

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 982
SENATE BILL 866

AN ACT TO PROVIDE ROADS TO THE FUTURE, AND TO CLASSIFY
HOUSEHOLD PERSONAL PROPERTY AND EXCLUDE IT FROM PROPERTY
TAXES.

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The General Assembly of North Carolina enacts:

—PART

I. POWELL BILL/SECONDARY ROADS FUND INCREASE

Section 1. G.S. 136-41.1(a) is amended by deleting the phrase "one and three-eighths cents (1 3/8c)" and substituting the phrase "one and three-fourths cents (1 3/4c)".

—PART II. DEPARTMENT OF TRANSPORTATION SALES TAX EXEMPTION

Sec. 2. G.S. 105-164.13 is amended by adding a new subdivision to read:
"(40) Sales to the Department of Transportation.

—PART III. MOTOR FUEL TAX INCREASE

Sec. 3. G.S. 105-434 is rewritten to read:

"§ 105-434. **Excise tax on motor fuel; payment of tax.** – (a) Tax. An excise tax is levied on motor fuel sold, distributed, or used by a distributor within this State at the rate of fourteen cents (14c) per gallon plus three percent (3%) of the average wholesale price of motor fuel, as determined semiannually by the Secretary of Revenue from information on refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel for resale, published by the United States Department of Energy in the 'Monthly Energy Review,' or on equivalent data. The Secretary shall determine the average wholesale price of motor fuel by computing the average sales price of finished motor gasoline for the base period, computing the average sales price for No. 2 diesel fuel for the base period, and then computing a weighted average of the results of the first two computations based on the proportion of tax collected under this Article on

motor fuel and Article 36A on fuel for the base period. The Secretary shall notify affected taxpayers of the tax rate to be in effect for each six-month period.

To facilitate collection of the motor fuel tax, the Secretary shall convert the percentage rate to a cents-per-gallon rate to be in effect during the six-month period beginning each January 1 and July 1. The rate to be in effect during the six-month period beginning January 1 shall be computed from data published for the six-month base period ending on the preceding September 30, and the rate to be in effect during the six-month period beginning July 1 shall be computed from data published for the six-month base period ending on the preceding March 31. The cents-per-gallon rate computed by the Secretary shall be rounded to the nearest one-tenth of a cent (1/10c). If the cents-per-gallon rate computed by the Secretary is exactly between two tenths of a cent, the rate shall be rounded up to the higher of the two.

(b) Payment. The tax levied under this Article is due when a return is required to be filed. Each distributor shall, within 20 days after the end of each month, submit a return to the Secretary of Revenue, on a form prescribed by the Secretary, stating the quantity of motor fuel sold, distributed, or used by him within the State during the preceding calendar month. Each return shall be accompanied by a payment to the Secretary for the amount of tax shown to be due on the return and shall be signed by the distributor or his agent.

In reporting the amount of tax due, a distributor may elect to calculate the tax on adjusted monthly receipts less a tare of two percent (2%) on the first 150,000 gallons, one and one-half percent (1 1/2%) on the next 100,000 gallons, and one percent (1%) on the excess over 250,000 gallons. 'Adjusted monthly receipts' means the quantity of motor fuel purchased, produced, refined, or compounded during the month plus the quantity of untaxed motor fuel on hand at the beginning of the month and less the quantity of motor fuel transported out-of-state during the month or lost during the month due to damage to a conveyance transporting the motor fuel, fire, a natural disaster, an act of war, or an accident. The Secretary of Revenue may, in accordance with rules adopted by him, refund to a nonlicensed distributor the tax on motor fuel that is purchased and delivered to him taxpaid and that is lost due to fire, a natural disaster, an act of war, or an accident after it is delivered to him and before it is sold.

(c) Exception. The tax levied by subsection (a) does not apply to nonanhydrous ethanol that is not sold or distributed.

(d) Local Tax Prohibited. No county, city, town, or other political subdivision of the State may levy or collect any tax upon the sale, distribution, or use of motor fuel."

Sec. 4. G.S. 105-435(a) is amended by deleting the phrase "of twelve cents (12c) per gallon" and substituting the phrase "at the rate established pursuant to G.S. 105-434(a)".

Sec. 5. G.S. 105-446 is rewritten to read:

"§ 105-446. Refund of motor fuel used other than to propel a motor vehicle. – A person who purchases and uses motor fuel for a purpose other than to operate a licensed motor vehicle may receive an annual refund, for the tax paid during the preceding calendar year, at a rate equal to fourteen cents (14c) per gallon plus the average of the two wholesale cents-per-gallon rates of tax in effect during the year for which refund is

claimed, less one cent (1c) per gallon. An application for a refund allowed under this section shall be made in accordance with G.S. 105- 440."

Sec. 6. G.S. 105-440 is rewritten to read:

"§ 105-440. Applications for and administration of tax refunds; penalty. – (a) Annual Refunds. An application for an annual refund of tax permitted by this Article shall be filed with the Secretary of Revenue on or before April 15th following the end of the calendar year for which the refund is claimed. The application shall state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year, and shall state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

(b) Quarterly Refunds. An application for a quarterly refund of tax permitted by this Article shall be filed with the Secretary of Revenue on or before the last day of the month following the end of the calendar quarter for which the refund is claimed. The application shall state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

(c) Late Applications. Applications filed with the Secretary within six months of the date the application is due shall be accepted, but the amount of the refund shall be reduced by twenty-five percent (25%) if the application is filed within 30 days after the date the application is due, and shall be reduced by fifty percent (50%) if the application is filed more than 30 days but within six months after the date the application is due. An application filed more than six months after the date the application is due shall not be accepted.

(d) Approval of Refund. If the Secretary of Revenue determines that an application for refund is correct, he shall issue the applicant a warrant upon the State Treasurer for the amount of the refund. If the Secretary determines that an application for refund is incorrect, he shall send a written notice of his determination to the applicant, stating a time and place for a hearing. If, upon holding the hearing, the Secretary finds the applicant has collected or sought to collect a refund to which he is not entitled, he shall reject the application and the applicant shall be required to pay back the tax, if any, refunded to him on the basis of the rejected application. The applicant may seek review of the Secretary's decision under G.S. 105-241.2, 105-241.3, and 105-241.4.

(e) Penalty. A person who knowingly makes a false application for refund to obtain a refund to which he is not entitled is guilty of a misdemeanor and is punishable by a fine of up to five hundred dollars (\$500.00), imprisonment for up to two years, or both."

Sec. 7. G.S. 105-446.1 is amended as follows:

- (1) by deleting the phrase "be reimbursed at the rate of eleven cents (11c) per gallon of" in the first sentence of that section and substituting the words "reimbursement for"; and
- (2) by deleting the last two sentences of that section and substituting the following sentences to read:

"Reimbursement shall be at a rate equal to fourteen cents (14c) per gallon plus the wholesale cents-per-gallon rate of tax in effect during the quarter for which the refund is

claimed, less one cent (1c) per gallon. An application for a refund under this section shall be made in accordance with G.S. 105-440."

Sec. 8. G.S. 105-446.3 is amended as follows:

- (1) by deleting the phrase "be reimbursed at the rate of eleven cents (11c) per gallon of" in the first sentence of subsection (a) of that section and substituting the words "reimbursement for the";
- (2) by deleting the last two sentences of subsection (a) and substituting the following sentences to read:

"Reimbursement shall be at a rate equal to fourteen cents (14c) per gallon plus the wholesale cents-per-gallon rate of tax in effect during the quarter for which the refund is claimed, less one cent (1c) per gallon. An application for a refund allowed under this section shall be made in accordance with G.S. 105- 440."; and

- (4) by deleting subsections (c), (d), (e), (f), (g), and (h) of that section.

Sec. 9. G.S. 105-446.5 is amended as follows:

- (1) by deleting the phrase "of thirty-three and one- third percent (33 1/3%)of eleven cents (11c) per gallon of the tax levied under this Article" in subsection (a) of that section;
- (2) by adding two new sentences after subdivision (4) of subsection (a) of that section to read: "The refund rate shall be computed by subtracting one cent (1c) from fourteen cents (14c) per gallon plus the average of the two wholesale cents-per-gallon rates of tax in effect during the year for which the refund is claimed, and multiplying the difference by thirty- three and one-third percent (33 1/3%). An application for a refund allowed under this section shall be made in accordance with G.S. 105-440."; and
- (3) by deleting subsections (b) and (c) of that section.

Sec. 10. G.S. 105-446.6 is amended in the first sentence of that section by deleting the phrase "the rate of eleven cents (11c) per gallon for the amount of tax paid" and substituting the phrase "a rate equal to fourteen cents (14c) per gallon plus the wholesale cents-per-gallon rate of tax paid on the fuel, less one cent (1c) per gallon".

Sec. 11. G.S. 105-449 is amended as follows:

- (1) by rewriting subsections (a) and (b) of that section to read:

"(a) Motor fuel purchased by a local board of education for use in public school transportation in this State is exempt from the excise tax levied by this Article provided an invoice for the fuel stating the board of education to whom the fuel was delivered, the price per gallon of the fuel excluding the tax, and the kind and quantity of fuel sold is furnished to the Secretary of Revenue. To implement this exemption, a person who holds a State contract for the sale of motor fuel to be used in public school transportation shall invoice motor fuel sold to a local board of education for this purpose at the prevailing contract price, excluding the tax, and a person who does not hold a State contract for the sale of motor fuel to be used in public school transportation but who sells motor fuel for this purpose in quantities not sufficient to require a State contract shall invoice motor fuel sold to a local board of education at the lowest informal bid price, excluding the tax.

(b) A person authorized to sell motor fuel to a local board of education who paid the tax levied by this Article on fuel sold to the local board for public school transportation may obtain a refund of the tax paid on the fuel upon filing an application for refund with the Secretary of Revenue and attaching an invoice, containing the information required in subsection (a), to the refund application. Upon receipt of a proper application and invoice, the Secretary shall issue a warrant upon the State Treasurer for the amount of tax paid.";

(2) by deleting the phrase "twelve cents (12c) gasoline tax now imposed by the State" in subsection (c) of that section and substituting the phrase "tax levied by this Article"; and

(3) by deleting the word "gasoline" each time it appears in subsections (c) and (d) of that section and substituting the words "motor fuel".

Sec. 12. G.S. 105-449.16(a) is amended as follows:

(1) by deleting from the first sentence of that subsection the phrase "of twelve cents (12c) per gallon" and substituting the phrase "established pursuant to G.S. 105-434";

(2) by deleting the phrase "twelve cents (12c) per gallon tax, hereinabove provided for," in the last sentence of that subsection and substituting the phrase "tax levied in this section"; and

(3) by deleting from the last sentence of that subsection the phrase "out of every said twelve cents (12c) tax per gallon" and substituting the phrase "of the amount of tax levied on each gallon".

Sec. 13. G.S. 105-449.19 is amended in the first sentence by deleting the phrase "twelve cents (12c) per gallon".

Sec. 14. G.S. 105-449.24 is rewritten to read:

"§ 105-449.24. Exemptions and refunds. – The exemptions from and the refunds of the tax levied by Article 36 on motor fuel apply to the tax levied by this Article on fuel, except the exemption and refund for losses in G.S. 105-434(a)."

Sec. 15. G.S. 105-449.30 and G.S. 105-449.31 are repealed.

Sec. 16. G.S. 105-449.38 is amended by rewriting the second sentence of that section to read:

"The tax shall be at the rate established by the Secretary pursuant to G.S. 105-434."

Sec. 17. G.S. 105-449.39 is amended by deleting the first two sentences of that section and substituting the following sentence to read:

"Every motor carrier subject to the tax levied by this Article is entitled to a credit against this tax for the amount of tax paid by the carrier under Articles 36 and 36A of this Subchapter on motor fuel or special fuel purchased in this State and used by the carrier in its operations either inside or outside this State."

—PART IV. HOUSEHOLD PERSONAL PROPERTY TAX EXCLUSION

Sec. 18. G.S. 105-275(16) is rewritten to read:

"(16) Household personal property. As used in this subdivision, the term 'household personal property' means personal property that is used by the owner of the property for a purpose other than the production of income and is not used in connection with a

business. The term includes household furnishings, clothing, pets, lawn tools, and lawn equipment. The term does not include motor vehicles, mobile homes, boats, or airplanes."

Sec. 19. G.S. 105-277.1(a) is rewritten to read:

"(a) The following class of property is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation as follows. The first twelve thousand dollars (\$12,000) in assessed value of real property, or a mobile home, owned by a North Carolina resident and occupied by the owner as his permanent residence shall not be assessed for taxation if, as of January 1 of the year for which the benefit of this section is claimed:

- (1) The owner is either 65 years of age or older or is totally and permanently disabled; and
- (2) The owner's disposable income for the preceding calendar year did not exceed eleven thousand dollars (\$11,000); and
- (3) The owner makes the required application.

For married applicants residing with their spouses, the disposable income of both spouses must be included, whether or not the property is in both names."

Sec. 20. G.S. 105-277.1(b)(2a) is repealed.

Sec. 21. G.S. 105-278.9 is repealed.

Sec. 22. G.S. 105-282.1(a)(2) is rewritten to read as follows:

"(2) Owners of the special classes of property excluded from taxation under G.S. 105-275(5), (15), (16), (26), or (31), or exempted under G.S. 105-278.2 are not required to file applications for the exclusion of that property."

Sec. 23. The second sentence of the second paragraph of G.S. 105-309(f) is rewritten to read:

"The exclusion covers real property, or a mobile home, occupied by the owner as his permanent residence."

—PART V. TWO-YEAR MOTOR VEHICLE REGISTRATION

Sec. 24. G.S. 20-66(d) is rewritten to read:

"(d) The Division may also provide for the issuance of license plates for motor vehicles with the dates of expiration thereof to vary from month to month so as to approximately equalize the number that expire during a registration period of one or two years. A person may purchase a license plate for a period of two years, but the Division shall not solicit, encourage, or require the purchase of a license plate for a period of more than one year."

—PART VI. TRANSFER DRIVER EDUCATION TO GENERAL FUND

Sec. 25. G.S. 20-88.1 is amended by adding a new subsection to read:

"(c) All expenses incurred by the State in carrying out the provisions of this section shall be paid out of the General Fund."

—PART VII. EFFECTIVE DATES; TRANSITIONAL PROVISIONS

Sec. 26. Notwithstanding G.S. 105-434 and G.S. 105- 449.16, the percentage wholesale component of the excise tax levied under those sections shall be one and one-half cents (1 1/2c) from July 15, 1986, to January 1, 1987. The 1987 Session of the General Assembly will examine the question of having a different computation of the wholesale tax for motor fuel and special fuel.

Sec. 27. July 15, 1986, Inventory of Motor Fuel. Every distributor of motor fuel, both at wholesale and at retail, shall inventory all motor fuel on hand or in his possession as of 12:01 a.m., July 15, 1986, and, on or before August 15, 1986, shall report to the Secretary of Revenue the amount of the motor fuel. When filing the report, the distributor shall remit to the Secretary of Revenue an additional tax on the motor fuel of three and one-half cents (3 1/2c) per gallon. The report required shall be in a form prescribed by the Secretary."

Sec. 28. July 15, 1986, Inventory of Special Fuels. Every supplier or reseller of special fuels shall inventory all special fuels on hand or in his possession as of 12:01 a.m., July 15, 1986, and, on or before August 15, 1986, shall report to the Secretary of Revenue the amount of the fuels. When filing the report, the supplier or reseller shall remit to the Secretary of Revenue an additional tax of three and one-half cents (3 1/2c) per gallon. The report required shall be in a form prescribed by the Secretary.

Sec. 29. Notwithstanding G.S. 105-446, G.S. 105-446.5, and G.S. 105-449.24, the annual refund rate for tax paid on motor fuel or special fuels for calendar year 1986 shall be twelve and six-tenths cents (12 6/10c) per gallon.

Sec. 30. Notwithstanding G.S. 105-446.1, G.S. 105- 446.3, and G.S. 105-449.24, the quarterly refund rate for tax paid on motor fuel or special fuels for the quarter ending June 30, 1986, shall be eleven cents (11c) per gallon, and the quarterly refund rate for tax paid on motor fuel or special fuels for the quarter ending September 30, 1986, shall be fourteen cents (14c) per gallon.

Sec. 31. Notwithstanding G.S. 105-434 and G.S. 105- 449.19, distributors of motor fuel and suppliers of special fuels shall file a report in accordance with those sections for the period July 1, 1986, through July 14, 1986, and a report for the period July 15, 1986, through July 31, 1986. Each report by a distributor of motor fuel shall be considered separately in applying the tare allowance under G.S. 105-434.

Sec. 32. Notwithstanding G.S. 105-449.45, a motor carrier shall file a report in accordance with that section for the period July 1, 1986, through July 14, 1986, and a report for the period July 15, 1986, through September 30, 1986. Notwithstanding G.S. 105-449.38 and G.S. 105-449.39, a motor carrier may elect to file a single report for the quarter ending September 30, 1986, reporting fuel use at the rate of fifteen cents (15c) per gallon and claiming credit for fuel purchased at the rate of fifteen cents (15c) per gallon.

Sec. 33. Part I of this act is effective upon ratification and applies to distributions made under G.S. 136- 41.1 after October 1, 1986. Part II shall become effective August 1, 1986. Part III shall become effective July 15, 1986. Part IV shall become effective for taxable years beginning on or after January 1, 1987. Part V is

effective upon ratification. Part VI shall become effective July 1, 1987. Part VII is effective upon ratification.

In the General Assembly read three times and ratified, this the 11th day of July, 1986.