

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 726
SENATE BILL 1473

AN ACT TO ADDRESS MOTOR FUEL TAX EVASION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-430 reads as rewritten:

"§ 105-430. **Definitions.**

The following definitions apply in this Article:

- (01) 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.
- (02) Reserved.
- (03) 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.
 - (1) Distributor. – A person who possesses motor fuel in this State for sale, use, or other distribution in this State or another state.
 - (2) 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.
 - (3) Import. – To do either of the following:
 - a. Bring motor fuel into this State by ~~pipeline, marine vessel, railroad tank car, or transport truck.~~ any means of conveyance other than in the fuel supply tank of a motor vehicle.
 - b. Exchange motor fuel located at a pipeline terminal or a seaport terminal in this State for motor fuel located inside or outside the State.
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.
- (4) Motor fuel. – Any of the following:
 - a. All products commonly or commercially known or sold as gasoline (including casinghead and absorption or natural gasoline) regardless of their classification or uses.

b. Any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society for Testing Materials Designation D-86) shows not less than ten per centum (10%) distilled (recovered) below three hundred forty-seven degrees (347°) Fahrenheit (one hundred seventy-five degrees (175°) Centigrade) and not less than ninety-five per centum (95%) distilled (recovered) below four hundred sixty-four degrees (464°) Fahrenheit (two hundred forty degrees (240°) Centigrade); with the exception that the term "motor fuel" shall not include commercial solvents which distill, by American Society for Testing Materials Method D-86, not more than nine per centum (9%) at 176° F. and which have a distillation range of 125° F. or less, of liquefied gases which would not exist as liquids at a temperature of 60° *Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(5) Person. – Defined in G.S. 105-228.90.

(5a) Reserved.

(5b) Rack. – A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a railroad tank car, a transport truck, or another means of nonbulk transfer.

(6) Secretary. – The Secretary of Revenue.

(7) Terminal. – A motor fuel storage and distribution facility that is supplied by pipeline or marine vessel and from which motor fuel may be removed at a rack.

(8) Terminal operator. – A person who owns, operates, or otherwise controls a terminal.

(9) Transport truck. – A semitrailer combination rig designed or used to transport loads of at least 4,200 gallons of motor fuel over the highways."

Sec. 2. Article 36 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-432.1. Application for registration as terminal operator.

A person may not engage in business in this State as a terminal operator unless the person is licensed under this Article as a distributor, is licensed under Article 36A of this Chapter as a supplier, or is registered as a terminal operator with the Secretary. To register as a terminal operator, a person must complete an application for registration provided by the Secretary and provide the information that would be required if the person filed an application for a license as a distributor.

A terminal operator must display a copy of a registration issued under this section in a conspicuous place at each place of business of the terminal operator. A terminal

operator's registration is not transferable and remains in effect until surrendered or cancelled."

Sec. 3. G.S. 105-433(d) reads as rewritten:

"(d) Export Exception. – A distributor ~~whose sale or other distribution of fuel consists only of exporting fuel~~ who meets the following restrictions is not required to be incorporated or formed in this State, authorized to transact business in this State, or have a designated agent for service of process in this ~~State~~.State:

- (1) The distributor's sale or other distribution of motor fuel consists only of exporting the motor fuel.
- (2) The distributor is licensed for motor fuel tax purposes in each state to which the distributor exports motor fuel."

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

"§ 105-438.1. Shipping document required to transport motor fuel by railroad tank car or transport truck.

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

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

- (1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received.
- (2) The date the motor fuel was loaded.
- (3) The gross volume and the net volume temperature-corrected to 60° Fahrenheit of motor fuel loaded.
- (4) The destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent.

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

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

- (1) Carry the shipping document in the conveyance for which it was issued when transporting the motor fuel described in it.
- (2) Show the shipping document to a law enforcement officer upon request when transporting the motor fuel described in it.
- (3) Deliver motor fuel described in the shipping document to the destination state printed on it unless the person does all of the following:

- a. Notifies the Secretary before transporting the motor fuel into a state other than the printed destination state that the person has received instructions since the shipping document was issued to deliver the motor fuel to a different destination state.
 - b. Receives from the Secretary a confirmation number authorizing the diversion.
 - c. Writes on the shipping document the change in destination state and the confirmation number for the diversion.
- (4) Give a copy of the shipping document to the distributor or other person to whom the motor fuel is delivered.

(e) Duties of Person Receiving Shipment. – A person to whom motor fuel is delivered by railroad tank car or transport truck may not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than North Carolina. To determine if the shipping document shows North Carolina as the destination state, the person to whom the fuel is delivered must examine the shipping document and must keep a copy of the shipping document. The person must keep a copy at the place of business where the motor fuel was delivered for 30 days from the date of delivery and must keep it at that place or another place for at least three years from the date of delivery.

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

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

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

Sec. 5. G.S. 105-441(a) reads as rewritten:

"(a) Acts. – Any ~~distributor~~ person who commits one or more of the following acts is guilty of a Class 1 misdemeanor:

- (1) Fails to obtain a license required by this Article.
- (2) Willfully fails to make a report required by this Article.

- (3) Willfully fails to pay a tax when due under this Article.
- (4) Makes a false statement in an application, a report, or a statement required under this Article.
- (5) Fails to keep records as required under this Article.
- (6) Refuses to allow the Secretary of Revenue or a representative of the Secretary of Revenue to examine the distributor's person's books and records concerning motor fuel.
- (7) Fails to disclose the correct amount of motor fuel sold or used in this State.
- (8) Fails to file a replacement bond or an additional bond as required under this Article.
- (9) Fails to show or give a shipping document as required under this Article."

Sec. 6. G.S. 105-447 reads as rewritten:

"§ 105-447. Reports and records of carriers, movements of motor fuel.

~~Every person, firm or corporation engaged in the business of, or transporting motor fuel, whether common carrier or otherwise, and whether by rail, water, pipeline or over public highways, either in interstate or in intrastate commerce, to points within the State of North Carolina, and every person, firm or corporation transporting motor fuel by whatever manner to a point in the State of North Carolina from any point outside of said State shall be required to keep for a period of two years from the date of each delivery records on forms prescribed by, or satisfactory to, the Secretary of Revenue of all receipts and deliveries of motor fuel so received or delivered to points within the State of North Carolina, including duplicate original copies of delivery tickets or invoices covering such receipts and deliveries, showing the date of the receipt or delivery, the name and address of the party to whom each delivery is made, and the amount of each delivery; and shall report, under oath, to the Secretary of Revenue, on forms prescribed by said Secretary of Revenue, all deliveries of motor fuel so made to points within the State of North Carolina. Such reports shall cover monthly periods, shall be submitted within the first 10 days of each month covering all shipments transported and delivered for the previous month, shall show the name and address of the person to whom the deliveries of motor fuel have actually and in fact been made, the name and address of the originally named consignee if motor fuel has been delivered to any other than the originally named consignee, the point of origin, the point of delivery, the date of delivery, and the number and initials of each tank car, and the number of gallons contained therein if shipped by rail; the name of the boat, barge or vessel, and the number of gallons contained therein, and the consignor and consignee if shipped by water; the license number of each tank truck and the number of gallons contained therein, and the consignor and consignee if transported by motor truck; if delivered by other means the manner in which such delivery is made; and such other additional information relative to shipments of motor fuel as the Secretary of Revenue may require. Provided, that the Secretary of Revenue may modify or suspend the provisions of this section with regard to reports of interstate or intrastate shipments or deliveries upon application of any licensed distributor. Provided, also, that the Secretary of~~

~~Revenue shall have full power to require any distributor to make additional reports and to produce for examination duplicate originals of delivery tickets or invoices covering both receipts and deliveries of products as herein provided. The reports herein provided for shall cover specifically gasoline, kerosene, benzine, naphtha, crude oil, or any distillates from crude petroleum. Any person, firm or corporation refusing, failing or neglecting to make such report shall be guilty of a Class 1 misdemeanor.~~

(a) Report. – A person who transports, by pipeline, marine vessel, railroad tank car, or transport truck, motor fuel that is being imported into this State or exported from this State must make a monthly report to the Secretary of motor fuel received or delivered for import or export by the transporter during the month. The report is due by the 25th day of the month following the month covered by the report and must contain the following information and any other information required by the Secretary:

- (1) The 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, and the date the motor fuel was received.
- (2) The name and address of each person to whom the transporter delivered motor fuel from a location inside the State to a location outside the State, the amount of motor fuel delivered, and the date the motor fuel was delivered.

(b) Records. – A person who is required to submit a report under subsection (a) must keep a record of all shipping documents or other documents used to determine the information provided in the report. The records must be kept for three years from the due date of the report to which the records apply."

Sec. 7. G.S. 105-449.27 reads as rewritten:

"§ 105-449.27. Article 9 of Revenue Act made applicable. Shipping document requirements and transporter report requirements that apply to motor fuel also apply to fuel.

~~All the provisions of Article 9 of Chapter 105 of the General Statutes, relating to general administration, penalties and remedies pursuant to the State Revenue Act, shall insofar as practicable, and except when in a direct conflict with the provisions of this Article, be applicable with respect to this Article. The requirements set by G.S. 105-438.1 concerning a shipping document apply to fuel. The requirements set by G.S. 105-447 concerning reports and records of movements of motor fuel apply to movements of fuel."~~

Sec. 8. G.S. 105-449.34(a) reads as rewritten:

~~"(a) General Class 1 Misdemeanors. – A person who commits one or more of the following acts is guilty of a Class 1 misdemeanor and is punishable as provided in G.S. 14-3: misdemeanor:~~

- ~~(1) Fails to obtain a license required by this Article.~~
- ~~(2) Willfully fails to make a report required by this Article.~~
- ~~(3) Willfully fails to pay a tax when due under this Article.~~
- ~~(4) Makes a false statement in an application, a report, or a statement required under this Article.~~

- (5) Fails to keep records as required under this Article.
- (6) Refuses to allow the Secretary or a representative of the Secretary to examine the licensee's books and records concerning fuel.
- (7) Fails to disclose the correct amount of fuel sold or used in this State.
- (8) Fails to file a replacement bond or an additional bond as required under this Article.
- (9) Fails to show or give a shipping document as required under this Article."

Sec. 9. G.S. 105-449.2 is amended by adding the following definitions in the appropriate order to read:

"(1a) Code. – Defined in G.S. 105-228.90.

(2a) Dyed diesel fuel. – Diesel fuel that is required to be dyed under section 4082 of the Code or under regulations adopted by the United States Environmental Protection Agency."

Sec. 10. Article 36A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.24A. Penalties for highway use of dyed diesel fuel.

It is unlawful to use dyed diesel fuel for a highway use unless that use is permitted under section 4082 of the Code. A person who operates on a highway a motor vehicle whose supply tank contains dyed diesel fuel whose use is unlawful under this section is guilty of a Class 1 misdemeanor and is liable for a civil penalty.

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

Sec. 11. This act becomes effective January 1, 1995.

In the General Assembly read three times and ratified this the 11th day of July, 1994.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives