

CHAPTER 314

H.B. No. 2411

An Act relating to the calibration for motor fuel tax purposes of cargo tanks used for transporting gasoline or diesel fuel.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 153.009, Tax Code, is repealed.

SECTION 2. Subsection (a), Section 153.103, Tax Code, is amended to read as follows:

(a) The amount of the tax shall be computed and paid over to the state on the temperature-adjusted volume of gallons of taxable gasoline sold to wholesalers, jobbers, dealers, or other persons purchasing gasoline for resale, where such sales are made in single deliveries of 5,000 gallons or more, or in lesser quantities where required by city ordinance [~~as computed from the authorized measurement certificate issued for the cargo tank making deliveries~~]. The comptroller may publish and distribute a table to be used for converting the measurement of gross gallons of gasoline to temperature-adjusted gallons of gasoline.

SECTION 3. Subsection (a), Section 153.204, Tax Code, is amended to read as follows:

(a) The amount of the tax shall be computed and paid to the state on the temperature-adjusted volume of gallons of taxable diesel fuel sold to wholesalers, jobbers, dealers, or other persons purchasing diesel fuel for resale, where such sales are made in single deliveries of 5,000 gallons or more, or in lesser quantities where required by city ordinance [~~as computed from the authorized measurement certificate issued for the cargo tank making deliveries~~]. The comptroller may publish and distribute a table to be used for converting the measurement of gross gallons of diesel fuel to temperature-adjusted gallons of diesel fuel.

SECTION 4. Section 153.402, Tax Code, is amended to read as follows:

Sec. 153.402. **PROHIBITED ACTS; CIVIL PENALTIES.** A person forfeits to the state a civil penalty of not less than \$25 nor more than \$200 if the person:

(1) refuses to stop and permit the inspection and examination of a motor vehicle transporting or using motor fuel on demand of a peace officer or the comptroller;

(2) operates a motor vehicle in this state without a valid interstate trucker's or a trip permit when the person is required to hold one of those permits;

(3) operates a liquefied gas-propelled motor vehicle that is required to be licensed in Texas, including motor vehicles equipped with dual carburetion, and does not display a current liquefied gas tax decal;

~~[(4) transports gasoline or diesel fuel for sale or distribution in a cargo tank that has not been calibrated by the comptroller, by an authorized representative of another state, or by a commercial calibration company that meets the calibration standards approved by the comptroller;~~

~~[(5) transports motor fuel in any cargo tank designated "out-of-order" by the comptroller;]~~

(4) [(6)] makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle that does not display a current Texas liquefied gas tax decal;

(5) [(7)] makes a taxable sale or delivery of liquefied gas without holding a valid dealer's permit;

(6) [(8)] makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing out-of-state license plates;

- (7) ~~[(9)]~~ makes a tax-free or taxable sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing Texas license plates and no Texas liquefied gas tax decal;
- (8) ~~[(10)]~~ transports gasoline or diesel fuel in any cargo tank that has a connection by pipe, tube, valve, or otherwise with the fuel injector or carburetor or with the fuel supply tank feeding the fuel injector or carburetor of the motor vehicle transporting the product;
- (9) ~~[(11)]~~ sells or delivers gasoline or diesel fuel from any fuel supply tank connected with the fuel injector or carburetor of a motor vehicle;
- (10) ~~[(12)]~~ owns or operates a motor vehicle for which reports or mileage records are required by this chapter without an operating odometer or other device in good working condition to record accurately the miles traveled;
- (11) ~~[(13)]~~ furnishes a signed statement to a supplier for purchasing diesel fuel tax free when he owns, operates, or acquires a diesel-powered motor vehicle;
- (12) ~~[(14)]~~ fails or refuses to comply with or violates a provision of this chapter; or
- (13) ~~[(15)]~~ fails or refuses to comply with or violates a comptroller's rule for administering or enforcing this chapter.

SECTION 5. Section 153.403, Tax Code, is amended to read as follows:

Sec. 153.403. **CRIMINAL OFFENSES.** Except as provided by Section 153.404 of this code, a person commits an offense if the person:

- (1) refuses to stop and permit the inspection and examination of a motor vehicle transporting or using motor fuel on the demand of a peace officer or the comptroller;
- (2) is required to hold a valid trip permit or interstate trucker's permit, but operates a motor vehicle in this state without a valid trip permit or interstate trucker's permit;
- (3) operates a liquefied gas-propelled motor vehicle that is required to be licensed in Texas, including a motor vehicle equipped with dual carburetion, and does not display a current liquefied gas tax decal;
- ~~[(4) transports gasoline or diesel fuel for sale or distribution in a cargo tank that has not been calibrated by the comptroller, by an authorized representative of another state, or by a commercial calibration company that meets the calibration standards approved by the comptroller;~~
- ~~[(5) transports motor fuel in any cargo tank designated "out-of-order" by the comptroller;~~
- (4) ~~[(6)]~~ makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle that does not display a current Texas liquefied gas tax decal;
- (5) ~~[(7)]~~ makes a sale or delivery of liquefied gas on which he knows the tax is required to be collected, if at the time the sale is made he does not hold a valid dealer's permit;
- (6) ~~[(8)]~~ makes a tax-free sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing out-of-state license plates;
- (7) ~~[(9)]~~ makes a tax-free or taxable sale or delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing Texas license plates and no Texas liquefied gas tax decal;
- (8) ~~[(10)]~~ transports gasoline or diesel fuel in any cargo tank that has a connection by pipe, tube, valve, or otherwise with the fuel injector or carburetor or with the fuel supply tank feeding the fuel injector or carburetor of the motor vehicle transporting the product;
- (9) ~~[(11)]~~ sells or delivers gasoline or diesel fuel from a fuel supply tank that is connected with the fuel injector or carburetor of a motor vehicle;
- (10) ~~[(12)]~~ owns or operates a motor vehicle for which reports or mileage records are required by this chapter without an operating odometer or other device in good working condition to record accurately the miles traveled;
- (11) ~~[(13)]~~ refuses to permit the comptroller or the attorney general to inspect, examine, and audit a book or record required to be kept by a distributor, supplier, user, dealer, interstate trucker, aviation fuel dealer, common or contract carrier, or any person required to hold a permit under this chapter;
- (12) ~~[(14)]~~ refuses to permit the comptroller or the attorney general to inspect and examine any plant, equipment, materials, or premises where motor fuel is produced, processed, stored, sold, delivered, or used;
- (13) ~~[(15)]~~ refuses to permit the comptroller or the attorney general to measure or gauge the contents of or take samples from a storage tank or container on premises where motor fuel is produced, processed, stored, sold, delivered, or used;
- (14) ~~[(16)]~~ as a diesel tax prepaid user fails to prepay the tax on every diesel-powered motor vehicle owned or operated by him;
- (15) ~~[(17)]~~ mutilates, destroys, or secretes a book or record required by this chapter to be kept by a distributor, supplier, user, dealer, interstate trucker, aviation fuel dealer, or a person required to hold a permit under this chapter;

(16) [(19)] is a distributor, bonded user, interstate trucker, or supplier and fails or refuses to make or deliver to the comptroller a report required by this chapter to be made and delivered to the comptroller;

(17) [(19)] conceals motor fuel with the intent of engaging in any conduct proscribed by this chapter or refuses to make sales of motor fuel on the volume-corrected basis prescribed by this chapter;

(18) [(20)] refuses, while transporting motor fuel, to stop the motor vehicle he is operating when called on to do so by a person authorized to stop the motor vehicle;

(19) [(21)] refuses to surrender a motor vehicle and cargo for impoundment after being ordered to do so by a person authorized to impound the motor vehicle and cargo;

(20) [(22)] transports motor fuel for which a cargo manifest is required to be carried without possessing or exhibiting on demand by an officer authorized to make the demand a cargo manifest containing the information required to be shown on the manifest;

(21) [(23)] is a distributor, supplier, user, dealer, interstate trucker, aviation fuel dealer, or other person required to hold a permit under this chapter, or the agent or employee of one of those persons and makes a false entry or fails to make an entry in the books and records required under this chapter to be made by the person;

(22) [(24)] transports in any manner motor fuel under a false cargo manifest;

(23) [(25)] engages in a motor fuel transaction that requires that the person have a permit under this chapter without then and there holding the required permit;

(24) [(26)] makes and delivers to the comptroller a report required under this chapter to be made and delivered to the comptroller, if the report contains false information;

(25) [(27)] forges, falsifies, or alters an invoice prescribed by law;

(26) [(29)] makes any statement, knowing said statement to be false, in a claim for a tax refund filed with the comptroller;

(27) [(30)] furnishes to a supplier a signed statement for purchasing diesel fuel tax free when he owns, operates, or acquires a diesel-powered motor vehicle;

(28) [(30)] holds an aviation fuel dealer's permit and makes a taxable sale or use of any gasoline or diesel fuel;

(29) [(31)] fails to remit any tax funds collected by a distributor, supplier, user, dealer, interstate trucker, or any other person required to hold a permit under this chapter;

(30) [(32)] makes a sale of diesel fuel tax free into a storage facility of a person who:

(A) is not permitted as a supplier, as an aviation fuel dealer, as a bonded user, or as a diesel tax prepaid user of diesel fuel; or

(B) does not furnish to the permitted supplier a signed statement prescribed in Section 153.205 of this code; or

(31) [(32)] makes a sale of gasoline tax free to any person who is not permitted as either a distributor or an aviation fuel dealer.

SECTION 6. Section 153.404, Tax Code, is amended to read as follows:

Sec. 153.404. **CRIMINAL OFFENSES: SPECIAL PROVISIONS AND EXCEPTIONS.** (a) A person does not commit an offense under Section 153.403 of this code unless he intentionally or knowingly engaged in conduct as the definition of the offense requires, except that no culpable mental state is required for an offense under Section 153.403(10) [(153.403(12))] of this code.

(b) Each day that a refusal prohibited under Section 153.403(11), (12) [(153.403(13)), (14)], or (13) [(15)] of this code continues is a separate offense.

(c) The prohibition under Section 153.403(30) [(153.403(32))] of this code does not apply to the tax-free sale or distribution of diesel fuel authorized by Section 153.203(1), (2), or (5) of this code.

(d) The prohibition under Section 153.403(31) [(153.403(33))] of this code does not apply to the tax-free sale or distribution of gasoline under Section 153.104(2) or (4) of this code.

SECTION 7. Section 153.405, Tax Code, is amended to read as follows:

Sec. 153.405. **CRIMINAL PENALTIES.** (a) An offense under Sections 153.403(1) through (14) [(16)] of this code is a Class C misdemeanor.

(b) An offense under Sections 153.403(15) [(153.403(17))] through (17) [(19)] of this code is a Class B misdemeanor.

(c) An offense under Sections 153.403(18) [(153.403(20))] through (20) [(22)] of this code is a Class A misdemeanor.

(d) An offense under Sections 153.403(21) [(153.403(23))] through (31) [(33)] of this code is a felony of the third degree.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 2, 1985, by a non-record vote; passed by the Senate on May 15, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 7, 1985

Effective: August 26, 1985