

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 943

Short Title: Collect Fuel Tax at Rack.

(Public)

Sponsors: Senators Kerr and Hoyle.

Referred to: Finance

May 2, 1995

A BILL TO BE ENTITLED

AN ACT TO ADDRESS MOTOR FUEL TAX EVASION AND TO IMPROVE THE ADMINISTRATION OF THE MOTOR FUEL TAXES BY CHANGING THE POINT OF TAXATION OF GASOLINE AND DIESEL FUEL, TO REPEAL THE MINIMUM HIGHWAY USE TAX, AND TO STRENGTHEN THE ENFORCEMENT OF THE ROAD TAX PAID BY MOTOR CARRIERS.

The General Assembly of North Carolina enacts:

PART I.

MOTOR FUEL LAW CHANGES

Section 1. The heading to Subchapter V of Chapter 105 of the General Statutes reads as rewritten:

"SUBCHAPTER V. ~~GASOLINE TAX.~~ MOTOR FUEL TAXES."

Sec. 2. Articles 36 and 36A of Chapter 105 of the General Statutes are repealed.

Sec. 3. Subchapter V of Chapter 105 of the General Statutes is amended by adding the following Articles to read:

"ARTICLE 36C.

"GASOLINE, DIESEL, AND BLENDS.

"PART 1. GENERAL PROVISIONS.

"§ 105-449.60. Definitions.

1 The following definitions apply in this Article:

- 2 (1) Blended fuel. – A mixture composed of gasoline or diesel fuel and
3 another liquid, other than a de minimus amount of a product such as
4 carburetor detergent or oxidation inhibitor, that can be used as a fuel in
5 a highway vehicle.
- 6 (2) Blender. – A person who produces blended fuel outside the terminal
7 transfer system.
- 8 (3) Bulk-end user. – A person that maintains storage facilities for motor
9 fuel and uses part or all of the stored fuel to operate a highway vehicle.
- 10 (4) Bulk plant. – A motor fuel storage and distribution facility that is not a
11 terminal and from which motor fuel may be removed at a rack.
- 12 (5) Code. – Defined in G.S. 105-228.90.
- 13 (6) Destination state. – The state, territory, or foreign country to which
14 motor fuel is directed for delivery into a storage facility, a receptacle, a
15 container, or a type of transportation equipment for the purpose of resale
16 or use.
- 17 (7) Diesel fuel. – Any liquid, other than gasoline, that is suitable for use as a
18 fuel in a diesel-powered highway vehicle. The term does not include jet
19 fuel sold to a buyer who is certified to purchase jet fuel under the Code.
- 20 (8) Distributor. – A person who acquires motor fuel from a supplier or from
21 another distributor for subsequent sale or use.
- 22 (9) Dyed diesel fuel. – Diesel fuel that meets the dying and marking
23 requirements of § 4082 of the Code.
- 24 (10) Elective supplier. – A supplier that is required to be licensed in this
25 State and that elects to collect the excise tax due this State on motor fuel
26 that is removed by the supplier at a terminal located in another state and
27 has this State as its destination state.
- 28 (11) Export. – To obtain motor fuel in this State for sale or other distribution
29 in another state. In applying this definition, motor fuel delivered out-of-
30 state by or for the seller constitutes an export by the seller and motor
31 fuel delivered out-of-state by or for the purchaser constitutes an export
32 by the purchaser.
- 33 (12) Fuel alcohol. – Methanol or fuel grade ethanol.
- 34 (13) Fuel alcohol provider. – A person that does any of the following:
35 a. Produces fuel alcohol.
36 b. Imports fuel alcohol outside the terminal transfer system by
37 means of a marine vessel, a transport truck, or a railroad tank car.
- 38 (14) Gasohol. – A blended fuel composed of gasoline and fuel grade ethanol.
- 39 (15) Gasoline. – Any of the following:
40 a. All products that are commonly or commercially known or sold
41 as gasoline and are suitable for use as a fuel in a highway
42 vehicle, other than products that have an American Society for

- 1 Testing Materials octane number of less than 75 as determined
2 by the motor method.
- 3 b. A petroleum product component of gasoline, such as naptha,
4 reformate, or toluene.
- 5 c. Gasohol.
- 6 d. Fuel grade ethanol.
- 7 The term does not include aviation gasoline sold for use in an aircraft
8 motor. 'Aviation gasoline' is gasoline that is designed for use in an
9 aircraft motor and is not adapted for use in an ordinary highway vehicle.
- 10 (16) Highway. – Defined in G.S. 20-4.01(13).
- 11 (17) Highway vehicle. – A self-propelled vehicle that is designed for use on
12 a highway.
- 13 (18) Import. – To bring motor fuel into this State by any means of
14 conveyance other than in the fuel supply tank of a highway vehicle. In
15 applying this definition, motor fuel delivered into this State from out-of-
16 state by or for the seller constitutes an import by the seller, and motor
17 fuel delivered into this State from out-of-state by or for the purchaser
18 constitutes an import by the purchaser.
- 19 (19) Motor fuel. – Gasoline, diesel fuel, and blended fuel.
- 20 (20) Motor fuel rate. – The rate of tax set in G.S. 105-449.80.
- 21 (21) Motor fuel transporter. – A person who transports motor fuel outside the
22 terminal transfer system by means of a transport truck, a railroad tank
23 car, or a marine vessel.
- 24 (22) Permissive supplier. – An out-of-state supplier that elects, but is not
25 required, to have a supplier's license under this Article.
- 26 (23) Person. – Defined in G.S. 105-228.90.
- 27 (24) Position holder. – The person who holds the inventory position in motor
28 fuel in a terminal, as reflected on the records of the terminal operator. A
29 person holds the inventory position in motor fuel when that person has a
30 contract with the terminal operator for the use of storage facilities and
31 terminaling services for fuel at the terminal. The term includes a
32 terminal operator who owns fuel in the terminal.
- 33 (25) Rack. – A mechanism for delivering motor fuel from a refinery, a
34 terminal, or a bulk plant into a transport truck, a railroad tank car, or
35 another means of transfer that is outside the terminal transfer system.
- 36 (26) Removal. – A physical transfer other than by evaporation, loss, or
37 destruction.
- 38 (27) Retailer. – A person that maintains storage facilities for motor fuel and
39 that sells the fuel at retail or dispenses the fuel at a retail location.
- 40 (28) Secretary. – Defined in G.S. 105-228.90.
- 41 (29) Supplier. – Any of the following:
- 42 a. A position holder or a person that receives motor fuel pursuant to
43 a two-party exchange.

- 1 b. A fuel alcohol provider.
2 (30) System transfer. – Either of the following:
3 a. A transfer of motor fuel within the terminal transfer system.
4 b. A transfer, by transport truck or railroad tank car, of fuel grade
5 ethanol.
6 (31) Tank wagon. – A truck that is not a transport truck and has multiple
7 compartments designed or used to carry motor fuel.
8 (32) Terminal. – A motor fuel storage and distribution facility that has been
9 assigned a terminal control number by the Internal Revenue Service, is
10 supplied by pipeline or marine vessel, and from which motor fuel may
11 be removed at a rack.
12 (33) Terminal operator. – A person who owns, operates, or otherwise
13 controls a terminal.
14 (34) Terminal transfer system. – The motor fuel distribution system
15 consisting of refineries, pipelines, marine vessels, and terminals. The
16 term has the same meaning as 'bulk transfer/terminal system' under 26
17 C.F.R. § 48.4081-1.
18 (35) Transport truck. – A semitrailer combination rig designed or used to
19 transport loads of motor fuel over a highway.
20 (36) Two-party exchange. – A transaction in which motor fuel is transferred
21 from one licensed supplier to another licensed supplier pursuant to an
22 exchange agreement whereby the supplier that is the position holder
23 agrees to deliver motor fuel to the other supplier or the other supplier's
24 customer at the rack of the terminal at which the delivering supplier is
25 the position holder.

26 **"§ 105-449.61. Tax restrictions; administration.**

- 27 (a) No Local Tax. – A county or city may not impose a tax on the sale,
28 distribution, or use of motor fuel.
29 (b) No Double Tax. – The tax imposed by this Chapter applies only once on the
30 same motor fuel.
31 (c) Administration. – Article 9 of this Chapter applies to this Article.

32 **"PART 2. LICENSING.**

33 **"§ 105-449.65. List of persons who must have a license.**

- 34 (a) License. – A person may not engage in business in this State as any of the
35 following unless the person has a license issued by the Secretary authorizing the person
36 to engage in that business:
37 (1) A refiner.
38 (2) A supplier.
39 (3) A terminal operator.
40 (4) An importer.
41 (5) A blender.
42 (6) A motor fuel transporter.
43 (7) A bulk-end user of undyed diesel fuel.

1 (8) A retailer of undyed diesel fuel.
2 (b) Types of Importers. – An applicant for a license as an importer must indicate
3 the type of importer license sought. A person may not be licensed as more than one type
4 of importer. The types of importers are as follows:

5 (1) Bonded Importer. – A bonded importer is a person, other than a
6 supplier, that imports, by transport truck or another means of transfer
7 outside the terminal transfer system, motor fuel removed from a
8 terminal located in another state in any of the following circumstances:

9 a. The state from which the fuel is imported does not require the
10 seller of the fuel to collect motor fuel tax on the removal either at
11 that state's rate or the rate of the destination state.

12 b. The supplier of the fuel is not an elective supplier.

13 c. The supplier of the fuel is not a permissive supplier.

14 (2) Occasional Importer. – An occasional importer is a person that imports
15 motor fuel by any means outside the terminal transfer system.

16 (3) Tank Wagon Importer. – A tank wagon importer is a person that
17 imports, only by means of a tank wagon, motor fuel that is removed
18 from a terminal or a bulk plant located in another state.

19 (c) Multiple Activity. – A person who is engaged in more than one activity for
20 which a license is required must have a separate license for each activity, unless this
21 subsection provides otherwise. A person who is licensed as a supplier is not required to
22 obtain a separate license for any other activity for which a license is required and is
23 considered to have a license as a distributor. A person who is licensed as a blender is not
24 required to obtain a separate license as a motor fuel transporter.

25 **"§ 105-449.66. List of persons who may obtain a license.**

26 A person who is engaged in business as any of the following may obtain a license
27 issued by the Secretary for that business:

28 (1) A distributor.

29 (2) A permissive supplier.

30 **"§ 105-449.67. How to apply for a license.**

31 (a) General. – To obtain a license, an applicant must file an application with the
32 Secretary on a form provided by the Secretary. An application must include the
33 applicant's name, address, federal employer identification number, and any other
34 information required by the Secretary.

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

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

41 (2) If the applicant is a limited liability company, the applicant must either
42 be organized in this State or be authorized to transact business in this
43 State.

1 (3) If the applicant is a limited partnership, the applicant must either be
2 formed in this State or be authorized to transact business in this State.

3 (4) If the applicant is an individual or a general partnership, the applicant
4 must designate an agent for service of process and give the agent's name
5 and address.

6 (c) Federal Certificate. – An applicant for a license as a refiner, a supplier, a
7 terminal operator, a blender, or a permissive supplier must have a federal Certificate of
8 Registry that is issued under § 4101 of the Code and authorizes the applicant to enter into
9 federal tax-free transactions in taxable motor fuel in the terminal transfer system. An
10 applicant that is required to have a federal Certificate of Registry must include the
11 registration number of the certificate on the application for a license under this section.

12 An applicant for a license as an importer or a distributor that has a federal Certificate
13 of Registry issued under § 4101 of the Code must include the registration number of the
14 certificate on the application for a license under this section.

15 (d) Import and Export Activity. – An applicant for a license as an importer must
16 list on the application each state from which the applicant intends to import motor fuel
17 and, if required by a state listed, must be licensed or registered for motor fuel tax
18 purposes in that state. An applicant for a license as a distributor must list on the
19 application each state to which the applicant intends to export motor fuel received in this
20 State by means of a transfer that is outside the terminal transfer system and, if required by
21 a state listed, must be licensed or registered for motor fuel tax purposes in that state.

22 **"§ 105-449.68. Supplier election to collect tax on out-of-state removals.**

23 (a) Election. – An applicant for a license as a supplier may elect on the
24 application to collect the excise tax due this State on motor fuel that is removed by the
25 supplier at a terminal located in another state and has this State as its destination state.
26 The Secretary must provide for this election on the application form. A supplier that does
27 not make the election on the application for a supplier's license may make the election
28 later by completing an election form provided by the Secretary. A supplier that makes
29 the election allowed by this section is an elective supplier.

30 (b) Effect. – A supplier that makes the election allowed by this section agrees to
31 all of the following with respect to motor fuel that is removed by the supplier at a
32 terminal located in another state and has this State as its destination state:

33 (1) To collect the excise tax due this State on the fuel and to waive any
34 defense that the State lacks jurisdiction to require the supplier to collect
35 the excise tax due this State on the fuel.

36 (2) To report and pay the tax due on the fuel in the same manner as if the
37 removal had occurred at a terminal located in this State.

38 (3) To keep records of the removal of the fuel and submit to audits
39 concerning the fuel as if the removal had occurred at a terminal located
40 in this State.

41 (c) State's Power. – A supplier that makes the election allowed by this section
42 acknowledges that the State imposes the requirements listed in subsection (b) of this

1 section on the supplier under its general police power to regulate the movement of motor
2 fuel.

3 **"§ 105-449.69. Permissive supplier election to collect tax on out-of-state removals.**

4 (a) Election and Effect. – An out-of-state supplier that is not required to have a
5 license under this Part may elect to have a license and thereby become a permissive
6 supplier. By obtaining a license as a permissive supplier, the permissive supplier agrees
7 to be subject to the same requirements as a supplier and to all of the following with
8 respect to motor fuel that is removed by the permissive supplier at a terminal located in
9 another state and has this State as its destination state:

- 10 (1) To collect the excise tax due this State on the fuel and to waive any
11 defense that the State lacks jurisdiction to require the supplier to collect
12 the excise tax due this State on the fuel.
13 (2) To report and pay the tax due on the fuel in the same manner as if the
14 removal had occurred at a terminal located in this State.
15 (3) To keep records of the removal of the fuel and submit to audits
16 concerning the fuel as if the removal had occurred at a terminal located
17 in this State.

18 (b) State's Power. – A supplier that makes the election allowed by this section
19 acknowledges that the State imposes the requirements listed in subsection (a) of this
20 section on the supplier under its general police power to regulate the movement of motor
21 fuel.

22 **"§ 105-449.70. Bond or letter of credit required as a condition of obtaining and**
23 **keeping certain licenses.**

24 (a) Initial Bond. – An applicant for a license as a refiner, a terminal operator, a
25 supplier, an importer, a permissive supplier, or a distributor must file with the Secretary a
26 bond or an irrevocable letter of credit. The amount of the bond or irrevocable letter of
27 credit is determined as follows:

- 28 (1) For an applicant for a license as any of the following, the amount is two
29 million dollars (\$2,000,000):
30 a. A refiner.
31 b. A terminal operator.
32 c. A supplier that is a position holder or a person that receives
33 motor fuel pursuant to a two-party exchange.
34 d. A bonded importer that is not a limited bulk-end user. A limited
35 bulk-end user is a bonded importer that uses all of the motor fuel
36 imported by that importer and does not resell the motor fuel.
37 e. A permissive supplier.
38 (2) For an applicant for a license as any of the following, the amount is two
39 times the applicant's average expected monthly tax liability under this
40 Article, as determined by the Secretary. The amount may not be less
41 than two thousand dollars (\$2,000) and may not be more than two
42 hundred fifty thousand dollars (\$250,000):

- a. A supplier that is a fuel alcohol provider but is not a position holder or a person that receives motor fuel pursuant to a two-party exchange.
- b. A bonded importer that is a limited bulk-end user.
- c. An occasional importer.
- d. A tank wagon importer.
- e. A distributor.

A bond filed under this section must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. An applicant for a license as a distributor and as a bonded importer must file only the bond required of a bonded importer. An applicant for a license as a distributor and either an occasional importer or a tank wagon importer may file one bond that covers the combined liabilities of the applicant under both activities.

(b) Adjustment To Bond. – When notified to do so by the Secretary, a person that has filed a bond or an irrevocable letter of credit and that holds a license listed in subdivision (a)(2) of this section must file an additional bond or irrevocable letter of credit in the amount requested by the Secretary. The person must file the additional bond or irrevocable letter of credit within 30 days after receiving the notice from the Secretary. The amount of the initial bond or irrevocable letter of credit and any additional bond or irrevocable letter of credit filed by the license holder, however, may not exceed the limits set in subdivision (a)(2) of this section.

"§ 105-449.71. Reasons why the Secretary can deny an application for a license.

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

- (1) Had a license or registration issued under this Article or former Articles 36 or 36A of this Chapter cancelled by the Secretary for cause.
- (2) Had a federal certificate of registry issued under § 4101 of the Code, or a similar federal authorization, revoked.
- (3) Been convicted of fraud or misrepresentation.
- (4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if issued a license.

"§ 105-449.72. Issuance of license.

Upon approval of an application, the Secretary must issue a license to the applicant as well as a duplicate copy of the license for each place of business of the applicant. A supplier's license must indicate the category of the supplier. A license holder must display a license issued under this Part in a conspicuous place at each place of business of the license holder. A license is not transferable and remains in effect until surrendered or cancelled.

"§ 105-449.73. License holder must notify the Secretary of discontinuance of business.

A license holder that stops engaging in this State in the business for which the license was issued must give the Secretary written notice of the change and must surrender the

1 license to the Secretary. The notice must give the date the change takes effect and, if the
2 license holder has transferred the business to another by sale or otherwise, the date of the
3 transfer and the name and address of the person to whom the business is transferred.

4 If the license holder is a supplier, all taxes for which the supplier is liable under this
5 Article but are not yet due become due on the date of the change. If the supplier has
6 transferred the business to another and does not give the notice required by this section,
7 the person to whom the supplier has transferred the business is liable for the amount of
8 any tax the supplier owed the State on the date the business was transferred. The liability
9 of the person to whom the business is transferred is limited to the value of the property
10 acquired from the supplier.

11 **"§ 105-449.74. Reasons why the Secretary can cancel a license.**

12 The Secretary may cancel a license issued under this Article upon the written request
13 of the license holder. The Secretary may summarily cancel the license of a license holder
14 when the Secretary finds that the license holder is incurring liability for the tax imposed
15 under this Article after failing to pay a tax when due under this Article. In addition, the
16 Secretary may cancel the license of a license holder who commits one or more of the acts
17 listed in G.S. 105-449.120 after holding a hearing on whether the license should be
18 cancelled.

19 The Secretary must send a person whose license is summarily cancelled a notice of
20 the cancellation and must give the person an opportunity to have a hearing on the
21 cancellation within 10 days after the cancellation. The Secretary must give a person
22 whose license may be cancelled after a hearing at least 10 days' written notice of the date,
23 time, and place of the hearing. A notice of a summary license cancellation and a notice
24 of hearing must be sent by registered mail to the last known address of the license holder.

25 When the Secretary cancels a license and the license holder has paid all taxes and
26 penalties due under this Article, the Secretary must take one of the following actions
27 concerning a bond or an irrevocable letter of credit filed by the license holder:

28 (1) Return an irrevocable letter of credit to the license holder.

29 (2) Return a bond to the license holder or notify the person liable on the
30 bond and the license holder that the person is released from liability on
31 the bond.

32 **"§ 105-449.75. Records and lists of license applicants and license holders.**

33 (a) Records. – The Secretary must keep a record of the following:

34 (1) Applicants for a license under this Article.

35 (2) Persons to whom a license has been issued under this Article.

36 (3) Persons who hold a current license issued under this Article, by license
37 category.

38 (b) List. – The Secretary must give a list of licensed distributors to each licensed
39 supplier who asks for a copy of the list. The list must state the name and business
40 address of each distributor on the list. The Secretary must send a monthly update of the
41 appropriate list to each supplier who requested a copy of the list.

42 **"PART 3. TAX AND LIABILITY.**

43 **"§ 105-449.80. Tax rate.**

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

6 The two base periods are six-month periods; one ends on September 30 and one ends
7 on March 31. The Secretary must set the tax rate twice a year based on the wholesale
8 price for each base period. A tax rate set by the Secretary using information for the base
9 period that ends on September 30 applies to the six -month period that begins the
10 following January 1. A tax rate set by the Secretary using information for the base period
11 that ends on March 31 applies to the six-month period that begins the following July 1.

12 (b) Wholesale Price. – The Secretary must determine the average wholesale price
13 of motor fuel for each base period. To do this, the Secretary must use information on
14 refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel
15 for 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 the
18 base period, compute the average sales price for No. 2 diesel fuel for the base period, and
19 then 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 rate
22 to the nearest one-tenth of a cent (1/10¢). If the converted cents-per-gallon rate is exactly
23 between two-tenths of a cent (2/10¢), the Secretary must round the rate up to the higher
24 of the two.

25 (c) Notification. – The Secretary must notify affected taxpayers of the tax rate to
26 be in effect for each six-month period beginning January 1 and July 1.

27 **"§ 105-449.81. Excise tax on motor fuel.**

28 An excise tax at the motor fuel rate is imposed on motor fuel that is:

- 29 (1) Removed from a refinery or a terminal and, upon removal, is subject to
30 the federal excise tax imposed by § 4081 of the Code.
- 31 (2) Imported by a system transfer to a refinery or a terminal and, upon
32 importation, is subject to the federal excise tax imposed by § 4081 of
33 the Code.
- 34 (3) Imported by a means of transfer outside the terminal transfer system for
35 consumption, use, or warehousing in this State and would have been
36 subject to the federal excise tax imposed by § 4081 of the Code if it had
37 been removed at a terminal or bulk plant rack in this State instead of
38 imported.
- 39 (4) Is blended fuel and is removed from a bulk plant.

40 **"§ 105-449.82. Liability for tax on removals from a refinery or terminal.**

41 (a) Refinery Removal. – The excise tax imposed by G.S. 105-449.81(1) on motor
42 fuel removed from a refinery in this State is payable by the refiner.

1 (b) Terminal Bulk Removal. – The excise tax imposed by G.S. 105-449.81(1) on
2 motor fuel removed by a system transfer from a terminal in this State is payable by the
3 position holder for the fuel. If the position holder is not the terminal operator, the
4 terminal operator is jointly and severally liable for the tax.

5 (c) Terminal Rack Removal. – The excise tax imposed by G.S. 105-449.81(1) on
6 motor fuel removed at a terminal rack in this State is payable by the position holder for
7 the fuel, if the position holder owns the fuel when it crosses the rack. If the position
8 holder for motor fuel removed at a terminal rack does not own the fuel when it crosses
9 the rack, the excise tax on the fuel is payable by the supplier to whom the position holder
10 transferred the fuel pursuant to a two-party exchange. The position holder or other
11 supplier that owns the fuel when it crosses the rack and the distributor that receives the
12 fuel are liable for the tax, as described in this Part.

13 If a position holder or other supplier that is liable for the tax under this subsection is
14 not the terminal operator and does not have a license required by this Article, the terminal
15 operator is jointly and severally liable for any amount for which the position holder or
16 other supplier is liable. If the motor fuel removed is not dyed diesel fuel but the shipping
17 document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator
18 is jointly and severally liable for the tax due on the fuel.

19 **"§ 105-449.83. Liability for tax on imports.**

20 (a) By System Transfer. – The excise tax imposed by G.S. 105-449.81(2) on motor
21 fuel imported by a system transfer to a refinery is payable by the refiner. The excise tax
22 imposed by that subdivision on motor fuel imported by a system transfer to a terminal is
23 payable by the person importing the fuel and by the terminal operator, both of which are
24 jointly and severally liable for payment of the tax due on the fuel.

25 (b) From Out-of-State Terminal. – The excise tax imposed by G.S. 105-449.81(3)
26 on motor fuel that is removed from a terminal rack located in another state and has this
27 State as its destination state is payable as follows:

28 (1) By the supplier of the fuel, if the supplier is required to be licensed as a
29 supplier in this State and either of the following applies:

30 a. The supplier has elected to collect the excise tax due this State on
31 these out-of-state removals.

32 b. The fuel is removed for the supplier's own account for use in this
33 State.

34 (2) By the supplier of the fuel, if the supplier is licensed as a permissive
35 supplier.

36 (3) By the importer of the fuel, if no other subdivision of this subsection
37 applies.

38 (c) From Out-of-State Bulk Plant. – The excise tax imposed by G.S. 105-
39 449.81(3) on motor fuel that is removed from a bulk plant located in another state is
40 payable by the person who imports the fuel.

41 **"§ 105-449.84. Liability for tax on blended fuel removed from a bulk plant.**

42 The excise tax imposed by G.S. 105-449.81(4) on blended fuel removed from a
43 bulk plant in this State is payable by the blender. The number of gallons of blended fuel

1 on which the tax is payable is the difference between the number of gallons of blended
2 fuel removed and the number of gallons of previously taxed motor fuel used to make the
3 blended fuel that is removed.

4 **"§ 105-449.85. Tax on and liability for certain blends made at a terminal.**

5 (a) In-Line-Blends. – A tax at the motor fuel rate is imposed on a liquid that is
6 combined with gasoline or undyed diesel fuel as the fuel is delivered at a terminal rack
7 into the motor fuel storage compartment of a motor fuel tank truck. The supplier of the
8 gasoline or undyed diesel fuel used in the blended fuel is liable for the tax on the liquid as
9 well as on the gasoline or undyed diesel fuel.

10 (b) Kerosene Splash-Blends. – A tax at the motor fuel rate is imposed on kerosene
11 that is delivered at a terminal into a motor fuel storage compartment of a motor fuel tank
12 truck when undyed diesel fuel is also delivered at that terminal into the same storage
13 compartment and the buyer of the kerosene notified the supplier before or at the time of
14 delivery that the kerosene would be used to make a splash-blend. The supplier of the
15 kerosene is liable for the tax.

16 **"§ 105-449.86. Compensating tax on and liability for unaccounted for motor fuel
17 received at a terminal.**

18 (a) Tax. – An excise tax at the motor fuel rate is imposed on the amount of a
19 terminal's unaccounted for motor fuel that exceeds the sum of the following:

20 (1) Net motor fuel gallon gains at the terminal.

21 (2) One-half of one percent (0.5%) multiplied by the number of net gallons
22 removed from the terminal by a system transfer or at a terminal rack.

23 (b) Liability. – The terminal operator whose motor fuel is unaccounted for is liable
24 for the tax imposed by this section. Motor fuel received by a terminal operator and not
25 shown on a report filed by the terminal operator with the Secretary as having been
26 removed from the terminal is presumed to be unaccounted for. A terminal operator may
27 establish that motor fuel received at a terminal but not shown on a report as having been
28 removed from the terminal was lost or part of a transmix and is therefore not unaccounted
29 for.

30 (c) Definitions. – The following definitions apply in this section:

31 (1) Net gallon gains. – Gains made when motor fuel removed at a terminal
32 rack are corrected to a temperature of 60 degrees Fahrenheit and a
33 pressure of fourteen and seven-tenths pounds per square inch.

34 (2) Transmix. – Either of the following:

35 a. The buffer or interface between two different products in a
36 pipeline shipment.

37 b. A mix of two different products within a refinery or terminal that
38 results in an off-grade mixture.

39 **"§ 105-449.87. Tax on and liability for dyed diesel fuel used to operate certain
40 highway vehicles.**

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

- 1 (1) Either a local bus or an intercity bus that is allowed by § 4082(b)(3) of
2 the Code to use dyed diesel fuel.
- 3 (2) A highway vehicle that is owned by or leased to an educational
4 organization that is not a public school and is allowed by § 4082(b)(1)
5 or (b)(3) of the Code to use dyed diesel fuel.
- 6 (3) A highway vehicle that is owned by or leased to the American Red
7 Cross and is allowed by § 4082 of the Code to use dyed diesel fuel.
- 8 (b) Liability. – The person who acquires fuel that is taxable under this section is
9 liable for the tax.

10 **"§ 105-449.88. Backup tax and liability for the tax.**

- 11 (a) Tax. – An excise tax at the motor fuel rate is imposed on the following:
- 12 (1) Dyed diesel fuel that is used to operate a highway vehicle for a use that
13 is not a nontaxable use under § 4082(b) of the Code.
- 14 (2) Motor fuel that was allowed an exemption from the motor fuel tax and
15 was then used for a taxable purpose.
- 16 (3) Motor fuel that is used to operate a highway vehicle after an application
17 for a refund of tax paid on the motor fuel is made or allowed under G.S.
18 105-449.102(a) on the basis that the motor fuel was used for an off-
19 highway purpose.
- 20 (b) Liability. – The operator of a highway vehicle that uses motor fuel that is
21 taxable under this section is liable for the tax. If the highway vehicle that uses the fuel is
22 owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for
23 the tax. If the end seller of motor fuel taxable under this section knew or had reason to
24 know that the motor fuel would be used for a purpose that is taxable under this section,
25 the end seller is jointly and severally liable for the tax.

26 (c) Imputed Knowledge. – An end seller of dyed diesel fuel is considered to have
27 known or had reason to know that the fuel would be used for a purpose that is taxable
28 under this section unless the end seller delivered the fuel into a storage facility that meets
29 one of the following requirements:

- 30 (1) It contains fuel used only in heating, drying crops, or a manufacturing
31 process and is installed in a manner that makes use of the fuel for any
32 other purpose improbable.
- 33 (2) It is marked as follows with the phrase 'Dyed Diesel', 'For Nonhighway
34 Use', or a similar phrase that clearly indicates the fuel is not to be used
35 to operate a highway vehicle:
- 36 a. The storage tank of the storage facility is marked if the storage
37 tank is visible.
- 38 b. The fillcap or spill containment box of the storage facility is
39 marked.
- 40 c. The dispensing device that serves the storage facility is marked.

41 **"§ 105-449.89. Exemptions from the excise tax.**

42 The excise tax on motor fuel does not apply to the following:

- 1 (1) Motor fuel removed, by transport truck or another means of transfer
2 outside the terminal transfer system, from a terminal for export, if the
3 supplier of the motor fuel collects tax on it at the rate of the motor fuel's
4 destination state that is printed on the shipping document for the motor
5 fuel.
- 6 (2) Motor fuel sold to the federal government.
- 7 (3) Motor fuel sold to the State for its use.
- 8 (4) Motor fuel sold to a local board of education for use in the public school
9 system.

10 **"PART 4. PAYMENT AND REPORTING.**

11 **"§ 105-449.90. When tax return and payment are due.**

12 (a) Filing Periods. – The excise tax imposed by this Article is payable when a
13 return is due. A return is due annually, monthly, or within three days of incurring
14 liability for the tax, as specified in this section. A return must be in the form required by
15 the Secretary.

16 An annual return is due within 45 days after the end of each calendar year. An annual
17 return covers tax liabilities that accrue in the calendar year preceding the date the return
18 is due.

19 A monthly return is due within 20 days after the end of each month. A monthly return
20 covers tax liabilities that accrue in the calendar month preceding the date the return is
21 due.

22 A three-day return is due within three days of incurring liability for the tax. A three-
23 day return covers tax liabilities that accrued no later than three days before the return is
24 due.

25 (b) Annual Filers. – A terminal operator must file an annual return for the
26 compensating tax imposed by G.S. 105-449.86.

27 (c) Monthly Filers. – The following persons must file a monthly return:

- 28 (1) A refiner.
- 29 (2) A supplier.
- 30 (3) A bonded importer.
- 31 (4) A blender.
- 32 (5) A tank wagon importer.
- 33 (6) A person who is liable under G.S. 105-449.87 for the tax on dyed diesel
34 fuel used to operate certain highway vehicles.
- 35 (7) A person who is liable under G.S. 105-449.88 for the backup tax on
36 motor fuel.

37 (d) Three-Day Filers. – An occasional importer must file a three-day return. An
38 occasional importer is not required to file a return, however, if all the motor fuel imported
39 by the importer in a reporting period was removed at a terminal located in another state
40 and the supplier of the fuel is an elective supplier or a permissive supplier.

41 **"§ 105-449.91. Right of licensed distributor to make deferred payments of tax to** 42 **supplier.**

1 (a) Right. – A licensed distributor has the right to defer payment of the excise tax
2 due on motor fuel received from a supplier until the date the supplier must pay the tax to
3 the State, unless the distributor's right has been suspended under this section. A supplier
4 may not directly or indirectly deny a licensed distributor this right.

5 The Secretary can suspend the right of a licensed distributor to make deferred
6 payments of tax for the reasons listed in subsection (b) of this section. The procedure set
7 in subsection (c) of this section applies to the suspension of this right. The procedure set
8 in subsection (d) of this section applies to the restoration of the right after a suspension.

9 (b) Reasons for Suspension. – The Secretary can suspend the right of a licensed
10 distributor to make deferred payments of excise tax due on motor fuel received from a
11 supplier if the distributor does any of the following, and the Secretary determines that
12 collection of excise tax revenue will be jeopardized unless the distributor's right to make
13 deferred payments is suspended:

14 (1) Fails to make a timely payment of excise tax to a supplier or to the
15 Department. Failure to comply with a requirement of a supplier to pay
16 the tax due the supplier by electronic funds transfer is considered a
17 failure to make a timely payment.

18 (2) Falsely reports the amount of exempt sales made by the distributor.

19 (3) Submits a false application for a refund of motor fuel taxes.

20 (c) Procedure. – When the Secretary receives information, through a notice from a
21 supplier under G.S. 105-449.96 or otherwise, that a licensed distributor has committed an
22 act listed in subsection (b) of this section, the Secretary must contact the distributor,
23 inform the distributor of the information, and give the distributor an opportunity to
24 explain the information. The distributor can request a hearing with the Secretary on the
25 matter. The Secretary must schedule a hearing on the matter as soon as possible if the
26 distributor requests a hearing.

27 If the information received is a notice from a supplier stating that the distributor failed
28 to make a deferred payment of excise tax, the Secretary must give the distributor 24 hours
29 to pay the tax due before considering suspending the distributor's right to make deferred
30 payments. The 24-hour period begins at the time set by the Secretary. The Secretary
31 must inform the distributor of when the period begins.

32 After considering any explanation offered by a licensed distributor, the Secretary must
33 determine whether or not to suspend the distributor's right to make deferred payments of
34 excise tax. The Secretary must suspend the right if the Secretary determines that
35 collection of excise tax revenue will be jeopardized if the distributor continues to enjoy
36 this right. The decision of the Secretary is final and is not reviewable by a court.

37 (d) Restoration of Right. – A licensed distributor whose right to make deferred
38 payments of excise tax to suppliers has been suspended may apply to the Secretary to
39 restore the right. The Secretary must restore the right if the Secretary finds that the
40 restoration will not jeopardize collection of any motor fuel tax revenue. The Secretary
41 may hold a hearing on the matter before making a determination.

42 **"§ 105-449.92. Notice to suppliers of suspension or restoration of deferred payment**
43 **right; effect of notice.**

1 (a) Notice to Suppliers. – The Secretary must notify all suppliers of the
2 suspension of a licensed distributor's right to make deferred payments of excise tax to
3 suppliers. The Secretary must notify all suppliers of the restoration of a licensed
4 distributor's right to make deferred payments of excise tax to suppliers.

5 (b) Effect of Notice of Suspension. – A supplier that sells motor fuel to a licensed
6 distributor after receiving notice from the Secretary that the Secretary has suspended the
7 distributor's right to make deferred payments of excise tax is jointly and severally liable
8 with the distributor for any tax due on motor fuel the supplier sells to the distributor after
9 receiving the notice. A supplier may not take a deduction for uncollectible taxes for any
10 tax for which the supplier is made jointly and severally liable under this subsection.

11 (c) Effect of Notice of Restoration. – The joint and several liability imposed on a
12 supplier by subsection (b) of this section does not apply to excise tax due on motor fuel
13 sold to a licensed distributor after the supplier receives notice from the Secretary that the
14 Secretary has restored the right of the distributor to make deferred payments of excise
15 tax. Similarly, the prohibition in subsection (b) of this section on taking a deduction for
16 uncollectible taxes does not apply to excise tax due on motor fuel sold to a licensed
17 distributor after the supplier receives notice from the Secretary that the Secretary has
18 restored the right of the distributor to make deferred payments of excise tax.

19 **§ 105-449.93. Exempt sale deduction, percentage discount, and quarterly hold**
20 **harmless for licensed distributors.**

21 (a) Deduction for Exempt Sales. – A distributor may deduct from the amount of
22 tax otherwise payable to a supplier the amount calculated on motor fuel the distributor
23 received from a supplier and resold to a governmental unit whose purchases of motor fuel
24 are exempt from the tax under G.S. 105-449.89 if the distributor complied with
25 requirements of the supplier concerning notification of the distributor's intent to resell the
26 fuel in an exempt sale. When making this deduction, the distributor must report to the
27 supplier the number of gallons sold in exempt sales, by type of sale, and the purchasers of
28 the fuel in the exempt sales.

29 (b) Percentage Discount. – A licensed distributor that pays the excise tax due a
30 supplier by the date the supplier must pay the tax to the State may deduct from the
31 amount due a discount of one percent (1%) of the amount of tax payable. The discount
32 covers the expense of furnishing a bond and losses due to shrinkage or evaporation. A
33 supplier may not directly or indirectly deny this discount to a licensed distributor that
34 pays the excise tax due the supplier by the date the supplier must pay the tax to the State.

35 (c) Quarterly Hold Harmless. – At the end of each calendar quarter, the Secretary
36 must review the amount of discounts each licensed distributor received under subsection
37 (b) of this section. The Secretary must determine if the amount of discounts the
38 distributor received under that subsection in each month of the quarter is less than the
39 amount the distributor would have received if the distributor had been allowed a discount
40 on gasoline purchased by the distributor from a supplier during each month of the quarter
41 under the following schedule:

42 Amount of Gasoline Purchased

Percentage Discount

43 Each Month

1	<u>First 150,000 gallons</u>	<u>2%</u>
2	<u>Next 100,000 gallons</u>	<u>1 1/2%</u>
3	<u>Amount over 250,000 gallons</u>	<u>1%.</u>

4 If the amount the distributor received under subsection (b) of this section for a month
5 in the quarter is less than the amount the distributor would have received on the
6 distributor's gasoline purchases under the monthly schedule in this subsection, the
7 Secretary must send the distributor a refund check for the difference. In determining the
8 amount of discounts a distributor received under subsection (b) of this section for
9 gasoline purchased in a month, a distributor is considered to have received the amount of
10 any discounts the distributor could have received under that subsection but did not
11 receive because the distributor failed to pay the tax due to the supplier by the date the
12 supplier had to pay the tax to the State.

13 **"§ 105-449.94. Information required on return filed by supplier.**

14 A return of a supplier must list all of the following information:

- 15 (1) The number of gallons of motor fuel received during the month by the
16 supplier by a system transfer, by type of fuel, and by terminal.
- 17 (2) The number of gallons of motor fuel imported during the month by the
18 supplier by a means of transfer outside the terminal transfer system.
- 19 (3) The number of gallons of motor fuel removed at a terminal rack during
20 the month from the account of the supplier, by type of fuel and by
21 receiving distributor.
- 22 (4) The number of gallons of motor fuel removed during the month for
23 export and, for each removal, the destination state of the fuel.
- 24 (5) The number of gallons of motor fuel sold during the month by the
25 supplier to either of the following:
 - 26 a. A governmental unit whose use of fuel is exempt from the tax.
 - 27 b. A distributor that resold the motor fuel to a governmental unit
28 whose use of fuel is exempt from the tax, as reported by the
29 distributor.
- 30 (6) The amount of discounts allowed under G.S. 105-449.93 on motor fuel
31 sold during the month to licensed distributors, sorted by distributor.

32 **"§ 105-449.95. Deductions and discounts allowed a supplier when filing a return.**

33 (a) Uncollectible Taxes. – A supplier that files a timely return is allowed a credit
34 against the amount of tax due with the return equal to the amount of tax that a distributor
35 owes the supplier and that became uncollectible during the period covered by the return.
36 Tax owed a supplier by a distributor becomes uncollectible when the distributor does not
37 pay the tax to the supplier or the Secretary within 24 hours after receiving a demand for
38 payment from the Secretary under G.S. 105-449.91(c). If a licensed distributor pays tax
39 owed to a supplier after the supplier claims a credit for the amount of the tax on a return,
40 the supplier must promptly remit the distributor's payment to the Secretary.

41 (b) Administrative Discount. – A supplier that files a timely return may deduct
42 from the amount of tax payable with the return an administrative discount of one-tenth of
43 one percent (0.1%) of the amount of tax payable, not to exceed eight thousand dollars

1 (\$8,000) a month. The discount covers expenses incurred in collecting taxes on motor
2 fuel from distributors and in maintaining the records and preparing the returns required
3 by this Article.

4 (c) Percentage Discount. – A supplier that sells motor fuel directly to the bulk-end
5 user, the retailer, or user of the fuel can take the same percentage discount on the fuel that
6 a licensed distributor can take under G.S. 105-449.93(b) when making deferred payments
7 of tax to the supplier.

8 **"§ 105-449.96. Duties of supplier concerning payments by distributors.**

9 (a) Notification of Nonpayment. – A supplier of motor fuel at a terminal must
10 notify the Department within 10 days after a return is due of any licensed distributors that
11 did not pay the tax due the supplier when the supplier filed the return. The notification
12 must be transmitted to the Department in the form required by the Department.

13 (b) Payment Application. – A supplier that receives a payment of excise tax from a
14 distributor may not apply the payment to debts for motor fuel purchased from the
15 supplier.

16 **"§ 105-449.97. Returns and discounts of importers.**

17 (a) Bonded or Occasional. – A monthly return of a bonded importer and a three-
18 day return of an occasional importer must contain the following information concerning
19 motor fuel imported during the period covered by the return:

20 (1) The number of gallons of imported motor fuel for which the supplier of
21 the fuel collected the excise tax due this State on the fuel.

22 (2) The number of gallons of imported motor fuel for which the supplier of
23 the fuel did not collect the excise tax due this State on the fuel, listed by
24 source state, supplier, and terminal or bulk plant.

25 (3) The import authorization number of each import reported under
26 subdivision (2) of this subsection.

27 (b) Tank Wagon. – A return of a tank wagon importer must list the number of
28 gallons of motor fuel imported during the month and the terminal or bulk plant from
29 which the fuel was imported.

30 (c) Discounts. – An importer may not deduct an administrative discount from the
31 amount remitted with a return. An importer that imports motor fuel received from an
32 elective supplier or a permissive supplier may take the percentage discount that a licensed
33 distributor can take when making deferred payments of tax to a supplier. An importer
34 that imports motor fuel received from a person that is not an elective supplier or a
35 licensed supplier can take the percentage discount that a licensed distributor can take
36 when making deferred payments of tax to a supplier.

37 **"§ 105-449.98. Report by terminal operator.**

38 A terminal operator must make a monthly report to the Secretary of motor fuel
39 received or removed from the terminal during the month. The report is due by the 25th
40 day of the month following the month covered by the report and must contain the
41 following information and any other information required by the Secretary:

42 (1) The number of gallons of motor fuel received in inventory at the
43 terminal during the month and each position holder for the fuel.

- 1 (2) The number of gallons removed from the terminal during the month
2 and, for each removal, the position holder for the fuel and the
3 destination state of the fuel.

4 **"§ 105-449.99. Reports by those who transport motor fuel.**

5 A person who transports, by pipeline, marine vessel, railroad tank car, or transport
6 truck, motor fuel that is being imported into this State or exported from this State must
7 make a monthly report to the Secretary of motor fuel received or delivered for import or
8 export by the transporter during the month. The report is due by the 25th day of the
9 month following the month covered by the report and must contain the following
10 information and any other information required by the Secretary:

- 11 (1) The name and address of each person from whom the transporter
12 received motor fuel outside the State for delivery in the State, the
13 amount of motor fuel received, the date the motor fuel was received,
14 and the person to whom the fuel was delivered.
15 (2) The name and address of each person to whom the transporter delivered
16 motor fuel from a location inside the State to a location outside the
17 State, the amount of motor fuel delivered, and the date the motor fuel
18 was delivered.

19 **"§ 105-449.100. Report of exports from a bulk plant.**

20 A distributor who exports motor fuel from a bulk plant located in this State must
21 make a monthly report to the Secretary of the exports. The report is due by the 25th day
22 of the month following the month covered by the report. The report must contain the
23 following information and any other information required by the Secretary:

- 24 (1) The number of gallons of motor fuel exported during the month.
25 (2) The destination state of the motor fuel exported during the month.

26 **"PART 5. REFUNDS.**

27 **"§ 105-449.105. Refunds upon application for tax paid on exempt fuel, lost fuel, and**
28 **fuel unsalable for highway use.**

29 (a) Licensed Distributor. – A licensed distributor may obtain a refund for tax paid
30 by the distributor on the following motor fuel:

- 31 (1) Fuel sold by the distributor to a governmental unit whose use of fuel is
32 exempt from the motor fuel excise tax.
33 (2) Fuel exported by the distributor, including fuel whose shipping
34 document shows this State as the destination state but was diverted to
35 another state in accordance with the diversion procedures established by
36 the Secretary.

37 (b) Lost Fuel. – A supplier, an importer, or a distributor that loses tax-paid motor
38 fuel due to damage to a conveyance transporting the motor fuel, fire, a natural disaster, an
39 act of war, or an accident may obtain a refund for the tax paid on the fuel.

40 (c) Accidental Mixes. – A person who accidentally combines any of the following
41 may obtain a refund for the amount of tax paid on the fuel:

- 42 (1) Dyed diesel fuel with tax-paid motor fuel.
43 (2) Gasoline with undyed diesel fuel.

1 (3) Undyed diesel fuel with dyed kerosene.

2 (d) Refund Amount. – The amount of a refund allowed under this section is the
3 amount of tax paid. Interest is payable at the rate set in G.S. 105-241(i) on a refund after
4 90 days.

5 **"§ 105-449.106. Quarterly refunds for certain local governmental entities, nonprofit**
6 **organizations, and taxicabs.**

7 (a) Government and Nonprofits. – A local governmental entity or a nonprofit
8 organization listed below that purchases and uses motor fuel may receive a quarterly
9 refund, for the tax paid during the preceding quarter, at a rate equal to the amount of the
10 flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the
11 quarter for which the refund is claimed, less one cent (1¢) per gallon. Any of the
12 following entities may receive a refund under this section:

13 (1) A county or a municipal corporation.

14 (2) A private, nonprofit organization that transports passengers under
15 contract with or at the express designation of a unit of local government.

16 (3) A volunteer fire department.

17 (4) A volunteer rescue squad.

18 (5) A sheltered workshop recognized by the Department of Human
19 Resources.

20 An application for a refund allowed under this section must be made in accordance
21 with this Part and must be signed by the chief executive officer of the entity. The chief
22 executive officer of a nonprofit organization is the president of the organization or
23 another officer of the organization designated in the charter or bylaws of the organization.

24 (b) Taxi. – A person who purchases and uses motor fuel in a taxicab, as defined in
25 G.S. 20-87(1), while the taxicab is engaged in transporting passengers for hire, or in a bus
26 operated as part of a city transit system that is exempt from regulation by the North
27 Carolina Utilities Commission under G.S. 62-260(a)(8), may receive a quarterly refund,
28 for the tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon
29 rate plus the variable cents-per-gallon rate in effect during the quarter for which the
30 refund is claimed, less one cent (1¢) per gallon. An application for a refund must be
31 made in accordance with this Part.

32 **"§ 105-449.107. Annual refunds for off-highway use and use by certain vehicles with**
33 **power attachments.**

34 (a) Off-Highway. – A person who purchases and uses motor fuel for a purpose
35 other than to operate a licensed highway vehicle may receive an annual refund for the tax
36 the person paid on fuel used during the preceding calendar year at a rate equal to the
37 amount of the flat cents-per-gallon rate in effect during the year for which the refund is
38 claimed plus the average of the two variable cents-per-gallon rates in effect during that
39 year, less one cent (1¢) per gallon. An application for a refund allowed under this section
40 must be made in accordance with this Part.

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

- 1 (1) A concrete mixing vehicle.
- 2 (2) A solid waste compacting vehicle.
- 3 (3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a
4 power takeoff to unload the feed.
- 5 (4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a
6 power takeoff to unload the lime or fertilizer.

7 The refund rate shall be computed by subtracting one cent (1¢) from the combined
8 amount of the flat cents-per-gallon rate in effect during the year for which the refund is
9 claimed and the average of the two variable cents-per-gallon rates in effect during that
10 year, and multiplying the difference by thirty-three and one-third percent (33 1/3%). An
11 application for a refund allowed under this section shall be made in accordance with this
12 Part. This refund is allowed for the amount of fuel consumed by the vehicle in its
13 mixing, compacting, or unloading operations, as distinguished from propelling the
14 vehicle, which amount is considered to be one-third of the amount of fuel consumed by
15 the vehicle.

16 **"§ 105-449.108. When an application for a refund is due.**

17 (a) Annual Refunds. – An application for an annual refund of tax permitted by this
18 Article is due by April 15 following the end of the calendar year for which the refund is
19 claimed. The application must state whether or not the applicant has filed a North
20 Carolina income tax return for the preceding taxable year, and must state that the
21 applicant has paid for the fuel for which a refund is claimed or that payment for the fuel
22 has been secured to the seller's satisfaction.

23 (b) Quarterly Refunds. – An application for a quarterly refund of tax permitted by
24 this Article is due by the last day of the month following the end of the calendar quarter
25 for which the refund is claimed. The application must state that the applicant has paid for
26 the fuel for which a refund is claimed or that payment for the fuel has been secured to the
27 seller's satisfaction.

28 **"§ 105-449.109. Reduction or denial of late annual or quarterly refund application.**

29 An application filed with the Secretary within six months of the date the application is
30 due must be accepted but is subject to a penalty of twenty-five percent (25%) of the
31 amount of the refund otherwise due if the application is filed within 30 days after the date
32 the application is due, and is subject to a penalty of fifty percent (50%) of the amount of
33 the refund otherwise due if the application is filed more than 30 days but within six
34 months after the date the application is due. The Secretary may not accept an application
35 filed more than six months after the date the application is due.

36 **"§ 105-449.110. Review of refund application.**

37 Upon determining that an application for refund is correct, the Secretary must issue
38 the applicant a warrant upon the State Treasurer for the amount of the refund. If the
39 Secretary determines that an application for refund is incorrect, the Secretary must send a
40 written notice of the determination to the applicant. The notice must advise the applicant
41 that the applicant may request a hearing on the matter in accordance with Article 9 of this
42 Chapter.

43 **"PART 6. ENFORCEMENT AND ADMINISTRATION.**

1 "§ 105-449.115. Shipping document required to transport motor fuel by railroad
2 tank car or transport truck.

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

8 (b) Content. – A shipping document issued by a terminal operator or the operator
9 of a bulk plant must be machine-printed and must contain the following information and
10 any other information required by the Secretary:

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

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

14 (3) The gross volume of motor fuel loaded.

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

17 (5) If the document is issued by a terminal operator, the following
18 information:

19 a. The net volume temperature corrected to 60° Fahrenheit of the
20 motor fuel loaded.

21 b. A tax responsibility statement indicating the name of the
22 supplier that is responsible for the tax due on the motor fuel and
23 the name of the state for whose tax the supplier is responsible.

24 (c) Reliance. – A terminal operator or bulk plant operator may rely on the
25 representation made by the purchaser of motor fuel or the purchaser's agent concerning
26 the destination state of the motor fuel. A purchaser is liable for any tax due as a result of
27 the purchaser's diversion of fuel from the represented destination state.

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

30 (1) Carry the shipping document in the conveyance for which it was issued
31 when transporting the motor fuel described in it.

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

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

36 a. Notifies the Secretary before transporting the motor fuel into a
37 state other than the printed destination state that the person has
38 received instructions since the shipping document was issued to
39 deliver the motor fuel to a different destination state.

40 b. Receives from the Secretary a confirmation number authorizing
41 the diversion.

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

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

3 (e) Duties of Person Receiving Shipment. – A person to whom motor fuel is
4 delivered by railroad tank car or transport truck may not accept delivery of the motor fuel
5 if the destination state shown on the shipping document for the motor fuel is a state other
6 than North Carolina. To determine if the shipping document shows North Carolina as the
7 destination state, the person to whom the fuel is delivered must examine the shipping
8 document and must keep a copy of the shipping document. The person must keep a copy
9 at the place of business where the motor fuel was delivered for 90 days from the date of
10 delivery and must keep it at that place or another place for at least three years from the
11 date of delivery.

12 (f) Sanctions. – The following acts are grounds for a civil penalty payable to the
13 Department of Transportation, Division of Motor Vehicles, or the Department of
14 Revenue:

15 (1) Transporting motor fuel in a railroad tank car or transport truck without
16 a shipping document or with a false or an incomplete shipping
17 document.

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

20 The penalty imposed under this subsection is payable by the person in whose name
21 the conveyance is registered, if the conveyance is a transport truck, and is payable by the
22 person responsible for the movement of motor fuel in the conveyance, if the conveyance
23 is a railroad tank car. The amount of the penalty depends on the amount of fuel
24 improperly transported or diverted and whether the person against whom the penalty is
25 assessed has previously been assessed a penalty under this subsection. For a first
26 assessment under this subsection, the penalty is the amount of motor fuel tax payable on
27 the improperly transported or diverted motor fuel. For a second or subsequent
28 assessment under this subsection, the penalty is the greater of one thousand dollars
29 (\$1,000) or five times the amount of motor fuel tax payable on the improperly transported
30 or diverted motor fuel. A penalty imposed under this subsection is in addition to any
31 motor fuel tax assessed.

32 **"§ 105-449.116. Import confirmation number required for some imported motor**
33 **fuel.**

34 A bonded importer or an occasional importer that acquires motor fuel for import by
35 transport truck from a supplier that is not an elective supplier or a permissive supplier
36 must obtain an import confirmation number from the Secretary before importing the
37 motor fuel. The importer must write the import confirmation number on the shipping
38 document issued for the fuel. The importer must obtain a separate import confirmation
39 number for each transport truck delivery of motor fuel into this State.

40 **"§ 105-449.117. Penalties for highway use of dyed diesel or other non-tax-paid fuel.**

41 It is unlawful to use dyed diesel fuel for a highway use unless that use is permitted
42 under section 4082 of the Code. A person who operates on a highway a highway vehicle
43 whose supply tank contains dyed diesel fuel whose use is unlawful under this section or

1 contains other fuel on which the tax imposed by this Article has not been paid is guilty of
2 a Class 1 misdemeanor and is liable for a civil penalty.

3 The civil penalty is payable to the Department of Transportation, Division of Motor
4 Vehicles, or the Department of Revenue and is payable by the person in whose name the
5 highway vehicle is registered. The amount of the penalty depends on the amount of fuel
6 in the supply tank of the highway vehicle. The penalty is the greater of one thousand
7 dollars (\$1,000) or five times the amount of motor fuel tax payable on the fuel in the
8 supply tank. A penalty imposed under this section is in addition to any motor fuel tax
9 assessed.

10 **"§ 105-449.118. Civil penalty for buying or selling non-tax-paid motor fuel.**

11 A person who dispenses non-tax-paid motor fuel into the supply tank of a highway
12 vehicle or who allows non-tax-paid motor fuel to be dispensed into the supply tank of a
13 highway vehicle is subject to a civil penalty. The penalty is based on the amount of
14 motor fuel dispensed and is set at the following amounts:

<u>Number of Gallons Dispensed</u>	<u>Penalty</u>
<u>Less than 25</u>	<u>\$ 75</u>
<u>At least 25 but less than 50</u>	<u>150</u>
<u>At least 50</u>	<u>300.</u>

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16
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19 The penalty is payable to the Department of Transportation, Division of Motor
20 Vehicles, or the Department of Revenue. Failure to pay a penalty imposed under this
21 section is grounds under G.S. 20-88.01(b) to withhold or revoke the registration
22 plate of the motor vehicle into which the motor fuel was dispensed.

23 **"§ 105-449.119. Hearing on civil penalty assessment.**

24 A person who denies liability for a penalty imposed under this Part must pay the
25 penalty under protest and make a written demand to the Department of Revenue for a
26 refund. The written demand must be made within 30 days after the penalty is imposed.
27 Upon receiving a demand for a refund, the Secretary shall schedule a hearing on the
28 matter before an employee or an agent of the Department. The hearing must be held
29 within 30 days after receiving the written demand for a refund. If, after the hearing, the
30 Department determines that the person was not liable for the penalty, the amount
31 collected shall be refunded. If after the hearing the Department determines that the
32 person was liable for the penalty, the person paying the penalty may appeal the
33 imposition of the penalty in accordance with G.S. 105-241.2, 105-241.3, and 105-241.4.

34 **"§ 105-449.120. Acts that are misdemeanors.**

35 (a) Class 1. – A person who commits any of the following acts is guilty of a Class
36 1 misdemeanor:

- 37 (1) Fails to obtain a license required by this Article.
- 38 (2) Willfully fails to make a report required by this Article.
- 39 (3) Willfully fails to pay a tax when due under this Article.
- 40 (4) Makes a false statement in an application, a report, or a statement
41 required under this Article.
- 42 (5) Makes a false statement in an application for a refund.
- 43 (6) Fails to keep records as required under this Article.

- 1 (7) Refuses to allow the Secretary or a representative of the Secretary to
2 examine the person's books and records concerning motor fuel.
3 (8) Fails to disclose the correct amount of motor fuel sold or used in this
4 State.
5 (9) Fails to file a replacement bond or an additional bond as required under
6 this Article.
7 (10) Fails to show or give a shipping document as required under this
8 Article.

9 (b) Class 2. – A person who commits any of the following acts is guilty of a Class
10 2 misdemeanor:

- 11 (1) Knowingly dispenses non-tax-paid motor fuel into the supply tank of a
12 highway vehicle.
13 (2) Knowingly allows non-tax-paid fuel to be dispensed into the supply
14 tank of a highway vehicle.

15 **"§ 105-449.121. Record-keeping requirements; inspection authority.**

16 (a) What Must Be Kept. – A person who is required to submit a report or file a
17 return under Part 4 of this Article must keep a record of all shipping documents or other
18 documents used to determine the information provided in the report or return. The
19 records must be kept for three years from the due date of the report or return to which the
20 records apply.

21 (b) Inspection. – The Secretary or a person designated by the Secretary may do
22 any of the following to determine tax liability under this Article:

- 23 (1) Audit a distributor or a person who is required to have or elects to have
24 a license under this Article.
25 (2) Audit a distributor that is not licensed under this Article.
26 (3) Examine a tank or other equipment used to make, store, or transport
27 motor fuel, diesel dyes, or diesel markers.
28 (4) Take a sample of a product from a vehicle, a tank, or another container
29 in a quantity sufficient to determine the composition of the product.
30 (5) Stop a vehicle for the purpose of taking a sample of motor fuel from the
31 vehicle.

32 **"§ 105-449.122. Miscellaneous requirements.**

33 (a) Metered Pumps. – All motor fuel dispensed at retail must be dispensed from
34 metered pumps that indicate the total amount of fuel measured through the pumps. Each
35 pump must be marked to indicate the type of motor fuel dispensed

36 (b) Truck Equipment. – A highway vehicle that transports diesel in a tank that is
37 separate from the fuel supply tank of the vehicle may not have a connection from the
38 transporting tank to the motor or to the supply tank of the vehicle.

39 **"PART 7. USE OF REVENUE.**

40 **"§ 105-449.125. Distribution of tax revenue among various funds and accounts.**

41 The Secretary shall allocate the amount of revenue collected under this Article from
42 an excise tax of one-half cent (1/2¢) a gallon to the following funds and accounts in the
43 fraction indicated:

<u>Fund or Account</u>	<u>Amount</u>
<u>Commercial Leaking Petroleum</u>	
<u>Underground Storage Tank Cleanup</u>	
<u>Fund.....</u>	<u>Nineteen thirty-seconds</u>
<u>Noncommercial Leaking Petroleum</u>	
<u>Underground Storage Tank Cleanup</u>	
<u>Fund.....</u>	<u>Three thirty-seconds</u>
<u>Water and Air Quality Account.....</u>	<u>Five sixteenths.</u>

9 The Secretary shall allocate seventy-five percent (75%) of the remaining excise tax
 10 revenue collected under this Article to the Highway Fund and shall allocate twenty-five
 11 percent (25%) to the Highway Trust Fund.

12 The Secretary shall charge a proportionate share of a refund allowed under this
 13 Article to each fund or account to which revenue collected under this Article is credited.
 14 The Secretary shall credit revenue or charge refunds to the appropriate funds or accounts
 15 on a monthly basis.

16 **"§ 105-449.126. Distribution of part of Highway Fund allocation to Wildlife**
 17 **Resources Fund.**

18 The Secretary shall credit to the Wildlife Resources Fund one-sixth of one percent
 19 (1/6 of 1%) of the amount that is allocated to the Highway Fund under G.S. 105-449.125
 20 and is from the excise tax on gasoline or blended fuel that contains gasoline. Revenue
 21 credited to the Wildlife Resources Fund under this section may be used only for the
 22 boating and water safety activities described in G.S. 75A-3(c). The Secretary must credit
 23 revenue to the Wildlife Resources Fund on an annual basis.

24 **"§ 105-449.127. Civil penalties.**

25 The Secretary must credit civil penalties collected under this Article to the Highway
 26 Fund as nontax revenue.

27 **"ARTICLE 36D.**
 28 **"ALTERNATIVE FUEL.**

29 **"§ 105-449.130. Definitions.**

30 The following definitions apply in this Article:

- 31 (1) Alternative fuel. – A combustible gas or liquid that can be used to
 32 generate power to operate a highway vehicle and that is not subject to
 33 tax under Article 36C of this Chapter.
- 34 (2) Highway. – Defined in G.S. 20-4.01(13).
- 35 (3) Highway vehicle. – Defined in G.S. 105-449.60.
- 36 (4) Motor fuel. – Defined in G.S. 105-449.60.
- 37 (5) Motor fuel rate. – Defined in G.S. 105-449.60.

38 **"§ 105-449.131. License and bond required.**

39 (a) License. – A person may not engage in business in this State as a provider of
 40 alternative fuel unless the person has an alternative fuel provider license issued by the
 41 Secretary. To obtain a license, a person must file an application with the Secretary on a
 42 form provided by the Secretary. An application must include the applicant's name,

1 address, federal employer identification number, and any other information required by
2 the Secretary.

3 (b) Bond. – An applicant for a license as an alternative fuel provider must file with
4 the Secretary a bond or an irrevocable letter of credit in an amount that would be required
5 if the fuel the applicant intended to provide was motor fuel rather than alternative fuel.
6 An applicant that is also required to file a bond or an irrevocable letter of credit under
7 G.S. 105-449.70 to obtain a license as a distributor of motor fuel may file a single bond
8 or irrevocable letter of credit under that section for the combined amount.

9 A bond filed under this subsection must be conditioned upon compliance with this
10 Article, be payable to the State, and be in the form required by the Secretary. The
11 Secretary may require a bond issued under this subsection to be adjusted in accordance
12 with the procedure set in G.S. 105-449.70 for adjusting a bond filed by a distributor of
13 motor fuel.

14 **"§ 105-449.132. Denial or cancellation of license.**

15 The Secretary may deny an application for a license as an alternative fuel provider or
16 cancel an alternative fuel provider license for the same reasons that the Secretary can
17 deny an application for a license or cancel a license under Article 36C of this Chapter.
18 The procedure in Article 36C for cancelling a license applies to the cancellation of a
19 license under this Article.

20 **"§ 105-449.133. Issuance of license; notification of changes.**

21 (a) Issuance. – The Secretary must issue an alternative fuel provider license to
22 each applicant whose application is approved. A license is not transferable and remains
23 in effect until surrendered or cancelled.

24 (b) Notice. – An alternative fuel provider that stops engaging in this State in the
25 business of providing alternative fuel must give the Secretary written notice of the change
26 and must surrender the license. The notice must give the date the change takes effect and,
27 if the alternative fuel provider has transferred the business to another by sale or
28 otherwise, the date of the transfer and the name and address of the person to whom the
29 business is transferred.

30 All taxes for which an alternative fuel provider is liable under this Article but are not
31 yet due become due on the date of the change. If the alternative fuel provider transfers
32 the business to another and does not give the notice required by this section, the person to
33 whom the business was transferred is liable for the amount of any tax the alternative fuel
34 provider owed the State on the date the business was transferred. The liability of the
35 person to whom the business is transferred is limited to the value of the property acquired
36 from the alternative fuel provider.

37 **"§ 105-449.134. Tax on alternative fuel.**

38 A tax at the equivalent of the motor fuel rate is imposed on alternative fuel used to
39 operate a highway vehicle. The Secretary must determine the equivalent rate. The
40 exemptions from the tax on motor fuel in G.S. 105-449.89(2), (3), and (4) apply to the
41 tax imposed by this section. The refunds for motor fuel tax allowed by Part 5 of Article
42 36C of this Chapter apply to the tax imposed by this section. The proceeds of the tax
43 imposed by this section must be allocated in accordance with G.S. 105-449.125.

1 **"§ 105-449.135. Liability for and payment of the tax.**

2 The tax imposed by this section is payable when a return is due. A return is due
3 monthly within 25 days after the end of each month. A monthly return covers liabilities
4 that accrue in the calendar month preceding the date the return is due. A return must be
5 in the form and contain the information required by the Secretary.

6 **"§ 105-449.136. Miscellaneous provisions.**

7 (a) Records. – An alternative fuel provider must keep a record of all documents
8 used to determine the information provided in a return filed under this Article. The
9 records must be kept for three years from the due date of the return to which the records
10 apply. The records are open to inspection during business hours by the Secretary or a
11 person designated by the Secretary.

12 (b) Violations. – The offenses listed in subdivisions (1) through (9) of G.S. 105-
13 449.120 apply to this Article. In applying those offenses to this Article, references to
14 'this Article' are to be construed as references to Article 36D and references to 'motor
15 fuel' are to be construed as references to alternative fuel."

16 PART II.

17 **TRANSITIONAL PROVISIONS**

18 Sec. 4. June 1996, Fuel Tax Liabilities. – A distributor of gasoline or a
19 supplier of diesel fuel that incurs liability in June of 1996 under Article 36 or 36A of
20 Chapter 105 of the General Statutes for the per gallon excise taxes on gasoline and diesel
21 fuel imposed by those Articles shall report the liability and pay the taxes in July of 1996
22 as if those Articles had not been repealed.

23 Sec. 5. Floor Stocks Tax. – Every distributor of motor fuel, both at wholesale
24 and retail, and every supplier or reseller of special fuel must inventory all motor fuel that
25 is on hand or in the person's possession as of 12:01 a.m. on July 1, 1996, and is not in the
26 terminal transfer system and must report the results of the inventory to the Secretary of
27 Revenue. The amount of motor fuel in dead storage is not considered to be part of
28 inventory and shall not be included in the report. "Dead storage" is the amount of motor
29 fuel in a storage tank that will not be pumped out of the tank because the motor fuel is
30 below the mouth of the draw pipe. For a storage tank with a capacity of less than 10,000
31 gallons, the amount of motor fuel in dead storage is considered to be 200 gallons. For a
32 storage tank with a capacity of 10,000 gallons or more, the amount of motor fuel in dead
33 storage is considered to be 400 gallons. The report of inventory must be made on a form
34 provided by the Secretary. The report is due by July 15, 1996.

35 A tax at the rate set in G.S. 105-449.80, as enacted by this act, is imposed on
36 all fuel that is included in the reportable inventory of a distributor, a supplier, or a
37 reseller. The tax does not apply, however, to fuel on which the per gallon excise taxes
38 imposed by former Articles 36 and 36A of Chapter 105 of the General Statutes have been
39 paid nor to fuel for which liability for those taxes attached before the repeal of those
40 Articles.

41 A distributor, a supplier, or a reseller may pay the tax due on fuel in inventory
42 at any time before August 31, 1997, but at least one-twelfth of the amount due must be
43 paid by the last day of each month starting with August of 1996. Payments made after

1 August 31, 1997, are late and are subject to penalties and interest under Article 9 of
2 Chapter 105 of the General Statutes.

3 Sec. 6. All licenses issued under Article 36 or 36A of Chapter 105 of the
4 General Statutes expire July 1, 1996. The Secretary of Revenue must give written notice
5 of this expiration to all license holders by January 1, 1996.

6 A distributor of gasoline under Article 36 or a supplier of special fuel under
7 Article 36A that intends to remain in business as a distributor under Article 36C of
8 Chapter 105 of the General Statutes, as enacted by this act, may obtain a replacement
9 license as a distributor without making a new application by notifying the Secretary of
10 Revenue that the person wants a replacement license. The Secretary of Revenue must
11 issue a replacement distributor license to a distributor or supplier that requests one
12 without requiring a new application or a change in the amount of bond required. The
13 Secretary of Revenue may, however, require an applicant for a replacement distributor
14 license to identify the states to which the distributor intends to export motor fuel and give
15 information on whether the distributor is licensed or registered for motor fuel tax
16 purposes in those states.

17 A bulk user or a reseller of fuel under Article 36A of Chapter 105 of the
18 General Statutes that intends to store or sell at retail undyed diesel fuel after June 30,
19 1996, may obtain a replacement license as a bulk-end user of undyed diesel fuel or a
20 retailer of undyed diesel fuel, respectively, without making a new application by
21 notifying the Secretary of Revenue that the person wants a replacement license. The
22 Secretary of Revenue must issue the appropriate replacement license without requiring a
23 new application.

24 Sec. 7. Notwithstanding G.S. 105-449.80, as enacted by this act, the weighted
25 average of gasoline and diesel fuel used to determine the variable component of the per
26 gallon excise tax to be in effect for the six-month period beginning January 1, 1997, shall
27 be computed based on the tax collected on gasoline and diesel #2 during the base period
28 under former Articles 36 and 36A of Chapter 105 of the General Statutes and under
29 Article 36C of that Chapter, as enacted by this act.

30 Sec. 8. This act does not affect the rights or liabilities of the State, a taxpayer,
31 or another person arising under a statute amended or repealed by this act before its
32 amendment or repeal; nor does it affect the right to any refund or credit of a tax that
33 would otherwise have been available under the amended or repealed statute before its
34 amendment or repeal.

35 PART III.

36 CONFORMING CHANGES

37 Sec. 9. G.S. 20-88.01 reads as rewritten:

38 **"§ 20-88.01. Revocation of registration for failure to register for or comply with**
39 **road tax or pay civil penalty for buying or selling non-tax-paid fuel.**

40 (a) Road Tax. – The Secretary of Revenue may notify the Commissioner of those
41 motor vehicles that are registered or are required to be registered under Article 36B of
42 Chapter 105 and whose owners or lessees, as appropriate, are not in compliance with

1 Article ~~36A or 36B~~ Article 36C or 36D of Chapter 105. When notified, the Commissioner
2 shall withhold or revoke the registration plate for the vehicle.

3 (b) Non-tax-paid Fuel. – The Secretary of Revenue may notify the Commissioner
4 of those motor vehicles for which a civil penalty imposed under G.S. ~~105-441.1 or G.S.~~
5 ~~105-449.24–105-449.118~~ has not been paid. When notified, the Commissioner shall
6 withhold or revoke the registration plate of the vehicle."

7 Sec. 10. G.S. 75-81(3) reads as rewritten:

8 "(3) 'Motor Fuel' ~~shall mean a refined or blended petroleum product used for~~
9 ~~the propulsion of self-propelled motor vehicles; the term includes~~
10 ~~"motor fuel" as defined in G.S. 105-430 and "fuel" as defined in G.S.~~
11 ~~105-449.2. has the same meaning as in G.S. 105-449.60."~~

12 Sec. 11. G.S. 75A-3(c) reads as rewritten:

13 "(c) The Boating Account is established within the Wildlife Resources Fund
14 created under G.S. 143-250. All moneys collected pursuant to the numbering and titling
15 provisions of this Chapter ~~and pursuant to G.S. 105-446.2~~ shall be credited to this ~~Account~~
16 ~~and Account. Gasoline excise tax revenue is credited to the Account under G.S. 105-~~
17 ~~449.126. Revenue in the Account shall be used by the Wildlife Resources Commission,~~
18 ~~subject to the Executive Budget Act and the Personnel Act, for the administration and~~
19 ~~enforcement of this Chapter; for activities relating to boating and water safety including~~
20 ~~education and waterway marking and improvement; and for boating access area~~
21 ~~acquisition, development, and maintenance."~~

22 Sec. 12. G.S. 105-164.13(11) reads as rewritten:

23 "(11) ~~Gasoline or other motor fuel on which the tax levied in G.S. 105-434~~
24 ~~and/or G.S. 105-435 is due and has been paid, and the fact that a~~
25 ~~refund of the tax levied by either of said sections is made pursuant to~~
26 ~~the provisions of Subchapter V of Chapter 105 shall not make the~~
27 ~~sale or the seller of such fuels subject to the tax levied by this~~
28 ~~Article. Motor fuel subject to tax under Article 36C of this Chapter~~
29 ~~and alternative fuel subject to tax under Article 36D of this Chapter,~~
30 ~~regardless of whether the motor fuel is exempted by the Chapter~~
31 ~~from the tax or a refund of the tax is allowed."~~

32 Sec. 13. G.S. 105-253(b) reads as rewritten:

33 "(b) Each responsible corporate officer is personally and individually liable for all
34 of the following:

35 (1) All sales and use taxes collected by a corporation upon taxable
36 transactions of the corporation.

37 (2) All sales and use taxes due upon taxable transactions of the
38 corporation but upon which the corporation failed to collect the tax,
39 but only if the responsible officer knew, or in the exercise of
40 reasonable care should have known, that the tax was not being
41 collected.

1 (3) All taxes due from the corporation pursuant to the provisions of
2 Article ~~36 and Article 36A~~ 36C and 36D of Subchapter V of this
3 Chapter.

4 The liability of the responsible corporate officer is satisfied upon timely remittance of
5 the tax to the Secretary by the corporation. If the tax remains unpaid by the corporation
6 after it is due and payable, the Secretary may assess the tax against, and collect the tax
7 from, any responsible corporate officer in accordance with the procedures in this Article
8 for assessing and collecting tax from a taxpayer. As used in this section, the term
9 'responsible corporate officer' includes the president and the treasurer of the corporation
10 and any other officers assigned the duty of filing tax returns and remitting taxes to the
11 Secretary on behalf of the corporation. Any penalties that may be imposed under G.S.
12 105-236 and that apply to a deficiency shall apply to any assessment made under this
13 section. The provisions of this Article apply to an assessment made under this section to
14 the extent they are not inconsistent with this section.

15 The period of limitations for assessing a responsible corporate officer for unpaid taxes
16 under this section shall expire one year after the expiration of the period of limitations for
17 assessment against the corporation."

18 Sec. 14. G.S. 105-449.38 reads as rewritten:

19 "**§ 105-449.38. Tax levied.**

20 A road tax for the privilege of using the streets and highways of this State is hereby
21 imposed upon every motor carrier on the amount of ~~gasoline or other motor fuel or~~
22 alternative fuel used by ~~such motor~~ the carrier in its operations within this State. The tax
23 shall be at the rate established by the Secretary pursuant to G.S. ~~105-434. Except as credit~~
24 ~~for certain taxes as hereinafter provided for in this Article, taxes imposed on motor carriers by~~
25 ~~this Article are~~ 105-449.80 or G.S. 105-449.134, as appropriate. This tax is in addition to
26 any other taxes imposed on ~~such carriers by any other provisions of law.~~ The tax herein levied
27 is ~~for the same purposes as the tax imposed under the provisions of G.S. 105-434. motor~~
28 carriers."

29 Sec. 15. G.S. 105-449.43 reads as rewritten:

30 "**§ 105-449.43. Application of tax proceeds.**

31 ~~The same percentage amounts of tax~~ Tax revenue collected under this Article and tax
32 refunds or credits allowed under this Article shall be ~~credited to the Highway Fund and to~~
33 ~~the Highway Trust Fund as are credited to those Funds under G.S. 105-445, and the same~~
34 ~~percentage amounts of refunds or credits allowed under this Article shall be charged to~~
35 ~~the Highway Fund and the Highway Trust Fund as are charged to those Funds under that~~
36 ~~statute.~~ allocated among and charged to the funds and accounts listed in G.S. 105-
37 449.125 in accordance with that section."

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

39 "**§ 105-449.47. Registration of vehicles.**

40 A motor carrier may not operate or cause to be operated in this State any vehicle listed
41 in the definition of motor carrier unless both the motor carrier and the motor vehicle are
42 registered with the Secretary for purposes of the tax imposed by this Article.

1 Upon application, the Secretary shall register a motor carrier and shall issue at least
2 one identification marker for each motor vehicle operated by the motor carrier. A copy
3 of the registration of a motor carrier shall be carried in each motor vehicle operated by
4 the motor carrier when the vehicle is in this State. An identification marker shall be
5 clearly displayed at all times and shall be affixed to the vehicle for which it was issued in
6 the place and manner designated by the Secretary. Registrations and identification
7 markers required by this section shall be issued on a calendar year basis. The Secretary
8 may renew a registration or an identification marker without issuing a new registration or
9 identification marker. All identification markers issued by the Secretary remain the
10 property of the State. The Secretary may withhold or revoke a registration or an
11 identification marker when a motor carrier fails to comply with this Article or Article 36A
12 36C of this Subchapter."

13 Sec. 17. G.S. 119-15 reads as rewritten:

14 **"§ 119-15. ~~'Gasoline' defined.~~ Definitions that apply to Article.**

15 The following definitions apply in this Article:

16 (1) Alternative fuel. – Defined in G.S. 105-449.130.

17 (2) Gasoline. – Defined in G.S. 105-449.60.

18 (3) Kerosene. – Petroleum oil that is free from water, glue, and suspended
19 matter and that meets the specifications and standards adopted by the
20 Gasoline and Oil Inspection Board.

21 (4) Motor fuel. – Defined in G.S. 105-449.60.

22 (5) Person. – Defined in G.S. 105-229.90.

23 ~~The term "gasoline" wherever used in this Article shall be construed to mean refined~~
24 ~~petroleum naphtha which by its composition is suitable for use as a carburant in internal~~
25 ~~combustion engines."~~

26 Sec. 18. G.S. 119-16 is repealed.

27 Sec. 19. G.S. 119-16.1 is repealed.

28 Sec. 20. G.S. 119-16.2 reads as rewritten:

29 **"§ 119-16.2. Application for license.**

30 A person may not engage in business as a kerosene distributor unless the person has
31 ~~either a license issued under G.S. 105-433~~ is licensed as a supplier or a distributor under Part
32 2 of Article 36C of Chapter 105 of the General Statutes or has a kerosene license issued
33 under this section. To obtain a license under this section, an applicant must file an
34 application with the Secretary of Revenue on a form provided by the Secretary and file
35 with the Secretary a bond in the amount required by the Secretary, not to exceed twenty
36 thousand dollars (\$20,000). An applicant must give the Secretary the same information
37 the applicant would be required to give under ~~G.S. 105-433~~ Part 2 of Article 36C of
38 Chapter 105 of the General Statutes if the applicant were applying for a license under that
39 ~~section.~~ Part. A bond filed under this section must be conditioned on compliance with
40 this Article, be payable to the State, and be in the form required by the Secretary. A
41 license issued under this section remains in effect until surrendered or canceled, must be
42 displayed in the same manner as a license issued under ~~G.S. 105-433~~, Part 2 of Article
43 36C of Chapter 105 of the General Statutes, and is subject to the same restrictions as a

1 license issued under that section. ~~Part.~~ A person who fails to comply with this section is
2 guilty of a Class 1 misdemeanor."

3 Sec. 21. G.S. 119-18(a) reads as rewritten:

4 "(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is
5 levied upon all ~~kerosene and motor fuel.~~ kerosene, motor fuel, and alternative fuel. The
6 inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same
7 time that the per gallon excise tax on motor fuel is due and payable under ~~Articles 36 and~~
8 ~~36A–~~Article 36C of Chapter 105 of the General Statutes. The inspection tax on
9 alternative fuel is due and payable to the Secretary of Revenue at the same time that the
10 excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the
11 General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by
12 a distributor required to be licensed under G.S. 119-16.2. A monthly report by a
13 distributor required to be licensed under G.S. 119-16.2 is due by the 20th of each month
14 and applies to kerosene received by the distributor during the preceding month."

15 Sec. 22. G.S. 119-19 reads as rewritten:

16 "~~§ 119-19. Failure to report or pay tax; cancellation of license.~~ Authority of Secretary to
17 cancel a license.

18 If any person shall at any time file a false report of the data or information required by
19 law, or shall fail or refuse or neglect to file any report required by law, or to pay the full
20 amount of the tax as required by law, the Secretary of Revenue may forthwith cancel the
21 license of such person issued under G.S. 105-433 or 119-16.2, and notify such person in
22 writing of such cancellation by registered mail to the last known address of such person
23 appearing in the files of the Secretary of Revenue. In the event that the license of any
24 person shall be canceled by the Secretary of Revenue as hereinbefore provided in this
25 section, and in the event such person shall have paid to the State of North Carolina all the
26 taxes due and payable by him under this Article, together with any and all penalties
27 accruing under any of the provisions of this Article, then the Secretary of Revenue shall
28 cancel and surrender the bond theretofore filed by said person under G.S. 105-433 or
29 119-16.2. The Secretary of Revenue may cancel a license issued under G.S. 119-16.2
30 upon the written request of the license holder. The Secretary may summarily cancel a
31 license issued under G.S. 119-16.2 or Article 36C or 36D of Chapter 105 of the General
32 Statutes when the Secretary finds that the license holder is incurring liability for the tax
33 imposed by this Article after failing to pay a tax when due under this Article. The
34 Secretary may cancel the license of a license holder who files a false report under this
35 Article or fails to file a report required under this Article after holding a hearing on
36 whether the license should be cancelled.

37 The Secretary must send a person whose license is summarily cancelled a notice of
38 the cancellation and must give the person an opportunity to have a hearing on the
39 cancellation within 10 days after the cancellation. The Secretary must give a person
40 whose license may be cancelled after a hearing at least 10 days' written notice of the date,
41 time, and place of the hearing. A notice of a summary license cancellation and a notice
42 of hearing must be sent by registered mail to the last known address of the license holder.

1 When the Secretary cancels a license and the license holder has paid all taxes and
2 penalties due under this Article, the Secretary must either return to the license holder the
3 bond filed by the license holder or notify the person liable on the bond and the license
4 holder that the person is released from liability on the bond."

5 Sec. 23. G.S. 119-22 is repealed.

6 Sec. 24. G.S. 136-41.1(a) reads as rewritten:

7 "(a) There is annually appropriated out of the State Highway Fund a sum equal to
8 the net amount after refunds that was produced during the fiscal year by a one and three-
9 fourths cents (1 3/4¢) tax on each gallon of motor fuel ~~as taxed by G.S. 105-434 and 105-~~
10 ~~435, to~~ under Article 36C of Chapter 105 of the General Statutes and on the equivalent
11 amount of alternative fuel taxed under Article 36D of that Chapter. The amount
12 appropriated shall be allocated in cash on or before October 1 of each year to the cities
13 and towns of the State in accordance with this section. In addition, as provided in G.S.
14 136-176(b)(3), revenue is allocated and appropriated from the Highway Trust Fund to the
15 cities and towns of this State to be used for the same purposes and distributed in the same
16 manner as the revenue appropriated to them under this section from the Highway Fund.
17 Like the appropriation from the Highway Fund, the appropriation from the Highway
18 Trust Fund shall be based on revenue collected during the fiscal year preceding the date
19 the distribution is made.

20 Seventy-five percent (75%) of the funds appropriated for cities and towns shall be
21 distributed among the several eligible municipalities of the State in the percentage
22 proportion that the population of each eligible municipality bears to the total population
23 of all eligible municipalities according to the most recent annual estimates of population
24 as certified to the Secretary of Revenue by the State Budget Officer. This annual
25 estimation of population shall include increases in the population within the
26 municipalities caused by annexations accomplished through July 1 of the calendar year in
27 which these funds are distributed. Twenty-five percent (25%) of said fund shall be
28 distributed among the several eligible municipalities of the State in the percentage
29 proportion that the mileage of public streets in each eligible municipality which does not
30 form a part of the State highway system bears to the total mileage of the public streets in
31 all eligible municipalities which do not constitute a part of the State highway system.

32 It shall be the duty of the mayor of each municipality to report to the Department of
33 Transportation such information as it may request for its guidance in determining the
34 eligibility of each municipality to receive funds under this section and in determining the
35 amount of allocation to which each is entitled. Upon failure of any municipality to make
36 such report within the time prescribed by the Department of Transportation, the
37 Department of Transportation may disregard such defaulting unit in making said
38 allotment.

39 The funds to be allocated under this section shall be paid in cash to the various
40 eligible municipalities on or before October 1 of each year. Provided that eligible
41 municipalities are authorized within the discretion of their governing bodies to enter into
42 contracts for the purpose of maintenance, repair, construction, reconstruction, widening,
43 or improving streets of such municipalities at any time after January 1 of any calendar

1 year in total amounts not to exceed ninety percent (90%) of the amount received by such
2 municipality during the preceding fiscal year, in anticipation of the receipt of funds under
3 this section during the next fiscal year, to be paid for out of such funds when received.

4 The Department of Transportation may withhold each year an amount not to exceed
5 one percent (1%) of the total amount appropriated for distribution under this section for
6 the purpose of correcting errors in allocations: Provided, that the amount so withheld and
7 not used for correcting errors will be carried over and added to the amount to be allocated
8 for the following year.

9 The word 'street' as used in this section is hereby defined as any public road
10 maintained by a municipality and open to use by the general public, and having an
11 average width of not less than 16 feet. In order to obtain the necessary information to
12 distribute the funds herein allocated, the Department of Transportation may require that
13 each municipality eligible to receive funds under this section submit to it a statement,
14 certified by a registered engineer or surveyor of the total number of miles of streets in
15 such municipality. The Department of Transportation may in its discretion require the
16 certification of mileage on a biennial basis."

17 Sec. 25. G.S. 136-176(a)(1) reads as rewritten:

18 "(1) Motor fuel, ~~special fuel~~, alternative fuel, and road tax revenue deposited
19 in the Fund under G.S. ~~105-445, 105-449.16, 105-449.125, 105-449.134,~~
20 and 105-449.43, respectively."

21 Sec. 26. G.S. 143-215.3A(a) reads as rewritten:

22 "(a) The Water and Air Quality Account is established as a nonreverting account
23 within the Department. Revenue in the Account shall be applied to the costs of
24 administering the programs for which the fees were collected. Revenue credited to the
25 Account pursuant to G.S. ~~105-445-105-449.125, 105-449.134, and 105-449.43~~ shall be
26 used to administer the air quality program. Except for the following fees, all application
27 fees and permit administration fees collected by the State for permits issued under
28 Articles 21, 21A, 21B, and 38 of this Chapter shall be credited to the Account:

29 (1) Fees collected under Part 2 of Article 21A and credited to the Oil or
30 Other Hazardous Substances Pollution Protection Fund.

31 (2) Fees credited to the Title V Account.

32 (3) Fees credited to the Wastewater Treatment Works Emergency
33 Maintenance, Operation and Repair Fund under G.S. 143-215.3B.

34 (4) Fees collected under G.S. 143-215.28A."

35 Sec. 27. G.S. 150B-2(8a)j. reads as rewritten:

36 "j. Establishment of the interest rate that applies to tax assessments
37 under G.S. 105-241.1 and the variable component of the excise
38 tax on motor fuel under G.S. ~~105-434. 105-449.80.~~"

39 PART IV.

40 REPEAL MINIMUM HIGHWAY USE TAX

41 Sec. 28. G.S. 105-187.3(a) reads as rewritten:

42 "(a) Amount. – The rate of the use tax imposed by this Article is three percent (3%)
43 of the retail value of a motor vehicle for which a certificate of title is issued. The tax is

1 payable as provided in G.S. 105-187.4. ~~The tax may not be less than forty dollars (\$40.00)~~
2 ~~for each motor vehicle for which a certificate of title is issued, unless the issuance of a title for~~
3 ~~the vehicle is exempt from tax under G.S. 105-187.6(a).~~—The tax may not be more than one
4 thousand dollars (\$1,000) for each certificate of title issued for a Class A or Class B
5 motor vehicle that is a commercial motor vehicle, as defined in G.S. 20-4.01. The tax
6 may not be more than one thousand five hundred dollars (\$1,500) for each certificate of
7 title issued for any other motor vehicle."

8 Sec. 29. G.S. 105-187.6(b) reads as rewritten:

9 "(b) Partial Exemptions. — A maximum tax of forty dollars (\$40.00) ~~Only the~~
10 ~~minimum tax imposed by this Article~~ applies when a certificate of title is issued as the result
11 of a transfer of a motor vehicle:

12 (1) To a secured party who has a perfected security interest in the motor
13 vehicle.

14 (2) To a partnership or corporation as an incident to the formation of the
15 partnership or corporation and no gain or loss arises on the transfer
16 under section 351 or section 721 of the Internal Revenue Code, or to a
17 corporation by merger or consolidation in accordance with G.S. 55-11-
18 06."

19 Sec. 30. G.S. 105-187.7 reads as rewritten:

20 "**§ 105-187.7. Credit for tax paid in another state.**

21 A person who, within 90 days before applying for a certificate of title for a motor
22 vehicle on which the tax imposed by this Article is due, has paid a sales tax, an excise
23 tax, or a tax substantially equivalent to the tax imposed by this Article on the vehicle to a
24 taxing jurisdiction outside this State is entitled to a credit against the tax due under this
25 Article for the amount of tax paid to the other jurisdiction. ~~The credit may not reduce the~~
26 ~~person's liability under this Article below the minimum forty dollar (\$40.00) tax."~~

27 Sec. 31. G.S. 105-187.8 reads as rewritten:

28 "**§ 105-187.8. Refund for return of purchased motor vehicle.**

29 When a purchaser of a motor vehicle returns the motor vehicle to the seller of the
30 motor vehicle within 90 days after the purchase and receives a vehicle replacement for
31 the returned vehicle or a refund of the price paid the seller, whether from the seller or the
32 manufacturer of the vehicle, the purchaser may obtain a refund of the privilege tax paid
33 on the certificate of title issued for the returned motor vehicle, ~~less the minimum tax of forty~~
34 ~~dollars (\$40.00) vehicle.~~

35 To obtain a refund, the purchaser must apply to the Division for a refund within 30
36 days after receiving the replacement vehicle or refund of the purchase price. The
37 application must be made on a form prescribed by the Commission and must be
38 supported by documentation from the seller of the returned vehicle."

39 PART V.

40 MOTOR CARRIER ENFORCEMENT

41 Sec. 32. G.S. 105-449.44 reads as rewritten:

42 "**§ 105-449.44. How to determine the amount of fuel used in State ascertained. the**
43 **State; presumption of amount used.**

1 (a) Calculation. – The amount of gasoline or other motor fuel used in the
2 operations of any motor carrier within this State shall be such proportion of the total
3 amount of such gasoline or other motor fuel used in its entire operations within and
4 without this State as the total number of miles traveled within this State bears to the total
5 number of miles traveled within and without this State.

6 (b) Presumption. – The Secretary shall check reports filed under this Article
7 against the weigh station records and other records of the Division of Motor Vehicles of
8 the Department of Transportation concerning motor carriers to determine if motor
9 carriers that are operating in this State are filing the reports required by this Article. A
10 motor carrier that does not file a report for a quarter but, based on the records of the
11 Division, operated in the State during that quarter is presumed to have traveled 450 miles
12 for each time the records of the Division indicate the carrier operated in this State. The
13 Department shall assess the motor carrier for the amount payable based on the presumed
14 mileage."

15 Sec. 33. G.S. 105-236 is amended by adding a new subdivision to read:

16 "(5b) Road Tax Understatement. – If a motor carrier understates its liability
17 for the road tax imposed by Article 36B of this Chapter by fifteen
18 percent (15%) or more, the Secretary shall assess the motor carrier a
19 penalty in an amount equal to two times the amount of the deficiency."

20 PART VI.

21 EFFECTIVE DATES

22 Sec. 34. Section 6 of Part I of this act and this Part are effective upon
23 ratification. The remainder of Part I of this act and Parts II and III of this act become
24 effective January 1, 1996. Part IV of this act becomes effective July 1, 1996. Part V of
25 this act becomes effective October 1, 1995.