

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 943
Finance Committee Substitute Adopted 5/17/95

Short Title: Motor Fuel/Use Tax Changes.

(Public)

Sponsors:

Referred to:

May 2, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO ADDRESS MOTOR FUEL TAX EVASION AND TO IMPROVE THE
3 ADMINISTRATION OF THE MOTOR FUEL TAXES BY CHANGING THE
4 POINT OF TAXATION OF GASOLINE AND DIESEL FUEL, TO REPEAL THE
5 MINIMUM HIGHWAY USE TAX, AND TO STRENGTHEN THE
6 ENFORCEMENT OF THE ROAD TAX PAID BY MOTOR CARRIERS.

7 The General Assembly of North Carolina enacts:

8 PART I.

9 MOTOR FUEL LAW CHANGES

10 Section 1. The heading to Subchapter V of Chapter 105 of the General
11 Statutes reads as rewritten:

12 "~~SUBCHAPTER V. GASOLINE TAX.~~ MOTOR FUEL TAXES."

13 Sec. 2. Articles 36 and 36A of Chapter 105 of the General Statutes are
14 repealed.

15 Sec. 3. Subchapter V of Chapter 105 of the General Statutes is amended by
16 adding the following Articles to read:

17 "ARTICLE 36C.

18 "GASOLINE, DIESEL, AND BLENDS.

19 "PART 1. GENERAL PROVISIONS.

1 **"§ 105-449.60. Definitions.**

2 The following definitions apply in this Article:

- 3 (1) Blended fuel. – A mixture composed of gasoline or diesel fuel and
4 another liquid, other than a de minimus amount of a product such as
5 carburetor detergent or oxidation inhibitor, that can be used as a fuel in
6 a highway vehicle.
- 7 (2) Blender. – A person who produces blended fuel outside the terminal
8 transfer system.
- 9 (3) Bulk-end user. – A person who maintains storage facilities for motor
10 fuel and uses part or all of the stored fuel to operate a highway vehicle.
- 11 (4) Bulk plant. – A motor fuel storage and distribution facility that is not a
12 terminal and from which motor fuel may be removed at a rack.
- 13 (5) Code. – Defined in G.S. 105-228.90.
- 14 (6) Destination state. – The state, territory, or foreign country to which
15 motor fuel is directed for delivery into a storage facility, a receptacle, a
16 container, or a type of transportation equipment for the purpose of resale
17 or use.
- 18 (7) Diesel fuel. – Any liquid, other than gasoline, that is suitable for use as a
19 fuel in a diesel-powered highway vehicle. The term does not include jet
20 fuel sold to a buyer who is certified to purchase jet fuel under the Code.
- 21 (8) Distributor. – A person who acquires motor fuel from a supplier or from
22 another distributor for subsequent sale.
- 23 (9) Dyed diesel fuel. – Diesel fuel that meets the dyeing and marking
24 requirements of § 4082 of the Code.
- 25 (10) Elective supplier. – A supplier that is required to be licensed in this
26 State and that elects to collect the excise tax due this State on motor fuel
27 that is removed by the supplier at a terminal located in another state and
28 has this State as its destination state.
- 29 (11) Export. – To obtain motor fuel in this State for sale or other distribution
30 in another state. In applying this definition, motor fuel delivered out-of-
31 state by or for the seller constitutes an export by the seller and motor
32 fuel delivered out-of-state by or for the purchaser constitutes an export
33 by the purchaser.
- 34 (12) Fuel alcohol. – Methanol or fuel grade ethanol.
- 35 (13) Fuel alcohol provider. – A person who does any of the following:
36 a. Produces fuel alcohol.
37 b. Imports fuel alcohol outside the terminal transfer system by
38 means of a marine vessel, a transport truck, or a railroad tank car.
- 39 (14) Gasohol. – A blended fuel composed of gasoline and fuel grade ethanol.
- 40 (15) Gasoline. – Any of the following:
41 a. All products that are commonly or commercially known or sold
42 as gasoline and are suitable for use as a fuel in a highway
43 vehicle, other than products that have an American Society for

- 1 Testing Materials octane number of less than 75 as determined
2 by the motor method.
- 3 b. A petroleum product component of gasoline, such as naptha,
4 reformate, or toluene.
- 5 c. Gasohol.
- 6 d. Fuel grade ethanol.
- 7 The term does not include aviation gasoline sold for use in an aircraft
8 motor. 'Aviation gasoline' is gasoline that is designed for use in an
9 aircraft motor and is not adapted for use in an ordinary highway vehicle.
- 10 (16) Highway. – Defined in G.S. 20-4.01(13).
- 11 (17) Highway vehicle. – A self-propelled vehicle that is designed for use on
12 a highway.
- 13 (18) Import. – To bring motor fuel into this State by any means of
14 conveyance other than in the fuel supply tank of a highway vehicle. In
15 applying this definition, motor fuel delivered into this State from out-of-
16 state by or for the seller constitutes an import by the seller, and motor
17 fuel delivered into this State from out-of-state by or for the purchaser
18 constitutes an import by the purchaser.
- 19 (19) Motor fuel. – Gasoline, diesel fuel, and blended fuel.
- 20 (20) Motor fuel rate. – The rate of tax set in G.S. 105-449.80.
- 21 (21) Motor fuel transporter. – A person who transports motor fuel outside the
22 terminal transfer system by means of a transport truck, a railroad tank
23 car, or a marine vessel.
- 24 (22) Permissive supplier. – An out-of-state supplier that elects, but is not
25 required, to have a supplier's license under this Article.
- 26 (23) Person. – Defined in G.S. 105-228.90.
- 27 (24) Position holder. – The person who holds the inventory position in motor
28 fuel in a terminal, as reflected on the records of the terminal operator. A
29 person holds the inventory position in motor fuel when that person has a
30 contract with the terminal operator for the use of storage facilities and
31 terminaling services for fuel at the terminal. The term includes a
32 terminal operator who owns fuel in the terminal.
- 33 (25) Rack. – A mechanism for delivering motor fuel from a refinery, a
34 terminal, or a bulk plant into a transport truck, a railroad tank car, or
35 another means of transfer that is outside the terminal transfer system.
- 36 (26) Removal. – A physical transfer other than by evaporation, loss, or
37 destruction. A physical transfer to a transport truck or another means of
38 conveyance outside the terminal transfer system is complete upon
39 delivery into the means of conveyance.
- 40 (27) Retailer. – A person who maintains storage facilities for motor fuel and
41 who sells the fuel at retail or dispenses the fuel at a retail location.
- 42 (28) Secretary. – Defined in G.S. 105-228.90.
- 43 (29) Supplier. – Any of the following:

- 1 a. A position holder or a person who receives motor fuel pursuant
2 to a two-party exchange.
- 3 b. A fuel alcohol provider.
- 4 (30) System transfer. – Either of the following:
- 5 a. A transfer of motor fuel within the terminal transfer system.
- 6 b. A transfer, by transport truck or railroad tank car, of fuel grade
7 ethanol.
- 8 (31) Tank wagon. – A truck that is not a transport truck and has multiple
9 compartments designed or used to carry motor fuel.
- 10 (32) Terminal. – A motor fuel storage and distribution facility that has been
11 assigned a terminal control number by the Internal Revenue Service, is
12 supplied by pipeline or marine vessel, and from which motor fuel may
13 be removed at a rack.
- 14 (33) Terminal operator. – A person who owns, operates, or otherwise
15 controls a terminal.
- 16 (34) Terminal transfer system. – The motor fuel distribution system
17 consisting of refineries, pipelines, marine vessels, and terminals. The
18 term has the same meaning as 'bulk transfer/terminal system' under 26
19 C.F.R. § 48.4081-1.
- 20 (35) Transport truck. – A semitrailer combination rig designed or used to
21 transport loads of motor fuel over a highway.
- 22 (36) Trustee. – A person who is licensed as a supplier, an elective supplier,
23 or a permissive supplier and who receives tax payments from and on
24 behalf of a licensed distributor.
- 25 (37) Two-party exchange. – A transaction in which motor fuel is transferred
26 from one licensed supplier to another licensed supplier pursuant to an
27 exchange agreement whereby the supplier that is the position holder
28 agrees to deliver motor fuel to the other supplier or the other supplier's
29 customer at the rack of the terminal at which the delivering supplier is
30 the position holder.

31 **§ 105-449.61. Tax restrictions; administration.**

32 (a) No Local Tax. – A county or city may not impose a tax on the sale,
33 distribution, or use of motor fuel.

34 (b) No Double Tax. – The tax imposed by this Chapter applies only once on the
35 same motor fuel.

36 (c) Administration. – Article 9 of this Chapter applies to this Article.

37 **"PART 2. LICENSING.**

38 **§ 105-449.65. List of persons who must have a license.**

39 (a) License. – A person may not engage in business in this State as any of the
40 following unless the person has a license issued by the Secretary authorizing the person
41 to engage in that business:

42 (1) A refiner.

43 (2) A supplier.

- 1 (3) A terminal operator.
- 2 (4) An importer.
- 3 (5) An exporter, if the Secretary imposes this requirement by rule.
- 4 (6) A blender.
- 5 (7) A motor fuel transporter.
- 6 (8) A bulk-end user of undyed diesel fuel.
- 7 (9) A retailer of undyed diesel fuel.

8 (b) Multiple Activity. – A person who is engaged in more than one activity for
9 which a license is required must have a separate license for each activity, unless this
10 subsection provides otherwise. A person who is licensed as a supplier is not required to
11 obtain a separate license for any other activity for which a license is required and is
12 considered to have a license as a distributor. A person who is licensed as a distributor or
13 a blender is not required to obtain a separate license as a motor fuel transporter if the
14 distributor or blender does not transport motor fuel for others for hire.

15 **"§ 105-449.66. Types of importers; restrictions on who can get a license as an**
16 **importer.**

17 (a) Types. – An applicant for a license as an importer must indicate the type of
18 importer license sought. The types of importers are as follows:

- 19 (1) Bonded importer. – A bonded importer is a person, other than a
20 supplier, who imports, by transport truck or another means of transfer
21 outside the terminal transfer system, motor fuel removed from a
22 terminal located in another state in any of the following circumstances:
 - 23 a. The state from which the fuel is imported does not require the
24 seller of the fuel to collect motor fuel tax on the removal either at
25 that state's rate or the rate of the destination state.
 - 26 b. The supplier of the fuel is not an elective supplier.
 - 27 c. The supplier of the fuel is not a permissive supplier.
- 28 (2) Occasional importer. – An occasional importer is a person who imports
29 motor fuel by any means outside the terminal transfer system.
- 30 (3) Tank wagon importer. – A tank wagon importer is a person who
31 imports, only by means of a tank wagon, motor fuel that is removed
32 from a terminal or a bulk plant located in another state.

33 (b) Restrictions. – A person may not be licensed as more than one type of
34 importer. A person who is a bulk-end user and is not also a distributor may not be
35 licensed as a bonded importer or an occasional importer.

36 **"§ 105-449.67. List of persons who may obtain a license.**

37 A person who is engaged in business as any of the following may obtain a license
38 issued by the Secretary for that business:

- 39 (1) A distributor.
- 40 (2) A permissive supplier.

41 **"§ 105-449.68. Restrictions on who can get a license as a distributor.**

42 A bulk-end user of motor fuel may not be licensed as a distributor unless the user also
43 acquires motor fuel from a supplier or from another distributor for subsequent sale. This

1 restriction does not apply to a bulk-end user that was licensed as a distributor on January
2 1, 1996. If a distributor license held by a bulk-end user on January 1, 1996, is
3 subsequently cancelled, the bulk-end user is subject to the restriction set in this section.

4 **"§ 105-449.69. How to apply for a license.**

5 (a) General. – To obtain a license, an applicant must file an application with the
6 Secretary on a form provided by the Secretary. An application must include the
7 applicant's name, address, federal employer identification number, and any other
8 information required by the Secretary.

9 (b) Most Licenses. – An applicant for a license as a refiner, a supplier, a terminal
10 operator, an importer, a blender, a bulk-end user of undyed diesel fuel, a retailer of
11 undyed diesel fuel, or a distributor must meet the following requirements:

12 (1) If the applicant is a corporation, the applicant must either be
13 incorporated in this State or be authorized to transact business in this
14 State.

15 (2) If the applicant is a limited liability company, the applicant must either
16 be organized in this State or be authorized to transact business in this
17 State.

18 (3) If the applicant is a limited partnership, the applicant must either be
19 formed in this State or be authorized to transact business in this State.

20 (4) If the applicant is an individual or a general partnership, the applicant
21 must designate an agent for service of process and give the agent's name
22 and address.

23 (c) Federal Certificate. – An applicant for a license as a refiner, a supplier, a
24 terminal operator, a blender, or a permissive supplier must have a federal Certificate of
25 Registry that is issued under § 4101 of the Code and authorizes the applicant to enter into
26 federal tax-free transactions in taxable motor fuel in the terminal transfer system. An
27 applicant that is required to have a federal Certificate of Registry must include the
28 registration number of the certificate on the application for a license under this section.

29 An applicant for a license as an importer or a distributor that has a federal Certificate
30 of Registry issued under § 4101 of the Code must include the registration number of the
31 certificate on the application for a license under this section.

32 (d) Import and Export Activity. – An applicant for a license as an importer must
33 list on the application each state from which the applicant intends to import motor fuel
34 and, if required by a state listed, must be licensed or registered for motor fuel tax
35 purposes in that state. An applicant for a license as a distributor must list on the
36 application each state to which the applicant intends to export motor fuel received in this
37 State by means of a transfer that is outside the terminal transfer system and, if required by
38 a state listed, must be licensed or registered for motor fuel tax purposes in that state.

39 **"§ 105-449.70. Supplier election to collect tax on out-of-state removals.**

40 (a) Election. – An applicant for a license as a supplier may elect on the application
41 to collect the excise tax due this State on motor fuel that is removed by the supplier at a
42 terminal located in another state and has this State as its destination state. The Secretary

1 must provide for this election on the application form. A supplier that makes the election
2 allowed by this section is an elective supplier.

3 A supplier that does not make the election on the application for a supplier's license
4 may make the election later by completing an election form provided by the Secretary. A
5 supplier that does not make the election may not act as an elective supplier for motor fuel
6 that is removed at a terminal in another state and has this State as its destination state.

7 (b) Effect. – A supplier that makes the election allowed by this section agrees to
8 all of the following with respect to motor fuel that is removed by the supplier at a
9 terminal located in another state and has this State as its destination state:

10 (1) To collect the excise tax due this State on the fuel and to waive any
11 defense that the State lacks jurisdiction to require the supplier to collect
12 the excise tax due this State under this Article on the fuel.

13 (2) To report and pay the tax due on the fuel in the same manner as if the
14 removal had occurred at a terminal located in this State.

15 (3) To keep records of the removal of the fuel and submit to audits
16 concerning the fuel as if the removal had occurred at a terminal located
17 in this State.

18 (c) Limited Jurisdiction. – A supplier that makes the election allowed by this
19 section acknowledges that the State imposes the requirements listed in subsection (b) of
20 this section on the supplier under its general police power set out in Article 3 of Chapter
21 119 of the General Statutes to regulate the quality of motor fuel and thereby promote
22 public health and safety. A supplier that makes the election allowed by this section
23 submits to the jurisdiction of the State only for the administration of this Article.

24 **"§ 105-449.71. Permissive supplier election to collect tax on out-of-state removals.**

25 (a) Election. – An out-of-state supplier that is not required to have a license under
26 this Part may elect to have a license and thereby become a permissive supplier. An out-
27 of-state supplier that does not make this election may not act as a permissive supplier for
28 motor fuel that is removed at a terminal in another state and has this State as its
29 destination state.

30 (b) Effect. – By obtaining a license as a permissive supplier, the permissive
31 supplier agrees to be subject to the same requirements as a supplier and to all of the
32 following with respect to motor fuel that is removed by the permissive supplier at a
33 terminal located in another state and has this State as its destination state:

34 (1) To collect the excise tax due this State on the fuel and to waive any
35 defense that the State lacks jurisdiction to require the supplier to collect
36 the excise tax due this State under this Article on the fuel.

37 (2) To report and pay the tax due on the fuel in the same manner as if the
38 removal had occurred at a terminal located in this State.

39 (3) To keep records of the removal of the fuel and submit to audits
40 concerning the fuel as if the removal had occurred at a terminal located
41 in this State.

42 (c) Limited Jurisdiction. – A supplier that makes the election allowed by this
43 section acknowledges that the State imposes the requirements listed in subsection (b) of

1 this section on the supplier under its general police power set out in Article 3 of Chapter
2 119 of the General Statutes to regulate the quality of motor fuel and thereby promote
3 public health and safety. A supplier that makes the election allowed by this section
4 submits to the jurisdiction of the State only for the administration of this Article.

5 **"§ 105-449.72. Bond or letter of credit required as a condition of obtaining and**
6 **keeping certain licenses.**

7 (a) Initial Bond. – An applicant for a license as a refiner, a terminal operator, a
8 supplier, an importer, a permissive supplier, or a distributor must file with the Secretary a
9 bond or an irrevocable letter of credit. The amount of the bond or irrevocable letter of
10 credit is determined as follows:

11 (1) For an applicant for a license as any of the following, the amount is two
12 million dollars (\$2,000,000):

13 a. A refiner.

14 b. A terminal operator.

15 c. A supplier that is a position holder or a person that receives
16 motor fuel pursuant to a two-party exchange.

17 d. A bonded importer that is not a limited bulk-end user. A limited
18 bulk-end user is a bonded importer that uses all of the motor fuel
19 imported by that importer and does not resell the motor fuel.

20 e. A permissive supplier.

21 (2) For an applicant for a license as any of the following, the amount is two
22 times the applicant's average expected monthly tax liability under this
23 Article, as determined by the Secretary. The amount may not be less
24 than two thousand dollars (\$2,000) and may not be more than two
25 hundred fifty thousand dollars (\$250,000):

26 a. A supplier that is a fuel alcohol provider but is not a position
27 holder or a person that receives motor fuel pursuant to a two-
28 party exchange.

29 b. A bonded importer that is a limited bulk-end user.

30 c. An occasional importer.

31 d. A tank wagon importer.

32 e. A distributor.

33 A bond filed under this section must be conditioned upon compliance with the
34 requirements of this Article, be payable to the State, and be in the form required by the
35 Secretary. An applicant for a license as a distributor and as a bonded importer must file
36 only the bond required of a bonded importer. An applicant for a license as a distributor
37 and either an occasional importer or a tank wagon importer may file one bond that covers
38 the combined liabilities of the applicant under both activities.

39 (b) Adjustment to Bond. – When notified to do so by the Secretary, a person that
40 has filed a bond or an irrevocable letter of credit and that holds a license listed in
41 subdivision (a)(2) of this section must file an additional bond or irrevocable letter of
42 credit in the amount requested by the Secretary. The person must file the additional bond
43 or irrevocable letter of credit within 30 days after receiving the notice from the Secretary.

1 The amount of the initial bond or irrevocable letter of credit and any additional bond or
2 irrevocable letter of credit filed by the license holder, however, may not exceed the limits
3 set in subdivision (a)(2) of this section.

4 **"§ 105-449.73. Reasons why the Secretary can deny an application for a license.**

5 The Secretary may refuse to issue a license to an individual applicant that has done
6 any of the following and may refuse to issue a license to an applicant that is a business
7 entity if any principal in the business has done any of the following:

- 8 (1) Had a license or registration issued under this Article or former Articles
9 36 or 36A of this Chapter cancelled by the Secretary for cause.
- 10 (2) Had a federal Certificate of Registry issued under § 4101 of the Code,
11 or a similar federal authorization, revoked.
- 12 (3) Been convicted of fraud or misrepresentation.
- 13 (4) Been convicted of any other offense that indicates that the applicant
14 may not comply with this Article if issued a license.

15 **"§ 105-449.74. Issuance of license.**

16 Upon approval of an application, the Secretary must issue a license to the applicant as
17 well as a duplicate copy of the license for each place of business of the applicant. A
18 supplier's license must indicate the category of the supplier. A license holder must
19 display a license issued under this Part in a conspicuous place at each place of business of
20 the license holder. A license is not transferable and remains in effect until surrendered or
21 cancelled.

22 **"§ 105-449.75. License holder must notify the Secretary of discontinuance of**
23 **business.**

24 A license holder that stops engaging in this State in the business for which the license
25 was issued must give the Secretary written notice of the change and must surrender the
26 license to the Secretary. The notice must give the date the change takes effect and, if the
27 license holder has transferred the business to another by sale or otherwise, the date of the
28 transfer and the name and address of the person to whom the business is transferred.

29 If the license holder is a supplier, all taxes for which the supplier is liable under this
30 Article but are not yet due become due on the date of the change. If the supplier has
31 transferred the business to another and does not give the notice required by this section,
32 the person to whom the supplier has transferred the business is liable for the amount of
33 any tax the supplier owed the State on the date the business was transferred. The liability
34 of the person to whom the business is transferred is limited to the value of the property
35 acquired from the supplier.

36 **"§ 105-449.76. Reasons why the Secretary can cancel a license.**

37 The Secretary may cancel a license issued under this Article upon the written request
38 of the license holder. The Secretary may summarily cancel the license of a license holder
39 when the Secretary finds that the license holder is incurring liability for the tax imposed
40 under this Article after failing to pay a tax when due under this Article. In addition, the
41 Secretary may cancel the license of a license holder that commits one or more of the acts
42 listed in G.S. 105-449.120 after holding a hearing on whether the license should be
43 cancelled.

1 The Secretary must send a person whose license is summarily cancelled a notice of
2 the cancellation and must give the person an opportunity to have a hearing on the
3 cancellation within 10 days after the cancellation. The Secretary must give a person
4 whose license may be cancelled after a hearing at least 10 days' written notice of the date,
5 time, and place of the hearing. A notice of a summary license cancellation and a notice
6 of hearing must be sent by registered mail to the last known address of the license holder.

7 When the Secretary cancels a license and the license holder has paid all taxes and
8 penalties due under this Article, the Secretary must take one of the following actions
9 concerning a bond or an irrevocable letter of credit filed by the license holder:

- 10 (1) Return an irrevocable letter of credit to the license holder.
11 (2) Return a bond to the license holder or notify the person liable on the
12 bond and the license holder that the person is released from liability on
13 the bond.

14 **"§ 105-449.77. Records and lists of license applicants and license holders.**

15 (a) Records. – The Secretary must keep a record of the following:

- 16 (1) Applicants for a license under this Article.
17 (2) Persons to whom a license has been issued under this Article.
18 (3) Persons that hold a current license issued under this Article, by license
19 category.

20 (b) Distributor List. – The Secretary must give a list of licensed distributors to
21 each licensed supplier that asks for a copy of the list. The list must state the name and
22 business address of each distributor on the list. The Secretary must send a monthly
23 update of the list to each supplier that requested a copy of the list.

24 (c) Supplier List. – The Secretary must give a list of licensed suppliers to each
25 distributor that asks for a copy of the list. The list must state the name and business
26 address of each supplier on the list and must indicate whether the supplier is an elective
27 supplier or a permissive supplier. The Secretary must send an annual update of the list to
28 each supplier that requested a copy of the list.

29 **"PART 3. TAX AND LIABILITY.**

30 **"§ 105-449.80. Tax rate.**

31 (a) Rate. – The motor fuel excise tax rate is a flat rate of seventeen and one-half
32 cents (17 1/2¢) a gallon plus a variable wholesale component. The variable wholesale
33 component is either three and one-half cents (3 1/2¢) a gallon or seven percent (7%) of
34 the average wholesale price of motor fuel for the applicable base period, whichever is
35 greater.

36 The two base periods are six-month periods; one ends on September 30 and one ends
37 on March 31. The Secretary must set the tax rate twice a year based on the wholesale
38 price for each base period. A tax rate set by the Secretary using information for the base
39 period that ends on September 30 applies to the six-month period that begins the
40 following January 1. A tax rate set by the Secretary using information for the base period
41 that ends on March 31 applies to the six-month period that begins the following July 1.

42 (b) Wholesale Price. – The Secretary must determine the average wholesale price
43 of motor fuel for each base period. To do this, the Secretary must use information on

1 refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel
2 for resale, published by the United States Department of Energy in the 'Monthly Energy
3 Review', or equivalent data.

4 The Secretary must compute the average sales price of finished motor gasoline for the
5 base period, compute the average sales price for No. 2 diesel fuel for the base period, and
6 then compute a weighted average of the results of the first two computations based on the
7 proportion of tax collected on each under this Article for the base period. The Secretary
8 must then convert the weighted average price to a cents-per-gallon rate and round the rate
9 to the nearest one-tenth of a cent (1/10¢). If the converted cents-per-gallon rate is exactly
10 between two-tenths of a cent (2/10¢), the Secretary must round the rate up to the higher
11 of the two.

12 (c) Notification. – The Secretary must notify affected taxpayers of the tax rate to
13 be in effect for each six-month period beginning January 1 and July 1.

14 **"§ 105-449.81. Excise tax on motor fuel.**

15 An excise tax at the motor fuel rate is imposed on motor fuel that is:

16 (1) Removed from a refinery or a terminal and, upon removal, is subject to
17 the federal excise tax imposed by § 4081 of the Code.

18 (2) Imported by a system transfer to a refinery or a terminal and, upon
19 importation, is subject to the federal excise tax imposed by § 4081 of
20 the Code.

21 (3) Imported by a means of transfer outside the terminal transfer system for
22 sale, use, or storage in this State and would have been subject to the
23 federal excise tax imposed by § 4081 of the Code if it had been removed
24 at a terminal or bulk plant rack in this State instead of imported.

25 (4) Blended fuel made in this State.

26 **"§ 105-449.82. Liability for tax on removals from a refinery or terminal.**

27 (a) Refinery Removal. – The excise tax imposed by G.S. 105-449.81(1) on motor
28 fuel removed from a refinery in this State is payable by the refiner.

29 (b) Terminal System Removal. – The excise tax imposed by G.S. 105-449.81(1)
30 on motor fuel removed by a system transfer from a terminal in this State is payable by the
31 position holder for the fuel. If the position holder is not the terminal operator, the
32 terminal operator is jointly and severally liable for the tax.

33 (c) Terminal Rack Removal. – The excise tax imposed by G.S. 105-449.81(1) on
34 motor fuel removed at a terminal rack in this State is payable by the person that first
35 receives the fuel upon its removal from the terminal. If the motor fuel is removed by an
36 unlicensed distributor, the supplier of the fuel is jointly and severally liable for the tax
37 due on the fuel. If the motor fuel removed is not dyed diesel fuel but the shipping
38 document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator,
39 the supplier, and the person removing the fuel are jointly and severally liable for the tax
40 due on the fuel.

41 **"§ 105-449.83. Liability for tax on imports.**

42 (a) By System Transfer. – The excise tax imposed by G.S. 105-449.81(2) on motor
43 fuel imported by a system transfer to a refinery is payable by the refiner. The excise tax

1 imposed by that subdivision on motor fuel imported by a system transfer to a terminal is
2 payable by the person importing the fuel and by the terminal operator, both of which are
3 jointly and severally liable for payment of the tax due on the fuel.

4 (b) From Out-of-State Terminal. – The excise tax imposed by G.S. 105-449.81(3)
5 on motor fuel that is removed from a terminal rack located in another state and has this
6 State as its destination state is payable by the importer of the fuel as follows:

7 (1) If the importer of the fuel is a licensed supplier in this State and the fuel
8 is removed for the supplier's own account for use in this State, the tax is
9 payable by the supplier.

10 (2) If the supplier of the fuel is licensed in this State as an elective supplier
11 or a permissive supplier, the tax is payable to the supplier as trustee.

12 (3) If no other subdivision of this subsection applies, the tax is payable by
13 the importer when filing a return with the Secretary.

14 (c) From Out-of-State Bulk Plant. – The excise tax imposed by G.S. 105-
15 449.81(3) on motor fuel that is removed from a bulk plant located in another state is
16 payable by the person that imports the fuel.

17 **"§ 105-449.84. Liability for tax on blended fuel.**

18 (a) On Blender. – The excise tax imposed by G.S. 105-449.81(4) on blended fuel
19 made in this State is payable by the blender. The number of gallons of blended fuel on
20 which the tax is payable is the difference between the number of gallons of blended fuel
21 made and the number of gallons of previously taxed motor fuel used to make the blended
22 fuel.

23 (b) Blends Made at Terminal. – The following blended fuel is considered to have
24 been made by the supplier of gasoline or undyed diesel fuel used in the blend:

25 (1) An in-line-blend made by combining a liquid with gasoline or undyed
26 diesel fuel as the fuel is delivered at a terminal rack into the motor fuel
27 storage compartment of a motor fuel tank truck.

28 (2) A kerosene splash-blend made when kerosene is delivered at a terminal
29 into a motor fuel storage compartment of a motor fuel tank truck and
30 undyed diesel fuel is also delivered at that terminal into the same
31 storage compartment, if the buyer of the kerosene notified the supplier
32 before or at the time of delivery that the kerosene would be used to
33 make a splash-blend.

34 **"§ 105-449.85. Compensating tax on and liability for unaccounted for motor fuel**
35 **losses at a terminal.**

36 (a) Tax. – An excise tax at the motor fuel rate is imposed annually on unaccounted
37 for motor fuel losses at a terminal that exceed one-half of one percent (0.5%) of the
38 number of net gallons removed from the terminal during the year by a system transfer or
39 at a terminal rack. To determine if this tax applies, the terminal operator of the terminal
40 must determine the difference between the following:

41 (1) The amount of motor fuel in inventory at the terminal at the beginning
42 of the year plus the amount of motor fuel received by the terminal
43 during the year.

1 (2) The amount of motor fuel in inventory at the terminal at the end of the
2 year plus the amount of motor fuel removed from the terminal during
3 the year.

4 (b) Liability. – The terminal operator whose motor fuel is unaccounted for is liable
5 for the tax imposed by this section. Motor fuel received by a terminal operator and not
6 shown on a report filed by the terminal operator with the Secretary as having been
7 removed from the terminal is presumed to be unaccounted for. A terminal operator may
8 establish that motor fuel received at a terminal but not shown on a report as having been
9 removed from the terminal was lost or part of a transmix and is therefore not unaccounted
10 for.

11 (c) Definitions. – The following definitions apply in this section:

12 (1) Net gallons. – The amount of gallons removed at a terminal rack when
13 corrected to a temperature of 60 degrees Fahrenheit and a pressure of 14
14 7/10 pounds per square inch.

15 (2) Transmix. – Either of the following:

16 a. The buffer or interface between two different products in a
17 pipeline shipment.

18 b. A mix of two different products within a refinery or terminal that
19 results in an off-grade mixture.

20 **§ 105-449.86. Tax on and liability for dyed diesel fuel used to operate certain**
21 **highway vehicles.**

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

24 (1) Either a local bus or an intercity bus that is allowed by § 4082(b)(3) of
25 the Code to use dyed diesel fuel.

26 (2) A highway vehicle that is owned by or leased to an educational
27 organization that is not a public school and is allowed by § 4082(b)(1)
28 or (b)(3) of the Code to use dyed diesel fuel.

29 (3) A highway vehicle that is owned by or leased to the American Red
30 Cross and is allowed by § 4082 of the Code to use dyed diesel fuel.

31 (b) Liability. – If the distributor of dyed diesel fuel that is taxable under this
32 section is not liable for the tax imposed by this section, the person that acquires the fuel is
33 liable for the tax. The distributor of dyed diesel fuel that is taxable under this section is
34 liable for the tax imposed by this section in the following circumstances:

35 (1) When the person acquiring the dyed diesel fuel has storage facilities for
36 the fuel and is therefore a bulk-end user of the fuel.

37 (2) When the person acquired the dyed diesel fuel from a retail outlet of the
38 distributor by using an access card or code indicating that the person's
39 use of the fuel is taxable under this section.

40 **§ 105-449.87. Backup tax and liability for the tax.**

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

42 (1) Dyed diesel fuel that is used to operate a highway vehicle for a use that
43 is not a nontaxable use under § 4082(b) of the Code.

1 (2) Motor fuel that was allowed an exemption from the motor fuel tax and
2 was then used for a taxable purpose.

3 (3) Motor fuel that is used to operate a highway vehicle after an application
4 for a refund of tax paid on the motor fuel is made or allowed under G.S.
5 105-449.107(a) on the basis that the motor fuel was used for an off-
6 highway purpose.

7 (4) Motor fuel imported by a tank wagon importer.

8 (b) Liability. – The operator of a highway vehicle that uses motor fuel that is
9 taxable under this section is liable for the tax. If the highway vehicle that uses the fuel is
10 owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for
11 the tax. If the end seller of motor fuel taxable under this section knew or had reason to
12 know that the motor fuel would be used for a purpose that is taxable under this section,
13 the end seller is jointly and severally liable for the tax.

14 (c) Imputed Knowledge. – An end seller of dyed diesel fuel is considered to have
15 known or had reason to know that the fuel would be used for a purpose that is taxable
16 under this section unless the end seller delivered the fuel into a storage facility that meets
17 one of the following requirements:

18 (1) It contains fuel used only in heating, drying crops, or a manufacturing
19 process and is installed in a manner that makes use of the fuel for any
20 other purpose improbable.

21 (2) It is marked as follows with the phrase 'Dyed Diesel', 'For Nonhighway
22 Use', or a similar phrase that clearly indicates the fuel is not to be used
23 to operate a highway vehicle:

24 a. The storage tank of the storage facility is marked if the storage
25 tank is visible.

26 b. The fillcap or spill containment box of the storage facility is
27 marked.

28 c. The dispensing device that serves the storage facility is marked.

29 **"§ 105-449.88. Exemptions from the excise tax.**

30 The excise tax on motor fuel does not apply to the following:

31 (1) Motor fuel removed, by transport truck or another means of transfer
32 outside the terminal transfer system, from a terminal for export, if the
33 supplier of the motor fuel collects tax on it at the rate of the motor fuel's
34 destination state that is printed on the shipping document for the motor
35 fuel.

36 (2) Motor fuel sold to the federal government.

37 (3) Motor fuel sold to the State for its use.

38 (4) Motor fuel sold to a local board of education for use in the public school
39 system.

40 **"PART 4. PAYMENT AND REPORTING.**

41 **"§ 105-449.90. When tax return and payment are due.**

1 (a) Filing Periods. – The excise tax imposed by this Article is payable when a
2 return is due. A return is due annually, quarterly, or monthly, as specified in this section.
3 A return must be filed with the Secretary and be in the form required by the Secretary.

4 An annual return is due within 45 days after the end of each calendar year. An annual
5 return covers tax liabilities that accrue in the calendar year preceding the date the return
6 is due.

7 A quarterly return is due within 15 days after the end of each calendar quarter. A
8 quarterly return covers tax liabilities that accrue in the calendar quarter preceding the date
9 the return is due.

10 A monthly return of a person other than an occasional importer is due within 22 days
11 after the end of each month. A monthly return of an occasional importer is due by the 1st
12 of each month. A monthly return covers tax liabilities that accrue in the calendar month
13 preceding the date the return is due.

14 (b) Annual Filers. – A terminal operator must file an annual return for the
15 compensating tax imposed by G.S. 105-449.85.

16 (c) Quarterly Filers. – A licensed distributor must file a quarterly return under G.S.
17 105-449.94 to reconcile exempt sales.

18 (d) Monthly Filers on 22nd. – The following persons must file a monthly return by
19 the 22nd of each month:

20 (1) A refiner.

21 (2) A supplier.

22 (3) A bonded importer.

23 (4) A blender.

24 (5) A tank wagon importer.

25 (6) A person that is liable under G.S. 105-449.86 for the tax on dyed diesel
26 fuel used to operate certain highway vehicles.

27 (7) A person that is liable under G.S. 105-449.87 for the backup tax on
28 motor fuel.

29 (e) Monthly Filers on 1st. – An occasional importer must file a monthly return by
30 the 1st of each month. An occasional importer is not required to file a return, however, if
31 all the motor fuel imported by the importer in a reporting period was removed at a
32 terminal located in another state and the supplier of the fuel is an elective supplier or a
33 permissive supplier.

34 **"§ 105-449.91. Remittance of tax by distributor.**

35 A distributor that is liable for the tax imposed on motor fuel removed at a terminal
36 rack must remit the tax to the supplier of the fuel. A licensed distributor has the right to
37 defer the remittance of tax to the supplier, as trustee, until the date the trustee must pay
38 the tax to the State. Payment of tax by an unlicensed distributor to a supplier is governed
39 by the terms of the contract between the unlicensed distributor and the supplier. G.S.
40 105-449.76 governs the cancellation of a distributor's license.

41 **"§ 105-449.92. Notice to suppliers of cancellation or reissuance of a distributor's**
42 **license; effect of notice.**

1 (a) Notice to Suppliers. – If the Secretary cancels a distributor's license, the
2 Secretary must notify all suppliers of the cancellation. If the Secretary issues a license to
3 a distributor whose license was cancelled, the Secretary must notify all suppliers of the
4 issuance.

5 (b) Effect of Notice. – A supplier that sells motor fuel to a distributor after
6 receiving notice from the Secretary that the Secretary has cancelled the distributor's
7 license is jointly and severally liable with the distributor for any tax due on motor fuel the
8 supplier sells to the distributor after receiving the notice. This joint and several liability
9 does not apply to excise tax due on motor fuel sold to a previously unlicensed distributor
10 after the supplier receives notice from the Secretary that the Secretary has issued another
11 license to the distributor.

12 **"§ 105-449.93. Exempt sale deduction and percentage discount for licensed**
13 **distributors.**

14 (a) Deduction. – A licensed distributor may deduct from the amount of tax
15 otherwise payable to a supplier the amount calculated on motor fuel the distributor
16 received from the supplier and resold to a governmental unit whose purchases of motor
17 fuel are exempt from the tax under G.S. 105-449.88 if, when removing the fuel, the
18 distributor used an access card or code specified by the supplier to notify the supplier of
19 the distributor's intent to resell the fuel in an exempt sale.

20 (b) Percentage Discount. – A licensed distributor that pays the excise tax due a
21 supplier by the date the supplier must pay the tax to the State may deduct from the
22 amount due a discount of one percent (1%) of the amount of tax payable. The discount
23 covers the expense of furnishing a bond and losses due to shrinkage or evaporation. A
24 supplier may not directly or indirectly deny this discount to a licensed distributor that
25 pays the excise tax due the supplier by the date the supplier must pay the tax to the State.

26 **"§ 105-449.94. Quarterly reconciling return for exempt sales by licensed**
27 **distributor.**

28 (a) Return. – A licensed distributor that deducts exempt sales under G.S. 105-
29 449.93(a) when paying tax to a supplier must file a quarterly reconciling return for the
30 exempt sales. The return must list the following information:

31 (1) The number of gallons for which a deduction was taken during the
32 quarter, by supplier.

33 (2) The number of gallons sold in exempt sales during the quarter, by type
34 of sale, and the purchasers of the fuel in the exempt sales.

35 (b) Payment. – If the number of gallons for which a licensed distributor takes a
36 deduction during a quarter exceeds the number of exempt gallons sold, the licensed
37 distributor must pay tax on the difference at the motor fuel rate. The licensed distributor
38 is not allowed a percentage discount when paying tax under this subsection.

39 (c) Refund. – If the number of gallons for which a licensed distributor takes a
40 deduction during a quarter is less than the number of exempt gallons sold, the Secretary
41 must refund the licensed distributor for the amount of tax paid on the difference. The
42 Secretary must reduce the amount of the refund by the amount of the percentage discount
43 the distributor received on the fuel.

1 **"§ 105-449.95. Quarterly hold harmless for licensed distributors.**

2 (a) Calculation. – At the end of each calendar quarter, the Secretary must review
3 the amount of discounts each licensed distributor received under G.S. 105-449.93(b).
4 The Secretary must determine if the amount of discounts the distributor received under
5 that subsection in each month of the quarter is less than the amount the distributor would
6 have received if the distributor had been allowed a discount on taxable gasoline
7 purchased by the distributor from a supplier during each month of the quarter under the
8 following schedule:

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

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

23 **"§ 105-449.96. Information required on return filed by supplier.**

24 A return of a supplier must list all of the following information and any other
25 information required by the Secretary:

- 26 (1) The number of gallons of motor fuel received during the month by the
27 supplier by a system transfer, by type of fuel, and by terminal.
- 28 (2) The number of gallons of motor fuel imported during the month by the
29 supplier by a means of transfer outside the terminal transfer system.
- 30 (3) The number of gallons of motor fuel removed at a terminal rack during
31 the month from the account of the supplier, by type of fuel and by
32 receiving distributor.
- 33 (4) The number of gallons of motor fuel removed during the month for
34 export and, for each removal, the destination state of the fuel.
- 35 (5) The number of gallons of motor fuel removed during the month at a
36 terminal located in another state for destination to this State, as
37 indicated on the shipping document for the fuel.
- 38 (6) The number of gallons of motor fuel sold during the month by the
39 supplier to either of the following:
 - 40 a. A governmental unit whose use of fuel is exempt from the tax.
 - 41 b. A distributor that resold the motor fuel to a governmental unit
42 whose use of fuel is exempt from the tax, as reported by the
43 distributor.

1 (7) The amount of discounts allowed under G.S. 105-449.93(b) on motor
2 fuel sold during the month to licensed distributors, sorted by distributor.

3 **"§ 105-449.97. Deductions and discounts allowed a supplier when filing a return.**

4 (a) Taxes Not Remitted. – When a supplier files a return, the supplier may deduct
5 from the amount of tax payable with the return the amount of tax a licensed distributor
6 owes the supplier but failed to remit to the supplier. A supplier is not liable for tax a
7 licensed distributor owes the supplier but fails to pay. If a licensed distributor pays tax
8 owed to a supplier after the supplier deducts the amount on a return, the supplier must
9 promptly remit the distributor's payment to the Secretary.

10 (b) Administrative Discount. – A supplier that files a timely return may deduct
11 from the amount of tax payable with the return an administrative discount of one-tenth of
12 one percent (0.1%) of the amount of tax payable, not to exceed eight thousand dollars
13 (\$8,000) a month. The discount covers expenses incurred in collecting taxes on motor
14 fuel from distributors and in maintaining the records and preparing the returns required
15 by this Article.

16 (c) Percentage Discount. – A supplier that sells motor fuel directly to the bulk-end
17 user, the retailer, or user of the fuel can take the same percentage discount on the fuel that
18 a licensed distributor can take under G.S. 105-449.93(b) when making deferred payments
19 of tax to the supplier.

20 **"§ 105-449.98. Duties of supplier concerning payments by distributors.**

21 (a) As Fiduciary. – A supplier has a fiduciary duty to remit to the Secretary the
22 amount of tax paid to the supplier by a licensed distributor. A supplier is liable for taxes
23 paid to the supplier by a licensed distributor.

24 (b) Notification To Distributor. – A supplier must notify a licensed distributor that
25 received motor fuel from the supplier during a reporting period of the number of taxable
26 gallons received. The supplier must give this notice after the end of each reporting period
27 and before the licensed distributor must remit to the supplier the amount of tax due on the
28 fuel.

29 (c) Notification To Department. – A supplier of motor fuel at a terminal must
30 notify the Department within 10 days after a return is due of any licensed distributors that
31 did not pay the tax due the supplier when the supplier filed the return. The notification
32 must be transmitted to the Department in the form required by the Department.

33 (d) Payment Application. – A supplier that receives a payment of excise tax from a
34 distributor may not apply the payment to debts for motor fuel purchased from the
35 supplier.

36 **"§ 105-449.99. Returns and discounts of importers.**

37 (a) Return. – A monthly return of a bonded importer, an occasional importer, or a
38 tank wagon importer must contain the following information concerning motor fuel
39 imported during the period covered by the return:

40 (1) The number of gallons of imported motor fuel acquired from a supplier
41 that collected the excise tax due this State on the fuel.

1 (2) The number of gallons of imported motor fuel acquired from a supplier
2 that did not collect the excise tax due this State on the fuel, listed by
3 source state, supplier, and terminal.

4 (3) The import authorization number of each import that is reported under
5 subdivision (2) of this subsection and was removed from a terminal.

6 (4) For an occasional importer or a tank wagon importer, the number of
7 gallons of imported motor fuel acquired from a bulk plant, listed by
8 bulk plant.

9 (b) Discounts. – An importer may not deduct an administrative discount from the
10 amount remitted with a return. An importer that is a licensed distributor as well as an
11 importer and that imports motor fuel received from an elective supplier or a permissive
12 supplier may deduct the percentage discount allowed by G.S. 105-449.93(b) when
13 remitting tax to the supplier, as trustee, for payment to the State. An importer that is a
14 licensed distributor as well as an importer and that imports motor fuel received from a
15 supplier that is not an elective supplier or a permissive supplier may deduct the
16 percentage discount allowed by G.S. 105-449.93(b) when filing a return for the tax due.

17 **§ 105-449.100. Report by terminal operator.**

18 A terminal operator must make a monthly report to the Secretary of motor fuel
19 received or removed from the terminal during the month. The report is due by the 25th
20 day of the month following the month covered by the report and must contain the
21 following information and any other information required by the Secretary:

22 (1) The number of gallons of motor fuel received in inventory at the
23 terminal during the month and each position holder for the fuel.

24 (2) The number of gallons removed from the terminal during the month
25 and, for each removal, the position holder for the fuel and the
26 destination state of the fuel.

27 **§ 105-449.101. Reports by those that transport motor fuel.**

28 (a) Requirement. – A person that transports, by pipeline, marine vessel, railroad
29 tank car, or transport truck, motor fuel that is being imported into this State or exported
30 from this State must make a monthly report to the Secretary of motor fuel received or
31 delivered for import or export by the transporter during the month. This requirement
32 does not apply to a distributor that is not required to be licensed as a motor fuel
33 transporter.

34 (b) Content. – The report required by this section is due by the 25th day of the
35 month following the month covered by the report and must contain the following
36 information and any other information required by the Secretary:

37 (1) The name and address of each person from whom the transporter
38 received motor fuel outside the State for delivery in the State, the
39 amount of motor fuel received, the date the motor fuel was received,
40 and the person to whom the fuel was delivered.

41 (2) The name and address of each person to whom the transporter delivered
42 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.

"§ 105-449.102. Report of exports from a bulk plant.

A distributor that exports motor fuel from a bulk plant located in this State must make a monthly report to the Secretary of the exports. The report is due by the 25th day of the month following the month covered by the report. The report must contain the following information and any other information required by the Secretary:

- (1) The number of gallons of motor fuel exported during the month.
- (2) The destination state of the motor fuel exported during the month.

"PART 5. REFUNDS.

"§ 105-449.105. Refunds upon application for tax paid on exempt fuel, lost fuel, and fuel unsalable for highway use.

(a) Exempt Fuel. – A distributor may obtain a refund of tax paid by the distributor on fuel sold to a governmental unit whose use of fuel is exempt from the motor fuel excise tax. A person may obtain a refund of tax paid by the person on exported fuel, including fuel whose shipping document shows this State as the destination state but was diverted to another state in accordance with the diversion procedures established by the Secretary.

(b) Lost Fuel. – A supplier, an importer, or a distributor that loses tax-paid motor fuel due to damage to a conveyance transporting the motor fuel, fire, a natural disaster, an act of war, or an accident may obtain a refund for the tax paid on the fuel.

(c) Accidental Mixes. – A person that accidentally combines any of the following may obtain a refund for the amount of tax paid on the fuel:

- (1) Dyed diesel fuel with tax-paid motor fuel.
- (2) Gasoline with undyed diesel fuel.
- (3) Undyed diesel fuel with dyed kerosene.

(d) Refund Amount. – The amount of a refund allowed under this section is the amount of tax paid. Interest is payable at the rate set in G.S. 105-241(i) on a refund after 90 days.

"§ 105-449.106. Quarterly refunds for certain local governmental entities, nonprofit organizations, and taxicabs.

(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 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. Any of the following entities may receive a refund under this section:

- (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.

1 (5) A sheltered workshop recognized by the Department of Human
2 Resources.

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

7 (b) Taxi. – A person who purchases and uses motor fuel in a taxicab, as defined in
8 G.S. 20-87(1), while the taxicab is engaged in transporting passengers for hire, or in a bus
9 operated as part of a city transit system that is exempt from regulation by the North
10 Carolina Utilities Commission under G.S. 62-260(a)(8), may receive a quarterly refund,
11 for the tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon
12 rate plus the variable cents-per-gallon rate in effect during the quarter for which the
13 refund is claimed, less one cent (1¢) per gallon. An application for a refund must be
14 made in accordance with this Part.

15 **§ 105-449.107. Annual refunds for off-highway use and use by certain vehicles with**
16 **power attachments.**

17 (a) Off-Highway. – A person who purchases and uses motor fuel for a purpose
18 other than to operate a licensed highway vehicle may receive an annual refund for the tax
19 the person paid on fuel used during the preceding calendar year at a rate equal to the
20 amount of the flat cents-per-gallon rate in effect during the year for which the refund is
21 claimed plus the average of the two variable cents-per-gallon rates in effect during that
22 year, less one cent (1¢) per gallon. An application for a refund allowed under this section
23 must be made in accordance with this Part.

24 (b) Certain Vehicles. – A person who purchases and uses motor fuel in one of the
25 vehicles listed below may receive an annual refund for the amount of fuel consumed by
26 any of the following vehicles:

27 (1) A concrete mixing vehicle.

28 (2) A solid waste compacting vehicle.

29 (3) A bulk feed vehicle that delivers feed to poultry or livestock and uses a
30 power takeoff to unload the feed.

31 (4) A vehicle that delivers lime or fertilizer in bulk to farms and uses a
32 power takeoff to unload the lime or fertilizer.

33 (5) A vehicle that delivers motor fuel into storage tanks and uses a pump to
34 make the delivery.

35 The refund rate shall be computed by subtracting one cent (1¢) from the combined
36 amount of the flat cents-per-gallon rate in effect during the year for which the refund is
37 claimed and the average of the two variable cents-per-gallon rates in effect during that
38 year, and multiplying the difference by thirty-three and one-third percent (33 1/3%). An
39 application for a refund allowed under this section shall be made in accordance with this
40 Part. This refund is allowed for the amount of fuel consumed by the vehicle in its
41 mixing, compacting, or unloading operations, as distinguished from propelling the
42 vehicle, which amount is considered to be one-third of the amount of fuel consumed by
43 the vehicle.

1 **"§ 105-449.108. When an application for a refund is due.**

2 (a) Annual Refunds. – An application for an annual refund of tax permitted by this
3 Article is due by April 15 following the end of the calendar year for which the refund is
4 claimed. The application must state whether or not the applicant has filed a North
5 Carolina income tax return for the preceding taxable year, and must state that the
6 applicant has paid for the fuel for which a refund is claimed or that payment for the fuel
7 has been secured to the seller's satisfaction.

8 (b) Quarterly Refunds. – An application for a quarterly refund of tax permitted by
9 this Article is due by the last day of the month following the end of the calendar quarter
10 for which the refund is claimed. The application must state that the applicant has paid for
11 the fuel for which a refund is claimed or that payment for the fuel has been secured to the
12 seller's satisfaction.

13 **"§ 105-449.109. Reduction or denial of late annual or quarterly refund application.**

14 An application filed with the Secretary within six months of the date the application is
15 due must be accepted but is subject to a penalty of twenty-five percent (25%) of the
16 amount of the refund otherwise due if the application is filed within 30 days after the date
17 the application is due, and is subject to a penalty of fifty percent (50%) of the amount of
18 the refund otherwise due if the application is filed more than 30 days but within six
19 months after the date the application is due. The Secretary may not accept an application
20 filed more than six months after the date the application is due.

21 **"§ 105-449.110. Review of refund application.**

22 Upon determining that an application for refund is correct, the Secretary must issue
23 the applicant a warrant upon the State Treasurer for the amount of the refund. If the
24 Secretary determines that an application for refund is incorrect, the Secretary must send a
25 written notice of the determination to the applicant. The notice must advise the applicant
26 that the applicant may request a hearing on the matter in accordance with Article 9 of this
27 Chapter.

28 **"PART 6. ENFORCEMENT AND ADMINISTRATION.**

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

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

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

- 39 (1) Identification, including address, of the terminal or bulk plant from
40 which the motor fuel was received.
41 (2) The date the motor fuel was loaded.
42 (3) The gross volume of motor fuel loaded.

- 1 (4) The destination state of the motor fuel, as represented by the purchaser
2 of the motor fuel or the purchaser's agent.
- 3 (5) If the document is issued by a terminal operator, the following
4 information:
- 5 a. The net volume temperature corrected to 60° Fahrenheit of the
6 motor fuel loaded.
- 7 b. A tax responsibility statement indicating the name of the supplier
8 that is responsible for the tax due on the motor fuel.
- 9 (c) Reliance. – A terminal operator or bulk plant operator may rely on the
10 representation made by the purchaser of motor fuel or the purchaser's agent concerning
11 the destination state of the motor fuel. A purchaser is liable for any tax due as a result of
12 the purchaser's diversion of fuel from the represented destination state.
- 13 (d) Duties of Transporter. – A person to whom a shipping document was issued
14 must do all of the following:
- 15 (1) Carry the shipping document in the conveyance for which it was issued
16 when transporting the motor fuel described in it.
- 17 (2) Show the shipping document to a law enforcement officer upon request
18 when transporting the motor fuel described in it.
- 19 (3) Deliver motor fuel described in the shipping document to the destination
20 state printed on it unless the person does all of the following:
- 21 a. Notifies the Secretary before transporting the motor fuel into a
22 state other than the printed destination state that the person has
23 received instructions since the shipping document was issued to
24 deliver the motor fuel to a different destination state.
- 25 b. Receives from the Secretary a confirmation number authorizing
26 the diversion.
- 27 c. Writes on the shipping document the change in destination state
28 and the confirmation number for the diversion.
- 29 (4) Give a copy of the shipping document to the distributor or other person
30 to whom the motor fuel is delivered.
- 31 (e) Duties of Person Receiving Shipment. – A person to whom motor fuel is
32 delivered by railroad tank car or transport truck may not accept delivery of the motor fuel
33 if the destination state shown on the shipping document for the motor fuel is a state other
34 than North Carolina. To determine if the shipping document shows North Carolina as the
35 destination state, the person to whom the fuel is delivered must examine the shipping
36 document and must keep a copy of the shipping document. The person must keep a copy
37 at the place of business where the motor fuel was delivered for 90 days from the date of
38 delivery and must keep it at that place or another place for at least three years from the
39 date of delivery.
- 40 (f) Sanctions. – The following acts are grounds for a civil penalty payable to the
41 Department of Transportation, Division of Motor Vehicles, or the Department of
42 Revenue:

- 1 (1) Transporting motor fuel in a railroad tank car or transport truck without
2 a shipping document or with a false or an incomplete shipping
3 document.
- 4 (2) Delivering motor fuel to a destination state other than that shown on the
5 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 the
8 person responsible for the movement of motor fuel in the conveyance, if the conveyance
9 is a railroad tank car. The amount of the penalty depends on the amount of fuel
10 improperly transported or diverted and whether the person against whom the penalty is
11 assessed has previously been assessed a penalty under this subsection. For a first
12 assessment under this subsection, the penalty is the amount of motor fuel tax payable on
13 the improperly transported or diverted motor fuel. For a second or subsequent
14 assessment under this subsection, the penalty is the greater of one thousand dollars
15 (\$1,000) or five times the amount of motor fuel tax payable on the improperly transported
16 or diverted motor fuel. A penalty imposed under this subsection is in addition to any
17 motor fuel tax assessed.

18 **"§ 105-449.116. Import confirmation number required for some imported motor**
19 **fuel.**

20 A bonded importer or an occasional importer that acquires motor fuel for import by
21 transport truck from a supplier that is not an elective supplier or a permissive supplier,
22 and therefore will not be acting as trustee for the remittance of tax to the State on behalf
23 of the importer, must obtain an import confirmation number from the Secretary before
24 importing the motor fuel. The importer must write the import confirmation number on
25 the shipping document issued for the fuel. The importer must obtain a separate import
26 confirmation number for each transport truck delivery of motor fuel into this State.

27 **"§ 105-449.117. Penalties for highway use of dyed diesel or other non-tax-paid fuel.**

28 It is unlawful to use dyed diesel fuel for a highway use unless that use is permitted
29 under section 4082 of the Code. A person who operates on a highway a highway vehicle
30 whose supply tank contains dyed diesel fuel whose use is unlawful under this section or
31 contains other fuel on which the tax imposed by this Article has not been paid is guilty of
32 a Class 1 misdemeanor and is liable for a civil penalty.

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

40 **"§ 105-449.118. Civil penalty for buying or selling non-tax-paid motor fuel.**

41 A person who dispenses non-tax-paid motor fuel into the supply tank of a highway
42 vehicle or who allows non-tax-paid motor fuel to be dispensed into the supply tank of a

1 highway vehicle is subject to a civil penalty. The penalty is based on the amount of
2 motor fuel dispensed and is set at the following amounts:

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

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

11 **"§ 105-449.119. Hearing on civil penalty assessment.**

12 A person who denies liability for a penalty imposed under this Part must pay the
13 penalty under protest and make a written demand to the Department of Revenue for a
14 refund. The written demand must be made within 30 days after the penalty is imposed.
15 Upon receiving a demand for a refund, the Secretary shall schedule a hearing on the
16 matter before an employee or an agent of the Department. The hearing must be held
17 within 30 days after receiving the written demand for a refund. If, after the hearing, the
18 Department determines that the person was not liable for the penalty, the amount
19 collected shall be refunded. If after the hearing the Department determines that the
20 person was liable for the penalty, the person paying the penalty may appeal the
21 imposition of the penalty in accordance with G.S. 105-241.2, 105-241.3, and 105-241.4.

22 **"§ 105-449.120. Acts that are misdemeanors.**

23 (a) Class 1. – A person who commits any of the following acts is guilty of a Class
24 1 misdemeanor:

- 25 (1) Fails to obtain a license required by this Article.
- 26 (2) Willfully fails to make a report required by this Article.
- 27 (3) Willfully fails to pay a tax when due under this Article. Failure to
28 comply with a requirement of a supplier to remit tax payable to the
29 supplier by electronic funds transfer is considered a failure to make a
30 timely payment.
- 31 (4) Makes a false statement in an application, a report, or a statement
32 required under this Article.
- 33 (5) Makes a false statement in an application for a refund.
- 34 (6) Fails to keep records as required under this Article.
- 35 (7) Refuses to allow the Secretary or a representative of the Secretary to
36 examine the person's books and records concerning motor fuel.
- 37 (8) Fails to disclose the correct amount of motor fuel sold or used in this
38 State.
- 39 (9) Fails to file a replacement bond or an additional bond as required under
40 this Article.
- 41 (10) Fails to show or give a shipping document as required under this
42 Article.

(b) Class 2. – A person who commits any of the following acts is guilty of a Class 2 misdemeanor:

(1) Knowingly dispenses non-tax-paid motor fuel into the supply tank of a highway vehicle.

(2) Knowingly allows non-tax-paid fuel to be dispensed into the supply tank of a highway vehicle.

"§ 105-449.121. Record-keeping requirements; inspection authority.

(a) What Must Be Kept. – A person who is required to submit a report or file a return under Part 4 of this Article must keep a record of all shipping documents or other documents used to determine the information provided in the report or return. The records must be kept for three years from the due date of the report or return to which the records apply.

(b) Inspection. – The Secretary or a person designated by the Secretary may do any of the following to determine tax liability under this Article:

(1) Audit a distributor or a person who is required to have or elects to have a license under this Article.

(2) Audit a distributor that is not licensed under this Article.

(3) Examine a tank or other equipment used to make, store, or transport motor fuel, diesel dyes, or diesel markers.

(4) Take a sample of a product from a vehicle, a tank, or another container in a quantity sufficient to determine the composition of the product.

(5) Stop a vehicle for the purpose of taking a sample of motor fuel from the vehicle.

"§ 105-449.122. Miscellaneous requirements.

(a) Metered Pumps. – All motor fuel dispensed at retail must be dispensed from metered pumps that indicate the total amount of fuel measured through the pumps. Each pump must be marked to indicate the type of motor fuel dispensed.

(b) Truck Equipment. – A highway vehicle that transports diesel fuel in a tank that is separate from the fuel supply tank of the vehicle may not have a connection from the transporting tank to the motor or to the supply tank of the vehicle.

"PART 7. USE OF REVENUE.

"§ 105-449.125. Distribution of tax revenue among various funds and accounts.

The Secretary shall allocate the amount of revenue collected under this Article from an excise tax of one-half cent (1/2¢) a gallon to the following funds and accounts in the fraction indicated:

<u>Fund or Account</u>	<u>Amount</u>
<u>Commercial Leaking Petroleum</u>	
<u>Underground Storage Tank Cleanup</u>	
<u>Fund.....</u>	<u>Nineteen thirty-seconds</u>
<u>Noncommercial Leaking Petroleum</u>	
<u>Underground Storage Tank Cleanup</u>	
<u>Fund.....</u>	<u>Three thirty-seconds</u>
<u>Water and Air Quality Account.....</u>	<u>Five-sixteenths.</u>

1 The Secretary shall allocate seventy-five percent (75%) of the remaining excise tax
2 revenue collected under this Article to the Highway Fund and shall allocate twenty-five
3 percent (25%) to the Highway Trust Fund.

4 The Secretary shall charge a proportionate share of a refund allowed under this
5 Article to each fund or account to which revenue collected under this Article is credited.
6 The Secretary shall credit revenue or charge refunds to the appropriate funds or accounts
7 on a monthly basis.

8 **"§ 105-449.126. Distribution of part of Highway Fund allocation to Wildlife**
9 **Resources Fund.**

10 The Secretary shall credit to the Wildlife Resources Fund one-sixth of one percent
11 (1/6 of 1%) of the amount that is allocated to the Highway Fund under G.S. 105-449.125
12 and is from the excise tax on gasoline or blended fuel that contains gasoline. Revenue
13 credited to the Wildlife Resources Fund under this section may be used only for the
14 boating and water safety activities described in G.S. 75A-3(c). The Secretary must credit
15 revenue to the Wildlife Resources Fund on an annual basis.

16 **"§ 105-449.127. Civil penalties.**

17 The Secretary must credit civil penalties collected under this Article to the Highway
18 Fund as nontax revenue.

19 **"ARTICLE 36D.**

20 **"ALTERNATIVE FUEL.**

21 **"§ 105-449.130. Definitions.**

22 The following definitions apply in this Article:

- 23 (1) Alternative fuel. – A combustible gas or liquid that can be used to
24 generate power to operate a highway vehicle and that is not subject to
25 tax under Article 36C of this Chapter.
26 (2) Highway. – Defined in G.S. 20-4.01(13).
27 (3) Highway vehicle. – Defined in G.S. 105-449.60.
28 (4) Motor fuel. – Defined in G.S. 105-449.60.
29 (5) Motor fuel rate. – Defined in G.S. 105-449.60.

30 **"§ 105-449.131. License and bond required.**

31 (a) License. – A person may not engage in business in this State as a provider of
32 alternative fuel unless the person has an alternative fuel provider license issued by the
33 Secretary. To obtain a license, a person must file an application with the Secretary on a
34 form provided by the Secretary. An application must include the applicant's name,
35 address, federal employer identification number, and any other information required by
36 the Secretary.

37 (b) Bond. – An applicant for a license as an alternative fuel provider must file with
38 the Secretary a bond or an irrevocable letter of credit in an amount that would be required
39 if the fuel the applicant intended to provide was motor fuel rather than alternative fuel.
40 An applicant that is also required to file a bond or an irrevocable letter of credit under
41 G.S. 105-449.72 to obtain a license as a distributor of motor fuel may file a single bond
42 or irrevocable letter of credit under that section for the combined amount.

1 A bond filed under this subsection must be conditioned upon compliance with this
2 Article, be payable to the State, and be in the form required by the Secretary. The
3 Secretary may require a bond issued under this subsection to be adjusted in accordance
4 with the procedure set out in G.S. 105-449.72 for adjusting a bond filed by a distributor
5 of motor fuel.

6 **"§ 105-449.132. Denial or cancellation of license.**

7 The Secretary may deny an application for a license as an alternative fuel provider or
8 cancel an alternative fuel provider license for the same reasons that the Secretary can
9 deny an application for a license or cancel a license under Article 36C of this Chapter.
10 The procedure in Article 36C for cancelling a license applies to the cancellation of a
11 license under this Article.

12 **"§ 105-449.133. Issuance of license; notification of changes.**

13 (a) Issuance. – The Secretary must issue an alternative fuel provider license to
14 each applicant whose application is approved. A license is not transferable and remains
15 in effect until surrendered or cancelled.

16 (b) Notice. – An alternative fuel provider that stops engaging in this State in the
17 business of providing alternative fuel must give the Secretary written notice of the change
18 and must surrender the license. The notice must give the date the change takes effect and,
19 if the alternative fuel provider has transferred the business to another by sale or
20 otherwise, the date of the transfer and the name and address of the person to whom the
21 business is transferred.

22 All taxes for which an alternative fuel provider is liable under this Article but are not
23 yet due become due on the date of the change. If the alternative fuel provider transfers
24 the business to another and does not give the notice required by this section, the person to
25 whom the business was transferred is liable for the amount of any tax the alternative fuel
26 provider owed the State on the date the business was transferred. The liability of the
27 person to whom the business is transferred is limited to the value of the property acquired
28 from the alternative fuel provider.

29 **"§ 105-449.134. Tax on alternative fuel.**

30 A tax at the equivalent of the motor fuel rate is imposed on alternative fuel used to
31 operate a highway vehicle. The Secretary must determine the equivalent rate. The
32 exemptions from the tax on motor fuel in G.S. 105-449.88(2), (3), and (4) apply to the tax
33 imposed by this section. The refunds for motor fuel tax allowed by Part 5 of Article 36C
34 of this Chapter apply to the tax imposed by this section. The proceeds of the tax imposed
35 by this section must be allocated in accordance with G.S. 105-449.125.

36 **"§ 105-449.135. Liability for and payment of the tax.**

37 (a) Liability. – The alternative fuel provider that sells or delivers alternative fuel is
38 liable for the tax imposed by this Article.

39 (b) Payment. – The tax imposed by this Article is payable when a return is due. A
40 return is due monthly within 25 days after the end of each month. A monthly return
41 covers liabilities that accrue in the calendar month preceding the date the return is due. A
42 return must be filed with the Secretary and must be in the form and contain the
43 information required by the Secretary.

1 **"§ 105-449.136. Miscellaneous provisions.**

2 (a) Records. – An alternative fuel provider must keep a record of all documents
3 used to determine the information provided in a return filed under this Article. The
4 records must be kept for three years from the due date of the return to which the records
5 apply. The records are open to inspection during business hours by the Secretary or a
6 person designated by the Secretary.

7 (b) Violations. – The offenses listed in subdivisions (1) through (9) of G.S. 105-
8 449.120 apply to this Article. In applying those offenses to this Article, references to
9 'this Article' are to be construed as references to Article 36D and references to 'motor
10 fuel' are to be construed as references to alternative fuel."

11 PART II.

12 **TRANSITIONAL PROVISIONS**

13 Sec. 4. December 1995, Fuel Tax Liabilities. – A distributor of gasoline or a
14 supplier of diesel fuel that incurs liability in December of 1995 under Article 36 or 36A
15 of Chapter 105 of the General Statutes for the per gallon excise taxes on gasoline and
16 diesel fuel imposed by those Articles shall report the liability and pay the taxes in January
17 of 1996 as if those Articles had not been repealed.

18 Sec. 5. Floor Stocks Tax. – Every distributor of motor fuel, both at wholesale
19 and retail, and every supplier or reseller of special fuel must inventory all motor fuel that
20 is on hand or in the person's possession as of 12:01 a.m. on January 1, 1996, and is not in
21 the terminal transfer system and must report the results of the inventory to the Secretary
22 of Revenue. The amount of motor fuel in dead storage is not considered to be part of
23 inventory and shall not be included in the report. "Dead storage" is the amount of motor
24 fuel in a storage tank that will not be pumped out of the tank because the motor fuel is
25 below the mouth of the draw pipe. For a storage tank with a capacity of less than 10,000
26 gallons, the amount of motor fuel in dead storage is considered to be 200 gallons. For a
27 storage tank with a capacity of 10,000 gallons or more, the amount of motor fuel in dead
28 storage is considered to be 400 gallons. The report of inventory must be made on a form
29 provided by the Secretary. The report is due by January 15, 1996.

30 A tax at the rate set in G.S. 105-449.80, as enacted by this act, is imposed on
31 all fuel that is included in the reportable inventory of a distributor, a supplier, or a
32 reseller. The tax does not apply, however, to fuel on which the per gallon excise taxes
33 imposed by former Articles 36 and 36A of Chapter 105 of the General Statutes have been
34 paid nor to fuel for which liability for those taxes attached before the repeal of those
35 Articles.

36 A distributor, a supplier, or a reseller may pay the tax due on fuel in inventory
37 at any time before February 28, 1996, but at least one-twelfth of the amount due must be
38 paid by the last day of each month starting with February of 1996. Payments made after
39 February 28, 1996, are late and are subject to penalties and interest under Article 9 of
40 Chapter 105 of the General Statutes.

41 Sec. 6. All licenses issued under Article 36 or 36A of Chapter 105 of the
42 General Statutes expire January 1, 1996. The Secretary of Revenue must give written
43 notice of this expiration to all license holders by September 1, 1995.

1 A distributor of gasoline under Article 36 or a supplier of special fuel under
2 Article 36A that intends to remain in business as a distributor under Article 36C of
3 Chapter 105 of the General Statutes, as enacted by this act, may obtain a replacement
4 license as a distributor without making a new application by notifying the Secretary of
5 Revenue that the person wants a replacement license. The Secretary of Revenue must
6 issue a replacement distributor license to a distributor or supplier that requests one
7 without requiring a new application or a change in the amount of bond required. The
8 Secretary of Revenue may, however, require an applicant for a replacement distributor
9 license to identify the states to which the distributor intends to export motor fuel and give
10 information on whether the distributor is licensed or registered for motor fuel tax
11 purposes in those states.

12 A bulk user or a reseller of fuel under Article 36A of Chapter 105 of the
13 General Statutes that intends to store or sell at retail undyed diesel fuel after December
14 31, 1995, may obtain a replacement license as a bulk-end user of undyed diesel fuel or a
15 retailer of undyed diesel fuel, respectively, without making a new application by
16 notifying the Secretary of Revenue that the person wants a replacement license. The
17 Secretary of Revenue must issue the appropriate replacement license without requiring a
18 new application.

19 Sec. 7. Notwithstanding G.S. 105-449.80, as enacted by this act, the weighted
20 average of gasoline and diesel fuel used to determine the variable component of the per
21 gallon excise tax to be in effect for the six-month period beginning July 1, 1996, shall be
22 computed based on the tax collected on gasoline and diesel #2 during the base period
23 under former Articles 36 and 36A of Chapter 105 of the General Statutes and under
24 Article 36C of that Chapter, as enacted by this act.

25 Sec. 8. Notwithstanding G.S. 105-449.90, as enacted by this act, a tax return
26 of an occasional importer that is due for a month in the 1996 calendar year is due by the
27 17th of the month rather than the 1st of the month.

28 Sec. 9. This act does not affect the rights or liabilities of the State, a taxpayer,
29 or another person arising under a statute amended or repealed by this act before its
30 amendment or repeal; nor does it affect the right to any refund or credit of a tax that
31 would otherwise have been available under the amended or repealed statute before its
32 amendment or repeal.

33 PART III.

34 CONFORMING CHANGES

35 Sec. 10. G.S. 20-88.01 reads as rewritten:

36 **"§ 20-88.01. Revocation of registration for failure to register for or comply with**
37 **road tax or pay civil penalty for buying or selling non-tax-paid fuel.**

38 (a) Road Tax. – The Secretary of Revenue may notify the Commissioner of those
39 motor vehicles that are registered or are required to be registered under Article 36B of
40 Chapter 105 and whose owners or lessees, as appropriate, are not in compliance with
41 Article ~~36A or 36B~~ 36B, 36C, or 36D of Chapter 105. When notified, the Commissioner
42 shall withhold or revoke the registration plate for the vehicle.

1 (b) Non-tax-paid Fuel. – The Secretary of Revenue may notify the Commissioner
2 of those motor vehicles for which a civil penalty imposed under G.S. ~~105-441.1~~ or G.S.
3 ~~105-449.24~~ 105-449.118 has not been paid. When notified, the Commissioner shall
4 withhold or revoke the registration plate of the vehicle."

5 Sec. 11. G.S. 75-81(3) reads as rewritten:

6 "(3) 'Motor Fuel' shall mean a refined or blended petroleum product used for
7 the propulsion of self-propelled motor vehicles; the term includes
8 "motor fuel" as defined in G.S. 105-430 and "fuel" as defined in G.S.
9 ~~105-449.2~~ has the same meaning as in G.S. 105-449.60."

10 Sec. 12. G.S. 75A-3(c) reads as rewritten:

11 "(c) The Boating Account is established within the Wildlife Resources Fund
12 created under G.S. 143-250. All moneys collected pursuant to the numbering and titling
13 provisions of this Chapter ~~and pursuant to G.S. 105-446.2~~ shall be credited to this Account
14 ~~and Account.~~ Gasoline excise tax revenue is credited to the Account under G.S. 105-
15 449.126. Revenue in the Account shall be used by the Wildlife Resources Commission,
16 subject to the Executive Budget Act and the Personnel Act, for the administration and
17 enforcement of this Chapter; for activities relating to boating and water safety including
18 education and waterway marking and improvement; and for boating access area
19 acquisition, development, and maintenance."

20 Sec. 13. G.S. 105-164.13(11) reads as rewritten:

21 "(11) ~~Gasoline or other motor fuel on which the tax levied in G.S. 105-434~~
22 ~~and/or G.S. 105-435 is due and has been paid, and the fact that a~~
23 ~~refund of the tax levied by either of said sections is made pursuant to~~
24 ~~the provisions of Subchapter V of Chapter 105 shall not make the~~
25 ~~sale or the seller of such fuels subject to the tax levied by this~~
26 ~~Article. Motor fuel subject to tax under Article 36C of this Chapter~~
27 ~~and alternative fuel subject to tax under Article 36D of this Chapter,~~
28 ~~regardless of whether those Articles exempt the fuel from tax or~~
29 ~~allow a refund of tax paid on the fuel."~~

30 Sec. 14. G.S. 105-253(b) reads as rewritten:

31 "(b) Each responsible corporate officer is personally and individually liable for all
32 of the following:

- 33 (1) All sales and use taxes collected by a corporation upon taxable
34 transactions of the corporation.
- 35 (2) All sales and use taxes due upon taxable transactions of the
36 corporation but upon which the corporation failed to collect the tax,
37 but only if the responsible officer knew, or in the exercise of
38 reasonable care should have known, that the tax was not being
39 collected.
- 40 (3) All taxes due from the corporation pursuant to the provisions of
41 ~~Article 36 and Article 36A-36C and 36D~~ of Subchapter V of this
42 Chapter.

1 The liability of the responsible corporate officer is satisfied upon timely remittance of
2 the tax to the Secretary by the corporation. If the tax remains unpaid by the corporation
3 after it is due and payable, the Secretary may assess the tax against, and collect the tax
4 from, any responsible corporate officer in accordance with the procedures in this Article
5 for assessing and collecting tax from a taxpayer. As used in this section, the term
6 'responsible corporate officer' includes the president and the treasurer of the corporation
7 and any other officers assigned the duty of filing tax returns and remitting taxes to the
8 Secretary on behalf of the corporation. Any penalties that may be imposed under G.S.
9 105-236 and that apply to a deficiency shall apply to any assessment made under this
10 section. The provisions of this Article apply to an assessment made under this section to
11 the extent they are not inconsistent with this section.

12 The period of limitations for assessing a responsible corporate officer for unpaid taxes
13 under this section shall expire one year after the expiration of the period of limitations for
14 assessment against the corporation."

15 Sec. 15. G.S. 105-449.38 reads as rewritten:

16 **"§ 105-449.38. Tax levied.**

17 A road tax for the privilege of using the streets and highways of this State is hereby
18 imposed upon every motor carrier on the amount of ~~gasoline or other motor fuel or~~ or
19 alternative fuel used by ~~such motor the~~ carrier in its operations within this State. The tax
20 shall be at the rate established by the Secretary pursuant to G.S. 105-434. ~~Except as credit~~
21 ~~for certain taxes as hereinafter provided for in this Article, taxes imposed on motor carriers by~~
22 ~~this Article are~~ 105-449.80 or G.S. 105-449.134, as appropriate. This tax is in addition to
23 any other taxes imposed on ~~such carriers by any other provisions of law.~~ The tax herein levied
24 is for the same purposes as the tax imposed under the provisions of G.S. 105-434. motor
25 carriers."

26 Sec. 16. G.S. 105-449.43 reads as rewritten:

27 **"§ 105-449.43. Application of tax proceeds.**

28 ~~The same percentage amounts of tax~~ Tax revenue collected under this Article and tax
29 refunds or credits allowed under this Article shall be credited to the Highway Fund and to
30 the Highway Trust Fund as are credited to those Funds under G.S. 105-445, and the same
31 ~~percentage amounts of refunds or credits allowed under this Article shall be charged to~~
32 ~~the Highway Fund and the Highway Trust Fund as are charged to those Funds under that~~
33 ~~statute.~~ allocated among and charged to the funds and accounts listed in G.S. 105-
34 449.125 in accordance with that section."

35 Sec. 17. G.S. 105-449.47 reads as rewritten:

36 **"§ 105-449.47. Registration of vehicles.**

37 A motor carrier may not operate or cause to be operated in this State any vehicle listed
38 in the definition of motor carrier unless both the motor carrier and the motor vehicle are
39 registered with the Secretary for purposes of the tax imposed by this Article.

40 Upon application, the Secretary shall register a motor carrier and shall issue at least
41 one identification marker for each motor vehicle operated by the motor carrier. A copy
42 of the registration of a motor carrier shall be carried in each motor vehicle operated by
43 the motor carrier when the vehicle is in this State. An identification marker shall be

1 clearly displayed at all times and shall be affixed to the vehicle for which it was issued in
2 the place and manner designated by the Secretary. Registrations and identification
3 markers required by this section shall be issued on a calendar year basis. The Secretary
4 may renew a registration or an identification marker without issuing a new registration or
5 identification marker. All identification markers issued by the Secretary remain the
6 property of the State. The Secretary may withhold or revoke a registration or an
7 identification marker when a motor carrier fails to comply with this Article or Article ~~36A~~
8 36C or 36D of this Subchapter."

9 Sec. 18. G.S. 119-15 reads as rewritten:

10 **"§ 119-15. ~~'Gasoline' defined.~~ Definitions that apply to Article.**

11 The following definitions apply in this Article:

12 (1) Alternative fuel. – Defined in G.S. 105-449.130.

13 (2) Gasoline. – Defined in G.S. 105-449.60.

14 (3) Kerosene. – Petroleum oil that is free from water, glue, and suspended
15 matter and that meets the specifications and standards adopted by the
16 Gasoline and Oil Inspection Board.

17 (4) Motor fuel. – Defined in G.S. 105-449.60.

18 (5) Person. – Defined in G.S. 105-229.90.

19 ~~The term "gasoline" wherever used in this Article shall be construed to mean refined~~
20 ~~petroleum naphtha which by its composition is suitable for use as a carburant in internal~~
21 ~~combustion engines."~~

22 Sec. 19. G.S. 119-16 is repealed.

23 Sec. 20. G.S. 119-16.1 is repealed.

24 Sec. 21. G.S. 119-16.2 reads as rewritten:

25 **"§ 119-16.2. Application for license.**

26 A person may not engage in business as a kerosene distributor unless the person ~~has~~
27 ~~either a license issued under G.S. 105-433~~ is licensed as a supplier or a distributor under Part
28 2 of Article 36C of Chapter 105 of the General Statutes or has a kerosene license issued
29 under this section. To obtain a license under this section, an applicant must file an
30 application with the Secretary of Revenue on a form provided by the Secretary and file
31 with the Secretary a bond in the amount required by the Secretary, not to exceed twenty
32 thousand dollars (\$20,000). An applicant must give the Secretary the same information
33 the applicant would be required to give under ~~G.S. 105-433~~ Part 2 of Article 36C of
34 Chapter 105 of the General Statutes if the applicant were applying for a license under that
35 ~~section.~~ Part. A bond filed under this section must be conditioned on compliance with
36 this Article, be payable to the State, and be in the form required by the Secretary. A
37 license issued under this section remains in effect until surrendered or canceled, must be
38 displayed in the same manner as a license issued under ~~G.S. 105-433~~, Part 2 of Article
39 36C of Chapter 105 of the General Statutes, and is subject to the same restrictions as a
40 license issued under that ~~section.~~ Part. A person who fails to comply with this section is
41 guilty of a Class 1 misdemeanor."

42 Sec. 22. G.S. 119-18(a) reads as rewritten:

1 "(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is
2 levied upon all ~~kerosene and motor fuel.~~ kerosene, motor fuel, and alternative fuel. The
3 inspection tax on motor fuel is due and payable to the Secretary of Revenue at the same
4 time that the per gallon excise tax on motor fuel is due and payable under ~~Articles 36 and~~
5 ~~36A–~~Article 36C of Chapter 105 of the General Statutes. The inspection tax on
6 alternative fuel is due and payable to the Secretary of Revenue at the same time that the
7 excise tax on alternative fuel is due and payable under Article 36D of Chapter 105 of the
8 General Statutes. The inspection tax on kerosene is payable monthly to the Secretary by
9 a distributor required to be licensed under G.S. 119-16.2. A monthly report by a
10 distributor required to be licensed under G.S. 119-16.2 is due by the 20th of each month
11 and applies to kerosene received by the distributor during the preceding month."

12 Sec. 23. G.S. 119-19 reads as rewritten:

13 **"§ 119-19. ~~Failure to report or pay tax; cancellation of license.~~ Authority of Secretary to**
14 **cancel a license.**

15 If any person shall at any time file a false report of the data or information required by
16 law, or shall fail or refuse or neglect to file any report required by law, or to pay the full
17 amount of the tax as required by law, the Secretary of Revenue may forthwith cancel the
18 license of such person issued under G.S. 105-433 or 119-16.2, and notify such person in
19 writing of such cancellation by registered mail to the last known address of such person
20 appearing in the files of the Secretary of Revenue. In the event that the license of any
21 person shall be canceled by the Secretary of Revenue as hereinbefore provided in this
22 section, and in the event such person shall have paid to the State of North Carolina all the
23 taxes due and payable by him under this Article, together with any and all penalties
24 accruing under any of the provisions of this Article, then the Secretary of Revenue shall
25 cancel and surrender the bond theretofore filed by said person under G.S. 105-433 or
26 119-16.2. The Secretary of Revenue may cancel a license issued under G.S. 119-16.2
27 upon the written request of the license holder. The Secretary may summarily cancel a
28 license issued under G.S. 119-16.2 or Article 36C or 36D of Chapter 105 of the General
29 Statutes when the Secretary finds that the license holder is incurring liability for the tax
30 imposed by this Article after failing to pay a tax when due under this Article. The
31 Secretary may cancel the license of a license holder who files a false report under this
32 Article or fails to file a report required under this Article after holding a hearing on
33 whether the license should be cancelled.

34 The Secretary must send a person whose license is summarily cancelled a notice of
35 the cancellation and must give the person an opportunity to have a hearing on the
36 cancellation within 10 days after the cancellation. The Secretary must give a person
37 whose license may be cancelled after a hearing at least 10 days' written notice of the date,
38 time, and place of the hearing. A notice of a summary license cancellation and a notice
39 of hearing must be sent by registered mail to the last known address of the license holder.

40 When the Secretary cancels a license and the license holder has paid all taxes and
41 penalties due under this Article, the Secretary must either return to the license holder the
42 bond filed by the license holder or notify the person liable on the bond and the license
43 holder that the person is released from liability on the bond."

1 Sec. 24. G.S. 119-22 is repealed.

2 Sec. 25. G.S. 136-41.1(a) reads as rewritten:

3 "(a) There is annually appropriated out of the State Highway Fund a sum equal to
4 the net amount after refunds that was produced during the fiscal year by a one and three-
5 fourths cents (1 3/4¢) tax on each gallon of motor fuel ~~as taxed by G.S. 105-434 and 105-~~
6 ~~435, to~~ under Article 36C of Chapter 105 of the General Statutes and on the equivalent
7 amount of alternative fuel taxed under Article 36D of that Chapter. The amount
8 appropriated shall be allocated in cash on or before October 1 of each year to the cities
9 and towns of the State in accordance with this section. In addition, as provided in G.S.
10 136-176(b)(3), revenue is allocated and appropriated from the Highway Trust Fund to the
11 cities and towns of this State to be used for the same purposes and distributed in the same
12 manner as the revenue appropriated to them under this section from the Highway Fund.
13 Like the appropriation from the Highway Fund, the appropriation from the Highway
14 Trust Fund shall be based on revenue collected during the fiscal year preceding the date
15 the distribution is made.

16 Seventy-five percent (75%) of the funds appropriated for cities and towns shall be
17 distributed among the several eligible municipalities of the State in the percentage
18 proportion that the population of each eligible municipality bears to the total population
19 of all eligible municipalities according to the most recent annual estimates of population
20 as certified to the Secretary of Revenue by the State Budget Officer. This annual
21 estimation of population shall include increases in the population within the
22 municipalities caused by annexations accomplished through July 1 of the calendar year in
23 which these funds are distributed. Twenty-five percent (25%) of said fund shall be
24 distributed among the several eligible municipalities of the State in the percentage
25 proportion that the mileage of public streets in each eligible municipality which does not
26 form a part of the State highway system bears to the total mileage of the public streets in
27 all eligible municipalities which do not constitute a part of the State highway system.

28 It shall be the duty of the mayor of each municipality to report to the Department of
29 Transportation such information as it may request for its guidance in determining the
30 eligibility of each municipality to receive funds under this section and in determining the
31 amount of allocation to which each is entitled. Upon failure of any municipality to make
32 such report within the time prescribed by the Department of Transportation, the
33 Department of Transportation may disregard such defaulting unit in making said
34 allotment.

35 The funds to be allocated under this section shall be paid in cash to the various
36 eligible municipalities on or before October 1 of each year. Provided that eligible
37 municipalities are authorized within the discretion of their governing bodies to enter into
38 contracts for the purpose of maintenance, repair, construction, reconstruction, widening,
39 or improving streets of such municipalities at any time after January 1 of any calendar
40 year in total amounts not to exceed ninety percent (90%) of the amount received by such
41 municipality during the preceding fiscal year, in anticipation of the receipt of funds under
42 this section during the next fiscal year, to be paid for out of such funds when received.

1 The Department of Transportation may withhold each year an amount not to exceed
2 one percent (1%) of the total amount appropriated for distribution under this section for
3 the purpose of correcting errors in allocations: Provided, that the amount so withheld and
4 not used for correcting errors will be carried over and added to the amount to be allocated
5 for the following year.

6 The word 'street' as used in this section is hereby defined as any public road
7 maintained by a municipality and open to use by the general public, and having an
8 average width of not less than 16 feet. In order to obtain the necessary information to
9 distribute the funds herein allocated, the Department of Transportation may require that
10 each municipality eligible to receive funds under this section submit to it a statement,
11 certified by a registered engineer or surveyor of the total number of miles of streets in
12 such municipality. The Department of Transportation may in its discretion require the
13 certification of mileage on a biennial basis."

14 Sec. 26. G.S. 136-176(a)(1) reads as rewritten:

15 "(1) Motor fuel, ~~special fuel,~~ alternative fuel, and road tax revenue deposited
16 in the Fund under G.S. ~~405-445, 105-449.16, 105-449.125, 105-449.134,~~
17 and 105-449.43, respectively."

18 Sec. 27. G.S. 143-215.3A(a) reads as rewritten:

19 "(a) The Water and Air Quality Account is established as a nonreverting account
20 within the Department. Revenue in the Account shall be applied to the costs of
21 administering the programs for which the fees were collected. Revenue credited to the
22 Account pursuant to G.S. ~~405-445-105-449.125, 105-449.134, and 105-449.43~~ shall be
23 used to administer the air quality program. Except for the following fees, all application
24 fees and permit administration fees collected by the State for permits issued under
25 Articles 21, 21A, 21B, and 38 of this Chapter shall be credited to the Account:

- 26 (1) Fees collected under Part 2 of Article 21A and credited to the Oil or
27 Other Hazardous Substances Pollution Protection Fund.
- 28 (2) Fees credited to the Title V Account.
- 29 (3) Fees credited to the Wastewater Treatment Works Emergency
30 Maintenance, Operation and Repair Fund under G.S. 143-215.3B.
- 31 (4) Fees collected under G.S. 143-215.28A."

32 Sec. 28. G.S. 150B-2(8a)j. reads as rewritten:

33 "j. Establishment of the interest rate that applies to tax assessments
34 under G.S. 105-241.1 and the variable component of the excise
35 tax on motor fuel under G.S. ~~105-434-105-449.80.~~"

36 PART IV.

37 REPEAL MINIMUM HIGHWAY USE TAX

38 Sec. 29. G.S. 105-187.3(a) reads as rewritten:

39 "(a) Amount. – The rate of the use tax imposed by this Article is three percent (3%)
40 of the retail value of a motor vehicle for which a certificate of title is issued. The tax is
41 payable as provided in G.S. 105-187.4. ~~The tax may not be less than forty dollars (\$40.00)~~
42 ~~for each motor vehicle for which a certificate of title is issued, unless the issuance of a title for~~
43 ~~the vehicle is exempt from tax under G.S. 105-187.6(a).~~–The tax may not be more than one

1 thousand dollars (\$1,000) for each certificate of title issued for a Class A or Class B
2 motor vehicle that is a commercial motor vehicle, as defined in G.S. 20-4.01. The tax
3 may not be more than one thousand five hundred dollars (\$1,500) for each certificate of
4 title issued for any other motor vehicle."

5 Sec. 30. G.S. 105-187.6(b) reads as rewritten:

6 "(b) Partial Exemptions. – A maximum tax of forty dollars (\$40.00) ~~Only the~~
7 ~~minimum tax imposed by this Article~~ applies when a certificate of title is issued as the result
8 of a transfer of a motor vehicle:

9 (1) To a secured party who has a perfected security interest in the motor
10 vehicle.

11 (2) To a partnership or corporation as an incident to the formation of the
12 partnership or corporation and no gain or loss arises on the transfer
13 under section 351 or section 721 of the Internal Revenue Code, or to a
14 corporation by merger or consolidation in accordance with G.S. 55-11-
15 06."

16 Sec. 31. G.S. 105-187.7 reads as rewritten:

17 "**§ 105-187.7. Credit for tax paid in another state.**

18 A person who, within 90 days before applying for a certificate of title for a motor
19 vehicle on which the tax imposed by this Article is due, has paid a sales tax, an excise
20 tax, or a tax substantially equivalent to the tax imposed by this Article on the vehicle to a
21 taxing jurisdiction outside this State is entitled to a credit against the tax due under this
22 Article for the amount of tax paid to the other jurisdiction. ~~The credit may not reduce the~~
23 ~~person's liability under this Article below the minimum forty dollar (\$40.00) tax."~~

24 Sec. 32. G.S. 105-187.8 reads as rewritten:

25 "**§ 105-187.8. Refund for return of purchased motor vehicle.**

26 When a purchaser of a motor vehicle returns the motor vehicle to the seller of the
27 motor vehicle within 90 days after the purchase and receives a vehicle replacement for
28 the returned vehicle or a refund of the price paid the seller, whether from the seller or the
29 manufacturer of the vehicle, the purchaser may obtain a refund of the privilege tax paid
30 on the certificate of title issued for the returned motor vehicle, ~~less the minimum tax of forty~~
31 ~~dollars (\$40.00) vehicle.~~

32 To obtain a refund, the purchaser must apply to the Division for a refund within 30
33 days after receiving the replacement vehicle or refund of the purchase price. The
34 application must be made on a form prescribed by the Commission and must be
35 supported by documentation from the seller of the returned vehicle."

36 PART V.

37 MOTOR CARRIER ENFORCEMENT

38 Sec. 33. G.S. 105-449.44 reads as rewritten:

39 "**§ 105-449.44. How to determine the amount of fuel used in State–~~ascertained. the~~
40 State; presumption of amount used.**

41 (a) Calculation. – The amount of gasoline or other motor fuel used in the
42 operations of any motor carrier within this State shall be such proportion of the total
43 amount of such gasoline or other motor fuel used in its entire operations within and

1 without this State as the total number of miles traveled within this State bears to the total
2 number of miles traveled within and without this State.

3 (b) Presumption. – The Secretary shall check reports filed under this Article
4 against the weigh station records and other records of the Division of Motor Vehicles of
5 the Department of Transportation concerning motor carriers to determine if motor
6 carriers that are operating in this State are filing the reports required by this Article. A
7 motor carrier that does not file a report for a quarter but, based on the records of the
8 Division, operated in the State during that quarter, is presumed to have traveled 450 miles
9 for each time the records of the Division indicate the carrier operated in this State. The
10 Department shall assess the motor carrier for the amount payable based on the presumed
11 mileage."

12 Sec. 34. G.S. 105-236 is amended by adding a new subdivision to read:

13 "(5b) Road Tax Understatement. – If a motor carrier understates its liability
14 for the road tax imposed by Article 36B of this Chapter by fifteen
15 percent (15%) or more, the Secretary shall assess the motor carrier a
16 penalty in an amount equal to two times the amount of the deficiency."

17 **PART VI.**

18 **EFFECTIVE DATES**

19 Sec. 35. Section 6 of Part I of this act and this Part are effective upon
20 ratification. The remainder of Part I of this act and Parts II and III of this act become
21 effective January 1, 1996. Part IV of this act becomes effective July 1, 1996. Part V of
22 this act becomes effective October 1, 1995.