

# Motor Fuels Audit Procedures Manual

---

## Table of Contents

<b>CHAPTER 1: HISTORY AND OVERVIEW.....</b>	<b>4</b>
Introduction .....	4
Allocation .....	4
Major Enactments .....	4
Licenses.....	10
Bonds.....	10
Records .....	11
Sampling Procedures .....	12
Terms and Definitions.....	12
Exhibit I – Motor Fuels Licenses and Tax Rates .....	22
Petroleum Products Delivery Fee.....	24
 <b>CHAPTER 2: GASOLINE LAW .....</b>	 <b>25</b>
Definition .....	25
Imposition .....	25
Computation of Tax .....	25
Exceptions .....	25
Specific Licenses .....	26
License Types.....	27
License Lists .....	28
Bonds.....	28
Returns and Payments .....	28
Records .....	29
Information on Returns .....	32
Refunds and Credits .....	35
Claims for Refunds .....	38
Exhibit II – Summary of Gasoline Tax Law by License Type .....	40
 <b>CHAPTER 3: DIESEL FUEL LAW .....</b>	 <b>60</b>
Definition .....	60
Imposition .....	60
Computation of Tax .....	60
Exceptions .....	61
Specific Licenses .....	62
License Types.....	63
License Lists .....	64
Bonds.....	64
Statement for Purchase of Dyed Diesel Fuel .....	64
Returns and Payments .....	66
Records .....	67
Information on Returns .....	71
Refunds and Credits .....	74
Exhibit III – Summary of Diesel Fuel Tax Law by License Type .....	79
 <b>CHAPTER 4: COMPRESSED NATURAL GAS AND LIQUEFIED NATURAL GAS LAW .....</b>	 <b>101</b>
Introduction .....	101
Exemptions .....	101

Collection of Tax .....	101
License Types.....	102
License Lists .....	102
Specific Licenses .....	102
<b>CHAPTER 5: PRE-AUDIT RESEARCH .....</b>	<b>105</b>
Introduction .....	105
Tax Types .....	105
Taxpayer History.....	106
Mainframe Inquiries .....	108
Universal Refund System .....	110
Account Information Cards .....	111
Prior Audits .....	111
Tax Fraud Awareness .....	112
<b>CHAPTER 6: AUDIT PLANNING .....</b>	<b>115</b>
Introduction .....	115
Audit Documentation Report .....	115
Audit Checklists .....	115
Preliminary Checklist .....	116
Audit Checklists by License Type.....	119
Electronic Auditing .....	129
Overview .....	129
<b>CHAPTER 7: ENTRANCE CONFERENCE .....</b>	<b>133</b>
Introduction .....	133
Topics to Discuss.....	133
Types of Records.....	134
Tour of Premises .....	134
Agreement to Extend Period of Limitation .....	134
<b>CHAPTER 8: INVENTORIES .....</b>	<b>135</b>
Introduction .....	135
Book Inventories .....	135
Stick or Physical Inventory .....	135
Electronic Tank Monitoring and Inventory Control .....	135
Tank Capacity Formula .....	136
96" Diameter Gauge Chart for Horizontal Tanks .....	137
<b>CHAPTER 9: PURCHASES .....</b>	<b>138</b>
Introduction .....	138
Records Examined .....	138
Third-party Verification .....	138
<b>CHAPTER 10: SALES.....</b>	<b>141</b>
Introduction .....	141
Tax-free Sales .....	143
Sales to Aviation Fuel Dealers .....	147
Signed Statement Sales .....	147
Exempt Sales.....	150
Kerosene .....	150
Transit Company Sales .....	150
Exhibit IV – Signed Statement.....	151
<b>CHAPTER 11: BONDED USER .....</b>	<b>153</b>

Bonded User – Dyed Diesel Fuel .....	153
Record-keeping Guidelines .....	153
Basic Audit Guidelines.....	154
<b>CHAPTER 12: AUDIT WRITE-UP .....</b>	<b>157</b>
Introduction .....	157
No-Tax-Change Audit.....	157
Certificate-of-No-Tax-Due Audits .....	158
Amended Audits .....	158
Open Collection Records.....	158
Handling Allowance .....	158
Penalty and Interest Waiver .....	158
Audit Examples.....	159
<b>CHAPTER 13: REFUNDS .....</b>	<b>187</b>
Introduction .....	187
Who May File a Refund Claim or Take a Credit on a Return? .....	187
Refund Scenarios .....	191
Refunds for Bad Debts; Credits for Nonpayment.....	195
School Fund Benefit Fee .....	196
Write-up Procedures for Motor Fuels Refunds.....	197
Sources Cited Regarding Refunds of Motor Fuel Tax.....	198
<b>CHAPTER 14: ADMINISTRATIVE RULES .....</b>	<b>199</b>
Motor Fuels .....	199
School Fund Benefit Fee .....	199
Petroleum Products Delivery Fee.....	199
<b>CHAPTER 15: GROUNDWATER PROTECTION ACT .....</b>	<b>200</b>
Groundwater Protection Act .....	200
Definitions .....	200
Inquiry .....	201
Exemptions .....	202
Fee.....	203
Exceptions .....	204
Permit .....	205
Security .....	206
Invoices and Manifests .....	206
Records .....	206
Audit Procedure .....	206
Reports .....	207
Excess Tax/Fee Collected (Unjust Enrichment).....	207
Unjust Enrichment .....	207
<b>CHAPTER 16: SCHOOL FUND BENEFIT FEE .....</b>	<b>208</b>
Introduction .....	208
Refund Verification Assignments and Audits .....	210

## **CHAPTER 1: HISTORY AND OVERVIEW**

### **Introduction**

The increased usage of motor vehicles in the early 1920s created a demand for government expenditures to be used for highway development and improvement. To meet the needs of these expenditures, a motor fuels tax was implemented.

### **Allocation**

Fuels tax revenues have historically been allocated primarily to highways. Gasoline tax revenue is allocated one-half to the State Highway Fund (SHF), one-fourth to the Available School Fund (ASF) and the remaining one-fourth to the County and Road District Highway Fund and/or the State Highway Fund. Diesel fuel and liquefied gas tax revenues are allocated three-fourths to the SHF and one-fourth to the ASF.

### **Major Enactments**

<b>Date</b>	<b>Description</b>
April 1, 1923	Initial taxation of gasoline at 1 cent per gallon.
1929	Distributors were required to be permitted and bonded.
1933	Motor fuel was defined to include diesel fuel and liquefied petroleum gas.
1941	Liquefied petroleum gas was taxed at 4 cents per gallon and diesel fuel at 8 cents per gallon.
1959	A special fuels tax law, Chapter 10, was created. Diesel and liquefied gas were separated from the motor fuels tax law. Since most diesel and liquefied gas was used for non-highway purposes, a permit collection system was implemented to reduce the amount of refunding.
1969	The special fuels tax law was divided into Subchapter A for diesel and B for liquefied gas.
1980	The fuels tax law was completely rewritten. All fuels taxes were incorporated under Article 9 as follows: Subchapter A – General Provisions; B – Gasoline; C – Diesel Fuel; and D – Liquefied Gas.
1982	The entire motor fuels tax Law was recodified as Chapter 153.
1984	Effective Aug. 1, 1984, the tax rates increased to 10 cents per gallon.
1987	Effective Jan. 1, 1987, the tax rates increased to 15 cents per gallon.
September 1, 1989	<p>The use of signed statements for the purchase of tax-free diesel fuel was restricted.</p> <p>A petroleum products delivery fee was enacted.</p> <p>The definitions of gasoline and diesel fuel were expanded to include blending agents.</p>

Date	Description
September 1, 1991	Texas public school districts were exempted from gasoline, diesel fuel and liquefied gas tax.  Counties were exempted from the liquefied gas tax.
October 1, 1991	The tax rate for gasoline and diesel fuel increased to 20 cents per gallon.
September 1, 1993	Qualified school transportation companies may purchase fuel tax free for the gallons used exclusively for Texas public school district transportation.
July 1, 1995	Joined the International Fuel Tax Agreement (IFTA) where interstate truckers traveling in two or more IFTA-member jurisdictions are issued a Texas IFTA license instead of a Texas interstate trucker license.
September 1, 1995	The Comptroller may collect a penalty from a person who gives an insufficient check to a permitted distributor or supplier for the payment of a debt that includes state motor fuels tax.
October 1, 1995	Liquefied gas (LG) interstate truckers based in Texas and licensed under IFTA no longer are required to prepay tax on vehicles operated for commercial purposes and traveling out of state.  An LG dealer must collect and remit taxes on liquefied gas delivered into the fuel supply tank of a motor vehicle licensed under IFTA and displaying a current multistate fuel tax agreement decal.
September 1, 2001	Diesel fuel signed statement limits increased to 7,400 gallons per single delivery. Agricultural Exemption Signed Statement calendar month amount increased to 25,000 gallons. End-user Signed Statement calendar month amount remains at 10,000 gallons. Oil and gas producers with End-user Signed Statement numbers may increase their purchases to 25,000 gallons per calendar month provided they have obtained a letter from the Comptroller and have given a copy of the letter to their supplier. Petroleum product delivery fee was reinstated, and fees changed.
2003	2003 permitted gasoline distributors and diesel fuel suppliers are no longer required to make an early pre-payment for the motor fuels taxes due in August of odd-numbered years, beginning with the August 2003 reporting period.
January 1, 2004	The Motor Fuels Tax Code was re-written as Chapter 162; Chapter 153 was repealed. State motor fuel taxes are now collected and remitted to the Comptroller based on the net gallons of gasoline and undyed diesel fuel removed from the terminal rack. Persons blending or importing motor fuel into

Date	Description
	the state outside the bulk terminal/transfer system will remit state motor fuel tax to the Comptroller. Only dyed diesel fuel can be removed from a terminal or sold tax-free. Motor fuel tax licenses, returns and refunds are changed.
January 1, 2005	Refunds for all diesel fuel off-road use are repealed unless specified by statute.
January 1, 2006	<p>Exports – A licensed supplier must collect the Texas motor fuels tax or be licensed and collect the destination state's tax on all gasoline or diesel fuel removed from a terminal in Texas for export to another state. The purchaser (exporter) must also be licensed as an exporter for the supplier to collect the destination state tax instead of the Texas tax.</p> <p>A licensed exporter or importer must pay either the Texas tax or the destination state tax on all gasoline or diesel fuel exported to another state, unless the transaction is specifically exempted by Texas or the destination state's law.</p> <p>Sales for Export – A licensed distributor or permissive supplier may no longer take credit on a return for taxes paid on gasoline or diesel fuel that is sold for export by the purchaser to another state. A distributor may continue to take credit on a return for taxes the distributor paid on fuel it exported from the state.</p> <p>An exporter or importer may continue to take a credit on a return for Texas taxes paid on fuel it exported to another state.</p> <p>A licensed exporter (including licensed suppliers and permissive suppliers, distributors and importers) can remove gasoline and diesel fuel from a terminal tax-free for export to another country when the bill of lading shows a foreign destination and the fuel is actually exported. A licensed supplier can sell gasoline or diesel fuel from a terminal tax free to an unlicensed purchaser when the bill of lading shows a foreign destination and the fuel is actually exported.</p>
July 1, 2007	Metropolitan rapid transit authorities (MRTAs) may receive a refund of taxes paid on gasoline, diesel fuel and liquefied gas used to provide student transportation under contract with a Texas independent school district.
September 1, 2007	Manufacturers may receive a refund of taxes paid on diesel fuel used as a feedstock in the production of tangible personal property for resale other than a motor fuel.

Date	Description
	A refund may be claimed for taxes paid on diesel fuel used to remove drill cuttings from a well bore in the production of oil or gas. A refund may be claimed for taxes paid on diesel fuel consumed by moveable specialized equipment used in oil well servicing.
June 19, 2009	<p>Biodiesel fuel and renewable diesel fuel are redefined in the Agricultural Code.</p> <p>Licensed suppliers and permissive suppliers may request a 100 percent accelerated credit on deferred taxes that were not paid by the distributor or importer, but only if the supplier or permissive supplier notifies the Comptroller within 15 days of the default.</p>
July 1, 2009	Texas volunteer fire departments are authorized to purchase gasoline and diesel fuel in bulk state tax free for the department's exclusive use. They may claim a refund for the taxes paid on gasoline and diesel fuel used exclusively by the department on or after July 1, 2009.
September 1, 2009	<p>Bulk storage is defined as a container of more than 10 gallons.</p> <p>A motor fuel transporter license is no longer required by a person who is licensed as a supplier, permissive supplier or distributor and who only transports motor fuel for which they retain title.</p> <p>A supplier or permissive supplier license is no longer needed to enter into tax-free transactions in the bulk terminal/transfer system. A supplier license is required for position-holders who remove or take orders for the removal of motor fuel from a terminal located in Texas.</p> <p>A license-holder may claim a tax credit on gasoline or diesel fuel sold to certain exempt entities through the acceptance of a credit card not issued by the license-holder, if the credit card issuer did not collect the tax from the exempt entity and the license-holder reimbursed the card issuer for the amount of tax included in the retail purchase price.</p> <p>The 7,400-gallon, single delivery limitation on the signed statement purchase of tax-free dyed diesel fuel is eliminated; this is not retroactive.</p> <p>A licensed seller may temporarily rely on the Comptroller's website list of end-user number, or other materials provided</p>

Date	Description
	<p>by the Comptroller, to make a tax-free signed statement sale of dyed diesel fuel until the purchaser provides the seller with a completed signed statement.</p> <p>The Comptroller may issue a written request giving the seller 60 days to provide copies of the seller's signed statements. The Comptroller may disallow tax-free sales of dyed diesel fuel on which the seller cannot deliver copies of the signed statement within the 60-day period.</p>
September 1, 2013	<p>Changes the point of taxation for compressed natural gas (CNG) and liquefied natural gas (LNG) vehicles from prepaid decals to tax collected at the pump. Transit authorities with CNG and/or LNG fueling stations NOT open to the public may continue to prepay the tax.</p> <p>A person who sells and delivers CNG or LNG into the fuel supply tanks of motor vehicles is required to obtain a CNG/LNG dealer's license.</p> <p>Additionally, anyone such as fleet users or other dealers who deliver CNG/LNG into a motor vehicle that is not in connection with a sale are also required to obtain a CNG/LNG dealer's license.</p> <p>Allows sellers of biodiesel to opt out of the statutory exemption for biodiesel. Once the option has been taken, it cannot be exercised by subsequent sellers or purchasers.</p> <p>Provides for notification to sellers when an end-user number for purchasing dyed diesel fuel tax free has been revoked due to a judgment.</p>
September 1, 2015	<p>Repealed the motor fuels tax on liquefied gas (LG) and liquefied petroleum gas (LPG). Propane, butane, methane, ethane or a mixture of those gases are longer subject to motor fuels tax.</p> <p>Liquefied petroleum gas (LPG) removed from the definition of a motor fuel. As a special fuel, liquefied gas will also remain exempt from sales and use tax pursuant to §151.308 regardless of how sold or used. There is no license requirement to sell liquefied gas.</p> <p>Exempts from tax LNG and CNG delivered into motor vehicles operated exclusively by a commercial transportation company</p>

Date	Description
	<p>or MTA and used to provide public school transportation services.</p> <p>Exempts LNG or CNG for motor vehicles operated exclusively by a municipality or county in Texas. A municipality means an incorporated city or town. Refueling stations that are accessible to motor vehicles other than vehicles operated by municipalities or used to provide transit services as described in §162.356 (11)(A) are not exempt from CNG and LNG motor fuel taxes.</p> <p>Exempts LNG and CNG for vehicles used to provide transportation company services, including a metropolitan rapid transit authority or a regional rapid transit authority.</p> <p>Preceding the enactment of HB 1905, there were five transit authorities – Corpus Christi Regional Transportation Authority, Dallas Area Rapid Transit, Fort Worth MTA, City of Laredo and the San Antonio Transit Authority – that were exempt from the state motor fuels tax on CNG/LNG. These transit authorities remain exempt.</p> <p>Exempts motor fuel sold to or operated by a nonprofit entity that is organized for the sole purpose of and engages exclusively in providing emergency medical services and that uses the gasoline, diesel or CNG/LNG exclusively to provide emergency medical services, including rescue and ambulance services. [§162.104(15), §162.204(9) and §162.356(9)]</p> <p>Texas Motor Fuels Tax Code Secs. 162.104(a)(8) for gasoline, 162.204(a)(14) for diesel fuel and 162.356(4) for CNG and LNG exempt Texas volunteer fire departments from state motor fuels tax. Currently, there is not a standard uniform definition of a volunteer fire department. In 2015, Rule 3.432 (h) (1)(E) was amended to clarify that a volunteer fire department has no paid members.</p>
May 10, 2017	Compressed natural gas and liquefied natural gases are exempt from local motor fuels tax (SB 1120 – 85R).
January 01, 2018	<p>If gasoline or diesel fuel is sold to a person who does not hold a license under 162.105(1), (2), (3), (4) or (6) or 162.205(1), (2), (3), (4) or (6), the seller is liable for the tax at the time of sale. Each sale of gasoline and diesel fuel prior to export must be reported to the Comptroller with specified information. Failure to properly report will incur a penalty of \$2,000 or 5 times the amount of tax due.</p>

Date	Description
	<p>The definition of a supplier was added to the Water Code. A supplier is required to remit the petroleum products delivery fee when ordering a withdrawal form bulk of a petroleum product. In Situations, when a petroleum product ceases to be in continuous movement to a destination outside of Texas, and that product was delivered to a destination in Texas, the person who directs the delivery shall pay the petroleum products delivery fee.</p> <p>In addition, a person who fails to report a subsequent sale in this state of tax-free motor fuel purchased for export will be charged a \$200 penalty for each sale that is not reported. This penalty will be waived if the taxpayer files an amended report that includes these sales no later than 180 days after the original due date of the report (SB 1557 – 85R).</p>
May 24, 2019	A definition was added for “Volunteer Fire Department” (HB 791 – 86R).
September 01, 2019	The tax is imposed when the fuel, which is otherwise exempt from taxation when exported to another state or country, is sold into a truck, railcar or marine vessel to a person who is not a motor fuel license holder. The seller of the fuel is liable for and will collect and remit the tax (HB 3954 – 86R).

## Licenses

See Motor Fuels Licenses and Tax Rate chart.

A fuels tax license must be placed in a conspicuous location or be available for inspection at the owner’s principal place of business. A copy of the license must be kept at each place of business or the place of storage from which the motor fuel is sold, distributed or used. A copy must also be kept in each motor vehicle used by the license-holder to transport motor fuel purchased for resale, distribution or use.

## Bonds

The Comptroller may require a supplier, permissive supplier, distributor, exporter, importer, blender or dyed diesel fuel bonded user to post a bond. The bond for a license-holder shall be two times the highest tax that could accrue on tax-free gasoline or diesel fuel purchased or acquired during a reporting period. The minimum bond amounts are \$600,000 for a supplier or permissive supplier; \$30,000 for an importer, exporter, blender or distributor; and \$10,000 for a dyed diesel bonded user. The Comptroller may waive bond requirements or may release a bond after four years of satisfactory compliance.

## Records

The statute includes specific record requirements as follows:

- Sec. 162.004 Motor Fuel Transportation: Required Documents
- Sec. 162.016 Required Documents
- Sec. 162.0125 Duty to Keep records
- Sec. 162.115 Records – Gasoline:
  - Supplier
  - Permissive Supplier
  - Distributor
  - Importer
  - Exporter
  - Blender
  - Terminal Operator
  - Motor Fuel Transporter
  - Dealer
  - Interstate Trucker
  - Aviation Fuel Dealer
- Sec. 162.125 Refunds and Credits for Bad Debts
- Sec. 162.126
- Sec. 162.127 Claims for Refunds
- Sec. 162.1275
- Sec. 162.206 Statement for Purchase of Diesel Fuel Tax Free
- Sec. 162.216 Records – Diesel:
  - Supplier
  - Permissive Supplier
  - Distributor
  - Importer
  - Exporter
  - Blender
  - Terminal Operator
  - Motor Fuel Transporter
  - Dealer – Interstate Trucker – Aviation Fuel Dealer
  - Dyed Diesel Bonded User
- Sec. 162.227 Refunds and Credits for Bad Debts
- Sec. 162.2275 Refund for Certain Metropolitan Rapid Transit Authorities
- Sec. 162.228 Refund for Bad Debts; Credit for Nonpayment
- Sec. 162.229 Claims for Refunds
- Sec. 162.363 Records – Compressed Natural Gas and Liquefied Natural Gas Tax
- Sec. 162.365 Refund or Credits for Certain Taxes Paid
- Sec. 162.366 Refunds and Credits for Bad Debts
- Sec. 162.367 Claims for Refunds
- Sec. 162.368 Refunds for Certain Metropolitan Rapid Transit Authorities

Records must be kept for four years. Records used to substantiate a refund claimed by a metropolitan transit authority for providing public school transportation under a contract must be kept for six years.

Effective October 1, 2011, a taxpayer is required to keep records to support a refund claim, administrative hearing pending before the Comptroller or a judicial proceeding to determine the amount of the tax penalty or interest that is to be assessed, collected or refunded. They shall be contemporaneous records and supporting documentation to substantiate and enable verification of the taxpayer's claim related to the amount of tax, penalty or interest to be assessed, collected or refunded. Contemporaneous records and supporting documentation appropriate to the tax or fee may include, for example, invoices, vouchers, checks, shipping records, contracts or other equivalent records, such as electronically stored images of such documents, reflecting legal relationships and taxes collected or paid. (see Secs. 162.0125 and 111.0041)

## **Sampling Procedures**

When possible, sampling should be considered in fuels audits using the procedures covered in the Sampling Manual and the Auditing Fundamentals Manual.

The following is a list of items or phases of a fuels tax audit where projections might be used:

- Disallowed tax-free sales
- Tax-free sales to non-permitted holders
- Tax-free sales not covered by signed statements.

The following is a list of items or phases of a fuels tax audit where projections are not recommended:

- Exports
- Imports
- Exceeding signed statement limitations

**Note:** The preceding lists are not all-inclusive because circumstances may vary greatly.

## **Terms and Definitions**

Some terms and definitions are per Chapter 162, Texas Motor Fuels Tax Statutes and the Federation of Tax Administrators (FTA) – Motor Fuels Tax Section Uniformity Definitions and are so noted.

- Accountable product/motor fuel (FTA adopted 4/95) means any product that is subject to the reporting requirements of a state, regardless of its intended use or taxability.
- Alcohol means motor fuel-grade ethanol or a mixture of motor fuel-grade ethanol and methanol, excluding denaturant and water, which is a minimum 98 percent ethanol or methanol by volume (162.001(2)).

- Aviation fuel means aviation gasoline or aviation jet fuel [Sec. 162.001(3)].
- Aviation fuel dealer means a person who:
  - a) is the operator of an aircraft servicing facility;
  - b) delivers gasoline, diesel fuel, compressed natural gas or liquefied natural gas 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, diesel fuel, compressed natural gas or liquefied natural gas on which a fuel tax is required to be collected or paid to this state. [Sec. 162.001(4)]
- Aviation gasoline means motor fuel designed for use in the operation of aircraft other than jet aircraft and sold or used for that purpose. [Sec. 162.001(5)]
- Aviation jet fuel means motor fuel designed for use in the operation of jet or turboprop aircraft and sold or used for that purpose. [Sec. 162.001(6)]
- Biodiesel fuel has the meaning assigned to “biodiesel” by Agriculture Code Section 16.001. [Sec. 162.001(7)] (as amended by Acts 2009, 81st Leg., R.S., Ch.1312, Sec. 1).
  - a) Meets the registration requirements for fuels and fuel additives established by the U.S. Environmental Protection Agency under Section 211(f) of the federal Clean Air Act (42 U.S.C. Sec. 7545);
  - b) Is mono-alkyl esters of long-chain fatty acids derived from vegetable oils and animal fats;
  - c) Meets the requirements of ASTM specification D-6751;
  - d) Is intended for use in engines that are designed to run on conventional, petroleum-derived diesel fuel; and
  - e) Is derived from agricultural products, vegetable oils, recycled greases, biomass or animal fats or the wastes of those products or fats.
- Biodiesel fuel [Sec. 162.001(7) as amended by Acts 2009, 81st Leg., R.S., Ch.1227, Sec. 7] means any motor fuel or mixture of motor fuels, other than gasoline blended fuel, 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, sold, used or capable of use as fuel for a diesel-powered engine. [Sec. 162.001(7)] (as amended by Acts 2009, 81st Leg., R.S., Ch. 1227, Sec. 7)
- Biodiesel blend (FTA adopted 9-03) means a blend of biodiesel fuel meeting ASTM D6751 with petroleum-based diesel fuel, designated Bxx, where xx represents the volume percentage of biodiesel fuel in the blend. (Example: B20 is 20 percent biodiesel and 80 percent petroleum diesel.)

- Blender means a person who produces blended motor fuel outside the bulk transfer/terminal system. (162.001(8))
- Blending means the mixing together of liquids that produces a product that is offered for sale, sold, used or capable of use as fuel for a gasoline-powered engine or diesel-powered engine. 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. (162.001(9))
- BOL means bill of lading; also called straight and great bill of lading (GBL). Also see “Shipping Document.”
- Book adjustment (FTA adopted 9-97) means an adjustment to books and records itemizing changes in volume of at least one reportable product and another product, with no physical movement of the product.
- 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. (162.001(10))
- Bulk storage means a container of more than 10 gallons. (162.001(10-a))
- Bulk transfer means a transfer of motor fuel from one location to another within the United States by pipeline or marine movement within a bulk transfer/terminal system, including:
  - a) a marine vessel movement of motor fuel owned by a licensed supplier or permissive supplier;
  - b) a pipeline movement of motor fuel from a refinery, motor fuel storage facility or terminal to a terminal or motor fuel storage facility;
  - c) a book transfer or in-tank transfer of motor fuel within a terminal or motor fuel storage facility 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. (162.001(11))
- Bulk transfer/terminal system means the motor fuel distribution system consisting of refineries, pipelines, marine vessels, motor fuel storage facilities and IRS-approved terminals. Motor fuel is in the bulk transfer/terminal system if the motor fuel is in a refinery, a pipeline, a motor fuel storage facility, a terminal or a marine vessel transporting motor fuel owned by a licensed supplier or permissive supplier. Motor fuel is not in the bulk transfer/terminal system if the motor fuel is in:
  - 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; or
  - c) a tank car, railcar, trailer, truck or other equipment suitable for ground transportation. (162.001 (12))

- 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. (162.001(13))
- 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. (162.001(14))
- Carrier means an operator of a pipeline or marine vessel engaged in the business of transporting motor fuel above the terminal rack. (162.001(15))
- Compressed natural gas means natural gas that has been compressed and is advertised, offered for sale, sold, suitable for use or used as an engine motor fuel. (162.001(16))
- Dealer means a person who sells motor fuel at retail or dispenses motor fuel at a retail location. (162.001(17))
- 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. (162.001(18))
- Diesel fuel means kerosene, or another liquid or combination of liquids blended together and offered for sale, sold, used or capable of use as fuel 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. (162.001(19))
- Distributor means a person who sells motor fuel at wholesale. A distributor's activities may also include sales of motor fuel at retail. (162.001(20))
- Diversion (FTA adopted 10-07) means a product shipped from a terminal to a state or jurisdiction other than the destination state or jurisdiction indicated on the original bill of lading.
- 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. (162.001(21))

- Dyed diesel fuel means diesel fuel that:
  - a) meets the dyeing and marking requirements of 26 U.S.C. Sec. 4082, regardless of how the diesel fuel was dyed; and
  - b) is intended for off highway use only. (162.001(22))
- Dyed kerosene (FTA adopted 6-05) is kerosene that has been colored or marked with the appropriate dye or marker to the concentration specified by the jurisdiction for tax purposes.
- Export means to obtain motor fuel in this state for sale or use in another state, territory or foreign country. (162.001(23))
- Exporter means a person who 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. (162.001(24))
- 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. (162.001(25))
- Fuel supply tank means a receptacle on a motor vehicle, non-highway equipment or a stationary engine from which motor fuel is supplied for the operation of its engine. (162.001(26))
- Gallon means a unit of liquid measurement as customarily used in the United States that contains 231 cubic inches by volume. (162.001(27))
- Gasohol means a blended motor fuel composed of gasoline and motor fuel alcohol. (162.001(28))
- Gasoline means any liquid or combination of liquids blended together, offered for sale, sold, used or capable of use as 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. (162.001(29))
- Gasoline blend stocks includes any petroleum product component of gasoline, such as naphtha, reformat 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 ultimately will be used for consumer non-motor fuel use and is sold or removed in drum quantities of 55 gallons or less at the time of the removal or sale. (162.001(30))
- 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. (162.001(31))

- Gross gallons mean the total measured product – exclusive of any temperature or pressure adjustments, considerations or deductions – in U.S. gallons. (162.001(32))
- 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. (162.001(33))
- 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. (162.001(34))
- 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. (162.001(35))
- 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. (162.001(36))
- Kerosene (FTA adopted 9-97) means the petroleum fraction containing hydrocarbons that are slightly heavier than those found in gasoline and naphtha, with a boiling range of 180 to 300 degrees Celsius. See diesel fuel definition.
- License-holder means a person licensed by the Comptroller under Secs. 162.105, 162.205, 162 304, 162.305 or 162 306. (162.001(38))
- Liquefied gas means all combustible gases existing in the gaseous state at 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute, excluding compressed natural gas, liquefied natural gas, gasoline or diesel fuel. Liquefied gas is considered a special fuel for purposes of Section 151.308. [Sec. 162.001(39)]

- Liquefied natural gas means natural gas that has been cooled to a liquid state and is advertised, offered for sale, sold, suitable for use or used as an engine motor fuel. [Sec. 162.001(40-a)]
- Marine Vessels include a marine barge. [Sec. 162.001 (40-b)]
- Motor carrier means a person who operates a commercial vehicle used, designated or maintained to transport persons or property. [Sec. 162.001(41)]
- Motor fuel means gasoline, diesel fuel, gasoline blend fuel, compressed natural gas, liquefied natural gas and other products that are offered for sale, sold, used or capable of use as fuel for a gasoline-powered engine or diesel-powered engine. [Sec. 162.001(42)]
- Motor fuel storage facility means a storage facility supplied by pipeline or marine vessel that does not have a rack for removal of motor fuel by truck, railcar or any other means of conveyance that is outside the bulk transfer/terminal system. [Sec. 162.001(42-a)]
- 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. The term does not include a person who is licensed under this chapter as a supplier, permissive supplier or distributor AND exclusively transports gasoline, diesel fuel, gasoline blended fuel, aviation fuel or any other motor fuel to which the person retains ownership while the fuel is being transported by the person [Sec. 162.001(43) as amended by Acts 2008, 81st Leg., R.S., Ch.1227, Sec. 7] **Note:** Suppliers, permissive suppliers and distributors that transported their own fuel (not acting as a common or contract carrier but only their own fuel) were required to get a transport license and file transporter returns between January 1, 2004 and September 1, 2009.
- Net gallons mean 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. [Sec. 162. 001(45)]
- Permissive supplier means a person who elects but is not required to have a supplier's license and who:
  - a) is registered under Internal Revenue Code Section 4101 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
  - c) under a two-party exchange. [Sec. 162.001(46)]

- Pipeline (FTA adopted 4-95) means a fuel distribution system that moves product in bulk through a pipe, either from a refinery to a terminal or from one terminal to another terminal.
- 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. [Sec. 162.001(47)]
- 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. [Sec. 162.001(48)]
- 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. [Sec. 162.001(49)]
- 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. [Sec. 162.001(50)]
- 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. [Sec. 162.001(51)]
- 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. [Sec. 162.001(53)]
- Renewable diesel has the meaning assigned by Agriculture Code Section 16.001. [Sec. 162.001(53-a)]
- Sale means a transfer of title, exchange or barter of motor fuel, excluding transfer of possession of motor fuel on consignment. [Sec. 162.001(54)]
- 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. [Sec. 162.001(55)] Also known as a bill of lading (BOL) or straight bill of lading.

- 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. [Sec. 162.001(56)]
- Stationary transfer (FTA adopted 9-97) means transfer of ownership of reportable product from one position-holder to another within a terminal or bulk plant.
- Supplier means a person who:
  - a) is subject to the general taxing jurisdiction of this state;
  - b) is registered under Internal Revenue Code Section 4101 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;
    - ii. a person who receives motor fuel in this state under a two-party exchange; or
    - iii. a person who owns motor fuel in a marine vessel in this state; 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. [Sec. 162.001(57)]
- 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. [Sec. 162.001(58)]
- Terminal operator means a person who owns, operates or otherwise controls a terminal. [Sec. 162.001(59)]
- Transit company means a business that:
  - a) transports in a political subdivision person 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. [Sec. 162.001(60)]
- Transmix (FTA adopted 11/98) means the accountable product/motor fuel that results from the natural mixing of products at both the beginning and end of each batch of product shipped through a pipeline.
- 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. [Sec. 162.001(61)]

- 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 in 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. [Sec. 162.001(62)]
- Volunteer fire department means a fire department operated by its members, including a part-paid fire department composed of at least 50 percent volunteer firefighters, that is operated on a not-for-profit basis, including a department that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization in Section 501(c)(3) or (4) of that code.

## Exhibit I – Motor Fuels Licenses and Tax Rates

### Gasoline (Tax Type 90 06)

Tax Rate Per Gallon (Regular)	Tax Rate Per Gallon (Transit)	License Type	Bond May Be Required	Filer Type	Filer Discount	Estimated Number of Licensees
\$ 0.20	\$ 0.19 <sup>1</sup>	Supplier	Yes	Monthly	2% <sup>2</sup>	159
\$ 0.20	\$ 0.19 <sup>1</sup>	Permissive Supplier	Yes	Monthly	2% <sup>2</sup>	39
\$ 0.20	\$ 0.19 <sup>1</sup>	Distributor	Yes	Monthly	1.75% <sup>2</sup>	626
\$ 0.20	\$ 0.19 <sup>1</sup>	Importer <sup>3</sup>	Yes	Monthly	1.75% <sup>2</sup>	3
\$ 0.20	\$ 0.19 <sup>1</sup>	Exporter	Yes	Monthly	No	28
\$ 0.20	\$ 0.19 <sup>1</sup>	Blender	Yes	Monthly	No	0
\$ 0.20	\$ 0.19 <sup>1</sup>	Aviation Fuel Dealer <sup>4</sup>	No	None	N/A	2,065
\$ 0.20	\$ 0.19 <sup>1</sup>	Interstate Trucker	No	Quarterly	N/A	26
\$ 0.20	\$ 0.19 <sup>1</sup>	Trip Permit <sup>5</sup>	No	None	N/A	1

### Diesel Fuel (Tax Type 90 07)

Tax Rate Per Gallon (Regular)	Tax Rate Per Gallon (Transit)	License Type	Bond May Be Required	Filer Type	Filer Discount	Estimated Number of Licensees
\$ 0.20	\$ 0.195 <sup>1</sup>	Supplier	Yes	Monthly	2% <sup>2</sup>	212
\$ 0.20	\$ 0.195 <sup>1</sup>	Permissive Supplier	Yes	Monthly	2% <sup>2</sup>	37
\$ 0.20	\$ 0.195 <sup>1</sup>	Importer <sup>3</sup>	Yes	Monthly	1.75% <sup>2</sup>	34
\$ 0.20	\$ 0.195 <sup>1</sup>	Exporter	Yes	Monthly	No	30
\$ 0.20	\$ 0.195 <sup>1</sup>	Blender	Yes	Monthly	No	3
\$ 0.20	\$ 0.195 <sup>1</sup>	DD Bonded User	Yes	Quarterly or Yearly	No	2,168
\$ 0.20	\$ 0.195 <sup>1</sup>	Aviation Fuel Dealer <sup>6</sup>	No	None	N/A	177
\$ 0.20	\$ 0.195 <sup>1</sup>	Interstate Trucker	No	Quarterly	No	2,331
\$ 0.20	\$ 0.195 <sup>1</sup>	Trip Permit <sup>7</sup>	No	None	N/A	1

### Liquefied Gas (Tax Type 90 08)

Tax Rate Per Gallon (Regular)	Tax Rate Per Gallon (Transit)	License Type	Bond May Be Required	Filer Type	Filer Discount	Estimated Number of Licensees
\$ 0.15	\$ 0.15 <sup>1</sup>	Dealer	No	Yearly	1% <sup>2</sup>	61
\$ 0.15	\$ 0.15 <sup>1</sup>	Interstate Trucker	No	Yearly	0.5% <sup>2</sup>	3
\$ 0.15	\$ 0.15 <sup>1</sup>	LG Tax Decal	No	None <sup>8</sup>	N/A	1,808

### All Motor Fuels

Tax Rate Per Gallon (Regular)	Tax Rate Per Gallon (Transit)	License Type	Bond May Be Required	Filer Type	Filer Discount	Estimated Number of Licensees
N/A	N/A	Motor Fuel Transporter	No	Quarterly	No	597
N/A	N/A	Terminal Operator	No	Monthly	No	48

## Petroleum Products Delivery Fee

### Tax (Fee) Type 64

Load Size	Effective Date 09/01/2003	Effective Date 09/01/2007	Effective Date 07/01/2012	Effective Date 09/01/2015
0 – 2,499 gallons	10.00	3.75	2.75	1.70
2,500 – 4,999	20.00	7.50	5.50	3.45
5,000 – 7,999	30.00	11.75	8.65	5.45
8,000 – 9,999	40.00	15.00	11.00	6.95
10,000 + @ 5,000	20.00	7.50	5.50	3.45

For gasoline deliveries of at least 7,000 but less than 8,000 gallons (whether single product type or split load), special rules apply. If the gasoline portion of the delivery is less than 7,000 gallons, the fee is determined by the load size for the applicable year. If the gasoline portion of the delivery is at least 7,000 gallons, the total load is presumed to be at least 8,000 gallons and the fee is determined by the load size for the applicable year.

<sup>1</sup> Metropolitan authorities cannot purchase gasoline or diesel fuel from suppliers and distributors at the reduced rate but must file a refund claim with the Comptroller for the reduction.

<sup>2</sup> Allowed for timely payment to supplier.

<sup>3</sup> Importers receive a 1.75% timely filing discount on purchases from suppliers and permissive suppliers. They receive a 2% timely filing discount on tax-free purchases imported into the state.

<sup>4</sup> Aviation fuel dealers may purchase and sell aviation gasoline and aviation jet fuel under either the gasoline or diesel fuel aviation fuel dealers license.

<sup>5</sup> Trip permits may be issued through IFTA or the motor fuels tax statutes.

<sup>6</sup> Aviation fuel dealers may purchase and sell aviation gasoline and aviation jet fuel under either the gasoline or diesel fuel aviation fuel dealers license.

<sup>7</sup> Trip permits may be issued through IFTA or the motor fuels tax statutes.

<sup>8</sup> Prepaid users: based on mileage and registered gross weight of vehicle.

## **CHAPTER 2: GASOLINE LAW**

### **Definition**

“Gasoline” means any liquid or combination of liquids blended together, offered for sale, sold, used or capable of use as the fuel for a gasoline-powered engine. The term includes gasohol, aviation gasoline and blending agents; it does not include racing gasoline, diesel fuel, aviation jet fuel or liquefied gas. [Sec. 162.001. Definitions (29)]

### **Imposition**

A tax is imposed on the removal of gasoline from the terminal rack other than by bulk transfer. The supplier or permissive supplier shall collect the tax at a rate of 20 cents per net gallon from the person who orders the withdrawal. Permissive suppliers shall collect the tax on gasoline destined for Texas. The tax is imposed on:

- the importer if the gasoline was purchased outside[?] of Texas tax free;
- gasoline imported in the fuel supply tank of a person required to be licensed as an interstate trucker;
- gasoline blended outside the terminal/bulk transfer system; and/or.
- gasoline removed from the bulk transfer/terminal system and transferred by truck or railcar by a licensed supplier or licensed permissive supplier to a person who does not have a supplier's or permissive supplier's license.
- Gasoline that is otherwise exempt from taxation under Section [162.104\(a\)\(4\)](#) or (7) if the gasoline is sold into a truck or railcar in this state to a person who does not hold a license under Section [162.105\(1\), \(2\), \(3\), \(4\) or \(6\)](#). The person who sold the gasoline is liable for and shall collect and remit the tax.
- Gasoline that is otherwise exempt from taxation under Section [162.104\(a\)\(4\)](#) or (7) if before export the gasoline is sold in this state to a person who holds a license under Section [162.105\(1\), \(2\), \(3\), \(4\) or \(6\)](#) and the gasoline is delivered to a destination in this state. The person that redirected the delivery of the gasoline to a destination in this state is liable for and shall pay the tax.
- Gasoline that is otherwise exempt from taxation under Section 162.104 (a)(7) if the gasoline is sold into a marine vessel in this state to a person who does not hold a license under Section 162.105 (1), (2), (3), (4) or (6) unless the exporter of record is licensed under Section 162.105(1), (2), (3), (4) or (6). The person who sold the gasoline is liable for and will collect and remit the tax.

**Note:** See the chart in Chapter 1 for tax rates and applicable periods.

### **Computation of Tax**

The amount of tax is based on the temperature-adjusted (net) volume.

### **Exceptions**

Tax does not apply to gasoline:

- sold to the United States for its exclusive use;
- sold to a public-school district for the district's exclusive use;
- sold to a commercial transportation company or metropolitan transit authority that provides public school transportation services;

- exported by a licensed supplier or exporter;
- moved by truck or railcar between licensed suppliers or permissive suppliers if the gasoline removed from the first terminal comes to rest in the second terminal;
- delivered or sold into a storage facility of a licensed aviation fuel dealer;
- exported to a foreign country;
- sold to a non-profit entity organized and engaged exclusively in providing emergency medical services, including rescue and ambulance services; or to
- Texas volunteer fire departments means a fire department operated by its members, including a part-paid fire department composed of at least 50% volunteer firefighters, that is operated on a not-for-profit basis, including a department that is exempt from federal income tax under Section 501(a), IRC of 1986, by being listed as an exempt organization in Section 501(c) (3) or (4) of that code.

## **Specific Licenses**

- **Supplier** – This license authorizes the collection of state tax on all gasoline transactions sold or transferred outside the bulk transfer system. The supplier must be registered under Internal Revenue Code Section 4101 for transactions in the motor fuel bulk transfer system. Suppliers must also be a position-holder in a terminal or refinery in Texas. See Exhibit II, Page 1.
- **Permissive supplier** – This license is for persons who elect but are not required to have a supplier's license. The permissive supplier must be registered under Internal Revenue Code Section 4101 for transactions in the motor fuel bulk transfer/terminal system and be a position-holder in a terminal located in another state. (See Exhibit II, Page 2.)
- **Distributor** – This license is for a person who sells motor fuel at wholesale. A distributor's activities may also include sales of motor fuel at retail. (See Exhibit II, page 3.)
- **Importer** – A person who imports gasoline into this state. (See Exhibit II, Page 4.)
- **Terminal operator** – A person who owns, operates or otherwise controls a terminal. A terminal operator may transact gasoline and/or diesel fuel without securing a separate license for each fuel type. (See Exhibit II, Page 5.)
- **Exporter** – A person who exports motor fuel from this state. (See Exhibit II, Page 6.)
- **Blender** – A person who produces blended motor fuel outside the bulk transfer/terminal system. (See Exhibit II, Page 7.)
- **Motor fuel transporter** – 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. The term does not include a

person who is licensed under this chapter as a supplier, permissive supplier or distributor and exclusively transports gasoline, diesel fuel, gasoline blended fuel, aviation fuel or any other motor fuel to which the person retains ownership while the fuel is being transported by the person. (See Exhibit II, Page 8.)

- Interstate trucker – 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 27,000 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. The interstate trucker license and IFTA license are by calendar year. Carriers traveling only between Texas and Mexico are issued an interstate trucker license; those traveling in two or more IFTA-member jurisdictions are issued an IFTA license.
- Aviation fuel dealer – 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 aircraft servicing equipment that is used solely off highway; and
  - c) does not use, sell or distribute gasoline or diesel fuel on which fuel tax is required to be collected or paid to this state. (See Exhibit II, Page 9.)
- Distributor – aviation fuel dealer – A licensed distributor who also operates an aircraft servicing facility (fixed base operation/FBO) that exclusively delivers aviation fuel, gasoline or diesel fuel into aircraft or aircraft servicing equipment. (See Exhibit II, Page 10.)
- Trip permit – Instead of an annual interstate trucker's license, a person operating a qualified motor vehicle described by Section 162.001 (36) into this state for commercial purposes may obtain a trip permit. A trip permit must be obtained before or at the time of entry into this state. Not more than five trip permits for each person may be issued during a calendar year. A fee for each trip permit shall be in the amount of \$50 for each vehicle for each trip.

## License Types

A supplier, permissive supplier, distributor, blender, importer, exporter, interstate trucker or aviation fuel dealer must obtain a Texas fuels tax license by filing an application with the Comptroller.

Suppliers and permissive suppliers may also act as distributors, importers, exporters, blenders or aviation fuel dealers without securing a separate license but are subject to all conditions, requirements and liabilities imposed on those license holders.

A distributor may also act as an importer, exporter or blender without securing a separate license but is subject to all of the conditions, requirements and liabilities imposed on those license-holders.

An importer may also act as an exporter or blender without securing a separate license but is subject to all of the conditions, requirements and liabilities imposed on those license-holders.

The interstate trucker license and IFTA license are calendar-year credentials and automatically renewed by the Comptroller each year if the taxpayer is in good standing. The trip permit is valid for the period stated on it, as determined by the Comptroller.

**Note:** A licensed supplier, permissive supplier, distributor, importer, exporter or blender must obtain a separate license to operate as a motor fuel transporter.

### **License Lists**

The statute requires that a list of license-holders be mailed to each license-holder by Dec. 20 of each year. Also, a supplemental list of additions and deletions is mailed to each license-holder on a monthly basis. License-holder lists are also available at <http://aixtcp.cpa.state.txus/newperm.html>.

### **Bonds**

License-holders may be required to post a security bond with the Comptroller. The amount of tax that has or is expected to become due, past history under the motor fuels statutes and the necessity to protect the state against failure to pay are all considered. The minimum bond amount is \$30,000; the maximum is \$600,000 unless the Comptroller believes there is undue risk of loss.

### **Returns and Payments**

Suppliers, permissive suppliers, distributors, importers, exporters, blenders and terminal operators shall file a return on or before the 25th day of the month following the end of each calendar month. An interstate trucker and motor fuel transporter shall file a return on or before the 25th day of the month following the end of the calendar quarter. The motor fuel transporter return contains only informational data. The return required by this section shall be accompanied by a payment for tax reported due. An aviation fuel dealer is not required to file a return.

## Records

### Section 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.
  - 7) the import verification number if that number is required by Rule 3.441.
- 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;
  - 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) additional records required by Rule 3.430(11 A-D).
- 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 the number of the aircraft or a description or the number of the aircraft servicing equipment in which gasoline is used.
- l) The Comptroller may require selective schedules from a supplier, permissive supplier, distributor, importer, exporter, blender, terminal operator, motor fuel transporter, dealer, aviation fuel dealer or 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.

## Information on Returns

**Note:** The auditor should reference the actual tax returns for each license type and see the instructions for each line.

### Suppliers and Permissive Suppliers – Section 162.116

The return and supplements shall contain:

- the number of net gallons received during the month, sorted by product code, seller, point of origin, destination state, carrier and receipt date;
- the number of net gallons removed at the terminal rack during the month from the account of the supplier, sorted by product code, person receiving the gasoline, terminal code and carrier;
- 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;
- the number of net gallons removed during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document, sorted by product code, person receiving the gasoline, terminal code and carrier;
- the number of net gallons the supplier or permissive supplier sold during the month in transaction exempt under Section 162.104, sorted by product code, carrier, purchaser and terminal code;
- the number of net gallons sold in the bulk transfer/terminal system in this state to any person not holding a supplier's or permissive supplier's license; and
- any other information required by the Comptroller.

A supplier or permissive supplier that timely remits the tax may deduct an allowance of 2 percent of the amount of tax payable. If a supplier or permissive supplier remits tax to the state but does not receive the tax from the license-holder/purchaser, the supplier or permissive supplier may take a tax credit for the previously remitted tax on the next monthly return if the Comptroller's office is notified of the default within 60 days after the default occurs. All payments and credits made by the purchaser must be applied to the purchaser's account to determine the non-payment amount, if the purchaser's account contains the purchase of goods or items other than motor fuel, then the payments and credits to that account should be applied ratably between motor fuel, including tax, and other goods or items sold to the purchaser. If the accelerated credit is not claimed within 60 days of the default, it may still be claimed as a bad debt credit after the account is written off the books and records as uncollectable. If the license-holder/purchaser pays the supplier or permissive supplier the tax owed after the supplier or permissive supplier has taken the credits on a return, the tax should be remitted on the supplier's or permissive supplier's next monthly return plus a penalty of 10 percent and interest.

Effective June 19, 2009, the Comptroller must be notified of the default with 15 days after the default occurs. The supplier or permissive supplier may claim a credit for 100 percent of the amount of the deferred tax payment defaulted by the distributor or importer. If the accelerated credit is not claimed within 15 days of the default, it may still be claimed as bad debt credit after the account is written off the books and records as uncollectable.

### **Distributors – Section 162.118**

The return and supplements of each distributor shall contain:

- the number of net gallons of gasoline received by the distributor during the month;
- the number of net gallons of gasoline removed at a terminal rack during the month;
- the number of net gallons of gasoline removed during the month for export, sorted by product code, terminal code, bulk plant address, destination state and carrier;
- the number of net gallons of gasoline removed by the distributor during the month from an out of state terminal for delivery into this state;
- the number of gallons of gasoline sold during the month in transactions exempt; and
- any other information required by the Comptroller.

### **Importer – Section 162.119**

The return and supplements of each importer shall contain:

- the number of gallons of imported gasoline acquired from a supplier or permissive supplier who collected the Texas tax due;
- the number of gallons of imported gasoline acquired tax free;
- the number of gallons of imported gasoline acquired from a bulk plant outside this state; and
- any other information required by the Comptroller.

An importer of gasoline that files a timely return and payment may deduct a 2 percent allowance on tax-free purchases imported into this state. Purchases from suppliers and permissive suppliers are subject to a 1.75 percent timely payment allowance.

### **Terminal Operator – Section 162.120**

A terminal operator shall file 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 beginning and ending inventory;
- the number of gallons received;
- the number of gallons removed; and,
- any other information required by the Comptroller.

### **Motor Fuel Transporter – Section 162.121**

The quarterly return and supplements of a motor fuel transporter shall contain:

- 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 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; and
- any other information required by the Comptroller.

#### **Exporter – Section 162.122**

The monthly return and supplements of an exporter shall contain:

- the number of gallons of gasoline acquired from a supplier and exported during the month, including supplier name, terminal control number and product code;
- the number of net gallons of gasoline acquired from a bulk plant and exported during the month, including bulk plant name and product code;
- the number of net gallons of gasoline acquired from a source other than a supplier or bulk plant and exported during the month, including the name of the source from which the gasoline was acquired and the name and address of the person receiving the gasoline;
- the destination state of the gasoline exported during the month; and
- any other information required by the Comptroller.

#### **Blender – Section 162.123**

The monthly return and supplements of each blender shall contain:

- the number of gallons of gasoline received;
- the number of gallons of product blended with gasoline;
- the number of gallons of blended gasoline sold; and
- any other information required by the Comptroller.

#### **Interstate Trucker – Section 162.124**

The quarterly return of each interstate trucker shall contain:

- 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;
- 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
- any other information required by the Comptroller.

## Refunds and Credits

### Introduction

A license-holder may take a credit on a return if the license-holder paid tax on the purchase of gasoline and subsequently:

- sold it tax-free 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;
- sold it tax free to a public-school district in this state for the district's exclusive use;
- sold it tax-free to a commercial transportation company that provides public school transportation services to a school district under Education Code Section 34.008 and that uses the gasoline only to provide those services;
- exported by either a licensed supplier or a licensed exporter from this state to any other state;
- moved by truck or railcar between licensed suppliers or licenses permissive supplier and in which 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;
- delivered or sold into a storage facility of a licensed aviation fuel dealer from which the 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;
- exported to a foreign country if the bill of lading or shipping documents indicates the foreign destination and the fuels is actually exported to the foreign country;
- is a nonprofit entity organized and engaged exclusively in providing emergency medical services, including rescue and ambulance services; or
- sold it tax free to a volunteer fire department for the department's exclusive use (effective July 1, 2009). [Per HB791 definition of volunteer fire department was amended to clarify "Volunteer Fire Department" means a fire department operated by its members, including a part-paid fire department composed of at least 50% volunteer firefighters, that is operated on a not-for-profit basis, including a department that is exempt from federal income tax under section 501(a), IRC of 1986, by being listed as an exempt organization in Section 501(c) (3) or (4) of that code. HB 791

If gasoline is moved from a terminal by a licensed supplier or permissive supplier by truck or railcar for delivery to another terminal, tax should be paid when the gasoline is first removed from the original terminal. After the tax-paid gasoline has been delivered to the receiving terminal the license-holder who receives the gasoline at the second terminal may take credit for the tax paid on the next monthly return.

A license-holder may take a credit on a return and a person who does not hold a license may file a refund claim if the license-holder or the person who paid the tax:

- is the United States government and the gasoline being 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;
- is a public-school district in this state and the gasoline is for the district's exclusive use;
- is a commercial transportation company or metropolitan rapid transit authority that provides public school transportation services to a school district under Education Code Section 34.008, and the gasoline is used exclusively to provide those services;
- used the gasoline in off-highway equipment, in stationary engines, or for other non-highway purposes and not in a motor vehicle on the public highways;
- used the gasoline in a motor vehicle that is operated exclusively off the public highways, except for incidental travel, provided credit or refund may not be allowed for the portion used in the incidental highway travel;
- is a licensed aviation fuel dealer who delivers the gasoline into the fuel supply tanks of aircraft or aircraft servicing equipment;
- is a nonprofit entity organized and engaged exclusively in providing emergency medical services, including rescue and ambulance services; or
- is a volunteer fire department (effective May 24, 2019). means a fire department operated by its members, including a part-paid fire department composed of at least 50% volunteer firefighters, that is operated on a not-for-profit basis, including a department that is exempt from federal income tax under Section 501(a), IRC of 1986, by being listed as an exempt organization in Section 501(c)(3) or (4) of that code.

A licensed interstate trucker including IFTA licensees may take credit on a return for gasoline purchased tax paid in the state but used outside the state. The credit must be taken or filed within the limitation period provided by Section 162.128.

A license-holder may take credit on a return or a person who does not hold a license may file a refund claim if the tax paid gasoline is used by auxiliary power units or power take-off equipment on any motor vehicle and if that use can be accurately measured.

A person who paid tax on gasoline may claim a credit or seek a refund 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.

A transit company that paid tax on gasoline may seek a refund in an amount equal to one cent per gallon for gasoline used in qualified transit vehicles.

A metropolitan rapid transit authority (MRTA) operating under Transportation Code Chapter 451 that is a party to a contract governed by Education Code Section 34.008 is entitled to a refund of taxes paid on gasoline used to provide transportation services

under a contract with a Texas school district. The refund claim must include information regarding:

- vehicle mileage;
- hours of service provided;
- fuel consumed;
- total number of student passengers per route; and
- total number of non-student passengers per route.

If in any month of a school year the number of non-student passengers is greater than 5 percent of the total passengers for any single route, the MRTA is not entitled to a refund of the taxes paid for that month.

An MRTA 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.

**Note:** The right to receive a refund or take a credit is not assignable.

### **Bad Debts and Credits for Nonpayment**

A licensed supplier, permissive supplier or distributor may file a refund claim with the Comptroller if:

- the licensed supplier, permissive supplier or distributor has paid the taxes on the gasoline sold on account;
- the licensed supplier, permissive supplier or distributor determines that the account is uncollectible and worthless; and
- the account is written off as a bad debt on the accounting books of the supplier, permissive supplier or distributor.

A licensed supplier, permissive supplier or distributor may take an accelerated credit on the monthly report if:

- the supplier, permissive supplier or distributor paid the taxes sold on account on a previous report;
- the purchaser has not remitted the tax to the supplier, permissive supplier or distributor; and
- at the time of the sale the purchaser held a license issued by the Comptroller.

Refunds or credits cannot be claimed for the sale of gasoline that is delivered into the fuel supply tank of a motor vehicle or motorboat and for which payment is made through use and acceptance of a credit card.

A credit card is defined as any card, plate, key or like device by which credit is extended to and charged to the purchaser's account. Sales made through the use and acceptance of a fuel access card, where the only use of the access card is to record the quantity and type of fuel or other information acquired merely for the purpose of reconciling accounts and no credit is extended to the holder are eligible for the bad debt

credit. Credit sales to commercial or agricultural customers at locations that are not open to the general public are eligible for the bad debt credit.

A refund may be claimed at the time the account is written off as a bad debt, before the expiration of the applicable limitation period as provided by Chapter 111. The limitation period begins on the date the account is written off the accounting books and records, not the date of the original sale.

### **Claims for Refunds**

A refund claim must be filed on a form provided by the Comptroller, supported by the original invoice issued by the seller and contain the:

- stamped or preprinted name and address of the seller;
- name of the purchaser;
- date of delivery
- date of the issuance of the invoice, if different from the date of delivery;
- number of gallons delivered;
- amount of tax, either separately stated from the selling price or stated with a notation the selling price includes the tax; and
- 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.

A distribution log must be maintained for refund claims for gasoline removed from the user's bulk storage. The distribution log must contain:

- date of delivery;
- number of gallons of gasoline delivered;
- signature of the bulk user; and 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 the odometer or hubometer reading.

After examination of the refund claim, the Comptroller shall reduce the refund by the 2 percent deducted originally by the license-holder on the first sale or distribution of the gasoline.

If delivery is through an automated method whereby the purchase is automatically applied to the purchaser's account, one invoice may be issued at the time of billing covering multiple purchases during the 30-day billing cycle.

### **Statute of Limitations**

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 whichever period expires latest.

## Exceptions

An interstate trucker who is entitled to a credit may carry the credit forward for three successive quarters or request a refund within the three successive quarters. A credit or refund that is not claimed within the period prescribed will expire.

There is a four-year statute of limitations from the due and payable date for a tax return on which an overpayment of tax was made by a licensed supplier, permissive supplier, distributor, importer, exporter or blender who determines that taxes were erroneously reported or that more taxes were paid than were due because of a mistake of fact or law. The supplier, permissive supplier, distributor, importer, exporter or blender must establish the credit by filing an amended tax return for the period in which the error occurred, and tax payment was made to the Comptroller.

If the Comptroller assesses a supplier or permissive supplier for a tax-free sale that should have been taxed and the supplier or permissive supplier subsequently collects the tax from the purchaser, the purchaser may file a refund claim if the gasoline was used in an exempt manner. The claim must be filed 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. Supporting documentation for the exempt use is required.

### **Duty to Report Subsequent Sales of Tax-Free Gasoline Purchased for Export**

- a) A person who purchases or removes gasoline tax-free under Section [162.104](#)(a)(4) or (7) and before export sells the gasoline in this state tax-free to a person who holds a license under Section [162.105](#)(1), (2), (3), (4) or (6) shall report that transaction to the comptroller as required by this section. If the gasoline is subsequently sold one or more times in this state before export and tax-free to a person who holds a license under Section [162.105](#)(1), (2), (3), (4) or (6), each seller shall report the transaction to the comptroller as required by this section.
- b) Each person who sells tax-free gasoline in this state in a transaction described by Subsection (a) must provide to the comptroller:
  - 1) the bill of lading number issued at the terminal;
  - 2) the terminal control number;
  - 3) the date the gasoline was removed from the terminal;
  - 4) the number of gallons invoiced; and
  - 5) any other information required by the comptroller.
- c) The sales invoice for each transaction described by Subsection (a) must include:
  - 1) the name of the seller and purchaser; and
  - 2) the original bill of lading number.
- d) A person required to report a transaction under Subsection (a) shall report the transaction on a form prescribed by the comptroller and with the return required by Section [162.114](#).

## Exhibit II – Summary of Gasoline Tax Law by License Type

### Fuel Type: **GASOLINE** License: **SUPPLIER**

- Issued a Certificate of Registry (637) under Section 4101, Internal Revenue Code, for transactions in the bulk transfer/terminal system and owns inventory (a position-holder) in a terminal or refinery located in Texas and may also own motor fuel in a terminal located outside of Texas. [162.001(57)]
- Collects tax from purchaser on gasoline removed from the terminal through the terminal rack. [162.101(a)] Remits tax on supplier's own removals from a terminal rack and on gasoline imported outside the bulk transfer/terminal system when not purchased from a licensed permissive supplier. [162.101(b)]
- Bond: \$30,000-\$600,000 (CPA may require a higher amount) Bond Type: surety, cash, assignment of CD or letter of credit. [162.111]

## Summary

<b>Reports [162.114] [162.116]</b>	<b>Tax Free Purchases [162.101]</b>	<b>Taxable Purchases</b>	<b>Tax Free Sales [162.104]</b>	<b>Taxable Sales</b>	<b>Records [162.115(a)]</b>	<b>Also Operates As [162.105]</b>
<p>Monthly due by the 25th of the month following the report period.</p> <ol style="list-style-type: none"> <li>Received in a terminal</li> <li>Removed from a terminal</li> <li>Removed from a terminal for export</li> <li>Imported into this state outside the bulk transfer / terminal system</li> <li>Sales exempt from tax under 162.104</li> <li>Sales in the bulk transfer / terminal system to unlicensed suppliers.</li> </ol>	<ol style="list-style-type: none"> <li>Transactions above the terminal rack in the bulk transfer / terminal system.</li> <li>Imported from non-licensed out of state terminal or bulk plant</li> </ol>	<ol style="list-style-type: none"> <li>Removed from Texas terminal.</li> <li>imported from licensed permissive supplier [162.107]</li> <li>All purchases below the terminal rack</li> </ol>	<ol style="list-style-type: none"> <li>US Government *</li> <li>TX public school district*</li> <li>Company under contract with TX public school district.</li> <li>Exporter for direct export *</li> <li>Transfers between terminals *</li> <li>AV Fuel Dealer *</li> <li>Exported out of country *</li> <li>TX electric &amp; telephone co-ops *</li> <li>Sales to a Volunteer Fire Department *</li> <li>TX Emergency Medical Services</li> </ol>	<ol style="list-style-type: none"> <li>Gallons removed from terminal</li> <li>Sales below the terminal rack</li> <li>Tax is imposed when fuel, which is otherwise exempt from taxation when exported to another state or country, is sold into a truck, railroad or marine vessel to a person who is not a motor fuel license holder</li> </ol>	<ol style="list-style-type: none"> <li>Inventory at first of each month</li> <li>Purchases and receipts</li> <li>Imported</li> <li>Exported</li> <li>sold, distributed, used</li> <li>Blended below the rack</li> <li>Loss by fire, theft or accident</li> </ol>	<ul style="list-style-type: none"> <li>Distributor</li> <li>Importer</li> <li>Exporter</li> <li>Blender</li> <li>Aviation Fuel Dealer</li> <li>Motor Fuel Transporter **</li> <li>Permissive Supplier</li> <li>[161.001(57)]</li> </ul>

\* Request credit on return if tax previously paid [162.125(a)]

\*\* Separate license issued if operating as a common carrier

**Fuel Type: GASOLINE    License: PERMISSIVE SUPPLIER**

- Issued a Certificate of Registry (637) under Section 4101, Internal Revenue code, for transactions in the bulk transfer/terminal system and owns inventory (a position-holder in **only** a terminal or refinery located in a state other than Texas. [162.001(46)])
- Collects tax from purchaser on gasoline removed from the out-of-state terminal destined for delivery in Texas. [162.101 & 162.117] Bond: \$30,000 – \$600,000 (CPA may require a higher amount.) Bond Type: surety, cash, assignment of CD or letter of credit. [162.111]

## Summary

<b>Reports</b> <b>[162.114]</b> <b>[162.116]</b>	<b>Tax-Free</b> <b>Purchases</b> <b>[162.101]</b>	<b>Taxable</b> <b>Purchases</b> <b>[162.101]</b>	<b>Tax-Free Sales</b> <b>[162.104]</b>	<b>Taxable Sales</b> <b>[162.104]</b>	<b>Records</b> <b>[162.115 (a)]</b>	<b>Also Operates</b> <b>As</b> <b>[162.105]</b>
<p>Monthly, due by the 25th of the month following the report period.</p> <ol style="list-style-type: none"> <li>Received in a terminal</li> <li>Removed from a terminal</li> <li>Removed from a terminal for export</li> <li>Imported into this state outside the bulk transfer/ terminal system</li> <li>Sales exempt from tax under 162.204</li> <li>Sales in the bulk transfer/ terminal system to unlicensed suppliers</li> </ol>	<p>Imported from non-licensed out of state terminal or bulk plant.</p>	<ol style="list-style-type: none"> <li>Removed from Texas terminal</li> <li>Imported from licensed permissive supplier [162.107]</li> <li>All purchases below the terminal rack.</li> </ol>	<ol style="list-style-type: none"> <li>US Government *</li> <li>TX public school district *</li> <li>Company under contract with TX public school district *</li> <li>Exporter for direct export *</li> <li>Transfers between terminals *</li> <li>AV Fuel Dealer *</li> <li>Exported out of country</li> <li>TX electric &amp; telephone co-ops *</li> <li>TX Volunteer Fire Department *</li> <li>TX Emergency Medical Services</li> </ol>	<ol style="list-style-type: none"> <li>Sales below the terminal rack</li> <li>Tax is imposed when fuel, which is otherwise exempt from taxation when exported to another state or country, is sold into a truck, railroad or marine vessel to a person who is not a motor fuel license holder</li> </ol>	<ol style="list-style-type: none"> <li>Inventory at first of each month</li> <li>Purchases and receipts</li> <li>Imported</li> <li>Exported</li> <li>Sold, distributed, used</li> <li>Blended below the rack</li> <li>Loss of fire, theft or accident</li> </ol>	<ul style="list-style-type: none"> <li>Distributor</li> <li>Importer</li> <li>Exporter</li> <li>Blender</li> <li>Aviation Fuel Dealer</li> <li>Motor Fuel Transporter **</li> </ul>

\* Request credit on return if tax previously paid [162.125(a)]

\*\* Separate license issued if operating as a common carrier

**Fuel Type: GASOLINE    License: DISTRIBUTOR**

- Purchases gasoline from a supplier or another distributor for sale at wholesale (a sale for resale) and may include sales at retail [162.001(20)] Must obtain Distributor/Aviation Fuel Dealer license if operates aircraft servicing facility.
- Bond: \$30,000-\$600,000 (CPA may require a higher amount.) Bond Type: surety, cash, assignment of CD or letter of credit. [162.111]

## Summary

Reports [162.114] [162.118]	Tax Free Purchases [162.101]	Taxable Purchases [162.101]	Tax Free Sales [162.104]	Taxable Sales [162.104]	Records [162.115(b)]	Also Operates As [162.105]
<p>Monthly, due by the 25th of the month following the report period.</p> <ol style="list-style-type: none"> <li>Received</li> <li>Removed from a terminal</li> <li>Removed from a terminal for export</li> <li>Imported into this state outside the bulk transfer / terminal system</li> <li>Sales exempt from tax under 162.104</li> </ol>	<p>Imported from non-licensed out of state terminal or bulk plant.</p>	<ol style="list-style-type: none"> <li>Removed from Texas terminal</li> <li>Imported from licensed permissive supplier [162.107]</li> <li>All purchases below the terminal rack.</li> </ol>	<ol style="list-style-type: none"> <li>US Government *</li> <li>TX public school district *</li> <li>Company under contract with TX public school district *</li> <li>Exporter for direct export *</li> <li>Transfers between terminals *</li> <li>AV Fuel Dealer *</li> <li>Exported out of country *</li> <li>TX electric &amp; telephone co-ops *</li> <li>Volunteer Fire Departments *</li> <li>TX Emergency Medical Services</li> </ol>	<ol style="list-style-type: none"> <li>Sales below the terminal rack</li> <li>Tax is imposed when fuel, which is otherwise exempt from taxation when exported to another state or country, is sold into a truck, railroad or marine vessel to a person who is not a motor fuel license holder</li> </ol>	<ol style="list-style-type: none"> <li>Inventory at first of each month</li> <li>Purchases and receipts</li> <li>Imported</li> <li>Exported</li> <li>Sold, distributed, used</li> <li>Blended below the rack</li> <li>Loss of fire, theft or accident</li> </ol>	<ul style="list-style-type: none"> <li>Importer</li> <li>Exporter</li> <li>Blender</li> <li>Aviation Fuel Dealer</li> <li>Motor Fuel Transporter **</li> </ul>

\* Request credit on return if tax previously paid [162.125(a)]

\*\* Separate license issued if operating as a common carrier

**Fuel Type: GASOLINE    License: IMPORTER**

- Imports gasoline or diesel fuel from another state or country into this state outside the bulk transfer/terminal system. [162.001(35)]
- Import verification number is required for a single cargo tank delivery. [162.001(34) and 162.016(h)]
- Diversion number required for all diverted loads. [162.016(g)]
- Gasoline and diesel fuel imported may be sold to a bulk end-user, sold through licensee's own company stores or used by the licensee. However, if importer is selling to other retail dealers or distributors then the importer must be licensed as a distributor.
- Bond: \$30,000-\$600,000 (CPA may require a higher amount.) Bond Type: surety, cash, assignment of CD or letter of credit. [162.111]

## Summary

Reports [162.114 and 162.119]	Tax Free Purchases [162.101]	Taxable Purchases [162.101]	Tax Free Sales [162.104]	Taxable Sales [162.104]	Records [162.115(c)]	Also Operates As [162.105(4)]
<p>Monthly, due by the 25th of the month following the report period.</p> <ol style="list-style-type: none"> <li>Imported, Texas tax paid</li> <li>Imported, tax free</li> </ol>	<ol style="list-style-type: none"> <li>Cannot purchase tax free in Texas</li> <li>Out of state purchases other than from permissive supplier.</li> </ol>	<p>removed at out of state terminal from permissive supplier with Texas destination</p>	<ol style="list-style-type: none"> <li>US Government *</li> <li>TX public school district *</li> <li>Company under contract with TX public school district *</li> <li>TX electric &amp; telephone co-ops</li> <li>Volunteer Fire Departments</li> <li>Emergency Medical Services</li> </ol>	<ol style="list-style-type: none"> <li>Bulk end-user</li> <li>Through company owned store *</li> </ol> <p>* Distributor license is required if making bulk wholesale sales</p>	<ol style="list-style-type: none"> <li>Inventory at first of each month</li> <li>Purchases and receipts</li> <li>Imported</li> <li>Exported</li> <li>Sold, distributed, used</li> <li>Blended below the rack</li> <li>Loss by fire, theft or accident</li> </ol>	<ul style="list-style-type: none"> <li>Exporter</li> <li>Blender</li> <li>Motor Fuel Transporter **</li> </ul>

\* Request credit on return if tax previously paid [162.125(a)]

\*\* Separate license issued if operating as a common carrier

**Fuel Type: GASOLINE or DIESEL      License: TERMINAL OPERATOR**

- Owns, operates or otherwise controls a terminal and has a Terminal control Number issued by the IRS. [162.001(59)]
- A terminal is located at a refinery or another facility that receives motor fuel by pipeline or ship and from which gasoline or diesel fuel is withdrawn through a rack [162.001(50)] into a transport vehicle, railroad tank car or other means of transport. [162.001(58)]
- A terminal operator may also hold separately another motor fuel tax license, such as a supplier or permissive supplier. No bond. [162.111 and 162.212]

## Summary

Reports [162.114 and 162.120] [162.215 and 162.221]	Purchases	Sales	Records [162.115f and 162.216f]	Also Operates As
<p>Monthly due by the 25th of the month following the report period</p> <ol style="list-style-type: none"> <li>1. Beginning and ending inventory</li> <li>2. Receipts into the terminal</li> <li>3. Removed sorted by each position-holder (licensed supplier)</li> </ol>	None	None	<ol style="list-style-type: none"> <li>1. Beginning inventory of each month held by each position-holder (licensed supplier)</li> <li>2. Receipts by showing the seller</li> <li>3. Receipts for export showing the origin and destination state or country</li> <li>4. Imports showing the state or country of origin</li> <li>5. Sold, distributed or used by the purchaser</li> <li>6. Loss by fire, theft or accident</li> </ol>	None

**Fuel Type: GASOLINE    License: EXPORTER**

- Exports gasoline from this state to another state or country outside of the bulk transfer/terminal system. [162.001(24)]. An exporter needs to be licensed to export fuel outside of this state.
- Beginning Jan. 1, 2006, the Texas seller must either collect the destination state's tax or Texas tax on all exports. [162.104(e)]. A diversion number is required for all diverted loads. [162.016(g)] and Rule 3.441(d).
- Bond: \$30,000-\$600,000 (CPA may require a higher amount.) Bond Type: surety, cash, assignment of CD or letter of credit. [162.111]

## Summary

Reports [162.114 and 162.122]	Tax Free Purchases [162.101]]	Taxable Purchases [162.101]]	Tax Free Sales	Taxable Sales	Records [162.115(d)]	Also Operates As [162.105]
Monthly, due by the 25th of the month following the report period.  Purchases for export	Removed from Texas terminal for direct export to another state or country	<ol style="list-style-type: none"> <li>Removed from Texas terminal with Texas destination</li> <li>All purchases below the terminal rack.</li> </ol>	<ol style="list-style-type: none"> <li>US Government *</li> <li>TX public school district *</li> <li>Company under contract with TX public school district *</li> <li>TX electric &amp; telephone co-ops</li> <li>Volunteer Fire Departments *</li> <li>Emergency Medical Services</li> </ol>	<ol style="list-style-type: none"> <li>Bulk end-user</li> <li>Through company owned store</li> <li>Tax is imposed when fuel, which is otherwise exempt from taxation when exported to another state or country, is sold into a truck, railroad or marine vessel to a person who is not a motor fuel license holder</li> </ol>	<ol style="list-style-type: none"> <li>Inventory at first of each month</li> <li>Purchases and receipts</li> <li>Exported (including proof tax paid to destination state)</li> <li>Sold, distributed, used</li> <li>Blended below the rack</li> <li>Loss by fire, theft or accident</li> </ol>	None

\* Request credit on return if tax previously paid [162.125(a)]

**Fuel Type: GASOLINE    License: BLENDER**

- A blender mixes one or more petroleum products with another product outside the bulk transfer/terminal system to produce a blended fuel capable of being used to propel 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 (trans mix). [162.001(8)(9)]
- Bond: \$30,000-\$600,000 (CPA may require a higher amount.) Bond Type: surety, cash, assignment of CD or letter of credit. [162.111]

## Summary

Reports [162.114 and 162.123]	Tax Free Purchases [162.101]	Taxable Purchases [162.101]	Tax Free Sales	Taxable Sales	Records [162.115(d)]	Also Operates As [162.105]
Monthly, due by the 25th of the month following the report period. 1. Receipts 2. Taxable blending agents blended with gasoline or diesel fuel. 3. Blended gasoline	None	1. Removed from Texas terminal 2. All purchases below the terminal rack.	1. US Government * 2. TX public school district * 3. Company under contract with TX public school district * 4. AV Fuel Dealer * 5. TX electric & telephone co-ops * 6. TX Volunteer Fire Department *, ** 7. Emergency Medical Services *, ***	Sales to end-user and through company owned stores	1. Inventory at first of each month 2. Purchases and receipts 3. Sold, distributed, used 4. Blended below the rack 5. Loss by fire, theft or accident	None

\* Request credit on return if tax previously paid (162.125(a))

\*\* Sales on or after July 1, 2009

\*\*\* Sales on or after Sept. 1, 2015

**Fuel Type: GASOLINE & DIESEL      License: MOTOR FUEL TRANSPORTER**

- Transports gasoline or diesel fuel outside the bulk transfer/terminal system by means of a transport vehicle, a railroad tank car or a marine vessel.  
[162.001(43)] A separate license for each fuel type is not required.
- No bond required. [162.111 and 162.212]

## Summary

<b>Reports</b> [162.114, 162.122 and 162.123] [162.215, 162.223 and 162.224]	<b>Tax Free Purchases</b> [162.101 and 162.201]	<b>Taxable Purchases</b> [162.101 and 162.201]	<b>Tax Free Sales</b> [162.104 and 162.204]	<b>Taxable Sales</b> [162.104 and 162.204]	<b>Records</b> [162.115(d)(e) and 162.216(d) (e)]	<b>Also Operates As</b> [162.105 and 162.205]
Quarterly, due by the 25th of the month following the report period. 1. Imports (fuel transported) into Texas sort by terminal control number, product code and origin. 2. Exports (fuel transported) from Texas sorted by terminal control number, product code and destination. 3. Gallons loaded at a Texas terminal or bulk plant and delivered to a Texas location	None	All purchases	None	None	Separate record of each intrastate and interstate transportation of gasoline or diesel fuel showing: <ul style="list-style-type: none"> <li>• date of transportation</li> <li>• name of consignor and consignee</li> <li>• means of transportation</li> <li>• gallons transported</li> <li>• points of origin and destination</li> <li>• import verification number or diversion number, when required</li> </ul>	None

**Fuel Type: GASOLINE & DIESEL      License: AVIATION FUEL DEALER**

- An operator of an aircraft servicing facility (FBO – fixed based operation) that delivers aviation fuel, gasoline or diesel fuel exclusively into aircraft or aircraft servicing equipment and does not make taxable sales or uses of the fuel purchased with the aviation fuel dealer license. [162.001(4)] Aviation fuel dealer may purchase gasoline, aviation gasoline, dyed and undyed diesel fuel, dyed and undyed kerosene and jet fuel. A separate license for each fuel type is not required.
- No bond required [162.111 and 162.212]

## Summary

Reports [162.115(1) and 162.216(m)]	Tax Free Purchases [162.104(6), 162.125(4), 162.204(6), 162.227(4)]	Taxable Purchases [162.104(6), 162.125(4), 162.204(6), 162.227(4)]	Tax Free Sales	Taxable Sales	Records [162.115(D)] [162.216 (D)]	Also Operates As [162.105] [162.205]
Return not required, however, CPA may request schedule from Aviation Fuel Dealer	1. Supplier * 2. Distributor *	All purchases below the terminal rack from unlicensed sellers.	1. Into aircraft and aircraft servicing equipment 2. Bulk storage tank of licensed Aviation Fuel Dealer	Cannot make a taxable sale or use	1. Inventory at first of each month 2. Purchases and receipts 3. Sold, distributed, used (including registration or "N" number of aircraft or description of aircraft and description of aircraft servicing equipment) 4. Loss by fire, theft or accident	None

\* Seller request credit on return if tax previously paid [162.125(4) and 162.227(4)]

Aviation Fuel Dealer requests refund for tax-paid purchases on refund claim form [162.125(c)(6) and 162.227(c)(4)], Rule 3.432(m)(2)

**Fuel Type: GASOLINE & DIESEL  
DEALER**

**License: DISTRIBUTOR – AVIATION FUEL**

- Licensed distributor who also is the operator of an aircraft servicing facility (Fixed Base Operation – FBO) that exclusively delivers aviation fuel, gasoline or diesel fuel into aircraft or aircraft servicing equipment.
- A separate license is required for gasoline and diesel fuel.
- Bond: \$30,000-\$600,000 (CPA may require a higher amount.) Bond Type: surety, cash, assignment of CD or letter of credit. [162.111 and 162.212]

## Summary

Reports [162.114, 162.214 and 162.218]	Tax Free Purchases [162.101, 162.201 and 162.2204]	Taxable Purchases [162.101, 162.201 and 162.2204]	Tax Free Sales [162.104 and 162.204]	Taxable Sales [162.104 and 162.204]	Records [162.115(b) and 162.216(b), Rule 3.430]	Also Operates As [162.105 and 162.205]
<p>Monthly, due by the 25th of the month following the report period.</p> <ol style="list-style-type: none"> <li>Received</li> <li>Removed from a terminal</li> <li>Removed from a terminal for export</li> <li>Imported into this state outside the bulk transfer / terminal system</li> <li>Sales exempt from tax under 162.204 (diesel fuel <b>ONLY</b>)</li> <li>Dyed diesel fuel sold to a Dyed DF Bonded User, supplier or distributor</li> <li>Dyed diesel fuel sold on a signed statement Rule 3.446 for electronic reporting requirements</li> </ol>	<ol style="list-style-type: none"> <li>Imported from non-licensed out of state terminal or bulk plant.</li> <li>Dyed diesel fuel from supplier, permissive supplier or distributor [162.204(10)]</li> <li>Supplier (all fuel types as AFD for delivery to FBO) *</li> <li>Distributor (all fuel types as AFD for delivery to FBO) *</li> <li>Aviation Fuel Dealer (all fuel types as AFD for delivery to FBO) *</li> </ol>	<ol style="list-style-type: none"> <li>Removed from Texas terminal</li> <li>Imported from licensed permissive supplier [162.107 and 162.208]</li> <li>All purchases below the terminal rack.</li> </ol>	<p>Same as Gasoline and Diesel Fuel Distributor <b>PLUS:</b></p> <ol style="list-style-type: none"> <li>Dyed DF bonded user, supplier, permissive supplier or distributor</li> <li>Dyed DF on signed statement</li> <li>Dyed DF delivered into off-road equipment</li> <li>Dyed kerosene sold to retailer for non-highway use</li> <li>Fixed route buses **</li> <li>Into aircraft &amp; aircraft servicing equip as AFD</li> <li>Bulk storage tank of licensed Aviation Fuel Dealer as AFD</li> </ol>	<ol style="list-style-type: none"> <li>Sales below the terminal rack <b>ONLY</b> taxable sale of dyed diesel fuel is when signed statement limit exceeded [162.206(a)]</li> <li>Tax is imposed when fuel, which is otherwise exempt from taxation when exported to another state or country, is sold into a truck, railroad or marine vessel to a person who is not a motor fuel license holder</li> </ol>	<ol style="list-style-type: none"> <li>Inventory as first of each month</li> <li>Purchases and receipts</li> <li>Imported</li> <li>Exported</li> <li>Sold, distributed, used</li> <li>Blended below the rack</li> <li>Loss of fire, theft or accident</li> <li>records required of an Aviation Fuel Dealer [162.114(j) (k) and 162.216(j) (k)]</li> </ol>	<ul style="list-style-type: none"> <li>Importer</li> <li>Exporter</li> <li>Blender</li> <li>Motor Fuel Transporter ***</li> </ul>

\* Credit on return if tax previously paid [162.125(4) and 162.227(4)]

\*\* Request credit on return if tax previously paid [162.227(a)]

\*\*\* Separate license issued if operating as a common carrier

## **CHAPTER 3: DIESEL FUEL LAW**

### **Definition**

“Diesel fuel” means kerosene or another liquid, or a combination of liquids blended together, offered for sale, sold, used or capable of use as fuel for the propulsion of a diesel-powered engine. 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, renewable diesel, biodiesel, distillate fuel, cutter stock or heating oil; it does not include gasoline, aviation gasoline or liquefied gas. (Sec. 162.001. Definitions (19))

### **Imposition**

A tax is imposed on the removal of diesel fuel from other terminal using the terminal rack other than by bulk transfer. The supplier or permissive supplier shall collect the tax at a rate of 20 cents per net gallon from the person who orders the withdrawal.

Permissive suppliers shall collect the tax on diesel fuel destined for Texas. The tax is imposed on:

- The importer if the diesel fuel was purchased Texas tax free
- Diesel fuel imported in the fuel supply tank of a person required to be licensed as an interstate trucker.
- Diesel fuel blended outside the terminal/bulk transfer system.
- Diesel fuel in the terminal/bulk transfer system that is transferred to a person who does not have a supplier's license.
- Diesel fuel that is otherwise exempt from taxation under Section 162.204(a)(4) or (7) if the diesel fuel is sold into a truck or railcar in this state to a person who does not hold a license under Section 162.205(a)(1), (2), (3), (4) or (6). The person who sold the diesel fuel is liable for and shall collect and remit the tax.
- Diesel fuel that is otherwise exempt from taxation under Section 162.204(a)(4) or (7) if before export the diesel fuel is sold in this state to a person who holds a license under Section 162.205(a)(1), (2), (3), (4) or (6) and the diesel fuel is delivered to a destination in this state. The person that redirected the delivery of the diesel fuel to a destination in this state is liable for and shall pay the tax.
- Diesel fuel that is otherwise exempt from taxation under Section 162.204 (a)(7) if the diesel is sold into a marine vessel in this state to a person who does not hold a license under Section 162.205 (1), (2), (3), (4) or (6) unless the exporter of record is licensed under Section 162.205(1), (2), (3), (4) or (6). The person who sold the diesel is liable for and will collect and remit the tax.

**Note:** See the chart in Chapter 1 for the tax rates and applicable periods.

### **Computation of Tax**

The amount of tax is based on the temperature-adjusted (net) volume.

## Exceptions

Tax does not apply to:

- Diesel fuel sold to the United States for its exclusive use
- Diesel fuel sold to a public-school district for the district's exclusive use;
- Diesel fuel sold to a commercial transportation company or metropolitan transit authority that provides public school transportation services
- Diesel fuel exported by a licensed supplier or exporter;
- Diesel fuel moved by truck or railcar between licensed suppliers or permissive suppliers if the diesel fuel removed from the first terminal comes to rest in the second terminal;
- Diesel fuel delivered or sold into a storage facility of a licensed aviation fuel dealer;
- Diesel fuel exported to a foreign country;
- 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;
- The volume of water, fuel ethanol, renewable diesel, 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 the sales invoice as a combination of diesel fuel and water, fuel ethanol, biodiesel or mixtures.
- Dyed diesel fuel sold by a supplier or permissive supplier to a distributor, or by a distributor to another distributor;
- 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;
- 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 non-highway use; or
- Diesel fuel used by a person, other than a political subdivision, who owns, controls, operates or manages a commercial motor vehicle as defined by Transportation Code Section 548.001, if the fuel is delivered exclusively into the fuel supply tank of the commercial motor vehicle and is used exclusively to transport passengers for compensation or hire between points in this state on a fixed route or schedule.
- Diesel fuel sold to a volunteer fire department in this state for the department's exclusive use (effective May 24, 2019). means a fire department operated by its members, including a part-paid fire department composed of at least 50% volunteer firefighters, that is operated on a not-for-profit basis, including a department that is exempt from federal income tax under Section 501(a), IRC of 1986, by being listed as an exempt organization in Section 501(c) (3) or (4) of that code.
- Sold to a nonprofit entity organized and engaged exclusively in providing emergency medical services, including rescue and ambulance services.

Effective Sept. 1, 2015, sellers of biodiesel can opt out of the statutory exemption for biodiesel. Once the option has been taken, it cannot be exercised by subsequent sellers or purchasers.

## **Specific Licenses**

- **Supplier** – This license authorizes the collection of state tax on all diesel fuel transactions sold or transferred outside the bulk transfer system. The supplier must be registered under Internal Revenue Code Section 4101 for transactions in the motor fuel bulk transfer system. Suppliers must also be a position-holder in a terminal or refinery in Texas. (See Exhibit III, Page 1.)
- **Permissive supplier** – This license is for persons who elect but are not required to have a supplier's license. The permissive supplier must be registered under section 4101, Internal Revenue Code for transactions in the motor fuel bulk transfer/ terminal system; and is a position-holder in a terminal located in another state. (See Exhibit III, Page 2.)
- **Distributor** – This license is for persons who make sales at wholesale and whose activities may also include sales at retail. (See Exhibit III, Page 3.)
- **Importer** – Importer means a person that imports diesel fuel into this state. (See Exhibit III, page 4.)
- **Terminal operator** – A terminal operator means a person owns, operates or otherwise controls a terminal. A terminal operator may transact diesel fuel and/or gasoline without securing a separate license for each fuel type. (See Exhibit III, Page 5.)
- **Exporter** – An exporter is a person who exports motor fuel from this state. (See Exhibit III, Page 6.)
- **Blender** – A blender is a person who produces blended motor fuel outside the bulk transfer/terminal system. (See Exhibit III, Page 7.)
- **Motor fuel transporter** – 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. (See Exhibit III, Page 8.)
- **Interstate trucker** – An interstate trucker is 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 27,000 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.

- **Aviation fuel dealer** – An 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 aircraft servicing equipment that is used solely off highway; and (C) does not use, sell or distribute gasoline or diesel fuel on which fuel tax is required to be collected or paid to this state. (See Exhibit III, Page 9.)
- **Distributor – aviation fuel dealer** – A licensed distributor who also operates an aircraft servicing facility (Fixed Base Operation/FBO) that exclusively delivers aviation fuel, gasoline or diesel fuel into aircraft or aircraft servicing equipment. (See Exhibit III, Page 10.)
- **Importer – dyed diesel fuel bonded user** – Imports diesel fuel from another state or country into this state outside the bulk transfer/terminal system for their own use and purchases dyed diesel fuel in Texas for use in off-highway equipment in Texas. (See Exhibit III, Page 11.)
- **Dyed diesel fuel bonded user** – A dyed diesel fuel bonded user means a person who purchases dyed diesel fuel in excess of 10,000 gallons per month for non-highway use. The dyed diesel fuel bonded user cannot make sales.
- **Trip permit** – Instead of an annual interstate trucker's license, a person operating a qualified motor vehicle described by Section 162.001(36) into this state for commercial purposes may obtain a trip permit. A trip permit must be obtained before or at the time of entry into this state. Not more than five trip permits for each person may be issued during a calendar year. A fee for each trip permit shall be in the amount of \$50 for each vehicle for each trip.

## License Types

A supplier, permissive supplier, distributor, blender, importer, exporter, interstate trucker, dyed diesel bonded user or aviation fuel dealer must obtain a Texas Fuels Tax License by filing an application with the Comptroller.

Suppliers and permissive suppliers may also act as distributors, importers, exporters, blenders or aviation fuel dealers without securing a separate license, but are subject to all conditions, requirements and liabilities imposed on those license-holders.

A distributor may also act as an importer, exporter or blender without securing a separate license but is subject to all of the conditions, requirements and liabilities imposed on those license-holders.

An importer may also act as an exporter or blender without securing a separate license, but is subject to all of the conditions, requirements and liabilities imposed on those license-holders.

The interstate trucker license and IFTA license are calendar year credentials, and automatically renewed by the Comptroller each year if the taxpayer is in good standing. The trip permit is valid for the period stated on it, as determined by the Comptroller. The Interstate Trucker license and IFTA license are calendar year. Carriers that travel only between Texas and Mexico are issued an interstate trucker license. Carriers that travel in two or more member jurisdictions are issued an IFTA license.

**Note:** A licensed supplier, permissive supplier, distributor, importer, exporter or blender must obtain a separate license to operate as a motor fuel transporter.

## License Lists

The statute requires that a list of license-holders be mailed to each license-holder by December 20 of each year. Also, a supplemental list of additions and deletions is mailed to each license-holder on a monthly basis. Permit-holder lists are also available at <https://comptroller.texas.gov/taxes/fuels/permitted-fuels-taxpayers-search.php>.

## Bonds

License-holders may be required to post a security bond with the Comptroller. The amount of tax that has or is expected to become due, past history under the motor fuels statutes and the necessity to protect the state against failure to pay are all considered. The minimum bond is \$30,000. The minimum for a dyed diesel fuel bonded user is \$10,000. The maximum bond is \$600,000 unless the Comptroller believes there is undue risk of loss.

## Statement for Purchase of Dyed Diesel Fuel

A tax-free sale of dyed diesel fuel may be made by a supplier or distributor to a purchaser who furnishes a signed statement that states:

- All of the dyed diesel fuel will be consumed by the purchaser and will not be resold; and
- 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.

An end-user signed statement number (DD) authorizes the tax-free purchase of only dyed diesel fuel for use in off-highway equipment operated in Texas for non-agricultural purposes. Non-agricultural purposes include diesel fuel used by construction companies (road, commercial buildings or residential), manufacturers (forklifts, loaders, welding machines, space heaters or generators), commercial trucking companies or excavating companies (land clearing or mowing services). Non-agricultural also consists of agricultural cooperatives, associations, cotton gins, farm supply stores, tractor supply stores, feed stores or veterinary services.

Dyed diesel fuel used in oil and gas production can be obtained tax-free through the use of an end-user signed statement number (OG). The dyed diesel fuel is for use to start initial production or increase production on the formation. Oil and gas production consists of fracturing (frac job), perforating, squeeze cement, workover, acidizing, logging, drilling deeper, plug back, completion, plug and abandon, pulling or resetting

casing liner, installing a casing liner, drilling out a plug, putting on artificial lift new installation), running a bottom hole bomb, swabbing, jetting, gravel packing and hot oil treatment of formation. Oil and gas production do not consist of companies that perform maintenance (set units, mow around unit and tank batteries, paint unit and tank batteries and gauge tanks), pump changes, rod or tubing jobs, fishing for rods or tubing repair tubing leak change packer or anchor, hot oil or water treatment of casing, tubing or flow lines, marketers, speculators or transportation companies.

An end-user signed statement number (AG) for agricultural users authorizes the tax-free purchase of only dyed diesel fuel for exclusive use in the agricultural off-highway equipment operated in Texas, such as a tractor or combine, on a farm or ranch. A farm or ranch is one or more tracts of land used, either in whole or in part, in the production of crops, livestock and/or other agricultural products held for sale in the regular course of business. A feedlot, livestock auction facility, dairy farm, poultry farm, commercial orchard, commercial nursery, timber operation or similar commercial agricultural operation is a farm or ranch. Timber operations include the production of timber including land preparation, planting, maintenance and gathering of trees commonly grown for commercial timber. Wildlife management is agricultural use as defined by the Texas Tax Code Section 23.51(7). A home garden is not a farm or ranch. An agricultural non-highway purpose does not include the processing, packaging or marketing of agricultural products by anyone other than the original producer.

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 using a signed statement for the purchase or sale of the following:

- more than 7,400 gallons in a single delivery (otherwise, the entire purchase is taxable \*) or
- 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:
  - DD end-user – 10,000 gallons per month
  - OG end-user – 25,000 gallons per month
  - AG end-user – 25,000 gallons per month

\* Effective Sept. 1, 2009, single delivery limitations are repealed and no longer apply; this **is not** retroactive.

Any gallons purchased or sold in excess of these limitations constitute a taxable purchase or sale. The purchase, sale or delivery that causes the 10,000-gallon or 25,000-gallon limitation to be exceeded during a month is not taxable. Any subsequent sale during that month would be taxable. A purchaser that exceeds the limitations is required to obtain a dyed diesel fuel bonded user license.

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 off-highway purpose was not taxable to the purchaser and remains in effect unless:

- the statement is revoked in writing by the purchaser or licensed supplier or distributor;
- the Comptroller notifies the licensed supplier or distributor in writing that the purchaser may no longer make tax-free purchases; or
- 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, excluding taxable sales for exceeding the limitations.

The statement must be signed by the purchaser or the purchaser's representative. The purchaser is considered to have **temporarily** furnished the signed statement to the licensed supplier or distributor if the supplier or distributor verifies that the purchaser has an end-user number issued by the Comptroller. The licensed supplier or distributor shall use the Comptroller's internet website or other materials provided or produced by the Comptroller to verify this information until the purchaser provides a completed signed statement. (effective Sept. 1, 2009)

Signed statements should be in the possession of the licensed supplier or distributor at the time the sale of dyed diesel fuel occurs. If the licensed supplier or distributor is not in possession of the signed statements within 60 days after the date written notice requiring possession of them is given to the licensed supplier or distributor by the Comptroller, exempt sales claimed by the licensed supplier or distributor that require delivery of the signed statements shall be disallowed. Signed statements received within the 60-day notification period are subject to verification. An exempt sale may not be granted on the basis of signed statements delivered to the Comptroller after the 60-day period (effective Sept. 1, 2009). This applies to all diesel fuel audits started on or after Sept. 1, 2009.

Audit Processing will issue the 60-day letter upon receipt of a Statement of Grounds. The taxpayer will then have 60 days to present the missing signed statements to the auditor (effective Sept. 1, 2009). This applies to all diesel fuel audits started on or after Sept. 1, 2009.

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. A taxable use of any part of the dyed diesel fuel purchased under a signed statement shall, in addition to the 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.

## Returns and Payments

Suppliers, permissive suppliers, distributors, importers, exporters, blenders and terminal operators shall file a return on or before the 25th day of the month following the end of each calendar month. A dyed diesel fuel bonded user, an interstate trucker and a motor

fuel transporter shall file a return on or before the 25th day of the month following the end of the calendar quarter. The motor fuel transporter return only contains informational data. The return required by this section shall be accompanied by a payment for the amount of tax reported due. An aviation fuel dealer is not required to file a return.

## Records

### Section 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 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 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 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 means 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.
  - 7) import verification number if that number is required by Rule 3.441.
- 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 to 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.
  - 3) Addition records required by Rule 3.430(11 A-D)
- 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.
- l) 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 non-highway 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.
  - o) In addition to the records specifically required by the chapter, a license-holder, a dealer or a person required to hold a license shall keep any other record required by the comptroller. (Added Sept. 1, 2009)

## Information on Returns

### Suppliers and Permissive Suppliers – Section 162.217

The return and supplements shall contain the:

- number of net gallons received during the month, sorted by product code, seller, point of origin, destination state, carrier and receipt date;
- number of net gallons removed at the terminal rack during the month from the account of the supplier, sorted by product code, person receiving the diesel fuel, terminal code and carrier;
- 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;
- number of net gallons removed during the month from a terminal located in another state for conveyance to this state, as indicated on the shipping document, sorted by product code, person receiving the diesel fuel, terminal code and carrier;
- number of net gallons the supplier or permissive supplier sold during the month in transaction exempt under Section 162.204 sorted by product code, carrier, purchaser and terminal code;
- number of net gallons sold in the bulk transfer/terminal system in this state to any person not holding a supplier's or permissive supplier's license; and any other information required by the Comptroller.

A supplier or permissive supplier that timely remits the tax may deduct an allowance of 2 percent of the amount of tax payable.

If a supplier or permissive supplier remits tax to the state, but does not receive the tax from the license-holder/purchaser, the supplier or permissive supplier may take a tax credit for the previously remitted tax on the next monthly return if the Comptroller is notified of the default within 60 days after the default occurs. All payments and credits made by the purchaser must be applied to the purchaser's account to determine the non-payment amount, if the purchaser's account contains the purchase of goods or items other than motor fuel, then the payments and credits to that account should be applied ratably between motor fuel, including tax, and other goods or items sold to the purchaser. If the accelerated credit is not claimed within 60 days of the default, it may still be claimed as a bad debt credit after the account is written off the books and records as uncollectable. If the license-holder/purchaser pays the supplier or permissive supplier the tax owed after the supplier or permissive supplier has taken the credits on a return, the tax should be remitted on the supplier's or permissive supplier's next monthly return plus a penalty of 10 percent and interest.

Effective June 19, 2009, the Comptroller must be notified of the default with 15 days after the default occurs. The supplier or permissive supplier may claim a credit for 100 percent of the amount of the deferred tax payment defaulted by the distributor or importer. If the accelerated credit is not claimed within 15 days of the default, it may still

be claimed as bad debt credit after the account is written off the books and records as uncollectable.

### **Distributors – Section 162.219**

The return and supplements of each distributor shall contain the:

- number of net gallons of diesel fuel received by the distributor during the month;
- number of net gallons of diesel fuel removed at a terminal rack during the month;
- number of net gallons of diesel fuel removed during the month for export, sorted by product code, terminal code, bulk plant address, destination state and carrier;
- number of net gallons of diesel fuel removed by the distributor during the month from an out of state terminal for delivery into this state;
- number of gallons of diesel fuel sold during the month in transactions exempt; and
- any other information required by the Comptroller.

### **Importer – Section 162.220**

The return and supplements of each importer shall contain the:

- number of gallons of imported diesel fuel acquired from a supplier or permissive supplier who collected the Texas tax due;
- number of gallons of imported diesel fuel acquired tax-free;
- number of gallons of imported diesel fuel acquired from a bulk plant outside this state; and
- any other information required by the Comptroller.

An importer of diesel fuel that files a timely return and payment may deduct a 2 percent allowance on tax-free purchases imported into this state. Purchases from suppliers and permissive suppliers are subject to a 1.75% timely payment allowance.

### **Terminal Operator – Section 162.221**

A terminal operator shall file a monthly information return and supplement showing the amount of diesel fuel received and removed from the terminal during the month. The return shall also contain the:

- beginning and ending inventory;
- number of gallons received;
- number of gallons removed; and
- any other information required by the Comptroller.

### **Motor Fuel Transporter – Section 162.222**

The quarterly return and supplements of a motor fuel transporter shall contain the following:

- 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;
- 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; and
- any other information required by the Comptroller.

### **Exporter – Section 162.223**

The monthly return and supplements of an exporter shall contain the following:

- number of gallons of diesel fuel acquired from a supplier and exported during the month, including supplier name, terminal control number and product code;
- number of net gallons of diesel fuel acquired from a bulk plant and exported during the month, including bulk plant name and product code;
- number of net gallons of diesel fuel acquired from a source other than a supplier or bulk plant and exported during the month, including the name of the source from which the diesel fuel was acquired and the name and address of the person receiving the diesel fuel;
- destination state of the diesel fuel exported during the month; and
- any other information required by the Comptroller.

### **Blender – Section 162.224**

The monthly return and supplements of each blender shall contain the following:

- number of gallons of diesel fuel received;
- number of gallons of product blended with diesel fuel;
- number of gallons of blended diesel fuel sold; and
- any other information required by the Comptroller.

### **Interstate Trucker – Section 162.225**

The quarterly return of each interstate trucker shall contain the following:

- total miles traveled in all states by all vehicles traveling to or from this state and the total quantity of diesel fuel consumed in those vehicles;
- 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
- any other information required by the Comptroller.

### **Dyed Diesel Fuel Bonded User – Section 162.226**

The quarterly return and supplements of each dyed diesel fuel bonded user shall contain the following:

- number of gallons of tax-free dyed diesel fuel received during the quarter sorted by product code and receipt date;
- number of gallons of dyed diesel fuel used during the quarter sorted by product code; and
- any other information required by the Comptroller.

## Refunds and Credits

### Introduction

A license-holder may take a credit on a return if the license-holder paid tax on the purchase of diesel fuel and subsequently:

- sold it tax free 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;
  - a public-school district in this state for the district's exclusive use;
  - a commercial transportation company that provides public school transportation services to a school district under Education Code Section 34.008 and that uses the gasoline only to provide those services;
- Exported it by either a licensed supplier or a licensed exporter from this state to any other state;
- Moved it by truck or railcar between licensed suppliers or licenses permissive supplier and in which 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;
- Delivered it 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;
- Exported it to a foreign country if the bill of lading or shipping documents indicates the foreign destination and the fuels are actually exported to the foreign country;
- Is a nonprofit entity organized and engaged exclusively in providing emergency medical services, including rescue and ambulance services; or
- Sold it to a Texas volunteer fire department for the department's exclusive use (effective May 24, 2019). means a fire department operated by its members, including a part-paid fire department composed of at least 50% volunteer firefighters, that is operated on a not-for-profit basis, including a department that is exempt from federal income tax under Section 501(a), IRC of 1986, by being listed as an exempt organization in Section 501(c) (3) or (4) of that code.

If diesel fuel is moved from a terminal by a licensed supplier or permissive supplier by truck or railcar for delivery to another terminal, tax should be paid when the diesel fuel is first removed from the original terminal. After the tax-paid diesel fuel has been delivered to the receiving terminal the license-holder who receives the diesel fuel at the second terminal may take credit for the tax paid on the next monthly return.

A license-holder may take a credit on a return, and a person who does not hold a license may file a refund claim, if the license-holder or the person who paid the tax:

- 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;

- is a public-school district in this state and the diesel fuel is for the district's exclusive use;
- is a commercial transportation company or metropolitan rapid transit authority that provides public school transportation services to a school district under Education Code Section 34.008 and the diesel fuel is used exclusively to provide those services;
- is a licensed aviation fuel dealer who delivers the diesel fuel into the fuel supply tanks of aircraft or aircraft servicing equipment;
- uses the diesel fuel as feedstock in the manufacturing of tangible personal property for resale, not as a motor fuel;
- uses the diesel fuel in a medium for the removal of drill cuttings from a well bore in the production of oil or gas;
- uses the diesel fuel in movable specialized equipment used in oil field well servicing and is eligible to receive a federal diesel fuel tax refund under the Internal Revenue Code of 1986;
- is a volunteer fire department that purchases in bulk for its own use. Refund claims may also be filed for tax paid purchases at retail, effective May 24, 2019. Volunteer fire department means a fire department operated by its members, including a part-paid fire department composed of at least 50% volunteer firefighters, that is operated on a not-for-profit basis, including a department that is exempt from federal income tax under Section 501(a), IRC of 1986, by being listed as an exempt organization in Section 501(c) (3) or (4) of that code.
- is a nonprofit entity organized and engaged exclusively in providing emergency medical services, including rescue and ambulance services.

A licensed interstate trucker including IFTA licensees may take credit on a return for tax paid on diesel fuel purchased in the state but used outside the state. The credit must be taken or filed within the limitation period provided by Section 162.230.

A person who paid tax on diesel fuel may claim a credit or seek a refund 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 limitation period provided by Section 162.230.

A metropolitan rapid transit authority that paid tax on diesel fuel may seek a refund in an amount equal to one-half of one cent per gallon for diesel fuel used in qualified transit vehicles.

A metropolitan rapid transit authority (MRTA) operating under Transportation Code Chapter 451 that is a party to a contract governed by Education Code Section 34.008 is entitled to a refund of taxes paid on diesel fuel used to provide transportation services under a contract with a Texas school district. The refund claim must claim information regarding:

- vehicle mileage;
- hours of service provided;
- fuel consumed;

- the total number of student passengers per route; and
- the total number of non-student passengers per route.

If in any month of a school year the number of non-student passengers is greater than 5 percent of the total passengers for any single route, the MRTA is not entitled to a refund of the taxes paid for that month.

An MRTA 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

**Note:** The right to receive a refund or take a credit is not assignable.

### **Bad Debts and Credits for Nonpayment**

A licensed supplier, permissive supplier or distributor may file a refund claim with the Comptroller if:

- The licensed supplier, permissive supplier or distributor has paid the taxes on the diesel fuel sold on account;
- The licensed supplier, permissive supplier or distributor determines that the account is uncollectible and worthless; and
- The account is written off as a bad debt on the accounting books of the supplier, permissive supplier or distributor.

A licensed supplier, permissive supplier or distributor may take an accelerated credit on the monthly report if:

- the supplier, permissive supplier or distributor paid the taxes sold on account on a previous report;
- the purchaser has not remitted the tax to the supplier, permissive supplier or distributor; and
- at the time of the sale the purchaser held a license issued by the Comptroller.

Refunds or credits cannot be claimed for the 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 use and acceptance of a credit card.

A credit card is defined as any card, plate, key or like device by which credit is extended to and charged to the purchaser's account. Sales made through the use and acceptance of a fuel access card, where the only use of the access card is to record the quantity and type of fuel or other information acquired merely for the purpose of reconciling accounts and no credit is extended to the holder are eligible for the bad debt credit. Credit sales to commercial or agricultural customers at locations that are not open to the general public are eligible for the bad debt credit.

A refund may be claimed at the time the account is written off as a bad debt, before the expiration of the applicable limitation period as provided by Chapter 111. The limitation period begins on the date the account is written off the accounting books and records, not the date of the original sale.

### Claims for Refunds

A refund claim must be filed on a form provided by the Comptroller, supported by the original invoice issued by the seller and contain the:

- stamped or preprinted name and address of the seller;
- name of the purchaser;
- date of delivery;
- date of the issuance of the invoice, if different from the date of delivery;
- number of gallons delivered;
- amount of tax, either separately stated from the selling price or stated with a notation the selling price includes the tax; and
- 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.

A distribution log must be maintained for refund claims for diesel fuel removed from the user's bulk storage. The distribution log must contain the:

- date of delivery;
- number of gallons of diesel fuel delivered;
- signature of the bulk user; and
- 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 the odometer or hubometer reading.

After examination of the refund claim, the Comptroller shall reduce the refund by the 2 percent deducted originally by the license-holder on the first sale or distribution of the diesel fuel.

If delivery is through an automated method whereby the purchase is automatically applied to the purchaser's account, one invoice may be issued at the time of billing covering multiple purchases during the 30-day billing cycle.

### Statute of Limitations

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, whichever period expires latest.

### Exceptions

An interstate trucker who is entitled to a credit may carry the credit forward for three successive quarters or request a refund within the three successive quarters. A credit or refund that is not claimed within the period prescribed will expire.

There is a four-year statute of limitations from the due and payable date for a tax return on which an overpayment of tax was made by a licensed supplier, permissive supplier, distributor, importer, exporter or blender who determines that taxes were erroneously reported or that more taxes were paid than were due because of a mistake of fact or

law. The supplier, permissive supplier, distributor, importer, exporter or blender must establish the credit by filing an amended tax return for the period in which the error occurred, and tax payment was made to the Comptroller.

If the Comptroller assesses a supplier or permissive supplier for a tax-free sale that is taxable, 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.

### **Duty to Report Subsequent Sales of Tax-Free Diesel Fuel Purchased for Export**

- a) A person who purchases or removes diesel fuel tax-free under Section [162.204](#)(a)(4) or (7) and before export sells the diesel fuel in this state tax-free to a person who holds a license under Section [162.205](#)(1), (2), (3), (4) or (6) shall report that transaction to the comptroller as required by this section. If the diesel fuel is subsequently sold one or more times in this state before export and tax-free to a person who holds a license under Section [162.205](#)(1), (2), (3), (4) or (6), each seller shall report the transaction to the comptroller as required by this section.
- b) Each person who sells tax-free diesel fuel in this state in a transaction described by Subsection (a) must provide to the comptroller:
  - 1) the bill of lading number issued at the terminal;
  - 2) the terminal control number;
  - 3) the date the diesel fuel was removed from the terminal;
  - 4) the number of gallons invoiced; and
  - 5) any other information required by the comptroller.
- c) The sales invoice for each transaction described by Subsection (a) must include:
  - 1) the name of the seller and purchaser; and
  - 2) the original bill of lading number.
- d) A person required to report a transaction under Subsection (a) shall report the transaction on a form prescribed by the comptroller and with the return required by Section [162.214](#).

## Exhibit III – Summary of Diesel Fuel Tax Law by License Type

**Fuel Type: DIESEL      License: SUPPLIER**

- Issued a Certificate of Registry (637) under Section 4101, Internal Revenue Code, for transactions in the bulk transfer/terminal system and owns inventory (a position-holder) in a terminal or refinery located in Texas and may also own motor fuel in a terminal located outside of Texas. [162.001(57)]
- Collects and remits to the state the tax on undyed diesel fuel removed from the terminal through the rack. [162.201(a)] Remits tax on supplier's own removals from a terminal rack and on diesel fuel imported outside the bulk transfer/terminal system when not purchased from a licensed permissive supplier. [162.201(b)] Only a licensed supplier, permissive supplier, distributor, dyed diesel fuel bonded user, aviation fuel dealer or person using a signed statement can remove dyed diesel from a terminal tax-free.
- A taxable sale or removal of dyed diesel fuel prohibited except when signed statement limitation exceeded. [162.206(a)]
- Bond: \$30,000-\$600,000 (CPA may require a higher amount.) Bond type: surety, cash, assignment of CD or letter of credit. [162.212]

## Summary

Reports [162.215] [162.217]	Tax Free Purchases [162.201]	Taxable Purchases [162.201]	Tax Free Sales [162.204]	Taxable Sales [162.204]	Records [162.216(a)]	Also Operates As [162.205]
<p>Monthly, due by the 25th of the month following the report period.</p> <ol style="list-style-type: none"> <li>Received in a terminal</li> <li>Removed from a terminal.</li> <li>Removed from a terminal for export</li> <li>Imported into this state outside the bulk transfer/ terminal system</li> <li>Sales exempt from tax under 162.204</li> <li>Sales in the bulk transfer/ terminal system to unlicensed suppliers</li> </ol>	<ol style="list-style-type: none"> <li>Transactions above the terminal rack in the bulk transfer / terminal system.</li> <li>Imported from non-licensed out of state terminal or bulk plant</li> <li>Dyed diesel fuel removed from terminal rack or purchased from other licensed suppliers and distributors below the rack [162.204(8)]</li> </ol>	<ol style="list-style-type: none"> <li>Undyed diesel fuel removed from Texas terminal</li> <li>Imported from licensed permissive supplier [162.208]</li> <li>All purchases below the terminal rack</li> </ol>	<p>Same as gasoline supplier <b>plus:</b></p> <ol style="list-style-type: none"> <li>Dyed DF bonded user, supplier or distributor</li> <li>Dyed DF on Signed Statement</li> <li>Dyed DF delivered into off-road equipment</li> <li>Dyed kerosene sold to retailer for non-highway use</li> <li>Fixed route buses **</li> <li>Volunteer fire departments</li> <li>Emergency medical services</li> </ol>	<ol style="list-style-type: none"> <li>Gallons removed from terminal</li> <li>Sales below the terminal rack</li> <li>Tax is imposed when fuel, which is otherwise exempt from taxation when exported to another state or country, is sold into a truck, railcar or marine vessel to a person who is not a motor fuel license holder</li> </ol>	<ol style="list-style-type: none"> <li>Inventory at first of each month</li> <li>Purchases and receipts</li> <li>Imported</li> <li>Exported</li> <li>Sold, distributed, used</li> <li>Blended below the rack</li> <li>Loss by fire, theft or accident</li> </ol>	<ul style="list-style-type: none"> <li>Distributor</li> <li>Importer</li> <li>Exporter</li> <li>Blender</li> <li>Aviation fuel dealer</li> <li>Motor Fuel Transport ***</li> <li>Permissive supplier [161.001(57)]</li> </ul>

\* Request credit on return if tax previously paid [162.227(a)].

\*\* By agreement, tax paid on purchases by bus companies may file for refund.

\*\*\* Separate license issued if operating as a common carrier.

**Fuel Type: DIESEL      License: PERMISSIVE SUPPLIER**

- Issued a Certificate of Registry (637) under Section 4101, Internal Revenue code, for transactions in the bulk transfer/terminal system and owns inventory (a position-holder in ONLY a terminal or refinery located in a state other than Texas. [162.001(46)])
- Collects tax from purchaser on diesel fuel removed from the out-of-state terminal destined for delivery in Texas. [162.201 & 162.218]
- Bond: \$30,000-\$600,000 (CPA may require a higher amount.) Bond type: surety, cash, assignment of CD or letter of credit. [162.212]

## Summary

Reports [162.215] [162.217]	Tax Free Purchases [162.201]	Taxable Purchases [162.201]	Tax Free Sales [162.204]	Taxable Sales [162.204]	Records [162.216 (A)]	Also Operates As [162.205]
<p>Monthly, due by the 25th of the month following the report period.</p> <ol style="list-style-type: none"> <li>Received in a terminal</li> <li>Removed from a terminal</li> <li>Removed from a terminal for export</li> <li>Imported into this state outside the bulk transfer/ terminal system</li> <li>Sales exempt from tax under 162.204</li> <li>Sales in the bulk transfer/ terminal system to unlicensed suppliers</li> </ol>	<ol style="list-style-type: none"> <li>Imported from non-licensed out of state terminal or bulk plant</li> <li>Dyed diesel fuel from supplier, permissive supplier or distributor [162.204(10)]</li> </ol>	<ol style="list-style-type: none"> <li>Removed from Texas terminal</li> <li>Imported from licensed permissive supplier [162.208]</li> <li>All purchases below the terminal rack</li> </ol>	<p>Same as diesel fuel distributor <b>plus</b>:</p> <ol style="list-style-type: none"> <li>Dyed DF bonded user, supplier, permissive supplier or distributor</li> <li>Dyed DF on signed statement</li> <li>Dyed DF delivered into off-road equipment</li> <li>Dyed kerosene sold to retailer for non-highway use</li> <li>Fixed route buses **</li> <li>Volunteer fire departments *</li> <li>Emergency medical services</li> </ol>	<ol style="list-style-type: none"> <li>Sales below the terminal rack</li> <li><b>only</b> taxable sale of dyed diesel fuel is when signed statement limit exceeded [162.206(a)]</li> <li>Tax is imposed when fuel, which is otherwise exempt from taxation when exported to another state or country, is sold into a truck, railcar or marine vessel to a person who is not a motor fuel license holder</li> </ol>	<ol style="list-style-type: none"> <li>Inventory at first of each month</li> <li>Purchases and receipts</li> <li>Imported</li> <li>Exported</li> <li>Sold, distributed, used</li> <li>Blended below the rack</li> <li>Loss of fire, theft or accident</li> </ol>	<ul style="list-style-type: none"> <li>Distributor</li> <li>Importer</li> <li>Exporter</li> <li>Blender</li> <li>Aviation fuel dealer</li> <li>Motor fuel transporter ***</li> </ul>

\* Request credit on return if tax previously paid [162.227(a)].

\*\* By agreement, tax paid on purchases by bus companies may file for refund.

\*\*\* Separate license issued if operating as a common carrier.

**Fuel Type: DIESEL      License: DISTRIBUTOR**

- Purchases gasoline from a supplier or another distributor for sale at wholesale (a sale for resale) and may include sales at retail [162.001(20)]. Must obtain distributor/aviation fuel dealer license if operate aircraft servicing facility.
- Bond: \$30,000-\$600,000 (CPA may require a higher amount.) Bond type: surety, cash, assignment of CD or letter of credit. [162.212]

## Summary

Reports [162.215] [162.219]	Tax Free Purchases [162.201 and 162.204]	Taxable Purchases [162.201 and 162.204]	Tax Free Sales [162.201 and 162.204]	Taxable Sales [162.201 and 162.204]	Records [162.216(b)]	Also Operates As [162.205]
<p>Monthly, due by the 25th of the month following the report period.</p> <ol style="list-style-type: none"> <li>Received</li> <li>Removed from a terminal</li> <li>Removed from a terminal for export</li> <li>Imported into this state outside the bulk transfer/terminal system</li> <li>Sales exempt from tax under 162.204</li> <li>Dyed diesel fuel sold to a dyed DF bonded user, supplier or distributor</li> <li>Dyed diesel fuel sold on a signed statement</li> </ol>	<ol style="list-style-type: none"> <li>Imported from non-licensed out of state terminal or bulk plant.</li> <li>Dyed diesel fuel from supplier, permissive supplier or distributor [162.204(10)]</li> </ol>	<ol style="list-style-type: none"> <li>Removed from Texas terminal</li> <li>Imported from licensed permissive supplier [162.208]</li> <li>All purchases below the terminal rack</li> </ol>	<p>Same as gasoline distributor <b>plus:</b></p> <ol style="list-style-type: none"> <li>Dyed DF bonded user, supplier, permissive supplier or distributor</li> <li>Dyed DF on signed statement</li> <li>Dyed DF delivered into off-road equipment</li> <li>4 Dyed kerosene sold to retailer for non-highway use</li> <li>fixed route buses **</li> <li>Volunteer fire departments *</li> <li>Emergency medical services</li> </ol>	<ol style="list-style-type: none"> <li>Sales below the terminal rack  <b>Only</b> taxable sale of dyed diesel fuel is when signed statement limit exceeded. [162.206(a)]</li> <li>Tax is imposed when fuel, which is otherwise exempt from taxation when exported to another state or country, is sold into a truck, railroad or marine vessel to a person who is not a motor fuel license holder</li> </ol>	<ol style="list-style-type: none"> <li>Inventory at first of each month</li> <li>Purchases and receipts</li> <li>Imported</li> <li>Exported</li> <li>Sold, distributed, used</li> <li>Blended below the rack</li> <li>Loss of fire, theft or accident</li> </ol>	<ul style="list-style-type: none"> <li>Importer</li> <li>Exporter</li> <li>Blender</li> <li>Motor Fuel Transporter ***</li> </ul>

\* Request credit on return if tax previously paid [162.227(a)].

\*\* By agreement, tax paid on purchases by bus companies may file for refund.

\*\*\* Separate license issued if operating as a common carrier.

**Fuel Type: DIESEL      License: IMPORTER**

- Imports gasoline or diesel fuel from another state or country into this state outside the bulk transfer/terminal system. [162.001(35)]
- Import verification number is required for a single cargo tank delivery. [162.001(34) and 162.016(h)]
- Diversion number required for all diverted loads. [162.016(g)]
- Gasoline and diesel fuel imported may be sold to a bulk end-user, sold through licensee's own company stores or used by the licensee. However, if importer is selling to other retail dealers or distributors then the importer must be licensed as a distributor.
- Bond: \$30,000-\$600,000 (CPA may require a higher amount.) Bond type: surety, cash, assignment of CD or letter of credit. [162.212]

## Summary

Reports [162.215 and 162.220]	Tax Free Purchases [162.201]]	Taxable Purchases [162.201]]	Tax Free Sales [162.204]	Taxable Sales [162.204]	Records [162.216 (c)]	Also Operates As [162.205(4)]
Monthly; due by the 25th of the month following the report period. 1. Imported, Texas tax paid 2. Imported, tax free	1. Cannot purchase tax free in Texas 2. Out-of-state purchases other than from permissive supplier	1. removed at out of state terminal from permissive supplier with Texas destination	1. U.S. government * 2. Texas public school district * 3. Company under contract with Texas public school district * 4. Texas electric & telephone co-ops ** 5. Volunteer fire departments * 6. Emergency medical services	1. Bulk end-user 2. Through company-owned store	1. Inventory at first of each month 2. Purchases and receipts 3. Imported 4. Exported 5. Sold, distributed, used 6. Blended below the rack 7. Loss by fire, theft or accident	<ul style="list-style-type: none"> <li>• Exporter</li> <li>• Blender</li> <li>• Motor Fuel Transporter ***</li> </ul>

\* Credit on return if tax previous paid [162.227(a)]

\*\* Bulk sales only

\*\*\* Separate license issued if operating as a common carrier.

**Fuel Type: GASOLINE or DIESEL      License: TERMINAL OPERATOR**

- Owns, operates or otherwise controls a terminal and has a terminal control number issued by the IRS. [162.001(59)]
- A terminal is located at a refinery or another facility that receives motor fuel by pipeline or ship and from which gasoline or diesel fuel is withdrawn through a rack [162.001(50)] into a transport vehicle, railroad tank car or other means of transport. [162.001(58)]
- A terminal operator may also hold separately another motor fuel tax license, such as a supplier or permissive supplier.
- No bond. [162.111 and 162.212]

## Summary

Reports [162.114 and 162.120] [162.215 and 162.221]	Purchases	Sales	Records [162.115f and 162.216f]	Also Operates As
<p>Monthly; due by the 25th of the month following the report period.</p> <ol style="list-style-type: none"> <li>1. Beginning and ending inventory</li> <li>2. Receipts into the terminal</li> <li>3. Removed sorted by each position-holder (licensed supplier)</li> </ol>	None	None	<ol style="list-style-type: none"> <li>1. Beginning inventory of each month held by each position-holder (licensed supplier)</li> <li>2. Receipts by showing the seller</li> <li>3. Receipts for export showing the origin and destination state or country</li> <li>4. Imports showing the state or country of origin</li> <li>5. Sold, distributed or used by the purchaser</li> <li>6. Loss by fire, theft or accident</li> </ol>	None

**Fuel Type: DIESEL      License: EXPORTER**

- Exports diesel fuel from this state to another state or country outside of the bulk transfer/terminal system. [162.001(24)].
- An exporter needs to be licensed to export fuels outside of this state.
- Beginning Jan. 1, 2006, the Texas seller must either collect the destination state's tax or Texas tax on all exports. [162.204(e)]. A diversion number is required for all diverted loads. [162.016(g) and Rule 3.441(d)]
- Bond: \$30,000-\$600,000 (CPA may require a higher amount.) Bond type: surety, cash, assignment of CD or letter of credit. [162.212]

## Summary

Reports [162.215 and 162.223]	Tax Free Purchases [162.201]	Taxable Purchases [162.201]	Tax Free Sales	Taxable Sales	Records [162.216 (d)]	Also Operates As [162.205]
Monthly, due by the 25th of the month following the report period.  Purchases for export	Removed from Texas terminal for direct export to another state or country	1. Removed from Texas terminal with Texas destination 2. All purchases below the terminal rack	1. U.S. government * 2. Texas public school district * 3. Company under contract with Texas public school district * 4. Texas electric & telephone co-ops ** 5. Volunteer fire departments * 6. Emergency medical services	1. Bulk end-user 2. Through company- owned store 3. Tax is imposed when fuel, which is otherwise exempt from taxation when exported to another state or country, is sold into a truck, railcar or marine vessel to a person who is not a motor fuel license holder	1. Inventory at first of each month 2. Purchases and receipts 3. Exported (including proof tax paid to destination state) 4. Sold, distributed, used 5. Blended below the rack 6. Loss by fire, theft or accident	None

\* Credit on return if tax previous paid 162.227(a)].

\*\* Bulk sales only.

**Fuel Type: DIESEL      License: BLENDER**

- A blender mixes one or more petroleum products with another product outside the bulk transfer/terminal system to produce a blended fuel capable of being used to propel 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 (transmix). [162.001(8)(9)]
- Bond: \$30,000-\$600,000 (CPA may require a higher amount.) Bond type: surety, cash, assignment of CD or letter of credit. [162.212]

## Summary

Reports [162.215 and 162.224]	Tax Free Purchases [162.201]	Taxable Purchases [162.201]	Tax Free Sales	Taxable Sales	Records [162.216 (d)]	Also Operates As [162.205]
Monthly, due by the 25th of the month following the report period. 1. Receipts 2. Taxable blending agents blended with diesel fuel. 3. Tax exempt blending agents blended with diesel fuel [water, ethanol, biodiesel 162.204(9)] 4. Blended diesel fuel sold.	None	1. Removed from Texas terminal 2. All purchases below the terminal rack.	None [except for volume of water, ethanol, biodiesel blended with diesel fuel 162.204(9)]	Sales to end-user and through company owned stores (except for volume of water, ethanol, biodiesel blended with diesel fuel)	1. Inventory at first of each month 2. Purchases and receipts 3. Sold, distributed, used 4. Blended below the rack 5. Loss by fire, theft or accident	None

**Fuel Type: GASOLINE & DIESEL      License: MOTOR FUEL TRANSPORTER**

- Transports gasoline or diesel fuel outside the bulk transfer/terminal system by means of a transport vehicle, a railroad tank car or a marine vessel.  
[162.001(43)]
- No bond required. [162.111 and 162.212]

## Summary

Reports [162.114, 162.122 and 162.123] [162.215, 162.223 and 162.224]	Tax Free Purchases [162.101 and 162.201]	Taxable Purchases [162.101 and 162.201]	Tax Free Sales [162.104 and 162.204]	Taxable Sales [162.104 and 162.204]	Records [162.115(d)(e) and 162.216(d) (e)]	Also Operates As [162.105 and 162.205]
<p>Quarterly; due by the 25th of the month following the report period.</p> <ol style="list-style-type: none"> <li>Imports (fuel transported) into Texas sort by terminal control number, product code and origin.</li> <li>Exports (fuel transported) from Texas sorted by terminal control number, product code and destination.</li> <li>Gallons loaded at a Texas terminal or bulk plant and delivered to a Texas location</li> </ol>	None	All purchases	None	None	<p>Separate record of each intrastate and interstate transportation of gasoline or diesel fuel showing:</p> <ul style="list-style-type: none"> <li>date of transportation</li> <li>name of consignor and consignee</li> <li>means of transportation</li> <li>gallons transported</li> <li>points of origin and destination</li> <li>import verification number or diversion number, when required</li> </ul>	None

**Fuel Type: GASOLINE & DIESEL      License: AVIATION FUELDEALER**

- An operator of an aircraft servicing facility (fixed-based operation – FBO) that delivers aviation fuel, gasoline or diesel fuel exclusively into aircraft or aircraft servicing equipment and does not make taxable sales or uses of the fuel purchased with the aviation fuel dealer license. [162.001(4)] Aviation fuel dealers may purchase gasoline, aviation gasoline, dyed and undyed diesel fuel, dyed and undyed kerosene and jet fuel.
- No bond required [162.111 and 162.212]

## Summary

Reports [162.115(1) and 162.216(m)]	Tax Free Purchases [162.104(6), 162.125(4), 162.204(6), 162.227(4)]	Taxable Purchases [162.104(6), 162.125(4), 162.204(6), 162.227(4)]	Tax Free Sales	Taxable Sales	Records [162.115(d)] [162.216 (d)]	Also Operates As [162.105] [162.205]
Return not required; however, CPA may request schedule from aviation fuel dealer	1. Supplier * 2. Distributor *	All purchases below the terminal rack from unlicensed sellers	1. Into aircraft and aircraft servicing equipment 2. Bulk storage tank of licensed aviation fuel dealer	Cannot make a taxable sale or use	1. Inventory at first of each month 2. Purchases and receipts 3. Sold, distributed, used (including registration or “N” number of aircraft or description of aircraft and description of aircraft servicing equipment) 4. Loss by fire, theft or accident	None

\* Seller request credit on return if tax previously paid [162.125(4) and 162.227(4)]

Aviation fuel dealer requests refund for tax-paid purchases on refund claim form [162.125(c) (6) and 162.227(c)(4)], Rule 3.432(m)(2)

**Fuel Type: GASOLINE & DIESEL  
DEALER**

**License: DISTRIBUTOR – AVIATION FUEL**

- Licensed distributor who also is the operator of an aircraft servicing facility (fixed base operation – FBO) that exclusively delivers aviation fuel, gasoline or diesel fuel into aircraft or aircraft servicing equipment.
- A separate license is required for gasoline and diesel fuel.
- Bond: \$30,000-\$600,000 (CPA may require a higher amount.) Bond type: surety, cash, assignment of CD or letter of credit. [162.111 and 162.212]

## Summary

Reports [162.214 and 162.218]	Tax Free Purchases [162.101, 162.201 and 162.2204]	Taxable Purchases [162.101, 162.201 and 162.2204]	Tax Free Sales [162.104 and 162.204]	Taxable Sales [162.104 and 162.204]	Records [162.115(b) and 162.216(b), Rule 3.430]	Also Operates As [162.105 and 162.205]
Monthly; due by the 25th of the month following the report period. 1. Received 2. Removed from a terminal 3. Removed from a terminal for export 4. Imported into this state outside the bulk transfer / terminal system 5. Sales exempt from tax under 162.204 (diesel fuel <b>only</b> ) 6. Dyed diesel fuel sold to a dyed DF bonded user, supplier or distributor 7. Dyed diesel fuel sold on a signed statement, Rule 3.446 for electronic reporting requirements	1. Imported from non-licensed out of state terminal or bulk plant. 2. Dyed diesel fuel from supplier, permissive supplier or distributor [162.204(10)] 3. Supplier (all fuel types as AFD for delivery to FBO) * 4. Distributor (all fuel types as AFD for delivery to FBO) * 5. Aviation fuel dealer (all fuel types as AFD for delivery to FBO) *	1. Removed from Texas terminal 2. Imported from licensed permissive supplier [162.107 and 162.208] 3. All purchases below the terminal rack	Same as gasoline and diesel fuel distributor <b>plus</b> : 1. Dyed DF bonded user, supplier, permissive supplier or distributor 2. Dyed DF on signed statement 3. Dyed DF delivered into off-road equipment 4. Dyed kerosene sold to retailer for non-highway use 5. Fixed route buses** 6. Into aircraft & aircraft servicing equip as AFD 7. Bulk storage tank of licensed aviation fuel dealer as AFD 8. Volunteer fire department 9. Emergency medical services	1. Sales below the terminal rack <b>only</b> taxable sale of dyed diesel fuel is when signed statement limit exceeded [162.206(a)] 2. Tax is imposed when fuel, which is otherwise exempt from taxation when exported to another state or country, is sold into a truck, railcar or marine vessel to a person who is not a motor fuel license holder	1. Inventory as first of each month 2. Purchases and receipts 3. Imported 4. Exported 5. Sold, distributed, used 6. Blended below the rack 7. Loss of fire, theft or accident records required of an aviation fuel dealer [162.114(j) (k) and 162.216(j) (k)] 8.	<ul style="list-style-type: none"> <li>• Importer</li> <li>• Exporter</li> <li>• Blender</li> <li>• Motor Fuel Transporter ***</li> </ul>

\* Credit on return if tax previously paid [162.125(4) and 162.227(4)].

\*\* Request credit on return if tax previously paid [162.227(a)].

\*\*\* Separate license issued if operating as a common carrier.

**Fuel Type: DIESEL      License: IMPORTER – DYED DF BONDED USER**

- Imports diesel fuel from another state or country into this state outside the bulk transfer/terminal system for their own use and purchases dyed diesel fuel in Texas for use in their off-highway equipment in Texas. [162.001(35), 162.205(b)]
- Import verification number is required for a single cargo tank delivery. [162.001(34) and 162.016(h) and Rule 3.441(b)]
- Diversion number required for all diverted loads. [162.016(g)]
- Bond: \$30,000-\$600,000 (Camay require a higher amount.) Bond type: surety, cash, assignment of CD or letter of credit. [162.212]

## Summary

<b>Reports [162.215, 162.220 and 162.226]</b>	<b>Tax Free Purchases [162.201]</b>	<b>Taxable Purchases [162.201]</b>	<b>Tax Free Sales [162.204 and 162.227(a)]</b>	<b>Taxable Sales [162.204 and 162.227(a)]</b>	<b>Records 162.216(c) and Rule 3.430]</b>	<b>Also Operates As [162.205(4)]</b>
Monthly; due 25th of the month following the report period. 1. Imported, Texas tax paid 2. Imported, tax free 3. Receipts of dyed diesel fuel 4. Dyed diesel fuel used  Rule 3.446 for electronic reporting requirements.	1. Only dyed diesel fuel from supplier or distributor 2. Out-of-state purchases other than from permissive supplier	1. Removed at out of state terminal from permissive supplier with Texas destination 2. Removed from Texas terminal 3. Purchases below the terminal rack	1. U.S. government * 2. Texas public school district * 3. Company under contract with Texas public school district * 4. Texas non-profit electric and telephone cooperatives [Chapter 161 and 162, Utilities Code] * 5. Texas volunteer fire department * 6. Texas emergency medical services	1. Bulk end-user 2. Through company-owned store	1. Inventory at first of each month 2. Purchases and receipts 3. Imported 4. Exported 5. Sold, distributed, used 6. Blended below the rack 7. Loss by fire, theft or accident	<ul style="list-style-type: none"> <li>• Exporter</li> <li>• Blender</li> <li>• Motor Fuel Transporter **</li> </ul>

\* Request credit on return if tax previously paid [162.227(a) and Rule 3.431(i)].

\*\* Separate license issued if operating as a common carrier.

## **CHAPTER 4: COMPRESSED NATURAL GAS AND LIQUEFIED NATURAL GAS LAW**

The Texas motor fuels tax on liquefied gas (LG) and liquefied petroleum gas (LPG) (propane, butane, methane, ethane or a mixture of those gases), was repealed effective Sept. 1, 2015.

### **Introduction**

“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. [Sec. 162.001(39), also refer to Rule 4.434.]

A tax is imposed on the use of liquefied gas for the propulsion of motor vehicles on the public highways of this state at the rate of 15 cents per gallon.

### **Exemptions**

Except for the use of liquefied gas used in motor vehicles on the highways in the state, all other sales or uses of liquefied gas are exempt. Texas counties, public school districts, non-profit electricity and telephone cooperatives and the federal government are not required to pay the tax or purchase decals.

The tax does not apply to a commercial transportation company that uses the fuel exclusively to provide transportation services to Texas public school districts and has been issued a vehicle-specific exception letter by the Comptroller (Rule 3.448).

### **Collection of Tax**

Liquefied gas dealers are required to pay tax directly to the state on annual reports per Rule 3.447.

Interstate truckers licensed under IFTA are not required to prepay the tax on vehicles operated for commercial purposes and traveling out of state; however, the vehicles must display current multi-state fuel tax agreement decals. An interstate trucker must pay fuels taxes to a licensed dealer, or if fuel is delivered from the interstate trucker’s tax-free storage, the tax must be reported and remitted on the liquefied gas dealer report.

## License Types

The following must obtain a fuels tax license as indicated by filing an application with the Comptroller:

- Liquefied gas dealer – a dealer's license
- User – a liquefied gas tax decal
- Motor vehicle dealer – a motor vehicle dealer's liquefied gas tax decal
- Interstate trucker – Carriers that travel only between Texas and Mexico are issued an interstate trucker license. Carriers that travel in two or more IFTA-member jurisdictions are issued an IFTA license.
- Trip permit

The dealer's license is permanent. The liquefied gas tax decal and motor vehicle dealer's liquefied gas tax decal must be applied for annually during the month of expiration. The interstate trucker license is renewed annually if the license-holder furnishes timely reports.

## License Lists

The statute does not require license lists to be prepared. All bulk sales are tax free.

## Specific Licenses

### Liquefied Gas Dealer

Authorizes a dealer to collect and remit taxes on liquefied gas deliveries into the fuel supply tanks of motor vehicles displaying a current IFTA decal, an out-of-state license plate or a motor vehicle displaying a motor vehicle dealer's liquefied gas tax decal.

No delivery may be made in Texas into the fuel supply tanks of motor vehicles not bearing a current liquefied gas tax decal without first obtaining the required dealer's license to make taxable sales.

### Liquefied Gas Tax Decal

Each user of liquefied gas in a motor vehicle operated on the public highway of Texas and licensed in Texas shall pre-pay and obtain a decal based on registered gross weight and mileage driven the previous year.

### Exceptions

- The liquefied gas tax does not apply to sales to Texas public school districts and counties in this state. A Texas public school district or a county in this state operating a motor vehicle powered by liquefied gas is not required to prepay the liquefied gas tax and obtain a decal for the motor vehicle.
- A commercial transportation company operating a motor vehicle powered by liquefied and gas and is used exclusively to provide transportation services to a Texas public school district is not required to have a liquefied gas tax decal or special use liquefied gas tax decal. (must have vehicle-specific exemption letter issued by Comptroller)
- Texas non-profit telephone and electricity cooperatives are not required to display liquefied gas tax decals on motor vehicles.

### **Interstate Trucker – Liquefied Gas**

A liquefied gas interstate trucker based in Texas and licensed under IFTA is no longer required to prepay the tax on vehicles operated for commercial purposes and traveling out of state. However, the vehicles must display current multi-state fuel tax agreement decals.

An LG interstate trucker must pay fuels taxes to a licensed dealer, or if fuel is delivered from the interstate trucker's tax-free storage (including the truck's cargo tanks), the tax must be reported and remitted on the liquefied gas dealer report.

Interstate truckers registered under IFTA who deliver liquefied gas into the fuel supply tanks of motor vehicles displaying out of state license plates or motor vehicle displaying a motor vehicle dealer's liquefied gas tax decal from their own bulk storage (including the truck's cargo tanks) must have liquefied gas dealer licenses. However, the vehicles must have a current IFTA license and display current IFTA decals.

### **Liquefied Gas Tax Decal License**

Authorizes any user of liquefied gas for propulsion of a motor vehicle on the public highways of Texas to pay in advance annually on each motor vehicle owned, operated and licensed by him in Texas, a tax based on the registered gross weight and miles traveled in the previous year.

### **Motor Vehicle Dealer's Liquefied Gas Tax Decal License**

This license authorizes any motor vehicle dealer holding a valid registration under TEX. REV. CIV. STAT. ANN., Art. 6686 to obtain a decal for each liquefied gas-powered motor vehicle held for sale or resale and pay the tax per gallon to a licensed liquefied gas dealer on each delivery of liquefied gas into the fuel supply tank of the motor vehicle. This license is subtitled in the statute as a class of decal rather than a separate license.

### **Trip Permit**

A trip permit allows a trucker, who makes infrequent trips into Texas, to bring a qualified commercial motor vehicle into Texas for one trip. This license is in lieu of an interstate trucker's license or an IFTA license. Only five such trips are allowed in a calendar year.

### **Refunds**

If a motor vehicle bearing a liquefied gas tax decal is sold, transferred, destroyed or the liquefied gas carburetor system (regulator or fuel supply tank) is removed from the motor vehicle the owner is entitled to a refund of the unused portion of the advanced taxes paid for the decal year. The owner must submit to the Comptroller the liquefied gas tax decal with an affidavit identifying the motor vehicle and circumstances for requesting a refund. The Comptroller shall refund that portion of the tax payment that corresponds to the number of complete months remaining in the decal year.

A metropolitan rapid transit authority (MRTA) operating under Transportation Code Chapter 451 that is a party to a contract governed by Education Code Section 34.008 is entitled to a refund of taxes paid on liquefied gas used to provide transportation services

under a contract with a Texas school district. The refund claim must include information regarding:

- vehicle mileage;
- hours of service provided;
- fuel consumed;
- the total number of student passengers per route; and
- the total number of non-student passengers per route.

If in any month of a school year the number of non-student passengers is greater than 5 percent of the total passengers for any single route, the MTA is not entitled to a refund of the taxes paid for that month. (see Rule 3.448)

An MRTA 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.

## **CHAPTER 5: PRE-AUDIT RESEARCH**

### **Introduction**

The auditor should refer to Chapter 2 of the Auditing Fundamentals Manual for a detailed explanation of the pre-audit research process. Fuels tax audits, like all other tax audits, may be generated by audit select in headquarters, in the field office or as a special division request. Agency Work Manager ensures inventory control to avoid duplicate audits and to track the assignment and progression of an audit. Numerous factors are involved in the selection process. Selected accounts include:

- top fuels taxpayers in audit area;
- re-audits of entities where the prior audit was productive; and
- computerized randomly selected accounts.

In addition, audits can be generated as:

- spin-offs of related companies being audited;
- leads obtained while performing audits of other taxpayers;
- leads from newspaper articles; or
- leads resulting from bankruptcy action.

For more information on audit method selection and pre-audit research, see the Auditing Fundamentals Manual, Chapter 2.

Other areas of pre-audit research include Agency Work Manager screens, audit questionnaire, computer auditing, taxpayer history, terminal inquiries, account information cards, prior audits, researching taxability, requested records and tax fraud awareness. These topics are discussed in detail in the Auditing Fundamentals Manual. Those topics having special areas of concern pertaining to motor fuels tax will be discussed in this chapter.

### **Tax Types**

The tax types assigned to motor fuels taxes are as follows:

<b>Motor Fuel Tax</b>	<b>Tax Type</b>
Gasoline	90 06
Diesel	90 07
Liquefied gas	90 08
Motor fuels transporter	90 95
Gasoline interstate trucker	90 96
Diesel interstate trucker	90 97
Liquefied gas interstate trucker	90 98
Terminal operator	90 05

## Taxpayer History

The taxpayer history is a computer-generated summary of all transactions relating to a particular tax account. Each fuels tax return including the supplements filed becomes a part of the fuels tax history. The audit file should always contain a history. The auditor should be certain that the history is current in order to have the latest updated information. For more information on supplements, see Chapter 9 – Purchases and Chapter 10 – Sales in this manual. If the history in the file does not cover all report periods in the audit, the XIDATA and XISCHD inquiries can be used to update the history and supplements. The following numbered information relates to the Diesel Taxpayer History.

### Page 1

No.	Explanation
1	This is the date the history was generated and may indicate an old history that necessitates update with XIDATA function or a new history.
2	This is the period covered by the history.
3	Taxpayer information – The taxpayer's name and address should be the same on XISUMM and the history.
4	The last report filed by the taxpayer – It may indicate XIDATA should be run.
5	If the history is old and updated by XIDATA inquiry, then the XICOLL inquiry should be run to ensure there are no open collection records. If there are open collection records, the auditor will need to address them during the audit.
6	If in management halt, the auditor should find out why before proceeding with the audit.
7	If a prior audit exists, that information will appear here.

The taxpayer's report information is detailed on Page 2. Motor fuels tax returns include detailed information by load for each vendor and/or customer by reporting category. For motor fuels audit histories, the information is summarized by vendor and/or customer. The detail information for these summarized categories can be obtained from TPR/Fuel Reports. The TPR reports will contain detailed load-by-load information unless the taxpayer reported "SUM" on the supplement schedules.

The “Report Information” records begin on Page 3 of Taxpayer History:

Page No.	Report Category	Detail Information
3	Receipts by Period	Receipts for all receipts reporting categories
4	Disbursements by Period	Disbursements for all disbursement reporting categories
5	Calculation by Period	Credit and tax due calculations
6	Supplement to Receipts	Gallons of dyed diesel purchased tax free
7	Supplement to Receipts	Gallons removed from IRS-registered terminal Texas tax paid
8	Supplement to Receipts	Dyed diesel imported tax free and clear diesel fuel imported tax free
9	Supplement to Receipts	Gallons imported with Texas tax paid
10	Supplement to Disbursements	Gallons removed from IRS-registered terminal Texas tax paid to supplier
11	Supplement to Disbursements	Dyed diesel sold tax free to license-holders or removed from IRS-registered terminal
12	Supplement to Disbursements	Gallons sold tax free to aviation fuel dealers
13	Supplement to Disbursements	Gallons exported
14	Supplement to Disbursements	Gallons sold tax free to exempt entities
15	Supplement to Disbursements	Sale of dyed diesel sold to signed statement holders
16	Supplement to Disbursements	State diversions of undyed diesel fuel or gasoline
17	Payment Information	Lists payments by report period for this tax type
18	Collection Information	Details payments, credits, refunds and open collection records for all tax types
19	Example of TPR Schedules	Provide detailed load-by-load information for each reporting category
20	Example of TPR Schedules	Provide detailed load-by-load information for each reporting category

**Important:** The auditor should examine all reported amounts for any fluctuations which appear to be unusual. These fluctuations may indicate a change in personnel, accounting procedures or internal control. These fluctuations should be considered when choosing periods for preliminary testing or sampling.

## Mainframe Inquiries

There is a great deal of information available to the auditor through mainframe inquiry. The information used in an audit is not limited to the account being audited. Inquiries are made to obtain information on related entities, customers and vendors. This section will also reference some useful inquiries used in audits as well as pre-audit activities.

The inquiry T-code will be referenced as well as some information as to its use in an audit. Entry techniques, formats and less-used T-codes will not be discussed.

- The following is a list of some commonly used inquiry codes and some of their uses. NAMNUM: Used to find taxpayer numbers when only the name is available.
- XICOLL: Gives all open collection records (Option 1). The auditor should be aware of any open collection records within the audit period prior to starting the audit. The taxpayer should be notified that there are open collection records and the auditor must verify if they are valid. Invalid records must be closed prior to submitting an audit. If an open collection record is due to a non-filer period, the return must be filed and the record closed prior to sending the audit to the RPC. Valid open collection records should be identified in the Notes to Reviewer section prior to sending the audit to the RPC.
- XIHIST: Can be accessed through the XICOLL function by entering an “X” beside a record. Useful for tracing payments to open collection records, particularly audit records, collection activity and billing information.
- XIPMTS: This gives reported payment amounts for each fuel type broken down by period, transfers in or out and refunds.
- XIDATA:
  - Gives reported amounts for each fuel type broken down by period. Update histories
  - Check postmarks on returns flagged on history as late
  - Examine reported sales or purchases of entities claiming exemptions or payment through returns.

Also note:

- “Audited period” appears in the upper right if an audit has been completed that includes the period on the screen.
- The return type is noted as a regular, amended or manual estimate (filed by enforcement) return.
- LISUMM: This is one of several bankruptcy screens available for inquiry. This screen displays case-related information such as case identification, bankrupt ID, chapter type, petition date, file by date and confirmation date.

**Note:** The case ID is the bankruptcy number assigned to the case by the court, and bankrupt ID is the taxpayer number or Social Security number of the entity that filed. To access this screen, enter the T-Code followed by a “1,” the taxpayer number or the T-code followed by a “2” and the case ID (i.e., LISUMM.1.12345678903 or LISUMM.2.9130246.).

- **LIACID:** This bankruptcy screen lists all bankruptcy cases associated with a specific ID. This screen also indicates whether the ID entered is set up as bankrupt on the taxpayer database.
- **LIASCA:** This bankruptcy screen lists all taxpayers associated with a specific case number.
- **LICORR:** This bankruptcy screen lists the attorney or trustee associated with the case.
- **LMMAIN:** This is the bankruptcy system main menu. Most of the T-Codes mentioned above can be accessed through this screen by entering an “x” on the appropriate line and either the case ID or the taxpayer number (bankrupt ID) in the appropriate field.

If the taxpayer is in bankruptcy but there is no bankruptcy screen information, contact the Bankruptcy Section of Revenue Accounting. The Bankruptcy Section needs tax-due figures of bankruptcy audits at least 10 working days before the filing date as indicated on LISUMM. Tax estimates will be accepted if the audit cannot be completed by this date. Notify the Bankruptcy Section with as accurate an estimate as possible, as well as if significant changes to the estimate are known before the confirmation date.

If the audit is completed within one month of the filing date, notify the Bankruptcy Section of the tax due and that the audit is being sent to the RPC. Audits of taxpayers in bankruptcy status should be sent to the RPC with an “expedite” handling flag attached. (See Sales Tax Policy/Procedures Manual for more information on bankruptcies.)

- **XISUMM:** Gives information for all automated taxes and fees administered by the agency for which the taxpayer is liable. Gives a phone number for contact and open collection record, non-filer and hot check counts. Also tells if the taxpayer is in bankruptcy or management halt and if enforcement is working the account.
- **XISTAT:** This multi-tax inquiry briefly summarizes all taxes for which the taxpayer has been permitted. This inquiry may also include limited information on the status of the license, or the last report filed by the taxpayer.

- **XIANFO:** Show all fuels licenses and license information, i.e., type of license, begin and end date. This screen should be run on all fuel's audits because of the changes in the fuels tax statutes.
- **XILOCA:** Show the physical location for each outlet that is set up with a Texas address. Out-of-state locations may be listed as information only, but not necessary for tax responsibility (does not apply directly to motor fuels but may be helpful).
- **XISCHD:** Displays all supplementary report schedules.

## Universal Refund System

- **RCDATI:** Shows the amount of the claim, the amount paid and/or denied and the claim status. The reference number on this inquiry is the same as the document locator number shown on the refund history.

Inquiry Line				
TCODE	PAYEE #.	TAX TYPE	JULIAN DATE	UNIQUENESS
				3-digit
				uniqueness
				Number
				5-digit julian process date
				2-digit tax type (see below)
				11-digit payee number, usually the taxpayer number
TCode is standardized as RCXXXZ where:				
RC = System code for Universal Refund Claims				
XXX = Abbreviation, i.e., 'PMT' for PAYMENT, 'REF' for REFUND				
Z = Transaction type, for example:				
I = Inquiry				
A = Add				
U = Update				
T = Transfer				

- **RCSUMI:** Shows the total number of claims filed under the taxpayer number.
- **RCPMTI:** Shows the date paid and amount of payment by claim.

## Tax Types (See Fee System Manual)

- 82: Manufacturing refund claims
- 83: Enterprise zone refund claim
- 84: Qualified business – sales tax refund claims
- 85: Qualified business – franchise tax refund claims
- 86: Motor fuel tax refund claims (gasoline)
- 87: Diesel fuel refund claims

## Account Information Cards

The card is completed by an auditor or enforcement officer and sent to the appropriate field audit office. Account information cards are initiated when:

- an investigation of a non-filer discloses that an audit is warranted;
- a non-licensed account needs to be audited;
- during an examination of purchases for use tax, it is apparent that a seller is selling tax free without the receipt of exemption or resale certificates; or
- during an examination of sales, an auditor feels that a customer is issuing invalid resale or exemption certificates.

The cards should be filled out as completely as possible. In some cases, it may be necessary to attach copies of contracts, certificates, audit schedules, newspaper articles or other pertinent data.

The auditor should pay particular attention to whether the items listed on the reverse side of the form were included in the audit where the transaction was seen.

Upon completion of the audit, the results should be relayed to the initiating office. This response may be written on a copy of the original account information card or in the form of a memorandum. The original account information card should remain with the audit file in the auditor's working papers.

## Prior Audits

The auditor can determine if there has been a prior audit by checking the audit history. Additional information can be obtained by running the Agency Work Manager terminal inquiry and the imaging system.

If there has been a prior audit:

- note the prior audit period to avoid re-auditing the same report periods;
- look for errors and exceptions noted in the prior audit and discuss them with the taxpayer to determine if corrective action has been taken;

Even if corrections were made, often there is a period early in the audit, prior to the change, where adjustments are necessary.

If the taxpayer disagreed with the audit, follow the audit through the hearings process to see how hearings decisions affect the audit.

Study audit procedures, plan and notes of the prior audit to:

- become familiar with records examined;
- use as a guide to help estimate the time required for completion; and
- see if the contact is the same as on the questionnaire.

If not, this change may indicate policy or reporting procedure changes in the audit period.

A prior audit should not serve as a blueprint for the current audit. Changes in tax law and business operations occurring since prior audits are important areas to cover. The prior audit can be used to enhance the auditor's use of time by identifying records examined, the difficulties of certain audit methods and areas where no errors were found that may require less emphasis in the current audit.

An auditor can obtain copies of prior audits that have been archived based on the storage media indicated on Agency Work Manager. Imaged audits can be viewed and/or printed via OnBase.

## **Tax Fraud Awareness**

### **Introduction**

With the current tax rate on a gallon of fuel – \$.20 state plus \$.184 federal tax on gasoline and \$.244 federal tax on diesel fuel – there is a real potential for a dishonest person to make large amounts of profit in a hurry by stealing fuels taxes. The combined state and federal tax on one transport load of diesel fuel (approximately 7,400 gallons) is \$3,285.60.

The additional penalty for fraud or intent to evade motor fuels taxes is 75 percent of the tax, penalty and interest.

### **Failure to Pay Tax or File Report**

A person who fails to report a subsequent sale in this state of tax-free motor fuel purchased for export as required by Section [162.1155](#) or [162.2165](#) shall pay for each sale that is not reported a penalty of \$200. The penalty provided by this subsection is not assessed if the taxpayer files an amended report that includes the sale not later than the 180th day after the due date of the original report of the sale.

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

### **Combined Effort to Stop Fraud**

In past years, the State of Texas realized that there was substantial non-compliance with the fuels tax laws. The Comptroller is sensitive to fuels tax problems and cooperates with other states and agencies, including the Federal Bureau of Investigation, IRS, Texas Department of Public Safety and the Travis County District Attorney's Office in detecting fuels tax fraud and collecting fuels taxes owed to the state. Investigations by our Criminal Investigation Division (CID) and audits have uncovered millions of dollars in fuels taxes which have been evaded by individuals and companies across the state.

It is important to detect problems early and assess and collect the tax before the money is placed beyond reach in foreign bank accounts, etc. Every effort is being made to recover as much as possible, but the primary goal is to put tax cheats out of business and behind bars. This not only returns fuel revenue to the state, but it provides equal

opportunity to fuel marketers to sell their product throughout Texas without unfair competition.

### **Fraud Detection**

Most of the schemes used to evade fuels taxes are very difficult to detect while performing a routine audit of a permissive supplier, supplier or any fuels tax licensee that imports motor fuel into Texas, unless every audit is approached with fraud detection in mind. Fraud can and does occur in the largest corporation right down to the smallest business. This is not to say that every audit is a fraud audit, but the auditor should be ever mindful of the possibility. If fraud is detected, it should be brought to the immediate attention of the auditor's supervisor and/or manager, in accordance with established procedures.

### **What is Fraud?**

Fuels tax fraud occurs when a person knowingly and intentionally diverts tax funds to personal or business use, or when a person knowingly and intentionally evades the payment of fuels tax. The operative words are "knowingly and intentionally;" there must be conscious, deliberate effort in order for fraud to be present. Fraud is not always present just because all taxes collected have not been remitted.

#### **Example**

Supplier A is experiencing financial difficulties, and every month when the fuels tax report is due, Supplier A reports whatever amount of money is in the checking account on the due date, even though the accrual account indicates more tax is due.

Supplier B also sends in less tax than is in the accrual account. The account is cleared out every month by journal entries or credit memos showing alleged tax refunds. During the audit, the bookkeeper confides to the auditor that Supplier B's instructions were to report 50 percent of the tax in the accrual account each month.

In the testimony or other documentation, Supplier A probably has a pretty good defense, particularly if partial payments are being made on other obligations, or there is other evidence of financial difficulties. A jury is not likely to convict a person in that situation, absent clear and convincing evidence that there was intent to defraud. On the other hand, Supplier B manifested intent to defraud by giving instructions to the bookkeeper and by falsifying documents.

### **Various Methods of Fraud**

Listed below are some of the ways that fuels taxes have been evaded. This list is not all-inclusive but should give the auditor an idea of what to look for.

- Reselling diesel fuel purchased on a signed statement
- This is not as effective as it once was due to the gallon limitations and registration numbers.
- Extending tax-paid fuel by blending other products with diesel fuel or gasoline
- Licenses obtained in the name of non-existent companies or individuals

- Fuel theft
- Sale of off-spec products as fuel (e.g., cutter stock that may not quite meet the specifications of No. 2 diesel but is sold as diesel fuel)
- Use of daisy-chain schemes where a variety of tax-free transactions are recorded on paper in order to confuse the issue and conceal the actual purchaser of the fuel
- Sale of licenses on the black market
- Importation of tax-free fuel sold as tax-paid fuel
- Fuel purchased for export tax free but sold in Texas as tax paid

### **Audit Procedures**

In addition to regular audit procedures, selective third-party verification and research should be utilized in the audit to substantiate recorded transactions. The supplements can be very helpful when verifying sales to other license-holders. Using inquiry, trace the purchased fuel to see what the purchaser did with it. Be particularly alert for purchasers who are reporting large amounts, “sales to exempt entities” and “exports” with little or no taxable sales; investigate further.

Third-party research and verification are very useful audit tools and, if used properly, can provide a high level of assurance without expending a lot of time. The use of such procedures is highly recommended.

### **Audit Leads**

A good source of audit leads that is often overlooked is convenience stores and other retail outlets that sell gasoline and/or diesel fuel. During the course of a sales tax audit, a few moments spent looking over fuel purchase invoices can be time well spent.

Be alert for the following, which might indicate that the seller of fuel is not legitimate:

- Fuel is purchased with cash, cashier’s checks or checks made payable to “cash.”
- Checks given in payment for fuel are hand-endorsed and cashed at a bank or check-cashing service.
- The seller does not provide an invoice for the fuel; or the invoice does not contain the pre-printed name, address and phone number of the seller.
- The purchaser has no way to contact the seller other than a pager number.
- The purchaser does not know who they are purchasing fuel from; all they know is someone comes around to take the order and collect the money.

Any leads like those above should be documented and discussed with the supervisor and/or field manager. In certain instances, fuels taxes can be assessed against purchasers. In addition, the above information should be referred to CID for evaluation.

To summarize, be alert and investigate transactions that appear out of the ordinary or that do not conform to established business practices. Be ever mindful that fraud can and does occur everywhere, and do not be afraid to ask questions.

## **CHAPTER 6: AUDIT PLANNING**

### **Introduction**

An audit plan is a detailed outline of the auditor's plans and procedures used in conducting an audit. An audit plan will include the following items:

- description of business activities
- schedule of planned audit procedures
- summary of records evaluation
- description of special problems to be resolved in the audit
- deviations from the plan, if any, and why they were made
- audit results
- listing of events/activities occurring during the audit

### **Audit Documentation Report**

The form "Audit Documentation Report" documents the audit plan for every audit performed. This form should be completed as the audit progresses.

For a detailed explanation of audit planning and documentation see Chapter 3 of the Auditing Fundamentals Manual.

### **Audit Checklists**

The following audit checklists can be used to ensure that all areas in an audit have been considered. Every item on the checklists does not need to be mentioned in the audit plan, nor are they all-inclusive; they should be the auditor's guides. Do not include the checklist in the audit plan.

## Preliminary Checklist

### For All Motor Fuels Audits

- I. Pre-Audit Research
  - A. Check Agency Work Manager
    1. Assignment comments
    2. Any special instructions
  - B. Verify that the taxpayer's information letter and audit questionnaire were sent to the taxpayer.
  - C. Examine the audit questionnaire completed by the taxpayer to determine:
    1. Contact and location of records
    2. Description of the business activity
    3. Availability of computer records
    4. Special instructions
    5. Person who has authority to sign the Agreement to Extend Period of Limitation
  - D. Review the taxpayer history
    1. Review title information
    2. Compare with Agency Work Manager
    3. Date of history (should be current)
    4. Has there been a change in license type?
    5. Schedule reported data on computerized spreadsheet for easy reference and note any extraordinary items and changes.
    6. Review reported data especially noting any categories that do not have supporting schedules when credit is taken for tax-paid fuel.
    7. Look for obvious inconsistencies or patterns in reported amounts.
    8. Review history and supplement schedules to get a general understanding of taxpayer's fuel business as reported.
    9. Check for and analyze any open collection records.
    10. Print a return with the instructions for the return for the license type being audited. The history has the lines on which each supplement from the history was reported. Review the descriptions of what is reported on each line and especially the lines that are included in the tax calculations. Some of the lines are for information and not included in the calculations. Also note from the history if the fuel in the supplements is marked as tax paid.
  - E. Run mainframe inquiry
  - F. Examine prior audits, if any, for:
    1. Prior periods audited
    2. Type and size of business
    3. Location and type of records
    4. Person or persons contacted
    5. Errors noted
    6. Hearings decision, if any
  - G. Examine the other documents for additional information including:
    1. Audit leads, if any

2. Correspondence with taxpayer or with others in reference to the taxpayer
  3. Any other sources such as newspaper articles, magazines stories etc.
- H. Review applicable portions of:
1. Fuels tax law/rules
  2. Manual procedures
  3. Memos
  4. Research motor fuels hearings in the STAR system
- I. Set up appointment via telephone
1. Inform taxpayer of audit period.
  2. Inform taxpayer of other taxes to be audited.
  3. Request the person who prepares the returns be present with some returns and documents or computer records used to prepare the return.
- II. Entrance Conference
- A. List the taxpayer's representatives who attended the entrance conference.
- B. Determine the taxpayer's knowledge of the law.
1. Discuss the taxpayer's interpretation of both the law and rules.
  2. Is the taxpayer aware of recent changes in tax policy/law affecting the business?
- C. Determine business activity.
1. What fuels are sold?
  2. What are the types of customers?
  3. Does the taxpayer sell via service station?
    - a. Owned?
    - b. Consigned?
  4. How are fuels delivered to customers?
  5. How does the taxpayer determine exempt customers and not charge tax?
  6. Is bulk storage maintained?
  7. Who are the suppliers?
- D. Discuss the taxpayer's accounting system and reporting activities.
1. Determine the taxes to be audited.
  2. What types of records are needed to conduct the audit?
  3. Where is the location of the records needed to conduct the audit?
  4. Who are the personnel who prepare the report and have there been changes?
  5. What are the step-by-step procedures used by the taxpayer to prepare the return?
- E. Verify the data from the history with the taxpayer and complete the appropriate file maintenance.
- F. Discuss the possibility of electronic auditing.
1. Are records computerized?
  2. Has the same computer system/software been used throughout the audit period?

3. What reports are available?
4. Is an IT person available to assist and answer questions?  
(If this is possible, go to the Electronic Auditing section of this chapter)

### III. Inventories

- A. What type of inventory facilities?
  1. Location?
  2. Capacity?
  3. Number of tanks?
- B. Are the inventories physical or book? Are the two ever reconciled?
- C. Does the recorded or book inventory ever exceed total capacity?
- D. How often and when are the inventories taken?
- E. Are the recorded beginning inventories the same as the last month's recorded ending inventories?

### IV. Purchases

- A. What purchases are compiled and reported on the return? Are there tax-paid purchases?
- B. Are all withdrawals from registered IRS registered terminals included in reported purchases? Are these reported as tax-paid purchases on the return?
- C. Are the exchange transactions being reported correctly?
- D. Examine the procedures for reporting refined or blended products. Does the company purchase fuel for use in their vehicles? What about fuel used in off-road equipment?
- E. Evaluate the internal controls.
- F. A test of the taxpayer's recorded and reported purchases should be made.
  1. Select the test months or periods randomly.
  2. Verify the purchase invoices to the records and to the reports.
  3. Analyze the effect of any discrepancies considering:
    - a. Bulk plant operations
    - b. Service station operations
    - c. The statute time period
  4. If adjustments are necessary, decide whether to do a detailed audit or a projected audit per the analyses and statute periods.
  5. Is the destination on tax-free imports the same as on the bill of lading?

## Audit Checklists by License Type

### Supplier/Permissive Supplier

1. Does the company operate a terminal or other storage facility?
  - A. How many in Texas?
  - B. How many in neighboring states?
  - C. How many separate tanks are there?
  - D. What are the capacities of each tank?
  - E. What products (reportable and non-reportable) are stored at the facility?
  - F. Obtain a diagram of the storage facility if possible.
  - G. What other states fuels taxes are collected and reported?
2. Does the business transport all fuel? Do they use other carriers to move product?
  - A. Obtain name and license number of carriers used.
  - B. Do they ever transport fuel for other fuel dealers?
  - C. Obtain name and license number of fuel dealers.
3. What types of customers are there?
  - A. Retail: independent, franchised, consignment, owner-operated
  - B. Other position-holders in terminal
  - C. Marketers, wholesalers, jobbers
  - D. End-user
4. If they have storage does the business store fuel for any other business? If so, obtain a list of dealers (name, license #) storing fuel and amount of fuel stored.
5. Does this business blend taxable fuels, such as gasohol or bio-diesel fuel blends? If so, list products used as blend stocks and resulting products.
6. Does the business “re-brand” or convert one product to another, such as mineral spirits to kerosene? Gasoline to gasohol? (Product safety sheets may be needed to track actual product changes from non-reported to reportable inventories.) If so, list products that are converted and resulting products created.
7. How does the business handle recording and reporting accidental mixtures of product? How are mixed fuels disposed of?
8. Review terminating agreements with terminals not operated by the company.
9. Obtain/review a representative sample of contracts between exchange partners and/or buy/sell agreements.
10. Obtain a representative sample of contracts between the company and their customers.
11. Reconcile inventory for all products (reportable and non-reportable) for the sample periods.
12. If tax-paid fuel has been reported, check to see if the seller has reported it as a taxable withdrawal on their returns. If they have not, request purchase invoices for all tax-paid gallons that are not verified as reported. These would include any gallons reported on the informational lines of the return and any gallons reported on the return where credit is taken for exempt sales or tax-paid gallons exported or to aviation fuel dealers.
13. Does the business conduct inventory reconciliation for their business activity?
  - A. Separate inventory reconciliation for products owned by others.
  - B. Are receipts at net or gross?
  - C. Are sales/deliveries at net or gross?

- D. Does the business reconcile their book and physical inventories in Texas?
14. Evaluate any discrepancies (excessive gain or loss), checking months before sample period. Match sales/reductions (in dollars) in inventory to sales journals, accounts receivable etc. Match purchases (in dollars) to purchase journals, accounts payable etc. Un-reconciled gains and losses may indicate unreported purchases and sales. Look for fuel in transit between terminals and refinery storage or held within pipelines or vessels.
  15. Track sales/deliveries to a sample of retail stations, verified by conducting retail checks and determine that all are properly recorded.
    - A. Review sales and deliveries to end-users; select a sample of locations for review and conformation.
    - B. Conduct sample check of company operated or consigned fuel locations to verify deliveries to and receipts at retail locations match.
  16. Trace taxes related to sales/deliveries to accounting records and reconcile to tax returns verifying all taxes were reported. The tax accrual account should be reconciled in detail for the audit period. Analyze the tax accrual account for journal entry adjustments.
  17. Evaluate any missing/unrecorded transactions to determine if recorded in previous or subsequent period, also check for jurisdiction problems. Attempt to determine explanation or unrecorded transaction and source of fuel.
  18. Obtain or create a list of purchases/receipts for the sample periods, representative of all reportable products. Record gallons, dollars and taxes paid, if appropriate. Use this cross-check to import records, carrier reports (quarterly), terminal reports, other licensee's records and returns and the business accounting records.
  19. Review sales/deliveries reported tax free, i.e., federal government sales, exports, dyed fuels, aviation fuels, signed statement sales etc.

### **Distributors/Importers/Exporters/Blenders**

1. Does the license-holder operate a bulk plant?
  - A. How many separate tanks are there?
  - B. What are the capacities of each tank?
  - C. What products (reportable and non-reportable) are stored at the facility?
  - D. Obtain a diagram of the bulk plant, if available.
  - E. Are the tanks metered?
  - F. What other states' fuels taxes are collected and reported?
2. Does the license-holder store fuel for any other business at the bulk plant? If so, obtain a list of dealers storing fuel with amounts stored.
3. Reconcile inventory for all products (reportable and non-reportable) for the sample periods.
  - A. Separate inventory reconciliation for products owned by others
  - B. Are purchases at net or gross?
  - C. Are sales/deliveries at net or gross?
  - D. Does the license-holder reconcile book and physical inventories?
  - E. Evaluate discrepancies (excessive gain or loss). Check days before and after sample periods reconciled. Match sales/ reductions (in dollars) to purchase journals, accounts payable etc. Un-reconciled gains and losses may indicate unreported purchases and sales.
4. What types of customers are there?
  - A. Retail
  - B. Independent
  - C. Consignment
  - D. Owned retail outlets
  - E. End-users
5. Does the license-holder blend taxable fuels?
  - A. List products used as blend stocks and resulting products.
  - B. Are the taxable blending agents that increase the volume of fuel sold being reported?
  - C. Are the non-taxable blending agents such as biodiesel, fuel ethanol and water used in diesel reported and invoiced as required by the statutes?
6. Does the license-holder convert one product to another, such as mineral spirits to kerosene?
  - A. Material Safety Data (MSD) sheets will describe the makeup of the fuel. This information is maintained at the terminal.
  - B. List products converted and resulting products.
7. How does the license-holder handle recording and reporting accidental mixtures of product? How are mixed fuels disposed?
8. Review sales/deliveries reported as exempt, license-holder sales, Federal Government sales, sales to schools and school transportation companies, exports, dyed fuels, kerosene/aviation fuel, signed statement sales and dyed fuel sales delivered directly into off road equipment.
9. Create a list of transactions with the sample periods that were exempt. (This will be used for third-party matching and to verify the exemptions claimed.)

10. Obtain or create a list of purchases for the sample periods, separated by vendor for all reportable products; product by product. Record gallons and dollars and taxes paid. Verify that the major sellers reported the taxed fuel on their fuels tax returns using our computer system.
11. Combine tax paid purchases with taxes reported and any beginning inventory already taxed. This total should equal taxable sales plus any inventory already taxed. Any discrepancy should be thoroughly investigated.
12. Obtain a representative sample of contracts between the license-holder and their vendors.
13. Obtain a representative sample of contracts between the license-holder and their customers.
14. Is the license-holder also a carrier?
  - A. Does the wholesaler transport all their own fuel or do they use other carriers?
  - B. Obtain name and license number of carriers used.
  - C. Does the license-holder transport fuel for other fuel dealers?
  - D. Obtain name and license number of fuel dealers?
15. Track sales from sample retail stations (previously reviewed during a retail check) to sales/delivery records and determine that all sales are properly recorded.
  - A. Trace taxes related to sales/deliveries to accounting records, if the license-holder is the taxpayer, trace to tax returns, and verify all taxes were reported.
  - B. Evaluate any missing/unrecorded transactions to determine if recorded in previous or subsequent period.
  - C. Attempt to determine explanation of unrecorded transaction and source of fuel.
16. Utilize the list of purchases created in Step 10 as a basis for tracing/matching fuel purchases and taxes paid on those purchases to supplier/permissive supplier returns on TPR. If return information will not allow tracking of gallons to supplier/permissive supplier, then information should be tracked to the next level (up the wholesale chain) utilizing the steps outlined in this procedure.
17. Obtain a list of all customers purchasing tax free dyed diesel.
  - A. Does the purchaser have the required license (distributor, bonded user, exporter, blender or signed statement registration number)? Verify license and period of validity.
  - B. Does the purchaser have a signed statement number? Verify license number and periods of validity.
  - C. Are all sales within the limitations of 7,400 gallons per single delivery?
  - D. Are the total monthly gallons for signed statement purchases within the purchasers' limitations? [DD – 10,000 gallons, DD (well servicing with written permission) – 25,000 gallons per month or AG – 25,000 gallons per month]
  - E. Are sales/deliveries directly into off-road equipment supported by the required invoice documentation?
18. Does the license-holder have a distribution log for all dyed diesel uses?

## Bonded Users

1. Are all purchases of dyed diesel bulk deliveries?
  - A. How many separate tanks are there?
  - B. What are the capacities of each tank?
  - C. What products (reportable and non-reportable) are stored at the facility?
  - D. Obtain a diagram of the bulk plant, if available.
  - E. Are any purchases through a “card lock” system?
2. Reconcile inventory for all products (reportable and non-reportable) for the sample periods.
  - A. Are separate inventories maintained for different products?
  - B. Are inventories book or physical?
  - C. Are purchases at net or gross?
  - D. Are sales/deliveries at net or gross?
  - E. Does the license-holder reconcile book and physical inventories?
  - F. Evaluate discrepancies (excessive gain or loss). Check days before and after sample periods reconciled. Match sales/ reductions (in dollars) to purchase journals, accounts payable etc. Un-reconciled gains and losses may indicate unreported purchases and sales.
3. Obtain a list of on-road and off-road equipment.
4. Utilize the list of purchases created in Step 2 as a basis for tracing/matching fuel purchases and taxes paid on those purchases to supplier/permissive supplier returns. If return information will not allow tracking of gallons to supplier/ permissive supplier, then information should be tracked to the next level (up the wholesale chain) utilizing the steps outline in this procedure.
5. Does the license-holder have a log for dyed diesel uses?
6. Has the taxpayer filed any refund claims for tax paid fuel used in a non-taxable manner (prior to Dec. 31, 2004)? Are there distribution logs to substantiate the tax-free use?
7. Has tax been accrued for incidental on-road use?
8. If the license-holder is an entity exempt from federal excise tax – i.e. city, county etc. – has state tax been accrued for on road use?

## Dealers

1. Is this station owned or operated by a licensed supplier or distributor?
  - A. Who owns the fuel?
  - B. Who is making the retail sales?
2. If the answer to Question #1 is no, is the fuel consigned to the station?
  - A. Who owns the fuel?
  - B. Who is making the retail sales?
3. Verify correct address and Environmental Protection Agency storage tank license number.
  - A. How many separate tanks are there?
  - B. What are the capacities of each tank?
  - C. What products are stored at the facility?
  - D. Are there any blocked pumps?
4. If there is no separate storage for mid-grade gasoline, document the blending method and the percentages used.
5. Identify the total number of pumps and meters for each product type. Prepare a worksheet to capture beginning meter readings, purchase withdrawals (sales use etc.) and ending inventory for each product for the last 12 months of the audit period.
6. Reconcile inventory for all products for the sample periods. **Note:** Inventory reconciliation should begin and end with dates at which a physical inventory and meter readings coincide.
  - A. Are purchases at net or gross?
  - B. Verify if sales are recorded at gross (meter readings).
  - C. Does the dealer reconcile book and physical inventories?
  - D. Evaluate discrepancies (excessive gain or loss).
  - E. Check days before and after sample reconciled.
  - F. Match sales/reductions (in dollars) in inventory to sales journals, accounts receivable etc.
  - G. Match purchases (in dollars) to purchase journals, accounts payables etc.
7. Has there been a problem with broken meters?
  - A. Evaluate need to set sample periods around meter problems or make adjustments based on meter repair tickets.
  - B. Adjust meter sales by any meter repair tickets.
8. Does the dealer convert any of the products received to another product, such as mineral spirits to kerosene?
  - A. If so, should the dealer have a blender's license?
  - B. List products converted and resulting products.
  - C. List products used a blend stocks and resulting products.
9. Were there any accidental mixtures or contamination of product? How did the dealer handle accidental mixtures or contamination of product? How were the mixtures and/or contamination disposed of? Was the mixture/contamination removed? If so, by whom? Obtain name, address and load information.
10. Obtain or create a list of purchases for the sample periods, separated by vendor for all products.

- A. Record gallons and dollars and taxes paid. Purchases should tie to inventory reconciliation.
  - B. Obtain sample copies of all invoices reflecting taxes collected by vendor.
  - C. Determine if tax is properly reflected on the invoices. Verify that tax paid is Texas tax.
- 11. Trace all purchase invoices to accounts payable verifying that all fuel has been paid for and verifying that there are no additional purchases recorded in accounts payable or cash disbursements for which no invoice exists.
  - 12. Obtain a copy of current contract between the dealer and their vendor if in existence.
  - 13. Utilizing the list of purchases created in Step 10, trace/match fuel purchases and taxes paid on those purchases to supplier/permissive supplier/distributor.

## Terminal Operators

1. Does the operator own or lease the location? If leased, obtain owner information.
2. How many separate tanks are there?
  - A. What are the capacities of each tank?
  - B. What products (reportable and non-reportable) are stored at the facility?
  - C. Obtain a diagram of the facility if available.
3. How is fuel received – by pipeline, by marine vessel and/or by transport?
4. Obtain a list of customers.
  - A. Supplier and exchange partners
  - B. Suppliers who are position-holders in the terminal
  - C. Companies who are authorized to pull fuel
    - i. Distributors
    - ii. Retailers
    - iii. End-users
5. Does the terminal store fuel for other businesses? Obtain a list of position-holders (names, license numbers) storing fuel.
6. Obtain a list of carriers (names, license numbers) authorized to pull fuel for suppliers, distributors, blenders, exporters, users etc.
7. Reconcile inventory for all products (reportable and non-reportable) for sample periods.
  - A. Separate inventory reconciliation for products owned by others.
  - B. Are receipts recorded in barrels or net or gross gallons?
  - C. Are withdrawals sales deliveries at net or gross?
  - D. Does the operator reconcile book and physical inventories?
  - E. Account for additives used to “brand fuel” for position-holders and their exchange partners.
  - F. Create separate inventory and a separate reconciliation for each position-holder. A copy of each position-holder’s inventory reconciliation should be retained for inclusion in supplier/exporter/blender audit assignments.
  - G. Evaluate discrepancies (excessive gain or loss). Checking days before and after sample is reconciled. Un-reconciled gains and losses may indicate unreported receipts and disbursements.
8. Does the terminal blend taxable fuels such as gasohol? List products used as blend stocks and resulting products.
9. Does the terminal convert or re-brand one product to another, such as mineral spirits to kerosene?
10. List products converted and the resulting products. How does the terminal handle recording and reporting accidental mixtures or contamination of the products? How are mixed/contaminated fuels disposed of?
11. How does the terminal account for and dispose of transmix?
12. Determine if any fuel was removed from the terminal by anyone other than a licensed supplier. Create a list of all products including volumes to be used in billing tax to the operator, if not already reported by the operator on a supplier return.
13. Obtain a representative sample of contracts between the terminal and the position-holders storing fuel. Is payment in dollars or product?

## Interstate Trucker

The audit procedure should involve the sampling of how the taxpayer compiles the data from the source documents into the reports. Basically, the data needed in filing an interstate trucker report are:

1. Miles traveled by all trucks in Texas and Mexico
2. Fuel put in all trucks in Texas and Mexico
  - A. Fuels used in Texas by all trucks which is computed using an average MPG, which is calculated by dividing total miles in Texas and Mexico by total gallons from Texas and Mexico. The result is then divided into Texas miles to arrive at gallons of fuel used in Texas. If the taxpayer is driving in other jurisdictions, then those miles and gallons should be included in the MPG calculation. They should be either be purchasing trip permits or getting an IFTA license.

In performing the above audit procedure, the following is a list of items that need to be considered.

1. How many (diesel, gasoline, liquefied gas) trucks are operated?
  - A. What size are they? (i. e., tractor, bobtail, pickup)
  - B. Do all trucks travel interstate each month?
2. Are all trucks used in the average MPG computations including those that do not travel interstate?
  - A. If pickups or other smaller vehicles are included, they should be deleted because they are not required to be reported, and their higher average MPG will distort the computations.
  - B. If qualified motor vehicles which do not travel interstate are included in the computations, then determine whether their inclusion affects the average MPG computations. If these trucks are the same make and horsepower as those, which travel interstate, they need not be deleted. However, if, for instance, they are bobtail and the interstate trucks are tractors, then the interstate bobbails would need to be deleted.
3. Are any trucks leased from other entities reported? Is the lessor or lessee responsible for the fuel?
4. Are any trucks leased to others reported? Is the lessor or lessee responsible for the fuel?
5. Evaluate the internal controls.
  - A. Does the taxpayer have maximum MPG limits?
  - B. If yes, how are they applied?
6. Do the trucks travel establish routes? How is mileage computed?
  - A. Pre-determined from map or computer software according to route?
  - B. Is extra driver mileage or detour route mileage accounted for?
    - i. Driver's logs?
    - ii. Trip reports filed by drivers.
    - iii. Dispatcher's records?
  - C. Global positioning satellite (GPS) transmittals from the truck?
  - D. How are fuel tickets filed? By truck, by month or by quarter?
7. Is the average MPG reasonable?

- A. Does it fluctuate from month to month?
  - B. MPG figures are affected by many factors, including age and type of equipment, load carried and driver techniques. Usually, gas mileage for a tractor-trailer combination will average anywhere from 3 to 6 MPG. Some newer vehicles equipped with aerodynamics and/or electronics may get an MPG as high as 7. Consistency is the key in determining accuracy of reported figures.
8. How is fueling from the taxpayer's bulk storage brought into the computations?
- A. Has tax been paid on bulk purchases for Texas terminals?
  - B. Was any fuel transferred to Texas terminals from other states by common carrier or in taxpayer's own trucks? This sometimes occurs during a fuel crisis.
  - C. If an interstate trucker is also a supplier, distributor or a bonded user, was tax properly included on the report for truck fueling out of bulk storage?

Also check the Power Take-Off (PTO) allowance deduction carefully. It only applies to gasoline and the allowance must be limited to the fuel used in Texas in these trucks. However, the taxpayer may also have operated PTO interstate trucks. The report is not designed to handle this situation, and a separate calculation must be made.

Generally, an examination of an interstate trucker's reporting procedure is sufficient. Although a detail examination of the mileage and fuel documents of each truck would be preferable for a month or quarter, it would probably not be practical if the taxpayer operates more than a handful of trucks. However, a detail check of a few selected trucks for both mileage and fuel should be made for a sample test.

As in all tax auditing, the auditors should decide whether an adjustment is necessary and that the taxpayer's reporting is adequate. Time required and additional revenue would be factors in the auditor's decision. Adjustments will usually entail additional Texas miles or lower average MPG. Projections are usually necessary and, in a situation, where records are inadequate, a four miles-per-gallon factor may be used on a per-truck or fleet basis, whichever is more appropriate.

Where mileage records are inadequate, it may be necessary to examine driver's expense accounts, waybills, dispatcher's records, commodity purchases, sales or any other records that will establish the number of trips and destinations. Based on the number of trips and destinations, map mileage can be used and projected.

## Electronic Auditing

Using electronics to perform an audit requires extensive planning. The right planning will enable the auditor to extract the information pertinent to a tax examination in an efficient manner. It may be possible to have the taxpayer provide various computer-generated reports that can be downloaded into spreadsheets files that would expedite the audit process. Any taxpayer that uses a computer to handle their record keeping should be considered for some type of electronic auditing.

**Note:** The programs currently used by the Audit Division (CAMS and CAMS-PC) are not compatible with motor fuels auditing at this time.

### Focus on Planning

During the entrance conference the auditor should explore the feasibility of electronic auditing and discuss it with the taxpayer. The auditor should think about what would make the audit process faster, more efficient and more accurate.

## Overview

Document the taxpayer's:

- different accounting systems;
- controls for the flow of data from one system to another;
- general ledger accounts (and structure) used for fuel transactions;
- internal product and terminal codes; and
- tax set-up procedures.

### General Questions to Ask

- Is each customer individually coded taxable?
- Who has the authority to override the system?
- Does the audit contact or someone in the company have the ability to download information into spreadsheets?

Basic information flows from the refinery to the terminal to the inventory and billing system. From the inventory and billing system, the data are sent in two different directions: for tax reporting and the tax return and for the financial system.

During these discussions, the auditor should build a system flow chart. This will show possible weaknesses, areas to test system controls and help develop the audit plan. The goal is for the auditor to determine confidence in the data and reports provided by the taxpayer.

### Items to Request

- Chart of accounts
- Internal product code list and how they relate to product codes used on the tax report
- Terminal or location code list
- List of data fields available on the systems such as bill of lading, tax codes, customer name, invoice number, taxes charged etc.
- Any exceptions or unusual circumstances

### Terminal System

Terminal personnel balance and reconcile the inventory, receipts and disbursements on a daily basis and balance them back to meter volumes. A book inventory is balanced to physical inventory. The previous day's terminal activity with a control total is sent to terminal owners, all position-holders and exchange partners' home offices for billing.

### Questions to Ask about Terminals

- What types of reports are available from the terminals?
- How are the data transferred from the terminal?
- Are there any manual transactions?
- Where and how are the supporting documents stored?
  - bills of lading
  - meter tickets
  - barge reports
  - gauging reports
- How often are the data transferred from the terminal?

### Questions to Ask about the Inventory and Billing System

- Are the various processing routines part of one global system or individual systems that interface?
- What are the controls for ensuring that all the data from the terminal(s) have been received?
- How do the different systems pass data to each other?
- Document how the secondary systems feed the primary system or other "stand-alone" systems.
- What are the controls for the migration of data from inventory and billing to the financial and other systems?
- Are there any manual inputs of data?
- Where and how are the source documents stored? Obtain copies of the file layout of the tax data files.
- What detail information is available on the system?

### Inter-company Transactions

Document the inter-company transactions (transfers to company-owned retail outlets) separately. Ask:

- How are the accruals made for inter-company transactions – manually or created by another system?
- Where and how are supporting records stored?

### Tax Return

Ask how the information from all the different systems gets consolidated into the tax return.

The most common question the taxpayer or auditor may ask is why the tax data are not pulled from the general ledger system. The general systems cannot hold all the necessary data elements needed to file federal and state motor fuel returns, such as:

- Terminal Control Numbers (TCNs)
- Federal Employer Identification Numbers (FEIN)
- mode codes
- supplier/position-holder information
- product codes
- tax flags that help determine which line number and supplementary schedule is required
- originating state and destination state

**Note:** Not all of the bill of lading and invoice information can be mapped into the general ledger.

### Application of Motor Fuels Taxes

In Texas, motor fuels taxes are due when the fuel is removed from the terminal/rack. This removal is normally handled by the carrier's driver by inserting various cards into the reader along with customer numbers, destination, etc. The potential for error at this point is great; the driver may enter the wrong customer number or destination or use the wrong access card. How does the terminal correct these errors? What are the documents supporting these corrections and where are they kept? The terminal data feeds update the inventory system and create invoice batches. Before an invoice is created it must be processed through a complicated tax matrix and rules to add taxes to the invoices. The auditor needs to understand how the taxpayer's system applies taxes to the invoice. At this point the auditor should ask the taxpayer which states they collect motor fuels for.

**Note:** Beginning Jan. 1, 2006, licensed suppliers must collect the Texas tax or be licensed and collect the destination state's tax on all gasoline or diesel fuel removed from a terminal in Texas for export to another state, unless the transaction is specifically exempted by Texas or the destination state law. A supplier will collect either the Texas tax or the destination state's tax, whichever is applicable, but not both.

It is suggested that the auditor draw a decision tree to depict the application of motor fuels taxes. Sometimes tax flags are set by customer number and for each destination. Can the taxpayer provide reports of all the federal tax flags for all customer numbers and destinations? For state tax flags? Are there data stamps to document changes? The auditor should test the account set up process and controls. Transactions should be traced through the system. A note should be made of the decision points, internal codes and different systems.

The reported figures should be traced back to the applicable general ledger accounts. Each company will handle booking sales and tax transactions differently. The auditor should find out if the taxpayer uses third-party or custom software or a manual process. Diagram and identify the processes, then test for accuracy.

Differences between financial and tax return data are expected. These differences could be associated with sales accruals, sales rebates, price adjustments or other information not needed for tax reporting. The differences should be investigated and verified that they do not skew taxable gallons or in other ways affect tax reporting.

Test all systems to determine the adherence to procedures, effectiveness of controls and the application of tax rates. Exemptions and other reported credits should be examined.

Knowing the reliability of the taxpayer's systems will enable the auditor to request reports and/or data drops from the areas the state has exposure. The more time spent up front preparing and discussing systems with the taxpayer the faster the actual examination of the records will be. The auditor will be able to design and implement efficient and meaningful samples for completing the field work.

All sampling should follow the policies and procedures of the Audit Division as discussed in the Sampling and Auditing Fundamentals manuals.

## **CHAPTER 7: ENTRANCE CONFERENCE**

### **Introduction**

The entrance conference is a meeting between the auditor and the taxpayer or taxpayer's designated representative, prior to beginning the examination of the taxpayer's books and records. This is generally the first face-to-face meeting between the taxpayer or representative and the auditor.

The auditor should print and review a copy of the appropriate check list in Chapter 6 before meeting with the taxpayer.

The entrance conference is the foundation of a good audit and generally sets the tone of the auditor's dealings with the taxpayer. The taxpayer should be left with the impression that the auditor will be honest and fair, flexible and interested in serving the taxpayer and willing to educate and assist the taxpayer.

During the entrance conference the auditor should make the taxpayer aware of the purpose of the audit and what is expected of the taxpayer, as well as what the taxpayer may expect of the auditor.

### **Topics to Discuss**

During the entrance conference for a fuels tax audit the following areas should be addressed.

1. What products are purchased, sold or used (i.e., gasoline, diesel fuel, dyed diesel, liquefied gas, kerosene, dyed kerosene, kerosene type jet fuels, different number specifications of fuel oil, natural gasoline etc.)?
2. How does the taxpayer determine when to exempt a sale from tax?
3. How are the files for signed statements maintained including AG, DD and OGP numbers: In customer files or in separate files?
4. What type of customers does the taxpayer have? (i.e., distributors, suppliers, brokers, truckers, contractors, farmers, industrial plants, service stations, municipalities, government etc.)
5. Does the taxpayer maintain bulk storage facilities? What kind, number, capacity, location and combined capacity of bulk storage does the taxpayer have?
6. How are products delivered to the customer? (i.e., taxpayer's trucks, customer's trucks, customer's barges, ships, common carrier such as trucks, pipeline, rail, ships or barges)
7. Does the taxpayer sell fuel through a service station or on consignment? If applicable, where is each service station located?
8. Does the taxpayer have a written agency relationship with any of his consignee dealers whereby the dealer can accept a signed statement from a customer and make bulk tax-free sales as an agent for his supplier or distributor? If such an agency exists, then such sales would be valid tax-free sales by the supplier or distributor.
9. Does the taxpayer sell any fuel via storage facilities owned by exchange partners?

10. Does the taxpayer use any of the fuel for highway vehicles, non-highway vehicles or stationary engines? What kind of fuel is used?
11. Do any of the taxpayer's trucks travel interstate?

## **Types of Records**

The types of records maintained for motor fuels taxes are unique to the industry because gallons of fuel rather than dollars and cents are being recorded, except for supplier/permissive supplier's tax accrual accounts. Some of the records that should be examined include the following:

- fuels tax accrual account(s)
- bulk storage reports and inventory records
- invoices
- cargo manifests
- daily load tickets
- customer sales records
- weekly station reports
- load dispatch books
- distribution logs
- driver's logs

**Note:** The person who prepares the returns for the taxpayer will usually have summaries, work papers, computer runs etc. filed with the taxpayer's copies of the returns.

## **Tour of Premises**

An on-site tour can be beneficial in verifying that retail pumps are not connected to bulk storage facilities and determining storage facility capacity, ownership of transports, business practices and activities and the use of fuel.

## **Agreement to Extend Period of Limitation**

The 67th Legislature established a four-year statute of limitation for all taxes. The Legislature also allowed for an extension of the statute of limitation up to two years on any single agreement.

An Agreement to Extend Period of Limitation form is the most frequent method of extending the statute. Once it is signed by the auditor and authorized taxpayer representatives, the form constitutes a legal [ly binding] document. It establishes a new expiration date for specific reporting periods to allow for the completion of an audit. See the Auditing Fundamentals Manual for more information.

## **CHAPTER 8: INVENTORIES**

### **Introduction**

The use of the correct beginning and ending inventories is important when determining total gallons to account for and total fuel dispersed. In examining the records, verify whether the recorded ending inventory is equal to the succeeding month's beginning inventory.

Recorded inventories should be only that inventory located in Texas.

### **Book Inventories**

Taxpayers often use "book" inventories or "plug" inventories. It is important to verify that inventories recorded were actual, physical ("stick") inventories. The constant use of book inventories may result in an inventory greater than actual storage capacity.

When book inventories are used, it may be necessary to conduct or observe physical inventory at the end of a report[ing] period.

A taxpayer may have claimed a refund for the credit gallons. They will be shown in the payment section or the collections record section of the history. If a refund was issued, then it should be documented in the audit schedules so that a credit is not given twice.

### **Stick or Physical Inventory**

A common method of determining inventory occurs when the taxpayer lowers a calibrated stick into the tank. The depth in inches of the fuel in the tank is determined from the wetness [fluid] on the stick. The taxpayer then refers to the inches shown on a tank chart like the 96" Diameter Gauge Chart at the end of this chapter to determine the gallons of fuel in this tank. This method is most common for underground service station storage tanks.

**Note:** The manufacturer will usually supply his customer with a chart similar to the one shown.

Example: For a 6,000-gallon-capacity tank, if a "stick" or physical inventory is taken and there are 33 inches of fuel left in the tank, then there are approximately 1,843 gallons of fuel in the tank.

Above ground tanks are sometimes equipped with sight gauges or other devices for determining the actual depth of fuel. The measurement is still compared to the proper gauge chart in order to determine the number of gallons.

### **Electronic Tank Monitoring and Inventory Control**

Many taxpayers now use electronic or computerized inventory equipment. These devices monitor tanks constantly. The owner/operator is supplied with a computer printout on demand.

These systems provide leak detection, line leak detection, communications capabilities, vapor and groundwater monitoring. The station owner/operator can print out inventories and other pertinent information as needed for record keeping and inventory control. The sophisticated systems can be accessed remotely from a central office through built in Ethernet/IP communications.

Included in these electronics are vapor recovery systems that enhance EPA requirements for environmental protection and comply with vapor emissions guidelines.

### **Tank Capacity Formula**

The formula for determining the fluid capacity of a tank is:

$\text{Pi} \times \text{radius}^2 \times \text{length or height} \times 7.48 = \text{gallons}$

Key: 231 cubic inches = one gallon; 1,728 cubic inches = one cubic foot and one cubic foot = 7.48 gallons.

GIVEN: The approximate dimensions of a tank are 32 feet long and eight feet in diameter.

THEN:  $3.1416 \times 4 \times 4 \times 32 \times 7.48 = 12,032$  gallons.

## 96" Diameter Gauge Chart for Horizontal Tanks

4,000 GALLON 96" x 10' - 8"				5,000 GALLON 96" x 13' - 4"				6,000 GALLON 96" x 16' - 0"				7,000 GALLON 96" x 19' - 0"			
Inch	Gal	Inch	Gal	Inch	Gal	Inch	Gal	Inch	Gal	Inch	Gal	Inch	Gal	Inch	Gal
1	7	49	2067	1	9	49	2595	1	11	49	3107	1	13	49	3625
2	21	50	2121	2	26	50	2662	2	31	50	3187	2	36	50	3718
3	38	51	2174	3	47	51	2729	3	57	51	3267	3	66	51	3812
4	58	52	2227	4	73	52	2796	4	87	52	3347	4	101	52	3905
5	81	53	2281	5	101	53	2862	5	121	53	3427	5	141	53	3999
6	105	54	2334	6	132	54	2929	6	158	54	3507	6	184	54	4092
7	132	55	2387	7	166	55	2995	7	198	55	3587	7	231	55	4184
8	161	56	2439	8	202	56	3062	8	241	56	3666	8	282	56	4277
9	191	57	2492	9	240	57	3128	9	287	57	3745	9	335	57	4369
10	223	58	2544	10	280	58	3193	10	335	58	3824	10	391	58	4461
11	256	59	2596	11	322	59	3259	11	385	59	3902	11	449	59	4552
12	291	60	2648	12	365	60	3324	12	437	60	3980	12	510	60	4643
13	327	61	2700	13	410	61	3388	13	491	61	4057	13	573	61	4734
14	364	62	2751	14	457	62	3453	14	547	62	4134	14	638	62	4823
15	402	63	2802	15	505	63	3517	15	605	63	4211	15	705	63	4913
16	442	64	2852	16	554	64	3580	16	664	64	4287	16	774	64	5001
17	482	65	2903	17	605	65	3643	17	724	65	4362	17	845	65	5069
18	523	66	2952	18	657	66	3706	18	786	66	4437	18	917	66	5176
19	565	67	3002	19	710	67	3767	19	850	67	4511	19	991	67	5263
20	606	68	3050	20	763	68	3829	20	914	68	4584	20	1066	68	5348
21	652	69	3099	21	818	69	3889	21	980	69	4657	21	1143	69	5433
22	696	70	3146	22	874	70	3949	22	1047	70	4729	22	1221	70	5517
23	742	71	3194	23	931	71	4008	23	1115	71	4800	23	1301	71	5600
24	788	72	3240	24	989	72	4067	24	1184	72	4870	24	1381	72	5681
25	834	73	3286	25	1047	73	4125	25	1254	73	4939	25	1463	73	5762
26	442	74	3331	26	1106	74	4181	26	1325	74	5007	26	1546	74	5841
27	482	75	3376	27	1166	75	4237	27	1397	75	5074	27	1629	75	5919
28	523	76	3420	28	1227	76	4292	28	1469	76	5139	28	1714	76	5996
29	565	77	3463	29	1288	77	4346	29	1543	77	5204	29	1800	77	6071
30	606	78	3505	30	1350	78	4399	30	1617	78	5267	30	1886	78	6145
31	881	79	3546	31	1413	79	4451	31	1691	79	5329	31	1973	79	6217
32	929	80	3596	32	1476	80	4501	32	1767	80	5390	32	2061	80	6288
33	977	81	3626	33	1539	81	4551	33	1843	81	5449	33	2150	81	6357
34	1026	82	3664	34	1603	82	4599	34	1919	82	5507	34	2239	82	6424
35	1076	83	3701	35	1667	83	4645	35	1996	83	5562	35	2329	83	6489
36	1125	84	3737	36	1732	84	4690	36	2074	84	5616	36	2419	84	6552
37	1175	85	3771	37	1797	85	4734	37	2152	85	5668	37	2510	85	6613
38	1226	86	3805	38	1862	86	4776	38	2230	86	5719	38	2602	86	6672
39	1277	87	3837	39	1928	87	4816	39	2309	87	5766	39	2693	87	6727
40	1328	88	3867	40	1994	88	4854	40	2388	88	5812	40	2786	88	6781
41	1641	89	3896	41	2060	89	4890	41	2467	89	5855	41	2878	89	6831
42	1694	90	3922	42	2127	90	4924	42	2547	90	5895	42	2971	90	6878
43	1747	91	3947	43	2193	91	4955	43	2626	91	5933	43	3064	91	6922
44	1800	92	3970	44	2260	92	4983	44	2706	92	5967	44	3157	92	6961
45	1854	93	3990	45	2327	93	5006	45	2788	93	5997	45	3250	93	6997
46	1907	94	4007	46	2394	94	5030	46	2866	94	6023	46	3344	94	7026
47	1960	95	4021	47	2461	95	5047	47	2947	95	6042	47	3438	95	7050
48	2014	96	4028	48	2528	96	5056	48	3027	96	6053	48	3531	96	7062

## **CHAPTER 9: PURCHASES**

### **Introduction**

One of the most important elements of auditing suppliers, permissive suppliers and distributors is determining that **all fuel acquired** has been reported and can be accounted for. All fuel acquired includes (in gallons):

- dyed diesel fuel purchased tax-free from other license-holders;
- fuel removed from an IRS-registered terminal, Texas tax paid to licensed suppliers or permissive suppliers;
- fuel purchased in Texas for blending;
- dyed diesel fuel imported tax free;
- undyed diesel fuel/gasoline imported tax free;
- fuel imported; Texas tax paid;
- taxable blending materials; and
- tax-exempt blending materials (diesel fuel).

### **Records Examined**

Journals or other records showing total purchases may be used to verify that reported figures are properly stated. These records should be verified as being correct by checking posted amounts against invoices. Test months can be chosen by using the supplemental schedules. Purchases can also be verified by comparing to vendors' supplier, permissive supplier and terminal operator reports.

All purchases from suppliers and permissive suppliers should include the Texas motor fuels tax unless otherwise exempted by statute. Suppliers and permissive suppliers should be accruing and collecting Texas motor fuels taxes on all Texas destination sales and withdrawals.

Suppliers who import motor fuel outside the bulk transfer system, distributors, importers and blenders must accrue and remit Texas motor fuels tax on imported fuel unless purchased from a licensed permissive supplier and Texas tax was collected.

The auditor should verify that Texas tax was paid by comparing invoices to payment instruments (checks or electronic funds transfers). The auditor can also verify the tax was paid by checking the returns of the seller making sure that credit has not been taken later for the tax on the loads. This should be performed concurrently while testing other areas of purchases.

### **Third-party Verification**

When a taxpayer's records are inaccurate, incomplete, suspect or not made available, it is sometimes desirable to use the records of the taxpayer's suppliers to determine purchases by the taxpayer and use those figures to project the taxable sales by the taxpayer.

**Note:** When using the records of suppliers to determine the purchase of the taxpayer, use only those records that could later be copied and introduced into evidence, in case

of a hearing. In other words, rely on actual documents that can later be obtained from the supplier; do not rely on verbal communications.

The following information is also useful:

- vendor's address
- records contact person's name and title
- date of information request

**Specific sales** made by the vendor to the taxpayer should be well documented in the audit. Avoid using only totals as documentation whenever possible even though the taxpayer has no records and does not object to using his vendors' records.

The auditor's report or schedules should include a complete description of the exact supplier's records used, including dates and locations. The following information from supplier's records may be used in an audit:

- detailed invoice-by-invoice listing
- specific totals, if they exist as totals, in the supplier's record

If the taxpayer disagrees with the audit figures taken from the supplier's records, then advise the taxpayer of his rights. The documentation included in the audit should be useful to a hearings attorney to determine what the actual sales figures for the supplier are and in what period these sales to the taxpayer occurred.

### Supporting Schedules

Taxpayers are required to supply various supporting schedules by report category along with the basic Texas fuels tax report. Texas has adopted the American Petroleum Institute's PIDX codes to identify the various types of motor fuels. The most common are:

Code	Fuel Type
065	gasoline
125	aviation gasoline
124	gasohol
130	aviation diesel (jet fuel)
160	clear diesel fuel
142	clear kerosene
130	jet fuel
228	dyed diesel fuel

The method of transporting the fuel is also reported on the schedules and is coded as follows:

Code	Transportation Method
J	truck
R	rail
B	barge
PL	pipeline
S	ship
BA	book adjustment
ST	stationary transfer

These supporting schedules are a good tool to use when comparing the amounts reported by the taxpayer with the amounts reported by the seller or purchaser.

The reported amounts are summarized by vendor by month in the Texas audit history. Detailed amounts by load, vendor and month can be accessed using the TPR (TPR/Reports/Fuel Schedules) section of Agency Work Manager.

**Note:** If the purchaser reports “SUM” on the supporting schedules no detail by load exists, only the total purchased from each vendor or sold to each customer.

The amounts shown on the supplements should not be used to make audit adjustments without first determining why the differences exist or if the amounts are accurate.

However, if a purchaser is being audited and has no records or does not make records available, and the seller’s records are not available or the seller has gone out of business, then the supplement history of sales made to this purchaser would be the best records available and could be used for audit purposes.

## **CHAPTER 10: SALES**

### **Introduction**

Under Chapter 162 of the Texas motor fuels tax statutes, effective Jan. 1, 2004 state motor fuels taxes are collected and remitted to the Comptroller based on the net gallons of gasoline and diesel fuel removed from the terminal rack. Persons blending or importing motor fuel into the state outside the bulk terminal/transfer system remit state motor fuel taxes to the Comptroller. Only dyed diesel fuel can be removed from a terminal or sold tax free.

A licensed supplier collects tax on all gasoline and undyed (clear) diesel fuel removed from a Texas terminal. A licensed permissive supplier collects the Texas tax on gasoline and undyed (clear) diesel fuel removed from a terminal located in another state and destined for delivery in Texas. Suppliers and permissive suppliers must also collect Texas tax or the destination state's tax on all pipeline sales to unlicensed entities.

The first step in auditing suppliers and permissive suppliers is reconciling the tax accrual account. Any reductions or adjustments to these accounts should be identified. It is expected that there will be deductions for payments and the 2 percent handling allowance that licensed suppliers and permissive suppliers retain for remitting the tax on time to the Comptroller.

### **Deferred Tax Payments**

Distributors and importers who pay the tax to the supplier or permissive supplier on time keep 1.75 percent of the total taxes due to cover administrative expenses. Licensed distributors and importers can defer paying the tax to a licensed supplier or permissive supplier until two days before the supplier or permissive supplier must remit the tax to the Comptroller. The deferred tax payment must be made by electronic funds transfers. Suppliers and permissive suppliers must provide at least two days' notice to the distributor or importer of the amount of tax that will be drafted from their account.

### **Exports**

A licensed supplier must collect the Texas tax or be licensed and collect the destination state's tax on all gasoline and diesel fuel removed from a terminal in Texas for export to another state by a Texas licensed distributor or exporter unless the transaction is specifically exempted by Texas or the destination state law. The supplier must collect Texas state tax if the purchaser does not hold a Texas exporter license and the supplier may also be required to collect the destination state's tax if they are licensed in the destination state and required to do so. If the person is not licensed as Texas distributor or exporter, then Texas tax must be collected.

Effective Jan. 1, 2006, a licensed distributor or licensed permissive supplier may no longer take a credit on a return for taxes paid on gasoline or diesel fuel that is sold "for export" by the purchaser to another state. A distributor may continue to take a credit on a return for taxes the distributor paid on fuel it exported from the state.

A licensed exporter or importer must pay either the Texas tax or the destination state tax on gasoline or diesel fuel exported to another state, unless the transaction is specifically exempted by Texas or the destination state's law. An exporter or importer may continue to take a credit on a return for Texas taxes paid on fuel exported to another state.

A purchaser (including licensed suppliers and permissive suppliers, distributors and importers) can remove gasoline and diesel fuel from a terminal tax-free for export to another country when the bill of lading shows a foreign destination and the fuel is actually exported.

Credit cannot be taken on a Texas motor fuels tax return for taxes paid to another state. There is no reciprocity for motor fuels taxes between any states.

Rule 3.441 should be reviewed when examining/verifying exports. The Comptroller can request proof of export to verify that the motor fuel was exported from Texas. This proof may consist of:

- U.S. Customs certification;
- certification of the port of entry of the receiving state;
- a report that the fuel was imported into the receiving state;
- a gauging report if the fuel was moved via pipeline; or
- other documentation that confirms the fuel left Texas.

**Note:** Gauging reports are prepared by the carrier (pipeline) or a third-party company that verifies that the quantity of fuel reached its destination and was off-loaded from the pipeline.

### State and Local Government

State and local government agencies purchase dyed diesel fuel under a bonded user's license or a signed statement. State and local governments are exempt from the federal excise tax; therefore, under federal law they can use dyed diesel on public roads [see Sec. 162.235(b)]. State and local governments are **not** exempt from state motor fuels taxes. They can use dyed diesel fuel purchased using a bonded user's license on public roads, but they must accrue and remit the state tax for that use on their quarterly/yearly tax returns. Dyed diesel fuels purchased using a signed statement cannot be used on the public roads because there is not a means to report and remit the tax due.

Please refer to the section on "Bonded Users" for auditing techniques.

### Back-up Tax

A person who sells or makes a taxable use of motor fuel on which tax has not been paid must collect the tax at the time of the taxable use or sale. The tax must be remitted to the Comptroller no later than the 25th day of the month following the month in which the motor fuel was used or sold.

## **Tax-free Sales**

There is no tax due on sales of gasoline, diesel fuel or CNG/LNG to the federal government, Texas public school districts, companies providing transportation services to a Texas public school district. Additionally, no tax is due on bulk sales to non-profit electricity and telephone cooperatives organized under the Texas Utilities Code, Texas volunteer fire departments or nonprofit entities organized for the sole purpose of and engaged exclusively in providing emergency medical services. Licensed suppliers, permissive suppliers or distributors who paid taxes on the gasoline or undyed (clear) diesel fuel and subsequently resells them to one of these exempt entities without collecting tax can take a credit on their monthly tax return.

### **Sales to the Federal Government**

Tax-free sales of motor fuel may be made to the U.S. government by suppliers, permissive suppliers and distributors. Tax-free sales may be made to contractors for use on government contracts.

Motor fuel that is purchased at retail by the federal government will have tax included in the purchase price. Either the federal entity or the credit card company can file for a refund. Please refer to Chapter 13 – Refund Claims.

Rule 3.432(i)(1) explains the documentation that must be maintained to provide evidence that the sales were made to the federal government, including:

- a U.S. tax exemption certificate (Standard Form 1094) or similar certificate;
- copies of the invoice(s) when a U.S. national credit card (Standard Form 149) is used for the purchase; or (The invoice must include the license plate number or official vehicle designation if the fuel is delivered into the fuel supply tank of a motor vehicle.)
- a copy of a contract between the seller and the federal government supporting the sales invoices or purchase vouchers.

Sales to the federal government are included in the sales to exempt entities on the monthly return. Detailed information for these sales is submitted on a supplementary schedule. The supplementary schedules can be downloaded via TPR/Fuels

Reports on a month by month basis. The TPR reports can be downloaded into spreadsheets for analysis and scheduling.

### **Sales to Public Schools**

Gasoline and diesel fuel sold to a public-school district for the district's exclusive use are exempt from the motor fuels taxes. The fuel must be sold to the district and not the individual schools. The vast majority of these school districts will be designated with "Independent School District" as part of their name. School districts can be verified through the Texas Education Agency (TEA) [website](#); then select the "School Directory" tab (this will link to a new page). Select the "Reports and Directories" tab and then the tab to select the year to be researched.

Charter schools, junior colleges, community colleges, private schools and universities are not public-school districts and do not qualify for the exemption.

### **Sales to Commercial Transportation Companies that Provide Public School Transportation Services**

Motor fuels taxes do not apply to gasoline and diesel fuel sold to a commercial transportation company that provides public school transportation services for a school district under Section 34.008 of the Education Code and uses the fuel exclusively to provide those services.

These companies must have a contract with the specific public-school district to provide transportation services (other than charter trips) for the school district. An affidavit must be submitted to the Comptroller to be able to purchase gasoline and diesel fuel tax free. The affidavit must also cover purchases of liquefied petroleum gases to be purchased tax free without a prepaid decal. The affidavit must state:

- the company has a contract with a specific public-school district;
- the motor fuel purchased tax free will be used exclusively to provide the contracted transportation services for that school district; and
- the vehicle identification number and vehicle license plate number for each vehicle equipped to use liquefied gas.

After the affidavit and required documentation has been reviewed and approved by the Comptroller, the company will receive a letter of exception. This letter will specify that the company may purchase tax free gasoline and/or diesel fuel used to provide transportation services to a public-school district in Texas. The letter of exception may be reproduced for licensed suppliers and licensed distributors. An exception letter shall be issued to the company for specific vehicles operated using liquefied gas. The letter may be furnished to inspectors when a liquefied gas-powered bus is undergoing a safety inspection and to liquefied gas dealers when the company purchases liquefied as tax free to be placed into the fuel supply tank of the bus.

A commercial transportation company providing transportation services to a Texas public school district shall keep separate records for tax-free and tax-paid fuels. Both sets of records must show:

- the number of gallons of gasoline, diesel fuel and liquefied gas on hand on the first day of each month;
- the number of gallons of gasoline, diesel fuel and liquefied gas purchased or received, showing the name of the seller and the date of each purchase;
- the date and number of gallons of gasoline, diesel fuel and liquefied gas delivered into the fuel supply tanks of vehicles used to furnish transportation services to public school districts;
- the date and number of gallons of gasoline, diesel fuel and liquefied gas delivered into the fuel supply tanks of vehicles used to furnish transportation services other than to public school districts;
- the date and number of miles traveled to provide transportation services for the public-school district, including starting point, destination, purpose of trip, beginning and ending odometer readings, vehicle identification number and the vehicle license plate number; and
- the date and number of miles traveled to provide transportation services for customers other than public school district(s), including beginning and ending odometer readings, vehicle identification number and vehicle license plate number of the vehicle so used.

A commercial transportation company forfeits its right to purchase fuel tax free if:

- the fuel is sold other than to a Texas public school district for which the commercial transportation company provides transportation services; or
- the fuel is used in a vehicle for any purpose other than providing transportation services for a Texas public school district.

Within five days of the cancellation or completion of a contract with a Texas public school district, a commercial transportation company shall report to the Comptroller the total number of gallons of tax-free gasoline and/or diesel fuel on hand in storage tanks and in the fuel supply tanks of its motor vehicles and remit the tax due on the ending tax-free inventory. In the case of a liquefied gas vehicle, the company must obtain a liquefied gas tax decal for previously excepted vehicles used to provide transportation services under the canceled/completed contract.

A commercial transportation company that charters round-trip transportation to special events for a Texas public school district may claim a refund for the fuel used in the charter vehicle.

The refund shall be computed by starting the trip with a full fuel supply tank or tanks, maintaining records of the fuel delivered into the fuel supply tank or tanks of the vehicle during the trip, and filling the fuel supply tank or tanks upon arrival back at the origination point. The number of gallons delivered into the fuel supply tank or tanks after the start of the trip will be the number of gallons upon which the charter company may

claim a tax refund. These records must be maintained for all charter trips along with a copy of the bill to the school district for the trip.

A commercial transportation company providing transportation services to a Texas public school district may file a claim for refund of state taxes paid on gasoline and diesel fuel used exclusively for such transportation purposes.

A metropolitan rapid transit authority operating under Transportation Code Chapter 451 that is party to a contract governed by Education Code Section 34.008 and that is providing transportation services to a Texas public school district may file a claim for refund of state taxes paid on gasoline, diesel fuel and liquefied gas used for such transportation services.

Documentation and record keeping requirements are discussed in depth in Chapter 13. Also, refer to Rule 3.448.

### **Bulk Transfers**

The transfer of motor fuel from one location to another by pipeline or marine delivery within the bulk transfer/terminal system between licensed suppliers and/or permissive suppliers is not taxable. This includes:

- the marine vessel movement of motor fuel from a refinery or terminal to a terminal;
- motor fuel storage facilities;
- the pipeline movement of motor fuel from a refinery or terminal to a terminal;
- a book transfer of motor fuel within a terminal between licensed suppliers before the fuel has been removed from the rack; and
- a two-party exchange between licensed suppliers or between licensed suppliers and permissive suppliers.

Bulk sales “above the rack” including pipeline sales to unlicensed entities are taxable. Unlicensed entities include those license-holders that only hold a distributor license. Effective Sept. 1, 2009, a supplier or permissive supplier license is not required for a tax-free transaction within the bulk terminal/transfer system. A supplier license is required to hold inventory, be a position-holder, in an IRS registered terminal located in Texas.

### **Sales to Other License-holders**

Dyed diesel fuel may be sold tax-free from the terminal by suppliers to other suppliers, distributors and bonded users.

### **Kerosene for Heating, Cooking and Lighting**

Beginning Jan. 1, 2005, there will no tax refunds on undyed (clear) kerosene used for off-highway purposes. Only dyed kerosene can be bought tax-free for heating, cooking, lighting and similar off-highway uses.

### **Tax-Free Deliveries of Diesel Fuel into Off-Highway Equipment**

Licensed suppliers and distributors can make deliveries of tax-free dyed diesel fuel into the fuel supply tanks of railway engines, motorboats, refrigeration units or other stationary equipment. The equipment into which the dyed diesel fuel is delivered must be clearly identified on an invoice. In the case of multiple deliveries such as into the refrigeration units of trailers in a freight yard, the invoice must list each unit and the number of gallons for each unit.

### **Sales to Aviation Fuel Dealers**

Sections 162.104(6) and 162.204(6) allow a distributor, supplier or permissive supplier to sell or deliver gasoline and diesel fuel into a storage facility of a licensed aviation fuel dealer from which the fuel will be delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment. Tax-free sales can also be made 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.

Tax-free fuel may not be delivered into the fuel supply tanks of aircraft servicing vehicles used on the highways unless the vehicles are owned by the U.S. government.

All fuel delivered into aircraft or aircraft servicing equipment must be documented by a complete record showing:

- the name of the purchaser;
- the date of sale, distribution or use; and
- the airplane registration or “N” number or aircraft servicing equipment number or description to which the fuel is delivered.

### **Signed Statement Sales**

A tax-free delivery of dyed diesel fuel may be made by a licensed supplier or distributor to a person who furnishes a signed statement that includes an end-user number issued by the Comptroller. Signed statements cannot be accepted for tax-free gasoline sales.

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 tax-free sale of dyed diesel fuel may be made if the purchaser furnishes a signed statement to the licensed supplier or distributor. The signed statement must include the end-user number issued by the Comptroller and stipulate that:

- all the dyed diesel fuel purchased on the signed statement will be consumed by the purchaser and will not be resold; and
- 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.

A licensed supplier or distributor may not make a sale, or a purchaser make a purchase of dyed diesel fuel using a signed statement:

- for the purchase or the sale of more than 7,400 gallons of dyed diesel fuel in a single delivery or the entire delivery is taxable; or

**Note:** Effective Sept. 1, 2009, single-load limitations no longer apply; this is not retroactive.

- when the purchaser has previously exceeded the monthly limitations including purchases from all sources:
  - 10,000 gallons of dyed diesel fuel, the signed statement will be designated with a DD number;
  - 25,000 gallons of dyed diesel fuel if the purchaser has been issued a signed statement and an Oil or Gas Producer Letter of Exception from the Comptroller with an OAG designation; or
  - 25,000 gallons of dyed diesel fuel if the purchaser stipulates in the signed statement designated with an AG number that all of the fuel will be consumed by the purchaser in agricultural off-highway equipment.

The purchase, sale or delivery that causes the limitations to be exceeded during a month is not taxable. Any subsequent purchase, sale or delivery made during the same month is taxable.

### Example

Date	Buyer A	Buyer B
July 5	5,000 gallons	5,000 gallons
July 10	2,500 gallons	2,500 gallons
July 15	2,500 gallons	2,501 gallons
July 20	3,000 gallons	500 gallons

The sale on July 20 to Buyer A is taxable because the 10,000-gallon limit was exceeded on July 15. The sale to Buyer B on July 15 is not taxable because it is the sale that caused the 10,000-gallon limit to be exceeded, and delivery does not exceed 7,400 gallons. The load limitation does not apply to purchases on or after Sept. 1, 2009; it is not retroactive.

A taxable sale or removal of dyed diesel fuel cannot be made except when exceeding the limitations. A purchaser who exceeds the limitations must obtain a dyed diesel fuel bonded user license.

Only licensed suppliers and distributors can sell tax-free dyed diesel fuel by accepting a signed statement and a DD or AG signed statement number.

A licensed seller may temporarily rely on the Comptroller's website list of end-user numbers, or other materials provided by the Comptroller, to make a tax-free signed statement sale of dyed diesel fuel until the purchaser provides the seller with a

completed signed statement. The Comptroller may issue a written request giving the seller 60 days to provide the copies of the seller's signed statements. The Comptroller may disallow tax-free sales of dyed diesel fuel on which the seller cannot deliver copies of the signed statement within the 60-day period. (see Exhibit IV)

In audits begun after Sept. 1, 2009, the 60-day letter will be issued when the taxpayer has submitted a Statement of Grounds.

Sellers can and should verify signed statement registration online at [comptroller.texas.gov/taxes/fuels/diesel.php](http://comptroller.texas.gov/taxes/fuels/diesel.php).

### **Separate Operating Division of a Corporation**

A separate division exists if the income, assets and expenses attributable to the separate division can be separately determined from the books of account or record. In completing the signed statement and purchasing fuel, the name used on the statement should correspond to the separate or identifiable accounting books; the division should be unique enough to be separated from other divisions. The seller only needs to know that a specific division is purchasing the fuel and that it completed the signed statement.

A separate operating division of a corporation may apply for and receive an end-user number to buy dyed diesel fuel tax free using a signed statement if the division:

- does not resell the fuel;
- consumes the fuel; and
- maintains separate storage apart from other corporate divisions.

A signed statement remains in effect until:

- it is revoked in writing by the buyer or seller; or
- the Comptroller notifies the supplier or distributor in writing or by means of electronic transmission that the buyer may no longer make tax-free purchases.

### **Highway Use of Farm Machinery**

Owners or operators of multiple farms, ranches or similar tracts of land in the same vicinity may move farm tractors, combines and similar self-propelled farm machinery over the public highways for the purpose of transferring the base of operation of the machinery.

Gasoline and diesel fuel used for travel on the highway for any purpose other than for moving the machinery from one tract of land to another is considered taxable. (Tax Code Secs. 162.125 and 162.227, Rule 3.440)

## Exempt Sales

A supplier, permissive supplier or distributor may make tax-free dyed diesel fuel sales directly into the fuel supply tanks of railway engines, motorboats, refrigeration units, off-road equipment (while off road) and other stationary equipment powered by a separate motor from a separate supply tank.

These are “exempt-type” sales that do not require a signed statement. The sales should be reported as “Other Tax-Free Sales/Uses” on the monthly report. An invoice must be issued for any “exempt-type” sales regardless of quantity.

## Kerosene

Clear (undyed) kerosene may not be sold or purchased tax free. The only exceptions are purchases by the federal government, a Texas public school district, a company that provides transportation for a Texas public school district, a Texas volunteer fire department or a non-profit electricity or telephone cooperative organized under the Texas Utilities Code. Only dyed kerosene is exempt from motor fuels tax on sales to retail outlets that resell kerosene exclusively for heating, cooking and lighting. A licensed supplier, permissive supplier, distributor or importer may make a tax-exempt sale of dyed kerosene to a retail outlet if the dyed kerosene is delivered into a tank marked **“Dyed Kerosene, Nontaxable Use Only, For Heating, Cooking, Lighting And Similar Nonhighway Use.”** The invoice that the licensed seller issues to the retail outlet must include the same notice.

If an end-user picks up the dyed kerosene at a seller’s location, a signed statement or dyed diesel fuel bonded user license is not required. If, however, the supplier, distributor or importer makes a delivery to an end-user’s storage tank, the end-user must either hold a valid dyed diesel fuel bonded user, supplier or permissive supplier license or provide the seller with a signed statement and a valid end-user number.

## Transit Company Sales

Qualified metropolitan rapid transit authorities pay the full tax rate (\$.20 for gasoline and diesel fuel). Transit companies can request a refund for fuel used in qualified vehicles. The refund is not available for wreckers, pickups or other service vehicles the company may operate because they are not qualified vehicles. The refund is one cent per gallon for gasoline and one-half cent per gallon for diesel fuel. Transit companies will have one year from the date of use to file for a refund. (see Rule 3.431 and Chapter 13 – Refunds)

Qualified metropolitan rapid transit authorities may also request a full refund of taxes for gasoline and diesel fuel used to provide transportation services for a Texas school district. The transit authority must have a contract governed by Education Code Section 34.008. Record-keeping requirements are discussed in Rule 3.448(h)(2) and Chapter 13 – Refunds.

## Exhibit IV – Signed Statement



### TEXAS END USER AGRICULTURAL SIGNED STATEMENT FOR PURCHASING TAX-FREE DYED DIESEL FUEL

Selling supplier  
or distributor: \_\_\_\_\_

Address: \_\_\_\_\_

Purchasing entity name	End user agricultural signed statement number
Address	Beginning effective date
	Taxpayer number

*If the purchaser is a division of a corporation, give the name and address of the parent corporation, not the division DBA name.*

Parent corporation name: \_\_\_\_\_

Address: \_\_\_\_\_

#### PLEASE READ CAREFULLY BEFORE SIGNING

1. Will you use any of this diesel fuel in a motor vehicle on public highways, streets or roads? ..... ☐ YES ☐ NO
2. Will you resell any of this diesel fuel? ..... ☐ YES ☐ NO
3. Will you purchase more than 25,000 gallons per month? ..... ☐ YES ☐ NO

**If any answer is "YES," you may not legally sign this statement.**

**NOTE: THIS IS YOUR MASTER COPY. PLEASE RETAIN IN YOUR FILES AND MAKE COPIES AS NEEDED.**

#### I DECLARE THAT:

- all of the dyed diesel fuel purchased on this signed statement will be used exclusively in agricultural non-highway equipment in Texas;
- all of the dyed diesel fuel purchased on this signed statement will be consumed by the purchaser in Texas and will not be resold; and
- none of the dyed diesel fuel purchased on this signed statement will be delivered or permitted to be delivered into the fuel supply tanks of motor vehicles operating on public highways, streets or roads in this state.

I am aware that certain fines and criminal penalties are provided by law for giving a false diesel fuel signed statement.



For information, call (800) 252-1383  
or (512) 463-4600.

Name of purchaser (Type or print) \_\_\_\_\_

By: \_\_\_\_\_

Purchaser or authorized representative (Type or print) \_\_\_\_\_

Signature of authorized representative \_\_\_\_\_

**sign  
here** ▶

Date \_\_\_\_\_



**TEXAS END USER SIGNED STATEMENT  
FOR PURCHASING TAX-FREE  
DYED DIESEL FUEL**

Selling supplier  
or distributor: \_\_\_\_\_

Address: \_\_\_\_\_

Purchasing entity name	End user signed statement number
Address	Beginning effective date
	Taxpayer number

*If the purchaser is a division of a corporation, give the name and address of the parent corporation, not the division DBA name.*

Parent corporation name: \_\_\_\_\_

Address: \_\_\_\_\_

**PLEASE READ CAREFULLY BEFORE SIGNING**

1. Will you use any of this diesel fuel in a motor vehicle on public highways, streets or roads? ..... ☐ YES ☐ NO
2. Will you resell any of this diesel fuel? ..... ☐ YES ☐ NO
3. Will you purchase more than 10,000 gallons per month? ..... ☐ YES ☐ NO

**If any answer is "YES," you may not legally sign this statement.**

*EXCEPTION: A purchaser using an End User Signed Statement Number to purchase dyed diesel fuel for exclusive use in oil or gas production must also furnish a Letter of Exception issued by the Comptroller to authorize the purchase of up to 25,000 gallons per month.*

**NOTE: THIS IS YOUR MASTER COPY. PLEASE RETAIN IN YOUR FILES AND MAKE COPIES AS NEEDED.**

I DECLARE THAT:

- none of the dyed diesel fuel purchased on this signed statement will be used on public highways, streets or roads;
- all of the dyed diesel fuel purchased on this signed statement will be consumed by the purchaser in Texas and will not be resold; and
- none of the dyed diesel fuel purchased on this signed statement will be delivered or permitted to be delivered into the fuel supply tanks of motor vehicles operating on public highways, streets or roads in this state.

I am aware that certain fines and criminal penalties are provided by law for giving a false diesel fuel signed statement.



For information, call (800) 252-1383  
or (512) 463-4600.

Name of purchaser (Type or print) \_\_\_\_\_

By: \_\_\_\_\_

Purchaser or authorized representative (Type or print) \_\_\_\_\_

Signature of authorized representative \_\_\_\_\_

**sign  
here** ▶

Date \_\_\_\_\_

## **CHAPTER 11: BONDED USER**

### **Bonded User – Dyed Diesel Fuel**

A bonded user license authorizes a user to purchase dyed diesel fuel tax-free for non-highway use from licensed suppliers, permissive suppliers and distributors. There is no single load or monthly limitation on the quantity of dyed diesel fuel that can be purchased. If they are entities exempt from federal fuels taxes such as cities and counties, they can use dyed diesel in on-road vehicles. They then must report and pay taxes on that part of the dyed diesel fuel that is delivered into the fuel supply tanks of on-road vehicles.

### **Record-keeping Guidelines**

A licensed bonded user must maintain detailed records of purchases and uses for both dyed and undyed (clear) diesel fuel. The records must show:

- inventories on hand at the first of each month;
- fuel purchased or received, showing the name of the seller and the date of each purchase or receipt;
- fuel delivered into the fuel supply tanks of motor vehicles;
- fuel used in off-highway equipment or for other non-highway purposes and supported by invoices or distribution logs; and
- fuel lost by fire, theft or accident.

### **Invoices**

Invoices must have the seller's stamped or preprinted name and address, the name of the purchaser and, for each delivery, the date and the number of gallons of dyed or undyed diesel fuel.

### **Distribution Log**

A distribution log must be used to record removals from bulk storage. The log can be paper or electronic, as long as it contains the required elements. The information to be included in the log is:

- the date of each delivery
- the number of gallons of diesel fuel delivered;
- the signature of the bulk user; and
- 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 number or vehicle identification number and odometer or hubometer.

Lack of a distribution log could result in all unaccounted fuel to be set up as taxable. Section 162.012. Presumptions (a) states, "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..." Occasionally, alternative

proof of use can be accepted, but these instances will be dealt with on a case-by-case basis.

To satisfy the record-keeping requirements, a dyed diesel fuel bonded user who owns or operates an **oil or gas well drilling rig** that satisfies the requirements of Subparagraph B of this paragraph may keep purchase and delivery records and supply tank inventory records that document the amount of dyed diesel fuel used by the drilling rig.

The owner, operator or contractor of the oil or gas well drilling rig may use this method if:

- one or more stationary engines are component parts of the drilling rig;
- each stationary engine is connected directly to a bulk fuel storage tank by way of a fuel supply line; and
- the bulk fuel storage tank is locked or otherwise secured so that dyed diesel can only be withdrawn from the bulk fuel storage tank:
  - through the fuel supply lines to the stationary engines;
  - to move the bulk fuel storage tank to another location; or
  - for emergencies such as a fire or leaking tank.

The drilling rig includes engines required to power equipment that is a component part of the oil or gas drilling rig. These component parts are the rotary table, draw works, shakers, mud pumps, doghouse and derrick lighting, whether referred to with these common industry names or an alternate name for these parts. A drilling rig or component part does not include auxiliary off-highway equipment used at the well site, including, but not limited to, a backhoe, tractor, forklift, front-end loader, bulldozer, bobcat, portable lighting unit, all-terrain vehicle or a generator used to power an off-site office, bunkhouse or a guard shack.

## Basic Audit Guidelines

The basic guidelines in auditing a bonded user are:

- Determine the total gallons purchased.
- Determine if the taxpayer has maintained a distribution log for **all** uses of tax-free dyed diesel.

## Reconciliation of Vehicles

A list of vehicles and equipment using diesel fuel should be made. Examination of license receipts, titles, depreciation schedules etc. may be helpful in determining a complete list of highway vehicles. The list of highway vehicles may include:

- description – year, make, model, size etc.;
- acquisition and retirement dates of each vehicle; and
- location of vehicle and purpose used.

## Records Available

Whatever situation arises while examining any bonded user's records, the following information will be helpful:

- Determine the bulk storage and capacity.
- How is fuel measured when delivered into the fuel supply tanks of motor vehicles? Of off-road equipment?
- How is the taxpayer maintaining control of the fuel?
- Are all invoice numbers accounted for or is there a distribution log?
- Does the taxpayer have a tank calibration chart and measuring stick to take a physical inventory?

If use records are available and contain the needed information, they can be used for a quick test. The basic formula to use for each diesel-powered vehicle for each month is as follows:

Odometer/hubometer reading at the end of the most current month	48,290
Less: Odometer/hubometer reading at the end of the previous month	(46,940)
<hr/>	
Equals: Miles traveled during the month	1,350
Divided by gallons put into vehicle during the month	300
Equals: Miles per Gallon (MPG) factor	4.5

If the MPG on each vehicle is reasonable, then total the gallons used and compare them with the gallons reported. If there is a significant difference between the numbers of gallons used than is reported, then examine another month. A significant difference might indicate adjustments should be made. This could be done by totaling taxable uses if the difference is errors in reporting.

An unreasonable MPG factor indicates some fill-ups have not been recorded. It could also be due to tax-paid purchases from other sources.

Half-ton pickups average from 10 to 20 MPG between fill-ups. Truck/tractors generally average from 3 to 6 MPG. Some newer truck/tractors equipped with the latest in electronics and aerodynamic equipment may get as high as 7 MPG.

## Off-highway Machinery and Equipment

The tax-free use of dyed diesel by any bonded user includes the delivery into the fuel supply tanks of refrigeration units, motorboats, stationary equipment, railway engines, farm machinery or any machinery or equipment not designed or licensed to operate on public roads.

### Incidental Highway Use

The fuel used in certain motor vehicles may qualify as tax-free use except for that portion used on the public highways (incidental travel). The highway use is taxable and may be computed at the rate of four MPG. These vehicles are used entirely off the highway except for incidental travel for repairs, maintenance or to travel from one base of operation to another.

A good guideline to determine whether the vehicle qualifies for incidental highway use is the vehicle's type of license. If it has a machinery-type license, it probably qualifies for the tax-free use except for highway travel. If it has a regular highway license, then it probably does not qualify, and all fuel placed in the fuel supply tank is taxable.

Vehicles that generally qualify for tax-free use include graders, maintainers, rollers, packers, paving machinery, loaders, draglines, motor cranes, pulling units, workover rigs, oil drilling rigs, spudders, seismograph units, water well drilling units etc.

Transport trucks that haul liquids or materials would not qualify even if less than 10 percent of their travel were on-highway and the rest off-highway.

There are exceptions to the above guidelines. A vehicle may be registered for regular highway use and still qualify for tax-free use except for highway travel. Some of these exceptions may include water well drilling units and oil field equipment such as pulling units, workover rigs, hot oiler trucks, kill trucks, etc. They should be equipped with a wheel meter or hubometer to measure the highway miles. For these types of units, a 4 MPG fuel reading is reported.

## **CHAPTER 12: AUDIT WRITE-UP**

### **Introduction**

Writing up motor fuels audits is consistent with writing up other tax audits performed by the Audit Division. CATS procedures for non-sales tax audits should be followed unless indicated below. The audit plans for motor fuels assignments are Word documents and can be accessed by selecting File > New > My Templates. Select the “Fuels” tab in the templates folders to obtain:

- Fuels Audit Plan
- Motor Fuels Refund Audit Plan
- Truck Audit Plan (for interstate trucker audits)
- Fuels Refund Results Memo

The Penalty and Interest (P&I) waiver worksheet, audit report and cover letters should be completed through CATS or by using the templates available. Statute waivers, Notifications of Sampling and Estimates should also be accessed and completed through CATS. Checklists for original audits, amended audits and refunds are available on the Audit Division’s website: Audit Division > Processing Center > Audit and Refund Package Assemble Checklists.

The audit write-up includes completion of the following:

- Record of audit planning, activities and results
- Other documentary evidence
- Exhibits (i. e., manifests, exchange agreements, consignment agreements, license additions/deletions list, monthly summaries etc.)
- Schedules
- Index to working papers
- Audit cover letter
- Audit report
- Notes to reviewer
- Comments about bankruptcy
- Valid open collection records
- Penalty and interest waiver information

Refer to the Auditing Fundamentals Manual for more information.

### **No-Tax-Change Audit**

When an audit examination results in no adjustments, then a no-tax-change audit must be prepared according to the procedures in the CATS and Auditing Fundamentals manuals.

## **Certificate-of-No-Tax-Due Audits**

The request for a Certificate of No Tax Due (CNTD) must be in writing from the seller or purchaser. The Comptroller has 60 days to issue the certificate after the records are made available for audit or after the written request is received, whichever is later.

The certificate must be issued no later than 90 days after the written request is received. Any amount found to be due must be paid before the certificate is issued.

Due to confidentiality restrictions, if there is an amount required to be paid, that information will be sent to the seller.

A Certificate of No Tax Due audit is a **priority assignment**. The audit procedures and write-up are the same as those for a deficiency/credit or no-tax-change audit.

## **Amended Audits**

An amended audit is an adjustment to a completed audit. Refer to the Auditing Fundamentals Manual for write-up procedures for an amended audit.

## **Open Collection Records**

Always run XICOLL before submitting an audit to the RPC or for processing as an NTD audit. Any open records should be analyzed. Valid open collection should remain open and should be explained in the Notes to Reviewer; they are not included in the audit adjustments. Examples of valid records are those open for penalties or interest due, overpayment, underpayment, estimated with partial payment and bonds. Invalid open collection records should be closed, and all audited amounts picked up in the audit adjustments. These records should be closed by the designated person in the field office before submitting the audit to the Processing Center. Examples of invalid records are those open for non-filer, estimated with no payment and partial filer. Invalid collection records should be closed before submitting the audit to the RPC.

## **Handling Allowance**

The handling allowances for suppliers and distributors have been tied to timely filing since Sept. 1, 2000. The 2 percent handling allowance is **not** deducted from any motor fuel tax liabilities assessed in audits.

Dyed diesel fuel bonded users, interstate truckers and blender license-holders filing tax returns after Jan. 1, 2004 are no longer given an allowance on tax remittances.

## **Penalty and Interest Waiver**

Penalty waiver and criteria are discussed in detail in the Auditing Fundamentals Manual. Penalty waiver is generally recommended if these criteria are met. The auditor should discuss the criteria with the taxpayer at the exit conference. Penalty is usually only waived for periods originally filed timely.

Interest is usually never waived except where there has been undue delay of the audit caused by Comptroller personnel; reliance on advice provided by the Comptroller's office which caused the imposition of interest; or natural disaster.

## Audit Examples

The following examples A, B and C show various schedules and formats.

Example A is an audit based on a sample and projection of disallowed tax-free sales and a detailed exam of disallowed tax-free sales.

Example B is the write-up of a refund claim.

Example C is an Audit Summary Report using a “Total Gallons to Account For” format. The notes at the bottom show that several exams supported this schedule. Under this method, any or all of the elements of the report are audited except taxable sales, thereby leaving audited taxable gallons as a computed or balancing figure. If the gain and loss column was eliminated, then losses would automatically be disallowed and become a part of the audited taxable gallons. The elimination of the gain/ loss column would be proper in case of totally inadequate records or audits where fraud is detected.

Go to Audit Examples for printouts (PDFs) of the following:

Example	Location
Audit Example A	Penalty & Interest Worksheet Page 1
Audit Example A	Penalty & Interest Worksheet Page 2
Audit Example A	Audit Cover Letter
Audit Example A	Audit Report
Audit Example A	Audit Adjustment Report
Audit Example A	Index
Audit Example A	Exam 1
Audit Example A	Exam 2
Audit Example A	Exam 2-A
Audit Example A	Exam 2-B Page 1
Audit Example A	Exam 2-B Page 2
Audit Example A	Exam 3
Audit Example A	Exhibit I
Audit Example A	Exhibit II Page 1
Audit Example A	Exhibit II Page 2
Audit Example B	Refund Results Memo
Audit Example B	Refund Cover Letter Page 1
Audit Example B	Refund Cover Letter Page 2
Audit Example B	Index to Working Papers
Audit Example B	Exam 1
Audit Example B	Exam 2
Audit Example B	Exam 3
Audit Example C	“Total Gallons to Account For” Summary
Audit Example C	Exam 2
Audit Example C	Exam 3
Audit Example C	Exam 4
Audit Example C	Exam 5

## Audit Example A

### Penalty and Interest Worksheet

Penalty & Interest Waiver			17511111118
To:	From:	Date:	
1. Audit Office: <b>2I01</b>	Auditor: <b>John Doe</b>		
2. Taxpayer Name: <b>Super Fuels</b>			
3. Taxpayer Number: <b>17511111118</b>	Tax Type: <b>DIESEL FUEL TAX</b>		
4. Audit Period: <b>0510 Through 0806</b>			
5. Statute Expiration Date: <b>11/25/09</b>			
6. Deficiency:	Tax	\$ <b>46,812</b>	
	Penalty	<b>4,681</b>	
	Interest		
Approved Fraud Penalty			
7. Number of Delinquent returns or Late Payments:	<b>0</b>		
Late Periods: <b>N/A</b>			
8. Delinquent Returns or Late Payments exceed 33% of all Filing Periods?	Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/> Filing Type at end of Audit:		
9. Extraordinary Circumstances			
<input type="checkbox"/> Undue delay caused by Comptroller			
<input type="checkbox"/> Reliance on advice provided by the Comptroller's office which caused imposition of penalty			
<input type="checkbox"/> and interest			
<input type="checkbox"/> Natural disasters			
10. Law, Rules and Policy			
<input type="checkbox"/> Unclear and difficult taxability issues			
<input type="checkbox"/> Change in Comptroller's Policy			
<input type="checkbox"/> New changes in the law effective during the audit period			
11. Taxable purchases			
<input type="checkbox"/> Significant number of resale & exemption certificates issued erroneously to vendors			
<input type="checkbox"/> No accrual system in place			
<input type="checkbox"/> Other:			
12. Prior Audit Period: <b>N/A Through</b>			
Prior Audit Errors:			
13. Current Audit Errors: <b>Current audit errors were for tax-free sales of dyed diesel fuel not supported by signed statements with registration numbers issued by the comptroller. There were also errors for sales exceeding the signed statement limitations.</b>			

14. Audit Deficiency Vs. Reported Tax

	<u>Current Audit</u>	<u>Prior Audit</u>
Assessed Tax (Sales)	\$46,812	0
Reported Tax (Sales)	11,450,070	0
Assessed Tax (Purchases)	0	0
Reported Tax (Purchases)	0	0
Total of all above	\$11,496,882	

15. Overall Percentage Rate 0 .41%

16. Tax Collected not Remitted: 0

17. Records made available for audit: Yes ☒ No ☐ (If no, please explain)

18. Taxpayer's tax staff: Tax matters handled by: Internal Tax/Accounting Department

19. Prior audit – Tax matters handled by: Not applicable:

20. Are there delinquencies in other taxes?

☒ No

☐ Yes (If yes, which tax(es)?)

21. Auditor Recommendation: **Waive penalty, do not waive interest**

Partial Penalty Waived:

Partial Interest Waived:

22. Reason for Auditor Recommendation: **Taxpayer has shown reasonable diligence, few or not late returns (less than 1/3 returns late), no prior audit**

23. Audit Office Approval: Yes

Supervisor name or signature

Yes

Manager name or signature

24. Audit Division Director Approval: Yes: ☐ No: ☐

Associate Deputy Comptroller Approval:

Yes: ☐ No: ☐

25. RPC sender:

Eulless RPC

## Audit Cover Letter



### TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

P.O. Box 13528 • Austin, TX 78711-3528

August 26, 2008

John Smith  
President  
Super Fuels  
P. O. Box 1111  
Anywhere, TX 75000-1111

RE: Taxpayer Number 17511111118

Dear Mr. Smith:

Our audit, conducted in accordance with the Motor Fuel (Diesel) Tax Statute, is complete. The audit covered the period October 1, 2005 through June 30, 2008 and resulted in an adjustment in the amount shown on the attached Texas Notification of Audit Results. We have included a pre-addressed envelope for your payment convenience. For an explanation of the interest calculations, contact Audit Headquarters - Audit Processing Section at 800-531-5441, ext. 3-4479.

We have waived the penalty for periods which were originally filed on time. However, we have not waived interest. Interest waiver is considered only where written, documented proof exists that a taxpayer relied to its detriment on misinformation from the State. If you disagree with our decision, you may request a redetermination hearing.

Audit adjustments are explained on the enclosed Audit Report.

At the exit conference, you agreed with the audit results. You were provided with the brochure "Contesting Disagreed Audits, Examinations, and Refund Denials" (Form 96-1253) and advised of your right to meet with an Independent Audit Reviewer (IAR). You were also advised of the requirements necessary to initiate a formal redetermination hearing.

If you have any questions, please contact me in the Audit Headquarters Audit Office at 512-463-3900. Thank you for your cooperation during the audit.

John Doe  
Auditor

## Audit Report

### AUDIT REPORT

Super Fuels  
Taxpayer Number 1751111118  
October 1, 2005 through June 30, 2008

This report summarizes the adjustments made in the audit.

1. A sample and projection was completed for Exam 2. Adjustments were made for tax-free sales of dyed diesel fuel not supported by signed statements. For specifics, refer to the Notification of Sampling Procedures for State Tax Audit for this exam.
2. A detailed examination was completed for Exam 3. Adjustments were made for sales of dyed diesel fuel that exceeded the signed statement load limitations.

## Audit Adjustment Report

Comptroller (20) - 677 of Public Accounts		Taxpayer Name <b>Super Fuels</b>		Prepared by <b>A. N. Auditor</b>		Date <b>8/4/08</b>	
PIAADD / PIAUPD		Tax Code <b>90</b>	Sub-Type <b>7</b>	Taxpayer Number <b>17511111113</b>	Ending Period <b>0808</b>		
PENALTY AND INTEREST AUDIT INFORMATION							
Audit Type	<b>0</b>	Q - Original Audit S - Original Refund FVAR - Orig FVAR		1 - Amended Audit 7 - Amended Refund AFVAR - Amst FVAR		Calculation Date (optional for auditor)	
Beginning Period	<b>0510</b>			Field Office			
Auditor ID	<b>AAUD111</b>			Reports Requested			
Determination		Y - Yes N - No		Waiver Granted (See P&I Waiver Worksheet for details)		Y - Yes N - No P - Partial	
Open Collection Records		Y - Yes N - No		Motor Vehicle Type		S - Seller P - Purchaser	
				Total Tax Adjustment <b>\$ 46,811.80</b>			
POSTMARK DATES				AUDIT PAYMENTS		REFUND PAYMENTS	
PIAADD / PIAUPD							
REPORT PERIOD	TAX ADJUSTMENTS	REPORT PERIOD	TAX ADJUSTMENTS	REPORT PERIOD	TAX ADJUSTMENTS	REPORT PERIOD	TAX ADJUSTMENTS
0510	\$ 983.40	0707	965.20				
0511	2,253.80	0708	988.00				
0512	1,258.00	0709	1,032.40				
0601	2,581.80	0710	1,023.80				
0602	1,290.20	0711	739.40				
0603	988.80	0712	730.80				
0604	2,044.80	0801	667.80				
0605	2,394.80	0802	740.40				
0606	821.00	0803	2,152.00				
0607	836.40	0804	895.40				
0608	1,268.00	0805	2,370.80				
0609	1,052.40	0806	978.80				
0610	1,085.40						
0611	3,972.40						
0612	1,137.40						
0701	813.00						
0702	852.80						
0703	961.20						
0704	881.00						
0705	927.40						
0706	5,123.80						
Sub Total	33,527.20	Sub Total	13,284.80	Sub Total	-	Sub Total	-
				GRAND TOTAL \$ 46,811.80			

## Index to Working Papers

Super Fuels  
Anywhere TX  
Taxpayer Number 1751111118

### INDEX TO WORKING PAPERS

Description	Pages
Adjustment Report	1
EXAM1 SUMMARY OF AUDIT RESULTS	1
EXAM2 COMPUTATION OF POPULATION BASE AND APPLICATION OF ERROR RATE	1
EXAM2-A COMPUTATION OF ERROR RATE	1
EXAM2-B DISALLOWED SIGNED STATEMENT SALES	2
EXAM3 DISALLOWED SIGNED STATEMENT SALES- EXCEEDING SINGLE LOAD LIMITATIONS	1
Exhibit I Notification of Sampling Procedures for State Tax Audit	1
Exhibit II Sample Items Report	2

## Exam 1

SUPER FUELS ANYWHERE, TX SUMMARY OF AUDIT RESULTS					TP#17511111118 EXAM 1 PAGE 1 OF 1
REPORT PERIOD	1 DISALLOWED SIGNED STATEMENT SALES (Per Exam 2)	2 SALES EXCEED SIGNED STMT LIMITATIONS (Per Exam 3)	3 AUDITED ADDITIONAL TAXABLE SALES (Col 1 + Col 2)	4 TAX RATE	5 AUDITED TAX DUE (Col 3 X Col 4)
0510	4,917	-	4,917	\$ 0.20	\$ 983.40
0511	3,793	7,475	11,268	0.20	2,253.60
0512	6,290	-	6,290	0.20	1,258.00
0601	5,349	7,560	12,909	0.20	2,581.80
0602	6,451	-	6,451	0.20	1,290.20
0603	4,944	-	4,944	0.20	988.80
0604	2,624	7,600	10,224	0.20	2,044.80
0605	4,498	7,475	11,973	0.20	2,394.60
0606	4,105	-	4,105	0.20	821.00
0607	4,182	-	4,182	0.20	836.40
0608	6,340	-	6,340	0.20	1,268.00
0609	5,262	-	5,262	0.20	1,052.40
0610	5,427	-	5,427	0.20	1,085.40
0611	4,937	14,925	19,862	0.20	3,972.40
0612	5,687	-	5,687	0.20	1,137.40
0701	4,065	-	4,065	0.20	813.00
0702	4,263	-	4,263	0.20	852.60
0703	4,806	-	4,806	0.20	961.20
0704	4,405	-	4,405	0.20	881.00
0705	4,637	-	4,637	0.20	927.40
0706	3,164	22,455	25,619	0.20	5,123.80
0707	4,826	-	4,826	0.20	965.20
0708	4,940	-	4,940	0.20	988.00
0709	5,162	-	5,162	0.20	1,032.40
0710	5,119	-	5,119	0.20	1,023.80
0711	3,697	-	3,697	0.20	739.40
0712	3,654	-	3,654	0.20	730.80
0801	3,339	-	3,339	0.20	667.80
0802	3,702	-	3,702	0.20	740.40
0803	3,305	7,455	10,760	0.20	2,152.00
0804	4,477	-	4,477	0.20	895.40
0805	4,253	7,600	11,853	0.20	2,370.60
0806	4,894	-	4,894	0.20	978.80
TOTAL	151,514	82,545	234,059		\$ 46,811.80

## Exam 2

SUPER FUELS ANYWHERE, TX COMPUTATION OF POPULATION BASE AND APPLICATION OF ERROR RATE					TP#17511111118 EXAM 2 PAGE 1 OF 1
REPORT PERIOD	1 REPORTED SIGNED STATEMENT SALES	2 SALES EXCEEDING SIGNED STMT LIMITATIONS	3 ADJUSTED POPULATION BASE (1 - 2)	4 ERROR RATE (Per Exam 2-A)	5 DISALLOWED SIGNED STATEMENT SALES (Col 3 X Col 4)
0510	66,798	-	66,798	7.360%	4,917
0511	59,005	7,475	51,530	7.360%	3,793
0512	85,452	-	85,452	7.360%	6,290
0601	80,233	7,560	72,673	7.360%	5,349
0602	87,641	-	87,641	7.360%	6,451
0603	67,166	-	67,166	7.360%	4,944
0604	43,248	7,600	35,648	7.360%	2,624
0605	68,588	7,475	61,113	7.360%	4,498
0606	55,770	-	55,770	7.360%	4,105
0607	56,823	-	56,823	7.360%	4,182
0608	86,141	-	86,141	7.360%	6,340
0609	71,493	-	71,493	7.360%	5,262
0610	73,731	-	73,731	7.360%	5,427
0611	82,007	14,925	67,082	7.360%	4,937
0612	77,269	-	77,269	7.360%	5,687
0701	55,234	-	55,234	7.360%	4,065
0702	57,921	-	57,921	7.360%	4,263
0703	65,290	-	65,290	7.360%	4,806
0704	59,850	-	59,850	7.360%	4,405
0705	63,005	-	63,005	7.360%	4,637
0706	65,449	22,455	42,994	7.360%	3,164
0707	65,573	-	65,573	7.360%	4,826
0708	67,111	-	67,111	7.360%	4,940
0709	70,128	-	70,128	7.360%	5,162
0710	69,545	-	69,545	7.360%	5,119
0711	50,223	-	50,223	7.360%	3,697
0712	49,648	-	49,648	7.360%	3,654
0801	45,366	-	45,366	7.360%	3,339
0802	50,298	-	50,298	7.360%	3,702
0803	52,359	7,455	44,904	7.360%	3,305
0804	60,824	-	60,824	7.360%	4,477
0805	65,387	7,600	57,787	7.360%	4,253
0806	66,496	-	66,496	7.360%	4,894
TOTAL	2,141,072	82,545	2,058,527		151,514

## Exam 2-A

**SUPER FUELS  
ANYWHERE, TX  
COMPUTATION OF ERROR RATE**

**TP#17511111118  
EXAM 2-A  
PAGE 1 OF 1**

REPORT PERIOD	1 ADJUSTED SAMPLE BASE (a)	2 ERRORS (b)	3 ERROR RATE (c)
0605	61,113		
0607	56,823		
0609	71,493		
0612	77,269		
0706	42,994		
0804	60,824		
	370,516	27,271	7.360%
			(d)

**NOTES:**

- (a) Per Exam2
- (b) Per Exam2-B
- (c) Col 2 / Col 1
- (d) To Exam2

**Exam 2-B**

**SUPER FUELS  
ANYWHERE, TX  
DISALLOWED SIGNED STATEMENT SALES**

**TP#17511111118  
EXAM 2-B  
PAGE 1 OF 2**

REPORT PERIOD	DATE (a)	CUSTOMER (a)	INVOICE NUMBER (a)	GALLONS PURCHASED (a)
0609	09/05/2006	Timber Products	67454	565
0609	09/06/2006	Tex-La	67486	500
0609	09/12/2006	John Smith	70844	148
0609	09/13/2006	Trucking Co	71057	108
0609	09/13/2006	Cash sale	67964	225
0609	09/15/2006	Tex-La	68034	250
0609	09/20/2006	AADE	68064	100
0609	09/21/2006	Tex-La	68296	186
0609	09/26/2006	City of Somewhere	68298	925
0612	12/01/2006	Ringling Telephone Co	70502	100
0612	12/01/2006	Loggers R Us	75060	400
0612	12/05/2006	Trucking Co	70592	112
0612	12/06/2006	Cash sale	70623	203
0612	12/08/2006	Cash sale	70874	130
0612	12/09/2006	Trucking Co	70684	100
0612	12/14/2006	Trucking Co	70771	110
0612	12/15/2006	Loggers R Us	70868	600
0612	12/17/2006	Trucking Co	70963	111
0612	12/18/2006	Construction Co Inc	71483	112
0612	12/20/2006	Trucking Co	71310	110
0612	12/27/2006	Trucking Co	71432	107
0612	12/27/2006	Cash sale	71449	400
0612	12/30/2006	Trucking Co	71455	109
0612	12/30/2006	The Lumber Co	71509	390
0612	12/31/2006	AADE	71584	175
0612	12/31/2006	City of Somewhere	71632	731
0706	06/02/2007	Forest Industries	81862	500
0706	06/03/2007	County of Anywhere	84154	2040
0706	06/12/2007	City of Somewhere	84609	674
0706	06/15/2007	Rail Service	84205	250
0706	06/16/2007	Cash sale	84246	220
0706	06/18/2007	Cash sale	84479	120
0706	06/20/2007	Cash sale	84488	112
0605	05/04/2006	Forest Industries	91990	500
0605	05/06/2006	Trucking Co	92183	171
0605	05/07/2006	Forest Industries	92303	500
0605	05/10/2006	Trucking Co	92319	107
0605	05/15/2006	Trucking Co	92423	414
0605	05/20/2006	County of Anywhere	92494	2040
0605	05/25/2006	County of Anywhere	92816	200
0605	05/25/2006	City of Somewhere	92826	537

**SUPER FUELS  
ANYWHERE, TX  
DISALLOWED SIGNED STATEMENT SALES**

**TP#17511111118  
EXAM 2-B  
PAGE 2 OF 2**

REPORT PERIOD	DATE (a)	CUSTOMER (a)	INVOICE NUMBER (a)	GALLONS PURCHASED (a)
0804	04/02/2008	John Doe	97548	117
0804	04/05/2008	County of Anywhere	97689	900
0804	04/12/2008	County of Anywhere	97715	1330
0804	04/12/2008	Wheels & Sons	97803	157
0804	04/16/2008	Wheels & Sons	97970	178
0804	04/18/2008	Forest Industries	98001	500
0804	04/20/2008	Wheels & Sons	98132	190
0804	04/21/2008	Tom Jones	98207	512
0804	04/23/2008	Ralph	98210	461
0804	04/25/2008	Wheels & Sons	98255	861
0804	04/25/2008	County of Anywhere Pct 3	98293	900
0804	04/28/2008	City of Somewhere	98505	1018
0607	07/01/2006	County of Anywhere Pct 3	98941	900
0607	07/05/2006	Ralph	99205	550
0607	07/05/2006	County of Anywhere	99613	800
0607	07/15/2006	Norton Farming	99956	1100
0607	07/22/2006	City of Somewhere	99966	1405
				<u>27,271</u>
				(b)

Comment: Signed statement sales not supported by a properly executed signed statement with a signed statement registration number issued by the Comptroller.

**Notes:**

- (a) Per invoices
- (b) Total to Exam 2-A

### Exam 3

**SUPER FUELS  
ANYWHERE, TX**

**TP#17511111118**

**EXAM 3**

**DISALLOWED SIGNED STATEMENT SALES-EXCEED SINGLE LOAD LIMITATION**

**PAGE 1 OF 1**

REPORT PERIOD	DATE (a)	CUSTOMER (a)	INVOICE NUMBER (a)	GALLONS PURCHASED (a)
11/01/2005	11/05/2005	Smith & Son	53124	7,475
0511 Total				7,475
01/01/2006	01/09/2006	Road Repair Co	54208	7,560
0601 Total				7,560
04/01/2006	04/16/2006	Your Construction Co	57310	7,600
0604 Total				7,600
05/01/2006	06/19/2005	Your Construction Co	10356	7,475
0506 Total				7,475
12/01/2006	12/05/2006	McDonald Farm	67895	7,440
12/01/2006	12/12/2006	Lucky's Excavation	67954	7,500
0612 Total				17,925
06/01/2007	07/07/2006	McDonald Farm	11649	7,440
06/01/2007	07/21/2006	Lucky's Excavation	11753	7,515
06/01/2007	07/25/2006	Backhoe Service	11802	7,500
0607 Total				22,455
03/01/2008	03/25/2008	The Flower Farm	12987	7,455
0803 Total				7,455
05/01/2008	05/16/2008	McDonald Farm	13201	7,600
0805 Total				7,600
Grand Total				82,545
				(c)

**NOTES:**

- (a) Per invoices
- (b) Loads over 7,400 gallons are disallowed
- (c) Report period total to Exams 1 and 2

**Exhibit I**

<b>COMPTROLLER OF PUBLIC ACCOUNTS STATE OF TEXAS</b>	
<b>NOTIFICATION OF SAMPLING PROCEDURES FOR STATE TAX AUDIT</b>	
<hr/>	
Taxpayer Name	: Super Fuels
Taxpayer Number	: 17511111118
Type of Tax	: Diesel Fuel Tax
Audit Period	: October 1, 2005 through June 30, 2008
Reporting Category	: Signed Statement Sales Subcategory:
<hr/>	
<ol style="list-style-type: none"><li>1. The records to be examined in performing the sample will include (but are not limited to): Sales invoices, monthly statements, bills of lading, sales journals</li><li>2. The sampling unit will be: Months</li><li>3. The method of selecting the units will be: Random – Computer Generated</li><li>4. The sample size will be: Six (6) months</li><li>5. If a time period sample is used, the selected periods will be: May 2006, July 2006, December 2006, June 2007 and April 2008</li><li>6. The sample base will be: Reported signed statement sales for the selected sample months</li><li>7. The population base will be: Reported signed statement sales for the entire audit period</li><li>8. The results of the sample will be applied to the population using the following procedures: Tax free sales not supported by a valid signed statement found in the six (6) month sample will be scheduled. An error percentage will be derived by totaling the scheduled invoices and by dividing that total by the reported signed statement sales for this sample months.</li></ol>	
<p>This error percent will be applied to reported signed statement sales for the entire audit period to arrive at additional taxable sales for these periods.</p> <p>Any sales in the sample which are disallowed for exceeding the signed statement limitations will be scheduled separately and excluded from the sample and population bases.</p>	
<hr/>	
This notification was hand delivered/ <u>mailed on</u>	Date: October 28, 2008
<hr/>	
TO: John Doe	Title: President
<hr/>	
SIGN HERE >	
<hr/>	
Comptroller's Representative	

## Exhibit II

**Super Fuels**

**TP# 17511111118**

**Page 1 of 1**

**Sample Items Report for Signed Statement Sales**

**Audit Period:** 10/01/2005 – 06/30/2008

**Seed:** 545473985

**Total Items Requested:** 6

Series	Reference	Begin	End	Range
1	Reference 1	10/01/2005	06/30/2006	33

**Totals:** 33

**Super Fuels**

**TP#17511111118**

**Page 1 of 1**

**Sample Items Report for Signed Statement Sales**

**Audit Period:** 10/01/2005 – 06/30/2008


**Seed:** 545473985

**Total Items Requested:** 6

<b>Request</b>	<b>Selection Order</b>	<b>Reference</b>	<b>Item Period (Month)</b>	<b>Correlative</b>
1	4	Reference 1	05/01/2006	8
1	6	Reference 1	07/01/2006	10
1	1	Reference 1	09/01/2006	12
1	2	Reference 1	12/01/2006	15
1	3	Reference 1	06/01/2007	21
1	5	Reference 1	04/01/2008	31

## Audit Example B

### Refund Results Memo

 <b>TEXAS COMPTROLLER OF PUBLIC ACCOUNTS</b> <hr/> P.O. Box 13528 • Austin, TX 78711-3528									
<b>REFUND RESULTS MEMO -</b>									
<b>Date:</b> November 15, 2008									
<table style="width: 100%;"><tr><td style="width: 50%; vertical-align: top;"><input type="checkbox"/> <b>To: Audit Processing</b> Re: Process Refund to Tax System and/or forward to appropriate section for processing of Amended Returns. See Results indicated below.</td><td style="width: 50%; vertical-align: top;"><input type="checkbox"/> <b>To:</b> Crude Oil &amp; Natural Gas Tax Section – Account Maintenance Re: Processing of Refund  <input type="checkbox"/> <b>To:</b> <input checked="" type="checkbox"/> – Refund Claims Verification (Tax 86, 87, 90-06, 90-07)  <input type="checkbox"/> – Overpayments Verification (Tax 13, 16)</td></tr></table>		<input type="checkbox"/> <b>To: Audit Processing</b> Re: Process Refund to Tax System and/or forward to appropriate section for processing of Amended Returns. See Results indicated below.	<input type="checkbox"/> <b>To:</b> Crude Oil & Natural Gas Tax Section – Account Maintenance Re: Processing of Refund  <input type="checkbox"/> <b>To:</b> <input checked="" type="checkbox"/> – Refund Claims Verification (Tax 86, 87, 90-06, 90-07)  <input type="checkbox"/> – Overpayments Verification (Tax 13, 16)						
<input type="checkbox"/> <b>To: Audit Processing</b> Re: Process Refund to Tax System and/or forward to appropriate section for processing of Amended Returns. See Results indicated below.	<input type="checkbox"/> <b>To:</b> Crude Oil & Natural Gas Tax Section – Account Maintenance Re: Processing of Refund  <input type="checkbox"/> <b>To:</b> <input checked="" type="checkbox"/> – Refund Claims Verification (Tax 86, 87, 90-06, 90-07)  <input type="checkbox"/> – Overpayments Verification (Tax 13, 16)								
<b>SUBJECT:</b>	<table style="width: 100%;"><tr><td style="width: 33%;">Taxpayer Name:</td><td>School Transportation</td></tr><tr><td>Taxpayer Number:</td><td>15911111118</td></tr><tr><td>Tax Code:</td><td>86-10 – Gasoline Fuel Refund Claim</td></tr><tr><td>Refund Period:</td><td>01/01/2008 through 08/31/2008</td></tr></table>	Taxpayer Name:	School Transportation	Taxpayer Number:	15911111118	Tax Code:	86-10 – Gasoline Fuel Refund Claim	Refund Period:	01/01/2008 through 08/31/2008
Taxpayer Name:	School Transportation								
Taxpayer Number:	15911111118								
Tax Code:	86-10 – Gasoline Fuel Refund Claim								
Refund Period:	01/01/2008 through 08/31/2008								
<b>RESULTS OF REFUND REQUEST SENT TO FIELD FOR VERIFICATION –</b>									
<input type="checkbox"/> Amended Returns have NOT yet been entered to XIDATA. Enter Amended Returns.									
<input type="checkbox"/> Amended Returns Previously Entered. Amounts are correct.									
<input type="checkbox"/> Amended Returns Previously Entered. Amounts are correct and refund has already been issued. Do NOT refund again.									
<input type="checkbox"/> Amended Returns Previously Entered. Amounts entered are NOT correct. Re-amend the returns to match the corrected amended figures (See Exhibit      ). Bill taxpayer, if necessary, to recoup any erroneously issued refunds.									
<input type="checkbox"/> Amended Returns Previously Entered but not yet refunded. Amounts are included in an audit. Delete amended returns and restore original returns.									
<input type="checkbox"/> Refund 100% Denied -Amended Returns Previously Entered. Re-amend the returns to delete the requested refund that has been 100% denied. Bill taxpayer, if necessary, to recoup any erroneously issued refunds.									
<table style="width: 100%;"><tr><td style="width: 33%;"><b>Refund Requested:</b></td><td>\$8,298 .40</td></tr><tr><td><b>Refund Denied:</b></td><td>\$4,026 .19</td></tr><tr><td><b>Refund Approved:</b></td><td><b>\$4,272.21</b></td></tr></table>		<b>Refund Requested:</b>	\$8,298 .40	<b>Refund Denied:</b>	\$4,026 .19	<b>Refund Approved:</b>	<b>\$4,272.21</b>		
<b>Refund Requested:</b>	\$8,298 .40								
<b>Refund Denied:</b>	\$4,026 .19								
<b>Refund Approved:</b>	<b>\$4,272.21</b>								
<b>SPECIAL MAILING INSTRUCTIONS?</b> <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES - See Attached Instructions									
<b>Comments:</b>									
<b>Auditor:</b> Jane Smith <b>Office:</b> 2155									
<b>RPC Reviewer:</b> , 2145									

## Refund Cover Letter



### TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

P.O. Box 13528 • Austin, TX 78711-3528

October 12, 2008

John Q Jones  
President  
School Transportation  
PO Box 111  
Somewhere, TX 75555-1111

RE: Taxpayer Number 159111111118

Dear Mr. Jones:

Our review of your refund request, conducted in accordance with the Motor Fuel (Gasoline) Refund Claim, is complete. The refund covered the period January 1, 2008 through August 31, 2008 and resulted in tax credit due. We will issue you a refund check after we apply any outstanding liabilities you may have with state agencies.

The original refund request has been decreased due to purchases on which no tax was paid, purchases outside the one-year statute of limitations and duplicate invoices. The refund was also reduced by the two percent handling allowance taken by original seller.

Credits were allowed for Gasoline used for public school transportation.

If you disagree with the refund results, you have 30 days from the date of this letter to request a refund hearing. Hearing requests must include a statement of grounds that describe in detail the reasons you believe the refund results are incorrect. Your statement should describe as clearly as possible the facts and the provisions of the tax laws and Comptroller rules upon which you are relying. All hearing requests should be made in writing and sent to Audit Headquarters - Audit Processing Section at Comptroller of Public Accounts, 111 E. 17th Street, Austin, Texas 78774-0100.

The results of this refund should not be taken as approval of your tax reporting system. Law changes and new rulings might result in different findings in the future and you will be responsible for any taxes found owing and due.

At the exit conference, you agreed with the refund results. You were provided with the brochure "Contesting Disagreed Audits" (Form 96-1253) and advised of your right to meet with an Independent Audit Reviewer (IAR).

School Transportation  
October 12, 2008  
Page 2

If you have any questions, please contact me in the Dallas East Audit Office at 972-792-5800. Thank you for your cooperation during the refund verification.

Jane Smith  
Auditor

## Index to Working Papers

School Transportation  
Somewhere, TX  
Taxpayer Number 159111111118

### INDEX TO WORKING PAPERS

Description		Pages
EXAM1	VERIFIED EXEMPT GALLONS Exam Summary – Detail	1
EXAM2	VERIFIED MILES PER GALLON Exam Summary – Detail	1
EXAM3	VERIFIED GALLONS SUBJECT TO REFUND Exam Summary – Detail	1

## Exam 1

School Transportation Somewhere, TX Verified Exempt Gallons				Exam 1 TP# 15911111118 Page 1 of 1			
	-1-	-2-	-3-	-4-	-5-	-6-	-7-
Period	Exempt Miles (a)	Miles Per Gallon (b)	Approved Gallons (Col 1 / Col 2)	Tax Rate	Gross Refund (Co 3 X Col 4)	Vendor Discount	Net Refund (Col 5 - Col 6)
0801	21,810	6.3841	3,416	0.20	\$ 683.20	0.98	\$ 669.54
0802	23,420	6.3841	3,668	0.20	733.60	0.98	718.93
0803	25,994	6.3841	4,072	0.20	814.40	0.98	798.11
0804	24,456	6.3841	3,831	0.20	766.20	0.98	750.88
0805	15,846	6.3841	2,482	0.20	496.40	0.98	486.47
0806	7,977	6.3841	1,250	0.20	250.00	0.98	245.00
0807	980	6.3841	154	0.20	30.80	0.98	30.18
0808	18,667	6.3841	2,924	0.20	584.80	0.98	573.10
Total	139,150	6.3841	21,796	XXX	\$ 4,359.40		\$ 4,272.21

Notes:  
(a) PerExam 2  
(b) PerExam 3

## Exam 2

School Transportation Somewhere, TX Verified Miles Per Gallons				Exam 2 TP# 15911111118 Page 1 of 2	
	-1-	-2-	-3-	-4-	-5-
Period	School Miles (a)	Charter and Misc. Miles (b)	Total Miles (Col 1 + Col 2)	Gallons Purchased (b)	Miles Per Gallon
Beg. Inv.				1,000	
0801	21,810	112	21,922	3,500	
0802	23,420	414	23,834	4,100	
0803	25,994	658	26,652	5,000	
0804	24,456	671	25,127	5,500	
0805	15,846	627	16,473	1,400	
0806	7,977	1,137	9,114	-	
0807	980	1,680	2,660	-	
0808	18,667	668	19,335	2,900	
Ending Inv.				(669)	
Total	139,150	5,967	145,117	22,731	6.3841
	(c)				(c)
Footnotes:					
(a)	Per Mileage Journal which used monthly odometer readings and designated charter & miscellaneous trips.				
(b)	Per Exam 3				
(c)	To Exam 1				

### Exam 3

**School Transportation**

**Somewhere, TX**

**Verified Gallons Subject to Refund**

**Exam 3**

**TP#15911111118**

**Page 1 of 1**

Report Period	Invoice Date (a)	Vendor (a)	Invoice Number (a)	Type of Fuel (a)	-1- Requested Gallons (a)	-2- Disallowed Gallons	-3- Approved Gallons Col 1 - Col 2	Notes
Period	Date	Vendor	Number	Fuel	Requested	Disallowed	Approved	
0708	08/05/2007	Diesel Distributor	78815	Clear Diesel	1,500	1,500	0	1
0708	08/26/2007	Diesel Distributor	78972	Clear Diesel	1,500	1,500	0	1
0708 Total					3,000	3,000	0	
0709	09/01/2007	Diesel Distributor	79064	Clear Diesel	500	500	0	2
0709	09/13/2007	Diesel Distributor	79184	Clear Diesel	1,500	1,500	0	2
0709	09/20/2007	Diesel Distributor	79269	Clear Diesel	1,407	1,407	0	2
0709 Total					3,407	3,407	0	
0710	10/10/2007	Diesel Distributor	79519	Clear Diesel	885	885	0	2
0710	10/17/2007	Diesel Distributor	79609	Clear Diesel	1,500	1,500	0	2
0710	10/26/2007	Diesel Distributor	79736	Clear Diesel	1,500	1,500	0	2
0710 Total					3,885	3,885	0	
0711	11/02/2007	Diesel Distributor	79827	Clear Diesel	1,500	1,500	0	2
0711	11/23/2007	Diesel Distributor	80097	Clear Diesel	800	800	0	2
0711 Total					2,300	2,300	0	
0712	12/01/2007	Diesel Distributor	80186	Clear Diesel	500	500	0	2
0712	12/07/2007	Diesel Distributor	80269	Clear Diesel	1,000	1,000	0	2
0712	12/13/2007	Diesel Distributor	80366	Clear Diesel	1,500	1,500	0	2
0712 Total					3,000	3,000	0	
0801	01/05/2008	Diesel Distributor	80629	Clear Diesel	1,500	0	1,500	
0801	01/18/2008	Diesel Distributor	80791	Clear Diesel	1,000	0	1,000	
0801	01/25/2008	Diesel Distributor	80888	Clear Diesel	1,000	0	1,000	
0801 Total					3,500	0	3,500	
0802	02/01/2008	Diesel Distributor	80989	Clear Diesel	1,000	0	1,000	
0802	02/15/2008	Diesel Distributor	81185	Clear Diesel	1,800	0	1,800	
0802	02.22.08	Diesel Distributor	81290	Clear Diesel	1,300	0	1,300	
0802 Total					4,100	0	4,100	
0803	03.02.08	Diesel Distributor	81413	Clear Diesel	1,500	0	1,500	
0803	03.09.08	Diesel Distributor	81518	Clear Diesel	1,500	0	1,500	
0803	03.23.08	Diesel Distributor	81704	Clear Diesel	1,000	0	1,000	
0803	03.29.08	Diesel Distributor	81786	Clear Diesel	1,000	0	1,000	
0803 Total					5,000	0	5,000	
0804	04.05.08	Diesel Distributor	81892	Clear Diesel	1,000	0	1,000	
0804	04.12.08	Diesel Distributor	81995	Clear Diesel	1,500	0	1,500	
0804	04.26.08	Diesel Distributor	82204	Clear Diesel	1,500	0	1,500	
0804	04.26.08	Diesel Distributor	82204	Clear Diesel	1,500	1,500	0	3
0804 Total					5,500	1,500	4,000	
0805	05.04.08	Diesel Distributor	82319	Clear Diesel	1,500	0	1,500	
0805	05.10.08	Diesel Distributor	82431	Clear Diesel	1,200	0	1,200	
0805	05.24.08	Diesel Distributor	82666	Clear Diesel	800	0	800	
0805 Total					3,500	0	3,500	
0806	06.15.08	Diesel Distributor	82941	Clear Diesel	1,400	0	1,400	
0806 Total					1,400	0	1,400	
0808	08.24.08	Diesel Distributor	83886	Clear Diesel	1,400	0	1,400	
0808	08.31.08	Diesel Distributor	84016	Clear Diesel	1,500	0	1,500	
0808 Total					2,900	0	2,900	
Grand Total					41,492	17,092	24,400	

**Footnotes**

1 Out of statute

2 Tax not paid

3 Duplicate invoice

## Audit Example C

### “Total Gallons to Account For” Summary

Gasoline Distributor Wherever, TX Summary of Audit Results											TP#17211111113 Exam 1 Page 1 of 1
	-1-	-2-	-3-	-4-	-5-	-6-	-7-	-8-	-9-	-10-	-11-
REPORT PERIOD	AUDITED BEG INVT (a)	Plus: AUDITED TAX PAID PURCHASES (b)	Plus: AUDITED TAX-FREE IMPORTS (c)	Plus/Minus: AUDITED GAINS/ LOSSES (d)	Minus: AUDITED ENDING INVT (a)	TOTAL GALLONS AVAILABLE	Minus: AUDITED TAX-FREE SALES (e)	Minus: REPORTED TAXABLE GALLONS (f)	Minus: AUDITED TAX-PAID PURCHASES (b)	Equals: AUDITED ADDITIONAL TAXABLE GALLONS	AUDITED TAX DUE (g)
0706	12,411	34,160	7,600	(20)	9,941	44,210	7,230	(6,995)	34,160	9,815	1,963.00
0707	9,941	65,303	14,099	0	7,454	81,889	7,410	(448)	65,303	9,822	1,924.40
0708	7,454	70,871	21,750	0	8,428	91,847	7,475	14,275	70,871	(974)	(194.80)
0709	8,428	27,082	5,999	0	9,483	32,026	7,225	(8,561)	27,082	6,280	1,256.00
0710	9,483	36,469	14,790	(18)	5,119	55,805	14,426	346	36,469	4,384	872.80
0711	5,119	54,167	21,790	(25)	10,299	70,752	14,705	7,060	54,167	(5,180)	(1,036.00)
0712	10,299	77,821	7,600	(12)	10,880	84,828	0	7,560	77,821	(543)	(108.60)
0801	10,880	67,421	14,350	(2,539)	7,461	82,851	14,790	4,571	67,421	(4,131)	(826.20)
0802	7,461	40,768	21,350	0	16,046	53,533	7,475	6,805	40,768	(1,315)	(263.00)
0803	16,046	51,402	25,495	0	7,775	85,168	0	25,495	51,402	8,271	1,654.20
0804	7,775	104,710	39,455	(8)	7,180	144,752	7,512	31,943	104,710	587	117.40
0805	7,180	68,033	25,990	(13)	7,258	93,932	0	7,590	68,033	18,309	3,661.80
0806	7,258	65,904	14,850	0	6,267	81,745	0	14,850	65,904	991	198.20
0807	6,267	65,277	22,675	(50)	5,788	88,381	14,770	(14,820)	65,277	23,154	4,630.80
0808	5,788	77,824	7,415	0	9,022	82,005	7,510	7,415	77,824	(10,744)	(2,148.80)
0809	9,022	77,268	30,570	(5)	7,331	109,524	7,480	15,715	77,268	9,081	1,812.20
TOTAL	140,812	984,280	295,778	(2,690)	135,732	1,282,448	118,008	112,593	984,280	67,567	\$ 13,513.40

NOTES:

- (a) PerExam 2
- (b) PerExam 3
- (c) Per actual invoices and bills of lading
- (d) PerExam 4
- (e) PerExam 5
- (f) ) Reported amounts
- (g) Column 10 times \$ .20 per gallon.

## Exam 2

Gasoline Distributor  
Wherever TX  
Audited Inventories

TP#17211111113

Exam 2  
Page 1 of 1

REPORT PERIOD	-1- Bulk Plant 1 BEG INVT (a)	-2- Bulk Plant 2 BEG INVT (a)	-3- AUDITED TOTAL BEG INVT (Col 1 + Col 2)
0706	5,964	6,447	12,411
0707	4,235	5,706	9,941
0708	3,682	3,772	7,454
0709	4,925	3,503	8,428
0710	5,070	4,413	9,483
0711	3,851	1,268	5,119
0712	6,343	3,956	10,299
0801	7,211	3,669	10,880
0802	4,312	3,149	7,461
0803	7,948	8,098	16,046
0804	3,211	4,564	7,775
0805	4,545	2,635	7,180
0806	2,510	4,748	7,258
0807	3,738	2,529	6,267
0808	2,149	3,639	5,788
0809	4,957	4,065	9,022
	<u>74,651</u>	<u>66,161</u>	<u>140,812</u>
			(b)

NOTES:

- (a) Per electronic tank monitoring reports
- (b) Report period totals to Exam 1  
Beg & End inventories

### Exam 3

Gasoline Distributor  
Wherever TX  
Audited Tax Paid Purchases

TP#17211111113

Exam 3  
Page 1 of 1

REPORT PERIOD	-1- Vendor 1 TAX PAID PURCHASES (a)	-2- Vendor 2 TAX PAID PURCHASES (a)	-3- AUDITED TAX PAID PURCHASES (Col 1 + Col 2)
0706	17,820	16,340	34,160
0707	38,600	26,703	65,303
0708	49,434	21,437	70,871
0709	13,083	13,999	27,082
0710	19,432	17,037	36,469
0711	35,094	19,073	54,167
0712	49,827	27,794	77,621
0801	38,698	28,723	67,421
0802	30,197	10,571	40,768
0803	27,974	23,428	51,402
0804	65,062	39,648	104,710
0805	38,459	29,574	68,033
0806	32,453	33,451	65,904
0807	40,125	25,152	65,277
0808	43,242	34,582	77,824
0809	41,210	36,058	77,268
	<u>580,710</u>	<u>403,570</u>	<u>984,280</u>
			(b)

NOTES:

- (a) Per vendor reported amounts & verified with vendors
- (b) Report period totals to Exam 1  
Audited Tax Paid Purchases

## Exam 4

Gasoline Distributor Wherever TX Audited Gains and Losses					TP#1721111113 Exam 4 Page 1 of 1
REPORT PERIOD	-1- Bulk Plant 1 AUDITED GAINS/LOSSES (a)	-2- Bulk Plant 2 AUDITED GAINS/LOSSES (b)	-3- C-Store #1 Documented Drive-Offs (c)	-4- C-Store #2 Documented Drive-Offs (d)	-5- AUDITED GAINS & LOSSES
0706	0	0	(20)	0	(20)
0707	0	0	0	0	0
0708	0	0	0	0	0
0709	0	0	0	0	0
0710	0	0	0	(18)	(18)
0711	0	0	(25)	0	(25)
0712	0	0	(12)	0	(12)
0801	(2,514)	0	0	(25)	(2,539)
0802	0	0	0	0	0
0803	0	0	0	0	0
0804	0	0	(8)	0	(8)
0805	0	0	0	(13)	(13)
0806	0	0	0	0	0
0807	0	(35)	(15)	0	(50)
0808	0	0	0	0	0
0809	0	0	0	(5)	(5)
	(2,514)	(35)	(60)	(61)	(2,670)
					(b)

NOTES:

(a) Per vendor reported amounts & verified with vendors

(b) Report period totals to Exam 1  
Audited Gains/Losses

**Exam 5**

Gasoline Distributor Wherever TX Audited Tax-Free Sales to Exempt Entities				TP#17211111113 Exam 5 Page 1 of 1		
REPORT PERIOD	Invoice Data (a)	Invoice Number (a)	Customer (a)	-1- Reported Tax-Free Gallons (a)	-2- Exempt Entities Disallowed Tax-Free Gallons (b)	-3- Audited Tax-Free Gallons Col 1 - Col 2
0706	06/02/2007	07-0602	Anywhere ISD	7,230		7,230
0706	06/15/2007	07-0615	My Charter School	7,345	7,345	0
0706 Total				14,575	7,345	7,230
0707	07/01/2007	07-0701	Anywhere ISD	7,410		7,410
0707	07/16/2007	07-0716	Your church	7,135	7,135	0
0707 Total				14,545	7,135	7,410
0708	08/01/2007	07-0801	Anywhere ISD	7,225		7,225
0708	08/24/2007	07-0824	ATF	250		250
0708 Total				7,475	0	7,475
0709	09/02/2007	07-0902	Anywhere ISD	7,225		7,225
0709	09/15/2007	07-0915	Your charter school	7,335	7,335	0
0709 Total				14,560	7,335	7,225
0710	10/01/2007	07-1001	Anywhere ISD	7,228		7,228
0710	10/17/2007	07-1017	TheCo-opElectricCo	7,198		7,198
0710 Total				14,426	0	14,426
0711	11/03/2007	07-1103	Anywhere ISD	7,340		7,340
0711	11/15/2007	07-1115	Whoknowswhere ISD	7,365		7,365
0711 Total				14,705	0	14,705
0801	01/05/2008	08-0105	Anywhere ISD	7,315		7,315
0801	01/12/2008	08-0112	Whoknowswhere ISD	7,475		7,475
0801 Total				14,790	0	14,790
0802	02/03/2008	08-0203	That Air Force Base	7,475		7,475
0802	02/19/2008	08-0219	My Charter School	7,270	7,270	0
0802 Total				14,745	7,270	7,475
0804	04/01/2008	08-0401	Anywhere ISD	7,337		7,337
0804	04/20/2008	08-0420	ATF	175		175
0804 Total				7,512	0	7,512
0807	07/02/2008	08-0702	That Air Force Base	7,275		7,275
0807	07/31/2008	08-0731	The Army	7,495		7,495
0807 Total				14,770	0	14,770
0808	08/01/2008	08-0801	StateUniversityTeam	7,395	7,395	0
0808	08/03/2008	08-0803	Anywhere ISD	7,510		7,510
0808 Total				14,905	7,395	7,510
0809	09/09/2008	08-0909	Your charter school	7,375	7,375	0
0809	08/15/2008	08-0915	Who School Trans Co	7,480		7,480
0809 Total				14,855	7,375	7,480
Grand Total				161,863	43,855	118,008 (c)

Notes:

(a) Per Sales Journal & Invoices  
(b) Entities not exempt per statutes  
(c) Report Period totals to Exam 1

## **CHAPTER 13: REFUNDS**

### **Introduction**

A function of any fuels audit is to verify refund claims. Refund claims filed and/or credits taken on filed returns must be reviewed. Occasionally, auditors are assigned larger refund claims for verification via a referral from Revenue Accounting. Sometimes additional liability adjustments may be necessary. These cannot be included in the assigned refund. (Later in this chapter the procedures for this situation will be covered.)

### **Who May File a Refund Claim or Take a Credit on a Return?**

#### **Sellers of Motor Fuels**

License-holders may take a credit on their returns for the period when the sale occurred for gallons of motor fuel purchased tax paid at the rack and sold tax free to the following buyers:

- the U.S. government for its exclusive use;
- a public-school district in this state for the district's exclusive use;
- a commercial transportation company or a metropolitan rapid transit authority that provides public school transportation services to a school district under the Transportation Code and that is a party to a contract governed by Education Code Section 34.008 and that uses the motor fuel exclusively to provide those services;
- a licensed exporter if the seller is a licensed supplier or distributor and the exporter subsequently exports the motor fuel to another state;
- Additionally, the bill of lading must indicate the destination state and that the motor 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. (See separate note on exports at the end of this section.)
- motor fuel exported to a foreign country if the bill of lading or shipping documents indicates the foreign destination and the fuel is actually exported to the foreign country;
- a licensed aviation fuel dealer if the seller is a licensed distributor;
- non-profit electric and telephone cooperatives organized under Utilities Code Chapter 161 (bulk sales);
- Texas volunteer fire departments (bulk sales);
- Texas non-profit emergency medical services (bulk sales).

A refund may be requested for state fuels tax on compressed natural gas or liquefied natural gas used in a motor vehicle operated exclusively by:

- a Texas county or a Texas municipality; or
- a transit company, including a metropolitan rapid transit authority under Transportation Code Chapter 451 or a regional transportation authority under Transportation Code Chapter 452 that provides transportation services, and which held a prepaid liquefied gas decal on Jan. 1, 2015, as that section existed on that date.

## Exports

(effective Jan. 1, 2006)

A licensed supplier must collect the Texas tax or be licensed and collect the destination state's tax on all gasoline or diesel fuel removed from a terminal in Texas for export to another state, unless the transaction is specifically exempted by Texas or the destination state law.

## Suppliers/Permissive Suppliers Making Above-the-Rack Transfers

Truck or railcar movements between licensed suppliers or licensed permissive suppliers are considered above-the-rack transfers. When motor 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 motor fuel in the second terminal may take the credit. Sales within the terminal between suppliers are considered above the rack if there is a written contract or two-party exchange agreement between suppliers.

## Purchasers of Motor Fuels

A license-holder must take the credit on a return for the period in which the purchase occurred.

A person who does not hold a license, other than a licensed aviation fuel dealer, should file a refund claim if the person paid tax on the motor fuel and the person or license-holder is:

- the U.S. government and the motor fuel is for its exclusive use;
- a public-school district in this state and the motor fuel is for the district's exclusive use;
- a commercial transportation company that provides public school transportation services to a school district, and the motor fuel is used exclusively to provide those services under Transportation Code Chapter 451 and that is a party to a contract governed by Education Code Section 34.008;
- a licensed aviation fuel dealer who delivers the motor fuel into the fuel supply tanks of aircraft or aircraft servicing equipment;
- a retailer located on an Indian reservation recognized by the U.S. government and has paid taxes on gasoline or diesel fuel and resold it tax-free to exempt tribal entities and tribal members [Rule 3.432(o)];
- a non-profit telephone or electricity cooperative organized under Utilities Code Chapter 161;
- a Texas volunteer fire department; or
- a Texas non-profit emergency medical service.

A refund may be requested for state fuels tax on compressed natural gas or liquefied natural gas used in a motor vehicle operated exclusively by:

- a Texas county or municipality; or
- a transit company including a metropolitan rapid transit authority under Transportation Code Chapter 451 or a regional transportation authority under Transportation Code Chapter 452 that provides transportation services, and which held a prepaid liquefied gas decal on Jan. 1, 2015, as that section existed on that date.

#### **When a Motor Fuel Tax Refund Claim May Be Filed or a Credit Taken on a Return**

- One year following the purchase, use, delivery or export or loss by fire, theft or accident of motor fuel.
- Interstate trucker credits must be used or a refund requested within one year or they will expire. IFTA credits must be used or refunded within two years.
- 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 if the purchaser used the gasoline or diesel fuel in an exempt manner. The claim must be submitted before the first anniversary of the date the supplier's or permissive supplier's deficiency assessment becomes final.
- 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. (Per Tax Policy this also applies to licensed distributors.)

#### **Refunds/Credits Not Assignable**

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

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

#### **Documentation Required for Refund Claims**

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 the:

- stamped or preprinted name and address of the seller;
- name of the purchaser;
- date of delivery of the motor fuel;
- date of the issuance of the invoice, if different from the date of fuel delivery;
- number of gallons of motor fuel delivered;
- amount of tax, either separately stated from the selling price or stated with a notation that the selling price includes the tax; and the
- type of vehicle or equipment, such as a motorboat, railway engine, motor vehicle, off-highway vehicle, refrigeration unit or
- stationary engine into which the fuel is delivered.

The purchaser must obtain the original invoice from the seller of the motor fuel not later than the 30th day after the date the motor fuel is delivered to the purchaser. If the delivery of motor fuel is made through an automated method, one invoice may be issued at the time of billing that covers multiple purchases made during a 30-day billing cycle.

A distribution log must be available to support the number of gallons of motor fuel removed from a bulk users' own bulk storage and must contain:

- the date of delivery;
- the number of gallons of gasoline delivered;
- the signature of the bulk user; and
- the type or description of off-highway equipment into which the motor fuel was delivered.

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 motor fuel sold or used that are the subject of the refund claim on the monthly report submitted by the distributor to the Comptroller.

A person who files a claim for a tax refund on motor 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.

### **Liabilities Within a Refund Period**

Motor fuel refunds that are requested by license-holders must be submitted via an amended return or returns. When verifying these refunds, auditors frequently detect additional liabilities for various reporting categories. Only refund transactions should be included in the refund verification assignment. If liabilities are detected, the auditor should refer to AP 120 for instructions and requirements to generate a Field Verified Adjusted Report (FVAR). This is an Agency Work Manager (AWM) work item type that allows an auditor to make adjustments when an audit is not warranted at the time.

### **Handling Allowance**

The total gallons examined and approved in the refund claim by report period should be reduced by the 2 percent handling allowance. The auditor is to assume that the supplier/permissive supplier/distributor remitted the tax timely to the state and reduced their taxable gallons by 2 percent.

### **Recovering Previously Paid Refunds**

Refunds that have been paid under any of the motor fuels tax codes including 86 and 87 may need to be audited and/or subsequently recovered. To recover these unverified refunds, an audit will need to be generated using tax codes 90.06, 90.07 or 90.08. If the

taxpayer is not set up for the fuels tax code being audited, a one-time sale will need to be entered by the file maintenance entry person in the audit office before the audit can be submitted for review.

**Note:** Tax types 86 – gasoline and 87 – diesel fuel are used for refund claims for taxpayers who are not required to be licensed but are entitled to file for refunds.

All other division requirements for writing up and processing audits will apply.

### Scheduling

- The beginning audit period should be set 61 days prior to the warrant issue date within the statute of limitations.
- The scheduling date should be 61 days prior to the warrant issue date.
- Each warrant issued should be scheduled as a separate exam.
- Each exam should be footnoted with the warrant issue date and the original refund period covered by the warrant.
- “Notes to Reviewer” should contain:
  - which exam(s) are recovering previously paid refunds; and
  - that the scheduling date is 61 days prior to the warrant date.
- Explain in “Assignment Comments” the original refund period, the warrant date and the reason for the beginning audit period.

## Refund Scenarios

### Gasoline Purchaser

Tax-paid gasoline used in Texas in the following situations allows the user to take a credit on a return or file a refund claim, if not licensed:

- In off-highway equipment, in stationary engines or for other non-highway purposes and not in a motor vehicle operated or intended to be operated on the public highways.
- In a motor vehicle that is operated exclusively off the public highways, except for incidental travel on the public highways.
- In auxiliary power units or power take-off equipment.

A credit or refund may not be allowed for the motor fuel tax paid on that portion of the gasoline used for idling.

### Diesel Purchaser

When diesel fuel is purchased tax-paid in the state, a credit may be taken on the return or a refund filed if the diesel fuel is used in the state in the following ways:

- by the U.S. government for its exclusive use;
- a public-school district in this state for the district’s exclusive use;
- a commercial transportation company or a metropolitan rapid transit authority that provides public school transportation services to a school district under the Transportation Code that is a party to a contract governed by Education Code Section 34.008 and that uses the motor fuel exclusively to provide those services;

- a licensed exporter if the seller is a licensed supplier or distributor and the exporter subsequently exports to the motor fuel to another state;
- Additionally, the bill of lading must indicate the destination state and that the motor 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;
- Motor fuel exported to a foreign country if the bill of lading or shipping documents indicates the foreign destination and the fuel is actually exported to the foreign country;
- a licensed aviation fuel dealer if the seller is a licensed distributor;
- a non-profit telephone or electricity cooperative organized under Utilities Code Chapter 161;
- a Texas non-profit emergency medical service.

#### Effective September 1, 2007

- as a **feedstock** in the manufacturing of tangible personal property for resale not as a motor fuel;
- in a medium for the removal of drill cuttings from a well bore in the production of oil or gas;
- used in this state by movable specialized equipment used in oil field well servicing and 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.

#### Effective July 1, 2009

- is a Texas volunteer fire department.

#### Effective September 1, 2015

- is a Texas non-profit emergency medical service.

A refund may be requested for state fuels tax on compressed natural gas or liquefied natural gas used in a motor vehicle operated exclusively by:

- a Texas county or municipality; or
- a transit company including a metropolitan rapid transit authority under Transportation Code Chapter 451 or a regional transportation authority under Transportation Code Chapter 452, that provides transportation services, and which held a prepaid liquefied gas decal on Jan. 1, 2015, as that section existed on that date.

#### Interstate Trucker

A licensed interstate trucker may take a credit on a tax return for tax paid on gasoline or diesel fuel purchased in Texas and used outside of Texas in commercial vehicles operated under that license.

### Exports or Lost Fuel

A person who paid tax on the purchase of motor fuel may claim a credit or seek a refund with the Comptroller if 100 or more gallons of motor fuel is subsequently exported or lost by fire, theft or accident.

### Transit Company

A transit company that paid tax on the purchase of motor fuel may seek a refund from the Comptroller in an amount equal to **one cent per gallon for gasoline** used in transit vehicles. For diesel, the refund amount is **one-half cent per gallon of diesel fuel** used in transit vehicles.

### Metropolitan Rapid Transit Authorities

#### Special Documentation Requirements (effective July 1, 2007)

A metropolitan rapid transit authority operating under Transportation Code Chapter 451 that is a party to a contract governed by Education Code Section 34.008 must maintain the following documentation supporting its claim:

- vehicle mileage
- hours of service provided
- fuel consumption
- total number of student passengers per route
- total number of non-student passengers per route

### Five-Percent Limitation

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 Education Code Section 34.008, the metropolitan rapid transit authority is not entitled to a refund of taxes paid under this subchapter for the route for that month.

### Additional Time Limit

A metropolitan rapid transit authority that requests a refund shall maintain all supporting documentation relating to the refund until the **sixth anniversary** of the date of the request.

**Note:** Gallons claimed for public school transportation by a transit company cannot be included in the transit company's claim for refund of the one cent per gallon for gasoline or the one-half cent per gallon for diesel fuel. (see Rule 3.448 regarding transportation services for Texas public school districts)

#### **Exclusive Use for Certain Metropolitan Rapid Transit Authorities Related to Liquefied Gas.**

This applies to a metropolitan rapid transit authority operating under Transportation Code Chapter 451 that is a party to a contract governed by Education Code Section 34.008 and that is not required 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. The documentation requirements, five-percent limitation and additional time limits are the same as for gasoline and diesel fuel.

### Electricity and Telephone Cooperatives

Electricity and telephone cooperatives are exempt from all excise taxes under Secs. 161.062 and 162.062 of the Utilities Code. They follow the one-year statute of limitations beginning on the date of purchase, use or loss, whichever is latest, and must provide the required documentation to receive the refund.

### Volunteer Fire Departments

A Texas volunteer fire department may purchase gasoline and diesel fuel state tax free in bulk from license-holders for the department's exclusive use in motor vehicles and equipment owned or leased and operated by the department.

Volunteer fire departments will continue to pay state motor fuel taxes when buying gasoline and diesel fuel at retail service stations and may claim a refund of those taxes from the Comptroller for purchases made on or after July 1, 2009.

Volunteer fire departments that have paid taxes on bulk purchases of gasoline and diesel fuel may claim a refund on fuel purchased or used on or after July 1, 2009.

**Effective May 24, 2019** the definition of a volunteer fire department was changed to mean a fire department operated by its members, including a part-paid fire department composed of at least 50% volunteer firefighters, that is operated on a not-for-profit basis, including a department that is exempt from federal income tax under Section 501(a), IRC of 1986, by being listed as an exempt organization in Section 501(c) (3) or (4) of that code. Medical Service

Exempts motor fuel sold to or operated by a nonprofit entity that is organized for the sole purpose of and engages exclusively in providing emergency medical services and that used the gasoline, diesel, CNG/LNG exclusively to provide emergency medical services, including rescue and ambulance services. [Secs. 162.104(15), 162.204(9), 162.356(9)]

### Texas County or Municipality

Exempts motor fuel on compressed natural gas or liquefied natural gas used in a motor vehicle operated exclusively by the Texas county or Texas municipality. A municipality means an incorporated city or town. Refueling stations that are accessible to motor vehicles other than vehicles operated by municipalities or used to provide transit services as described in Section 162.356(11)(A) are not exempt from CNG and LNG motor fuel taxes.

### Retailers on Recognized Indian Reservations

Retailers located on an Indian reservation recognized by the U. S. government can claim refund of tax paid on gasoline or diesel fuel resold tax-free to exempt tribal entities and tribal members. The retail dealer must maintain records that include the original purchase invoices that show that the state tax was paid and sales invoices that document the exempt sale. (see Rule 3.432 for sale invoice requirements)

### Owners of Vehicles Using Liquefied Gas – Special Situation

The Texas motor fuels tax on liquefied gas (LG) or liquefied petroleum gas (LPG, i.e., propane, butane, methane, ethane or a mixture of these gases) **was repealed effective September 1, 2015**.

If a motor vehicle bearing a liquefied gas tax decal is sold or transferred the owner or operator must **remove** the LG decal from the vehicle and return it to the Comptroller to request a refund. The owner or operator will receive a refund of the unused portion of the advance taxes paid for that year.

The owner or operator shall submit to the Comptroller a letter requesting a refund and the liquefied gas tax decal removed from the motor vehicle.

### Refunds for Bad Debts; Credits for Nonpayment

#### Suppliers/Permissive Suppliers and Distributors

Licensed suppliers, permissive suppliers and distributors may file a refund claim with the Comptroller if:

- the license-holder has paid the taxes imposed on the motor fuel sold on account;
- the account is uncollectible and worthless; and
- the account is written off as a bad debt on the accounting books.

A licensed supplier or permissive supplier may take an accelerated bad debt on the monthly report to be filed with the Comptroller if:

- on a previous report, taxes were paid on the motor fuel sold on account;
- the person to whom the motor fuel was sold has not remitted the tax to the supplier and, at the time of the transaction, the person to whom the supplier sold the motor fuel held a license as a distributor or importer issued by the Comptroller; and
- the Comptroller is notified of the default within 60 days after the default occurs.
- Payments applied to the account must be applied ratably between state fuel tax and all other products or charges to the account. Effective June 19, 2009, the Comptroller must be notified within 15 days of the date of the default and the supplier or permissive supplier receives credit on 100 percent of the defaulted tax amount.
- 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. The refund or credit that may be claimed may not exceed the amount of taxes paid on the motor fuel to which the written-off account or unpaid taxes apply.

If, after a refund is received or a credit is taken, 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, the unpaid taxes shall be paid by the license-holder receiving the refund or taking the credit, plus a penalty of 10 percent of the amount of the unpaid taxes and interest beginning on the day the refund was issued.

A bad debt refund or credit may not be taken for the sale of motor 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.

A refund 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.

Bad debt/refund claims can only be taken while the license is active. Returns cannot be amended if the license is no longer active.

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.

All payments and credits to the account should be applied pro-ratably between motor fuel including tax and other goods or items sold to the purchaser.

### **School Fund Benefit Fee**

The school fund benefit fee provides for refunds of the tax on diesel fuel used by commercial busses operating on fixed routes in Texas. (see Chapter 16, “School Fund Benefit Fee.”)

## Write-up Procedures for Motor Fuels Refunds

Write-ups of fuel refunds follow the same requirements as all refund assignments. The table below shows some of the requirements for the packets to be submitted.

Situation	Audit	Revenue Accounting
Entire claim approved, but reduced by 2% handling allowance	<p>Refund package sent to RPC for processing. Package includes:</p> <ul style="list-style-type: none"> <li>• Refund cover letter addresses</li> <li>• “30-day language” for hearing</li> <li>• “Partial denial” for reduction by 2% handling allowance</li> <li>• Taxpayer is mailed refund package.</li> <li>• RPC images entire package and sends Refund Section email advising them refund assignment has been imaged.</li> </ul>	<p>Referring claims examiner reviews assignment using imaging.</p> <p>Authorizes warrant.</p> <p>Warrant is mailed to taxpayer with letter. No partial denial is mentioned for 2% reduction</p>
Partial denial of claimed gallons for various reasons and reduction by 2% handling allowance	<p>Refund cover letter addresses:</p> <ul style="list-style-type: none"> <li>• “30-day language” for hearing</li> <li>• “Partial denial” for reduction by 2% handling allowance</li> <li>• Other reason(s) for other gallons denied Taxpayer is mailed refund package.</li> </ul> <p>RPC images entire package and sends Refund Section email advising them refund assignment has been imaged.</p>	<p>Referring claims examiner reviews assignment using imaging.</p> <p>Authorizes warrant.</p> <p>Check mailed to taxpayer with another denial letter covering reason for the partial denial other than 2% handling allowance.</p> <p>“30-day language” is included in letter.</p>
Full denial of claimed gallons	<p>Auditor drafts the full denial letter which includes “30-day language” and includes it in the audit package. The RPC will mail the letter. See AP91 for an example of the letter.</p> <p>Audit package is sent to RPC with draft of the denial letter.</p> <p>RPC images entire package and send Refund Section email advising them refund assignment has been imaged.</p>	<p>Referring claims examiner reviews assignment using imaging.</p> <p>URS system issues full denial letter which includes “30-day language.”</p>

## Sources Cited Regarding Refunds of Motor Fuel Tax

### Statutes

Section	Topic
111.104	Refunds
111.1042	Tax Refund: Informal Review
111.105	Tax Refund: Hearing
111.107	When Refund or Credit is Permitted
111.108	Recovery of Refund Credit
162.125	Refund or Credit for Certain Taxes Paid – Gasoline
162.126	Refund for Bad Debts; Credit for Non-Payment – Gasoline
162.127	Claims for Refunds – Gasoline
162.1275	Refunds for Certain Metropolitan Rapid Transit Authorities – Gasoline
162.128	When Gasoline Tax Refund or Credit May be Filed
162.217	Information Required on Supplier's and Permissive Supplier's Return; Credits and Allowances
162.227	Refund or Credit for Certain Taxes Paid – Diesel
162.2275	Refund for Certain Metropolitan Rapid Transit Authorities – Diesel
162.228	Refund for Bad Debts Credit for Non-Payment – Diesel
162.2229	Claims for Refunds – Diesel
162.230	When Diesel Fuel Tax Refund or Credit May Be Filed
162.311	Refunds: Transfers of Decals – Liquefied Petroleum

### Rules

Rule	Topic
4.431	Refund of Gasoline and Diesel Fuel Tax to Transit Company
4.432	Refunds on Gasoline and Diesel Fuel Tax
4.433	Incidental Highway Travel
4.434	Metering Devices Used to Claim Refund of Tax on Gasoline Used in Power Take-off and Auxiliary Power Units
4.441	Documentation of Imports and Exports, Import Verification Numbers, Export Sales and Diversion Numbers
4.448	Transportation Services for Texas Public School Districts

## **CHAPTER 14: ADMINISTRATIVE RULES**

### **Motor Fuels**

<b>Rule</b>	<b>Topic</b>
<a href="#"><u>3.430</u></a>	Records Required; Information Required
<a href="#"><u>3.431</u></a>	Refund of Gasoline and Diesel Fuel Tax to Transit Company
<a href="#"><u>3.432</u></a>	Refunds on Gasoline, Diesel Fuel, Compressed Natural Gas and Liquefied Natural Gas Taxes
<a href="#"><u>3.433</u></a>	Incidental Highway Travel
<a href="#"><u>3.434</u></a>	Liquefied Gas Tax Decal
<a href="#"><u>3.435</u></a>	Metering Devices Used to Claim Refund of Tax on Fuel Used in Power Take-Off and Auxiliary Power Units
<a href="#"><u>3.436</u></a>	Liquefied Gas Dealer Licenses
<a href="#"><u>3.437</u></a>	Trip Permit in lieu of Interstate Trucker License
<a href="#"><u>3.438</u></a>	Signed Statements for Purchasing Dyed Diesel Fuel Tax Free
<a href="#"><u>3.439</u></a>	Motor Fuel Transporting Documents
<a href="#"><u>3.440</u></a>	On-Highway Travel of Farm Machinery
<a href="#"><u>3.441</u></a>	Documentation of Imports and Exports, Import Verification Numbers, Export Sales and Diversion Numbers
<a href="#"><u>3.442</u></a>	Bad Debts or Accelerated Credit for Non-Payment of Taxes
<a href="#"><u>3.443</u></a>	Diesel Fuel Tax Exemption for Water, Fuel Ethanol, Biodiesel and Biodiesel Mixtures
<a href="#"><u>3.444</u></a>	Temperature Adjustment Conversion Table and Metering Devices
<a href="#"><u>3.446</u></a>	Electronic Filing of Reports, Civil Penalties and Deferred Tax Payments
<a href="#"><u>3.447</u></a>	Reports, Due Dates, Bonding Requirements and Qualifications for Annual Filers
<a href="#"><u>3.448</u></a>	Transportation Services for Texas Public School Districts

### **School Fund Benefit Fee**

<b>Rule</b>	<b>Topic</b>
<a href="#"><u>3.1251</u></a>	School Fund Benefit Fee

### **Petroleum Products Delivery Fee**

<b>Rule</b>	<b>Topic</b>
<a href="#"><u>3.151</u></a>	Imposition, Collection and Bonds or Other Security of the Fee

## **CHAPTER 15: GROUNDWATER PROTECTION ACT**

### **Groundwater Protection Act**

Groundwater and surface water must be protected from contamination caused by leaks of hazardous, toxic and otherwise harmful substances. The Groundwater Protection Act provides an “insurance policy” for the cleanup of leakage and spillage.

The Texas Commission on Environmental Quality (TCEQ) is responsible for administration of the fund and the groundwater cleanup program, registration and regulation of tanks containing hazardous materials and the enforcement of environmental cleanup. The Commission collects fees for the registration of underground and aboveground storage tanks.

The Comptroller is responsible for the collection of fees on deliveries of petroleum products. The fees are deposited in the Petroleum Storage Tank Remediation Fund, which is used for the administration, investigation and cleanup of the environment when contamination occurs due to leakage or spillage.

The law took effect September 1, 1989. Initially there was confusion as to the title of the statute. Consequently, the following are some of the terms used by the industry on their billing invoices and transporting documents:

- Texas Petroleum Production Fee
- Texas Loading Fee Tax
- Texas HB 1588 Delivery Charge
- Texas Tank Remediation Fee
- Texas Groundwater Protection Fee

### **Definitions**

Definitions applicable to the groundwater protection law are:

- **Petroleum product:** a product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol and other alcohol-blended fuels, aviation gasoline, kerosene, distillate fuel oil and #1 and #2 diesel fuel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.
- **Regulated substance:** an element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to public health or welfare or the environment.
- **Hazardous substance:** The definition is assigned by Section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U. S.C. Sec. 9601 et. seq.).
- **Aboveground storage tank:**

- made of non-earthen materials;
  - located on or above the surface of the ground or on or above the surface of the floor of a structure below ground, such as a mineworking, basement or vault; and
  - designed to contain an accumulation of petroleum.
- Underground storage tank: any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10 percent or more beneath the surface of the ground.
  - Bulk facility: A bulk facility is a facility in this state, which **that receives** gasoline or diesel fuel by pipeline, rail or barge and then delivers the fuel into a cargo tank or barge. If the terminal receives fuel in some way other than by pipeline, rail or barge, this law **does not** apply to it. If the fuel leaves the terminal in some way other than a cargo tank or barge, the fee does not apply. This term does not include petroleum products consumed at an electricity generating facility.
  - Cargo tank: An assembly that is used for transporting, hauling or delivering liquids and that consists of a tank having one or more compartments mounted on a wagon, truck, trailer, railcar or wheels.
  - Withdrawal from bulk: the removal of a petroleum product from a bulk facility storage tank for delivery directly into a cargo tank or a barge to be transported to another location, other than a bulk facility, for distribution or sale in this state.

## Inquiry

The petroleum products delivery fee is included in the fee system (tax code 64). The following are the most frequently used inquiries. To check other inquiries, check the fee system listings.

- XIDATA – return data inquiry information XIDATA.TP#.64.
- XICOLL – collection balance information. XICOLL.TP#.64.

There is not a history for tax code 64 on XIRPTS. In lieu of the history, the auditor should print all data per the XIDATA screens for the audit period.

Refer to the Quick Reference Manual for other inquiries for petroleum product delivery fee accounts.

## Exemptions

### Exemptions from Regulation Fee Only

An underground or aboveground storage tank is exempt from the tank registration fee but not from the petroleum products delivery fee if the tank is:

- a farm or residential tank with a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;
- used for storing heating oil for consumptive use on the premises where stored;
- a septic tank;
- a surface impoundment, pit, pond or lagoon;
- a storm water or wastewater collection system;
- a flow-through process tank;
- a tank, liquid trap, gathering line or other facility used in connection with an activity associated with the exploration, development or production of oil, gas or geothermal resources or any other activity regulated by the Railroad Commission of Texas under Natural Resources Code Section 91.101;
- a transformer or other electrical equipment that contains a regulated substance and that is used in the transmission of electricity to the extent that such a transformer or equipment is exempted by the U.S. Environmental Protection Agency (EPA) under 40 C.F.R. Part 280.; or
- an aboveground storage tank that is located at or is part of a petrochemical plant, petroleum refinery, electricity generating facility or a bulk facility that is exempt from regulation but not exempt from the fee imposed by this subchapter.

### Exemptions from Both Fees

A storage tank is exempt from regulation under this subchapter if the sole or principal substance in the tank is a hazardous substance and the tank is located in an underground area, including a basement, cellar, mineworking, drift, shaft or tunnel and on or above the surface of the floor of that area.

An interstate pipeline facility, including gathering lines, or an aboveground storage tank connected to such a facility is exempt from regulation under the Groundwater Protection Act if the pipeline facility is regulated under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979.

An intrastate pipeline facility or an aboveground storage tank connected to such a facility is exempt from regulation of the Groundwater Protection Act if the pipeline facility is regulated under the Natural Resources Code or articles 6053-1 and 6053-2, Revised Statutes.

In-ground hydraulic lifts that use a compressed air/hydraulic fluid system and hold less than 100 gallons of hydraulic oil, if exempt by the EPA, are exempt from regulation and fees under this subchapter.

## Fee

### Fee Collection

The petroleum product delivery fee is imposed on the delivery of a petroleum product upon withdrawal from bulk of that product.

Suppliers, upon withdrawal from bulk of a petroleum product, shall collect from the person who orders the withdrawal a fee based on the net gallons of the product. The supplier is the person who **first invoices (position-holder)** petroleum products withdrawn from the facility. An exchange statement is not considered an invoice.

A **person who imports** a petroleum product in a cargo tank or a barge destined for delivery into an underground or above ground storage tank, regardless of whether or not the tank is exempt from regulation, shall pay the fee to the Comptroller.

The fee amount is determined as follows:

### Petroleum Products Delivery Fees, Effective Sept. 1, 2015

Gallons Delivered (All Petroleum Products)	Rate Per Gallon
Less than 2,500	\$1.70
2,500 but less than 5,000	\$3.45
5,000 but less than 8,000 *	\$5.45
8,000 but less than 10,000 *	\$6.95
10,000 or more per 5,000-gallon increment	\$3.45/5K gal.

\* For gasoline deliveries of at least 7,000 but less than 8,000 gallons (whether single product type or split load), special rules continue to apply:

- If the gasoline portion of the delivery is less than 7,000 gallons, the fee is \$5.45/gal.
- If the gasoline portion of the delivery is at least 7,000 gallons, the fee is \$6.95/gal.

### Petroleum Products Delivery Fees, Effective July 1, 2012 – Aug. 31, 2015

Gallons Delivered (All Petroleum Products)	Rate Per Gallon
Less than 2,500	\$2.75
2,500 but less than 5,000	\$5.50
5,000 but less than 8,000*	\$8.65
8,000 but less than 10,000*	\$11.00
10,000 or more	\$5.50/5K gal.

\* For gasoline deliveries of at least 7,000 but less than 8,000 gallons (whether single-product type or split load), special rules apply:

- If the gasoline portion of the delivery is less than 7,000 gallons, the fee is \$8.65/gal.
- If the gasoline portion of the delivery is at least 7,000 gallons, the fee is \$11.00/gal.

## Petroleum Products Delivery Fees, Effective Sept. 1, 2015

Gallons Delivered (All Petroleum Products)	Rate Per Gallon
Less than 2,500	\$1.70
2,500 but less than 5,000	\$3.45
5,000 but less than 8,000*	\$5.45
8,000 but less than 10,000*	\$6.95
10,000 or more per 5,000-gallon increment	\$3.45/5K gal.

\* For gasoline deliveries of at least 7,000 but less than 8,000 gallons (whether single-product type or split load), special rules continue to apply:

- If the gasoline portion of the delivery is less than 7,000 gallons, the fee is \$5.45/gal.
- If the gasoline portion of the delivery is at least 7,000 gallons, the fee is \$6.95/gal.

## Petroleum Products Delivery Fees, Effective July 1, 2012 – Aug. 31, 2015

Gallons Delivered (All Petroleum Products)	Rate Per Gallon
Less than 2,500	\$2.75
2,500 but less than 5,000	\$5.50
5,000 but less than 8,000*	\$8.65
8,000 but less than 10,000*	\$11.00
10,000 or more	\$5.50/5K gal.

\* For gasoline deliveries of at least 7,000 but less than 8,000 gallons (whether single-product type or split load), special rules apply:

- If the gasoline portion of the delivery is less than 7,000 gallons, the fee is \$8.65/gal.
- If the gasoline portion of the delivery is at least 7,000 gallons, the fee is \$11.00/gal.

## Exceptions

Exceptions to the fee are detailed below.

Imported petroleum product that is delivered to a tank connected to or part of a bulk facility in this state from which the imported petroleum product will be withdrawn from bulk is exempt from the fee requirement.

The fee does not apply to a withdrawal from a bulk facility of a petroleum product destined for export from this state if the petroleum product is in continuous movement to a destination outside this state. Petroleum products taken to an intermediate storage facility prior to export are not exempt from the fee.

The fee does not apply to a petroleum product withdrawn from bulk for delivery to an electric generating facility.

The fee does not apply to a petroleum product withdrawn from bulk for delivery to a common carrier railroad for exclusive use by the common carrier railroad.

Common carrier railroads are exempt from the fees imposed by the Groundwater Protection Act and are not reimbursed for costs incurred as a result of a release from a storage tank system, operated or maintained by the common carrier railroad.

Deliveries into the fuel supply tanks of boats and vessels are exempt when each of the following conditions is met:

- The entire withdrawal from the bulk facility will be delivered into the fuel supply tanks of vessels or boats; and
- None of the withdrawal will be placed into intermediate storage tanks prior to delivery into the fuel supply tanks of vessels or boats.

Persons exempt from the fee cannot request a refund directly from the Comptroller. The refund must be obtained from the bulk facility operator who collected the fee. (see Rule 3.151 for exemption to claiming refund from the Comptroller)

**Note:** The exporter, electricity generating facility or common carrier railroad must furnish the bulk facility with a copy of an exception letter issued by the Comptroller.

The fee does not apply to 100 percent biodiesel fuel or renewable diesel fuel or that portion of biodiesel fuel or renewable diesel fuel blended with petroleum diesel fuel that is withdrawn from a bulk facility or imported into this state outside of the bulk terminal/transfer system.

## **Permit**

The following persons must obtain a petroleum product delivery fee permit:

- each operator of a bulk facility (person who first invoices for the petroleum product)
- each importer of petroleum products

The permit entitles that person to deliver a petroleum product into a cargo tank destined for delivery to an underground or aboveground storage tank, regardless of whether the tank is exempt from regulation.

A permit issued by the Comptroller is valid on the date of its issuance and is permanent until it is surrendered by the holder or canceled by the Comptroller.

The permit must be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner. A copy of the permit must be kept at each place of business or other place of storage from which petroleum products are delivered into cargo tanks and in each motor vehicle used by the permit-holder to transport petroleum products by the holder for delivery into petroleum storage tanks in this state.

## **Security**

Persons required to obtain a permit must post a security. The security may be waived if any motor fuels bonds have been released and the taxpayer's account is current in all other taxes.

Acceptable securities are:

- surety bonds
- cash (in the form of U.S. currency)
- assignment of a certificate of deposit in any Texas financial institution that is a member of the Federal Deposit Insurance Corp. (FDIC)
- Letter of credit from any Texas financial institution that is a member of the FDIC

The amount of security required is equal to two times the highest fees expected to accrue during a reporting period. The minimum bond is \$30,000; the maximum is \$600,000.

## **Invoices and Manifests**

Each operator of a bulk facility and each importer shall list, as a separate line item on an invoice or cargo manifest required to be carried with the petroleum product, the amount of the delivery fee due. Only persons who hold a petroleum product delivery fee permit may charge and collect the fee. No other person selling fuel may list the fee as a separate item on an invoice or manifest unless the amount is clearly identified as reimbursement. An amount listed as a reimbursement may not exceed the amount of fee actually collected.

The owner or lessee of a cargo tank or a common or contract carrier transporting a petroleum product shall possess a cargo manifest or an invoice showing the point of origin, the delivery point of the product, the amount of the required fee and other information as required by the rules of the Comptroller.

## **Records**

Originals or copies of the cargo manifests or invoices and any other records required under this section or rules of the Comptroller must be maintained for a period of four years after the date on which the document or other record is prepared and be open for inspection by the Comptroller at all reasonable times.

## **Audit Procedure**

The audit procedure would consist of verifying:

- reported amounts according to number of gallons and rate;
- exemptions of deliveries on which no fee was charged;
- imported petroleum products; and
- fee previously paid.

A "total fuel to account for" type of cross-check using the distributor and supplier reports is recommended.

## **Reports**

Each operator of a bulk facility and each importer shall file a report with the Comptroller on or before the 25th day of each month and remit the amount of fees required to be collected or paid during the preceding month.

Failure to file the report and/or pay the fee results in the addition of a 5 percent penalty for the first 30 days and an additional 5 percent penalty that accrues on the 31st day after the due date. A fraud penalty of 75 percent of the fee may be assessed, plus penalty and interest.

## **Excess Tax/Fee Collected (Unjust Enrichment)**

When a taxpayer collects tax/fee in excess of the amount due, the excess amount either should be refunded to the customer or reported to the state. This can be done by reporting gallons on line 21 “additional taxable sales.”

## **Unjust Enrichment**

Suppliers collect the delivery fee from a customer that purchases petroleum products when the products are withdrawn into cargo tanks, and importers remit the fee directly to the Comptroller's office when petroleum products are imported into Texas. Distributors or any other license types are not required to be permitted with the Comptroller for the Petroleum Products Delivery Fee (PPDF). Distributors can bill their customers for the PPDF to reimburse themselves, however, the reimbursement cannot be titled as a tax. In addition, if the reimbursement is for an excess amount, the excess amount either should be refunded to the customer or reported to the state.

## **CHAPTER 16: SCHOOL FUND BENEFIT FEE**

### **Introduction**

House Bill 3159, effective Sept. 1, 1999, exempted certain commercial motor vehicles from the motor fuel tax paid on **diesel fuel** used exclusively to transport passengers for compensation or hire between points in Texas on fixed or scheduled routes. A new school fund benefit fee of \$0.04875 per gallon is owed on diesel fuel exempted from the motor fuel tax under this bill (tax code 77).

To qualify for the diesel fuel tax exemption, the commercial motor vehicle must have a registered gross weight of more than 26,000 pounds or be designed to transport more than 15 passengers, including the driver, and the vehicle owner or operator must not be a political subdivision. All bus companies qualifying for diesel fuel refunds and the school fund benefit fee must be pre-approved by the Comptroller.

An entity that qualifies for the exemption must pay the motor fuel tax to its supplier on **all** purchases of diesel fuel, then file a claim for refund in the calendar month following the month in which the diesel fuel is used while traveling fixed or scheduled routes in this state. The amount of school fund benefit due for each monthly reporting period will be paid from the proceeds of the monthly claim for refund of motor fuel taxes. In the event the school fund benefit fee due exceeds the amount of the motor fuel tax refund, any remaining amount should be paid with the report. (Rule 3.1251)

Qualified and approved bus companies will file a diesel fuel refund claim accompanied by the school fund benefit fee (SFBF) return. The claim should be filed the month after the fuel is consumed by the qualified buses. The diesel fuel consumption is based on the overall miles per gallon (MPG). In many cases these companies are also licensed for IFTA for their interstate travel. The overall MPG is not computed until the IFTA quarterly return is completed. The SFBF is not due until a diesel fuel tax refund is requested and received. For this reason, there is not a penalty for filing the SFBF return late.

Texas miles traveled for **fixed** or **scheduled** routes should be verified. In the case of interstate travel by the same buses, the Texas miles begin when the buses enter Texas and end when the buses leave Texas. The intervening miles on fixed or scheduled routes comprise the Texas miles subject to refund.

Tax paid on diesel fuel used to operate commercial vehicles on charter trips or other non-fixed or non-scheduled routes is not refundable, other than for refunds provided by Section 3.432 of this title.

Verify that the Texas miles are divided by the overall MPG to compute the number gallons consumed by the qualified vehicles in Texas. These same gallons are entered on the SFBF return. The Revenue Accounting Refund Verification Section processes the return and does a fund transfer; the remaining amount is refunded. The gallons on

the refund claim and the SFBF return must agree. Any other gallons subject to refund would be processed as a separate claim.

### Example

Claim Period	Fixed Route Miles	IFTA Fleet MPG	Fixed Route Gallons
0810	425,101	5.60	75,911
0811	421,980	5.60	75,354
0812	468,597	5.60	83,678
Total	1,315,678	5.60	234,943

Total Fixed Route Gallons	234,943	
School Fund Benefit Fee to be retained (234,943 X \$0.04875)		\$11,453.47
Gallons eligible for refund	234,943	
Less 2% handling allowance	<4,699>	
Net gallons subject to refund	230,244	
Total Refund (230,244 X \$0.20)		\$46,048.80
Claim Amount Paid (\$46,048.80 – \$11,453.47)		\$34,595.33

## Refund Verification Assignments and Audits

If, in verifying a school fund benefit fee (SFBF) refund claim, it appears that previously paid refund claims were paid in error (the taxpayer claimed too many gallons), then a diesel audit (90-07) should be generated. If the taxpayer is not licensed for diesel fuel tax, a “one-time sale” should be set up by the person who handles file maintenance in the audit field office. An SFBF (77) audit should also be generated and performed concurrently with the 90-07. These audits must be processed together.

Recovering previously paid refunds also means a reduction in the SFBF gallons submitted by the taxpayer. The SFBF audit would always be a credit in these circumstances. The SFBF audit should be written up similar to fuels tax audits and other miscellaneous taxes; i.e., an adjustment report by period needs to be part of the audit package, but not on the index.

### Refund claims and SFBF returns should be for the same period of time – monthly.

If the taxpayer files IFTA returns or is part of consolidated IFTA returns, the MPG to compute the gallons used on Texas fixed routes should be based on the IFTA or consolidated IFTA returns MPG. Since the IFTA return is quarterly and the refund claim and the SFBF return is monthly, the taxpayer can wait and file the refund claims and SFBF returns after the IFTA MPG has been computed. There is no penalty if the SFBF return(s) is late.

In many cases, the taxpayer files the monthly returns before the IFTA quarterly return is filed. For these situations, the auditor should compute the quarterly MPG using the monthly data per the refund claim and SFBF return and compare it to the IFTA MPG. The MPG for the three months of the quarter should approximate the IFTA MPG. Taxpayers may still file on a monthly basis, but they should adjust the third month in the quarter to tie the total refund gallons claimed to the valid refund gallons using the IFTA MPG.

If there are adjustments to the refund claim and SFBF, the auditor should obtain a letter from the taxpayer requesting that the credits from the SFBF be applied to the diesel audit liability. The letter should be an exhibit in both audit packages. Comments/Notes to Reviewer on AWM must also indicate that the two audits (90 07 and 77) should be processed together and that the SFBF credit be applied to the diesel fuel audit liability.

**Note:** Credit interest does apply to the school fund benefit fee.

The current tax rate on diesel is \$.20 per gallon; the SFBF rate is \$.04875 per gallon.

For more information on refunds and refund verification assignments, refer to Chapter 13 of this manual.