

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 1963\*  
Committee Substitute Favorable 6/5/06

Short Title: Revenue Laws Tech. & Motor Fuel Tax Changes. (Public)

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Sponsors:

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Referred to:

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May 15, 2006

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE  
3 CHANGES TO THE REVENUE LAWS AND RELATED STATUTES AND TO  
4 IMPROVE THE COLLECTION AND ADMINISTRATION OF THE MOTOR  
5 FUEL TAX.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 105-113.82(a) reads as rewritten:

8 "**§ 105-113.82. Distribution of part of beer and wine taxes.**

9 (a) Amount, Method. – The Secretary shall distribute annually the following  
10 percentages of the net amount of excise taxes collected on the sale of malt beverages  
11 and wine during the preceding 12-month period ending March 31, less the amount of  
12 the net proceeds credited to the Department of ~~Agriculture and Consumer Services~~  
13 Commerce under G.S. 105-113.81A, to the counties and cities in which the retail sale of  
14 these beverages is authorized in the entire county or city:

- 15 (1) Of the tax on malt beverages levied under G.S. 105-113.80(a),  
16 twenty-three and three-fourths percent (23¾%);  
17 (2) Of the tax on unfortified wine levied under G.S. 105-113.80(b),  
18 sixty-two percent (62%); and  
19 (3) Of the tax on fortified wine levied under G.S. 105-113.80(b),  
20 twenty-two percent (22%).

21 If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail  
22 in both a county and a city located in the county, both the county and city shall receive a  
23 portion of the amount distributed, that portion to be determined on the basis of  
24 population. If one of these beverages may be licensed to be sold at retail in a city  
25 located in a county in which the sale of the beverage is otherwise prohibited, only the  
26 city shall receive a portion of the amount distributed, that portion to be determined on  
27 the basis of population. The amounts distributed under subdivisions (1), (2), and (3)  
28 shall be computed separately."

29 **SECTION 2.** G.S. 105-122(d) reads as rewritten:

1       "(d) After determining the proportion of its total capital stock, surplus and  
2 undivided profits as set out in subsection (c) of this section, which amount ~~so~~  
3 ~~determined shall in no case not~~ be less than fifty-five percent (55%) of the appraised  
4 value as determined for ad valorem taxation of all the real and tangible personal  
5 property in this State of each ~~such~~ corporation ~~plus the total appraised value of~~  
6 ~~intangible property returned for taxation of intangible personal property as herein~~  
7 ~~specified~~ nor less than its total actual investment in tangible property in this State, every  
8 corporation taxed under this section shall annually pay to the Secretary of Revenue, at  
9 the time the report and statement are due, a franchise or privilege ~~tax, which is hereby~~  
10 ~~levied tax~~ at the rate of one dollar and fifty cents (\$1.50) per one thousand dollars  
11 (\$1,000) of the total amount of capital stock, surplus and undivided profits as ~~herein~~  
12 ~~provided. provided in this section.~~ The tax imposed in this section shall ~~in no case not~~  
13 be less than thirty-five dollars (\$35.00) and shall be for the privilege of carrying on,  
14 doing business, and/or the continuance of articles of incorporation or domestication of  
15 each ~~such~~ corporation in this State. Appraised value of tangible property including real  
16 estate ~~shall be is~~ the ad valorem valuation for the calendar year next preceding the due  
17 date of the franchise tax return. ~~Appraised value of intangible property shall be the total~~  
18 ~~gross valuation required to be reported for intangible tax purposes on April 15~~  
19 ~~coincident with or next preceding the due date of the franchise tax return.~~ The term  
20 "total actual investment in tangible property" as used in this section ~~shall be construed~~  
21 ~~to mean means~~ the total original purchase price or consideration to the reporting  
22 taxpayer of its tangible properties, including real estate, in this State plus additions and  
23 improvements thereto less reserve for depreciation as permitted for income tax  
24 purposes, and also less any indebtedness incurred and existing by virtue of the purchase  
25 of any real estate and any permanent improvements made thereon. In computing "total  
26 actual investment in tangible personal property" there shall also be deducted reserves  
27 for the entire cost of any air-cleaning device or sewage or waste treatment plant,  
28 including waste lagoons, and pollution abatement equipment purchased or constructed  
29 and installed which reduces the amount of air or water pollution resulting from the  
30 emission of air contaminants or the discharge of sewage and industrial wastes or other  
31 polluting materials or substances into the outdoor atmosphere or into streams, lakes, or  
32 rivers, upon condition that the corporation claiming ~~such this~~ deduction shall furnish to  
33 the Secretary a certificate from the Department of Environment and Natural Resources  
34 or from a local air pollution control program for air-cleaning devices located in an area  
35 where the Environmental Management Commission has certified a local air pollution  
36 control program pursuant to G.S. 143-215.112 certifying that said Department or local  
37 air pollution control program has found as a fact that the air-cleaning device, waste  
38 treatment plant or pollution abatement equipment purchased or constructed and installed  
39 as above described has actually been constructed and installed and that ~~such the~~ device,  
40 plant or equipment complies with the requirements of the Environmental Management  
41 Commission or local air pollution control program with respect to ~~such the~~ devices,  
42 plants or equipment, that ~~such the~~ device, plant or equipment is being effectively  
43 operated in accordance with the terms and conditions set forth in the permit, certificate  
44 of approval, or other document of approval issued by the Environmental Management

1 Commission or local air pollution control program and that the primary purpose thereof  
 2 is to reduce air or water pollution resulting from the emission of air contaminants or the  
 3 discharge of sewage and waste and not merely incidental to other purposes and  
 4 functions. The cost of constructing facilities of any private or public utility built for the  
 5 purpose of providing sewer service to residential and outlying areas ~~shall be~~ is treated as  
 6 deductible for the purposes of this section; the deductible liability allowed by this  
 7 section shall apply only with respect to ~~such~~ pollution abatement plants or equipment  
 8 constructed or installed on or after January 1, 1955."

9 **SECTION 3.(a)** G.S. 105-130.2 reads as rewritten:

10 "...

11 (4a) Gross income. – Defined in section 61 of the Code.

12 ~~(4a)~~(4b) Income year. – The calendar year or the fiscal year upon the basis of  
 13 which the net income is computed under this Part. If no fiscal year has  
 14 been established, the income year is the calendar year. In the case of a  
 15 return made for a fractional part of a year under the provisions of this  
 16 Part or under rules adopted by the Secretary, the income year is the  
 17 period for which the return is made.

18 "..."

19 **SECTION 3.(b)** G.S. 105-114(b)(4) reads as rewritten:

20 "(4) Income year. – Defined in G.S. ~~105-130.2(5).~~ 105-130.2(4b)."

21 **SECTION 4.(a)** G.S. 105-130.47(a) reads as rewritten:

22 "(a) Definitions. – The following definitions apply in this section:

23 (1) Highly compensated individual. – An individual who directly or  
 24 indirectly receives compensation in excess of one million dollars  
 25 (\$1,000,000) for personal services with respect to a single production.  
 26 An individual receives compensation indirectly when a production  
 27 company pays a personal service company or an employee leasing  
 28 company that pays the individual.

29 (2) Live sporting event. – A scheduled sporting competition, game, or race  
 30 that is not originated by a production company, but originated solely  
 31 by an amateur, collegiate, or professional organization, institution, or  
 32 association for live or tape-delayed television or satellite broadcast. A  
 33 live sporting event ~~shall does not~~ include commercial advertising, an  
 34 episodic television series, a television pilot, a music video, a motion  
 35 picture, or a documentary production ~~where any~~ in which sporting  
 36 events are presented through archived historical footage or similar  
 37 footage ~~depicting earlier live sporting events that originated more than~~  
 38 ~~thirty days before the time of such usage.~~ taken at least 30 days before  
 39 it is used.

40 (3) Production company. – Defined in G.S. 105-164.3.

41 (4) Qualifying expenses. – The sum of the ~~total amount~~ following amounts  
 42 spent in this State ~~for the following~~ by a production company in  
 43 connection with a ~~production~~ production, less the amount paid to a  
 44 highly compensated individual:

- 1 a. Goods and services leased or ~~purchased by the production~~  
 2 ~~company-purchased.~~ For goods with a purchase price of  
 3 twenty-five thousand dollars (\$25,000) or more, the amount  
 4 included in qualifying expenses is the purchase price less the  
 5 fair market value of the good at the time the production is  
 6 completed.
- 7 b. Compensation and ~~wages paid by the production company,~~  
 8 ~~other than amounts paid to a highly compensated individual,~~  
 9 wages on which the production company remitted withholding  
 10 payments are remitted to the Department of Revenue under  
 11 Article 4A of this Chapter."

12 **SECTION 4.(b)** G.S. 105-151.29(a) reads as rewritten:

13 "(a) Definitions. – The following definitions apply in this section:

- 14 (1) Highly compensated individual. – An individual who directly or  
 15 indirectly receives compensation in excess of one million dollars  
 16 (\$1,000,000) for personal services with respect to a single production.  
 17 An individual receives compensation indirectly when a production  
 18 company pays a personal service company or an employee leasing  
 19 company that pays the individual.
- 20 (2) Live sporting event. – A scheduled sporting competition, game, or race  
 21 that is not originated by a production company, but originated solely  
 22 by an amateur, collegiate, or professional organization, institution, or  
 23 association for live or tape-delayed television or satellite broadcast. A  
 24 live sporting event ~~shall~~does not include commercial advertising, an  
 25 episodic television series, a television pilot, a music video, a motion  
 26 picture, or a documentary production where anyin which sporting  
 27 events are presented through archived historical footage or similar  
 28 footage ~~depicting earlier live sporting events that originated more than~~  
 29 ~~thirty days before the time of such usage.~~taken at least 30 days before  
 30 it is used.
- 31 (3) Production company. – Defined in G.S. 105-164.3.
- 32 (4) Qualifying expenses. – The sum of the ~~total amount~~following amounts  
 33 spent in this State ~~for the following~~ by a production company in  
 34 connection with a ~~production~~production, less the amount paid to a  
 35 highly compensated individual:
  - 36 a. Goods and services leased or ~~purchased by the production~~  
 37 ~~company-purchased.~~ For goods with a purchase price of  
 38 twenty-five thousand dollars (\$25,000) or more, the amount  
 39 included in qualifying expenses is the purchase price less the  
 40 fair market value of the good at the time the production is  
 41 completed.
  - 42 b. Compensation and ~~wages paid by the production company,~~  
 43 ~~other than amounts paid to a highly compensated~~  
 44 ~~individual,~~wages on which the production company remitted

1 withholding payments are remitted to the Department of  
2 Revenue under Article 4A of this Chapter."

3 **SECTION 4.(c)** G.S. 105-259(b) reads as rewritten:

4 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State  
5 who has access to tax information in the course of service to or employment by the State  
6 may not disclose the information to any other person unless the disclosure is made for  
7 one of the following purposes:

8 ~~(32) To provide the report required under G.S. 105-164.14(e) to the~~  
9 ~~Department of Public Instruction and the Fiscal Research Division of~~  
10 ~~the General Assembly.~~

11 ...

12 (36) To furnish to a taxpayer claiming a credit under G.S. 105-130.47 or  
13 G.S. 105-151.29 information used by the Secretary to adjust the  
14 amount of the credit claimed by the taxpayer."

15 **SECTION 5.(a)** G.S. 105-164.3(49) reads as rewritten:

16 "(49) Use. – Means and includes the exercise of any right or power or  
17 dominion whatsoever over tangible personal property or over any  
18 service subject to tax under this Article by a purchaser thereof and  
19 includes, but is not limited to, any withdrawal from storage,  
20 distribution, installation, affixation to real or personal property, or  
21 exhaustion or consumption of tangible personal property or any service  
22 subject to tax under this Article by the owner or purchaser thereof, but  
23 does not include the sale of tangible personal property or of any  
24 service subject to tax under this Article in the regular course of  
25 business."

26 **SECTION 5.(b)** G.S. 105-164.16(a) reads as rewritten:

27 "(a) General. – Sales and use taxes are payable quarterly, monthly, or  
28 semimonthly as specified in this section. A return is due quarterly or monthly as  
29 specified in this section. A return must be filed with the Secretary on a form prescribed  
30 by the Secretary and in the manner required by the Secretary. A return must be signed  
31 by the taxpayer or the taxpayer's agent.

32 A sales tax return must state the taxpayer's gross sales for the reporting period, the  
33 amount and type of sales made in the period that are exempt from tax under  
34 G.S. 105-164.13 or are elsewhere excluded from tax, the amount of tax due, and any  
35 other information required by the Secretary. A use tax return must state the purchase  
36 price of tangible personal property or services sourced to this State that was-were  
37 purchased or received during the reporting period and is-are subject to tax under  
38 G.S. 105-164.6, the amount of tax due, and any other information required by the  
39 Secretary. Returns that do not contain the required information will not be accepted.  
40 When an unacceptable return is submitted, the Secretary will require a corrected return  
41 to be filed."

42 **SECTION 6.** G.S. 105-164.6(c) reads as rewritten:

43 "(c) Credit. – A credit is allowed against the tax imposed by this section for the  
44 following:

- 1 (1) The amount of sales or use tax paid on the item to this State. Payment  
2 of sales or use tax to this State on an item by a retailer extinguishes the  
3 liability of a purchaser for the tax imposed under this section.
- 4 (2) The amount of sales or use tax paid on the item to another state. If the  
5 amount of tax paid to the other state is less than the amount of tax  
6 imposed by this section, the difference is payable to this State. The  
7 credit allowed by this subdivision does not apply to tax paid to a state  
8 that does not grant a similar credit for sales or use taxes paid in North  
9 Carolina."

10 **SECTION 7.** G.S. 105-164.7 reads as rewritten:

11 "**§ 105-164.7. Sales tax part of purchase price.**

12 Every retailer subject to the tax levied in G.S. 105-164.4 shall at the time of selling  
13 or delivering or taking an order for the sale or delivery of taxable tangible personal  
14 property or a taxable service, or collecting the sales price, add to the sales price the  
15 amount of tax due. The tax constitutes a part of the purchase price, is a debt from the  
16 purchaser to the retailer until paid, and is recoverable at law in the same manner as other  
17 debts. The tax must be stated and charged separately from the sales price, shown  
18 separately on the retailer's sales records, and paid by the purchaser to the retailer as  
19 trustee for and on account of the State. The retailer is liable for the collection of the tax  
20 and for its payment to the Secretary. The retailer's failure to charge the tax to or to  
21 collect the tax from the purchaser does not affect this liability. It is the intent of this  
22 Article that the tax be added to the sales price of tangible personal property and services  
23 when sold at retail and be borne and passed on to the customer, instead of being borne  
24 by the retailer."

25 **SECTION 8.(a)** G.S. 105-164.13(1a) reads as rewritten:

26 "(1a) Sales of the following to a farmer, as defined in subdivision (1) of this  
27 section:

28 a. A container sold to a farmer, as defined in subdivision (1) of  
29 this section, used for a purpose set out in that subdivision (1) of  
30 this section or in packaging and transporting the farmer's  
31 product for sale.

32 b. A grain, feed, or soybean storage facility, and parts and  
33 accessories attached to the facility."

34 **SECTION 8.(b)** G.S. 105-164.13(4e) is repealed.

35 **SECTION 9.** G.S. 105-164.14(k) reads as rewritten:

36 "(k) Reports. – The Department of Revenue shall publish by May 1 of each year  
37 the following information itemized by taxpayer for the 12-month period ending the  
38 preceding December 31:

39 (1) The number of taxpayers claiming a refund allowed in subsections  
40 (a1), (g), (h), (i), and (j)(j), and (l) of this section.

41 (2) The total amount of purchases with respect to which refunds were  
42 claimed.

43 (3) The total cost to the General Fund of the refunds claimed."

44 **SECTION 10.** G.S. 105-164.15A reads as rewritten:

1 **"§ 105-164.15A. Effective date of rate changes for services.**

2 The effective date of a rate change for a service taxable under this Article is  
3 administered as follows:

- 4 (1) For a rate increase, the new rate applies to the first billing period that  
5 starts on or after the effective date. For a service billed after it is  
6 provided, the first billing period starts on the effective date. For a  
7 service billed before it is provided, the first billing period starts on the  
8 first day of the month after the effective date.
- 9 (2) For a rate decrease, the new rate applies to bills rendered on or after  
10 the effective date."

11 **SECTION 11.** G.S. 105-187.52 reads as rewritten:

12 **"§ 105-187.52. Administration.**

13 (a) Administration. – The privilege taxes imposed by this Article are in addition  
14 to the State use tax. Except as otherwise provided in this Article, the collection and  
15 administration of these taxes is the same as the State use tax imposed by Article 5 of  
16 this Chapter.

17 (b) Credit. – A credit is allowed against the tax imposed by this Article for the  
18 amount of a sales or use tax, privilege or excise tax, or substantially equivalent tax paid  
19 to another state. The credit allowed by this subsection does not apply to tax paid to  
20 another state that does not grant a similar credit for the privilege tax paid in North  
21 Carolina."

22 **SECTION 12.(a)** G.S. 105-233 and G.S. 105-234 are repealed.

23 **SECTION 12.(b)** G.S. 105-236 reads as rewritten:

24 **"§ 105-236. ~~Penalties.~~Penalties; situs of violations; penalty disposition.**

25 (a) Penalties. – ~~Penalties assessed by the Secretary under this Subchapter are~~  
26 ~~assessed as an additional tax. The clear proceeds of any civil penalties levied pursuant~~  
27 ~~to subdivisions (3), (4), (5)a., and (6) of this section shall be remitted to the Civil~~  
28 ~~Penalty and Forfeiture Fund in accordance with G.S. 115C 457.2. Except as otherwise~~  
29 ~~provided by law, and subject to the provisions of G.S. 105 237, the following penalties~~  
30 ~~shall be applicable:~~The following civil penalties and criminal offenses apply:

- 31 (1) **Penalty for Bad Checks.** – When the bank upon which any uncertified  
32 check tendered to the Department of Revenue in payment of any  
33 obligation due to the Department returns the check because of  
34 insufficient funds or the nonexistence of an account of the drawer, the  
35 Secretary shall assess a penalty equal to ten percent (10%) of the  
36 check, subject to a minimum of one dollar (\$1.00) and a maximum of  
37 one thousand dollars (\$1,000). This penalty does not apply if the  
38 Secretary finds that, when the check was presented for payment, the  
39 drawer of the check had sufficient funds in an account at a financial  
40 institution ~~in this State~~ to pay the check and, by inadvertence, the  
41 drawer of the check failed to draw the check on the account that had  
42 sufficient funds.

43 ...

1           (11) ~~Any violation of Subchapter I, V, or VIII of this Chapter or of Article~~  
2           ~~3 of Chapter 119 of the General Statutes is considered an act~~  
3           ~~committed in part at the office of the Secretary in Raleigh. The~~  
4           ~~certificate of the Secretary that a tax has not been paid, a return has not~~  
5           ~~been filed, or information has not been supplied, as required by law, is~~  
6           ~~prima facie evidence that the tax has not been paid, the return has not~~  
7           ~~been filed, or the information has not been supplied.~~

8           (12) Repealed by Session Laws 1991, c. 45, s. 27.

9           (b) Situs. – Violation of a tax law is considered an act committed in part at the  
10          office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been  
11          paid, a return has not been filed, or information has not been supplied, as required by  
12          law, is prima facie evidence that the tax has not been paid, the return has not been filed,  
13          or the information has not been supplied.

14          (c) Penalty Disposition. – Civil penalties assessed by the Secretary are assessed  
15          as an additional tax. The clear proceeds of civil penalties assessed by the Secretary must  
16          be credited to the Civil Penalty and Forfeiture Fund established in G.S. 115C-457.1."

17          **SECTION 12.(c)** G.S. 105-449.48 and G.S. 105-449.127 are repealed.

18          **SECTION 12.(d)** G.S. 105-449.49 reads as rewritten:

19          "**§ 105-449.49. Temporary permits.**

20          (a) Issuance. – Upon application to the Secretary and payment of a fee of fifty  
21          dollars (\$50.00), a motor carrier may obtain a temporary permit authorizing the carrier  
22          to operate a vehicle in the State for three days without registering the vehicle in  
23          accordance with G.S. 105-449.47 for not more than three days. 105-449.47. A motor  
24          carrier to whom a temporary permit has been issued may elect not to report its operation  
25          of the vehicle during the three-day period. Fees collected under this subsection are  
26          credited to the Highway Fund.

27          (b) Refusal. – The Secretary may refuse to issue a temporary permit to any of the  
28          following:

29               (1) A motor carrier whose registration has been withheld or revoked.

30               (2) A motor carrier who the Secretary determines is evading payment of  
31               tax through the successive purchase of temporary permits."

32          **SECTION 13.(a)** G.S. 105-449.65(b) reads as rewritten:

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



1 transports fuel is considered to be licensed as a motor fuel transporter if the distributor  
2 or blender does not transport motor fuel for others for hire.transporter."

3 **SECTION 13.(b)** G.S. 105-449.101 reads as rewritten:

4 **"§ 105-449.101. Motor fuel transporter to file informational return showing**  
5 **deliveries of imported or exported motor fuel.**

6 (a) Requirement. – A motor fuel transporter ~~that imports motor fuel into this~~  
7 ~~State or exports motor fuel from this State~~ must file a monthly informational return with  
8 the Secretary that shows motor fuel ~~received or delivered for import or export~~  
9 transported in this State by the transporter during the month. ~~This requirement does not~~  
10 ~~apply to a distributor that is not required to be licensed as a motor fuel transporter.~~

11 (b) Content. – The return required by this section is due by the 25th day of the  
12 month following the month covered by the return. The return must contain the following  
13 information and any other information required by the Secretary:

14 (1) The name and address of each person from whom the transporter  
15 received motor fuel outside the State for delivery in the State, the  
16 amount of motor fuel received, the date the motor fuel was received,  
17 and the destination state of the fuel.

18 (2) The name and address of each person from whom the transporter  
19 received motor fuel in the State for delivery outside the State, the  
20 amount of motor fuel delivered, the date the motor fuel was delivered,  
21 and the destination state of the fuel.

22 (3) The name and address of each person from whom the transporter  
23 received motor fuel in the State for delivery in the State, the amount of  
24 motor fuel received, the date the motor fuel was received, and the  
25 destination state of the fuel."

26 **SECTION 14.(a)** G.S. 105-449.60 is amended by adding a new subdivision  
27 to read:

28 **"§ 105-449.60. Definitions.**

29 The following definitions apply in this Article:

30 ...

31 (10a) Exempt card or code. – A credit card or an access code that enables the  
32 person to whom the card or code is issued to buy motor fuel at retail  
33 without paying the motor fuel excise tax on the fuel."

34 **SECTION 14.(b)** G.S. 105-449.88A reads as rewritten:

35 **"§ 105-449.88A. Liability for tax due on motor fuel designated as exempt by the**  
36 **use of cards or codes.**

37 (a) ~~Exempt Cards at Rack. — When a licensed distributor or licensed importer~~  
38 ~~removes motor fuel from a terminal by means of an exempt card or exempt access code~~  
39 ~~issued by the supplier, the distributor or importer represents that the fuel removed will~~  
40 ~~be resold to a governmental unit that is exempt from the tax. A supplier may rely on this~~  
41 ~~representation. A licensed distributor or licensed importer that does not resell motor fuel~~  
42 ~~removed from a terminal by means of an exempt card or exempt access code to an~~  
43 ~~exempt governmental unit is liable for any tax due on the fuel.~~

1 (b) ~~Exempt Cards at Retail. Card or Code.~~ – An "exempt card or code" is a credit  
2 ~~card or an access code that enables the person to whom the card or code is issued to buy~~  
3 ~~motor fuel at retail without paying the motor fuel excise tax on the fuel.~~ An entity that  
4 issues an exempt card or code has a duty to determine if the person to whom it is issued  
5 is exempt from the motor fuel excise tax. An entity that issues an exempt card or code to  
6 a person who is not exempt from tax is liable for tax due on motor fuel the person  
7 purchases at retail by use of the exempt card or code. If a supplier authorizes another  
8 entity to issue an exempt card or code to a person who is not exempt from tax, the  
9 supplier and the entity that issued the card are jointly and severally liable for tax due on  
10 motor fuel the person purchases at retail by use of the exempt card or code.

11 (c) Card Holder. – A person to whom an exempt card or ~~exempt access card code~~  
12 is issued ~~for use at a terminal or at retail~~ is liable for any tax due on fuel purchased with  
13 the card or code for a purpose that is not exempt. A person who misuses an exempt card  
14 or code by purchasing fuel with the card or code for a purpose that is not exempt is  
15 liable for the tax due on the fuel."

16 SECTION 14.(c) G.S. 105-449.90 reads as rewritten:

17 "§ 105-449.90. When tax return and payment are due.

18 (a) Filing Periods. – The excise tax imposed by this Article is payable when a  
19 return is due. A return is due ~~annually, quarterly, annually~~ or monthly, as specified in  
20 this section. A return must be filed with the Secretary and be in the form required by the  
21 Secretary.

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

25 ~~A quarterly return is due by the last day of the month that follows the end of a~~  
26 ~~calendar quarter. A quarterly return covers tax liabilities that accrue in the calendar~~  
27 ~~quarter preceding the date the return is due.~~

28 A monthly return of a person other than an occasional importer is due within 22 days  
29 after the end of each month. A monthly return of an occasional importer is due by the  
30 3rd of each month. A monthly return covers tax liabilities that accrue in the calendar  
31 month preceding the date the return is due.

32 (b) Annual Filers. – A terminal operator must file an annual return for the  
33 compensating tax imposed by G.S. 105-449.85.

34 (c) ~~Quarterly Filers.~~ – ~~A licensed importer that removes fuel at a terminal rack of~~  
35 ~~a permissive or an elective supplier and a licensed distributor must file a quarterly return~~  
36 ~~under G.S. 105-449.94 to reconcile exempt sales.~~

37 (d) Monthly Filers on 22nd. – The following persons must file a monthly return  
38 by the 22nd of each month:

- 39 (1) A refiner.
- 40 (2) A supplier.
- 41 (3) A bonded importer.
- 42 (4) A blender.
- 43 (5) A tank wagon importer.

1 (6) A person that incurred a liability under G.S. 105-449.86 during the  
2 preceding month for the tax on dyed diesel fuel used to operate certain  
3 highway vehicles.

4 (7) A person that incurred a liability under G.S. 105-449.87 during the  
5 preceding month for the backup tax on motor fuel.

6 (e) Monthly Filers on 3rd. – An occasional importer must file a monthly return  
7 by the third day of each month. An occasional importer is not required to file a return,  
8 however, if all the motor fuel imported by the importer in a reporting period was  
9 removed at a terminal located in another state and the supplier of the fuel is an elective  
10 supplier or a permissive supplier. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s.  
11 23; 1997-60, s. 11.)"

12 **SECTION 14.(d)** G.S. 105-449.93 reads as rewritten:

13 "**§ 105-449.93. ~~Exempt sale deduction and percentage~~ Percentage discount for**  
14 **licensed distributors and some licensed importers.**

15 (a) ~~Deduction.~~—A license holder listed below may deduct from the amount of  
16 tax otherwise payable to a supplier the amount calculated on motor fuel the license  
17 holder received from the supplier and resold to a governmental unit whose purchases of  
18 motor fuel are exempt from the tax under G.S. 105-449.88 if, when removing the fuel,  
19 the license holder used an access card or code specified by the supplier to notify the  
20 supplier of the license holder's intent to resell the fuel in an exempt sale:

21 (1) ~~A licensed distributor.~~

22 (2) ~~A licensed importer that removed the motor fuel from a terminal rack~~  
23 ~~of a permissive or an elective supplier.~~

24 (b) Percentage Discount. – A licensed distributor that pays the tax due a supplier  
25 by the date the supplier must pay the tax to the State may deduct from the amount due a  
26 discount of one percent (1%) of the amount of tax payable. A licensed importer that  
27 removes motor fuel from a terminal rack of a permissive or an elective supplier and that  
28 pays the tax due the supplier by the date the supplier must pay the tax to the State may  
29 deduct from the amount due a discount of the same amount allowed a licensed  
30 distributor. The discount covers the expense of furnishing a bond and losses due to  
31 shrinkage or evaporation. A supplier may not directly or indirectly deny this discount to  
32 a licensed distributor or licensed importer that pays the tax due the supplier by the date  
33 the supplier must pay the tax to the State."

34 **SECTION 14.(e)** G.S. 105-449.94 is repealed.

35 **SECTION 14.(f)** G.S. 105-449.97(d) reads as rewritten:

36 "(d) Taxes Paid on Exempt Retail Sales. – When filing a return, a supplier that  
37 issues or authorizes the issuance of an exempt card or ~~an exempt access code~~ to a person  
38 that enables the person to buy motor fuel ~~at retail~~ without paying tax on the fuel may  
39 deduct the amount of excise tax imposed on fuel purchased with the exempt ~~retail~~ card  
40 or code. The amount of excise tax imposed on fuel purchased ~~at retail~~ with an exempt  
41 ~~retail~~ card or code is the amount that was imposed on the fuel when it was delivered to  
42 the retailer of the fuel."

43 **SECTION 14.(g)** G.S. 105-449.105A(a) reads as rewritten:

1       "(a) Refund. – A distributor who sells kerosene to any of the following may obtain  
2 a refund for the excise tax the distributor paid on the kerosene, less the amount of any  
3 discount allowed on the kerosene under G.S. 105-449.93:

4           (1) The end user of the kerosene, if the distributor dispenses the kerosene  
5 into a storage facility of the end user that contains fuel used only for  
6 one of the following purposes and the storage facility is installed in a  
7 manner that makes use of the fuel for any other purpose improbable:

- 8           a. Heating.  
9           b. Drying crops.  
10          c. A manufacturing process.

11          (2) A retailer of kerosene, if the distributor dispenses the kerosene into a  
12 storage facility that meets both of the following conditions:

- 13          a. It is marked with the phrase "Undyed, Untaxed Kerosene,  
14 Nontaxable Use Only" or a similar phrase that clearly indicates  
15 that the fuel is not to be used to operate a highway vehicle.  
16          b. It either has a dispensing device that is not suitable for use in  
17 fueling a highway vehicle or is kept locked by the retailer and  
18 must be unlocked by the retailer for each sale of kerosene.

19          (3) An airport, if the distributor dispenses the kerosene into a storage  
20 facility that contains fuel used only for fueling airplanes and that meets  
21 at least one of the following conditions:

- 22          a. It is marked with the phrase "Undyed, Untaxed Kerosene,  
23 Nontaxable Use Only" or a similar phrase that clearly indicates  
24 that the fuel is not to be used to operate a highway vehicle.  
25          b. It has a dispensing device that is not suitable for use in fueling a  
26 highway vehicle."

27       **SECTION 15.(a)** G.S. 105-449.100 reads as rewritten:

28       "**§ 105-449.100. Terminal operator to file informational return showing changes in**  
29 **amount of motor fuel at the terminal.**

30       A terminal operator must file a monthly informational return with the Secretary that  
31 shows the amount of motor fuel received or removed from the terminal during the  
32 month. The return is due ~~by the 25th day of the month following the month covered by~~  
33 ~~the return, on the same date as a monthly return due under G.S. 105-449.90.~~ The return  
34 must contain the following information and any other information required by the  
35 Secretary:

- 36          (1) The number of gallons of motor fuel received in inventory at the  
37 terminal during the month and each position holder for the fuel.  
38          (2) The number of gallons of motor fuel removed from inventory at the  
39 terminal during the month and, for each removal, the position holder  
40 for the fuel and the destination state of the fuel.  
41          (3) The number of gallons of motor fuel gained or lost at the terminal  
42 during the month."

43       **SECTION 15.(b)** G.S. 105-449.101 reads as rewritten:

1 **"§ 105-449.101. Motor fuel transporter to file informational return showing**  
2 **deliveries of imported or exported motor fuel.**

3 (a) Requirement. – A motor fuel transporter that imports motor fuel into this  
4 State or exports motor fuel from this State must file a monthly informational return with  
5 the Secretary that shows motor fuel received or delivered for import or export by the  
6 transporter during the month. This requirement does not apply to a distributor that is not  
7 required to be licensed as a motor fuel transporter.

8 (b) Content. – The return required by this section ~~is due by the 25th day of the~~  
9 ~~month following the month covered by the return.~~ The return 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 destination state of the fuel.

15 (2) The name and address of each person from whom the transporter  
16 received motor fuel in the State for delivery outside the State, the  
17 amount of motor fuel delivered, the date the motor fuel was delivered,  
18 and the destination state of the fuel.

19 (c) Due Date. – The return required by this section is due on the same date as a  
20 monthly return due under G.S. 105-449.90."

21 **SECTION 15.(c)** G.S. 105-449.102(a) reads as rewritten:

22 "(a) Return. – A distributor that exports motor fuel from a bulk plant located in  
23 this State must file a monthly return with the Secretary that shows the exports. The  
24 return is ~~due by the 25th day of the month following the month covered by the return.~~  
25 on the same date as a monthly return due under G.S. 105-449.90. The return serves as a  
26 claim for refund by the distributor for tax paid to this State on the exported motor fuel."

27 **SECTION 15.(d)** G.S. 105-449.137(b) reads as rewritten:

28 "(b) Payment. – The tax imposed by this Article is payable when a return is due. A  
29 return is ~~due monthly within 25 days after the end of each month.~~ on the same date as a  
30 monthly return due under G.S. 105-449.90. A monthly return covers liabilities that  
31 accrue in the calendar month preceding the date the return is due. A return must be filed  
32 with the Secretary and must be in the form and contain the information required by the  
33 Secretary."

34 **SECTION 15.(e)** G.S. 119-18(a) reads as rewritten:

35 "(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is  
36 levied upon all of the fuel listed in this subsection regardless of whether the fuel is  
37 exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of  
38 the General Statutes. The inspection tax on motor fuel is due and payable to the  
39 Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due  
40 and payable under Article 36C of Chapter 105 of the General Statutes. The inspection  
41 tax on alternative fuel is due and payable to the Secretary of Revenue at the same time  
42 that the excise tax on alternative fuel is due and payable under Article 36D of Chapter  
43 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the  
44 Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the

1 General Statutes and by a kerosene supplier. A monthly report is due ~~by the 22nd of~~  
2 ~~each month on the same date as a monthly return due under G.S. 105-449.90~~ and applies  
3 to kerosene sold during the preceding month by a supplier licensed under that Part and  
4 to kerosene received during the preceding month by a kerosene supplier. A kerosene  
5 terminal operator must file a return in accordance with the provisions of  
6 ~~G.S. 105-449.100; G.S. 105-449.90.~~

7 (1) Motor fuel.

8 (2) Alternative fuel used to operate a highway vehicle.

9 (3) Kerosene."

10 **SECTION 16.(a)** G.S. 105-449.106(c) reads as rewritten:

11 "(c) Special Mobile Equipment. – A person who purchases and uses motor fuel to  
12 operate special mobile equipment off-highway may receive a quarterly refund, for the  
13 excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon  
14 rate plus the variable cents-per-gallon rate in effect during the quarter for which the  
15 refund is claimed, less the amount of sales and use tax or privilege tax due on the fuel  
16 under this Chapter, as determined in accordance with G.S. 105-449.107(c). An  
17 application for a refund must be made in accordance with this Part."

18 **SECTION 16.(b)** G.S. 105-449.107 reads as rewritten:

19 "**§ 105-449.107. Annual refunds for off-highway use and use by certain vehicles**  
20 **with power attachments.**

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

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

32 (1) A concrete mixing vehicle.

33 (2) A solid waste compacting vehicle.

34 (3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a  
35 power takeoff to unload the feed.

36 (4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a  
37 power takeoff to unload the lime or fertilizer.

38 (5) A tank wagon that delivers alternative fuel, as defined in  
39 G.S. 105-449.130, or motor fuel or another type of liquid fuel into  
40 storage tanks and uses a power takeoff to make the delivery.

41 (6) A commercial vehicle that delivers and spreads mulch, soils,  
42 composts, sand, sawdust, and similar materials and that uses a power  
43 takeoff to unload, blow, and spread the materials.

1 (7) A commercial vehicle that uses a power takeoff to remove and dispose  
2 of septage and for which an annual fee is required to be paid to the  
3 Department of Environment and Natural Resources under  
4 G.S. 130A-291.1.

5 (8) A sweeper.

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

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

22 **SECTION 17.** G.S. 105-449.120(a)(3a) is repealed.

23 **SECTION 18.** The catch line of G.S. 105-249.2 reads as rewritten:

24 "**§ 105-249.2. Due date extended and penalties waived for certain military**  
25 **personnel or ~~individuals~~ persons affected by a presidentially declared**  
26 **disaster."**

27 **SECTION 19.** The catch line of G.S. 143B-437.71 reads as rewritten:

28 "**§ 143B-437.71. One North Carolina Fund established as a ~~nonreverting~~**  
29 **account special revenue fund."**

30 **SECTION 20.(a)** G.S. 153A-155(d) reads as rewritten:

31 "(d) Administration. – The taxing county shall administer a room occupancy tax it  
32 levies. A room occupancy tax is due and payable to the county finance officer in  
33 monthly installments on or before the ~~15<sup>th</sup>~~ 20<sup>th</sup> day of the month following the month in  
34 which the tax accrues. Every person, firm, corporation, or association liable for the tax  
35 shall, on or before the 20<sup>th</sup> day of each month, prepare and render a return on a form  
36 prescribed by the taxing county. The return shall state the total gross receipts derived in  
37 the preceding month from rentals upon which the tax is levied. A room occupancy tax  
38 return filed with the county finance officer is not a public record and may not be  
39 disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

40 **SECTION 20.(b)** G.S. 160A-215(d) reads as rewritten:

41 "(d) Administration. – The taxing city shall administer a room occupancy tax it  
42 levies. A room occupancy tax is due and payable to the city finance officer in monthly  
43 installments on or before the ~~15<sup>th</sup>~~ 20<sup>th</sup> day of the month following the month in which the  
44 tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or

1 before the 20<sup>th</sup> day of each month, prepare and render a return on a form prescribed by  
2 the taxing city. The return shall state the total gross receipts derived in the preceding  
3 month from rentals upon which the tax is levied. A room occupancy tax return filed  
4 with the city finance officer is not a public record and may not be disclosed except in  
5 accordance with G.S. 153A-148.1 or G.S. 160A-208.1."

6 **SECTION 21.** G.S. 160A-49(f2) reads as rewritten:

7 "(f2) Effective Date of Annexation for Certain Property. – Annexation of property  
8 subject to annexation under subsection (f1) of this section shall become effective:

9 (1) Upon the effective date of the annexation ordinance, the property is  
10 considered part of the city only (i) for the purpose of establishing city  
11 boundaries for additional annexations pursuant to this Article and (ii)  
12 for the exercise of city authority pursuant to Article 19 of this Chapter.

13 (2) For all other purposes, the annexation becomes effective as to each  
14 tract of such property or part thereof on the last day of the month in  
15 which that tract or part thereof becomes ineligible for classification  
16 pursuant to ~~G.S. 105-227.4~~ G.S. 105-277.4 or no longer meets the  
17 requirements of subdivision (f1)(2) of this section. Until annexation of  
18 a tract or a part of a tract becomes effective pursuant to this  
19 subdivision, the tract or part of a tract is not subject to taxation by the  
20 city under Article 12 of Chapter 105 of the General Statutes nor is the  
21 tract or part of a tract entitled to services provided by the city."

22 **SECTION 22.** The introductory language for Section 59.2 of S.L. 2005-435  
23 reads as rewritten:

24 "**SECTION 59.2.(a)** ~~G.S. 105-114.1(a4)~~ G.S. 105-114(a4) reads as rewritten:"

25 **SECTION 23.** The introductory language of Section 4 of S.L. 2005-413  
26 reads as rewritten:

27 "**SECTION 4.** ~~G.S. 105-129.15(7)~~ reads Subdivisions (6) and (7) of  
28 G.S. 105-129.15 read as rewritten:"

29 **SECTION 24.** Section 1(a) of S.L. 2005-261 reads as rewritten:

30 "**SECTION 1.(a)** Authority; Vote. – If the majority of those voting on the question  
31 pursuant to this section vote for the levy of the tax, the Monroe City Council may, by  
32 ordinance, levy a prepared food and beverages tax of up to one percent (1%) of the sales  
33 price of prepared food and beverages sold within the City of Monroe at retail for  
34 consumption on or off the premises by a retailer subject to sales tax under  
35 ~~G.S. 105-164(a)(1)~~ 105-164.4(a)(1). This tax is in addition to State and local sales tax.

36 The Monroe City Council may direct the county board of elections to submit to the  
37 qualified voters of the city during any election held in 2006 the question of whether to  
38 levy a local prepared food and beverages tax of one percent (1%) as provided in this  
39 section. The election must be held on a date jointly agreed upon by the board of  
40 elections and city council and held in accordance with Chapter 163 of the General  
41 Statutes. The question to be used in the voting systems and ballots shall be:

42 "[ ] FOR [ ] AGAINST



1           One percent (1%) local prepared food and beverages tax, in addition to the  
2 current local sales and use taxes, to be used for the Civic Center Project for the City of  
3 Monroe."

4           **SECTION 25.** Section 4 is effective for taxable years beginning on or after  
5 January 1, 2006. Section 13 of this act becomes effective July 1, 2007, and applies to  
6 motor fuel transported on or after that date. Sections 14, 15, and 17 of this act become  
7 effective January 1, 2007, and apply to motor fuel purchased on or after that date. An  
8 exempt card or code will not be valid for sales of motor fuel at the terminal rack on or  
9 after January 1, 2007. The remainder of this act is effective when it becomes law.