

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 647
SENATE BILL 1198

AN ACT TO CLARIFY THE REQUIREMENTS CONCERNING IMPORTS AND
EXPORTS OF MOTOR FUEL UNDER THE "TAX AT THE RACK" LAWS AND
TO MAKE OTHER ADJUSTMENTS TO THOSE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-449.60 is amended by adding the following subdivision in the appropriate alphabetical order and renumbering the succeeding subdivisions accordingly:

"(20) In-State-only supplier. – Either of the following:

- a. A supplier that is required to have a license and elects not 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.
- b. A supplier that does business only in this State."

Sec. 2. G.S. 105-449.60, as amended by Section 1 of this act, is amended by adding the following subdivision in the appropriate alphabetical order and renumbering the succeeding subdivisions accordingly:

"(35) Tax. – An inspection or other excise tax on motor fuel and any other fee or charge imposed on motor fuel on a per-gallon basis."

Sec. 3. G.S. 105-449.65 reads as rewritten:

"§ 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)~~(5) A blender.
- ~~(7)~~(6) A motor fuel transporter.
- ~~(8)~~(7) A bulk-end user of undyed diesel fuel.
- ~~(9)~~(8) 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 an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier. 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."

Sec. 4. G.S. 105-449.66(a)(2) reads as rewritten:

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

- a. A distributor that imports motor fuel on an average basis of no more than once a month during a calendar year.
- b. A bulk-end user that is not a distributor.
- c. A distributor that imports motor fuel for use in a race car."

Sec. 5. G.S. 105-449.67 reads as rewritten:

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

(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.
- (3) An exporter.

(b) Effect on Exports. – An exporter license or a distributor license authorizes the license holder to pay the destination state tax on motor fuel purchased for export instead of paying this State's tax on the fuel. An unlicensed exporter or unlicensed distributor must pay this State's tax on motor fuel purchased for export.

(c) Multiple Activity. – A person who is licensed as a distributor is considered to have a license as an exporter."

Sec. 6. G.S. 105-449.69 reads as rewritten:

"§ 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~~ importer, an exporter, 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 or as a distributor 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. If a state listed requires the applicant to be licensed or registered, the applicant must give the applicant's license or registration number in that state.

A license holder that intends to import motor fuel from a state not listed on the license holder's application for an importer's license or a distributor's license must give the Secretary written notice of the change before importing motor fuel from that state. The notice must include the information that is required on the license application.

(e) Export Activity. – An applicant for a license as an exporter must designate an agent located in North Carolina for service of process and must give the agent's name and address. An applicant for a license as an exporter or 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. If a state listed requires the applicant to be licensed or registered, the applicant must give the applicant's license or registration number in that state.

A license holder that intends to export motor fuel to a state not listed on the license holder's application for an exporter's license or a distributor's license must give the Secretary written notice of the change before exporting motor fuel to that state. The notice must include the information that is required on the license application."

Sec. 7. G.S. 105-449.70(a) reads as rewritten:

"(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 allowed by this section is an in-State-only supplier."

Sec. 8. G.S. 105-449.70(b) is amended by adding a new subdivision to read:

"(4) To report removals of fuel received by a person who is not licensed in the state where the removal occurred."

Sec. 9. G.S. 105-449.71(b) is amended by adding a new subdivision to read:

"(4) To report removals of fuel received by a person who is not licensed in the state where the removal occurred."

Sec. 10. G.S. 105-449.72 reads as rewritten:

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

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

(1) For an applicant for a license as any of the following, the amount is two million dollars (\$2,000,000):

- a. A refiner.
- b. A terminal operator.
- c. A supplier that is a position holder or a person that receives motor fuel pursuant to a two-party exchange.
- d. A bonded importer.
- e. A permissive supplier.

(2) For an applicant for a license as any of the following, the amount is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. The amount may not be less than two thousand dollars (\$2,000) and may not be more than two hundred fifty thousand dollars (\$250,000):

- a. A supplier that is a fuel alcohol provider but is ~~not~~ neither a position holder ~~or nor~~ a person that receives motor fuel pursuant to a two-party exchange.
- b. An occasional importer.
- c. A tank wagon importer.
- d. A distributor.
- e. An exporter.

(3) For an applicant for a license as a blender, a bond is required only if the applicant's average expected annual tax liability under this Article, as determined by the Secretary, is at least two thousand dollars (\$2,000). When a bond is required, the bond amount is the same as under subdivision (2) of this subsection.

~~(b) Multiple Activity. – 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~~

two or more of the licenses listed in subdivision (a)(2) or (a)(3) of this section may file one bond that covers the combined liabilities of the applicant under both activities. all the activities. A bond for these combined activities may not exceed the maximum amount set in subdivision (a)(2) of this subsection.

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

Sec. 11. G.S. 105-449.73 reads as rewritten:

"§ 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 motor fuel license or registration issued by another state cancelled for cause.
- ~~(2)(3)~~ Had a federal Certificate of Registry issued under § 4101 of the Code, or a similar federal authorization, revoked.
- ~~(3)(4)~~ Been convicted of fraud or misrepresentation.
- ~~(4)(5)~~ Been convicted of any other offense that indicates that the applicant may not comply with this Article if issued a license."

Sec. 12. G.S. 105-449.77 reads as rewritten:

"§ 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.~~ Supplier Lists. – The Secretary must give a list of licensed ~~distributors—suppliers, licensed terminal operators, licensed importers, licensed distributors, and licensed exporters~~ to each licensed ~~supplier that asks for a copy of the list.~~ supplier. The list must state the ~~name~~ name, account number, and business address of each ~~distributor~~ license holder on the list. The Secretary must send a monthly update of the list to each ~~supplier that requested a copy of the list.~~ licensed supplier.

~~(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.~~

The Secretary must give a list of licensed suppliers to each licensed distributor, licensed exporter, and licensed importer. The Secretary must also give a list of licensed suppliers to each unlicensed distributor or unlicensed exporter that asks for a copy of the list. The list must state the name, account number, and business address of each supplier on the list and must indicate whether the supplier is an elective supplier, a permissive supplier, or an in-State-only supplier. The Secretary must send an annual update of the list to each licensed distributor, licensed exporter, and licensed importer, and to each unlicensed distributor or unlicensed exporter that requested a copy of the list.

(c) Transporter Lists. – The Secretary must give a list of licensed motor fuel transporters to each licensed supplier, licensed terminal operator, licensed importer, licensed blender, licensed distributor, and licensed exporter. The list must state the name, account number, and business address of each motor fuel transporter on the list. The Secretary must send a monthly update of the list to each license holder to whom the Secretary must give the list.

The Secretary must give a list of licensed suppliers, licensed terminal operators, licensed importers, licensed blenders, licensed distributors, and licensed exporters to each licensed motor fuel transporter. The list must state the name, account number, and business address of each license holder on the list. The Secretary must send a monthly update of the list to each licensed motor fuel transporter."

Sec. 13. G.S. 105-449.81 reads as rewritten:

"§ 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) Fuel grade ethanol that meets any of the following descriptions:
 - a. Is removed from a terminal or another storage and distribution facility, unless the removed fuel is received by a supplier for subsequent sale.
 - b. Is imported to this State outside the terminal transfer system by a means other than a marine vessel, a transport truck, or a railroad tank car.
- ~~(4)~~(5) Blended fuel made in this State or imported to this State.
- (6) Transferred within the terminal transfer system and, upon transfer, is subject to the federal excise tax imposed by section 4081 of the Code."

Sec. 14. G.S. 105-449.82(c) reads as rewritten:

"(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 is sold by a person who is not licensed as a supplier, as required by this Article, the terminal operator, the person selling the fuel, and the person removing the fuel are 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."

Sec. 15. Part 3 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

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

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

Sec. 16. G.S. 105-449.84 reads as rewritten:

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

(a) On Blender. – The excise tax imposed by G.S. ~~105-449.81(4)~~ 105-449.81(5) 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)~~ 105-449.81(5) 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."

Sec. 17. Part 3 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.84A. Liability for tax on behind-the-rack transfers.

The excise tax imposed by G.S. 105-449.81(6) on motor fuel transferred within the terminal transfer system is payable by the supplier of the fuel, the person receiving the fuel, and the terminal operator of the terminal at which the fuel was transferred, all of whom are jointly and severally liable for the tax."

Sec. 18. G.S. 105-449.85(b) reads as rewritten:

"(b) Liability. – The terminal operator whose motor fuel is unaccounted for is liable for the tax imposed by this ~~section~~ section and is liable for a penalty equal to the amount of tax payable. Motor fuel received by a terminal operator and not shown on a ~~report~~ an informational return 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~~ an informational return as having been removed from the terminal was lost or part of a transmix and is therefore not unaccounted for."

Sec. 19. G.S. 105-449.87(a)(4) is repealed.

Sec. 20. G.S. 105-449.88 reads as rewritten:

"§ 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~~ state. If the removed fuel is to be used for a purpose that is exempt from tax in the destination state and, when removing the fuel, the licensed distributor or licensed exporter uses an access card or code specified by the supplier to notify the supplier that the fuel will be resold in an exempt sale, no tax is due on the removal.
- (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."

Sec. 21. Effective July 1, 1997, G.S. 105-449.88, as amended by Section 20 of this act, reads as rewritten:

"§ 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. ~~If the removed fuel is to be used for a purpose that is exempt from tax in the destination state and, when removing the fuel, the licensed distributor or licensed exporter uses an access card or code specified by the supplier to notify the supplier that the fuel will be resold in an exempt sale, no tax is due on the removal.~~
- (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."

Sec. 22. Part 3 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.89. Removals by out-of-state bulk-end user.

An out-of-state bulk-end user may remove motor fuel from a terminal in this State for use in the state in which the bulk-end user is located as follows:

- (1) Upon payment to the supplier of tax on the motor fuel at the motor fuel rate.
- (2) Upon payment to the supplier of destination, state tax on the motor fuel, if the bulk-end user acquires the fuel from a supplier who, with respect to the destination state of the fuel, is either a permissive supplier or an elective supplier and therefore collects the destination state tax on the fuel."

Sec. 23. G.S. 105-449.90 reads as rewritten:

"§ 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 importer that removes fuel at a terminal rack of a permissive or an elective supplier and 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~~ incurred a liability under G.S. 105-449.86 during the preceding month for the tax on dyed diesel fuel used to operate certain highway vehicles.
- (7) A person that ~~is liable~~ incurred a liability under G.S. 105-449.87 during the preceding month 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."

Sec. 24. Part 4 of Article 36C of Chapter 105 of the General Statutes is amended by adding the following section to read:

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

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

Sec. 25. G.S. 105-449.91 reads as rewritten:

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

(a) Distributor. – A distributor that is liable for the must remit tax imposed due 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 this State or to another state. The time when an unlicensed distributor must remit tax 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. supplier and the unlicensed distributor.

(b) Exporter. – An exporter must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. A licensed exporter that is also licensed in the destination state has the right to defer the remittance of tax to the supplier until the date set by the law of the destination state of the fuel. The time when an unlicensed exporter, or a licensed exporter that is not also licensed in the destination state, must remit tax to a supplier is governed by the terms of the contract between the supplier and the exporter.

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

(d) General. – The method by which a distributor, an exporter, or a licensed importer must remit tax to a supplier is governed by the terms of the contract between the supplier and the distributor, exporter, or licensed importer and the supplier. G.S. 105-449.76 governs the cancellation of a license of a distributor, an exporter, and an importer."

Sec. 26. G.S. 105-449.92 reads as rewritten:

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

(a) Notice to Suppliers. – If the Secretary cancels a distributor's ~~license, license,~~ an exporter's license, or an importer's license, the Secretary must notify all suppliers of the cancellation. If the Secretary issues a license to a ~~distributor-distributor, an exporter,~~ or an importer 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 or an exporter after receiving notice from the Secretary that the Secretary has cancelled the distributor's or exporter's license is jointly and severally liable with the distributor or exporter for any tax due on motor fuel the supplier sells to the distributor or exporter 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 or unlicensed exporter after the supplier receives notice from the Secretary that the Secretary has issued another license to the ~~distributor-distributor or exporter."~~

Sec. 27. G.S. 105-449.93 reads as rewritten:

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

(a) Deduction. – A ~~licensed distributor-license holder listed below~~ may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel the ~~distributor-license holder~~ 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-license holder~~ used an access card or code specified by the supplier to notify the supplier of the ~~distributor's-license holder's~~ intent to resell the fuel in an exempt ~~sale-sale~~:

(1) A licensed distributor.

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

(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. A licensed importer that removes motor fuel from a terminal rack of a permissive or an elective supplier and that pays the tax due the supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of the same amount allowed a licensed distributor. 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 or licensed importer that pays the ~~excise-tax~~ due the supplier by the date the supplier must pay the tax to the State."

Sec. 28. G.S. 105-449.94 reads as rewritten:

"§ 105-449.94. Quarterly reconciling return for exempt sales by licensed ~~distributor-distributor and some licensed importers.~~

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

(c) Refund. – If the number of gallons for which a licensed distributor or licensed importer 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."~~

Sec. 29. G.S. 105-449.95 reads as rewritten:

"§ 105-449.95. Quarterly hold harmless for licensed ~~distributors.~~ distributors and some licensed importers.

(a) Calculation. – At the end of each calendar quarter, the Secretary must review the amount of discounts each licensed distributor licensed importer received under G.S. 105-449.93(b). The Secretary must determine if the amount of discounts the distributor or importer received under that subsection in each month of the quarter is less than the amount the distributor or importer would have received if the distributor or importer had been allowed a discount on taxable gasoline purchased by the distributor or importer 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>	
First 150,000 gallons	2%
Next 100,000 gallons	1 1/2%
Amount over 250,000 gallons	1%.

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

Sec. 30. G.S. 105-449.96 reads as rewritten:

"§ 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 tax-paid motor fuel received by the supplier during the month by the supplier by a system transfer, by month, sorted by type of fuel, and by terminal. seller, point of origin, destination state, and carrier.
- (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)(2) The number of gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of fuel, by receiving distributor, and by terminal. exporter, or importer, terminal code, and carrier.
- (4)(3) The number of gallons of motor fuel removed during the month for export, sorted by distributor and by terminal, and, for each removal, the destination state of the fuel. type of fuel, receiving distributor or exporter, terminal code, destination state, and carrier.
- (5)(4) The number of gallons of motor fuel removed during the month, ~~by distributor and by terminal, at month at~~ a terminal located in another state for destination to this State, as indicated on the shipping document for the ~~fuel.~~ fuel, sorted by type of fuel, receiving distributor, exporter, or importer, terminal code, and carrier.
- (6)(5) The number of gallons of motor fuel the supplier sold during the month, ~~by distributor and by terminal, month to either any of the following:~~ following, sorted by type of fuel, exempt entity, receiving distributor, terminal code, and carrier:
 - a. A governmental unit whose use of fuel is exempt from the tax.
 - b. A licensed distributor that resold the motor fuel to a governmental unit whose use of fuel is exempt from the tax, as ~~reported~~ indicated by the distributor.
 - c. A licensed exporter that resold the motor fuel to a person whose use of fuel is exempt from tax in the destination state, as indicated by the exporter.
- (7)(6) 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.~~ distributors or licensed importers."

Sec. 31. G.S. 105-449.97 reads as rewritten:

"§ 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~~ any of the following license holders owes the supplier but failed to remit to the ~~supplier.~~ supplier:

- (1) A licensed distributor.

- (2) A licensed importer that removed the motor fuel on which the tax is due from a terminal of an elective or a permissive supplier.
- (3) A licensed exporter, if the destination state of the exported motor fuel allows a supplier in that state to deduct from the amount of tax payable with a return the amount of tax an exporter licensed in that state owes the supplier but fails to pay.

A supplier is not liable for tax a ~~licensed distributor~~ license holder listed in this subsection owes the supplier but fails to pay. If a ~~licensed distributor~~ listed license holder 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. When a supplier deducts an amount not paid to the supplier by a licensed distributor or licensed exporter on exported motor fuel, the Secretary must notify the appropriate destination state of the failure and cooperate with that state in recovering from the exporter the amount deducted.

(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 to this State 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.~~ fuel.

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

Sec. 32. Effective July 1, 1997, G.S. 105-449.97(a), as amended by Section 31 of this act, reads as rewritten:

"(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 any of the following license holders owes the supplier but failed to remit to the supplier:

- (1) A licensed distributor.
- (2) A licensed importer that removed the motor fuel on which the tax is due from a terminal of an elective or a permissive supplier.
- (3) ~~A licensed exporter, if the destination state of the exported motor fuel allows a supplier in that state to deduct from the amount of tax payable with a return the amount of tax an exporter licensed in that state owes the supplier but fails to pay.~~

A supplier is not liable for tax a license holder listed in this subsection owes the supplier but fails to pay. If a listed license holder pays tax owed to a supplier after the supplier deducts the amount on a return, the supplier must promptly remit the payment to the Secretary. ~~When a supplier deducts an amount not paid to the supplier by a licensed distributor or licensed exporter on exported motor fuel, the Secretary must notify the appropriate destination state of the failure and cooperate with that state in recovering from the exporter the amount deducted."~~

Sec. 33. G.S. 105-449.98 reads as rewritten:

**"§ 105-449.98. Duties of supplier concerning payments by ~~distributors.~~
distributors, exporters, and importers.**

(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.~~ distributor, licensed exporter, or licensed importer. A supplier is liable for taxes paid to the supplier by a licensed ~~distributor.~~ distributor, licensed exporter, or licensed importer.

(b) Notification to ~~Distributor.~~ Distributor or Exporter. – A supplier must notify a licensed distributor or licensed exporter 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 or licensed exporter 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 business days after a return is due of any licensed distributors or licensed exporters 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 or a licensed exporter may not apply the payment to debts for motor fuel purchased from the supplier."

Sec. 34. G.S. 105-449.100 reads as rewritten:

"§ 105-449.100. ~~Report by terminal operator.~~ Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.

A terminal operator must ~~make file~~ a monthly ~~report to~~ informational return with the Secretary ~~of that shows the amount of motor fuel received or removed from the terminal during the month. The report return is due by the 25th day of the month following the month covered by the report and return. The return 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 of motor fuel removed from inventory at 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."

Sec. 35. G.S. 105-449.101 reads as rewritten:

"§ 105-449.101. ~~Reports by those that transport motor fuel.~~ Motor fuel transporter to file informational return showing deliveries of imported or exported 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 file~~ a monthly ~~report to~~ informational return with the Secretary ~~of that shows~~ 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~~ return required by this section is due by the 25th day of the month following the month covered by the ~~report and return~~. The return 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."

Sec. 36. G.S. 105-449.102 reads as rewritten:

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

(a) Return. – A distributor that exports motor fuel from a bulk plant located in this State must ~~make file a monthly report to return with~~ the Secretary ~~of that shows the exports~~. The ~~report return~~ is due by the 25th day of the month following the month covered by the ~~report~~. The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel.

(b) Content. – The return 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.
- (3) A certification that the distributor has paid to the destination state of the motor fuel exported during the month, or will pay on a timely basis, the amount of tax due that state on the fuel."

Sec. 37. Part 4 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.104. Use of name and account number on return.

When a transaction with a person licensed under this Article is required to be reported on a return, the return must state the license holder's name and the account number used by the Department to identify the license holder. The name of a license holder and the license holder's account number is stated on the lists compiled under G.S. 105-449.77."

Sec. 38. G.S. 105-449.105 reads as rewritten:

"§ 105-449.105. Refunds upon application for tax paid on exempt fuel, lost fuel, ~~used in boats~~ fuel unsalable for highway use, and undyed diesel fuel used in boats.

(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) **Marina.** – A marina may obtain a refund of tax paid by the marina on undyed diesel fuel purchased for use in a boat or another marine vessel. The refund applies only to undyed diesel fuel delivered at the time of purchase into a storage facility that is marked 'For Boat Use Only' or another phrase that clearly indicates the fuel is not to be used to operate a highway vehicle.

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

Sec. 39. G.S. 105-449.115(e) reads as rewritten:

"(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. A person who accepts delivery of motor fuel in violation of this subsection is jointly and severally liable for any tax due on the fuel."

Sec. 40. G.S. 105-449.115(f) reads as rewritten:

"(f) ~~**Sanctions.**~~ **Sanctions Against Transporter.** – 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. one thousand five hundred dollars (\$1,500).~~ 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. seven thousand five hundred dollars (\$7,500).~~ A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

Sec. 41. Part 6 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.118A. Civil penalty for refusing to allow the taking of a motor fuel sample.

A person who refuses to allow the taking of a motor fuel sample is subject to a civil penalty of one thousand dollars (\$1,000). The penalty is payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue. If the refusal is for a sample to be taken from a vehicle, the penalty is payable by the person in whose name the vehicle is registered. If the refusal is for a sample to be taken from any other storage tank or container, the penalty is payable by the owner of the container."

Sec. 42. G.S. 105-449.120(a) reads as rewritten:

"(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 file a report return~~ 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.
- (3a) Willfully fails to pay a tax collected on behalf of a destination state to that state when it is due.
- (4) Makes a false statement in an application, a ~~report, return,~~ 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.
- (11) Willfully refuses to allow a licensed distributor, a licensed exporter, or a licensed importer to defer payment of tax to the supplier, as required by G.S. 105-449.91.

- (12) Willfully refuses to allow a licensed distributor or a licensed importer to take the discount allowed by G.S. 105-449.93 when remitting tax to the supplier."

Sec. 43. G.S. 105-449.121(a) reads as rewritten:

"(a) What Must Be Kept. – A person who is required to submit a report or file a return under Part 4 of this Article subject to audit under subsection (b) of this section must keep a record of all shipping documents or other documents used to determine the information provided in the report or return. information the person provides in a return or to determine the person's motor fuel transactions. The records must be kept for three years from the due date of the report or return to which the records apply. apply or, if the records apply to a transaction not required to be reported in a return, for three years from the date of the transaction."

Sec. 44. G.S. 105-449.130 reads as rewritten:

"§ 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) Bulk-end user. – A person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.
- ~~(2)~~(3) Highway. – Defined in G.S. 20-4.01(13).
- ~~(3)~~(4) Highway vehicle. – Defined in G.S. 105-449.60.
- ~~(4)~~(5) Motor fuel. – Defined in G.S. 105-449.60.
- ~~(5)~~(6) Motor fuel rate. – Defined in G.S. 105-449.60.
- (7) Provider of alternative fuel. – A person who does one or more of the following:
 - a. Acquires alternative fuel for sale or delivery to a bulk-end user or a retailer.
 - b. Maintains storage facilities for alternative fuel, part or all of which the person uses or sells to someone other than a bulk-end user or a retailer to operate a highway vehicle.
 - c. Sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicle to the engine of the vehicle.
 - d. Imports alternative fuel to this State, by a means other than the usual tank or receptacle connected with the engine of a highway vehicle, for use by that person to operate a highway vehicle.
- (8) Retailer. – A person who maintains storage facilities for alternative fuel and who sells the fuel at retail or dispenses the fuel at a retail location to operate a highway vehicle."

Sec. 45. G.S. 105-449.131 reads as rewritten:

"§ 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. ~~user.~~
- (3) A retailer of alternative fuel that sells part or all of the fuel for use in a highway vehicle. ~~retailer."~~

Sec. 46. G.S. 105-449.134 reads as rewritten:

"§ 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~~ may 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."

Sec. 47. G.S. 105-449.136 reads as rewritten:

"§ 105-449.136. Tax on alternative fuel.

A tax at the motor fuel rate is imposed on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. A tax at the equivalent of the motor fuel rate is imposed on all other 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.~~ section, except that the refund allowed by G.S. 105-449.107(b) for certain vehicles that use power takeoffs does not apply to a vehicle whose use of alternative fuel is taxed on the basis of miles driven. The proceeds of the tax imposed by this section must be allocated in accordance with G.S. 105-449.125."

Sec. 48. G.S. 105-449.138 reads as rewritten:

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

(a) ~~Reports.~~ Informational Return. – 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 ~~informational return~~ with the Secretary. A quarterly report ~~return~~ covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the ~~report.~~ return.

The ~~report~~ return 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."

Sec. 49. G.S. 105-449.139 is amended by adding the following subsection to read:

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

Sec. 50. G.S. 105-449.57 reads as rewritten:

"§ 105-449.57. Cooperative agreements between states-jurisdictions.

The Secretary may enter into cooperative agreements with other ~~states~~ jurisdictions for exchange of information in administering the tax imposed by this Article. No agreement, arrangement, declaration, or amendment to an agreement is effective until stated in writing and approved by the Secretary.

An agreement may provide for determining the base state for motor carriers, records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods, including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of gasoline or other motor fuel taxes and penalties to another jurisdiction, and such other provisions as will facilitate the administration of the agreement.

In accordance with G.S. 105-259, the Secretary may, as required by the terms of an agreement, forward to officials of another ~~state~~ jurisdiction any information in the Department's possession relative to the use of gasoline or other motor fuels by any motor carrier. The Secretary may disclose to officials of another ~~state~~ jurisdiction the location of offices, motor vehicles, and other real and personal property of motor carriers.

An agreement may provide for each ~~state~~ jurisdiction to audit the records of motor carriers based in the ~~state~~ jurisdiction to determine if the gasoline or other motor fuel taxes due each ~~state~~ jurisdiction are properly reported and paid. Each ~~state~~ jurisdiction shall forward the findings of the audits performed on motor carriers based in the ~~state~~ jurisdiction to each ~~state~~ jurisdiction in which the carrier has taxable use of gasoline or other motor fuels. For motor carriers not based in this State who have taxable use of gasoline or other motor fuels in this State, the Secretary may utilize the audit findings received from another ~~state~~ jurisdiction as the basis upon which to propose assessments of gasoline or other motor fuel taxes against the carrier as though the audit had been conducted by the Secretary. Penalties and interest shall be assessed at the rates provided in the agreement.

No agreement entered into pursuant to this section may preclude the Department from auditing the records of any motor carrier covered by this Chapter.

The provisions of Article 9 of this Chapter apply to any assessment or order made under this section.

The Secretary may not enter into any agreement that would increase or decrease taxes and fees imposed under Subchapter V of Chapter 105 of the General Statutes, and any provision to the contrary is void."

Sec. 51. G.S. 105-236(10) is amended by adding a new subpart to read:

"c. For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due, there shall be assessed as a tax a penalty of fifty dollars (\$50.00)."

Sec. 52. 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 and 36D of Subchapter V of this Chapter. Chapter and all taxes payable under those Articles by the corporation to a supplier for remittance to this State or another state.

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. 53. G.S. 119-15 reads as rewritten:

"§ 119-15. 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) Kerosene distributor. – A person who acquires kerosene from any of the following for subsequent sale:
 - a. A supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.
 - b. A kerosene supplier.

- c. Another kerosene distributor.
- (5) Kerosene supplier. – A person who is not required to be licensed as a supplier under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for kerosene to be used to fuel an airplane.
- (4)(6) Motor fuel. – Defined in G.S. 105-449.60.
- (5)(7) Person. – Defined in G.S. 105-229.90."
- Sec. 54. G.S. 119-16.2 reads as rewritten:

"§ 119-16.2. Application for license.

(a) When Required. – A person may not engage in business as a kerosene distributor-supplier unless the person 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 supplier license issued under this section. A kerosene distributor is required to have a kerosene distributor license only if the distributor imports kerosene. Other kerosene distributors may elect to have a kerosene distributor license. A licensed kerosene distributor that buys kerosene from a supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes has the right to defer payment of the inspection tax until the supplier is required to remit the tax to this State or another state. A licensed kerosene distributor that pays the tax due a supplier licensed under that Part by the date the supplier must pay the tax to the State may deduct from the amount due a discount in the amount set in G.S. 105-449.93.

(b) Application. – 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 Part 2 of Article 36C of Chapter 105 of the General Statutes if the applicant were applying for a license under that Part.

(c) General. – 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 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 Part. A person who fails to comply with this section is guilty of a Class 1 misdemeanor."

Sec. 55. 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, motor fuel, and alternative fuel of the following fuel, regardless of whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D of Chapter 105 of the General Statutes:

- (1) Motor fuel that is not dyed diesel fuel.
- (2) Dyed diesel fuel used to operate a highway vehicle.
- (3) Alternative fuel used to operate a highway vehicle.
- (4) Kerosene.

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 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.~~ supplier that is licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A monthly report ~~by a distributor required to be licensed under G.S. 119-16.2~~ is due by the ~~20th-22nd~~ of each month and applies to kerosene sold during the preceding month by a supplier licensed under that Part and to kerosene received during the preceding month by the distributor during the preceding month, a kerosene supplier."

Sec. 56. The following sections in Article 3 of Chapter 119 of the General Statutes are repealed:

- | | |
|-------------|---|
| G.S. 119-40 | Manufacturers to notify Commissioner of shipments. |
| G.S. 119-41 | Persons engaged in transporting are subject to inspection laws. |
| G.S. 119-44 | Registration of exclusive industrial users of naphthas and coal tar solvents. |

Sec. 57. Sections 21 and 32 of this act become effective July 1, 1997. The remaining sections of this act become effective July 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives