

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2002-108
SENATE BILL 1407**

AN ACT TO ESTABLISH A CONTRACT RIGHT REGARDING THE TIMING OF
PAYMENTS UNDER CONTRACTS REQUIRING REIMBURSEMENT OF
FEDERAL FUEL EXCISE TAXES AND TO MAKE VARIOUS MOTOR FUEL
EXCISE TAX CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 119 of the General Statutes is amended by adding a new Article to read:

"Article 6.

"Contract Rights Regarding Tax Reimbursement.

"§ 119-65. Timing of reimbursement payments under contract.

(a) Right. – When a contract calls for one party to reimburse a second party for the federal manufacturer's excise taxes levied on petroleum products in Part III of Subchapter A of Chapter 32 of the Internal Revenue Code, whether as a separate item or as part of the price, the party making the reimbursement has the right to choose to tender payment for the taxes no more than one business day before the day the second party is required to remit the taxes to the federal Internal Revenue Service. The party making the reimbursement has the option of exercising this right. Exercise of this right does not relieve the party of the obligation to make the reimbursement as provided for in the contract, but affects only the timing of when that reimbursement must be tendered.

(b) Procedure. – In order to exercise the contractual right established in subsection (a) of this section, the party making the reimbursement must notify the second party in writing of the intent to exercise the payment option and the effective date of the exercise. The effective date must be no earlier than the beginning of the next federal tax quarter or 30 days after the notice of intent is received, whichever is later.

(c) Security. – If the party making the reimbursement exercises the contractual right provided in this section, the second party may require security for the payment of the taxes in proportion to the amount the taxes represent compared to the security required on the contract as a whole. The second party may not, however, change the other payment terms of the contract without a valid business reason other than the exercise of the contractual right, except to require the payment of the taxes under the contractual right to be made by electronic funds transfer."

SECTION 2. G.S. 105-449.41 is repealed.

SECTION 3. G.S. 105-449.47 is amended by adding a new subsection to read:

"§ 105-449.47. Registration of vehicles.

(a) Requirement. – A motor carrier that is subject to the International Fuel Tax Agreement may not operate or cause to be operated in this State any vehicle listed in the definition of motor vehicle unless both the motor carrier and the motor vehicle are registered with the motor carrier's base state jurisdiction. A motor carrier that is not subject to the International Fuel Tax Agreement may not operate or cause to be operated in this State any vehicle listed in the definition of motor vehicle unless both the motor carrier and the motor vehicle are registered with the Secretary for purposes of the tax imposed by this Article.

(a1) Registration and Identification Marker. – When the Secretary registers a motor carrier, the Secretary must issue at least one identification marker for each motor vehicle operated by the motor carrier. A motor carrier must keep records of identification markers issued to it and must be able to account for all identification markers it receives from the Secretary. Registrations and identification markers issued by the Secretary are for a calendar year. The Secretary may renew 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 or an identification marker when a motor carrier fails to comply with this Article, former Article 36 or 36A of this Subchapter, or Article 36C or 36D of this Subchapter.

A motor carrier must carry a copy of its registration in each motor vehicle operated by the motor carrier when the vehicle is in this State. A motor vehicle must clearly display an identification marker at all times. The identification marker must be affixed to the vehicle for which it was issued in the place and manner designated by the authority that issued it.

(b) Exemption. – This section does not apply to the operation of a vehicle that is registered in another state and is operated temporarily in this State by a public utility, a governmental or cooperative provider of utility services, or a contractor for one of these entities for the purpose of restoring utility services in an emergency outage."

SECTION 4. G.S. 105-449.52 reads as rewritten:

"§ 105-449.52. ~~Penalty for operating a motor vehicle without a registration card or an identification marker.~~ Civil penalties applicable to motor carriers.

(a) Penalty. – A motor carrier who does any of the following is subject to a civil penalty:

- (1) ~~operates~~ Operates in this State or causes to be operated in this State a motor vehicle that does not carry the registration card required by this Article or does not display an identification marker in accordance with this Article ~~is subject to a civil penalty of one hundred dollars (\$100.00).~~ Article. The amount of the penalty is one hundred dollars (\$100.00).
- (2) Is unable to account for identification markers the Secretary issues the motor carrier, as required by G.S. 105-449.47. The amount of the penalty is one hundred dollars (\$100.00) for each identification marker the carrier is unable to account for.
- (3) Displays an identification marker on a motor vehicle operated by a motor carrier that was not issued to the carrier by the Secretary under G.S. 105-449.47. The amount of the penalty is one thousand dollars (\$1,000) for each identification marker unlawfully obtained. Both the licensed motor carrier to whom the Secretary issued the identification marker and the motor carrier displaying the unlawfully obtained identification marker are jointly and severally liable for the penalty under this subdivision.

~~The~~ A penalty imposed under this section is payable to the Department of Revenue or the Division of Motor Vehicles. When a motor vehicle is found to be operating without a registration card or an identification marker, marker or with an identification marker the Secretary did not issue for the vehicle, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty.

(b) Hearing. – The procedure set out in G.S. 105-449.119 for protesting a penalty imposed under Article 36C, Part 6, of this Chapter applies to a penalty imposed under this section."

SECTION 5. G.S. 105-449.60(1) is recodified as G.S. 105-449.60(1e).

SECTION 6. G.S. 105-449.60 reads as rewritten:

"§ 105-449.60. Definitions.

The following definitions apply in this Article:

- "(1) Biodiesel. – Any fuel or mixture of fuels derived in whole or in part from agricultural products or animal fats or wastes from these products or fats.
- (1a) Biodiesel provider. – A person who does any of the following:
- a. Produces an average of no more than 500,000 gallons of biodiesel per month during a calendar year. A person who produces more than this amount is a refiner.
 - b. Imports biodiesel outside the terminal transfer system by means of a marine vessel, a transport truck, a railroad tank car, or a tank wagon.
- ...
- (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.~~ kerosene and biodiesel. The term does not include jet fuel sold to a buyer who is certified to purchase jet fuel under the Code.
- ...
- (12) Fuel alcohol. – ~~Methanol.~~ Alcohol, methanol, or fuel grade ethanol.
- (13) Fuel alcohol provider. – A person who does any of the following:
- a. Produces an average of no more than 500,000 gallons of fuel alcohol-alcohol per month during a calendar year. A person who produces more than this amount is a refiner.
 - b. Imports fuel alcohol outside the terminal transfer system by means of a marine vessel, a transport truck, ~~or~~ a railroad tank car-car, or a tank wagon.
- ...
- (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-alcohol.
- 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.
- ...
- (22) Motor fuel transporter. – A person who transports motor fuel by pipeline or who transports motor fuel outside the terminal transfer system by means of a transport truck, a railroad tank car, or a marine vessel.
- ...
- (27a) Refiner. – A person who owns, operates, or controls a refinery. The term includes a person who produces an average of more than 500,000 gallons of fuel alcohol or biodiesel a month during a calendar year.
- (27b) Refinery. – A facility used to process crude oil, unfinished oils, natural gas liquids, or other hydrocarbons into motor fuel and from which fuel may be removed by pipeline or vessel or at a rack. The term does not include a facility that produces only blended fuel or gasohol.

...

- (31) Supplier. – Any of the following:
- a. A position holder or a person who receives motor fuel pursuant to a two-party exchange.
 - b. A fuel alcohol provider.
 - c. A biodiesel provider.
 - d. A refiner.

...
(33) Tank wagon. – A truck that is not a transport truck ~~and has multiple compartments and has a compartment~~ designed or used to carry at least 1,000 gallons of motor fuel."

SECTION 7. G.S. 105-449.72(a)(2) reads as rewritten:

"(a) Initial Bond. – An applicant for a license as a refiner, a terminal operator, a supplier, an importer, 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:

- ...
(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 or a biodiesel provider but is neither a position holder 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. Repealed by Session Laws 1997-60, s. 5."

SECTION 8. G.S. 105-449.72(d) reads as rewritten:

"(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 9. 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) ~~Supplier~~ Lists. – The Secretary must annually give a list to each license holder of all the license holders under this Article. 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 refiner or licensed supplier and to any other license holder that requests a copy of the list. ~~of licensed suppliers, licensed terminal operators, licensed importers, licensed distributors, and licensed exporters to each licensed supplier. 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 supplier.~~

~~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 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 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."~~

SECTION 10. G.S. 105-449.87 reads as rewritten:

"§ 105-449.87. Backup tax and liability for the tax.

(a) Tax. – An excise tax at the motor fuel rate is imposed on the following:

- (1) Dyed diesel fuel that is used to operate a highway vehicle for a use that is not a nontaxable use under § 4082(b) of the Code. ~~The tax does not apply, however, to dyed diesel fuel that is used to operate special mobile equipment.~~
- (2) Motor fuel that was allowed an exemption from the motor fuel tax and was then used for a taxable purpose.
- (3) Motor fuel that is used to operate a highway vehicle after an application for a refund of tax paid on the motor fuel is made or allowed under G.S. 105-449.107(a) on the basis that the motor fuel was used for an off-highway purpose.
- (4) Repealed by Session Laws 1995 (Regular Session, 1996), c. 647, s. 19.
- (5) Motor fuel that, based on its shipping document, is destined for delivery to another state and is then diverted and delivered in this State.

(b) General Liability. – The operator of a highway vehicle that uses motor fuel that is taxable under subdivisions (a)(1) through (a)(3) of 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. An end seller of dyed diesel fuel is considered to have known or had reason to know that the fuel would be used for a purpose that is taxable under this section if the end seller delivered the fuel into a storage facility that was not marked as required by G.S. 105-449.123.

~~(c) Imputed Knowledge-Diverted Fuel. – An end seller of dyed diesel fuel is considered to have known or had reason to know that the fuel would be used for a purpose that is taxable under this section if the end seller delivered the fuel into a storage facility that was not marked as required by G.S. 105-449.123. The person who authorizes a change in the destination state of motor fuel from the state given on the~~

fuel's shipping document to North Carolina is liable for the tax due on the motor fuel. If motor fuel is diverted from North Carolina to another state, only the person who authorized the fuel to be diverted is eligible for a refund of the amount of tax paid on the fuel."

SECTION 11. G.S. 105-449.88 is amended by adding a new subdivision to read:

"(8) Motor fuel sold to a county or a municipal corporation for its use."

SECTION 12. G.S. 105-449.101(a) reads as rewritten:

"(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~~ motor fuel transporter that imports motor fuel into this State or exports motor fuel from this State must file a monthly informational return with the Secretary 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."

SECTION 13. G.S. 105-449.106(a) reads as rewritten:

"(a) ~~Government and Nonprofits.~~ – ~~A local governmental entity or a nonprofit organization listed below that purchases and uses motor fuel may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the amount of the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon.~~

An application for a refund allowed under this subsection must be made in accordance with this Part and must be signed by the chief executive officer of the ~~entity~~ organization. The chief executive officer of a nonprofit organization is the president of the organization or another officer of the organization designated in the charter or bylaws of the organization.

Any of the following entities may receive a refund under this subsection:

- ~~(1) A county or a municipal corporation.~~
- (2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.
- (3) A volunteer fire department.
- (4) A volunteer rescue squad.
- (5) A sheltered workshop recognized by the Department of Health and Human Services."

SECTION 14. G.S. 105-449.114(c) reads as rewritten:

"(c) Notwithstanding any other provision of law concerning refunds of motor fuels and ~~special-alternative~~ fuels taxes, the Department of Revenue may enter into a memorandum of understanding or an agreement with the Eastern Band of Cherokee Indians to make refunds of motor fuels and ~~special-alternative~~ fuels taxes to the Tribe in its collective capacity on behalf of its members who reside on or engage in otherwise taxable transactions within Cherokee trust lands. The memorandum or agreement shall be approved by the Council and signed by the Chief on behalf of the Tribe and shall be signed by the Secretary of Revenue on behalf of Department of Revenue. The memorandum or agreement may not affect the right of an individual member of the Tribe to a refund and shall provide for deduction of amounts refunded to individual members of the Tribe from the amounts to be refunded to the Tribe on behalf of all members. The memorandum or agreement may be effective for a definite or indefinite period, as specified in the agreement."

SECTION 15. G.S. 105-449.115(f) reads as rewritten:

"(f) 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 care 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 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 one thousand five hundred dollars (\$1,500). For a second or subsequent assessment under this subsection, the penalty is seven thousand five hundred dollars (\$7,500).~~ is five thousand dollars (\$5,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

SECTION 16. Part 6 of Article 36C of Chapter 105 of the General Statutes is amended by adding new section to read:

"§ 105-449.115A. Shipping document required to transport fuel by tank wagon.

(a) Issuance. – A person may not transport motor fuel by tank wagon unless that person has an invoice, bill of sale, or shipping document containing the following information and any other information required by the Secretary:

- (1) The name and address of the person from whom the motor fuel was received.
- (2) The date the fuel was loaded.
- (3) The type of fuel.
- (4) The gross number of gallons loaded.

(b) Duties of Transporter. – A person to whom an invoice, bill of sale, or shipping document was issued must do all of the following:

- (1) Carry the invoice, bill of sale, or shipping document in the conveyance for which it is issued when transporting the motor fuel described in it.
- (2) Show the invoice, bill of sale, or shipping document upon request when transporting the motor fuel described in it.

(c) Sanctions. – Transporting motor fuel in a tank wagon without an invoice, bill of sale, or shipping document containing the information required by this section is grounds for a civil penalty payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue. The penalty imposed under this subsection is payable by the person in whose name the tank wagon is registered. The amount of the penalty is one thousand dollars (\$1,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

SECTION 17. G.S. 105-449.118 reads as rewritten:

"§ 105-449.118. Civil penalty for buying or selling non-tax-paid motor fuel.

A person who dispenses non-tax-paid motor fuel into the supply tank of a highway vehicle or who allows non-tax-paid motor fuel to be dispensed into the supply tank of a highway vehicle is subject to a civil ~~penalty~~ penalty of two hundred fifty dollars (\$250.00) per occurrence. ~~The penalty is based on the amount of motor fuel dispensed and is set at the following amounts:~~

<u>Number of Gallons Dispensed:</u>	<u>Penalty</u>
Less than 25	\$ 75.00
At least 25 but less than 50	150.00
At least 50	300.00.

The penalty is payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue. Failure to pay a penalty imposed under this section is grounds under G.S. 20-88.01(b) to withhold or revoke the registration plate of the motor vehicle into which the motor fuel was dispensed."

SECTION 18.(a) Section 1 of this act becomes effective September 1, 2002, and applies to contracts entered into or renewed on or after that date and to all continuing contracts that are in effect on that date and have no expiration date. Section 1 of this act does not apply to a contract in effect on September 1, 2002, that, by its terms, will terminate on a later date. Section 1 of this act does not impair the obligation arising under any contract executed before September 1, 2002.

SECTION 18.(b) The remainder of this act becomes effective January 1, 2003.

In the General Assembly read three times and ratified this the 27th day of August, 2002.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 4:55 p.m. this 6th day of September, 2002