

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1088

Short Title: Diesel Fuel Payment Method.

(Public)

Sponsors: Senators Lee; and Smith.

Referred to: Finance.

May 10, 1993

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE TAX ON DIESEL FUEL SHALL BE PAID
PARTLY AT THE PUMP AND PARTLY BY REPORTING.

Whereas, North Carolina is a major agricultural and industrial State that relies on a viable, irregular-route, full-load, motor-carrier transport system which is supported by a historically strong North Carolina truckstop industry; and

Whereas, a drive along I-95, I-85, I-40, or I-77 will reveal the presence of a well-developed system of North Carolina truckstops supporting the full-load, irregular-route trucking industry; and

Whereas, in the fall of 1989, North Carolina increased the diesel fuel tax to a rate well above the rate in the other South Atlantic states, resulting in a shift of truck fueling to other states, tax avoidance, or both; and

Whereas, the burden of this shift fell on the North Carolina truckstops who support these trucks; and

Whereas, data indicates the fuel volume sold in North Carolina truckstops has dropped 31% from 1989 to 1992 and margins have fallen 44% in the same period, while the truckstop industry continues to supply support for these trucks; and

Whereas, the North Carolina truckstop industry cannot endure long in such a situation; and

Whereas, at the same time, the State is losing money: tax-paid fuel gallons dropped from 622,000 gallons in 1989 to 605,000 gallons in 1991; and

Whereas, while enforcement activities in late 1991 increased in-State compliance, interstate compliance appears to be staying down; and

1 Whereas, other states with high fuel taxes, such as Indiana and Michigan,
2 have solved similar problems by placing part of the fuel tax on the pump and collecting
3 part on the quarterly report; and

4 Whereas, this approach works because an audit trail is provided, and has
5 resulted in a steady growth in tax-paid gallons and a healthy truckstop industry; and

6 Whereas, for example, Indiana, with a 27¢ fuel tax, increased tax-paid gallons
7 from 637,000 in 1988 to 793,000 in 1991; Now, therefore,

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 105-449.2 is amended by adding a new subdivision to read:

10 "(6a) Nontaxpaid fuel. – Fuel on which the tax, other than the surtax,
11 imposed by this Article has not been paid."

12 Sec. 2. G.S. 105-449.9 reads as rewritten:

13 **"§ 105-449.9. License required of user and user-seller.**

14 (a) License. – ~~A user who uses fuel to propel a motor vehicle having a registered gross~~
15 ~~vehicle weight of at least 10,001 pounds~~ must have a user's license. A user-seller must
16 have a user-seller's license unless the user-seller is also a supplier and is licensed as a
17 supplier. A user's license or a user-seller's license remains in effect until cancelled.

18 (b) Application. – To obtain a user's license or a user-seller's license, an applicant
19 must file an application with the Secretary on a form provided by the Secretary. An
20 application must include the applicant's name and address and any other information
21 required by the Secretary."

22 Sec. 3. G.S. 105-449.10 reads as rewritten:

23 **"§ 105-449.10. Report of fuel use and payment of tax by user.**

24 (a) General. – ~~A user who is required to have a user's license~~ must keep records and
25 comply with either subsection (b) or subsection (c), as appropriate. The records must
26 account for all fuel used by the user to propel a motor vehicle.

27 (b) Motor Carrier. – A user who is a motor carrier and who files a quarterly or
28 an annual report under G.S. 105-449.45 does not have to file a report under this section.
29 A user who is a motor carrier and who does not file either a quarterly or an annual
30 report under G.S. 105-449.45 must file a report under this section. A report by a motor
31 carrier must state the total number of miles driven during the reporting period by motor
32 vehicles operated by the motor carrier and the total amount of fuel the motor carrier
33 bought in the State during the reporting period for use in motor vehicles operated by the
34 motor carrier.

35 A motor carrier who has to file a report must file a quarterly report unless the
36 Secretary has given the motor carrier permission to file an annual report. A quarterly
37 report covers a calendar quarter and is due by the last day in April, July, October, and
38 January.

39 The Secretary may authorize a motor carrier to file an annual report if the motor
40 carrier is in compliance with this Article and Article 36B of this Subchapter. An annual
41 report covers a fiscal year beginning July 1 and ending the following June 30 and is due
42 by July 31 after the end of a fiscal year. To file an annual report, a motor carrier must
43 apply to the Secretary for permission to file on an annual basis. Once granted

1 permission, a motor carrier may continue to file an annual report until notified by the
2 Secretary to file a quarterly report.

3 (c) ~~Other Users. – A user who is required to have a user's license but~~ is not a
4 motor carrier must file an annual statement certifying ~~that the user either did not use any~~
5 ~~nontaxpaid fuel in a motor vehicle during the preceding fiscal year or paid tax on any~~
6 ~~nontaxpaid fuel acquired~~ the total amount of fuel the user bought during the preceding
7 fiscal year for use in a motor ~~vehicle.~~ vehicle and how much of the fuel was nontaxpaid.
8 A statement must be filed with the Secretary by July 31 of each year.

9 (d) ~~Payment. – A user who acquires nontaxpaid fuel is liable for the tax surtax~~
10 levied by this Article on the fuel. A user who acquires nontaxpaid fuel is also liable for
11 the tax, other than the surtax, levied by this Article on the fuel. Tax due on nontaxpaid
12 fuel acquired during a reporting period by a user who must file a is due when the report
13 under this section or G.S. 105-449.45 is due when the report for that reporting period is
14 due. ~~Tax due on nontaxpaid fuel acquired by a user who does not have to file a report under~~
15 ~~this section or G.S. 105-449.45 must be paid to the Secretary within 45 days after the fuel is~~
16 ~~acquired."~~

17 Sec. 4. G.S. 105-449.16 reads as rewritten:

18 "**§ 105-449.16. Levy of tax, application of tax proceeds, and exemption for**
19 **nonanhydrous ethanol.**

20 (a) Tax. – A tax is imposed upon all of the following fuel:

- 21 (1) Fuel sold or delivered by a supplier to a licensed user-seller.
- 22 (2) Fuel used by a supplier in a motor vehicle owned, leased, or operated
23 by the supplier.
- 24 (3) Fuel delivered by a supplier directly into the fuel supply tank of a
25 motor vehicle.
- 26 (4) Fuel imported by a user-seller into this State, by a means other than
27 carrying the fuel in a fuel supply tank of a motor vehicle, for resale or
28 to propel a motor vehicle.
- 29 (5) Fuel acquired tax free by a user-seller or user in this State for resale or
30 to propel a motor vehicle.

31 (a1) Rates. – The tax on liquid fuel other than diesel is at the rate established
32 under G.S. 105-434. The tax on non-liquid fuel is at a rate equivalent to the rate of tax
33 on liquid fuel, fuel other than diesel, as determined by the Secretary. The tax on liquid
34 diesel fuel is:

- 35 (1) A base tax at a flat rate of ten and one-half cents (10 1/2¢) per gallon
36 plus the variable rate established under G.S. 105-434; and
- 37 (2) A surtax of seven cents (7¢) per gallon.

38 A supplier who consigns fuel to a reseller may elect to report and pay the tax due on
39 the fuel when the reseller sells or dispenses the fuel instead of when the supplier
40 delivers the fuel to the reseller.

41 (a2) Purpose of Tax. – The primary purposes of this levy and this Article are to
42 provide a more efficient and effective method of collecting the tax now imposed and
43 collected pursuant to G.S. 105-435, by providing for the collection of the tax from the
44 supplier instead of the user. The tax levied by this Article is in lieu of rather than in

1 addition to the tax levied by G.S. 105-435; payment of the tax levied by this Article
2 constitutes compliance with G.S. 105-435.

3 (b) Application of Tax Proceeds. – The same percentage amounts of revenue
4 collected under this Article shall be credited to the Highway Fund and to the Highway
5 Trust Fund as are credited to those Funds under G.S. 105-445, and the same percentage
6 amounts of refunds allowed under this Article shall be charged to the Highway Fund
7 and to the Highway Trust Fund as are charged to those Funds under that statute.

8 (c) **(Expires January 1, 1993.)** Nonanhydrous ethanol is exempt from the tax
9 described in this section if that ethanol is not for sale or distribution."

10 Sec. 5. G.S. 105-449.39 reads as rewritten:

11 "**§ 105-449.39. Credit for payment of motor fuel tax.**

12 Every motor carrier subject to the tax levied by this Article is entitled to a credit for
13 tax paid by the carrier on fuel purchased in the State. No credit is allowed for the surtax
14 levied in G.S. 105-449.16 unless the motor carrier pays the surtax with the report on
15 which the credit is claimed or has paid the surtax with an earlier report. A motor carrier
16 who files a quarterly report is entitled to a credit at a rate equal to the flat cents-per-
17 gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter for
18 which the credit is claimed. A motor carrier who files an annual report is entitled to a
19 credit at a rate equal to the flat cents-per-gallon rate plus the average of the two variable
20 cents-per-gallon rates of tax in effect during the year for which the credit is claimed. To
21 obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that
22 the tax for which the credit is claimed has been paid.

23 If the amount of a credit to which a motor carrier is entitled for a reporting period
24 exceeds the motor carrier's liability for that reporting period, the excess may, in
25 accordance with rules adopted by the Secretary, be refunded to the motor carrier or
26 carried forward and applied to the motor carrier's tax liability for another reporting
27 period. Before the Secretary allows a motor carrier a refund, the Secretary may audit
28 the motor carrier's records or require the motor carrier to furnish a bond under G.S. 105-
29 449.40."

30 Sec. 6. Part 7 of Article 3 of Chapter 20 of the General Statutes is amended
31 by adding a new section to read:

32 "**§ 20-88.02. Notice to Department of Revenue of certain motor vehicles.**

33 The Commissioner shall, on a quarterly basis, notify the Department of Revenue of
34 the name and address of the owner of every diesel-powered motor vehicle that has been
35 registered or for which a certificate of title had been issued in this State during the past
36 calendar quarter."

37 Sec. 7. This act becomes effective October 1, 1993.