

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 797*

Short Title: Diesel Fuel Payment Method.

(Public)

Sponsors: Senator Hoyle.

Referred to: Finance

April 24, 1995

A BILL TO BE ENTITLED

1
2 **AN ACT TO PROVIDE THAT THE PER GALLON EXCISE TAX ON DIESEL FUEL**
3 **SHALL BE PAID PARTLY AT THE PUMP AND PARTLY EITHER BY MAKING**
4 **AN ADDITIONAL PAYMENT WHEN A MOTOR CARRIER REPORT IS FILED**
5 **OR BY PAYMENT OF AN ANNUAL REGISTRATION TAX.**

Whereas, North Carolina has one of the highest diesel fuel taxes in the United States; and
Whereas, since North Carolina increased its diesel fuel tax by 5 cents per gallon in the
fall of 1989, truckers have shifted their fueling to other states; and
Whereas, the burden of this shift has fallen on the North Carolina truckstops that support
these trucks and these truckstops have not participated in increased growth in the
economy; and

Whereas, North Carolina truckstops have the highest average pump price and the lowest
average gallon per fill for major North-South traffic routes; and

Whereas, Virginia collects 3.5 cents per gallon through motor carrier quarterly reports,
Indiana collects 11 cents per gallon from motor carrier quarterly reports, and at least 6
other states collect part of their per gallon tax on diesel fuel through motor carrier
quarterly reports; and

Whereas, lower advertised prices of fuel to truckers passing through this State on
interstate routes would cause sales to rise; Now, therefore,

6 The General Assembly of North Carolina enacts:

1 Section 1. G.S. 105-449.2 is amended by adding a new subdivision to read:

2 "(6a) Nontaxpaid fuel. – Fuel on which the tax, other than the surtax, imposed
3 by this Article has not been paid."

4 Sec. 2. G.S. 105-449.10 reads as rewritten:

5 "**§ 105-449.10. Report of fuel use and payment of tax by user.**

6 (a) General. – A user who is required to have a user's license must keep records
7 and comply with either subsection (b) or subsection (c), as appropriate. The records must
8 account for all fuel used by the user to ~~propel~~operate a motor vehicle.

9 (b) Motor Carrier. – A user who is a motor carrier ~~and who files~~must file a
10 quarterly or an annual report under G.S. 105-449.45. ~~105-449.45 does not have to file a~~
11 ~~report under this section. A user who is a motor carrier and who does not file either a~~
12 ~~quarterly or an annual report under G.S. 105-449.45 must file a report under this section.~~
13 ~~A report by a motor carrier must state the total number of miles driven during the~~
14 ~~reporting period by motor vehicles operated by the motor carrier and the total amount of~~
15 ~~fuel the motor carrier bought in the State during the reporting period for use in motor~~
16 ~~vehicles operated by the motor carrier.~~

17 ~~A motor carrier who has to file a report must file a quarterly report unless the~~
18 ~~Secretary has given the motor carrier permission to file an annual report. A quarterly~~
19 ~~report covers a calendar quarter and is due by the last day in April, July, October, and~~
20 ~~January.~~

21 ~~The Secretary may authorize a motor carrier to file an annual report if the motor~~
22 ~~carrier is in compliance with this Article and Article 36B of this Subchapter. An annual~~
23 ~~report covers a fiscal year beginning July 1 and ending the following June 30 and is due~~
24 ~~by July 31 after the end of a fiscal year. To file an annual report, a motor carrier must~~
25 ~~apply to the Secretary for permission to file on an annual basis. Once granted~~
26 ~~permission, a motor carrier may continue to file an annual report until notified by the~~
27 ~~Secretary to file a quarterly report.~~

28 (c) Other Users. – A user who is required to have a user's license but is not a motor
29 carrier must file an annual ~~statement certifying that the user either did not use any~~
30 ~~nontaxpaid fuel in a motor vehicle during the preceding fiscal year or paid tax on any~~
31 ~~nontaxpaid fuel acquired during the preceding fiscal year for use in a motor vehicle. A~~
32 ~~statement must be filed~~report with the Secretary by July 31 of each year. The report
33 must be in the form prescribed by the Secretary and must include any information
34 required by the Secretary to determine the user's liability for the tax levied by this Article
35 for the preceding fiscal year.

36 (d) Payment. – A user who acquires nontaxpaid fuel is liable for the tax levied
37 by this Article on the fuel. Tax due on nontaxpaid fuel acquired during a reporting period
38 by a user who must file a report under this section or G.S. 105-449.45 is due when the
39 report for that reporting period is due. Tax due on nontaxpaid fuel acquired by a user
40 who does not have to file a report under this section or G.S. 105-449.45 must be paid to
41 the Secretary within 45 days after the fuel is acquired."

42 Sec. 3. G.S. 105-449.16 reads as rewritten:

43 "**§ 105-449.16. Levy of tax and application of tax proceeds.**

1 (a) Tax. – A tax is imposed upon all of the following fuel:

2 (1) Fuel sold or delivered by a supplier to a licensed user-seller.

3 (2) Fuel used by a supplier in a motor vehicle owned, leased, or operated by
4 the supplier.

5 (3) Fuel delivered by a supplier directly into the fuel supply tank of a motor
6 vehicle.

7 (4) Fuel imported by a user-seller into this State, by a means other than
8 carrying the fuel in a fuel supply tank of a motor vehicle, for resale or to
9 operate a motor vehicle.

10 (5) Fuel acquired tax free by a user-seller or user in this State for resale or
11 to operate a motor vehicle.

12 The tax on liquid fuel other than diesel is at the rate established under G.S. 105-434.
13 The tax on non-liquid fuel is at a rate equivalent to the rate of tax on liquid ~~fuel~~, fuel other
14 than diesel, as determined by the Secretary. The tax on liquid diesel fuel is at a flat rate
15 of ten and one-half cents (10 1/2¢) per gallon plus the variable rate established under G.S.
16 105-434.

17 A supplier who consigns fuel to a reseller may elect to report and pay the tax due on
18 the fuel when the reseller sells or dispenses the fuel instead of when the supplier delivers
19 the fuel to the reseller.

20 (a1) Surtax. – A surtax is imposed on liquid diesel fuel used in this State to operate
21 a motor vehicle. The surtax is at the rate of seven cents (7¢) per gallon. This surtax does
22 not apply to fuel used to operate a motor vehicle having a registered gross vehicle weight
23 of 26,000 pounds or less.

24 (a2) Purpose of Tax. – The primary purposes of this levy and this Article are to
25 provide a more efficient and effective method of collecting the tax now imposed and
26 collected pursuant to G.S. 105-435, by providing for the collection of the tax from the
27 supplier instead of the user. The tax levied by this Article is in lieu of rather than in
28 addition to the tax levied by G.S. 105-435; payment of the tax levied by this Article
29 constitutes compliance with G.S. 105-435.

30 (b) Application of Tax Proceeds. – The same percentage amounts of revenue
31 collected under this Article shall be credited to the Highway Fund and to the Highway
32 Trust Fund as are credited to those Funds under G.S. 105-445, and the same percentage
33 amounts of refunds allowed under this Article shall be charged to the Highway Fund and
34 to the Highway Trust Fund as are charged to those Funds under that statute.

35 (c) Expired."

36 Sec. 4. G.S. 105-449.19(b) reads as rewritten:

37 "(b) Information. – A return filed by a supplier must contain all of the following
38 information:

39 (1) The amount of fuel the supplier had on hand on the first and last days of
40 the reporting period.

41 (2) The amount of fuel the supplier received during the reporting period.

42 (3) The amount of fuel the supplier used during the reporting period to
43 operate a motor vehicle and the amount of fuel the supplier used during

1 the reporting period for a purpose other than to operate a motor vehicle,
2 stated separately.

3 (4) The amount of fuel the supplier sold or delivered to a licensed bulk-
4 user, a licensed reseller, a licensed user, or other persons, stated
5 separately.

6 (5) Any other information required by the Secretary to determine the
7 supplier's liability for the tax or surtax levied by this Article."

8 Sec. 5. G.S. 105-449.21 reads as rewritten:

9 **"§ 105-449.21. Report of purchases and payment of tax by user-seller.**

10 On or before the last day of the month immediately following the end of the quarter,
11 each user-seller not otherwise licensed as a supplier shall ~~render to file with~~ file with the Secretary
12 a ~~statement-report~~ statement-report on forms furnished by the Secretary which shall be signed by the user-
13 seller. The ~~statement-report~~ statement-report shall show the quantity of fuel on hand at the beginning of the
14 quarter, the quantity on hand at the end of the quarter, and the quantity sold or used, and
15 each and every purchase made by the user-seller during the preceding calendar quarter.
16 Each purchase shall be specifically noted on the ~~statement and the statement-report~~ statement-report which
17 shall show the name and address of the supplier and the quantity and date of each
18 purchase. The report shall also include any other information required by the Secretary
19 to determine the user-seller's liability for the tax or surtax levied by this Article. Tax
20 owed by a user-seller because of fuel imported or acquired tax-free in any manner
21 whatsoever during a reporting period is due when the ~~statement-report~~ statement-report for that period is
22 due."

23 Sec. 6. G.S. 105-449.26(b) reads as rewritten:

24 "(b) Content. – A record of a sale and a receipt for a sale shall include all of the
25 following information:

26 (1) The name and address of the user-seller or supplier.

27 (2) The name and address of the person buying the fuel.

28 (2a) If the person buying the fuel is a motor carrier, the person's North
29 Carolina fuel license number or International Fuel Tax Agreement fuel
30 license number.

31 (3) The date the fuel was sold.

32 (4) The amount of fuel sold.

33 (5) The type of fuel sold.

34 (6) The total sales price of the fuel.

35 (7) Either of the following:

36 a. The company name and company unit number of the motor
37 vehicle into which the fuel was dispensed.

38 b. The license plate number of the motor vehicle into which the fuel
39 was dispensed and the state that issued the license plate.

40 (8) If the fuel is diesel and is sold for a purpose other than to operate a
41 motor vehicle, the type of container or equipment into which the fuel
42 was dispensed."

43 Sec. 7. G.S. 105-449.38 reads as rewritten:

1 **"§ 105-449.38. Tax levied.**

2 A road tax for the privilege of using the streets and highways of this State is hereby
3 imposed upon every motor carrier on the amount of gasoline or other motor fuel used by
4 such motor carrier in its operations within this State. The tax on motor fuel other than
5 diesel fuel shall be at the rate established by the Secretary pursuant to G.S. 105-434. The
6 tax on diesel fuel shall be the combination of the following:

7 (1) A base tax at a flat rate of ten and one-half cents (10 1/2¢) per gallon
8 plus the variable rate established pursuant to G.S. 105-434.

9 (2) A surtax of seven cents (7¢) per gallon.

10 Except as credit for certain taxes as hereinafter provided for in this Article, taxes
11 imposed on motor carriers by this Article are in addition to any taxes imposed on such
12 carriers by any other provisions of law. The tax herein levied is for the same purposes as
13 the tax imposed under the provisions of G.S. 105-434."

14 Sec. 8. G.S. 105-449.39 reads as rewritten:

15 **"§ 105-449.39. Credit for payment of motor fuel tax.**

16 Every motor carrier subject to the tax levied by this Article is entitled to a credit for
17 tax paid by the carrier on fuel purchased in the State. No credit is allowed for the surtax
18 levied in G.S. 105-449.16 unless the motor carrier pays the surtax with the report on
19 which the credit is claimed or has paid the surtax with an earlier report. A motor carrier
20 who files a quarterly report is entitled to a credit at a rate equal to the flat cents-per-gallon
21 rate plus the variable cents-per-gallon rate of tax in effect during the quarter for which the
22 credit is claimed. A motor carrier who files an annual report is entitled to a credit at a
23 rate equal to the flat cents-per-gallon rate plus the average of the two variable cents-per-
24 gallon rates of tax in effect during the year for which the credit is claimed. To obtain a
25 credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax
26 for which the credit is claimed has been paid.

27 If the amount of a credit to which a motor carrier is entitled for a reporting period
28 exceeds the motor carrier's liability for that reporting period, the excess may, in
29 accordance with rules adopted by the Secretary, be refunded to the motor carrier or
30 carried forward and applied to the motor carrier's tax liability for another reporting
31 period. Before the Secretary allows a motor carrier a refund, the Secretary may audit the
32 motor carrier's records or require the motor carrier to furnish a bond under G.S. 105-
33 449.40."

34 Sec. 9. G.S. 105-449.45, as amended by Chapter 17 of the 1995 Session Laws,
35 reads as rewritten:

36 **"§ 105-449.45. Reports of carriers.**

37 (a) Quarterly Report. – A motor carrier shall report its operations to the Secretary
38 on a quarterly basis unless this subsection exempts the motor carrier from this
39 requirement or permits the motor carrier to report on a different basis. A motor carrier is
40 not required to file a quarterly report if:

41 (1) All the motor carrier's operations during the quarter were made under a
42 temporary permit issued under G.S. 105-449.49.

1 (2) The motor carrier is an intrastate motor carrier, as indicated on the
2 motor carrier's application for registration with the ~~Secretary~~ Secretary,
3 and the motor carrier does not operate any vehicles that use diesel fuel.

4 (3) The motor carrier has been granted permission to file an annual report
5 under subsection (b).

6 A quarterly report covers a calendar quarter and is due by the last day in April, July,
7 October, and January.

8 (b) Annual Report. – The Secretary may authorize a motor carrier whose estimated
9 annual tax liability under this Article does not exceed two hundred dollars (\$200.00) to
10 file an annual report of its operations. The tax liability of a motor carrier that files an
11 annual report shall be computed at a rate equal to the flat cents-per-gallon rate plus the
12 average of the two cents-per-gallon rates in effect during the year for which the liability
13 is computed.

14 An annual report covers a fiscal year beginning on July 1 and ending on the following
15 June 30 and is due by July 31 after the end of a fiscal year. To file an annual report, a
16 motor carrier must apply to the Secretary for permission to file on an annual basis. An
17 application must be submitted by the date set by the Secretary. Once granted permission,
18 a motor carrier may continue to file an annual report until notified by the Secretary to file
19 a quarterly report.

20 (c) Other Reports. – A motor carrier shall file with the Secretary other reports
21 concerning its operations that the Secretary requires.

22 (c1) Information in Report. – A motor carrier shall provide with a report filed under
23 this section any information required by the Secretary to determine the motor carrier's
24 liability for the tax or surtax levied by this Article.

25 (d) Penalties. – A motor carrier that fails to file a report under this section by the
26 required date is subject to a penalty of up to fifty dollars (\$50.00) for the first failure and
27 of up to one hundred dollars (\$100.00) for a subsequent failure."

28 Sec. 10. G.S. 20-87 is amended by adding at the end a new subdivision to
29 read:

30 "(12) Certain Diesel Vehicles. – In addition to other fees and taxes, a tax
31 of fifty dollars (\$50.00) shall be paid on passenger vehicles that are
32 powered by diesel fuel. Three-fourths of the revenue collected under
33 this subdivision shall be credited to the Highway Fund. The
34 remaining one-fourth of the revenue collected under this subdivision
35 shall be credited to the North Carolina Highway Trust Fund."

36 Sec. 11. G.S. 20-88 is amended by adding at the end a new subsection to read:

37 "(k) There shall be paid to the Division annually, in addition to other fees and taxes,
38 a tax on property-carrying vehicles that are powered by diesel fuel and have a gross
39 vehicle weight rating (GVWR) of 26,000 pounds or less. The tax on vehicles that have a
40 gross vehicle weight rating of 16,500 pounds or less is fifty dollars (\$50.00); the tax on
41 vehicles that have a gross vehicle weight rating of more than 16,500 pounds but not more
42 than 26,000 pounds is one hundred fifty dollars (\$150.00). Three-fourths of the revenue
43 collected under this subsection shall be credited to the Highway Fund. The remaining

1 one-fourth of the revenue collected under this subsection shall be credited to the North
2 Carolina Highway Trust Fund."

3 Sec. 12. The Joint Legislative Transportation Oversight Committee created in
4 G.S. 120-70.50 shall study the issue of the level of consumption of liquid diesel fuel in
5 this State as compared to surrounding states. The Committee shall also study the impact
6 of this act upon the level of consumption of liquid diesel fuel in this State and upon
7 Highway Fund revenues and Highway Trust Fund revenues. The Department of
8 Transportation and the Department of Revenue shall provide the Committee any
9 information it requires to conduct this study. The Committee may report to the 1996
10 Session of the 1995 General Assembly and the 1997 Session of the 1997 General
11 Assembly on this study. The Committee shall make a final report on the results of the
12 study to the 1998 Session of the 1997 General Assembly, including a recommendation as
13 to whether the provisions of this act should be continued after October 1, 1998.

14 Sec. 13. (a) This act becomes effective October 1, 1995, and expires October
15 1, 1998.

16 (b) If a taxpayer's inventory of liquid diesel fuel on hand or in the taxpayer's
17 possession as of 12:01 a.m., October 1, 1995, contains liquid diesel fuel on which the tax
18 levied in Article 36A of Chapter 105 of the General Statutes has been paid, the Secretary
19 of Revenue shall refund to the taxpayer an amount equal to seven cents (7¢) per gallon of
20 this fuel. In order to be eligible for this refund, the taxpayer must be in compliance with
21 G.S. 105-449.10, 105-449.19, 105-449.21, 105-449.23, and 105-449.45, and must
22 provide any information required by the Secretary of Revenue to determine the taxpayer's
23 eligibility for the refund.

24 (c) Every supplier or reseller of special fuel must inventory all liquid diesel fuel on
25 hand or in its possession as of 12:01 a.m., October 1, 1998, and, on or before November
26 1, 1998, must report to the Secretary of Revenue the amount of the liquid diesel fuel.
27 When filing the report, the supplier or reseller must remit to the Secretary of Revenue an
28 additional tax on the liquid diesel fuel of seven cents (7¢) per gallon. The report required
29 must be in a form prescribed by the Secretary. Notwithstanding G.S. 105-449.39 to the
30 contrary, a motor carrier that as of 12:01 a.m. on October 1, 1998, has on hand or in its
31 possession liquid diesel fuel upon which it has paid the tax but not the surtax in effect on
32 September 30, 1998, is allowed a credit of only the amount of tax paid on the fuel when
33 filing the report required by G.S. 105-449.45.