

BILL ANALYSIS

C.S.H.B. 2925
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are concerns that certain industry practices regarding the export of gasoline and diesel fuel may result in the state collecting less motor fuel tax revenue than is legally due. C.S.H.B. 2925 seeks to address this issue in part by adding a reporting requirement on purchases of fuel for export where the exporter of record subsequently resells the fuel in Texas prior to export.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2925 amends the Tax Code to impose a tax on gasoline and diesel fuel that is otherwise exempt from motor fuel taxation on the basis of being exported to another state or a foreign country if the gasoline or diesel fuel is sold in Texas to a person who does not hold a certain license. The bill makes the person that sold the gasoline or diesel fuel liable for the tax and requires that person to collect the tax. The bill also imposes a tax on such gasoline and diesel fuel if before export the gasoline or diesel fuel is sold in Texas to a person who holds a certain license and the gasoline or diesel fuel is delivered to a destination in Texas. The bill makes the person that redirected the delivery of the gasoline or diesel fuel to a destination in Texas liable for the tax, requires that person to pay the tax, and requires a person who fails to pay the tax when due to pay an additional penalty equal to the greater of \$2,000 or five times the amount of the tax due on the motor fuel.

C.S.H.B. 2925 removes and repeals provisions relating to an obsolete condition under which gasoline and diesel fuel exported by a licensed supplier or a licensed exporter from Texas to another state is exempt from the applicable motor fuel tax, with the exception of the requirement that an exporter, if an exemption on the basis of interstate exportation is claimed, keep proof of payment of tax to the destination state or proof that the transaction was exempt in the destination state.

C.S.H.B. 2925 requires a person who purchases or removes gasoline or diesel fuel tax-free on the basis of being exported to another state or a foreign country and before export sells the gasoline or diesel fuel in Texas tax-free to a person who holds a certain license to report that transaction to the comptroller of public accounts. The bill requires each seller, if the gasoline or diesel fuel is subsequently sold one or more times in Texas before export and tax-free to a person who holds such a license, to report the transaction to the comptroller. The bill requires each person who

sells tax-free gasoline or diesel fuel in Texas in such a transaction to provide to the comptroller the bill of lading number issued at the terminal, the terminal control number, the date the gasoline or diesel fuel was removed from the terminal, the number of gallons invoiced, and any other information required by the comptroller. The bill requires the sales invoice for each applicable transaction to include the name of the seller and purchaser and the original bill of lading number. The bill requires a person required to report a transaction to report the transaction on a form prescribed by the comptroller and with the required tax return.

C.S.H.B. 2925 requires a person who fails to report a subsequent sale in Texas of tax-free motor fuel purchased for export to pay for each sale that is not reported a penalty of \$200. This penalty is not assessed if the taxpayer files an amended report that includes the sale not later than the 180th day after the due date of the original report of the sale.

C.S.H.B. 2925 amends the Water Code to transfer liability for the fee imposed on the delivery of a petroleum product on withdrawal from bulk of that product from each operator of a bulk facility to each supplier. The bill specifies that a bulk facility in the context of this fee is a facility in Texas and provides for the meaning of "supplier" by reference to Tax Code provisions relating to motor fuel taxes. A petroleum product ceases to be in continuous movement to a destination outside Texas, for purposes of the exemption from the fee of a delivery of a petroleum product destined for export from Texas on the basis of being in continuous movement to a destination outside Texas, if the product is delivered to a destination in Texas. The bill requires the person that directs the delivery of the product to a destination in Texas to pay the fee on that product.

C.S.H.B. 2925 repeals the following provisions of the Tax Code:

- Sections 162.104(c) and (e)
- Sections 162.204(c) and (e)

EFFECTIVE DATE

January 1, 2018.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2925 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 162.012(a), Tax Code, is amended.

SECTION 2. Section 162.101, Tax Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) If gasoline exempt from taxation under Section 162.104(a)(4) or (7) is sold in this state to a person who does not hold a license under Section 162.105(1), (2), (3), (4), or (6):

(1) the gasoline loses its tax-exempt status and a tax is imposed on the gasoline at the time of sale; and

(2) the person selling the gasoline is liable

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Section 162.101, Tax Code, is amended by adding Subsections (e-1) and (e-2) to read as follows:

(e-1) A tax is imposed on gasoline that is otherwise exempt from taxation under Section 162.104(a)(4) or (7) if the gasoline is sold in this state to a person who does not hold a license under Section 162.105(1), (2), (3), (4), or (6).

The person that sold the gasoline is liable

for and shall collect the tax.

SECTION 3. Sections 162.104(a), (d), and (f), Tax Code, are amended.

SECTION 4. Section 162.115(d), Tax Code, is amended.

SECTION 5. Subchapter B, Chapter 162, Tax Code, is amended.

SECTION 6. Section 162.201, Tax Code, is amended by adding Subsection (e-1) to read as follows:

(e-1) If diesel fuel exempt from taxation under Section 162.204(a)(4) or (7) is sold in this state to a person who does not hold a license under Section 162.205(1), (2), (3), (4), or (6):

(1) the diesel fuel loses its tax-exempt status and a tax is imposed on the diesel fuel at the time of sale; and

(2) the person selling the diesel fuel is liable for and shall collect the tax.

SECTION 7. Sections 162.204(a), (d), and (f), Tax Code, are amended.

SECTION 8. Section 162.216(d), Tax Code, is amended.

SECTION 9. Subchapter C, Chapter 162, Tax Code, is amended.

SECTION 10. Section 162.401, Tax Code,

for and shall collect the tax.

(e-2) A tax is imposed on gasoline that is otherwise exempt from taxation under Section 162.104(a)(4) or (7) if before export the gasoline is sold in this state to a person who holds a license under Section 162.105(1), (2), (3), (4), or (6) and the gasoline is delivered to a destination in this state. The person that redirected the delivery of the gasoline to a destination in this state is liable for and shall pay the tax.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Section 162.201, Tax Code, is amended by adding Subsections (e-1) and (e-2) to read as follows:

(e-1) A tax is imposed on diesel fuel that is otherwise exempt from taxation under Section 162.204(a)(4) or (7) if the diesel fuel is sold in this state to a person who does not hold a license under Section 162.205(a)(1), (2), (3), (4), or (6).

The person that sold the diesel fuel is liable for and shall collect the tax.

(e-2) A tax is imposed on diesel fuel that is otherwise exempt from taxation under Section 162.204(a)(4) or (7) if before export the diesel fuel is sold in this state to a person who holds a license under Section 162.205(a)(1), (2), (3), (4), or (6) and the diesel fuel is delivered to a destination in this state. The person that redirected the delivery of the diesel fuel to a destination in this state is liable for and shall pay the tax.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Substantially the same as introduced version.

SECTION 10. Section 162.401, Tax Code,

is amended by adding Subsection (e) to read as follows:

(e) In addition to any other penalty authorized by this section, a person who fails to report a subsequent sale in this state of tax-free motor fuel purchased for export as required by Section 162.1155 or 162.2165 shall pay for each sale that is not reported a penalty equal to the greater of \$2,000 or five times the amount of the tax due on the fuel. The penalty provided by this subsection in relation to a sale is not assessed if the taxpayer files an amended report that includes the sale not later than the 180th day after the due date of the original report of the sale.

SECTION 11. Section 26.3574(a), Water Code, is amended.

SECTION 12. Sections 26.3574(b), (d), (e), (f), (g), (i), and (j), Water Code, are amended.

SECTION 13. The following provisions of the Tax Code are repealed:

- (1) Sections 162.104(c) and (e); and
- (2) Sections 162.204(c) and (e).

No equivalent provision.

SECTION 14. The changes in law made by this Act do 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 that purpose.

SECTION 15. This Act takes effect January 1, 2018.

is amended by adding Subsections (e) and (f) to read as follows:

(e) In addition to any other penalty authorized by this section, a person who fails to report a subsequent sale in this state of tax-free motor fuel purchased for export as required by Section 162.1155 or 162.2165 shall pay for each sale that is not reported a penalty of \$200.

The penalty provided by this subsection is not assessed if the taxpayer files an amended report that includes the sale not later than the 180th day after the due date of the original report of the sale.

(f) In addition to any other penalty authorized by this section, a person who fails to pay the tax imposed by Section 162.101(e-2) or 162.201(e-2) when due shall pay a penalty equal to the greater of \$2,000 or five times the amount of the tax due on the motor fuel.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.

SECTION 14. The amendments made by this Act to Sections 162.101 and 162.201, Tax Code, are a clarification of existing law and do not imply that existing law may be construed as inconsistent with the law as amended by this Act.

SECTION 15. Same as introduced version.

SECTION 16. Same as introduced version.