

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 2587

Short Title: Reduce Gasoline/Diesel Fuel Tax. (Public)

Sponsors: Representatives Allred; Blust, Hurley, Johnson, Justice, Justus, Moore, Setzer, Steen, Walker, and West.

Referred to: Finance.

May 28, 2008

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE GASOLINE AND DIESEL FUEL TAXES BY
3 ELIMINATING THE VARIABLE PORTION OF THE MOTOR FUEL EXCISE
4 TAX.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 105-449.80 reads as rewritten:

7 "**§ 105-449.80. Tax rate.**

8 (a) Rate. – The motor fuel excise tax rate is a flat rate of seventeen and one-half
9 cents (17 1/2¢) a ~~gallon~~ gallon plus a variable wholesale component. The variable
10 wholesale component is either three and one half cents (3 1/2¢) a gallon or seven
11 percent (7%) of the average wholesale price of motor fuel for the applicable base
12 period, whichever is greater.

13 The two base periods are six month periods; one ends on September 30 and one ends
14 on March 31. The Secretary must set the tax rate twice a year based on the wholesale
15 price for each base period. A tax rate set by the Secretary using information for the base
16 period that ends on September 30 applies to the six month period that begins the
17 following January 1. A tax rate set by the Secretary using information for the base
18 period that ends on March 31 applies to the six month period that begins the following
19 July 1.

20 (b) Wholesale Price.—The Secretary must determine the average wholesale price
21 of motor fuel for each base period. To do this, the Secretary must use information on
22 refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel
23 fuel for resale, published by the United States Department of Energy in the "Monthly
24 Energy Review", or equivalent data.

25 The Secretary must compute the average sales price of finished motor gasoline for
26 the base period, compute the average sales price for No. 2 diesel fuel for the base
27 period, and then compute a weighted average of the results of the first two computations
28 based on the proportion of tax collected on each under this Article for the base period.

~~The Secretary must then convert the weighted average price to a cents per gallon rate and round the rate to the nearest one-tenth of a cent (1/10¢). If the converted cents per gallon rate is exactly between two tenths of a cent (2/10¢) the Secretary must round the rate up to the higher of the two.~~

~~(e) Notification. — The Secretary must notify affected taxpayers of the tax rate to be in effect for each six-month period beginning January 1 and July 1."~~

SECTION 2. G.S. 105-449.107 reads as rewritten:

"§ 105-449.107. Annual refunds for off-highway use and use by certain vehicles with power attachments.

(a) Off-Highway. – A person who purchases and uses motor fuel for a purpose other than to operate a licensed highway vehicle may receive an annual refund for the excise tax the person paid on fuel used during the preceding calendar year. The amount of refund allowed is the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part.

(b) Certain Vehicles. – A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by the vehicle:

- (1) A concrete mixing vehicle.
- (2) A solid waste compacting vehicle.
- (3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.
- (4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.
- (5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.
- (6) A commercial vehicle that delivers and spreads mulch, soils, composts, sand, sawdust, and similar materials and that uses a power takeoff to unload, blow, and spread the materials.
- (7) A commercial vehicle that uses a power takeoff to remove and dispose of septage and for which an annual fee is required to be paid to the Department of Environment and Natural Resources under G.S. 130A-291.1.
- (8) A sweeper.

The amount of refund allowed is thirty-three and one-third percent (33 1/3%) of the following: the sum of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax or privilege tax due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from

1 propelling the vehicle, which amount is considered to be one-third of the amount of fuel
2 consumed by the vehicle.

3 (c) Sales Tax Amount. – Article 5 of this Chapter determines the amount of sales
4 and use tax to be deducted under this section from a motor fuel excise tax refund.
5 Article 5F of this Chapter determines the amount of privilege tax to be deducted under
6 this section from a motor fuel excise tax refund. The sales price and the cost price of
7 motor fuel to be used in determining the amount to deduct is the average of the
8 wholesale prices during the year for which the refund is claimed, using the method set
9 forth in subsection (d) of this section.~~used under G.S. 105-449.80 to determine the~~
10 ~~excise tax rates in effect for the two six-month periods of the year for which the refund~~
11 ~~is claimed.~~

12 (d) Wholesale Price. – The Secretary must determine the average wholesale price
13 of motor fuel annually. To do this, the Secretary must use information on refiner and
14 gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel for
15 resale, published by the United States Department of Energy in the "Monthly Energy
16 Review", or equivalent data.

17 The Secretary must compute the average sales price of finished motor gasoline for
18 the year, compute the average sales price for No. 2 diesel fuel for the year, and then
19 compute a weighted average of the results of the first two computations based on the
20 proportion of tax collected on each under this Article for the base period. The Secretary
21 must then convert the weighted average price to a cents-per-gallon rate and round the
22 rate to the nearest one-tenth of a cent (1/10¢). If the converted cents-per-gallon rate is
23 exactly between two-tenths of a cent (2/10¢) the Secretary must round the rate up to the
24 higher of the two."

25 **SECTION 3.** G.S. 150B-2 reads as rewritten:

26 "**§ 150B-2. Definitions.**

27 As used in this Chapter,

28 ...

29 (8a) "Rule" means any agency regulation, standard, or statement of general
30 applicability that implements or interprets an enactment of the General
31 Assembly or Congress or a regulation adopted by a federal agency or
32 that describes the procedure or practice requirements of an agency.
33 The term includes the establishment of a fee and the amendment or
34 repeal of a prior rule. The term does not include the following:

35 ...

36 j. Establishment of the interest rate that applies to tax assessments
37 under G.S. 105-241.21 and the ~~variable component of the~~
38 ~~excise tax on motor fuel under G.S. 105-449.80.~~ average annual
39 wholesale price of motor fuels under G.S. 105-449.107(d).

40 ..."

41 **SECTION 4.** This act becomes effective July 1, 2008, and applies to motor
42 fuel purchased on or after that date.