

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 Subsection (e-1) to read as follows:

14 (e-1) If gasoline exempt from taxation under Section
15 162.104(a)(4) or (7) is sold in this state to a person who does not
16 hold a license under Section 162.105(1), (2), (3), (4), or (6):

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

19 (2) the person selling the gasoline is liable for and
20 shall collect the tax.

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

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

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

1 States;

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

4 (3) sold to a commercial transportation company or a
5 metropolitan rapid transit authority operating under Chapter 451,
6 Transportation Code, that provides public school transportation
7 services to a school district under Section 34.008, Education Code,
8 and that uses the gasoline only to provide those services;

9 (4) exported by either a licensed supplier or a
10 licensed exporter from this state to any other state, provided
11 that[+

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

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

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

25 (6) delivered or sold into a storage facility of a
26 licensed aviation fuel dealer from which gasoline will be delivered
27 solely into the fuel supply tanks of aircraft or aircraft servicing

1 equipment, or sold from one licensed aviation fuel dealer to
2 another licensed aviation fuel dealer who will deliver the aviation
3 fuel exclusively into the fuel supply tanks of aircraft or aircraft
4 servicing equipment;

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

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

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

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

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

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

26 (d) An exporter shall keep:

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

1 (A) all gasoline inventories on hand at the first
2 of each month;

3 (B) all gasoline compounded or blended;

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

6 (D) all gasoline sold, distributed, or used,
7 showing the name of the purchaser and the date of the sale or use;
8 and

9 (E) all gasoline lost by fire, theft, or
10 accident;

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

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

15 (B) exported from this state by destination state
16 or country;

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

19 (4) if an exemption under Section 162.104(a)(4)
20 [~~162.104(a)(4)(B)~~] is claimed, proof of payment of tax to the
21 destination state or proof that the transaction was exempt in the
22 destination state, in a form acceptable to the comptroller.

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

25 Sec. 162.1155. DUTY TO REPORT SUBSEQUENT SALES OF TAX-FREE
26 GASOLINE PURCHASED FOR EXPORT. (a) A person who purchases or
27 removes gasoline tax-free under Section 162.104(a)(4) or (7) and

1 before export sells the gasoline in this state tax-free to a person
2 who holds a license under Section 162.105(1), (2), (3), (4), or (6),
3 shall report that transaction to the comptroller as required by
4 this section. If the gasoline is subsequently sold one or more
5 times in this state before export and tax-free to a person who holds
6 a license under Section 162.105(1), (2), (3), (4), or (6), each
7 seller shall report the transaction to the comptroller as required
8 by this section.

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

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

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

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

22 (d) A person required to report a transaction under
23 Subsection (a) shall report the transaction on a form prescribed by
24 the comptroller and with the return required by Section 162.114.

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

27 (e-1) If diesel fuel exempt from taxation under Section

1 162.204(a)(4) or (7) is sold in this state to a person who does not
2 hold a license under Section 162.205(1), (2), (3), (4), or (6):

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

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

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

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

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

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

16 (3) diesel fuel sold to a commercial transportation
17 company or a metropolitan rapid transit authority operating under
18 Chapter 451, Transportation Code, that provides public school
19 transportation services to a school district under Section 34.008,
20 Education Code, and that uses the diesel fuel only to provide those
21 services;

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

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

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

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

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

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

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

26 (9) the volume of water, fuel ethanol, renewable
27 diesel, biodiesel, or mixtures thereof that are blended together

1 with taxable diesel fuel when the finished product sold or used is
2 clearly identified on the retail pump, storage tank, and sales
3 invoice as a combination of diesel fuel and water, fuel ethanol,
4 renewable diesel, biodiesel, or mixtures thereof;

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

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

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

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

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

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

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

27 (15) diesel fuel sold to a nonprofit entity that is

1 organized for the sole purpose of and engages exclusively in
2 providing emergency medical services and that uses the diesel fuel
3 exclusively to provide emergency medical services, including
4 rescue and ambulance services.

5 (d) Subsection (a)(4) [~~(a)(4)(A)~~] applies only if the
6 destination state recognizes, by agreement with this state or by
7 statute or rule, a supplier in this state as a valid taxpayer for
8 the motor fuel being exported to that state from this state. The
9 comptroller shall publish a list that specifies for each state,
10 other than this state, whether that state does or does not qualify
11 under this subsection.

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

14 SECTION 8. Section [162.216](#)(d), Tax Code, is amended to read
15 as follows:

16 (d) An exporter shall keep:

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

18 (A) all diesel fuel inventories on hand at the
19 first of each month;

20 (B) all diesel fuel compounded or blended;

21 (C) all diesel fuel purchased or received,
22 showing the name of the seller and the date of each purchase or
23 receipt;

24 (D) all diesel fuel sold, distributed, or used,
25 showing the name of the purchaser and the date of the sale or use;
26 and

27 (E) all diesel fuel lost by fire, theft, or

1 accident;

2 (2) an itemized statement showing by load the number
3 of gallons of all diesel fuel:

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

6 (B) exported from this state, by destination
7 state or country;

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

10 (4) if an exemption under Section [162.204\(a\)\(4\)](#)
11 [~~[162.204\(a\)\(4\)\(B\)](#)~~] is claimed, proof of payment of tax to the
12 destination state or proof that the transaction was exempt in the
13 destination state, in a form acceptable to the comptroller.

14 SECTION 9. Subchapter C, Chapter [162](#), Tax Code, is amended
15 by adding Section 162.2165 to read as follows:

16 Sec. 162.2165. DUTY TO REPORT SUBSEQUENT SALES OF TAX-FREE
17 DIESEL FUEL PURCHASED FOR EXPORT. (a) A person who purchases or
18 removes diesel fuel tax-free under Section [162.204\(a\)\(4\)](#) or (7) and
19 before export sells the diesel fuel in this state tax-free to a
20 person who holds a license under Section [162.205\(1\)](#), (2), (3), (4),
21 or (6), shall report that transaction to the comptroller as
22 required by this section. If the diesel fuel is subsequently sold
23 one or more times in this state before export and tax-free to a
24 person who holds a license under Section [162.205\(1\)](#), (2), (3), (4),
25 or (6), each seller shall report the transaction to the comptroller
26 as required by this section.

27 (b) Each person who sells tax-free diesel fuel in this state

1 in a transaction described by Subsection (a) must provide to the
2 comptroller:

- 3 (1) the bill of lading number issued at the terminal;
4 (2) the terminal control number;
5 (3) the date the diesel fuel was removed from the
6 terminal;
7 (4) the number of gallons invoiced; and
8 (5) any other information required by the comptroller.

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

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

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

16 SECTION 10. Section 162.401, Tax Code, is amended by adding
17 Subsection (e) to read as follows:

18 (e) In addition to any other penalty authorized by this
19 section, a person who fails to report a subsequent sale in this
20 state of tax-free motor fuel purchased for export as required by
21 Section 162.1155 or 162.2165 shall pay for each sale that is not
22 reported a penalty equal to the greater of \$2,000 or five times the
23 amount of the tax due on the fuel. The penalty provided by this
24 subsection in relation to a sale is not assessed if the taxpayer
25 files an amended report that includes the sale not later than the
26 180th day after the due date of the original report of the sale.

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

1 amending Subdivision (1) and adding Subdivision (2-a) to read as
2 follows:

3 (1) "Bulk facility" means a facility in this state,
4 including pipeline terminals, refinery terminals, rail and barge
5 terminals, and associated underground and aboveground tanks,
6 connected or separate, from which petroleum products are withdrawn
7 from bulk and delivered into a cargo tank or a barge used to
8 transport those products. This term does not include petroleum
9 products consumed at an electric generating facility.

10 (2-a) "Supplier" has the meaning assigned by Section
11 162.001, Tax Code.

12 SECTION 12. Sections 26.3574(b), (d), (e), (f), (g), (i),
13 and (j), Water Code, are amended to read as follows:

14 (b) A fee is imposed on the delivery of a petroleum product
15 on withdrawal from bulk of that product as provided by this
16 subsection. Each supplier [~~operator of a bulk facility~~] on
17 withdrawal from bulk of a petroleum product shall collect from the
18 person who orders the withdrawal a fee in an amount determined as
19 follows:

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

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

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

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

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

7 (d) A person who imports a petroleum product in a cargo tank
8 or a barge destined for delivery into an underground or aboveground
9 storage tank, regardless of whether or not the tank is exempt from
10 regulation under Section 26.344 [~~of this code~~], other than a
11 storage tank connected to or part of a bulk facility in this state,
12 shall pay to the comptroller a fee on the number of gallons
13 imported, computed as provided by Subsections (b) and (c) [~~of this~~
14 ~~section~~]. If a supplier [~~bulk facility operator~~] imports a
15 petroleum product in a cargo tank or a barge, the supplier [~~bulk~~
16 ~~facility operator~~] is not required to pay the fee on that imported
17 petroleum product if the petroleum product is delivered to a bulk
18 facility from which the petroleum product will be withdrawn from
19 bulk.

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

23 (f) Subsection (b) [~~of this section~~] does not apply to a
24 delivery of a petroleum product destined for export from this state
25 if the petroleum product is in continuous movement to a destination
26 outside this state. For purposes of this subsection, a petroleum
27 product ceases to be in continuous movement to a destination

1 outside this state if the product is delivered to a destination in
2 this state. The person that directs the delivery of the product to
3 a destination in this state shall pay the fee imposed by this
4 section on that product.

5 (g) Each supplier [~~operator of a bulk facility~~] and each
6 person covered by Subsection (d) [~~of this section~~] shall file an
7 application with the comptroller for a permit to deliver a
8 petroleum product into a cargo tank destined for delivery to an
9 underground or aboveground storage tank, regardless of whether or
10 not the tank is exempt from regulation under Section 26.344 [~~of this~~
11 ~~code~~]. A permit issued by the comptroller under this subsection is
12 valid on and after the date of its issuance and until the permit is
13 surrendered by the holder or canceled by the comptroller. An
14 applicant for a permit issued under this subsection must use a form
15 adopted or approved by the comptroller that contains:

16 (1) the name under which the applicant transacts or
17 intends to transact business;

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

20 (3) if the applicant is not an individual, the names of
21 the principal officers of an applicant corporation, or the name of
22 the member of an applicant partnership, and the office, street, or
23 post office address of each; and

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

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

27 (1) list, as a separate line item on an invoice or

1 cargo manifest required under this section, the amount of the
2 delivery fee due under this section; and

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

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

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

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

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

16 SECTION 14. The changes in law made by this Act do not
17 affect tax liability accruing before the effective date of this
18 Act. That liability continues in effect as if this Act had not been
19 enacted, and the former law is continued in effect for that purpose.

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