

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1547

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Finance

4/20/1999

Committee Report (Substituted)

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. C.S.S.B. 1547 would set forth provisions regarding the collection of the motor fuels tax and provides penalties.

PURPOSE

As proposed, C.S.S.B. 1547 sets forth provisions regarding the collection of the motor fuels tax and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the comptroller of public accounts in SECTION 2 (Section 153.003(b), Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 153.001, Tax Code, by amending Subdivisions (8) and (19) and adding Subdivisions (28) - (36), to redefine "diesel tax prepaid user," and "motor fuel." Defines "blended fuel," "blending," "diversion number," "dyed diesel fuel," "export," "import," "import verification number," "shipping document," and "undyed diesel fuel."

SECTION 2. Amends Section 153.003(a), Tax Code, to require the records of each intrastate and interstate transportation of motor fuel required under Subsection (b) to be compiled into a report and supplements in a form or manner determined by the comptroller. Requires, on or before the 25th day of the month following the end of each calendar quarter, a common or contract carrier to file a report showing complete and detailed information on the transportation of motor fuel during the preceding quarter. Requires the report to be executed by the common or contract carrier or a representative of the carrier, and the penalties provided by this chapter apply to any violation relating to the report. Requires the comptroller of public accounts (comptroller), by rule, to determine the registration requirements for common or contract carriers transporting motor fuel.

SECTION 3. Amends Section 153.004(d), Tax Code, to require each person, other than a common carrier transporting motor fuel, to also carry a copy of the supplier, distributor, jobber, dyed diesel fuel bonded user, or agricultural bonded user permit.

SECTION 4. Amends Section 153.006, Tax Code, by adding Subsection (e), to authorize the comptroller to revoke a distributor's or supplier's permit if the distributor or supplier purchases, for export, motor fuel in this state on which the tax imposed by this chapter has not been paid and subsequently diverts or causes the fuel to be diverted to a destination in this state or to a destination in another state or country other than the originally designated state or country without first obtaining a diversion number.

SECTION 5. Amends Section 153.010, Tax Code, to authorize the comptroller or a peace officer, in order to enforce the provisions of this chapter, to stop a motor vehicle that appears to operating with or

transporting fuel in order to examine the shipping document, cargo manifest, or invoices required to be carried and make any other investigation that could reasonably be made to determine whether the taxes have been paid or accounted for by a distributor, supplier, dealer, dyed diesel fuel bonded user, agricultural bonded user, jobber, or any person required to be so permitted. Authorizes the certain persons to take samples of motor fuel from any storage tank or container to draw certain conclusions.

SECTION 6. Amends Section 153.013(a), Tax Code, to provide that a distributor, supplier, dealer, interstate trucker, jobber, dyed diesel fuel bonded user, or agricultural bonded user 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 certain entities. Makes conforming changes.

SECTION 7. Amends Chapter 153A, Tax Code, by adding Section 153.018, to prohibit a person from importing fuel to a destination in this state or export motor fuel to a destination outside of this state by any means unless the person possesses a shipping document for that fuel created by the terminal or bulk plant at which the fuel was received. Sets forth the information required to be included in the shipping document. Requires the terminal or bulk plant to provide shipping documents to the importer or exporter. Requires the terminal to document the split loads by issuing shipping documents that list the destination state of each portion of the motor fuel, if motor fuel is to be delivered to more than one state. Sets forth required actions to be taken by a terminal, a bulk plant, the carrier, the permitted distributor or supplier, and the person that received the motor fuel. Requires an importer or exporter to keep in the person's possession, the shipping document issued by the terminal or bulk plant when transporting motor fuel imported into this state or for export from this state. Requires the importer or exporter to show the document to the comptroller or a peace officer on request. Authorizes the comptroller to delegate authority to inspect the document to other governmental agencies. Requires the importer or exporter to provide a copy of the shipping document to the person that receives the fuel when it is delivered. Authorizes the importer or exporter to deliver motor fuel only to the destination state or states indicated on the shipping document. Requires an importer or exporter who wants to divert the delivery of a single cargo tank of motor fuel from the destination state printed on the shipping document to obtain a diversion number from the comptroller before diverting the delivery. Requires the importer, exporter, or common carrier to write the diversion number on the shipping document issued for the fuel. Requires a diversion number for each diverted delivery. Authorizes the comptroller to appoint a person to assign diversion numbers or may delegate that authority to another person. Requires an importer that acquires motor fuel for import by cargo tank to obtain an import verification number from the comptroller before importing the motor fuel. Requires the importer to write the import verification number on the shipping document issued for the fuel. Requires the importer to obtain a separate import confirmation number for each cargo tank delivery of motor fuel into this state. Authorizes the comptroller to appoint a person to assign import verification numbers or may delegate that authority to another person. Requires each terminal post to post a notice in a conspicuous location proximate to the point of receipt of shipping papers that describes the duties of importers and exporters. Authorizes the comptroller to prescribe the language, type, style, and format of the notice.

SECTION 8. Amends Section 153.112(a), Tax Code, to require, rather than authorize, the comptroller to cancel a distributor's permit if no purchase, sale, or use of gasoline has been reported by the distributor for the prior 9 months, rather than 12 months.

SECTION 9. Amends Section 153.117(a), Tax Code, to require a distributor to keep a record showing the number of gallons of an itemized statement showing by load, a certain number of gallons of all gasoline.

SECTION 10. Amends Section 153.118(a), Tax Code, to require, on or before the 25th day of each month, a distributor or other person liable to this state for payment of the tax imposed under this chapter to file all reports and supplements. Requires the report to be executed by the distributor, the distributor's representative, or any other person required to report and shall be filed with the comptroller in a manner or on a form provided or approved by the comptroller. Provides that the failure of a distributor or other person to obtain forms or software from the comptroller is no excuse for the failure to file a report containing all the information required to be reported.

SECTION 11. Amends Section 153.203, Tax Code, to provide that the tax imposed by this subchapter does not apply to diesel fuel sold or delivered by a permitted supplier to another permitted supplier or to the bulk storage facility of an agricultural bonded user, or dyed diesel fuel sold or delivered by a permitted supplier to the bulk storage facility of a dyed diesel fuel bonded user.

SECTION 12. Amends Section 153.205, Tax Code, by amending Subsections (a), (b), (c), (e), (i), and (j), and by adding Subsection (k), as follows:

(a) Provides that the first sale or use of diesel fuel in this state is taxable, except that sales of dyed diesel fuel, or of undyed diesel fuel if the fuel will be used for an agricultural purpose, may be made without collecting the tax if the purchaser furnishes to a permitted supplier a signed statement, including an end user number or agricultural user exemption number issued by the comptroller that includes certain stipulations. Deletes text providing that the first sale or use of diesel fuel in this state is taxable, except that the sale of diesel fuel, may be made without collecting the tax if the purchaser furnishes to a permitted supplier a signed statement.

(b) Prohibits a person from making a tax-free purchase of any diesel fuel under this section using a signed statement for the purchase of more than 3,000 gallons of dyed or undyed diesel fuel in a single transaction. Makes a conforming change.

(c) Provides that the signed statement and end user number or agricultural user exemption number from the purchaser relieves the permitted supplier from the burden of proof that the sale of diesel fuel was not taxable to the purchaser and remains in effect unless certain conditions are met.

(e) Authorizes a person, however, to claim a refund of the tax paid on any undyed diesel fuel used for nonhighway purposes under Section 153.222. Makes conforming changes.

(i) Prohibits a supplier from making a tax-free sale of dyed diesel fuel, or undyed diesel fuel for agricultural purposes, to a purchaser using a signed statement. Makes conforming changes.

(j) Authorizes the sale of dyed diesel fuel, or undyed diesel fuel for agricultural purposes, to be made without collecting tax from a purchaser, rather than to a purchaser, who operates one or more motor vehicles on the public highway and who furnishes to a permitted supplier a signed statement and end user number or agricultural user exemption number only as provided in this subsection. Makes conforming changes.

(k) Requires a person who wants to use a signed statement to purchase dyed diesel fuel to apply to the comptroller for an end user number to be used in conjunction with a signed statement. Requires a person who wants to use a signed statement to purchase dyed or undyed diesel fuel for agricultural purposes to apply to the comptroller for an agricultural user exemption number to be used in conjunction with a signed statement. Prohibits a person from making a tax-free sale of any diesel fuel to a purchaser using a signed statement unless the purchaser has an end user number or agricultural user exemption number issued by the comptroller under this subsection.

SECTION 13. Amends Section 153.206(i), Tax Code, to provide that a dyed diesel fuel bonded user, an agricultural bonded user, or a permitted interstate trucker is entitled to deduct one-half of one percent of the taxable gallons of diesel fuel on payment of the taxes to this state for the expense of recordkeeping, reporting, and remitting the tax.

SECTION 14. Amends Section 153.207(a), Tax Code, to make a conforming change.

SECTION 15. Amends Section 153.208(b), Tax Code, to make a conforming change.

SECTION 16. Amends Section 153.209, Tax Code, as follows:

Sec. 153.209. New heading: **DYED DIESEL FUEL BONDED USER AND AGRICULTURAL BONDED USER PERMITS.** Provides that a dyed diesel fuel bonded user permit authorizes a user to purchase more than 10,000 gallons a month of dyed diesel fuel for the user's own use. Provides that an agricultural bonded user permit authorizes a user to purchase more than 10,000 gallons of dyed and undyed diesel fuel for the user's own use for agricultural purposes only.

SECTION 17. Amends Section 153.210, Tax Code, to provide that a diesel tax prepaid user permit authorizes a person whose use of diesel fuel is predominantly for agricultural nonhighway use, but owns or operates one or more passenger cars or light trucks only in the weight class shown in this section to elect to prepay an annual tax on the fuel delivered from his own tax-free storage rather than obtain an

agricultural bonded user permit.

SECTION 18. Amends Section 153.214, Tax Code, to authorize a supplier to operate under the supplier's permit as a dyed diesel fuel bonded user, agricultural bonded user, dealer, or aviation fuel dealer.

SECTION 19. Amends Section 153.215, Tax Code, to provide that a supplier's permit, a dyed diesel fuel bonded user permit, and an agricultural bonded user permit are permanent and valid as long as the permittee has in force and effect the required bond or security and furnishes timely reports and supplements as required. Requires the comptroller to cancel a permit if no purchase, sale, or use of diesel fuel has been reported by the permittee for 9 months. Deletes text authorizing the comptroller to cancel a supplier's or bonded user's permit if no purchase, sale, or use of diesel fuel has been reported by the supplier or bonded user for 12 months.

SECTION 20. Amends Section 153.217(a), Tax Code, to provide that a diesel fuel bonded user on the list is qualified to purchase dyed diesel fuel tax free during the following calendar year. Makes conforming changes.

SECTION 21. Amends Section 153.217(a), Tax Code, to require the comptroller to notify immediately the issuer of a letter of credit of a final determination of the supplier's, dyed diesel fuel bonded user's, or agricultural bonded user's delinquent liability or a judgment secured in any action. Makes conforming changes.

SECTION 22. Amends Section 153.219, Tax Code, by amending Subsections (a) and (c), and adding Subsection (j), as follows:

- (a) Requires a supplier to keep a record showing the number of gallons of all diesel fuel sold, distributed, or used no which the tax was paid, showing the name of each purchaser and the date of sale, distribution, or use.
- (b) Makes conforming changes.
- (c) Sets forth the information a supplier is required to keep in itemized statements.

SECTION 23. Amends Section 153.219, Tax Code, to make conforming changes.

SECTION 24. Amends Section 153.221(a) and (b), Tax Code, to require, on or before the 25th day of each month, a supplier, a dealer required to collect the tax under Section 153.206(b), or a user required to pay the tax under Section 153.206(c) to file a report of diesel fuel transactions or of diesel fuel delivered by a user into the fuel tank of a motor vehicle owned or operated by the user and such supplements as the comptroller may require and remit the amount of tax required to be collected or to be paid during the preceding month. Requires a report to be filed on a form or in a manner provided by the comptroller and to contain information required by the comptroller, showing complete and detailed information of diesel fuel transactions or use during the preceding month. Provides that the failure of a supplier, dealer, or user to obtain forms or software from the comptroller is no excuse for the failure to file a report. Requires, on or before the 25th day of each month following the end of each calendar quarter, a dyed diesel fuel bonded user, an agricultural bonded user, or an interstate trucker to file a report and remit the amount of tax due. Deletes text requiring, on or before the 25th day of each month following the end of each calendar quarter, a bonded user or interstate trucker to file a report and remit the amount of tax due. Makes conforming changes.

SECTION 25. Amends Section 153.222(d), Tax Code, to make conforming changes.

SECTION 26. Amends Section 153.223(a), Tax Code, to prohibit a permitted supplier from filing a claim for refund of taxes paid by a purchaser of undyed diesel fuel.

SECTION 27. Amends Section 153.224(d), Tax Code, to make conforming changes.

SECTION 28. Amends Chapter 153C, Tax Code, by adding Sections 1653.226-153.230, as follows:

Sec. 153.226. NOTICE REGARDING DYED DIESEL FUEL. Sets forth the required uses of a notice stating "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR

TAXABLE USE.”

Sec. 153.227. DYED DIESEL FUEL NOTICE REQUIRED ON SHIPPING DOCUMENTS, BILLS OF LADING, AND INVOICES. Requires the form of notice required by Sections 153.226(1) and (2) to be provided when the dyed diesel fuel is removed or sold and must appear on each shipping document, bill of lading, cargo manifest, and invoice accompanying the sale or removal of the dyed diesel fuel.

Sec. 153.228. UNAUTHORIZED SALE OR USE OF DYED DIESEL FUEL. 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 a taxable use of the diesel fuel. Prohibits a person from using or holding for use dyed diesel fuel for a use other than a nontaxable use if the person knows or has reason to know that the diesel fuel is dyed diesel fuel.

Sec. 153.229. ALTERATION OF DYE OR MARKER IN DYED DIESEL FUEL PROHIBITED. Prohibits a person, with the intent to evade payment of tax, from altering or attempting to alter the strength or composition of a dye or marker in dyed diesel fuel.

Sec. 153.230. USE OF DYED FUEL PROHIBITED. Prohibits a person from operating a motor vehicle on a public highway in this state with taxable motor fuel that contains dye in the fuel supply tank of the motor vehicle. Provides that this section does not apply to a use of dyed fuel that is lawful under the Internal Revenue Code and implementing regulations.

SECTION 29. Amends Section 153.401(a), Tax Code, to make a conforming change.

SECTION 30. Amends Section 153.402, Tax Code, to provide that a person forfeits to the state a civil penalty of not less than \$25 nor more than \$200, if the person is an importer who does not obtain an import verification number when required by this chapter or purchases motor fuel for export, on which the tax imposed by this chapter has not been paid, and subsequently diverts or causes to motor fuel to be diverted to a destination in this state or any other state or country other than the originally designated state or country without first obtaining a diversion number. Provides that an importer or exporter that violates a requirement of Section 153.018 is liable to this state for a civil penalty of \$2,000 or five times the amount of the unpaid tax, whichever is greater, for each violation. Provides that a person receiving motor fuel who accepts a shipping document that does not conform with the requirements of Section 153.018(a) is liable to this state for a civil penalty of \$2,000 or five times the amount of the unpaid tax, whichever is greater, for each occurrence. Provides that a person operating a bulk plant or terminal who issues a shipping document that does not conform with the requirements of Section 153.018(a) is liable to this state for a civil penalty of \$2,000 or five times the amount of the unpaid tax, whichever is greater, for each occurrence. Provides that a person operating a terminal or bulk plant who does not post notice as required by Section 153.018(i) is liable to this state for a civil penalty of \$100 for each day the notice is not posted as required by Section 153.018(i).

SECTION 31. Amends Section 153.403, Tax Code, to provide that, except as provided by Section 153.404 of this code, a person commits an offense if the person uses dyed diesel fuel, on which a tax is required to be paid, for the operation of a motor vehicle on a public highway; is an importer who does not obtain an import verification number when required by this chapter; purchases motor fuel for export, on which the tax imposed by this chapter has not been paid, and subsequently diverts or causes to be diverted to a destination in this state or any other state or country other than the originally designated state or country without first obtaining a diversion number; is a distributor, supplier, dyed diesel fuel bonded user, agricultural bonded user, dealer, interstate trucker, aviation fuel dealer, jobber, or other person required to hold a permit under this chapter who fails to retain a document as required by this chapter; transports in any manner motor fuel under a false cargo manifest or shipping document, or transports in any manner motor fuel to a location without delivering at the same time a shipping document relating to that shipment; is a dealer who purchases motor fuel with the intent to evade any tax imposed by this chapter, or who accepts delivery of motor fuel by any means and does not at the same time accept or receive a shipping document relating to the delivery; transports motor fuel for which a cargo manifest or shipping document is required to be carried without possessing or exhibiting on demand by an officer authorized to make the demand, a cargo manifest or shipping document containing the information required to be shown on the manifest or shipping document; imports, sells, uses, distributes, or store motor fuel within this state on which the taxes imposed by this chapter are owed but have not been first paid to or reported by the holder of a distributor, supplier, liquefied gas dealer, interstate trucker, diesel tax prepaid user, dyed diesel fuel

bonded user, or agricultural bonded user permit; blends products together to produce a blended fuel that is offered for sale, sold, or used that expands the volume of the original product to evade paying applicable motor fuel taxes; or evades or attempts to evade in any manner, a tax imposed on motor fuel by this chapter. Deletes text providing that, except as provided by Section 153.404 of this code, a person commits an offense, if the person transports motor fuel for which a cargo manifest is required to be carried. Makes conforming changes.

SECTION 32. Amends Sections 153.404(b), (c), and (d), Tax Code, as follows:

(b) Provides that each day a refusal prohibited under Sections 153.403(13), (14), or (15) continues is a separate offense. Deletes text providing that each day a refusal prohibited under Sections 153.403(12) or (13) of this code continues is a separate offense.

(c) Provides that the prohibition under Section 153.403(32) does not apply to the tax-free sale or distribution of diesel fuel authorized by Sections 153.203(1), (2), or (5). Deletes text providing that the prohibition under Section 153.403(30) of this code does not apply to the tax-free sale or distribution of diesel fuel authorized by Sections 153.203(1), (2), or (5) of this code.

(d) Provides that the prohibition under Section 153.403(33) does not apply to the tax-free sale or distribution of gasoline under Sections 153.104(2) or (4). Deletes text providing that the prohibition under Section 153.403(31) of this code does not apply to the tax-free sale or distribution of gasoline under Sections 153.104(2) or (4) of this code.

SECTION 33. Amends Section 153.405, Tax Code, as follows:

(a) Provides that an offense under Section 153.403(8), is a Class C misdemeanor.

(b) Provides that an offense under Sections 153.403(9), (16), (17), or (18) is a Class B misdemeanor. Deletes text providing that an offense under Section 153.403(8), or (9) of this code is a Class B misdemeanor.

(c) Provides that an offense under Sections 153.403(19), (20) or (21) is a Class A misdemeanor. Deletes text providing that an offense under Section 153.403(16), (17), (18), or (19) of this code is a Class A misdemeanor.

(d) Provides that an offense under Sections 153.403(22), (23), (28) or (29) is a felony of the third degree. Deletes text providing that an offense under Sections 153.403(20), (21), or (22) of this code is a felony of the third degree.

(e) Provides that an offense under Sections 153.403(30), (34), (35), (36), (37), (38), or (39) is a felony of the third degree. Deletes text providing that an offense under Sections 153.403(28), (29) or (30) of this code is a felony of the third degree.

(f) Provides that violations of three or more separate offenses under Sections 153.403(22) through (27), rather than Sections 153.403(20) through (27) of this code, committed pursuant to one scheme or continuous course of conduct may be considered as one offense and punished as a felony of the second degree.

SECTION 34. Effective date: September 1, 1999.

Makes application of this Act prospective.

SECTION 35. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Deletes proposed Chapter 161A, Title 2E, Tax Code, regarding motor fuel taxes and general provisions and all corresponding sections. Redefines “blended fuel,” “blending,” “diversion

number,” “dyed diesel fuel,” “export,” “import,” “import verification number.” Adds definitions for “shipping document,” and “undyed diesel fuel.”