

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-423
HOUSE BILL 35

AN ACT TO EXTEND THE TIME ALLOWED FOR CLAIMING SALES TAX REFUNDS, MOTOR FUEL TAX REFUNDS, AND ALTERNATIVE FUEL TAX REFUNDS, AND TO PROVIDE THAT A MOTOR FUEL TAX REFUND IS NET OF THE SALES TAX DUE ON THE FUEL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.14(d) reads as rewritten:

"(d) Penalties for Late Applications. – Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above are subject to the following penalties for late filing: applications filed within 30 days after the due date, twenty-five percent (25%); applications filed after 30 days but within ~~six months~~ three years after the due date, fifty percent (50%). Refunds applied for more than ~~six months~~ three years after the due date are barred."

Section 2. G.S. 105-449.109 reads as rewritten:

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

An application filed with the Secretary within ~~six months~~ three years of the date the application is due must be accepted but is subject to a penalty of twenty-five percent (25%) of the amount of the refund otherwise due if the application is filed within 30 days after the date the application is due, and is subject to a penalty of fifty percent (50%) of the amount of the refund otherwise due if the application is filed more than 30 days but within ~~six months~~ three years after the date the application is due. The Secretary shall not accept an application filed more than ~~six months~~ three years after the date the application is due."

Section 3. G.S. 105-164.13(11) reads as rewritten:

"(11) ~~Motor fuel subject to tax under Article 36C of this Chapter and alternative fuel subject to tax under Article 36D of this Chapter, regardless of whether those Articles exempt the fuel from tax or allow a refund of tax paid on the fuel. Any of the following fuel:~~

- a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105(c) or (d) or under G.S. 105-449.107.
- b. Alternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under G.S. 105-449.107."

Section 4. G.S. 105-449.107, as amended by Section 14 of Chapter 33 of the 1997 Session Laws, reads as rewritten:

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

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

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

- (1) A concrete mixing vehicle.
- (2) A solid waste compacting vehicle.
- (3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.
- (4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.
- (5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.

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

(c) Sales Tax Amount. – Article 5 of this Chapter determines the amount of sales and use tax to be deducted under this section from a motor fuel excise tax refund. The sales price and the cost price of motor fuel to be used in determining the amount to deduct is the average of the wholesale prices used under G.S. 105-449.80 to determine the excise tax rates in effect for the two six-month periods of the year for which the refund is claimed."

Section 5. Notwithstanding G.S. 105-164.14, as amended by this act, a taxpayer's sales tax refund application under G.S. 105-164.14(b) is timely filed if it is filed within four years after the due date and before July 1, 1998.

Section 6. Section 5 of this act is effective when it becomes law; the Department of Revenue shall not issue a refund of sales tax under Section 5 until July 1,

1998. Section 1 of this act becomes effective July 1, 1998. Sections 2 through 4 of this act become effective January 1, 1998, and apply to motor fuel and alternative fuel taxes paid on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of August, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 2:15 p.m. this 22nd day of August, 1997