

SUBJECT: Tax exemptions on purchase of diesel fuel using a signed statement

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 7 ayes — Oliveira, McCall, Craddick, Hartnett, Keffer, Ramsay, Ritter

0 nays

4 absent — Bonnen, Y. Davis, Heflin, Hilbert

WITNESSES: For — Mickey Nunley, National Fuel

Against — None

On — Steve White, Comptroller of Public Accounts

BACKGROUND: Tax Code, sec. 153.203 grants several exemptions to the diesel fuel tax, including for agricultural and various industrial and commercial purposes. Agricultural users may purchase both dyed and undyed diesel fuel tax-free. All other users may purchase only dyed diesel tax-free, but end-users may apply for tax refunds if they use undyed diesel off-road.

In 1993, the U.S. Environmental Protection Agency (EPA) determined that high-sulfur diesel fuel was harmful to the atmosphere's ozone layer. The EPA prohibited such fuel's use in vehicles traveling on public roadways and ordered that it be dyed to distinguish it for regulatory purposes. There are no federal or state taxes collected on sales of dyed diesel, but taxes and penalties are assessed operators of vehicles using dyed diesel unlawfully on public roadways.

In order to qualify for the tax exemption, all users must either obtain a non-fee, bonded user permit, or submit a signed statement and obtain either an end-user number or an agricultural user exemption number. The statement must stipulate that the purchaser consumes all the diesel fuel purchased, resells none, and puts none into any motor vehicle fuel tank. Permit-holders may purchase unlimited quantities of diesel. Signed-statement issuers may buy up to 10,000 gallons per calendar month, but no more than 3,000 gallons at any one time. Suppliers also are prohibited from selling tax-free diesel fuel to signed-statement issuers in more than the prescribed amounts.

In 1999, the 76th Legislature enacted SB 1547 by Bivins, effective September 1, 2000. SB 1547 increased documentation and reporting requirements on suppliers, restricted tax-free sales of clear diesel to agricultural users, and required tax-exempt purchasers using signed statements to register with the comptroller.

DIGEST:

HB 1241 would amend the Tax Code to increase limits on the amount of diesel fuel that may be bought by or sold to a purchaser authorized by a signed statement to do so tax-free. The bill would raise the maximum amount allowed per transaction from 3,000 gallons to 7,400 gallons. The 10,000-gallon aggregate monthly maximum would remain in effect for all purchasers except oil and gas producers, who would be able to purchase up to 25,000 gallons of dyed diesel per month tax-free from all sources, provided that they used all the fuel in oil or gas production. The same provisions would apply to sales made by permitted suppliers to signed-statement purchasers.

The bill also would stipulate that the new higher limit for oil and gas producers would not be affected by the provisions in current law (Tax Code, Sec. 153.209) authorizing holders of bonded user permits to purchase more than 10,000 gallons of dyed diesel fuel per month.

HB 1241 would take effect September 1, 2001, and would apply only to diesel fuel purchases made on or after that date.

SUPPORTERS
SAY:

HB 1241 is necessary to raise limits on the amount of diesel fuel that small purchasers can buy. This bill would increase economic efficiency without sacrificing regulatory oversight. A 7,400-gallon maximum per transaction would allow distributors to sell entire tank truckloads at a time without exceeding the state-mandated truck weight limit of 80,000 pounds. Making fewer trips and selling larger quantities would allow distributors to give price breaks of 4-5 cents a gallon, saving buyers \$300-\$400 per load. Creating a 25,000-gallon monthly maximum for oil and gas producers would accommodate well operators, many of whom are having to absorb higher fuel costs, and drilling contractors who need that much diesel fuel on average to complete jobs in the field. They, too, would benefit from economies of scale. Raising existing limits also would help reduce costs for farmers, ranchers and other struggling agribusinesses vital to the well-being of many small towns and rural communities.

HB 1241 would allow signed-statement issuers to buy more diesel fuel, thereby reducing red tape for bulk purchasers and wholesalers. Many farmers, well operators and drilling contractors, especially those from out of state, are unfamiliar with the state's relatively new bonding and permitting procedures. They often consider bonded permits not worth the time and effort required to obtain and comply with them if they are only going to use them a few times a year. Some even misrepresent their status for expediency's sake, putting the onus on distributors who can be held liable for taxes and penalties on unauthorized diesel sales. The regulations are burdensome and unworkable, particularly in the oil patch. Purchases by signed-statement issuers still could be monitored because they are registered by number with the Comptroller's Office. Most major oil and gas companies already are bonded. So higher limits would not compromise legitimate governmental regulation.

More reporting, like that required in SB 1547 by Bivins, is not by itself an effective method to deter fraud. The current rules easily can be circumvented by manipulating the data reported. Honest suppliers and distributors have too much paperwork to contend with to be expected to act as "dyed diesel police." They cannot control how their products are used. More enforcement by the comptroller and inspections by the Department of Public Safety are needed to apprehend unscrupulous motorists and truckers driving the roadways with dyed diesel in their vehicles, if that is the goal. But it makes little sense to set purchase limits on, or spend tax dollars to monitor and audit, what is essentially a tax-free commodity until and unless it is used unlawfully. The costs outweigh the benefits, and the state would not be getting a good return on the use of its limited resources.

OPPONENTS
SAY:

HB 1241 is not necessary. It is merely an attempt to avoid regulatory scrutiny and reduce paperwork. It would not help deter tax fraud and could hinder oversight.

Bonded user permits already allow holders to buy unlimited quantities of diesel fuel tax-free. There is no cost for the permits, and the cost of the minimum \$10,000 bond is not prohibitive. In fact, bonds often are waived for applicants with good credit histories and payment records.

Increasing the purchase limits for signed-statement issuers could threaten the integrity of the regulatory system. Unlike bonded user permit-holders who

must report quarterly or annually, signed-statement issuers are not required to report at all and are not audited regularly, if at all. The comptroller must rely on the suppliers who sell to them to help the state monitor dyed diesel fuel sales. This bill effectively would end reporting requirements for an unknown number of large purchasers and remove them from the comptroller's audit track.

Signed-statement issuers already can exceed current purchase limits; this bill could exacerbate that situation. The comptroller allows the entire amount of a transaction that causes a purchaser to exceed the monthly limit to be purchased tax-free. This means that the 10,000-gallon monthly limit actually is closer to 13,000 gallons (9,999 gallons + 3,000), or almost 156,000 gallons a year, as opposed to the statutory 120,000 gallons. In effect, this bill would allow purchases of more than 32,000 gallons a month (24,999 + 7,400), or more than 388,000 gallons a year. The combination of larger purchases of dyed diesel and less oversight is one that Texas can ill afford if it hopes to exert some control over dyed diesel fuel and curtail its unlawful use by tax-exemption abusers.

The oil and gas industry, already benefitting from soaring gas prices and higher oil profits, would gain the most from this bills. This would be unfair to purchasers in other industries, especially agriculture.

OTHER
OPPONENTS
SAY:

HB 1241 would be premature. The stricter reporting measures established less than two years ago by SB 1547 have not had sufficient time to work, much less be changed substantially. At best, the proposed changes should be phased in, if not delayed, until the impact of SB 1547 can be properly evaluated.

NOTES:

Rep. Counts plans to offer an amendment increasing the aggregate monthly maximum purchase amount for agricultural users to 25,000 gallons.