

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-205
SENATE BILL 967**

**AN ACT TO MAKE TECHNICAL AND ADMINISTRATIVE CHANGES TO THE
MOTOR FUELS TAX LAW.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(7a) To furnish the name and identifying information of motor carriers whose licenses have been revoked to the administrator of a national criminal justice system database that makes the information available only to criminal justice agencies and public safety organizations."

SECTION 2. G.S. 105-449.38 reads as rewritten:

"§ 105-449.38. Tax levied.

A road tax for the privilege of using the streets and highways of this State is imposed upon every motor carrier on the amount of motor fuel or alternative fuel used by the carrier in its operations within this State. The tax shall be at the rate established by the Secretary pursuant to G.S. 105-449.80 or G.S. ~~105-449.134~~, 105-449.136, as appropriate. This tax is in addition to any other taxes imposed on motor carriers."

SECTION 3. G.S. 105-449.105 reads as rewritten:

"§ 105-449.105. Refunds upon application for tax paid on exempt fuel, lost fuel, and fuel unsalable for highway use.

(a) ~~Exempt Fuel. – A person may obtain a refund of tax paid by the person on motor fuel sold to a governmental unit whose use of motor fuel is exempt from the motor fuel excise tax. A governmental unit whose use of motor fuel is exempt from the motor fuel excise tax may obtain a refund of tax paid by it on motor fuel.~~ An entity whose use of motor fuel is exempt from tax may obtain a refund of any motor fuel excise tax the entity pays on its motor fuel. A person who sells motor fuel to an entity whose use of motor fuel is exempt from tax may obtain a refund of any motor fuel excise tax the person pays on motor fuel it sells to the entity. A credit card company that issues a credit card to an entity whose use of motor fuel is exempt from tax may obtain a refund of any motor fuel excise tax the company pays on motor fuel the entity purchases using the credit card.

A person may obtain a refund of tax paid by the person on exported fuel, including fuel whose shipping document shows this State as the destination state but was diverted to another state in accordance with the diversion procedures established by the Secretary.

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

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

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

(d) ~~Repealed by Session Laws 1998-98, s. 29, effective August 14, 1998.~~

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

SECTION 4. G.S. 105-449.88A reads as rewritten:

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

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

(b) Exempt Cards at Retail. – ~~A supplier that issues to, or authorizes another person to issue to, another person a credit card or an access code that enables the person to buy motor fuel at retail without paying the tax on the fuel has a duty to determine if the person is exempt from the tax. A supplier is liable for tax due on motor fuel purchased at retail by use of a credit card or an access code issued to a person who is not exempt from the tax. An 'exempt card or code' is a credit card or an access code that enables the person to whom the card or code is issued to buy motor fuel at retail without paying the motor fuel excise tax on the fuel. An entity that issues an exempt card or code has a duty to determine if the person to whom it is issued is exempt from the motor fuel excise tax. An entity that issues an exempt card or code to a person who is not exempt from tax is liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code. If a supplier authorizes another entity to issue an exempt card or code to a person who is not exempt from tax, the supplier and the entity that issued the card are jointly and severally liable for tax due on motor fuel the person purchases at retail by use of the exempt card or code.~~

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

SECTION 5. G.S. 105-449.72 reads as rewritten:

"§ 105-449.72. Bond or letter of credit required as a condition of obtaining and keeping certain licenses. licenses or of applying for certain refunds.

(a) Initial Bond. – An applicant for a license as a refiner, a terminal operator, a supplier, an importer, a blender, a permissive supplier, or a distributor must file with the Secretary a bond or an irrevocable letter of credit. A bond must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is determined as follows:

- (1) For an applicant for a license as any of the following, the amount is two million dollars (\$2,000,000):
 - a. A refiner.
 - b. A terminal operator.
 - c. A supplier that is a position holder or a person that receives motor fuel pursuant to a two-party exchange.
 - d. A bonded importer.
 - e. A permissive supplier.
- (2) For an applicant for a license as any of the following, the amount is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. The amount may not be less than two thousand dollars (\$2,000) and may not be more than two hundred fifty thousand dollars (\$250,000):

- a. A supplier that is a fuel alcohol provider but is neither a position holder nor a person that receives motor fuel pursuant to a two-party exchange.
 - b. An occasional importer.
 - c. A tank wagon importer.
 - d. A distributor.
 - e. Repealed by Session Laws 1997-60, s. 5.
- (3) For an applicant for a license as a blender, a bond is required only if the applicant's average expected annual tax liability under this Article, as determined by the Secretary, is at least two thousand dollars (\$2,000). When a bond is required, the bond amount is the same as under subdivision (2) of this subsection.

(b) **Multiple Activity.** – An applicant for a license as a distributor and as a bonded importer must file only the bond required of a bonded importer. An applicant for two or more of the licenses listed in subdivision (a)(2) or (a)(3) of this section may file one bond that covers the combined liabilities of the applicant under all the activities. A bond for these combined activities may not exceed the maximum amount set in subdivision (a)(2) of this subsection.

(c) **Adjustment to Bond.** – When notified to do so by the Secretary, a person that has filed a bond or an irrevocable letter of credit and that holds a license listed in subdivision (a)(2) of this section must file an additional bond or irrevocable letter of credit in the amount requested by the Secretary. The person must file the additional bond or irrevocable letter of credit within 30 days after receiving the notice from the Secretary. The amount of the initial bond or irrevocable letter of credit and any additional bond or irrevocable letter of credit filed by the license holder, however, may not exceed the limits set in subdivision (a)(2) of this section.

(d) **Replacements.** – When a license holder files a bond or an irrevocable letter of credit as a replacement for a previously filed bond or letter of credit and the license holder has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions:

- (1) Return the previously filed bond or letter of credit.
- (2) Notify the person liable on the previously filed bond and the license holder that the person is released from liability on the bond.

(e) **Credit Card Companies.** – The Secretary may require a credit card company to file with the Secretary a bond if the company applies for a refund under G.S. 105-449.105(a) and the Secretary determines after an audit that a bond is needed to protect the State from loss in collecting any additional tax due pursuant to the audit. The bond must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of a bond required under this subsection is two times the average monthly refund due, subject to the minimum and maximum amounts provided in subdivision (a)(2) of this section.

SECTION 6. G.S. 105-449.105A reads as rewritten:

"§ 105-449.105A. Monthly refunds for kerosene.

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

- (1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for heating, one of the following purposes and the storage facility is installed in a manner that makes use of the fuel for any other purpose improbable:
 - a. Heating.
 - b. Drying crops.
 - c. A manufacturing process.

- (2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that meets both of the following conditions:
- a. It is marked with the phrase 'Undyed, Untaxed Kerosene, Nontaxable Use Only' or a similar phrase that clearly indicates that the fuel is not to be used to operate a highway vehicle.
 - b. It ~~and~~ either has a dispensing device that is not suitable for use in fueling a highway vehicle or is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene.

(b) Liability. – If the Secretary determines that the Department overpaid a distributor by refunding more tax to the distributor than is due under this section, the distributor is liable for the amount of the overpayment. This liability applies regardless of whether the actions of a retailer of kerosene contributed to the overpayment."

SECTION 7. G.S. 105-449.123 reads as rewritten:

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

(a) Requirements. – A person who is a retailer of dyed diesel fuel or who stores both dyed and undyed diesel fuel for use by that person or another person must mark the storage facility for the dyed diesel fuel as follows with the phrase 'Dyed Diesel', 'For Nonhighway Use', or a similar phrase that clearly indicates the diesel fuel is not to be used to operate a highway vehicle:

- (1) The storage tank of the storage facility must be marked if the storage tank is visible.
- (2) The fillcap or spill containment box of the storage facility must be marked.
- (3) The dispensing device that serves the storage facility must be marked.

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

SECTION 8. Sections 3 through 7 of this act become effective October 1, 2001. Section 6 of this act applies to sales made on or after October 1, 2001. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 5th day of June, 2001.

s/ Beverly E. Perdue
President of the Senate

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

s/ Michael F. Easley
Governor

Approved 1:51 p.m. this 15th day of June, 2001