

SUBJECT: Tax credit or refund for auxiliary power units or power take-off equipment

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 6 ayes — Keffer, Ritter, Otto, Bonnen, Davis, Pena

0 nays

3 absent — Flores, Paxton, Pitts

WITNESSES: For — Chris Macomb, Waste Management of Texas; Linda Sickels, Trinity Industry Inc.; Russell Stubbs, Texas Motor Transportation Association; Richard S. Szecsy, Texas Aggregates and Concrete Association. (*Registered, but did not testify*: Lee Carroll, Texas Aggregates and Concrete Association; Wil Galloway, The Zachary Group; Michael Stewart, Texas Aggregates and Concrete Association)

Against — None

BACKGROUND: The 78th Legislature in 2003 enacted HB 2458 by Krusee, which moved the tax collection point to the terminal rack, among other changes.

Undyed diesel fuel is taxed by the state at 20 cents a gallon. Under HB 2458, tax-free purchases of this fuel for off-highway equipment, stationary engines and other non-highway purposes is not permissible, with exceptions for the federal government, Texas public school districts, companies providing transportation for school districts, and Texas non-profit electric and telephone cooperatives organized under the Texas Utilities Code.

Dyed diesel fuel is sold tax free to qualifying users. By law, dyed diesel fuel may not be used in fuel supply tanks of motor vehicles operating on public highways. Under HB 2458, a person may obtain permission from the comptroller to buy dyed diesel fuel tax free for use in nonagricultural, nonhighway equipment or to buy dyed or undyed diesel fuel tax free for use in agricultural, nonhighway equipment.

DIGEST:

HB 688 would amend Tax Code, sec. 162.227 to allow license holders to receive a tax credit and non-license holders to file a refund claim for the diesel fuel tax paid to power auxiliary power units or power take-off equipment on motor vehicles.

The air conditioning or heating system of a motor vehicle that provides comfort for a driver or passengers would not qualify as a power take-off system and the diesel fuel consumed for that purpose would not qualify for a credit or refund. The diesel fuel tax paid on fuel consumed while the vehicle was idling would not be eligible for credit or refund.

The bill would authorize the comptroller to approve and adopt the use of certain devices or methods to accurately measure the amount of diesel fuel consumed when the vehicle was stationary and when it was in motion. The approved devices or methods would be used to determine the amount of diesel fuel eligible for a tax credit or refund.

If a device or method to conduct the measurement was unavailable, the comptroller could determine the percentage of the diesel fuel consumed by a motor vehicle equipped with an auxiliary power unit or power take-off equipment. The diesel fuel tax credit or refund would be determined according to this percentage.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS  
SAY:

HB 688 is needed to correct an oversight in HB 2458, enacted in 2003, which inadvertently eliminated the diesel fuel tax credit for the use of auxiliary power units and power take-off equipment. This tax credit or refund had existed for more than three decades, and HB 688 is designed to fix this unintentional oversight. The bill also would eliminate the advantage afforded to gasoline-powered vehicles, as the gasoline tax credit or refund for such equipment remains in effect.

In a vehicle with an auxiliary power unit or power-take off equipment, diesel is consumed in powering the second engine. This portion of the diesel consumed does not propel the vehicle forward and thus does not have an impact the state's public roads. The diesel fuel tax funds State Highway Fund 6, which pays for the maintenance and construction of public roads in Texas. Because the use of auxiliary power units and power

take-off equipment does not affect public roads, this diesel fuel should not be subject to the state tax.

Diesel consumed by a vehicle using a diesel-powered auxiliary power unit or power take-off equipment for non-transportation purposes often is a large portion of that vehicle's fuel usage. The hauling and pouring of concrete by such vehicles exemplifies the significance of this form of diesel fuel consumption. Engine manufacturers estimate that 30 percent of the diesel fuel consumed by concrete trucks is used to turn the drum, not move the vehicle. Diesel-powered trucks transporting refrigerated food and beverage items also consume diesel for non-transportation purposes.

Many vehicles are equipped with electronic sensing devices, capable of discerning how much fuel is used for transport and non-transport. This technology enables a fair and efficient process for computing the diesel fuel tax credit or rebate in HB 688.

**OPPONENTS  
SAY:**

The diesel fuel tax on auxiliary power units and power take-off equipment helps to fund the state highway fund and the available school fund. By creating this exemption, the bill would eliminate a sizable source of revenue for the state of Texas.

**NOTES:**

According to the Legislative Budget Board, HB 688 would result in a net loss of general revenue of \$1,793,000 in fiscal 2008 and \$2,051,000 in fiscal 2009. The bill would result in a revenue loss from the state highway fund 6 of \$5,379,000 in fiscal 2008 and \$6,152,000 in fiscal 2009.

During the 2005 regular session, HB 917 by Krusee, which would have reinstated the diesel fuel tax credit or refund for auxiliary power units or power take-off equipment, was left pending in the House Ways and Means Committee.