

BILL ANALYSIS

Senate Research Center

H.B. 2458
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Finance
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Engrossed

This bill analysis was prepared by the House Ways and Means Committee for C.S.H.B. 2458 and is the most recent version available to the Senate Research Center. A list of House floor amendments is attached at the end of the analysis.

DIGEST AND PURPOSE

The objective of C.S.H.B. 2458 is to increase motor fuel tax revenue and Federal highway matching funds, without increasing the tax rate, by moving the point of collection to the highest point in the marketing chain, the terminal loading rack; utilizing the automated systems of the terminals to calculate and remit tax in order to decrease the opportunity for human error; increasing efficiency in tax collection by reducing the number of persons who remit tax to the comptroller's office from the current 2,000+ to fewer than 100; requiring persons in the fuel marketing chain to file reports with the comptroller that will enable the comptroller to verify the reports of others in the marketing chain without field audits; encouraging the sale and purchase of dyed diesel fuel for use in off-highway vehicles and equipment; and furthering national efforts to coordinate fuel tax systems among the states.

RULEMAKING AUTHORITY

It is the opinion of this office that this bill does not grant any additional rulemaking authority to a state officer, department, agency, or institution.

SECTION BY SECTION ANALYSIS

Section 162.001. This Section provides the general definitions of terms used in this chapter.

Section 162.002. This Section provides for the treatment of taxable motor fuels brought into this state in the fuels supply tanks of certain leased vehicles used for interstate operations. The Section also provides specific direction for tax compliance to both persons operating leased interstate vehicles in this state for commercial purposes and to those who lease vehicles and other equipment to be used in interstate operation and have responsibility for the fuels taxes.

Section. 162.003. This Section delegates to the comptroller of public accounts, the authority to enter into interstate agreements for sharing information and other resources to aid in the effective and efficient administration of motor fuels taxes.

Section 162.004. This Section provides the documentation requirements for transporting motor fuels in this state.

Section 162.005. This Section provides for the refusal to reissue and cancellation of a person's licenses by the comptroller of public accounts to any person who has violated or has failed to comply with the provisions of the chapter or a rule of the comptroller.

Section 162.006. This Section provides for the summary suspension of a person's license without notice under conditions that constitute an immediate and substantial threat to the collection of taxes imposed by the chapter.

Section 162.007. This Section provides for the accelerated collection of unpaid taxes by the comptroller of public accounts while enforcing the cancellation, suspension or refusal of a license.

Section 162.008. This Section provides the comptroller of public accounts with the specific authority to inspect and examine the premises, storage facilities, books and records of any person licensed or required to be licensed or any person selling, receiving or possessing motor fuels or other petroleum products and blending agents or natural gas, its derivatives or other by-products to determine the amount of tax due and payable to the state of Texas.

Section 162.009. This Section provides the comptroller of public accounts or a peace officer with the specific authority to stop and inspect motor vehicles operating with or transporting motor fuel to inspect and examine licenses and or required documentation and to take samples of the motor fuels to determine whether taxes have been paid or accounted for to the state.

Section 162.010. This Section provides the comptroller of public accounts with the specific authority for impoundment and seizure of vehicles inspected under Section 162.009 when the operator, owner, fuel or product in possession are determined to be in violation of this chapter or a rule of the comptroller.

Section 162.011. This Section provides for the sale of property seized under Section 162.010.

Section 162.012. This Section provides the presumption to be applied by the comptroller of public accounts in the determining the taxability of motor fuel when a person licensed or required to be license under this chapter fails to keep adequate records, issue invoices, file returns or properly report and pay tax.

Section 162.013. This Section provides for the venue of tax collection suits.

Section 162.014. This Section prohibits the imposition of an excise or occupation tax on the sale, use or distribution of motor fuels by any political subdivision of this state.

Section 162.015. This Section provides for the application of tax rate changes on existing inventories of tax paid fuel (2,000 gallons or greater) possessed for the purpose of sale.

Section 162.016. This Section provides for the specific shipping document requirements for sellers, exporters, and importers of motor fuels.

Sections 162.017 -162.100. These Sections are reserved for expansion.

Section 162.101. This Section imposes a tax on gasoline removed from a terminal rack or imported into this state or blended outside of the bulk transfer/terminal system, sold to a non-licensed supplier in the bulk transfer/terminal system, or used by certain commercial interstate motor vehicles. The licensed supplier, permissive supplier, importer, interstate trucker, blender, or terminal operator collects the tax.

Section 162.102. This Section sets forth the tax rate at 20 cents on each net gallon of gasoline and 19 cents on each net gallon of gasoline sold to a commercial transit company.

Section 162.103. This Section requires that the tax be computed and paid to the state on the net gallons of gasoline.

Section 162.104. This Section imposes a backup tax at the rate provided in Section 162.102 on gasoline used to operate a motor vehicle on a highway or sold for a nonexempt purpose on which the tax has not been paid.

Section 162.105. This Section sets forth eligible exempt sales and exempt uses of gasoline.

Section 162.106. This Section requires a person to obtain the appropriate license before conducting the activities of a supplier, distributor, importer, blender, motor fuel transporter, terminal operator, exporter, aviation fuel dealer, or interstate trucker. A person may elect to obtain a permissive supplier license.

Section 162.107. This Section provides that in lieu of an interstate trucker's permit a person may obtain a temporary trip permit.

Section 162.108. This Section allows a person to obtain a permissive supplier license for the purpose of collecting the tax imposed by this chapter on gasoline removed at a terminal located in another state and Texas is the destination state.

Section 162.109. This Section specifies the information required on a gasoline tax license application.

Section 162.110. This Section requires that a license be displayed at each place of business or other place of storage in which gasoline is sold and in motor vehicles that transport gasoline.

Section 162.111. This Section provides that a gasoline license is valid until surrendered by the licensee or cancelled by the comptroller, except that an interstate trucker's license expires December 31 of each calendar year. This Section provides that licenses are not transferable.

Section 162.112. This Section allows the comptroller to require a bond accompany the issuance of a license. The bond is not less than \$30,000 for all licenses. The Section also delineates the bond attributes.

Section 162.113. This Section requires the comptroller to make available a list of active gasoline licensees.

Section 162.114. This Section requires a distributor or importer to remit the tax due to a supplier or permissive supplier by electronic funds transfer two days prior to the date the supplier or permissive supplier is required to remit the tax to the state. This Section allows a supplier or permissive supplier to cancel the distributor or importer deferred payment of tax and take a credit against subsequent payment of tax to the state if the distributor or importer fails to remit tax to the supplier or permissive supplier. This Section allows a distributor or importer to retain 1.75 percent of the tax timely paid to the supplier or permissive supplier to cover administrative expenses.

Section 162.115. This Section requires a licensee to file a tax report with the comptroller on or before the 25th of each month, except a motor fuel transporter and interstate trucker which shall file on or before the 25th of the month following the end of each calendar quarter.

Section 162.116. This Section specifies the records required to be maintained by a licensee and dealer.

Section 162.117. This Section specifies the information required on a supplier's and permissive supplier's report.

Section 162.118. This Section provides that the tax collected by a supplier or permissive supplier is held in trust for the benefit of the state. This Section requires a supplier or permissive supplier to furnish an invoice or other document as evidence of the number of gallons of gasoline received by the purchaser.

Section 162.119. This Section specifies the information required on a distributor's return.

Section 162.120. This Section specifies the information required on an importer's return.

Section 162.121. This Section specifies the information required on a terminal operator's return.

Section 162.122. This Section specifies the information required on a motor fuel transporter's return.

Section 162.123. This Section specifies the information required on an exporter's return.

Section 162.124. This Section specifies the information required on a blender's return.

Section 162.125. This Section specifies the information required on an interstate trucker's return.

Section 162.126. This Section allows refund of tax paid on gasoline sold to an exempt entity or used in an exempt manner.

Section 162.127. This Section allows a permitted distributor and a terminal supplier a refund or credit for bad debts.

Section 162.128. This Section sets forth the documentation required to support a claim for refund.

Section 162.129. This Section sets forth the time period for filing a gasoline tax refund claim or taking a credit for taxes erroneously paid.

Section 162.201. This Section imposes a tax on diesel fuel removed from a terminal rack or imported into this state or blended outside of the bulk transfer/terminal system, sold to a non-licensed supplier in the bulk transfer/terminal system, or used by certain commercial interstate motor vehicles. The licensed supplier, permissive supplier, importer, interstate trucker, blender, or terminal operator collects the tax.

Section 162.202. This Section sets forth the tax rate at 20 cents on each net gallon of diesel fuel and 19.5 cents on each net gallon of diesel fuel sold to a commercial transit company.

Section 162.203. This Section requires that the tax be computed and paid to the state on the net gallons.

Section 162.204. This Section imposes a backup tax at the rate provided in Section 162.202 on diesel fuel used to operate a motor vehicle on a highway or sold for a nonexempt purpose on which the tax has not been paid.

Section 162.205. This Section sets forth eligible exempt sales and exempt uses of diesel fuel.

Section 162.206. This Section requires a person to obtain the appropriate license before conducting the activities of a supplier, distributor, importer, motor fuel transporter, terminal operator, exporter, blender, aviation fuel dealer, interstate trucker, or dyed diesel fuel bonded user license. A person may elect to obtain a permissive supplier license.

Section 162.207. This Section allows a licensed supplier or distributor to sell dyed diesel fuel in limited quantities to a person registered with the comptroller as an end user and that furnishes to the seller a signed statement and end user number.

Section 162.208. This Section provides that in lieu of an interstate trucker's permit a person may obtain a temporary trip permit.

Section 162.209. This Section allows a person to obtain a permissive supplier license for the purpose of collecting the tax imposed by this chapter on diesel fuel removed at a terminal located in another state and Texas is the destination state.

Section 162.210. This Section specifies the information required on a diesel fuel tax license application.

Section 162.211. This Section requires that a license be displayed at each place of business or other place of storage in which diesel fuel is sold and in motor vehicles that transport diesel fuel.

Section 162.212. This Section provides that a diesel fuel license is valid until surrendered by the licensee or cancelled by the comptroller, except that an interstate trucker's license expires

December 31 of each calendar year. This Section states that licenses are not transferable.

Section 162.213. This Section allows the comptroller to require a bond accompany the issuance of a license. The bond is not less than \$30,000 for all licenses except the dyed diesel fuel bonded user minimum bond which is \$10,000. The section also delineates the bond attributes.

Section 162.214. This Section requires the comptroller to make available a list of active diesel fuel licensees.

Section 162.215. This Section requires a distributor or importer to remit the tax due to a supplier or permissive supplier by electronic funds transfer two days prior to the date the supplier or permissive supplier is required to remit the tax to the state. This Section allows a supplier or permissive supplier to cancel the distributor or importer deferred payment of tax and take a credit against subsequent payment of tax to the state if the distributor or importer fails to remit tax to the supplier or permissive supplier. This Section allows a distributor or importer to retain 1.75 percent of the tax timely paid to the supplier or permissive supplier to cover administrative expenses.

Section 162.216. This Section requires a licensee to file a tax report with the comptroller on or before the 25th of each month, except a motor fuel transporter, interstate trucker and dyed diesel fuel bonded user which shall be filed on or before the 25th of the month following the end of each calendar quarter.

Section 162.217. This Section specifies the records required to be maintained by a supplier and permissive supplier.

Section 162.218. This Section specifies the information required on a supplier's and permissive supplier's report.

Section 162.219. This Section provides that the tax collected by a supplier or permissive supplier is held in trust for the benefit of the state. This Section requires a supplier or permissive supplier to furnish an invoice or other document as evidence of the number of gallons received by the purchaser.

Section 162.220. This Section specifies the information required on a distributor's return.

Section 162.221. This Section specifies the information required on an importer's return.

Section 162.222. This Section specifies the information required on a terminal operator's return.

Section 162.223. This Section specifies the information required on a motor fuel transporter's return.

Section 162.224. This Section specifies the information required on an exporter's return.

Section 162.225. This Section specifies the information required on a blender's return.

Section 162.226. This Section specifies the information required on an interstate trucker's return.

Section 162.227. This Section specifies the information required on a dyed diesel fuel bonded user's return.

Section 162.228. This Section allows refund of tax paid on diesel fuel sold to an exempt entity or used in an exempt manner.

Section 162.229. This Section allows a supplier, permissive supplier and distributor a refund or credit for bad debts.

Section 162.230. This Section sets forth the documentation required to support a claim for

refund.

Section 162.231. This Section sets forth the time period for filing a diesel fuel tax refund claim or taking a credit for taxes erroneously paid.

Section 162.232. This Section requires a supplier, permissive supplier, distributor or other seller of dyed diesel fuel to post a notice on a retail pump or bulk plant.

Section 162.233. This Section requires that all shipping documents, bills of lading, and invoices identify the product as dyed diesel fuel.

Section 162.234. This Section makes it unlawful to sell or hold for sale or use or hold for use dyed diesel fuel that the person knows will be used in a taxable manner.

Section 162.235. This Section makes it unlawful to alter or attempt to alter the strength or composition of the dye or marker in dyed diesel fuel with the intent to evade payment of tax.

Section 162.236. This Section makes it unlawful to operate a motor vehicle on a public highway in this state that contains dye with stated exceptions of state and local government vehicles.

Section 162.237 - 162.300. These Sections are reserved for expansion.

Section 162.301. This Section imposes a tax at a rate of 15 cents per gallon on liquefied gas used in a motor vehicle on the public highways.

Section 162.302. This Section requires that a person using a motor vehicle licensed in Texas that is equipped to use liquefied gas prepay the tax. This Section provides that the holder of a motor vehicle dealer decal or interstate trucker license must pay the tax at the time liquefied gas is delivered into a motor vehicle.

Section 162.3021. This Section provides an exemption to Texas public school districts and counties.

Section 162.303. This Section requires that a person obtain the appropriate license to make taxable sells or uses of liquefied gas. This Section provides that a liquefied gas license is not transferable and must be displayed at each place of business or carried in each motor vehicle using liquefied gas.

Section 162.304. This Section authorizes the holder of a dealer's license to collect and remit taxes on liquefied gas delivered into motor vehicles displaying an out-of-state license plant, an International Fuel Tax Agreement license, or motor vehicle dealer's decal.

Section 162.305. This Section sets forth the tax rate prepaid according to each motor vehicle's registered gross weight and mileage driven in the previous year.

Section 162.306. This Section requires an interstate truck to remit the tax on liquefied gas used in this state by their commercial motor vehicles. This Section allows an interstate trucker to deliver liquefied gas into motor vehicles bearing a current liquefied gas tax decal.

Section 162.307. This Section provides that a dealer's license is valid until surrendered by the licensee or cancelled by the comptroller, except an interstate trucker's license expires December 31 each calendar year and a liquefied gas tax decal expires one year after its issuance.

Section 162.308. This Section requires a dealer or interstate trucker to remit the tax imposed by this chapter to the comptroller. This Section allows the dealer to retain one percent of the tax due and the interstate trucker to retain one-half of one percent of the tax due to cover the cost of administrative expenses.

Section 162.309. This Section specifies the records that a dealer and an interstate trucker must

maintain.

Section 162.310. This Section requires that a dealer and interstate trucker file a report on or before the 25th day of the month following the end of each calendar quarter.

Section 162.311. This Section allows a refund on the unused portion of the taxes paid in advance if the comptroller is notified when a vehicle is sold or destroyed. This Section allows the refund of the tax paid by an interstate trucker on liquefied gas used outside this state.

Section 162.312 - 162.400. These Sections are reserved for expansion.

Section 162.401. This Section allows the comptroller to assess penalties for failure to file reports or pay taxes as required, and allows the comptroller to assess a 75% penalty if such failure to file of pay the tax due is attributable to fraud.

Section 162.402. This Section provides for civil penalties for certain violations of the Tax Code or rule promulgated under this chapter.

Section 162.403. This Section provides for criminal penalties for violations of the Tax Code, except that subSection (7) makes it a misdemeanor to sell or deliver dyed diesel fuel for use on a public highway, and subSection (8) provides an exception to use of dyed diesel fuel on the public highway.

Section 162.404. This Section provides special provisions and exceptions to Sec. 162.403.

Section 162.405. This Section provides the classification of offenses under Sec. 162.403.

Section 162.406. This Section provides the criminal penalties for corporations and associations for violations of Sec. 162.403.

Section 162.407. This Section provides that venue for prosecution under Sec. 162.403 is in Travis County or the county where the offense occurred.

Section 162.408. This Section provides that charging instruments need not negate exceptions to prohibited acts, and the use of exceptions by the defense.

Section 162.409. This Section provides that the issuance of a bad check to licensed suppliers and distributors is an offense.

SectionS 162.410 - 162.500. These Sections are reserved for expansion.

Section 162.501. This Section provides for the allocation of one percent of the gross taxes collected for use by the comptroller in the administration and enforcement of this chapter.

Section 162.502. This Section provides for an allocation of the unclaimed motorboat gasoline taxes.

Section 162.5025. This Section provides for an allocation of the unclaimed off-highway equipment taxes.

Section 162.503. This Section provides for allocation of the gasoline tax.

Section 162.504. This Section provides for allocation of the diesel fuel tax.

Section 162.505. This Section provides for allocation of the liquefied gas tax.

SECTION 2. This Section repeals Chapter 153, Tax Code.

SECTION 3. This Section provides a bill effective date of September 1, 2003.

EFFECTIVE DATE

This act takes effect September 1, 2003.

LIST OF FLOOR AMENDMENTS

Amend CSHB 2458 as follows:

(1) On page 5, line 23, amend Section 162.001, subsection (21) to read as follows:

"(21)"Distributor" means a person who acquires motor fuel from a licensed supplier, permissive supplier, or another licensed distributor and makes sales at wholesale and whose activities may also include sales at retail."

(2) On page 9, line 13, amend subsection (43) to read as follows: "'Licensee' means any person licensed by the comptroller pursuant to Section 162.106, 162.206, 162.304, 162.305, and 162.306."

(3) On page 37, line 16, amend Section 162.105, subsection(4) to read as follows: "(4) All gasoline exported by either a licensed supplier or licensed exporter from this state to any other state, provided that the bill of lading indicates the destination state, the gasoline is subsequently exported and the exporter is licensed in the destination state to pay that state's tax and has a Texas exporter's license in accordance with Section 162.109(d). If the exporter does not have a Texas exporter's license, the Texas state tax must be collected. This exception shall not apply to any gasoline that is transported and delivered outside this state in the motor fuel supply tank of a motor vehicle other than an interstate trucker. Section 162.105(4) shall only be in effect if the destination state does not recognize, by agreement with the State of Texas or by statute, the out of state supplier as a valid taxpayer for the motor fuel being exported to such state from Texas."

(4) On page 37, line 23, add Section 162.105, subsection (5) to read as follows and renumber subsequent sections appropriately:"(5) All gasoline exported by either a licensed supplier or licensed exporter from this state to any other state, provided that the bill of lading indicates the destination state and the supplier collects the destination state tax. This exception shall not apply to any gasoline that is transported and delivered outside this state in the motor fuel supply tank of a motor vehicle other than an interstate trucker. Section 162.105(5) shall only be in effect if the destination state recognizes, by agreement with the State of Texas or by statute, the out of state supplier as a valid taxpayer for the motor fuel being exported to such state from Texas, or until January 1, 2006, whichever is earlier."

(5) On page 37, line 26, after "terminal." insert "The removal from the second terminal rack will be subject to the tax imposed by this subchapter."

(6) On page 39, line 15, replace the word "permit" with the word "license."

(7) On page 39, line 26, after the word "trucker's" insert the word "license."

(8) On page 44, line 23, strike the words "is exempted from the bond or other security requirements of this subchapter and."

(9) On page 47, line 26, after the word "gasoline" delete the word "fuel."

(10) On page 48, line 9, strike Section 162.114, subsection (a) and substitute the following: "(a) Each licensed distributor and licensed importer shall remit to the supplier or permissive supplier, as applicable, the tax imposed by Section 162.101 for gasoline removed at a terminal rack. A licensed distributor or licensed importer may elect to defer payment of the tax to the supplier or permissive supplier until two days prior to the date the supplier or permissive supplier is required to remit the tax to this state and the payment shall be by electronic funds transfer. A supplier, permissive supplier, or their representative which

conducts electronic transactions to draft account of licensed distributors or licensed importers for the payment of taxes due under this subsection shall provide at least two days notice via electronic means of the amount to be drafted from the account of the licensed distributor or licensed importer, as well as the account number to be drafted. If the supplier or permissive supplier is unable to secure payment of taxes from the licensed distributor or licensed importer due for gasoline removed from the terminal during the previous period and the supplier elects to take a credit against a subsequent payment of gasoline tax to the state for the taxes not remitted to the supplier or permissive supplier by the licensed distributor or licensed importer, the supplier or permissive supplier shall notify the comptroller of the licensed distributor's or licensed importer's failure to remit tax in conjunction with the report requesting a credit. The supplier shall have the right, after notifying the comptroller of the licensed distributor's or licensed importer's failure to remit taxes under this subsection, to terminate the ability of the licensed distributor or licensed importer to defer the payment of gasoline tax. The right of the licensed distributor or licensed importer to defer the payment of gasoline tax shall be reinstated by the supplier or permissive supplier after notice has been issued by the comptroller that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of state gasoline tax."(11) On page 49, line 26, delete the sentence "The comptroller may cancel as provided in Section 162.005 the license of a distributor, exporter, or importer who fails to pay the full amount of tax required by this subchapter." and replace it with subsection (c) to read as follows: "(c) The comptroller may cancel as provided in Section 162.005 the license of a distributor, exporter, or importer who fails to pay the full amount of tax required by this subchapter."

(12) On page 58, line 1, delete "Sec. 162.104" and replace it with "Sec. 162.114."

(13) On page 58, line 8, after the word "tax" insert "plus a penalty of ten percent of the amount of unpaid taxes in interest at the rate provided by Sec. 111.060 beginning on the date that the credit was taken or the refund was issued."

(14) On page 58, line 21, insert subsection (d) to read as follows: "(d) To determine the amount of credit per tax, all payments or credits in reduction of a customer's account must be applied ratably between motor fuels and other goods sold to the customer, and the credit allowed will be the tax on the number of gallons represented by the motor fuel portion of the credit."

(15) On page 59, line 6, amend Section 162.119, subsection (3) to read as follows: "(3) the number of net gallons of gasoline removed by the distributor during the month for export, sorted by product code, terminal code, bulk plant address, destination state and carrier. Proof of payment of tax to the destination state must be supplied in a form acceptable to the comptroller."

(16) On page 61, line 12, after the word "RETURN" insert "AND PAYMENT OF TAX ON EXPORTS."

(17) On page 61, line 13, before "The" insert "(a)."

(18) On page 61, line 23, amend Section 162.123 by adding subsection (4) to read as follows: "(4) Proof of payment of the tax to the destination state in a form acceptable to the comptroller."

(19) On page 61, line 24, add subsection (b) to read as follows: "(b) If an exporter fails to provide the proof required by subsection (a) of this section within the time period required by the comptroller, the exporter shall report and pay the tax imposed by this subchapter on the exported gasoline to the state. If the exporter fails to provide proof of payment of the destination state taxes to the comptroller and fails to pay the tax imposed by this subchapter, the comptroller shall assess the tax imposed by this subchapter on the exported gasoline against the exporter."

(20) On page 62, line 21, amend Section 162.126 title to read as follows: "REFUNDS OF TAXES PAID ON EXCEPTED USES OR OTHERWISE EXEMPT SALES OF GASOLINE."

(21) On page 62, lines 22 through 26, amend Section 162.126(a) to read as follows: "(a) A licensee may take a credit on a return for the period in which the sale occurred if the licensee paid tax on the purchase of gasoline and subsequently resells the gasoline without collection of the tax to:" (22) On page 63, line 23, after new subsection (7), add new subsection (8) to read as follows: "(8) Gasoline used in motor vehicles that are operated exclusively off the public highways, except for incidental travel on the public highways as determined by the comptroller, but not for that portion used in the incidental highway travel."

(23) On page 64, line 18, replace "162.128" with "162.129."

(24) On page 65, line 7, add new subsection (7), to read as follows: "(7) Uses the gasoline in off highway equipment, and stationary engines, or for other non-highway purposes and not in a motor vehicle operated or intended to be operated on the public highways;"

(25) On page 65, line 7, after new subsection (7), add new subsection (8), to read as follows: "(8) Uses the gasoline in a motor vehicle that is operated exclusively off the public highways, except for incidental travel on the public highways as determined by the comptroller, provided that a refund may not be allowed for the portion used in the incidental highway travel."

(26) On page 65, line 9, after "by the comptroller." insert the following: "For the purposes of this section, a distributor shall meet the requirement of filing a valid refund claim by designating the gallons of gasoline sold or used as described in Section 162.126(b) on the monthly report submitted by the distributor to the comptroller's office."

(27) On page 65, line 15, replace "162.128" with "162.129."

(28) On page 65, line 25, replace "permitted" with "licensed."

(29) On page 66, line 4, strike section 126.127 (a) (3) and renumber the subsequent subsections appropriately.

(30) On page 66, line 5, replace "permit" with "license."

(31) On page 66, line 9, delete "terminal" and after the word "supplier" insert "or permissive supplier."

(32) On page 66, line 11, delete "terminal" and after the word "supplier" insert "or permissive supplier."

(33) On page 66, line 16, delete "terminal" and after the word "supplier" insert "or permissive supplier."

(34) On page 66, line 16, replace the word "permit" with the word "license."

(35) On page 66, line 18, amend section 126.127 (c) to read as follows: "The return on which the credit is taken or the refund claimed must state, if applicable, the permit number of the person whose account has been written off as a bad debt and any other information required by the comptroller. The amount of the refund that may be claimed under Subsection (a) or (b) may equal but may not exceed the amount of taxes paid on the gasoline to which the written-off account applies."

(36) On page 67, line 2, delete "terminal" and after the word "supplier" insert "or permissive supplier."

(37) On page 67, line 14, delete "A credit under this section must be taken on either the first or second monthly report of a terminal supplier following the monthly report following the monthly report on which the terminal supplier paid the tax."

(38) On page 74, line 7, strike subsection (4) of section 126.162.205 and substitute the following: "(4) All diesel fuel exported by either a licensed supplier or licensed exporter from this state to any other state, provided that the bill of lading indicates the destination state, the diesel fuel is subsequently exported and the exporter is licensed in the destination state to pay that state's tax and has a Texas exporter's license in accordance with Section 162.210(d). If the exporter does not have a Texas exporter's license, the Texas state tax must be collected. This exception shall not apply to any diesel that is transported and delivered outside this state in the motor fuel supply tank of a motor vehicle other than an interstate trucker. Section 162.205(4) shall only be in effect if the destination state does not recognize, by agreement with the State of Texas or by statute, the out of state supplier as a valid taxpayer for the motor fuel being exported to such state from Texas, or until January 2, 2006, whichever is earlier."

(39) On page 74, line 14, at the end of subsection (4) add subsection (5) and renumber subsequent subsection appropriately to read as follows: "(5) All diesel fuel exported by either a licensed supplier or licensed exporter from this state to any other state, provided that the bill of lading indicates the destination state and the supplier collects the destination state tax. This exception shall not apply to any diesel that is transported and delivered outside this state in the motor fuel supply tank of a motor vehicle other than an interstate trucker. Section 162.205(5) shall only be in effect if the destination state recognizes, by agreement with the State of Texas or by statute, the out of state supplier as a valid taxpayer for the motor fuel being exported to such state from Texas, or until January 1, 2006, whichever is earlier."

(40) On page 75, line 2, strike subsections (8), (9), and (10) and renumber the subsequent sections appropriately.add the word "Dyed" before the words "diesel fuel."

(41) On page 75, line 6, add the word "Dyed" before the word "kerosene."

(42) On page 75, line 10, strike "sold by a supplier or distributor to" and replace with "used by."

(43) On page 78, line 15, strike "or the licensed supplier has previously sold to that purchaser more than 15,000 gallons of dyed diesel fuel".

(44) On page 78, line 17, delete the ":" and replace it with a "." and delete subsections "(A)" and "(B)" on lines 18 through 24.

(45) On page 80, line 15, replace the word "permit" with the word "license."

(46) On page 83, line 24, replace subsection (f) to read as follows: "(f) An application for license as a dyed diesel fuel bonded user is required for any purchase of dyed diesel fuel in the excess of the limitations in section 162.207(c). This section does not affect the right of a purchaser to purchase not more than 15,000 of dyed diesel fuel for the purchaser's own use using a signed statement under section 162.207."

(47) On page 89, line 19, strike section 162.215 (a) and substitute with the following: "(a) Each licensed distributor and licensed importer shall remit to the supplier or permissive supplier, as applicable, the tax imposed by Section 162.201 for diesel fuel removed at a terminal rack. A licensed distributor or licensed importer may elect to defer payment of the tax to the supplier or permissive supplier until two days prior to the date the supplier or permissive supplier is required to remit the tax to this state and the payment shall be by electronic funds transfer. A supplier, permissive supplier, or their representative which conducts electronic transactions to draft account of licensed distributors or licensed importers for the payment of taxes due under this subsection shall provide at least two days notice via electronic means of the amount to be drafted from the account of the licensed

distributor or licensed importer, as well as the account number to be drafted. If the supplier or permissive supplier is unable to secure payment of taxes from the licensed distributor or licensed importer due for diesel fuel removed from the terminal during the previous period and the supplier elects to take a credit against a subsequent payment of diesel fuel tax to the state for the taxes not remitted to the supplier or permissive supplier by the licensed distributor or licensed importer, the supplier or permissive supplier shall notify the comptroller of the licensed distributor's or licensed importer's failure to remit tax in conjunction with the report requesting a credit. The supplier shall have the right, after notifying the comptroller of the licensed distributor's or licensed importer's failure to remit taxes under this subsection, to terminate the ability of the licensed distributor or licensed importer to defer the payment of diesel fuel tax. The right of the licensed distributor or licensed importer to defer the payment of diesel fuel tax shall be reinstated by the supplier or permissive supplier after notice has been issued by the comptroller that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of state diesel fuels tax."

(48) On page 91, line 7, between "payments and "is", insert "of the Texas diesel fuel tax".

(49) On page 100, line 4, after the word "tax" insert "plus a penalty of ten percent of the amount of the unpaid taxes in interest at the rate provided by Section 111.060 beginning on the day that the credit was taken or the refund was issued."

(50) On page 100, line 5, insert a new subsection (d) to read as follows: "(d) To determine the amount of credit per tax, all payments or credits in reduction of a customer's account must be applied ratably between motor fuels and other goods sold to the customer, and the credit allowed will be the tax on the number of gallons represented by the motor fuel portion of the credit."

(51) On page 101, line 5, strike ";" and insert ". Proof of payment of tax to the destination state must be supplied in a form acceptable to the comptroller;"

(52) On page 103, line 12, after the word "RETURN" insert "AND PAYMENT OF TAX ON EXPORTS."

(53) On page 103, line 21, at the end of Section 162.224 (c) insert "(d) Proof of payment of the tax to the destination state in a form acceptable to the comptroller."

(54) On page 103, line 22, before "The" insert "(a)."

(55) On page 104, line 7, add subsection (b) to read as follows: "(b) If an exporter fails to provide the proof required by subsection (a) of this section within the time period required by the comptroller, the exporter shall report and pay the tax imposed by this subchapter on the exported gasoline to the state. If the exporter fails to provide proof of payment of the destination state taxes to the comptroller and fails to pay the tax imposed by this subchapter, the comptroller shall assess the tax imposed by this subchapter on the exported gasoline against the exporter."

(56) On page 105, line 2, amend section 162.228 title to read: "REFUNDS OF TAXES PAID ON EXCEPTED USES OR OTHERWISE EXEMPT SALES OF DIESEL FUEL."

(57) On page 105, line 3, amend subsection 162.228(a) to read as follows: "(a) A licensee may take a credit on a return for the period in which the sale occurred if the licensee pays tax on the purchase of diesel fuel and subsequently resells the diesel fuel without collection of the tax to:"

(58) On page 105, line 15, strike subsection (a) (3) and substitute the following: "(3) sale by a licensed distributor to a licensed exporter, who is registered in accordance with Section 162.210(d), and who subsequently exports the diesel fuel to another state."

- (59) On page 106, line 26, replace "162.229" with "162.131."
- (60) On page 106, line 27, insert the word "Dyed" before the words "Diesel fuel."
- (61) On page 107, line 17, after "by the comptroller." insert the following: "For the purposes of this section, a distributor shall meet the requirement of filing a valid refund claim by designating the gallons of diesel fuel sold or used as described in Section 162.228(b) on the monthly report submitted by the distributor to the comptroller's office."
- (62) On page 107, line 23, replace "162.229" with "162.131."
- (63) On page 107, line 26, insert subsection (f) and renumber the subsequent subsections appropriately to read as follows: "(f) A commercial transit company who paid tax on the purchase of diesel fuel may seek a refund with the comptroller of one-half of one cent per gallon for diesel fuel used in transit vehicles."
- (64) On page 108, line 2, replace "REFUNDS/CREDITS FOR BAD DEBTS" with "CREDITS AND REFUNDS FOR BAD DEBTS."
- (65) On page 108, line 3, replace "permitted" with "licensed."
- (66) On page 108, line 9, strike all of subsection (3) and renumber the following subsections appropriately.
- (67) On page 108, line 14, delete "terminal" and after "supplier", add "or permissive supplier."
- (68) On page 108, line 16, delete "terminal" and after "supplier", add "or permissive supplier."
- (69) On page 108, line 18, delete "terminal" and after "supplier", add "or permissive supplier."
- (70) On page 108, line 19, delete "terminal" and after "supplier", add "or permissive supplier."
- (71) On page 108, line 21, delete "terminal" and after "supplier", add "or permissive supplier."
- (72) On page 108, line 21, replace the word "permit" with the word "license."
- (73) On page 108, line 24, replace the word "permit" with the word "license."
- (74) On page 108, line 24, between "state" and "the", insert ", if applicable".
- (75) On page 112, line 25, replace "162.226" with "162.228."
- (76) On page 109, line 19, delete the sentence "A credit under this section must be taken on either the first or second monthly report of a terminal supplier following the monthly report on which the terminal supplier paid the tax."
- (77) On page 110, delete subsection (j) on lines 8 through 11.
- (78) On page 112, line 25, replace "162.226" with "162.228."
- (79) On page 138, line 17, replace "This Act takes effect September 1, 2003." with "(a) This Act takes effect January 1, 2004."

(80) On page 138, line 17, add new subsection (b) to read as follows: "(b) On or before the 25th day of the month following the effective date of this Act each person who possessed gasoline or undyed diesel fuel on which the taxes imposed by Chapter 162, Tax Code have not been paid shall report and pay to the comptroller the tax imposed by that chapter on the volume of tax-free gasoline or undyed diesel fuel in the person's possession if the person held a permit under Chapter 153, Tax Code and:

- (1) the person is a gasoline distributor;
- (2) the person is a diesel fuel supplier;
- (3) the person is a agricultural bonded user; or
- (4) the person is a diesel tax prepaid user and the volume of tax-free undyed diesel fuel in the person's possession is 2,000 or more gallons.

(c) A person that possessed gasoline or undyed diesel fuel on which the taxes imposed by Chapter 162, Tax Code have not been paid on the effective date of this Act shall not be required to report and pay to the comptroller the tax imposed by Chapter 162, Tax Code if:

- (1) the person is a licensed supplier, permissive supplier, or aviation fuel dealer as provided by Chapter 162, Tax Code; or
- (2) the person held an active agricultural exemption number as previously provided under Chapter 153; or
- (3) the person is exempt from the tax as provided by Section 162.105 (1)(2)(3) and (6) and Section 165.205 (1)(2)(3)(9) and (10)."

(81) On page 138, line 5, add new section 162.5045 to read as follows: "Section 162.5045 TAX PAID ON UNDYED DIESEL USED OFF HIGHWAY. On or before the fifth work day after the end of each month, the comptroller shall determine as accurately as possible, for the period since the latest determination under this subsection, the number of gallons of undyed diesel fuel used off road on which the diesel fuel tax was paid to the state. From the number of gallons so determined, the comptroller shall compute the amount of tax and shall deposit this amount to the credit of the general revenue fund."