

SUBJECT: Clarifying the transfers of motor fuel that are subject to motor fuel taxes

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 10 ayes — Burrows, Guillen, Bohac, Cole, Martinez Fischer, Murphy,
Noble, Sanford, Shaheen, Wray

0 nays

1 absent — E. Rodriguez

WITNESSES: For — James LeBas, Texas Oil and Gas Association; (*Registered, but did not testify*: Kinnan Golemon, Shell Oil Company; Robert Flores, Texas Energy Advocates Coalition; Sabrina Calloway, Valero Energy)

Against — None

BACKGROUND: Tax Code ch. 162 generally taxes the removal of gasoline or diesel fuel from a terminal using the terminal rack, other than by bulk transfer.

A bulk transfer is a transfer of motor fuel from one location to another by pipeline or marine movement within a bulk transfer/terminal system. A bulk transfer/terminal system is a motor fuel distribution system consisting of refineries, pipelines, terminals, and marine vessels transporting motor fuel to a refinery or terminal.

Gasoline and diesel fuel may be exempt from taxation if exported to another state or a foreign country. In order to qualify for the exemption, the bill of lading must indicate the destination state or country. However, gasoline or diesel fuel for export is taxed if sold in the state to a person who is not a licensed supplier, permissive supplier, distributor, importer, or exporter. The person selling the gasoline or diesel fuel is liable for and required to collect the tax.

Some suggest the current statute can lead to unnecessary motor fuel tax payments, audit deficiencies, and time-consuming motor fuel tax refund

requests by taxpayers due to the lack of clarity regarding which transfers are subject to tax.

DIGEST: HB 3954 would modify the rules for determining whether certain transfers were subject to motor fuels tax.

Bulk transfer. The bill would expand the definition of a bulk transfer qualifying for exclusion from motor fuels tax to include transfers to and from a motor fuel storage facility within a bulk transfer/terminal system. A motor fuel storage facility would be defined as a storage facility supplied by pipeline or marine vessel that did not have a rack for removal of motor fuel by any means of conveyance that was outside the bulk/transfer terminal system.

A bulk transfer also would include a movement of motor fuels by marine vessel, including a barge, that was owned by a licensed supplier or permissive supplier. The definition of a supplier would be expanded to include a person who owned motor fuel in a marine vessel so long as that person met all other statutory requirements.

Bulk transfers would be limited to transfers taking place within the United States.

Taxable exports. The bill would change the rules for determining whether an export of gasoline or diesel fuel was subject to tax.

Gasoline or diesel fuel sold into a truck or railcar in this state for export to another state or a foreign country would be subject to tax if the purchaser was not a licensed supplier, permissive supplier, distributor, importer, or exporter.

When exported to a foreign country by marine vessel, gasoline or diesel fuel would be subject to tax if neither the purchaser nor the exporter of record was a licensed supplier, permissive supplier, licensed distributor, licensed importer, or licensed exporter.

Foreign country documentation. The bill would allow shipping documents other than a bill of lading to be used to establish that gasoline or diesel fuel was exported to a foreign country in order to qualify for exemption from tax.

The bill would take effect September 1, 2019.