

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 390
SENATE BILL 943

AN ACT TO ADDRESS MOTOR FUEL TAX EVASION AND TO IMPROVE THE ADMINISTRATION OF THE MOTOR FUEL TAXES BY CHANGING THE POINT OF TAXATION OF GASOLINE AND DIESEL FUEL, TO REPEAL THE MINIMUM HIGHWAY USE TAX, AND TO STRENGTHEN THE ENFORCEMENT OF THE ROAD TAX PAID BY MOTOR CARRIERS.

The General Assembly of North Carolina enacts:

PART I.
MOTOR FUEL LAW CHANGES

Section 1. The heading to Subchapter V of Chapter 105 of the General Statutes reads as rewritten:

"SUBCHAPTER V. ~~GASOLINE TAX.~~ MOTOR FUEL TAXES."

Sec. 2. Articles 36 and 36A of Chapter 105 of the General Statutes are repealed.

Sec. 3. Subchapter V of Chapter 105 of the General Statutes is amended by adding the following Articles to read:

"ARTICLE 36C.

"Gasoline, Diesel, and Blends.

"Part 1. General Provisions.

"§ 105-449.60. Definitions.

The following definitions apply in this Article:

- (1) Blended fuel. – A mixture composed of gasoline or diesel fuel and another liquid, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.
- (2) Blender. – A person who produces blended fuel outside the terminal transfer system.
- (3) Bulk-end user. – A person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle.
- (4) Bulk plant. – A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.
- (5) Code. – Defined in G.S. 105-228.90.
- (6) Destination state. – The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.

- (7) Diesel fuel. – Any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle. The term does not include jet fuel sold to a buyer who is certified to purchase jet fuel under the Code.
- (8) Distributor. – A person who acquires motor fuel from a supplier or from another distributor for subsequent sale.
- (9) Dyed diesel fuel. – Diesel fuel that meets the dyeing and marking requirements of § 4082 of the Code.
- (10) Elective supplier. – A supplier that is required to be licensed in this State and that elects to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.
- (11) Export. – To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or for the seller constitutes an export by the seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.
- (12) Fuel alcohol. – Methanol or fuel grade ethanol.
- (13) Fuel alcohol provider. – A person who does any of the following:
 - a. Produces fuel alcohol.
 - b. Imports fuel alcohol outside the terminal transfer system by means of a marine vessel, a transport truck, or a railroad tank car.
- (14) Gasohol. – A blended fuel composed of gasoline and fuel grade ethanol.
- (15) Gasoline. – Any of the following:
 - a. All products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method.
 - b. A petroleum product component of gasoline, such as naphtha, reformat, or toluene.
 - c. Gasohol.
 - d. Fuel grade ethanol.

The term does not include aviation gasoline sold for use in an aircraft motor. 'Aviation gasoline' is gasoline that is designed for use in an aircraft motor and is not adapted for use in an ordinary highway vehicle.
- (16) Gross gallons. – The total amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.
- (17) Highway. – Defined in G.S. 20-4.01(13).
- (18) Highway vehicle. – A self-propelled vehicle that is designed for use on a highway.

- (19) Import. – To bring motor fuel into this State by any means of conveyance other than in the fuel supply tank of a highway vehicle. In applying this definition, motor fuel delivered into this State from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of-state by or for the purchaser constitutes an import by the purchaser.
- (20) Motor fuel. – Gasoline, diesel fuel, and blended fuel.
- (21) Motor fuel rate. – The rate of tax set in G.S. 105-449.80.
- (22) Motor fuel transporter. – A person who transports motor fuel outside the terminal transfer system by means of a transport truck, a railroad tank car, or a marine vessel.
- (23) Net gallons. – The amount of motor fuel measured in gallons when corrected to a temperature of 60 degrees Fahrenheit and a pressure of 14 7/10 pounds per square inch.
- (24) Permissive supplier. – An out-of-state supplier that elects, but is not required, to have a supplier's license under this Article.
- (25) Person. – Defined in G.S. 105-228.90.
- (26) Position holder. – The person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.
- (27) Rack. – A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a transport truck, a railroad tank car, or another means of transfer that is outside the terminal transfer system.
- (28) Removal. – A physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or another means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.
- (29) Retailer. – A person who maintains storage facilities for motor fuel and who sells the fuel at retail or dispenses the fuel at a retail location.
- (30) Secretary. – Defined in G.S. 105-228.90.
- (31) Supplier. – Any of the following:
 - a. A position holder or a person who receives motor fuel pursuant to a two-party exchange.
 - b. A fuel alcohol provider.
- (32) System transfer. – Either of the following:
 - a. A transfer of motor fuel within the terminal transfer system.
 - b. A transfer, by transport truck or railroad tank car, of fuel grade ethanol.
- (33) Tank wagon. – A truck that is not a transport truck and has multiple compartments designed or used to carry motor fuel.

- (34) Terminal. – A motor fuel storage and distribution facility that has been assigned a terminal control number by the Internal Revenue Service, is supplied by pipeline or marine vessel, and from which motor fuel may be removed at a rack.
- (35) Terminal operator. – A person who owns, operates, or otherwise controls a terminal.
- (36) Terminal transfer system. – The motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. The term has the same meaning as 'bulk transfer/terminal system' under 26 C.F.R. § 48.4081-1.
- (37) Transmix. – Either of the following:
 - a. The buffer or interface between two different products in a pipeline shipment.
 - b. A mix of two different products within a refinery or terminal that results in an off-grade mixture.
- (38) Transport truck. – A semitrailer combination rig designed or used to transport loads of motor fuel over a highway.
- (39) Trustee. – A person who is licensed as a supplier, an elective supplier, or a permissive supplier and who receives tax payments from and on behalf of a licensed distributor.
- (40) Two-party exchange. – A transaction in which motor fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement whereby the supplier that is the position holder agrees to deliver motor fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.

"§ 105-449.61. Tax restrictions; administration.

- (a) No Local Tax. – A county or city may not impose a tax on the sale, distribution, or use of motor fuel.
- (b) No Double Tax. – The tax imposed by this Chapter applies only once on the same motor fuel.
- (c) Administration. – Article 9 of this Chapter applies to this Article.

"Part 2. Licensing.

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

- (a) License. – A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:
 - (1) A refiner.
 - (2) A supplier.
 - (3) A terminal operator.
 - (4) An importer.
 - (5) An exporter, if the Secretary imposes this requirement by rule.
 - (6) A blender.
 - (7) A motor fuel transporter.

(8) A bulk-end user of undyed diesel fuel.

(9) A retailer of undyed diesel fuel.

(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier is not required to obtain a separate license for any other activity for which a license is required and is considered to have a license as a distributor. A person who is licensed as a distributor or a blender is not required to obtain a separate license as a motor fuel transporter if the distributor or blender does not transport motor fuel for others for hire.

"§ 105-449.66. Types of importers; restrictions on who can get a license as an importer.

(a) Types. – An applicant for a license as an importer must indicate the type of importer license sought. The types of importers are as follows:

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

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

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

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

(2) Occasional importer. – An occasional importer is a person who imports motor fuel by any means outside the terminal transfer system.

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

(b) Restrictions. – A person may not be licensed as more than one type of importer. A person who is a bulk-end user and is not also a distributor may not be licensed as a bonded importer. A person who is a bulk-end user and is not also a distributor may be licensed as an occasional importer with the restriction that the person acquire motor fuel for import only from an elective supplier or a permissive supplier or from a bulk plant.

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

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

(1) A distributor.

(2) A permissive supplier.

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

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

"§ 105-449.69. How to apply for a license.

(a) General. – To obtain a license, an applicant must file an application with the Secretary on a form provided by the Secretary. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary.

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

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

(c) Federal Certificate. – An applicant for a license as a refiner, a supplier, a terminal operator, a blender, or a permissive supplier must have a federal Certificate of Registry that is issued under § 4101 of the Code and authorizes the applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An applicant that is required to have a federal Certificate of Registry must include the registration number of the certificate on the application for a license under this section.

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

(d) Import and Export Activity. – An applicant for a license as an importer must list on the application each state from which the applicant intends to import motor fuel and, if required by a state listed, must be licensed or registered for motor fuel tax purposes in that state. An applicant for a license as a distributor must list on the application each state to which the applicant intends to export motor fuel received in this State by means of a transfer that is outside the terminal transfer system and, if required by a state listed, must be licensed or registered for motor fuel tax purposes in that state.

"§ 105-449.70. Supplier election to collect tax on out-of-state removals.

(a) Election. – An applicant for a license as a supplier may elect on the application to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state. The Secretary must provide for this election on the application form. A supplier that makes the election allowed by this section is an elective supplier.

A supplier that does not make the election on the application for a supplier's license may make the election later by completing an election form provided by the Secretary.

A supplier that does not make the election may not act as an elective supplier for motor fuel that is removed at a terminal in another state and has this State as its destination state.

(b) Effect. – A supplier that makes the election allowed by this section agrees to all of the following with respect to motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state:

- (1) To collect the excise tax due this State on the fuel and to waive any defense that the State lacks jurisdiction to require the supplier to collect the excise tax due this State under this Article on the fuel.
- (2) To report and pay the tax due on the fuel in the same manner as if the removal had occurred at a terminal located in this State.
- (3) To keep records of the removal of the fuel and submit to audits concerning the fuel as if the removal had occurred at a terminal located in this State.

(c) Limited Jurisdiction. – A supplier that makes the election allowed by this section acknowledges that the State imposes the requirements listed in subsection (b) of this section on the supplier under its general police power set out in Article 3 of Chapter 119 of the General Statutes to regulate the quality of motor fuel and thereby promote public health and safety. A supplier that makes the election allowed by this section submits to the jurisdiction of the State only for the administration of this Article.

"§ 105-449.71. Permissive supplier election to collect tax on out-of-state removals.

(a) Election. – An out-of-state supplier that is not required to have a license under this Part may elect to have a license and thereby become a permissive supplier. An out-of-state supplier that does not make this election may not act as a permissive supplier for motor fuel that is removed at a terminal in another state and has this State as its destination state.

(b) Effect. – By obtaining a license as a permissive supplier, the permissive supplier agrees to be subject to the same requirements as a supplier and to all of the following with respect to motor fuel that is removed by the permissive supplier at a terminal located in another state and has this State as its destination state:

- (1) To collect the excise tax due this State on the fuel and to waive any defense that the State lacks jurisdiction to require the supplier to collect the excise tax due this State under this Article on the fuel.
- (2) To report and pay the tax due on the fuel in the same manner as if the removal had occurred at a terminal located in this State.
- (3) To keep records of the removal of the fuel and submit to audits concerning the fuel as if the removal had occurred at a terminal located in this State.

(c) Limited Jurisdiction. – A supplier that makes the election allowed by this section acknowledges that the State imposes the requirements listed in subsection (b) of this section on the supplier under its general police power set out in Article 3 of Chapter 119 of the General Statutes to regulate the quality of motor fuel and thereby promote public health and safety. A supplier that makes the election allowed by this section submits to the jurisdiction of the State only for the administration of this Article.

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

(a) Initial Bond. – An applicant for a license as a refiner, a terminal operator, a supplier, an importer, a permissive supplier, or a distributor must file with the Secretary a bond or an irrevocable letter of credit. 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 not a position holder or a person that receives motor fuel pursuant to a two-party exchange.
 - b. An occasional importer.
 - c. A tank wagon importer.
 - d. A distributor.

A bond filed under this section 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. 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 a license as a distributor and either an occasional importer or a tank wagon importer may file one bond that covers the combined liabilities of the applicant under both activities.

(b) 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.

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

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

- (1) Had a license or registration issued under this Article or former Article 36 or 36A of this Chapter cancelled by the Secretary for cause.
- (2) Had a federal Certificate of Registry issued under § 4101 of the Code, or a similar federal authorization, revoked.
- (3) Been convicted of fraud or misrepresentation.
- (4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if issued a license.

"§ 105-449.74. Issuance of license.

Upon approval of an application, the Secretary must issue a license to the applicant as well as a duplicate copy of the license for each place of business of the applicant. A supplier's license must indicate the category of the supplier. A license holder must display a license issued under this Part in a conspicuous place at each place of business of the license holder. A license is not transferable and remains in effect until surrendered or cancelled.

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

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

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

"§ 105-449.76. Reasons why the Secretary can cancel a license.

The Secretary may cancel a license issued under this Article upon the written request of the license holder. The Secretary may summarily cancel the license of a license holder when the Secretary finds that the license holder is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may cancel the license of a license holder that commits one or more of the acts listed in G.S. 105-449.120 after holding a hearing on whether the license should be cancelled.

The Secretary must send a person whose license is summarily cancelled a notice of the cancellation and must give the person an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary must give a person whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a notice of hearing must be sent by registered mail to the last known address of the license holder.

When the Secretary cancels a license and the license holder has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions concerning a bond or an irrevocable letter of credit filed by the license holder:

- (1) Return an irrevocable letter of credit to the license holder.
- (2) Return a bond to the license holder or notify the person liable on the bond and the license holder that the person is released from liability on the bond.

"§ 105-449.77. Records and lists of license applicants and license holders.

(a) Records. – The Secretary must keep a record of the following:

- (1) Applicants for a license under this Article.
- (2) Persons to whom a license has been issued under this Article.
- (3) Persons that hold a current license issued under this Article, by license category.

(b) Distributor List. – The Secretary must give a list of licensed distributors to each licensed supplier that asks for a copy of the list. The list must state the name and business address of each distributor on the list. The Secretary must send a monthly update of the list to each supplier that requested a copy of the list.

(c) Supplier List. – The Secretary must give a list of licensed suppliers to each distributor that asks for a copy of the list. The list must state the name and business address of each supplier on the list and must indicate whether the supplier is an elective supplier or a permissive supplier. The Secretary must send an annual update of the list to each distributor that requested a copy of the list.

"Part 3. Tax and Liability.

"§ 105-449.80. Tax rate.

(a) Rate. – The motor fuel excise tax rate is a flat rate of seventeen and one-half cents (17 1/2¢) a gallon plus a variable wholesale component. The variable wholesale component is either three and one-half cents (3 1/2¢) a gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater.

The two base periods are six-month periods; one ends on September 30 and one ends on March 31. The Secretary must set the tax rate twice a year based on the wholesale price for each base period. A tax rate set by the Secretary using information for the base period that ends on September 30 applies to the six-month period that begins the following January 1. A tax rate set by the Secretary using information for the base period that ends on March 31 applies to the six-month period that begins the following July 1.

(b) Wholesale Price. – The Secretary must determine the average wholesale price of motor fuel for each base period. To do this, the Secretary must use information on refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel for resale, published by the United States Department of Energy in the 'Monthly Energy Review', or equivalent data.

The Secretary must compute the average sales price of finished motor gasoline for the base period, compute the average sales price for No. 2 diesel fuel for the base period, and then compute a weighted average of the results of the first two computations

based on the proportion of tax collected on each under this Article for the base period. The Secretary must then convert the weighted average price to a cents-per-gallon rate and round the rate to the nearest one-tenth of a cent (1/10¢). If the converted cents-per-gallon rate is exactly between two-tenths of a cent (2/10¢), the Secretary must round the rate up to the higher of the two.

(c) Notification. – The Secretary must notify affected taxpayers of the tax rate to be in effect for each six-month period beginning January 1 and July 1.

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

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

- (1) Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax imposed by § 4081 of the Code.
- (2) Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the federal excise tax imposed by § 4081 of the Code.
- (3) Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in this State and would have been subject to the federal excise tax imposed by § 4081 of the Code if it had been removed at a terminal or bulk plant rack in this State instead of imported.
- (4) Blended fuel made in this State or imported to this State.

"§ 105-449.82. Liability for tax on removals from a refinery or terminal.

(a) Refinery Removal. – The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed from a refinery in this State is payable by the refiner.

(b) Terminal System Removal. – The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed by a system transfer from a terminal in this State is payable by the position holder for the fuel. If the position holder is not the terminal operator, the terminal operator is jointly and severally liable for the tax.

(c) Terminal Rack Removal. – The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed at a terminal rack in this State is payable by the person that first receives the fuel upon its removal from the terminal. If the motor fuel is removed by an unlicensed distributor, the supplier of the fuel is jointly and severally liable for the tax due on the fuel. If the motor fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person removing the fuel are jointly and severally liable for the tax due on the fuel.

"§ 105-449.83. Liability for tax on imports.

(a) By System Transfer. – The excise tax imposed by G.S. 105-449.81(2) on motor fuel imported by a system transfer to a refinery is payable by the refiner. The excise tax imposed by that subdivision on motor fuel imported by a system transfer to a terminal is payable by the person importing the fuel and by the terminal operator, both of which are jointly and severally liable for payment of the tax due on the fuel.

(b) From Out-of-State Terminal. – The excise tax imposed by G.S. 105-449.81(3) on motor fuel that is removed from a terminal rack located in another state and has this State as its destination state is payable by the importer of the fuel as follows:

- (1) If the importer of the fuel is a licensed supplier in this State and the fuel is removed for the supplier's own account for use in this State, the tax is payable by the supplier.
- (2) If the supplier of the fuel is licensed in this State as an elective supplier or a permissive supplier, the tax is payable to the supplier as trustee.
- (3) If no other subdivision of this subsection applies, the tax is payable by the importer when filing a return with the Secretary.

(c) From Out-of-State Bulk Plant. – The excise tax imposed by G.S. 105-449.81(3) on motor fuel that is removed from a bulk plant located in another state is payable by the person that imports the fuel.

"§ 105-449.84. Liability for tax on blended fuel.

(a) On Blender. – The excise tax imposed by G.S. 105-449.81(4) on blended fuel made in this State is payable by the blender. The number of gallons of blended fuel on which the tax is payable is the difference between the number of gallons of blended fuel made and the number of gallons of previously taxed motor fuel used to make the blended fuel.

(b) On Importer. – The excise tax imposed by G.S. 105-449.81(4) on blended fuel imported to this State is payable by the importer.

(c) Blends Made at Terminal. – The following blended fuel is considered to have been made by the supplier of gasoline or undyed diesel fuel used in the blend:

- (1) An in-line-blend made by combining a liquid with gasoline or undyed diesel fuel as the fuel is delivered at a terminal rack into the motor fuel storage compartment of a transport truck or a tank wagon.
- (2) A kerosene splash-blend made when kerosene is delivered at a terminal into a motor fuel storage compartment of a transport truck or a tank wagon and undyed diesel fuel is also delivered at that terminal into the same storage compartment, if the buyer of the kerosene notified the supplier before or at the time of delivery that the kerosene would be used to make a splash-blend.

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

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

- (1) The amount of motor fuel in inventory at the terminal at the beginning of the year plus the amount of motor fuel received by the terminal during the year.
- (2) The amount of motor fuel in inventory at the terminal at the end of the year plus the amount of motor fuel removed from the terminal during the year.

(b) Liability. – The terminal operator whose motor fuel is unaccounted for is liable for the tax imposed by this section. Motor fuel received by a terminal operator

and not shown on a report filed by the terminal operator with the Secretary as having been removed from the terminal is presumed to be unaccounted for. A terminal operator may establish that motor fuel received at a terminal but not shown on a report as having been removed from the terminal was lost or part of a transmix and is therefore not unaccounted for.

"§ 105-449.86. Tax on and liability for dyed diesel fuel used to operate certain highway vehicles.

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

- (1) A highway vehicle that is owned by or leased to a unit of local government and is allowed by § 4082 of the Code to use dyed diesel fuel.
- (2) Either a local bus or an intercity bus that is allowed by § 4082(b)(3) of the Code to use dyed diesel fuel.
- (3) A highway vehicle that is owned by or leased to an educational organization that is not a public school and is allowed by § 4082(b)(1) or (b)(3) of the Code to use dyed diesel fuel.
- (4) A highway vehicle that is owned by or leased to the American Red Cross and is allowed by § 4082 of the Code to use dyed diesel fuel.

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

- (1) When the person acquiring the dyed diesel fuel has storage facilities for the fuel and is therefore a bulk-end user of the fuel.
- (2) When the person acquired the dyed diesel fuel from a retail outlet of the distributor by using an access card or code indicating that the person's use of the fuel is taxable under this section.

"§ 105-449.87. Backup tax and liability for the tax.

(a) Tax. – An excise tax at the motor fuel rate is imposed on the following:

- (1) Dyed diesel fuel that is used to operate a highway vehicle for a use that is not a nontaxable use under § 4082(b) of the Code.
- (2) Motor fuel that was allowed an exemption from the motor fuel tax and was then used for a taxable purpose.
- (3) Motor fuel that is used to operate a highway vehicle after an application for a refund of tax paid on the motor fuel is made or allowed under G.S. 105-449.107(a) on the basis that the motor fuel was used for an off-highway purpose.
- (4) Motor fuel imported by a tank wagon importer.

(b) Liability. – The operator of a highway vehicle that uses motor fuel that is taxable under this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for the tax. If the end seller of motor fuel taxable under this section knew or had reason

to know that the motor fuel would be used for a purpose that is taxable under this section, the end seller is jointly and severally liable for the tax.

(c) Imputed Knowledge. – An end seller of dyed diesel fuel is considered to have known or had reason to know that the fuel would be used for a purpose that is taxable under this section unless the end seller delivered the fuel into a storage facility that meets one of the following requirements:

- (1) It contains fuel used only in heating, drying crops, or a manufacturing process and is installed in a manner that makes use of the fuel for any other purpose improbable.
- (2) It is marked as follows with the phrase 'Dyed Diesel', 'For Nonhighway Use', or a similar phrase that clearly indicates the fuel is not to be used to operate a highway vehicle:
 - a. The storage tank of the storage facility is marked if the storage tank is visible.
 - b. The fillcap or spill containment box of the storage facility is marked.
 - c. The dispensing device that serves the storage facility is marked.

"§ 105-449.88. Exemptions from the excise tax.

The excise tax on motor fuel does not apply to the following:

- (1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state that is printed on the shipping document for the motor fuel.
- (2) Motor fuel sold to the federal government.
- (3) Motor fuel sold to the State for its use.
- (4) Motor fuel sold to a local board of education for use in the public school system.

"Part 4. Payment and Reporting.

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

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

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

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

A monthly return of a person other than an occasional importer is due within 22 days after the end of each month. A monthly return of an occasional importer is due by the 1st of each month. A monthly return covers tax liabilities that accrue in the calendar month preceding the date the return is due.

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

(c) Quarterly Filers. – A licensed distributor must file a quarterly return under G.S. 105-449.94 to reconcile exempt sales.

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

(1) A refiner.

(2) A supplier.

(3) A bonded importer.

(4) A blender.

(5) A tank wagon importer.

(6) A person that is liable under G.S. 105-449.86 for the tax on dyed diesel fuel used to operate certain highway vehicles.

(7) A person that is liable under G.S. 105-449.87 for the backup tax on motor fuel.

(e) Monthly Filers on 1st. – An occasional importer must file a monthly return by the 1st of each month. An occasional importer is not required to file a return, however, if all the motor fuel imported by the importer in a reporting period was removed at a terminal located in another state and the supplier of the fuel is an elective supplier or a permissive supplier.

"§ 105-449.91. Remittance of tax by distributor.

A distributor that is liable for the tax imposed on motor fuel removed at a terminal rack must remit the tax to the supplier of the fuel. A licensed distributor has the right to defer the remittance of tax to the supplier, as trustee, until the date the trustee must pay the tax to the State. Payment of tax by an unlicensed distributor to a supplier is governed by the terms of the contract between the unlicensed distributor and the supplier. G.S. 105-449.76 governs the cancellation of a distributor's license.

"§ 105-449.92. Notice to suppliers of cancellation or reissuance of a distributor's license; effect of notice.

(a) Notice to Suppliers. – If the Secretary cancels a distributor's license, the Secretary must notify all suppliers of the cancellation. If the Secretary issues a license to a distributor whose license was cancelled, the Secretary must notify all suppliers of the issuance.

(b) Effect of Notice. – A supplier that sells motor fuel to a distributor after receiving notice from the Secretary that the Secretary has cancelled the distributor's license is jointly and severally liable with the distributor for any tax due on motor fuel the supplier sells to the distributor after receiving the notice. This joint and several liability does not apply to excise tax due on motor fuel sold to a previously unlicensed distributor after the supplier receives notice from the Secretary that the Secretary has issued another license to the distributor.

"§ 105-449.93. Exempt sale deduction and percentage discount for licensed distributors.

(a) Deduction. – A licensed distributor may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel the distributor

received from the supplier and resold to a governmental unit whose purchases of motor fuel are exempt from the tax under G.S. 105-449.88 if, when removing the fuel, the distributor used an access card or code specified by the supplier to notify the supplier of the distributor's intent to resell the fuel in an exempt sale.

(b) Percentage Discount. – A licensed distributor that pays the excise tax due a supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of one percent (1%) of the amount of tax payable. The discount covers the expense of furnishing a bond and losses due to shrinkage or evaporation. A supplier may not directly or indirectly deny this discount to a licensed distributor that pays the excise tax due the supplier by the date the supplier must pay the tax to the State.

"§ 105-449.94. Quarterly reconciling return for exempt sales by licensed distributor.

(a) Return. – A licensed distributor that deducts exempt sales under G.S. 105-449.93(a) when paying tax to a supplier must file a quarterly reconciling return for the exempt sales. The return must list the following information:

- (1) The number of gallons for which a deduction was taken during the quarter, by supplier.
- (2) The number of gallons sold in exempt sales during the quarter, by type of sale, and the purchasers of the fuel in the exempt sales.

(b) Payment. – If the number of gallons for which a licensed distributor takes a deduction during a quarter exceeds the number of exempt gallons sold, the licensed distributor must pay tax on the difference at the motor fuel rate. The licensed distributor is not allowed a percentage discount when paying tax under this subsection.

(c) Refund. – If the number of gallons for which a licensed distributor takes a deduction during a quarter is less than the number of exempt gallons sold, the Secretary must refund the licensed distributor for the amount of tax paid on the difference. The Secretary must reduce the amount of the refund by the amount of the percentage discount the distributor received on the fuel.

(d) Exception. – If the number of gallons for which a licensed distributor takes a deduction during a quarter equals the number of exempt gallons sold, the licensed distributor is not required to file a return under this section for that quarter. The Secretary may waive the requirement of filing a return under this section in other specified circumstances.

"§ 105-449.95. Quarterly hold harmless for licensed distributors.

(a) Calculation. – At the end of each calendar quarter, the Secretary must review the amount of discounts each licensed distributor received under G.S. 105-449.93(b). The Secretary must determine if the amount of discounts the distributor received under that subsection in each month of the quarter is less than the amount the distributor would have received if the distributor had been allowed a discount on taxable gasoline purchased by the distributor from a supplier during each month of the quarter under the following schedule:

<u>Amount of Gasoline Purchased</u>	<u>Percentage Discount</u>
<u>Each Month</u>	

<u>First 150,000 gallons</u>	<u>2%</u>
<u>Next 100,000 gallons</u>	<u>1 1/2%</u>
<u>Amount over 250,000 gallons</u>	<u>1%.</u>

(b) Refund. – If the amount the distributor received under G.S. 105-449.93(b) for a month in the quarter is less than the amount the distributor would have received on the distributor's taxable gasoline purchases under the monthly schedule in subsection (a) of this section, the Secretary must send the distributor a refund check for the difference. In determining the amount of discounts a distributor received under G.S. 105-449.93(b) for gasoline purchased in a month, a distributor is considered to have received the amount of any discounts the distributor could have received under that subsection but did not receive because the distributor failed to pay the tax due to the supplier by the date the supplier had to pay the tax to the State.

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

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

- (1) The number of gallons of motor fuel received during the month by the supplier by a system transfer, by type of fuel, and by terminal.
- (2) The number of gallons of motor fuel imported during the month by the supplier by a means of transfer outside the terminal transfer system.
- (3) The number of gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, by type of fuel, by receiving distributor, and by terminal.
- (4) The number of gallons of motor fuel removed during the month for export, by distributor and by terminal, and, for each removal, the destination state of the fuel.
- (5) The number of gallons of motor fuel removed during the month, by distributor and by terminal, at a terminal located in another state for destination to this State, as indicated on the shipping document for the fuel.
- (6) The number of gallons of motor fuel the supplier sold during the month, by distributor and by terminal, to either of the following:
 - a. A governmental unit whose use of fuel is exempt from the tax.
 - b. A distributor that resold the motor fuel to a governmental unit whose use of fuel is exempt from the tax, as reported by the distributor.
- (7) The amount of discounts allowed under G.S. 105-449.93(b) on motor fuel sold during the month to licensed distributors, sorted by distributor.

"§ 105-449.97. Deductions and discounts allowed a supplier when filing a return.

(a) Taxes Not Remitted. – When a supplier files a return, the supplier may deduct from the amount of tax payable with the return the amount of tax a licensed distributor owes the supplier but failed to remit to the supplier. A supplier is not liable for tax a licensed distributor owes the supplier but fails to pay. If a licensed distributor pays tax

owed to a supplier after the supplier deducts the amount on a return, the supplier must promptly remit the distributor's payment to the Secretary.

(b) Administrative Discount. – A supplier that files a timely return may deduct from the amount of tax payable with the return an administrative discount of one-tenth of one percent (0.1%) of the amount of tax payable as the trustee, not to exceed eight thousand dollars (\$8,000) a month. The discount covers expenses incurred in collecting taxes on motor fuel from distributors.

(c) Percentage Discount. – A supplier that sells motor fuel directly to the bulk-end user, the retailer, or user of the fuel can take the same percentage discount on the fuel that a licensed distributor can take under G.S. 105-449.93(b) when making deferred payments of tax to the supplier.

"§ 105-449.98. Duties of supplier concerning payments by distributors.

(a) As Fiduciary. – A supplier has a fiduciary duty to remit to the Secretary the amount of tax paid to the supplier by a licensed distributor. A supplier is liable for taxes paid to the supplier by a licensed distributor.

(b) Notification to Distributor. – A supplier must notify a licensed distributor that received motor fuel from the supplier during a reporting period of the number of taxable gallons received. The supplier must give this notice after the end of each reporting period and before the licensed distributor must remit to the supplier the amount of tax due on the fuel.

(c) Notification to Department. – A supplier of motor fuel at a terminal must notify the Department within 10 days after a return is due of any licensed distributors that did not pay the tax due the supplier when the supplier filed the return. The notification must be transmitted to the Department in the form required by the Department.

(d) Payment Application. – A supplier that receives a payment of excise tax from a distributor may not apply the payment to debts for motor fuel purchased from the supplier.

"§ 105-449.99. Returns and discounts of importers.

(a) Return. – A monthly return of a bonded importer, an occasional importer, or a tank wagon importer must contain the following information concerning motor fuel imported during the period covered by the return:

- (1) The number of gallons of imported motor fuel acquired from a supplier that collected the excise tax due this State on the fuel.
- (2) The number of gallons of imported motor fuel acquired from a supplier that did not collect the excise tax due this State on the fuel, listed by source state, supplier, and terminal.
- (3) The import authorization number of each import that is reported under subdivision (2) of this subsection and was removed from a terminal.
- (4) For an occasional importer or a tank wagon importer, the number of gallons of imported motor fuel acquired from a bulk plant, listed by bulk plant.

(b) Discounts. – An importer may not deduct an administrative discount from the amount remitted with a return. An importer that imports motor fuel received from an

elective supplier or a permissive supplier may deduct the percentage discount allowed by G.S. 105-449.93(b) when remitting tax to the supplier, as trustee, for payment to the State. An importer that imports motor fuel received from a supplier that is not an elective supplier or a permissive supplier may not deduct the percentage discount allowed by G.S. 105-449.93(b) when filing a return for the tax due.

"§ 105-449.100. Report by terminal operator.

A terminal operator must make a monthly report to the Secretary of motor fuel received or removed from the terminal during the month. The report is due by the 25th day of the month following the month covered by the report and must contain the following information and any other information required by the Secretary:

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

"§ 105-449.101. Reports by those that transport motor fuel.

(a) Requirement. – A person that transports, by pipeline, marine vessel, railroad tank car, or transport truck, motor fuel that is being imported into this State or exported from this State must make a monthly report to the Secretary of motor fuel received or delivered for import or export by the transporter during the month. This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.

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

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

"§ 105-449.102. Report of exports from a bulk plant.

A distributor that exports motor fuel from a bulk plant located in this State must make a monthly report to the Secretary of the exports. The report is due by the 25th day of the month following the month covered by the report. The report must contain the following information and any other information required by the Secretary:

- (1) The number of gallons of motor fuel exported during the month.
- (2) The destination state of the motor fuel exported during the month.

"Part 5. Refunds.

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

(a) Exempt Fuel. – A distributor may obtain a refund of tax paid by the distributor 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. 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) Refund Amount. – The amount of a refund allowed under this section is the amount of tax paid.

"§ 105-449.106. Quarterly refunds for certain local governmental entities, nonprofit organizations, and taxicabs.

(a) Government and Nonprofits. – A local governmental entity or a nonprofit organization listed below that purchases and uses motor fuel may receive a quarterly refund, for the tax paid during the preceding quarter, at a rate equal to the amount of the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. Any of the following entities may receive a refund under this section:

- (1) A county or a municipal corporation.
- (2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.
- (3) A volunteer fire department.
- (4) A volunteer rescue squad.
- (5) A sheltered workshop recognized by the Department of Human Resources.

An application for a refund allowed under this section must be made in accordance with this Part and must be signed by the chief executive officer of the entity. The chief executive officer of a nonprofit organization is the president of the organization or another officer of the organization designated in the charter or bylaws of the organization.

(b) Taxi. – A person who purchases and uses motor fuel in a taxicab, as defined in G.S. 20-87(1), while the taxicab is engaged in transporting passengers for hire, or in a bus operated as part of a city transit system that is exempt from regulation by the North Carolina Utilities Commission under G.S. 62-260(a)(8), may receive a quarterly refund.

for the tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. An application for a refund must be made in accordance with this Part.

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

(a) Off-Highway. – A person who purchases and uses motor fuel for a purpose other than to operate a licensed highway vehicle may receive an annual refund for the tax the person paid on fuel used during the preceding calendar year at a rate equal to the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less one cent (1¢) per gallon. An application for a refund allowed under this section must be made in accordance with this Part.

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

- (1) A concrete mixing vehicle.
- (2) A solid waste compacting vehicle.
- (3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a power takeoff to unload the feed.
- (4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a power takeoff to unload the lime or fertilizer.
- (5) A tank wagon that delivers alternative fuel, as defined in G.S. 105-449.130, or motor fuel or another type of liquid fuel into storage tanks and uses a power takeoff to make the delivery.

The refund rate shall be computed by subtracting one cent (1¢) from the combined amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, and multiplying the difference by thirty-three and one-third percent (33 1/3%). An application for a refund allowed under this section shall be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle.

"§ 105-449.108. When an application for a refund is due.

(a) Annual Refunds. – An application for an annual refund of tax is due by April 15 following the end of the calendar year for which the refund is claimed. The application must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year, and must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

(b) Quarterly Refunds. – An application for a quarterly refund of tax is due by the last day of the month following the end of the calendar quarter for which the refund is claimed. The application must state that the applicant has paid for the fuel for which

a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

(c) Upon Application. – An application for a refund of tax upon application under G.S. 105-449.105 is due by the last day of the month that follows the payment of tax or other event that is the basis of the refund.

"§ 105-449.109. Reduction or denial of late annual or quarterly refund application.

An application filed with the Secretary within six months of the date the application is due must be accepted but is subject to a penalty of twenty-five percent (25%) of the amount of the refund otherwise due if the application is filed within 30 days after the date the application is due, and is subject to a penalty of fifty percent (50%) of the amount of the refund otherwise due if the application is filed more than 30 days but within six months after the date the application is due. The Secretary shall not accept an application filed more than six months after the date the application is due.

"§ 105-449.110. Review of refund application and payment of refund.

(a) Decision. – Upon determining that an application for refund is correct, the Secretary must issue the applicant a warrant upon the State Treasurer for the amount of the refund. If the Secretary determines that an application for refund is incorrect, the Secretary must send a written notice of the determination to the applicant. The notice must advise the applicant that the applicant may request a hearing on the matter in accordance with Article 9 of this Chapter.

(b) Interest. – The rate of interest payable on a refund is the rate set in G.S. 105-242.1(i). Interest accrues on a refund from the date that is 90 days after the later of the following:

- (1) The date the application for refund was filed.
- (2) The date the application for refund was due.

"Part 6. Enforcement and Administration.

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

(a) Issuance. – A person may not transport motor fuel by railroad tank car or transport truck unless the person has a shipping document for its transportation that complies with this section. A terminal operator and the operator of a bulk plant must give a shipping document to the person who operates a railroad tank car or a transport truck into which motor fuel is loaded at the terminal rack or bulk plant rack.

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

- (1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received.
- (2) The date the motor fuel was loaded.
- (3) The gross gallons loaded.
- (4) The destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent.
- (5) If the document is issued by a terminal operator, the following information:

- a. The net gallons loaded.
- b. A tax responsibility statement indicating the name of the supplier that is responsible for the tax due on the motor fuel.

(c) Reliance. – A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser is liable for any tax due as a result of the purchaser's diversion of fuel from the represented destination state.

(d) Duties of Transporter. – A person to whom a shipping document was issued must do all of the following:

- (1) Carry the shipping document in the conveyance for which it was issued when transporting the motor fuel described in it.
- (2) Show the shipping document to a law enforcement officer upon request when transporting the motor fuel described in it.
- (3) Deliver motor fuel described in the shipping document to the destination state printed on it unless the person does all of the following:
 - a. Notifies the Secretary before transporting the motor fuel into a state other than the printed destination state that the person has received instructions since the shipping document was issued to deliver the motor fuel to a different destination state.
 - b. Receives from the Secretary a confirmation number authorizing the diversion.
 - c. Writes on the shipping document the change in destination state and the confirmation number for the diversion.
- (4) Give a copy of the shipping document to the distributor or other person to whom the motor fuel is delivered.

(e) Duties of Person Receiving Shipment. – A person to whom motor fuel is delivered by railroad tank car or transport truck may not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than North Carolina. To determine if the shipping document shows North Carolina as the destination state, the person to whom the fuel is delivered must examine the shipping document and must keep a copy of the shipping document. The person must keep a copy at the place of business where the motor fuel was delivered for 90 days from the date of delivery and must keep it at that place or another place for at least three years from the date of delivery.

(f) Sanctions. – The following acts are grounds for a civil penalty payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue:

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

The penalty imposed under this subsection is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty depends on the amount of fuel improperly transported or diverted and whether the person against whom the penalty is assessed has previously been assessed a penalty under this subsection. For a first assessment under this subsection, the penalty is the amount of motor fuel tax payable on the improperly transported or diverted motor fuel. For a second or subsequent assessment under this subsection, the penalty is the greater of one thousand dollars (\$1,000) or five times the amount of motor fuel tax payable on the improperly transported or diverted motor fuel. A penalty imposed under this subsection is in addition to any motor fuel tax assessed.

"§ 105-449.116. Import confirmation number required for some imported motor fuel.

A bonded importer or an occasional importer that acquires motor fuel for import by transport truck from a supplier that is not an elective supplier or a permissive supplier, and therefore will not be acting as trustee for the remittance of tax to the State on behalf of the importer, must obtain an import confirmation number from the Secretary before importing the motor fuel. The importer must write the import confirmation number on the shipping document issued for the fuel. The importer must obtain a separate import confirmation number for each transport truck delivery of motor fuel into this State.

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

It is unlawful to use dyed diesel fuel for a highway use unless that use is permitted under section 4082 of the Code. A person who operates on a highway a highway vehicle whose supply tank contains dyed diesel fuel whose use is unlawful under this section or contains other fuel on which the tax imposed by this Article has not been paid is guilty of a Class 1 misdemeanor and is liable for a civil penalty.

The civil penalty is payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue and is payable by the person in whose name the highway vehicle is registered. The amount of the penalty depends on the amount of fuel in the supply tank of the highway vehicle. The penalty is the greater of one thousand dollars (\$1,000) or five times the amount of motor fuel tax payable on the fuel in the supply tank. A penalty imposed under this section is in addition to any motor fuel tax assessed.

"§ 105-449.118. Civil penalty for buying or selling non-tax-paid motor fuel.

A person who dispenses non-tax-paid motor fuel into the supply tank of a highway vehicle or who allows non-tax-paid motor fuel to be dispensed into the supply tank of a highway vehicle is subject to a civil penalty. The penalty is based on the amount of motor fuel dispensed and is set at the following amounts:

<u>Number of Gallons Dispensed</u>	<u>Penalty</u>
<u>Less than 25</u>	<u>\$ 75.00</u>
<u>At least 25 but less than 50</u>	<u>150.00</u>
<u>At least 50</u>	<u>300.00.</u>

The penalty is payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue. Failure to pay a penalty imposed under this section is grounds under G.S. 20-88.01(b) to withhold or revoke the registration plate of the motor vehicle into which the motor fuel was dispensed.

"§ 105-449.119. Hearing on civil penalty assessment.

A person who denies liability for a penalty imposed under this Part must pay the penalty under protest and make a written demand to the Department of Revenue for a refund. The written demand must be made within 30 days after the penalty is imposed. Upon receiving a demand for a refund, the Secretary shall schedule a hearing on the matter before an employee or an agent of the Department. The hearing must be held within 30 days after receiving the written demand for a refund. If, after the hearing, the Department determines that the person was not liable for the penalty, the amount collected shall be refunded. If after the hearing the Department determines that the person was liable for the penalty, the person paying the penalty may appeal the imposition of the penalty in accordance with G.S. 105-241.2, 105-241.3, and 105-241.4.

"§ 105-449.120. Acts that are misdemeanors.

(a) Class 1. – A person who commits any of the following acts is guilty of a Class 1 misdemeanor:

- (1) Fails to obtain a license required by this Article.
- (2) Willfully fails to make a report required by this Article.
- (3) Willfully fails to pay a tax when due under this Article. Failure to comply with a requirement of a supplier to remit tax payable to the supplier by electronic funds transfer is considered a failure to make a timely payment.
- (4) Makes a false statement in an application, a report, or a statement required under this Article.
- (5) Makes a false statement in an application for a refund.
- (6) Fails to keep records as required under this Article.
- (7) Refuses to allow the Secretary or a representative of the Secretary to examine the person's books and records concerning motor fuel.
- (8) Fails to disclose the correct amount of motor fuel sold or used in this State.
- (9) Fails to file a replacement bond or an additional bond as required under this Article.
- (10) Fails to show or give a shipping document as required under this Article.

(b) Class 2. – A person who commits any of the following acts is guilty of a Class 2 misdemeanor:

- (1) Knowingly dispenses non-tax-paid motor fuel into the supply tank of a highway vehicle.
- (2) Knowingly allows non-tax-paid fuel to be dispensed into the supply tank of a highway vehicle.

"§ 105-449.121. Record-keeping requirements; inspection authority.

(a) What Must Be Kept. – A person who is required to submit a report or file a return under Part 4 of this Article must keep a record of all shipping documents or other documents used to determine the information provided in the report or return. The records must be kept for three years from the due date of the report or return to which the records apply.

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

- (1) Audit a distributor or a person who is required to have or elects to have a license under this Article.
- (2) Audit a distributor or a motor fuel user that is not licensed under this Article.
- (3) Examine a tank or other equipment used to make, store, or transport motor fuel, diesel dyes, or diesel markers.
- (4) Take a sample of a product from a vehicle, a tank, or another container in a quantity sufficient to determine the composition of the product.
- (5) Stop a vehicle for the purpose of taking a sample of motor fuel from the vehicle.

"§ 105-449.122. Miscellaneous requirements.

(a) Metered Pumps. – All motor fuel dispensed at retail must be dispensed from metered pumps that indicate the total amount of fuel measured through the pumps. Each pump must be marked to indicate the type of motor fuel dispensed.

(b) Truck Equipment. – A highway vehicle that transports diesel fuel in a tank that is separate from the fuel supply tank of the vehicle may not have a connection from the transporting tank to the motor or to the supply tank of the vehicle.

"Part 7. Use of Revenue.

"§ 105-449.125. Distribution of tax revenue among various funds and accounts.

The Secretary shall allocate the amount of revenue collected under this Article from an excise tax of one-half cent (1/2¢) a gallon to the following funds and accounts in the fraction indicated:

<u>Fund or Account</u>	<u>Amount</u>
<u>Commercial Leaking Petroleum</u> <u>Underground Storage Tank Cleanup</u> <u>Fund.....</u>	<u>Nineteen thirty-seconds</u>
<u>Noncommercial Leaking Petroleum</u> <u>Underground Storage Tank Cleanup</u> <u>Fund.....</u>	<u>Three thirty-seconds</u>
<u>Water and Air Quality Account.....</u>	<u>Five-sixteenths.</u>

The Secretary shall allocate seventy-five percent (75%) of the remaining excise tax revenue collected under this Article to the Highway Fund and shall allocate twenty-five percent (25%) to the Highway Trust Fund.

The Secretary shall charge a proportionate share of a refund allowed under this Article to each fund or account to which revenue collected under this Article is credited. The Secretary shall credit revenue or charge refunds to the appropriate funds or accounts on a monthly basis.

"§ 105-449.126. Distribution of part of Highway Fund allocation to Wildlife Resources Fund.

The Secretary shall credit to the Wildlife Resources Fund one-sixth of one percent (1/6 of 1%) of the amount that is allocated to the Highway Fund under G.S. 105-449.125 and is from the excise tax on gasoline or blended fuel that contains gasoline. Revenue credited to the Wildlife Resources Fund under this section may be used only for the boating and water safety activities described in G.S. 75A-3(c). The Secretary must credit revenue to the Wildlife Resources Fund on an annual basis.

"§ 105-449.127. Civil penalties.

The Secretary must credit civil penalties collected under this Article to the Highway Fund as nontax revenue.

"ARTICLE 36D.

"Alternative Fuel.

"§ 105-449.130. Definitions.

The following definitions apply in this Article:

- (1) Alternative fuel. – A combustible gas or liquid that can be used to generate power to operate a highway vehicle and that is not subject to tax under Article 36C of this Chapter.
- (2) Highway. – Defined in G.S. 20-4.01(13).
- (3) Highway vehicle. – Defined in G.S. 105-449.60.
- (4) Motor fuel. – Defined in G.S. 105-449.60.
- (5) Motor fuel rate. – Defined in G.S. 105-449.60.

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

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

- (1) A provider of alternative fuel.
- (2) A bulk-end user of alternative fuel that uses part or all of the fuel in a highway vehicle.
- (3) A retailer of alternative fuel that sells part or all of the fuel for use in a highway vehicle.

"§ 105-449.132. How to apply for a license.

To obtain a license, an applicant must file an application with the Secretary on a form provided by the Secretary. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary.

"§ 105-449.133. Bond or letter of credit required as a condition of obtaining and keeping license as alternative fuel provider.

An applicant for a license as an alternative fuel provider must file with the Secretary a bond or an irrevocable letter of credit in an amount that would be required if the fuel the applicant intended to provide was motor fuel rather than alternative fuel. An applicant that is also required to file a bond or an irrevocable letter of credit under G.S. 105-449.72 to obtain a license as a distributor of motor fuel may file a single bond or irrevocable letter of credit under that section for the combined amount.

A bond filed under this subsection must be conditioned upon compliance with this Article, be payable to the State, and be in the form required by the Secretary. The Secretary may require a bond issued under this subsection to be adjusted in accordance with the procedure set out in G.S. 105-449.72 for adjusting a bond filed by a distributor of motor fuel.

"§ 105-449.134. Denial or cancellation of license.

The Secretary may deny an application for a license or cancel a license under this Article for the same reasons that the Secretary can deny an application for a license or cancel a license under Article 36C of this Chapter. The procedure in Article 36C for cancelling a license applies to the cancellation of a license under this Article.

"§ 105-449.135. Issuance of license; notification of changes.

(a) Issuance. – The Secretary must issue a license to each applicant whose application is approved. A license is not transferable and remains in effect until surrendered or cancelled.

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

All taxes for which the license holder is liable under this Article but are not yet due become due on the date of the change. If the license holder transfers the business to another and does not give the notice required by this section, the person to whom the business was transferred is liable for the amount of any tax the license holder owed the State on the date the business was transferred. The liability of the person to whom the business is transferred is limited to the value of the property acquired from the license holder.

"§ 105-449.136. Tax on alternative fuel.

A tax at the equivalent of the motor fuel rate is imposed on alternative fuel used to operate a highway vehicle. The Secretary must determine the equivalent rate. The exemptions from the tax on motor fuel in G.S. 105-449.88(2), (3), and (4) apply to the tax imposed by this section. The refunds for motor fuel tax allowed by Part 5 of Article 36C of this Chapter apply to the tax imposed by this section. The proceeds of the tax imposed by this section must be allocated in accordance with G.S. 105-449.125.

"§ 105-449.137. Liability for and payment of the tax.

(a) Liability. – The alternative fuel provider that sells or delivers alternative fuel is liable for the tax imposed by this Article.

(b) Payment. – The tax imposed by this Article is payable when a return is due. A return is due monthly within 25 days after the end of each month. A monthly return covers liabilities that accrue in the calendar month preceding the date the return is due. A return must be filed with the Secretary and must be in the form and contain the information required by the Secretary.

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

(a) Reports. – A bulk-end user of alternative fuel that uses part or all of the fuel in a highway vehicle and a retailer of alternative fuel that sells part or all of the fuel for use in a highway vehicle must file a quarterly report with the Secretary. A quarterly report covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the report.

The report must give the following information and any other information required by the Secretary:

- (1) The amount of alternative fuel received during the quarter.
- (2) The amount of alternative fuel sold or used during the quarter.

(b) Storage. – A storage facility used by a bulk-end user of alternative fuel or a retailer of alternative fuel must be marked in a manner similar to that required for diesel fuel by G.S. 105-449.87(c) if the alternative fuel stored in the facility is to be used for a purpose other than to operate a highway vehicle.

"§ 105-449.139. Miscellaneous provisions.

(a) Records. – A license holder must keep a record of all documents used to determine the information provided in a return filed under this Article. The records must be kept for three years from the due date of the return to which the records apply. The records are open to inspection during business hours by the Secretary or a person designated by the Secretary.

(b) Violations. – The offenses listed in subdivisions (1) through (9) of G.S. 105-449.120 apply to this Article. In applying those offenses to this Article, references to 'this Article' are to be construed as references to Article 36D and references to 'motor fuel' are to be construed as references to alternative fuel."

PART II.

TRANSITIONAL PROVISIONS

Sec. 4. December 1995, Fuel Tax Liabilities. – A distributor of gasoline or a supplier of diesel fuel that incurs liability in December of 1995 under Article 36 or 36A of Chapter 105 of the General Statutes for the per gallon excise taxes on gasoline and diesel fuel imposed by those Articles shall report the liability and pay the taxes in January of 1996 as if those Articles had not been repealed.

Sec. 5. Floor Stocks Tax. – Every distributor of motor fuel, both at wholesale and retail, and every supplier or reseller of special fuel must inventory all motor fuel that is on hand or in the person's possession as of 12:01 a.m. on January 1, 1996, and is not in the terminal transfer system and must report the results of the inventory to the Secretary of Revenue. The amount of motor fuel in dead storage is not considered to be part of inventory and shall not be included in the report. "Dead storage" is the amount of motor fuel in a storage tank that will not be pumped out of the tank because the motor fuel is below the mouth of the draw pipe. For a storage tank with a capacity of less than 10,000 gallons, the amount of motor fuel in dead storage is considered to be 200 gallons. For a storage tank with a capacity of 10,000 gallons or more, the amount of motor fuel in dead storage is considered to be 400 gallons. The report of inventory must be made on a form provided by the Secretary. The report is due by January 15, 1996.

A tax at the rate set in G.S. 105-449.80, as enacted by this act, is imposed on all fuel that is included in the reportable inventory of a distributor, a supplier, or a

reseller. The tax does not apply, however, to fuel on which the per gallon excise taxes imposed by former Articles 36 and 36A of Chapter 105 of the General Statutes have been paid nor to fuel for which liability for those taxes attached before the repeal of those Articles.

A distributor, a supplier, or a reseller may pay the tax due on fuel in inventory at any time before February 28, 1997, but at least one-twelfth of the amount due must be paid by the last day of each month starting with February of 1996. Payments not received in accordance with this monthly requirement are late and are subject to penalties and interest under Article 9 of Chapter 105 of the General Statutes. All payments made after February 28, 1997, are late and are subject to penalties and interest under Article 9 of Chapter 105 of the General Statutes.

Sec. 6. All licenses issued under Article 36 or 36A of Chapter 105 of the General Statutes expire January 1, 1996. The Secretary of Revenue must give written notice of this expiration to all license holders by September 1, 1995.

A distributor of gasoline under Article 36 or a supplier of special fuel under Article 36A that intends to remain in business as a distributor under Article 36C of Chapter 105 of the General Statutes, as enacted by this act, may obtain a replacement license as a distributor without making a new application by notifying the Secretary of Revenue that the person wants a replacement license. The Secretary of Revenue must issue a replacement distributor license to a distributor or supplier that requests one without requiring a new application or a change in the amount of bond required. The Secretary of Revenue may, however, require an applicant for a replacement distributor license to identify the states to which the distributor intends to export motor fuel and give information on whether the distributor is licensed or registered for motor fuel tax purposes in those states.

A bulk user or a reseller of fuel under Article 36A of Chapter 105 of the General Statutes that intends to store or sell at retail undyed diesel fuel after December 31, 1995, may obtain a replacement license as a bulk-end user of undyed diesel fuel or a retailer of undyed diesel fuel, respectively, without making a new application by notifying the Secretary of Revenue that the person wants a replacement license. The Secretary of Revenue must issue the appropriate replacement license without requiring a new application.

Sec. 7. Notwithstanding G.S. 105-449.80, as enacted by this act, the weighted average of gasoline and diesel fuel used to determine the variable component of the per gallon excise tax to be in effect for the six-month period beginning July 1, 1996, shall be computed based on the tax collected on gasoline and diesel #2 during the base period under former Articles 36 and 36A of Chapter 105 of the General Statutes and under Article 36C of that Chapter, as enacted by this act.

Sec. 8. Notwithstanding G.S. 105-449.90, as enacted by this act, a tax return of an occasional importer that is due for a month in the 1996 calendar year is due by the 17th of the month rather than the 1st of the month.

Sec. 9. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that

would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Sec. 10. This act does not affect the authority of the Department of Revenue under Chapter 753 of the 1989 Session Laws to enter into a memorandum of understanding or an agreement with the Tribal Council of the Eastern Band of Cherokee Indians to make refunds of motor fuel taxes and alternative fuel taxes to the Tribe in its collective capacity on behalf of members of the Tribe.

PART III.

CONFORMING CHANGES

Sec. 11. G.S. 20-88.01 reads as rewritten:

"§ 20-88.01. Revocation of registration for failure to register for or comply with road tax or pay civil penalty for buying or selling non-tax-paid fuel.

(a) Road Tax. – The Secretary of Revenue may notify the Commissioner of those motor vehicles that are registered or are required to be registered under Article 36B of Chapter 105 and whose owners or lessees, as appropriate, are not in compliance with Article ~~36A or 36B~~ 36B, 36C, or 36D of Chapter 105. When notified, the Commissioner shall withhold or revoke the registration plate for the vehicle.

(b) Non-tax-paid Fuel. – The Secretary of Revenue may notify the Commissioner of those motor vehicles for which a civil penalty imposed under G.S. ~~105-441.1 or G.S. 105-449.24~~ 105-449.118 has not been paid. When notified, the Commissioner shall withhold or revoke the registration plate of the vehicle."

Sec. 12. G.S. 75-81(3) reads as rewritten:

"(3) 'Motor Fuel' ~~shall mean a refined or blended petroleum product used for the propulsion of self-propelled motor vehicles; the term includes "motor fuel" as defined in G.S. 105-430 and "fuel" as defined in G.S. 105-449.2.~~ means motor fuel, as defined in G.S. 105-449.60, and alternative fuel, as defined in G.S. 105-449.130."

Sec. 13. G.S. 75A-3(c) reads as rewritten:

"(c) The Boating Account is established within the Wildlife Resources Fund created under G.S. 143-250. All moneys collected pursuant to the numbering and titling provisions of this Chapter ~~and pursuant to G.S. 105-446.2~~ shall be credited to this ~~Account and Account.~~ Gasoline excise tax revenue is credited to the Account under G.S. 105-449.126. Revenue in the Account shall be used by the Wildlife Resources Commission, subject to the Executive Budget Act and the Personnel Act, for the administration and enforcement of this Chapter; for activities relating to boating and water safety including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance."

Sec. 14. G.S. 105-164.13(11) reads as rewritten:

"(11) ~~Gasoline or other motor fuel on which the tax levied in G.S. 105-434 and/or G.S. 105-435 is due and has been paid, and the fact that a refund of the tax levied by either of said sections is made pursuant to the provisions of Subchapter V of Chapter 105 shall not make the sale or the seller of such fuels subject to the tax levied by this Article.~~ Motor fuel subject to tax under Article 36C of this Chapter and

alternative fuel subject to tax under Article 36D of this Chapter, regardless of whether those Articles exempt the fuel from tax or allow a refund of tax paid on the fuel."

Sec. 15. G.S. 105-253(b) reads as rewritten:

"(b) Each responsible corporate officer is personally and individually liable for all of the following:

- (1) All sales and use taxes collected by a corporation upon taxable transactions of the corporation.
- (2) All sales and use taxes due upon taxable transactions of the corporation but upon which the corporation failed to collect the tax, but only if the responsible officer knew, or in the exercise of reasonable care should have known, that the tax was not being collected.
- (3) All taxes due from the corporation pursuant to the provisions of Article ~~36 and Article 36A-36C~~ 36C and 36D of Subchapter V of this Chapter.

The liability of the responsible corporate officer is satisfied upon timely remittance of the tax to the Secretary by the corporation. If the tax remains unpaid by the corporation after it is due and payable, the Secretary may assess the tax against, and collect the tax from, any responsible corporate officer in accordance with the procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the term 'responsible corporate officer' includes the president and the treasurer of the corporation and any other officers assigned the duty of filing tax returns and remitting taxes to the Secretary on behalf of the corporation. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency shall apply to any assessment made under this section. The provisions of this Article apply to an assessment made under this section to the extent they are not inconsistent with this section.

The period of limitations for assessing a responsible corporate officer for unpaid taxes under this section shall expire one year after the expiration of the period of limitations for assessment against the corporation."

Sec. 16. 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 hereby imposed upon every motor carrier on the amount of ~~gasoline or other motor fuel or~~ alternative fuel used by ~~such motor~~ the carrier in its operations within this State. The tax shall be at the rate established by the Secretary pursuant to G.S. ~~105-434. Except as credit for certain taxes as hereinafter provided for in this Article, taxes imposed on motor carriers by this Article are~~ 105-449.80 or G.S. 105-449.134, as appropriate. This tax is in addition to any other taxes imposed on such carriers by any other provisions of law. The tax herein levied is for the same purposes as the tax imposed under the provisions of G.S. 105-434. motor carriers."

Sec. 17. G.S. 105-449.43 reads as rewritten:

"§ 105-449.43. Application of tax proceeds.

~~The same percentage amounts of tax~~ Tax revenue collected under this Article ~~and tax refunds or credits allowed under this Article shall be credited to the Highway Fund~~

~~and to the Highway Trust Fund as are credited to those Funds under G.S. 105-445, and the same percentage amounts of refunds or credits allowed under this Article shall be charged to the Highway Fund and the Highway Trust Fund as are charged to those Funds under that statute. allocated among and charged to the funds and accounts listed in G.S. 105-449.125 in accordance with that section."~~

Sec. 18. G.S. 105-449.47 reads as rewritten:

"§ 105-449.47. Registration of vehicles.

A motor carrier may not operate or cause to be operated in this State any vehicle listed in the definition of motor carrier unless both the motor carrier and the motor vehicle are registered with the Secretary for purposes of the tax imposed by this Article.

Upon application, the Secretary shall register a motor carrier and shall issue at least one identification marker for each motor vehicle operated by the motor carrier. A copy of the registration of a motor carrier shall be carried in each motor vehicle operated by the motor carrier when the vehicle is in this State. An identification marker shall be clearly displayed at all times and shall be affixed to the vehicle for which it was issued in the place and manner designated by the Secretary. Registrations and identification markers required by this section shall be issued on a calendar year basis. The Secretary may renew a registration or an identification marker without issuing a new registration or identification marker. All identification markers issued by the Secretary remain the property of the State. The Secretary may withhold or revoke a registration or an identification marker when a motor carrier fails to comply with this Article or Article ~~36A-36C~~ or ~~36D~~ of this Subchapter."

Sec. 19. G.S. 119-15 reads as rewritten:

"§ 119-15. ~~'Gasoline' defined.~~ Definitions that apply to Article.

The following definitions apply in this Article:

- (1) Alternative fuel. – Defined in G.S. 105-449.130.
- (2) Gasoline. – Defined in G.S. 105-449.60.
- (3) Kerosene. – Petroleum oil that is free from water, glue, and suspended matter and that meets the specifications and standards adopted by the Gasoline and Oil Inspection Board.
- (4) Motor fuel. – Defined in G.S. 105-449.60.
- (5) Person. – Defined in G.S. 105-229.90.

~~The term "gasoline" wherever used in this Article shall be construed to mean refined petroleum naphtha which by its composition is suitable for use as a carburant in internal combustion engines."~~

Sec. 20. G.S. 119-16 is repealed.

Sec. 21. G.S. 119-16.1 is repealed.

Sec. 22. G.S. 119-16.2 reads as rewritten:

"§ 119-16.2. Application for license.

A person may not engage in business as a kerosene distributor unless the person ~~has either a license issued under G.S. 105-433 is licensed as a supplier or a distributor under Part 2 of Article 36C of Chapter 105 of the General Statutes or~~ has a kerosene license issued under this section. To obtain a license under this section, an applicant must file an application with the Secretary of Revenue on a form provided by the Secretary and

file with the Secretary a bond in the amount required by the Secretary, not to exceed twenty thousand dollars (\$20,000). An applicant must give the Secretary the same information the applicant would be required to give under ~~G.S. 105-433-Part 2 of Article 36C of Chapter 105 of the General Statutes~~ if the applicant were applying for a license under that ~~section-Part.~~ A bond filed under this section must be conditioned on compliance with this Article, be payable to the State, and be in the form required by the Secretary. A license issued under this section remains in effect until surrendered or canceled, must be displayed in the same manner as a license issued under ~~G.S. 105-433, Part 2 of Article 36C of Chapter 105 of the General Statutes,~~ and is subject to the same restrictions as a license issued under that ~~section-Part.~~ A person who fails to comply with this section is guilty of a Class 1 misdemeanor."

Sec. 23. G.S. 119-18(a) reads as rewritten:

"(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is levied upon all ~~kerosene and motor fuel.~~ kerosene, motor fuel, and alternative fuel. The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same time that the per gallon excise tax on motor fuel is due and payable under ~~Articles 36 and 36A- Article 36C of Chapter 105 of the General Statutes.~~ The inspection tax on alternative fuel is due and payable to the Secretary of Revenue at the same time that the excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a distributor required to be licensed under G.S. 119-16.2. A monthly report by a distributor required to be licensed under G.S. 119-16.2 is due by the 20th of each month and applies to kerosene received by the distributor during the preceding month."

Sec. 24. G.S. 119-19 reads as rewritten:

"§ 119-19. Failure to report or pay tax; cancellation of license. Authority of Secretary to cancel a license.

~~If any person shall at any time file a false report of the data or information required by law, or shall fail or refuse or neglect to file any report required by law, or to pay the full amount of the tax as required by law, the Secretary of Revenue may forthwith cancel the license of such person issued under G.S. 105-433 or 119-16.2, and notify such person in writing of such cancellation by registered mail to the last known address of such person appearing in the files of the Secretary of Revenue. In the event that the license of any person shall be canceled by the Secretary of Revenue as hereinbefore provided in this section, and in the event such person shall have paid to the State of North Carolina all the taxes due and payable by him under this Article, together with any and all penalties accruing under any of the provisions of this Article, then the Secretary of Revenue shall cancel and surrender the bond theretofore filed by said person under G.S. 105-433 or 119-16.2. The Secretary of Revenue may cancel a license issued under G.S. 119-16.2 upon the written request of the license holder. The Secretary may summarily cancel a license issued under G.S. 119-16.2 or Article 36C or 36D of Chapter 105 of the General Statutes when the Secretary finds that the license holder is incurring liability for the tax imposed by this Article after failing to pay a tax when due under this Article. The Secretary may cancel the license of a license holder~~

who files a false report under this Article or fails to file a report required under this Article after holding a hearing on whether the license should be cancelled.

The Secretary must send a person whose license is summarily cancelled a notice of the cancellation and must give the person an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary must give a person whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a notice of hearing must be sent by registered mail to the last known address of the license holder.

When the Secretary cancels a license and the license holder has paid all taxes and penalties due under this Article, the Secretary must either return to the license holder the bond filed by the license holder or notify the person liable on the bond and the license holder that the person is released from liability on the bond."

Sec. 25. G.S. 119-22 is repealed.

Sec. 26. G.S. 136-41.1(a) reads as rewritten:

"(a) There is annually appropriated out of the State Highway Fund a sum equal to the net amount after refunds that was produced during the fiscal year by a one and three-fourths cents (1 3/4¢) tax on each gallon of motor fuel ~~as taxed by G.S. 105-434 and 105-435, to~~ under Article 36C of Chapter 105 of the General Statutes and on the equivalent amount of alternative fuel taxed under Article 36D of that Chapter. The amount appropriated shall be allocated in cash on or before October 1 of each year to the cities and towns of the State in accordance with this section. In addition, as provided in G.S. 136-176(b)(3), revenue is allocated and appropriated from the Highway Trust Fund to the cities and towns of this State to be used for the same purposes and distributed in the same manner as the revenue appropriated to them under this section from the Highway Fund. Like the appropriation from the Highway Fund, the appropriation from the Highway Trust Fund shall be based on revenue collected during the fiscal year preceding the date the distribution is made.

Seventy-five percent (75%) of the funds appropriated for cities and towns shall be distributed among the several eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible municipalities according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer. This annual estimation of population shall include increases in the population within the municipalities caused by annexations accomplished through July 1 of the calendar year in which these funds are distributed. Twenty-five percent (25%) of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the mileage of public streets in each eligible municipality which does not form a part of the State highway system bears to the total mileage of the public streets in all eligible municipalities which do not constitute a part of the State highway system.

It shall be the duty of the mayor of each municipality to report to the Department of Transportation such information as it may request for its guidance in determining the eligibility of each municipality to receive funds under this section and in determining

the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the Department of Transportation, the Department of Transportation may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 of each year. Provided that eligible municipalities are authorized within the discretion of their governing bodies to enter into contracts for the purpose of maintenance, repair, construction, reconstruction, widening, or improving streets of such municipalities at any time after January 1 of any calendar year in total amounts not to exceed ninety percent (90%) of the amount received by such municipality during the preceding fiscal year, in anticipation of the receipt of funds under this section during the next fiscal year, to be paid for out of such funds when received.

The Department of Transportation may withhold each year an amount not to exceed one percent (1%) of the total amount appropriated for distribution under this section for the purpose of correcting errors in allocations: Provided, that the amount so withheld and not used for correcting errors will be carried over and added to the amount to be allocated for the following year.

The word 'street' as used in this section is hereby defined as any public road maintained by a municipality and open to use by the general public, and having an average width of not less than 16 feet. In order to obtain the necessary information to distribute the funds herein allocated, the Department of Transportation may require that each municipality eligible to receive funds under this section submit to it a statement, certified by a registered engineer or surveyor of the total number of miles of streets in such municipality. The Department of Transportation may in its discretion require the certification of mileage on a biennial basis."

Sec. 27. G.S. 136-176(a)(1) reads as rewritten:

"(1) Motor fuel, ~~special fuel~~, alternative fuel, and road tax revenue deposited in the Fund under G.S. ~~105-445, 105-449.16, 105-449.125, 105-449.134, and 105-449.43~~, respectively."

Sec. 28. G.S. 143-215.3A(a) reads as rewritten:

"(a) The Water and Air Quality Account is established as a nonreverting account within the Department. Revenue in the Account shall be applied to the costs of administering the programs for which the fees were collected. Revenue credited to the Account pursuant to G.S. ~~105-445~~ 105-449.125, 105-449.134, and 105-449.43 shall be used to administer the air quality program. Except for the following fees, all application fees and permit administration fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38 of this Chapter shall be credited to the Account:

- (1) Fees collected under Part 2 of Article 21A and credited to the Oil or Other Hazardous Substances Pollution Protection Fund.
- (2) Fees credited to the Title V Account.
- (3) Fees credited to the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund under G.S. 143-215.3B.
- (4) Fees collected under G.S. 143-215.28A."

Sec. 29. G.S. 150B-2(8a)j. reads as rewritten:

"j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.1 and the variable component of the excise tax on motor fuel under G.S. ~~105-434.~~ 105-449.80."

PART IV.

REPEAL MINIMUM HIGHWAY USE TAX

Sec. 30. G.S. 105-187.3(a) reads as rewritten:

"(a) Amount. – The rate of the use tax imposed by this Article is three percent (3%) of the retail value of a motor vehicle for which a certificate of title is issued. The tax is payable as provided in G.S. 105-187.4. ~~The tax may not be less than forty dollars (\$40.00) for each motor vehicle for which a certificate of title is issued, unless the issuance of a title for the vehicle is exempt from tax under G.S. 105-187.6(a).~~ The tax may not be more than one thousand dollars (\$1,000) for each certificate of title issued for a Class A or Class B motor vehicle that is a commercial motor vehicle, as defined in G.S. 20-4.01. The tax may not be more than one thousand five hundred dollars (\$1,500) for each certificate of title issued for any other motor vehicle."

Sec. 31. G.S. 105-187.6(b) reads as rewritten:

"(b) Partial Exemptions. – A maximum tax of forty dollars (\$40.00) ~~Only the minimum tax imposed by this Article~~ applies when a certificate of title is issued as the result of a transfer of a motor vehicle:

- (1) To a secured party who has a perfected security interest in the motor vehicle.
- (2) To a partnership or corporation as an incident to the formation of the partnership or corporation and no gain or loss arises on the transfer under section 351 or section 721 of the Internal Revenue Code, or to a corporation by merger or consolidation in accordance with G.S. 55-11-06."

Sec. 32. G.S. 105-187.7 reads as rewritten:

"§ 105-187.7. Credit for tax paid in another state.

A person who, within 90 days before applying for a certificate of title for a motor vehicle on which the tax imposed by this Article is due, has paid a sales tax, an excise tax, or a tax substantially equivalent to the tax imposed by this Article on the vehicle to a taxing jurisdiction outside this State is entitled to a credit against the tax due under this Article for the amount of tax paid to the other jurisdiction. ~~The credit may not reduce the person's liability under this Article below the minimum forty dollar (\$40.00) tax.~~

Sec. 33. G.S. 105-187.8 reads as rewritten:

"§ 105-187.8. Refund for return of purchased motor vehicle.

When a purchaser of a motor vehicle returns the motor vehicle to the seller of the motor vehicle within 90 days after the purchase and receives a vehicle replacement for the returned vehicle or a refund of the price paid the seller, whether from the seller or the manufacturer of the vehicle, the purchaser may obtain a refund of the privilege tax paid on the certificate of title issued for the returned motor vehicle, ~~less the minimum tax of forty dollars (\$40.00) vehicle.~~

To obtain a refund, the purchaser must apply to the Division for a refund within 30 days after receiving the replacement vehicle or refund of the purchase price. The application must be made on a form prescribed by the Commission and must be supported by documentation from the seller of the returned vehicle."

Sec. 34. G.S. 20-85(b) reads as rewritten:

"(b) ~~Thirty one dollars and fifty cents (\$31.50) of each title fee collected under subdivision (a)(1) of this section and all of the fees~~ Fees collected under the other subdivisions in subsection (a) of this section shall be credited to the North Carolina Highway Trust Fund; ~~the remaining three dollars and fifty cents (\$3.50) of the title fee collected under subdivision (a)(1) shall be credited to the Highway Fund.~~ Fifteen dollars (\$15.00) of each title fee credited to the Trust Fund under subdivision (a)(1) shall be added to the amount allocated for secondary roads under G.S. 136-176 and used in accordance with G.S. 136-44.5."

PART V.

MOTOR CARRIER ENFORCEMENT

Sec. 35. G.S. 105-449.44 reads as rewritten:

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

(a) Calculation. – The amount of gasoline or other motor fuel used in the operations of any motor carrier within this State shall be such proportion of the total amount of such gasoline or other motor fuel used in its entire operations within and without this State as the total number of miles traveled within this State bears to the total number of miles traveled within and without this State.

(b) Presumption. – The Secretary shall check reports filed under this Article against the weigh station records and other records of the Division of Motor Vehicles of the Department of Transportation concerning motor carriers to determine if motor carriers that are operating in this State are filing the reports required by this Article. A motor carrier that does either of the following for a quarter is presumed to have traveled in this State during that quarter the number of miles equal to 10 trips of 450 miles each for each of the motor carrier's vehicles:

- (1) Fails to file a report for the quarter and the records of the Division indicate the carrier operated in this State during the quarter.
- (2) Files a report for the quarter that, based on the records of the Division, understates by at least twenty-five percent (25%) the carrier's mileage in this State for the quarter.

The number of vehicles of a motor carrier that is registered under this Article is the number of identification markers issued to the carrier. The number of vehicles of a carrier that is not registered under this Article is the number of vehicles registered by the motor carrier in the carrier's base state under the International Registration Plan. The Department shall assess a motor carrier for the amount payable based on the presumed mileage."

Sec. 36. G.S. 105-236 is amended by adding a new subdivision to read:

"(5b) Road Tax Understatement. – If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five

percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency."

PART VI.

EFFECTIVE DATES

Sec. 37. Section 6 of Part II of this act and this Part are effective upon ratification. Part I of this act, the remainder of Part II of this act, and Part III of this act become effective January 1, 1996. Part IV of this act becomes effective July 1, 1996. Part V of this act becomes effective October 1, 1995.

In the General Assembly read three times and ratified this the 10th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives