

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE DRH60033-RBxfz-2 (12/8)

Short Title: Motor Fuel Tax Changes. (Public)

Sponsors: Representatives Luebke; Brubaker, Hill, McGee, and Wainwright.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE TAXATION OF MOTOR FUELS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-236(2) reads as rewritten:

"§ 105-236. Penalties.

Penalties assessed by the Secretary under this Subchapter are assessed as an additional tax. Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

...

- (2) Failure to Obtain a License. – For failure to obtain a license before engaging in a business, trade or profession for which a license is required, the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars (\$5.00). In cases in which the taxpayer fails to obtain a license as required under G.S. 105-449.65 or G.S. 105-449.131, the Secretary may assess a penalty of one thousand dollars (\$1,000)."

SECTION 2. G.S. 105-449.39 reads as rewritten:

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

Every motor carrier subject to the tax levied by this Article is entitled to a credit on its quarterly report for tax paid by the carrier on fuel purchased in the State. The amount of the credit is determined using the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter covered by the report. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

1 If the amount of a credit to which a motor carrier is entitled for a quarter exceeds the
2 motor carrier's liability for that quarter, the Secretary must refund the excess to the
3 motor ~~carrier~~ carrier in accordance with G.S. 105-266(a)(3)."

4 **SECTION 3.** G.S. 105-449.44(a) reads as rewritten:

5 "(a) Calculation. – The amount of motor fuel or alternative fuel a motor carrier
6 uses in its operations in this State for a reporting period is the ~~ratio of the number of~~
7 miles the motor carrier travels in this State during that period divided by the calculated
8 miles per gallon for the motor carrier for all qualified vehicles to the total number of
9 miles the motor carrier travels inside and outside this State during that period,
10 multiplied by the total amount of fuel the motor carrier uses in its operations inside and
11 outside the State during that period."

12 **SECTION 4.** G.S. 105-449.46 reads as rewritten:

13 **"§ 105-449.46. Inspection of books and records.**

14 The Secretary and his authorized agents and representatives shall have the right at
15 any reasonable time to inspect the books and records of any motor carrier subject to the
16 tax imposed by this ~~Article~~ Article or to the registration fee imposed by Article 3 of
17 Chapter 20 of the General Statutes."

18 **SECTION 5.** G.S. 105-449.47(a1) reads as rewritten:

19 "(a1) Registration and Identification Marker. – When the Secretary registers a
20 motor carrier, the Secretary must issue at least one identification marker for each motor
21 vehicle operated by the motor carrier. A motor carrier must keep records of
22 identification markers issued to it and must be able to account for all identification
23 markers it receives from the Secretary. Registrations and identification markers issued
24 by the Secretary are for a calendar year. All identification markers issued by the
25 Secretary remain the property of the State. The Secretary may ~~withhold or~~ revoke a
26 registration or an identification marker when a motor carrier fails to comply with this
27 ~~Article, former Article 36 or 36A of this Subchapter,~~ Article or Article 36C or 36D of
28 this Subchapter.

29 A motor carrier must carry a copy of its registration in each motor vehicle operated
30 by the motor carrier when the vehicle is in this State. A motor vehicle must clearly
31 display an identification marker at all times. The identification marker must be affixed
32 to the vehicle for which it was issued in the place and manner designated by the
33 authority that issued it."

34 **SECTION 6.** Article 36B of Chapter 105 of the General Statutes is amended
35 by adding a new section to read:

36 **"§ 105-449.47A. Reasons why the Secretary can deny an application for a**
37 **registration and identification marker.**

38 The Secretary may refuse to register and issue an identification marker to an
39 individual applicant that has done any of the following and may refuse to register and
40 issue an identification marker to an applicant that is a business entity if any principal in
41 the business has done any of the following:

42 (1) Had a registration issued under Chapter 105 or Chapter 119 of the
43 General Statutes cancelled by the Secretary for cause.

- 1 (2) Had a registration issued by another jurisdiction, pursuant to
2 G.S. 105-449.57, cancelled for cause.
- 3 (3) Been convicted of fraud or misrepresentation.
- 4 (4) Been convicted of any other offense that indicates that the applicant
5 may not comply with this Article if registered and issued an
6 identification marker.
- 7 (5) Failed to remit payment for a tax debt under Chapter 105 or Chapter
8 119 of the General Statutes. The term 'tax debt' has the same meaning
9 as defined in G.S. 105-243.1.
- 10 (6) Failed to file a return due under Chapter 105 or Chapter 119 of the
11 General Statutes."

12 **SECTION 7.** G.S. 105-449.51 reads as rewritten:

13 "**§ 105-449.51. Violations declared to be misdemeanors.**

14 Any person who operates or causes to be operated on a highway in this State a motor
15 vehicle that does not carry a registration card as required by this Article, does not
16 properly display an identification marker as required by this Article, or is not registered
17 in accordance with this Article is guilty of a Class 3 misdemeanor and, upon conviction
18 thereof, shall ~~only be fined no less than ten dollars (\$10.00) nor more than two hundred~~
19 dollars (\$200.00). Each day's operation in violation of any provision of this section shall
20 constitute a separate offense."

21 **SECTION 8.** G.S. 105-449.65(b) reads as rewritten:

22 "(b) Multiple Activity. – A person who is engaged in more than one activity for
23 which a license is required must have a separate license for each activity, unless this
24 subsection provides otherwise. A person who is licensed as a supplier ~~is not required to~~
25 ~~obtain a separate license for any other activity for which a license is required and is~~
26 considered to have a license as a distributor. A person who is licensed as an occasional
27 importer or a tank wagon importer is not required to obtain a separate license as a
28 distributor. distributor unless the importer is also purchasing motor fuel, at the terminal
29 rack, from an elective or permissive supplier who is authorized to collect and remit the
30 tax to the State. A person who is licensed as a distributor is not required to obtain a
31 separate license as an importer if the distributor acquires fuel for import only from an
32 elective supplier or a permissive supplier and is not required to obtain a separate license
33 as an exporter. A person who is licensed as a distributor or a blender is not required to
34 obtain a separate license as a motor fuel transporter if the distributor or blender does not
35 transport motor fuel for others for hire."

36 **SECTION 9.** G.S. 105-449.69(b) reads as rewritten:

37 "(b) Most Licenses. – An applicant for a license as a refiner, a supplier, a terminal
38 operator, an importer, a blender, ~~a bulk end user of undyed diesel fuel, a retailer of~~
39 ~~undyed diesel fuel,~~ or a distributor must meet the following requirements:

- 40 (1) If the applicant is a corporation, the applicant must either be
41 incorporated in this State or be authorized to transact business in this
42 State.

- 1 (2) If the applicant is a limited liability company, the applicant must either
2 be organized in this State or be authorized to transact business in this
3 State.
4 (3) If the applicant is a limited partnership, the applicant must either be
5 formed in this State or be authorized to transact business in this State.
6 (4) If the applicant is an individual or a general partnership, the applicant
7 must designate an agent for service of process and give the agent's
8 name and address."

9 **SECTION 10.** G.S. 105-449.73 reads as rewritten:

10 **"§ 105-449.73. Reasons why the Secretary can deny an application for a license.**

11 The Secretary may refuse to issue a license to an individual applicant that has done
12 any of the following and may refuse to issue a license to an applicant that is a business
13 entity if any principal in the business has done any of the following:

- 14 (1) Had a license or registration issued under this Article or former Article
15 36 or 36A of this Chapter cancelled by the Secretary for cause.
16 (1a) Had a motor fuel license or registration issued by another state
17 cancelled for cause.
18 (2) Had a federal Certificate of Registry issued under § 4101 of the Code,
19 or a similar federal authorization, revoked.
20 (3) Been convicted of fraud or misrepresentation.
21 (4) Been convicted of any other offense that indicates that the applicant
22 may not comply with this Article if issued a license.
23 (5) Failed to remit payment for ~~an overdue tax debt~~ tax debt under Chapter
24 105 or Chapter 119 of the General Statutes. The term "~~overdue tax~~
25 ~~debt~~" "tax debt" has the same meaning as defined in G.S. 105-243.1.
26 (6) Failed to file a return due under Chapter 105 or Chapter 119 of the
27 General Statutes."

28 **SECTION 11.** G.S. 105-449.86(a) reads as rewritten:

29 "(a) Tax. – An excise tax at the motor fuel rate is imposed on dyed diesel fuel
30 acquired to operate any of the following:

- 31 (1) Repealed by Session Laws 2003-349, s. 10.8, effective January 1,
32 2004.
33 (2) Either a local bus or an intercity bus that is allowed by § 4082(b)(3) of
34 the Code to use dyed diesel fuel.
35 (3) A highway vehicle that is owned by or leased to an educational
36 organization that is not a public school and is allowed by § 4082(b)(1)
37 or (b)(3) of the Code to use dyed diesel fuel.
38 (4) ~~A highway vehicle that is owned by or leased to the American Red~~
39 ~~Cross and is allowed by § 4082 of the Code to use dyed diesel fuel."~~

40 **SECTION 12.** G.S. 105-449.90A reads as rewritten:

41 **"§ 105-449.90A. Payment by supplier of destination state tax collected on exported**
42 **motor fuel.**

43 Tax collected by a supplier on exported motor fuel is payable by the supplier to the
44 destination state if the supplier is licensed in that state for payment of motor fuel excise

1 ~~taxes.state. Tax collected by a supplier on exported motor fuel is payable to the~~
2 ~~Secretary for remittance to the destination state if the supplier is not licensed in that~~
3 ~~state for payment of motor fuel excise taxes. Payments of destination state tax are due to~~
4 ~~the destination state or the Secretary, as appropriate, on the date set by the law of the~~
5 ~~destination state. Payments of destination state tax to the Secretary must be~~
6 ~~accompanied by a form provided by the Secretary that contains the information required~~
7 ~~by the Secretary."~~

8 **SECTION 13.** G.S. 105-449.96 is amended by adding a new subdivision to
9 read:

10 **"§ 105-449.96. Information required on return filed by supplier.**

11 A return of a supplier must list all of the following information and any other
12 information required by the Secretary:

13 ...

14 (7) The number of gallons of motor fuel the supplier exchanged with
15 another licensed supplier, pursuant to a two-party exchange agreement,
16 during the month, sorted by type of fuel, person receiving the fuel, and
17 terminal code."

18 **SECTION 14.** The catch line for G.S. 105-449.106 reads as rewritten:

19 **"§ 105-449.106. Quarterly refunds for ~~certain local governmental entities,~~**
20 **~~nonprofit organizations, taxicabs, and special mobile equipment."~~**

21 **SECTION 15.** G.S. 105-449.115 reads as rewritten:

22 **"§ 105-449.115. Shipping document required to transport motor fuel by railroad**
23 **tank car or transport truck.**

24 (a) Issuance. – A person may not transport motor fuel by railroad tank car or
25 transport truck unless the person has a shipping document for its transportation that
26 complies with this section. A terminal operator and the operator of a bulk plant must
27 give a shipping document to the person who operates a railroad tank car or a transport
28 truck into which motor fuel is loaded at the terminal rack or bulk plant rack.

29 (b) Content. – A shipping document issued by a terminal operator or the operator
30 of a bulk plant must contain the following information and any other information
31 required by the Secretary:

32 (1) Identification, including address, of the terminal or bulk plant from
33 which the motor fuel was received.

34 (2) The date the motor fuel was loaded.

35 (3) The gross gallons loaded.

36 (4) The destination state of the motor fuel, as represented by the purchaser
37 of the motor fuel or the purchaser's agent.

38 (5) If the document is issued by a terminal operator, the document must be
39 machine printed and it must contain the following information:

40 a. The net gallons loaded.

41 b. A tax responsibility statement indicating the name of the
42 supplier that is responsible for the tax due on the motor fuel.

43 (c) Reliance. – A terminal operator or bulk plant operator may rely on the
44 representation made by the purchaser of motor fuel or the purchaser's agent concerning

1 the destination state of the motor fuel. A purchaser is liable for any tax due as a result of
2 the purchaser's diversion of fuel from the represented destination state.

3 (d) Duties of Transporter. – A person to whom a shipping document was issued
4 must do all of the following:

5 (1) Carry the shipping document in the conveyance for which it was
6 issued when transporting the motor fuel described in it. When
7 operating an empty transport, carry the shipping document in the
8 conveyance for the motor fuel last contained in the conveyance.

9 (2) Show the shipping document to a law enforcement officer upon
10 request when transporting the motor fuel described in it.

11 (3) Deliver motor fuel described in the shipping document to the
12 destination state printed on it unless the person does all of the
13 following:

14 a. Notifies the Secretary before transporting the motor fuel into a
15 state other than the printed destination state that the person has
16 received instructions since the shipping document was issued to
17 deliver the motor fuel to a different destination state.

18 b. Receives from the Secretary a confirmation number authorizing
19 the diversion.

20 c. Writes on the shipping document the change in destination state
21 and the confirmation number for the diversion.

22 (4) Give a copy of the shipping document to the distributor or other person
23 to whom the motor fuel is delivered.

24 (e) Duties of Person Receiving Shipment. – A person to whom motor fuel is
25 delivered by railroad tank car or transport truck may not accept delivery of the motor
26 fuel if the destination state shown on the shipping document for the motor fuel is a state
27 other than North Carolina. To determine if the shipping document shows North Carolina
28 as the destination state, the person to whom the fuel is delivered must examine the
29 shipping document and must keep a copy of the shipping document. The person must
30 keep a copy at the place of business where the motor fuel was delivered for 90 days
31 from the date of delivery and must keep it at that place or another place for at least three
32 years from the date of delivery. A person who accepts delivery of motor fuel in
33 violation of this subsection is jointly and severally liable for any tax due on the fuel.

34 (f) Sanctions Against Transporter. – The following acts are grounds for a civil
35 penalty payable to the ~~Department of Transportation, Division of Motor~~
36 ~~Vehicles, Department of Crime Control and Public Safety~~ or the Department of
37 Revenue:

38 (1) Transporting motor fuel in a railroad tank car or transport truck
39 without a shipping document or with a false or an incomplete shipping
40 document.

41 (2) Delivering motor fuel to a destination state other than that shown on
42 the shipping document.

43 The penalty imposed under this subsection is payable by the person in whose name
44 the conveyance is registered, if the conveyance is a transport truck, and is payable by

1 the person responsible for the movement of motor fuel in the conveyance, if the
2 conveyance is a railroad tank car. The amount of the penalty is five thousand dollars
3 (\$5,000). A penalty imposed under this subsection is in addition to any motor fuel tax
4 assessed.

5 (g) Sanctions Against Terminal Operator. – The Secretary may assess a civil
6 penalty of five thousand dollars (\$5,000) against a terminal operator for issuing a
7 shipping document that does not satisfy the requirements of subsection (b) of this
8 section."

9 **SECTION 16.** G.S. 105-449.115A reads as rewritten:

10 **"§ 105-449.115A. Shipping document required to transport fuel by tank wagon.**

11 (a) Issuance. – A person who operates a tank wagon into which motor fuel is
12 loaded at the terminal must comply with the document requirements in
13 G.S. 105-449.115(b). A person ~~may not transport motor fuel by who operates a tank~~
14 wagon into which motor fuel is loaded from some other source must have ~~unless that~~
15 person has an invoice, bill of sale, or shipping document containing the following
16 information and any other information required by the Secretary:

- 17 (1) The name and address of the person from whom the motor fuel was
18 received.
- 19 (2) The date the fuel was loaded.
- 20 (3) The type of fuel.
- 21 (4) The gross number of gallons loaded.

22 (b) Duties of Transporter. – A person to whom an invoice, bill of sale, or
23 shipping document was issued must do all of the following:

- 24 (1) Carry the invoice, bill of sale, or shipping document in the conveyance
25 for which it is issued when transporting the motor fuel described in it.
- 26 (2) Show the invoice, bill of sale, or shipping document upon request
27 when transporting the motor fuel described in it.
- 28 (3) Keep a copy of the invoice, bill of sale, or shipping document at the
29 place of business for at least three years from the date of delivery.

30 (c) Sanctions. – Transporting motor fuel in a tank wagon without an invoice, bill
31 of sale, or shipping document containing the information required by this section is
32 grounds for a civil penalty payable to the Department of Transportation, Division of
33 Motor Vehicles, or the Department of Revenue. The penalty imposed under this
34 subsection is payable by the person in whose name the tank wagon is registered. The
35 amount of the penalty is one thousand dollars (\$1,000). A penalty imposed under this
36 subsection is in addition to any motor fuel tax assessed."

37 **SECTION 17.** G.S. 105-449.123 reads as rewritten:

38 **"§ 105-449.123. Marking requirements for dyed fuel storage facilities.**

39 (a) Requirements. – A person who is a retailer of dyed motor fuel or who stores
40 both dyed and undyed motor fuel for use by that person or another person must mark the
41 storage facility for the dyed motor fuel as follows in a manner that clearly indicates the
42 fuel is not to be used to operate a highway vehicle. The storage facility must be marked
43 "Dyed Diesel, Nontaxable Use Only, Penalty For Taxable Use" or "Dyed Kerosene,
44 Nontaxable Use Only, Penalty for Taxable Use" or a similar phrase that clearly

1 indicates the fuel is not to be used to operate a highway vehicle. A person who fails to
2 mark the storage facility as required by this section is subject to a civil penalty equal to
3 the excise tax at the motor fuel rate on the inventory held in the storage tank at the time
4 of the violation. If the inventory cannot be determined, then the penalty is calculated on
5 the capacity of the storage tank.

6 (1) The storage tank of the storage facility must be marked if the storage
7 tank is visible.

8 (2) The fillcap or spill containment box of the storage facility must be
9 marked.

10 (3) The dispensing device that serves the storage facility must be marked.

11 (4) The retail pump or dispensing device at any level of the distribution
12 system must comply with the marking requirements.

13 (b) Exception. – The marking requirements of this section do not apply to a
14 storage facility that contains fuel used only for one of the purposes listed in
15 G.S. 105-449.105A(a)(1) and is installed in a manner that makes use of the fuel for any
16 other purpose improbable."

17 **SECTION 18.** G.S. 119-15 is amended by adding the following two new
18 subdivisions:

19 "**§ 119-15. Definitions that apply to Article.**

20 The following definitions apply in this Article:

21 ...

22 (1a) Dyed diesel fuel distributor. – A person who acquires dyed diesel fuel
23 from either of the following:

24 a. A person who is not required to be licensed under Part 2 of
25 Article 36C of Chapter 105 of the General Statutes and who
26 maintains storage facilities for dyed diesel fuel to be used for
27 nonhighway purposes.

28 b. Another dyed diesel fuel distributor.

29 (1b) Dyed diesel fuel. – Defined in G.S. 105-449.60."

30 **SECTION 19.** G.S. 119-15.1(a) reads as rewritten:

31 "(a) License. – A person may not engage in business in this State as any of the
32 following unless the person has a license issued by the Secretary authorizing the person
33 to engage in business:

34 (1) A kerosene supplier.

35 (2) A kerosene distributor.

36 (3) A kerosene terminal operator.

37 (4) A dyed diesel fuel distributor."

38 **SECTION 20.** G.S. 119-15.3(a) reads as rewritten:

39 "(a) Initial Bond. – An applicant for a license as a kerosene supplier, kerosene
40 distributor, or kerosene terminal operator must file with the Secretary of Revenue a
41 bond or an irrevocable letter of credit. A bond or irrevocable letter of credit must be
42 conditioned upon compliance with the requirements of this Article, be payable to the
43 State, and be in the form required by the Secretary. The amount of the bond or

1 irrevocable letter of credit may not be less than five hundred dollars (\$500.00) and may
2 not be more than twenty thousand dollars (\$20,000)."

3 **SECTION 21.** G.S. 20-91 reads as rewritten:

4 "**§ 20-91. Audit of vehicle registrations under the International Registration Plan.**

5 (a) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9.

6 (b) The ~~Division~~ Department of Revenue may audit a person who registers or is
7 required to register a vehicle under the International Registration Plan to determine if
8 the person has paid the registration fees due under this Article. A person who registers a
9 vehicle under the International Registration Plan must keep any records used to
10 determine the information provided to the Division when registering the vehicle. The
11 records must be kept for three years after the date of the registration to which the
12 records apply. The ~~Division~~ Department of Revenue may examine these records during
13 business hours. If the records are not located in North Carolina and an auditor must
14 travel to the location of the records, the registrant shall reimburse North Carolina for per
15 diem and travel expense incurred in the performance of the audit. If more than one
16 registrant is audited on the same out-of-state trip, the per diem and travel expense may
17 be prorated.

18 The ~~Commissioner~~ Secretary of Revenue may enter into reciprocal audit agreements
19 with other agencies of this State or agencies of another jurisdiction for the purpose of
20 conducting joint audits of any registrant subject to audit under this section.

21 (c) If an audit is conducted and it becomes necessary to assess the registrant for
22 deficiencies in registration fees or taxes due based on the audit, the assessment will be
23 determined based on the schedule of rates prescribed for that registration year, adding
24 thereto and as a part thereof an amount equal to five percent (5%) of the tax to be
25 collected. If, during an audit, it is determined that:

- 26 (1) A registrant failed or refused to make acceptable records available for
27 audit as provided by law; or
28 (2) A registrant misrepresented, falsified or concealed records, then all
29 plates and cab cards shall be deemed to have been issued erroneously
30 and are subject to cancellation. The ~~Commissioner~~ Commissioner,
31 based on information provided by the Department of Revenue audit,
32 may assess the registrant for an additional percentage up to one
33 hundred percent (100%) North Carolina registration fees at the rate
34 prescribed for that registration year, adding thereto and as a part
35 thereof an amount equal to five percent (5%) of the tax to be collected.
36 The Commissioner may cancel all registration and reciprocal
37 privileges.

38 As a result of an audit, no assessment shall be issued and no claim for refund shall
39 be allowed which is in an amount of less than ten dollars (\$10.00).

40 The results of any audit conducted under this section shall be provided to the
41 Division. The notice of any assessments ~~will~~ shall be sent by the Division to the
42 registrant by registered or certified mail at the address of the registrant as it appears in
43 the records of the Division of Motor Vehicles in Raleigh. The notice, when sent in

1 accordance with the requirements indicated above, will be sufficient regardless of
2 whether or not it was ever received.

3 The failure of any registrant to pay any additional registration fees or tax within 30
4 days after the billing date, shall constitute cause for revocation of registration license
5 plates, cab cards and reciprocal privileges.

6 (d) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9."

7 **SECTION 22.** Sections 1, 6, 7, 8, 15, and 17 of this act become effective
8 January 1, 2006. The remainder of this act is effective when it becomes law.