

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2003-349
SENATE BILL 236**

AN ACT TO MODIFY THE DIVIDEND RECEIVED DEDUCTION FOR REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS TO ENSURE THAT ALL DIVIDENDS ARE TREATED UNIFORMLY, TO EXTEND FOR TWO YEARS THE DEPARTMENT OF REVENUE'S AUTHORITY TO OUTSOURCE THE COLLECTION OF IN-STATE TAX DEBTS, TO AMEND THE MOTOR FUEL TAX LAWS, AND TO MAKE VARIOUS ADMINISTRATIVE CHANGES IN THE TAX LAWS.

The General Assembly of North Carolina enacts:

PART 1. MODIFY DIVIDEND RECEIVED DEDUCTION FOR RICs AND REITs.

SECTION 1.1. G.S. 105-130.7 and G.S. 105-130.5(b)(3) are repealed.

SECTION 1.2. G.S. 105-130.4(c) reads as rewritten:

"(c) Rents and royalties from real or tangible personal property, gains and losses, interest, ~~dividends less the portion deductible under G.S. 105-130.7,~~ dividends, patent and copyright royalties and other kinds of income, to the extent that they constitute nonbusiness income, less related expenses shall be allocated as provided in subsections (d) through (h) of this section."

SECTION 1.3. G.S. 105-130.4(f) reads as rewritten:

"(f) Interest and net dividends are allocable to this State if the corporation's commercial domicile is in this State. For purposes of this section, the term "net dividends" means gross dividend income received less related ~~expenses and less that portion of the dividends deductible under G.S. 105-130.7,~~ expenses."

PART 2. AVOID DUPLICATIVE REPORTING REQUIREMENTS REGARDING SALES OF SEIZED PROPERTY.

SECTION 2. G.S. 105-242(a)(2) reads as rewritten:

"(2) The Secretary may issue a warrant or order under the Secretary's hand and seal to any revenue officer or other employee of the Department of Revenue charged with the duty to collect taxes, commanding the officer or employee to levy upon and sell the taxpayer's personal property, including that described in G.S. 105-366(d), found within the State for the payment of the tax, including penalties and interest. Except as otherwise provided in this subdivision, the levy upon the sale of personal property shall be governed by the laws regulating levy and sale under execution. The person to whom the warrant is directed shall proceed to levy upon and sell the personal property subject to levy in the same manner and with the same powers and authority normally exercised by sheriffs in levying upon and selling personal property under execution, except that the property may be sold in any county, in the discretion of the Secretary. In addition to the notice of sale required by the laws governing sale of property levied upon under execution, the Secretary may advertise the sale in any reasonable manner and for any reasonable period of time to produce an adequate bid for the property. Levy and sale fees, plus actual advertising costs, shall be added to and collected in the same manner as taxes. The

Secretary is not required to file a report of sale with the clerk of superior court, as required by the laws governing sale of property levied upon under execution, if the sale is otherwise publicly reported."

PART 3. EXTEND AUTHORITY TO CONTINUE USING OUTSIDE COLLECTION AGENCIES.

SECTION 3. Section 9 of S.L. 2001-380 reads as rewritten:

"**SECTION 9.** Section 3 of this act becomes effective November 1, 2001. Section 6 of this act is effective on and after July 1, 2001. Section 8 of this act becomes effective ~~October 1, 2003.~~ October 1, 2005. The remainder of this act is effective when it becomes law and applies to tax debts that remain unpaid on or after that date."

PART 4. REVISE SECRECY PROVISION TO REFLECT TRANSFER OF DMV ENFORCEMENT TO THE DIVISION OF THE STATE HIGHWAY PATROL.

SECTION 4. G.S. 105-259(b)(7) reads as rewritten:

"(7) To exchange information with the ~~Division of Motor Vehicles of the Department of Transportation~~ Division of the State Highway Patrol of the Department of Crime Control and Public Safety or the International Fuel Tax Association, Inc., when the information is needed to fulfill a duty imposed on the Department of Revenue or the ~~Division of Motor Vehicles~~ Division of the State Highway Patrol of the Department of Crime Control and Public Safety."

PART 5. BASE LOCAL SALES TAX DISTRIBUTIONS ON TAXPAYER DATA.

SECTION 5. G.S. 105-472(a) reads as rewritten:

"(a) County Allocation. – The Secretary shall, on a monthly basis, allocate to each taxing county for which the Secretary collects the tax the net proceeds of the tax collected in that county under this Article. For the purpose of this section, "net proceeds" means the gross proceeds of the tax collected in each county under this Article less taxes refunded, the cost to the State of collecting and administering the tax in the county as determined by the Secretary, and other deductions that may be charged to the county. If the Secretary collects local sales or use taxes in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary shall allocate the taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article during that month and shall include them in the monthly distribution. Amounts collected by electronic funds transfer payments are included in the distribution for the month in which the return that applies to the payment is received."

PART 6. SIMPLIFY PROCEDURE FOR HOLD HARMLESS CALCULATION.

SECTION 6. G.S. 105-521(b), as amended by Section 37.1 of S.L. 2003-284, reads as rewritten:

"(b) Distributions. – On or before August 15, 2003, and August 15, 2004, the Secretary must multiply each local government's local sales tax share by the estimated amount that all local governments would be expected to receive during the current fiscal year under G.S. 105-520 if every county levied the tax under this Article for the year. If the resulting amount is less than one hundred percent (100%) of the local government's repealed reimbursement amount, the Secretary must pay the local government the difference, but not less than one hundred dollars (\$100.00).

On or before May 1, 2003, and May 1, 2004, the ~~Office of State Budget and Management~~ Department of Revenue and the Fiscal Research Division of the General Assembly must each submit to the Secretary and to the General Assembly a final projection of the estimated amount that all local governments would be expected to receive during the upcoming fiscal year under G.S. 105-520 if every county levied the tax under this Article for the fiscal year. If, after May 1 and before a distribution is

made, a law is enacted that would affect the projection, an updated projection must be submitted as soon as practicable. If the Secretary does not use the lower of the two final projections to make the calculation required by this subsection, the Secretary must report the reasons for this decision to the Joint Legislative Commission on Governmental Operations within 60 days after receiving the projections."

PART 7. CLARIFY THAT THE FILING FEE FOR AN ANNUAL REPORT IS NONREFUNDABLE.

SECTION 7. G.S. 55-1-22 is amended by adding a new subsection to read:

"(d) The fee for the annual report in subdivision (23) of this section is nonrefundable."

PART 8. CLARIFY ELIGIBILITY FOR R&D CREDIT.

SECTION 8.1. G.S. 105-129.4(a) is amended by adding a new subdivision

to read:

"(7) Research and development. – For the purpose of determining eligibility under this subsection for the credit for research and development in G.S. 105-129.10, the following special rules apply:

a. If the primary activity of an establishment of the taxpayer in this State is computer services, the taxpayer's qualified research expenditures in this State are considered to be used in computer services.

b. For all other taxpayers, the taxpayer's qualified research expenditures in this State are considered to be used in the primary business of the taxpayer."

SECTION 8.2. The General Assembly finds that the amendment to G.S. 105-129.4 made by this Part clarifies the intent of the existing law and does not represent a change in the law. Accordingly, G.S. 105-129.4(a)(7)a. applies to taxable years beginning on or after January 1, 2001, and G.S. 105-129.4(a)(7)b. applies to taxable years beginning on or after January 1, 1996.

PART 9. REVENUE LAWS TO STUDY DATA NEEDED TO ESTIMATE IMPACT OF CONSOLIDATED RETURNS.

SECTION 9. The Revenue Laws Study Committee shall establish a study group composed of State tax professionals from accounting firms and representatives of the Department of Revenue to work together on gathering appropriate data to conduct an analysis of the potential revenue impact of modifying the corporate income tax law to require consolidated returns.

PART 10. MOTOR FUEL TAX CHANGES.

SECTION 10.1. G.S. 105-449.49 reads as rewritten:

"§ 105-449.49. Temporary permits.

Upon application to the Secretary and payment of a fee of fifty dollars (\$50.00), a motor carrier may obtain a temporary permit authorizing the carrier to operate a vehicle in the State without registering the vehicle in accordance with G.S. 105-449.47 for not more than ~~20~~three days. A motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the ~~20-day~~three-day period. The Secretary may refuse to issue a temporary permit to any of the following:

- (1) A motor carrier whose registration has been withheld or revoked.
- (2) A motor carrier who the Secretary determines is evading payment of tax through the successive purchase of temporary permits."

SECTION 10.2. G.S. 105-449.60(33) reads as rewritten:

"(33) Tank wagon. – A truck that is not a transport truck and ~~has a~~ ~~compartment~~ ~~is~~ designed or used to carry at least 1,000 gallons of motor fuel."

SECTION 10.3. G.S. 105-449.65(a) reads as rewritten:

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

- (1) A refiner.
- (2) A supplier.
- (3) A terminal operator.
- (4) An importer.
- (5) An exporter.
- (6) A blender.
- (7) A motor fuel transporter.
- (8) Repealed by Session Laws 1999-438, s. 20.
- (9) Repealed by Session Laws 1999-438, s. 21.
- (10) A distributor who purchases motor fuel from an elective or permissive supplier at an out-of-state terminal for import into this State."

SECTION 10.4. G.S. 105-449.67 reads as rewritten:

"§ 105-449.67. List of persons who may obtain a license.

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

- (1) ~~A distributor.~~ A distributor who is not required to be licensed under G.S. 105-449.65.
- (2) A permissive supplier."

SECTION 10.5. G.S. 105-449.69(d) and (e) read as rewritten:

"(d) Import Activity. – An applicant for a license as an importer or as a distributor must list on the application each state from which the applicant intends to import motor fuel and, if required by a state listed, must be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant must give the applicant's license or registration number in that state.

~~A license holder that intends to import motor fuel from a state not listed on the license holder's application for an importer's license or a distributor's license must give the Secretary written notice of the change before importing motor fuel from that state. The notice must include the information that is required on the license application.~~

(e) Export Activity. – An applicant for a license as an exporter must designate an agent located in North Carolina for service of process and must give the agent's name and address. An applicant for a license as an exporter or as a distributor must list on the application each state to which the applicant intends to export motor fuel received in this State by means of a transfer that is outside the terminal transfer system and, if required by a state listed, must be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant must give the applicant's license or registration number in that state.

~~A license holder that intends to export motor fuel to a state not listed on the license holder's application for an exporter's license or a distributor's license must give the Secretary written notice of the change before exporting motor fuel to that state. The notice must include the information that is required on the license application."~~

SECTION 10.6. G.S. 105-449.72(a)(2) reads as rewritten:

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

- (2) For an applicant for a license as any of the following, the amount is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. The amount may not be less than two thousand dollars (\$2,000) and may not be more than ~~two hundred fifty thousand dollars (\$250,000)~~ five hundred thousand dollars (\$500,000):

- a. A supplier that is a fuel alcohol provider or a biodiesel provider but is neither a position holder nor a person that receives motor fuel pursuant to a two-party exchange.
- b. An occasional importer.
- c. A tank wagon importer.
- d. A distributor.
- e. Repealed by Session Laws 1997-60, s. 5, effective October 5, 1997."

SECTION 10.7. G.S. 105-449.73 reads as rewritten:

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

The Secretary may refuse to issue a license to an individual applicant that 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 Article 36 or 36A of this Chapter cancelled by the Secretary for cause.
- (1a) Had a motor fuel license or registration issued by another state cancelled 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.
- (5) Failed to remit payment for an overdue tax debt under Chapter 105 or Chapter 119 of the General Statutes. The term "overdue tax debt" has the same meaning as defined in G.S. 105-243.1.
- (6) Failed to file a return due under Chapter 105 or Chapter 119 of the General Statutes."

SECTION 10.8. G.S. 105-449.86(a)(1) is repealed.

SECTION 10.9. G.S. 105-449.115(b) reads as rewritten:

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

- (1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received.
- (2) The date the motor fuel was loaded.
- (3) The gross gallons loaded.
- (4) The destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent.
- (5) If the document is issued by a terminal operator, the document must be machine printed and it must contain the following information:
 - a. The net gallons loaded.
 - b. A tax responsibility statement indicating the name of the supplier that is responsible for the tax due on the motor fuel."

SECTION 10.10. G.S. 105-449.117 reads as rewritten:

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

(a) Violation. – It is unlawful to use dyed diesel fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless that use is allowed under section 4082 of the Code. It is unlawful to use undyed diesel fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless the tax imposed by this Article has been paid. A person who violates this section is guilty of a Class 1 misdemeanor and is liable for a civil penalty.

(b) Civil Penalty. – The civil penalty is payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue and is payable by the person in whose name the highway vehicle is registered. The amount of

the penalty depends on the amount of fuel in the supply tank of the highway vehicle. The penalty is the greater of one thousand dollars (\$1,000) or five times the amount of motor fuel tax payable on the fuel in the supply tank. A penalty imposed under this section is in addition to any motor fuel tax assessed.

(c) Enforcement. – The Secretary or a person designated by the Secretary may conduct investigations to identify violations of this Article. It is not a valid defense to a violation of this Article that the State is exempt from the tax imposed by this Article."

SECTION 10.11. G.S. 105-449.123(a) reads as rewritten:

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

- (1) The storage tank of the storage facility must be marked if the storage tank is visible.
- (2) The fillcap or spill containment box of the storage facility must be marked.
- (3) The dispensing device that serves the storage facility must be marked.
- (4) The retail pump or dispensing device at any level of the distribution system must comply with the marking requirements."

SECTION 10.12. G.S. 119-15 is amended by adding the following new subdivisions to read:

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

The following definitions apply in this Article:

- ...
(6) Terminal. – Defined in G.S. 105-449.60.
- (7) Terminal operator. – Defined in G.S. 105-449.60."

SECTION 10.13. G.S. 119-16.2 is repealed.

SECTION 10.14. Article 3 of Chapter 119 of the General Statutes is amended by adding the following new sections to read:

"§ 119-15.1. List of persons who must have a license.

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

- (1) A kerosene supplier.
- (2) A kerosene distributor.
- (3) A kerosene terminal operator.

(b) Exception. – A kerosene supplier license is not required if the supplier is licensed as a supplier under Part 2 of Article 36C of Chapter 105 of the General Statutes. A kerosene distributor is required to have a kerosene distributor license only if the distributor imports kerosene. Other kerosene distributors may elect to have a kerosene license. A kerosene terminal operator license is not required if the supplier is licensed as a supplier under Part 2 of Article 36C of Chapter 105 of the General Statutes.

"§ 119-15.2. How to apply for a license.

To obtain a license, an applicant must file an application with the Secretary of Revenue on a form provided by the Secretary. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary. An applicant must meet the requirements for obtaining a license set out in G.S. 105-449.69(b) and (c).

"§ 119-15.3. Bond or letter of credit required as a condition of obtaining and keeping certain licenses.

(a) Initial Bond. – An applicant for a license as a kerosene supplier, kerosene distributor, or kerosene terminal operator must file with the Secretary of Revenue a bond or an irrevocable letter of credit. A bond 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. The amount of the bond or irrevocable letter of credit may not be less than five hundred dollars (\$500.00) and may not be more than twenty thousand dollars (\$20,000).

(b) Adjustments to Bond. – When notified by the Secretary of Revenue, a person that has filed a bond or irrevocable letter of credit and that holds a license listed in this Article 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 the additional bond or irrevocable letter of credit by the license holder, however, may not exceed the limits set in subsection (a) of this section.

(c) Class 1. – A person who fails to comply with this section is guilty of a Class 1 misdemeanor."

SECTION 10.15. G.S. 119-18(a) reads as rewritten:

"(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all of the ~~following fuel, fuel~~ listed in this subsection regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes. ~~Statutes. The~~

- ~~(1) Motor fuel that is not dyed diesel fuel.~~
- ~~(2) Dyed diesel fuel used to operate a highway vehicle.~~
- ~~(3) Alternative fuel used to operate a highway vehicle.~~
- ~~(4) Kerosene.~~

~~The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under Article 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report is due by the 22nd of each month and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by a kerosene supplier. A kerosene terminal operator must file a return in accordance with the provisions of G.S. 105-449.100.~~

- (1) Motor fuel.
- (2) Alternative fuel used to operate a highway vehicle.
- (3) Kerosene."

SECTION 10.16. G.S. 119-18 is amended by adding a new subsection to read:

"(a1) Deferred Payment. – A licensed kerosene distributor that buys kerosene from a supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes has the right to defer payment of the inspection tax until the supplier is required to remit the tax to this State or another state. A licensed kerosene distributor that pays the tax due a supplier licensed under that Part by the date the supplier must pay the tax to the State may deduct from the amount due a discount in the amount set in G.S. 105-449.93."

PART 11. CHARGE OFF BAD DEBTS.

SECTION 11. G.S. 105-164.13(15) reads as rewritten:

"(15) Accounts of purchasers, representing taxable sales, on which the tax imposed by this Article has been paid, that are found to be worthless and actually charged off for income tax purposes may, at corresponding periods, be deducted from gross sales, ~~provided, however, they must be added to gross sales if afterwards collected.~~ In the case of a municipality that sells electricity, the account may be deducted if it meets all the conditions for charge-off that would apply if the municipality were subject to income tax. Any accounts deducted pursuant to this subdivision must be added to gross sales if afterwards collected."

PART 12. EFFECTIVE DATE.

SECTION 12. Parts 1 and 8 of this act are effective for taxable years beginning on or after January 1, 2003. Part 5 of this act becomes effective July 1, 2003. Part 9 of this act is effective for taxable years beginning on or after January 1, 2003, and shall expire for taxable years beginning on or after January 1, 2005. Part 10 of this act becomes effective January 1, 2004. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 2003.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 1:43 p.m. this 27th day of July, 2003