

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

D

SENATE DRS55631-SVxz-23A* (04/28)

Short Title: Rev Laws Tech., Clarifying, & Admin Changes. (Public)

Sponsors: Senators Hartsell, Kerr, Brunstetter, Clodfelter, Dalton, and Hoyle.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE
3 CHANGES TO THE TAX AND RELATED LAWS.

4 The General Assembly of North Carolina enacts:

5 **911 TECHNICAL CHANGES**

6 **SECTION 1.(a)** G.S. 62A-44 is amended by adding a new subsection to
7 read:

8 "(b1) Adjustment. – If the revenues allocated to PSAPs under subdivision (b)(2) of
9 this section are insufficient to fund the distribution under G.S. 62A-46(a)(1), then the
10 Board may, once each fiscal year, adjust the allocation of revenues, provided that after
11 the adjustment:

12 (1) The amount allocated to PSAPs is equal to the amount required to fund
13 the distribution under G.S. 62A-46(a)(1).

14 (2) The amount allocated to CMRS providers is sufficient to make
15 reimbursements under G.S. 62A-45."

16 **SECTION 1.(b)** G.S. 62A-46(b) reads as rewritten:

17 "(b) Percentage Designations. – The 911 Board must determine how revenue that
18 is allocated to the 911 Fund for distribution to primary PSAPs and is not needed to
19 make the base amount distribution required by subdivision (a)(1) of this section is to be
20 used. The 911 Board must designate a percentage of the remaining funds to be
21 distributed to primary PSAPs on a per capita basis and a percentage to be allocated to
22 the PSAP Grant Account established in G.S. 62A-47. If the 911 Board does not
23 designate an amount to be allocated to the PSAP Grant Account, the 911 Board must
24 distribute all of the remaining funds on a per capita basis. The 911 Board may not
25 change the percentage designation more than once each ~~calendar~~ fiscal year."

26 **SECTION 1.(c)** G.S. 62A-46 is amended by adding a new subsection to
27 read:

1 "(f) The Eastern Band of the Cherokee. – Notwithstanding G.S. 62A-46(e), the
2 Eastern Band of the Cherokee is eligible for distributions from the 911 Fund. The 911
3 Board shall determine the base amount to be distributed to the Eastern Band of the
4 Cherokee upon receipt of satisfactory evidence of the amount of 911 funds the PSAP
5 received in the fiscal year ending June 30, 2007."

6 **WORK OPPORTUNITY TAX CREDIT CHANGES**

7 **SECTION 2.(a)** G.S. 105-129.16G reads as rewritten:

8 "**§ 105-129.16G. Work Opportunity Tax Credit.**

9 (a) Credit. – A taxpayer who is allowed a federal tax credit under Part IV,
10 Subpart F of the Code for the taxable year is allowed a credit against the tax imposed by
11 this Part. The credit is equal to six percent (6%) of the amount of credit allowed under
12 the Code. Code for wages paid during the taxable year for positions located in this State.
13 A position is located in this State if more than fifty percent (50%) of the employee's
14 duties are performed in the State.

15 (b) Sunset. – This section expires for taxable years beginning on or after January
16 1, 2012."

17 **SECTION 2.(b)** G.S. 105-130.5(b)(11) reads as rewritten:

18 "(b) The following deductions from federal taxable income shall be made in
19 determining State net income:

20 ...

21 (11) If a deduction for an ordinary and necessary business expense was
22 required to be reduced or was not allowed under the Code because the
23 corporation claimed a federal tax credit against its federal income tax
24 liability for the income year in lieu of a deduction, the amount by
25 which the deduction was reduced and the amount of the deduction that
26 was disallowed. This deduction is allowed only to the extent that a
27 similar credit is not allowed by this Chapter for the amount."

28 **SECTION 2.(c)** G.S. 105-134.6(d)(2) reads as rewritten:

29 "(2) The taxpayer may deduct the amount by which the taxpayer's
30 deductions allowed under the Code were reduced, and the amount of
31 the taxpayer's deductions that were not allowed, because the taxpayer
32 elected a federal tax credit in lieu of a deduction. This deduction is
33 allowed only to the extent that a similar credit is not allowed by this
34 ~~Part~~Chapter for the amount."

35 **SECTION 2.(d)** Subsection (a) of this section is effective for taxable years
36 beginning on or after July 1, 2008.

37 **REFORM TAX APPEALS CHANGES**

38 **SECTION 3.(a)** Section 10 of S.L. 2007-491 is repealed.

39 **SECTION 3.(b)** G.S. 105-122(a) reads as rewritten:

40 "(a) An annual franchise or privilege tax is imposed on a corporation doing
41 business in this State. The tax is determined on the basis of the books and records of the
42 corporation as of the close of its income year. A corporation subject to the tax must file
43 a return under affirmation with the Secretary at the place and in the manner prescribed
44 by the Secretary. The return must be signed by the president, vice-president, treasurer,

1 or chief financial officer of the corporation. The return is due on or before the fifteenth
2 day of the fourth month following the end of the corporation's income year. ~~Every~~
3 ~~corporation, domestic and foreign, incorporated, or, by an act, domesticated under the~~
4 ~~laws of this State or doing business in this State, except as otherwise provided in this~~
5 ~~Article, shall, on or before the fifteenth day of the third month following the end of its~~
6 ~~income year, annually make and deliver to the Secretary in the form prescribed by the~~
7 ~~Secretary a full, accurate, and complete report and statement signed by either its~~
8 ~~president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary,~~
9 ~~containing the facts and information required by the Secretary as shown by the books~~
10 ~~and records of the corporation at the close of the income year.~~

11 ~~There shall be annexed to the return required by this subsection the affirmation of~~
12 ~~the officer signing the return."~~

13 **SECTION 3.(c)** Subsections (a) and (c) of this section are effective January
14 1, 2008. Subsection (b) of this section is effective for taxable years beginning on or
15 after January 1, 2009.

16 **SECTION 4.(a)** G.S. 105-130.16(a) reads as rewritten:

17 "(a) Return. – Every corporation doing business in this State must file with the
18 Secretary an income tax return showing specifically the items of gross income and the
19 deductions allowed by this Part and any other facts the Secretary requires to make any
20 computation required by this Part. The return of a corporation must be signed by its
21 president, vice-president, treasurer, ~~assistant treasurer, secretary, or assistant secretary.~~
22 or chief financial officer. The officer signing the return must furnish an affirmation
23 verifying the return. The affirmation must be in the form required by the Secretary."

24 **SECTION 4.(b)** This section is effective for taxable years beginning on or
25 after January 1, 2009.

26 **SECTION 5.(a)** G.S. 105-241.11(a) reads as rewritten:

27 "(a) Procedure. – A taxpayer who objects to a proposed denial of a refund or a
28 proposed assessment of tax may request a Departmental review of the proposed action
29 by filing a request for review. The request must be filed with the Department ~~within 45~~
30 ~~days after the following:~~ as follows:

- 31 (1) ~~The~~ Within 45 days of the date the notice of the proposed denial of the
32 refund or proposed assessment was mailed to the taxpayer, if the
33 notice was delivered by mail.
- 34 (2) ~~The~~ Within 45 days of the date the notice of the proposed denial of the
35 refund or proposed assessment was delivered to the taxpayer, if the
36 notice was delivered in person.
- 37 (3) ~~The date that~~ At any time between the date that inaction by the
38 Department on a request for refund ~~was~~ is considered a proposed
39 denial of the ~~refund.~~ refund and the date the time periods set in the
40 other subdivisions of this subsection expire."

41 **SECTION 5.(b)** This section is effective for taxable years beginning on or
42 after January 1, 2008.

43 **SECTION 6.(a)** G.S. 105-241.14(c) reads as rewritten:

1 "(c) Time Limit. – The process set out in G.S. 105-241.13 for reviewing and
2 attempting to resolve a proposed denial of a refund or a proposed assessment must
3 conclude, and a final determination must be issued within nine months after the date the
4 taxpayer files a request for review. The Department and the taxpayer may extend this
5 time limit by mutual agreement. Failure to issue a notice of final determination within
6 the required time does not affect the validity of a proposed denial of a refund or
7 proposed assessment."

8 **SECTION 6.(b)** This section is effective for taxable years beginning on or
9 after January 1, 2008.

10 **SECTION 7.(a)** G.S. 105-241.22 reads as rewritten:

11 "**§ 105-241.22. Collection of tax.**

12 The Department may collect a tax in the following circumstances:

13 (1) When a taxpayer files a return showing ~~tax~~an amount due with the
14 return and does not pay the amount shown due.

15 ..."

16 **SECTION 7.(b)** This section is effective for taxable years beginning on or
17 after January 1, 2008.

18 **SECTION 8.** G.S. 105-449.52(b) reads as rewritten:

19 "(b) ~~Hearing-Review.~~ – The procedure set out in G.S. 105-449.119 for ~~protesting~~
20 reviewing a penalty imposed under Article 36C, Part 6, of this Chapter applies to a
21 penalty imposed under this section."

22 **SECTION 9.** G.S. 150B-31.1(d) reads as rewritten:

23 "(d) ~~Law Enforcement Reports.~~ – ~~A report of a law enforcement agency is~~The
24 following agency reports are admissible without testimony from personnel of the ~~law~~
25 ~~enforcement agency.~~agency:

26 (1) Law enforcement reports.

27 (2) Government agency lab reports used for the enforcement of motor fuel
28 tax laws."

29 **COLLECTION CHANGES**

30 **SECTION 10.(a)** G.S. 105-253 is recodified as G.S. 105-242.2 and reads as
31 rewritten:

32 "**§ 105-242.2. Personal liability when certain taxes not ~~remitted~~paid.**

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

34 (1) Business entity. – A corporation, a limited liability company, or a
35 partnership.

36 (2) Responsible person. – Any of the following:

37 a. The president, treasurer, or chief financial officer of a
38 corporation.

39 b. A manager of a limited liability company or a partnership.

40 c. An officer of a corporation, a member of a limited liability
41 company, or a partner in a partnership who has a duty to deduct,
42 account for, or pay taxes listed in subsection (b) of this section.

43 d. A partner who is liable for the debts and obligations of a
44 partnership under G.S. 59-45 or G.S. 59-403.

1 ~~Any officer, trustee, or receiver of any corporation or limited liability company~~
2 ~~required to file a report with the Secretary who has custody of funds of the corporation~~
3 ~~or company and who allows the funds to be paid out or distributed to the stockholders of~~
4 ~~the corporation or to the members of the company without having remitted to the~~
5 ~~Secretary any State taxes that are due is personally liable for the payment of the tax.~~

6 (b) Responsible Person. – Each responsible officer-person in a business entity is
7 personally and individually liable for all of the following taxes listed in this subsection.
8 If a business entity does not pay a tax it owes after the tax becomes collectible under
9 G.S. 105-241.22, the Secretary may enforce the responsible person's liability for the tax
10 by sending the responsible person a notice of proposed assessment in accordance with
11 G.S. 105-241.9. The taxes for which a responsible person may be held personally and
12 individually liable are:

13 (1) ~~All sales and use taxes collected by a corporation or a limited liability~~
14 ~~company~~ the business entity upon its taxable transactions.

15 (2) ~~All sales and use taxes due upon taxable transactions of a corporation~~
16 ~~or a limited liability company~~ the business entity but upon which it
17 failed to collect the tax, but only if the person knew, or in the exercise
18 of reasonable care should have known, that the tax was not being
19 collected.

20 (3) ~~All taxes due from a corporation or a limited liability company~~ the
21 business entity pursuant to the provisions of Articles 36C and 36D of
22 Subchapter V of this Chapter and all taxes payable under those
23 Articles by it to a supplier for remittance to this State or another state.

24 (4) ~~All income taxes required to be withheld from the wages of employees~~
25 ~~of a corporation or a limited liability company~~ the business entity.

26 ~~The liability of the responsible officer is satisfied upon timely remittance of the tax~~
27 ~~by the corporation or the limited liability company. If the tax remains unpaid after it is~~
28 ~~due and payable, the Secretary may proceed to enforce the responsible officer's liability~~
29 ~~for the tax by sending the responsible officer a notice of proposed assessment in~~
30 ~~accordance with G.S. 105-241.9. As used in this section, the term "responsible officer"~~
31 ~~means the president, treasurer, and chief financial officer of a corporation, the manager~~
32 ~~of a limited liability company, and any other officer of a corporation or member of a~~
33 ~~limited liability company who has a duty to deduct, account for, or pay taxes listed in~~
34 ~~this subsection. Any penalties that may be imposed under G.S. 105-236 and that apply~~
35 ~~to a deficiency also apply to an assessment made under this section.~~

36 ~~The period of limitations for assessing a responsible officer for unpaid taxes under~~
37 ~~this section expires one year after the expiration of the period of limitations for~~
38 ~~assessment against the corporation or limited liability company.~~

39 (c) ~~Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15.~~

40 (d) Distributions. – An officer, partner, trustee, or receiver of a business entity
41 required to file a report with the Secretary who has custody of funds of the entity and
42 who allows the funds to be paid out or distributed to the owners of the entity without
43 having remitted to the Secretary any State taxes that are due is personally liable for the
44 payment of the tax. The Secretary may enforce an individual's liability under this

1 subsection by sending the individual a notice of proposed assessment in accordance
2 with G.S. 105-241.9.

3 (e) Statute of Limitations. – The period of limitations for assessing a responsible
4 person for unpaid taxes under this section expires one year after the expiration of the
5 period of limitations for assessing the business entity."

6 **SECTION 10.(b)** This section becomes effective July 1, 2008, and applies
7 to taxes that become collectible on or after that date.

8 SALES TAX CHANGES

9 **SECTION 11.** G.S. 105-164.16 is amended by adding a new subsection to
10 read:

11 "(e) Simultaneous State and Local Changes. – When State and local sales and use
12 tax rates change on the same date because one increases and the other decreases but the
13 combined general rate does not change, sales and use taxes payable on the gross receipts
14 from the following periodic payments are reportable in accordance with the changed
15 State and local rates:

16 (1) Lease or rental payments billed after the effective date of the changes.

17 (2) Installment sale payments received after the effective date of the
18 changes by a taxpayer who reports the installment sale on a cash
19 basis."

20 OCCUPANCY TAX CHANGES

21 **SECTION 12.(a)** Article 9 of Chapter 105 is amended by adding a new
22 section to read:

23 **§ 105-264.1. Secretary's interpretation applies to local taxes that are based on**
24 **State taxes.**

25 An interpretation by the Secretary of a law administered by the Secretary applies to a
26 local law administered by a unit of local government when the local law refers to the
27 State law to determine the application of the local law. A person who is subject to the
28 local law or the unit of local government that administers the local law may ask the
29 Secretary for an interpretation of the State law that determines the application of the
30 local law. An interpretation by the Secretary of a State law that determines the
31 application of a local law provides the same protections against liability under the local
32 law that it provides under the State law."

33 **SECTION 12.(b)** G.S. 153A-155(c) reads as rewritten:

34 "(c) Collection. – Every operator of a business subject to a room occupancy tax
35 shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall
36 be collected as part of the charge for furnishing a taxable accommodation. If a taxable
37 accommodation is furnished as part of a package, the bundled transaction provisions in
38 G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If
39 those provisions do not address the type of package offered, the operator may determine
40 an allocated price for each item in the package based on a reasonable allocation of
41 revenue that is supported by the operator's business records kept in the ordinary course
42 of business and collect tax on the allocated price of the taxable accommodation. ~~The~~

43 The tax shall be stated and charged separately from the sales records and shall be
44 paid by the purchaser to the operator of the business as trustee for and on account of the

1 taxing county. The tax shall be added to the sales price and shall be passed on to the
2 purchaser instead of being borne by the operator of the business. ~~The~~

3 The taxing county shall design, print, and furnish to all appropriate businesses and
4 persons in the county the necessary forms for filing returns and instructions to ensure
5 the full collection of the tax. An operator of a business who collects a room occupancy
6 tax may deduct from the amount remitted to the taxing county a discount equal to the
7 discount the State allows the operator for State sales and use tax."

8 **SECTION 12.(c)** G.S. 160A-215(c) reads as rewritten:

9 "(c) Collection. – Every operator of a business subject to a room occupancy tax
10 shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall
11 be collected as part of the charge for furnishing a taxable accommodation. If a taxable
12 accommodation is furnished as part of a package, the bundled transaction provisions in
13 G.S. 105-164.4D apply in determining the sales price of the taxable accommodation. If
14 those provisions do not address the type of package offered, the operator may determine
15 an allocated price for each item in the package based on a reasonable allocation of
16 revenue that is supported by the operator's business records kept in the ordinary course
17 of business and collect tax on the allocated price of the taxable accommodation. ~~The~~

18 The tax shall be stated and charged separately from the sales records and shall be
19 paid by the purchaser to the operator of the business as trustee for and on account of the
20 taxing city. The tax shall be added to the sales price and shall be passed on to the
21 purchaser instead of being borne by the operator of the business. ~~The~~

22 The taxing city shall design, print, and furnish to all appropriate businesses and
23 persons in the city the necessary forms for filing returns and instructions to ensure the
24 full collection of the tax. An operator of a business who collects a room occupancy tax
25 may deduct from the amount remitted to the taxing city a discount equal to the discount
26 the State allows the operator for State sales and use tax."

27 **MEDICAID TECHNICAL CHANGES**

28 **SECTION 13.(a)** G.S. 105-522, as enacted by Section 31.16.3(f) of S.L.
29 2007-323, reads as rewritten:

30 "**§ 105-522. City hold harmless for repealed local taxes.**

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

32 (1) Eligible municipality. – A municipality that was incorporated on or
33 before October 1, 2008, and receives a distribution of sales and use
34 taxes under G.S. 105-472.

35 (2) Hold harmless amount. – Fifty percent (50%) of the amount of sales
36 and use tax revenue ~~distributed under Article 40 of this Chapter to the~~
37 ~~municipality for a month, other than revenue from the sale of food that~~
38 ~~is subject to local tax but is exempt from State tax under~~
39 ~~G.S. 105-164.13B.~~ allocated under G.S. 105-486 for distribution to a
40 municipality.

41 (b) Requirement. – A county is required to hold the eligible municipalities in the
42 county harmless from the repeal of the local sales and use taxes formerly imposed under
43 this Article. The Secretary must add an eligible municipality's hold harmless amount to
44 the amount ~~distributed to the~~ otherwise allocated to the municipality for distribution

1 under this Subchapter. To obtain the revenue for the hold harmless distribution, the
2 Secretary must reduce ~~each county's monthly allocation under G.S. 105-472(b) the~~
3 amount otherwise allocated to a county for distribution under Article 39 of this
4 Subchapter or under Chapter 1096 of the 1967 Session Laws by the hold harmless
5 amounts for the municipalities in that county."

6 **SECTION 13.(b)** Section 31.16.3(d) of S.L. 2007-323 is repealed.

7 **SECTION 13.(c)** Section 31.16.3(e) of S.L. 2007-323 is repealed.

8 **SECTION 13.(d)** Subsection (a) of this section becomes effective October
9 1, 2008, and applies to distributions for months beginning on or after that date. The
10 remainder of this section is effective when it becomes law.

11 **SECTION 14.(a)** G.S. 105-523, as enacted by Section 31.16.3(f) of S.L.
12 2007-323, reads as rewritten:

13 "**§ 105-523. County hold harmless for repealed local taxes.**

14 (a) Intent. – It is the intent of the General Assembly that each county benefit by
15 at least five hundred thousand dollars (\$500,000) annually from the exchange of a
16 portion of the local sales and use taxes for the State's agreement to assume the
17 responsibility for the non-administrative costs of Medicaid.

18 (b) Definitions. – The following definitions apply in this section:

19 (1) City hold harmless amount. – The hold harmless amount determined
20 under G.S. 105-522 for the eligible municipalities in a county.

21 ~~(1)(2)~~ Hold harmless threshold. – The amount of a county's Medicaid service
22 costs and Medicare Part D clawback payments assumed by the State
23 under G.S. 108A-54 for the fiscal year, less five hundred thousand
24 dollars (\$500,000).

25 ~~(2)(3)~~ Repealed sales tax amount. – Fifty percent (50%) of the amount of
26 sales and use tax revenue distributed to a county under Article 40 of
27 this Chapter, other than revenue from the sale of food that is subject to
28 local tax but is exempt from State tax under G.S. 105-164.13B.
29 allocated under G.S. 105-486 for distribution to a county.

30 (c) Requirement. – If a county's repealed sales tax amount plus its city hold
31 harmless amount for a fiscal year exceeds the county's hold harmless threshold for that
32 fiscal year, the State is required to hold the county harmless for the difference by paying
33 the amount of the difference to the county. The Secretary must withhold from sales and
34 use tax collections under Article 5 of this Chapter the amount needed to make the
35 county hold harmless payments required by this section.

36 (d) Method. – The Secretary must estimate a county's repealed sales tax ~~amount~~
37 amount, city hold harmless amount, and hold harmless threshold for a fiscal year to
38 determine if the county is eligible for a hold harmless payment. The Secretary must
39 send to an eligible county with the distribution made under G.S. 105-472 for March of
40 that year an amount equal to ninety percent (90%) of its estimated hold harmless
41 payment. At the end of each fiscal year, the Secretary must determine ~~the difference~~
42 ~~between a county's repealed sales tax amount and its~~ each county's hold harmless
43 ~~threshold payment~~ for that year. The Secretary must send by August 15 the remainder of
44 the county's hold harmless payment for the fiscal year that ended on June 30. The

1 Secretary of the Department of Human Resources must give the Secretary of Revenue
2 the data needed to determine a county's hold harmless threshold."

3 **SECTION 14.(b)** Section 31.16.3(g) of S.L. 2007-323 is repealed.

4 **SECTION 14.(c)** Section 31.16.4(c) of S.L. 2007-323 is repealed.

5 **SECTION 14.(d)** Section 31.16.4(d) of S.L. 2007-323 is repealed.

6 **SECTION 14.(e)** Section 31.16.4(e) of S.L. 2007-323 is repealed.

7 **SECTION 14.(f)** Section 14.4 of S.L. 2007-345 is repealed.

8 **SECTION 14.(g)** G.S. 105-522(a)(2), as enacted by Section 31.16.3(f) of
9 S.L. 2007-323 and amended by Section 6 of this act, reads as rewritten:

10 "(2) Hold harmless amount. – ~~Fifty percent (50%) of the~~The sum of the
11 following amounts allocated for distribution to a municipality for a month:

12 a. The amount of sales and use tax revenue allocated under
13 G.S. 105-486 for distribution to a municipality. 105-486. This
14 calculation determines the effect of repealing a one-half percent
15 (½%) sales and use tax distributed on a per capita basis.

16 b. An amount determined by subtracting twenty-five percent (25%) of
17 the amount of sales and use tax revenue allocated under
18 G.S. 105-472 or Chapter 1096 of the 1967 Session Laws from fifty
19 percent (50%) of the amount of sales and use tax revenue allocated
20 under G.S. 105-486. This calculation determines the effect of
21 distributing a one-quarter percent (.25%) tax on the basis of point
22 of origin instead of on a per capita basis."

23 **SECTION 14.(h)** G.S. 105-523(b)(3), as enacted by Section 31.16.3(f) of
24 S.L. 2007-323 and as amended by subsection (a) of this section, reads as rewritten:

25 "(3) Repealed sales tax amount. – ~~Fifty percent (50%) of the~~The sum of
26 the following amounts allocated for distribution to a county for a
27 month:

28 a. The amount of sales and use tax revenue allocated under
29 G.S. 105-486 for distribution to a county. 105-486. This
30 calculation determines the effect of repealing a one-half percent
31 (½%) sales and use tax distributed on a per capita basis.

32 b. An amount determined by subtracting twenty-five percent
33 (25%) of the amount of sales and use tax revenue allocated
34 under G.S. 105-472 or Chapter 1096 of the 1967 Session Laws
35 from fifty percent (50%) of the amount of sales and use tax
36 revenue allocated under G.S. 105-486. This calculation
37 determines the effect of distributing a one-quarter percent
38 (.25%) tax on the basis of point of origin instead of on a per
39 capita basis."

40 **SECTION 14.(i)** For fiscal year 2008-2009, the hold harmless amount
41 determined for a municipality under G.S. 105-522 and the repealed sales tax amount
42 determined for a county under G.S. 105-523 is reduced by the amount distributed in
43 October, November, and December of 2008 to the municipality or county on a per
44 capita basis under repealed G.S. 105-520(b).

1 For fiscal year 2009-2010, the hold harmless amount determined for a municipality
2 under G.S. 105-522 and the repealed sales tax amount determined for a county under
3 G.S. 105-523 is reduced by the amount distributed in October, November, and
4 December of 2009 to the municipality or county on the basis of point of origin under
5 repealed G.S. 105-520(a).

6 **SECTION 14.(j)** Subsection (a) of this section becomes effective October 1,
7 2008, and applies to distributions for months beginning on or after that date.
8 Subsections (g) and (h) of this section become effective October 1, 2009, and apply to
9 distributions for months beginning on or after that date. The remainder of this section is
10 effective when it becomes law.

11 **OTHER CHANGES**

12 **SECTION 15.(a)** G.S. 105-113.112 reads as rewritten:

13 **"§ 105-113.112. Confidentiality of information.**

14 Information obtained by the Department in the course of administering the tax
15 imposed by this Article, including information on whether the Department has issued a
16 revenue stamp to a person, is confidential tax information and is subject to the following
17 restrictions on disclosure:

- 18 (1) G.S. 105-259 prohibits the disclosure of the information, except in the
19 limited circumstances provided in that statute.
- 20 (2) The information may not be used as evidence, as defined in
21 G.S. 15A-971, in a criminal prosecution for an offense other than an
22 offense under this Article or under Article 9 of this Chapter. Under this
23 prohibition, no officer, employee, or agent of the Department may
24 testify about the information in a criminal prosecution for an offense
25 other than an offense under this Article or under Article 9 of this
26 Chapter. This subdivision implements the protections against double
27 jeopardy and self-incrimination set out in Amendment V of the United
28 States Constitution and the restrictions in it apply regardless of
29 whether information may be disclosed under G.S. 105-259. This
30 subdivision does not apply to information obtained from a source other
31 than an employee, officer, or agent of the Department. This
32 subdivision does not prohibit testimony by an officer, employee, or
33 agent of the Department concerning an offense committed against that
34 individual in the course of administering this Article. An officer,
35 employee, or agent of the Department who provides evidence or
36 testifies in violation of this subdivision is guilty of a Class 1
37 misdemeanor."

38 **SECTION 15.(b)** This section becomes effective December 1, 2008, and
39 applies to offenses committed on or after that date.

40 **SECTION 16.(a)** Part 2D of Article 10 of Chapter 143B of the General
41 Statutes is repealed.

42 **SECTION 16.(b)** G.S. 66-58(b)(21) is repealed.

43 **SECTION 16.(c)** G.S. 120-123(72) is repealed.

44 **SECTION 16.(d)** G.S. 126-5(c1)(20) is repealed.

1 **SECTION 16.(e)** G.S. 143B-437.45 reads as rewritten:

2 "**§ 143B-437.45. Definitions.**

3 The following definitions apply in this Part:

4 ...

5 (5) ~~Regional Partnerships. — As defined in G.S. 143B-437.21(6).~~
6 partnership. — Any of the following:

7 a. The Western North Carolina Regional Economic Development
8 Commission created in G.S. 158-8.1.

9 b. The North Carolina's Northeast Commission created in
10 G.S. 158-8.2.

11 c. The Southeastern North Carolina Regional Economic
12 Development Commission created in G.S. 158-8.3.

13 d. The North Carolina's Eastern Region Development Commission
14 created in G.S. 158-35.

15 e. The Charlotte Regional Partnership, Inc.

16 f. The Research Triangle Regional Partnership.

17 g. The Piedmont Triad Partnership.

18 ..."

19 **SECTION 17.** G.S. 105-538 reads as rewritten:

20 "**§ 105-538. Administration of taxes.**

21 Except as provided in this Article, the adoption, levy, collection, administration, and
22 repeal of these additional taxes must be in accordance with Article 39 of this Chapter.
23 G.S. 105-468.1 is an administrative provision that applies to this Article. A tax levied
24 under this Article does not apply to the sales price of food that is exempt from tax
25 pursuant to G.S. 105-164.13B. The Secretary shall not divide the amount allocated to a
26 county between the county and the municipalities within the county. Notwithstanding
27 the provisions of ~~G.S. 105-467(e), 105-466(c),~~ during the 2008 calendar year a tax
28 levied under this Article may become effective on the first day of any calendar quarter
29 so long as the county gives the Secretary at least 60 days' advance notice of the new tax
30 levy."

31 **SECTION 18.(a)** G.S. 105-277.1(a2) reads as rewritten:

32 "(a2) Income Eligibility Limit. — Until For the tax year beginning July 1, 2008, the
33 income eligibility limit is twenty-five thousand dollars (\$25,000). For taxable years
34 beginning on or after July 1, 2008, July 1, 2009, the income eligibility limit is the
35 amount for the preceding year, adjusted by the same percentage of this amount as the
36 percentage of any cost-of-living adjustment made to the benefits under Titles II and
37 XVI of the Social Security Act for the preceding calendar year, rounded to the nearest
38 one hundred dollars (\$100.00). On or before July 1 of each year, the Department of
39 Revenue must determine the income eligibility amount to be in effect for the taxable
40 year beginning the following July 1 and must notify the assessor of each county of the
41 amount to be in effect for that taxable year."

42 **SECTION 18.(b)** This section becomes effective for taxable years beginning
43 on or after January 1, 2008.

44 **SECTION 19.** G.S. 158-12.1 reads as rewritten:

1 **"§ 158-12.1. Commission funds secured.**

2 The Western North Carolina Regional Economic Development Commission,
3 Research Triangle Regional ~~Commission, Partnership,~~ Southeastern North Carolina
4 Regional Economic Development Commission, Piedmont Triad Partnership, North
5 Carolina's Northeast Commission, North Carolina's Eastern Region Development
6 Commission, and Carolinas Partnership, Inc., may deposit money at interest in any
7 bank, savings and loan association, or trust company in this State in the form of savings
8 accounts, certificates of deposit, or such other forms of time deposits as may be
9 approved for county governments. Investment deposits and money deposited in an
10 official depository or deposited at interest shall be secured in the manner prescribed in
11 G.S. 159-31(b). When deposits are secured in accordance with this section, no public
12 officer or employee may be held liable for any losses sustained by an institution because
13 of the default or insolvency of the depository. This section applies to the regional
14 economic development commissions listed in this section only for as long as the
15 commissions are receiving State funds."

16 **MOTOR FUEL TAX LAW CHANGES**

17 **SECTION 20.** G.S. 105-449.37 reads as rewritten:

18 **"§ 105-449.37. Definitions; tax liability.**

19 (a) Definitions. – The following definitions apply in this Article:

20 (1) International Fuel Tax Agreement. – The Articles of Agreement
21 adopted by the International Fuel Tax Association, Inc., as amended as
22 of June 1, 2008.

23 (2) Motor carrier. – A person who operates or causes to be operated on
24 any highway in this State a motor vehicle that is a qualified motor
25 ~~vehicle under the International Fuel Tax Agreement.~~ vehicle. The term
26 does not include the United States, ~~the State,~~ a state, or a political
27 subdivision of ~~the State~~ a state.

28 ~~(1a)(3)~~ (3) Motor vehicle. – ~~A motor vehicle as defined in G.S. 105-164.3~~
29 ~~other than special mobile equipment as defined in~~
30 ~~G.S. 105-164.3.~~ Defined in G.S. 20-4.01.

31 ~~(2)(4)~~ (4) Operations. – ~~Operations of all motor vehicles described in subdivision~~
32 ~~(4).~~ The movement of a qualified motor vehicle by a motor carrier,
33 whether loaded or empty and whether or not operated for
34 compensation.

35 ~~(2a)(5)~~ (5) Person. – Defined in G.S. 105-228.90.

36 (6) Qualified motor vehicle. – Defined in the International Fuel Tax
37 Agreement.

38 ~~(3)(7)~~ (7) Secretary. – ~~The Secretary of Revenue.~~ Defined in G.S. 105-228.90.

39 (b) Liability. – A motor carrier who operates on one or more days of a reporting
40 period is liable for the tax imposed by this Article for that reporting period and is
41 entitled to the credits allowed for that reporting period."

42 **SECTION 21.** G.S. 105-449.38 reads as rewritten:

43 **"§ 105-449.38. Tax levied.**

1 A road tax for the privilege of using the streets and highways of this State is imposed
2 upon every motor carrier on the amount of motor fuel or alternative fuel used by the
3 carrier in its operations within this State. The tax shall be at the rate established by the
4 Secretary pursuant to G.S. 105-449.80 or G.S. 105-449.136, as appropriate. This tax is
5 in addition to any other taxes imposed on motor ~~carriers~~carriers."

6 **SECTION 22.** G.S. 105-449.44 reads as rewritten:

7 "**§ 105-449.44. How to determine the amount of fuel used in the State;**
8 **presumption of amount used.**

9 (a) Calculation. – The amount of motor fuel or alternative fuel a motor carrier
10 uses in its operations in this State for a reporting period is the number of miles the
11 motor carrier travels in this State during that period divided by the calculated miles per
12 gallon for the motor carrier for all qualified motor vehicles during that period.

13 (b) Presumption. – The Secretary must check reports filed under this Article
14 against the weigh station records and other records of the Division of Motor Vehicles of
15 the Department of Transportation and the State Highway Patrol of the Department of
16 Crime Control and Public Safety concerning motor carriers to determine if motor
17 carriers that are operating in this State are filing the reports required by this Article. ~~The~~
18 ~~Department may assess a motor carrier for the amount payable based on the presumed~~
19 ~~mileage. A motor carrier that does either of the following for a quarter is presumed to~~
20 ~~have traveled in this State during that quarter the number of miles equal to 10 trips of~~
21 ~~450 miles each for each of the motor carrier's vehicles: If the records indicate that a~~
22 ~~motor carrier operated in this State in a quarter and either did not file a report for that~~
23 ~~quarter or understated its mileage in this State on a report filed for that quarter by at~~
24 ~~least twenty-five percent (25%), the Secretary may assess the motor carrier for an~~
25 ~~amount based on the motor carrier's presumed operations. The motor carrier is~~
26 ~~presumed to have mileage in this State equal to 10 trips of 450 miles each for each of~~
27 ~~the motor carrier's qualified motor vehicles and to have fuel usage of four miles per~~
28 ~~gallon.~~

29 (1) ~~Fails to file a report for the quarter and the records of the Division~~
30 ~~indicate the carrier operated in this State during the quarter.~~

31 (2) ~~Files a report for the quarter that, based on the records of the Division,~~
32 ~~understates by at least twenty five percent (25%) the carrier's mileage~~
33 ~~in this State for the quarter.~~

34 (c) Vehicles. – The number of qualified motor vehicles of a motor carrier that is
35 registered under this Article is the number of ~~identification markers~~sets of decals issued
36 to the carrier. The number of qualified motor vehicles of a carrier that is not registered
37 under this Article is the number of qualified motor vehicles registered by the motor
38 carrier in the carrier's base state under the International Registration Plan."

39 **SECTION 23.** G.S. 105-449.47 reads as rewritten:

40 "**§ 105-449.47. Registration of vehicles.**

41 (a) Requirement. – A motor carrier that is subject to the International Fuel Tax
42 Agreement may not operate or cause to be operated in this State ~~any vehicle listed in the~~
43 ~~definition of motor vehicle~~a qualified motor vehicle unless both the motor carrier and
44 ~~the~~at least one qualified motor vehicle are registered with the motor carrier's base state

1 jurisdiction. A motor carrier that is not subject to the International Fuel Tax Agreement
2 may not operate or cause to be operated in this State ~~any vehicle listed in the definition~~
3 ~~of motor vehicle~~ a qualified motor vehicle unless both the motor carrier and ~~the~~ at least
4 one qualified motor vehicle are registered with the Secretary for purposes of the tax
5 imposed by this Article. This subsection applies to a motor carrier that operates a
6 recreational vehicle that is considered a qualified motor vehicle.

7 (a1) Registration and ~~Identification Marker. Decal.~~ – When the Secretary registers
8 a motor carrier, the Secretary must issue a registration card for the motor carrier and at
9 ~~least one identification marker~~ a set of decals for each qualified motor vehicle operated
10 ~~by the motor carrier.~~ carrier registers. A motor carrier must keep records of
11 ~~identification markers~~ decals issued to it and must be able to account for all
12 ~~identification markers~~ decals it receives from the Secretary. Registrations and
13 ~~identification markers~~ decals issued by the Secretary are for a calendar year. All
14 ~~identification markers~~ decals issued by the Secretary remain the property of the State.
15 The Secretary may revoke a registration or ~~an identification marker~~ a decal when a
16 motor carrier fails to comply with this Article or Article 36C or 36D of this Subchapter.

17 A motor carrier must carry a copy of its registration in each motor vehicle operated
18 by the motor carrier when the vehicle is in this State. A motor vehicle must clearly
19 display ~~an identification marker~~ one decal on each side of the vehicle at all times. ~~The~~
20 ~~identification marker~~ A decal must be affixed to the qualified motor vehicle for which
21 it was issued in the place and manner designated by the authority that issued it.

22 (b) Exemption. – This section does not apply to the operation of a qualified
23 motor vehicle that is registered in another state and is operated temporarily in this State
24 by a public utility, a governmental or cooperative provider of utility services, or a
25 contractor for one of these entities for the purpose of restoring utility services in an
26 emergency outage."

27 **SECTION 24.** G.S. 105-449.47A reads as rewritten:

28 "**§ 105-449.47A. Reasons why the Secretary can deny an application for a**
29 **registration and ~~identification marker~~ decals.**

30 The Secretary may refuse to register and issue ~~an identification marker~~ a decal to an
31 applicant that has done any of the following:

- 32 (1) Had a registration issued under Chapter 105 or Chapter 119 of the
33 General Statutes cancelled by the Secretary for cause.
- 34 (2) Had a registration issued by another jurisdiction, pursuant to
35 ~~G.S. 105-449.57,~~ the International Fuel Tax Agreement, cancelled for
36 cause.
- 37 (3) Been convicted of fraud or misrepresentation.
- 38 (4) Been convicted of any other offense that indicates that the applicant
39 may not comply with this Article if registered and issued ~~an~~
40 ~~identification marker~~ a decal.
- 41 (5) Failed to remit payment for a tax debt under Chapter 105 or Chapter
42 119 of the General Statutes. The term "tax debt" has the same meaning
43 as defined in G.S. 105-243.1.

1 (6) Failed to file a return due under Chapter 105 or Chapter 119 of the
2 General Statutes."

3 **SECTION 25.** G.S. 105-449.50 is repealed.

4 **SECTION 26.** G.S. 105-449.51 reads as rewritten:

5 "**§ 105-449.51. Violations declared to be misdemeanors.**

6 Any person who operates or causes to be operated on a highway in this State a
7 qualified motor vehicle that does not carry a registration card as required by this Article,
8 does not properly display ~~an identification marker~~ a decal as required by this Article, or
9 is not registered in accordance with this Article ~~is guilty of~~ commits a Class 3
10 misdemeanor ~~and, upon conviction thereof, shall be fined and is punishable by a fine of~~
11 two hundred dollars (\$200.00). Each day's operation in violation ~~of any provision~~ of this
12 section ~~shall constitute~~ constitutes a separate offense."

13 **SECTION 27.** G.S. 105-449.52 reads as rewritten:

14 "**§ 105-449.52. Civil penalties applicable to motor carriers.**

15 (a) Penalty. – A motor carrier who does any of the following is subject to a civil
16 penalty:

17 (1) Operates in this State or causes to be operated in this State a qualified
18 motor vehicle that either fails to carry the registration card required by
19 this Article or fails to display ~~an identification marker~~ a decal in
20 accordance with this Article. The amount of the penalty is one hundred
21 dollars (\$100.00).

22 (2) Is unable to account for ~~identification markers~~ a decal the Secretary
23 issues the motor carrier, as required by G.S. 105-449.47. The amount
24 of the penalty is one hundred dollars (\$100.00) for each ~~identification~~
25 ~~marker~~ decal for which the carrier is unable to ~~account for~~ account.

26 (3) Displays ~~an identification marker~~ a decal on a qualified motor vehicle
27 operated by a motor carrier that was not issued to the carrier by the
28 Secretary under G.S. 105-449.47. The amount of the penalty is one
29 thousand dollars (\$1,000) for each ~~identification marker~~ decal
30 unlawfully obtained. Both the licensed motor carrier to whom the
31 Secretary issued the ~~identification marker~~ decal and the motor carrier
32 displaying the unlawfully obtained ~~identification marker~~ decal are
33 jointly and severally liable for the penalty under this subdivision.

34 (a1) Payment. – A penalty imposed under this section is payable to the agency that
35 assessed the penalty. When a qualified motor vehicle is found to be operating without a
36 registration card or ~~an identification marker~~ a decal or with ~~an identification marker~~ a
37 decal the Secretary did not issue for the vehicle, the qualified motor vehicle may not be
38 driven for a purpose other than to park ~~the motor vehicle~~ it until the penalty imposed
39 under this section is paid unless the officer that imposes the penalty determines that
40 ~~operation of the motor vehicle operating it~~ will not jeopardize collection of the penalty.

41 (b) Hearing. – The procedure set out in G.S. 105-449.119 for protesting a penalty
42 imposed under Article 36C, Part 6, of this Chapter applies to a penalty imposed under
43 this section."

44 **SECTION 28.** G.S. 105-449.60 reads as rewritten:

1 **"§ 105-449.60. Definitions.**

2 The following definitions apply in this Article:

3 (1) Additive. – A de minimus amount of product that is added or mixed
4 with motor fuel. Examples of an additive include fuel system
5 detergent, an oxidation inhibitor, gasoline antifreeze, or an octane
6 enhancer.

7 (2) Aviation gasoline. – Fuel blended or produced specifically for use in
8 an aircraft motor.

9 ~~(1)~~(3) Biodiesel. – Any fuel or mixture of fuels derived in whole or in part
10 from agricultural products or animal fats or wastes from these products
11 or fats.

12 ~~(1a)~~(4) Biodiesel provider. – A person who does any of the following:

13 a. Produces an average of no more than 500,000 gallons of
14 biodiesel per month during a calendar year. A person who
15 produces more than this amount is a refiner.

16 b. Imports biodiesel outside the terminal transfer system by means
17 of ~~a marine vessel~~, a transport truck, a railroad tank car, or a
18 tank wagon.

19 ~~(1b)~~ ~~to (1d) Reserved for future codification purposes.~~

20 ~~(1e)~~(5) Blended fuel. – A mixture composed of gasoline or diesel fuel and
21 another liquid, other than ~~a de minimus amount of a product such as~~
22 ~~carburetor detergent or oxidation inhibitor~~, an additive, that can be
23 used as a fuel in a highway vehicle.

24 ~~(2)~~(6) Blender. – A person who produces blended fuel outside the terminal
25 transfer system.

26 (7) Bonded importer. – A person, other than a supplier, who imports by
27 transport truck or another means of transfer outside the terminal
28 transfer system motor fuel removed from a terminal located in another
29 state in one or more of the following circumstances:

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

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

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

35 ~~(3)~~(8) ~~Bulk end user.~~ Bulk end-user. – A person who maintains storage
36 facilities for motor fuel and uses part or all of the stored fuel to operate
37 a highway vehicle.

38 ~~(4)~~(9) Bulk plant. – A motor fuel storage and distribution facility that is not a
39 terminal and from which motor fuel may be removed at a rack.

40 ~~(5)~~(10) Code. – Defined in G.S. 105-228.90.

41 ~~(6)~~(11) Destination state. – The state, territory, or foreign country to which
42 motor fuel is directed for delivery into a storage facility, a receptacle, a
43 container, or a type of transportation equipment for the purpose of
44 resale or use.

- 1 ~~(7)~~(12) Diesel fuel. – Any liquid, other than gasoline, that is suitable for
2 use as a fuel in a diesel-powered highway vehicle. The term includes
3 biodiesel, fuel oil, heating oil, high-sulfur dyed diesel fuel, and
4 kerosene. The term does not include jet fuel sold to a buyer who is
5 certified to purchase jet fuel under the Code.fuel.
- 6 ~~(8)~~(13) Distributor. – A person who acquires motor fuel from a supplier or
7 from another distributor for subsequent sale.does one or more of the
8 activities listed in this subdivision. The term does not include a person
9 who sells motor fuel only at retail.
- 10 a. Produces, refines, blends, compounds, or manufactures motor
11 fuel.
- 12 b. Transports motor fuel into a state or exports motor fuel out of a
13 state.
- 14 c. Engages in the distribution of motor fuel primarily by tank car
15 or tank truck or both.
- 16 d. Operates a bulk plant where the person has active motor fuel
17 bulk storage.
- 18 (14) Diversion. – The movement of motor fuel from a terminal to a state
19 other than the destination state indicated on the original bill of lading.
- 20 ~~(9)~~(15) Dyed diesel fuel. – Diesel fuel that meets the dyeing and marking
21 requirements of ~~§ 4082 of the Code~~ as set out in 26 C.F.R. §
22 48.4082.1.
- 23 ~~(10)~~(16) Elective supplier. – A supplier that is required to be licensed in this
24 State and that elects to collect the excise tax due this State on motor
25 fuel that is removed by the supplier at a terminal located in another
26 state and has this State as its destination state.
- 27 ~~(10a)~~(17) Exempt card or code. – A credit card or an access code that enables
28 the person to whom the card or code is issued to buy motor fuel at
29 retail without paying the motor fuel excise tax on the fuel.
- 30 ~~(11)~~(18) Export. – To obtain motor fuel in this State for sale or other
31 distribution in another state. In applying this definition, motor fuel
32 delivered out-of-state by or for the seller constitutes an export by the
33 seller and motor fuel delivered out-of-state by or for the purchaser
34 constitutes an export by the purchaser.
- 35 ~~(12)~~(19) Fuel alcohol. – Alcohol, methanol, or fuel grade ethanol.
- 36 ~~(13)~~(20) Fuel alcohol provider. – A person who does any of the following:
- 37 a. Produces an average of no more than 500,000 gallons of fuel
38 alcohol per month during a calendar year. A person who
39 produces more than this amount is a refiner.
- 40 b. Imports fuel alcohol outside the terminal transfer system by
41 means of ~~a marine vessel~~, a transport truck, a railroad tank car,
42 or a tank wagon.
- 43 ~~(14)~~(21) Gasohol. – A blended fuel composed of gasoline and fuel grade
44 ethanol.

1 ~~(15)~~(22) Gasoline. – Any of the following:

- 2 a. All products that are commonly or commercially known or sold
3 as gasoline and are suitable for use as a fuel in a highway
4 vehicle, other than products that have an American Society for
5 Testing Materials octane number of less than 75 as determined
6 by the motor method. The term does not include aviation
7 gasoline.
8 b. A petroleum product component of gasoline, such as naphtha,
9 reformate, or toluene.
10 c. Gasohol.
11 d. Fuel alcohol.

12 ~~The term does not include aviation gasoline sold for use in an aircraft~~
13 ~~motor. "Aviation gasoline" is gasoline that is designed for use in an~~
14 ~~aircraft motor and is not adapted for use in an ordinary highway~~
15 ~~vehicle.~~

16 ~~(16)~~(23) Gross gallons. – The total amount of motor fuel measured in
17 gallons, exclusive of any temperature, pressure, or other adjustments.

18 ~~(17)~~(24) Highway. – Defined in G.S. 20-4.01(13).

19 ~~(18)~~(25) Highway vehicle. – A self-propelled vehicle that is designed for
20 use on a highway.

21 ~~(19)~~(26) Import. – To bring motor fuel into this State by any means of
22 conveyance other than in the fuel supply tank of a highway vehicle. In
23 applying this definition, motor fuel delivered into this State from
24 out-of-state by or for the seller constitutes an import by the seller, and
25 motor fuel delivered into this State from out-of-state by or for the
26 purchaser constitutes an import by the purchaser.

27 ~~(19a)~~(27) ~~In State only~~ In-State supplier. – Either of the following:

- 28 a. A supplier that is required to have a license and elects not to
29 collect the excise tax due this State on motor fuel that is
30 removed by the supplier at a terminal located in another state
31 and has this State as its destination state.
32 b. A supplier that does business only in this State.

33 (28) Jet fuel. – Kerosene that meets all of the following requirements:

- 34 a. Has a maximum distillation temperature of 400 degrees
35 Fahrenheit at the ten percent (10%) recovery point and a final
36 maximum boiling point of 572 degrees Fahrenheit.
37 b. Meets American Society Testing Materials Specification D
38 1655 and Military Specifications MIL-T-5624P and
39 MIL-T-83133D, Grades JP-5 and JP-8.

40 (29) Kerosene. – Petroleum oil that is free from water, glue, and suspended
41 matter and that meets the specifications and standards adopted under
42 G.S. 119-26 by the Gasoline and Oil Inspection Board.

43 (30) Marine vessel. – A ship, boat, or other watercraft used or capable of
44 being used to move in or through a waterway.

- 1 ~~(20)~~(31) Motor fuel. – Gasoline, diesel fuel, and blended fuel.
- 2 ~~(21)~~(32) Motor fuel rate. – The rate of tax set in G.S. 105-449.80.
- 3 ~~(22)~~(33) Motor fuel transporter. – A person who transports motor fuel by
4 ~~pipeline or who transports motor fuel outside the terminal transfer~~
5 ~~system by means of a pipeline,~~ transport truck, a-railroad tank car, or a
6 marine vessel.
- 7 ~~(23)~~(34) Net gallons. – The amount of motor fuel measured in gallons when
8 corrected to a temperature of 60 degrees Fahrenheit and a pressure of
9 14 7/10 pounds per square inch.
- 10 (35) Occasional importer. – One or more of the following that imports
11 motor fuel by any means outside the terminal transfer system:
12 a. A distributor that imports motor fuel on an average basis of no
13 more than once a month during a calendar year.
14 b. A bulk end-user that acquires motor fuel for import from a bulk
15 plant and is not required to be licensed as a bonded importer.
16 c. A distributor that imports motor fuel for use in a race car.
- 17 ~~(24)~~(36) Permissive supplier. – An out-of-state supplier that elects, but is
18 not required, to have a supplier's license under this Article.
- 19 ~~(25)~~(37) Person. – Defined in G.S. 105-228.90.
- 20 (38) Pipeline. – A fuel distribution system that moves motor fuel, in bulk,
21 through a pipe either from a refinery to a terminal or from a terminal to
22 another terminal.
- 23 ~~(26)~~(39) Position holder. – The person who holds the inventory position ~~in~~
24 on the motor fuel in a terminal, as reflected on the records of the
25 terminal operator. A person holds the inventory position ~~in~~on the
26 motor fuel when that person has a contract with the terminal operator
27 for the use of storage facilities and terminaling services for fuel at the
28 terminal. The term includes a terminal operator who owns fuel in the
29 terminal.
- 30 ~~(27)~~(40) Rack. – A mechanism for delivering motor fuel from a refinery, a
31 terminal, or a bulk plant into a transport truck, a railroad tank car, or
32 another means of transfer that is outside the terminal transfer system.
- 33 ~~(27a)~~(41) Refiner. – A person who owns, operates, or controls a refinery. The
34 term includes a person who produces an average of more than 500,000
35 gallons of fuel alcohol or biodiesel a month during a calendar year.
- 36 ~~(27b)~~(42) Refinery. – A facility used to process crude oil, unfinished oils,
37 natural gas liquids, or other hydrocarbons into motor fuel and from
38 which fuel may be removed by pipeline or vessel or at a rack. The term
39 does not include a facility that produces only blended fuel or gasohol.
- 40 ~~(28)~~(43) Removal. – A physical transfer other than by evaporation, loss, or
41 destruction. A physical transfer to a transport truck or another means
42 of conveyance outside the terminal transfer system is complete upon
43 delivery into the means of conveyance.

- 1 (29)(44) Retailer. – A person who maintains storage facilities for motor fuel
2 and who sells the fuel at retail or dispenses the fuel at a retail location.
- 3 (30)(45) Secretary. – Defined in G.S. 105-228.90.
- 4 (31)(46) Supplier. – Any of the following:
5 a. A position holder or a person who receives motor fuel pursuant
6 to a two-party exchange.
7 b. A fuel alcohol provider.
8 c. A biodiesel provider.
9 d. A refiner.
- 10 (32)(47) System transfer. – Either of the following:
11 a. A transfer of motor fuel within the terminal transfer system.
12 b. A transfer, by transport truck or railroad tank car, of fuel grade
13 ethanol.
- 14 (33)(48) Tank wagon. – A truck that is not a transport truck and is designed
15 or used to carry at least 1,000 gallons of motor fuel.
- 16 (49) Tank wagon importer. – A person who imports only by means of a
17 tank wagon motor fuel that is removed from a terminal or a bulk plant
18 located in another state.
- 19 (33a)(50) Tax. – An inspection or other excise tax on motor fuel and any
20 other fee or charge imposed on motor fuel on a per-gallon basis.
- 21 (34)(51) Terminal. – A motor fuel storage and distribution facility that has
22 been assigned a terminal control number by the Internal Revenue
23 Service, is supplied by pipeline or marine vessel, and from which
24 motor ~~fuel~~ fuel, jet fuel, or aviation gasoline may be removed at a rack.
- 25 (35)(52) Terminal operator. – A person who owns, operates, or otherwise
26 controls a terminal.
- 27 (36)(53) Terminal transfer system. – The motor fuel distribution system
28 consisting of refineries, pipelines, marine vessels, and terminals. The
29 term has the same meaning as "bulk transfer/terminal system" under
30 26 C.F.R. § 48.4081-1.
- 31 (37)(54) Transmix. – Either of the following:
32 a. The buffer or interface between two different products in a
33 pipeline shipment.
34 b. A mix of two different products within a refinery or terminal
35 that results in an off-grade mixture.
- 36 (38)(55) Transport truck. – A ~~semitrailer-tractor trailer combination rig~~
37 designed or used to transport loads of motor fuel over a highway.
- 38 (39)(56) Trustee. – A person who is licensed as a ~~supplier, an elective~~
39 ~~supplier, or a permissive supplier~~ and who receives tax payments from
40 and on behalf of a licensed ~~distributor~~ distributor or licensed importer
41 for remittance to the Secretary.
- 42 (40)(57) Two-party exchange. – A transaction in which motor fuel is
43 transferred from one licensed supplier to another licensed supplier
44 pursuant to an exchange agreement under which the supplier that is the

1 position holder agrees to deliver motor fuel to the other supplier or the
2 other supplier's customer at the rack of the terminal at which the
3 delivering supplier is the position holder.

4 ~~(41)~~(58) User. – A person who owns or operates a licensed highway vehicle
5 that has a registered gross vehicle weight of at least 10,001 pounds and
6 who does not maintain storage facilities for motor fuel."

7 **SECTION 29.** G.S. 105-449.65 reads as rewritten:

8 **"§ 105-449.65. List of persons who must have a license.**

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

12 (1) A refiner.

13 (2) A supplier.

14 (3) A terminal operator.

15 (4) An importer.

16 (5) An exporter.

17 (6) A blender.

18 (7) A motor fuel transporter.

19 (8) Repealed by Session Laws 1999-438, s. 20, effective August 10, 1999.

20 (9) Repealed by Session Laws 1999-438, s. 21, effective August 10, 1999.

21 (10) A distributor who purchases motor fuel from an elective or permissive
22 supplier at an out-of-state terminal for import into this State.

23 (b) Multiple Activity. – A person who is engaged in more than one activity for
24 which a license is required must have a separate license for each activity, unless ~~this~~
25 ~~subsection one of the following subdivisions~~ provides otherwise. A

26 (1) Supplier. – A person who is licensed as a supplier is considered to
27 have a license as a distributor. A person who is licensed as a supplier
28 and is a biodiesel provider is considered to have a license as a blender.

29 (2) Importer. – A person who is licensed as an occasional importer or a
30 tank wagon importer is not required to obtain a separate license as a
31 distributor unless the importer is also purchasing motor fuel, at the
32 terminal rack, from an elective or permissive supplier who is
33 authorized to collect and remit the tax to the State.

34 (3) Distributor. – A person who is licensed as a distributor is not required
35 to obtain a separate license as an importer if the distributor acquires
36 fuel for import only from an elective supplier or a permissive supplier
37 and is not required to obtain a separate license as an exporter.

38 (4) Transporter. – ~~A person who is licensed as a distributor or a blender~~
39 has any license issued under this section other than a motor fuel
40 transporter license and who transports fuel is considered to be licensed
41 as a motor fuel transporter. motor fuel."

42 **SECTION 30.** G.S. 105-449.66 reads as rewritten:

43 **"§ 105-449.66. ~~Types of importers; restrictions on who can get a license as an~~**
44 **importer. Importer licensing.**

1 (a) ~~Types.~~—An applicant for a license as an importer must indicate on the
2 application the type of importer license sought. The types of importers are bonded
3 importer, occasional importer, and tank wagon importer. as follows:

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

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

11 b. ~~The supplier of the fuel is not an elective supplier.~~

12 e. ~~The supplier of the fuel is not a permissive supplier.~~

13 (2) ~~Occasional importer.~~—An ~~occasional importer is any of the following~~
14 ~~that imports motor fuel by any means outside the terminal transfer~~
15 ~~system:~~

16 a. ~~A distributor that imports motor fuel on an average basis of no~~
17 ~~more than once a month during a calendar year.~~

18 b. ~~A bulk end user that acquires motor fuel for import from a bulk~~
19 ~~plant and is not required to be licensed as a bonded importer.~~

20 e. ~~A distributor that imports motor fuel for use in a race car.~~

21 (3) ~~Tank wagon importer.~~—A ~~tank wagon importer is a person who~~
22 ~~imports, only by means of a tank wagon, motor fuel that is removed~~
23 ~~from a terminal or a bulk plant located in another state.~~

24 (b) ~~Restrictions.~~—A person may not be licensed as more than one type of
25 importer. A ~~bulk end user~~ bulk end-user that imports motor fuel from a terminal of a
26 supplier that is not an elective or a permissive supplier must be licensed as a bonded
27 importer. A ~~bulk end user~~ bulk end-user that imports motor fuel from a bulk plant and is
28 not required to be licensed as a bonded importer must be licensed as an occasional
29 importer. A ~~bulk end user~~ bulk end-user that imports motor fuel only from a terminal of
30 an elective or a permissive supplier is not required to be licensed as an importer."

31 **SECTION 31.** G.S. 105-449.68 reads as rewritten:

32 "**§ 105-449.68. Restrictions on who can get a license as a distributor.**

33 A ~~bulk end user~~ bulk end-user of motor fuel may not be licensed as a distributor
34 unless the ~~bulk end user~~ bulk end-user also acquires motor fuel from a supplier or from
35 another distributor for subsequent sale. This restriction does not apply to a ~~bulk end user~~
36 bulk end-user that was licensed as a distributor on January 1, 1996. If a distributor
37 license held by a ~~bulk end user~~ bulk end-user on January 1, 1996, is subsequently
38 cancelled, the ~~bulk end user~~ bulk end-user is subject to the restriction set in this
39 section."

40 **SECTION 32.** G.S. 105-449.69(c) reads as rewritten:

41 "(c) Federal Certificate. — An applicant for a license as a refiner, a supplier, a
42 terminal operator, or a blender, ~~or a permissive supplier~~ blender must have a federal
43 Certificate of Registry that is issued under § 4101 of the Code and authorizes the
44 applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal

1 transfer system. An applicant that is required to have a federal Certificate of Registry
2 must include the registration number of the certificate on the application for a license
3 under this section.

4 An applicant for a license as an importer, an exporter, or a distributor that has a
5 federal Certificate of Registry issued under § 4101 of the Code must include the
6 registration number of the certificate on the application for a license under this section."

7 **SECTION 33.** G.S. 105-449.70(a) reads as rewritten:

8 "(a) Election. – An applicant for a license as a supplier may elect on the
9 application to collect the excise tax due this State on motor fuel that is removed by the
10 supplier at a terminal located in another state and has this State as its destination state.
11 The Secretary must provide for this election on the application form. A supplier that
12 makes the election allowed by this section is an elective supplier. A supplier that does
13 not make the election allowed by this section is an ~~in-State-only-in-State~~ supplier.

14 A supplier that does not make the election on the application for a supplier's license
15 may make the election later by completing an election form provided by the Secretary.
16 A supplier that does not make the election may not act as an elective supplier for motor
17 fuel that is removed at a terminal in another state and has this State as its destination
18 state."

19 **SECTION 34.** G.S. 105-449.74 reads as rewritten:

20 "**§ 105-449.74. Issuance of license.**

21 Upon approval of an application, the Secretary must issue a license to the applicant.
22 A supplier's license must indicate the category of the supplier. An importer's license
23 must indicate the category of the importer. A license holder must maintain and display a
24 copy of the license issued under this Part in a conspicuous place at each place of
25 business of the license holder. A license is not transferable and remains in effect until
26 surrendered or cancelled."

27 **SECTION 35.** G.S. 105-449.75 reads as rewritten:

28 "**§ 105-449.75. License holder must notify the Secretary of discontinuance of**
29 **business.**

30 A license holder that stops engaging in this State in the business for which the
31 license was issued must give the Secretary written notice of the change and must
32 surrender the license to the Secretary. The notice must give the date the change takes
33 effect and, if the license holder has transferred the business to another by sale or
34 otherwise, the date of the transfer and the name and address of the person to whom the
35 business is transferred.

36 ~~If the~~ The license holder is a supplier, responsible for all taxes for which the ~~supplier~~
37 license holder is liable under this Article but are not yet ~~due~~ become due on the date of
38 ~~the change due.~~ If the ~~supplier~~ license holder has transferred the business to another and
39 does not give the notice required by this section, the person to whom the ~~supplier~~
40 license holder has transferred the business is liable for the amount of any tax the
41 ~~supplier~~ license holder owed the State on the date the business was transferred. The
42 liability of the person to whom the business is transferred is limited to the value of the
43 property acquired from the ~~supplier~~ license holder."

44 **SECTION 36.** G.S. 105-449.81 reads as rewritten:

1 **"§ 105-449.81. Excise tax on motor fuel.**

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

- 3 (1) Removed from a refinery or a terminal and, upon removal, is subject to
4 the federal excise tax imposed by § 4081 of the Code.
- 5 (2) Imported by a system transfer to a refinery or a terminal and, upon
6 importation, is subject to the federal excise tax imposed by § 4081 of
7 the Code.
- 8 (3) Imported by a means of transfer outside the terminal transfer system
9 for sale, use, or storage in this State and would have been subject to
10 the federal excise tax imposed by § 4081 of the Code if it had been
11 removed at a terminal or bulk plant rack in this State instead of
12 imported.
- 13 (3a) Repealed by Session Laws 2007-527, s. 38(a), effective January 1,
14 2008.
- 15 (4) Blended fuel made in this State or imported to this State.
- 16 (5) Transferred within the terminal transfer system and, upon transfer, is
17 subject to the federal excise tax imposed by section 4081 of the Code.
- 18 (6) Transferred within the terminal transfer system to a person that is not
19 licensed as a supplier with the State.
- 20 (7) Fuel grade ethanol that meets any of the following descriptions:
- 21 a. Is produced in this State, is removed from the storage facility at
22 the production location, and is not delivered to a terminal in this
23 State.
- 24 b. Is imported to this State outside the terminal transfer system
25 and is not delivered to a terminal.
- 26 c. Is removed from a terminal."

27 **SECTION 37.** G. S. 105-449.82(c) reads as rewritten:

28 "(c) Terminal Rack Removal. – The excise tax imposed by G.S. 105-449.81(1) on
29 motor fuel removed at a terminal rack in this State is payable by the person that first
30 receives the fuel upon its removal from the terminal. If the motor fuel is removed by an
31 unlicensed distributor, the supplier of the fuel is jointly and severally liable for the tax
32 due on the fuel. If the motor fuel is sold by a person who is not licensed as a supplier, as
33 required by this Article, the terminal operator, the person selling the fuel, and the person
34 removing the fuel are jointly and severally liable for the tax due on the fuel. If the motor
35 fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states
36 that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person
37 removing the fuel are jointly and severally liable for the tax due on the fuel.

38 If the motor fuel is removed for export by an unlicensed exporter, the exporter is
39 liable for tax on the fuel at the motor fuel rate and at the rate of the destination state.
40 ~~The liability for the tax at the motor fuel rate applies when the Department assesses the~~
41 ~~unlicensed exporter for the tax.~~ A supplier who sells motor fuel to a unlicensed exporter
42 is jointly and severally liable for the tax due on the fuel at the motor fuel rate."

43 **SECTION 38.** G.S. 105-449.83A reads as rewritten:

44 **"§ 105-449.83A. Liability for tax on fuel grade ethanol.**

1 The excise tax imposed by ~~G.S. 105-449.81(3a)~~ G.S. 105-449.81 on fuel grade
2 ethanol removed from a storage facility or terminal or imported to the State is payable
3 by the fuel alcohol provider. ~~The excise tax imposed by that subdivision on fuel grade~~
4 ~~ethanol imported to this State is payable by the importer."~~

5 **SECTION 39.** G.S. 105-449.85 reads as rewritten:

6 "**§ 105-449.85. Compensating tax on and liability for unaccounted for motor fuel**
7 **losses at a terminal.**

8 (a) Tax. – An excise tax at the motor fuel rate is imposed annually on
9 unaccounted for motor fuel losses at a terminal that exceed one-half of one percent
10 (0.5%) of the number of net gallons removed from the terminal during the year by a
11 system transfer or at a terminal rack. To determine if this tax applies, the terminal
12 operator of the terminal must determine the difference between the following:

13 (1) The amount of motor fuel in inventory at the terminal at the beginning
14 of the year plus the amount of motor fuel received by the terminal
15 during the year.

16 (2) The amount of motor fuel in inventory at the terminal at the end of the
17 year plus the amount of motor fuel removed from the terminal during
18 the year.

19 (b) Liability. – The terminal operator whose motor fuel is unaccounted for is
20 liable for the tax imposed by this section and is liable for a penalty equal to the amount
21 of tax payable. Motor fuel received by a terminal operator and not shown on an
22 informational return filed by the terminal operator with the Secretary as having been
23 removed from the terminal is presumed to be unaccounted ~~for~~ for motor fuel. A
24 terminal operator may establish that it can account for motor fuel received at a terminal
25 but not shown on an informational return as having been removed from the terminal if
26 the motor fuel was lost or part of a ~~transmix and is therefore not unaccounted for~~
27 ~~transmix.~~"

28 **SECTION 40.** G.S. 105-449.86(b) reads as rewritten:

29 "(b) Liability. – If the distributor of dyed diesel fuel that is taxable under this
30 section is not liable for the tax imposed by this section, the person that acquires the fuel
31 is liable for the tax. The distributor of dyed diesel fuel that is taxable under this section
32 is liable for the tax imposed by this section in the following circumstances:

33 (1) When the person acquiring the dyed diesel fuel has storage facilities
34 for the fuel and is therefore a ~~bulk end-user~~ bulk end-user of the fuel.

35 (2) When the person acquired the dyed diesel fuel from a retail outlet of
36 the distributor by using an access card or code indicating that the
37 person's use of the fuel is taxable under this section."

38 **SECTION 41.** G.S. 105-449.87(b) reads as rewritten:

39 "(b) General Liability. – The operator of a highway vehicle that uses motor fuel
40 that is taxable under subdivisions (a)(1) through (a)(3) of this section is liable for the
41 tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier,
42 the motor carrier is jointly and severally liable for the tax. If the ~~end-seller~~ end-seller of
43 motor fuel taxable under this section knew or had reason to know that the motor fuel
44 would be used for a purpose that is taxable under this section, the ~~end-seller~~ end-seller is

1 jointly and severally liable for the tax. If the Secretary determines that a ~~bulk end-user~~
2 bulk end-user or retailer used or sold untaxed dyed diesel fuel to operate a highway
3 vehicle when the fuel is dispensed from a storage facility or through a meter marked for
4 nonhighway use, all fuel delivered into that storage facility is presumed to have been
5 used to operate a highway vehicle. An ~~end-seller~~ end-seller of dyed diesel fuel is
6 considered to have known or had reason to know that the fuel would be used for a
7 purpose that is taxable under this section if the ~~end-seller~~ end-seller delivered the fuel
8 into a storage facility that was not marked as required by G.S. 105-449.123."

9 **SECTION 42.** G.S. 105-449.89 reads as rewritten:

10 "**§ 105-449.89. ~~Removals by out-of-state bulk end-user.~~ Restrictions on removal of**
11 **motor fuel from terminal.**

12 (a) By Bulk End-User. – An out-of-state ~~bulk end-user~~ bulk end-user may not
13 remove motor fuel from a terminal in this State for use in the state in which the
14 ~~bulk end-user~~ bulk end-user is located unless the ~~bulk end-user~~ bulk end-user is licensed
15 under this Article as an exporter. An out-of-state ~~bulk end-user~~ bulk end-user that is not
16 licensed under this Article may remove motor fuel from a bulk plant in this State.

17 (b) To Marine Vessel. – A supplier may not transfer motor fuel from a terminal
18 to a marine vessel unless the person to whom the supplier transfers the motor fuel is
19 licensed as a supplier."

20 **SECTION 43.** G.S. 105-449.91 reads as rewritten:

21 "**§ 105-449.91. Remittance of tax to supplier.**

22 (a) Distributor. – A distributor must remit tax due on motor fuel removed at a
23 terminal rack to the supplier of the fuel. A licensed distributor has the right to defer the
24 remittance of tax to the supplier, as trustee, until the date the trustee must pay the tax to
25 this State or to another state. The time when an unlicensed distributor must remit tax to
26 a supplier is governed by the terms of the contract between the supplier and the
27 unlicensed distributor.

28 (b) Exporter. – ~~An~~ A licensed exporter must remit tax due on motor fuel removed
29 at a terminal rack to the supplier of the fuel. The time when ~~an~~ a licensed exporter must
30 remit tax to a supplier is governed by the law of the destination state of the exported
31 motor fuel.

32 (c) Importer. – A licensed importer must remit tax due on motor fuel removed at
33 a terminal rack of a permissive or an elective supplier to the supplier of the fuel. A
34 licensed importer that removes fuel from a terminal rack of a permissive or an elective
35 supplier has the right to defer the remittance of tax to the supplier until the date the
36 supplier must pay the tax to this State.

37 (d) General. – A person who removes motor fuel at a terminal rack and is not
38 subject to another subsection is this section must remit tax due on the motor fuel to the
39 supplier of the fuel. The time a person must remit tax to a supplier is governed by the
40 terms of the contract between the supplier and the person. The method by which a
41 ~~distributor, a licensed exporter, or a licensed importer~~ person must remit tax to a
42 supplier under this section is governed by the terms of the contract between the supplier
43 and ~~the distributor, exporter, or licensed importer and the supplier.~~ that person.

1 G.S. 105-449.76 governs the cancellation of a license of a distributor, an exporter, and
2 an importer."

3 **SECTION 44.** G.S. 105-449.96 reads as rewritten:

4 "**§ 105-449.96. Information required on return filed by supplier.**

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

- 7 (1) The number of gallons of tax-paid motor fuel received by the supplier
8 during the month, sorted by type of ~~fuel, seller, point of origin,~~
9 destination state, and carrier.fuel.
- 10 (2) The number of gallons of motor fuel removed at a terminal rack during
11 the month from the account of the supplier, sorted by type of ~~fuel,~~
12 person receiving the fuel, terminal code, and carrier.fuel.
- 13 (3) The number of gallons of motor fuel removed during the month for
14 export, sorted by type of ~~fuel, person receiving the fuel, terminal code,~~
15 destination state, and carrier.fuel.
- 16 (4) The number of gallons of motor fuel removed during the month at a
17 terminal located in another state for destination to this State, as
18 indicated on the shipping document for the fuel, sorted by type of ~~fuel,~~
19 person receiving the fuel, terminal code, and carrier.fuel.
- 20 (5) The number of gallons of motor fuel the supplier sold during the
21 month to a governmental unit whose use of fuel is exempt from the
22 tax, any of the following, sorted by type of ~~fuel, exempt entity, person~~
23 receiving the fuel, terminal code, and carrier.fuel.
 - 24 a. ~~A governmental unit whose use of fuel is exempt from the tax.~~
 - 25 b. ~~A licensed distributor or importer that resold the motor fuel to a~~
26 ~~governmental unit whose use of fuel is exempt from the tax, as~~
27 ~~indicated by the distributor or importer.~~
 - 28 e. ~~A licensed exporter that resold the motor fuel to a person whose~~
29 ~~use of fuel is exempt from tax in the destination state, as~~
30 ~~indicated by the exporter.~~
- 31 (6) The amount of discounts allowed under G.S. 105-449.93(b) on motor
32 fuel sold during the month to licensed distributors or licensed
33 importers.
- 34 (7) The number of gallons of motor fuel the supplier exchanged during the
35 month with another licensed supplier pursuant to a two-party exchange
36 agreement, sorted by type of ~~fuel, licensed supplier receiving the fuel,~~
37 and terminal code.fuel."

38 **SECTION 45.** G.S. 105-449.97(c) reads as rewritten:

39 "(c) Percentage Discount. – A supplier that sells motor fuel directly to an
40 unlicensed distributor or to the ~~bulk end user, bulk end-user,~~ the retailer, or the user of
41 the fuel may take the same percentage discount on the fuel that a licensed distributor
42 may take under G.S. 105-449.93(b) when making deferred payments of tax to the
43 supplier."

44 **SECTION 46.** G.S. 105-449.100 reads as rewritten:

1 **"§ 105-449.100. Terminal operator to file informational return showing changes in**
2 **amount of motor fuel at the terminal.**

3 (a) Requirement. – A terminal operator must file a monthly informational return
4 with the Secretary that shows the amount of motor fuel received or removed from the
5 terminal during the month. A terminal operator must report all motor fuel removed from
6 an out-of-state terminal that has this State as its destination state.

7 (b) Content. – The return is due on the same date as a monthly return due under
8 G.S. 105-449.90. The return must contain the following information and any other
9 information required by the Secretary:

10 (1) The number of gallons of motor fuel received in inventory at the
11 terminal during the month and each position holder for the ~~fuel~~fuel,
12 sorted by type of fuel.

13 (2) The number of gallons of motor fuel removed from inventory at the
14 terminal during the month and, for each removal, the position holder
15 for the fuel and the destination state of the ~~fuel~~fuel, sorted by type of
16 fuel.

17 (3) The number of gallons of motor fuel gained or lost at the terminal
18 during the month.

19 (4) The number of gallons of motor fuel in inventory at the beginning of
20 each month and at the end of each month.

21 (c) Due Date. – The return is due on the date a monthly return is due under
22 G.S. 105-449.90."

23 **SECTION 47.** G.S. 105-449.102 reads as rewritten:

24 **"§ 105-449.102. Distributor to file return showing exports from a bulk plant.**

25 (a) ~~Return.~~Requirement. – A distributor that exports motor fuel from a bulk
26 plant located in this State must file a monthly return with the Secretary that shows the
27 exports. ~~The return is due on the same date as a monthly return due under~~
28 ~~G.S. 105-449.90.~~ The return serves as a claim for refund by the distributor for tax paid
29 to this State on the exported motor fuel.

30 (b) Content. – The return must contain the following information and any other
31 information required by the Secretary:

32 (1) The number of gallons of motor fuel exported during the month.

33 (2) The destination state of the motor fuel exported during the month.

34 (3) A certification that the distributor has paid to the destination state of
35 the motor fuel exported during the month, or will pay on a timely
36 basis, the amount of tax due that state on the fuel.

37 (c) Due Date. – The return is due on the date a monthly return is due under
38 G.S. 105-449.90."

39 **SECTION 48.** G.S. 105-449.105 reads as rewritten:

40 **"§ 105-449.105. ~~Refunds upon application~~ Monthly refunds for tax paid on exempt**
41 **fuel, lost fuel, and accidental mixes that result in fuel unsalable**
42 **unsuitable for highway use.**

43 (a) Exempt Fuel. – An entity whose use of motor fuel is exempt from tax may
44 obtain a monthly refund of any motor fuel excise tax the entity pays on its motor fuel. A

1 person who sells motor fuel to an entity whose use of motor fuel is exempt from tax
 2 may obtain a monthly refund of any motor fuel excise tax the person pays on motor fuel
 3 it sells to the entity. A credit card company that issues a credit card to an entity whose
 4 use of motor fuel is exempt from tax may obtain a monthly refund of any motor fuel
 5 excise tax the company pays on motor fuel the entity purchases using the credit card.

6 A person may obtain a monthly refund of tax paid by the person on exported fuel,
 7 including fuel whose shipping document shows this State as the destination state but
 8 was diverted to another state in accordance with the diversion procedures established by
 9 the Secretary. An out-of-state bulk end-user is not allowed a refund on fuel exported
 10 from a bulk plant unless the bulk end-user is licensed as an exporter.

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

14 (c) Accidental Mixes. – A person that accidentally combines any of the following
 15 may obtain a monthly refund for the amount of tax paid on the fuel:

- 16 (1) Dyed diesel fuel with tax-paid motor fuel.
- 17 (2) Gasoline with diesel fuel.
- 18 (3) Undyed diesel fuel with dyed kerosene.

19 (d) Repealed by Session Laws 1998-98, s. 29.

20 (e) Refund Amount. – The amount of a refund allowed under this section is the
 21 amount of excise tax paid, less the amount of any discount allowed on the fuel under
 22 G.S. 105-449.93."

23 **SECTION 49.** G.S. 105-449.105A(a) reads as rewritten:

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

27"

28 **SECTION 50.** G.S. 105-449.105A(a)(1) reads as rewritten:

29 "(1) The ~~end-user~~end-user of the kerosene, if the distributor dispenses the
 30 kerosene into a storage facility of the ~~end-user~~end-user that contains
 31 fuel used only for one of the following purposes and the storage
 32 facility is installed in a manner that makes use of the fuel for any other
 33 purpose improbable:

- 34 a. Heating.
- 35 b. Drying crops.
- 36 c. A manufacturing process."

37 **SECTION 51.** G.S. 105-449.108(a) reads as rewritten:

38 "(a) Due Dates. – The due dates of applications for refunds are as follows:

39	Refund Period	Due Date
40	Annual	April 15 after the end of the year
41	Quarterly	Last day of the month after the end of the
42	quarter	
43	Monthly	22nd day after the end of the month
44	Upon Application	Last day of the month after the

1 month in which tax was paid
2 or the event occurred that is the
3 basis of the refund."

4 **SECTION 52.** G.S. 105-449.115(b) reads as rewritten:

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

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

10 (1a) The type of motor fuel loaded.

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

12 (3) The gross gallons loaded.

13 (3a) The motor fuel transporter for the motor fuel.

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

16 (5) If the document is issued by a terminal operator, the document must be
17 machine printed and it must contain the following information:

18 a. The net gallons loaded.

19 b. A tax responsibility statement indicating the name of the
20 supplier that is responsible for the tax due on the motor fuel."

21 **SECTION 53.** G.S. 105-449.117(a) reads as rewritten:

22 "(a) Violation. – It is unlawful to use dyed diesel fuel or other non-tax-paid fuel in
23 a highway vehicle that is licensed or required to be licensed under Chapter 20 of the
24 General Statutes unless that use is allowed under section 4082 of the Code. It is
25 unlawful to use ~~undyed diesel motor fuel~~ or alternative fuel in a highway vehicle that is
26 licensed or required to be licensed under Chapter 20 of the General Statutes unless the
27 tax imposed by this ~~Article~~ Article, Article 36D of this Chapter, or Article 3 of Chapter
28 119 of the General Statutes has been paid. A person who violates this section is guilty of
29 a Class 1 misdemeanor and is liable for a civil penalty."

30 **SECTION 54.** G.S. 105-449.121(b) reads as rewritten:

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

33 (1) ~~Audit a distributor~~ or a person who is required to have or elects to have
34 a license under this Article.

35 (2) Audit a distributor, a retailer, a bulk-end user, or a motor fuel user that
36 is not licensed under this Article.

37 (3) Examine a tank or other equipment used to make, store, or transport
38 motor fuel, diesel dyes, or diesel markers.

39 (4) Take a sample of a product from a vehicle, a tank, or another container
40 in a quantity sufficient to determine the composition of the product.

41 (5) Stop a vehicle for the purpose of taking a sample of motor fuel from
42 the vehicle."

43 **SECTION 55.** G.S. 105-449.130 reads as rewritten:

44 "§ 105-449.130. **Definitions.**

1 The following definitions apply in this Article:

- 2 (1) Alternative fuel. – A combustible gas or liquid that can be used to
3 generate power to operate a highway vehicle and that is not subject to
4 tax under Article 36C of this Chapter.
- 5 (1a) ~~Bulk end user.~~ Bulk end-user. – A person who maintains storage
6 facilities for alternative fuel and uses part or all of the stored fuel to
7 operate a highway vehicle.
- 8 (2) Highway. – Defined in ~~G.S. 20-4.01(13).~~ G.S. 105-449.60.
- 9 (3) Highway vehicle. – Defined in G.S. 105-449.60.
- 10 (4) Motor fuel. – Defined in G.S. 105-449.60.
- 11 (5) Motor fuel rate. – Defined in G.S. 105-449.60.
- 12 (6) Provider of alternative fuel. – A person who does one or more of the
13 following:
- 14 a. Acquires alternative fuel for sale or delivery to a ~~bulk end user~~
15 bulk end-user or a retailer.
- 16 b. Maintains storage facilities for alternative fuel, part or all of
17 which the person uses or sells to someone other than a ~~bulk end~~
18 ~~user~~ bulk end-user or a retailer to operate a highway vehicle.
- 19 c. Sells alternative fuel and uses part of the fuel acquired for sale
20 to operate a highway vehicle by means of a fuel supply line
21 from the cargo tank of the vehicle to the engine of the vehicle.
- 22 d. Imports alternative fuel to this State, by a means other than the
23 usual tank or receptacle connected with the engine of a highway
24 vehicle, for use by that person to operate a highway vehicle.
- 25 (7) Retailer. – A person who maintains storage facilities for alternative
26 fuel and who sells the fuel at retail or dispenses the fuel at a retail
27 location to operate a highway vehicle."

28 **SECTION 56.** G.S. 105-449.131 reads as rewritten:

29 "**§ 105-449.131. List of persons who must have a license.**

30 A person may not engage in business in this State as any of the following unless the
31 person has a license issued by the Secretary authorizing the person to engage in that
32 business:

- 33 (1) A provider of alternative fuel.
34 (2) A ~~bulk end user.~~ bulk end-user.
35 (3) A retailer."

36 **SECTION 57.** G.S. 105-449.133(a) reads as rewritten:

37 "(a) Who Must Have Bond. – The following applicants for a license must file with
38 the Secretary a bond or an irrevocable letter of credit:

- 39 (1) An alternative fuel provider.
40 (2) A retailer or a ~~bulk end user~~ bulk end-user that intends to store
41 highway and nonhighway alternative fuel in the same storage facility."

42 **SECTION 58.** G.S. 105-449.137(a) reads as rewritten:

43 "(a) Liability. – A ~~bulk end user~~ bulk end-user or retailer that stores highway and
44 nonhighway alternative fuel in the same storage facility is liable for the tax imposed by

1 this Article. The tax payable by a ~~bulk end-user~~ bulk end-user or retailer applies when
2 fuel is withdrawn from the storage facility. The alternative fuel provider that sells or
3 delivers alternative fuel is liable for the tax imposed by this Article on all other
4 alternative fuel."

5 **SECTION 59.** G.S. 105-449.138 reads as rewritten:

6 "**§ 105-449.138. Requirements for ~~bulk end-users~~ bulk end-users and retailers.**

7 (a) Informational Return. – A ~~bulk end-user~~ bulk end-user and a retailer must file
8 a quarterly informational return with the Secretary. A quarterly return covers a calendar
9 quarter and is due by the last day of the month that follows the quarter covered by the
10 return.

11 The return must give the following information and any other information required
12 by the Secretary:

13 (1) The amount of alternative fuel received during the quarter.

14 (2) The amount of alternative fuel sold or used during the quarter.

15 (b) Storage. – A ~~bulk end-user~~ bulk end-user or a retailer may store highway and
16 nonhighway alternative fuel in separate storage facilities or in the same storage facility.
17 If highway and nonhighway alternative fuel are stored in separate storage facilities, the
18 facility for the nonhighway fuel must be marked in accordance with the requirements
19 set by G.S. 105-449.123 for dyed diesel storage facilities. If highway and nonhighway
20 alternative fuel are stored in the same storage facility, the storage facility must be
21 equipped with separate metering devices for the highway fuel and the nonhighway fuel.
22 If the Secretary determines that a ~~bulk end-user~~ bulk end-user or retailer used or sold
23 alternative fuel to operate a highway vehicle when the fuel was dispensed from a
24 storage facility or through a meter marked for nonhighway use, all fuel delivered into
25 that storage facility is presumed to have been used to operate a highway vehicle."

26 **SECTION 60.** G.S. 105-449.139(c) reads as rewritten:

27 "(c) Lists. – The Secretary must give a list of licensed alternative fuel providers to
28 each licensed ~~bulk end-user~~ bulk end-user and licensed retailer. The Secretary must also
29 give a list of licensed ~~bulk end-users~~ bulk end-users and licensed retailers to each
30 licensed alternative fuel provider. A list must state the name, account number, and
31 business address of each license holder on the list. The Secretary must send an annual
32 update of a list to each license holder, as appropriate."

33 **SECTION 61.** G.S. 119-15 reads as rewritten:

34 "**§ 119-15. Definitions that apply to Article.**

35 The following definitions apply in this Article:

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

37 (2) Aviation gasoline. – Defined in G.S. 105-449.60.

38 ~~(1a)~~(3) Dyed diesel fuel. – Defined in G.S. 105-449.60.

39 ~~(1b)~~(4) Dyed diesel fuel distributor. – A person who acquires dyed diesel
40 fuel from either of the following:

- 41 a. A person who is not required to be licensed under Part 2 of
42 Article 36C of Chapter 105 of the General Statutes and who
43 maintains storage facilities for dyed diesel fuel to be used for
44 nonhighway purposes.

- 1 b. Another dyed diesel fuel distributor.
2 ~~(2)~~(5) Gasoline. – Defined in G.S. 105-449.60.
3 (6) Jet fuel. – Defined in G.S. 105-449.60.
4 ~~(3)~~(7) Kerosene. – Defined in G.S. 105-449.60. Petroleum oil that is free
5 ~~from water, glue, and suspended matter and that meets the~~
6 ~~specifications and standards adopted by the Gasoline and Oil~~
7 ~~Inspection Board.~~
8 ~~(3a)~~(8) Kerosene distributor. –A person who acquires kerosene from any
9 of the following for subsequent sale:
10 a. A supplier licensed under Part 2 of Article 36C of Chapter 105
11 of the General Statutes.
12 b. A kerosene supplier.
13 c. Another kerosene distributor.
14 ~~(3b)~~(9) Kerosene supplier. – Either of the following:
15 a. A person who supplies both kerosene and motor fuel and,
16 consequently, is required to be licensed under Part 2 of Article
17 36C of Chapter 105 of the General Statutes.
18 b. A person who is not required to be licensed as a supplier under
19 Part 2 of Article 36C of Chapter 105 of the General Statutes and
20 who maintains storage facilities for kerosene to be used to fuel
21 an airplane.
22 ~~(4)~~(10) Motor fuel. – Defined in G.S. 105-449.60.
23 ~~(5)~~(11) Person. – Defined in G.S. 105-229.90.
24 ~~(6)~~(12) Terminal. – Defined in G.S. 105-449.60.
25 ~~(7)~~(13) Terminal operator. – Defined in G.S. 105-449.60."

26 **SECTION 62.** G.S. 119-18(a) reads as rewritten:

27 "(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is
28 levied upon all of the fuel listed in this ~~subsection~~ Article regardless of whether the fuel
29 is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105
30 of the General Statutes. The inspection tax on motor fuel is due and payable to the
31 Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due
32 and payable under Article 36C of Chapter 105 of the General Statutes. The inspection
33 tax on alternative fuel is due and payable to the Secretary of Revenue at the same time
34 that the excise tax on alternative fuel is due and payable under Article 36D of Chapter
35 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the
36 Secretary by a supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the
37 General Statutes and by a kerosene supplier. A monthly report is due on the same date
38 as a monthly return due under G.S. 105-449.90 and applies to kerosene sold during the
39 preceding month by a supplier licensed under that Part and to kerosene received during
40 the preceding month by a kerosene supplier. A kerosene terminal operator must file a
41 return in accordance with the provisions of G.S. 105-449.90.

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

1 **EFFECTIVE DATE**

2 **SECTION 63.** Sections 20-62 are effective January 1, 2009. Except as
3 otherwise provided, the remainder of this act is effective when it becomes law.