

SUBJECT: Liability for motor-fuel taxes and related administrative requirements

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 10 ayes — Oliveira, Otto, Bohac, Hartnett, Hilderbran, C. Howard,
P. King, Paxton, Taylor, Villarreal

0 nays

1 absent — Peña

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Bryant Lomax, Office of the
Comptroller)

BACKGROUND: The comptroller collects an excise tax on motor fuels. The Special
Prosecution Unit of the Travis County District Attorney's Office
prosecutes instances of motor-fuel tax (MFT) non-payment and fraud
across the state.

In 2003, HB 2458 by Krusee repealed ch. 153 of the Tax Code and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 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 the 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:

HB 3900 would make various modifications to the administration of the motor-fuel tax (MFT) in Tax Code, ch. 162. It would make certain parties liable for the collection or payment of MFTs. The bill also would revise statutory language in certain sections of the Tax Code, Water Code, and Transportation Code to reflect the elimination of ch. 153 of the Tax Code, as replaced by ch. 162.

Tax liability. A supplier would be liable for the collection of tax on gasoline or diesel fuel imported into Texas or removed from a terminal rack. If the seller was not a supplier or permissive supplier, then the person who imported the gasoline or diesel into Texas would be liable for and would pay the tax. A tax would be imposed on the removal of gasoline or diesel from the bulk transfer/terminal system in Texas. The supplier would be liable for and would collect applicable taxes from the person who ordered the removal from the bulk transfer terminal system.

HB 3900 would require a licensed interstate trucker who paid a tax on fuel brought into Texas be liable for applicable tax. A blender would be liable for MFTs at the point gasoline or diesel blended fuel was made in Texas outside of the bulk transfer/terminal system. HB 3900 would remove those who only conduct business at a bulk transfer station from the requirement that they obtain a license to do so.

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.

Reporting requirements. HB 3900 would modify requirements on shipping documents used in motor-fuel transport. The shipping document no longer would include the license number for the purchaser. Information on the carrier would not be required when reporting on the gasoline or diesel fuel. The provisions on shipping documents would not apply to motor fuel delivered into a motor vehicle's fuel supply tank.

HB 3900 would remove the requirement that the shipping document include the federal employer identification number or the social security number, if the employer identification number is not available, of the carrier transporting the motor fuel. HB 3900 would require the shipping document to include the destination state of each portion of a split load of motor fuel if the motor fuel was to be delivered to more than one state. A seller, transporter, or receiver of motor fuel would have to retain a copy of the shipping document.

HB 3900 would require a license holder to keep any record required by the comptroller.

Penalties. The bill would establish that a civil penalty of \$2,000 for a person who issued a faulty shipping document would apply to all issuers, as opposed to only those issuers who operated a bulk plant or terminal.

HB 3900 would make the furnishing of a signed statement for purchasing diesel fuel tax-free to a licensed supplier or distributor, and then using the fuel to operate a vehicle on a public highway, subject to a civil penalty of between \$25 and \$200. HB 3900 also would stipulate that any person who issued an improper shipping document would be liable for a civil penalty of \$2,000 or five times the amount of the unpaid tax, whichever was greater.

HB 3900 would amend Tax Code, sec. 462.403 to make the furnishing of a signed statement for purchasing diesel fuel tax-free and then using that diesel to operate a vehicle on a public highway a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). HB 3900 also would make the sale of dyed diesel fuel tax-free into a storage facility a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if done by a person who:

- was not licensed as a distributor, as an aviation fuel dealer, or as a dyed diesel fuel bonded user; or
- did not furnish to a licensed supplier or distributor the signed statement required for the purchase of dyed diesel fuels.

HB 3900 would state that a person commits a class C misdemeanor (maximum fine of \$500), under the Penal Code, sec. 32.41 if:

- the person issued or passed a check for the payment of money knowing that the issuer did not have sufficient funds for the payment in full;
- the payee on the check or order was a licensed distributor, licensed supplier, or permissive supplier; and
- the payment was for an obligation or debt that included a tax to be collected by the licensed distributor, licensed supplier, or permissive supplier.

The state would be allowed to elect the offense for the prosecution of an individual in violation of the law.

Dyed diesel fuel. HB 3900 would modify certain restrictions on the tax-free purchase and sale of dyed diesel fuel. The current restriction on the sale of more than 7,400 gallons of dyed diesel fuel in a single day would be repealed. The monthly limitations on dyed diesel fuel purchases would apply regardless of the number of transactions in that month. HB 3900 would allow for the sale of up to 25,000 gallons of dyed diesel fuel to be tax exempt under certain circumstances, such as the production of petroleum products or for agricultural use.

Requirements for permission to purchase dyed-diesel fuel would be amended. A purchaser would be considered to have temporary permission to buy the fuel if the supplier or distributor verified that the purchaser had an end-user number issued by the comptroller. The licensed supplier or distributor would have to verify this information with material from the comptroller until the purchaser provided to the supplier or distributor a completed signed statement.

Tax credits. Under HB 3900, a supplier, permissive supplier, distributor, importer, exporter, or blender that determined taxes were erroneously reported and remitted, or that paid more taxes than were due by mistake, would be allowed to take a credit on the monthly tax report on which the error had occurred and on the tax payment made to the comptroller.

Effective date. The bill would take effect September 1, 2009. The changes HB 3900 would make to the Tax Code would apply only to an offense committed on or after the effective date. These changes in the law would not affect tax liability accruing before the effective date.

**SUPPORTERS
SAY:**

HB 3900 would make several changes to motor-fuels tax laws in order to bring them up to date with the changing nature of fuel transport in Texas. It would make conforming changes to the Tax Code to address changes made by the 78th Legislature in 2003. The bill would clean up certain liability issues to make record-keeping and prosecution of MFT fraud simpler. It would make changes to the volumes of fuel sales allowed in order to address the larger size of tanker trucks on the road today. It also would make certain changes to reporting requirements that will make it easier for businesses to comply with and for the comptroller to administer MFTs.

HB 3900 would make several changes that would close existing loopholes in the law to make the prosecution of motor-fuels tax fraud easier to document and prosecute. Current law often vests responsibility for tax collection with licensed dealers and distributors. However, a great deal of motor fuel is traded by people who should be licensed, but are not. HB 3900 would ensure that licensed, as well as unlicensed, dealers and distributors would be liable for applicable reporting requirements and taxes.

HB 3900 also would assist the comptroller and industry by making improvements to and simplifying reporting requirements. HB 3900 would exempt from licensing those who only conduct business within the bulk transport system. Under current law, they already do not owe tax, and HB 3900 would prevent them and the state from having to go through the licensing process. HB 3900's conforming changes to the Tax Code also would aid in administration and collection of the tax.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The companion bill, SB 1495 by Williams, passed the Senate by 31-0 on the Local and Uncontested Calendar on April 9 and was reported favorably, without amendment, by the House Ways and Means Committee on April 29, making it eligible to be considered in lieu of HB 3900.