
DIGEST

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HB 736 Engrossed

2015 Regular Session

Ortego

Abstract: Provides relative to the state excise tax levied on special fuels and provides for the administration and collection of the tax.

Present law provides for the levy of a tax of 16¢ per gallon on all special fuels including compressed natural gas, liquefied natural gas, and liquefied petroleum gas (hereinafter "special fuel") sold, used, or consumed in the state for the operation of motor vehicles licensed or required to be licensed for highway use. Present law levies an additional tax of 4¢ dedicated to the Transportation Infrastructure Model for Economic Development (TIMED) Program.

Present law requires owners and operators of motor vehicles with a gross weight of 10,000 pounds or less to pay the tax levied pursuant to present law for special fuels in accordance with an annual flat rate equal to 80% of \$150, based on a 16¢ per gallon special fuels tax rate or a variable rate of 80% of the current special fuels tax rate. The owner or operator of a motor vehicle having a gross weight of more than 10,000 pounds shall pay the special fuels tax by paying the rate of 80% of the special fuels tax rate in effect on the fuel used. The aggregate annual tax paid for these vehicles shall not be less than 80% of \$150 based on a 16¢ per gallon special fuels tax per motor vehicle. Present law provides for a schedule for determining the amount of special fuel used the previous year based on the gross weight of the vehicle and the miles per gallon

Proposed law changes present law in that, beginning Jan. 1, 2016, the tax levied on special fuels shall not be collected pursuant to the annual decal but rather the amount of the tax shall be converted from a tax levied per gallon on such special fuel to a tax levied per gallon but based on the special fuel's energy content as follows:

- (1) Diesel gallon equivalent for liquefied natural gas (LNG) shall be equal to 6.060 pounds of LNG and shall be the unit of measurement of the tax levied pursuant to the provisions of proposed law.
- (2) Diesel gallon equivalent for liquefied petroleum gas (LPG) shall be equal to 3.066 pounds of LPG and shall be the unit of measurement of the tax levied pursuant to proposed law.
- (3) Gasoline gallon equivalent for compressed natural gas (CNG) shall be equal to 5.660 pounds of CNG and shall be the unit of measurement of the tax levied pursuant to proposed law.

Present law requires owners of school buses propelled by a special fuel that are used to transport La. students to pay one-half of the annual flat rate. Further authorizes a credit for the owner of any

school bus which operates on special fuel which transports La students to pay the tax levied on the fuel. School bus owners shall be entitled to a credit equal to 50% of the taxes paid. The credit shall be claimed on a return filed for the period in which a fuel purchase occurred.

Proposed law retains present law.

Proposed law provides that the person or entity possessing a special fuels license shall be considered a retail dealer or dealer for purposes of imposition of the tax levied on special fuels and shall be the party liable for the tax. The dealer shall add the tax to the selling price of the fuel so that the tax is paid by the ultimate consumer or purchaser of the fuel. The tax shall become part of the sales price of the special fuel and shall be considered a debt of the purchaser. If unpaid, the tax shall be recoverable in the same manner as the original sales price. The dealer shall provide an invoice or receipt to the purchaser that states the rate and amount of tax added to the selling price or that indicates that no tax was added to the selling price.

Proposed law provides that the special fuels tax is imposed on the delivery of special fuels into the fuel supply tank of a motor vehicle by a special fuel fleet dealer or other retail dealer not in connection with a sale of the special fuel. The special fuel fleet dealer or other retail dealer shall be the liable party for the tax.

Present law requires persons who install or alter special fuel carburetion equipment to file a written report, on forms prescribed by the secretary, not later than 15 days after the installation or alteration of the equipment. Failure to file the report shall subject the person to a penalty of \$100. The penalty shall be multiplied by the number of vehicles on which installation or alterations were performed.

Proposed law repeals present law.

Proposed law provides that all special fuel sold by a dealer and delivered into the fuel supply tank of a motor vehicle is presumed to be subject to tax, and the dealer is liable for the tax unless the dealer maintains adequate records to establish that the fuel was exempt from tax. Further provides that all special fuel delivered into the fuel supply tank of a motor vehicle by a special fuel fleet dealer or other special fuels retail dealer not in connection with a sale is presumed to be subject to tax, and the special fuel fleet dealer or other retail dealer is liable for the tax unless the dealer maintains adequate records to establish that the fuel was exempt from the tax.

Present law requires persons who operate a motor vehicle powered by a special fuel on the highways of this state to apply for permission to operate on the highways of this state. The application shall be on a form prescribed by the secretary. When the applicant pays the annual flat rate for the tax, the secretary shall issue the applicant a decal which signifies that the special fuel tax has been paid. Present law requires the secretary to provide for a procedure for the annual payment of the tax and issuance of the decal. Failure to obtain an annual decal shall result in a penalty to be assessed of \$50 for a first violation and a penalty of \$100 for each subsequent violation.

Proposed law repeals present law as it relates to issuance of an annual decal. However, proposed law adds a transitional provision for the department to continue issuing decals from July 1, 2015,

through Dec. 31, 2015, for the operation of vehicles which use LNG, LPG, or CNG in order for the taxes due on this fuel to be paid. The amount of the decal shall be calculated at a rate of one-twelfth of the total annual decal amount for each month the decal is valid.

Proposed law prohibits a person from selling or delivering special fuel into the fuel supply tank of a motor vehicle and on which tax is imposed unless the person holds a dealer's license. Proposed law provides for requirements for the application for a dealer's license including the form provided by the secretary and the amount of the bond required to be provided. A dealer's license is not transferable and shall remain in effect until surrendered, canceled, or revoked. The license must be posted in a conspicuous place or kept available for inspection at the principal place of business of the license holder.

Proposed law provides that a dealer's license shall be permanent and valid during the period the license holder has in force and effect the required bond or security and furnishes timely reports and supplements as required by the secretary, or until the license is surrendered by the license holder or canceled by the secretary. Proposed law requires the secretary to cancel a license if the license holder has not reported a delivery of special fuel during the previous nine months.

Proposed law requires the secretary to maintain a record of all persons to whom a license has been issued and all persons holding a current license by license category.

Proposed law provides for general requirements regarding license applications, form requirements, and bond requirements. Upon approval of the bond required pursuant to proposed law, the secretary is required to issue the appropriate license or licenses to an applicant. Proposed law includes specific conditions in which the secretary may refuse to issue a license to the applicant or any principal of the applicant, such as if a license or registration issued by another state was revoked, denied, or canceled for cause or if a federal certificate of registry was revoked, and if the applicant or any principal of the applicant has been convicted of any offense involving fraud or misrepresentation or has been convicted of any other offense that indicates that the applicant or any principal of the applicant may not comply with proposed law.

Proposed law prohibits the secretary from issuing a license if an applicant or anyone connected with the applicant's business has been convicted of a felony.

Proposed law authorizes the secretary to revoke a license after sending written notice by certified mail to the licensee's last known address for certain specific reasons including the licensee filing a false return, report of data, or the failure, refusal, or neglect of the licensee to file a return or report.

Proposed law prohibits the secretary from granting a license or requires the secretary to suspend a license previously granted for a period of at least 30 days, or until such time as the applicant supplies the secretary with evidence to the contrary, where there is prima facie evidence, at the discretion of the secretary, that the applicant is not a person of good moral character, or has violated the provisions of proposed law. The period of suspension shall not exceed 90 calendar days from the date of suspension, unless at the end of the 90 day period, the secretary determines that the reason for the suspension has not been resolved.

Proposed law provides for the cancellation, revocation, or surrender of a license in specific circumstances.

Proposed law requires license applicants to file surety bonds executed in favor of the secretary when the secretary approves an application. The amount of the bond varies depending on the license the applicant is applying for. The secretary is authorized to waive the surety bond requirements when a licensee agrees to maintain assets in La. of a net value of not less than one and one-fourth times the amount of the bond which would otherwise be required or when a licensee has not been delinquent in remitting taxes accrued or accruing during the three-year period immediately preceding the filing of an application for waiver of the bond.

Proposed law requires a person who receives or collects special fuel taxes to hold the amount received or collected in trust for the benefit of the state and shall have a fiduciary duty to remit the amount of taxes received or collected to the secretary. A dealer who receives a payment of tax may not apply the payment of tax to a debt that the person making the payment owes for special fuel purchased from the dealer.

Proposed law requires a licensed dealer to file a monthly return no later than the 20th day of the month following the end of the reporting period. If a licensed retail dealer files a return and remits the tax due on or before the due date, 1% of the tax due is allocated to the licensed retail dealer for the expense of collecting, accounting for, reporting, and timely remitting the taxes collected and for keeping the records.

Proposed law provides generally for claims for refunds of special fuel taxes paid on forms provided by the secretary and documentation which must accompany claims for refund.

Proposed law requires dealers to maintain certain records until the fourth anniversary of the date they were created. Records shall be open to inspection at all times by the secretary.

Proposed law requires a licensee to notify the secretary in writing at least 30 days prior to the discontinuance, sale, or transfer of a business and to surrender the license to the secretary. Provides for information which shall be included in the notice of discontinuance. If a licensee liable for any tax, interest, or penalty sells or transfers the business or quits the business, the licensee shall make a final return and payment within 15 days after the date of selling, transferring, or quitting the business. The successor or assigns, if any, shall withhold sufficient amounts of the purchase monies to cover the amount of taxes, interest, and penalties due and unpaid until such time as the former owner shall produce a receipt from the secretary showing that all taxes, interest, and penalties have been paid, or a certificate stating that no taxes, interest, or penalties are due.

Proposed law prohibits a person from engaging in any business activity for which a license is required without first obtaining and subsequently retaining a valid license. Failure to obtain a valid license shall result in the levy of a penalty of \$10,000 for a first violation. For each subsequent violation, the penalty shall be multiplied by the sum of the current violation plus all prior violations.

Proposed law provides for remedies for the Dept. of Revenue to enforce collection and remittance

of the special fuels tax, interest, penalties, or applicable costs or failure to furnish bond. Further authorizes the secretary and other law enforcement officers to stop any commercial motor vehicle which appears to be operating with special fuels for the purpose of examining the invoices to determine whether the taxes imposed by present law have been paid. If it is determined that the tax has not been paid, the secretary or law enforcement officer may assess the tax due together with the applicable penalty to the owner or driver of the vehicle. Proposed law authorizes the impoundment of any vehicle found to be operating in violation of proposed law or any vehicle for which inspection has been refused until an inspection has been completed or any tax, interest, penalties, and other charges have been paid.

Proposed law authorizes the secretary to search and examine any warehouse, boat, store, storeroom, vehicle, or any and all means of transportation, where there is probable cause to believe proposed law is being violated. The secretary may examine the books and records of companies or firms operating in this state in order to determine licensees that are importing or otherwise shipping special fuel which is subject to the tax. Failure of a person to allow an inspection of records or storage facilities or refuses to permit an audit shall result in a penalty of \$5,000 in addition to any other penalty imposed by law.

Proposed law provides for the seizure of special fuel when it is discovered that special fuel is illegally imported into or illegally transported, delivered, stored, or sold in this state until the tax, interest, and penalties levied or imposed are assessed and paid. Proposed law further authorizes the secretary to take action in a summary proceeding against the owner of any automobile or truck used in the illegal transportation of special fuels to demand the forfeiture and sale of the automobile or truck used in the illegal transportation. All funds collected from the seized and forfeited property shall be paid into the state treasury. Requires the court to fix attorney fees representing the owner when appointed by the court at a rate not to exceed 10%.

Proposed law provides for a listing of offenses that constitute a misdemeanor, and upon conviction, shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned not more than two years, or both. Proposed law provides for a listing of offenses which, if committed with the intent of evading tax, and upon conviction, shall be fined not less than \$5,000 nor more than an amount commensurate to the amount of tax combined with interest and penalties lost to the state due to the illegal actions or imprisoned with or without hard labor for not less than two nor more than 10 years, or both.

Present law authorizes the Dept. of Revenue to collect a fee of $\frac{4}{32}$ of 1¢ per gallon on all petroleum products distributed or sold in the state to defray the expenses connected with the inspection, testing, and analyzing of petroleum products in this state. The fee does not include liquefied petroleum gas, natural gas, or bulk sale or transfers.

Proposed law changes present law to specifically provide that the fee imposed by the Dept. of Revenue shall apply to CNG and LNG and that the fee shall be remitted to the department when the tax on the fuel is remitted to the department. Proposed law retains present law as it relates to fees on LPG.

Effective July 1, 2015.

(Amends R.S. 3:4602(12.1) and 4684 and R.S. 47:818.2(18), (43), (44), (54), (58), and (63), and 818.101 through 818.104; Adds R.S. 47:818.105 through 818.121)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Change the diesel gallon equivalent for LPG from 4.2 pounds to 3.066 pounds.
2. Delete provisions relative to an interstate trucker's license which authorizes a person who commercially operates certain motor vehicles fueled by special fuel to report and pay the tax and take a credit or claim a refund as provided in proposed law. Further delete all requirements and limitations for interstate trucker's licenses, including bond provisions.
3. Add transitional provisions for the issuance of decals from July 1, 2015, through Dec. 31, 2015, to persons operating vehicles which use or are capable of using LNG, LPG, or CNG in order to continue collecting the excise tax due on the fuel. Further provide for a reduced amount for the decal since it will only be valid for six months.
4. Change reporting requirements for returns from a licensed dealer from filing returns *quarterly* no later than the 25th day of the month following the end of the reporting period to filing returns *monthly* no later than the 20th day of the month following the end of the reporting period.
5. Clarify that the fee imposed by the Dept. of Revenue for the inspection, testing, and analyzing of special fuels shall apply to CNG and LNG and requires the fee to be remitted to the department when the tax on the fuel is remitted to the department.
6. Delete LPG from the provisions of proposed law as it relates to fees.