

- SUBJECT:** Deferral of payment of fuel taxes by distributors
- COMMITTEE:** Ways and Means — committee substitute recommended
- VOTE:** 9 ayes — Oliveira, Otto, Bohac, Hartnett, C. Howard, P. King, Paxton, Peña, Villarreal
- 0 nays
- 2 absent — Hilderbran, Taylor
- WITNESSES:** For — Chris Newton, Texas Petroleum Marketers and Convenience Store Association
- Against — None
- BACKGROUND:** Under Tax Code, secs. 162.113 and 162.214, a distributor of motor fuels who purchases those fuels from a supplier pays the supplier the applicable motor-fuel taxes. The supplier remits those taxes the comptroller. A distributor is allowed to defer payments to the supplier until the distributor has collected those taxes from its customers. If the distributor fails to pay applicable taxes to the supplier, the supplier may take a credit against a subsequent payment of motor-fuel taxes to the state for the taxes not remitted to the supplier by the distributor. The supplier must notify the comptroller of the distributor's failure to remit tax to the supplier with the report requesting the credit.
- The supplier has the right, after having notified the comptroller of the failure to remit taxes, to terminate the distributor's ability to defer payment of motor-fuels taxes. The supplier must immediately reinstate the right of the distributor to defer the payment of motor-fuels tax after the comptroller provides notice that the distributor has paid all applicable taxes to the comptroller and is in good standing.
- Under secs. 162.116 and 162.217, suppliers are eligible to take a credit for unpaid motor-fuels taxes if they notify the comptroller within 60 days of the default.

Under secs. 162.116(d) and 162.217(d), all payments or credits in reduction of a customer's account must be apportioned between motor fuels and other goods sold to the customer.

DIGEST:

CSHB 2578 would amend Tax Code, secs. 162.113 and 162.214, to require a supplier requesting a motor-fuels tax credit from the comptroller to terminate the ability of a distributor to defer payment of motor-fuels taxes. The supplier would not be allowed to reinstate the right of the distributor to defer motor-fuels tax payments until the first anniversary of the date the supplier or permissive supplier requested the credit. A supplier would be allowed to reinstate the right of a distributor to defer the motor-fuels tax payments before a year had run if the comptroller determined that:

- the supplier erroneously requested the credit that resulted in the termination of the licensed distributor's or licensed importer's right to defer payment; or
- the licensed distributor failed to pay motor-fuels taxes because of circumstances that may have been outside the distributor's control.

CSHB 2578 would amend secs. 162.116 and 162.217, to require a supplier to report a distributor's default on payment of motor-fuels taxes within 15 days, rather than 60 days, after the default occurred.

CSHB 2578 would repeal secs. 162.116(d) and 162.217(d).

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

SUPPORTERS
SAY:

CSHB 2578 would address concerns from the Comptroller's Office about the payment and collection of motor-fuels taxes. CSHB 2578 would require suppliers who make a request for a credit for unpaid taxes to notify the comptroller within 15 days of the default. CSHB 2578 also would bar a distributor that caused a supplier to apply for a credit for unpaid motor-fuels taxes from making tax-deferred purchases for one year, unless the non-payment was a result of the supplier's error or circumstances beyond the distributor's control. These changes would result in more efficient administration of the tax. CSHB 2578 also would increase compliance with the law by threatening a year-long suspension of a distributor's ability to defer tax payments if the distributor fell into default.

CSHB 2578 also would repeal Tax Code, secs. 162.116(d) and 162.217(d). These secs. require all payments or credits in reduction of a customer's account to be apportioned between motor fuels and other goods sold to the customer. These requirements should be removed because suppliers and distributors do not buy other goods from each other, only fuel. These requirements cause confusion among taxpayers and collectors, and their removal would clarify how credits should be used and accounted for.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The bill as filed only would have repealed Tax Code, secs. 162.116(d) and 162.217(d). The substitute made changes to how a supplier applies for a credit stemming from a distributors default on applicable fuel taxes.

The companion bill, SB 1782 by Hinojosa, was reported favorably, as substituted, by the Senate Finance Committee on May 6 and recommended for the Senate Local and Uncontested Calendar.