

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

S

4

**SENATE BILL 1171**

## **Finance Committee Substitute Adopted 6/9/04**

Third Edition Engrossed 6/17/04

## House Committee Substitute Favorable 6/30/04

Short Title: Motor Fuels Tax Changes.

(Public)

## Sponsors:

Referred to:

May 19, 2004

A BILL TO BE ENTITLED

2 AN ACT TO MODIFY THE TAXATION OF MOTOR FUELS; TO ALLOW THE  
3 SECRETARY OF REVENUE TO APPOINT EMPLOYEES OF THE MOTOR  
4 FUELS TAX DIVISION AS REVENUE LAW ENFORCEMENT OFFICERS;  
5 AND TO TRANSFER THE AUDIT FUNCTIONS FOR THE INTERNATIONAL  
6 REGISTRATION PLAN TO THE DEPARTMENT OF REVENUE FROM THE  
7 DIVISION OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 105-236(2) reads as rewritten:

## **"§ 105-236. Penalties.**

11       Penalties assessed by the Secretary under this Subchapter are assessed as an  
12 additional tax. Except as otherwise provided by law, and subject to the provisions of  
13 G.S. 105-237, the following penalties shall be applicable:

(2) Failure to Obtain a License. – For failure to obtain a license before engaging in a business, trade or profession for which a license is required, the Secretary shall assess a penalty equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, not to exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars (\$5.00). In cases in which the taxpayer fails to obtain a license as required under G.S. 105-449.65 or G.S. 105-449.131, the Secretary may assess a penalty of one thousand dollars (\$1,000)."

**SECTION 2.** G.S. 105-236.1(a) reads as rewritten:

25        "(a) General. – The Secretary may appoint employees of the Unauthorized  
26 Substances Tax Division to serve as revenue law enforcement officers having the

1 responsibility and subject-matter jurisdiction to enforce the excise tax on unauthorized  
2 substances imposed by Article 2D of this Chapter.

3 The Secretary may appoint up to 11 employees of the Motor Fuels Tax Division to  
4 serve as revenue law enforcement officers having the responsibility and subject-matter  
5 jurisdiction to enforce the taxes on motor fuels imposed by Articles 36B, 36C, and 36D  
6 of this Chapter and by Chapter 119 of the General Statutes.

7 The Secretary may appoint employees of the Criminal Investigations Division to  
8 serve as revenue law enforcement officers having the responsibility and subject-matter  
9 jurisdiction to enforce the following tax violations and criminal offenses:

- 10 (1) The felony and misdemeanor tax violations in G.S. 105-236.
- 11 (2) The misdemeanor tax violations in G.S. 105-449.117 and  
12 G.S. 105-449.120.
- 13 (3) The following criminal offenses when they involve a tax imposed  
14 under Chapter 105 of the General Statutes:
  - 15 a. G.S. 14-91 (Embezzlement of State Property).
  - 16 b. G.S. 14-92 (Embezzlement of Funds).
  - 17 c. G.S. 14-100 (Obtaining Property By False Pretenses).
  - 18 d. G.S. 14-119 (Forgery).
  - 19 e. G.S. 14-120 (Uttering Forged Paper).
  - 20 f. G.S. 14-401.18 (Sale of Certain Packages of Cigarettes)."

21 **SECTION 3.** G.S. 105-449.46 reads as rewritten:

22 **"§ 105-449.46. Inspection of books and records.**

23 The Secretary and his authorized agents and representatives shall have the right at  
24 any reasonable time to inspect the books and records of any motor carrier subject to the  
25 tax imposed by this Article or to the registration fee imposed by Article 3 of  
26 Chapter 20 of the General Statutes."

27 **SECTION 4.** G.S. 105-449.86(a) reads as rewritten:

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

- 30 (1) Repealed by Session Laws 2003-349, s. 10.8, effective January 1,  
31 2004.
- 32 (2) Either a local bus or an intercity bus that is allowed by § 4082(b)(3) of  
33 the Code to use dyed diesel fuel.
- 34 (3) A highway vehicle that is owned by or leased to an educational  
35 organization that is not a public school and is allowed by § 4082(b)(1)  
36 or (b)(3) of the Code to use dyed diesel fuel.
- 37 (4) ~~A highway vehicle that is owned by or leased to the American Red~~  
38 ~~Cross and is allowed by § 4082 of the Code to use dyed diesel fuel."~~

39 **SECTION 5.(a)** G.S. 105-449.95 is recodified as G.S. 105-449.106A.

40 **SECTION 5.(b)** G.S. 105-449.106A, as recodified by this act, reads as  
41 rewritten:

42 **"§ 105-449.106A. Quarterly ~~hold harmless refund~~ for licensed distributors and**  
43 **some licensed importers.**

1       (a) Calculation. Application. – At the end of each calendar quarter, the Secretary  
2 must review the amount of discounts each A licensed distributor or licensed importer  
3 may receive a quarterly refund as allowed under this section. To receive a refund, a  
4 distributor or importer must apply for the refund. The application must show the amount  
5 of discounts received under G.S. 105-449.93(b). The Secretary must determine if the  
6 amount of discounts the distributor or importer received under that subsection in each  
7 month of the quarter is less than G.S. 105-449.93(b) and the amount the distributor or  
8 importer would have received if the distributor or importer had been allowed a discount  
9 on taxable gasoline purchased by the distributor or importer from a supplier during each  
10 month of the quarter under the following schedule:

| <u>Amount of Gasoline Purchased</u> | <u>Percentage</u> |
|-------------------------------------|-------------------|
| <u>Each Month</u>                   | <u>Discount</u>   |
| First 150,000 gallons               | 2%                |
| Next 100,000 gallons                | 1 1/2%            |
| Amount over 250,000 gallons         | 1%.               |

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

27       SECTION 6. G.S. 105-449.115 reads as rewritten:

28       **"§ 105-449.115. Shipping document required to transport motor fuel by railroad**  
29       **tank car or transport truck.**

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

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

- 38       (1) Identification, including address, of the terminal or bulk plant from  
39       which the motor fuel was received.
- 40       (2) The date the motor fuel was loaded.
- 41       (3) The gross gallons loaded.
- 42       (4) The destination state of the motor fuel, as represented by the purchaser  
43       of the motor fuel or the purchaser's agent.

(5) If the document is issued by a terminal operator, the document must be machine printed and it must contain the following information:

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

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

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

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

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

(f) Sanctions Against Transporter. – The following acts are grounds for a civil penalty payable to the ~~Department of Transportation, Division of Motor Vehicles~~Department of Crime Control and Public Safety, 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.

6 The penalty imposed under this subsection is payable by the person in whose name  
7 the conveyance is registered, if the conveyance is a transport truck, and is payable by  
8 the person responsible for the movement of motor fuel in the conveyance, if the  
9 conveyance is a railroad tank car. The amount of the penalty is five thousand dollars  
10 (\$5,000). A penalty imposed under this subsection is in addition to any motor fuel tax  
11 assessed.

12       (g) Sanctions Against Terminal Operator. – The Secretary may assess a civil  
13 penalty of five thousand dollars (\$5,000) against a terminal operator for issuing a  
14 shipping document that does not satisfy the requirements of subsection (b) of this  
15 section."

16 **SECTION 7.** G.S. 119-15 is amended by adding the following two new  
17 subdivisions:

## **"§ 119-15. Definitions that apply to Article.**

19 The following definitions apply in this Article:

8

(1a) Dyed diesel fuel distributor. – A person who acquires dyed diesel fuel from either of the following:

- a. A person who is not required to be licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for dyed diesel fuel to be used for nonhighway purposes.
- b. Another dyed diesel fuel distributor.

(1b) Dyed diesel fuel. – Defined in G.S. 105-449.60."

**SECTION 8.** G.S. 119-15.1(a) reads as rewritten:

30 "(a) License. - A person may not engage in business

30       (a) License. A person may not engage in business in this State as any of the  
31 following unless the person has a license issued by the Secretary authorizing the person  
32 to engage in business:

- (1) A kerosene supplier.
- (2) A kerosene distributor.
- (3) A kerosene terminal operator.
- (4) A dyed diesel fuel distributor."

**SECTION 9.** G.S. 20-91 reads as rewritten:

**"§ 20-91. Audit of vehicle registrations under the International Registration Plan.**

(a) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9.

(b) The DivisionDepartment of Revenue may audit a person who registers or is required to register a vehicle under the International Registration Plan to determine if the person has paid the registration fees due under this Article. A person who registers a vehicle under the International Registration Plan must keep any records used to determine the information provided to the Division when registering the vehicle. The

1 records must be kept for three years after the date of the registration to which the  
2 records apply. The Division Department of Revenue may examine these records during  
3 business hours. If the records are not located in North Carolina and an auditor must  
4 travel to the location of the records, the registrant shall reimburse North Carolina for per  
5 diem and travel expense incurred in the performance of the audit. If more than one  
6 registrant is audited on the same out-of-state trip, the per diem and travel expense may  
7 be prorated.

8 The Commissioner Secretary of Revenue may enter into reciprocal audit agreements  
9 with other agencies of this State or agencies of another jurisdiction for the purpose of  
10 conducting joint audits of any registrant subject to audit under this section.

11 (c) If an audit is conducted and it becomes necessary to assess the registrant for  
12 deficiencies in registration fees or taxes due based on the audit, the assessment will be  
13 determined based on the schedule of rates prescribed for that registration year, adding  
14 thereto and as a part thereof an amount equal to five percent (5%) of the tax to be  
15 collected. If, during an audit, it is determined that:

16 (1) A registrant failed or refused to make acceptable records available for  
17 audit as provided by law; or

18 (2) A registrant misrepresented, falsified or concealed records, then all  
19 plates and cab cards shall be deemed to have been issued erroneously  
20 and are subject to cancellation. The Commissioner Commissioner,  
21 based on information provided by the Department of Revenue audit,  
22 may assess the registrant for an additional percentage up to one  
23 hundred percent (100%) North Carolina registration fees at the rate  
24 prescribed for that registration year, adding thereto and as a part  
25 thereof an amount equal to five percent (5%) of the tax to be collected.  
26 The Commissioner may cancel all registration and reciprocal  
27 privileges.

28 As a result of an audit, no assessment shall be issued and no claim for refund shall  
29 be allowed which is in an amount of less than ten dollars (\$10.00).

30 The results of any audit conducted under this section shall be provided to the  
31 Division. The notice of any assessments will shall be sent by the Division to the  
32 registrant by registered or certified mail at the address of the registrant as it appears in  
33 the records of the Division of Motor Vehicles in Raleigh. The notice, when sent in  
34 accordance with the requirements indicated above, will be sufficient regardless of  
35 whether or not it was ever received.

36 The failure of any registrant to pay any additional registration fees or tax within 30  
37 days after the billing date, shall constitute cause for revocation of registration license  
38 plates, cab cards and reciprocal privileges.

39 (d) Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 9."

40 **SECTION 10.** Sections 1, 5, and 6 of this act become effective January 1,  
41 2005. The remainder of this act is effective when it becomes law.