

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 23  
Committee Substitute Favorable 5/2/91

Short Title: Fuel Tax Changes To Enter Fuel Pact.

(Public)

Sponsors:

Referred to:

February 6, 1991

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE FUEL TAX STATUTES TO ENABLE NORTH CAROLINA TO ENTER THE INTERNATIONAL FUEL TAX AGREEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-449.22 reads as rewritten:

**"§ 105-449.22. Leased motor vehicles.**

(a) ~~Except as provided in this section, the lessee of a motor vehicle, and not the lessor of the motor vehicle, is the "user," "user-seller," or "supplier," as the case may be, for the purposes of this Article.~~

(b) ~~A lessor of a motor vehicle who gives written notice, by filing a report or otherwise, to the Secretary that the lessor desires to be taxed as a user, user-seller or supplier may be treated by the Secretary as a user, user-seller, or supplier with respect to a motor vehicle leased to another by him as well as fuel consumed by the leased motor vehicle when the lessor supplies or pays for the fuel consumed by the motor vehicle or makes rental or other charges calculated to include the cost of the fuel. A lessee may exclude from reports made pursuant to this Article a motor vehicle of which he is the lessee if that motor vehicle is leased from a lessor who is a user, user-seller, or supplier pursuant to this section.~~

(c) ~~Subsections (a) and (b) govern the primary liability of lessors and lessees of motor vehicles under this Article. Both the lessor and lessee, however, are jointly and severally liable for compliance with this Article.~~

The user under this Article of fuel consumed by a leased motor vehicle whose operations are reported under Article 36B of this Chapter is the person who is the motor

1 carrier under Article 36B for reporting operations of the motor vehicle. The user under  
2 this Article of fuel consumed by a leased motor vehicle whose operations are not  
3 reported under Article 36B of this Chapter is the person who is liable for payment for  
4 the fuel consumed by the motor vehicle."

5 Sec. 2. G.S. 105-449.37(a) reads as rewritten:

6 "(a) Definitions. – As used in this Article unless the context clearly requires  
7 otherwise:

8 (1) 'Motor carrier' means every person, firm, or corporation who operates  
9 or causes to be operated on any highway in this State a motor vehicle  
10 used, designed, or maintained for transportation of persons or property  
11 and (i) having two axles and a gross vehicle weight or registered gross  
12 vehicle weight exceeding 26,000 pounds, (ii) having three or more  
13 axles regardless of weight, or (iii) used in combination when the  
14 weight of the combination exceeds 26,000 pounds gross vehicle  
15 weight. The term does not include the United States, ~~the State or its~~  
16 ~~political subdivisions, operators of special mobile equipment as defined in~~  
17 ~~G.S. 20-4.01(44), or nonprofit religious, educational, charitable, or~~  
18 ~~benevolent organizations; States, the State, or a political subdivision of~~  
19 the State.

20 (1a) 'Motor vehicle' means motor vehicle as defined in G.S. 20-4.01(23)  
21 except that the term does not include special mobile equipment as  
22 defined in G.S. 20-4.01(44) or recreational vehicles; vehicles.

23 (2) 'Operations' means operations of all vehicles described in  
24 subdivision (1), whether loaded or empty and whether or not  
25 operated for ~~compensation; and compensation.~~

26 (3) 'Secretary' means the Secretary of Revenue."

27 Sec. 3. G.S. 105-449.39 reads as rewritten:

28 **"§ 105-449.39. Credit for payment of motor fuel tax.**

29 Every motor carrier subject to the tax levied by this Article is entitled to a credit for  
30 tax paid by the carrier on fuel purchased in the ~~State.~~ State at a rate equal to the flat  
31 cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the  
32 quarter for which the credit is claimed. To obtain this credit, the motor carrier must  
33 furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed  
34 has been paid.

35 If the amount of a credit to which a motor carrier is entitled for a quarter exceeds the  
36 motor carrier's liability for that quarter, the excess may, in accordance with rules  
37 adopted by the Secretary, be refunded to the motor carrier or carried forward and  
38 applied to the motor carrier's tax liability for another quarter. ~~The Before the Secretary~~  
39 ~~may not allow a refund without auditing~~ allows a motor carrier a refund, the Secretary may  
40 audit the motor carrier's records unless or require the motor carrier:

41 (1) ~~Has furnished a bond under G.S. 105-449.40; or~~

42 (2) ~~Has complied with this Subchapter and the rules adopted under the~~  
43 ~~Subchapter for at least a one-year period preceding the date the~~  
44 ~~application for a refund is filed.~~

1 carrier to furnish a bond under G.S. 105-449.40."

2 Sec. 4. G.S. 105-449.40 reads as rewritten:

3 **"§ 105-449.40. Refunds to motor carriers who give Secretary may require bond.**

4 ~~A motor carrier may give a bond in an amount no less than five hundred dollars~~  
5 ~~(\$500.00) nor more than ten thousand dollars (\$10,000) payable to the State and~~  
6 ~~conditioned that the motor carrier will pay all taxes due and to become due under this~~  
7 ~~Article. So long as the bond remains in force the Secretary may order refunds to the~~  
8 ~~motor carrier in the amounts appearing to be due on applications duly filed by the~~  
9 ~~carrier under G.S. 105-449.39 without first auditing the records of the carrier. Such~~  
10 ~~bond shall be in such form and with such surety or sureties as may be required by the~~  
11 ~~Secretary. (a) Authority. – The Secretary may require a motor carrier to furnish a bond~~  
12 ~~when any of the following occurs:~~

13 (1) The motor carrier fails to file a report within the time required by this  
14 Article.

15 (2) The motor carrier fails to pay a tax when due under this Article.

16 (3) After auditing the motor carrier's records, the Secretary determines that  
17 a bond is needed to protect the State from loss in collecting the tax due  
18 under this Article.

19 (b) Amount. – A bond required of a motor carrier under this section may not be  
20 more than the larger of the following amounts:

21 (1) Five hundred dollars (\$500.00).

22 (2) Four times the motor carrier's average tax liability or refund for a  
23 reporting period.

24 A bond must be in the form required by the Secretary."

25 Sec. 5. G.S. 105-449.42A reads as rewritten:

26 **"§ 105-449.42A. Leased motor vehicles.**

27 (a) Lessor in Leasing Business. – Except as provided in this section, the lessee of  
28 a motor vehicle, and not the lessor of the motor vehicle, is a "motor carrier" for the  
29 purposes of this Article. A lessor who is regularly engaged in the business of leasing or  
30 renting motor vehicles without drivers for compensation is the motor carrier for a leased  
31 or rented motor vehicle unless the lessee of the leased or rented motor vehicle gives the  
32 Secretary written notice, by filing a report or otherwise, that the lessee is the motor  
33 carrier. In that circumstance, the lessee is the motor carrier for the leased or rented  
34 motor vehicle.

35 Before a lessee gives the Secretary written notice under this subsection that the  
36 lessee is the motor carrier, the lessee and lessor must make a written agreement for the  
37 lessee to be the motor carrier. Upon request of the Secretary, the lessee must give the  
38 Secretary a copy of the agreement.

39 (b) Independent Contractor. – A lessor of a motor vehicle who gives written  
40 notice, by filing a report or otherwise, to the Secretary that the lessor desires to be taxed  
41 as a motor carrier may be treated by the Secretary as a motor carrier with respect to a  
42 motor vehicle leased to another by him as well as motor fuel consumed by the leased  
43 motor vehicle when the lessor supplies or pays for the motor fuel consumed by the  
44 motor vehicle or makes rental or other charges calculated to include the cost of the fuel.

1 ~~A lessee motor carrier may exclude from reports made pursuant to this Article a motor~~  
2 ~~vehicle of which he is the lessee if that motor vehicle is leased from a lessor who is a~~  
3 ~~motor carrier pursuant to this section. The lessee of a motor vehicle that is leased from~~  
4 ~~an independent contractor is the motor carrier for the leased motor vehicle unless either~~  
5 ~~of the following applies:~~

6 (1) The motor vehicle is leased for fewer than 30 days.

7 (2) The motor vehicle is leased for at least 30 days and the lessor gives the  
8 Secretary written notice, by filing a report or otherwise, that the lessor  
9 is the motor carrier.

10 If either of these circumstances applies, the lessor is the motor carrier for the leased  
11 motor vehicle.

12 Before a lessor gives the Secretary written notice under subdivision (2) that the  
13 lessor is the motor carrier, the lessor and lessee must make a written agreement for the  
14 lessor to be the motor carrier. Upon request of the Secretary, the lessor must give the  
15 Secretary a copy of the agreement.

16 (c) Liability. – Subsections (a) and (b) govern the primary liability of lessors and  
17 lessees of motor vehicles under this Article. Both the lessor and lessee, however, are  
18 jointly and severally liable for compliance with this Article."

19 Sec. 6. G.S. 105-449.47 reads as rewritten:

20 "**§ 105-449.47. Registration of vehicles.**

21 A motor carrier may not operate or cause to be operated in this State any vehicle  
22 listed in the definition of motor carrier unless both the motor carrier ~~has registered the~~  
23 ~~vehicle~~ and the motor vehicle are registered with the Secretary for purposes of the tax  
24 imposed by this ~~Article with the Secretary.~~ Article.

25 Upon application, the Secretary shall register a motor carrier and shall issue a  
26 ~~registration card and at least one identification marker for a vehicle.~~ each motor vehicle  
27 operated by the motor carrier. The registration card ~~A copy of the registration of a motor~~  
28 carrier shall be carried in the each motor vehicle for which it was issued ~~operated by the~~  
29 motor carrier when the vehicle is in this State. ~~The~~ An identification marker shall be  
30 clearly displayed at all times and shall be affixed to the vehicle for which it was issued  
31 in the place and manner designated by the Secretary. ~~Every identification marker issued~~  
32 ~~shall bear a number that corresponds to the number on the registration card issued for the same~~  
33 ~~vehicle.~~ Registrations ~~Registration cards~~ and identification markers required by this  
34 section shall be issued on a calendar year basis. The Secretary may renew ~~registration~~  
35 ~~cards and identification markers without issuing new cards and markers.~~ a registration or an  
36 identification marker without issuing a new registration or identification marker. All  
37 identification markers issued by the Secretary remain the property of the State. The  
38 Secretary may withhold or revoke a registration ~~card and~~ or an identification marker  
39 when a motor carrier fails to comply with this Article or Article 36A of this  
40 Subchapter."

41 Sec. 7. G.S. 105-449.49 reads as rewritten:

42 "**§ 105-449.49. Temporary permits.**

43 Upon application to the Secretary and payment of a fee of twenty-five dollars  
44 (\$25.00), a motor carrier may obtain a temporary permit authorizing the carrier to

1 operate a vehicle in the State without registering the vehicle in accordance with G.S.  
2 105-449.47 for not more than 20 days. A motor carrier to whom a temporary permit has  
3 been issued may elect not to report its operation of the vehicle during the 20-day period,  
4 as otherwise required by G.S. 105-449.45. ~~A motor carrier who files a report for a quarter in  
5 which the carrier paid a temporary permit fee may claim a credit for the amount of the fee. A  
6 motor carrier whose operations are exclusively intrastate may obtain a refund of the fee by  
7 filing a report for the quarter in which the fee was paid."~~

8           Sec. 8. This act becomes effective January 1, 1992.