

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 487
HOUSE BILL 23

AN ACT TO MODIFY THE FUEL TAX STATUTES TO ENABLE NORTH
CAROLINA TO ENTER THE INTERNATIONAL FUEL TAX AGREEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-449.22 reads as rewritten:

"§ 105-449.22. Leased motor vehicles.

(a) ~~Except as provided in this section, the lessee of a motor vehicle, and not the lessor of the motor vehicle, is the "user," "user-seller," or "supplier," as the case may be, for the purposes of this Article.~~

(b) ~~A lessor of a motor vehicle who gives written notice, by filing a report or otherwise, to the Secretary that the lessor desires to be taxed as a user, user-seller or supplier may be treated by the Secretary as a user, user-seller, or supplier with respect to a motor vehicle leased to another by him as well as fuel consumed by the leased motor vehicle when the lessor supplies or pays for the fuel consumed by the motor vehicle or makes rental or other charges calculated to include the cost of the fuel. A lessee may exclude from reports made pursuant to this Article a motor vehicle of which he is the lessee if that motor vehicle is leased from a lessor who is a user, user-seller, or supplier pursuant to this section.~~

(c) ~~Subsections (a) and (b) govern the primary liability of lessors and lessees of motor vehicles under this Article. Both the lessor and lessee, however, are jointly and severally liable for compliance with this Article.~~

The user under this Article of fuel consumed by a leased motor vehicle whose operations are reported under Article 36B of this Chapter is the person who is the motor carrier under Article 36B for reporting operations of the motor vehicle. The user under this Article of fuel consumed by a leased motor vehicle whose operations are not reported under Article 36B of this Chapter is the person who is liable for payment for the fuel consumed by the motor vehicle.

Sec. 2. G.S. 105-449.37(a) reads as rewritten:

"(a) Definitions. ~~As used in this Article unless the context clearly requires otherwise:~~ The following definitions apply in this Article:

- (1) ~~'Motor carrier' means every~~ Motor carrier. ~~– Every~~ person, firm, or corporation who operates or causes to be operated on any highway in this State a motor vehicle used, designed, or maintained for transportation of persons or property and (i) having two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds, (ii) having three or more axles regardless of weight, or

(iii) used in combination when the weight of the combination exceeds 26,000 pounds gross vehicle weight. The term does not include the United States, the State or its political subdivisions, operators of special mobile equipment as defined in G.S. 20-4.01(44), or nonprofit religious, educational, charitable, or benevolent organizations; States, the State, or a political subdivision of the State.

(1a) ~~'Motor vehicle' means Motor vehicle. – A motor vehicle as defined in G.S. 20-4.01(23) except that the term does not include special mobile equipment as defined in G.S. 20-4.01(44) or recreational vehicles;~~ vehicles.

(2) ~~'Operations' means operations~~ Operations. – Operations of all vehicles described in subdivision (1), whether loaded or empty and whether or not operated for ~~compensation; and compensation.~~

(3) ~~'Secretary' means the Secretary. – The Secretary of Revenue."~~

Sec. 3. G.S. 105-449.39, as amended by Section 3 of Chapter 182 of the 1991 Session Laws, 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. ~~The~~ Before the Secretary may not allow a refund without auditing allows a motor carrier a refund, the Secretary may audit the motor carrier's records unless or require the motor carrier:

(1) ~~Has furnished a bond under G.S. 105-449.40; or~~

(2) ~~Has complied with this Subchapter and the rules adopted under the Subchapter for at least a one year period preceding the date the application for a refund is filed.~~

carrier to furnish a bond under G.S. 105-449.40."

Sec. 4. G.S. 105-449.40 reads as rewritten:

"§ 105-449.40. Refunds to motor carriers who give Secretary may require bond.

~~A motor carrier may give a bond in an amount no less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) payable to the State and conditioned that the motor carrier will pay all taxes due and to become due under this Article. So long as the bond remains in force the Secretary may order refunds to the~~

~~motor carrier in the amounts appearing to be due on applications duly filed by the carrier under G.S. 105-449.39 without first auditing the records of the carrier. Such bond shall be in such form and with such surety or sureties as may be required by the Secretary. (a) Authority. – The Secretary may require a motor carrier to furnish a bond when any of the following occurs:~~

- ~~(1) The motor carrier fails to file a report within the time required by this Article.~~
- ~~(2) The motor carrier fails to pay a tax when due under this Article.~~
- ~~(3) After auditing the motor carrier's records, the Secretary determines that a bond is needed to protect the State from loss in collecting the tax due under this Article.~~

~~(b) Amount. – A bond required of a motor carrier under this section may not be more than the larger of the following amounts:~~

- ~~(1) Five hundred dollars (\$500.00).~~
- ~~(2) Four times the motor carrier's average tax liability or refund for a reporting period.~~

~~A bond must be in the form required by the Secretary."~~

~~Sec. 5. G.S. 105-449.42A reads as rewritten:~~

~~"§ 105-449.42A. Leased motor vehicles.~~

~~(a) Lessor in Leasing Business. – Except as provided in this section, the lessee of a motor vehicle, and not the lessor of the motor vehicle, is a "motor carrier" for the purposes of this Article. A lessor who is regularly engaged in the business of leasing or renting motor vehicles without drivers for compensation is the motor carrier for a leased or rented motor vehicle unless the lessee of the leased or rented motor vehicle gives the Secretary written notice, by filing a report or otherwise, that the lessee is the motor carrier. In that circumstance, the lessee is the motor carrier for the leased or rented motor vehicle.~~

~~Before a lessee gives the Secretary written notice under this subsection that the lessee is the motor carrier, the lessee and lessor must make a written agreement for the lessee to be the motor carrier. Upon request of the Secretary, the lessee must give the Secretary a copy of the agreement.~~

~~(b) Independent Contractor. – A lessor of a motor vehicle who gives written notice, by filing a report or otherwise, to the Secretary that the lessor desires to be taxed as a motor carrier may be treated by the Secretary as a motor carrier with respect to a motor vehicle leased to another by him as well as motor fuel consumed by the leased motor vehicle when the lessor supplies or pays for the motor fuel consumed by the motor vehicle or makes rental or other charges calculated to include the cost of the fuel. A lessee motor carrier may exclude from reports made pursuant to this Article a motor vehicle of which he is the lessee if that motor vehicle is leased from a lessor who is a motor carrier pursuant to this section. The lessee of a motor vehicle that is leased from an independent contractor is the motor carrier for the leased motor vehicle unless either of the following applies:~~

- ~~(1) The motor vehicle is leased for fewer than 30 days.~~

- (2) The motor vehicle is leased for at least 30 days and the lessor gives the Secretary written notice, by filing a report or otherwise, that the lessor is the motor carrier.

If either of these circumstances applies, the lessor is the motor carrier for the leased motor vehicle.

Before a lessor gives the Secretary written notice under subdivision (2) that the lessor is the motor carrier, the lessor and lessee must make a written agreement for the lessor to be the motor carrier. Upon request of the Secretary, the lessor must give the Secretary a copy of the agreement.

(c) Liability. – Subsections (a) and (b) govern the primary liability of lessors and lessees of motor vehicles under this Article. Both the lessor and lessee, however, are jointly and severally liable for compliance with this Article."

Sec. 6. 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 ~~has registered the vehicle and~~ the motor vehicle are registered with the Secretary for purposes of the tax imposed by this ~~Article with the Secretary.~~ Article.

Upon application, the Secretary shall register a motor carrier and shall issue a registration card and at least one identification marker for a vehicle. ~~each motor vehicle operated by the motor carrier. The registration card~~ A copy of the registration of a motor carrier shall be carried in the each motor vehicle for which it was issued ~~operated by the motor carrier when the vehicle is in this State. The~~ 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. ~~Every identification marker issued shall bear a number that corresponds to the number on the registration card issued for the same vehicle. Registration cards~~ Registrations and identification markers required by this section shall be issued on a calendar year basis. The Secretary may renew ~~registration cards and identification markers without issuing new cards and markers.~~ 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 ~~card and or~~ an identification marker when a motor carrier fails to comply with this Article or Article 36A of this Subchapter."

Sec. 7. G.S. 105-449.49, as amended by Section 6 of Chapter 182 of 1991 Session Laws, reads as rewritten:

"§ 105-449.49. Temporary permits.

Upon application to the Secretary and payment of a fee of twenty-five dollars (\$25.00), a motor carrier may obtain a temporary permit authorizing the carrier to operate a vehicle in the State without registering the vehicle in accordance with G.S. 105-449.47 for not more than 20 days. A motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the 20-day period. ~~A motor carrier who files a report for a reporting period in which the carrier paid a temporary permit fee may claim a credit for the amount of the fee. A motor carrier~~

~~whose operations are exclusively intrastate may obtain a refund of the fee by filing a report for the reporting period in which the fee was paid."~~

Sec. 8. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives