

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1547  
By: Bivins  
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### **DIGEST**

Currently, Texas' objective is to increase the annual motor fuel tax compliance, resulting in increased state revenues of \$50 million and increased federal appropriations of \$48 million by taking the following actions: moving fuel tax collection to the highest feasible point in the marketing chain, the loading terminal rack; shifting system demands to decrease taxpayer audits and allowing increased field enforcement and compliance investigations; facilitating enforcement; automating the motor fuel tacking system, including implementing a new federal motor fuel tracking system; reducing border fraud opportunities; and furthering national efforts to simplify and coordinate systems among the states. S.B. 1547 would set forth provisions, regulations, and penalties concerning the sales and use tax on gasoline, diesel fuel, and liquefied gas.

### **PURPOSE**

As proposed, S.B. 1547 sets forth provisions, regulations, and penalties concerning the sales and use tax on gasoline, diesel fuel, and liquefied gas.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the comptroller of public accounts in SECTION 1 (Sections 161.009, 161.017(a), and 161.064(c), Chapter 161A, Title 2, Tax Code; Sections 161.163(l), 161.165(d), and 161.166, Chapter 161E, Title 2, Tax Code; Section 161.225(c), Chapter 161F, Title 2, Tax Code; Sections 161.251 and 161.261(g), Chapter 161G, Title 2, Tax Code; Sections 161.301(e), 161.304(b), and 161.322, Chapter 161H, Title 2, Tax Code; and Section 161.403, Chapter 161J (a) and (c), Title 2, Tax Code) and to the Texas Department of Agriculture in SECTION 1 (Section 161.007, Chapter 161A, Title 2, Tax Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 2E, Tax Code, by adding Chapter 161, as follows:

#### **CHAPTER 161. MOTOR FUEL TAXES SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 161.001. DEFINITIONS. Defines "aviation fuel dealer," "blended fuel," "blending," "bulk end user," "bulk plant," "bulk transfer," "bulk transfer system," "dealer," "destination state," "diesel fuel," "division number," "dyed diesel fuel," "eligible purchaser," "end user," "export," "exporter," "fractionator," "fuel transportation vehicle," "gasohol," "gasoline," "gross gallons," "heating oil," "import," "import verification number," "importer," "interstate trucker," "invoiced gallons," "kerosene," "lessor," "liquefied gas," "liquefied gas tax decal user," "motor fuel," "motor fuel transporter," "motor vehicle," "motorboat," "net gallons," "permissive supplier," "pipeline," "point of delivery," "position holder," "public highway," "qualified terminal," "rack," "refiner," "refinery," "removal," "sale," "supplier," "tank wagon," "taxable motor fuel," "terminal," "terminal bulk transfers," "terminal operator," "terminal transfer system," "transit company," "transmix," "transport truck," "transporter," "two-party exchange," "vehicle supply tank," "vendor," and "wholesaler."

Sec. 161.002. AUDITS AND INSPECTIONS. Authorizes the comptroller of public accounts (comptroller) or an authorized deputy, for the purpose of determining the amount of tax collected and payable to this state, the amount of tax accruing and due, and whether a tax liability has been incurred under this chapter, to audit and examine certain information to verify the completeness and accuracy of any statement or report. Authorizes the comptroller or the comptroller's

representative to inspect the premises of a fuel vendor, motor fuel transporter, or bulk purchaser and require the immediate disclosure of any shipping paper required by this chapter to be maintained at the physical location at which the request is made, including any location at which motor fuel is stored or held for sale or transportation. Authorizes the comptroller to inspect all records of a person doing business in this state to determine certain information. Sets forth legible recordkeeping requirements for persons, terminal operators, and suppliers.

Sec. 161.003. INSPECTION OF FUEL AND SHIPPING PAPERS. Authorizes the comptroller or the comptroller's representative to conduct inspections and remove samples of fuel to determine coloration of diesel fuel or to identify shipping paper violations at any place at which taxable fuel is or may be produced, stored, or loaded into transport vehicles. Sets forth the actions an inspector is authorized to do. Authorizes an office of the Department of Public Safety, a motor carrier inspector in this state, and other law enforcement officers and agents of the comptroller to conduct inspections to determine violations under this chapter using procedures established by the comptroller. Provides that agents have the same power and authority to carry out inspections under this chapter. Sets forth the circumstances in which an inspector is authorized to detain a person or equipment.

Sec. 161.004. OPERATION OF PERMANENT OR PORTABLE WEIGH STATIONS. Authorizes the comptroller to assign qualified persons who are not state peace officers to supervise or operate permanent or portable weigh stations. Authorizes a person assigned under this section to stop, inspect, and issue citations for violations of this chapter to operators of trucks, trailers, barges, or vessels having a declared gross weight of 11,000 pounds or more, and buses. Authorizes the person to perform this duty at a permanent weigh station or other inspection point or while operating a clearly marked state police vehicle.

Sec. 161.005. ANALYSTS, CHEMISTS, AND INSPECTORS APPOINTED. Authorizes the comptroller to appoint analysts, chemists, and inspectors required to carry out this chapter. Sets forth the actions the analysts, chemists, and inspectors are authorized to do.

Sec. 161.006. LAW ENFORCEMENT ASSISTANCE. Authorizes the Department of Public Safety or another law enforcement agency to assist in enforcing all laws relating to inspection of motor fuels, at the request of the comptroller.

Sec. 161.007. STANDARDS FOR MOTOR FUELS; TESTING. Authorizes the Texas Department of Agriculture to adopt rules prescribing standards for motor fuel and methods for testing the fuel, including any requirements relating to the chain of custody.

Sec. 161.008. RECORDS OF RECEIPT AND SHIPMENT OF MOTOR FUELS. Requires a person who sells motor fuel or offers motor fuel for sale in this state to keep accurate records of each shipment lot of motor fuels received by the person and of the motor fuels shipped by the person. Requires each original or copy of a delivery to be included in the actual origin and destination of motor fuel by federal employer identification number or other identifier acceptable to the comptroller before the load leaves the terminal or origination location.

Sec. 161.009. COMPTROLLER TO ADOPT RULES AND PRESCRIBE FORMS. Requires the comptroller to adopt rules and prescribe forms in conformance with approved Federation of Tax Administrators uniformity standards as necessary to carry out this chapter.

Sec. 161.010. AGREEMENTS WITH POLITICAL SUBDIVISIONS OR INDIAN TRIBES. Defines "Indian tribe." Requires the comptroller to enter into agreements on behalf of this state with political subdivisions or Indian tribes necessary to improve motor fuel tax collection and to facilitate the recording of transactions. Authorizes the comptroller to enter into agreements with Indian tribes to provide a method or formula to refund taxes paid on tax-exempt motor fuel purchases or uses under this chapter.

Sec. 161.011. AGREEMENTS WITH OTHER STATES. Authorizes the comptroller to enter into a cooperative agreement with another state for the exchange of information and to audit end users of motor fuel in fleets of motor vehicles that are operated or intended to operate interstate. Provides that an agreement or amendment of an agreement takes effect according to its terms, except that an agreement or amendment may not take effect until the proposed agreement or

amendment is published in the Texas Register. Sets forth what the agreement is authorized to prescribe. Authorizes the comptroller, as required by the terms of an agreement, to forward to an officer of another state any information in the comptroller's possession relating to the manufacture, receipt, sale, use, transportation, or shipment of motor fuel by any person. Authorizes the comptroller to disclose to an officer of another state the location of officers, motor vehicles, and other real and personal property of end users of motor fuel. Provides that an agreement with another state may require each state to audit the records of a person based in the state to determine if the motor fuel taxes due each state that is a party to the agreement are properly reported and paid and may require each state to forward the findings of an audit performed on a person based in the state to each other state in which the person has a taxable use of motor fuel. Authorizes the comptroller to use an audit performed by another state to make an assessment of motor fuel taxes against a person not based in this state who has taxable use of motor fuel in this state. Provides that any agreement entered into under this section does not affect the authority of the comptroller to audit any person under any other law; an agreement entered into under this section prevails over an inconsistent rule of the comptroller; and except as otherwise provided by this section, a statute of this state prevails over an inconsistent provision of an agreement entered into under this section. Authorizes the comptroller to segregate in a separate fund or account, the amount of motor fuel taxes, other than penalties, estimated to be due to other jurisdictions, motor fuel taxes subject to refund during the fiscal year, licensing fees, and other costs collected under the agreement and to, on determination of an amount held that is due to be remitted to another jurisdiction, issue a warrant or make an electronic transfer of the amount as necessary to carry out the purposes of the agreement. Authorizes an auditing cost, membership fee, and other costs associated with the agreement to be paid from interest earned on funds segregated under this subsection. Requires any interest earnings in excess of the costs associated with the agreement to be credited to the general revenue fund. Authorizes the comptroller to enter into motor fuel tax agreements with other jurisdictions that may provide for the temporary remittance of amounts due to other jurisdictions that exceed the amounts collected. Requires the comptroller to ensure that reasonable measures are developed to recover motor fuel taxes and other amounts due to this state during each biennium.

Sec. 161.012. TAX ON CONSUMER. Provides that the tax imposed on taxable motor fuel under this chapter is a levy and assessment on the consumer, and a person required to remit a tax under this chapter acts as an agent of this state for the collection of the tax and that this section does not affect the method of collecting the tax prescribed by this chapter. Requires the tax imposed by this chapter to be collected and paid at the times, in the manner, and by the persons prescribed by this chapter.

Sec. 161.013. OTHER MOTOR VEHICLE TAXES PROHIBITED. Provides that the taxes imposed by this chapter are in lieu of any other occupation or sales, use, or other excise tax imposed by a municipality, county, or other political subdivision of this state on the sale, use, and distribution of gasoline, diesel fuel, or liquefied gas.

Sec. 161.014. FOREIGN ENTITIES. Provides that a person with a business based outside the political boundaries of the United States can be liable for state motor fuel taxes due.

Sec. 161.015. PRESUMPTIONS RELATING TO USE OF FUEL. Provides that except as provided by Section 161.161, there is a rebuttable presumption that all taxable motor fuel delivered into a motor vehicle fuel supply tank in this state is to be used or consumed to produce or generate power for propelling the motor vehicle on the public highways of this state and there is a rebuttable presumption that all taxable motor fuel that is removed from a terminal in this state, imported into this state by other than a bulk transfer within the bulk transfer system or terminal transfer system, or delivered into an end user's storage tank is to be used or consumed to produce or generate power for propelling motor vehicles on the public highways of this state.

Sec. 161.016. PRESUMPTION OF TAX DUE. Provides that a person who fails to keep a record, issue, an invoice, or file a report required by this chapter is presumed to have sold or used for taxable purposes all motor fuel shown by an audit by the comptroller to have been sold to the person and that any motor fuel unaccounted for is presumed to have been sold or used for taxable purposes. Authorizes the comptroller to set or establish the amount of taxes, penalties, and interest due this state from the records of deliveries or from any records of information available to the comptroller. Provides that a tax claim developed under this section is not paid after the

opportunity to request a redetermination, the claim and any audit made by the comptroller, or any report filed by the person, are evidence in any suit or judicial proceedings filed by the attorney general and are prima facie evidence of the correctness of the claim or audit. Provides that a prima facie presumption of the correctness of the claim may be overcome at trial by evidence produced by the person. Provides that in the absence of records showing the number of miles actually operated per gallon of motor fuel consumed, it is presumed that not less than one gallon of motor fuel was consumed for every four miles traveled. Authorizes an importer or transporter to produce evidence of motor fuel consumption to establish another mileage factor. Provides that the importer or transporter is liable for tax, penalties, and interest on any additional amount shown, if an examination or audit made by the comptroller of the records of an importer or transporter show that a greater amount of motor fuel was consumed than was reported by the importer or transporter for tax purposes; conversely, an importer or transporter is entitled to a credit or refund on overpayments of tax established by the audit.

Sec. 161.017. FUTURE INCREASES IN MOTOR FUEL TAX RATES. Requires a dealer or other person who, on the effective date of an increase in the rate of tax imposed by this chapter, possesses for the purpose of sale 2,000 or more gallons of gasoline or diesel fuel at each business location on which the taxes imposed by this chapter at a previous rate have been paid, to report to the comptroller the volume of that gasoline and diesel fuel and, at the time of the report, is required to pay a tax on that gasoline and diesel fuel at a rate equal to the rate of the tax increase. Provides that on the effective date of a reduction in the rate of a tax imposed by this chapter, a dealer who possesses for the purpose of sale 2,000 or more gallons of gasoline or diesel fuel at each business location on which the taxes imposed by this chapter at the previous rate have been paid becomes entitled to a refund in an amount equal to the difference in the amount of taxes paid on that gasoline or diesel fuel at the previous rate and at the rate in effect of the effective date of the reduction in the tax rate. Requires the comptroller to adopt rules prescribing the method for claiming a refund under this section and may require that the refund be paid through the person from whom the dealer received the fuel.

#### SUBCHAPTER B. TAXES IMPOSED ON GASOLINE AND DIESEL FUEL

Sec. 161.051. TAX ON GASOLINE. Provides that subject to the exemptions provided by this chapter, a tax is imposed on all gasoline used or consumed in this state in producing or generating power for propelling a motor vehicle on the public highways of this state; except as provided by Subsection (c), the gasoline tax rate is 20 cents per gallon; and the gasoline sold to a transit company for exclusive use in its transit carrier vehicles under an exemption certificate promulgated by the comptroller is 19 cents per gallon.

Sec. 161.052. TAX ON DIESEL FUEL. Provides that subject to the exemptions provided by this chapter, a tax is imposed on all diesel fuel used or consumed in this state in producing or generating power for propelling a motor vehicle on the public highways of this state; except as provided by Subsection (c), the diesel fuel tax rate is 20 cents a gallon; and the diesel fuel tax rate for gasoline sold to a transit company for exclusive use in its transit carrier vehicles under an exemption certificate promulgated by the comptroller is 19.5 cents per gallon.

Sec. 161.053. TAX ON IMPORTED MOTOR FUEL. Requires the tax imposed by this chapter on the use of taxable gasoline or diesel fuel imported into this state by a licensed importer for delivery to a destination in this state, other than by bulk transfer, to occur at the time the product enters the state. Requires the amount of the tax to be measured by invoiced gallons received outside this state at a refinery, terminal, or bulk plant.

Sec. 161.054. MEASUREMENT OF TAX ON MOTOR FUEL. Provides that except as provided by Section 161.053, the tax imposed by this chapter on the use of taxable gasoline or diesel fuel is measured by invoiced gallons of taxable gasoline or diesel fuel removed from certain places. Requires the tax on motor fuel to otherwise be determined in the same manner as the tax imposed by Section 4081, Internal Revenue Code of 1986, as amended, and applicable regulations in the Code of Federal Regulations, as amended.

Sec. 161.055. PAYMENT OF TAX ON MOTOR FUEL IMPORTED FROM ANOTHER STATE. Requires a tax imposed by this chapter on taxable motor fuel imported by a licensed occasional importer from another state to be paid by that licensed occasional importer, except as

otherwise provided by this chapter. Requires the licensed occasional importer to make the payment not later than the third business day after the earlier of the time the nonexempt taxable motor fuel entered the state or the date a valid import verification number required by Section 161.207 was assigned by the comptroller. Requires a tax imposed by this chapter on taxable motor fuel imported by a licensed bonded importer from another state to be paid by the licensed bonded importer who imported the nonexempt taxable motor fuel during the month, except as provided by this section. Sets forth the accrued tax due dates. Provides that if the date the taxes are due and payable is on a weekend or on a state or banking holiday, the tax is due and payable on the next succeeding business day. Provides that a supplier who has made a blanket election to precollect tax under Section 161.056 is jointly liable with the importer for the tax. Requires the jointly liable supplier to remit the tax to the comptroller on behalf of the importer under the same terms as a supplier payment is made under Section 161.057, except that an import verification number is not required and the supplier may retain the net percentage of the tax collected that a supplier may retain under Section 161.066.

**Sec.161.056. BLANKET ELECTION TO TREAT ALL REMOVALS FROM OUT-OF-STATE TERMINALS AS REMOVALS FROM IN-STATE TERMINALS.** Authorizes a licensed supplier or licensed permissive supplier to make a blanket election to treat all removals from the supplier's out-of-state terminals with a destination in this state, as shown on the terminal-issued shipping paper, as if removals were removed across the rack by the supplier from a terminal in this state. Requires an election under this section to be made by filing a notice with the comptroller as provided by this section. Requires the comptroller to release a list of electing suppliers on request of any person. Requires a supplier who makes the election provided by this section to precollect the tax imposed by this chapter on all removals from a qualified terminal on the supplier's account as a position holder or as a person receiving fuel from a position holder under a two-party exchange agreement, without regard to the license status of the person acquiring the fuel from the supplier, the point or terms of sale, or the character of delivery.

**Sec. 161.057. TAX COLLECTED AND REMITTED BY SUPPLIER OR PERMISSIVE SUPPLIER; DUE DATE; LATE TAXES.** Requires the tax imposed by this chapter on gasoline or diesel fuel removed by a licensed supplier from a terminal or refinery in this state, other than by bulk transfer, to be collected and remitted to the state by the supplier who removes the taxable gallons, as shown in the terminal operator's records. Requires the supplier and each reseller to list the amount of the tax as a separate line item on all invoices or billings. Sets forth due date for all taxes to be paid by a supplier with respect to gallons removed on the supplier's account. Requires the supplier to pay the taxes in concurrence with payments to the Internal Revenue Service for federal excise taxes due. Provides that the tax is due and payable on the next succeeding business day, if the date the taxes are due and payable is on a weekend or on a state holiday. Requires a supplier to notify the comptroller of certain late tax remittances.

**Sec. 161.058. LIABILITY OF TERMINAL OPERATOR FOR MOTOR FUEL TAXES.** Provides that a terminal operator of a terminal in this state is jointly and severally liable for tax imposed under this chapter on gasoline and diesel fuel. Sets forth the conditions under which a terminal operator is required to remit tax payment to the state. Provides that a terminal operator is relieved of liability in a situation described by Subsection (a)(1) if the operator establishes certain facts regarding that operator. Provides that a terminal operator is jointly and severally liable for the tax imposed by this chapter that is not allocable to a licensed supplier. Requires the terminal operator to remit the tax due with the annual report required by Section 161.256(d). Prohibits the operator from taking a collection credit or deduction with respect to payment of a tax on lost gallons. Requires the terminal operator to pay a penalty equal to 100 percent of the tax otherwise due, if the number of gallons lost or unaccounted for exceed an amount equal to five percent of the gallons removed from the terminal across the rack. Provides that the tax is not due if the terminal operator can establish that the gallons lost were diesel fuel that was dyed before receipt by that terminal operator.

**Sec. 161.059. PAYMENT OF TAX BY LICENSED TANK WAGON OPERATOR-IMPORTER.** Provides that a licensed tank wagon operator-importer is liable for the tax imposed by this chapter on nonexempt gasoline and diesel fuel imported by a tank wagon if the tax has not previously been paid to a supplier. Requires the person to remit the tax for the preceding month's import activities with the person's monthly report of activities. Authorizes a licensed tank wagon operator-importer to retain a percentage of the tax as an administrative credit in accordance with

Section 161.067(b).

Sec. 161.060. PAYMENT OF TAX BY LICENSED EXPORTER. Requires a licensed exporter carrying in a transport truck, tank wagon, or similar vehicle nonexempt gasoline or diesel fuel for which tax has not previously been paid to a supplier to remit the motor fuel tax for the destination state to the comptroller with the exporter's monthly report of activities. Requires the tax to be collected at the applicable rate prescribed by this subchapter and be refunded when the licensed exporter provides proof that the destination state taxes have been paid, if the comptroller does not have an agreement with the destination state for collection of state motor fuel taxes.

Sec. 161.061. COLLECTION OF TAX FROM ELIGIBLE PURCHASER; ELECTION TO DEFER TAX PAYMENT. Requires a supplier or bonded importer who sells taxable gasoline or diesel fuel to collect from the purchaser the motor fuel tax imposed under this chapter. Prohibits the seller from requiring an eligible purchaser to pay the tax on transport truckloads of gasoline or diesel fuel before payment for the fuel is due or before one business day before the date the tax is required to be remitted by the supplier or bonded importer under this subchapter. Provides that failure of a supplier or bonded importer to comply with this section may result in suspension or revocation of the person's license. Authorizes an eligible purchaser to deduct from the amount of tax otherwise payable to a supplier or bonded importer an amount equal to certain differences.

Sec. 161.062. ELECTION OF PURCHASER. Requires a person who elects to be an eligible purchaser and to defer payment of taxes to present certain evidence to the comptroller regarding an applicant. Requires an eligible purchaser's remittances of all amounts of tax due to the seller to be paid by electronic funds transfer. Authorizes the seller to terminate an eligible purchaser's election under this section, if the eligible purchaser does not make timely payments to the seller. Authorizes the comptroller to require an eligible purchaser who pays the tax to a supplier to file a surety bond payable to the state on which the eligible purchaser is the obligator, or to file other financial security in an amount satisfactory to the comptroller and the bond indemnify the comptroller against uncollectible tax credits claimed by the supplier under Section 161.064.

Sec. 161.063. RESCISSION OF ELIGIBLE PURCHASER'S ELECTION TO DEFER PAYMENT OF TAX. Authorizes the comptroller to rescind an eligible purchaser's election to defer remitting motor fuel taxes to a supplier or bonded importer by sending written notice to all suppliers and bonded importers or by publishing notice of the rescission in at least one newspaper of general circulation in this state. Authorizes the comptroller to rescind the election after a hearing and on a showing of good cause such as failure to make timely tax-deferred payment to a supplier or bonded importer. Authorizes the comptroller to require further assurance of the purchaser's financial responsibility, to increase the bond requirement under Section 161.217 for that purchaser, or to take other action to ensure remittance of the taxable motor fuel tax, instead of rescinding the election. Requires the comptroller to follow the revocation procedures prescribed by this chapter in rescinding an eligible purchaser's election.

Sec. 161.064. CREDITS FOR LICENSED SUPPLIERS, PERMISSIVE SUPPLIERS, AND BONDED IMPORTERS. Provides that in computing the amount of motor fuel tax due, a supplier or bonded importer is entitled to a credit against the tax payable in an amount equal to the amount of tax paid by the supplier or bonded importer that is uncollectible from an eligible purchaser. Requires the supplier or bonded importer to provide notice to the comptroller of a failure to collect tax not later than the 10th day after the earliest date the supplier or bonded importer was entitled to collect the tax from the eligible purchaser under this subchapter. Requires the comptroller, by rule, to establish the evidence a supplier or bonded importer must provide to receive the credit. Requires a supplier or bonded importer to claim a credit on the firm's return after the date the eligible purchaser fails to pay the tax if the payment remains unpaid as of the filing date of that return. Requires the claim for the credit to identify the defaulting eligible purchaser and any tax liability that remains unpaid. Provides that the supplier's or bonded importer's credit is limited to the amount due from the eligible purchaser, plus any tax due from that purchaser for the period ending on the date the supplier or bonded importer receives notice from the comptroller that the eligible purchaser's election has been received. Prohibits a supplier or bonded importer from receiving an additional credit under this section in relation to a particular purchaser after the purchaser's election is rescinded unless the comptroller authorizes the purchaser to make a new election.

Sec. 161.065. PAYMENT OF TAX BY ELECTRONIC FUNDS TRANSFER. Requires a supplier or bonded importer that is required to remit motor fuel taxes to remit the taxes due by electronic funds transfer in the manner required by the comptroller on or before the date the taxes are due.

Sec. 161.066. RETENTION FOR ADMINISTRATIVE COSTS. Authorizes a supplier or permissive supplier who properly remits taxes under this chapter to retain each month an amount equal to three-fourths of one percent of the taxes collected and remitted by that supplier to cover certain administrative costs. Authorizes a licensed bonded importer who properly remits taxes to retain an amount equal to one-half of one percent of the taxes collected and remitted by that importer, provided that an importer is prohibited from retaining more than \$2,000 each month. Authorizes the importer to retain an amount to cover certain administrative costs.

Sec. 161.067. ELIGIBLE PURCHASERS AND SUPPLIERS TO SHARE ADMINISTRATIVE CREDITS. Requires an eligible purchaser who lawfully engages in the distribution of tax-paid motor fuel within this state to receive a credit from the terminal in an amount equal to one-half of one percent of the tax due to offset the cost of recordkeeping on removal of the taxable motor fuel from the terminal; however, the credit is not applicable more than once to any taxable motor fuel. Authorizes the supplier to choose not to transfer the credit to an eligible purchaser that is also a company store. Provides that a supplier who makes a sale of tax-paid motor fuel to a person who is not an eligible purchaser is entitled to the allowance provided by Subsection (a). Requires the supplier to receive the allowance through a credit against tax remittance due to this state and payable by a person.

Sec. 161.068. TAX COLLECTED ON MOTOR FUEL BELONGS TO STATE AND IS HELD IN TRUST BY COLLECTOR. Provides that the tax that a person collects on taxable motor fuel sales belongs to this state and a person holds the money in trust for this state for payment to the comptroller. Provides that each officer, employee, or agent of a corporation or partnership has a duty to collect the tax and is personally liable for the tax, penalty, and interest.

Sec. 161.069. DIVERSION OF TAXABLE MOTOR FUEL. Requires an exporter who diverts taxable motor fuel removed from a terminal in this state from an intended destination outside this state to a destination within this state, to take certain actions. Authorizes an exporter who removes taxable motor fuel on which the tax imposed by this subchapter has been previously paid from a bulk plant in this state, to issue a refund of that tax, without including the allowance provided by Section 161.066, when displaying proof of export to the comptroller's satisfaction. Requires an unlicensed importer who diverts taxable motor fuel from a destination outside this state to a destination inside this state, after having removed the product from a terminal outside this state to take certain actions. Requires a licensed importer to report and pay tax on diversions into this state of imported taxable motor fuel in accordance with the rules that apply to that license class. Prohibits a licensed importer from taking an allowance under Section 161.066 for diverted shipments. Authorizes an importer who purchases a product from a licensed supplier to permit the supplier to assume the importer's liability and adjust the importer's taxes payable to the supplier. Requires a tax remitter to pay to the comptroller, all motor fuel tax the remitter collected from the sale of taxable motor fuel during the taxable period, in addition to penalties and interest, if a monthly report is filed or the amount due is remitted after the date required by this chapter. Requires, under all circumstances, diverted loads and imported loads to obtain a diversion or import verification number from the comptroller before leaving this state, entering this state, or being delivered.

Sec. 161.070. PERSONS BLENDING OR FRACTIONATING UNTAXED MATERIALS; PAYMENT OF TAX. Requires a person blending certain untaxed materials with taxable motor fuels to pay and remit any unpaid tax imposed by this chapter. Sets forth the required actions regarding a person fractioning fuels. Requires a fuel vendor required to pay a tax under Subsection (a), to remit the tax with the report required by Section 161.261 (b) or otherwise required from a person who is a miscellaneous fuel tax license holder. Requires a person other than a fuel vendor required to pay tax under Subsection (a), to remit the tax directly to the comptroller not later than the 30th day after the blending event in accordance with comptroller rules.

Sec. 161.071. BACK-UP TAX COLLECTION. Provides that a tax is imposed by this chapter on tax-exempt motor fuel that is used in a taxable or illegal manner and on a tax-exempt end user

who uses tax-exempt fuel in a taxable or illegal manner. Provides that the ultimate taxable motor fuel vendor is jointly and severably liable for the tax imposed by this section if the ultimate vendor knows or has reason to know that the tax-exempt motor fuel is or will be used in a manner that will make the fuel subject to taxation under this section.

#### SUBCHAPTER C. TAXES IMPOSED ON LIQUIFIED GAS

Sec. 161.101. LIQUIFIED GAS. Provides that, subject to the exemptions provided by this chapter, a tax is imposed on all liquefied gas used or consumed in this state in producing or generating power for propelling a motor vehicle on the public highways of this state. Provides that the liquified gas rate is 15 cents a gallon.

Sec. 161.102. PAYMENT OF TAX. Requires a person using a certain liquified gas-propelled motor vehicle that is required to be licensed in this state for use on the public highways of this state, to prepay the liquefied gas tax to the comptroller on an annual basis. Requires a person who holds a motor vehicle dealer's liquefied gas tax decal or an interstate trucker whose vehicle is registered in this state but who may operate in other states under multi-state fuels tax agreement, to pay the tax to a permitted dealer at the time the fuel is delivered into the fuel supply tank of the motor vehicle. Requires an interstate trucker operating a motor vehicle licensed in a state other than this state and any other out-of-state user, to pay the tax on delivery of the liquified gas into the fuel supply tanks of a motor vehicle.

Sec. 161.013. LICENSES; APPLICATION; DISPLAY. Requires a dealer who sells taxable liquified gas, an interstate trucker, a liquified gas tax decal user, or a motor vehicle dealer's liquefied gas tax decal license holder to file an application with the comptroller for the kind and class of a nonassignable license required by this subchapter. Requires a license application to be filed on a form provided by the comptroller showing the kind and class of license desired, the odometer reading of a Class A through Class F motor vehicle, and other information required by the comptroller. Requires a license to be posted in a conspicuous place or kept available for inspection at the principle place of business of the owner. Requires a license holder to reproduce the license and keep a copy on display at each additional place of business from which liquefied gas is sold, delivered, or used in motor vehicles. Requires a person holding an interstate trucker's license to reproduce the license and carry a copy with each motor vehicle being operated into or from this state. Requires the liquified gas tax decal user to affix a decal in the lower right corner of the front windshield of the passenger side of the vehicle.

Sec. 161.104. DEALER'S LICENSE. Provides that a dealer's license authorizes a dealer to collect and remit taxes on liquefied gas delivered into the fuel supply tank of a motor vehicle displaying an out-of-state license plate, the motor vehicle of an interstate trucker licensed under an agreement entered into under Section 161.011, or a motor vehicle displaying a motor vehicle dealer's liquefied gas tax decal.

Sec. 161.105. LIQUEFIED GAS TAX DECAL LICENSE. Requires a person who uses liquefied gas in producing or generating power for propelling a motor vehicle on the public highways of this state to pay annually in advance, on each motor vehicle owned, operated, and registered in this state by that person, a tax based on the registered gross weight and mileage driven the previous year according to a certain schedule. Requires the first issuance of a liquefied gas tax decal for a Class A through Class F motor vehicle to be issued on the basis of the number of miles estimated to be driven during the period ending on the first anniversary of the date of issuance of the decal. Requires a special liquefied gas tax decal and tax to be paid for certain types of vehicles. Authorizes an entity holding a registration under Chapter 503, Transportation Code, to obtain a decal for each liquefied-gas-powered motor vehicle held for sale or resale and to pay the tax on each gallon to a licensed dealer on each delivery of liquefied gas into the fuel supply tank of the motor vehicle. Provides that an interstate trucker is not required to prepay the tax under Subsection (a) for a motor vehicle operated for commercial purposes.

Sec. 161.106. LICENSES; PERIODS OF VALIDITY. Provides that a dealer's license is permanent and valid as long as the license holder provides timely reports to the comptroller s required, or until the license is surrendered by the holder or canceled by the comptroller and a liquefied gas tax decal license is valid from the date of its initial issuance through the last day of the same month of the year following the year it was issued, unless the motor vehicle for which the tax



is prepaid is sold or no longer used on a public highway. Requires a liquefied gas tax decal, after its initial issuance, to be issued annually and is valid until the first anniversary of the date of its issuance unless the motor vehicle for which the tax is prepaid is sold or no longer use on a public highway. Requires a liquified gas tax decal license holder to apply for a new license each year. Requires the ending odometer reading to be provided on the renewal application. Requires the previous year's motor vehicle mileage to be presumed to be at least 15,000 miles, in the absence of an ending odometer reading. Requires a motor vehicle dealer's liquefied gas tax decal license to be issued annually and is valid from the date of its issuance through December 31 of each calendar year unless the motor vehicle is sold at which time the decal shall be removed by the dealer from the motor vehicle. Requires a motor vehicle dealer's liquefied gas tax decal license holder to make application for a new license each year. Provides that the fee for a dealer's license is \$50.

Sec. 161.107. COMPUTATION OF TAXES; ALLOWANCES. Requires a licensed dealer who makes a sale or delivery of liquefied gas into a fuel supply tank of a motor vehicle on which the tax is required to be collected to report and pay the tax in a manner required by this subchapter. Provides that a licensed dealer who makes a sale or delivery of liquefied gas into a fuel supply tank of a motor vehicle n which the tax is required to be collected is liable for the tax. Requires the tax on one-half of one percent of the taxable gallons of liquefied gas sold in this state by a licensed dealer to be allocated to the licensed dealer for certain expenses. Requires the allocation allowances to be deducted by the licensed dealer in the payment to the state. Requires the tax on one-half of one percent of the taxable gallons of liquefied gas sold in this state to a person licensed as an interstate trucker to be allocated to the interstate trucker making the use of the liquefied gas for the expense or accounting for, reporting, and remitting the taxes due.

Sec. 161.108. RECORDS. Requires each taxable sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle, including deliveries by interstate truckers from bulk storage, to be covered by an invoice. Provides that the invoice must be printed. Sets forth the required information contained on the invoice. Requires the invoice to be carried with the vehicle. Provides that the invoice serves as a trip permit. Authorizes a liquefied gas tax decal license holder required to report beginning and ending odometer readings to deduct the miles traveled outside this state from the total miles traveled. Requires a mileage record traveled by the vehicle in state other than this state to be maintained and submitted with the renewal each year. Prohibits a decal from being renewed for an amount less than the rate for 4,999 miles annually.

Sec. 161.109. REPORTS AND PAYMENTS. Requires a licensed dealer, on or before the 25th day of the month following the end of each calendar quarter, to report and remit an amount of tax due. Requires a licensed dealer who has not made taxable sales during the reporting period to file a report that include the facts or information with the comptroller.

Sec. 161.110. REFUNDS; TRANSFER OF DECALS. Requires a seller and purchaser to promptly notify the comptroller of any sale and transfer, and a new decal is required to be issued in the new purchaser's name, if a motor vehicle with a liquefied gas tax decal is sold or transferred. Provides that if a motor vehicle with a liquefied gas tax decal is destroyed or the liquefied gas carburetor system is removed, the owner is entitled to a refund of the unused portion of the advance taxes paid for that year. Requires the owner or operator to submit an affidavit identifying the vehicle, the circumstances entitling the person to a refund, and all other information requested by the comptroller to the comptroller. Requires the comptroller, on receipt of the affidavit, and if satisfied as the circumstances, to refund that portion of the tax payment that corresponds to the number of complete months remaining in the year for which the tax has been paid, beginning with the month following the date the vehicle or the liquefied gas carburetor was not used. Prohibits the comptroller from making a refund if the use of the vehicle ceased within the last month of the year.

#### SUBCHAPTER D. INTERNATIONAL FUEL TAX AGREEMENT

Sec. 161.131. INTERNATIONAL FUEL TAX AGREEMENT LICENSE REQUIREMENT. Requires an interstate trucker who imports motor fuel into this state in the fuel supply tanks of a motor vehicle described in the definition of "interstate trucker" in Section 161.001 that is operated for commercial purposes to obtain a license as interstate trucker to report and pay the tax due on motor fuel that is imported and used on the public highways in this state or claim a credit or refund

of the tax paid on motor fuel purchased in this state and used in other states. Provides that an interstate trucker's license is valid for certain time periods. Authorizes the comptroller to renew the license each year if the license holder reports as required by the comptroller. Requires the comptroller to determine from the information on the application or from other investigations the kind or class of license or permit to be issued and to issue a license to an applicant on approval of the application. Requires a person who holds an interstate trucker's license to reproduce the license and carry a photocopy in each vehicle the person operates into or from the state. Provides that a license is not transferable.

Sec. 161.132. TRIP PERMIT. Authorizes an interstate trucker to obtain a trip permit instead of obtaining an annual interstate trucker's license. Requires the trip permit to be obtained before or at the time of entry into this state. Prohibits the comptroller from issuing more than five trip permits for a person during a calendar year. Requires the comptroller to collect a fee for each trip permit in the amount of \$50 for each vehicle for each trip. Provides that a report is not required with respect to that vehicle and a trip permit is not transferable.

Sec. 161.133. OPERATING WITHOUT LICENSE OR PERMIT. Provides that an interstate trucker who operates a motor vehicle without an interstate trucker's license or trip permit may be subject to a penalty under Subchapter I.

Sec. 161.134. RECORD REQUIREMENT. Sets forth an interstate trucker's recordkeeping requirements. Requires an interstate trucker to keep the records for four years. Provides that the records are open to inspection at all times by the comptroller and the attorney general.

Sec. 161.135. REPORTS. Requires an interstate trucker, on or before the 25th day of the month following the end of each calendar quarter, to file a report on forms provided by the comptroller. Requires the report to include complete and detailed information required by the comptroller. Requires an interstate trucker who has not used any motor fuel during a reporting period to file a report stating that fact with the comptroller. Provides that the failure of an interstate trucker to obtain forms from the comptroller is not an excuse for the failure to file a report containing the information required to be reported. Authorizes the comptroller to waive a report required by this section if substantially similar data is available from federal government sources.

Sec. 161.136. PAYMENT OF TAX. Prohibits an interstate trucker from making tax-free purchases of motor fuel. Requires an interstate trucker to remit all taxes due with report required by Section 161.135 and to remit all taxes due by the trucker based on the applicable tax rate for each gallon of motor fuel consumed in this state at the time the report is filed. Provides that a licensed interstate trucker is entitled to deduct an amount equal to one-half on one percent of the taxable gallons of motor fuel on payment of taxes to this state for the expense of recordkeeping, reporting, and remitting the tax.

Sec. 161.137. CREDIT FOR MOTOR FUEL CONSUMED OUTSIDE STATE. Provides that a licensed interstate trucker is entitled to a credit equal to the tax rate for each gallon on all tax-paid motor fuel that is consumed in a vehicle outside this state. Authorizes an interstate trucker to accumulate credits for four successive calendar quarters, but must take the credit or claim a refund on a report filed on or after the 25th day after the end of the fourth quarter. Authorizes the comptroller to allow a trucker to claim an excess as a credit or refund on a timely filed quarterly report against tax for which the interstate trucker would be otherwise liable for any of the next three quarters, if the amount of a credit to which an interstate trucker is entitled for a calendar quarter exceeds the amount of tax for which the interstate trucker is liable for motor fuel consumed in the person's vehicles during the reporting period. Requires an interstate trucker claiming a tax refund or credit to provide evidence of the mileage traveled and gallons consumed and the payment of the tax on a form required by or satisfactory to the comptroller. Requires an interstate trucker to file a claim for a credit or refund not later than the first anniversary of the day after the first day of the calendar month following a purchase or use.

Sec. 161.138. INTERSTATE TRUCKERS AND LESSORS; PAYMENT OF TAX. Provides that unless a lessor is liable under Subsection (b), an interstate trucker is liable for the tax on motor fuel imported into this state in the fuel supply tanks of motor vehicles leased to the trucker and used on the public highways of this state to the same extent and in the same manner as the trucker is liable for the tax on motor fuel imported in the trucker's own motor vehicles and used on the

public highways of this state. Provides that a lessor who regularly engages in the business of leasing motor vehicles and equipment for compensation to carriers or other losses for interstate operation may be considered to be the end user or interstate trucker if the lessor supplies or pays for the motor fuel consumed in those vehicles. Provides that a lessor may be issued a license as an interstate trucker if an application is properly filed with and approved by the comptroller. Authorizes a lessee to exclude a motor vehicle that the person leases from the person's reports and liabilities under this chapter, but only if the motor vehicle has been leased from a lessor who holds a license as a bonded interstate trucker for the calendar year. Authorizes a lessor described by Subsection (b) to file with the person's application for an interstate trucker license, one copy of the form lease or service contract the person enters into with the lessees of the person's motor vehicles. Authorizes the lessor, on approval of the license, to make and assign to each motor vehicle the person leases for interstate operation, a photocopy of the license to be carried in the cab compartment of the motor vehicle. Requires the license photocopy to have the unit or motor number of the motor vehicle to which it is assigned and the name of the lessee typed or printed on the back. Provides that the lessor is responsible for the proper use of the license photocopy issued and for its return to the lessor with the motor vehicle to which it is assigned.

#### SUBCHAPTER E. EXEMPTIONS, REFUNDS, AND CREDITS

Sec. 161.161. EXEMPTIONS FROM TAX ON MOTOR FUEL. Sets forth certain fuels and motor fuel sales, subject to the conditions and prohibitions imposed by this chapter, which are exempt from the tax on motor fuel imposed by this chapter. Requires motor fuel delivered to a farm or ranch for agricultural purposes to be delivered tax-free if the fuel is delivered in quantities of 3,000 gallons or less per delivery, with a maximum of 10,000 gallons in any month. Requires the ultimate vendor to pay tax on behalf of the farm or ranch and may request a refund under Section 161.162.

Sec. 161.162. REFUNDS OF MOTOR FUEL TAX PAID. Authorizes a person who has paid tax on motor fuel that is used for a nontaxable purpose described by this subsection to apply to the comptroller for a refund using a form prescribed by the comptroller. Sets forth certain uses of motor fuel which would result in the comptroller, on receipt of an application and acceptable proof, being required to issue a refund for taxes paid on motor fuel. Sets forth the conditions in which a person who files a claim for a tax refund forfeits the person's right to the entire amount of the claim. Authorizes the comptroller to grant all or part of a refund under Subsection (b), if a person provides satisfactory proof to the comptroller that the incorrect refund claim was filed because of a clerical or mathematical computation error. Requires the comptroller to credit or pay a refund directly to the person who paid the tax. Provides that a credit or refund is not assignable or transferable.

Sec. 161.163. CLAIM FOR REFUND ON TAXES PAID ON EXEMPT SALES TO GOVERNMENTAL ENTITIES. Sets forth the types of sales this section applies to. Authorizes a licensed fuel vendor that made a sale described by Subsection (a) as an ultimate vendor to an exempt government end user to apply for a refund on behalf of the exempt end user. Requires the licensed fuel vendor to apply directly with the comptroller in accordance with the rules and forms prescribed by the comptroller. Authorizes an ultimate vendor to apply for a government exempt bulk sales permit that entitles the vendor to make purchases of gasoline tax-free for resale to an exempt government end user. Requires an ultimate vendor to apply on a form acceptable to the comptroller and include certain information on the application. Requires the comptroller to issue a permit to the applicant that authorizes the applicant to make tax-exempt sales of motor fuel during the year in an amount not to exceed the estimate included on an application, if the comptroller determines that tax collections would not be jeopardized by issuance of a government exempt bulk sales permit. Requires the comptroller to provide a copy of a permit to each supplier named by the applicant under Subsection (d)(3). Prohibits a governmental entity from qualifying as a purchaser eligible for tax-exempt sales under this section unless the vendor takes certain actions. Requires the comptroller to assign an approval number for the governmental entity and ultimate vendor location described by Subsection (f). Prohibits the comptroller from requiring that identical gallons purchased by an ultimate vendor under the permit be delivered to the eligible entity. Authorizes the comptroller to require that the total gallons purchased tax-exempt under the permit equal the total gallons delivered to all eligible entities. Provides that if the ultimate vendor fails to deliver purchased tax-exempt fuel to an eligible entity, the ultimate vendor is liable for the tax on that motor fuel. Authorizes the comptroller to levy a penalty equal to 10 percent

of the tax due, if the number of tax-exempt gallons purchases tax-free exceeds the number of gallons sold for tax-exempt use by 10 percent or more. Requires a vendor to notify the comptroller, if an ultimate vendor needs to purchase more gallons than the amount a vendor included in an estimate prescribed by Subsection (d) to fulfill a vendor's commitments. Requires the comptroller to increase the quantity authorized on a permit and to notify each supplier of an increase, if the comptroller is satisfied with the reports previously submitted by a vendor that account for the tax-exempt fuel. Authorizes an ultimate vendor who made a sale to apply to the comptroller for certain refunds or credits, if an ultimate vendor makes a sale of taxable motor fuel to an eligible entity under this section at a fixed retail pump available to the general public without including the tax. Authorizes an entity to apply for a refund from the comptroller, if an ultimate vendor makes a sale of taxable motor fuel to an eligible entity under this section at a fixed retail pump available to the general public and includes the tax. Requires the entity to submit any supporting documentation the comptroller prescribes by rule with the application.

Sec. 161.164. REFUND OF MOTOR FUEL TAX ERRONEOUSLY PAID. Requires the comptroller to permit a person who paid tax to take a credit against a subsequent tax report for an amount erroneously or illegally paid or to apply for a refund, if any taxes, interest, or penalties imposed by this chapter have been erroneously paid or illegally collected. Requires an election to take a credit to be made not later than the first anniversary of the date of the erroneous collection or payment.

Sec. 161.165. REFUND CLAIMS. Sets forth the required actions a person must take, except as otherwise provided by this chapter, to claim a refund under Sections 161.162 through 161.064. Requires the comptroller to investigate a claim as the comptroller considers necessary before issuing a refund. Authorizes the comptroller to also investigate a refund after the refund has been issued and within the period for making adjustments to the tax. Authorizes a supplier to claim a credit instead of a refund, if a refund is payable to a supplier. Authorizes the comptroller, by rule, to provide an alternative election by the applicant for a refund by allowing a credit against state tax liability to facilitate efficient administration and instead of an individual refund procedure. Requires the comptroller to deduct an amount originally deducted under Subchapter B by the licensed entity making the sale.

Sec. 161.166. INTEREST ON REFUND. Requires the comptroller to pay interest on a refund claim at the rate and in the manner provided by comptroller rules.

#### SUBCHAPTER F. LICENSING

Sec. 161.201. REQUIREMENT FOR LICENSE. Requires a person who wants to engage in any form of fuel storage, transportation, purchase, sale, or delivery in this state to notify the comptroller of that intent and obtain an appropriate license.

Sec. 161.202. SUPPLIER'S LICENSE; FEE. Requires a person who wants to be engaged in a business in this state as a supplier to obtain a supplier's license. Provides that the supplier's license fee is \$2,000.

Sec. 161.203. PERMISSIVE SUPPLIER'S LICENSE; FEE. Authorizes a person who wants to collect the tax imposed by this chapter as a supplier and who meets the definition of a permissive supplier to obtain a permissive supplier's license. Provides that application for or possession of a permissive supplier's license does not itself subject an applicant or license holder to the jurisdiction of this state for the purpose other than administration and enforcement of this chapter. Provides that the permissive supplier's license fee is \$250.

Sec. 161.204. TERMINAL OPERATOR'S LICENSE; FEE. Requires a person, other than a supplier licensed under Section 161.202, who wants to be engaged in business in this state as a terminal operator to obtain a terminal operator's license for each terminal state. Provides that the terminal operator's license fee is \$100.

Sec. 161.206. TRANSPORTER'S LICENSE; FEE. Requires a person who is not licensed as a supplier or as an aviation fuel dealer to obtain a transporter's license before transporting taxable motor fuel, whether from a point outside this state to a point inside this state or from a point inside this state to a point outside this state, regardless of whether the person is engaged for hire in

interstate or intrastate commerce. Requires lease vehicles to be registered to transport motor fuel within the state in the same manner as owned vehicles. Provides that a transporter's license fee is \$100.

Sec. 161.207. OCCASIONAL IMPORTER'S LICENSE (TRIP LICENSE) OR BONDED IMPORTER'S LICENSE; FEES. Requires a person to apply for and obtain an occasional importer's license or a bonded importer's license, at the discretion of the applicant under certain conditions. Provides that this section does not apply to certain persons. Sets forth the kinds of importer's licenses a person described by Subsection (a) is required to obtain. Sets forth the actions a person required to obtain a license under this section must take. Requires an importer's license issued under this section to be specific to each state that is the source of supply.

Sec. 161.208. TANK WAGON OPERATOR-IMPORTER LICENSE; FEE. Requires a person to obtain a tank wagon operator-importer license from the comptroller before the person imports motor fuel by tank wagon if the destination of that tank wagon is within 25 miles of a border of this state. Provides that registration as a tank wagon operator-importer does not constitute authorization to acquire nonexempt motor fuel free of the tax imposed by this chapter at a terminal either in or outside this state for direct delivery to a location in this state. Authorizes a person who possesses a valid importer's license to act as a tank wagon operator-importer without issuance of a separate license if the importer also operates one or more bulk plants outside this state. Requires a person who operates a tank wagon that delivers products into this state to also obtain an importer's license under Section 161.207. Provides that a tank wagon operator-importer license fee is \$150.

Sec. 161.209. FUEL VENDOR'S LICENSE; FEE. Requires a person who wants to engage in the business of selling taxable motor fuel at wholesale or retail or in storing or distributing taxable motor fuel for resale within this state to obtain a fuel vendor's license. Requires a fuel vendor to maintain detailed records of all purchases and sales at all locations in this state until the third anniversary of the date of a transaction. Requires all fuel vendor records to be maintained in English and Arabic or in a manner acceptable to electronic formats. Requires a vendor to make an annual report of taxable gallons sold at retail in accordance with Section 161.261. Authorizes the comptroller to exempt from the requirements of Subsection (a), a person who possesses a valid supplier's, terminal operator's, transporter's, importer's, tank wagon operator-importer, or exporter's license. Provides that a fuel vendor's license fee is \$50.

Sec. 161.210. AVIATION FUEL DEALER'S LICENSE; FEE. Requires a person who wants to engage in business in this state as a dealer, wholesaler, vendor, or transporter of aviation fuels or who stores those fuels to obtain an aviation fuel dealer's license for each business site. Provides that an aviation fuel dealer's license authorizes a person to deliver gasoline or diesel fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment. Authorizes the holder of an aviation fuel dealer's license to sell or deliver diesel fuel to another aviation fuel dealer who will deliver the diesel fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment. Prohibits the holder of an aviation fuel dealer's license from acting as a supplier of gasoline or diesel fuel other than as allowed by this section. Provides that the aviation fuel dealer's license fee is \$50.

Sec. 161.211. MISCELLANEOUS FUEL TAX LICENSE; FEE. Requires each person who is liable for the tax imposed by this chapter but is not licensed under Sections 161.202 through 161.210 to obtain a miscellaneous fuel tax license. Provides that there is no fee for this service.

Sec. 161.212. APPLICATION FOR LICENSE. Requires an applicant to file an application with the comptroller on a form prescribed by the comptroller containing certain required applicant and other information to obtain a license. Prohibits a person from applying for a license as a refiner, supplier, terminal operator, importer, exporter, blender, or transporter unless the person meets certain conditions. Prohibits a person from applying for a license as a refiner, supplier, permissive supplier, or terminal operator unless the person meets certain conditions. Requires a person applying for a license who has a federal certificate of registry that is issued under Section 4101, Internal Revenue Code of 1986, as amended, to include the registration number of the certificate on the license application. Requires a person applying for a license as an importer to include on an a list of each state from which the applicant intends to import fuel. Requires a person to be licensed in a state to obtain a license in a state, if a listed state requires a license. Requires a person

applying for a license as an exporter to include on the application a list of each state to which the applicant intends to export motor fuel that is received in this state by transfer outside the terminal transfer system. Requires a person to be licensed in a state to obtain a license in the state, if a listed state requires a license.

Sec. 161.213. INVESTIGATION OF APPLICANT FOR LICENSE. Requires the comptroller to investigate each applicant for a license under this chapter. Prohibits the comptroller from issuing a license to a person under certain circumstances.

Sec. 161.214. REQUIREMENT FOR FINANCIAL STATEMENTS. Authorizes the comptroller to require a license holder or an applicant for a license to provide current financial statements that have been verified by a certified public accountant; to make an independent inquiry into the financial condition of the applicant and is not required to accept as accurate, financial statements that have not been certified or independently audited; and to require a license holder to provide an increased bond or cash deposit, if the comptroller determines that a license holder's financial condition warrants an increase in a bond or cash deposit.

Sec. 161.215. FINGERPRINTING REQUIREMENT; EXEMPTIONS. Authorizes the comptroller to require an applicant for a license, including certain persons, to submit the person's fingerprints to the comptroller when applying for a license. Sets forth the people who are exempt from the requirement prescribed by Subsection (a). Requires a person required to submit fingerprints to submit the fingerprints on forms prescribed by the comptroller. Authorizes the comptroller to forward all fingerprints submitted by license applicants to the Federal Bureau of Investigation or any other agency for processing. Requires the receiving agency to issue the agency's findings to the comptroller. Requires the comptroller to use the license application fee to pay the cost of the investigation. Authorizes the comptroller or another state agency to maintain a file on fingerprints.

Sec. 161.216. APPLICATION MUST BE FILED WITH SURETY BOND OR CASH DEPOSIT. Requires the comptroller, except as otherwise provided by this section, concurrently with the filing of an application for a license under this chapter, to require an applicant to file a certain surety bond or cash deposit with the comptroller. Requires a supplier or bonded importer to post a bond of not less than \$2 million. Authorizes the comptroller to reduce a bond to not less than \$1 million, if a person is registered as a taxable fuel registrant under Section 4101, Internal Revenue Code of 1986, as amended. Authorizes a person to show proof of financial responsibility instead of posting of a bond. Provides that proof of net worth of at least \$5 million constitutes evidence of financial responsibility in the absence of circumstances indicating to the comptroller that collection of the taxes from the applicant is at risk. Sets forth bond requirements, if an applicant files a bond. Sets forth the conditions in which a person is exempt from the bonding requirements of this section.

Sec. 161.217. REQUIREMENT FOR LICENSE HOLDER TO FILE NEW BOND OR ADDITIONAL DEPOSIT. Authorizes the comptroller to require a license holder to file a new bond with a satisfactory surety in the same form and amount under certain conditions. Requires the comptroller to cancel a person's license, if a new bond is unsatisfactory. Requires the comptroller to release in writing the surety on a previous bond from liability accruing after the effective date of the new bond, if the new bond is satisfactory. Authorizes the comptroller to require a license holder to make a new deposit equal to the amount of an insufficiency, if a license holder has a cash deposit with the comptroller and the deposit is reduced by a judgment rendered or payment made or the amount otherwise becomes insufficient.

Sec. 161.218. AMOUNT OF BOND OR DEPOSIT; CANCELLATION OF LICENSE. Requires a license holder to file a new bond or increase a cash deposit if the comptroller determines that the amount of an existing bond or cash deposit is insufficient to ensure payment to this state of the tax and of any penalty and interest for which the license holder is or may become liable and makes a written demand for the new bond or increased deposit. Requires the comptroller to allow the license holder at least 15 days to secure an increased bond or cash deposit. Requires a new bond or cash deposit to meet the requirements prescribed by this chapter. Requires the comptroller to cancel a person's license, if a new bond or cash deposit required under this section is unsatisfactory.

Sec. 161.219. **ISSUANCE OF LICENSE.** Requires the comptroller to issue a license for an applicant and a number of copies equal to the number of places of business that a person has for which a license is required, if an applicant and bond are approved.

Sec. 161.220. **RECORDS OF LICENSE HOLDERS IN THIS STATE.** Requires the comptroller to update the list of all motor fuel license holders in this state by category, not later than the 20th day of each month. Sets forth the information required to be included in the list. Requires the comptroller to make the list available by mail if requested. Provides that a current and effective license or the list provided by the comptroller is evidence of the validity of a license until the comptroller notifies suppliers and bonded importers of a change in the status of a license holder.

Sec. 161.221. **LICENSE IN NONTRANSFERABLE.** Prohibits a license from being transferred to another person or to another place of business. Defines “transfer.”

Sec. 161.222. **LICENSE MUST BE DISPLAYED AT PLACE OF BUSINESS.** Requires each license to be preserved and conspicuously displayed at a place of business for which it is issued. Authorizes the comptroller to waive this requirement for any class of license holder.

Sec. 161.223. **SURRENDER OF LICENSE ON DISCONTINUANCE OR RELOCATION.** Requires a license holder who discontinues conducting business at a location or changes a business location to immediately surrender the license issued for the location to the comptroller.

Sec. 161.224. **NOTICE THAT LICENSE HODER HAS DISCONTINUED, SOLD OR TRANSFERRED BUSINESS.** Requires a person to immediately notify the comptroller in writing of a discontinuance, sale, or transfer, if a license holder discontinues, sells, or transfers a person’s business. Requires a person, in addition to the notice required by Subsection (a), who discontinues, sells, or transfers a person’s business to file a final report as required by Section 161.263. Requires the notice to give the date of discontinuance, sale, or transfer and , for the sale or transfer of the business, the name and address of the purchaser or transferee. Provides that the license holder is liable for all taxes, interest, and penalties that accrue or may be owing and for any criminal liability for misuse of the license that occurs before issuance of a notice.

Sec. 161.225. **CANCELLATION OR REFUSAL OF LICENSE.** Authorizes the comptroller to cancel or refuse to issue or reissue a motor fuel license to a person who has violated or has failed to comply with this chapter or a rule of the comptroller. Requires the comptroller, before a license may be canceled or an issuance or reissuance refused, to give a license holder or license applicant not less than 10 days notice of a hearing at the office of the comptroller in Austin, or at a specified comptroller’s field office, granting the license hoder or applicant an opportunity to show cause before the comptroller, why the proposed action should not be taken. Requires notice to be in writing and may be mailed by registered or certified mail to the license holder or applicant at the person’s last known address or ma be delivered by the comptroller to the license holder or applicant. Provides that other notice is not necessary. Provides that in case of service by mail of notice required by this chapter, the service is complete at the time of deposit in the United States mail. Authorizes the comptroller to prescribe rules of procedure and evidence for hearings in accordance with Chapter 2001, Government Code. Requires all taxes that have been collected or that have accrued, although the taxes are not due and payable to the state, except by provision of this chapter, to become due and payable concurrently with a notice of cancellation of the license, if, after a hearing or an opportunity to be heard, a license is canceled or an issuance or reissuance refused by the comptroller. Requires the license holder within five days to make a report covering the period not covered by a preceding report filed by a license holder and ending with the date of cancellation and to remit and pay to the comptroller all taxes that have been collected and that have accrued from the sale, use, or distribution of motor fuel in this state.

Sec. 161.226. **SUMMARY SUSPENSION OF LICENSE.** Authorizes the comptroller to suspend a person’s license without notice or a hearing under certain conditions. Requires proceedings for a preliminary hearing before the comptroller or the comptroller’s representative to be initiated simultaneously with the summary suspension, if the comptroller summarily suspends a person’s license. Requires a preliminary hearing to be set for a date not later than the 10th day after the date of a summary suspension, unless the parties agree to a later date. Requires the license holder to show cause why a license should not remain suspended pending a final hearing

on suspension or revocation at the preliminary hearing. Requires the comptroller to serve notice on a license holder informing a person of certain information to initiate a proceeding to summarily suspend a person's license. Requires the notice to be personally served to certain persons or sent by certified or registered mail, return receipt requested, to the license holder's mailing address as it appears on the comptroller's records. Requires the notice to state the alleged violations that constitute the grounds for summary suspension. Provides that the summary is effective when the notice is served. Requires a licensed holder to immediately surrender a license to the comptroller or to the comptroller's representative, if a notice is served in person. Requires a license holder to immediately return a license to the comptroller, if notice is served by mail. Provides that Chapter 2001, Government Code, does not apply to summary suspension under this section.

Sec. 161.227. ENFORCEMENT OF LICENSE CANCELLATION, SUSPENSION, OR REFUSAL. Authorizes the comptroller to examine any business books and records of a person whose license has been canceled or suspended on a person's failure to file a report required by this chapter or to remit all taxes due. Requires the comptroller to issue an audit deficiency determination of the amount of delinquent taxes, penalties, and interest, containing a demand for payment. Requires the deficiency determination to provide that if neither a payment is made nor a request for a redetermination is filed within 30 days after the date of a notice of deficiency, the amount of a determination becomes due and payable. Provides that if an amount is not paid before the 45th day after the date of service of a notice of deficiency determination, a bond or other security required under this chapter is forfeited. Requires the demand for payment to be addressed to a person who owes the delinquency and to any surety of that person. Requires the comptroller to certify the taxes, penalty, and interest delinquent to the attorney general, who may file suit against a person, a person's surety, or both, to collect an amount due, if a forfeiture of a bond or other security does not satisfy a delinquency. Provides that after being given notice of an order of cancellation or summary suspension, it shall be unlawful for any person to continue to operate a person's business under a canceled or suspended license. Authorizes the attorney general to file suit to enjoin a person from continuing to operate under a person's license until the comptroller reissues a license. Authorizes an appeal from an order of the comptroller canceling or suspending or refusing the issuance or reissuance of a license to be taken to a district court of Travis County by an aggrieved license holder. Requires the trial to be de novo under the same rules as ordinary suits, except under certain conditions.

#### SUBCHAPTER G. REPORTS

Sec. 161.251. CONTENT AND FORMAT OF REQUIRED INFORMATION. Requires a report required by this chapter to conform to the content approved by the Federation of Tax Administrators and to specifically indicate the federal employer identification number of each handler of a load of fuel, including a common or private carrier, broker, or contractor. Authorizes the comptroller to adopt rules prescribing reporting requirements for a person engaged in more than one activity for which a license is required. Requires the comptroller to ensure that each report is as simple and standardized as possible and requires the minimum amount of information necessary for the comptroller's compliance and enforcement activities. Requires each person, except as provided by this chapter, who holds a license under this chapter to file a monthly report with the comptroller on or before the 25th day of each month that covers the tax liabilities that accrued during the preceding calendar month. Requires each person, in addition to the monthly report, who holds a license under this chapter to file an annual report with the comptroller on or before January 25 that covers the tax liabilities that accrued in the preceding calendar year. Requires a person who holds a license as a supplier, permissive supplier, or bonded importer to submit each report required by this chapter in an electronic format that conforms to the standards approved by the Federation of Tax Administrators for electronic data interchange. Authorizes the comptroller, on or after January 1, 2004, to require other license holders to submit records electronically or by electronic data interchange if the comptroller determines that the requirement is in the best interests of this state. Requires the comptroller to allow a person who is required to file in accordance with this subsection to take a suitable tax credit to accommodate the costs of installing equipment necessary to comply. Authorizes the comptroller to waive a reporting requirement if substantially similar data is readily available to this state from an electronic federal excise tax report.

Sec. 161.252. INVENTORY RECORDS. Requires a license holder to maintain inventory records as required by the comptroller for purposes of reporting and determining tax liability under



this chapter.

Sec. 161.253. VERIFIED STATEMENT BY SUPPLIER; REPORTING OF INFORMATION. Requires a supplier to include in a monthly report required by this subchapter certain information relating to billed gallons of taxable motor fuel. Requires the supplier to report the information required by Subsection (a) in the aggregate and must identify whether the billed gallons are net or gross. Requires a licensed supplier or permissive supplier to separately include as part of a report required by this section, information that discloses and identifies any removal and sale, as shown by the terminal-issued shipping paper, from the bulk transfer system or terminal system in another state by that supplier to a person other than a licensed supplier, permissive supplier, or importer, of gallons of taxable motor fuel destined for this state on which the tax imposed by this chapter has not been collected or accrued by the supplier on removal. Provides that this section does not apply to diesel fuel dyed in accordance with Internal Revenue Service (IRS) and United States Environmental Protection Agency (EPA) dyeing standards. Requires a supplier to separately identify each tax-free sale of K-1 kerosene, other than dyed diesel fuel, in accordance with reporting requirements established by the comptroller.

Sec. 161.254. VERIFIED STATEMENT OF LICENSED OCCASIONAL IMPORTER. Requires a licensed occasional importer to include in a monthly report required under this chapter certain information relating to taxable gallons and source and means of transportation. Authorizes the comptroller to waive the reporting requirement prescribed by this section, if the comptroller determines that one or more states bordering this state have adopted and implemented reciprocal terminal report requirements adequate to assure the comptroller that the comptroller receives complete information relating to motor fuel removed by and on behalf of suppliers from terminals in border states that is destined for this state.

Sec. 161.255. VERIFIED STATEMENT OF LICENSED BONDED IMPORTER. Requires a licensed bonded importer to include in a monthly report required under this subchapter certain information related to taxable gallons. Authorizes the comptroller to waive a reporting requirement prescribed by this section if the comptroller determines that one or more states bordering this state have adopted and implemented reciprocal terminal report requirements adequate to assure the comptroller that the comptroller receive complete information relating to motor fuel removed by and on behalf of suppliers from terminals in border states that is destined for this state.

Sec. 161.256. TERMINAL OPERATOR STATEMENT OF OPERATIONS; ANNUAL REPORT. Requires a person operating a terminal in this state to include in a monthly report required under this subchapter certain information for each terminal location in this state. Requires the information to be transferred to this state electronically. Authorizes the comptroller to waive requiring a separate electronic submission to this state, if sufficient and reliable information can be obtained from IRS databases such as the Excise Files Information Retrieval System or Excise Summary Terminal Activity Reporting System. Requires an operator to provide appropriate codes instead of carrier names, if the IRS provides a common system of assigning carriers alphanumeric codes instead of names. Requires a person operating a terminal in this state to include in an annual report required under this subchapter certain information related to net amount, net gallons, and tax due.

Sec. 161.257. TERMINAL REPORTS REGARDING SOURCE STATE. Requires a terminal operator subject to the jurisdiction of this state who operates a terminal outside this state to provide a report to the comptroller that includes information relating to gallons removed from the source state as to which the operator issued a shipping paper indicating this state as the destination state, if a source state does not require a terminal report that provides information substantially similar to the information required by Section 161.256. Requires the report to include information required by Section 161.256. Provides that this section does not apply if substantially similar information is readily available to this state from a federal terminal report or from a source state.

Sec. 161.258. AVIATION FUEL DEALER MONTHLY REPORTS. Requires an aviation fuel dealer to keep records showing the number of gallons of certain fuels. Requires an aviation fuel dealer's record made under Subsection (a) to show certain information. Requires the records to be kept for at least four years.

Sec. 161.259. LICENSED EXPORTER REPORTS. Requires a person licensed as an exporter to include in a monthly report required under this subchapter certain information relating to the amount of taxable motor fuel exported from this state, other than diesel fuel dyed in accordance with the Internal Revenue Code of 1986, amended. Authorizes the comptroller to waive the reporting requirement prescribed by this section if the comptroller determines that the report is not necessary to administer this chapter.

Sec. 161.260. PERSONS PURCHASING GALLONS TAX-EXEMPT FOR RESALE TO GOVERNMENTAL ENTITIES MUST FILE REPORT. Requires a person who purchases gallons tax-exempt under Section 161.163 for resale to governmental entities exempted under Section 161.161 to include certain information in a monthly report.

Sec. 161.261. REPORTS BY FUEL VENDORS. Requires a fuel vendor to file a quarterly report that lists total gallons of motor fuel by type sold by a vendor through a retail outlet accessible to the general public. Requires a vendor to file the report on or before the 25th day of the first month after the end of a calendar quarter. Requires a person who makes a sale of, or otherwise causes a transfer of ownership of, kerosene, blendstocks, or transmix to file with the comptroller a monthly report in accordance with Section 161.251. Requires a vendor to remit with the report any tax payable under this chapter. Requires a person described by Section (b), in addition to the monthly report, to keep a record of those sales or transfers for at least three months in accordance with comptroller rules. Requires a person who makes a sale as a vendor and is not required to report under this subchapter to maintain on the premises for three months, invoices and shipping papers indicating the amount and source of each load of fuel sold or transferred to the vendor. Sets forth the information required to be stated on the invoice. Requires the vendor to make the records required by Subsection (d) available to the comptroller or to the comptroller's agent during normal business hours without prior notification. Requires a person who makes a sale as a vendor to retain invoices for taxable motor fuels for four years. Requires the invoices to clearly designate the amount of tax paid to this state as a separate line item that is described generally as a "Texas Motor Fuel Tax." Authorizes the comptroller to proceed against a fuel vendor to collect the tax, if a vendor does not retain the invoices that relate to these disclosures. Provides that the fuel vendor is jointly liable for the tax imposed by this chapter. Requires a person who makes a sale as a vendor to retain all terminal-issued shipping papers received from the transporter for every shipment of taxable motor fuel that is delivered to the vendor's retail outlets for four years. Requires a vendor to keep these documents at any location prescribed by comptroller rules.

Sec. 161.262. RECORDS. Requires a person who sells or transfers motor fuel to keep a complete record of all motor fuel sold or delivered for taxable purposes for four years. Provides that the record is open to inspection at all times by the comptroller and the attorney general. Requires a record to include shipping papers and invoices from all transactions completed either directly or through a broker or contractor. Requires each taxable sale or delivery of motor fuel, including a delivery by an interstate trucker from bulk storage, to be covered by an invoice. Requires the invoice to be printed. Sets forth the required information to be included on the invoice. Provides that the invoice serves as a trip permit. Requires the invoice to be carried with a vehicle.

Sec. 161.263. FINAL REPORT AND PAYMENT BY LICENSE HOLDER. Requires a license holder who discontinues, sells, or transfers a person's business or who has a person's license canceled, revoked, or terminated by law under this chapter to file a report as required by this chapter not later than the 30th day after an event, mark a report as "final report," and pay all motor fuel taxes and penalties that may be due the state except as otherwise provided by law.

#### SUBCHAPTER H. SHIPPING REQUIREMENTS

Sec. 161.301. MACHINE-PRINTED SHIPPING PAPERS; EXEMPTIONS. Requires a person operating a refinery, terminal, or bulk plant in this state to prepare and provide to the driver of every fuel transportation vehicle that receives taxable motor fuel into the vehicle storage tank at the facility, an automated shipping paper that includes certain information on its face. Authorizes a terminal operator to manually prepare shipping papers if, as a result of extraordinary and unforeseen circumstances, including an act of God, a terminal operator is temporarily unable to issue automated machine-generated shipping papers. Requires a terminal operator to provide

notice to the comptroller by telephone and obtain a service interruption authorization number before manually preparing the papers. Requires an operator to add this number to the manually prepared papers before removal of an affected transport load from a terminal. Provides that the service interruption authorization number is valid for use by a terminal operator for not more than 24 hours. Requires an operator to provide additional notices to the comptroller, if the interruption is not solved within a 24-hour period. Authorizes the comptroller to issue additional interruption authorization numbers on explanation by a terminal operator that is satisfactory to the comptroller. Provides that this section does not apply to an operator of a bulk plant in this state that delivers taxable motor fuel into a tank wagon for subsequent delivery to an end user in this state. Authorizes a terminal operator to load split loads of motor fuel in which a portion is destined for sale or use in this state and a portion is destined for sale or use in another state. Requires a terminal operator to document the split loads removed by issuing shipping papers designating the destination state for each portion of the fuel. Requires each terminal operator to post a conspicuous notice, proximally located to the point of receipt of shipping papers by transport operators, that describes in clear and concise terms, the duties of the transport operator and retail dealer under Section 161.302. Authorizes the comptroller, by rule, to establish the format of a notice. Provides that a person who violates this section commits an offense; an offense under this section is a third degree felony.

**Sec. 161.302. REQUIREMENTS RELATING TO SHIPPING PAPERS.** Prohibits a person from transporting taxable motor fuel in a fuel transportation vehicle on the public highways of this state unless the person carries the shipping paper issued by the terminal operator or the bulk operator of a facility at which the taxable fuel was obtained, regardless of whether the facility is inside or outside this state, on board the vehicle. Requires the shipping paper to state on its face, the taxable motor fuel transported in the vehicle, as represented to the terminal operator when the fuel transportation vehicle was loaded or as otherwise prescribed by Subsection (c). Requires a person described by Subsection (a) to produce and allow inspection and duplication of the shipping paper at the request of a law enforcement officer or comptroller representative at any time while transporting, holding, or off-loading the motor fuel described in a shipping paper. Authorizes a person described by Subsection (a) to deliver taxable motor fuel described in a shipping paper only to a point in the destination state shown on the face of a document, unless a person or a person's agent takes certain actions. Requires a person described by Subsection (a) to provide a copy of a shipping paper to the person who controls a facility to which the motor fuel is delivered and comply with any other requirement or condition the comptroller may require to enforce this chapter.

**Sec. 161.303. TERMINAL-ISSUED SHIPPING PAPER PROVIDED ON DELIVERY OF SHIPMENT.** Requires a person who transports taxable motor fuel in a motor vehicle on the public highways of this state to provide original or a copy of the terminal-issued shipping outlet, bulk plant, or end user bulk storage facility to which delivery of the shipment is made.

**Sec. 161.304. INSPECTION AND RETENTION OF TERMINAL-ISSUED SHIPPING PAPER BY RECEIVER OF TAXABLE MOTOR FUEL.** Requires an operator of a taxable motor fuel retail outlet, bulk plant, or end user's bulk storage facility to receive and examine a terminal-issued shipping paper received from a transporter for every shipment of taxable motor fuel that is delivered to that location. Requires a person to retain a shipping paper for at least 90 days after the date of delivery at the delivery location. Requires the person, after the 90th day, to retain the shipping paper until the fourth anniversary of the date of delivery at any location allowed by comptroller rules.

**Sec. 161.305. ACCEPTANCE OF DELIVERY WITHOUT PROPER SHIPPING PAPER PROHIBITED.** Prohibits a retail dealer, bulk plant operator, wholesaler, or bulk end user from accepting delivery of taxable motor fuel into bulk storage facilities in this state if the delivery is not accompanied by a shipping paper issued by the terminal operator or bulk plant operator that includes certain information on its face.

**Sec. 161.306. RELIEF IN CASE OF IMPROPERLY COMPLETED SHIPPING PAPER; NOTIFICATION OF DIVERSION OR CORRECTION; VERIFICATION NUMBER.** Requires the comptroller to provide relief in a situation in which a shipment of taxable motor fuel legitimately is diverted from the represented destination state after the shipping paper has been issued by a terminal operator or in which a terminal operator failed to cause proper information

to be printed on the shipping paper. Requires the relief provisions to include a provision requiring that the shipper, the transporter, or an agent of either person notify the comptroller of an intended diversion or correction before the diversion or correction occurs and that a diversion number be assigned and manually added to the face of a terminal-issued shipping paper. Requires the relief provisions to establish a protest procedure that a person found to be in violation of Section 161.301 or 161.304 may use to establish defense to a civil penalty imposed under this chapter for violation of one or both of those sections. Requires the procedure to allow a person to establish that the violation was the result of an honest error made in good faith and that a person made a reasonable effort to properly account for and report fuel shipments and taxes. Requires the comptroller to make reasonable efforts to coordinate with neighboring states and the Federation of Tax Administrators for the operation of a common telephonic diversion or verification number assignment system.

Sec. 161.307. RELIANCE ON REPRESENTATIONS REGARDING DESTINATION, TAX-EXEMPT USE, OR SUPPLIER'S OBLIGATION TO COLLECT TAX. Authorizes the supplier and the terminal operator to rely for all purposes on the representation by the transporter, the shipper, or the shipper's agent regarding the shipper's intended destination state and whether the motor fuel use is tax-exempt. Provides that the shipper, the importer, the transporter, the shipper's agent, and a purchaser are jointly liable for any tax otherwise due to this state as a result of a diversion of the taxable motor fuel from a represented destination state. Provides that the supplier and terminal operator are not liable. Authorizes a terminal operator to rely on the representation of a licensed supplier with respect to the supplier's obligation to collect tax and the related shipping paper representation to be shown on the shipping paper as provided by Section 161.309(a). Requires the terminal operator or supplier to report any improbable or patently false destination state information to the comptroller.

Sec. 161.308. UNLAWFUL SALE, USE, DELIVERY, OR STORAGE OF TAXABLE MOTOR FUEL PROHIBITED; EXCEPTIONS. Prohibits a person, except as expressly provided by Subsection (b), from selling, using, delivering, or storing in this state, or importing for sale, using, delivering, or storing in this state, taxable motor fuel on which the tax imposed by this chapter has not previously been paid to or accrued by a licensed supplier or permissive supplier at the time of removal from a terminal or from a licensed importer. Sets forth exceptions in which Subsection (a) does not apply.

Sec. 161.309. REQUIRED NOTATIONS ON TERMINAL-ISSUED SHIPPING PAPER; EXCEPTIONS. Prohibits a person, except as provided by Subsections (c) and (d), from operating a transport truck that is engaged in the shipment of taxable motor fuel on the public highways of this state without having a terminal-issued shipping paper on board that has, in addition to the information otherwise required by this subchapter, certain notations. Provides that a person violates Subsection (a), if the person boards a vehicle with a shipping paper that does not meet the requirements prescribed by this section. Provides that a licensed importer or transporter acting on the transporter's behalf is exempt from the application of Subsection (a)(2), if the person is otherwise required to comply with Section 161.310. Provides that a person is not exempt from the application of this section with respect to shipments sourced to a state that has adopted reciprocal legislation that has been recognized by the comptroller. Authorizes the comptroller to provide an advance notification procedure with respect to documentation for imported motor fuel for which the importer is unable to obtain terminal-issued shipping papers that comply with this section.

Sec. 161.310. REQUIREMENTS FOR LICENSED IMPORTER REGARDING FUEL THAT HAS NOT BEEN DYED AND ON WHICH TAX HAS NOT BEEN PAID OR ACCRUED BY THE SUPPLIER. Provides that this section applies to certain motor fuel destined for this state. Prohibits a licensed importer who acquires motor fuel described by Subsection (a) or a transporter operating on the importer's behalf from entering the motor fuel onto public highways of this state by loaded transport truck unless certain conditions are met. Makes conforming changes.

Sec. 161.311. REQUIREMENTS FOR EXPORTING FUEL. Prohibits a person from exporting motor fuel from this state without first paying the applicable destination state or this state's motor fuel tax to the supplier unless the motor fuel complies with the export exempt criteria prescribed by Section 161.161. Requires the person to demonstrate proof of exporting in the form of a destination state bill of lading. Provides that a person who violates this section commits an offense.

Provides that an offense under this section is a felony of the third degree. Provides that this section does not apply to an end user who exports fuel in a vehicle fuel supply tank incident to interstate transportation.

Sec. 161.312. NOTICE REGARDING DYED DIESEL FUEL. Requires a notice stating: DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE” to be provide by and posted by certain parties.

Sec. 161.313. DYED DIESEL FUEL NOTICE REQUIRED ON SHIPPING PAPERS, BILLS OF LADING, AND INVOICES. Requires the form of notice required by Sections 161.312(1) and (2) to be provided by the time of the removal or sale and must appear on certain papers and forms.

Sec. 161.314. UNAUTHORIZED SALE OR USE OF DYED DIESEL FUEL PROHIBITED. Prohibits a person from selling or holding for sale dyed diesel fuel for any use that the person knows or has reason to know is not a tax-exempt use of the diesel fuel and from using or holding for use dyed diesel fuel for a use other than a tax-exempt use, if the person knows or has reason to know that the diesel fuel is dyed.

Sec. 161.315. ALTERATION OF DYE OR MARKER IN DYED DIESEL FUEL PROHIBITED. Prohibits a person with intent to evade tax, from altering or attempting to alter the strength or composition of a dye or marker in dyed diesel fuel.

Sec. 161.316. FUEL MUST MEET AMERICAN SOCIETY OF TESTING AND MATERIALS STANDARDS. Prohibits a person from selling or purchasing a product for general public highway use in the supply tank of a motor vehicle that does not meet the standards of the American Society of Testing Materials, unless the standards are amended or modified by the comptroller. Provides that the transporter and the transporter’s agent and customer have the exclusive duty to disperse in the manner provided by federal and state law of any product that does not meet the standards prescribed by this section. Makes conforming changes.

Sec. 161.317. USE OF DYED DIESEL FUEL PROHIBITED; EXCEPTIONS; PENALTIES. Prohibits a person from operating a motor vehicle on a public highway in this state with diesel fuel in the fuel supply tank of the motor vehicle that contains dye. Sets forth the persons and use of dyed fuel that this section does not apply to. Makes conforming changes.

Sec. 161.319. INVOICED SALES. Requires a person who sells or transfers a load of motor fuel to issue an invoice to a retail outlet that states the federal employer identification number, name, and address of the seller of transferor and clearly indicates the amount of tax paid, who paid the tax, and on what product the tax was paid. Prohibits a retail outlet from accepting a load of motor fuel unless the outlet acquires an invoice that complies with Subsection (a).

Sec. 161.320. FALSE STATEMENT ON SHIPPING PAPER REGARDING LIABILITY FOR TAX; PENALTIES. Prohibits a terminal operator from imprinting, and a supplier from permitting an operator to imprint on the supplier’s behalf, a statement on a shipping paper relating to motor fuel to be delivered to this state or to a state having substantially the same shipping paper legending requirements with respect to a supplier’s responsibility or liability for payment of the tax and the tax-paid or tax-collected status of a taxable motor fuel unless the supplier or supplier’s representative firms provides a terminal operator with a representation or direction to make the statement on behalf of the supplier. Provides that a terminal operator who imprints a statement in violation of this section is subject to a penalty in an amount prescribed by the comptroller and that a penalty provided by this section is in addition to any other tax, fine, penalty, or sanction that may be imposed. Provides that a supplier who violates this section is jointly liable with the terminal operator.

Sec. 161.321. METERING DEVICE REQUIRED FOR FUEL DISPENSER ACCESSIBLE BY PUBLIC; TAMPERING PROHIBITED. Requires a person operating taxable motor fuel dispenser equipment accessible by the general public to provide metering devices for each dispenser and maintain records sufficient to enable the comptroller to determine the volumes dispensed through that equipment with reasonable accuracy. Prohibits a person from exchanging, replacing, rolling back, or otherwise tampering with the metering equipment in a manner that does

not comply with comptroller rules relating to legitimate maintenance, repairs, and replacement purposes. Provides that a person who violates this section commits an offense. Provides that an offense under this section is a third degree felony.

Sec. 161.322. **TAMPER-RESISTANT SHIPPING PAPERS REQUIRED.** Requires a terminal operator in this state, and every supplier licensed by this state for the collection of tax on taxable motor fuel, to ensure that terminal-issued shipping papers meet certain tamper resistance standards the comptroller, by rule, may require.

Sec. 161.323. **TANK WAGONS MUST HAVE INTERNATIONAL FUEL TAX AGREEMENT REGISTRATION; EXCEPTION.** Prohibits a person from operating a tank wagon in this state unless the tank wagon meets certain conditions. Provides that this section does not apply to a vehicle registered in this state that is exempt from the International Fuel Tax Agreement regulations.

#### SUBCHAPTER I. PENALTIES

Sec. 161.351. **LIABILITY OF BUSINESS ENTITIES, PARTICIPATING OFFICERS, EMPLOYERS, AND AGENTS.** Provides that a business entity and its officers, employees, and agents who wilfully participate in an activity that violates Section 161.314 or 161.315 are jointly and severally liable for the penalty imposed by Section 6715, Internal Revenue Code of 1986, as amended, for a violation of those sections.

Sec. 161.352. **LIABILITY FOR UNCOLLECTED AND UNPAID TAX; PENALTIES.** Provides that a supplier, permissive supplier, or importer who fails to collect and timely remit tax otherwise required to be paid to the comptroller as required by Section 161.055 or 161.057, or as required by a tax precollection agreement under Section 161.056, is liable for the uncollected tax plus the penalties as imposed by the comptroller.

Sec. 161.353. **PENALTIES.** Requires a person liable for the tax who files a false or fraudulent return to pay in addition to the tax, a penalty in an amount equal to 75 percent of the taxes, other penalties, and interest due. Requires the comptroller to impose a civil penalty of \$1,000 for a person's first violation relating to transporting taxable motor fuel without adequate shipping papers that are annotated as required by Section 161.302 or 161.309 and to impose a civil penalty of \$2,000 on the operator of a vehicle for the first violation in a calendar year of the prohibition on use of dyed diesel fuel on the public highways of this state. Provides that each subsequent offense in a calendar year is subject to a civil penalty of \$5,000. Provides that a supplier who makes a sale of taxable motor fuel for export to a person who does not have an appropriate export license, or without collecting the destination state's tax on taxable motor fuel nonexempt in the destination state, is subject to a civil penalty equal to the amount of the destination state's motor fuel tax in addition to the tax due to this state. Authorizes the comptroller to impose a penalty against a terminal operator who wilfully fails to comply with the shipping paper issuance requirements prescribed by Sections 161.058, 161.301, and 161.312 in an amount prescribed by the comptroller. Requires the comptroller to impose a penalty in an amount equal to the penalty prescribed by Section 6715, Internal Revenue Code of 1986, as amended, on the operator of a vehicle who violates the prohibition on the sale or use of dyed diesel fuel on the public highways of this state. Provides that an importer or transporter who imports undyed taxable motor fuel in a transport truck without a valid importer license or supplier license and an import verification number or a shipping paper showing on its face that this state's motor fuel tax is not due is subject to a penalty of \$10,000 for each occurrence. Provides that this subsection does not apply to a person who transports taxable motor fuel through this state in interstate commerce.

Sec. 161.354. **IMPOUNDMENT AND SEIZURE OF VEHICLE AND CARGO FOR VIOLATION OF SHIPPING PAPER REQUIREMENTS.** Provides that a motor vehicle and the vehicle's cargo are subject to impoundment, seizure, and subsequent sale and forfeiture in accordance with the general laws of this state relating to seizure and forfeiture, if a person is found operating a motor vehicle in violation of the shipping paper requirements prescribed by Sections 161.302, 161.309, 161.310, and 161.312. Provides that the failure of an operator of a motor vehicle to have a terminal-issued bill of lading on board when loaded or that fails to meet the descriptive annotation requirements, if applicable, is presumptive evidence of a violation sufficient to warrant impoundment and seizure of a vehicle and its cargo. Authorizes the comptroller or any

peace officer to impound the fuel, motor vehicle, cargo tanks, storage tanks, equipment, paraphernalia, or other tangible personal property used for or incident to the storage, sale, or transportation of that motor fuel, if after examination or other investigation, the comptroller believes that an owner or operator of a motor vehicle or cargo tank, or a person receiving, possessing, delivering, or selling gasoline or diesel fuel, has not paid all motor fuel taxes due or does not have a valid license entitling that person to possess or transport tax-free motor fuel. Authorizes the comptroller to demand payment of all taxes, penalties, interest due to this state, and all costs of impoundment, unless the comptroller receives proof not later than the third work day after the beginning of impoundment that the owner, operator, or other person has paid the taxes established to be due on the gasoline or diesel fuel stored, sold, used, or transported and any other taxes due to this state or the owner, operator, or other person holds a license to possess or transport tax-free motor fuel. Authorizes the comptroller to seize an impounded property to satisfy a tax liability if the owner or operator does not pay the taxes, penalties, interest, and costs due, not later than the third working day after the beginning of the impoundment. Sets forth certain fuels, vehicles, boats and equipment that the comptroller is authorized to seize.

Sec. 161.355. **SALE OF SEIZED PROPERTY.** Authorizes the comptroller to sell property seized under Section 161.354. Requires notice of the time and place of a sale to be given to the delinquent person in writing by certified mail, not later than the 20th day before the date set for the sale. Require the notice to be enclosed in an envelope addressed to a person at the person's last known address or place of business, to be deposited in the United States mail, postage prepaid, and to be published once a week for two consecutive weeks before the date of the sale in a newspaper of general circulation which is published in the county in which the property seized is to be sold. Requires notice to be posted in three public places in the count not later than the 14th day before the date set for the sale, if there is not a newspaper of general circulation in the county. Sets forth the required information to be included in the notice. Requires the comptroller to sell the property and to deliver the purchaser a bill of sale for personal property or a deed for real property sold at the sale. Provides that the bill of sale or deed vests the interest or title of a person liable for the amount in the purchaser. Authorizes the unsold portion of any property seized to be left at the place of sale at the risk of the person liable for the amount. Requires the proceeds of a sale to be allocated according to certain priorities.

Sec. 161.356. **FAILURE TO PAY TAX OR REPORT.** Requires a person who holds a license under this chapter, is required to pay tax under this chapter, and fails to file a report as required by this chapter or fails to pay a tax imposed by this chapter when due to forfeit an amount equal to five percent of the amount due as a penalty. Provides that if a person fails to file a report or pay a tax not later than the 30th day after the day a tax or report is due, the person forfeits an additional five percent. Authorizes the comptroller to add a penalty in an amount equal to 75 percent of the amount of taxes, other penalties, and interest due, if failure to file a report or pay a tax when it becomes due is attributable to fraud or an intent to evade the application of this Chapter 111.

Sec. 161.357. **PROHIBITED ACTS; CIVIL PENALTIES.** Sets forth certain conditions when a person forfeits to the state a civil penalty of not less than \$25 nor more than \$250 under.

Sec. 161.358. **CRIMINAL OFFENSES.** Sets forth certain conditions when a person commits an offense.

Sec. 161.359. **CRIMINAL OFFENSES; SPECIAL PROVISIONS AND EXCEPTIONS.** Provides that a person does not commit an offense under Section 161.358 unless a person intentionally or knowingly engages in conduct that is prohibited under Section 161.358, except that a culpable mental state is not required for an offense described by Section 161.358(6). Provides that each day a refusal prohibited under Sections 161.358(11), (12), or (13) continues is a separate offense, the prohibition prescribed by Section 161.358(31) does not apply to the tax-free sale or distribution of diesel fuel authorized by Section 161.161, and the prohibition under Section 161.358(32) does not apply to the tax-free sale or distribution of diesel fuel authorized by Section 161.161.

Sec. 161.360. **CRIMINAL PENALTIES.** Provides that an offense under Sections 161.358(1), (2), (3), (4), (5), or (6) is a Class C misdemeanor. Provides that an offense under Section 161.358(7), (8), (9), (10), (11), (12), (13), or (14) is a Class B misdemeanor. Provides that an

offense under Sections 161.358(15), (16), (17), or (18) is a Class A misdemeanor. Provides that an offense under Section 161.358(19), (20), (21), (22), (23), (24), (25), (26), (27), or (28) is a felony of the third degree. Provides that an offense under Sections 161.358(29), (30), (31), (32), (33), or (34) is a felony of the second degree. Provides that violations of three or more separate offenses under Sections 161.358(19)-(28) committed under one scheme or continuous course of conduct may be considered as one offense and punished as a felony of the second degree.

Sec. 161.361. **CRIMINAL PENALTIES: CORPORATIONS AND ASSOCIATIONS.** Provides that except as provided by Subchapter (b), Chapter 12E, Penal Code, applies to an offense under this chapter committed by a corporation or association. Prohibits a court from fining a corporation or association under Section 12.51(c), Penal Code, unless the amount of the fine under that subsection is greater than the amount that could be assessed by the court under Section 12.51(b), Penal Code. Requires the court, in addition to a sentence imposed on a corporation, to give notice of the conviction to the attorney general as required by Article 17A.09, Code of Criminal Procedure.

Sec. 161.362. **VENUE OF TAX COLLECTION SUITS.** Provides that the venue of a suit, injunction, or other proceeding at law available for the establishment or collection of a claim for delinquent taxes, penalties, or interest accruing under this chapter and the enforcement of the terms and provisions of this chapter is in Travis County or in any other county having venue under applicable venue statutes.

Sec. 161.363. **ASSESSED PENALTIES ARE NOT ASSIGNABLE.** Provides that penalties assessed as a result of this subchapter are not assignable or transferable.

Sec. 161.364. **NEGATION OF EXCEPTION: INFORMATION, COMPLAINT, OR INDICTMENT.** Provides that an information, complaint, or indictment charging a violation of this chapter need not negate an exception to an act prohibited by this chapter, but the exception may be urged by the defendant as a defense to the offense charged.

Sec. 161.365. **ISSUANCE OF BAD CHECK TO LICENSED SUPPLIER OR BONDED IMPORTER.** Sets forth the conditions in which a person commits an offense. Provides that Sections 32.41(b), (c), (d), (e), and (g), Penal Code apply to an offense under this section in the same manner as those provisions are applicable to the offense under Section 32.41(a), Penal Code. Provides that an offense under this section is a Class C misdemeanor. Authorizes a person who makes payment on an obligation or debt that includes a tax under this chapter and pays with an insufficient funds check issued to a licensed supplier or bonded importer to be held liable for a penalty equal to the total amount of tax not paid to the licensed supplier or bonded importer.

#### SUBCHAPTER J. DEPOSITS AND DISTRIBUTIONS

Sec. 161.401. **TAX ADMINISTRATION FUND.** Requires one percent of the gross amount of the taxes to be deposited in the state treasury in a special fund, before any other allocation of the taxes collected under this chapter is made, subject to the use of the comptroller of public accounts (comptroller) in the administration and enforcement of this chapter. Requires the unexpended portion of the special fund to revert, at the end of the fiscal year, to the other funds to which revenue is allocated by this subchapter in proportion to the amounts originally derived from the respective sources.

Sec. 161.402. **ALLOCATION OF UNCLAIMED REFUNDABLE GASOLINE TAXES.** Requires the comptroller, on or before the fifth workday after the end of each month, after making the deductions for refund purposes, to determine as accurately as possible, for the period since the latest determination under this subsection, the number of gallons of fuel used in motorboats on which the gasoline tax has been paid to this state, and on which refund of the tax has not been made against which limitation has run for filing claim for refund of the tax. Requires the comptroller to compute from the number of gallons so determined, the amount of taxes that would have been refunded under the law, had refund claims been filed in accordance with the law. Sets forth the required method of allocation and deposit of these unclaimed funds. Authorizes money deposited to the credit of the general revenue fund under Subsection (b)(2) to be appropriated only to the Parks and Wildlife Department for any lawful purpose.

Sec. 161.403. **ALLOCATION OF OTHER UNCLAIMED REFUNDABLE NONDEDICATED**



TAXES. Requires the comptroller, by rule, to devise a method of determining as accurately as possible the number of gallons of fuel that is not used to propel a motor vehicle on the public highways; and the amount of taxes collected under this chapter from fuel that is not used to propel a motor vehicle on the public highways that would have been refunded under this chapter if refund claims had been filed in accordance with this chapter and that is not subject to allocation under this Section 161.402. Requires the comptroller to allocate the amount determined under Subsection (a)(2) to the general revenue fund. Requires the determination and allocation to be made periodically as prescribed by rule.

Sec. 161.404. ALLOCATION OF GASOLINE TAX. Sets forth the manner in which the comptroller, on or before the fifth workday after the end of each month, after making all deductions for refund purposes and for the amounts allocated under Sections 161.402 and 161.403, must allocate the net remainder of the taxes collected on gasoline.

Sec. 161.405. ALLOCATION OF DIESEL FUEL TAX. Sets forth the manner in which the comptroller, on or before the fifth workday after the end of each month, after making all deductions for refund purposes and for the administration and enforcement of this chapter, and for the amounts allocated under Sections 161.403, must allocate the remainder of the taxes collected on diesel fuel.

Sec. 161.406. ALLOCATION OF LIQUEFIED GAS TAX. Sets forth the manner in which the comptroller, on or before the fifth workday after the end of each month, after making all deductions for refund purposes and for the administration and enforcement of this chapter, must allocate the remainder of the taxes collected on liquefied gas.

SECTION 2. Repealer: Chapter 153, Tax Code (Motor Fuel Taxes). Provides that a reference in law to Chapter 153, Tax Code, or to a motor fuel imposed under Chapter 153, Tax Code, means Chapter 161, Tax Code, as added by this Act, and the motor fuels tax imposed under Chapter 161, Tax Code.

SECTION 3. (a) Effective date: January 1, 2001.

(b) Requires each person who possessed a permit as a distributor to sell taxable motor fuel at wholesale or had a permit requiring the remittance of taxes to this state under Chapter 153, Tax Code, as it existed immediately before the effective date of this Act, to file a report with the comptroller in accordance with the final report requirements prescribed by Section 161.263, Tax Code, as added by this Act. Requires the person to compute any remaining taxes due and remit the taxes with the report.

(c) Requires a person making a report, as part of the final report required under Subsection (b) of this section, to compute the tax on all inventory held outside of the bulk transfer system, as that term is defined by Section 161.001, Tax Code, as added by this Act and subject to reporting under Subsection (a) of this section. Provides that a person is not required to pay the tax on the inventory but is required to list the computation of the tax as a separate line item on the report.

(d) Requires a vendor, as that term is defined by Section 161.001, Tax Code, as added by this Act, who possessed a permit to sell taxable motor fuel at wholesale or at retail under Chapter 153, Tax Code, as it existed immediately before the effective date of this Act, to compute all remaining taxes due as provided by Subsection (a) of this section. Requires the vendor, on or before January 25, 2001, to pay the tax in not more than 24 equal monthly installments.

SECTION 4. (a) Requires each person, beginning on the effective date of this Act and ending on December 31, 2002, who possessed a permit as a distributor to sell taxable motor fuel at wholesale under Chapter 153, Tax Code, as it existed immediately before the effective date of this Act, to receive a credit from the supplier for a terminal transfer under Section 161.067, Tax Code, as amended by this Act, of two percent instead of one-half of one percent if the person obtains a license before January 1, 2001, to operate under Chapter 161, Tax Code, as added by this Act, as an eligible purchaser; and submits the final report required by Section 3(b) of this Act not later than January 10, 2001.

(b) Requires a supplier who pays a credit under Subsection (a) of this section to receive a credit for remitting taxes under Section 161.066, Tax Code, as added by this Act, of 2.25 percent, instead of three-fourths of one percent.

SECTION 5. Requires the comptroller to immediately allow a person who held a permit under Chapter 153, Tax Code, as it existed immediately before the effective date of this Act, to apply for eligible purchaser status under Sections 161.061 and 161.062, Tax Code, as added by this Act. Authorizes the comptroller to allow a person to act as an eligible purchaser until the date the person receives approval of that status or is rejected.

SECTION 6. Emergency clause.