

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 1407
Finance Committee Substitute Adopted 7/24/02

Short Title: Contracts to Reimburse Fuel Tax/Fuel Tax Chg.

(Public)

Sponsors:

Referred to:

June 13, 2002

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A CONTRACT RIGHT REGARDING THE TIMING OF
3 PAYMENTS UNDER CONTRACTS REQUIRING REIMBURSEMENT OF
4 FEDERAL FUEL EXCISE TAXES AND TO MAKE VARIOUS MOTOR FUEL
5 EXCISE TAX CHANGES.

6 The General Assembly of North Carolina enacts:

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

9 "Article 6.

10 "Contract Rights Regarding Tax Reimbursement.

11 "**§ 119-65. Timing of reimbursement payments under contract.**

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

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

27 (c) Security. – If the party making the reimbursement exercises the contractual
28 right provided in this section, the second party may require security for the payment of
29 the taxes in proportion to the amount the taxes represent compared to the security

1 required on the contract as a whole. The second party may not, however, change the
2 other payment terms of the contract without a valid business reason other than the
3 exercise of the contractual right, except to require the payment of the taxes under the
4 contractual right to be made by electronic funds transfer."

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

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

8 "**§ 105-449.47. Registration of vehicles.**

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

17 (a1) Registration and Identification Marker. – When the Secretary registers a
18 motor carrier, the Secretary must issue at least one identification marker for each motor
19 vehicle operated by the motor carrier. A motor carrier must keep records of
20 identification markers issued to it and must be able to account for all identification
21 markers it receives from the Secretary. Registrations and identification markers issued
22 by the Secretary are for a calendar year. The Secretary may renew a registration or an
23 identification marker without issuing a new registration or identification marker. All
24 identification markers issued by the Secretary remain the property of the State. The
25 Secretary may withhold or revoke a registration or an identification marker when a
26 motor carrier fails to comply with this Article, former Article 36 or 36A of this
27 Subchapter, or Article 36C or 36D of this Subchapter.

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

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

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

38 "**§ 105-449.52. ~~Penalty for operating a motor vehicle without a registration card or~~**
39 **~~an identification marker.~~Civil penalties applicable to motor carriers.**

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

42 (1) ~~operates~~Operates in this State or causes to be operated in this State a
43 motor vehicle that does not carry the registration card required by this
44 Article or does not display an identification marker in accordance with

1 this Article is subject to a civil penalty of one hundred dollars
 2 (\$100.00). ~~Article.~~ The amount of the penalty is one hundred dollars
 3 (\$100.00).

4 (2) Is unable to account for identification markers the Secretary issues the
 5 motor carrier, as required by G.S. 105-449.47. The amount of the
 6 penalty is one hundred dollars (\$100.00) for each identification marker
 7 the carrier is unable to account for.

8 (3) Displays an identification marker on a motor vehicle operated by a
 9 motor carrier that was not issued to the carrier by the Secretary under
 10 G.S. 105-449.47. The amount of the penalty is one thousand dollars
 11 (\$1,000) for each identification marker unlawfully obtained. Both the
 12 licensed motor carrier to whom the Secretary issued the identification
 13 marker and the motor carrier displaying the unlawfully obtained
 14 identification marker are jointly and severally liable for the penalty
 15 under this subdivision.

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

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

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

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

28 "**§ 105-449.60. Definitions.**

29 The following definitions apply in this Article:

30 "(1) Biodiesel. – Any fuel or mixture of fuels derived in whole or in part
 31 from agricultural products or animal fats or wastes from these products
 32 or fats.

33 (1a) Biodiesel provider. – A person who does any of the following:

34 a. Produces an average of no more than 500,000 gallons of
 35 biodiesel per month during a calendar year. A person who
 36 produces more than this amount is a refiner.

37 b. Imports biodiesel outside the terminal transfer system by means
 38 of a marine vessel, a transport truck, a railroad tank car, or a
 39 tank wagon.

40 ...

41 (7) Diesel fuel. – Any liquid, other than gasoline, that is suitable for use as
 42 a fuel in a diesel-powered highway vehicle. The term includes
 43 ~~kerosene.~~ kerosene and biodiesel. The term does not include jet fuel
 44 sold to a buyer who is certified to purchase jet fuel under the Code.

- 1 ...
- 2 (12) Fuel alcohol. —~~Methanol~~ Alcohol, methanol, or fuel grade ethanol.
- 3 (13) Fuel alcohol provider. — A person who does any of the following:
- 4 a. Produces an average of no more than 500,000 gallons of fuel
- 5 ~~alcohol~~-alcohol per month during a calendar year. A person who
- 6 produces more than this amount is a refiner.
- 7 b. Imports fuel alcohol outside the terminal transfer system by
- 8 means of a marine vessel, a transport truck, ~~or~~ a railroad tank
- 9 car, car, or a tank wagon.
- 10 ...
- 11 (15) Gasoline. — Any of the following:
- 12 a. All products that are commonly or commercially known or sold
- 13 as gasoline and are suitable for use as a fuel in a highway
- 14 vehicle, other than products that have an American Society for
- 15 Testing Materials octane number of less than 75 as determined
- 16 by the motor method.
- 17 b. A petroleum product component of gasoline, such as naphtha,
- 18 reformat, or toluene.
- 19 c. Gasohol.
- 20 d. Fuel grade ethanol-alcohol.
- 21 The term does not include aviation gasoline sold for use in an aircraft
- 22 motor. 'Aviation gasoline' is gasoline that is designed for use in an
- 23 aircraft motor and is not adapted for use in an ordinary highway
- 24 vehicle.
- 25 ...
- 26 (22) Motor fuel transporter. — A person who transports motor fuel by
- 27 pipeline or who transports motor fuel outside the terminal transfer
- 28 system by means of a transport truck, a railroad tank car, or a marine
- 29 vessel.
- 30 ...
- 31 (27a) Refiner. — A person who owns, operates, or controls a refinery. The
- 32 term includes a person who produces an average of more than 500,000
- 33 gallons of fuel alcohol or biodiesel a month during a calendar year.
- 34 (27b) Refinery. — A facility used to process crude oil, unfinished oils, natural
- 35 gas liquids, or other hydrocarbons into motor fuel and from which fuel
- 36 may be removed by pipeline or vessel or at a rack. The term does not
- 37 include a facility that produces only blended fuel or gasohol.
- 38 ...
- 39 (31) Supplier. — Any of the following:
- 40 a. A position holder or a person who receives motor fuel pursuant
- 41 to a two-party exchange.
- 42 b. A fuel alcohol provider.
- 43 c. A biodiesel provider.
- 44 d. A refiner.

1 ...
2 (33) Tank wagon. – A truck that is not a transport truck ~~and has multiple~~
3 ~~compartments and~~ has a compartment designed or used to carry at least
4 1,000 gallons of motor fuel."

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

6 "(a) Initial Bond. – An applicant for a license as a refiner, a terminal operator, a
7 supplier, an importer, a blender, a permissive supplier, or a distributor must file with the
8 Secretary a bond or an irrevocable letter of credit. A bond must be conditioned upon
9 compliance with the requirements of this Article, be payable to the State, and be in the
10 form required by the Secretary. The amount of the bond or irrevocable letter of credit is
11 determined as follows:

12 ...
13 (2) For an applicant for a license as any of the following, the amount is
14 two times the applicant's average expected monthly tax liability under
15 this Article, as determined by the Secretary. The amount may not be
16 less than two thousand dollars (\$2,000) and may not be more than two
17 hundred fifty thousand dollars (\$250,000):

- 18 a. A supplier that is a fuel alcohol provider or a biodiesel provider
19 but is neither a position holder nor a person that receives motor
20 fuel pursuant to a two-party exchange.
21 b. An occasional importer.
22 c. A tank wagon importer.
23 d. A distributor.
24 e. Repealed by Session Laws 1997-60, s. 5."

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

26 "(d) Replacements. – When a license holder files a bond or an irrevocable letter of
27 credit as a replacement for a previously filed bond or letter of credit and the license
28 holder has paid all taxes and penalties due under this Article, the Secretary must take
29 one of the following actions:

- 30 (1) Return the previously filed bond or letter of credit.
31 (2) Notify the person liable on the previously filed bond ~~and the license~~
32 ~~holder~~ that the person is released from liability on the bond."

33 **SECTION 9.** G.S. 105-449.77 reads as rewritten:

34 **"§ 105-449.77. Records and lists of license applicants and license holders.**

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

- 36 (1) Applicants for a license under this Article.
37 (2) Persons to whom a license has been issued under this Article.
38 (3) Persons that hold a current license issued under this Article, by license
39 category.

40 (b) ~~Supplier~~-Lists. – The Secretary must annually give a list to each license
41 holder of all the license holders under this Article. The list must state the name, account
42 number, and business address of each license holder on the list. The Secretary must send
43 a monthly update of the list to each licensed refiner or licensed supplier and to any other
44 license holder that requests a copy of the list. ~~of licensed suppliers, licensed terminal~~

1 operators, licensed importers, licensed distributors, and licensed exporters to each
2 licensed supplier. The list must state the name, account number, and business address of
3 each license holder on the list. The Secretary must send a monthly update of the list to
4 each licensed supplier.

5 The Secretary must give a list of licensed suppliers to each licensed distributor,
6 licensed exporter, and licensed importer. The Secretary must also give a list of licensed
7 suppliers to each unlicensed distributor that asks for a copy of the list. The list must
8 state the name, account number, and business address of each supplier on the list and
9 must indicate whether the supplier is an elective supplier, a permissive supplier, or an
10 in-State only supplier. The Secretary must send an annual update of the list to each
11 licensed distributor, licensed exporter, and licensed importer, and to each unlicensed
12 distributor that requested a copy of the list.

13 (e) Transporter Lists.—The Secretary must give a list of licensed motor fuel
14 transporters to each licensed supplier, licensed terminal operator, licensed importer,
15 licensed blender, licensed distributor, and licensed exporter. The list must state the
16 name, account number, and business address of each motor fuel transporter on the list.
17 The Secretary must send a monthly update of the list to each license holder to whom the
18 Secretary must give the list.

19 The Secretary must give a list of licensed suppliers, licensed terminal operators,
20 licensed importers, licensed blenders, licensed distributors, and licensed exporters to
21 each licensed motor fuel transporter. The list must state the name, account number, and
22 business address of each license holder on the list. The Secretary must send a monthly
23 update of the list to each licensed motor fuel transporter."

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

25 **"§ 105-449.87. Backup tax and liability for the tax.**

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

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

41 (b) General Liability. – The operator of a highway vehicle that uses motor fuel
42 that is taxable under subdivisions (a)(1) through (a)(3) of this section is liable for the
43 tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier,
44 the motor carrier is jointly and severally liable for the tax. If the end seller of motor fuel

1 taxable under this section knew or had reason to know that the motor fuel would be used
2 for a purpose that is taxable under this section, the end seller is jointly and severally
3 liable for the tax. If the Secretary determines that a bulk-end user or retailer used or sold
4 untaxed dyed diesel fuel to operate a highway vehicle when the fuel is dispensed from a
5 storage facility or through a meter marked for nonhighway use, all fuel delivered into
6 that storage facility is presumed to have been used to operate a highway vehicle. An end
7 seller of dyed diesel fuel is considered to have known or had reason to know that the
8 fuel would be used for a purpose that is taxable under this section if the end seller
9 delivered the fuel into a storage facility that was not marked as required by G.S.
10 105-449.123.

11 ~~(c) Imputed Knowledge. Diverted Fuel. – An end seller of dyed diesel fuel is~~
12 ~~considered to have known or had reason to know that the fuel would be used for a~~
13 ~~purpose that is taxable under this section if the end seller delivered the fuel into a~~
14 ~~storage facility that was not marked as required by G.S. 105-449.123. The person who~~
15 ~~authorizes a change in the destination state of motor fuel from the state given on the~~
16 ~~fuel's shipping document to North Carolina is liable for the tax due on the motor fuel. If~~
17 ~~motor fuel is diverted from North Carolina to another state, only the person who~~
18 ~~authorized the fuel to be diverted is eligible for a refund of the amount of tax paid on the~~
19 ~~fuel."~~

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

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

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

24 ~~"(a) Requirement. – A person that transports, by pipeline, marine vessel,~~
25 ~~railroad tank car, or transport truck, motor fuel that is being imported~~
26 ~~into this State or exported from this State motor fuel transporter that~~
27 ~~imports motor fuel into this State or exports motor fuel from this State~~
28 ~~must file a monthly informational return with the Secretary that shows~~
29 ~~motor fuel received or delivered for import or export by the transporter~~
30 ~~during the month. This requirement does not apply to a distributor that~~
31 ~~is not required to be licensed as a motor fuel transporter."~~

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

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

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

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

44 ~~(1) A county or a municipal corporation.~~

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

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

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

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

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

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

31 The penalty imposed under this subsection is payable by the person in whose name
32 the conveyance is registered, if the conveyance is a transport truck, and is payable by
33 the person responsible for the movement of motor fuel in the conveyance, if the
34 conveyance is a railroad tank car. The amount of the penalty ~~depends on whether the~~
35 ~~person against whom the penalty is assessed has previously been assessed a penalty~~
36 ~~under this subsection. For a first assessment under this subsection, the penalty is one~~
37 ~~thousand five hundred dollars (\$1,500). For a second or subsequent assessment under~~
38 ~~this subsection, the penalty is seven thousand five hundred dollars (\$7,500).~~ is five
39 thousand dollars (\$5,000). A penalty imposed under this subsection is in addition to any
40 motor fuel tax assessed."

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

43 "**§ 105-449.115A. Shipping document required to transport fuel by tank wagon.**

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

4 (1) The name and address of the person from whom the motor fuel was
 5 received.

6 (2) The date the fuel was loaded.

7 (3) The type of fuel.

8 (4) The gross number of gallons loaded.

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

11 (1) Carry the invoice, bill of sale, or shipping document in the conveyance
 12 for which it is issued when transporting the motor fuel described in it.

13 (2) Show the invoice, bill of sale, or shipping document upon request
 14 when transporting the motor fuel described in it.

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

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

23 "**§ 105-449.118. Civil penalty for buying or selling non-tax-paid motor fuel.**

24 A person who dispenses non-tax-paid motor fuel into the supply tank of a highway
 25 vehicle or who allows non-tax-paid motor fuel to be dispensed into the supply tank of a
 26 highway vehicle is subject to a civil ~~penalty~~ penalty of two hundred fifty dollars
 27 (~~\$250.00~~ per occurrence. ~~The penalty is based on the amount of motor fuel dispensed~~
 28 ~~and is set at the following amounts:~~

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

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

37 **SECTION 18.(a)** Section 1 of this act becomes effective September 1, 2002,
 38 and applies to contracts entered into or renewed on or after that date and to all
 39 continuing contracts that are in effect on that date and have no expiration date. Section
 40 1 of this act does not apply to a contract in effect on September 1, 2002, that, by its
 41 terms, will terminate on a later date. Section 1 of this act does not impair the obligation
 42 arising under any contract executed before September 1, 2002.

43 **SECTION 18.(b)** The remainder of this act becomes effective January 1,
 44 2003.