

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 23

Short Title: Fuel Tax Changes To Enter Fuel Pact.

(Public)

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Sponsors: Representatives Lilley, Abernethy, Brawley, and Hasty.

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Referred to: Finance.

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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 carrier under Article 36B for reporting operations of the motor vehicle. The user under

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

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

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

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

19 (1a) 'Motor vehicle' means motor vehicle as defined in G.S. 20-4.01(23)  
20 except that the term does not include special mobile equipment as  
21 defined in G.S. 20-4.01(44) or recreational vehicles; vehicles.

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

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

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

27 **"§ 105-449.39. Credit for payment of motor fuel tax.**

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

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

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

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

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

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

2   "**§ 105-449.40. Refunds to motor carriers who give Secretary may require bond.**

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

- 12           (1) The motor carrier fails to file a report within the time required by this  
13 Article.  
14           (2) The motor carrier fails to pay a tax when due under this Article.  
15           (3) After auditing the motor carrier's records, the Secretary determines that  
16 a bond is needed to protect the State from loss in collecting the tax due  
17 under this Article.

18       A bond required of a motor carrier under this section may not exceed five hundred  
19 dollars (\$500.00) or four times the amount of the motor carrier's average tax liability or  
20 refund for a reporting period, whichever is greater. A bond must be in the form  
21 required by the Secretary."

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

23   "**§ 105-449.42A. Leased motor vehicles.**

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

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

36       (b) Independent Contractor. ~~A lessor of a motor vehicle who gives written~~  
37 ~~notice, by filing a report or otherwise, to the Secretary that the lessor desires to be taxed~~  
38 ~~as a motor carrier may be treated by the Secretary as a motor carrier with respect to a~~  
39 ~~motor vehicle leased to another by him as well as motor fuel consumed by the leased~~  
40 ~~motor vehicle when the lessor supplies or pays for the motor fuel consumed by the~~  
41 ~~motor vehicle or makes rental or other charges calculated to include the cost of the fuel.~~  
42 ~~A lessee motor carrier may exclude from reports made pursuant to this Article a motor~~  
43 ~~vehicle of which he is the lessee if that motor vehicle is leased from a lessor who is a~~  
44 ~~motor carrier pursuant to this section. The lessee of a motor vehicle that is leased from~~

1 an independent contractor is the motor carrier for the leased motor vehicle unless either  
2 of the following applies:

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

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

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

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

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

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

17 "**§ 105-449.47. Registration of vehicles.**

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

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

38 Sec. 7. This act becomes effective January 1, 1992.