to a refund of taxes paid for gasoline or diesel fuel used to provide public transportation and authorizes the district to file a refund claim with the comptroller for the amount of those taxes. The bill requires the refund claim to contain information regarding vehicle mileage, hours of service provided, and fuel consumed and requires a district that requests the refund to maintain all supporting documentation relating to the refund until the sixth anniversary of the date of the request.

C.S.H.B. 311 exempts from the liquefied gas tax the sale of liquefied petroleum gas to a transit district that uses the gas exclusively to provide public transportation and the use of liquefied petroleum gas by that district for that purpose. The bill establishes that a motor vehicle that uses liquefied petroleum gas, that is owned by the transit district, and that is used exclusively to provide public transportation is not required to have a liquefied gas tax decal or a special use liquefied gas tax decal. The bill requires a transit district that is not required to have such decals to maintain the following supporting documentation relating to the services provided under the contract until the sixth anniversary of the date of the services provided: vehicle mileage, hours of

service provided, and fuel consumed. The bill authorizes the comptroller to adopt rules to implement these supporting documentation requirements for such a district.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 311 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### **INTRODUCED**

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

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

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

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

(3) 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 gasoline only to provide those services;

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

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

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

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

#### **HOUSE COMMITTEE SUBSTITUTE**

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

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

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

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

(3) 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 gasoline only to provide those services;

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

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

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

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

- (6) delivered or sold into a storage facility of a licensed aviation fuel dealer from which gasoline will be delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment, or sold from one licensed aviation fuel dealer to another licensed aviation fuel dealer who will deliver the aviation fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment;
- (7) exported to a foreign country if the bill of lading indicates the foreign destination and the fuel is actually exported to the foreign country; [Ø]
- (8) sold to a volunteer fire department in this state for the department's exclusive use;
- or
- (9) sold to a rural transit district created under Chapter 458, Transportation Code, that uses the gasoline exclusively to provide public transportation.

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

- (a) A license holder may take a credit on a return for the period in which the sale occurred if the license holder paid tax on the purchase of gasoline and subsequently resells the gasoline without collecting the tax to:
  - (1) the United States government for its exclusive use, provided that a credit is not allowed for gasoline used by a person operating under contract with the United States;
  - (2) a public school district in this state for the district's exclusive use;
  - (3) an exporter licensed under this subchapter if the seller is a licensed supplier or distributor and the exporter subsequently exports the gasoline to another state;
  - (4) a licensed aviation fuel dealer if the seller is a licensed distributor; [Ø]
  - (5) 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 gasoline exclusively to provide those services; or
  - (6) a rural transit district created under Chapter 458, Transportation Code, that uses the gasoline exclusively to provide public transportation.

- (6) delivered or sold into a storage facility of a licensed aviation fuel dealer from which gasoline will be delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment, or sold from one licensed aviation fuel dealer to another licensed aviation fuel dealer who will deliver the aviation fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment;
- (7) exported to a foreign country if the bill of lading indicates the foreign destination and the fuel is actually exported to the foreign country; [Ø]
- (8) sold to a volunteer fire department in this state for the department's exclusive use;
- or
- (9) sold to a transit district created under Chapter 458, Transportation Code, that uses the gasoline exclusively to provide public transportation.

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

- (a) A license holder may take a credit on a return for the period in which the sale occurred if the license holder paid tax on the purchase of gasoline and subsequently resells the gasoline without collecting the tax to:
  - (1) the United States government for its exclusive use, provided that a credit is not allowed for gasoline used by a person operating under contract with the United States;
  - (2) a public school district in this state for the district's exclusive use;
  - (3) an exporter licensed under this subchapter if the seller is a licensed supplier or distributor and the exporter subsequently exports the gasoline to another state;
  - (4) a licensed aviation fuel dealer if the seller is a licensed distributor; [Ø]
  - (5) 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 gasoline exclusively to provide those services; or
  - (6) a transit district created under Chapter 458, Transportation Code, that uses the gasoline exclusively to provide public transportation.

(g) A transit company that paid tax on the purchase of gasoline, and is not otherwise entitled to a refund of that tax under this subchapter, may seek a refund with the comptroller in an amount equal to one cent per gallon for gasoline used in transit vehicles.

SECTION 3. Subchapter B, Chapter 162, Tax Code, is amended by adding Section 162.1276 to read as follows:

Sec. 162.1276. REFUND FOR CERTAIN RURAL TRANSIT DISTRICTS. (a) A rural transit district created under Chapter 458, Transportation Code, is entitled to a refund of taxes paid under this subchapter for gasoline used to provide public transportation and may file a refund claim with the comptroller for the amount of those taxes.

(b) The refund claim under Subsection (a) must contain information regarding:

(1) vehicle mileage;

(2) hours of service provided; and

(3) fuel consumed.

(c) A rural transit district that requests a refund under this section shall maintain all supporting documentation relating to the refund until the sixth anniversary of the date of the request.

SECTION 4. 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

(g) A transit company that paid tax on the purchase of gasoline, and is not otherwise entitled to a refund of that tax under this subchapter, may seek a refund with the comptroller in an amount equal to one cent per gallon for gasoline used in transit vehicles.

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(b) The refund claim under Subsection (a) must contain information regarding:

(1) vehicle mileage;

(2) hours of service provided; and

(3) fuel consumed.

(c) A transit district that requests a refund under this section shall maintain all supporting documentation relating to the refund until the sixth anniversary of the date of the request.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

tank;

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

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

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

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

(14) diesel fuel sold to a volunteer fire department in this state for the department's exclusive use; or

(15) diesel fuel sold to a rural transit district created under Chapter 458, Transportation Code, that uses the diesel fuel exclusively to provide public transportation.

SECTION 5. Sections 162.227(a) and (f), Tax Code, are amended to read as follows:

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

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

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

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

(4) a licensed aviation fuel dealer if the seller is a licensed distributor; [øø]

(5) 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 exclusively to

tank;

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

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

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

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

(14) diesel fuel sold to a volunteer fire department in this state for the department's exclusive use; or

(15) diesel fuel sold to a transit district created under Chapter 458, Transportation Code, that uses the diesel fuel exclusively to provide public transportation.

SECTION 5. Sections 162.227(a) and (f), Tax Code, are amended to read as follows:

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

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

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

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

(4) a licensed aviation fuel dealer if the seller is a licensed distributor; [øø]

(5) 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 exclusively to

provide those services; or

(6) a rural transit district created under Chapter 458, Transportation Code, that uses the diesel fuel exclusively to provide public transportation.

(f) A transit company who paid tax on the purchase of diesel fuel, and is not otherwise entitled to a refund of that tax under this subchapter, may seek a refund with the comptroller of one-half of one cent per gallon for diesel fuel used in transit vehicles.

SECTION 6. Subchapter C, Chapter 162, Tax Code, is amended by adding Section 162.2276 to read as follows:

Sec. 162.2276. REFUND FOR CERTAIN RURAL TRANSIT DISTRICTS. (a) A rural transit district created under Chapter 458, Transportation Code, is entitled to a refund of taxes paid under this subchapter for diesel fuel used to provide public transportation and may file a refund claim with the comptroller for the amount of those taxes.

(b) The refund claim under Subsection (a) must contain information regarding:

(1) vehicle mileage;

(2) hours of service provided; and

(3) fuel consumed.

(c) A rural transit district that requests a refund under this section shall maintain all supporting documentation relating to the refund until the sixth anniversary of the date of the request.

SECTION 7. Subchapter D, Chapter 162, Tax Code, is amended by adding Sections 162.3023 and 162.3024 to read as follows:

Sec. 162.3023. RURAL TRANSIT DISTRICT EXEMPTION. (a) Subject to Section 162.3024, the tax imposed by this subchapter does not apply to the sale of liquefied petroleum gas to a rural transit district created under Chapter 458, Transportation Code, that uses the gas exclusively to provide public transportation, or to the use of liquefied petroleum gas by that district for that purpose.

(b) A motor vehicle that uses liquefied petroleum gas, that is owned by a rural transit district created under Chapter 458, Transportation Code, and that is used exclusively to provide public transportation is not required to have a liquefied gas tax decal or a special use liquefied gas tax

provide those services; or

(6) a transit district created under Chapter 458, Transportation Code, that uses the diesel fuel exclusively to provide public transportation.

(f) A transit company who paid tax on the purchase of diesel fuel, and is not otherwise entitled to a refund of that tax under this subchapter, may seek a refund with the comptroller of one-half of one cent per gallon for diesel fuel used in transit vehicles.

SECTION 6. Subchapter C, Chapter 162, Tax Code, is amended by adding Section 162.2276 to read as follows:

Sec. 162.2276. REFUND FOR CERTAIN TRANSIT DISTRICTS. (a) A transit district created under Chapter 458, Transportation Code, is entitled to a refund of taxes paid under this subchapter for diesel fuel used to provide public transportation and may file a refund claim with the comptroller for the amount of those taxes.

(b) The refund claim under Subsection (a) must contain information regarding:

(1) vehicle mileage;

(2) hours of service provided; and

(3) fuel consumed.

(c) A transit district that requests a refund under this section shall maintain all supporting documentation relating to the refund until the sixth anniversary of the date of the request.

SECTION 7. Subchapter D, Chapter 162, Tax Code, is amended by adding Sections 162.3023 and 162.3024 to read as follows:

Sec. 162.3023. TRANSIT DISTRICT EXEMPTION. (a) Subject to Section 162.3024, the tax imposed by this subchapter does not apply to the sale of liquefied petroleum gas to a transit district created under Chapter 458, Transportation Code, that uses the gas exclusively to provide public transportation, or to the use of liquefied petroleum gas by that district for that purpose.

(b) A motor vehicle that uses liquefied petroleum gas, that is owned by a transit district created under Chapter 458, Transportation Code, and that is used exclusively to provide public transportation is not required to have a liquefied gas tax decal or a special use liquefied gas tax

decal.

Sec. 162.3024. EXCLUSIVE USE FOR RURAL TRANSIT DISTRICTS. (a) This section applies to a rural transit district created under Chapter 458, Transportation Code, that is not required under Section 162.3023 to have a liquefied gas tax decal or a special use liquefied gas tax decal for liquefied gas used to provide public transportation.

(b) The rural transit district shall maintain the following supporting documentation relating to the services provided under the contract until the sixth anniversary of the date of the services provided:

(1) vehicle mileage;

(2) hours of service provided; and

(3) fuel consumed.

(c) The comptroller may adopt rules to implement this section.

SECTION 8. The change in law made by this Act does not affect tax liability accruing before the effective date of this Act. 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 9. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

decal.

Sec. 162.3024. EXCLUSIVE USE FOR TRANSIT DISTRICTS. (a) This section applies to a transit district created under Chapter 458, Transportation Code, that is not required under Section 162.3023 to have a liquefied gas tax decal or a special use liquefied gas tax decal for liquefied gas used to provide public transportation.

(b) The transit district shall maintain the following supporting documentation relating to the services provided under the contract until the sixth anniversary of the date of the services provided:

(1) vehicle mileage;

(2) hours of service provided; and

(3) fuel consumed.

(c) The comptroller may adopt rules to implement this section.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.