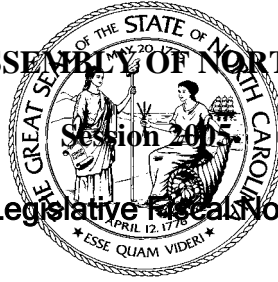


GENERAL ASSEMBLY OF NORTH CAROLINA



Legislative Fiscal Note

BILL NUMBER: House Bill 105 (Third Edition)

SHORT TITLE: Motor Fuel Tax Chgs & Rev Laws Technical Chgs.

SPONSOR(S): Representative Luebke

FISCAL IMPACT (\$Mill.)					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
REVENUES					
Highway Fund					
Penalties		See "Assumptions and Methodology"			
Refund Repeal					
Dyed Fuel Dist.					
General Fund					
Sales Tax Refund for					
Aviation Fuel	(8.0)	(4.8)			
Sec. Of State Fees		See "Assumptions and Methodology"			
EXPENDITURES					
Department of Revenue	\$0	\$0	\$0	\$0	\$0
POSITIONS (cumulative):					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The taxes affected are administered by the Department of Revenue. The partnership fee changes are collected by the Department of Secretary of State. The enactment of the bill is not expected to affect the budget requirements of either department.					
EFFECTIVE DATE: Sections 1, 6, 7, 8, 15, and 17 become effective January 1, 2006. The aviation fuel changes are effective January 1, 2005 and apply to sales made on or after that date. The remainder of the act is effective when it becomes law.					

BILL SUMMARY: The bill has three distinctive parts.

Motor Fuels: The legislation makes several changes to the motor fuel laws as follows: (1) Amends GS 105-236(2), effective January 1, 2006, to authorize Secretary of Revenue to impose a penalty of \$1,000 for a person's failure to obtain certain motor and alternative fuel business licenses as required by GS 105-449.65 and 105-449.131. (2) Amends GS 105-449.46 and GS 20-91 to transfer audits related to the International Registration Plan from the Department of Transportation, Division of Motor Vehicles, to the Department of Revenue, Motor Fuels Tax Division. (3) Enacts new GS 105-449.47A, effective January 1, 2006, to authorize Secretary to deny a motor carrier an identification marker if carrier has: had a registration canceled for cause; has been convicted of fraud, misrepresentation, or any other offense that indicates that applicant may not comply with motor carrier fuel tax requirements; or failed to pay a state tax or file a return. (4) Effective January 1, 2006, amends GS 105-449.51 to impose \$200 fine (was, at least \$10 and up to \$200) for operation of a motor vehicle without required registration and identification markers. (5) Amends GS 105-449.65(b) to provide that a person licensed as an occasional or tank wagon importer is required to obtain a distributor license if the importer is also purchasing motor fuel, at the terminal rack, from an elective or permissive supplier who is authorized to collect and remit tax to the state, effective Jan. 1, 2006. (6) Deletes GS 105-449.86(a)(4), which imposed motor fuel excise tax on American Red Cross. (7) Amends GS 105-449.90A to delete option of paying tax to NC rather than destination state when the person exporting fuel is not registered in the destination state. (8) Enacts new GS 105-449.96(7) to require that fuel supplier list on state tax return the number of gallons of motor fuel exchanged with another licensed supplier pursuant to a two-party exchange agreement. (9) Amends GS 105-449.15(d)(1), effective January 1, 2006, to require a person operating an empty fuel transport to carry the shipping document for the motor fuel last contained in the conveyance. (10) Enacts new GS 105-449.115(g) authorizing Secretary of Revenue to assess a civil penalty of \$5,000 against a terminal operator that issues a shipping document that does not contain all the required information. (11) Amends GS 105-449.115A(a) to extend shipping document requirements to a person who operates a tank wagon into which motor fuel is loaded at the terminal. (12) Effective January 1, 2006, amends GS 105-449.123(a) to impose a civil penalty on a person who fails to mark a storage facility for dyed (untaxed) motor fuel. Amends GS 119-15 to define "dyed diesel fuel" and "dyed diesel fuel distributor." (13) Enacts new GS 119-15.1(a)(4) to require licensing of dyed diesel fuel distributor. (14) Makes technical and conforming changes. This portion of the bill is a recommendation of the Revenue Laws Study Committee.

Aviation Fuel: The legislation also allows a new refund of taxes paid on aviation fuel. Under the bill, an interstate passenger air carrier whose passenger related takeoffs and landings in North Carolina increased over that company's three-year average, is eligible for the new refund. The amount of the refund allowed is equal to the increase in the net amount of sales and use tax paid by the carrier, when compared to the company's three-year average net sales and use tax payment. The net amount refers to the taxes paid after the refunds allowed in GS 105-164.14(a).

Revenue Technical Changes: This portion of the bill makes a number of technical and clarifying changes to the revenue laws and related statutes. Examples include clarification language, correction of statutory references, cross-reference language, and deleting obsolete references. In addition, the bill eliminates an inconsistency in the fees collected by the Secretary of State for obtaining paper and electronic certificates provided by the Secretary of State's Office for certifying a copy of any filed document relating to a domestic or foreign limited partnership.

ASSUMPTIONS AND METHODOLOGY:

Motor Fuels: The fiscal implications of this portion of the bill fall into five categories.

Penalties

The legislation authorizes the Secretary of Revenue to impose a \$1,000 penalty for failure to obtain certain motor and alternative fuel business licenses. The current law bars the Department from charging a penalty because there is no fee for the license. The Department estimates a maximum of five violations a year. Since the penalty is discretionary, no revenue estimate is possible. If a penalty were assessed, the proceeds would be deposited in the Highway Fund.

The bill also allows the Secretary of Revenue to impose a civil penalty of \$5,000 on an oil terminal operator that issues a shipping document that does not contain all the required information. Without an accurate and complete bill of lading the Department cannot ensure proper taxation. No estimate is available due to the discretionary nature of the penalty, but proceeds are expected to be limited.

The final penalty relates to persons who operate as a motor carrier in North Carolina, but do so without obtaining the necessary registration and identification markers. Under current law the fine is between \$10 and \$200. This section sets the amount at \$200. While no estimate is available, the impact is expected to be minimal.

Red Cross

The legislation exempts the Red Cross from paying the excise tax on dyed diesel fuel. The U.S. Supreme Court ruled in the Department of Employment v. United States that the American Red Cross is an instrumentality of the United States for state tax immunity purposes. While the Red Cross is not exempt by statute, the Department of Revenue had administratively recognized their federal exemption status and has refunded their tax payments. Since this section conforms statute to department policy, no fiscal impact is expected.

Refunds

The bill conforms the refund statute for motor carriers to the general rule applicable to tax refunds of overpaid taxes. Under the general administrative provisions of G.S. 105-266(a)(3), the Secretary does not have to refund a tax overpayment of less than \$3.00, unless the taxpayer makes a written request for the funds. However, there is no minimum payment amount for motor carriers. This provision conforms the motor carrier process to be utilized with other taxpayers. No fiscal impact is expected.

Department of Revenue (Administrative Responsibility)

Per Section 21, G.S. 20-91 is amended to transfer audits related to the International Registration Plan to the Department of Revenue. In July 2004, six (6) Vehicle Plan Registration Auditor positions with salaries and related benefits were transferred through administrative process from the Department of Transportation (DOT) to the Department of Revenue/International Registration Division to handle International Registration audit functions. The support for the division is

derived from receipts transferred from DOT, and there is no additional funding required for the positions. Additionally, there is no increase in receipts needed for the department to administer the new or revised statutory requirements resulting from this legislation.

Other provisions:

Sections 3,5,8,9,10,12,13,14,18, and 19 either conform the law to existing Department practice or changes obsolete language. No fiscal impact is expected as a result of these changes.

The remaining sections deal with record keeping requirements and have no fiscal impact.

Aviation Fuel: A Department review of three years of historic aviation fuel tax refund requests indicates that a modification of the refund provisions would have likely result in a revenue loss to the state of approximately \$5.0 million each year. Economy.com's baseline forecast for west Texas oil (the nearest publicly available proxy for aviation fuel costs) suggests that the price of fuel will likely increase by 26.7% between 2004 and 2005, suggesting a \$6.4 million annual cost. Because the bill is retroactive to January 1, 2005, carriers will be able to claim more than a year's worth of refunds in the 05-06 fiscal year. It should be noted that the amount of fuel consumed, and the amount of tax collected, vary significantly from year to year. The estimate is based on average consumption.

Revenue Technical Changes: A review of the language of the changes to the tax law indicates that they are purely technical in nature. In many cases the new language conforms to the current administrative interpretation. Finally, the Secretary of State fee changes conform statutory law to administrative practice based on an interpretation of 2002 fee changes.

SOURCES OF DATA: North Carolina Department of Revenue.

TECHNICAL CONSIDERATIONS: None

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Signed Copy Located in the NCGA Principal Clerk's Offices