



# Fuel Taxes and Fees in Texas

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May 2016

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## Fuel Taxes and Fees

### A. Fuel Taxes and Fees.

Texas law imposes fuel taxes and fees on the sale of finished petroleum products. Oil and gas producers and service providers frequently encounter fuel tax issues in transporting equipment and product to and from the well site.

Diesel Fuels Tax. Texas law imposes a diesel fuels tax on:

- The net gallons of diesel fuel removed from the terminal rack or imported into this state, other than in the bulk transfer/terminal system.
- The net gallons of diesel fuel sold to an unlicensed purchaser within the bulk transfer/terminal system.
- The gallons of diesel fuel blended in this state outside the bulk transfer/terminal system.
- The gallons of diesel fuel brought into this state in the fuel supply tanks of a commercial motor vehicle licensed as an interstate trucker, or an IFTA licensed vehicle.<sup>80</sup>

The tax is imposed at a rate of 20¢ per gallon on diesel fuel removed from a terminal, imported, blended, sold to an unauthorized person, or otherwise used in a taxable manner and not exempted by statute.<sup>81</sup>

Different filing deadlines apply to the parties producing, marketing and selling and using diesel fuels: Suppliers, permissive suppliers, distributors, importers, exporters, and blenders file reports monthly on the 25th day of the month following the end of

the calendar month. Suppliers and importers may deduct 2% for timely payment of the tax.<sup>82</sup> Distributors and importers may deduct 1.75% for timely payment.<sup>83</sup>

Dyed Diesel Fuel Bonded Users and interstate truckers (except IFTA licensed truckers) file reports quarterly on the 25th day of the month following the end of the calendar quarter. Some qualifying taxpayers may report the tax annually by January 25 of the year following the taxable fuel use.<sup>84</sup>

**2013 and 2014 Updates.** New legislation requires the Comptroller to revoke the end user number issued to a purchaser of dyed diesel fuel after receiving notice of a final judgment against the purchaser for failure to pay an amount owed to a licensed supplier or distributor for the purchase of dyed diesel fuel.<sup>85</sup> The Comptroller may reinstate an end user number with proof that the purchaser whose end user number was revoked has satisfied the final judgment.<sup>86</sup> The Comptroller revised Rule 3.447 to incorporate these revisions. The minimum bond is \$10,000, but may be waived if it's determined it's not necessary to protect the state.

IFTA licensees file reports quarterly on the last day of the month following the end of the calendar quarter.<sup>87</sup>

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<sup>80</sup> Texas Tax Code § 162.201.

<sup>81</sup> Texas Tax Code § 162.202.

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<sup>82</sup> Texas Tax Code §§ 162.217 and 162.220.

<sup>83</sup> Texas Tax Code § 162.214.

<sup>84</sup> Texas Tax Code § 162.215.

<sup>85</sup> Senate Bill 603, effective Sept. 1, 2013.

<sup>86</sup> Texas Tax Code § 162.

<sup>87</sup> See IFTA Articles of Agreement – R960.

Taxpayers may search for licensed persons at:

- <http://aixtcp.cpa.state.tx.us/fuelperm.html>,
- <http://aixtcp.cpa.state.tx.us/newperm.html> and
- <http://ourcpa.cpa.state.tx.us/fuels/FuelsSearch.jsp>.

Gasoline Tax. Texas law imposes a gasoline tax on:

- The net gallons of gasoline removed from the terminal rack or imported into this state, other than in the bulk transfer/terminal system.
- The net gallons of gasoline sold to an unlicensed purchaser within the bulk transfer/terminal system.
- The gallons of gasoline blended in this state outside the bulk transfer/terminal system.
- The gallons of gasoline brought into this state in the fuel supply tanks of a commercial motor vehicle licensed as an interstate trucker, or an IFTA licensed vehicle.<sup>88</sup>

The tax is imposed at a rate of 20¢ per gallon on gasoline removed from a terminal, imported, blended, sold to an unauthorized person, or otherwise used in a taxable manner and not exempted by statute.<sup>89</sup> Different filing deadlines apply to the parties producing, marketing and selling and using gasoline: Suppliers, permissive suppliers, distributors, importers, exporters, and blenders - monthly: 25th day of the month following the end of the calendar month. Suppliers and importers may deduct 2% for timely payment of the

tax.<sup>90</sup> Distributors and importers may deduct 1.75% for timely payment.<sup>91</sup>

Interstate truckers (except IFTA licensed) pay quarterly on the 25th day of the month following the end of the calendar quarter; or yearly, if qualified, on January 25.

IFTA licensees pay quarterly on the last day of the month following the end of the calendar quarter.<sup>92</sup>

Fuel Tax Refund for Volunteer Fire Departments. Texas volunteer fire departments may purchase gasoline and diesel fuel free from state tax in bulk from license holders for the department's exclusive use in motor vehicles and equipment owned or leased and operated by the department.<sup>93</sup>

Volunteer fire departments continue to owe 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. License holders who have paid tax on their purchase of gasoline or diesel fuel and subsequently resell the gasoline or diesel fuel to a Texas volunteer fire department without collecting the tax on or after July 1, 2009, may claim credits on their monthly tax returns.

**2015 Update.** Liquefied Gas (LG) and Liquefied Petroleum Gas (LPG) Tax. Until September 1, 2015, Texas law imposed a tax on the use of LG and LPG as a motor fuel. Motor vehicles licensed in Texas and equipped with liquefied gas systems were required to

<sup>88</sup> Texas Tax Code § 162.101.

<sup>89</sup> Texas Tax Code § 162.102.

<sup>90</sup> Texas Tax Code §§ 162.116 and 162.119.

<sup>91</sup> Texas Tax Code § 162.113.

<sup>92</sup> IFTA Articles of Agreement - R960.

<sup>93</sup> Senate Bill 254 (Effective July 1, 2009).

prepay the tax by purchasing a liquefied gas tax decal. Motor vehicles licensed in other states, Mexico, or licensed under the IFTA pay the tax at the retail pump to a licensed dealer.<sup>94</sup> The liquefied gas tax was repealed by the 84th Texas Legislature in 2015.

All prepaid LG decals previously issued to Texas-registered motor vehicles that operate using LG or LPG were cancelled effective Aug. 31, 2015. The Comptroller sold prepaid LG decals issued beginning July 16, 2015, on a prorated basis. The Comptroller will automatically process refunds for the unused portion of any prepaid LG decals that expired Sept. 1, 2015 or later. This bill repealed Subchapter D, Chapter 162, Section 162.001(40), and made conforming amendments to Tax Code Sections 162.402 (civil penalties) and 162.403 (criminal penalties).

**2013 Legislative Update.** The tax on compressed natural gas (CNG) and liquefied natural gas (LNG) still applies. Effective September 1, 2013, the tax on liquefied natural gas (LNG) and compressed natural gas (CNG) must be collected at the *time of delivery* into the fuel supply tank of a motor vehicle.<sup>95</sup> A licensed dealer collects and remits the \$0.15 per gallon tax.

This bill provides a tax exemption for LNG and CNG delivered into the fuel supply tanks of motor vehicles operated exclusively by:

- the United States government;
- Texas public school districts;
- commercial transportation companies and metropolitan rapid transit authorities operating

<sup>94</sup> See Texas Tax Code §§ 162.301 and 162.305.

<sup>95</sup> House Bill 2148, Effective Sept. 1, 2013.

under Transportation Code Chapter 451 that provide public school transportation services to Texas public school districts;

- Texas volunteer fire departments;
- Texas counties;
- nonprofit electric cooperatives; and
- nonprofit telephone cooperatives.

The tax does not apply to LNG and CNG used in:

- motor vehicles used exclusively off-highway;
- off-highway equipment;
- stationary engines;
- motorboats;
- aircraft;
- equipment used solely for servicing aircraft and used exclusively off-highway;
- locomotive engines; or
- any device (other than a motor vehicle) operated or intended to be operated on public highways.

Qualified transit companies that paid tax on the purchase of LNG or CNG may request a refund of \$0.01 per gasoline gallon equivalent of compressed natural gas or diesel gallon equivalent of liquefied natural gas used in transit vehicles.<sup>96</sup>

**2013 Licensing Requirements.** In order to implement the new tax LNG and CNG license requirements, the Comptroller mailed details on the new requirements, along with a questionnaire, to all current liquefied gas dealers on July 12, 2013. The Comptroller issued new licenses to dealers returning their questionnaires by August 20, 2013. Dealers that did not return the questionnaires were issued

<sup>96</sup> Texas Tax Code Chapter 162.

liquefied gas decal licenses and were advised to anticipate contact from the Comptroller's office at a later date.<sup>97</sup> In 2015 the tax on LG and LPG was repealed and the decals are no longer valid.

**2015 Update.** In the past, metropolitan rapid transit authorities and regional transportation authorities that maintain private LNG or CNG refueling facilities inaccessible to the public could opt to prepay the LNG or CNG tax for each transit vehicle by purchasing an annual decal. Effective September 1, 2015, these decals are no longer available and no longer required to prepay the tax. Therefore, transit authorities with their own facilities must obtain LNG or CNG dealer licenses and remit tax on each gallon of LNG or CNG delivered into their transit vehicles. Transit authorities that do not maintain a private LNG or CNG storage facility are required to pay the tax on each gallon delivered into the transit vehicles.

LNG or CNG dealers with an average quarterly tax liability of more than \$600 must file quarterly reports. Otherwise, LNG or CNG dealers file annual returns.

Licensed LNG or CNG dealers are eligible to claim a refund on bad debts.

Texas Emissions Reduction Program (TERP) Surcharge. Texas law imposes a surcharge on the sale, use, lease or rental of off-road, heavy-duty diesel equipment and is based on the sale, lease or rental amount. The surcharge is 2% of the sales or lease price of certain equipment. Reports are due monthly, quarterly or annually, based on the level of activity.

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<sup>97</sup> September 2013 Tax Policy News.

The tax is due by the 20th of the month following the end of the taxable period.<sup>98</sup>

In 2003, the legislature increased the Texas emissions reduction plan surcharge on sales of off-road, heavy-duty diesel equipment from 1% to 2%.<sup>99</sup> Effective July 1, 2003, the surcharge applies not only to construction equipment but also to other off-road, heavy-duty diesel equipment, including but not limited to the following:

- Mining equipment;
- Oil or gas exploration and production equipment;
- Rock and gravel crushers;
- Forklifts;
- Cement mixers;
- Tractors; and
- Motorized cranes.

Effective September 1, 2005, the surcharge did not apply to recreational vehicles that were not held or used in the production of income.<sup>100</sup>

**2015 Update.** Effective September 1, 2015, HB 7 reduces the Texas Emissions Reduction Plan Surcharge imposed on the sale, lease or rental of off-road, heavy-duty diesel equipment from 2% to 1.5%.

The TERP surcharge also applies to Texas purchases of diesel-powered, on-road motor vehicles with a gross vehicle registered weight exceeding 14,000 pounds applies to both new and used

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<sup>98</sup> Texas Tax Code § 151.0515.

<sup>99</sup> H.B. 1365 (78th Legis. Session) (amending Texas Tax Code § 151.0515).

<sup>100</sup> Senate Bill 867, amending Texas Tax Code § 151.0515. A recreational vehicle is defined as a motor vehicle primarily designed as temporary living quarters for recreational camping or travel.

vehicles and to motor vehicles purchased inside or outside Texas. For model years 1996 and earlier, the tax rate is 2.5% of the total consideration paid for the vehicle. For model years 1997 and later, the rate is 1.5%.

**Automotive Oil Sales Fee.** Texas law imposes a fee on the first sale of automotive oil delivered to a location in Texas and sold to a purchaser who is not an automotive oil manufacturer or distributor; and on automotive oil imported into Texas for sale, use, or consumption. The fee is imposed on oil manufacturers, distributors, and importers at the rate of one cent per quart of automotive oil imported or sold in Texas. Automotive oil sales fee reports are due quarterly by the 25th day of the month following the end of each calendar quarter.

**Petroleum Products Delivery Fee.** Texas law imposes a petroleum products delivery fee, which is collected by bulk facility operators (rail, pipeline, barge, or refinery terminals) upon the withdrawal of petroleum products into cargo tanks and on petroleum products imported into Texas. The fee varies according to the net total gallons of all petroleum products withdrawn. Reports are due monthly on the 25th day of the month following the end of each calendar month.<sup>101</sup>

**Changes effective July 1, 2012.** The Texas legislature reauthorized and made permanent the petroleum products delivery fee, which had been set to

<sup>101</sup> Texas Water Code § 26.3574. S.B. 1863 (2005 Texas Legislature) continues the petroleum products delivery fee at its current rate. The fee will expire on September 1, 2007.

expire on Aug. 31, 2011.<sup>102</sup> The law requires the Texas Commission on Environmental Quality (TCEQ) to set, by rule, the petroleum product delivery fee rates. The fee applies to all petroleum products imported into Texas or withdrawn from a Texas bulk storage facility and delivered into cargo tanks or barges.

The TCEQ fee is based upon total net gallons delivered, as shown in this schedule, effective July 1, 2012:

Net Gallons Delivered	Fee
< 2,500	\$ 2.75
≥ 2,500 but < 5,000	\$ 5.50
≥ 5,000 but < 8,000	\$ 8.65
≥ 8,000 but < 10,000	\$11.00
≥ 10,000 per 5,000 or increment thereof	\$ 5.50

For gasoline deliveries of at least 7,000 but less than 8,000 net gallons (whether single product type or split load), special rules apply:

- If the gasoline portion of the delivery is less than 7,000 net gallons, the fee is \$8.65.
- If the gasoline portion of the delivery is at least 7,000 net gallons, the total load is presumed to be at least 8,000 gallons and the fee is \$11.00.<sup>103</sup>

**Coastal Protection Fee.** Texas law imposes a coastal protection fee on all crude oil and condensate transferred from or to vessels at a marine terminal located in Texas. The tax is imposed at the rate of 2¢ per barrel of crude oil or condensate. The rate can vary or the fee

<sup>102</sup> House Bill 2694, passed during the 82nd Legislature Regular Session (2011).

<sup>103</sup> Tax Policy News, May 2012.

can be suspended, depending on the balance in the Coastal Protection Fund. The Comptroller may suspend the fee when the unobligated balance in the fund reaches \$25 million.

International Fuels Tax Agreement (IFTA). In discussing oil and gas taxes and motor fuels taxes it's important to know about IFTA. IFTA is not a separate tax or fee. It's an agreement that provides for the consolidated reporting of motor fuels (i.e., Gasoline, Diesel Fuel, Liquefied Gas) taxes for qualifying commercial motor vehicles traveling in more than one state or province of Canada. Each of the member jurisdictions set the applicable tax rates. Interstate carriers based in Texas report fuel tax paid in all member jurisdictions. The reports are due quarterly on the last day of the month following the end of each calendar quarter.<sup>104</sup>

Motor Fuels Transporter Licenses. Texas law requires sole owners, partnerships, corporations, or other organizations transporting gasoline or diesel fuel in this state by truck, railroad tank car or marine vessel to be licensed with the Comptroller's Office. The license requirement applies to motor fuels transporters who transport fuel outside the bulk transfer/terminal system.<sup>105</sup> Persons transporting their own fuel in their own cargo tanks for their own use and not for resale are not required to obtain a motor fuel transporter license. Motor fuel transporters must file informational reports quarterly by the 25th day of the month following the end of the calendar

quarter.<sup>106</sup> The informational reports disclose the transporters' interstate and intrastate transportation of gasoline and diesel fuel during the previous quarter.<sup>107</sup>

#### B. Late Filing Penalties.

Effective October 1, 2011, the Texas legislature enacted a \$50 penalty for certain taxpayers who file their tax reports late.<sup>108</sup> The penalty applies to the following tax types affecting the oil and gas industry and is due regardless of whether the taxpayer later files the report or whether any taxes or fees were due:

- franchise tax;
- motor fuels tax;
- sales and use tax (including direct pay); and
- the off-road, heavy-duty diesel equipment surcharge tax.

A person who doesn't receive or obtain the correct report form from the Comptroller's office is not relieved of the responsibility to file a report and remit the required tax or fee.<sup>109</sup>

<sup>104</sup> More information is available on the International Fuels Tax Association, Inc. website at: <http://www.iftach.org/index4.htm>.

<sup>105</sup> Texas Tax Code § 162.001.

<sup>106</sup> Texas Tax Code §§ 162.114 and Sec. 162.215.

<sup>107</sup> Texas Tax Code §§ 162.121 and 162.222.

<sup>108</sup> Senate Bill 1, 82nd Legislature, 1st Called Session, Article 14 (Effective Oct. 1, 2011).

<sup>109</sup> Tax Policy News, May 2012.



