

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1226

Short Title: Motor Carrier Diesel Tax Payment.

(Public)

Sponsors: Representative Buchanan.

Referred to: Transportation, if favorable, Finance.

May 6, 1997

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT PART OF THE TAX ON DIESEL FUEL SOLD TO
2 MOTOR CARRIERS SHALL BE PAID WITH THE CARRIER'S PERIODIC
3 REPORT RATHER THAN AT THE PUMP.
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5 Whereas, North Carolina has one of the highest diesel fuel taxes in the United
6 States; and

7 Whereas, since North Carolina increased its diesel fuel tax by five cents per
8 gallon in the fall of 1989, truckers have shifted their fueling to other states; and

9 Whereas, the burden of this shift has fallen on the North Carolina truckstops
10 that support these trucks and these truckstops have not participated in increased growth in
11 the economy; and

12 Whereas, North Carolina truckstops have the highest average pump price and
13 the lowest average gallon per fill for major North-South traffic routes; Now, therefore,
14 The General Assembly of North Carolina enacts:

15 Section 1. G.S. 105-449.60 is amended by adding the following new
16 subdivisions to read:

17 "(19b) Motor carrier. – Defined in G.S. 105-449.37.

18 (19c) Motor carrier diesel fuel. – Diesel fuel for which a truck diesel seller-
19 user claims or intends to claim a refund under G.S. 105-449.105A.

1 (19d) Motor carrier vehicle. – A motor vehicle that is a qualified motor
2 vehicle under the International Fuel Tax Agreement.

3 (38a) Truck diesel seller-user. – Either of the following:

4 a. A distributor that, for the most recent 12-month period preceding
5 application for a truck diesel seller-user license, sold an average
6 of more than 100,000 gallons of diesel fuel a month.

7 b. A bulk-end user that is not a distributor and that acquires diesel
8 fuel intended for use in motor carrier vehicles it operates."

9 Section 2. G.S. 105-449.67(a) is amended by adding a new subdivision to
10 read:

11 "(4) A truck diesel seller-user."

12 Section 3. Part 5 of Article 36C of Chapter 105 of the General Statutes is
13 amended by adding a new section to read:

14 "§ 105-449.105A. Monthly refunds for motor carrier diesel fuel purchased by truck
15 diesel seller-users.

16 (a) Refund. – A licensed truck diesel seller-user that purchases motor carrier diesel
17 fuel intended only for sale to a motor carrier or use in a motor carrier vehicle and that
18 complies with the requirements of this section may receive a monthly refund of part of
19 the tax the truck diesel seller-user paid on the fuel during the preceding month. The
20 refund rate is seven cents (7¢) per gallon.

21 (b) Storage. – A truck diesel seller-user must store motor carrier diesel fuel
22 separately from other diesel fuel in a storage facility that is marked as follows with the
23 phrase 'Motor Carrier Diesel', 'For Motor Carrier Use', or a similar phrase that clearly
24 indicates the fuel is not to be used to operate a vehicle that is not a motor carrier vehicle:

25 (1) The storage tank of the storage facility is marked if the storage tank is
26 visible.

27 (2) The fillcap or spill containment box of the storage facility is marked.

28 (3) The dispensing device that serves the storage facility is marked.

29 (c) Use. – A truck diesel seller-user may use motor carrier diesel fuel only to
30 operate a motor carrier vehicle or for sale to a motor carrier for use in a motor carrier. A
31 truck diesel seller-user may not sell motor carrier diesel fuel to anyone other than a motor
32 carrier or use motor carrier diesel fuel for any purpose other than to operate a motor
33 carrier vehicle.

34 (d) Sales Price. – A truck diesel seller-user that sells motor carrier diesel fuel must
35 sell it at a price that is at least seven cents (7¢) per gallon less than the price at which the
36 truck diesel seller-user sells other diesel fuel.

37 (e) Application; Reconciliation. – An application for a refund allowed under this
38 section must be made in accordance with this Part. The application must include the
39 following information:

40 (1) The number of gallons of diesel fuel the truck diesel seller-user
41 purchased during the previous month, itemized by motor carrier diesel
42 fuel and other diesel fuel.

- 1 (2) The number of gallons of diesel fuel the truck diesel seller-user sold to
2 motor carriers during the previous month, itemized by motor carrier
3 diesel fuel and other diesel fuel and itemized by month of purchase by
4 the truck diesel seller-user.
- 5 (3) The name or the registration number issued under G.S. 105-449.47 of
6 each motor carrier to which the truck diesel seller-user sold diesel fuel
7 during the previous month.
- 8 (4) The number of gallons of diesel fuel the truck diesel seller-user used to
9 operate motor carrier vehicles during the previous month, itemized by
10 motor carrier diesel fuel and other diesel fuel and itemized by month of
11 purchase by the truck diesel seller-user.
- 12 (5) The number of gallons of diesel fuel the truck diesel seller-user used for
13 a purpose other than to operate a motor carrier vehicle or sale to a motor
14 carrier during the previous month, itemized by motor carrier diesel fuel
15 and other diesel fuel and itemized by month of purchase by the truck
16 diesel seller-user.

17 The truck diesel seller-user shall use the first in first out method of allocation in
18 itemizing fuel used by month of purchase. The amount of the refund applied for shall be
19 reduced by seven cents (7¢) per gallon of diesel fuel the truck diesel seller-user used for a
20 purpose other than to operate a motor carrier vehicle or sale to a motor carrier. If the
21 amount of diesel fuel the truck diesel seller-user used for a purpose other than to operate
22 a motor carrier vehicle or sale to a motor carrier during the previous month exceeds the
23 amount of motor carrier diesel fuel the truck diesel seller-user purchased during the
24 previous month, the truck diesel seller-user must pay tax on the difference at the rate of
25 seven cents (7¢) per gallon."

26 Section 4. G.S. 105-449.108 is amended by adding a new subsection to read:

27 "(d) Monthly Refunds. – An application for a monthly refund of excise tax is due
28 by the last day of the month following the end of the month for which the refund is
29 claimed. The application must state that the applicant has paid for the fuel for which a
30 refund is claimed or that payment for the fuel has been secured to the seller's
31 satisfaction."

32 Section 5. The catch line of G.S. 105-449.109 reads as rewritten:

33 "§ 105-449.109. Reduction or denial of late ~~annual or quarterly~~ annual, quarterly, or
34 monthly refund application."

35 Section 6. G.S. 105-449.120(b) reads as rewritten:

36 "(b) Class 2. – A person who commits any of the following acts is guilty of a Class
37 2 misdemeanor:

- 38 (1) Knowingly dispenses non-tax-paid motor fuel into the supply tank of a
39 highway vehicle.
- 40 (2) Knowingly allows non-tax-paid fuel to be dispensed into the supply
41 tank of a highway vehicle.
- 42 (3) Knowingly dispenses motor carrier diesel fuel into the supply tank of a
43 vehicle that is not a motor carrier vehicle.

1 (4) Knowingly allows motor carrier diesel fuel to be dispensed into the
2 supply tank of a vehicle that is not a motor carrier vehicle."

3 Section 7. G.S. 105-449.39 reads as rewritten:

4 "**§ 105-449.39. Credit for payment of motor fuel tax.**

5 Every motor carrier subject to the tax levied by this Article is entitled to a credit for
6 tax paid by the carrier on fuel purchased in the State. ~~A-If the motor carrier who files a~~
7 ~~quarterly report is entitled to a credit at a rate equal to the flat cents per gallon rate plus the~~
8 ~~variable cents per gallon rate of tax report, the credit rate for fuel other than diesel fuel is~~
9 ~~the motor fuel rate in effect during the quarter for which the credit is claimed. A-If the~~
10 ~~motor carrier who files an annual report is entitled to a credit at report, the credit rate for~~
11 ~~fuel other than diesel fuel is a rate equal to the flat cents-per-gallon rate plus the average~~
12 ~~of the two variable cents-per-gallon rates of tax in effect during the year for which the~~
13 ~~credit is claimed. The credit rate for diesel fuel is seven cents (7¢) less than the~~
14 ~~applicable credit rate for fuel other than diesel fuel.~~ To obtain a credit, the motor carrier
15 must furnish evidence satisfactory to the Secretary that the tax for which the credit is
16 claimed has been paid.

17 If the amount of a credit to which a motor carrier is entitled for a reporting period
18 exceeds the motor carrier's liability for that reporting period, the excess may, in
19 accordance with rules adopted by the Secretary, be refunded to the motor carrier or
20 carried forward and applied to the motor carrier's tax liability for another reporting
21 period. Before the Secretary allows a motor carrier a refund, the Secretary may audit the
22 motor carrier's records or require the motor carrier to furnish a bond under G.S. 105-
23 449.40."

24 Section 8. G.S. 105-449.45(a) reads as rewritten:

25 "(a) Quarterly Report. – A motor carrier shall report its operations to the Secretary
26 on a quarterly basis unless this subsection exempts the motor carrier from this
27 requirement or permits the motor carrier to report on a different basis. A motor carrier is
28 not required to file a quarterly report if:

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

31 ~~(2) All the motor carrier's operations during the quarter were in this State.~~

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

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

36 Section 9. This act becomes effective July 1, 1997, and applies to diesel fuel
37 purchased on or after that date.