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(Shine, Darby)

S.B. No. 1557

A BILL TO BE ENTITLED

AN ACT

1  
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.