HOUSE
RESEARCH
ORGANIZATION bill analysis | 4/10/2007 | HB 1332 Chisum, et al. (CSHB 1332 by Pena)

SUBJECT: Diesel fuel tax credit or refund for certain manufacturing processes

COMMITTEE: Ways and Means — committee substitute recommended

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

0 nays

3 absent — Flores, Paxton, Pitts

WITNESSES: For — Bill Hammond, Texas Association of Business; Jennifer Patterson, Texas Oil and Gas Association (*Registered, but did not testify:* Jayme Cox, Shell Oil/Chemical; Steve Hazlewood, The Dow Chemical Company; Robert Howden, Texas Association of Manufacturers; Cindy McCauley, Lyondell Chemical Company; Julie Moore, Occidental Petroleum Corporation; Steve Perry, Chevron USA; Shannon Ratliff, CITGO; Ben Sebree, Texas Alliance of Energy Producers; Sara Tays, Exxon Mobil Corporation; Donna Warndof, Texas Independent Producers and Royalty Owners Association; Christina Wisdom, Texas Chemical Council).

Against — None

BACKGROUND: In 2003, the 78th Legislature enacted HB 2458 by Krusee. Among its provisions, it moved the tax collection point from the distributor level to the terminal level.

Clear diesel fuel is taxed by the state of Texas at 20 cents per gallon. Under HB 2458 (Tax Code, ch. 162), tax-free purchases of clear diesel fuel used in off-highway equipment, stationary engines, and other non-highway purposes are not permissible, with exceptions granted to the federal government, a Texas public school district, and a company that provides transportation for a Texas public school district, among others.

Dyed diesel fuel is sold tax free to qualifying users. By law, dyed diesel fuel cannot be used in fuel supply tanks of motor vehicles operating on public highways. Under Tax Code, sec. 162.206(c)(2)(B), with a letter of exception issued by the comptroller, a person can obtain tax free up to 25,000 gallons of dyed diesel fuel per month if the purchaser stipulates in writing that the fuel will be used in the production of oil or gas. Under sec.

162.205, a licensed dyed diesel fuel bonded user may exceed the 25,000-gallon limit.

DIGEST: CSHB 1332 would amend Tax Code, sec. 162.227 to offer a tax credit or refund for diesel fuel used as:

- a raw material in the manufacturing process of an object not resold as a motor fuel; or
- a component in the removal of drill cuttings from a well bore during oil or gas production.

A license holder could receive tax credit on a return during the purchase period. Non-license holders would file a refund claim with the comptroller.

The bill would take effect September 1, 2007, and would apply only to taxes and law in effect on or after that date.

SUPPORTERS SAY: CSHB 1332 would correct the inadvertent taxation of diesel fuel used for manufacturing processes and oil drilling. Prior to 2003, diesel fuel used for such processes was tax exempt. This new tax was an unintended consequence of HB 2458 due to the bill’s modification of the diesel fuel tax collection point.

The motor fuel tax levies a charge on fuel used to propel engines on public roads. The tax is deposited into the State Highway Fund and is used to maintain and construct the state’s public roads. Diesel fuel used in manufacturing processes does not put engines into motion on public roads. Therefore, fuel used for this purpose should not be subject to taxation.

Diesel fuel often is used to power the engines utilized in oil drilling. The process of drilling a hole into the ground produces rock fragments that clog the hole. To remove the fragments, diesel-powered machinery flushes the hole with a water and dirt mixture. This fuel that powers this process is not used on public roads and should not be subject to taxation.

Under current law, purchasers of diesel for manufacturing and oil drilling purposes must choose between buying dyed diesel tax free or paying the 20-cent-per-gallon tax for clear diesel fuel. However, dyed diesel cannot be used in many manufacturing process as the dye results in an unacceptable level of contamination. In oil drilling, dyed diesel is not an optimal product for powering such engines.

OPPONENTS SAY:

The diesel fuel tax generates revenue for the state highway fund, which in turn supplies money to the available school fund, which helps fund public education. By eliminating the tax on diesel fuel used in manufacturing processes and oil or gas production, HB 1332 would result in a loss to the state highway fund of $3.6 million in fiscal 2008-09, according to the Legislative Budget Board, which represents a loss to the available school fund of $1.2 million in general revenue-related funds over the biennium.

NOTES:

Unlike HB 1332 as introduced, the committee substitute specifically would apply the provisions of the bill only to taxes and law in effect on or after the effective date of September 1, 2007.

The companion bill, SB 635 by Janek, has been referred to the Senate Finance Committee. It is identical to HB 1332 as introduced.

HB 1618 by Ritter would amend the Tax Code to allow credit or refunds on diesel fuel tax in the use of certain oil field well service equipment. HB 688 by Krusee would allow a tax credit or refund for diesel consumed through a vehicle’s auxiliary power unit or power-take off equipment. Both bills passed the House on April 4.