

- SUBJECT:** Liabilities for motor fuel taxes and related requirements
- COMMITTEE:** Ways and Means — committee substitute recommended
- VOTE:** 6 ayes — Keffer, Ritter, Otto, Y. Davis, Paxton, Pitts  
0 nays  
3 absent — Bonnen, Flores, Peña
- WITNESSES:** For — (*Registered, but did not testify:* Doug DuBois, Texas Petroleum Marketers and Convenience Store Association; James LeBas, Texas Oil and Gas Association; Steve Perry, Chevron USA)  
Against — None  
On — Bryant Lomax, Comptroller of Public Accounts
- BACKGROUND:** In 2003, HB 2458 by Krusee repealed ch. 153 of the Tax Code and replaced it with ch. 162. The bill accomplished the following:
- moved the motor fuel tax (MFT) collection point from the distributor level to the terminal level;
  - replaced the existing tax’s delivery-based framework with one based on the amount of fuel removed from terminals;
  - continued the licensing of motor-fuel retailers and terminal operators;
  - set up a new filing allowance schedule for remitting MFTs on gasoline and diesel fuel;
  - limited the purchase of tax-free diesel fuel to “dyed” diesel, except for independent school districts and the federal government;
  - preserved all existing exceptions, including off-road and agricultural use, and the aviation fuel exemption;
  - eliminated refund claims for tax-exempt use of gasoline and diesel fuel in off-road equipment; and
  - tightened control of imported and exported fuel and required importers and exporters to register with the state.

DIGEST:

CSHB 3320 would revise statutory language in certain sections of the Tax Code, Water Code, and Code of Criminal Procedure. These changes would reflect the elimination of ch. 153 of the Tax Code, as replaced by ch. 162, in HB 2458 in the 78th Legislative Session. Various modifications to ch. 162 would also be made.

**Tax liability.** The supplier would be liable for tax on gasoline or diesel fuel imported into this state or removed from the terminal rack. The interstate trucker would be liable for the tax imposed on gasoline or diesel fuel brought into the state on a motor fuel supply tank. The blender would be liable for the tax imposed on the blending of gasoline or diesel fuel outside the terminal rack.

A distributor selling tax-exempt gasoline to an individual with a revoked license would be liable for tax due on gasoline sold, if notice was received of the license's revocation. Similarly, a supplier would be held responsible for the tax-free sale to an aviation fuel dealer or a relevant distributor after the aviation fuel dealer's license had been revoked.

**Tax exemption.** A person who sold gasoline or diesel fuel by bulk transfer would be released from the current backup tax, which is imposed at 20 cents per net gallon for certain purposes. Provisions for tax exemptions on the sale of aviation gasoline, aviation jet fuel, or diesel fuel by licensed suppliers or distributors also would be modified.

The tax exemption on gasoline or diesel fuel would not apply to sale by a distributor and exported to another state unless:

- the sale was to a licensed exporter;
- the supplier collected the destination state tax from the distributor;
- the distributor collected the destination state tax from the exporter; and
- the sale contract was signed before removing the gasoline or diesel fuel from the terminal.

**Tax credits.** The bill would allow a license holder to take credit on a return for tax on the retail purchase of gasoline or diesel fuel, if the purchase was made by one of the following entities:

- the federal government for its exclusive use;
- a public school district in Texas for its exclusive use;
- a commercial transportation company providing public school transportation services;
- a nonprofit electric cooperative corporation; or
- a nonprofit telephone cooperative corporation.

Also, a distributor, importer, exporter, or blender of gasoline or diesel fuel who determined that taxes were reported erroneously could take a credit on the monthly tax report.

**Reporting requirements.** The bill would modify requirements on shipping documents used in motor fuel transport. A terminal or bulk plant no longer would create a shipping document for motor fuel transport within the state, outside of the state, or for importation or exportation. The shipping document no longer would include the identification number for the purchaser or carrier. The destination of motor fuel to be delivered to multiple states would be included in the shipping document. The provisions on shipping documents would not apply to motor fuel delivered into a motor vehicle's fuel supply tank.

The distributor would no longer be required to include the point of origin, destination state, carrier and receipt date when reporting the receipt of gasoline or diesel fuel. Information on the carrier would not be required when reporting on the gasoline or diesel fuel removed at a terminal rack.

The quantity of diesel fuel sold to exempt entities would include information on product code and entity receiving the diesel fuel. The dyed diesel fuel sold to qualified purchasers and users would include information on the net number of gallons sold.

On a return submitted by a supplier, the bill would eliminate the required inclusion of the following:

- the number of net gallons of gasoline or diesel fuel received by the supplier each month, with certain information;
- sorting requirements on the terminal code and carrier for the number net gallons of tax-free gasoline and diesel fuel sold monthly; and
- the number of gallons of gasoline and diesel fuel sold at the terminal rack to a person not holding a supplier's license.

**Dyed-diesel fuel.** Certain restrictions on the tax-free purchase and sale of dyed diesel fuel would be modified. The current restriction on the sale of more than 7,400 gallons of dyed diesel fuel in a single delivery would be repealed. The monthly limitations on dyed diesel fuel purchases would apply regardless of the number of transactions. Requirements for permission to purchase dyed-diesel fuel would be clarified.

**Penalties.** The proposed legislation would establish a civil penalty of \$2,000 for issuing a faulty shipping document that would apply to all persons, as opposed to those operating a bulk plant or terminal. CSHB 3320 would make it an offense to issue a bad check to a permissive supplier. The state would be allowed to elect the offense for the prosecution of an individual in violation of the law.

**Import verification number.** The bill would eliminate the requirement that an importer of motor fuel obtain an import verification number from the comptroller. Associated penalties would also be repealed.

**Effective date.** Changes established by the bill would not apply to an offense or tax liability before the effective date of the bill. The bill would take effect on September 1, 2007.