

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S

2

SENATE BILL 1088
Finance Committee Substitute Adopted 7/7/93

Short Title: Diesel Fuel Payment Method.

(Public)

Sponsors:

Referred to:

May 10, 1993

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT THE TAX ON DIESEL FUEL SHALL BE PAID
2 PARTLY AT THE PUMP AND PARTLY BY EITHER REPORTING OR
3 ANNUAL REGISTRATION TAX.
4

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

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

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

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

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

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

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

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

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

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

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

10 The General Assembly of North Carolina enacts:

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

12 "(6a) Nontaxpaid fuel. – Fuel on which the tax, other than the surtax,
13 imposed by this Article has not been paid."

14 Sec. 2. G.S. 105-449.10 reads as rewritten:

15 **"§ 105-449.10. Report of fuel use and payment of tax by user.**

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

19 (b) Motor Carrier. – A user who is a motor carrier ~~and who files must file a~~
20 ~~quarterly or an annual report under G.S. 105-449.45. 105-449.45 does not have to file a~~
21 ~~report under this section. A user who is a motor carrier and who does not file either a~~
22 ~~quarterly or an annual report under G.S. 105-449.45 must file a report under this~~
23 ~~section. A report by a motor carrier must state the total number of miles driven during~~
24 ~~the reporting period by motor vehicles operated by the motor carrier and the total~~
25 ~~amount of fuel the motor carrier bought in the State during the reporting period for use~~
26 ~~in motor vehicles operated by the motor carrier.~~

27 ~~A motor carrier who has to file a report must file a quarterly report unless the~~
28 ~~Secretary has given the motor carrier permission to file an annual report. A quarterly~~
29 ~~report covers a calendar quarter and is due by the last day in April, July, October, and~~
30 ~~January.~~

31 ~~The Secretary may authorize a motor carrier to file an annual report if the motor~~
32 ~~carrier is in compliance with this Article and Article 36B of this Subchapter. An annual~~
33 ~~report covers a fiscal year beginning July 1 and ending the following June 30 and is due~~
34 ~~by July 31 after the end of a fiscal year. To file an annual report, a motor carrier must~~
35 ~~apply to the Secretary for permission to file on an annual basis. Once granted~~
36 ~~permission, a motor carrier may continue to file an annual report until notified by the~~
37 ~~Secretary to file a quarterly report.~~

38 (c) Other Users. – A user who is required to have a user's license but is not a
39 motor carrier must file an annual ~~statement certifying that the user either did not use any~~
40 ~~nontaxpaid fuel in a motor vehicle during the preceding fiscal year or paid tax on any~~
41 ~~nontaxpaid fuel acquired during the preceding fiscal year for use in a motor vehicle. A~~
42 ~~statement must be filed report with the Secretary by July 31 of each year. The report~~
43 ~~must be in the form prescribed by the Secretary and must include any information~~

1 required by the Secretary to determine the user's liability for the tax levied by this
2 Article for the preceding fiscal year.

3 (d) Payment. – A user who acquires nontaxpaid fuel is liable for the tax levied
4 by this Article on the fuel. Tax due on nontaxpaid fuel acquired during a reporting
5 period by a user who must file a report under this section or G.S. 105-449.45 is due
6 when the report for that reporting period is due. Tax due on nontaxpaid fuel acquired
7 by a user who does not have to file a report under this section or G.S. 105-449.45 must
8 be paid to the Secretary within 45 days after the fuel is acquired."

9 Sec. 3. G.S. 105-449.16 reads as rewritten:

10 "**§ 105-449.16. Levy of tax, application of tax proceeds, and exemption for**
11 **nonanhydrous ethanol.**

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

- 13 (1) Fuel sold or delivered by a supplier to a licensed user-seller.
- 14 (2) Fuel used by a supplier in a motor vehicle owned, leased, or operated
15 by the supplier.
- 16 (3) Fuel delivered by a supplier directly into the fuel supply tank of a
17 motor vehicle.
- 18 (4) Fuel imported by a user-seller into this State, by a means other than
19 carrying the fuel in a fuel supply tank of a motor vehicle, for resale or
20 to propel a motor vehicle.
- 21 (5) Fuel acquired tax free by a user-seller or user in this State for resale or
22 to propel a motor vehicle.

23 The tax on liquid fuel other than diesel is at the rate established under G.S. 105-434.
24 The tax on non-liquid fuel is at a rate equivalent to the rate of tax on liquid ~~fuel,~~ fuel
25 other than diesel, as determined by the Secretary. The tax on liquid diesel fuel is at a
26 flat rate of ten and one-half cents (10 1/2¢) per gallon plus the variable rate established
27 under G.S. 105-434.

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

31 (a1) Surtax. – A surtax is imposed on liquid diesel fuel used in this State to propel
32 a motor vehicle. The surtax is at the rate of seven cents (7¢) per gallon. This surtax
33 does not apply to fuel used to propel a motor vehicle having a registered gross vehicle
34 weight of 26,000 pounds or less.

35 (a2) Purpose of Tax. – The primary purposes of this levy and this Article are to
36 provide a more efficient and effective method of collecting the tax now imposed and
37 collected pursuant to G.S. 105-435, by providing for the collection of the tax from the
38 supplier instead of the user. The tax levied by this Article is in lieu of rather than in
39 addition to the tax levied by G.S. 105-435; payment of the tax levied by this Article
40 constitutes compliance with G.S. 105-435.

41 (b) Application of Tax Proceeds. – The same percentage amounts of revenue
42 collected under this Article shall be credited to the Highway Fund and to the Highway
43 Trust Fund as are credited to those Funds under G.S. 105-445, and the same percentage

1 amounts of refunds allowed under this Article shall be charged to the Highway Fund
2 and to the Highway Trust Fund as are charged to those Funds under that statute.

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

5 Sec. 4. G.S. 105-449.19 reads as rewritten:

6 **"§ 105-449.19. Time when supplier must file return and pay any tax due.**

7 (a) Return. – A supplier of fuel who acquires, sells, delivers, or uses part or all of
8 the fuel to propel a motor vehicle must file a monthly return. A supplier of fuel who
9 sells, delivers, or uses fuel only for a purpose other than to propel a motor vehicle must
10 file a quarterly return. A return must be filed with the Secretary on a form provided by
11 the Secretary. A monthly return covers a calendar month and is due within 25 days
12 after the end of each month. A quarterly return covers a calendar quarter and is due
13 within 30 days after the end of each quarter. A supplier must pay any tax due on fuel
14 acquired, sold, delivered, or used by the supplier during a reporting period when filing a
15 return for that period.

16 (b) Information. – A return filed by a supplier must contain all of the following
17 information:

18 (1) The amount of fuel the supplier had on hand on the first and last days
19 of the reporting period.

20 (2) The amount of fuel the supplier received during the reporting period.

21 (3) The amount of fuel the supplier used during the reporting period to
22 propel a motor vehicle and the amount of fuel the supplier used during
23 the reporting period for a purpose other than to propel a motor vehicle,
24 stated separately.

25 (4) The amount of fuel the supplier sold or delivered to a licensed bulk-
26 user, a licensed reseller, a licensed user, or other persons, stated
27 separately.

28 (5) Any other information required by the Secretary to determine the
29 supplier's liability for the tax or surtax levied by this Article."

30 Sec. 5. G.S. 105-449.21 reads as rewritten:

31 **"§ 105-449.21. Report of purchases and payment of tax by user-seller.**

32 On or before the last day of the month immediately following the end of the quarter,
33 each user-seller not otherwise licensed as a supplier shall ~~render to file with~~ the
34 Secretary a ~~statement-report~~ on forms furnished by the Secretary which shall be signed
35 by the user-seller. The ~~statement-report~~ shall show the quantity of fuel on hand at the
36 beginning of the quarter, quantity on hand at the end of the quarter, and the quantity
37 sold or used and each and every purchase made by the user-seller during the preceding
38 calendar quarter. Each purchase shall be specifically noted on the ~~statement and the~~
39 ~~statement-report~~ which shall show the name and address of the supplier and the quantity
40 and date of each purchase. The report shall also include any other information required
41 by the Secretary to determine the user-seller's liability for the tax or surtax levied by this
42 Article. Each user-seller at the time of rendering ~~such statement~~ this report shall pay to
43 the Secretary the tax or taxes for the preceding calendar quarter which may be due
44 because of fuel imported or acquired ~~tax-free nontaxpaid~~ in any manner whatsoever."

1 Sec. 6. G.S. 105-449.26 reads as rewritten:

2 "**§ 105-449.26. User-sellers and certain suppliers must give receipts for and keep**
3 **records of fuel sold at retail.**

4 (a) Receipts and Records. – When required by this section, a user-seller and a
5 supplier who is also a reseller but is licensed only as a supplier must give a receipt for
6 and keep a record of certain fuel sold at retail from any of the following locations:

- 7 (1) A retail service station or other retail establishment operated by the
8 user-seller or supplier.
9 (2) A bulk storage facility of the user-seller or supplier to which the buyer
10 came to buy the fuel.
11 (3) Any other location at which the user-seller or supplier dispenses fuel
12 into a motor vehicle.

13 If the fuel is sold to propel a motor vehicle, the user-seller or supplier must give the
14 buyer a receipt only when the buyer asks for a receipt and must keep a record of any
15 receipt given. If the fuel is diesel and is sold for a purpose other than to propel a motor
16 vehicle, the user-seller or supplier must give the buyer a receipt only when the buyer
17 asks for a receipt but must always keep a record of the sale unless subsection (c)
18 exempts the user-seller or supplier from the requirement of keeping a record.

19 If the Secretary determines that a user-seller or a supplier has sold nontaxpaid fuel at
20 retail to propel a motor vehicle, the Secretary may require the user-seller or supplier to
21 keep a record of all fuel sold at retail to propel a motor vehicle. A user-seller or supplier
22 who is required to keep a record of diesel sold at retail for a purpose other than to propel
23 a motor vehicle is liable for the tax and the inspection fee on the diesel if the user-seller
24 or supplier does not keep a record of the sale.

25 (b) Content. – A record of a sale and a receipt for a sale shall include all of the
26 following information:

- 27 (1) The name and address of the user-seller or supplier.
28 (2) The name and address of the person buying the fuel.
29 (2a) If the person buying the fuel is a motor carrier, the person's North
30 Carolina fuel license number or International Fuel Tax Agreement fuel
31 license number.
32 (3) The date the fuel was sold.
33 (4) The amount of fuel sold.
34 (5) The type of fuel sold.
35 (6) The total sales price of the fuel.
36 (7) Either of the following:
37 a. The company name and company unit number of the motor
38 vehicle into which the fuel was dispensed.
39 b. The license plate number of the motor vehicle into which the
40 fuel was dispensed and the state that issued the license plate.
41 (8) If the fuel is diesel and is sold for a purpose other than to propel a
42 motor vehicle, the type of container or equipment into which the fuel
43 was dispensed.

1 (c) Exception. – A user-seller or supplier who sells diesel at a marina from a
2 storage facility whose location makes it improbable that the diesel could be dispensed
3 for a purpose other than to propel a watercraft must keep a record of a sale only if the
4 user-seller or supplier gives the buyer a receipt for the sale."

5 Sec. 7. G.S. 105-449.38 reads as rewritten:

6 **"§ 105-449.38. Tax levied.**

7 A road tax for the privilege of using the streets and highways of this State is hereby
8 imposed upon every motor carrier on the amount of gasoline or other motor fuel used by
9 such motor carrier in its operations within this State. The tax on fuel other than diesel
10 fuel shall be at the rate established by the Secretary pursuant to G.S. 105-434. The tax
11 on diesel fuel shall be:

12 (1) A base tax at a flat rate of ten and one-half cents (10 1/2¢) per gallon
13 plus the variable rate established pursuant to G.S. 105-434; and

14 (2) A surtax of seven cents (7¢) per gallon.

15 Except as credit for certain taxes as hereinafter provided for in this Article, taxes
16 imposed on motor carriers by this Article are in addition to any taxes imposed on such
17 carriers by any other provisions of law. The tax herein levied is for the same purposes as
18 the tax imposed under the provisions of G.S. 105-434."

19 Sec. 8. G.S. 105-449.39 reads as rewritten:

20 **"§ 105-449.39. Credit for payment of motor fuel tax.**

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

32 If the amount of a credit to which a motor carrier is entitled for a reporting period
33 exceeds the motor carrier's liability for that reporting period, the excess may, in
34 accordance with rules adopted by the Secretary, be refunded to the motor carrier or
35 carried forward and applied to the motor carrier's tax liability for another reporting
36 period. Before the Secretary allows a motor carrier a refund, the Secretary may audit
37 the motor carrier's records or require the motor carrier to furnish a bond under G.S. 105-
38 449.40."

39 Sec. 9. G.S. 105-449.45 reads as rewritten:

40 **"§ 105-449.45. Reports of carriers.**

41 (a) Quarterly Report. – A motor carrier shall report its operations to the Secretary
42 on a quarterly basis unless this subsection exempts the motor carrier from this
43 requirement or permits the motor carrier to report on a different basis. A motor carrier
44 is not required to file a quarterly report if:

- 1 (1) All the motor carrier's operations during the quarter were made under a
2 temporary permit issued under G.S. 105-449.49.
- 3 (2) ~~All~~ The motor carrier does not operate any diesel-propelled vehicles
4 and all the motor carrier's operations during the quarter were in this
5 State.
- 6 (3) The motor carrier has been granted permission to file an annual report
7 under subsection (b).

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

10 (b) Annual Report. – The Secretary may authorize a motor carrier whose
11 estimated annual tax liability under this Article does not exceed two hundred dollars
12 (\$200.00) to file an annual report of its operations. The tax liability of a motor carrier
13 that files an annual report shall be computed at a rate equal to the flat cents-per-gallon
14 rate plus the average of the two cents-per-gallon rates in effect during the year for which
15 the liability is computed.

16 An annual report covers a fiscal year beginning on July 1 and ending on the
17 following June 30 and is due by July 31 after the end of a fiscal year. To file an annual
18 report, a motor carrier must apply to the Secretary for permission to file on an annual
19 basis. An application must be submitted by the date set by the Secretary. Once granted
20 permission, a motor carrier may continue to file an annual report until notified by the
21 Secretary to file a quarterly report.

22 (c) Other Reports. – A motor carrier shall file with the Secretary other reports
23 concerning its operations that the Secretary requires.

24 (c1) Information in Report. – A motor carrier shall provide with a report filed
25 under this section any information required by the Secretary to determine the motor
26 carrier's liability for the tax or surtax levied by this Article.

27 (d) Penalties. – A motor carrier that fails to file a report under this section by the
28 required date is subject to a penalty of up to fifty dollars (\$50.00) for the first failure and
29 of up to one hundred dollars (\$100.00) for a subsequent failure."

30 Sec. 10. G.S. 20-87 is amended by adding at the end a new subdivision to
31 read:

32 "(12) Certain Vehicles Propelled by Diesel Fuel. – In addition to other
33 fees and taxes, a tax of fifty dollars (\$50.00) shall be paid on
34 passenger vehicles that are propelled by diesel fuel. Three-fourths
35 of the revenue collected under this subdivision shall be credited to
36 the Highway Fund. The remaining one-fourth of the revenue
37 collected under this subdivision shall be credited to the North
38 Carolina Highway Trust Fund."

39 Sec. 11. G.S. 20-88 is amended by adding at the end a new subsection to
40 read:

41 "(k) There shall be paid to the Division annually, in addition to other fees and
42 taxes, a tax on property-carrying vehicles that are propelled by diesel fuel and have a
43 gross vehicle weight rating (GVWR) of 26,000 pounds or less. The tax on vehicles that
44 have a gross vehicle weight rating of 16,500 pounds or less is fifty dollars (\$50.00); the

1 tax on vehicles that have a gross vehicle weight rating of more than 16,500 pounds but
2 not more than 26,000 pounds is one hundred fifty dollars (\$150.00). Three-fourths of
3 the revenue collected under this subsection shall be credited to the Highway Fund. The
4 remaining one-fourth of the revenue collected under this subsection shall be credited to
5 the North Carolina Highway Trust Fund."

6 Sec. 12. The Joint Legislative Highway Oversight Committee created in G.S.
7 120-70.50 shall study the issue of the level of consumption of liquid diesel fuel in this
8 State as compared to surrounding states. The Committee shall also study the impact of
9 this act upon the level of consumption of liquid diesel fuel in this State and upon
10 Highway Fund revenues and North Carolina Highway Trust Fund revenues. The
11 Department of Transportation and the Department of Revenue shall provide the
12 Committee any information it requires to conduct this study. The Committee may
13 report to the 1994 Session of the 1993 General Assembly and the 1995 Session of the
14 1995 General Assembly on this study. The Committee shall make a final report on the
15 results of the study to the 1996 Session of the 1995 General Assembly, including a
16 recommendation as to whether the provisions of this act should be continued after
17 October 1, 1996.

18 Sec. 13. (a) This act becomes effective October 1, 1993, and expires October
19 1, 1996.

20 (b) If a taxpayer's inventory of liquid diesel fuel on hand or in the taxpayer's
21 possession as of 12:01 a.m., October 1, 1993, contains liquid diesel fuel on which the
22 tax levied in Article 36A of Chapter 105 of the General Statutes has been paid, the
23 Secretary of Revenue shall refund to the taxpayer an amount equal to seven cents (7¢)
24 per gallon of this fuel. In order to be eligible for this refund, the taxpayer must be in
25 compliance with G.S. 105-449.10, 105-449.19, 105-449.21, 105-449.23, and 105-
26 449.45, and must provide any information required by the Secretary of Revenue to
27 determine the taxpayer's eligibility for the refund.

28 (c) Every supplier or reseller of special fuel must inventory all liquid diesel fuel
29 on hand or in its possession as of 12:01 a.m., October 1, 1996, and, on or before
30 November 1, 1996, must report to the Secretary of Revenue the amount of the liquid
31 diesel fuel. When filing the report, the supplier or reseller must remit to the Secretary of
32 Revenue an additional tax on the liquid diesel fuel of seven cents (7¢) per gallon. The
33 report required must be in a form prescribed by the Secretary. Notwithstanding G.S.
34 105-449.39 to the contrary, a motor carrier that as of 12:01 a.m. on October 1, 1996, has
35 on hand or in its possession liquid diesel fuel upon which it has paid the tax but not the
36 surtax in effect on September 30, 1996, is allowed a credit of only the amount of tax
37 paid on the fuel when filing the report required by G.S. 105-449.45.