

## **BILL ANALYSIS**

Senate Research Center

S.B. 1557  
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Finance  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Background:

- The tax on gasoline and diesel does not apply to fuel exported by either a licensed supplier or a licensed exporter. This provision allows a Texas licensed exporter, as the first purchaser of the motor fuel, to purchase motor fuel in Texas for export to another state without having to pay the Texas taxes on the fuel.
- The Tax Code does not reflect current industry practices and first purchasers are making "flash title sales" of the fuel prior to export where they are the exporter of record.
- When the first purchaser of fuel immediately resells the fuel in Texas, instead of exporting it as indicated, no Texas tax has been assessed on the fuel and there is no way to track the fuel to verify if the fuel was exported or resold in Texas.
- Texas is losing out on revenue that would have otherwise been collected on sales within the state; unchecked, this practice may continue to grow and compound the lost revenue.

Solution: Texas-licensed motor fuel exporters may purchase motor fuel in Texas for export to another state without having to pay the Texas taxes on the fuel; however, some of those purchasers never export the fuel and actually sell it in state. This practice results in the state collecting less revenue than is legally due.

This proposal adds a reporting requirement on purchases of fuel for export where the exporter of record subsequently resells the fuel in Texas prior to export. In effect, the change provides a tracking mechanism on sales of fuel in Texas to verify the fuel is ultimately exported so that appropriate taxes are ultimately collected. (Original Author's / Sponsor's Statement of Intent)

S.B. 1557 amends current law relating to the administration of gasoline and diesel fuel motor fuels taxes and the fee on the delivery of certain petroleum products.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 162.012(a), Tax Code, as follows:

- (a) Provides that, if an exporter claims an exemption under Section 162.104(a)(4) (relating to tax exemptions for exports by a licensed supplier or a licensed exporter) or 162.204(a)(4) (relating to tax exemptions for diesel fuel exported by a licensed supplier or licensed exporter) and fails to report subsequent tax-free sales in this state of the motor fuel for which the exemption was claimed as required by Section 162.1155 or 162.2165, or to produce certain proof, the exporter is presumed to have not paid the destination state's tax or this state's tax on the motor fuel and the Texas comptroller of public accounts (comptroller) is required to assess the tax imposed by this chapter (Motor Fuel

Taxes) on the motor fuel against the exporter, rather than provides that, if an exporter claims an exemption under Section 162.104(a)(4)(B) (relating to tax exemptions for gasoline exported in certain situations) or 162.204(a)(4)(B) (relating to tax exemptions for diesel fuel exported in certain situations) and fails to produce certain proof, the exporter is presumed to have not paid the destination state's tax or this state's tax on the exported motor fuel and the comptroller is required to assess the tax imposed by this chapter on the exported motor fuel against the exporter.

SECTION 2. Amends Section 162.101, Tax Code, by adding Subsections (e-1) and (e-2), as follows:

(e-1) Provides that a tax is imposed on gasoline that is otherwise exempt from taxation under Section 162.104(a)(4) or (7) (relating to tax exemptions for gasoline exports to a foreign county) if the gasoline is sold in this state to a person who does not hold a license under Section 162.105(1) (relating to the requirement for a person to obtain a license before conducting the activities of a certain supplier), (2) (relating to the requirement for a person to obtain a license before conducting the activities of a permissive supplier), (3) (relating to the requirement for a person to obtain a license before conducting the activities of a distributor), (4) (relating to the requirement that a person obtained a license before conducting the activities of an importer), or (6) (relating to the requirement that a person obtain a license before conducting the activities of an exporter). Provides that the person that sold the gasoline is liable for and is required to collect the tax.

(e-2) Provides that a tax is imposed on gasoline that is otherwise exempt from taxation under Section 162.104(a)(4) or (7) if before export the gasoline is sold in this state to a person who holds a license under Section 162.105(1), (2), (3), (4), or (6) and the gasoline is delivered to a destination in this state. Provides that the person that redirected the delivery of the gasoline to a destination in this state is liable for and is required to pay the tax.

SECTION 3. Amends Sections 162.104(a), (d), and (f), Tax Code, as follows;

(a) Provides that tax imposed by this subchapter (Gasoline Tax) does not apply to certain gasoline, including gasoline exported by either a licensed supplier or a 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, rather than provides that, for gasoline in a situation described by Subsection (d), the bill of lading indicates the destination state and the supplier collects the destination state tax; or, for gasoline in a situation described by Subsection (e), 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 an exporter's license issued under this subchapter.

(d) and (f) Makes conforming changes.

SECTION 4. Amends Section 162.115(d), Tax Code, to replace a reference to Section 162.104(a)(4)(B) to Section 162.104(a)(4).

SECTION 5. Amends Subchapter B, Chapter 162, Tax Code, by adding Section 162.1155, as follows:

Sec. 162.1155. DUTY TO REPORT SUBSEQUENT SALES OF TAX-FREE GASOLINE PURCHASED FOR EXPORT. (a) Requires a person who engages in a certain gasoline transaction to report that transaction to the comptroller as required by this section. Requires each seller to report the transaction to the comptroller as required by this section, if the gasoline is subsequently sold one or more times in this state before export and tax-free to a person who holds a license under Section 162.105(1), (2), (3), (4), or (6).

(b) Requires each person who sells tax-free gasoline in this state in a transaction described by Subsection (a) to provide certain information to the comptroller.

(c) Requires that the sales invoice for each transaction described by Subsection (a) include the seller's and purchaser's names and the original bill of lading number.

(d) Requires a person required to report a transaction under Subsection (a) to report the transaction on a form prescribed by the comptroller and with the return required by Section 162.114 (Returns and Payments).

SECTION 6. Amends Section 162.201, Tax Code, by adding Subsections (e-1) and (e-2), as follows:

(e-1) Provides that a tax is imposed on diesel fuel that is otherwise exempt from taxation under Section 162.204(a)(4) or (7) (relating to tax exemptions for diesel fuel exports to a foreign country) if the diesel fuel is sold in this state to a person who does not hold a license under Section 162.205(a)(1) (relating to the requirement that a person obtain a license before conducting the activities of a supplier), (2) (relating to the requirement that a person obtain a license before conducting the activities of a permissive supplier), (3) (relating to the requirement that a person obtain a license before conducting the activities of a distributor), (4) (relating to the requirement that a person obtain a license before conducting the activities of an importer), or (6) (relating to the requirement that a person obtain a license before conducting the activities of an exporter). Provides that the person that sold the diesel fuel is liable for and is required to collect the tax.

(e-2) Provides that a tax is imposed on diesel fuel that is otherwise exempt from taxation under Section 162.204(a)(4) or (7) if before export the diesel fuel is sold in this state to a person who holds a license under Section 162.205(a)(1), (2), (3), (4), or (6) and the diesel fuel is delivered to a destination in this state. Provides that the person that redirected the delivery of the diesel fuel to a destination in this state is liable for and is required to pay the tax.

SECTION 7. Amends Sections 162.204(a), (d), and (f), Tax Code, as follows:

(a) Provides that the tax imposed by this subchapter (Diesel Fuel Tax) does not apply to certain diesel fuel, including diesel fuel exported by either a licensed supplier or a 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, rather than provides that, for diesel fuel in a situation described by Subsection (d), the bill of lading indicates the destination state and the supplier collects the destination state tax; or, for diesel fuel in a situation described by Subsection (e), 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 an exporter's license issued under this subchapter.

(d) and (f) Makes conforming changes.

SECTION 8. Amends Section 162.216(d), Tax Code, to change a reference to Section 162.204(a)(4)(B) to Section 162.204(a)(4).

SECTION 9 Amends Subchapter C, Chapter 162, Tax Code, by adding Section 162.2165, as follows:

**Sec. 162.2165. DUTY TO REPORT SUBSEQUENT SALES OF TAX-FREE DIESEL FUEL PURCHASED FOR EXPORT.** (a) Requires a person who engages in certain diesel fuel transactions to report that transaction to the comptroller as required by this section. Requires each seller to report the transaction to the comptroller as required by this section, if the diesel fuel is subsequently sold one or more times in this state before export and tax-free to a person who holds a license under Section 162.205(a)(1), (2), (3), (4), or (6).

(b) Requires each person who sells tax-free diesel fuel in this state in a transaction described by Subsection (a) to provide certain information to the comptroller.

(c) Requires that the sales invoice for each transaction described by Subsection (a) include the seller's and purchaser's names and the original bill of lading number.

(d) Requires a person required to report a transaction under Subsection (a) to report the transaction on a form prescribed by the comptroller and with the return required by Section 162.215 (Returns and Payments).

SECTION 10. Amends Section 162.401, Tax Code, by adding Subsections (e) and (f), as follows:

(e) Requires a person who fails to report a subsequent sale in this state of tax-free motor fuel purchased for export as required by Section 162.1155 or 162.2165 to pay for each sale that is not reported a penalty of \$200, in addition to any other penalty authorized by this section. Provides that the penalty provided by this subsection is not assessed if the taxpayer files an amended report that includes the sale not later than the 180th day after the due date of the original report of the sale.

(f) Requires a person who fails to pay the tax imposed by Section 162.101(e-2) or 162.201(e-2) when due, in addition to any other penalty authorized by this section, to pay a penalty equal to the greater of \$2,000 or five times the amount of the tax due on the motor fuel.

SECTION 11. Amends Section 26.3574(a), Water Code, by amending Subdivision (1) and adding Subdivision (2-a), to redefine "bulk facility" and define "supplier."

SECTION 12. Amends Sections 26.3574(b), (d), (e), (f), (g), (i), and (j), Water Code, as follows:

(b) Requires each supplier, rather than each operator of a bulk facility, on withdrawal from bulk of a petroleum product, to collect a certain fee from the person who orders the withdrawal.

(d) Provides that the supplier, rather than the bulk facility operator, if a supplier imports a petroleum product in a cargo tank or barge, is not required to pay the fee on that imported petroleum product if the petroleum product is delivered to a bulk facility from which the petroleum product will be withdrawn from bulk. Makes conforming and nonsubstantive changes.

(e) Authorizes a supplier, rather than a bulk facility operator, who receives petroleum products on which the fee has been paid to take credit for the fee paid on monthly reports.

(f) Provides that, for purposes of this subsection, a petroleum product ceases to be in continuous movement to a destination outside this state if the product is delivered to a destination in this state. Requires the person that directs the delivery of the product to a destination in this state to pay the fee imposed by this section (Fee on Delivery of Certain Petroleum Products) on that product. Makes a nonsubstantive change.

(g) Requires each supplier, rather than each operator of a bulk facility, and each person covered by Subsection (d) to file an application with the comptroller for a certain permit. Makes nonsubstantive changes.

(i) Requires each supplier, rather than each operator of a bulk facility, and each person covered by Subsection (d) to take certain actions. Makes a nonsubstantive change.

(j) Requires each supplier or the supplier's representative, rather than each operator of a bulk facility or his representative, and each person covered by Subsection (d) to prepare the report required under Subsection (i) on a certain form. Makes nonsubstantive changes.

**SECTION 13.** Repealers: Sections 162.104(c) (relating to collection of certain tax from an exporter without an exporter's license) and (e) (relating to the expiration of a certain exemption), Tax Code.

Repealers: Sections 162.204(c) (relating to collection of certain tax from an exporter without an exporter's license) and (e) (relating to the expiration of a certain exemption), Tax Code.

**SECTION 14.** Provides that the amendments made by this Act to Sections 162.101 and 162.201, Tax Code, are a clarification of existing law and do not imply that existing law may be construed as inconsistent with the law as amended by this Act.

**SECTION 15.** Provides that the changes in law made by this Act do not affect tax liability accruing before the effective date of this Act. Provides that the liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for that purpose.

**SECTION 16.** Effective date: January 1, 2018.