

BILL ANALYSIS

Senate Research Center

S.B. 1188
By: Armbrister
Finance
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As Filed

DIGEST

Currently, the comptroller of public accounts regulates the collection of motor fuel tax. This bill would revise the process for collection of motor fuel tax and provide penalties for violations of this Act.

PURPOSE

As proposed, S.B. 1188 revises the process for collection of motor fuel tax and provides penalties for violations of this Act.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 153.001, Tax Code, to define “export,” “import,” “bulk lot vehicle,” “dyed diesel fuel,” “undyed diesel fuel,” “blended fuel,” “blending,” and “shipping document.” Redefines “motor fuel.”

SECTION 2. Amends Section 153.010, Tax Code, to authorize the comptroller of public accounts (comptroller) or a peace officer to stop vehicles transporting motor fuel in order to examine the shipping document. Authorizes the comptroller, a peace officer, an employee of the attorney general’s office, an employee of the Texas Natural Resource Conservation Commission, or an employee of the Department of Agriculture to take samples of motor fuel from any storage tank or container to determine whether the taxes have been paid or accounted for.

SECTION 3. Amends Section 153.403, Tax Code, to set forth offenses relating to transporting motor fuel.

SECTION 4. Amends Chapter 153A, Tax Code, by adding Section 153.018, as follows:

Sec. 153.018. IMPORTATION AND EXPORTATION OF MOTOR FUEL. Prohibits a person or entity from importing or exporting motor fuel from this state unless the person or business entity possesses a shipping document created by a terminal or bulk plant where the fuel was received. Requires the terminal or bulk plant to provide the shipping document. Sets forth the required information to be included in a shipping document. Requires a terminal, a bulk plant, the carrier, the permitted distributor or supplier, and the person that received the motor fuel to retain a copy of the shipping document for four years after the date of receipt of the fuel and requires those entities to provide within 10 working days after receiving a request, a copy of the shipping document to the comptroller or any other law enforcement officer. Requires each operator of a bulk lot vehicle (operator) to have in its possession the required shipping document, while transporting motor fuel imported or exported from this state. Requires the operator to show the shipping document to the comptroller or a peace officer upon request. Authorizes the comptroller to delegate authority to inspect the document to other governmental agencies. Requires the operator to provide a copy of the shipping document to the person that receives the fuel when it is delivered. Requires the operator of the bulk lot vehicle to deliver motor fuel only to the destination state or states as indicated on the shipping document. Requires each terminal to post a notice describing the duties of operators of bulk lot vehicles under this section. Requires the notice to be posted in a conspicuous place. Authorizes the comptroller to prescribe the language, type, style, and format of the notice. Provides that any operator, person or business

entity receiving motor fuel, or operating a bulk plant or terminal that violates any requirement of this section is subject to a monetary penalty.

SECTION 5. Amends Section 153.006, Tax Code, by adding Subsection (e), to set forth the circumstances under which the comptroller is authorized to revoke a distributor or supplier permit.

SECTION 6. Amends Section 153.117(a), Tax Code, to require a distributor to keep an itemized statement of all gasoline exported, received for export, and imported, on a load by load basis.

SECTION 7. Amends Section 153.219(a), Tax Code, to require a supplier to keep an itemized statement of all diesel fuel exported, received for export, and imported, on a load by load basis. Requires a supplier to keep an itemized statement for sales of undyed tax-free diesel fuel to agricultural users, sales of dyed diesel fuel sold, and sales of dyed diesel fuel sold tax free to bonded purchasers.

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

SECTION 9. Amends Section 153.118, Tax Code, to require other persons liable to the state for payment of tax under Section 153.105(a) to file all required reports and supplements to the comptroller, and remit the required tax. Makes conforming and nonsubstantive changes.

SECTION 10. Amends Section 153.215(a), Tax Code, to require the comptroller to cancel a supplier's permit if no purchase, sale, or use of diesel fuel has been reported by the supplier for the prior nine months. Makes conforming and nonsubstantive changes.

SECTION 11. Amends Section 153.221(a), Tax Code, to require a dealer required to collect tax under Section 153.206(b) of this code or a user required to pay tax under Section 153.206(c) of this code 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 person. Makes conforming and nonsubstantive changes.

SECTION 12. Amends Section 153.201(a), Tax Code, to provide that a tax is imposed on the first sale of undyed diesel fuel in this state.

SECTION 13. Amends Section 153.203, Tax Code, by amending Subdivision (3) and adding Subdivision (10) to provide a tax exemption to permitted suppliers selling undyed diesel fuel to one another, to agricultural bonded users, to diesel tax prepaid users made to a bulk storage facility, or to purchasers utilizing a signed statement to purchase undyed diesel fuel for agricultural purposes. Exempts dyed diesel fuel from taxation.

SECTION 14. Amends Section 153.205, Tax Code, by amending Subsections (a)-(d), (i) and (j) and adding a Subsection (k), to provide that the sales of dyed diesel fuel, or 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 containing certain information. 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 or in a calendar month in which the person has previously purchased more than 10,000 gallons of dyed or undyed diesel fuel from all sources. Provides that the signed statement and end user 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 circumstances exist. Requires each person wishing to utilize a signed statement for the purchase of dyed fuel, or undyed tax-free 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 tax-free sale of diesel fuel to a purchaser without a valid end user number or agricultural user exemption number issued by the comptroller's office. Makes conforming and nonsubstantive changes.

SECTION 15. Amends Chapter 153C, Tax Code, to add Sections 153.226 through 153.330, as follows:

Sec. 153.226. NOTICE REGARDING DYED DIESEL FUEL. Sets forth requirements concerning a notice regarding dyed diesel fuel.

Sec. 153.227. DYED DIESEL FUEL NOTICE REQUIRED ON SHIPPING DOCUMENTS, BILLS OF LADING, AND INVOICES. Requires the required notice to be provided at the time

of the removal or sale, and requires the notice to appear on shipping documents, bills of lading, cargo manifests, and invoices 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 selling or holding for sale dyed diesel fuel for a use other than a non-taxable use if the person knew or had reason to know that the diesel fuel was so dyed.

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

Sec. 153.330. **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. Sets forth conditions under which this section does not apply. Provides that a person who violates this section is subject to a criminal penalty.

SECTION 16. Amends Section 153.209, Tax Code, to provide that a dyed diesel bonded user permit authorizes a user to purchase dyed diesel fuel in excess of 10,000 gallons per month. Provides that an agricultural bonded user permit authorizes a user to purchase undyed diesel fuel in excess of 10,000 gallons per month for agricultural purposes only. Deletes text authorizing bonded users to purchase dyed or undyed diesel fuel tax-free.

SECTION 17. Amends Section 153.217(a), Tax Code, to make conforming changes.

SECTION 18. Amends Sections 153.218(a)-(c), Tax Code, to make conforming changes.

SECTION 21. Amends Section 153.223(a), Tax Code, to prohibit permitted distributors from filing claims for refunds of taxes paid by purchasers of undyed diesel fuel.

SECTION 22. Amends Section 153.224(a), Tax Code, to authorize claims to be submitted to the comptroller's office once a quarter or when the amount of potential refund claim equals at least \$200.

SECTION 23. Effective date: September 1, 1999.

SECTION 24. Emergency clause.