

By: Kolkhorst

S.B. No. 1557

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the administration of gasoline and diesel fuel motor
3 fuels taxes and the fee on the delivery of certain petroleum
4 products.

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

6 SECTION 1. Section 162.012(a), Tax Code, is amended to read
7 as follows:

8 (a) A person licensed under this chapter or required to be
9 licensed under this chapter, or other user, who fails to keep a
10 record, issue an invoice, or file a return or report required by
11 this chapter is presumed to have sold or used for taxable purposes
12 all motor fuel shown by an audit by the comptroller to have been
13 sold to the license holder or other user. Motor fuel unaccounted
14 for is presumed to have been sold or used for taxable purposes. If
15 an exporter claims an exemption under Section 162.104(a)(4)
16 [~~162.104(a)(4)(B)~~] or 162.204(a)(4) [~~162.204(a)(4)(B)~~] and fails
17 to report subsequent tax-free sales in this state of the motor fuel
18 for which the exemption was claimed as required by Section 162.1155
19 or 162.2165, or to produce proof of payment of tax to the
20 destination state or proof that the transaction was exempt in the
21 destination state, the exporter is presumed to have not paid the
22 destination state's tax or this state's tax on the [~~exported~~] motor
23 fuel and the comptroller shall assess the tax imposed by this
24 chapter on the [~~exported~~] motor fuel against the exporter. The

1 comptroller may fix or establish the amount of taxes, penalties,
2 and interest due this state from the records of deliveries or from
3 any records or information available. If a tax claim, as developed
4 from this procedure, is not paid, after the opportunity to request a
5 redetermination, the claim and any audit made by the comptroller or
6 any report filed by the license holder or other user is evidence in
7 any suit or judicial proceedings filed by the attorney general and
8 is prima facie evidence of the correctness of the claim or audit. A
9 prima facie presumption of the correctness of the claim may be
10 overcome at the trial by evidence adduced by the license holder or
11 other user.

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

14 (e-1) A tax is imposed on gasoline that is otherwise exempt
15 from taxation under Section 162.104(a)(4) or (7) if the gasoline is
16 sold in this state to a person who does not hold a license under
17 Section 162.105(1), (2), (3), (4), or (6). The person that sold the
18 gasoline is liable for and shall collect the tax.

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

26 SECTION 3. Sections 162.104(a), (d), and (f), Tax Code, are
27 amended to read as follows:

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

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

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

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

14 (4) exported by either a licensed supplier or a
15 licensed exporter from this state to any other state, provided
16 that~~+~~

17 ~~[(A) for gasoline in a situation described by~~
18 ~~Subsection (d),] the bill of lading indicates the destination state~~
19 ~~and the supplier collects the destination state tax~~, or~~~~

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

25 (5) moved by truck or railcar between licensed
26 suppliers or licensed permissive suppliers and in which the
27 gasoline removed from the first terminal comes to rest in the second

1 terminal, provided that the removal from the second terminal rack
2 is subject to the tax imposed by this subchapter;

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

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

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

15 (9) sold to a nonprofit entity that is organized for
16 the sole purpose of and engages exclusively in providing emergency
17 medical services and that uses the gasoline exclusively to provide
18 emergency medical services, including rescue and ambulance
19 services.

20 (d) Subsection (a)(4) [~~(a)(4)(A)~~] applies only if the
21 destination state recognizes, by agreement with this state or by
22 statute or rule, a supplier in this state as a valid taxpayer for
23 the motor fuel being exported to that state from this state. The
24 comptroller shall publish a list that specifies for each state,
25 other than this state, whether that state does or does not qualify
26 under this subsection.

27 (f) The exemption provided by Subsection (a)(4) [~~(a)(4)(A)~~]

1 does not apply to a sale by a distributor.

2 SECTION 4. Section [162.115\(d\)](#), Tax Code, is amended to read
3 as follows:

4 (d) An exporter shall keep:

5 (1) a record showing the number of gallons of:

6 (A) all gasoline inventories on hand at the first
7 of each month;

8 (B) all gasoline compounded or blended;

9 (C) all gasoline purchased or received, showing
10 the name of the seller and the date of each purchase or receipt;

11 (D) all gasoline sold, distributed, or used,
12 showing the name of the purchaser and the date of the sale or use;
13 and

14 (E) all gasoline lost by fire, theft, or
15 accident;

16 (2) an itemized statement showing by load the number
17 of gallons of all gasoline:

18 (A) received during the preceding calendar month
19 for export and the location of the loading; and

20 (B) exported from this state by destination state
21 or country;

22 (3) proof of payment of tax to the destination state in
23 a form acceptable to the comptroller; and

24 (4) if an exemption under Section [162.104\(a\)\(4\)](#)
25 [~~[162.104\(a\)\(4\)\(B\)](#)~~] is claimed, proof of payment of tax to the
26 destination state or proof that the transaction was exempt in the
27 destination state, in a form acceptable to the comptroller.

1 SECTION 5. Subchapter B, Chapter 162, Tax Code, is amended
2 by adding Section 162.1155 to read as follows:

3 Sec. 162.1155. DUTY TO REPORT SUBSEQUENT SALES OF TAX-FREE
4 GASOLINE PURCHASED FOR EXPORT. (a) A person who purchases or
5 removes gasoline tax-free under Section 162.104(a)(4) or (7) and
6 before export sells the gasoline in this state tax-free to a person
7 who holds a license under Section 162.105(1), (2), (3), (4), or (6)
8 shall report that transaction to the comptroller as required by
9 this section. If the gasoline is subsequently sold one or more
10 times in this state before export and tax-free to a person who holds
11 a license under Section 162.105(1), (2), (3), (4), or (6), each
12 seller shall report the transaction to the comptroller as required
13 by this section.

14 (b) Each person who sells tax-free gasoline in this state in
15 a transaction described by Subsection (a) must provide to the
16 comptroller:

- 17 (1) the bill of lading number issued at the terminal;
18 (2) the terminal control number;
19 (3) the date the gasoline was removed from the
20 terminal;
21 (4) the number of gallons invoiced; and
22 (5) any other information required by the comptroller.

23 (c) The sales invoice for each transaction described by
24 Subsection (a) must include:

- 25 (1) the name of the seller and purchaser; and
26 (2) the original bill of lading number.

27 (d) A person required to report a transaction under

1 Subsection (a) shall report the transaction on a form prescribed by
2 the comptroller and with the return required by Section 162.114.

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

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

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

18 SECTION 7. Sections 162.204(a), (d), and (f), Tax Code, are
19 amended to read as follows:

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

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

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

27 (3) diesel fuel sold to a commercial transportation

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

6 (4) diesel fuel exported by either a licensed supplier
7 or a licensed exporter from this state to any other state, provided
8 that~~+~~

9 ~~[(A) for diesel fuel in a situation described by~~
10 ~~Subsection (d),]~~ the bill of lading indicates the destination state
11 and the supplier collects the destination state tax~~+, or~~

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

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

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

1 aircraft or aircraft servicing equipment;

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

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

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

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

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

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

27 (13) diesel fuel used by a person, other than a

1 political subdivision, who owns, controls, operates, or manages a
2 commercial motor vehicle as defined by Section 548.001,
3 Transportation Code, if the fuel:

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

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

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

11 (15) diesel fuel sold to a nonprofit entity that is
12 organized for the sole purpose of and engages exclusively in
13 providing emergency medical services and that uses the diesel fuel
14 exclusively to provide emergency medical services, including
15 rescue and ambulance services.

16 (d) Subsection (a)(4) [~~(a)(4)(A)~~] applies only if the
17 destination state recognizes, by agreement with this state or by
18 statute or rule, a supplier in this state as a valid taxpayer for
19 the motor fuel being exported to that state from this state. The
20 comptroller shall publish a list that specifies for each state,
21 other than this state, whether that state does or does not qualify
22 under this subsection.

23 (f) The exemption provided by Subsection (a)(4) [~~(a)(4)(A)~~]
24 does not apply to a sale by a distributor.

25 SECTION 8. Section 162.216(d), Tax Code, is amended to read
26 as follows:

27 (d) An exporter shall keep:

- 1 (1) a record showing the number of gallons of:
- 2 (A) all diesel fuel inventories on hand at the
- 3 first of each month;
- 4 (B) all diesel fuel compounded or blended;
- 5 (C) all diesel fuel purchased or received,
- 6 showing the name of the seller and the date of each purchase or
- 7 receipt;
- 8 (D) all diesel fuel sold, distributed, or used,
- 9 showing the name of the purchaser and the date of the sale or use;
- 10 and
- 11 (E) all diesel fuel lost by fire, theft, or
- 12 accident;
- 13 (2) an itemized statement showing by load the number
- 14 of gallons of all diesel fuel:
- 15 (A) received during the preceding calendar month
- 16 for export and the location of the loading; and
- 17 (B) exported from this state, by destination
- 18 state or country;
- 19 (3) proof of payment of tax to the destination state in
- 20 a form acceptable to the comptroller; and
- 21 (4) if an exemption under Section 162.204(a)(4)
- 22 [~~162.204(a)(4)(B)~~] is claimed, proof of payment of tax to the
- 23 destination state or proof that the transaction was exempt in the
- 24 destination state, in a form acceptable to the comptroller.

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

26 by adding Section 162.2165 to read as follows:

27 Sec. 162.2165. DUTY TO REPORT SUBSEQUENT SALES OF TAX-FREE

1 DIESEL FUEL PURCHASED FOR EXPORT. (a) A person who purchases or
2 removes diesel fuel tax-free under Section 162.204(a)(4) or (7) and
3 before export sells the diesel fuel in this state tax-free to a
4 person who holds a license under Section 162.205(a)(1), (2), (3),
5 (4), or (6) shall report that transaction to the comptroller as
6 required by this section. If the diesel fuel is subsequently sold
7 one or more times in this state before export and tax-free to a
8 person who holds a license under Section 162.205(a)(1), (2), (3),
9 (4), or (6), each seller shall report the transaction to the
10 comptroller as required by this section.

11 (b) Each person who sells tax-free diesel fuel in this state
12 in a transaction described by Subsection (a) must provide to the
13 comptroller:

- 14 (1) the bill of lading number issued at the terminal;
15 (2) the terminal control number;
16 (3) the date the diesel fuel was removed from the
17 terminal;
18 (4) the number of gallons invoiced; and
19 (5) any other information required by the comptroller.

20 (c) The sales invoice for each transaction described by
21 Subsection (a) must include:

- 22 (1) the name of the seller and purchaser; and
23 (2) the original bill of lading number.

24 (d) A person required to report a transaction under
25 Subsection (a) shall report the transaction on a form prescribed by
26 the comptroller and with the return required by Section 162.215.

27 SECTION 10. Section 162.401, Tax Code, is amended by adding

1 Subsections (e) and (f) to read as follows:

2 (e) In addition to any other penalty authorized by this
3 section, a person who fails to report a subsequent sale in this
4 state of tax-free motor fuel purchased for export as required by
5 Section 162.1155 or 162.2165 shall pay for each sale that is not
6 reported a penalty of \$200. The penalty provided by this subsection
7 is not assessed if the taxpayer files an amended report that
8 includes the sale not later than the 180th day after the due date of
9 the original report of the sale.

10 (f) In addition to any other penalty authorized by this
11 section, a person who fails to pay the tax imposed by Section
12 162.101(e-2) or 162.201(e-2) when due shall pay a penalty equal to
13 the greater of \$2,000 or five times the amount of the tax due on the
14 motor fuel.

15 SECTION 11. Section 26.3574(a), Water Code, is amended by
16 amending Subdivision (1) and adding Subdivision (2-a) to read as
17 follows:

18 (1) "Bulk facility" means a facility in this state,
19 including pipeline terminals, refinery terminals, rail and barge
20 terminals, and associated underground and aboveground tanks,
21 connected or separate, from which petroleum products are withdrawn
22 from bulk and delivered into a cargo tank or a barge used to
23 transport those products. This term does not include petroleum
24 products consumed at an electric generating facility.

25 (2-a) "Supplier" has the meaning assigned by Section
26 162.001, Tax Code.

27 SECTION 12. Sections 26.3574(b), (d), (e), (f), (g), (i),

1 and (j), Water Code, are amended to read as follows:

2 (b) A fee is imposed on the delivery of a petroleum product
3 on withdrawal from bulk of that product as provided by this
4 subsection. Each supplier [~~operator of a bulk facility~~] on
5 withdrawal from bulk of a petroleum product shall collect from the
6 person who orders the withdrawal a fee in an amount determined as
7 follows:

8 (1) not more than \$3.75 for each delivery into a cargo
9 tank having a capacity of less than 2,500 gallons;

10 (2) not more than \$7.50 for each delivery into a cargo
11 tank having a capacity of 2,500 gallons or more but less than 5,000
12 gallons;

13 (3) not more than \$11.75 for each delivery into a cargo
14 tank having a capacity of 5,000 gallons or more but less than 8,000
15 gallons;

16 (4) not more than \$15.00 for each delivery into a cargo
17 tank having a capacity of 8,000 gallons or more but less than 10,000
18 gallons; and

19 (5) not more than \$7.50 for each increment of 5,000
20 gallons or any part thereof delivered into a cargo tank having a
21 capacity of 10,000 gallons or more.

22 (d) A person who imports a petroleum product in a cargo tank
23 or a barge destined for delivery into an underground or aboveground
24 storage tank, regardless of whether or not the tank is exempt from
25 regulation under Section [26.344](#) [~~of this code~~], other than a
26 storage tank connected to or part of a bulk facility in this state,
27 shall pay to the comptroller a fee on the number of gallons

1 imported, computed as provided by Subsections (b) and (c) [~~of this~~
2 ~~section~~]. If a supplier [~~bulk facility operator~~] imports a
3 petroleum product in a cargo tank or a barge, the supplier [~~bulk~~
4 ~~facility operator~~] is not required to pay the fee on that imported
5 petroleum product if the petroleum product is delivered to a bulk
6 facility from which the petroleum product will be withdrawn from
7 bulk.

8 (e) A supplier [~~bulk facility operator~~] who receives
9 petroleum products on which the fee has been paid may take credit
10 for the fee paid on monthly reports.

11 (f) Subsection (b) [~~of this section~~] does not apply to a
12 delivery of a petroleum product destined for export from this state
13 if the petroleum product is in continuous movement to a destination
14 outside this state. For purposes of this subsection, a petroleum
15 product ceases to be in continuous movement to a destination
16 outside this state if the product is delivered to a destination in
17 this state. The person that directs the delivery of the product to
18 a destination in this state shall pay the fee imposed by this
19 section on that product.

20 (g) Each supplier [~~operator of a bulk facility~~] and each
21 person covered by Subsection (d) [~~of this section~~] shall file an
22 application with the comptroller for a permit to deliver a
23 petroleum product into a cargo tank destined for delivery to an
24 underground or aboveground storage tank, regardless of whether or
25 not the tank is exempt from regulation under Section 26.344 [~~of this~~
26 ~~code~~]. A permit issued by the comptroller under this subsection is
27 valid on and after the date of its issuance and until the permit is

1 surrendered by the holder or canceled by the comptroller. An
2 applicant for a permit issued under this subsection must use a form
3 adopted or approved by the comptroller that contains:

4 (1) the name under which the applicant transacts or
5 intends to transact business;

6 (2) the principal office, residence, or place of
7 business in this state of the applicant;

8 (3) if the applicant is not an individual, the names of
9 the principal officers of an applicant corporation, or the name of
10 the member of an applicant partnership, and the office, street, or
11 post office address of each; and

12 (4) any other information required by the comptroller.

13 (i) Each supplier [~~operator of a bulk facility~~] and each
14 person covered by Subsection (d) [~~of this section~~] shall:

15 (1) list, as a separate line item on an invoice or
16 cargo manifest required under this section, the amount of the
17 delivery fee due under this section; and

18 (2) on or before the 25th day of the month following
19 the end of each calendar month, file a report with the comptroller
20 and remit the amount of fees required to be collected or paid during
21 the preceding month.

22 (j) Each supplier [~~operator of a bulk facility~~] or the
23 supplier's [~~his~~] representative and each person covered by
24 Subsection (d) [~~of this section~~] shall prepare the report required
25 under Subsection (i) [~~of this section~~] on a form provided or
26 approved by the comptroller.

27 SECTION 13. The following provisions of the Tax Code are

1 repealed:

2 (1) Sections 162.104(c) and (e); and

3 (2) Sections 162.204(c) and (e).

4 SECTION 14. The amendments made by this Act to Sections
5 162.101 and 162.201, Tax Code, are a clarification of existing law
6 and do not imply that existing law may be construed as inconsistent
7 with the law as amended by this Act.

8 SECTION 15. The changes in law made by this Act do not
9 affect tax liability accruing before the effective date of this
10 Act. That liability continues in effect as if this Act had not been
11 enacted, and the former law is continued in effect for that purpose.

12 SECTION 16. This Act takes effect January 1, 2018.