

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 105
Committee Substitute Favorable 5/4/05

Short Title: Motor Fuel Tax Changes.

(Public)

Sponsors:

Referred to:

February 8, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE TAXATION OF MOTOR FUELS.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. G.S. 105-236(2) reads as rewritten:

5 "§ 105-236. Penalties.

6 Penalties assessed by the Secretary under this Subchapter are assessed as an
7 additional tax. Except as otherwise provided by law, and subject to the provisions of
8 G.S. 105-237, the following penalties shall be applicable:

9 ...

10 (2) Failure to Obtain a License. – For failure to obtain a license before
11 engaging in a business, trade or profession for which a license is
12 required, the Secretary shall assess a penalty equal to five percent (5%)
13 of the amount prescribed for the license per month or fraction thereof
14 until paid, not to exceed twenty-five percent (25%) of the amount so
15 prescribed, but in any event shall not be less than five dollars (\$5.00).
16 In cases in which the taxpayer fails to obtain a license as required
17 under G.S. 105-449.65 or G.S. 105-449.131, the Secretary may assess
18 a penalty of one thousand dollars (\$1,000)."

19 SECTION 2. G.S. 105-241(b) is amended by adding a new subdivision to
20 read:

21 "(b) Electronic Funds Transfer. – Payment by electronic funds transfer is required
22 as provided in this subsection.

23 ...

24 (2a) Motor fuel taxes. – A taxpayer that is required to file an electronic
25 return under Article 36C or Article 36D of Chapter 105 of the General
26 Statutes must pay the tax by electronic funds transfer."

27 SECTION 3. G.S. 105-449.39 reads as rewritten:

28 "§ 105-449.39. Credit for payment of motor fuel tax.

1 Every motor carrier subject to the tax levied by this Article is entitled to a credit on
2 its quarterly report for tax paid by the carrier on fuel purchased in the State. The amount
3 of the credit is determined using the flat cents-per-gallon rate plus the variable
4 cents-per-gallon rate of tax in effect during the quarter covered by the report. To obtain
5 a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax
6 for which the credit is claimed has been paid.

7 If the amount of a credit to which a motor carrier is entitled for a quarter exceeds the
8 motor carrier's liability for that quarter, the Secretary must refund the excess to the
9 motor carrier in accordance with G.S. 105-266(a)(3)."

10 **SECTION 4.** G.S. 105-449.44(a) reads as rewritten:

11 "(a) Calculation. – The amount of motor fuel or alternative fuel a motor carrier
12 uses in its operations in this State for a reporting period is the ~~ratio of the number of~~
13 ~~miles the motor carrier travels in this State during that period divided by the calculated~~
14 ~~miles per gallon for the motor carrier for all qualified vehicles to the total number of~~
15 ~~miles the motor carrier travels inside and outside this State during that period,~~
16 ~~multiplied by the total amount of fuel the motor carrier uses in its operations inside and~~
17 ~~outside the State during that period."~~

18 **SECTION 5.** G.S. 105-449.46 reads as rewritten:

19 "**§ 105-449.46. Inspection of books and records.**

20 The Secretary and his authorized agents and representatives shall have the right at
21 any reasonable time to inspect the books and records of any motor carrier subject to the
22 tax imposed by this ~~Article~~ Article or to the registration fee imposed by Article 3 of
23 Chapter 20 of the General Statutes."

24 **SECTION 6.** G.S. 105-449.47(a1) reads as rewritten:

25 "(a1) Registration and Identification Marker. – When the Secretary registers a
26 motor carrier, the Secretary must issue at least one identification marker for each motor
27 vehicle operated by the motor carrier. A motor carrier must keep records of
28 identification markers issued to it and must be able to account for all identification
29 markers it receives from the Secretary. Registrations and identification markers issued
30 by the Secretary are for a calendar year. All identification markers issued by the
31 Secretary remain the property of the State. The Secretary may ~~withhold or~~ revoke a
32 registration or an identification marker when a motor carrier fails to comply with this
33 ~~Article, former Article 36 or 36A of this Subchapter, Article~~ or Article 36C or 36D of
34 this Subchapter.

35 A motor carrier must carry a copy of its registration in each motor vehicle operated
36 by the motor carrier when the vehicle is in this State. A motor vehicle must clearly
37 display an identification marker at all times. The identification marker must be affixed
38 to the vehicle for which it was issued in the place and manner designated by the
39 authority that issued it."

40 **SECTION 7.** Article 36B of Chapter 105 of the General Statutes is amended
41 by adding a new section to read:

42 "**§ 105-449.47A. Reasons why the Secretary can deny an application for a**
43 **registration and identification marker.**

1 The Secretary may refuse to register and issue an identification marker to an
2 applicant that has done any of the following:

- 3 (1) Had a registration issued under Chapter 105 or Chapter 119 of the
4 General Statutes cancelled by the Secretary for cause.
5 (2) Had a registration issued by another jurisdiction, pursuant to
6 G.S. 105-449.57, cancelled for cause.
7 (3) Been convicted of fraud or misrepresentation.
8 (4) Been convicted of any other offense that indicates that the applicant
9 may not comply with this Article if registered and issued an
10 identification marker.
11 (5) Failed to remit payment for a tax debt under Chapter 105 or Chapter
12 119 of the General Statutes. The term 'tax debt' has the same meaning
13 as defined in G.S. 105-243.1.
14 (6) Failed to file a return due under Chapter 105 or Chapter 119 of the
15 General Statutes."

16 **SECTION 8.** G.S. 105-449.51 reads as rewritten:

17 **"§ 105-449.51. Violations declared to be misdemeanors.**

18 Any person who operates or causes to be operated on a highway in this State a motor
19 vehicle that does not carry a registration card as required by this Article, does not
20 properly display an identification marker as required by this Article, or is not registered
21 in accordance with this Article is guilty of a Class 3 misdemeanor and, upon conviction
22 thereof, shall ~~only be fined no less than ten dollars (\$10.00) nor more than two hundred~~
23 ~~dollars (\$200.00).~~ Each day's operation in violation of any provision of this section shall
24 constitute a separate offense."

25 **SECTION 9.** G.S. 105-449.65(b) reads as rewritten:

26 "(b) Multiple Activity. – A person who is engaged in more than one activity for
27 which a license is required must have a separate license for each activity, unless this
28 subsection provides otherwise. A person who is licensed as a supplier ~~is not required to~~
29 ~~obtain a separate license for any other activity for which a license is required and is~~
30 considered to have a license as a distributor. A person who is licensed as an occasional
31 importer or a tank wagon importer is not required to obtain a separate license as a
32 ~~distributor.~~ distributor unless the importer is also purchasing motor fuel, at the terminal
33 rack, from an elective or permissive supplier who is authorized to collect and remit the
34 tax to the State. A person who is licensed as a distributor is not required to obtain a
35 separate license as an importer if the distributor acquires fuel for import only from an
36 elective supplier or a permissive supplier and is not required to obtain a separate license
37 as an exporter. A person who is licensed as a distributor or a blender is not required to
38 obtain a separate license as a motor fuel transporter if the distributor or blender does not
39 transport motor fuel for others for hire."

40 **SECTION 10.** G.S. 105-449.69(b) reads as rewritten:

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

- 1 (1) If the applicant is a corporation, the applicant must either be
2 incorporated in this State or be authorized to transact business in this
3 State.
- 4 (2) If the applicant is a limited liability company, the applicant must either
5 be organized in this State or be authorized to transact business in this
6 State.
- 7 (3) If the applicant is a limited partnership, the applicant must either be
8 formed in this State or be authorized to transact business in this State.
- 9 (4) If the applicant is an individual or a general partnership, the applicant
10 must designate an agent for service of process and give the agent's
11 name and address."

12 **SECTION 11.** G.S. 105-449.73 reads as rewritten:

13 **"§ 105-449.73. Reasons why the Secretary can deny an application for a license.**

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

- 17 (1) Had a license or registration issued under this Article or former Article
18 36 or 36A of this Chapter cancelled by the Secretary for cause.
- 19 (1a) Had a motor fuel license or registration issued by another state
20 cancelled for cause.
- 21 (2) Had a federal Certificate of Registry issued under § 4101 of the Code,
22 or a similar federal authorization, revoked.
- 23 (3) Been convicted of fraud or misrepresentation.
- 24 (4) Been convicted of any other offense that indicates that the applicant
25 may not comply with this Article if issued a license.
- 26 (5) Failed to remit payment for ~~an overdue tax debt~~ tax debt under Chapter
27 105 or Chapter 119 of the General Statutes. The term "~~overdue tax~~
28 ~~debt~~" "tax debt" has the same meaning as defined in G.S. 105-243.1.
- 29 (6) Failed to file a return due under Chapter 105 or Chapter 119 of the
30 General Statutes."

31 **SECTION 12.** G.S. 105-449.86(a) reads as rewritten:

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

- 34 (1) Repealed by Session Laws 2003-349, s. 10.8, effective January 1,
35 2004.
- 36 (2) ~~Either a A local bus or an intercity bus~~ that is allowed by § 4082(b)(3)
37 of the Code to use dyed diesel fuel.
- 38 (3) A highway vehicle that is owned by or leased to an educational
39 organization that is not a public school and is allowed by § 4082(b)(1)
40 or (b)(3) of the Code to use dyed diesel fuel.
- 41 (4) ~~A highway vehicle that is owned by or leased to the American Red~~
42 ~~Cross and is allowed by § 4082 of the Code to use dyed diesel fuel."~~

43 **SECTION 13.** G.S. 105-449.90A reads as rewritten:

1 **"§ 105-449.90A. Payment by supplier of destination state tax collected on exported**
2 **motor fuel.**

3 Tax collected by a supplier on exported motor fuel is payable by the supplier to the
4 destination state if the supplier is licensed in that state for payment of motor fuel excise
5 taxes.~~state. Tax collected by a supplier on exported motor fuel is payable to the~~
6 ~~Secretary for remittance to the destination state if the supplier is not licensed in that~~
7 ~~state for payment of motor fuel excise taxes.~~ Payments of destination state tax are due to
8 the destination state ~~or the Secretary, as appropriate,~~ on the date set by the law of the
9 destination state. ~~Payments of destination state tax to the Secretary must be~~
10 ~~accompanied by a form provided by the Secretary that contains the information required~~
11 ~~by the Secretary."~~

12 **SECTION 14.** G.S. 105-449.96 is amended by adding a new subdivision to
13 read:

14 **"§ 105-449.96. Information required on return filed by supplier.**

15 A return of a supplier must list all of the following information and any other
16 information required by the Secretary:

17 ...

- 18 (7) The number of gallons of motor fuel the supplier exchanged with
19 another licensed supplier, pursuant to a two-party exchange agreement,
20 during the month, sorted by type of fuel, person receiving the fuel, and
21 terminal code."

22 **SECTION 15.** The catch line for G.S. 105-449.106 reads as rewritten:

23 **"§ 105-449.106. Quarterly refunds for ~~certain local governmental entities,~~**
24 **~~nonprofit organizations, taxicabs, and special mobile equipment."~~**

25 **SECTION 16.** G.S. 105-449.115 reads as rewritten:

26 **"§ 105-449.115. Shipping document required to transport motor fuel by railroad**
27 **tank car or transport truck.**

28 ...

29 (f) Sanctions Against Transporter. – The following acts are grounds for a civil
30 penalty payable to the ~~Department of Transportation, Division of Motor~~
31 ~~Vehicles, Department of Crime Control and Public Safety~~ or the Department of
32 Revenue:

- 33 (1) Transporting motor fuel in a railroad tank car or transport truck
34 without a shipping document or with a false or an incomplete shipping
35 document.
36 (2) Delivering motor fuel to a destination state other than that shown on
37 the shipping document.

38 The penalty imposed under this subsection is payable by the person in whose name
39 the conveyance is registered, if the conveyance is a transport truck, and is payable by
40 the person responsible for the movement of motor fuel in the conveyance, if the
41 conveyance is a railroad tank car. The amount of the penalty is five thousand dollars
42 (\$5,000). A penalty imposed under this subsection is in addition to any motor fuel tax
43 assessed.

1 (g) Sanctions Against Terminal Operator. – The Secretary may assess a civil
2 penalty of five thousand dollars (\$5,000) against a terminal operator who willfully and
3 with intent issues a shipping document that does not satisfy the requirements of
4 subsection (b) of this section."

5 **SECTION 17.** G.S. 105-449.115A reads as rewritten:

6 **"§ 105-449.115A. Shipping document required to transport fuel by tank wagon.**

7 (a) Issuance. – A person who operates a tank wagon into which motor fuel is
8 loaded at the terminal must comply with the document requirements in
9 G.S. 105-449.115(b). A person ~~may not transport motor fuel by~~ who operates a tank
10 wagon into which motor fuel is loaded from some other source must have ~~unless that~~
11 person has an invoice, bill of sale, or shipping document containing the following
12 information and any other information required by the Secretary:

13 (1) The name and address of the person from whom the motor fuel was
14 received.

15 (2) The date the fuel was loaded.

16 (3) The type of fuel.

17 (4) The gross number of gallons loaded.

18 (b) Duties of Transporter. – A person to whom an invoice, bill of sale, or
19 shipping document was issued must do all of the following:

20 (1) Carry the invoice, bill of sale, or shipping document in the conveyance
21 for which it is issued when transporting the motor fuel described in it.

22 (2) Show the invoice, bill of sale, or shipping document upon request
23 when transporting the motor fuel described in it.

24 (3) Keep a copy of the invoice, bill of sale, or shipping document at a
25 centralized place of business for at least three years from the date of
26 delivery.

27 (c) Sanctions. – Transporting motor fuel in a tank wagon without an invoice, bill
28 of sale, or shipping document containing the information required by this section is
29 grounds for a civil penalty payable to the Department of Transportation, Division of
30 Motor Vehicles, or the Department of Revenue. The penalty imposed under this
31 subsection is payable by the person in whose name the tank wagon is registered. The
32 amount of the penalty is one thousand dollars (\$1,000). A penalty imposed under this
33 subsection is in addition to any motor fuel tax assessed."

34 **SECTION 18.** G.S. 105-449.123 reads as rewritten:

35 **"§ 105-449.123. Marking requirements for dyed fuel storage facilities.**

36 (a) Requirements. – A person who is a retailer of dyed motor fuel or who stores
37 both dyed and undyed motor fuel for use by that person or another person must mark the
38 storage facility for the dyed motor fuel as follows in a manner that clearly indicates the
39 fuel is not to be used to operate a highway vehicle. The storage facility must be marked
40 "Dyed Diesel, Nontaxable Use Only, Penalty For Taxable Use" or "Dyed Kerosene,
41 Nontaxable Use Only, Penalty for Taxable Use" or a similar phrase that clearly
42 indicates the fuel is not to be used to operate a highway vehicle. A person who
43 knowingly and with intent fails to mark the storage facility as required by this section is
44 subject to a civil penalty equal to the excise tax at the motor fuel rate on the inventory

1 held in the storage tank at the time of the violation. If the inventory cannot be
2 determined, then the penalty is calculated on the capacity of the storage tank.

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

10 (b) Exception. – The marking requirements of this section do not apply to a
11 storage facility that contains fuel used only for one of the purposes listed in
12 G.S. 105-449.105A(a)(1) and is installed in a manner that makes use of the fuel for any
13 other purpose improbable."

14 **SECTION 19.** G.S. 119-15 is amended by adding the following two new
15 subdivisions:

16 **"§ 119-15. Definitions that apply to Article.**

17 The following definitions apply in this Article:

18 ...

19 (1a) Dyed diesel fuel distributor. – A person who acquires dyed diesel fuel
20 from either of the following:

- 21 a. A person who is not required to be licensed under Part 2 of
22 Article 36C of Chapter 105 of the General Statutes and who
23 maintains storage facilities for dyed diesel fuel to be used for
24 nonhighway purposes.
- 25 b. Another dyed diesel fuel distributor.

26 (1b) Dyed diesel fuel. – Defined in G.S. 105-449.60."

27 **SECTION 20.** G.S. 119-15.1(a) reads as rewritten:

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

- 31 (1) A kerosene supplier.
- 32 (2) A kerosene distributor.
- 33 (3) A kerosene terminal operator.
- 34 (4) A dyed diesel fuel distributor."

35 **SECTION 21.** G.S. 119-15.3(a) reads as rewritten:

36 "(a) Initial Bond. – An applicant for a license as a kerosene supplier, kerosene
37 distributor, or kerosene terminal operator must file with the Secretary of Revenue a
38 bond or an irrevocable letter of credit. A bond or irrevocable letter of credit must be
39 conditioned upon compliance with the requirements of this Article, be payable to the
40 State, and be in the form required by the Secretary. The amount of the bond or
41 irrevocable letter of credit may not be less than five hundred dollars (\$500.00) and may
42 not be more than twenty thousand dollars (\$20,000)."

43 **SECTION 22.** G.S. 20-91 reads as rewritten:

44 **"§ 20-91. Audit of vehicle registrations under the International Registration Plan.**

1 (a) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9.

2 (b) The ~~Division~~ Department of Revenue may audit a person who registers or is
3 required to register a vehicle under the International Registration Plan to determine if
4 the person has paid the registration fees due under this Article. A person who registers a
5 vehicle under the International Registration Plan must keep any records used to
6 determine the information provided to the Division when registering the vehicle. The
7 records must be kept for three years after the date of the registration to which the
8 records apply. The ~~Division~~ Department of Revenue may examine these records during
9 business hours. If the records are not located in North Carolina and an auditor must
10 travel to the location of the records, the registrant shall reimburse North Carolina for per
11 diem and travel expense incurred in the performance of the audit. If more than one
12 registrant is audited on the same out-of-state trip, the per diem and travel expense may
13 be prorated.

14 The ~~Commissioner~~ Secretary of Revenue may enter into reciprocal audit agreements
15 with other agencies of this State or agencies of another jurisdiction for the purpose of
16 conducting joint audits of any registrant subject to audit under this section.

17 (c) If an audit is conducted and it becomes necessary to assess the registrant for
18 deficiencies in registration fees or taxes due based on the audit, the assessment will be
19 determined based on the schedule of rates prescribed for that registration year, adding
20 thereto and as a part thereof an amount equal to five percent (5%) of the tax to be
21 collected. If, during an audit, it is determined that:

22 (1) A registrant failed or refused to make acceptable records available for
23 audit as provided by law; or

24 (2) A registrant misrepresented, falsified or concealed records, then all
25 plates and cab cards shall be deemed to have been issued erroneously
26 and are subject to cancellation. The ~~Commissioner~~ Commissioner,
27 based on information provided by the Department of Revenue audit,
28 may assess the registrant for an additional percentage up to one
29 hundred percent (100%) North Carolina registration fees at the rate
30 prescribed for that registration year, adding thereto and as a part
31 thereof an amount equal to five percent (5%) of the tax to be collected.
32 The Commissioner may cancel all registration and reciprocal
33 privileges.

34 As a result of an audit, no assessment shall be issued and no claim for refund shall
35 be allowed which is in an amount of less than ten dollars (\$10.00).

36 The results of any audit conducted under this section shall be provided to the
37 Division. The notice of any assessments ~~will~~ shall be sent by the Division to the
38 registrant by registered or certified mail at the address of the registrant as it appears in
39 the records of the Division of Motor Vehicles in Raleigh. The notice, when sent in
40 accordance with the requirements indicated above, will be sufficient regardless of
41 whether or not it was ever received.

42 The failure of any registrant to pay any additional registration fees or tax within 30
43 days after the billing date, shall constitute cause for revocation of registration license
44 plates, cab cards and reciprocal privileges.

- 1 (d) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9."
2 **SECTION 23.** Sections 1, 7, 8, 9, 16, and 18 of this act become effective
3 January 1, 2006. The remainder of this act is effective when it becomes law.