

TAX CODE CHAPTER 162. MOTOR FUEL TAXES

TAX CODE

TITLE 2. STATE TAXATION

SUBTITLE E. SALES, EXCISE, AND USE TAXES

CHAPTER 162. MOTOR FUEL TAXES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 162.001. DEFINITIONS.

In this chapter:

(1) "Agricultural purpose" means a purpose associated with the following activities:

(A) cultivating the soil;

(B) producing crops for human food, animal feed, or planting seed or for the production of fibers;

(C) floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media;

(D) raising, feeding, or keeping livestock or other animals for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

(E) wildlife management; and

(F) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

(2) "Alcohol" means motor fuel grade ethanol or a mixture of motor fuel grade ethanol and methanol, excluding denaturant and water, that is a minimum of 98 percent ethanol or methanol by volume.

(3) "Aviation fuel" means aviation gasoline or aviation jet fuel.

(4) "Aviation fuel dealer" means a person who:

(A) is the operator of an aircraft servicing facility;

(B) delivers gasoline or diesel fuel exclusively into the fuel supply tanks of aircraft or into equipment used solely for servicing aircraft and used exclusively off-highway; and

(C) does not use, sell, or distribute gasoline or diesel fuel on which a fuel tax is required to be collected or paid to this state.

(5) "Aviation gasoline" means motor fuel designed for use in the operation of aircraft other than jet aircraft and sold or used for that purpose.

(6) "Aviation jet fuel" means motor fuel designed for use in the operation of jet or turboprop aircraft and sold or used for that purpose.

(7) "Biodiesel fuel" means any motor fuel or mixture of motor fuels that is:

(A) derived wholly or partly from agricultural products, vegetable oils, recycled greases, or animal fats, or the wastes of those products or fats; and

(B) advertised, offered for sale, suitable for use, or used as a motor fuel in an internal combustion engine.

(8) "Blender" means a person who produces blended motor fuel outside the bulk transfer/terminal system.

(9) "Blending" means the mixing of one or more petroleum products with another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle. The term does not include mixing that occurs in the process of refining by the original refiner of crude petroleum or the commingling of products during transportation in a pipeline.

(10) "Bulk plant" means a motor fuel storage and distribution facility that:

(A) is not an IRS-approved terminal; and

(B) from which motor fuel may be removed at a rack.

(11) "Bulk transfer" means a transfer of motor fuel from one location to another by pipeline tender or marine delivery within a bulk transfer/terminal system, including:

(A) a marine vessel movement of motor fuel from a refinery or terminal to a terminal;

(B) a pipeline movement of motor fuel from a

refinery or terminal to a terminal;

(C) a book transfer of motor fuel within a terminal between licensed suppliers before completion of removal across the rack; and

(D) a two-party exchange between licensed suppliers or between licensed suppliers and permissive suppliers.

(12) "Bulk transfer/terminal system" means the motor fuel distribution system consisting of refineries, pipelines, marine vessels, and IRS-approved terminals. Motor fuel is in the bulk transfer/terminal system if the motor fuel is in a refinery, a pipeline, a terminal, or a marine vessel transporting motor fuel to a refinery or terminal. Motor fuel is not in the bulk transfer/terminal system if the motor fuel is in a motor fuel storage facility, including:

(A) a bulk plant that is not part of a refinery or terminal;

(B) the motor fuel supply tank of an engine or a motor vehicle;

(C) a marine vessel transporting motor fuel to a motor fuel storage facility that is not in the bulk transfer/terminal system; or

(D) a tank car, railcar, trailer, truck, or other equipment suitable for ground transportation.

(13) "Bulk user" means a person who maintains storage facilities for motor fuel and uses all or part of the stored motor fuel to operate a motor vehicle, vessel, or aircraft and for other uses.

(14) "Cargo tank" means an assembly that is used to transport, haul, or deliver liquids and that consists of a tank having one or more compartments mounted on a wagon, automobile, truck, trailer, or wheels. The term includes accessory piping, valves, and meters, but does not include a fuel supply tank connected to the carburetor or fuel injector of a motor vehicle.

(15) "Carrier" means an operator of a pipeline or marine vessel engaged in the business of transporting motor fuel above the terminal rack.

(16) "Compressed natural gas" means natural gas that

has been compressed and dispensed into motor fuel storage containers and is advertised, offered for sale, suitable for use, or used as an engine motor fuel.

(17) "Dealer" means a person who sells motor fuel at retail or dispenses motor fuel at a retail location.

(18) "Destination state" means the state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for resale or use.

(19) "Diesel fuel" means kerosene or another liquid, or a combination of liquids blended together, that is suitable for or used for the propulsion of diesel-powered motor vehicles. The term includes products commonly referred to as kerosene, light cycle oil, #1 diesel fuel, #2 diesel fuel, dyed or undyed diesel fuel, aviation jet fuel, biodiesel, distillate fuel, cutter stock, or heating oil, but does not include gasoline, aviation gasoline, or liquefied gas.

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

(21) "Diversion number" means the number assigned by the comptroller, or by a person to whom the comptroller delegates or appoints the authority to assign the number, that relates to a single cargo tank delivery of motor fuel that is diverted from the original destination state printed on the shipping document.

(22) "Dyed diesel fuel" means diesel fuel that:

(A) meets the dyeing and marking requirements of 26 U.S.C. Section 4082, regardless of how the diesel fuel was dyed; and

(B) is intended for off-highway use only.

(23) "Export" means to obtain motor fuel in this state for sale or use in another state, territory, or foreign country.

(24) "Exporter" means a person that exports motor fuel from this state. The seller is the exporter of motor fuel delivered out of this state by or for the seller, and the purchaser is the exporter of motor fuel delivered out of this state by or for the

purchaser.

(25) "Fuel grade ethanol" means the ASTM standard in effect on the effective date of this chapter as the D-4806 specification for denatured motor fuel grade ethanol for blending with motor fuel.

(26) "Fuel supply tank" means a receptacle on a motor vehicle, nonhighway equipment, or a stationary engine from which motor fuel is supplied for the operation of its engine.

(27) "Gallon" means a unit of liquid measurement as customarily used in the United States and that contains 231 cubic inches by volume.

(28) "Gasohol" means a blended motor fuel composed of gasoline and motor fuel alcohol.

(29) "Gasoline" means any liquid or combination of liquids blended together, offered for sale, sold, or used as the fuel for a gasoline-powered engine. The term includes gasohol, aviation gasoline, and blending agents, but does not include racing gasoline, diesel fuel, aviation jet fuel, or liquefied gas.

(30) "Gasoline blend stocks" includes any petroleum product component of gasoline, such as naphtha, reformate, or toluene, listed in Treasury Regulation Section 48.4081-1(c)(3), that can be blended for use in a motor fuel. The term does not include a substance that will be ultimately used for consumer nonmotor fuel use and is sold or removed in drum quantities of 55 gallons or less at the time of the removal or sale.

(31) "Gasoline blended fuel" means a mixture composed of gasoline and other liquids, including gasoline blend stocks, gasohol, ethanol, methanol, fuel grade alcohol, and resulting blends, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as gasoline in a motor vehicle.

(32) "Gross gallons" means the total measured product, exclusive of any temperature or pressure adjustments, considerations, or deductions, in U.S. gallons.

(33) "Import" means to bring motor fuel into this state by motor vehicle, marine vessel, pipeline, or any other means. The term does not include bringing motor fuel into this

state in the motor fuel supply tank of a motor vehicle if the motor fuel is used to power that motor vehicle.

(34) "Import verification number" means the number assigned by the comptroller, or by a person to whom the comptroller delegates or appoints the authority to assign the number, that relates to a single cargo tank delivery into this state from another state after a request for an assigned number by an importer or by the motor fuel transporter carrying taxable motor fuel into this state for the account of an importer.

(35) "Importer" means a person that imports motor fuel into this state. The seller is the importer for motor fuel delivered into this state from outside of this state by or for the seller, and the purchaser is the importer for motor fuel delivered into this state from outside of this state by or for the purchaser.

(36) "Interstate trucker" means a person who for commercial purposes operates in this state, other states, or other countries a motor vehicle that:

(A) has two axles and a registered gross weight in excess of 26,000 pounds;

(B) has three or more axles; or

(C) is used in combination and the registered gross weight of the combination exceeds 26,000 pounds.

(37) "Lessor" means a person:

(A) whose principal business is the leasing or renting of motor vehicles for compensation to the general public;

(B) who maintains established places of business; and

(C) whose lease or rental contracts require the motor vehicles to be returned to the established places of business at the termination of the lease.

(38) "License holder" means a person licensed by the comptroller under Section 162.105, 162.205, 162.304, 162.305, or 162.306.

(39) "Liquefied gas" means all combustible gases that exist in the gaseous state at 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute, but does not include gasoline or diesel fuel.

(40) "Liquefied gas tax decal user" means a person who owns or operates on the public highways of this state a motor vehicle capable of using liquefied gas for propulsion.

(41) "Motor carrier" means a person who operates a commercial vehicle used, designated, or maintained to transport persons or property.

(42) "Motor fuel" means gasoline, diesel fuel, liquefied gas, and other products that can be used to propel a motor vehicle.

(43) "Motor fuel transporter" means a person who transports gasoline, diesel fuel, or gasoline blended fuel outside the bulk transfer/terminal system by means of a transport vehicle, a railroad tank car, or a marine vessel.

(44) "Motor vehicle" means a self-propelled vehicle, trailer, or semitrailer that is designed or used to transport persons or property over a public highway.

(45) "Net gallons" means the amount of motor fuel measured in gallons when adjusted to a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch.

(46) "Permissive supplier" means a person who elects, but is not required, to have a supplier's license and who:

(A) is registered under Section 4101, Internal Revenue Code, for transactions in motor fuel in the bulk transfer/terminal system; and

(B) is a position holder in motor fuel located only in another state or a person who receives motor fuel only in another state under a two-party exchange.

(47) "Position holder" means the person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for motor fuel at the terminal. The term includes a terminal operator who owns motor fuel in the terminal.

(48) "Public highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this state, including the streets and alleys in

towns and cities.

(49) "Racing gasoline" means gasoline that contains lead, has an octane rating of 110 or higher, does not have detergent additives, and is not suitable for use as a motor fuel in a motor vehicle used on a public highway.

(50) "Rack" means a mechanism for delivering motor fuel from a refinery, terminal, marine vessel, or bulk plant into a transport vehicle, railroad tank car, or other means of transfer that is outside the bulk transfer/terminal system.

(51) "Refinery" means a facility for the manufacture or reprocessing of finished or unfinished petroleum products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel or at a rack.

(52) "Registered gross weight" means the total weight of the vehicle and carrying capacity shown on the registration certificate issued by the Texas Department of Transportation.

(53) "Removal" means a physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport vehicle or other means of conveyance outside the bulk transfer/terminal system is complete on delivery into the means of conveyance.

(54) "Sale" means a transfer of title, exchange, or barter of motor fuel, but does not include transfer of possession of motor fuel on consignment.

(55) "Shipping document" means a delivery document issued by a terminal or bulk plant operator in conjunction with the sale, transfer, or removal of motor fuel from the terminal or bulk plant. A shipping document issued by a terminal operator shall be machine printed. A shipping document issued by a bulk plant shall be typed or handwritten on a preprinted form or machine printed.

(56) "Solid waste refuse vehicle" means a motor vehicle equipped with a power takeoff or auxiliary power unit that provides power to compact the refuse, open the back of the container before ejection, and eject the compacted refuse.

(57) "Supplier" means a person that:

(A) is subject to the general taxing jurisdiction of this state;

(B) is registered under Section 4101, Internal Revenue Code, for transactions in motor fuel in the bulk transfer/terminal distribution system, and is:

(i) a position holder in motor fuel in a terminal or refinery in this state and may concurrently also be a position holder in motor fuel in another state; or

(ii) a person who receives motor fuel in this state under a two-party exchange; and

(C) may also be a terminal operator, provided that a terminal operator is not considered to also be a "supplier" based solely on the fact that the terminal operator handles motor fuel consigned to it within a terminal.

(58) "Terminal" means a motor fuel storage and distribution facility to which a terminal control number has been assigned by the Internal Revenue Service, to which motor fuel is supplied by pipeline or marine vessel, and from which motor fuel may be removed at a rack.

(59) "Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

(60) "Transit company" means a business that:

(A) transports in a political subdivision persons in carriers designed for 12 or more passengers;

(B) holds a franchise from a political subdivision; and

(C) has its rates regulated by the political subdivision or is owned or operated by the political subdivision.

(61) "Transport vehicle" means a vehicle designed or used to carry motor fuel over a public highway and includes a straight truck, straight truck/trailer combination, and semitrailer combination rig.

(62) "Two-party exchange" means a transaction in which motor fuel is transferred from one licensed supplier or permissive supplier to another licensed supplier or permissive supplier under an exchange agreement, including a transfer from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on the records of the terminal operator, and that is:

(A) completed before removal of the product from

the terminal by the receiving exchange partner; and

(B) recorded on the terminal operator's books and records with the receiving exchange partner as the supplier that removes the motor fuel across the terminal rack for purposes of reporting the transaction to this state.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.002. TAX LIABILITY ON LEASED VEHICLES. (a) A user or interstate trucker is liable for the tax on motor fuel imported into this state in fuel supply tanks of leased motor vehicles and used on the public highways of this state to the same extent and in the same manner as motor fuel imported in the user's or interstate trucker's own motor vehicles and used on the public highways of this state, unless the person who owns the leased motor vehicles is liable under Subsection (b). If the owner of the leased motor vehicles is liable, the user or interstate trucker may exclude the leased motor vehicles from the person's return.

(b) A person who, in the regular course of business and for consideration, leases motor vehicles and equipment to motor carriers or others for interstate operation may be considered to be the user or interstate trucker under this chapter if the person supplies or pays for the motor fuel consumed in those leased motor vehicles or equipment, and the person may be issued a license as an interstate trucker by the comptroller. An application for an interstate trucker license may be accompanied by one copy of the form-lease or service contract entered into with various lessees. On receipt of the interstate trucker license, the person may assign to each motor vehicle leased for interstate operation a photocopy of the license to be carried in the cab compartment of the motor vehicle. The photocopy of the license must have typed or printed on the back the unit or motor number of the motor vehicle to which it is assigned and the name of the lessee. The lessor is responsible for the proper use of the photocopy of the license issued to the lessor and for its return with the motor vehicle to which it is assigned.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.003. COOPERATIVE AGREEMENTS WITH OTHER STATES.

(a) The comptroller may enter into a cooperative agreement with another state for the collection of motor fuel taxes, the exchange of information, the auditing of users of motor fuel used in fleets of motor vehicles operated or intended for interstate operation, and the auditing of importers and exporters. An agreement or amendment of an agreement takes effect according to its terms, except that an agreement or amendment may not take effect until the proposed agreement or amendment is published in the Texas Register.

(b) An agreement may provide for:

- (1) determining the base state for motor fuel users;
- (2) user, importer, and exporter records requirements;
- (3) audit procedures;
- (4) exchange of information;
- (5) persons eligible for tax licensing;
- (6) licensing and license revocation procedures, permits, penalties, and fees;
- (7) defining qualified motor vehicles;
- (8) determining bonding procedures, types, and amounts;
- (9) specifying reporting requirements and periods;
- (10) defining refund procedures and limitations, including the payment of interest;
- (11) defining uniform penalties, fees, and interest rates;
- (12) determining methods for collecting motor fuel taxes and for collecting and forwarding motor fuel taxes, other than penalties, due to another jurisdiction;
- (13) the temporary remittal of funds equal to the amount of the taxes and interest due to another jurisdiction but not otherwise collected, subject to appropriation of funds for that purpose; and
- (14) other provisions to facilitate the administration of the agreement.

(c) The comptroller may, as required by the terms of an agreement, forward to an officer of another state any information in the comptroller's possession relating to the manufacture,

receipts, sale, use, transportation, or shipment of motor fuel by any person. The comptroller may disclose to an officer of another state the location of officers, motor vehicles, and other real and personal property of users, importers, and exporters of motor fuel.

(d) An agreement may provide for each state to audit the records of a person based in this state to determine if the motor fuel taxes due each state that is a party to the agreement are properly reported and paid. An agreement may provide for each state to forward the findings of an audit performed on a person based in this state to each other state in which the person has taxable use of motor fuel, from which the person imports motor fuel into this state, or to which the person exports motor fuel from this state. For a person who is not based in this state and who has taxable use of motor fuel in this state or an import into or export out of this state, the comptroller may use an audit performed by another state that is a party to an agreement with this state to make an assessment of motor fuel taxes against the person.

(e) An agreement entered into under this section does not affect the authority of the comptroller to audit any person under any other law.

(f) An agreement entered into under this section prevails over an inconsistent rule of the comptroller. Except as otherwise provided by this section, a statute of this state prevails over an inconsistent provision of an agreement entered into under this section.

(g) The comptroller may segregate in a separate fund or account the amount of motor fuel taxes, other than penalties, estimated to be due to other jurisdictions, motor fuel taxes subject to refund during the fiscal year, licensing fees, and other costs collected under the agreement. On a determination of an amount held that is due to be remitted to another jurisdiction, the comptroller may issue a warrant or make an electronic transfer of the amount as necessary to carry out the purposes of the agreement. An auditing cost, membership fee, and other cost associated with the agreement may be paid from interest earned on funds segregated under this subsection. Any interest earnings in excess of the costs associated with the agreement shall be credited to general revenue.

(h) The legislature finds that it is in the public interest to enter into motor fuel tax agreements with other jurisdictions that may provide for the temporary remittal of amounts due other jurisdictions that exceed the amounts collected and for cooperation with other jurisdictions for the collection of taxes imposed by this state and other jurisdictions on motor fuel that is imported into or exported out of this state. The comptroller shall ensure that reasonable measures are developed to recover motor fuel taxes and other amounts due this state during each biennium.

(i) The comptroller shall attempt to enter into a cooperative agreement with each state that borders this state to provide for the collection of taxes imposed by this state and the bordering state on motor fuel that is imported into this state from or exported from this state to the bordering state. The comptroller is encouraged to attempt to enter into similar cooperative agreements with states that do not border this state.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.004. MOTOR FUEL TRANSPORTATION: REQUIRED DOCUMENTS. (a) A person may not transport in this state any motor fuel by barge, vessel, railroad tank car, or transport vehicle unless the person has a shipping document for the motor fuel that complies with this section. A terminal operator or operator of a bulk plant shall give a shipping document to the person who operates the barge, vessel, railroad tank car, or transport vehicle into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) The shipping document issued by the terminal operator or operator of a bulk plant shall contain the following information and any other information required by the comptroller:

(1) the terminal control number of the terminal or physical address of the bulk plant from which the motor fuel was received;

(2) the name and license number of the purchaser;

(3) the date the motor fuel was loaded;

(4) the net gallons loaded, or the gross gallons loaded if the fuel was purchased from a bulk plant;

(5) the destination state of the motor fuel, as

represented by the purchaser of the motor fuel or the purchaser's agent; and

(6) a description of the product being transported.

(c) In the event of an extraordinary circumstance, including an act of God, that temporarily interferes with the ability to issue an automated machine-generated shipping document, a manually prepared shipping document that contains all of the information required by Subsection (b) shall be substituted for the machine-generated shipping document.

(d) A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser is liable for any tax due as a result of the purchaser's diversion of motor fuel from the represented destination state.

(e) A person to whom a shipping document was issued shall:

(1) carry the shipping document in the barge, vessel, railroad tank car, or other transport vehicle for which the document was issued when transporting the motor fuel described in the document;

(2) show the shipping document on request to any law enforcement officer, representative of the comptroller, or other authorized individual, when transporting the motor fuel described;

(3) deliver the motor fuel to the destination state printed on the shipping document unless the person:

(A) notifies the comptroller and the destination state, if a diversion program is in place, before transporting the motor fuel into a state other than the printed destination state, that the person has received instructions after the shipping document was issued to deliver the motor fuel to a different destination state;

(B) receives from the comptroller and destination state, if a diversion program is in place, a diversion number authorizing the diversion; and

(C) writes on the shipping document the change in destination state and the diversion number; and

(4) give a copy of the shipping document to the person

to whom the motor fuel is delivered.

(f) The purchaser is responsible for paying the applicable destination state taxes along with filing a refund with the origin state. The supplier may not refund any taxes due to the diversion of a product.

(g) The person to whom motor fuel is delivered by barge, vessel, railroad tank car, or transport vehicle may not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than this state, except that the person may accept that delivery if the document contains a diversion number authorized by the comptroller and destination state, if applicable. The person to whom the motor fuel is delivered shall examine the shipping document to determine that the destination state is this state, and shall retain a copy of the shipping document at the delivery location or another place until the fourth anniversary of the date of delivery.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.005. CANCELLATION OR REFUSAL OF LICENSE. (a) The comptroller may cancel or refuse to issue or reissue a motor fuel license to any person who has violated or has failed to comply with a provision of this chapter or a rule of the comptroller.

(b) Before a license may be canceled, or the issuance or reissuance refused, the comptroller shall give the license holder or license applicant not less than 10 days' notice of a hearing at the office of the comptroller in Austin or at a specified comptroller's field office, granting the license holder or applicant an opportunity to show cause before the comptroller why the proposed action should not be taken. If a license is in effect, the license remains in force pending the determination of the show-cause hearing. Notice must be in writing and may be mailed by United States registered mail or certified mail to the license holder or applicant at the person's last known address, or may be delivered by the comptroller to the license holder or applicant, and no other notice is necessary. In case of service by mail of a notice required by this chapter, the service is complete at the time of deposit in the United States Post Office.

(c) The comptroller may prescribe rules of procedure and evidence for the hearings in accordance with Chapter 2001, Government Code.

(d) If, after the hearing or the opportunity to be heard, the license is canceled or the issuance or reissuance refused by the comptroller, all taxes that have been collected or that have accrued, although the taxes are not then due and payable to the state, except by the provisions of this chapter, shall become due and payable concurrently with the notice of cancellation of the license. The license holder shall within five days make a report covering the period not covered by preceding reports filed by the license holder and ending with the date of cancellation, and shall remit and pay to the comptroller all taxes that have been collected and that have accrued from the sale, use, or distribution of motor fuel in this state.

(e) The comptroller may revoke a license if the license holder purchases for export motor fuel on which the tax was not paid under this chapter and subsequently diverts or causes the motor fuel to be diverted to a destination in this state or to any destination other than the originally designated state or country without first obtaining a diversion number.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.006. SUMMARY SUSPENSION OF LICENSE. (a) The comptroller may suspend a person's license without notice or a hearing for the person's failure to comply with this chapter or a rule adopted under this chapter if the person's continued operation constitutes an immediate and substantial threat to the collection of taxes imposed by this chapter and attributable to the person's operation.

(b) If the comptroller summarily suspends a person's license, proceedings for a preliminary hearing before the comptroller or the comptroller's representative must be initiated simultaneously with the summary suspension. The preliminary hearing shall be set for a date that is not later than the 10th day after the date of the summary suspension, unless the parties agree to a later date.

(c) At the preliminary hearing, the license holder must show cause why the license should not remain suspended pending a final hearing on suspension or revocation.

(d) Chapter 2001, Government Code, does not apply to a summary suspension under this section.

(e) To initiate a proceeding to suspend summarily a person's license, the comptroller shall serve notice on the license holder informing the license holder of the right to a preliminary hearing before the comptroller or the comptroller's representative and of the time and place of the preliminary hearing. The notice must be personally served on the license holder or an officer, employee, or agent of the license holder, or sent by certified or registered mail, return receipt requested, to the license holder's mailing address as it appears on the comptroller's records. The notice must state the alleged violations that constitute the grounds for summary suspension. The suspension is effective at the time the notice is served. If the notice is served in person, the license holder shall immediately surrender the license to the comptroller or to the comptroller's representative. If notice is served by mail, the license holder shall immediately return the license to the comptroller.

(f) Section 162.005, governing hearings for license cancellation or refusal to issue a license under this chapter, governs a final administrative hearing under this section.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.007. ENFORCEMENT OF LICENSE CANCELLATION, SUSPENSION, OR REFUSAL. (a) The comptroller may examine any books and records incident to the conduct of the business of a person whose license has been canceled or suspended on the person's failure to file the reports required by this chapter or to remit all taxes due. If necessary, the comptroller shall issue an audit deficiency determination for any tax amount due. If the amount is not paid on or before the 15th day after the deficiency determination becomes final, the bond or other security required under this chapter shall be forfeited. The demand for payment shall be addressed to both the surety or sureties and the person who owes

the delinquency.

(b) If the forfeiture of the bond or other security does not satisfy the delinquency, the comptroller shall certify the taxes, penalty, and interest delinquent to the attorney general, who may file suit against the person or the person's surety, or both, to collect the amount due. After being given notice of an order of cancellation or summary suspension, it shall be unlawful for any person to continue to operate the person's business under a canceled or suspended license. The attorney general may file suit to enjoin the person from operating under the canceled or suspended license until the comptroller reissues a license.

(c) An appeal from an order of the comptroller canceling or suspending or refusing the issuance or reissuance of a license may be taken to a district court of Travis County by the aggrieved license holder or applicant. The trial shall be de novo under the same rules as ordinary civil suits, except that:

(1) an appeal must be perfected and filed within 30 days after the effective date of the order, decision, or ruling of the comptroller;

(2) the trial of the case shall begin within 10 days after its filing; and

(3) the order, decision, or ruling of the comptroller may be suspended or modified by the court pending a trial on the merits.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.008. INSPECTION OF PREMISES AND RECORDS. For the purpose of determining the amount of tax collected and payable to this state, the amount of tax accruing and due, and whether a tax liability has been incurred under this chapter, the comptroller may:

(1) inspect any premises where motor fuel, crude petroleum, natural gas, derivatives or condensates of crude petroleum, natural gas, or their products, methyl alcohol, ethyl alcohol, or other blending agents are produced, made, prepared, stored, transported, sold, or offered for sale or exchange;

(2) examine the books and records required to be kept

and records incident to the business of any license holder or person required to be licensed, or any person receiving, possessing, delivering, or selling motor fuel, crude oil, derivatives or condensates of crude petroleum, natural gas, or their products, or any blending agents;

(3) examine and either gauge or measure the contents of all storage tanks, containers, and other property or equipment; and

(4) take samples of any and all of these products stored on the premises.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.009. AUTHORITY TO STOP AND EXAMINE. To enforce this chapter, the comptroller or a peace officer may stop a motor vehicle that appears to be operating with or transporting motor fuel to examine the shipping document, cargo manifest, or invoices required to be carried, examine a license or copy of a license that may be required to be carried, take samples from the fuel supply or cargo tanks, and make any other investigation that could reasonably be made to determine whether the taxes have been paid or accounted for by a license holder or a person required to be licensed. The comptroller, a peace officer, an employee of the attorney general's office, an employee of the Texas Commission on Environmental Quality, or an employee of the Department of Agriculture may take samples of motor fuel from a storage tank or container to:

(1) determine if the fuel contains hazardous waste or is adulterated; or

(2) allow the comptroller to determine whether taxes on the fuel have been paid or accounted for to this state.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.010. IMPOUNDMENT AND SEIZURE. (a) If after examination or other investigation, the comptroller believes that the owner or operator of a motor vehicle or cargo tank, or a person receiving, possessing, delivering, or selling gasoline or diesel fuel, has not paid all motor fuel taxes due, or does not have a valid license entitling that person to possess or transport tax-free

motor fuel, the comptroller or peace officer may impound the fuel, the motor vehicle, cargo tank, storage tank, equipment, paraphernalia, or other tangible personal property used for or incident to the storage, sale, or transportation of that motor fuel. Unless proof is produced within three working days after the beginning of impoundment that the owner, operator, or other person has paid the taxes established by the comptroller to be due on the gasoline or diesel fuel stored, sold, used, or transported and any other taxes due to this state, or that the owner, operator, or other person holds a valid license to possess or transport tax-free motor fuel, the comptroller may demand payment of all taxes, penalties, and interest due to this state, and all costs of impoundment.

(b) If the owner or operator does not produce the required documentation or required license or pay the taxes, penalties, interest, and costs due within three working days after the beginning of the impoundment, the comptroller may seize the impounded property to satisfy the tax liability.

(c) The comptroller may seize:

(1) all motor fuel on which taxes are imposed by this chapter that is found in the possession, custody, or control of any person for the purpose of being sold, transported, removed, or used by the person in violation of this chapter;

(2) all motor fuel that is removed or is deposited, stored, or concealed in any place with intent to avoid payment of taxes;

(3) any automobile, truck, tank truck, boat, trailer conveyance, or other vehicle used in the removal or transportation of the motor fuel to avoid payment of taxes; and

(4) all equipment, paraphernalia, storage tanks, or tangible personal property incident to and used for avoiding the payment of taxes and found in the place, building, or vehicle where the motor fuel is found.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.011. SALE OF SEIZED PROPERTY. (a) The comptroller may sell property seized under Section 162.010.

(b) Notice of the time and place of a sale shall be given to

the delinquent person in writing by certified mail at least 20 days before the date set for the sale. The notice shall be enclosed in an envelope addressed to the person at the person's last known address or place of business. It shall be deposited in the United States mail, postage prepaid. The notice shall also be published once a week for two consecutive weeks before the date of the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county 14 days before the date set for the sale. The notice must contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due, interest, penalties, and costs are paid on or before the time fixed in the notice for the sale, the property, or as much of it as may be necessary, will be sold at public auction in accordance with the law and the notice.

(c) At the sale, the comptroller shall sell the property and shall deliver to the purchaser a bill of sale for personal property and a deed for real property sold. The bill of sale or deed vests the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

(d) The proceeds of a sale shall be allocated according to the following priorities:

(1) the payment of expenses of seizure, appraisal, custody, advertising, auction, and any other expenses incident to the seizure and sale;

(2) the payment of the tax, penalty, and interest; and

(3) the repayment of the remaining balance to the person liable for the amount unless a claim is presented before the sale by any other person who has an ownership interest evidenced by a financing statement or lien, in which case the comptroller shall withhold the remaining balance pending a determination of the rights of the respective parties.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.012. PRESUMPTIONS. (a) A person licensed under this chapter or required to be licensed under this chapter, or other user, who fails to keep a record, issue an invoice, or file a return or report required by this chapter is presumed to have sold or used for taxable purposes all motor fuel shown by an audit by the comptroller to have been sold to the license holder or other user. Motor fuel unaccounted for is presumed to have been sold or used for taxable purposes. If an exporter claims an exemption under Section 162.104(a)(4)(B) or 162.204(a)(4)(B) and fails to produce proof of payment of tax to the destination state or proof that the transaction was exempt in the destination state, 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 shall assess the tax imposed by this chapter on the exported motor fuel against the exporter. The comptroller may fix or establish the amount of taxes, penalties, and interest due this state from the records of deliveries or from any records or information available. If a tax claim, as developed from this procedure, is not paid, after the opportunity to request a redetermination, the claim and any audit made by the comptroller or any report filed by the license holder or other user is evidence in any suit or judicial proceedings filed by the attorney general and is prima facie evidence of the correctness of the claim or audit. A prima facie presumption of the correctness of the claim may be overcome at the trial by evidence adduced by the license holder or other user.

(b) In the absence of records showing the number of miles actually operated per gallon of motor fuel consumed, it is presumed that not less than one gallon of motor fuel was consumed for every four miles traveled. An interstate trucker may produce evidence of motor fuel consumption to establish another mileage factor. If an examination or audit made by the comptroller from the records of an interstate trucker shows that a greater amount of motor fuel was consumed than was reported by the interstate trucker for tax purposes, the interstate trucker is liable for the tax, penalties, and interest on the additional amount shown or the trucker is entitled to a credit or refund on overpayments of tax established by the audit.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.013. VENUE OF TAX COLLECTION SUITS. The venue of a suit, injunction, or other proceeding at law available for the establishment or collection of a claim for delinquent taxes, penalties, or interest accruing under this chapter and the enforcement of the terms and provisions of this chapter is in Travis County or in any other county having venue under existing venue statutes.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.014. OTHER MOTOR FUEL TAXES PROHIBITED. The taxes imposed by this chapter are in lieu of any other excise or occupation tax imposed by a political subdivision of this state on the sale, use, or distribution of gasoline, diesel fuel, or liquefied gas.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.015. ADDITIONAL TAX APPLIES TO INVENTORIES.

(a) On the effective date of an increase in the rates of the taxes imposed by this chapter, a distributor or dealer that possesses for the purpose of sale 2,000 or more gallons of gasoline or diesel fuel at each business location on which the taxes imposed by this chapter at a previous rate have been paid shall report to the comptroller the volume of that gasoline and diesel fuel, and at the time of the report shall pay a tax on that gasoline and diesel fuel at a rate equal to the rate of the tax increase.

(b) On the effective date of a reduction of the rates of taxes imposed by this chapter, a distributor or dealer that possesses for the purpose of sale 2,000 or more gallons of gasoline or diesel fuel at each business location on which the taxes imposed by this chapter at the previous rate have been paid becomes entitled to a refund in an amount equal to the difference in the amount of taxes paid on that gasoline or diesel fuel at the previous rate and at the rate in effect on the effective date of the reduction in the tax rates. The rules of the comptroller shall provide for the method of claiming a refund under this chapter and may require that

the refund for the dealer be paid through the distributor or supplier from whom the dealer received the fuel.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.016. IMPORTATION AND EXPORTATION OF MOTOR FUEL.

(a) A person may not import motor fuel to a destination in this state or export motor fuel to a destination outside this state by any means unless the person possesses a shipping document for that fuel created by the terminal or bulk plant at which the fuel was received. The shipping document must include:

(1) the name and physical address of the terminal or bulk plant from which the motor fuel was received for import or export;

(2) the name and federal employer identification number, or the social security number if the employer identification number is not available, of the carrier transporting the motor fuel;

(3) the date the motor fuel was loaded;

(4) the type of motor fuel;

(5) the number of gallons:

(A) in temperature-adjusted gallons if purchased from a terminal for export or import; or

(B) in temperature-adjusted gallons or in gross gallons if purchased from a bulk plant;

(6) the destination of the motor fuel as represented by the purchaser of the motor fuel and the number of gallons of the fuel to be delivered, if delivery is to only one state;

(7) the name, federal employer identification number, license number, and physical address of the purchaser of the motor fuel;

(8) the name of the person responsible for paying the tax imposed by this chapter, as given to the terminal by the purchaser if different from the licensed supplier or distributor; and

(9) any other information that, in the opinion of the comptroller, is necessary for the proper administration of this chapter.

(b) The terminal or bulk plant shall provide the shipping documents to the importer or exporter.

(c) If motor fuel is to be delivered to more than one state, the terminal shall document the split loads by issuing shipping documents that list the destination state of each portion of the motor fuel.

(d) A terminal, a bulk plant, the carrier, the licensed distributor or supplier, and the person that received the motor fuel shall:

(1) retain a copy of the shipping document until at least the fourth anniversary of the date the fuel is received; and

(2) provide a copy of the document to the comptroller or any law enforcement officer not later than the 10th working day after the date a request for the copy is received.

(e) An importer or exporter shall keep in the person's possession the shipping document issued by the terminal or bulk plant when transporting motor fuel imported into this state or for export from this state. The importer or exporter shall show the document to the comptroller or a peace officer on request. The comptroller may delegate authority to inspect the document to other governmental agencies. The importer or exporter shall provide a copy of the shipping document to the person that receives the fuel when it is delivered.

(f) The importer or exporter may deliver motor fuel only to the destination state or states indicated on the shipping document.

(g) An importer or exporter who wants to divert the delivery of a single cargo tank of motor fuel from the destination state printed on the shipping document must obtain a diversion number from the comptroller before diverting the delivery. The importer, exporter, or motor fuel transporter must write the diversion number on the shipping document issued for the fuel. A diversion number is required for each diverted delivery. The comptroller may appoint a person to assign diversion numbers or may delegate that authority to another person.

(h) An importer that acquires motor fuel for import by cargo tank must obtain an import verification number from the comptroller before importing the motor fuel. The importer must write the import

verification number on the shipping document issued for the fuel. The importer must obtain a separate import confirmation number for each cargo tank delivery of motor fuel into this state. The comptroller may appoint a person to assign import verification numbers or may delegate that authority to another person.

(i) Each terminal or bulk plant shall post a notice in a conspicuous location proximate to the point of receipt of shipping papers that describes the duties of importers and exporters under this section. The comptroller may prescribe the language, type, style, and format of the notice.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.017. STUDY COMMISSION ON TRANSPORTATION FINANCING. (a) The Study Commission on Transportation Financing is created as provided by this section.

(b) The commission is composed of nine members as follows:

(1) three members of the general public appointed by the governor;

(2) three members appointed by the lieutenant governor, of which one is a member of the general public and two are members of the senate; and

(3) three members appointed by the speaker of the house of representatives, of which one is a member of the general public and two are members of the house.

(c) Each member of the commission serves at the will of the person who appointed the member.

(d) The lieutenant governor shall designate one of the appointed senators and the speaker of the house of representatives shall designate one of the appointed house members to serve together as joint presiding officers of the commission.

(e) A member of the commission is not entitled to receive compensation for service on the commission but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the commission, as provided by the General Appropriations Act.

(f) The commission may accept gifts and grants from any source to be used to carry out a function of the commission.

(g) The commission shall conduct public hearings and study public policy implications relating to the financing of transportation projects.

(h) The study shall include:

(1) a review of the state motor fuels tax in order to:

(A) evaluate the state motor fuels tax, including its efficacy in funding the transportation needs of this state; and

(B) examine and evaluate the expenditure of funds from the state highway fund;

(2) a review of the current sources for funding rail transportation projects in order to:

(A) evaluate the options for rail funding, including their efficacy in funding identified rail needs of the state; and

(B) identify other possible sources for funding; and

(3) a review of all other financing options for all modes of transportation, including but not limited to:

(A) motor vehicle user fees and fines;

(B) bonding; and

(C) other debt financing methods.

(i) Not later than December 1, 2006, the commission shall issue a report summarizing:

(1) any hearings conducted by the commission;

(2) any studies conducted by the commission;

(3) any legislation proposed by the commission; and

(4) any other findings and recommendations of the commission.

Added by Acts 2005, 79th Leg., Ch. 420, Sec. 1, eff. June 17, 2005.

SUBCHAPTER B. GASOLINE TAX

Sec. 162.101. POINT OF IMPOSITION OF GASOLINE TAX. (a) A tax is imposed on the removal of gasoline from the terminal using the terminal rack, other than by bulk transfer. The supplier or permissive supplier shall collect the tax imposed by this subchapter from the person who orders the withdrawal at the terminal rack.

(b) A tax is imposed at the time gasoline is imported into this state, other than by a bulk transfer, for delivery to a destination in this state. The permissive supplier shall collect the tax imposed by this subchapter from the person who imports the gasoline into this state. If the seller is not a permissive supplier, then the person who imports the gasoline into this state shall pay the tax.

(c) A tax is imposed on the sale or transfer of gasoline in the bulk transfer/terminal system in this state by a supplier to a person who does not hold a supplier's license. The supplier shall collect the tax imposed by this subchapter from the person who orders the sale or transfer in the bulk transfer terminal system.

(d) A tax is imposed on gasoline brought into this state in a motor fuel supply tank or tanks of a motor vehicle operated by a person required to be licensed as an interstate trucker.

(e) A tax is imposed on the blending of gasoline at the point gasoline blended fuel is made in this state outside the bulk transfer/terminal system. The blender shall pay the tax. The number of gallons of gasoline blended fuel on which the tax is imposed is equal to the difference between the number of gallons of blended fuel made and the number of gallons of previously taxed gasoline used to make the blended fuel.

(f) A terminal operator in this state is considered a supplier for the purpose of the tax imposed under this subchapter unless at the time of removal:

(1) the terminal operator has a terminal operator's license issued for the facility from which the gasoline is withdrawn;

(2) the terminal operator verifies that the person who removes the gasoline has a supplier's license; and

(3) the terminal operator does not have a reason to believe that the supplier's license is not valid.

(g) In each subsequent sale of gasoline on which the tax has been paid, the amount of the tax shall be added to the selling price so that the tax is paid ultimately by the person using or consuming the gasoline. Gasoline is considered to be used when it is delivered into a fuel supply tank.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.102. TAX RATE. The gasoline tax rate is 20 cents for each net gallon or fractional part on which the tax is imposed under Section 162.101.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.103. BACKUP TAX; LIABILITY. (a) A backup tax is imposed at the rate prescribed by Section 162.102 on:

(1) a person who obtains a refund of tax on gasoline by claiming the gasoline was used for an off-highway purpose, but actually uses the gasoline to operate a motor vehicle on a public highway;

(2) a person who operates a motor vehicle on a public highway using gasoline on which tax has not been paid; and

(3) a person who sells to the ultimate consumer gasoline on which tax has not been paid and who knew or had reason to know that the gasoline would be used for a taxable purpose.

(b) If the motor vehicle described by Subsection (a)(2) is owned or leased by a person other than the operator, the tax shall be paid by either the operator or the motor vehicle's owner or lessee.

(c) The tax imposed under Subsection (a)(3) is also imposed on the ultimate consumer.

(d) A person who sells gasoline in this state on which tax has not been paid for any purpose other than a purpose exempt under Section 162.104 shall at the time of sale collect the tax from the purchaser or recipient of gasoline in addition to the selling price and is liable to this state for the taxes collected at the time and in the manner provided by this chapter.

(e) The tax liability imposed by this section is in addition to any penalty imposed under this chapter.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.104. EXEMPTIONS. (a) The tax imposed by this subchapter does not apply to gasoline:

(1) sold to the United States for its exclusive use,

provided that the exemption does not apply with respect to fuel sold or delivered to a person operating under a contract with the United States;

(2) sold to a public school district in this state for the district's exclusive use;

(3) sold to a commercial transportation company or a metropolitan rapid transit authority operating under Chapter 451, Transportation Code, that provides public school transportation services to a school district under Section 34.008, Education Code, and that uses the gasoline only to provide those services;

(4) exported by either a licensed supplier or a licensed exporter from this state to any other state, provided that:

(A) 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

(B) 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;

(5) moved by truck or railcar between licensed suppliers or licensed permissive suppliers and in which the gasoline removed from the first terminal comes to rest in the second terminal, provided that the removal from the second terminal rack is subject to the tax imposed by this subchapter;

(6) delivered or sold into a storage facility of a licensed aviation fuel dealer from which gasoline will be delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment, or sold from one licensed aviation fuel dealer to another licensed aviation fuel dealer who will deliver the aviation fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment; or

(7) exported to a foreign country if the bill of lading indicates the foreign destination and the fuel is actually exported to the foreign country.

(b) The exemption provided by Subsection (a)(4) does not

apply to gasoline that is transported and delivered outside this state in the motor fuel supply tank of a motor vehicle other than an interstate trucker.

(c) If an exporter described by Subsection (a)(4)(B) does not have an exporter's license issued under this subchapter, the supplier must collect the tax imposed under this subchapter.

(d) Subsection (a)(4)(A) applies only if the destination state recognizes, by agreement with this state or by statute or rule, a supplier in this state as a valid taxpayer for the motor fuel being exported to that state from this state. The comptroller shall publish a list that specifies for each state, other than this state, whether that state does or does not qualify under this subsection.

(e) Subsection (a)(4)(B) applies only until the date the destination state recognizes, by agreement with this state or by statute, the out-of-state supplier as a valid taxpayer for the motor fuel being exported to that state from this state, or until January 1, 2006, whichever date is earlier.

(f) The exemption provided by Subsection (a)(4)(A) does not apply to a sale by a distributor.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 931, Sec. 11, eff. July 1, 2007.

Sec. 162.105. PERSONS REQUIRED TO BE LICENSED. A person shall obtain the appropriate license or licenses issued by the comptroller before conducting the activities of:

(1) a supplier, who may also act as a distributor, importer, exporter, blender, motor fuel transporter, or aviation fuel dealer without securing a separate license, but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(2) a permissive supplier, who may also act as a distributor, importer, exporter, blender, motor fuel transporter, or aviation fuel dealer without securing a separate license, but who is subject to all other conditions, requirements, and

liabilities imposed on those license holders;

(3) a distributor, who may also act as an importer, exporter, blender, or motor fuel transporter without securing a separate license, but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(4) an importer, who may also act as an exporter, blender, or motor fuel transporter without securing a separate license, but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(5) a terminal operator;

(6) an exporter;

(7) a blender;

(8) a motor fuel transporter;

(9) an aviation fuel dealer; or

(10) an interstate trucker.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.106. TRIP PERMITS. (a) Instead of an annual interstate trucker's license, a person bringing a motor vehicle described by Section 162.001(36) into this state for commercial purposes may obtain a trip permit. The trip permit must be obtained before or at the time of entry into this state.

(b) Not more than five trip permits for each person may be issued during a calendar year.

(c) A fee for each trip permit shall be collected from the applicant and shall be in the amount of \$50 for each vehicle for each trip.

(d) A report is not required with respect to the vehicle.

(e) Operating a motor vehicle without a valid interstate trucker's license or trip permit may subject the operator to a penalty under Section 162.402.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.107. PERMISSIVE SUPPLIER REQUIREMENTS ON OUT-OF-STATE REMOVALS. (a) A person may elect to obtain a permissive supplier license to collect the tax imposed under this subchapter for gasoline that is removed at a terminal in another

state and has this state as the destination state.

(b) With respect to gasoline that is removed by the licensed permissive supplier at a terminal located in another state and that has this state as the destination state, a licensed permissive supplier shall:

(1) collect the tax due to this state on the gasoline;

(2) waive any defense that this state lacks jurisdiction to require the supplier to collect the tax due to this state on the gasoline under this subchapter;

(3) report and pay the tax due on the gasoline in the same manner as if the removal had occurred at a terminal located in this state;

(4) keep records of the removal of the gasoline and submit to audits concerning the gasoline as if the removal had occurred at a terminal located in this state; and

(5) report sales by the permissive supplier to a person who is not licensed in this state.

(c) A permissive supplier must acknowledge in the person's license application that this state imposes the requirements listed in Subsection (b) under this state's general police power and that the permissive supplier submits to the jurisdiction of this state only for purposes related to the administration of this chapter.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.108. LICENSE APPLICATION PROCEDURE. (a) To obtain a license under this subchapter, an applicant shall file an application using a form adopted by the comptroller. The application must contain:

(1) the name under which the applicant transacts or intends to transact business;

(2) the applicant's principal office, residence, or place of business in this state, or other location of the applicant;

(3) if the applicant is not an individual, the names of the principal officers of an applicant corporation, or the names of the members of an applicant partnership, and the office, street, or post office addresses of each; and

(4) other information required by the comptroller.

(b) An applicant for a license as a supplier, permissive supplier, or terminal operator must have a federal certificate of registry issued under 26 U.S.C. Section 4101 that authorizes the applicant to enter into federal tax-free transactions of gasoline in the bulk terminal/transfer system. An applicant that is required to have a federal certificate of registry must include the registration number of the certificate on the application for a license. An applicant for a license as an importer, an exporter, or a distributor who has a federal certificate of registry issued under 26 U.S.C. Section 4101 must include the registration number of the certificate on the application for a license.

(c) An applicant for a license as an importer or distributor must list on the application each state from which the applicant intends to import gasoline and, if required by a listed state, must be licensed or registered for gasoline tax purposes in that state. If a listed state requires the applicant to be licensed or registered, the applicant must provide the applicant's license or registration number from that state.

(d) An applicant for a license as an exporter must designate an agent located in this state for service of process and provide the agent's name and address. An applicant for a license as an exporter or distributor must list on the application each state to which the applicant intends to export gasoline received in this state by means of a transfer that is outside the bulk transfer/terminal system and must be licensed or registered for gasoline tax purposes in that state. The applicant must provide the applicant's license or registration number from that state.

(e) An applicant for a license as a motor fuel transporter must list on the application each state from which and to which the applicant intends to transport motor fuel and, if required by a listed state, must be licensed or registered for gasoline tax purposes in that state. If a listed state requires the applicant to be licensed or registered, the applicant must provide the applicant's license or registration number from that state.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.109. ISSUANCE AND DISPLAY OF LICENSE. (a) If the

comptroller approves a license application, the comptroller shall issue a license to the applicant. A license must be posted in a conspicuous place or kept available for inspection at the principal place of business of the license holder. A copy of the license must be kept at each place of business or other place of storage from which gasoline is sold, distributed, or used and in each motor vehicle used by the license holder to transport gasoline purchased by the license holder for resale, distribution, or use.

(b) A person holding an interstate trucker's license shall reproduce the license and carry a photocopy with each motor vehicle being operated into or from this state.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.110. LICENSES AND TRIP PERMITS; PERIODS OF VALIDITY. (a) The license issued to a supplier, permissive supplier, distributor, importer, exporter, terminal operator, blender, or motor fuel transporter is permanent and is valid during the period the license holder has in force and effect the required bond or security and furnishes timely reports and supplements as required, or until the license is surrendered by the holder or canceled by the comptroller. The comptroller shall cancel a license under this subsection if a purchase, sale, or use of gasoline has not been reported by the license holder during the previous nine months.

(b) The license issued to an aviation fuel dealer is permanent and is valid until the license is surrendered by the holder or canceled by the comptroller.

(c) The license issued to an interstate trucker is valid from the date of its issuance through December 31 of each calendar year or until the license is surrendered by the holder or canceled by the comptroller. The comptroller may renew the license for each ensuing calendar year if the license holder furnishes timely reports as required.

(d) A trip permit is valid for the period stated on the permit as determined by the comptroller.

(e) A license issued under this subchapter is not transferable.

Sec. 162.111. BOND AND OTHER SECURITY FOR TAXES. (a) The comptroller shall determine the amount of security required of a supplier, permissive supplier, distributor, exporter, importer, or blender, taking into consideration the amount of tax that has or is expected to become due from the person, any past history of the person as a license holder under this chapter or its predecessor, and the necessity to protect this state against the failure to pay the tax as the tax becomes due.

(b) If it is determined that the posting of security is necessary to protect this state, the comptroller may require a license holder to post a bond. A license holder shall post a bond equal to two times the maximum amount of tax that could accrue on tax-free gasoline purchased or acquired during a reporting period. The minimum bond is \$30,000. The maximum bond is \$600,000 unless the comptroller believes there is undue risk of loss of tax revenues, in which event the comptroller may require one or more bonds or securities in a total amount exceeding \$600,000.

(c) A license holder who has filed a bond or other security under this subchapter is entitled, on request, to have the comptroller return, refund, or release the bond or security if in the judgment of the comptroller the person has for four consecutive years continuously complied with the conditions of the bond or other security filed under this subchapter. However, if the comptroller determines that the revenues of this state would be jeopardized by the return, refund, or release of the bond or security, the comptroller may elect not to return, refund, or release the bond or security and may reimpose a requirement of a bond or other security as the comptroller determines necessary to protect the revenues of this state.

(d) A bond must be a continuing instrument, must constitute a new and separate obligation in the penal sum named in the bond for each calendar year or portion of a year while the bond is in force, and must remain in effect until the surety on the bond is released and discharged.

(e) Instead of filing a surety bond, an applicant for a

license may substitute the following security:

(1) cash in the form of United States currency in an amount equal to the required bond to be deposited in the suspense account of the state treasury;

(2) an assignment to the comptroller of a certificate of deposit in any bank or savings and loan association in this state that is a member of the Federal Deposit Insurance Corporation in an amount at least equal to the bond amount required; or

(3) an irrevocable letter of credit to the comptroller from any bank or savings and loan association in this state that is a member of the Federal Deposit Insurance Corporation in an amount of credit at least equal to the bond amount required.

(f) If the amount of an existing bond becomes insufficient or a security becomes unsatisfactory or unacceptable, the comptroller may require the filing of a new or of an additional bond or security.

(g) A surety bond or other form of security may not be released until it is determined by examination or audit that a tax, penalty, or interest liability does not exist. The cash or securities shall be released within 60 days after the comptroller determines that liability does not exist.

(h) The comptroller may use the cash or certificate of deposit security to satisfy a final determination of delinquent liability or a judgment secured in any action by this state to recover gasoline taxes, costs, penalties, and interest found to be due to this state by a person in whose behalf the cash or certificate security was deposited.

(i) A surety on a bond furnished by a license holder shall be released and discharged from liability to this state accruing on the bond on the 31st day after the date on which the surety files with the comptroller a written request to be released and discharged. The request does not relieve, release, or discharge the surety from a liability that already accrued or that accrues before the expiration of the 30-day period. The comptroller, promptly on receipt of the request, shall notify the license holder who furnished the bond, and unless the license holder, before the expiration date of the existing security, files with the

comptroller a new bond with a surety company duly authorized to do business under the laws of this state, or other authorized security, in the amount required by this section, the comptroller shall cancel the license in the manner provided by this chapter.

(j) The comptroller shall notify immediately the issuer of a letter of credit of a final determination of the license holder's delinquent liability or a judgment secured in any action by this state to recover gasoline taxes, costs, penalties, and interest found to be due this state by a license holder in whose behalf the letter of credit was issued. The letter of credit allowed as security for the remittance of taxes under this subchapter shall contain a statement that the issuer agrees to respond to the comptroller's notice of liability with amounts to satisfy the comptroller's delinquency claim against the license holder.

(k) A license holder may request an examination or audit to obtain release of the security when the license holder relinquishes the license or when the license holder wants to substitute one form of security for an existing one.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.112. LICENSE HOLDER STATUS LIST. (a) The comptroller, on or before December 20 of each year, shall make available to all license holders an alphabetical list of licensed suppliers, permissive suppliers, distributors, aviation fuel dealers, importers, exporters, blenders, and terminal operators. A supplemental list of additions and deletions shall be made available to the license holders each month. A current and effective license or the list furnished by the comptroller is evidence of the validity of the license until the comptroller notifies license holders of a change in the status of a license holder.

(b) A licensed supplier or permissive supplier who sells gasoline tax-free to a person whose supplier's or permissive supplier's license has been canceled or revoked under this chapter is liable for any tax due on gasoline sold after receiving notice of the cancellation or revocation.

(c) The comptroller shall notify all license holders under

this chapter when a canceled or revoked license is subsequently reinstated and include in the notice the effective date of the reinstatement. Sales to the supplier or permissive supplier after the effective date of the reinstatement may be made tax-free.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.113. REMITTANCE OF TAX TO SUPPLIER OR PERMISSIVE SUPPLIER; ALLOWANCES. (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 before the date the supplier or permissive supplier is required to remit the tax to this state. The distributor or importer shall pay the taxes by electronic funds transfer.

(b) A supplier, a permissive supplier, or its representative that conducts electronic transactions to draft an account of a licensed distributor or licensed importer for the payment of taxes due under this section shall provide at least two days' notice using an electronic means of the amount to be drafted from the account of the licensed distributor or licensed importer and the number of the account to be drafted from.

(c) If the supplier or permissive supplier cannot secure from the licensed distributor or licensed importer payment of taxes due for gasoline removed from the terminal during the previous reporting period and the supplier elects to take a credit against a subsequent payment of gasoline tax to this 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.

(d) The supplier or permissive supplier has the right, after notifying the comptroller of the licensed distributor's or licensed importer's failure to remit taxes under this section, to terminate the ability of the licensed distributor or licensed importer to

defer the payment of gasoline tax. The supplier or permissive supplier shall reinstate without delay the right of the licensed distributor or licensed importer to defer the payment of gasoline tax after the comptroller provides to the supplier or permissive supplier notice that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of the gasoline tax imposed under this subchapter.

(e) A licensed distributor or licensed importer who makes timely payments of the gasoline tax imposed under this subchapter is entitled to retain an amount equal to 1.75 percent of the total taxes to be paid to the supplier or permissive supplier to cover administrative expenses.

(f) The license of a distributor, exporter, or importer who fails to pay the full amount of tax required by this subchapter is subject to cancellation as provided by Section 162.005.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.114. RETURNS AND PAYMENTS. (a) Except as provided by Subsection (b), each person who is liable for the tax imposed by this subchapter, a terminal operator, and a licensed distributor shall file a return on or before the 25th day of the month following the end of each calendar month.

(b) A motor fuel transporter and an interstate trucker shall file a return on or before the 25th day of the month following the end of the calendar quarter.

(c) The return required by this section shall be accompanied by a payment for the amount of tax reported due.

(d) An aviation fuel dealer is not required to file a return.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.115. RECORDS. (a) A supplier and permissive supplier shall keep:

(1) a record showing the number of gallons of:

(A) all gasoline inventories on hand at the first of each month;

(B) all gasoline refined, compounded, or

blended;

(C) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and

(E) all gasoline lost by fire, theft, or accident; and

(2) an itemized statement showing by load the number of gallons of all gasoline:

(A) received during the preceding calendar month for export and the location of the loading;

(B) exported from this state by destination state or country; and

(C) imported during the preceding calendar month by state or country of origin.

(b) A distributor shall keep:

(1) a record showing the number of gallons of:

(A) all gasoline inventories on hand at the first of each month;

(B) all gasoline blended;

(C) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and

(E) all gasoline lost by fire, theft, or accident;

(2) an itemized statement showing by load the number of gallons of all gasoline:

(A) received during the preceding calendar month for export and the location of the loading;

(B) exported from this state by destination state or country; and

(C) imported during the preceding calendar month by state or country of origin; and

(3) for gasoline exported from this state, proof of

payment of tax to the destination state in a form acceptable to the comptroller.

(c) An importer shall keep:

(1) a record showing the number of gallons of:

(A) all gasoline inventories on hand at the first of each month;

(B) all gasoline compounded or blended;

(C) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and

(E) all gasoline lost by fire, theft, or accident; and

(2) an itemized statement showing by load the number of gallons of all gasoline:

(A) received during the preceding calendar month for export and the location of the loading;

(B) exported from this state by destination state or country; and

(C) imported during the preceding calendar month by state or country of origin.

(d) An exporter shall keep:

(1) a record showing the number of gallons of:

(A) all gasoline inventories on hand at the first of each month;

(B) all gasoline compounded or blended;

(C) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale or use; and

(E) all gasoline lost by fire, theft, or accident;

(2) an itemized statement showing by load the number of gallons of all gasoline:

(A) received during the preceding calendar month

for export and the location of the loading; and

(B) exported from this state by destination state or country;

(3) proof of payment of tax to the destination state in a form acceptable to the comptroller; and

(4) if an exemption under Section 162.104(a)(4)(B) is claimed, proof of payment of tax to the destination state or proof that the transaction was exempt in the destination state, in a form acceptable to the comptroller.

(e) A blender shall keep a record showing the number of gallons of:

(1) all gasoline inventories on hand at the first of each month;

(2) all gasoline compounded or blended;

(3) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;

(4) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale or use; and

(5) all gasoline lost by fire, theft, or accident.

(f) A terminal operator shall keep:

(1) a record showing the number of gallons of:

(A) all gasoline inventories on hand at the first of each month, including the name and license number of each owner and the amount of gasoline held for each owner;

(B) all gasoline received, showing the name of the seller and the date of each purchase or receipt;

(C) all gasoline sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and

(D) all gasoline lost by fire, theft, or accident; and

(2) an itemized statement showing by load the number of gallons of all gasoline:

(A) received during the preceding calendar month for export and the location of the loading;

(B) exported from this state by destination state or country; and

(C) imported during the preceding calendar month by state or country of origin.

(g) A motor fuel transporter shall keep a complete and separate record of each intrastate and interstate transportation of gasoline, showing:

- (1) the date of transportation;
- (2) the name of the consignor and consignee;
- (3) the means of transportation;
- (4) the quantity and kind of gasoline transported;
- (5) full data concerning the diversion of shipments, including the number of gallons diverted from interstate to intrastate and intrastate to interstate commerce; and
- (6) the points of origin and destination, the number of gallons shipped or transported, the date, the consignee and the consignor, and the kind of gasoline that has been diverted.

(h) A dealer shall keep a record showing the number of gallons of:

- (1) gasoline inventories on hand at the first of each month;
- (2) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;
- (3) all gasoline sold or used, showing the date of the sale or use; and
- (4) all gasoline lost by fire, theft, or accident.

(i) An interstate trucker shall keep a record of:

- (1) the total miles traveled in all states by all vehicles traveling to or from this state and the total quantity of gasoline consumed in those vehicles; and
- (2) the total miles traveled in this state and the total quantity of gasoline purchased and delivered into the fuel supply tanks of motor vehicles in this state.

(j) An aviation fuel dealer shall keep a record showing the number of gallons of:

- (1) all gasoline inventories on hand at the first of each month;
- (2) all gasoline purchased or received, showing the name of the seller and the date of each purchase or receipt;

(3) all gasoline sold or used in aircraft or aircraft servicing equipment; and

(4) all gasoline lost by fire, theft, or accident.

(k) The records of an aviation fuel dealer made under Subsection (j)(3) must show:

(1) the name of the purchaser or user of gasoline;

(2) the date of the sale or use of gasoline; and

(3) the registration or "N" number of the airplane or a description or number of the aircraft or a description or number of the aircraft servicing equipment in which gasoline is used.

(1) The comptroller may require selective schedules from a supplier, permissive supplier, distributor, importer, exporter, blender, terminal operator, motor fuel transporter, dealer, aviation fuel dealer, and interstate trucker for any purchase, sale, or delivery of gasoline if the schedules are not inconsistent with the requirements of this chapter.

(m) The records required by this section must be kept until the fourth anniversary of the date they are created and are open to inspection at all times by the comptroller and the attorney general.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.116. INFORMATION REQUIRED ON SUPPLIER'S AND PERMISSIVE SUPPLIER'S RETURN; CREDITS AND ALLOWANCES. (a) The monthly return and supplements of each supplier and permissive supplier shall contain for the period covered by the return:

(1) the number of net gallons of gasoline received by the supplier or permissive supplier during the month, sorted by product code, seller, point of origin, destination state, carrier, and receipt date;

(2) the number of net gallons of gasoline removed at a terminal rack during the month from the account of the supplier, sorted by product code, person receiving the gasoline, terminal code, and carrier;

(3) the number of net gallons of gasoline removed during the month for export, sorted by product code, person receiving the gasoline, terminal code, destination state, and

carrier;

(4) the number of net gallons of gasoline removed during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the gasoline, sorted by product code, person receiving the gasoline, terminal code, and carrier;

(5) the number of net gallons of gasoline the supplier or permissive supplier sold during the month in transactions exempt under Section 162.104, sorted by product code, carrier, purchaser, and terminal code;

(6) the number of net gallons of gasoline sold in the bulk transfer/terminal system in this state to any person not holding a supplier's or permissive supplier's license; and

(7) any other information required by the comptroller.

(b) A supplier or permissive supplier that timely pays the tax to this state may deduct from the amount of tax due a collection allowance equal to two percent of the amount of tax payable to this state.

(c) A supplier or permissive supplier may take a credit for any taxes that were not remitted in a previous period to the supplier or permissive supplier by a licensed distributor or licensed importer as required by Section 162.113. The supplier or permissive supplier is eligible to take the credit if the comptroller is notified of the default within 60 days after the default occurs. If a license holder pays to a supplier or permissive supplier the tax owed, but the payment occurs after the supplier or permissive supplier has taken a credit on its return, the supplier or permissive supplier shall remit the payment to the comptroller with the next monthly return after receipt of the tax, plus a penalty of 10 percent of the amount of unpaid taxes and interest at the rate provided by Section 111.060 beginning on the date the credit was taken.

(d) For purposes of Subsection (c), 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.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.117. DUTIES OF SUPPLIER OR PERMISSIVE SUPPLIER.

(a) A supplier or permissive supplier who receives or collects tax holds the amount received or collected in trust for the benefit of this state and has a fiduciary duty to remit to the comptroller the amount of tax received or collected.

(b) A supplier or permissive supplier shall furnish the purchaser with an invoice, bill of lading, or other documentation as evidence of the number of gallons received by the purchaser.

(c) A supplier or permissive supplier who receives a payment of tax may not apply the payment of tax to a debt that the person making the payment owes for gasoline purchased from the supplier or permissive supplier.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.118. INFORMATION REQUIRED ON DISTRIBUTOR'S RETURN. The monthly return and supplements of each distributor shall contain for the period covered by the return:

(1) the number of net gallons of gasoline received by the distributor during the month, sorted by product code, seller, point of origin, destination state, carrier, and receipt date;

(2) the number of net gallons of gasoline removed at a terminal rack by the distributor during the month, sorted by product code, seller, terminal code, and carrier;

(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;

(4) the number of net gallons of gasoline removed by the distributor during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the gasoline, sorted by product code, seller, terminal code, bulk plant address, and carrier;

(5) the number of net gallons of gasoline the distributor sold during the month in transactions exempt under Section 162.104, sorted by product code and purchaser; and

(6) any other information required by the comptroller.
Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.119. INFORMATION REQUIRED ON IMPORTER'S RETURN; ALLOWANCES. (a) The monthly return and supplements of an importer shall contain for the period covered by the return:

(1) the number of net gallons of imported gasoline acquired from a supplier or permissive supplier who collected the tax due to this state on the gasoline;

(2) the number of net gallons of imported gasoline acquired from a person who did not collect the tax due to this state on the gasoline, listed by source state, person, and terminal;

(3) the number of net gallons of imported gasoline acquired from a bulk plant outside this state, listed by bulk plant name, address, and product code; and

(4) any other information required by the comptroller.

(b) An importer of gasoline that timely files a return and payment may deduct from the amount of tax payable with the return a collection allowance equal to two percent of the amount of tax payable to this state.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.120. INFORMATION REQUIRED ON TERMINAL OPERATOR'S RETURN. (a) A terminal operator shall file with the comptroller a monthly information return and supplement showing the amount of gasoline received and removed from the terminal during the month. The return shall also contain the following summary information:

(1) the beginning and ending inventory that relates to the applicable reporting month;

(2) the number of net gallons of gasoline received in inventory at the terminal during the month;

(3) the number of net gallons of gasoline removed from inventory at the terminal during the month; and

(4) any other summary information required by the comptroller.

(b) The comptroller may accept the Federal ExSTARS terminal operator report provided to the Internal Revenue Service instead of

the required state terminal operator report.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.121. INFORMATION REQUIRED ON MOTOR FUEL TRANSPORTER'S RETURN. The quarterly return and supplements of a motor fuel transporter shall contain for the period covered by the return:

(1) the name, license number, and terminal control number of each person or terminal from whom the transporter received gasoline outside this state for delivery in this state, the gross gallons of gasoline received, the date the gasoline was received, the product code, and the name and license number of the purchaser of the gasoline;

(2) the name, license number, and terminal control number of each person or terminal from whom the transporter received gasoline in this state for delivery outside this state, the gross gallons of gasoline delivered, the date the gasoline was delivered, the product code, and the destination state of the gasoline; and

(3) any other information required by the comptroller.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.122. INFORMATION REQUIRED ON EXPORTER'S RETURN AND PAYMENT OF TAX ON EXPORTS. The monthly return and supplements of an exporter shall contain for the period covered by the return:

(1) the number of net gallons of gasoline acquired from a supplier and exported during the month, including supplier name, terminal control number, and product code;

(2) the number of net gallons of gasoline acquired from a bulk plant and exported during the month, including bulk plant name and product code;

(3) the destination state of the gasoline exported during the month; and

(4) any other information required by the comptroller.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.123. INFORMATION REQUIRED ON BLENDER'S RETURN.

The monthly return and supplements of each blender shall contain for the period covered by the return:

(1) the number of net gallons of gasoline received by the blender during the month, sorted by product code, seller, point of origin, carrier, and receipt date;

(2) the number of net gallons of product blended with gasoline during the month, sorted by product code, type of blending agent if no product code exists, seller, and carrier;

(3) the number of net gallons of blended gasoline sold during the month and the license number or name and address of the entity receiving the blended gasoline; and

(4) any other information required by the comptroller.
Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.124. INFORMATION REQUIRED ON INTERSTATE TRUCKER'S RETURN. The quarterly return and supplements of each interstate trucker shall contain for the period covered by the return:

(1) the total miles traveled in all states by all vehicles traveling to or from this state and the total quantity of gasoline consumed in those vehicles;

(2) the total miles traveled in this state and the total quantity of gasoline purchased and delivered into the fuel supply tanks of motor vehicles in this state; and

(3) any other information required by the comptroller.
Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.125. REFUND OR CREDIT FOR CERTAIN TAXES PAID.

(a) A license holder may take a credit on a return for the period in which the sale occurred if the license holder paid tax on the purchase of gasoline and subsequently resells the gasoline without collecting the tax to:

(1) the United States government for its exclusive use, provided that a credit is not allowed for gasoline used by a person operating under contract with the United States;

(2) a public school district in this state for the district's exclusive use;

(3) an exporter licensed under this subchapter if the

seller is a licensed supplier or distributor and the exporter subsequently exports the gasoline to another state;

(4) a licensed aviation fuel dealer if the seller is a licensed distributor; or

(5) a commercial transportation company or a metropolitan rapid transit authority operating under Chapter 451, Transportation Code, that provides public school transportation services to a school district under Section 34.008, Education Code, and that uses the gasoline exclusively to provide those services.

(b) For truck or railcar movements between licensed suppliers or licensed permissive suppliers in which the gasoline removed from the first terminal comes to rest in the second terminal and tax was paid on the first removal, the license holder who receives the gasoline in the second terminal may take the credit.

(c) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license under this subchapter, other than a license as an aviation fuel dealer, may file a refund claim with the comptroller if the license holder or person paid tax on gasoline and the license holder or person:

(1) is the United States government and the gasoline is for its exclusive use, provided that a credit or refund is not allowed for gasoline used by a license holder or person operating under a contract with the United States;

(2) is a public school district in this state and the gasoline is for the district's exclusive use;

(3) is a commercial transportation company that provides public school transportation services to a school district under Section 34.008, Education Code, and the gasoline is used exclusively to provide those services;

(4) uses the gasoline in off-highway equipment, in stationary engines, or for other nonhighway purposes and not in a motor vehicle operated or intended to be operated on the public highways;

(5) 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 credit or refund may not be allowed for the portion used in the incidental highway travel; or

(6) is a licensed aviation fuel dealer who delivers the gasoline into the fuel supply tanks of aircraft or aircraft servicing equipment.

(d) A license holder may take a credit on a return for the period in which the purchase occurred if the license holder paid tax on gasoline and the license holder is a licensed interstate trucker who uses the gasoline outside this state in commercial vehicles operated under an interstate trucker license, provided that a credit or refund claimed under this subsection must be taken or filed within the limitation period provided by Section 162.128.

(e) A license holder may take credit on a return for the period in which the purchase occurred, and a person who does not hold a license may file a refund claim with the comptroller, if the license holder or person paid tax on gasoline and the gasoline is used in this state by auxiliary power units or power take-off equipment on any motor vehicle, if that use can be accurately measured while the motor vehicle is stationary by any metering or other measuring device or method designed to measure the fuel separately from fuel used to propel or idle the motor vehicle. The comptroller may approve and adopt the use of any device as a basis for determining the quantity of gasoline consumed in those operations for tax credit or tax refund. The climate-control air conditioning or heating system of a motor vehicle that has a primary purpose of providing for the convenience or comfort of the operator or passengers is not a power take-off system, and a credit or refund may not be allowed for the gasoline tax paid on any portion of the gasoline that is used for that purpose. A credit or refund may not be allowed for the gasoline tax paid on that portion of the gasoline used for idling.

(f) A person who paid tax on the purchase of gasoline may claim a credit or seek a refund with the comptroller if 100 or more gallons of gasoline is subsequently exported or lost by fire, theft, or accident. A credit or refund claimed under this subsection must be taken or filed within the limitation period provided by Section 162.128.

(g) A transit company that paid tax on the purchase of gasoline may seek a refund with the comptroller in an amount equal to one cent per gallon for gasoline used in transit vehicles.

(h) The right to receive a refund or take a credit under this section is not assignable.

(i) The comptroller may adopt rules specifying procedures and requirements that must be followed to claim a credit or refund under this section.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 931, Sec. 12, eff. July 1, 2007.

Sec. 162.126. REFUND FOR BAD DEBTS; CREDIT FOR NONPAYMENT. (a) A licensed distributor may file a refund claim with the comptroller if:

(1) the distributor has paid the taxes imposed by this subchapter on gasoline sold on account;

(2) the distributor determines that the account is uncollectible and worthless; and

(3) the account is written off as a bad debt on the accounting books of the distributor.

(b) A licensed supplier or permissive supplier may take a credit on the monthly report to be filed with the comptroller if:

(1) on a previous report, the supplier or permissive supplier paid the taxes imposed by this subchapter on gasoline sold on account;

(2) the person to whom the supplier or permissive supplier sold the gasoline has not remitted the tax to the supplier or permissive supplier; and

(3) at the time of the transaction, the person to whom the supplier or permissive supplier sold the gasoline held a license issued by the comptroller.

(c) The return on which the refund is claimed or the credit is taken must state, if applicable, the license number of the person whose account has been written off as a bad debt, or who failed to remit the tax, and any other information required by the

comptroller. The amount of the refund or credit 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 or unpaid taxes apply.

(d) If, after a refund is received under Subsection (a) or a credit is taken under Subsection (b), the account on which the refund or credit was based is paid, or if the comptroller otherwise determines that the refund or credit was not authorized by Subsection (a) or (b), the unpaid taxes shall be paid by the distributor receiving the refund or the supplier or permissive supplier taking the credit, plus a penalty of 10 percent of the amount of the unpaid taxes and interest at the rate provided by Section 111.060 beginning on the day the refund was issued.

(e) This section does not apply to a sale of gasoline that is delivered into the fuel supply tank of a motor vehicle or motorboat and for which payment is made through the use and acceptance of a credit card.

(f) A refund under this section must be claimed at the time the account is written off as a bad debt, but may only be claimed before the expiration of the applicable limitation period as provided by Chapter 111.

(g) The comptroller may take action against a person in relation to whom a distributor, supplier, or permissive supplier has made a refund claim or taken a credit for collection of the tax owed and for penalty and interest as provided by Chapter 111.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.127. CLAIMS FOR REFUNDS. (a) A refund claim must be filed on a form provided by the comptroller, be supported by the original invoice issued by the seller, and contain:

- (1) the stamped or preprinted name and address of the seller;
- (2) the name of the purchaser;
- (3) the date of delivery of the gasoline;
- (4) the date of the issuance of the invoice, if different from the date of fuel delivery;
- (5) the number of gallons of gasoline delivered;

(6) the amount of tax, either separately stated from the selling price or stated with a notation that the selling price includes the tax; and

(7) the type of vehicle or equipment, such as a motorboat, railway engine, motor vehicle, off-highway vehicle, or refrigeration unit or stationary engine, into which the fuel is delivered.

(b) The purchaser must obtain the original invoice from the seller of the gasoline not later than the 30th day after the date the gasoline is delivered to the purchaser. If the delivery of gasoline is made through an automated method in which the purchase is automatically applied to the purchaser's account, one invoice may be issued at the time of billing that covers multiple purchases made during a 30-day billing cycle.

(c) A distribution log filed with the comptroller to support the number of gallons of gasoline removed from a bulk user's own bulk storage must contain the name and address of the bulk user making the delivery stamped or preprinted on it and for each individual delivery from the bulk storage:

- (1) the date of delivery;
- (2) the number of gallons of gasoline delivered;
- (3) the signature of the bulk user; and
- (4) the type or description of off-highway equipment into which the gasoline was delivered, or the type of licensed motor vehicle into which the gasoline was delivered, including the state highway license plate number or vehicle identification number and odometer or hubmeter reading.

(d) A distributor or person who does not hold a license who files a valid refund claim with the comptroller shall be paid by a warrant issued by the comptroller. For purposes of this section, a distributor meets the requirement of filing a valid refund claim if the distributor designates the gallons of gasoline sold or used that are the subject of the refund claim on the monthly report submitted by the distributor to the comptroller.

(e) A person who files a claim for a tax refund on gasoline used for a purpose for which a tax refund is not authorized or who files an invoice supporting a refund claim on which the date,

figures, or any material information has been falsified or altered forfeits the person's right to the entire amount of the refund claim filed unless the claimant provides proof satisfactory to the comptroller that the incorrect refund claim filed was due to a clerical or mathematical calculation error.

(f) After examination of the refund claim, the comptroller, before issuing a refund warrant, shall deduct from the amount of the refund the two percent deducted originally by the license holder on the first sale or distribution of the gasoline.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.1275. REFUND FOR CERTAIN METROPOLITAN RAPID TRANSIT AUTHORITIES. (a) Except as otherwise provided by this section, a metropolitan rapid transit authority operating under Chapter 451, Transportation Code, that is a party to a contract governed by Section 34.008, Education Code, is entitled to a refund of taxes paid under this subchapter for gasoline used to provide services under the contract and may file a refund claim with the comptroller for the amount of those taxes.

(b) The refund claim under Subsection (a) must contain information regarding:

- (1) vehicle mileage;
- (2) hours of service provided;
- (3) fuel consumed;
- (4) the total number of student passengers per route;

and

(5) the total number of non-student passengers per route.

(c) If in any month of a school year the number of non-student passengers is greater than five percent of the total passengers for any single route under a contract governed by Section 34.008, Education Code, the metropolitan rapid transit authority is not entitled to a refund of taxes paid under this subchapter for the route for that month.

(d) A metropolitan rapid transit authority that requests a refund under this section shall maintain all supporting documentation relating to the refund until the sixth anniversary of

the date of the request.

Added by Acts 2007, 80th Leg., R.S., Ch. 931, Sec. 13, eff. July 1, 2007.

Sec. 162.128. WHEN GASOLINE TAX REFUND OR CREDIT MAY BE FILED. (a) Except as otherwise provided by this section, a claim for a refund must be filed with the comptroller before the first anniversary of the first day of the calendar month following the purchase, use, delivery, or export, or loss by fire, theft, or accident of gasoline, whichever period expires latest.

(b) If the amount of credit that an interstate trucker is entitled to take under Section 162.125 exceeds the amount of tax due on that reporting period, the excess credit amount may be claimed on any of three successive quarterly returns following the period in which the credit was established, or the interstate trucker may seek a refund from the comptroller on or before the due date of the third successive quarterly return following the period in which the credit was established. A credit that is not claimed within the period prescribed by this subsection expires.

(c) If the comptroller assesses a supplier or permissive supplier for a tax-free sale that is taxable, and the supplier or permissive supplier subsequently collects the tax from the purchaser, the purchaser may file a refund claim before the first anniversary of the date the supplier's or permissive supplier's deficiency assessment becomes final if the purchaser used the gasoline in an exempt manner.

(d) A supplier or permissive supplier that determines taxes were erroneously reported and remitted or that paid more taxes than were due this state because of a mistake of fact or law may take a credit on the monthly tax report on which the error has occurred and tax payment made to the comptroller. The credit must be taken before the expiration of the applicable period of limitation as provided by Chapter 111.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

SUBCHAPTER C. DIESEL FUEL TAX

Sec. 162.201. POINT OF IMPOSITION OF DIESEL FUEL TAX.

(a) A tax is imposed on the removal of diesel fuel from the terminal using the terminal rack other than by bulk transfer. The supplier or permissive supplier shall collect the tax imposed by this subchapter from the person who orders the withdrawal at the terminal rack.

(b) A tax is imposed at the time diesel fuel is imported into this state, other than by a bulk transfer, for delivery to a destination in this state. The permissive supplier shall collect the tax imposed by this subchapter from the person who imports the diesel fuel into this state. If the seller is not a permissive supplier, the person who imports the diesel fuel into this state shall pay the tax.

(c) A tax is imposed on the sale or transfer of diesel fuel in the bulk transfer/terminal system in this state by a supplier to a person who does not hold a supplier's license. The supplier shall collect the tax imposed by this subchapter from the person who orders the sale or transfer in the bulk transfer/terminal system.

(d) A tax is imposed on diesel fuel brought into this state in the motor fuel supply tank or tanks of a motor vehicle operated by a person required to be licensed as an interstate trucker.

(e) A tax is imposed on the blending of diesel fuel at the point blended diesel fuel is made in this state outside the bulk transfer/terminal system. The blender shall pay the tax. The number of gallons of blended diesel fuel on which the tax is imposed is equal to the difference between the number of gallons of blended fuel made and the number of gallons of previously taxed diesel fuel used to make the blended fuel.

(f) The terminal operator in this state is considered a supplier for the purpose of the tax imposed under this subchapter unless at the time of removal:

(1) the terminal operator has a terminal operator's license issued for the facility from which the diesel fuel is withdrawn;

(2) the terminal operator verifies that the person who removes the diesel fuel has a supplier's license; and

(3) the terminal operator does not have a reason to believe that the supplier's license is not valid.

(g) In each subsequent sale of diesel fuel on which the tax has been paid, the amount of the tax shall be added to the selling price so that the tax is paid ultimately by the person using or consuming the diesel fuel. Diesel fuel is considered to be used when it is delivered into a fuel supply tank.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.202. TAX RATE. The diesel fuel tax rate is 20 cents for each net gallon or fractional part on which the tax is imposed under Section 162.201.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.203. BACKUP TAX; LIABILITY. (a) A backup tax is imposed at the rate prescribed by Section 162.202 on:

(1) a person who obtains a refund of tax on diesel fuel by claiming the diesel fuel was used for an off-highway purpose, but actually uses the diesel fuel to operate a motor vehicle on a public highway;

(2) a person who operates a motor vehicle on a public highway using diesel fuel on which tax has not been paid; and

(3) a person who sells to the ultimate consumer diesel fuel on which a tax has not been paid and who knew or had reason to know that the diesel fuel would be used for a taxable purpose.

(b) If the motor vehicle described by Subsection (a)(2) is owned or leased by a person other than the operator, the tax shall be paid by either the operator or the motor vehicle's owner or lessee.

(c) The tax imposed under Subsection (a)(3) is also imposed on the ultimate consumer.

(d) A person who sells diesel fuel in this state on which tax has not been paid for any purpose other than a purpose exempt under Section 162.204 shall at the time of sale collect the tax from the purchaser or recipient of diesel fuel in addition to the selling price and is liable to this state for the taxes collected at the time and in the manner provided by this chapter.

(e) The tax liability imposed by this section is in addition to any penalty imposed under this chapter.

Sec. 162.204. EXEMPTIONS. (a) The tax imposed by this subchapter does not apply to:

(1) diesel fuel sold to the United States for its exclusive use, provided that the exemption does not apply to diesel fuel sold or delivered to a person operating under a contract with the United States;

(2) diesel fuel sold to a public school district in this state for the district's exclusive use;

(3) diesel fuel sold to a commercial transportation company or a metropolitan rapid transit authority operating under Chapter 451, Transportation Code, that provides public school transportation services to a school district under Section 34.008, Education Code, and that uses the diesel fuel only to provide those services;

(4) diesel fuel exported by either a licensed supplier or a licensed exporter from this state to any other state, provided that:

(A) 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

(B) 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;

(5) diesel fuel moved by truck or railcar between licensed suppliers or licensed permissive suppliers and in which the diesel fuel removed from the first terminal comes to rest in the second terminal, provided that the removal from the second terminal rack is subject to the tax imposed by this subchapter;

(6) diesel fuel delivered or sold into a storage facility of a licensed aviation fuel dealer from which the diesel fuel will be delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment, or sold from one licensed aviation fuel dealer to another licensed aviation fuel dealer who will

deliver the diesel fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment;

(7) diesel fuel exported to a foreign country if the bill of lading indicates the foreign destination and the fuel is actually exported to the foreign country;

(8) dyed diesel fuel sold or delivered by a supplier to another supplier and dyed diesel fuel sold or delivered by a supplier or distributor into the bulk storage facility of a dyed diesel fuel bonded user or to a purchaser who provides a signed statement as provided by Section 162.206;

(9) the volume of water, fuel ethanol, biodiesel, or mixtures thereof that are blended together with taxable diesel fuel when the finished product sold or used is clearly identified on the retail pump, storage tank, and sales invoice as a combination of diesel fuel and water, fuel ethanol, biodiesel, or mixtures thereof;

(10) dyed diesel fuel sold by a supplier or permissive supplier to a distributor, or by a distributor to another distributor;

(11) dyed diesel fuel delivered by a license holder into the fuel supply tanks of railway engines, motorboats, or refrigeration units or other stationary equipment powered by a separate motor from a separate fuel supply tank;

(12) dyed kerosene when delivered by a supplier, distributor, or importer into a storage facility at a retail business from which all deliveries are exclusively for heating, cooking, lighting, or similar nonhighway use; or

(13) diesel fuel used by a person, other than a political subdivision, who owns, controls, operates, or manages a commercial motor vehicle as defined by Section 548.001, Transportation Code, if the fuel:

(A) is delivered exclusively into the fuel supply tank of the commercial motor vehicle; and

(B) is used exclusively to transport passengers for compensation or hire between points in this state on a fixed route or schedule.

(b) The exemption provided by Subsection (a)(4) does not

apply to diesel fuel that is transported and delivered outside this state in the motor fuel supply tank of a motor vehicle other than an interstate trucker.

(c) If an exporter described by Subsection (a)(4)(B) does not have an exporter's license issued under this subchapter, the supplier must collect the tax imposed under this subchapter.

(d) Subsection (a)(4)(A) applies only if the destination state recognizes, by agreement with this state or by statute or rule, a supplier in this state as a valid taxpayer for the motor fuel being exported to that state from this state. The comptroller shall publish a list that specifies for each state, other than this state, whether that state does or does not qualify under this subsection.

(e) Subsection (a)(4)(B) applies only until the date the destination state recognizes, by agreement with this state or by statute, the out-of-state supplier as a valid taxpayer for the motor fuel being exported to that state from this state, or until January 1, 2006, whichever date is earlier.

(f) The exemption provided by Subsection (a)(4)(A) does not apply to a sale by a distributor.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 931, Sec. 14, eff. July 1, 2007.

Sec. 162.205. PERSONS REQUIRED TO BE LICENSED. (a) A person shall obtain the appropriate license or licenses issued by the comptroller before conducting the activities of:

(1) a supplier, who may also act as a distributor, importer, exporter, blender, motor fuel transporter, or aviation fuel dealer without securing a separate license, but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(2) a permissive supplier, who may also act as a distributor, importer, exporter, blender, motor fuel transporter, or aviation fuel dealer without securing a separate license but who is subject to all other conditions, requirements, and liabilities

imposed on those license holders;

(3) a distributor, who may also act as an importer, exporter, blender, or motor fuel transporter without securing a separate license, but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(4) an importer, who may also act as an exporter, blender, or motor fuel transporter without securing a separate license, but who is subject to all other conditions, requirements, and liabilities imposed on those license holders;

(5) a terminal operator;

(6) an exporter;

(7) a blender;

(8) a motor fuel transporter;

(9) an aviation fuel dealer;

(10) an interstate trucker; or

(11) a dyed diesel fuel bonded user.

(b) A person must obtain a license as a dyed diesel fuel bonded user to purchase dyed diesel fuel in amounts that exceed the limitations prescribed by Section 162.206(c). This subsection does not affect the right of a purchaser to purchase not more than 10,000 gallons of dyed diesel fuel each month for the purchaser's own use using a signed statement under Section 162.206.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.206. STATEMENT FOR PURCHASE OF DYED DIESEL FUEL.

(a) The first removal of diesel fuel from a terminal in this state is taxable, except the sale of dyed diesel fuel may be made without collecting the tax if the purchaser furnishes to a licensed supplier or distributor a signed statement that includes an end user number issued by the comptroller. A person who wants to use a signed statement to purchase dyed diesel fuel must apply to the comptroller for an end user number to be used in conjunction with a signed statement. A licensed supplier or distributor may not make a tax-free sale of any diesel fuel to a purchaser using a signed statement unless the purchaser has an end user number issued by the comptroller under this section. A taxable sale or removal of dyed diesel fuel may not be made under this chapter, except as prescribed

by Subsection (d).

(b) A sale of dyed diesel fuel may be made without collecting the tax if the purchaser furnishes to a licensed supplier or distributor a signed statement, including an end user number issued by the comptroller, that stipulates that:

(1) all of the dyed diesel fuel purchased on the signed statement will be consumed by the purchaser and will not be resold; and

(2) none of the dyed diesel fuel purchased on the signed statement will be delivered or permitted to be delivered into the fuel supply tank of a motor vehicle operated on the public highways of this state.

(c) A person may not make a tax-free purchase and a licensed supplier or distributor may not make a tax-free sale to a purchaser of any dyed diesel fuel under this section using a signed statement:

(1) for the purchase or the sale of more than 7,400 gallons of dyed diesel fuel in a single delivery; or

(2) in a calendar month in which the person has previously purchased from all sources or in which the licensed supplier has previously sold to that purchaser more than:

(A) 10,000 gallons of dyed diesel fuel;

(B) 25,000 gallons of dyed diesel fuel if the purchaser stipulates in the signed statement that all of the fuel will be consumed by the purchaser in the original production of, or to increase the production of, oil or gas and furnishes the supplier with a letter of exception issued by the comptroller; or

(C) 25,000 gallons of dyed diesel fuel if the purchaser stipulates in the signed statement that all of the fuel will be consumed by the purchaser in agricultural off-highway equipment.

(d) Any gallons purchased or sold in excess of the limitations prescribed by Subsection (c) constitute a taxable purchase or sale. The purchaser paying the tax on dyed diesel fuel in excess of the limitations prescribed by Subsection (c) may claim a refund of the tax paid on any dyed diesel fuel used for nonhighway purposes under Section 162.227. A purchaser that exceeds the limitations prescribed by Subsection (c) shall be required to

obtain a dyed diesel fuel bonded user license.

(e) The signed statement and end user number from the purchaser relieves the licensed supplier or distributor from the burden of proof that the sale of dyed diesel fuel for a nonhighway purpose was not taxable to the purchaser and remains in effect unless:

(1) the statement is revoked in writing by the purchaser or licensed supplier or distributor;

(2) the comptroller notifies the licensed supplier or distributor in writing that the purchaser may no longer make tax-free purchases; or

(3) the licensed supplier or distributor is put on notice by making taxable sales of dyed diesel fuel to a purchaser who has previously furnished a signed statement to the licensed supplier or distributor.

(f) For purposes of Subsection (e)(3), a licensed supplier or distributor is not put on notice when taxable sales of dyed diesel fuel are made in accordance with Subsection (d).

(g) The statement must be signed by the purchaser or the purchaser's representative.

(h) The comptroller by rule may allow separate operating divisions of a corporation to give separate signed statements as if the divisions were different legal entities.

(i) The comptroller may adopt necessary forms and rules to administer and enforce this section.

(j) A taxable use of any part of the dyed diesel fuel purchased under a signed statement shall, in addition to application of any criminal penalty, forfeit the right of the person to purchase dyed diesel fuel tax-free for a period of one year from the date of the offense. Any tax, interest, and penalty found to be due through false or erroneous execution or continuance of a promissory statement by the purchaser, if assessed to the licensed supplier or distributor, is a debt of the purchaser to the licensed supplier or distributor until paid and is recoverable at law in the same manner as the purchase price of the fuel. The person may, however, claim a refund of the tax paid on any dyed diesel fuel used for nonhighway purposes under Section 162.227.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.207. TRIP PERMITS. (a) Instead of an annual interstate trucker's license, a person bringing a motor vehicle described by Section 162.001(36) into this state for commercial purposes may obtain a trip permit. The trip permit must be obtained before or at the time of entry into this state.

(b) Not more than five trip permits for each person may be issued during a calendar year.

(c) A fee for each trip permit shall be collected from the applicant and shall be in the amount of \$50 for each vehicle for each trip.

(d) A report is not required with respect to the vehicle.

(e) Operating a motor vehicle without a valid interstate trucker's license or trip permit may subject the operator to a penalty under Section 162.402.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.208. PERMISSIVE SUPPLIER REQUIREMENTS ON OUT-OF-STATE REMOVALS. (a) A person may elect to obtain a permissive supplier license to collect the tax imposed under this subchapter for diesel fuel that is removed at a terminal in another state and has this state as the destination state.

(b) With respect to diesel fuel that is removed by the licensed permissive supplier at a terminal located in another state and that has this state as the destination state, a licensed permissive supplier shall:

(1) collect the tax due to this state on the diesel fuel;

(2) waive any defense that this state lacks jurisdiction to require the supplier to collect the tax due to this state on the diesel fuel under this subchapter;

(3) report and pay the tax due on the diesel fuel in the same manner as if the removal had occurred at a terminal located in this state;

(4) keep records of the removal of the diesel fuel and submit to audits concerning the diesel fuel as if the removal had

occurred at a terminal located in this state; and

(5) report sales by the permissive supplier to a person who is not licensed in this state.

(c) A permissive supplier must acknowledge in the supplier's license application that this state imposes the requirements listed in Subsection (b) under this state's general police power and that the permissive supplier submits to the jurisdiction of this state only for purposes related to the administration of this chapter.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.209. LICENSE APPLICATION PROCEDURE. (a) To obtain a license under this subchapter, an applicant shall file an application using a form adopted by the comptroller. The application must contain:

(1) the name under which the applicant transacts or intends to transact business;

(2) the applicant's principal office, residence, place of business in this state, or other location of the applicant;

(3) if the applicant is not an individual, the names of the principal officers of an applicant corporation, or the names of the members of an applicant partnership, and the office, street, or post office addresses of each; and

(4) other information required by the comptroller.

(b) An applicant for a license as a supplier, permissive supplier, or terminal operator must have a federal certificate of registry issued under 26 U.S.C. Section 4101 that authorizes the applicant to enter into federal tax-free transactions of diesel fuel in the bulk terminal/transfer system. An applicant that is required to have a federal certificate of registry must include the registration number of the certificate on the application for a license. An applicant for a license as an importer, exporter, or distributor who has a federal certificate of registry issued under 26 U.S.C. Section 4101 must include the registration number of the certificate on the application for a license.

(c) An applicant for a license as an importer or distributor must list on the application each state from which the applicant

intends to import diesel fuel and, if required by a listed state, must be licensed or registered for diesel fuel tax purposes in that state. If a listed state requires the applicant to be licensed or registered, the applicant must provide the applicant's license or registration number from that state.

(d) An applicant for a license as an exporter must designate an agent located in this state for service of process and provide the agent's name and address. An applicant for a license as an exporter or distributor must list on the application each state to which the applicant intends to export diesel fuel received in this state by means of a transfer that is outside the bulk terminal/transfer system and must be licensed or registered for diesel fuel tax purposes in that state. The applicant must provide the applicant's license or registration number from that state.

(e) An applicant for a license as a motor fuel transporter must list on the application each state from which and to which the applicant intends to transport motor fuel and, if required by a listed state, must be licensed or registered for diesel fuel tax purposes in that state. If a listed state requires the applicant to be licensed or registered, the applicant must provide the applicant's license or registration number from that state.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.210. ISSUANCE AND DISPLAY OF LICENSE. (a) If the comptroller approves a license application, the comptroller shall issue a license to the applicant. A license must be posted in a conspicuous place or kept available for inspection at the principal place of business of the license holder. A copy of the license must be kept at each place of business or other place of storage from which diesel fuel is sold, distributed, or used, and in each motor vehicle used by the license holder to transport diesel fuel purchased by the license holder for resale, distribution, or use.

(b) A person holding an interstate trucker's license shall reproduce the license and carry a photocopy with each motor vehicle being operated into or from this state.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.211. LICENSES AND TRIP PERMITS; PERIODS OF VALIDITY. (a) The license issued to a supplier, permissive supplier, distributor, importer, terminal supplier, exporter, blender, motor fuel transporter, or dyed diesel fuel bonded user is permanent and is valid during the period the license holder has in force and effect the required bond or security and furnishes timely reports and supplements as required, or until the license is surrendered by the holder or canceled by the comptroller. The comptroller shall cancel a license under this subsection if a purchase, sale, or use of diesel fuel has not been reported by the license holder during the previous nine months.

(b) The license issued to an aviation fuel dealer is permanent and is valid until the license is surrendered by the holder or canceled by the comptroller.

(c) The license issued to an interstate trucker is valid from the date of its issuance through December 31 of each calendar year or until the license is surrendered by the holder or canceled by the comptroller. The comptroller may renew the license for each ensuing calendar year if the license holder furnishes timely reports as required.

(d) A trip permit is valid for the period stated on the permit as determined by the comptroller.

(e) A license issued under this subchapter is not transferable.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.212. BOND AND OTHER SECURITY FOR TAXES. (a) The comptroller shall determine the amount of security required of a supplier, permissive supplier, distributor, exporter, importer, blender, or dyed diesel fuel bonded user, taking into consideration the amount of tax that has or is expected to become due from the person, any past history of the person as a license holder under this chapter and its predecessor, and the necessity to protect this state against the failure to pay the tax as the tax becomes due.

(b) If it is determined that the posting of security is necessary to protect this state, the comptroller may require a license holder to post a bond. A license holder shall post a bond

equal to two times the maximum amount of tax that could accrue on tax-free diesel fuel purchased or acquired during a reporting period. The minimum bond is \$30,000, except that for a dyed diesel fuel bonded user the minimum bond is \$10,000. The maximum bond is \$600,000 unless the comptroller believes there is undue risk of loss of tax revenues, in which event the comptroller may require one or more bonds or securities in a total amount exceeding \$600,000.

(c) A license holder who has filed a bond or other security under this subchapter is entitled, on request, to have the comptroller return, refund, or release the bond or security if in the judgment of the comptroller the person has for four consecutive years continuously complied with the conditions of the bond or other security filed under this subchapter. However, if the comptroller determines that the revenues of this state would be jeopardized by the return, refund, or release of the bond or security, the comptroller may elect not to return, refund, or release the bond or security and may reimpose a requirement of a bond or other security as the comptroller determines necessary to protect the revenues of this state.

(d) A bond must be a continuing instrument, must constitute a new and separate obligation in the penal sum named in the bond for each calendar year or portion of a year while the bond is in force, and must remain in effect until the surety on the bond is released and discharged.

(e) Instead of filing a surety bond, an applicant for a license may substitute the following security:

(1) cash in the form of United States currency in an amount equal to the required bond to be deposited in the suspense account of the state treasury;

(2) an assignment to the comptroller of a certificate of deposit in any bank or savings and loan association in this state that is a member of the Federal Deposit Insurance Corporation in an amount at least equal to the bond amount required; or

(3) an irrevocable letter of credit to the comptroller from any bank or savings and loan association in this state that is a member of the Federal Deposit Insurance Corporation in an amount of credit at least equal to the bond amount required.

(f) If the amount of an existing bond becomes insufficient or a security becomes unsatisfactory or unacceptable, the comptroller may require the filing of a new or additional bond or security.

(g) A surety bond or other form of security may not be released until it is determined by examination or audit that a tax, penalty, or interest liability does not exist. The cash or securities shall be released within 60 days after the comptroller determines that liability does not exist.

(h) The comptroller may use the cash or certificate of deposit security to satisfy a final determination of delinquent liability or a judgment secured in any action by this state to recover diesel fuel taxes, costs, penalties, and interest found to be due to this state by a person in whose behalf the cash or certificate security was deposited.

(i) A surety on a bond furnished by a license holder shall be released and discharged from liability to this state accruing on the bond on the 31st day after the date the surety files with the comptroller a written request to be released and discharged. The request does not relieve, release, or discharge the surety from a liability already accrued, or that accrues before the expiration of the 30-day period. The comptroller, promptly on receipt of the request, shall notify the license holder who furnished the bond, and unless the license holder, before the expiration date of the existing security, files with the comptroller a new bond with a surety company duly authorized to do business under the laws of this state, or other authorized security, in the amount required in this section, the comptroller shall cancel the license in the manner provided by this chapter.

(j) The comptroller shall notify immediately the issuer of a letter of credit of a final determination of the license holder's delinquent liability or a judgment secured in any action by this state to recover diesel fuel taxes, costs, penalties, and interest found to be due this state by a license holder in whose behalf the letter of credit was issued. The letter of credit allowed as security for the remittance of taxes under this subchapter shall contain a statement that the issuer agrees to respond to the

comptroller's notice of liability with amounts to satisfy the comptroller's delinquency claim against the license holder.

(k) A license holder may request an examination or audit to obtain release of the security when the license holder relinquishes the license or when the license holder wants to substitute one form of security for an existing one.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.213. LICENSE HOLDER STATUS LIST. (a) The comptroller, on or before December 20 of each year, shall make available to all license holders an alphabetical list of licensed suppliers, permissive suppliers, distributors, aviation fuel dealers, importers, exporters, blenders, terminal operators, and dyed diesel fuel bonded users. A supplemental list of additions and deletions shall be made available to the license holders each month. A current and effective license or the list furnished by the comptroller is evidence of the validity of the license until the comptroller notifies license holders of a change in the status of a license holder.

(b) A licensed supplier or permissive supplier who sells diesel fuel tax-free to a supplier or permissive supplier whose license has been canceled or revoked under this chapter, or who sells dyed diesel fuel to a dyed diesel fuel bonded user whose license has been canceled or revoked under this chapter, is liable for any tax due on diesel fuel sold after receiving notice of the cancellation or revocation.

(c) The comptroller shall notify all license holders under this chapter when a canceled or revoked license is subsequently reinstated and include in the notice the effective date of the reinstatement. Sales to a supplier, permissive supplier, distributor, or dyed diesel fuel bonded user after the effective date of the reinstatement may be made tax-free.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.214. REMITTANCE OF TAX TO SUPPLIER OR PERMISSIVE SUPPLIER; ALLOWANCES. (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 before the date the supplier or permissive supplier is required to remit the tax to this state. The distributor or importer shall pay the taxes by electronic funds transfer.

(b) A supplier, a permissive supplier, or its representative that conducts electronic transactions to draft an account of a licensed distributor or licensed importer for the payment of taxes due under this section shall provide at least two days' notice using an electronic means of the amount to be drafted from the account of the licensed distributor or licensed importer and the number of the account to be drafted from.

(c) If the supplier or permissive supplier cannot secure from the licensed distributor or licensed importer payment of taxes due for diesel fuel removed from the terminal during the previous reporting period and the supplier elects to take a credit against a subsequent payment of diesel fuel tax to this 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.

(d) The supplier or permissive supplier has the right, after notifying the comptroller of the licensed distributor's or licensed importer's failure to remit taxes under this section, to terminate the ability of the licensed distributor or licensed importer to defer the payment of diesel fuel tax. The supplier or permissive supplier shall reinstate without delay the right of the licensed distributor or licensed importer to defer the payment of diesel fuel tax after the comptroller provides to the supplier or permissive supplier notice that the licensed distributor or licensed importer is in good standing with the comptroller for the purposes of diesel fuel tax imposed under this subchapter.

(e) A licensed distributor or licensed importer who makes timely payments of the diesel fuel tax imposed under this

subchapter is entitled to retain an amount equal to 1.75 percent of the total taxes to be paid to the supplier or permissive supplier to cover administrative expenses.

(f) The license of a distributor, exporter, or importer who fails to pay the full amount of tax required by this subchapter is subject to cancellation as provided by Section 162.005.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.215. RETURNS AND PAYMENTS. (a) Except as provided by Subsection (b), each person who is liable for the tax imposed by this subchapter, a terminal operator, and a licensed distributor shall file a return on or before the 25th day of the month following the end of each calendar month.

(b) A motor fuel transporter, interstate trucker, and dyed diesel fuel bonded user shall file a return on or before the 25th day of the month following the end of the calendar quarter.

(c) The return required by this section shall be accompanied by a payment for the amount of tax reported due.

(d) An aviation fuel dealer is not required to file a return.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.216. RECORDS. (a) A supplier and permissive supplier shall keep:

(1) a record showing the number of gallons of:

(A) all diesel fuel inventories on hand at the first of each month;

(B) all diesel fuel refined, compounded, or blended;

(C) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) all diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and

(E) all diesel fuel lost by fire, theft, or accident; and

(2) an itemized statement showing by load the number of gallons of all diesel fuel:

(A) received during the preceding calendar month for export and the location of the loading;

(B) exported from this state by destination state or country; and

(C) imported during the preceding calendar month, by state or country of origin.

(b) A distributor shall keep:

(1) a record showing the number of gallons of:

(A) all diesel fuel inventories on hand at the first of each month;

(B) all diesel fuel blended;

(C) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) all diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and

(E) all diesel fuel lost by fire, theft, or accident;

(2) an itemized statement showing by load the number of gallons of all diesel fuel:

(A) received during the preceding calendar month for export and the location of the loading;

(B) exported from this state by destination state or country; and

(C) imported during the preceding calendar month, by state or country of origin; and

(3) for diesel fuel exported outside this state, proof of payment of tax to the destination state, in a form acceptable to the comptroller.

(c) An importer shall keep:

(1) a record showing the number of gallons of:

(A) all diesel fuel inventories on hand at the first of each month;

(B) all diesel fuel compounded or blended;

(C) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) all diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and

(E) all diesel fuel lost by fire, theft, or accident; and

(2) an itemized statement showing by load the number of gallons of all diesel fuel:

(A) received during the preceding calendar month for export and the location of the loading;

(B) exported from this state, by destination state or country; and

(C) imported during the preceding calendar month, by state or country of origin.

(d) An exporter shall keep:

(1) a record showing the number of gallons of:

(A) all diesel fuel inventories on hand at the first of each month;

(B) all diesel fuel compounded or blended;

(C) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(D) all diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale or use; and

(E) all diesel fuel lost by fire, theft, or accident;

(2) an itemized statement showing by load the number of gallons of all diesel fuel:

(A) received during the preceding calendar month for export and the location of the loading; and

(B) exported from this state, by destination state or country;

(3) proof of payment of tax to the destination state in a form acceptable to the comptroller; and

(4) if an exemption under Section 162.204(a)(4)(B) is claimed, proof of payment of tax to the destination state or proof that the transaction was exempt in the destination state, in a form acceptable to the comptroller.

(e) A blender shall keep a record showing the number of gallons of:

(1) all diesel fuel inventories on hand at the first of each month;

(2) all diesel fuel compounded or blended;

(3) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

(4) all diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and

(5) all diesel fuel lost by fire, theft, or accident.

(f) A terminal operator shall keep:

(1) a record showing the number of gallons of:

(A) all diesel fuel inventories on hand at the first of each month, including the name and license number of each owner and the amount of diesel fuel held for each owner;

(B) all diesel fuel received, showing the name of the seller and the date of each purchase or receipt;

(C) all diesel fuel sold, distributed, or used, showing the name of the purchaser and the date of the sale, distribution, or use; and

(D) all diesel fuel lost by fire, theft, or accident; and

(2) an itemized statement showing by load the number of gallons of all diesel fuel:

(A) received during the preceding calendar month for export and the location of the loading;

(B) exported from this state, by destination state or country; and

(C) imported during the preceding calendar month, by state or country of origin.

(g) A motor fuel transporter shall keep a complete and separate record of each intrastate and interstate transportation of

diesel fuel, showing:

- (1) the date of transportation;
- (2) the name of the consignor and consignee;
- (3) the method of transportation;
- (4) the quantity and kind of diesel fuel transported;
- (5) full data concerning the diversion of shipments, including the number of gallons diverted from interstate to intrastate and intrastate to interstate commerce; and
- (6) the points of origin and destination, the number of gallons shipped or transported, the date, the consignee and the consignor, and the kind of diesel fuel that has been diverted.

(h) A dealer shall keep a record showing the number of gallons of:

- (1) diesel fuel inventories on hand at the first of each month;
- (2) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;
- (3) all diesel fuel sold or used, showing the date of the sale or use; and
- (4) all diesel fuel lost by fire, theft, or accident.

(i) An interstate trucker shall keep a record of:

- (1) the total miles traveled in all states by all vehicles traveling into or from this state and the total quantity of diesel fuel consumed in those vehicles; and
- (2) the total miles traveled in this state and the total quantity of diesel fuel purchased and delivered into the fuel supply tanks of motor vehicles in this state.

(j) An aviation fuel dealer shall keep a record showing the number of gallons of:

- (1) all diesel fuel inventories on hand at the first of each month;
- (2) all diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;
- (3) all diesel fuel sold or used in aircraft or aircraft servicing equipment; and
- (4) all diesel fuel lost by fire, theft, or accident.

(k) The records of an aviation fuel dealer made under

Subsection (j)(3) must show:

- (1) the name of the purchaser or user of diesel fuel;
- (2) the date of the sale or use of diesel fuel; and
- (3) the registration or "N" number of the airplane or a description or number of the aircraft or a description or number of the aircraft servicing equipment in which diesel fuel is used.

(1) A dyed diesel fuel bonded user shall keep a record showing the number of gallons of:

- (1) dyed and undyed diesel fuel inventories on hand at the first of each month;

- (2) dyed and undyed diesel fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;

- (3) dyed and undyed diesel fuel delivered into the fuel supply tanks of motor vehicles;

- (4) dyed and undyed diesel fuel used in off-highway equipment or for other nonhighway purposes; and

- (5) dyed and undyed diesel fuel lost by fire, theft, or accident.

(m) The comptroller may require selective schedules from a supplier, permissive supplier, distributor, importer, exporter, blender, terminal operator, motor fuel transporter, dealer, aviation fuel dealer, dyed diesel fuel bonded user, and interstate trucker for any purchase, sale, or delivery of diesel fuel if the schedules are not inconsistent with the requirements of this chapter.

(n) The records required by this section must be kept until the fourth anniversary of the date they are created and are open to inspection at all times by the comptroller and the attorney general.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.217. INFORMATION REQUIRED ON SUPPLIER'S AND PERMISSIVE SUPPLIER'S RETURN; CREDITS AND ALLOWANCES. (a) The monthly return and supplements of each supplier and permissive supplier shall contain for the period covered by the return:

- (1) the number of net gallons of diesel fuel received

by the supplier or permissive supplier during the month, sorted by product code, seller, point of origin, destination state, carrier, and receipt date;

(2) the number of net gallons of diesel fuel removed at a terminal rack during the month from the account of the supplier, sorted by product code, person receiving the diesel fuel, terminal code, and carrier;

(3) the number of net gallons of diesel fuel removed during the month for export, sorted by product code, person receiving the diesel fuel, terminal code, destination state, and carrier;

(4) the number of net gallons of diesel fuel removed during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the diesel fuel, sorted by product code, person receiving the diesel fuel, terminal code, and carrier;

(5) the number of net gallons of diesel fuel the supplier or permissive supplier sold during the month in transactions exempt under Section 162.204, sorted by product code, carrier, purchaser, and terminal code;

(6) the number of net gallons of diesel fuel sold in the bulk transfer/terminal system in this state to any person not holding a supplier's or permissive supplier's license; and

(7) any other information required by the comptroller.

(b) A supplier or permissive supplier that timely pays the tax to this state may deduct from the amount of tax due a collection allowance equal to two percent of the amount of tax payable to this state.

(c) A supplier or permissive supplier may take a credit for any taxes that were not remitted in a previous period to the supplier or permissive supplier by a licensed distributor or licensed importer as required by Section 162.214. The supplier or permissive supplier is eligible to take this credit if the comptroller is notified of the default within 60 days after the default occurs. If a license holder pays to a supplier or permissive supplier the tax owed, but the payment occurs after the supplier or permissive supplier has taken a credit on its return,

the supplier or permissive supplier shall remit the payment to the comptroller with the next monthly return after receipt of the tax, plus a penalty of 10 percent of the amount of unpaid taxes and interest at the rate provided by Section 111.060 beginning on the date the credit is taken.

(d) For the purpose of Subsection (c), 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.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.218. DUTIES OF SUPPLIER OR PERMISSIVE SUPPLIER.

(a) A supplier or permissive supplier who receives or collects tax holds the amount received or collected in trust for the benefit of this state and has a fiduciary duty to remit to the comptroller the amount of tax received or collected.

(b) A supplier or permissive supplier shall furnish the purchaser with an invoice, bill of lading, or other documentation as evidence of the number of gallons received by the purchaser.

(c) A supplier or permissive supplier who receives a payment of tax may not apply the payment of tax to a debt that the person making the payment owes for diesel fuel purchased from the supplier or permissive supplier.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.219. INFORMATION REQUIRED ON DISTRIBUTOR'S RETURN. The monthly return and supplements of each distributor shall contain for the period covered by the return:

(1) the number of net gallons of diesel fuel received by the distributor during the month, sorted by product code, seller, point of origin, destination state, carrier, and receipt date;

(2) the number of net gallons of diesel fuel removed at a terminal rack by the distributor during the month, sorted by product code, seller, terminal code, and carrier;

(3) the number of net gallons of diesel fuel removed by

the distributor during the month for export, sorted by product code, terminal code, bulk plant address, destination state, and carrier;

(4) the number of net gallons of diesel fuel removed by the distributor during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document for the diesel fuel, sorted by product code, seller, terminal code, bulk plant address, and carrier;

(5) the number of net gallons of diesel fuel the distributor sold during the month in transactions exempt under Section 162.204, dyed diesel fuel sold to a purchaser under a signed statement, or dyed diesel fuel sold to a dyed diesel fuel bonded user, sorted by product code and by the entity receiving the diesel fuel; and

(6) any other information required by the comptroller.
Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.220. INFORMATION REQUIRED ON IMPORTER'S RETURN; ALLOWANCES. (a) The monthly return and supplements of an importer shall contain for the period covered by the return:

(1) the number of net gallons of imported diesel fuel acquired from a supplier or permissive supplier who collected the tax due this state on the diesel fuel;

(2) the number of net gallons of imported diesel fuel acquired from a person who did not collect the tax due to this state on the diesel fuel, listed by product code, source state, person, and terminal;

(3) the number of net gallons of imported diesel fuel acquired from a bulk plant outside this state, listed by bulk plant name, address, and product code; and

(4) any other information required by the comptroller.

(b) An importer of diesel fuel that timely files a return and payment may deduct from the amount of tax payable with the return a collection allowance equal to two percent of the amount of tax payable to this state.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.221. INFORMATION REQUIRED ON TERMINAL OPERATOR'S RETURN. (a) A terminal operator shall file with the comptroller a monthly information return and supplement showing the amount of diesel fuel received and removed from the terminal during the month. The return also shall contain the following summary information:

(1) the beginning and ending inventory that relates to the applicable reporting month;

(2) the number of net gallons of diesel fuel received in inventory at the terminal during the month;

(3) the number of net gallons of diesel fuel removed from inventory at the terminal during the month; and

(4) any other summary information required by the comptroller.

(b) The comptroller may accept the Federal ExSTARS terminal operator report provided to the Internal Revenue Service instead of the required state terminal operator report.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.222. INFORMATION REQUIRED ON MOTOR FUEL TRANSPORTER'S RETURN. The quarterly return and supplements of a motor fuel transporter shall contain for the period covered by the return:

(1) the name, license number, and terminal control number of each person or terminal from whom the transporter received diesel fuel outside this state for delivery in this state, the gross gallons of diesel fuel received, the date the diesel fuel was received, the product code, and the name and license number of the purchaser of the diesel fuel;

(2) the name, license number, and terminal control number of each person or terminal from whom the transporter received diesel fuel in this state for delivery outside this state, the gross gallons of diesel fuel delivered, the date the diesel fuel was delivered, the product code, and the destination state of the diesel fuel; and

(3) any other information required by the comptroller.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.223. INFORMATION REQUIRED ON EXPORTER'S RETURN AND PAYMENT OF TAX ON IMPORTS. The monthly return and supplements of an exporter shall contain for the period covered by the return:

(1) the number of net gallons of diesel fuel acquired from a supplier and exported during the month, including supplier name, terminal control number, and product code;

(2) the number of net gallons of diesel fuel acquired from a bulk plant and exported during the month, including bulk plant name and product code;

(3) the destination state of the diesel fuel exported during the month; and

(4) any other information the comptroller requires.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.224. INFORMATION REQUIRED ON BLENDER'S RETURN. The monthly return and supplements of each blender shall contain for the period covered by the return:

(1) the number of net gallons of diesel fuel received by the blender during the month, sorted by product code, seller, point of origin, carrier, and receipt date;

(2) the number of net gallons of product blended with diesel fuel during the month, sorted by product code, type of blending agent if no product code exists, seller, and carrier;

(3) the number of net gallons of blended diesel fuel sold during the month and the license number or name and address of the entity receiving the blended diesel fuel; and

(4) any other information required by the comptroller.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.225. INFORMATION REQUIRED ON INTERSTATE TRUCKER'S RETURN. The quarterly return and supplements of each interstate trucker shall contain for the period covered by the return:

(1) the total miles traveled in all states by all vehicles traveling into or from this state and the total quantity of diesel fuel consumed in those vehicles;

(2) the total miles traveled in this state and the

total quantity of diesel fuel purchased and delivered into the fuel supply tanks of motor vehicles in this state; and

(3) any other information required by the comptroller.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.226. INFORMATION REQUIRED ON DYED DIESEL FUEL BONDED USER'S RETURN. The quarterly return and supplements of each dyed diesel fuel bonded user shall contain for the period covered by the return:

(1) the number of net gallons of tax-free dyed diesel fuel received by the dyed diesel fuel bonded user during the quarter, sorted by product code and receipt date;

(2) the number of net gallons of dyed diesel fuel used by the dyed diesel fuel bonded user during the quarter, sorted by product code; and

(3) any other information required by the comptroller.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.227. REFUND OR CREDIT FOR CERTAIN TAXES PAID.

(a) A license holder may take a credit on a return for the period in which the sale occurred if the license holder paid tax on the purchase of diesel fuel and subsequently resells the diesel fuel without collecting the tax to:

(1) the United States government for its exclusive use, provided that a credit is not allowed for gasoline used by a person operating under a contract with the United States;

(2) a public school district in this state for the district's exclusive use;

(3) an exporter licensed under this subchapter if the seller is a licensed supplier or distributor and the exporter subsequently exports the diesel fuel to another state;

(4) a licensed aviation fuel dealer if the seller is a licensed distributor; or

(5) a commercial transportation company or a metropolitan rapid transit authority operating under Chapter 451, Transportation Code, that provides public school transportation services to a school district under Section 34.008, Education Code,

and that uses the diesel fuel exclusively to provide those services.

(b) For truck or railcar movements between licensed suppliers or licensed permissive suppliers in which the diesel fuel removed from the first terminal comes to rest in the second terminal and tax was paid on the first removal, the license holder who receives the diesel fuel in the second terminal may take the credit.

(c) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license under this subchapter, other than a license as an aviation fuel dealer, may file a refund claim with the comptroller if the license holder or person paid tax on diesel fuel and the license holder or person:

(1) is the United States government and the diesel fuel is for its exclusive use, provided that a credit or refund is not allowed for diesel fuel used by a license holder or person operating under a contract with the United States;

(2) is a public school district in this state and the diesel fuel is for the district's exclusive use;

(3) is a commercial transportation company that provides public school transportation services to a school district under Section 34.008, Education Code, and the diesel fuel is used exclusively to provide those services; or

(4) is a licensed aviation fuel dealer who delivers the diesel fuel into the fuel supply tanks of aircraft or aircraft servicing equipment.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 220,
Sec. 1

(c-1) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license under this subchapter may file a refund claim with the comptroller, if the license holder or person paid tax on diesel fuel and the diesel fuel is used in this state:

(1) as a feedstock in the manufacturing of tangible personal property for resale not as a motor fuel; or

(2) in a medium for the removal of drill cuttings from a well bore in the production of oil or gas.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 911,
Sec. 3

(c-1) A license holder may take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license may file a refund claim with the comptroller, if:

(1) the license holder or person paid tax on diesel fuel;

(2) the diesel fuel is used in this state by movable specialized equipment used in oil field well servicing; and

(3) the person who purchased the diesel fuel has received or is eligible to receive a federal diesel fuel tax refund under the Internal Revenue Code of 1986 for the diesel fuel used by movable specialized equipment used in oil field well servicing.

(d) A license holder may take a credit on a return for the period in which the purchase occurred if the license holder paid tax on the diesel fuel and the license holder is a licensed interstate trucker who uses the diesel fuel outside this state in commercial vehicles operated under an interstate trucker license, provided that a credit or refund claimed under this subdivision must be taken or filed within the limitations period as provided by Section 162.230.

(e) A person who paid tax on the purchase of diesel fuel may claim a credit or seek a refund with the comptroller if 100 or more gallons of diesel fuel is subsequently exported or lost by fire, theft, or accident. A credit or refund claimed under this subsection must be taken or filed within the limitations period provided by Section 162.230.

(f) A 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.

(g) The right to receive a refund or take a credit under this section is not assignable.

(h) The comptroller may adopt rules specifying procedures

and requirements that must be followed to claim a credit or refund under this section.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 220, Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 911, Sec. 3(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 931, Sec. 15, eff. July 1, 2007.

Sec. 162.2275. REFUND FOR CERTAIN METROPOLITAN RAPID TRANSIT AUTHORITIES. (a) Except as otherwise provided by this section, a metropolitan rapid transit authority operating under Chapter 451, Transportation Code, that is a party to a contract governed by Section 34.008, Education Code, is entitled to a refund of taxes paid under this subchapter for diesel fuel used to provide services under the contract and may file a refund claim with the comptroller for the amount of those taxes.

(b) The refund claim under Subsection (a) must contain information regarding:

- (1) vehicle mileage;
- (2) hours of service provided;
- (3) fuel consumed;
- (4) the total number of student passengers per route;

and

(5) the total number of non-student passengers per route.

(c) If in any month of a school year the number of non-student passengers is greater than five percent of the total passengers for any single route under a contract governed by Section 34.008, Education Code, the metropolitan rapid transit authority is not entitled to a refund of taxes paid under this subchapter for the route for that month.

(d) A metropolitan rapid transit authority that requests a refund under this section shall maintain all supporting documentation relating to the refund until the sixth anniversary of

the date of the request.

Added by Acts 2007, 80th Leg., R.S., Ch. 931, Sec. 16, eff. July 1, 2007.

Sec. 162.228. REFUND FOR BAD DEBTS; CREDIT FOR NONPAYMENT. (a) A licensed distributor may file a refund claim with the comptroller if:

(1) the distributor has paid the taxes imposed by this subchapter on diesel fuel sold on account;

(2) the distributor determines that the account is uncollectible and worthless; and

(3) the account is written off as a bad debt on the accounting books of the distributor.

(b) A licensed supplier or permissive supplier may take a credit on the monthly report to be filed with the comptroller if:

(1) on a previous report, the supplier or permissive supplier paid the taxes imposed by this subchapter on diesel fuel sold on account;

(2) the person to whom the supplier or permissive supplier sold the diesel fuel has not remitted the tax to the supplier or permissive supplier; and

(3) at the time of the transaction, the person to whom the supplier or permissive supplier sold the diesel fuel held a license issued by the comptroller.

(c) The return on which the refund is claimed or the credit is taken must state, if applicable, the license number of the person whose account has been written off as a bad debt, or who failed to remit the tax, and any other information required by the comptroller. The amount of the refund or credit that may be claimed under Subsection (a) or (b) may equal but may not exceed the amount of taxes paid on the diesel fuel to which the written-off account or unpaid taxes apply.

(d) If, after a refund is received under Subsection (a) or a credit is taken under Subsection (b), the account on which the refund or credit was based is paid, or if the comptroller otherwise determines that the refund or credit was not authorized by Subsection (a) or (b), the unpaid taxes shall be paid by the

distributor receiving the refund or the supplier or permissive supplier taking the credit, plus a penalty of 10 percent of the amount of the unpaid taxes and interest at the rate provided by Section 111.060 beginning on the day the refund was issued.

(e) This section does not apply to a sale of diesel fuel that is delivered into the fuel supply tank of a motor vehicle or motorboat and for which payment is made through the use and acceptance of a credit card.

(f) A refund under this section must be claimed at the time the account is written off as a bad debt, but may only be claimed before the expiration of the applicable limitation period as provided by Chapter 111.

(g) The comptroller may take action against a person in relation to whom a distributor, supplier, or permissive supplier has made a refund claim or taken a credit for collection of the tax owed and for penalty and interest as provided by Chapter 111.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.229. CLAIMS FOR REFUNDS. (a) A refund claim must be filed on a form provided by the comptroller, be supported by the original invoice issued by the seller, and contain:

- (1) the stamped or preprinted name and address of the seller;
- (2) the name of the purchaser;
- (3) the date of delivery of the diesel fuel;
- (4) the date of the issuance of the invoice, if different from the date of fuel delivery;
- (5) the number of gallons of diesel fuel delivered;
- (6) the amount of tax, either separately stated from the selling price or stated with a notation that the selling price includes the tax; and
- (7) the type of vehicle or equipment into which the fuel is delivered.

(b) The purchaser must obtain the original invoice from the seller of diesel fuel not later than the 30th day after the date the diesel fuel is delivered to the purchaser. If the delivery of diesel fuel is made through an automated method in which the

purchase is automatically applied to the purchaser's account, one invoice may be issued at the time of billing that covers multiple purchases made during a 30-day billing cycle.

(c) A distribution log filed with the comptroller to support the number of gallons of diesel fuel removed from a bulk user's own bulk storage must contain the name and address of the bulk user making the delivery stamped or preprinted on the log and, for each individual delivery from the bulk storage:

- (1) the date of delivery;
- (2) the number of gallons of diesel fuel delivered;
- (3) the signature of the bulk user; and
- (4) the type or description of off-highway equipment into which the diesel fuel was delivered, or the type of licensed motor vehicle into which the diesel fuel was delivered, including the state highway license plate number or vehicle identification number and odometer or hubmeter reading.

(d) A distributor or person who does not hold a license who files a valid refund claim with the comptroller shall be paid by a warrant issued by the comptroller. For purposes of this section, a distributor meets the requirement of filing a valid refund claim if the distributor designates the gallons of diesel fuel sold or used that are the subject of the refund claim on the monthly report submitted by the distributor to the comptroller.

(e) A person who files a claim for a tax refund on diesel fuel used for a purpose for which a tax refund is not authorized or who files an invoice supporting a refund claim on which the date, figures, or any material information has been falsified or altered forfeits the person's right to the entire amount of the refund claim filed unless the claimant provides proof satisfactory to the comptroller that the incorrect refund claim filed was due to a clerical or mathematical calculation error.

(f) After examination of the refund claim, the comptroller, before issuing a refund warrant, shall deduct from the amount of the refund the two percent deducted originally by the license holder on the first sale or distribution of the diesel fuel.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.230. WHEN DIESEL FUEL TAX REFUND OR CREDIT MAY BE FILED. (a) Except as otherwise provided by this section, a claim for a refund must be filed with the comptroller before the first anniversary of the first day of the calendar month following the purchase, use, delivery, or export, or loss by fire, theft, or accident of diesel fuel, whichever period expires latest.

(b) If the amount of credit that an interstate trucker is entitled to take under Section 162.227 exceeds the amount of tax due on that reporting period, the excess credit amount may be claimed on any of the three successive quarterly returns following the period in which the credit was established or the interstate trucker may file a refund claim with the comptroller on or before the due date of the third successive quarterly return following the period in which the credit was established. A credit that is not claimed within the period prescribed by this subsection expires.

(c) If the comptroller assesses a supplier or permissive supplier for a tax-free sale that is taxable, and the supplier or permissive supplier subsequently collects the tax from the purchaser, the purchaser may file a refund claim before the first anniversary of the date the supplier's or permissive supplier's deficiency assessment becomes final if the purchaser used the diesel fuel in an exempt manner.

(d) A supplier or permissive supplier that determines taxes were erroneously reported and remitted or that paid more taxes than were due to this state because of a mistake of fact or law may take a credit on the monthly tax report on which the error has occurred and tax payment made to the comptroller. The credit must be taken before the expiration of the applicable period of limitation as provided by Chapter 111.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.231. NOTICE REGARDING DYED DIESEL FUEL. A notice stating "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" must be:

- (1) provided by a licensed supplier, permissive supplier, or distributor to a person who receives dyed diesel fuel;
- (2) provided by a seller of dyed diesel fuel to the

person's buyers; and

(3) posted by a seller on a retail pump or bulk plant at which the person sells dyed diesel fuel for use by the person's buyers.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.232. DYED DIESEL FUEL NOTICE REQUIRED ON SHIPPING DOCUMENTS, BILLS OF LADING, AND INVOICES. The form of notice required by Sections 162.231(1) and (2) must be provided when the dyed diesel fuel is removed or sold and must appear on each shipping document, bill of lading, cargo manifest, and invoice accompanying the sale or removal of the dyed diesel fuel.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.233. UNAUTHORIZED SALE OR USE OF DYED DIESEL FUEL. (a) A person may not sell or hold 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.

(b) A person may not use or hold for use dyed diesel fuel for a use other than a nontaxable use if the person knows or has reason to know that the diesel fuel is dyed diesel fuel.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.234. ALTERATION OF DYE OR MARKER IN DYED DIESEL FUEL PROHIBITED. A person, with the intent to evade payment of tax, may not alter or attempt to alter the strength or composition of a dye or marker in dyed diesel fuel.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.235. USE OF DYED FUEL PROHIBITED. (a) A person may not operate 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.

(b) This section does not apply to a use of dyed fuel that is lawful under the Internal Revenue Code and implementing regulations, including use in state and local government vehicles or buses, unless otherwise prohibited by this chapter.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

SUBCHAPTER D. LIQUEFIED GAS TAX

Sec. 162.301. TAX IMPOSED; RATE. (a) A tax is imposed on the use of liquefied gas for the propulsion of motor vehicles on the public highways of this state.

(b) The liquefied gas tax rate is 15 cents a gallon.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.302. PAYMENT OF TAX. (a) A person using a liquefied gas-propelled motor vehicle, including a motor vehicle equipped to use liquefied gas interchangeably with another motor fuel, that is required to be licensed in this state for use on the public highways of this state shall prepay the liquefied gas tax to the comptroller on an annual basis. A person holding a motor vehicle dealer's liquefied gas tax decal or an interstate trucker whose vehicle is registered in this state but may operate in other states under a multistate tax agreement shall pay the tax to a licensed dealer at the time the fuel is delivered into the fuel supply tank of a motor vehicle.

(b) An interstate trucker operating a motor vehicle licensed in a base state other than this state and any other out-of-state user shall pay the excise tax on delivery of the liquefied gas into the fuel supply tanks of a motor vehicle.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.3021. SCHOOL DISTRICT TRANSPORTATION AND COUNTY EXEMPTION. (a) The tax imposed by this subchapter does not apply to the sale of liquefied petroleum gas to a public school district or county in this state or to the use of liquefied petroleum gas by a public school district or county in this state. A motor vehicle that uses liquefied petroleum gas and that is operated by a public school district or county in this state is not required to have a liquefied gas tax decal or a special use liquefied gas tax decal.

(b) Subject to Section 162.3022, the tax imposed by this subchapter does not apply to the sale of liquefied petroleum gas to a commercial transportation company or a metropolitan rapid transit

authority operating under Chapter 451, Transportation Code, that uses the gas exclusively to provide public school transportation services to a school district under Section 34.008, Education Code, or to the use of liquefied petroleum gas by that company for that purpose. A motor vehicle that uses liquefied petroleum gas and that is owned by a commercial transportation company or a metropolitan rapid transit authority operating under Chapter 451, Transportation Code, and used exclusively to provide public school transportation services to a school district under Section 34.008, Education Code, is not required to have a liquefied gas tax decal or a special use liquefied gas tax decal.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 931, Sec. 17, eff. July 1, 2007.

Sec. 162.3022. EXCLUSIVE USE FOR CERTAIN METROPOLITAN RAPID TRANSIT AUTHORITIES. (a) This section applies to a metropolitan rapid transit authority operating under Chapter 451, Transportation Code, that is a party to a contract governed by Section 34.008, Education Code, that is not required under Section 162.3021 to have a liquefied gas tax decal or a special use liquefied gas tax decal for liquefied gas used to provide services under the contract.

(b) If in any month of a school year the number of non-student passengers is greater than five percent of the total passengers for any single route under a contract governed by Section 34.008, Education Code, the metropolitan rapid transit authority is liable for the tax under this subchapter in an amount that is prorated for that month.

(c) The metropolitan rapid transit authority shall maintain the following supporting documentation relating to the services provided under the contract until the sixth anniversary of the date of the services provided:

- (1) vehicle mileage;
- (2) hours of service provided;
- (3) fuel consumed;

(4) the total number of student passengers per route;
and

(5) the total number of non-student passengers per route.

(d) The comptroller may adopt rules to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 931, Sec. 18, eff. July 1, 2007.

Sec. 162.303. LICENSE; APPLICATION; DISPLAY. (a) A dealer who sells taxable liquefied gas, an interstate trucker, a liquefied gas tax decal user, or a motor vehicle dealer's liquefied gas tax decal license holder shall file an application with the comptroller for the kind and class of a nonassignable license required by this subchapter.

(b) An application for a license must be filed on a form provided by the comptroller showing the kind and class of license desired, the odometer reading of a Class A through F motor vehicle, and other information required by the comptroller.

(c) A license shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner. A license holder shall reproduce the license and keep a copy on display at each additional place of business from which liquefied gas is sold, delivered, or used in motor vehicles. A person holding an interstate trucker's license shall reproduce the license and carry a copy with each motor vehicle being operated into or from this state. The liquefied gas tax decal user shall affix the decal in the lower right corner of the front windshield of the passenger side of the vehicle.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.304. DEALER'S LICENSE. A dealer's license authorizes a dealer to collect and remit taxes on liquefied gas delivered into the fuel supply tanks of motor vehicles displaying an out-of-state license plate, the motor vehicle of an interstate trucker licensed under an agreement entered into under Section 162.003, or a motor vehicle displaying a motor vehicle dealer's

liquefied gas tax decal.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.305. LIQUEFIED GAS TAX DECAL LICENSE. (a) A user of liquefied gas for the propulsion of a motor vehicle on the public highways of this state shall pay in advance annually on each motor vehicle owned, operated, and licensed in this state by that person a tax based on the registered gross weight and mileage driven the previous year in the following schedule:

	Less than 5,000 miles	5,000 to 9,999 miles	10,000 to 14,999 miles	15,000 miles and over
Class A: Less than 4,000 pounds	\$ 30	\$ 60	\$ 90	\$120
Class B: 4001 to 10,000 pounds	42	84	126	168
Class C: 10,001 to 15,000 pounds	48	96	144	192
Class D: 15,001 to 27,500 pounds	84	168	252	336
Class E: 27,501 to 43,500 pounds	126	252	378	504
Class F: 43,501 pounds and over	186	372	558	744

(b) The first issuance of a liquefied gas tax decal for a Class A through F motor vehicle shall be issued on a basis of estimated miles that will be driven during the one-year period following the date of issuance of the decal.

(c) The following special-use liquefied gas tax decal and tax shall be required for the types of vehicles described below:

Class T: Transit carrier vehicles operated by a transit company--\$444

(d) An entity holding a registration under Chapter 503, Transportation Code, may obtain a decal for each liquefied gas-powered motor vehicle held for sale or resale and pay the tax per gallon to a licensed dealer on each delivery of liquefied gas into the fuel supply tank of the motor vehicle.

(e) An interstate trucker is not required to prepay the tax

under Subsection (a) for a motor vehicle operated for commercial purposes and described by Section 162.001(36).

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.306. INTERSTATE TRUCKER'S LICENSE. An interstate trucker's license authorizes a person who imports liquefied gas into this state in the fuel supply tanks of a motor vehicle owned or operated for commercial purposes and described by Section 162.001(36) to report and pay the tax due and to make sales or distributions in this state from the vehicle's cargo tanks, but a delivery may not be made in this state into the fuel supply tanks of motor vehicles that do not bear a current liquefied gas tax decal without first obtaining the required dealer's license to make taxable sales.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.307. LICENSES: PERIODS OF VALIDITY. (a) A dealer's license is permanent and valid during the period the license holder furnishes timely reports as required or until the license is surrendered by the holder or canceled by the comptroller.

(b) An interstate trucker's license is valid from the date of its issuance through December 31 of each calendar year or until the license is surrendered by the holder or canceled by the comptroller. The comptroller may renew the license for each ensuing calendar year if the license holder furnishes timely reports as required.

(c) A liquefied gas tax decal license is valid from the date of its initial issuance through the last day of the same month of the year following the year it was issued unless the motor vehicle for which the tax is prepaid is sold or is no longer used on a public highway. After its initial issuance, a liquefied gas tax decal license shall be issued annually and is valid for one year from the date of its issuance unless the motor vehicle for which the tax is prepaid is sold or is no longer used on the public highway. A liquefied gas tax decal license holder must apply for a new license each year. The ending odometer reading must be provided on the

renewal application. In the absence of an ending odometer reading, the previous year's mileage of the motor vehicle shall be presumed to be at least 15,000 miles.

(d) A motor vehicle dealer's liquefied gas tax decal license shall be issued annually and is valid from the date of its issuance through December 31 of each calendar year unless the motor vehicle is sold, at which time the decal shall be removed by the dealer from the motor vehicle. A motor vehicle dealer's liquefied gas tax decal license holder must apply for a new license each year.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.308. COMPUTATION OF TAXES; ALLOWANCES. (a) A licensed dealer who makes a sale or delivery of liquefied gas into a fuel supply tank of a motor vehicle on which the tax is required to be collected is liable to this state for the tax imposed and shall report and pay the tax in the manner required by this subchapter.

(b) A licensed interstate trucker shall report and pay to this state the tax at the rate imposed on each gallon of liquefied gas delivered by the trucker into the fuel supply tank of a motor vehicle, unless the tax has been paid to a licensed dealer, and shall report and pay the tax on each gallon of liquefied gas imported into this state in the fuel supply tanks of motor vehicles owned or operated by the trucker and consumed in the operation of the motor vehicles on the public highways of this state.

(c) The tax on one percent of the taxable gallons of liquefied gas sold in this state shall be allocated to the licensed dealer making the sale for the expense of collecting, accounting for, reporting, and timely remitting the taxes collected and for keeping the records. The allocation allowance shall be deducted by the licensed dealer when paying the tax to this state.

(d) The tax of one-half of one percent of the taxable gallons of liquefied gas used in this state by persons licensed as interstate truckers shall be allocated to the interstate trucker making the use of the liquefied gas for the expense of accounting for, reporting, and timely remitting the taxes due.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.309. RECORDS. (a) A dealer shall keep for four years, open to inspection at all times by the comptroller and the attorney general, a complete record of all liquefied gas sold or delivered for taxable purposes.

(b) An interstate trucker shall keep for four years, open to inspection by the comptroller and the attorney general, a record of:

(1) the total miles traveled in all states by all the interstate trucker's motor vehicles traveling into or from this state and the total quantity of liquefied gas used in the motor vehicles; and

(2) the total miles traveled in this state and the total quantity of liquefied gas purchased in this state, showing both tax-paid fuel delivered into the fuel supply tanks of motor vehicles and tax-free fuel delivered into storage facilities in this state.

(c) Each taxable sale or delivery of liquefied gas into the fuel supply tanks of a motor vehicle, including deliveries by interstate truckers from bulk storage, shall be covered by an invoice. The invoice must be printed and contain:

(1) the preprinted or stamped name and address of the licensed dealer or interstate trucker;

(2) the date of the sale or delivery;

(3) the number of gallons sold or delivered;

(4) the mileage recorded on the odometer;

(5) the state and state highway license number;

(6) the signature of the driver of the motor vehicle;

and

(7) the amount of tax paid or accounted for stated separately from the selling price.

(d) The invoice must be carried with the vehicle and will serve as a trip permit.

(e) A liquefied gas tax decal license holder required to report beginning and ending odometer readings may deduct the miles traveled outside this state from the total miles traveled. A record of miles traveled by the vehicle in states other than this state must be maintained and submitted with the renewal each year. A

decal may not be renewed for an amount that is less than the rate for 4,999 miles annually.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.310. REPORTS AND PAYMENTS. (a) A licensed dealer, on or before the 25th day of the month following the end of each calendar quarter, shall file a report and remit the amount of tax due. A licensed dealer who has not made taxable sales during the reporting period shall file with the comptroller a report that includes those facts or that information.

(b) Every licensed interstate trucker, on or before the 25th day of the month following the end of each calendar quarter, shall file a report and remit the amount of tax due. A report shall be filed with the comptroller on forms provided for that purpose and must contain the number of miles traveled in this state, the number of miles traveled outside this state, and other information required by the comptroller. An interstate trucker who is required to file a report under this section and who has not made interstate trips or used liquefied gas in motor vehicles in this state during the reporting period shall file with the comptroller a report that includes those facts or that information.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.311. REFUNDS; TRANSFER OF DECALS. (a) If a motor vehicle bearing a liquefied gas tax decal is sold or transferred, the seller and purchaser shall promptly notify the comptroller of the sale or transfer and a new decal shall be issued in the new purchaser's name.

(b) If a motor vehicle bearing a liquefied gas tax decal is destroyed or the liquefied gas carburetor system is removed, the owner is entitled to a refund of the unused portion of the advance taxes paid for that year. The owner or operator shall submit to the comptroller an affidavit identifying the vehicle, the license number of the vehicle, the decal number assigned to the vehicle, the circumstances entitling the owner to a refund, and all other information required by the comptroller. On receipt of the affidavit and when satisfied as to the circumstances, the

comptroller shall refund that portion of the tax payment that corresponds to the number of complete months remaining in the year for which the tax has been paid, beginning with the month following the date on which the vehicle or the liquefied gas carburetor was no longer used. A refund may not be made if the use of the vehicle ceased during the last month of the year.

(c) A licensed interstate trucker is entitled to a refund of the amount of the liquefied gas tax paid under this subchapter on each gallon of liquefied gas subsequently used outside this state. On verification by the comptroller that the interstate trucker's report was timely filed with all information required, the comptroller shall issue a warrant to the interstate trucker for the amount of the refund less the one percent deducted originally by the licensed dealer making the sale. An interstate trucker who fails to file an interstate trucker report by the 25th day of the month following the end of a calendar quarter forfeits the right to a refund.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

SUBCHAPTER E. PENALTIES AND OFFENSES

Sec. 162.401. FAILURE TO PAY TAX OR FILE REPORT. (a) If a person having a license, or a person required to have a license, fails to file a report as required by this chapter or fails to pay a tax imposed by this chapter when due, the person forfeits five percent of the amount due as a penalty, and if the person fails to file the report or pay the tax within 30 days after the day on which the tax or report is due, the person forfeits an additional five percent.

(b) The comptroller may add a penalty of 75 percent of the amount of taxes, penalties, and interest due if failure to file the report or pay the tax when it becomes due is attributable to fraud or an intent to evade the application of this chapter or a rule adopted under this chapter or Chapter 111.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.402. PROHIBITED ACTS; CIVIL PENALTIES. (a) A person forfeits to the state a civil penalty of not less than \$25

and not 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 license or a trip permit when the person is required to hold one of those licenses or permits;

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

(4) 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) makes a taxable sale or delivery of liquefied gas without holding a valid dealer's license;

(6) 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) makes a delivery of liquefied gas into the fuel supply tank of a motor vehicle bearing Texas license plates and no Texas liquefied gas tax decal, unless licensed under a multistate fuels tax agreement;

(8) 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 of, or with the fuel supply tank feeding the fuel injector or carburetor of, the motor vehicle transporting the product;

(9) sells or delivers gasoline or diesel fuel from any fuel supply tank connected with the fuel injector or carburetor of a motor vehicle;

(10) 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) furnishes to a supplier a signed statement for

purchasing diesel fuel tax-free and then uses the tax-free diesel fuel to operate a diesel-powered motor vehicle on a public highway;

(12) fails or refuses to comply with or violates a provision of this chapter;

(13) fails or refuses to comply with or violates a comptroller's rule for administering or enforcing this chapter;

(14) is an importer who does not obtain an import verification number when required by this chapter; or

(15) purchases motor fuel for export, on which the tax imposed by this chapter has not been paid, and subsequently diverts or causes the motor fuel to be diverted to a destination in this state or any other state or country other than the originally designated state or country without first obtaining a diversion number.

(b) An importer or exporter that violates a requirement of Section 162.016 is liable to this state for a civil penalty of \$2,000 or five times the amount of the unpaid tax, whichever is greater, for each violation.

(c) A person receiving motor fuel who accepts a shipping document that does not conform with the requirements of Section 162.016(a) is liable to this state for a civil penalty of \$2,000 or five times the amount of the unpaid tax, whichever is greater, for each occurrence.

(d) A person operating a bulk plant or terminal who issues a shipping document that does not conform with the requirements of Section 162.016(a) is liable to this state for a civil penalty of \$2,000 or five times the amount of the unpaid tax, whichever is greater, for each occurrence.

(e) A person operating a terminal or bulk plant who does not post notice as required by Section 162.016(i) is liable to this state for a civil penalty of \$100 for each day the notice is not posted as required by Section 162.016(i).

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.403. CRIMINAL OFFENSES. Except as provided by Section 162.404, 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 license, but operates a motor vehicle in this state without a valid trip permit or interstate trucker's license;

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

(4) 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;

(5) 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;

(6) 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;

(7) sells or delivers dyed diesel fuel for the operation of a motor vehicle on a public highway;

(8) uses dyed diesel fuel for the operation of a motor vehicle on a public highway except as allowed under Section 162.235;

(9) 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;

(10) makes a sale or delivery of liquefied gas on which the person knows the tax is required to be collected, if at the time the sale is made the person does not hold a valid dealer's license;

(11) 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;

(12) makes a delivery of liquefied gas into the fuel

supply tank of a motor vehicle bearing Texas license plates and no Texas liquefied gas tax decal, unless licensed under a multistate fuels tax agreement;

(13) refuses to permit the comptroller or the attorney general to inspect, examine, or audit a book or record required to be kept by a license holder, other user, or any person required to hold a license under this chapter;

(14) refuses to permit the comptroller or the attorney general to inspect or examine any plant, equipment, materials, or premises where motor fuel is produced, processed, blended, stored, sold, delivered, or used;

(15) refuses to permit the comptroller, the attorney general, an employee of either of those officials, a peace officer, an employee of the Texas Commission on Environmental Quality, or an employee of the Department of Agriculture to measure or gauge the contents of or take samples from a storage tank or container on premises where motor fuel is produced, processed, blended, stored, sold, delivered, or used;

(16) is a license holder, a person required to be licensed, or another user 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) is an importer who does not obtain an import verification number when required by this chapter;

(18) purchases motor fuel for export, on which the tax imposed by this chapter has not been paid, and subsequently diverts or causes the motor fuel to be diverted to a destination in this state or any other state or country other than the originally designated state or country without first obtaining a diversion number;

(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;

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

(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;

(22) mutilates, destroys, or secretes a book or record required by this chapter to be kept by a license holder, other user, or person required to hold a license under this chapter;

(23) is a license holder, other user, or other person required to hold a license 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 or fails to retain a document as required by this chapter;

(24) transports in any manner motor fuel under a false cargo manifest or shipping document, or transports in any manner motor fuel to a location without delivering at the same time a shipping document relating to that shipment;

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

(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;

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

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

(29) furnishes to a supplier a signed statement for purchasing diesel fuel tax-free and then uses the tax-free diesel fuel to operate a diesel-powered motor vehicle on a public highway;

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

(31) fails to remit any tax funds collected by a license holder, another user, or any other person required to hold a license under this chapter;

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

(A) is not licensed as a distributor, as an

aviation fuel dealer, or as a dyed diesel fuel bonded user; or

(B) does not furnish to the licensed supplier or distributor a signed statement prescribed in Section 162.206;

(33) makes a sale of gasoline tax-free to any person who is not licensed as an aviation fuel dealer;

(34) is a dealer who purchases any motor fuel tax-free when not authorized to make a tax-free purchase under this chapter;

(35) is a dealer who purchases motor fuel with the intent to evade any tax imposed by this chapter or who accepts a delivery of motor fuel by any means and does not at the same time accept or receive a shipping document relating to the delivery;

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

(37) imports, sells, uses, blends, distributes, or stores motor fuel within this state on which the taxes imposed by this chapter are owed but have not been first paid to or reported by a license holder, another user, or any other person required to hold a license under this chapter;

(38) blends products together to produce a blended fuel that is offered for sale, sold, or used and that expands the volume of the original product to evade paying applicable motor fuel taxes; or

(39) evades or attempts to evade in any manner a tax imposed on motor fuel by this chapter.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.404. CRIMINAL OFFENSES: SPECIAL PROVISIONS AND EXCEPTIONS. (a) A person does not commit an offense under Section 162.403 unless the person 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 162.403(6).

(b) Each day that a refusal prohibited under Section 162.403(13), (14), or (15) continues is a separate offense.

(c) The prohibition under Section 162.403(32) does not apply to the tax-free sale or distribution of diesel fuel authorized by Section 162.204(1), (2), or (3).

(d) The prohibition under Section 162.403(33) does not apply to the tax-free sale or distribution of gasoline under Section 162.104(1), (2), or (3).

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.405. CRIMINAL PENALTIES. (a) An offense under Section 162.403(1), (2), (3), (4), (5), (6), or (8) is a Class C misdemeanor.

(b) An offense under Section 162.403(9), (10), (11), (12), (13), (14), (15), (16), (17), or (18) is a Class B misdemeanor.

(c) An offense under Section 162.403(19), (20), or (21) is a Class A misdemeanor.

(d) An offense under Section 162.403(7), (22), (23), (24), (25), (26), (27), (28), or (29) is a felony of the third degree.

(e) An offense under Section 162.403(30), (31), (32), (33), (34), (35), (36), (37), (38), or (39) is a felony of the second degree.

(f) Violations of three or more separate offenses under Sections 162.403(22) through (29) committed pursuant to one scheme or continuous course of conduct may be considered as one offense and punished as a felony of the second degree.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Amended by Acts 2003, 78th Leg., ch. 209, Sec. 96, eff. Jan. 1, 2004.

Sec. 162.406. CRIMINAL PENALTIES: CORPORATIONS AND ASSOCIATIONS. (a) Except as provided by Subsection (b), Subchapter E, Chapter 12, Penal Code, applies to offenses under this chapter committed by a corporation or association.

(b) The court may not fine a corporation or association under Section 12.51(c), Penal Code, unless the amount of the fine under that subsection is greater than the amount that could be fixed by the court under Section 12.51(b), Penal Code.

(c) In addition to a sentence imposed on a corporation, the

court shall give notice of the conviction to the attorney general as required by Article 17A.09, Code of Criminal Procedure.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.407. VENUE OF CRIMINAL PROSECUTIONS. The venue for a prosecution under this subchapter is in Travis County or in the county where the offense occurred.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.408. NEGATION OF EXCEPTION: INFORMATION, COMPLAINT, OR INDICTMENT. An information, complaint, or indictment charging a violation of this chapter need not negate an exception to an act prohibited by this chapter, but the exception may be urged by the defendant as a defense to the offense charged.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.409. ISSUANCE OF BAD CHECK TO LICENSED DISTRIBUTOR OR LICENSED SUPPLIER. (a) A person commits an offense if:

(1) the person issues or passes a check or similar sight order for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance;

(2) the payee on the check or order is a licensed distributor or licensed supplier; and

(3) the payment is for an obligation or debt that includes a tax under this chapter to be collected by the licensed distributor or licensed supplier.

(b) Sections 32.41(b), (c), (d), (e), and (g), Penal Code, apply to an offense under this section in the same manner as those provisions are applicable to the offense under Section 32.41(a), Penal Code.

(c) An offense under this section is a Class C misdemeanor.

(d) A person who makes payment on an obligation or debt that includes a tax under this chapter and pays with an insufficient funds check issued to a licensed distributor or licensed supplier may be held liable for a penalty equal to the total amount of tax not

paid to the licensed distributor or licensed supplier.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

SUBCHAPTER F. ALLOCATION OF TAXES

Sec. 162.501. TAX ADMINISTRATION FUND. (a) Before any other allocation of the taxes collected under this chapter is made, one percent of the gross amount of the taxes shall be deposited in the state treasury in a special fund, subject to the use of the comptroller in the administration and enforcement of this chapter.

(b) The unexpended portion of the special fund shall revert, at the end of the fiscal year, to the other funds to which revenue is allocated by this subchapter in proportion to the amounts originally derived from the respective sources.

(c) In October of each even-numbered year, the comptroller will report to the legislature on the use of the special fund in the administration and enforcement of this chapter. The report shall be reviewed by the state auditor and the Legislative Budget Board. The report shall include:

(1) the total amount expended from the special fund for administration and enforcement of motor fuel taxes;

(2) any other uses of the special fund;

(3) the amount of the unexpended portion reverted to other funds as provided by this chapter;

(4) the methods used by the comptroller to enforce this chapter, including number of internal auditors, external auditors, and other full-time employees; and

(5) recommendations for improving and enhancing the collection of motor fuel taxes in this state.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.502. ALLOCATION OF UNCLAIMED REFUNDABLE GASOLINE TAXES. (a) On or before the fifth workday after the end of each month, the comptroller, after making the deductions for refund purposes, shall determine as accurately as possible, for the period since the latest determination under this subsection, the number of gallons of fuel used in motorboats on which the gasoline tax has been paid to this state, on which refund of the tax has not been

made, and against which limitation has run for filing claim for refund of the tax. From the number of gallons so determined the comptroller shall compute the amount of taxes that would have been refunded under the law had refund claims been filed in accordance with the law.

(b) The comptroller shall allocate and deposit these unclaimed refunds as follows:

(1) 25 percent of the revenues based on unclaimed refunds of taxes paid on motor fuel used in motorboats shall be deposited to the credit of the available school fund; and

(2) the remaining 75 percent of the revenue shall be deposited to the credit of the general revenue fund.

(c) Money deposited to the credit of the general revenue fund under Subsection (b)(2) may be appropriated only to the Parks and Wildlife Department for any lawful purpose.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.5025. ALLOCATION OF OTHER UNCLAIMED REFUNDABLE NONDEDICATED TAXES. (a) The comptroller by rule shall devise a method of determining as accurately as possible the:

(1) number of gallons of fuel that are not used to propel a motor vehicle on the public highways; and

(2) amount of taxes collected under this chapter from fuel that is not used to propel a motor vehicle on the public highways that would have been refunded under this chapter if refund claims had been filed in accordance with this chapter and that is not subject to allocation under Section 162.502.

(b) The comptroller shall allocate to the general revenue fund the amount determined under Subsection (a)(2).

(c) The determination and allocation shall be made periodically as prescribed by rule.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.503. ALLOCATION OF GASOLINE TAX. On or before the fifth workday after the end of each month, the comptroller, after making all deductions for refund purposes and for the amounts allocated under Sections 162.502 and 162.5025, shall allocate the

net remainder of the taxes collected under Subchapter B as follows:

(1) one-fourth of the tax shall be deposited to the credit of the available school fund;

(2) one-half of the tax shall be deposited to the credit of the state highway fund for the construction and maintenance of the state road system under existing law; and

(3) from the remaining one-fourth of the tax the comptroller shall:

(A) deposit to the credit of the county and road district highway fund all the remaining tax receipts until a total of \$7,300,000 has been credited to the fund each fiscal year; and

(B) after the amount required to be deposited to the county and road district highway fund has been deposited, deposit to the credit of the state highway fund the remainder of the one-fourth of the tax, the amount to be provided on the basis of allocations made each month of the fiscal year, which sum shall be used by the Texas Department of Transportation for the construction, improvement, and maintenance of farm-to-market roads.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.504. ALLOCATION OF DIESEL FUEL TAX. On or before the fifth workday after the end of each month, the comptroller, after making deductions for refund purposes, for the administration and enforcement of this chapter, and for the amounts allocated under Section 162.5025, shall allocate the remainder of the taxes collected under Subchapter C as follows:

(1) one-fourth of the taxes shall be deposited to the credit of the available school fund; and

(2) three-fourths of the taxes shall be deposited to the credit of the state highway fund.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.5045. ALLOCATION OF TAXES PAID ON UNDYED DIESEL FUEL USED OFF-HIGHWAY. On or before the fifth workday after the end of each month, the comptroller shall determine as accurately as possible for the period since the latest determination under this

section the number of gallons of undyed diesel fuel used for purposes other than to propel a motor vehicle on the public highways of this state. From the number of gallons so determined, the comptroller shall compute the amount of taxes that were paid on that undyed diesel fuel and shall allocate and deposit that amount to the credit of the general revenue fund.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.

Sec. 162.505. ALLOCATION OF LIQUEFIED GAS TAX. On or before the fifth workday after the end of each month, the comptroller, after making deductions for refund purposes and for the administration and enforcement of this chapter, shall allocate the remainder of the taxes collected under Subchapter D as follows:

(1) one-fourth of the taxes shall be deposited to the credit of the available school fund; and

(2) three-fourths of the taxes shall be deposited to the credit of the state highway fund.

Added by Acts 2003, 78th Leg., ch. 199, Sec. 1, eff. Jan. 1, 2004.