

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-146
SENATE BILL 1230

AN ACT TO CLARIFY THE TAXATION OF KEROSENE AND TO MAKE OTHER
CHANGES IN THE MOTOR FUEL TAX LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-449.39 reads as rewritten:

"§ 105-449.39. Credit for payment of motor fuel tax.

Every motor carrier subject to the tax levied by this Article is entitled to a credit for tax paid by the carrier on fuel purchased in the State. A motor carrier who files a quarterly report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter for which the credit is claimed. A motor carrier who files an annual report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the average of the two variable cents-per-gallon rates of tax in effect during the year for which the credit is claimed. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a reporting period exceeds the motor carrier's liability for that reporting period, ~~the excess may, in accordance with rules adopted by the Secretary, be refunded to the motor carrier or carried forward and applied to the motor carrier's tax liability for another reporting period. Before the Secretary allows a motor carrier a refund, the Secretary may audit the motor carrier's records or require the motor carrier to furnish a bond under G.S. 105-449.40. the Secretary must refund the excess to the motor carrier.~~

Section 2. G.S. 105-449.52(b) reads as rewritten:

"(b) Hearing. – Any person denying liability for a penalty imposed under this section ~~may~~ must pay the penalty under protest and apply to the Department of Revenue for a hearing. Upon receiving a request for a hearing, the Secretary shall schedule a hearing before a duly designated employee or agent of the Department within 30 days after receipt of the request. 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 bring an action in the Superior Court of Wake County against the Secretary of Revenue for refund of the penalty. No restraining order or injunction shall issue from any court of the State to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty."

Section 3. G.S. 105-449.60 reads as rewritten:

"§ 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 includes kerosene. 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.
- (19a) 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.
- (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~~-transaction.
 - 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.
- (33a) 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.
- (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 transaction.~~ – 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 between two licensed suppliers as the motor fuel crosses the terminal rack as the result of an exchange agreement or a sale between the suppliers that requires the supplier that is the position holder 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.~~
- (41) User. – A person who owns or operates a licensed highway vehicle and does not maintain storage facilities for motor fuel."

Section 4. G.S. 105-449.72 is amended by adding the following new subsection to read:

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

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

Section 5. G.S. 105-449.87(b) reads as rewritten:

"(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. If the Secretary determines that a bulk-end user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel is dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle."

Section 6. 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.
- (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.
- (5) Diesel that is kerosene and is sold to an airport."

Section 7. G.S. 105-449.94 is amended by adding the following new subsection to read:

"(e) Penalty. – A licensed distributor or a licensed importer that deducts an exempt sale when paying tax to a supplier and does not report the sale by filing the return required by this section is liable for a penalty of two hundred fifty dollars (\$250.00)."

Section 8. Part 5 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

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

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

- (1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for heating.
- (2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that is marked for nonhighway use in accordance with the requirements in G.S. 105-449.123(a)(1) through (a)(3) and has a dispensing device that is not suitable for use in fueling a highway vehicle."

Section 9. G.S. 105-164.13(11)a. reads as rewritten:

- "a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105(c) or ~~(d)~~ (d), under G.S. 105-449.105A, or under G.S. 105-449.107."

Section 10. G.S. 105-449.108 reads as rewritten:

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

~~(a) Annual Refunds. — An application for an annual refund of excise 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.~~ Due Dates. – The due dates of applications for refunds are as follows:

<u>Refund Period</u>	<u>Due Date</u>
<u>Annual</u>	<u>April 15 after the end of the year</u>
<u>Quarterly</u>	<u>Last day of the month after the end of the quarter</u>
<u>Monthly</u>	<u>22nd day after the end of the month</u>

Upon Application

Last day of the month after the month in which
tax was paid or the event occurred that is the
basis of the refund.

~~(b) Quarterly Refunds. — An application for a quarterly refund of excise 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. Requirements. — An application for an annual refund must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year. An application for a refund allowed under this Part 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 excise 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."~~

Section 11. G.S. 105-449.132 reads as rewritten:

"§ 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. An applicant must meet the requirements for obtaining a license set out in G.S. 105-449.69(b)."

Section 12. The following persons who have kerosene that is on hand or in their possession as of 12:01 a.m. on July 1, 1998, and is not in the terminal transfer system must inventory the kerosene and report the results of the inventory to the Secretary of Revenue:

- (1) Retailers who maintain storage facilities for kerosene of at least 2,000 gallons.
- (2) Distributors.
- (3) Importers.
- (4) Suppliers.

The amount of kerosene 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 kerosene in a storage tank that will not be pumped out of the tank because the kerosene is below the mouth of the draw pipe. For a storage tank with a capacity of less than 2,000 gallons, the amount of kerosene in dead storage is considered to be 200 gallons. For a storage tank with a capacity of 2,000 gallons or more, the amount of kerosene 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 July 15, 1998.

Section 13. Section 7 of this act becomes effective January 1, 1999. Section 1 applies to credits generated from reports filed by motor carriers for the reporting period beginning July 1, 1998. G.S. 105-449.60(7), as amended by Section 3 of this act, and Sections 8 and 9 of this act apply to kerosene sold on or after July 1, 1998. G.S. 105-449.60(31) and (40), as amended by Section 3 of this act, apply to transactions

occurring on or after January 1, 1999. The remaining sections of this act are effective when they become law.

In the General Assembly read three times and ratified this the 9th day of September, 1998.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 9:45 a.m. this 18th day of September, 1998