

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1971

Short Title: Motor Oil Tax/Used Oil Program.

(Public)

Sponsors: Representative Hackney.

Referred to: Finance.

June 1, 1994

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPOSE A TAX UPON MOTOR OIL AT THE POINT OF FIRST SALE
3 AND TO ESTABLISH THE USED OIL COLLECTION PROGRAM TO
4 ENCOURAGE THE PROPER MANAGEMENT OF USED OIL GENERATED BY
5 PRIVATE CITIZENS WHO CHANGE THEIR OWN OIL, AS RECOMMENDED
6 BY THE ENVIRONMENTAL REVIEW COMMISSION.

7 The General Assembly of North Carolina enacts:

8 Section 1. Chapter 105 of the General Statutes is amended by adding a new
9 Article to read:

10 **"ARTICLE 2E.**
11 **"SCHEDULE B-E.**
12 **"MOTOR OIL TAX.**

13 **"§ 105-113.120. Definitions.**

14 The following definitions apply to this Article:

- 15 (1) Distributor. – A person who does any of the following:
16 a. Manufactures or produces motor oil.
17 b. Acquires motor oil for sale to a wholesale dealer or a retail
18 dealer.
19 c. Imports motor oil into this State for use by that person.
20 (2) Motor oil. – Any oil or similar lubricant classified for use in an
21 internal combustion engine, crankcase, transmission, gear box, or
22 differential.
23 (3) Retail dealer. – A person who sells motor oil to the ultimate consumer
24 of the motor oil.

1 (4) Sale. – A transfer, a trade, an exchange, or a barter, in any manner or
2 by any means, with or without consideration.

3 (5) Wholesale dealer. – A person who sells motor oil to another for resale.

4 **"§ 105-113.121. Tax imposed.**

5 An excise tax is imposed on motor oil at the rate of two cents (2¢) per quart.

6 **"§ 105-113.122. Motor oil license required.**

7 (a) Distributors and Wholesale Dealers. – Distributors and wholesale dealers
8 shall obtain a continuing motor oil license for each place of business for which a tax of
9 twenty-five dollars (\$25.00) shall be paid. For the purpose of this section, 'place of
10 business' means any place where a distributor manufactures or produces motor oil or
11 any place where a distributor or a wholesale dealer receives or stores non-tax-paid
12 motor oil.

13 (b) Retail Dealers. – Retail dealers shall obtain for each place of business a
14 continuing motor oil license for which a tax of five dollars (\$5.00) shall be paid. For
15 the purpose of this subsection, 'place of business' means any place where a retail dealer
16 receives non-tax-paid motor oil or manufactures or produces motor oil.

17 **"§ 105-113.123. Liability for tax and payment of excise taxes.**

18 (a) Primary Liability. – The distributor, wholesale dealer, or retail dealer who
19 first distributes, sells, or otherwise handles motor oil in this State is liable for the tax
20 imposed by this Article. A distributor, wholesale dealer, or retail dealer who brings into
21 this State motor oil made outside the State is the first person to handle the motor oil in
22 this State. A distributor, wholesale dealer, or retail dealer who is the original consignee
23 of motor oil that is made outside the State and is shipped into the State is the first person
24 to handle the motor oil in this State.

25 (b) Secondary Liability. – A retail dealer who acquires non-tax-paid motor oil
26 from a distributor or a wholesale dealer is liable for any tax due on the motor oil.

27 (c) Reporting Periods. – Except for tax on a designated sale under G.S. 105-
28 113.126, the taxes levied by this Article are payable when a report is required to be
29 filed. A report is due on a monthly or a quarterly basis. A monthly report covers sales
30 and other activities occurring in a calendar month and is due within 15 days after the
31 end of the month covered by the report. A quarterly report covers sales and other
32 activities occurring in a calendar quarter and is due within 15 days after the end of the
33 quarter covered by the report. A report shall be filed on a form provided by the
34 Secretary and shall contain the information required by the Secretary.

35 A person who is consistently liable for less than fifty dollars (\$50.00) of tax a month
36 may, with the approval of the Secretary, file a report on a quarterly basis. All others
37 who are liable for the tax imposed by this Article must file a report on a monthly basis.
38 The amount of tax payable by a person for a reporting period is the amount payable by
39 all places of business owned or operated by that person.

40 **"§ 105-113.124. Tax discount.**

41 A distributor, a wholesale dealer, or a retail dealer who is liable for the excise tax on
42 motor oil and who files a timely report under G.S. 105-113.123 may deduct from the
43 amount due with the report a discount of two percent (2%).

44 **"§ 105-113.125. Exemptions.**

1 The tax imposed by G.S. 105-113.121 on motor oil does not apply to the following:

2 (1) Motor oil sold outside the State.

3 (2) Motor oil required to operate industrial machinery and sold for that
4 purpose.

5 "**§ 105-113.126. Designation of exempt sale.**

6 (a) A distributor or a wholesale dealer who sells motor oil to a person who has
7 notified the distributor or wholesale dealer in writing that the person intends to resell the
8 item in a transaction that is exempt from tax under G.S. 105-113.125 may, when filing a
9 report under G.S. 105-113.123, designate the quantity of motor oil sold to the person for
10 resale. A distributor or a wholesale dealer shall report a designated sale on a form
11 provided by the Secretary.

12 (b) A distributor or a wholesale dealer is not required to pay tax on a designated
13 sale when filing a report. The distributor or the wholesale dealer shall pay the tax due on
14 all other sales in accordance with this section. A distributor, a wholesale dealer, or a
15 customer of a distributor shall not delay payment of the tax due on motor oil by failing
16 to pay tax on a sale that is not a designated sale or by overstating the quantity of motor
17 oil that will be resold in a transaction exempt under G.S. 105-113.125.

18 (c) A person who does not sell motor oil in a transaction exempt under G.S. 105-
19 113.125 after a distributor or a wholesale dealer has failed to pay the tax due on the sale
20 of the item to the person in reliance on the person's written notification of intent is liable
21 for the tax and any penalties and interest due on the designated sale. If the Secretary
22 determines that motor oil reported as a designated sale is not sold as reported, the
23 Secretary shall assess the person who notified the distributor or the wholesale dealer of
24 an intention to resell the item in an exempt transaction for the tax due on the sale and
25 any applicable penalties and interest. A distributor or a wholesale dealer who does not
26 pay tax on motor oil in reliance on a person's written notification of intent to resell the
27 item in an exempt transaction is not liable for any tax assessed on the item.

28 "**§ 105-113.127. Use of tax proceeds.**

29 The Secretary shall credit five percent (5%) of the tax collected under this Article to
30 the Solid Waste Management Trust Fund. The Secretary shall credit the remaining
31 ninety-five percent (95%) of the tax collected under this Article to the Used Oil
32 Collection Fund to be used in accordance with the provisions of Part 2E of Article 9 of
33 Chapter 130A of the General Statutes."

34 Sec. 2. Article 9 of Chapter 130A of the General Statutes is amended by
35 adding a new Part to read:

36 "**PART 2E. USED OIL COLLECTION PROGRAM.**

37 "**§ 130A-309.90. Findings; intent.**

38 (a) The General Assembly finds that used oil is a valuable resource that can be
39 used as an environmentally acceptable source of energy or as a clean rerefined product.
40 Despite its potential value, a significant amount of used motor oil is improperly
41 disposed of, resulting in a significant environmental problem and a waste of a valuable
42 energy resource.

43 (b) The General Assembly finds that, although there is an existing system for the
44 collection and recycling of used oil generated by business and industry, private citizens

1 who change their own motor oil have only limited access to that system and often
2 dispose of their used oil on land or in landfills, sewers, drainage systems, septic tanks,
3 surface or ground waters, and elsewhere.

4 (c) It is the intent of the General Assembly to reduce the amount of improperly
5 disposed used oil by providing incentives to encourage the establishment of more
6 certified used oil collection centers and to expand curbside collection programs to
7 receive used oil from Do-It-Yourselfers.

8 **"§ 130A-309.91. Definitions.**

9 As used in this Part, unless the context requires otherwise:

10 (1) 'Do-It-Yourselfer (DIYer)' means an individual who removes used oil
11 from any of the following engines owned or operated by that
12 individual:

13 a. A light duty motor vehicle.

14 b. A small utility engine.

15 c. A noncommercial motor vehicle.

16 d. Farm equipment.

17 (2) 'Motor oil' has the same meaning as in G.S. 105-113.120.

18 (3) 'Reclaiming' means the use of methods, other than those used in
19 rerefining, to purify used oil primarily to remove insoluble
20 contaminants, making the oil suitable for further use. The methods
21 used may include settling, heating, dehydration, filtration, or
22 centrifuging.

23 (4) 'Recycle oil' means to prepare, in a safe, legal, and environmentally
24 sound manner, used oil for reuse as a petroleum product by reclaiming,
25 reprocesssing, energy recovery, rerefining, or another means.

26 (5) 'Rerefining' means the use of refining processes on used oil to produce
27 high-quality base stocks for lubricants or other petroleum products.
28 Rerefining may include distillation, hydrotreating, or treatments
29 employing acid, caustic, solvent, clay, or other chemicals, or other
30 physical treatments other than those used in reclaiming.

31 (6) 'Retailer' means a person who sells motor oil to the consumer.

32 (7) 'Used oil' means any oil which has been refined from crude oil or
33 synthetic oil and, as a result of use, storage, or handling, has become
34 unsuitable for its original purpose due to the presence of impurities or
35 loss of original properties, but which may be suitable for further use
36 and is economically recyclable. As used in this Article, used oil does
37 not include an oil filter that has been drained of free flowing used oil
38 or an oil-contaminated material.

39 (8) 'Used oil collection center' means a facility, including a fixed location,
40 tank, truck, or container, that serves as a centralized collection center
41 that accepts used motor oil from DIYers.

42 **"§ 130A-309.92. Used Oil Collection Fund.**

43 (a) The Used Oil Collection Fund is created as a nonreverting fund within the
44 Department. The Used Oil Collection Fund consists of:

- 1 (1) The proceeds of the motor oil tax imposed under Article 2E of Chapter
2 105 of the General Statutes.
- 3 (2) Any contributions and grants from public or private sources.
- 4 (b) The Used Oil Collection Fund may be used for:
- 5 (1) Grants to public or private entities to establish certified used oil
6 collection centers.
- 7 (2) Grants to units of local government or private collectors that offer or
8 include, as part of municipal solid waste collection services, curbside
9 collection of used oil from households, including grants for the
10 reasonable costs of household containers, truck retrofitting, tanks, and
11 similar costs associated with the curbside collection of used oil.
- 12 (3) Grants for advertising, training, and other programs to promote the
13 collection and recycling of used oil from the public.
- 14 (4) Grants for public education programs concerning the proper handling
15 and recycling of used oil.
- 16 (5) Incentives pursuant to G.S. 130A-309.99 to encourage individuals who
17 change their own oil to return the oil to used oil collection centers.
- 18 (6) Grants to indemnify a used oil collection center for the costs arising
19 out of used oil collected from the public that is unsuitable for reuse or
20 recycling, results from spills or contamination, or results from the
21 additional liability associated with the operation of the used oil
22 collection center.
- 23 (7) The costs that the Department directly incurs in developing and
24 administering the Used Oil Collection Program under this Part, not to
25 exceed seven percent (7%) of the Fund.

26 **"§ 130A-309.93. Used oil collection program; duties of the Department.**

27 (a) The Department shall develop and administer a used oil collection program to
28 encourage the proper disposal of used oil generated by DIYers and shall adopt rules to
29 implement this program. The used oil collection program shall include provisions
30 regarding:

- 31 (1) All grants that may be paid from the Used Oil Collection Fund under
32 G.S. 130A-309.92.
- 33 (2) Technical assistance to persons who develop the used oil collection
34 center programs or the curbside collection of used oil as part of
35 municipal solid waste collection.
- 36 (3) Management standards and certification requirements for used oil
37 collection centers, transporters of used oil, and used oil recyclers
38 consistent with the provisions of this Part and applicable federal laws
39 and regulations.

40 (b) The Department shall develop criteria for selecting the recipients of the grants
41 that may be paid from the Used Oil Collection Fund under G.S. 130A-309.92 and shall
42 select the recipients of these grants.

43 (c) The Department shall establish and maintain a toll-free telephone number for
44 the purpose of disseminating information regarding:

- 1 (1) The locations and phone numbers of used oil collection centers within
2 the State.
- 3 (2) The availability, dates, and requirements for curbside collection where
4 available.
- 5 (3) Alternate locations that accept commercial used oil.
- 6 (d) The Department may adopt rules to implement this Part.

7 **"§ 130A-309.94. Report requirement.**

8 No later than 1 March of each year, the Department shall submit a report to the
9 Environmental Review Commission on the used oil collection program. The report
10 shall include:

- 11 (1) The total motor oil tax proceeds collected pursuant to Article 2E of
12 Chapter 105 of the General Statutes during the preceding tax year, the
13 total motor oil tax proceeds credited to the Used Oil Collection Fund
14 during the preceding tax year, and the total motor oil tax proceeds
15 credited to the Solid Waste Management Trust Fund during the
16 preceding tax year.
- 17 (2) The total amount expended from the Used Oil Collection Fund during
18 the preceding calendar year.
- 19 (3) Information identifying each grant recipient, the amount of each grant
20 received, and the proposed use of the grant moneys.
- 21 (4) The number of gallons of used oil collected under the used oil
22 collection program.
- 23 (5) The cost of developing and administering the used oil collection
24 program.
- 25 (6) A calculation of the per gallon cost of the used oil collection program,
26 including the administrative cost of the program.

27 **"§ 130A-309.95. Advisory committee.**

28 The Secretary shall appoint an advisory committee for the used oil collection
29 program. The advisory committee shall consist of seven members who shall serve at
30 the pleasure of the Secretary. In making appointments to the advisory committee, the
31 Secretary shall select persons who represent the various interests affected by the used
32 oil collection program. The advisory committee shall recommend criteria for selecting
33 recipients of the grants that may be paid from the Used Oil Collection Fund under G.S.
34 130A-309.92 and shall recommend recipients of these grants. Members of the advisory
35 committee shall receive necessary travel and subsistence expenses while on official
36 business of the committee in accordance with G.S. 138-5 and G.S. 138-6.

37 **"§ 130A-309.96. Used oil collection centers.**

38 (a) A used oil collection center must be certified by the Department. To be
39 certified, a center must:

- 40 (1) Participate in the State toll-free telephone used oil information network
41 system.
- 42 (2) Meet the minimum requirements for hours of operation and other
43 standards established by the Department.

1 (3) Demonstrate that the center complies with all State rules concerning
2 tank structure and integrity, maintenance, supervision, employee
3 training, and housekeeping.

4 (b) Used oil collection centers shall transfer used oil only to certified transporters
5 and shall maintain records of all volumes of material collected, including the identity of
6 the hauler and the name and location of the recycling facility to which the oil is being
7 transported.

8 **"§ 130A-309.97. Oil releases from collection centers.**

9 Upon detecting a release of used oil to the environment at a used oil collection
10 center, the owner, operator, or lessor of the used collection center shall notify the
11 Department of the release and shall:

12 (1) Stop the release.

13 (2) Contain the released used oil.

14 (3) Clean up and properly manage the released used oil.

15 (4) Repair and replace any leaking used oil storage containers or tanks
16 prior to returning them to service, if necessary to prevent future used
17 oil releases.

18 **"§ 130A-309.98. Limitation of liability.**

19 (a) A person or the State shall not recover from the owner, operator, or lessor of
20 a certified used oil collection center any costs of response actions resulting from a
21 release of used oil collected at the center or subsequently handled or disposed of by
22 others if:

23 (1) The owner, operator, or lessor of the used oil collection center does not
24 mix the used oil collected with any hazardous substance.

25 (2) The owner, operator, or lessor of the used oil collection center does not
26 accept used oil that the owner, operator, or lessor knows contains
27 hazardous substances.

28 (3) The used oil collection center is in compliance with management
29 standards issued by the Department.

30 (4) The used oil is removed from the premises by a transporter certified
31 pursuant to G.S. 130A-309.101.

32 (b) For purposes of this section, the owner, operator, or lessor of a used oil
33 collection center may presume that a quantity of less than five gallons of used oil
34 accepted at any one time from any member of the public is not mixed with a hazardous
35 substance, provided that the owner or operator acts in good faith.

36 (c) This section applies only to activities directly related to the collection of used
37 oil by a used oil collection center. This section does not apply to grossly negligent
38 activities related to the operations of a used oil collection center.

39 **"§ 130A-309.99. through § 130A-309.102: Reserved.**

40 **"§ 130A-309.103. Used oil filters.**

41 Prior to disposal, used oil filters shall be prepared for disposal in one of the
42 following ways:

43 (1) Punctured and hot-drained for a minimum of 12 hours.

44 (2) Punctured and cold-drained for a minimum of 24 hours.

1 (3) Drained and crushed.

2 (4) Otherwise prepared for disposal consistent with rules adopted by the
3 Commission.

4 **"§ 130A-309.104. Retail sales of motor oil.**

5 Any retailer of motor oil that is not a used oil collection center shall post and
6 maintain at or near the point of motor oil display or sale a durable and legible sign
7 (minimum size of eight and one-half by 11 inches) informing the public of the
8 importance of proper collection and disposal of used oil and the State toll-free number
9 for information regarding used oil collection centers.

10 **"§ 130A-309.105. through § 130A-309.107: Reserved."**

11 Sec. 3. G.S. 130A-290(b), 130A-309.16, 130A-309.20, 130A-309.22, and
12 130A-309.23 are repealed.

13 Sec. 4. G.S. 130A-309.15 is recodified as G.S. 130A-309.105, which is
14 reserved under Section 2 of this act.

15 Sec. 5. G.S. 130A-309.15, recodified as G.S. 130A-309.105 in Section 4 of
16 this act, reads as rewritten:

17 **"§ 130A-309.105. Prohibited acts regarding used oil.**

18 (a) No person may knowingly:

19 (1) Collect, transport, store, recycle, use, or dispose of used oil in any
20 manner which endangers the public health or welfare.

21 (2) Discharge used oil into sewers, drainage systems, septic tanks, surface
22 waters, groundwaters, watercourses, or marine waters.

23 (3) Dispose of used oil in landfills in the State unless such disposal has
24 been approved by the Department.

25 (4) Mix used oil with solid waste that is to be disposed of in landfills.

26 (5) Mix used oil with hazardous substances that make it unsuitable for
27 recycling or beneficial use.

28 (b) A person who violates subsection (a) of this section shall be ~~guilty of a~~
29 ~~misdemeanor and upon conviction shall be punished as provided by G.S. 130A-25(a) and G.S.~~
30 ~~14-3, subject to an administrative penalty not to exceed five thousand dollars (\$5,000)~~
31 per violation.

32 (c) A person who disposes of used oil in a landfill where such used oil has been
33 mixed with other solid waste which may be lawfully disposed of in such landfill, and
34 who is without knowledge that such solid waste has been mixed with used oil, is not
35 guilty of a violation under this section.

36 (d) Used oil shall not be used for road oiling, dust control, weed abatement, or
37 other similar purposes that have the potential to release used oil into the environment."

38 Sec. 6. G.S. 130A-309.17 is recodified as G.S. 130A-309.100, which is
39 reserved under Section 2 of this act.

40 Sec. 7. G.S. 130A-309.17, recodified as G.S. 130A-309.100 in Section 6 of
41 this act, reads as rewritten:

42 **"§ 130A-309.100. Registration of persons transporting, collecting, or recycling used**
43 **oil; fees; reports and records.**

1 (a) The following persons shall register annually with the Department pursuant to
2 rules of the Department on forms prescribed by it:

3 (1) Any person who transports over public highways more than 500
4 gallons of used oil per ~~week~~ week or more than 55 gallons at any time.

5 (2) Any person who maintains a collection facility ~~that receives more than~~
6 ~~6,000 gallons of used oil annually. For purposes of registration, the~~
7 ~~amount received does not include used oil delivered to collection~~
8 ~~centers by individuals that change their own personal motor oil. that~~
9 ~~accepts more than 6,000 gallons of used oil annually from generators~~
10 other than DIYers.

11 (3) Any facility that recycles ~~more than 10,000 gallons of used oil~~
12 annually used oil.

13 (b) An electric utility which generates during its operation used oil that is then
14 reclaimed, recycled, or rerefined by the electric utility for use in its operations is not
15 required to register or report pursuant to this section.

16 (c) An on-site burner which only burns a specification used oil generated by the
17 burner is not required to register or report pursuant to this section, provided that the
18 burning is done in compliance with any air permits issued by the Department.

19 (d) The Department may prescribe a fee for the registration required by this
20 section in an amount which is sufficient to cover the cost of processing applications but
21 which does not exceed twenty-five dollars (\$25.00).

22 (e) The Department shall require each registered person to submit, no later than 1
23 July of each year, a report which specifies the type and quantity of used oil transported,
24 collected, and recycled during the preceding calendar year.

25 (f) Each registered person who transports or recycles used oil shall maintain
26 records which identify:

27 (1) The source of the materials transported or recycled;

28 (2) The quantity of materials received;

29 (3) The date of receipt; and

30 (4) The destination or end use of the materials.

31 (g) The Department shall perform technical studies to sample used oil at facilities
32 of representative used oil transporters and at representative recycling facilities to
33 determine the incidence of contamination of used oil with hazardous, toxic, or other
34 harmful substances.

35 (h) Any person who fails to register with the Department as required by this
36 section shall be guilty of a misdemeanor and upon conviction shall be punished as
37 provided by G.S. 130A-25(a) and G.S. 14-3.

38 (i) The proceeds from the registration fees imposed by this section shall be
39 deposited into the Solid Waste Management Trust Fund."

40 Sec. 8. G.S. 130A-309.23 is recodified as G.S. 130A-309.101, which is
41 reserved under Section 2 of this act.

42 Sec. 9. G.S. 130A-309.23, recodified as G.S. 130A-309.101 in Section 8 of
43 this act, reads as rewritten:

44 "**§ 130A-309.101. Certification of used oil transporters.**

1 (a) Any person who transports over public highways after 1 January 1992, more
2 than 500 gallons of used oil in any week must be a certified transporter or must be
3 employed by a person who is a certified transporter.

4 (b) The Department of Transportation shall develop a certification program for
5 transporters of used oil, and shall issue, deny, or revoke certifications authorizing the
6 holder to transport used oil. Certification requirements shall ~~help assure~~ require that a
7 used oil transporter is familiar with appropriate rules and used oil management
8 procedures.

9 (c) The Department of Transportation shall adopt rules governing certification,
10 which shall include requirements for the following:

11 (1) Registration and annual reporting pursuant to G.S. ~~130A-309.17-130A-~~
12 309.100.

13 (2) Evidence of familiarity with applicable State laws and rules governing
14 used oil ~~transportation-~~ transportation and proper used oil management.

15 (3) Proof of liability insurance or other means of financial responsibility
16 for any liability which may be incurred in the transport of used oil.

17 (4) Marking, by the certified transporter of used oil, of all vehicles which
18 transport used oil or all containers of used oil when it is not feasible to
19 mark the vehicle. The mark must clearly identify the certified used oil
20 transporter and clearly indicate that the vehicle is used to transport
21 used oil. The marking must be visible to others travelling on the
22 highway.

23 (5) Equipment in the transportation vehicle being in good mechanical
24 condition and suitable for the transportation of used oil.

25 (6) Documentation, maintained by the transporter, that indicates whether
26 all used oil is delivered to qualified customers or certified recyclers.

27 (d) Where used oil is sold directly by the transporter to an end user, the
28 documentation required under subsection (c) of this section shall include test results
29 showing that the used oil meets all applicable standards established by Department
30 rules."

31 Sec. 10. G.S. 130A-309.18, 130A-309.19, 130A-309.21 and 130A-309.24
32 are recodified as G.S. 130A-309.107, 130A-309.106, 130A-309.99, and 130A-309.102
33 respectively, which sections are reserved under Section 2 of this act.

34 Sec. 11. This act becomes effective 1 January 1995.