

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1995

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SENATE BILL 1198

Short Title: Tax At Rack Fine Tuning.

(Public)

Sponsors: Senators Kerr, Cochrane, Cooper, Soles; and Carpenter.

Referred to: Finance.

May 15, 1996

A BILL TO BE ENTITLED

1
2 AN ACT TO CLARIFY THE REQUIREMENTS CONCERNING IMPORTS AND
3 EXPORTS OF MOTOR FUEL UNDER THE "TAX AT THE RACK" LAWS AND
4 TO MAKE OTHER ADJUSTMENTS TO THOSE LAWS.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 105-449.60 is amended by adding the following subdivision in
7 the appropriate alphabetical order and renumbering the succeeding subdivisions
8 accordingly:

9 "(20) In-State-only supplier. – Either of the following:

10 a. A supplier that is required to have a license and elects not to
11 collect the excise tax due this State on motor fuel that is removed
12 by the supplier at a terminal located in another state and has this
13 State as its destination state.

14 b. A supplier that does business only in this State."

15 Sec. 2. G.S. 105-449.60, as amended by Section 1 of this act, is amended by
16 adding the following subdivision in the appropriate alphabetical order and renumbering
17 the succeeding subdivisions accordingly:

18 "(35) Tax. – An inspection or other excise tax on motor fuel and any other fee
19 or charge imposed on motor fuel on a per-gallon basis."

20 Sec. 3. G.S. 105-449.65 reads as rewritten:

1 **"§ 105-449.65. List of persons who must have a license.**

2 (a) License. – A person may not engage in business in this State as any of the
3 following unless the person has a license issued by the Secretary authorizing the person
4 to engage in that business:

5 (1) A refiner.

6 (2) A supplier.

7 (3) A terminal operator.

8 (4) An importer.

9 ~~(5) An exporter, if the Secretary imposes this requirement by rule.~~

10 ~~(6)(5) A blender.~~

11 ~~(7)(6) A motor fuel transporter.~~

12 ~~(8)(7) A bulk-end user of undyed diesel fuel.~~

13 ~~(9)(8) A retailer of undyed diesel fuel.~~

14 (b) Multiple Activity. – A person who is engaged in more than one activity for
15 which a license is required must have a separate license for each activity, unless this
16 subsection provides otherwise. A person who is licensed as a supplier is not required to
17 obtain a separate license for any other activity for which a license is required and is
18 considered to have a license as a distributor. A person who is licensed as an occasional
19 importer or a tank wagon importer is not required to obtain a separate license as a
20 distributor. A person who is licensed as a distributor is not required to obtain a separate
21 license as an importer if the distributor acquires fuel for import only from an elective
22 supplier or a permissive supplier. A person who is licensed as a distributor or a blender is
23 not required to obtain a separate license as a motor fuel transporter if the distributor or
24 blender does not transport motor fuel for others for hire."

25 Sec. 4. G.S. 105-449.66(a)(2) reads as rewritten:

26 "(2) Occasional importer. – An occasional importer is ~~a person who~~ any of
27 the following that imports motor fuel by any means outside the terminal
28 transfer system.~~system:~~

29 a. A distributor that imports motor fuel on an average basis of no
30 more than once a month during a calendar year.

31 b. A bulk-end user that is not a distributor.

32 c. A distributor that imports motor fuel for use in a race car."

33 Sec. 5. G.S. 105-449.67 reads as rewritten:

34 **"§ 105-449.67. List of persons who may obtain a license.**

35 (a) License. – A person who is engaged in business as any of the following may
36 obtain a license issued by the Secretary for that business:

37 (1) A distributor.

38 (2) A permissive supplier.

39 (3) An exporter.

40 (b) Effect on Exports. – An exporter license or a distributor license authorizes the
41 license holder to pay the destination state tax on motor fuel purchased for export instead
42 of paying this State's tax on the fuel. An unlicensed exporter or unlicensed distributor
43 must pay this State's tax on motor fuel purchased for export.

1 (c) Multiple Activity. – A person who is licensed as a distributor is considered to
2 have a license as an exporter."

3 Sec. 6. G.S. 105-449.69 reads as rewritten:

4 **"§ 105-449.69. How to apply for a license.**

5 (a) General. – To obtain a license, an applicant must file an application with the
6 Secretary on a form provided by the Secretary. An application must include the
7 applicant's name, address, federal employer identification number, and any other
8 information required by the Secretary.

9 (b) Most Licenses. – An applicant for a license as a refiner, a supplier, a terminal
10 operator, an importer, a blender, a bulk-end user of undyed diesel fuel, a retailer of
11 undyed diesel fuel, or a distributor must meet the following requirements:

12 (1) If the applicant is a corporation, the applicant must either be
13 incorporated in this State or be authorized to transact business in this
14 State.

15 (2) If the applicant is a limited liability company, the applicant must either
16 be organized in this State or be authorized to transact business in this
17 State.

18 (3) If the applicant is a limited partnership, the applicant must either be
19 formed in this State or be authorized to transact business in this State.

20 (4) If the applicant is an individual or a general partnership, the applicant
21 must designate an agent for service of process and give the agent's name
22 and address.

23 (c) Federal Certificate. – An applicant for a license as a refiner, a supplier, a
24 terminal operator, a blender, or a permissive supplier must have a federal Certificate of
25 Registry that is issued under § 4101 of the Code and authorizes the applicant to enter into
26 federal tax-free transactions in taxable motor fuel in the terminal transfer system. An
27 applicant that is required to have a federal Certificate of Registry must include the
28 registration number of the certificate on the application for a license under this section.

29 An applicant for a license as an ~~importer~~ importer, an exporter, or a distributor that has
30 a federal Certificate of Registry issued under § 4101 of the Code must include the
31 registration number of the certificate on the application for a license under this section.

32 (d) ~~Import and Export~~ Activity. – An applicant for a license as an importer or as a
33 distributor must list on the application each state from which the applicant intends to
34 import motor fuel and, if required by a state listed, must be licensed or registered for
35 motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed
36 or registered, the applicant must give the applicant's license or registration number in that
37 state.

38 A license holder that intends to import motor fuel from a state not listed on the license
39 holder's application for an importer's license or a distributor's license must give the
40 Secretary written notice of the change before importing motor fuel from that state. The
41 notice must include the information that is required on the license application.

42 (e) Export Activity. – An applicant for a license as an exporter must designate an
43 agent located in North Carolina for service of process and must give the agent's name and

1 address. An applicant for a license as an exporter or as a distributor must list on the
2 application each state to which the applicant intends to export motor fuel received in this
3 State by means of a transfer that is outside the terminal transfer system and, if required by
4 a state listed, must be licensed or registered for motor fuel tax purposes in that state. If a
5 state listed requires the applicant to be licensed or registered, the applicant must give the
6 applicant's license or registration number in that state.

7 A license holder that intends to export motor fuel to a state not listed on the license
8 holder's application for an exporter's license or a distributor's license must give the
9 Secretary written notice of the change before exporting motor fuel to that state. The
10 notice must include the information that is required on the license application."

11 Sec. 7. G.S. 105-449.70(a) reads as rewritten:

12 "(a) Election. – An applicant for a license as a supplier may elect on the application
13 to collect the excise tax due this State on motor fuel that is removed by the supplier at a
14 terminal located in another state and has this State as its destination state. The Secretary
15 must provide for this election on the application form. A supplier that makes the election
16 allowed by this section is an elective supplier. A supplier that does not make the election
17 allowed by this section is an in-State-only supplier."

18 Sec. 8. G.S. 105-449.70(b) is amended by adding a new subdivision to read:

19 "(4) To report removals of fuel received by a person who is not licensed in
20 the state where the removal occurred."

21 Sec. 9. G.S. 105-449.71(b) is amended by adding a new subdivision to read:

22 "(4) To report removals of fuel received by a person who is not licensed in
23 the state where the removal occurred."

24 Sec. 10. G.S. 105-449.72 reads as rewritten:

25 **"§ 105-449.72. Bond or letter of credit required as a condition of obtaining and**
26 **keeping certain licenses.**

27 (a) Initial Bond. – An applicant for a license as a refiner, a terminal operator, a
28 supplier, an importer, an exporter, a blender, a permissive supplier, or a distributor must
29 file with the Secretary a bond or an irrevocable letter of credit. A bond must be
30 conditioned upon compliance with the requirements of this Article, be payable to the
31 State, and be in the form required by the Secretary. The amount of the bond or
32 irrevocable letter of credit is determined as follows:

33 (1) For an applicant for a license as any of the following, the amount is two
34 million dollars (\$2,000,000):

- 35 a. A refiner.
- 36 b. A terminal operator.
- 37 c. A supplier that is a position holder or a person that receives
38 motor fuel pursuant to a two-party exchange.
- 39 d. A bonded importer.
- 40 e. A permissive supplier.

41 (2) For an applicant for a license as any of the following, the amount is two
42 times the applicant's average expected monthly tax liability under this
43 Article, as determined by the Secretary. The amount may not be less

1 than two thousand dollars (\$2,000) and may not be more than two
2 hundred fifty thousand dollars (\$250,000):

- 3 a. A supplier that is a fuel alcohol provider but is ~~not~~ neither a
4 position holder ~~or~~ nor a person that receives motor fuel pursuant
5 to a two-party exchange.
6 b. An occasional importer.
7 c. A tank wagon importer.
8 d. A distributor.
9 e. An exporter.

10 (3) For an applicant for a license as a blender, a bond is required only if the
11 applicant's average expected annual tax liability under this Article, as
12 determined by the Secretary, is at least two thousand dollars (\$2,000).
13 When a bond is required, the bond amount is the same as under
14 subdivision (2) of this subsection.

15 (b) Multiple Activity. – A bond filed under this section must be conditioned upon
16 compliance with the requirements of this Article, be payable to the State, and be in the
17 form required by the Secretary.—An applicant for a license as a distributor and as a
18 bonded importer must file only the bond required of a bonded importer. An applicant for
19 a license as a distributor and either an occasional importer or a tank wagon importer two
20 or more of the licenses listed in subdivision (a)(2) or (a)(3) of this section may file one
21 bond that covers the combined liabilities of the applicant under both activities. all the
22 activities. A bond for these combined activities may not exceed the maximum amount
23 set in subdivision (a)(2) of this subsection.

24 (b) (c) Adjustment to Bond. – When notified to do so by the Secretary, a person
25 that has filed a bond or an irrevocable letter of credit and that holds a license listed in
26 subdivision (a)(2) of this section must file an additional bond or irrevocable letter of
27 credit in the amount requested by the Secretary. The person must file the additional bond
28 or irrevocable letter of credit within 30 days after receiving the notice from the Secretary.
29 The amount of the initial bond or irrevocable letter of credit and any additional bond or
30 irrevocable letter of credit filed by the license holder, however, may not exceed the limits
31 set in subdivision (a)(2) of this section."

32 Sec. 11. G.S. 105-449.73 reads as rewritten:

33 "**§ 105-449.73. Reasons why the Secretary can deny an application for a license.**

34 The Secretary may refuse to issue a license to an individual applicant that has done
35 any of the following and may refuse to issue a license to an applicant that is a business
36 entity if any principal in the business has done any of the following:

- 37 (1) Had a license or registration issued under this Article or former Article
38 36 or 36A of this Chapter cancelled by the Secretary for cause.
39 (2) Had a motor fuel license or registration issued by another state cancelled
40 for cause.
41 (2)(3) Had a federal Certificate of Registry issued under § 4101 of the Code,
42 or a similar federal authorization, revoked.
43 (3)(4) Been convicted of fraud or misrepresentation.

1 (4)(5) Been convicted of any other offense that indicates that the applicant
2 may not comply with this Article if issued a license."

3 Sec. 12. G.S. 105-449.77 reads as rewritten:

4 "**§ 105-449.77. Records and lists of license applicants and license holders.**

5 (a) Records. – The Secretary must keep a record of the following:

6 (1) Applicants for a license under this Article.

7 (2) Persons to whom a license has been issued under this Article.

8 (3) Persons that hold a current license issued under this Article, by license
9 category.

10 (b) ~~Distributor List.~~ Supplier Lists. – The Secretary must give a list of licensed
11 ~~distributors—suppliers, licensed terminal operators, licensed importers, licensed~~
12 ~~distributors, and licensed exporters~~ to each licensed ~~supplier that asks for a copy of the list.~~
13 ~~supplier.~~ The list must state the name—name, account number, and business address of
14 each distributor—license holder on the list. The Secretary must send a monthly update of
15 the list to each ~~supplier that requested a copy of the list.~~ licensed supplier.

16 (c) ~~Supplier List.~~ — The Secretary must give a list of licensed suppliers to each
17 ~~distributor that asks for a copy of the list.~~ The list must state the name and business
18 address of each supplier on the list and must indicate whether the supplier is an elective
19 supplier or a permissive supplier. The Secretary must send an annual update of the list to
20 each ~~distributor that requested a copy of the list.~~

21 The Secretary must give a list of licensed suppliers to each licensed distributor,
22 licensed exporter, and licensed importer. The Secretary must also give a list of licensed
23 suppliers to each unlicensed distributor or unlicensed exporter that asks for a copy of the
24 list. The list must state the name, account number, and business address of each supplier
25 on the list and must indicate whether the supplier is an elective supplier, a permissive
26 supplier, or an in-State-only supplier. The Secretary must send an annual update of the
27 list to each licensed distributor, licensed exporter, and licensed importer, and to each
28 unlicensed distributor or unlicensed exporter that requested a copy of the list.

29 (c) Transporter Lists. – The Secretary must give a list of licensed motor fuel
30 transporters to each licensed supplier, licensed terminal operator, licensed importer,
31 licensed blender, licensed distributor, and licensed exporter. The list must state the name,
32 account number, and business address of each motor fuel transporter on the list. The
33 Secretary must send a monthly update of the list to each license holder to whom the
34 Secretary must give the list.

35 The Secretary must give a list of licensed suppliers, licensed terminal operators,
36 licensed importers, licensed blenders, licensed distributors, and licensed exporters to each
37 licensed motor fuel transporter. The list must state the name, account number, and
38 business address of each license holder on the list. The Secretary must send a monthly
39 update of the list to each licensed motor fuel transporter."

40 Sec. 13. G.S. 105-449.81 reads as rewritten:

41 "**§ 105-449.81. Excise tax on motor fuel.**

42 An excise tax at the motor fuel rate is imposed on motor fuel that is:

- 1 (1) Removed from a refinery or a terminal and, upon removal, is subject to
2 the federal excise tax imposed by § 4081 of the Code.
- 3 (2) Imported by a system transfer to a refinery or a terminal and, upon
4 importation, is subject to the federal excise tax imposed by § 4081 of
5 the Code.
- 6 (3) Imported by a means of transfer outside the terminal transfer system for
7 sale, use, or storage in this State and would have been subject to the
8 federal excise tax imposed by § 4081 of the Code if it had been removed
9 at a terminal or bulk plant rack in this State instead of imported.
- 10 (4) Fuel grade ethanol that meets any of the following descriptions:
- 11 a. Is removed from a terminal or another storage and distribution
12 facility, unless the removed fuel is received by a supplier for
13 subsequent sale.
- 14 b. Is imported to this State outside the terminal transfer system by a
15 means other than a marine vessel, a transport truck, or a railroad
16 tank car.
- 17 ~~(4)(5)~~ Blended fuel made in this State or imported to this State.
- 18 (6) Transferred within the terminal transfer system and, upon transfer, is
19 subject to the federal excise tax imposed by section 4081 of the Code."

20 Sec. 14. G.S. 105-449.82(c) reads as rewritten:

21 "(c) Terminal Rack Removal. – The excise tax imposed by G.S. 105-449.81(1) on
22 motor fuel removed at a terminal rack in this State is payable by the person that first
23 receives the fuel upon its removal from the terminal. If the motor fuel is removed by an
24 unlicensed distributor, the supplier of the fuel is jointly and severally liable for the tax
25 due on the fuel. If the motor fuel is sold by a person who is not licensed as a supplier, as
26 required by this Article, the terminal operator, the person selling the fuel, and the person
27 removing the fuel are jointly and severally liable for the tax due on the fuel. If the motor
28 fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states
29 that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person
30 removing the fuel are jointly and severally liable for the tax due on the fuel."

31 Sec. 15. Part 3 of Article 36C of Chapter 105 of the General Statutes is
32 amended by adding a new section to read:

33 **"§ 105-449.83A. Liability for tax on fuel grade ethanol.**

34 The excise tax imposed by G.S. 105-449.81(4) on fuel grade ethanol removed
35 from a storage facility is payable by the fuel alcohol provider. The excise tax imposed by
36 that subdivision on fuel grade ethanol imported to this State is payable by the importer."

37 Sec. 16. G.S. 105-449.84 reads as rewritten:

38 **"§ 105-449.84. Liability for tax on blended fuel.**

39 (a) On Blender. – The excise tax imposed by G.S. ~~105-449.81(4)~~ 105-449.81(5) on
40 blended fuel made in this State is payable by the blender. The number of gallons of
41 blended fuel on which the tax is payable is the difference between the number of gallons
42 of blended fuel made and the number of gallons of previously taxed motor fuel used to
43 make the blended fuel.

1 (b) On Importer. – The excise tax imposed by G.S. ~~405-449.81(4)~~ 105-449.81(5) on
2 blended fuel imported to this State is payable by the importer.

3 (c) Blends Made at Terminal. – The following blended fuel is considered to have
4 been made by the supplier of gasoline or undyed diesel fuel used in the blend:

5 (1) An in-line-blend made by combining a liquid with gasoline or undyed
6 diesel fuel as the fuel is delivered at a terminal rack into the motor fuel
7 storage compartment of a transport truck or a tank wagon.

8 (2) A kerosene splash-blend made when kerosene is delivered at a terminal
9 into a motor fuel storage compartment of a transport truck or a tank
10 wagon and undyed diesel fuel is also delivered at that terminal into the
11 same storage compartment, if the buyer of the kerosene notified the
12 supplier before or at the time of delivery that the kerosene would be
13 used to make a splash-blend."

14 Sec. 17. Part 3 of Article 36C of Chapter 105 of the General Statutes is
15 amended by adding a new section to read:

16 "**§ 105-449.84A. Liability for tax on behind-the-rack transfers.**

17 The excise tax imposed by G.S. 105-449.81(6) on motor fuel transferred within
18 the terminal transfer system is payable by the supplier of the fuel, the person receiving
19 the fuel, and the terminal operator of the terminal at which the fuel was transferred, all of
20 whom are jointly and severally liable for the tax."

21 Sec. 18. G.S. 105-449.85(b) reads as rewritten:

22 "(b) Liability. – The terminal operator whose motor fuel is unaccounted for is liable
23 for the tax imposed by this ~~section~~ section and is liable for a penalty equal to the amount
24 of tax payable. Motor fuel received by a terminal operator and not shown on ~~a report~~ an
25 informational return filed by the terminal operator with the Secretary as having been
26 removed from the terminal is presumed to be unaccounted for. A terminal operator may
27 establish that motor fuel received at a terminal but not shown on ~~a report~~ an informational
28 return as having been removed from the terminal was lost or part of a transmix and is
29 therefore not unaccounted for."

30 Sec. 19. G.S. 105-449.87(a)(4) is repealed.

31 Sec. 20. G.S. 105-449.88 reads as rewritten:

32 "**§ 105-449.88. Exemptions from the excise tax.**

33 The excise tax on motor fuel does not apply to the following:

34 (1) Motor fuel removed, by transport truck or another means of transfer
35 outside the terminal transfer system, from a terminal for export, if the
36 supplier of the motor fuel collects tax on it at the rate of the motor fuel's
37 destination ~~state that is printed on the shipping document for the motor fuel.~~
38 state. If the removed fuel is to be used for a purpose that is exempt from
39 tax in the destination state and, when removing the fuel, the licensed
40 distributor or licensed exporter uses an access card or code specified by
41 the supplier to notify the supplier that the fuel will be resold in an
42 exempt sale, no tax is due on the removal.

43 (2) Motor fuel sold to the federal government.

1 (3) Motor fuel sold to the State for its use.

2 (4) Motor fuel sold to a local board of education for use in the public school
3 system."

4 Sec. 21. Effective July 1, 1997, G.S. 105-449.88, as amended by Section 20 of
5 this act, reads as rewritten:

6 **"§ 105-449.88. Exemptions from the excise tax.**

7 The excise tax on motor fuel does not apply to the following:

8 (1) Motor fuel removed, by transport truck or another means of transfer
9 outside the terminal transfer system, from a terminal for export, if the
10 supplier of the motor fuel collects tax on it at the rate of the motor fuel's
11 destination state. ~~If the removed fuel is to be used for a purpose that is
12 exempt from tax in the destination state and, when removing the fuel, the
13 licensed distributor or licensed exporter uses an access card or code specified
14 by the supplier to notify the supplier that the fuel will be resold in an exempt
15 sale, no tax is due on the removal.~~

16 (2) Motor fuel sold to the federal government.

17 (3) Motor fuel sold to the State for its use.

18 (4) Motor fuel sold to a local board of education for use in the public school
19 system."

20 Sec. 22. Part 3 of Article 36C of Chapter 105 of the General Statutes is
21 amended by adding a new section to read:

22 **"§ 105-449.89. Removals by out-of-state bulk-end user.**

23 An out-of-state bulk-end user may remove motor fuel from a terminal in this State for
24 use in the state in which the bulk-end user is located as follows:

25 (1) Upon payment to the supplier of tax on the motor fuel at the motor fuel
26 rate.

27 (2) Upon payment to the supplier of destination, state tax on the motor fuel,
28 if the bulk-end user acquires the fuel from a supplier who, with respect
29 to the destination state of the fuel, is either a permissive supplier or an
30 elective supplier and therefore collects the destination state tax on the
31 fuel."

32 Sec. 23. G.S. 105-449.90 reads as rewritten:

33 **"§ 105-449.90. When tax return and payment are due.**

34 (a) Filing Periods. – The excise tax imposed by this Article is payable when a
35 return is due. A return is due annually, quarterly, or monthly, as specified in this section.
36 A return must be filed with the Secretary and be in the form required by the Secretary.

37 An annual return is due within 45 days after the end of each calendar year. An annual
38 return covers tax liabilities that accrue in the calendar year preceding the date the return
39 is due.

40 A quarterly return is due by the last day of the month that follows the end of a
41 calendar quarter. A quarterly return covers tax liabilities that accrue in the calendar
42 quarter preceding the date the return is due.

1 A monthly return of a person other than an occasional importer is due within 22 days
2 after the end of each month. A monthly return of an occasional importer is due by the 1st
3 of each month. A monthly return covers tax liabilities that accrue in the calendar month
4 preceding the date the return is due.

5 (b) Annual Filers. – A terminal operator must file an annual return for the
6 compensating tax imposed by G.S. 105-449.85.

7 (c) Quarterly Filers. – A licensed importer that removes fuel at a terminal rack of a
8 permissive or an elective supplier and a licensed distributor must file a quarterly return
9 under G.S. 105-449.94 to reconcile exempt sales.

10 (d) Monthly Filers on 22nd. – The following persons must file a monthly return by
11 the 22nd of each month:

12 (1) A refiner.

13 (2) A supplier.

14 (3) A bonded importer.

15 (4) A blender.

16 (5) A tank wagon importer.

17 (6) A person that is liable incurred a liability under G.S. 105-449.86 during
18 the preceding month for the tax on dyed diesel fuel used to operate
19 certain highway vehicles.

20 (7) A person that is liable incurred a liability under G.S. 105-449.87 during
21 the preceding month for the backup tax on motor fuel.

22 (e) Monthly Filers on 1st. – An occasional importer must file a monthly return by
23 the 1st of each month. An occasional importer is not required to file a return, however, if
24 all the motor fuel imported by the importer in a reporting period was removed at a
25 terminal located in another state and the supplier of the fuel is an elective supplier or a
26 permissive supplier."

27 Sec. 24. Part 4 of Article 36C of Chapter 105 of the General Statutes is
28 amended by adding the following section to read:

29 **"§ 105-449.90A. Payment by supplier of destination state tax collected on exported**
30 **motor fuel.**

31 Tax collected by a supplier on exported motor fuel is payable by the supplier to the
32 destination state if the supplier is licensed in that state for payment of motor fuel excise
33 taxes. Tax collected by a supplier on exported motor fuel is payable to the Secretary for
34 remittance to the destination state if the supplier is not licensed in that state for payment
35 of motor fuel excise taxes. Payments of destination state tax are due to the destination
36 state or the Secretary, as appropriate, on the date set by the law of the destination state.
37 Payments of destination state tax to the Secretary must be accompanied by a form
38 provided by the Secretary that contains the information required by the Secretary."

39 Sec. 25. G.S. 105-449.91 reads as rewritten:

40 **"§ 105-449.91. Remittance of tax by distributor to supplier.**

41 (a) Distributor. – A distributor that is liable for the must remit tax imposed due on
42 motor fuel removed at a terminal rack must remit the tax to the supplier of the fuel. A
43 licensed distributor has the right to defer the remittance of tax to the supplier, as trustee,

1 until the date the trustee must pay the tax to the State. ~~Payment of tax by this State or to~~
2 ~~another state. The time when an unlicensed distributor must remit tax to a supplier is~~
3 ~~governed by the terms of the contract between the unlicensed distributor and the supplier.~~
4 ~~G.S. 105-449.76 governs the cancellation of a distributor's license.~~ supplier and the unlicensed
5 distributor.

6 (b) Exporter. – An exporter must remit tax due on motor fuel removed at a
7 terminal rack to the supplier of the fuel. A licensed exporter that is also licensed in the
8 destination state has the right to defer the remittance of tax to the supplier until the date
9 set by the law of the destination state of the fuel. The time when an unlicensed exporter,
10 or a licensed exporter that is not also licensed in the destination state, must remit tax to a
11 supplier is governed by the terms of the contract between the supplier and the exporter.

12 (c) Importer. – A licensed importer must remit tax due on motor fuel removed at a
13 terminal rack of a permissive or an elective supplier to the supplier of the fuel. A
14 licensed importer that removes fuel from a terminal rack of a permissive or an elective
15 supplier has the right to defer the remittance of tax to the supplier until the date the
16 supplier must pay the tax to this State.

17 (d) General. – The method by which a distributor, an exporter, or a licensed
18 importer must remit tax to a supplier is governed by the terms of the contract between the
19 supplier and the distributor, exporter, or licensed importer and the supplier. G.S. 105-
20 449.76 governs the cancellation of a license of a distributor, an exporter, and an
21 importer."

22 Sec. 26. G.S. 105-449.92 reads as rewritten:

23 "**§ 105-449.92. Notice to suppliers of cancellation or reissuance of a ~~distributor's~~**
24 **license; certain licenses; effect of notice.**

25 (a) Notice to Suppliers. – If the Secretary cancels a distributor's ~~license,~~ license, an
26 exporter's license, or an importer's license, the Secretary must notify all suppliers of the
27 cancellation. If the Secretary issues a license to a ~~distributor~~ distributor, an exporter, or an
28 importer whose license was cancelled, the Secretary must notify all suppliers of the
29 issuance.

30 (b) Effect of Notice. – A supplier that sells motor fuel to a distributor or an
31 exporter after receiving notice from the Secretary that the Secretary has cancelled the
32 distributor's or exporter's license is jointly and severally liable with the distributor or
33 exporter for any tax due on motor fuel the supplier sells to the distributor or exporter after
34 receiving the notice. This joint and several liability does not apply to excise tax due on
35 motor fuel sold to a previously unlicensed distributor or unlicensed exporter after the
36 supplier receives notice from the Secretary that the Secretary has issued another license
37 to the ~~distributor.~~ distributor or exporter."

38 Sec. 27. G.S. 105-449.93 reads as rewritten:

39 "**§ 105-449.93. Exempt sale deduction and percentage discount for licensed**
40 **distributors.** **distributors and some licensed importers.**

41 (a) Deduction. – A ~~licensed distributor~~ license holder listed below may deduct from
42 the amount of tax otherwise payable to a supplier the amount calculated on motor fuel the
43 ~~distributor~~ license holder received from the supplier and resold to a governmental unit

1 whose purchases of motor fuel are exempt from the tax under G.S. 105-449.88 if, when
2 removing the fuel, the ~~distributor-license holder~~ used an access card or code specified by
3 the supplier to notify the supplier of the ~~distributor's-license holder's~~ intent to resell the
4 fuel in an exempt ~~sale-sale~~:

5 (1) A licensed distributor.

6 (2) A licensed importer that removed the motor fuel from a terminal rack of
7 a permissive or an elective supplier.

8 (b) Percentage Discount. – A licensed distributor that pays the ~~excise-tax~~ due a
9 supplier by the date the supplier must pay the tax to the State may deduct from the
10 amount due a discount of one percent (1%) of the amount of tax payable. A licensed
11 importer that removes motor fuel from a terminal rack of a permissive or an elective
12 supplier and that pays the tax due the supplier by the date the supplier must pay the tax to
13 the State may deduct from the amount due a discount of the same amount allowed a
14 licensed distributor. The discount covers the expense of furnishing a bond and losses due
15 to shrinkage or evaporation. A supplier may not directly or indirectly deny this discount
16 to a licensed distributor or licensed importer that pays the ~~excise-tax~~ due the supplier by
17 the date the supplier must pay the tax to the State."

18 Sec. 28. G.S. 105-449.94 reads as rewritten:

19 "**§ 105-449.94. Quarterly reconciling return for exempt sales by licensed ~~distributor-~~**
20 **distributor and some licensed importers.**

21 (a) Return. – A licensed distributor or a licensed importer that deducts exempt
22 sales under G.S. 105-449.93(a) when paying tax to a supplier must file a quarterly
23 reconciling return for the exempt sales. The return must list the following information:

24 (1) The number of gallons for which a deduction was taken during the
25 quarter, by supplier.

26 (2) The number of gallons sold in exempt sales during the quarter, by type
27 of sale, and the purchasers of the fuel in the exempt sales.

28 (b) Payment. – If the number of gallons for which a licensed distributor or licensed
29 importer takes a deduction during a quarter exceeds the number of exempt gallons sold,
30 the licensed distributor or licensed importer must pay tax on the difference at the motor
31 fuel rate. The licensed distributor or licensed importer is not allowed a percentage
32 discount when paying tax under this subsection.

33 (c) Refund. – If the number of gallons for which a licensed distributor or licensed
34 importer takes a deduction during a quarter is less than the number of exempt gallons
35 sold, the Secretary must refund the ~~licensed distributor for the~~ amount of tax paid on the
36 difference. The Secretary must reduce the amount of the refund by the amount of the
37 percentage discount ~~the distributor~~ received on the fuel.

38 (d) Exception. – ~~If the number of gallons for which a licensed distributor takes a~~
39 ~~deduction during a quarter equals the number of exempt gallons sold, the licensed~~
40 ~~distributor is not required to file a return under this section for that quarter. The Secretary~~
41 ~~may waive the requirement of filing a return under this section in other specified~~
42 ~~circumstances."~~

43 Sec. 29. G.S. 105-449.95 reads as rewritten:

1 **"§ 105-449.95. Quarterly hold harmless for licensed ~~distributors.~~ distributors and**
 2 **some licensed importers.**

3 (a) Calculation. – At the end of each calendar quarter, the Secretary must review
 4 the amount of discounts each licensed distributor licensed importer received under G.S.
 5 105-449.93(b). The Secretary must determine if the amount of discounts the distributor or
 6 importer received under that subsection in each month of the quarter is less than the
 7 amount the distributor or importer would have received if the distributor or importer had
 8 been allowed a discount on taxable gasoline purchased by the distributor or importer
 9 from a supplier during each month of the quarter under the following schedule:

<u>Amount of Gasoline Purchased</u>	<u>Percentage Discount</u>
<u>Each Month</u>	
First 150,000 gallons	2%
Next 100,000 gallons	1 1/2%
Amount over 250,000 gallons	1%.

15 (b) Refund. – If the amount the licensed distributor or licensed importer received
 16 under G.S. 105-449.93(b) for a month in the quarter is less than the amount the
 17 distributor or importer would have received on the distributor's or importer's taxable
 18 gasoline purchases under the monthly schedule in subsection (a) of this section, the
 19 Secretary must send the distributor or importer a refund check for the difference. In
 20 determining the amount of discounts a distributor or importer received under G.S. 105-
 21 449.93(b) for gasoline purchased in a month, a distributor or importer is considered to
 22 have received the amount of any discounts the distributor or importer could have received
 23 under that subsection but did not receive because the distributor or importer failed to pay
 24 the tax due to the supplier by the date the supplier had to pay the tax to the State."

25 Sec. 30. G.S. 105-449.96 reads as rewritten:

26 **"§ 105-449.96. Information required on return filed by supplier.**

27 A return of a supplier must list all of the following information and any other
 28 information required by the Secretary:

- 29 (1) The number of gallons of tax-paid motor fuel received by the supplier
 30 during the month by the supplier by a system transfer, by month, sorted by
 31 type of fuel, and by terminal, seller, point of origin, destination state, and
 32 carrier.
- 33 (2) ~~The number of gallons of motor fuel imported during the month by the~~
 34 ~~supplier by a means of transfer outside the terminal transfer system.~~
- 35 (3)(2) The number of gallons of motor fuel removed at a terminal rack
 36 during the month from the account of the supplier, sorted by type
 37 of fuel, by receiving distributor, and by terminal, exporter, or
 38 importer, terminal code, and carrier.
- 39 (4)(3) The number of gallons of motor fuel removed during the month for
 40 export, sorted by distributor and by terminal, and, for each removal, the
 41 destination state of the fuel, type of fuel, receiving distributor or exporter,
 42 terminal code, destination state, and carrier.

1 ~~(5)~~(4) The number of gallons of motor fuel removed during the month, by
2 ~~distributor and by terminal, at month~~ at a terminal located in another state
3 for destination to this State, as indicated on the shipping document for
4 the ~~fuel~~ fuel, sorted by type of fuel, receiving distributor, exporter, or
5 importer, terminal code, and carrier.

6 ~~(6)~~(5) The number of gallons of motor fuel the supplier sold during the month,
7 ~~by distributor and by terminal, month~~ to either any of the following:
8 following, sorted by type of fuel, exempt entity, receiving distributor,
9 terminal code, and carrier:

- 10 a. A governmental unit whose use of fuel is exempt from the tax.
11 b. A licensed distributor that resold the motor fuel to a
12 governmental unit whose use of fuel is exempt from the tax, as
13 ~~reported~~ indicated by the distributor.
14 c. A licensed exporter that resold the motor fuel to a person whose
15 use of fuel is exempt from tax in the destination state, as
16 indicated by the exporter.

17 ~~(7)~~(6) The amount of discounts allowed under G.S. 105-449.93(b) on motor
18 fuel sold during the month to licensed ~~distributors, sorted by distributor.~~
19 distributors or licensed importers."

20 Sec. 31. G.S. 105-449.97 reads as rewritten:

21 "**§ 105-449.97. Deductions and discounts allowed a supplier when filing a return.**

22 (a) Taxes Not Remitted. – When a supplier files a return, the supplier may deduct
23 from the amount of tax payable with the return the amount of tax ~~a licensed distributor~~ any
24 of the following license holders owes the supplier but failed to remit to the ~~supplier.~~
25 supplier:

- 26 (1) A licensed distributor.
27 (2) A licensed importer that removed the motor fuel on which the tax is due
28 from a terminal of an elective or a permissive supplier.
29 (3) A licensed exporter, if the destination state of the exported motor fuel
30 allows a supplier in that state to deduct from the amount of tax payable
31 with a return the amount of tax an exporter licensed in that state owes
32 the supplier but fails to pay.

33 A supplier is not liable for tax ~~a licensed distributor~~ license holder listed in this
34 subsection owes the supplier but fails to pay. If a ~~licensed distributor~~ listed license holder
35 pays tax owed to a supplier after the supplier deducts the amount on a return, the supplier
36 must promptly remit the ~~distributor's~~ payment to the Secretary. When a supplier deducts
37 an amount not paid to the supplier by a licensed distributor or licensed exporter on
38 exported motor fuel, the Secretary must notify the appropriate destination state of the
39 failure and cooperate with that state in recovering from the exporter the amount deducted.

40 (b) Administrative Discount. – A supplier that files a timely return may deduct
41 from the amount of tax payable with the return an administrative discount of one-tenth of
42 one percent (0.1%) of the amount of tax payable to this State as the trustee, not to exceed

1 eight thousand dollars (\$8,000) a month. The discount covers expenses incurred in
2 collecting taxes on motor fuel ~~from distributors.~~ fuel.

3 (c) Percentage Discount. – A supplier that sells motor fuel directly to an
4 unlicensed distributor or unlicensed exporter or to the bulk-end user, the retailer, or user
5 of the fuel ~~can~~ may take the same percentage discount on the fuel that a licensed
6 distributor ~~can~~ may take under G.S. 105-449.93(b) when making deferred payments of
7 tax to the supplier."

8 Sec. 32. Effective July 1, 1997, G.S. 105-449.97(a), as amended by Section 31
9 of this act, reads as rewritten:

10 "(a) Taxes Not Remitted. – When a supplier files a return, the supplier may deduct
11 from the amount of tax payable with the return the amount of tax any of the following
12 license holders owes the supplier but failed to remit to the supplier:

13 (1) A licensed distributor.

14 (2) A licensed importer that removed the motor fuel on which the tax is due
15 from a terminal of an elective or a permissive supplier.

16 (3) ~~A licensed exporter, if the destination state of the exported motor fuel
17 allows a supplier in that state to deduct from the amount of tax payable
18 with a return the amount of tax an exporter licensed in that state owes
19 the supplier but fails to pay.~~

20 A supplier is not liable for tax a license holder listed in this subsection owes the
21 supplier but fails to pay. If a listed license holder pays tax owed to a supplier after the
22 supplier deducts the amount on a return, the supplier must promptly remit the payment to
23 the Secretary. ~~When a supplier deducts an amount not paid to the supplier by a licensed
24 distributor or licensed exporter on exported motor fuel, the Secretary must notify the appropriate
25 destination state of the failure and cooperate with that state in recovering from the exporter the
26 amount deducted."~~

27 Sec. 33. G.S. 105-449.98 reads as rewritten:

28 "**§ 105-449.98. Duties of supplier concerning payments by ~~distributors.~~ distributors,**
29 **exporters, and importers.**

30 (a) As Fiduciary. – A supplier has a fiduciary duty to remit to the Secretary the
31 amount of tax paid to the supplier by a licensed ~~distributor.~~ distributor, licensed exporter,
32 or licensed importer. A supplier is liable for taxes paid to the supplier by a licensed
33 ~~distributor.~~ distributor, licensed exporter, or licensed importer.

34 (b) Notification to ~~Distributor.~~ Distributor or Exporter. – A supplier must notify a
35 licensed distributor or licensed exporter that received motor fuel from the supplier during
36 a reporting period of the number of taxable gallons received. The supplier must give this
37 notice after the end of each reporting period and before the licensed distributor or
38 licensed exporter must remit to the supplier the amount of tax due on the fuel.

39 (c) Notification to Department. – A supplier of motor fuel at a terminal must
40 notify the Department within 10 business days after a return is due of any licensed
41 distributors or licensed exporters that did not pay the tax due the supplier when the
42 supplier filed the return. The notification must be transmitted to the Department in the
43 form required by the Department.

1 (d) Payment Application. – A supplier that receives a payment of ~~excise~~-tax from a
2 distributor or a licensed exporter may not apply the payment to debts for motor fuel
3 purchased from the supplier."

4 Sec. 34. G.S. 105-449.100 reads as rewritten:

5 "**§ 105-449.100. Report by terminal operator. Terminal operator to file informational**
6 **return showing changes in amount of motor fuel at the terminal.**

7 A terminal operator must ~~make file~~ a monthly ~~report to~~ informational return with the
8 Secretary ~~of that shows the amount of~~ motor fuel received or removed from the terminal
9 during the month. The ~~report return~~ is due by the 25th day of the month following the
10 month covered by the ~~report and return~~. The return must contain the following
11 information and any other information required by the Secretary:

12 (1) The number of gallons of motor fuel received in inventory at the
13 terminal during the month and each position holder for the fuel.

14 (2) The number of gallons of motor fuel removed from inventory at the
15 terminal during the month and, for each removal, the position holder for
16 the fuel and the destination state of the fuel.

17 (3) The number of gallons of motor fuel gained or lost at the terminal
18 during the month."

19 Sec. 35. G.S. 105-449.101 reads as rewritten:

20 "**§ 105-449.101. Reports by those that transport motor fuel. Motor fuel transporter to**
21 **file informational return showing deliveries of imported or exported**
22 **motor fuel.**

23 (a) Requirement. – A person that transports, by pipeline, marine vessel, railroad
24 tank car, or transport truck, motor fuel that is being imported into this State or exported
25 from this State must ~~make file~~ a monthly ~~report to~~ informational return with the Secretary
26 ~~of that shows~~ motor fuel received or delivered for import or export by the transporter
27 during the month. This requirement does not apply to a distributor that is not required to
28 be licensed as a motor fuel transporter.

29 (b) Content. – The ~~report return~~ required by this section is due by the 25th day of
30 the month following the month covered by the ~~report and return~~. The return must contain
31 the following information and any other information required by the Secretary:

32 (1) The name and address of each person from whom the transporter
33 received motor fuel outside the State for delivery in the State, the
34 amount of motor fuel received, the date the motor fuel was received,
35 and the destination state of the fuel.

36 (2) The name and address of each person from whom the transporter
37 received motor fuel in the State for delivery outside the State, the
38 amount of motor fuel delivered, the date the motor fuel was delivered,
39 and the destination state of the fuel."

40 Sec. 36. G.S. 105-449.102 reads as rewritten:

41 "**§ 105-449.102. Report of Distributor to file return showing exports from a bulk**
42 **plant.**

1 (a) Return. – A distributor that exports motor fuel from a bulk plant located in this
2 State must ~~make file~~ a monthly ~~report to~~ return with the Secretary ~~of that~~ shows the
3 exports. The ~~report return~~ is due by the 25th day of the month following the month
4 covered by the ~~report~~. ~~The report return.~~ The return serves as a claim for refund by the
5 distributor for tax paid to this State on the exported motor fuel.

6 (b) Content. – The return must contain the following information and any other
7 information required by the Secretary:

8 (1) The number of gallons of motor fuel exported during the month.

9 (2) The destination state of the motor fuel exported during the month.

10 (3) A certification that the distributor has paid to the destination state of the
11 motor fuel exported during the month, or will pay on a timely basis, the
12 amount of tax due that state on the fuel."

13 Sec. 37. Part 4 of Article 36C of Chapter 105 of the General Statutes is
14 amended by adding a new section to read:

15 "**§ 105-449.104. Use of name and account number on return.**

16 When a transaction with a person licensed under this Article is required to be reported
17 on a return, the return must state the license holder's name and the account number used
18 by the Department to identify the license holder. The name of a license holder and the
19 license holder's account number is stated on the lists compiled under G.S. 105-449.77."

20 Sec. 38. G.S. 105-449.105 reads as rewritten:

21 "**§ 105-449.105. Refunds upon application for tax paid on exempt fuel, lost fuel, used**
22 **in boats—fuel unsalable for highway use, and undyed diesel fuel used in**
23 **boats.**

24 (a) Exempt Fuel. – A distributor may obtain a refund of tax paid by the distributor
25 on motor fuel sold to a governmental unit whose use of motor fuel is exempt from the
26 motor fuel excise tax. A governmental unit whose use of motor fuel is exempt from the
27 motor fuel excise tax may obtain a refund of tax paid by it on motor fuel. A person may
28 obtain a refund of tax paid by the person on exported fuel, including fuel whose shipping
29 document shows this State as the destination state but was diverted to another state in
30 accordance with the diversion procedures established by the Secretary.

31 (b) Lost Fuel. – A supplier, an importer, or a distributor that loses tax-paid motor
32 fuel due to damage to a conveyance transporting the motor fuel, fire, a natural disaster, an
33 act of war, or an accident may obtain a refund for the tax paid on the fuel.

34 (c) Accidental Mixes. – A person that accidentally combines any of the following
35 may obtain a refund for the amount of tax paid on the fuel:

36 (1) Dyed diesel fuel with tax-paid motor fuel.

37 (2) Gasoline with diesel fuel.

38 (3) Undyed diesel fuel with dyed kerosene.

39 (d) Marina. – A marina may obtain a refund of tax paid by the marina on undyed
40 diesel fuel purchased for use in a boat or another marine vessel. The refund applies only
41 to undyed diesel fuel delivered at the time of purchase into a storage facility that is
42 marked 'For Boat Use Only' or another phrase that clearly indicates the fuel is not to be
43 used to operate a highway vehicle.

1 (e) Refund Amount. – The amount of a refund allowed under this section is the
2 amount of tax ~~paid~~-paid, less the amount of any discount allowed on the fuel under G.S.
3 105-449.93."

4 Sec. 39. G.S. 105-449.115(e) reads as rewritten:

5 "(e) Duties of Person Receiving Shipment. – A person to whom motor fuel is
6 delivered by railroad tank car or transport truck may not accept delivery of the motor fuel
7 if the destination state shown on the shipping document for the motor fuel is a state other
8 than North Carolina. To determine if the shipping document shows North Carolina as the
9 destination state, the person to whom the fuel is delivered must examine the shipping
10 document and must keep a copy of the shipping document. The person must keep a copy
11 at the place of business where the motor fuel was delivered for 90 days from the date of
12 delivery and must keep it at that place or another place for at least three years from the
13 date of delivery. A person who accepts delivery of motor fuel in violation of this
14 subsection is jointly and severally liable for any tax due on the fuel."

15 Sec. 40. G.S. 105-449.115(f) reads as rewritten:

16 "(f) ~~Sanctions~~-Sanctions Against Transporter. – The following acts are grounds for a
17 civil penalty payable to the Department of Transportation, Division of Motor Vehicles, or
18 the Department of Revenue:

- 19 (1) Transporting motor fuel in a railroad tank car or transport truck without
20 a shipping document or with a false or an incomplete shipping
21 document.
22 (2) Delivering motor fuel to a destination state other than that shown on the
23 shipping document.

24 The penalty imposed under this subsection is payable by the person in whose name
25 the conveyance is registered, if the conveyance is a transport truck, and is payable by the
26 person responsible for the movement of motor fuel in the conveyance, if the conveyance
27 is a railroad tank car. The amount of the penalty depends on ~~the amount of fuel improperly~~
28 ~~transported or diverted and~~ whether the person against whom the penalty is assessed has
29 previously been assessed a penalty under this subsection. For a first assessment under
30 this subsection, the penalty is ~~the amount of motor fuel tax payable on the improperly~~
31 ~~transported or diverted motor fuel~~. one thousand five hundred dollars (\$1,500). For a
32 second or subsequent assessment under this subsection, the penalty is ~~the greater of one~~
33 ~~thousand dollars (\$1,000) or five times the amount of motor fuel tax payable on the improperly~~
34 ~~transported or diverted motor fuel~~. seven thousand five hundred dollars (\$7,500). A penalty
35 imposed under this subsection is in addition to any motor fuel tax assessed."

36 Sec. 41. Part 6 of Article 36C of Chapter 105 of the General Statutes is
37 amended by adding a new section to read:

38 **§ 105-449.118A. Civil penalty for refusing to allow the taking of a motor fuel**
39 **sample.**

40 A person who refuses to allow the taking of a motor fuel sample is subject to a civil
41 penalty of one thousand dollars (\$1,000). The penalty is payable to the Department of
42 Transportation, Division of Motor Vehicles, or the Department of Revenue. If the refusal
43 is for a sample to be taken from a vehicle, the penalty is payable by the person in whose

1 name the vehicle is registered. If the refusal is for a sample to be taken from any other
2 storage tank or container, the penalty is payable by the owner of the container."

3 Sec. 42. G.S. 105-449.120(a) reads as rewritten:

4 "(a) Class 1. – A person who commits any of the following acts is guilty of a Class
5 1 misdemeanor:

6 (1) Fails to obtain a license required by this Article.

7 (2) Willfully fails to ~~make file a report return~~ required by this Article.

8 (3) Willfully fails to pay a tax when due under this Article. Failure to
9 comply with a requirement of a supplier to remit tax payable to the
10 supplier by electronic funds transfer is considered a failure to make a
11 timely payment.

12 (3a) Willfully fails to pay a tax collected on behalf of a destination state to
13 that state when it is due.

14 (4) Makes a false statement in an application, a ~~report, return,~~ or a statement
15 required under this Article.

16 (5) Makes a false statement in an application for a refund.

17 (6) Fails to keep records as required under this Article.

18 (7) Refuses to allow the Secretary or a representative of the Secretary to
19 examine the person's books and records concerning motor fuel.

20 (8) Fails to disclose the correct amount of motor fuel sold or used in this
21 State.

22 (9) Fails to file a replacement bond or an additional bond as required under
23 this Article.

24 (10) Fails to show or give a shipping document as required under this
25 Article.

26 (11) Willfully refuses to allow a licensed distributor, a licensed exporter, or a
27 licensed importer to defer payment of tax to the supplier, as required by
28 G.S. 105-449.91.

29 (12) Willfully refuses to allow a licensed distributor or a licensed importer to
30 take the discount allowed by G.S. 105-449.93 when remitting tax to the
31 supplier."

32 Sec. 43. G.S. 105-449.121(a) reads as rewritten:

33 "(a) What Must Be Kept. – A person who is ~~required to submit a report or file a return~~
34 ~~under Part 4 of this Article subject to audit under subsection (b) of this section~~ must keep a
35 record of all shipping documents or other documents used to determine ~~the information~~
36 ~~provided in the report or return.~~ information the person provides in a return or to determine
37 the person's motor fuel transactions. The records must be kept for three years from the
38 due date of the ~~report or return to which the records apply.~~ apply or, if the records apply to
39 a transaction not required to be reported in a return, for three years from the date of the
40 transaction."

41 Sec. 44. G.S. 105-449.130 reads as rewritten:

42 "**§ 105-449.130. Definitions.**

43 The following definitions apply in this Article:

- 1 (1) Alternative fuel. – A combustible gas or liquid that can be used to
2 generate power to operate a highway vehicle and that is not subject to
3 tax under Article 36C of this Chapter.
- 4 (2) Bulk-end user. – A person who maintains storage facilities for
5 alternative fuel and uses part or all of the stored fuel to operate a
6 highway vehicle.
- 7 ~~(2)~~(3) Highway. – Defined in G.S. 20-4.01(13).
- 8 ~~(3)~~(4) Highway vehicle. – Defined in G.S. 105-449.60.
- 9 ~~(4)~~(5) Motor fuel. – Defined in G.S. 105-449.60.
- 10 ~~(5)~~(6) Motor fuel rate. – Defined in G.S. 105-449.60.
- 11 (7) Provider of alternative fuel. – A person who does one or more of the
12 following:
- 13 a. Acquires alternative fuel for sale or delivery to a bulk-end user or
14 a retailer.
- 15 b. Maintains storage facilities for alternative fuel, part or all of
16 which the person uses or sells to someone other than a bulk-end
17 user or a retailer to operate a highway vehicle.
- 18 c. Sells alternative fuel and uses part of the fuel acquired for sale to
19 operate a highway vehicle by means of a fuel supply line from
20 the cargo tank of the vehicle to the engine of the vehicle.
- 21 d. Imports alternative fuel to this State, by a means other than the
22 usual tank or receptacle connected with the engine of a highway
23 vehicle, for use by that person to operate a highway vehicle.
- 24 (8) Retailer. – A person who maintains storage facilities for alternative fuel
25 and who sells the fuel at retail or dispenses the fuel at a retail location to
26 operate a highway vehicle."

27 Sec. 45. G.S. 105-449.131 reads as rewritten:

28 **"§ 105-449.131. List of persons who must have a license.**

29 A person may not engage in business in this State as any of the following unless the
30 person has a license issued by the Secretary authorizing the person to engage in that
31 business:

- 32 (1) A provider of alternative fuel.
- 33 (2) ~~A bulk-end user of alternative fuel that uses part or all of the fuel in a~~
34 ~~highway vehicle.~~ user.
- 35 (3) ~~A retailer of alternative fuel that sells part or all of the fuel for use in a~~
36 ~~highway vehicle.~~ retailer."

37 Sec. 46. G.S. 105-449.134 reads as rewritten:

38 **"§ 105-449.134. Denial or cancellation of license.**

39 The Secretary may deny an application for a license or cancel a license under this
40 Article for the same reasons that the Secretary ~~can~~ may deny an application for a license
41 or cancel a license under Article 36C of this Chapter. The procedure in Article 36C for
42 cancelling a license applies to the cancellation of a license under this Article."

43 Sec. 47. G.S. 105-449.136 reads as rewritten:

1 **"§ 105-449.136. Tax on alternative fuel.**

2 A tax at the motor fuel rate is imposed on liquid alternative fuel used to operate a
3 highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of
4 supplying fuel to operate the vehicle. A tax at the equivalent of the motor fuel rate is
5 imposed on all other alternative fuel used to operate a highway vehicle. The Secretary
6 must determine the equivalent rate. The exemptions from the tax on motor fuel in G.S.
7 105-449.88(2), (3), and (4) apply to the tax imposed by this section. The refunds for
8 motor fuel tax allowed by Part 5 of Article 36C of this Chapter apply to the tax imposed
9 by this section, except that the refund allowed by G.S. 105-449.107(b) for certain
10 vehicles that use power takeoffs does not apply to a vehicle whose use of alternative fuel
11 is taxed on the basis of miles driven. The proceeds of the tax imposed by this section
12 must be allocated in accordance with G.S. 105-449.125."

13 Sec. 48. G.S. 105-449.138 reads as rewritten:

14 **"§ 105-449.138. Requirements for bulk-end users and retailers.**

15 (a) Reports-Informational Return. – A bulk-end user ~~of alternative fuel that uses~~
16 ~~part or all of the fuel in a highway vehicle and a retailer of alternative fuel that sells part~~
17 ~~or all of the fuel for use in a highway vehicle must file a quarterly report-informational~~
18 return with the Secretary. A quarterly ~~report-return~~ covers a calendar quarter and is due
19 by the last day of the month that follows the quarter covered by the ~~report-return~~.

20 The ~~report-return~~ must give the following information and any other information
21 required by the Secretary:

22 (1) The amount of alternative fuel received during the quarter.

23 (2) The amount of alternative fuel sold or used during the quarter.

24 (b) Storage. – A storage facility used by a bulk-end user ~~of alternative fuel or a~~
25 ~~retailer of alternative fuel~~ must be marked in a manner similar to that required for diesel
26 fuel by G.S. 105-449.87(c) if the alternative fuel stored in the facility is to be used for a
27 purpose other than to operate a highway vehicle."

28 Sec. 49. G.S. 105-449.139 is amended by adding the following subsection to
29 read:

30 "(c) Lists. – The Secretary must give a list of licensed alternative fuel providers to
31 each licensed bulk-end user and licensed retailer. The Secretary must also give a list of
32 licensed bulk-end users and licensed retailers to each licensed alternative fuel provider.
33 A list must state the name, account number, and business address of each license holder
34 on the list. The Secretary must send an annual update of a list to each license holder, as
35 appropriate."

36 Sec. 50. G.S. 105-449.57 reads as rewritten:

37 **"§ 105-449.57. Cooperative agreements between states-jurisdictions.**

38 The Secretary may enter into cooperative agreements with other ~~states-jurisdictions~~ for
39 exchange of information in administering the tax imposed by this Article. No agreement,
40 arrangement, declaration, or amendment to an agreement is effective until stated in
41 writing and approved by the Secretary.

42 An agreement may provide for determining the base state for motor carriers, records
43 requirements, audit procedures, exchange of information, persons eligible for tax

1 licensing, defining qualified motor vehicles, determining if bonding is required,
2 specifying reporting requirements and periods, including defining uniform penalty and
3 interest rates for late reporting, determining methods for collecting and forwarding of
4 gasoline or other motor fuel taxes and penalties to another jurisdiction, and such other
5 provisions as will facilitate the administration of the agreement.

6 In accordance with G.S. 105-259, the Secretary may, as required by the terms of an
7 agreement, forward to officials of another ~~state-jurisdiction~~ any information in the
8 Department's possession relative to the use of gasoline or other motor fuels by any motor
9 carrier. The Secretary may disclose to officials of another ~~state-jurisdiction~~ the location
10 of offices, motor vehicles, and other real and personal property of motor carriers.

11 An agreement may provide for each ~~state-jurisdiction~~ to audit the records of motor
12 carriers based in the ~~state-jurisdiction~~ to determine if the gasoline or other motor fuel
13 taxes due each ~~state-jurisdiction~~ are properly reported and paid. Each ~~state-jurisdiction~~
14 shall forward the findings of the audits performed on motor carriers based in the ~~state~~
15 ~~jurisdiction~~ to each ~~state-jurisdiction~~ in which the carrier has taxable use of gasoline or
16 other motor fuels. For motor carriers not based in this State who have taxable use of
17 gasoline or other motor fuels in this State, the Secretary may utilize the audit findings
18 received from another ~~state-jurisdiction~~ as the basis upon which to propose assessments of
19 gasoline or other motor fuel taxes against the carrier as though the audit had been
20 conducted by the Secretary. Penalties and interest shall be assessed at the rates provided
21 in the agreement.

22 No agreement entered into pursuant to this section may preclude the Department from
23 auditing the records of any motor carrier covered by this Chapter.

24 The provisions of Article 9 of this Chapter apply to any assessment or order made
25 under this section.

26 The Secretary may not enter into any agreement that would increase or decrease taxes
27 and fees imposed under Subchapter V of Chapter 105 of the General Statutes, and any
28 provision to the contrary is void."

29 Sec. 51. G.S. 105-236(10) is amended by adding a new subpart to read:

30 "c. For failure to file an informational return required by Article 36C
31 or 36D of this Chapter by the date the return is due, there shall be
32 assessed as a tax a penalty of fifty dollars (\$50.00)."

33 Sec. 52. G.S. 105-253(b) reads as rewritten:

34 "(b) Each responsible corporate officer is personally and individually liable for all
35 of the following:

36 (1) All sales and use taxes collected by a corporation upon taxable
37 transactions of the corporation.

38 (2) All sales and use taxes due upon taxable transactions of the corporation
39 but upon which the corporation failed to collect the tax, but only if the
40 responsible officer knew, or in the exercise of reasonable care should
41 have known, that the tax was not being collected.

42 (3) All taxes due from the corporation pursuant to the provisions of Article
43 ~~36 and Article 36A-36C and 36D of Subchapter V of this Chapter.~~

Chapter and all taxes payable under those Articles by the corporation to a supplier for remittance to this State or another state.

The liability of the responsible corporate officer is satisfied upon timely remittance of the tax ~~to the Secretary~~ by the corporation. If the tax remains unpaid by the corporation after it is due and payable, the Secretary may assess the tax against, and collect the tax from, any responsible corporate officer in accordance with the procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the term 'responsible corporate officer' includes the president and the treasurer of the corporation and any other officers assigned the duty of filing tax returns and remitting taxes ~~to the Secretary~~ on behalf of the corporation. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency shall apply to any assessment made under this section. The provisions of this Article apply to an assessment made under this section to the extent they are not inconsistent with this section.

The period of limitations for assessing a responsible corporate officer for unpaid taxes under this section shall expire one year after the expiration of the period of limitations for assessment against the corporation."

Sec. 53. G.S. 119-15 reads as rewritten:

"§ 119-15. Definitions that apply to Article.

The following definitions apply in this Article:

(1) Alternative fuel. – Defined in G.S. 105-449.130.

(2) Gasoline. – Defined in G.S. 105-449.60.

(3) Kerosene. – Petroleum oil that is free from water, glue, and suspended matter and that meets the specifications and standards adopted by the Gasoline and Oil Inspection Board.

(4) Kerosene distributor. – A person who acquires kerosene from any of the following for subsequent sale:

a. A supplier licensed under Part 2 of Article 36C of Chapter 105 of the General Statutes.

b. A kerosene supplier.

c. Another kerosene distributor.

(5) Kerosene supplier. – A person who is not required to be licensed as a supplier under Part 2 of Article 36C of Chapter 105 of the General Statutes and who maintains storage facilities for kerosene to be used to fuel an airplane.

~~(4)~~(6) Motor fuel. – Defined in G.S. 105-449.60.

~~(5)~~(7) Person. – Defined in G.S. 105-229.90."

Sec. 54. G.S. 119-16.2 reads as rewritten:

"§ 119-16.2. Application for license.

(a) When Required. – A person may not engage in business as a kerosene distributor-supplier unless the person is licensed as a supplier or a distributor under Part 2 of Article 36C of Chapter 105 of the General Statutes or has a kerosene supplier license issued under this section. A kerosene distributor is required to have a kerosene distributor license only if the distributor imports kerosene. Other kerosene distributors may elect to

1 have a kerosene distributor license. A licensed kerosene distributor that buys kerosene
2 from a supplier licensed under Part 2 of Article 36C of Chapter 105 of the General
3 Statutes has the right to defer payment of the inspection tax until the supplier is required
4 to remit the tax to this State or another state. A licensed kerosene distributor that pays the
5 tax due a supplier licensed under that Part by the date the supplier must pay the tax to the
6 State may deduct from the amount due a discount in the amount set in G.S. 105-449.93.

7 (b) Application. – To obtain a license under this section, an applicant must file an
8 application with the Secretary of Revenue on a form provided by the Secretary and file
9 with the Secretary a bond in the amount required by the Secretary, not to exceed twenty
10 thousand dollars (\$20,000). An applicant must give the Secretary the same information
11 the applicant would be required to give under Part 2 of Article 36C of Chapter 105 of the
12 General Statutes if the applicant were applying for a license under that Part.

13 (c) General. – A bond filed under this section must be conditioned on compliance
14 with this Article, be payable to the State, and be in the form required by the Secretary. A
15 license issued under this section remains in effect until surrendered or canceled, must be
16 displayed in the same manner as a license issued under Part 2 of Article 36C of Chapter
17 105 of the General Statutes, and is subject to the same restrictions as a license issued
18 under that Part. A person who fails to comply with this section is guilty of a Class 1
19 misdemeanor."

20 Sec. 55. G.S. 119-18(a) reads as rewritten:

21 "(a) Tax. – An inspection tax of one fourth of one cent (1/4 of 1¢) per gallon is
22 levied upon all ~~kerosene, motor fuel, and alternative fuel.~~ of the following fuel, regardless of
23 whether the fuel is exempt from the per-gallon excise tax imposed by Article 36C or 36D
24 of Chapter 105 of the General Statutes:

- 25 (1) Motor fuel that is not dyed diesel fuel.
26 (2) Dyed diesel fuel used to operate a highway vehicle.
27 (3) Alternative fuel used to operate a highway vehicle.
28 (4) Kerosene.

29 The inspection tax on motor fuel is due and payable to the Secretary of Revenue at the
30 same time that the per gallon excise tax on motor fuel is due and payable under Article
31 36C of Chapter 105 of the General Statutes. The inspection tax on alternative fuel is due
32 and payable to the Secretary of Revenue at the same time that the excise tax on
33 alternative fuel is due and payable under Article 36D of Chapter 105 of the General
34 Statutes. The inspection tax on kerosene is payable monthly to the Secretary by a
35 ~~distributor required to be licensed under G.S. 119-16.2.~~ supplier that is licensed under Part 2
36 of Article 36C of Chapter 105 of the General Statutes and by a kerosene supplier. A
37 monthly report by a distributor required to be licensed under G.S. 119-16.2 is due by the 20th
38 22nd of each month and applies to kerosene sold during the preceding month by a
39 supplier licensed under that Part and to kerosene received during the preceding month by
40 the distributor during the preceding month. a kerosene supplier."

41 Sec. 56. The following sections in Article 3 of Chapter 119 of the General
42 Statutes are repealed:

43 G.S. 119-40 Manufacturers to notify Commissioner of shipments.

- 1 G.S. 119-41 Persons engaged in transporting are subject to inspection laws.
2 G.S. 119-44 Registration of exclusive industrial users of naphthas and coal
3 tar solvents.
4 Sec. 57. Sections 21 and 32 of this act become effective July 1, 1997. The
5 remaining sections of this act become effective July 1, 1996.