

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 151

Short Title: Motor Oil Tax/Used Oil Prog.

(Public)

Sponsors: Senators Jordan; and Carpenter.

Referred to: Finance.

February 7, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPOSE A TAX UPON MOTOR OIL AT THE POINT OF FIRST SALE
3 AND TO ESTABLISH THE USED OIL COLLECTION PROGRAM TO
4 ENCOURAGE THE PROPER MANAGEMENT OF USED OIL GENERATED BY
5 PRIVATE CITIZENS WHO CHANGE THEIR OWN OIL.

6 The General Assembly of North Carolina enacts:

7 Section 1. Chapter 105 of the General Statutes is amended by adding a new
8 Article to read:

9 **"ARTICLE 2E.**
10 **"SCHEDULE B-E.**
11 **"MOTOR OIL TAX.**

12 **"§ 105-113.120. Definitions.**

13 The following definitions apply to this Article:

- 14 (1) Distributor. – A person who does any of the following:
15 a. Manufactures or produces motor oil.
16 b. Acquires motor oil for sale to a wholesale dealer or a retail
17 dealer.
18 c. Imports motor oil into this State for use by that person.
19 (2) Motor oil. – Any oil or similar lubricant classified for use in an internal
20 combustion engine, crankcase, transmission, gearbox, or differential.

1 (3) Retail dealer. – A person who sells motor oil to the ultimate consumer
2 of the motor oil.

3 (4) Sale. – A transfer, a trade, an exchange, or a barter, in any manner or by
4 any means, with or without consideration.

5 (5) Wholesale dealer. – A person who sells motor oil to another for resale.

6 **"§ 105-113.121. Tax imposed.**

7 An excise tax is imposed on motor oil at the rate of two cents (2¢) per quart.

8 **"§ 105-113.122. Motor oil license required.**

9 (a) Distributors and Wholesale Dealers. – Distributors and wholesale dealers shall
10 obtain a continuing motor oil license for each place of business for which a tax of twenty-
11 five dollars (\$25.00) shall be paid. For the purpose of this section, 'place of business'
12 means any place where a distributor manufactures or produces motor oil or any place
13 where a distributor or a wholesale dealer receives or stores non-tax-paid motor oil.

14 (b) Retail Dealers. – Retail dealers shall obtain for each place of business a
15 continuing motor oil license for which a tax of five dollars (\$5.00) shall be paid. For the
16 purpose of this subsection, 'place of business' means any place where a retail dealer
17 receives non-tax-paid motor oil or manufactures or produces motor oil.

18 **"§ 105-113.123. Liability for tax and payment of excise taxes.**

19 (a) Primary Liability. – The distributor, wholesale dealer, or retail dealer who first
20 distributes, sells, or otherwise handles motor oil in this State is liable for the tax imposed
21 by this Article. A distributor, wholesale dealer, or retail dealer who brings into this State
22 motor oil made outside the State is the first person to handle the motor oil in this State. A
23 distributor, wholesale dealer, or retail dealer who is the original consignee of motor oil
24 that is made outside the State and is shipped into the State is the first person to handle the
25 motor oil in this State.

26 (b) Secondary Liability. – A retail dealer who acquires non-tax-paid motor oil
27 from a distributor or a wholesale dealer is liable for any tax due on the motor oil.

28 (c) Reporting Periods. – Except for tax on a designated sale under G.S. 105-
29 113.126, the taxes levied by this Article are payable when a report is required to be filed.
30 A report is due on a monthly or a quarterly basis. A monthly report covers sales and other
31 activities occurring in a calendar month and is due within 15 days after the end of the
32 month covered by the report. A quarterly report covers sales and other activities
33 occurring in a calendar quarter and is due within 15 days after the end of the quarter
34 covered by the report. A report shall be filed on a form provided by the Secretary and
35 shall contain the information required by the Secretary.

36 A person who is consistently liable for less than fifty dollars (\$50.00) of tax a month
37 may, with the approval of the Secretary, file a report on a quarterly basis. All others who
38 are liable for the tax imposed by this Article must file a report on a monthly basis. The
39 amount of tax payable by a person for a reporting period is the amount payable by all
40 places of business owned or operated by that person.

41 **"§ 105-113.124. Tax discount.**

1 A distributor, a wholesale dealer, or a retail dealer who is liable for the excise tax on
2 motor oil and who files a timely report under G.S. 105-113.123 may deduct from the
3 amount due with the report a discount of two percent (2%).

4 **"§ 105-113.125. Exemptions.**

5 The tax imposed by G.S. 105-113.121 on motor oil does not apply to the following:

6 (1) Motor oil sold outside the State.

7 (2) Motor oil required to operate industrial machinery and sold for that
8 purpose.

9 **"§ 105-113.126. Designation of exempt sale.**

10 (a) A distributor or a wholesale dealer who sells motor oil to a person who has
11 notified the distributor or wholesale dealer in writing that the person intends to resell the
12 item in a transaction that is exempt from tax under G.S. 105-113.125 may, when filing a
13 report under G.S. 105-113.123, designate the quantity of motor oil sold to the person for
14 resale. A distributor or a wholesale dealer shall report a designated sale on a form
15 provided by the Secretary.

16 (b) A distributor or a wholesale dealer is not required to pay tax on a designated
17 sale when filing a report. The distributor or the wholesale dealer shall pay the tax due on
18 all other sales in accordance with this section. A distributor, a wholesale dealer, or a
19 customer of a distributor shall not delay payment of the tax due on motor oil by failing to
20 pay tax on a sale that is not a designated sale or by overstating the quantity of motor oil
21 that will be resold in a transaction exempt under G.S. 105-113.125.

22 (c) A person who does not sell motor oil in a transaction exempt under G.S. 105-
23 113.125 after a distributor or a wholesale dealer has failed to pay the tax due on the sale
24 of the item to the person in reliance on the person's written notification of intent is liable
25 for the tax and any penalties and interest due on the designated sale. If the Secretary
26 determines that motor oil reported as a designated sale is not sold as reported, the
27 Secretary shall assess the person who notified the distributor or the wholesale dealer of an
28 intention to resell the item in an exempt transaction for the tax due on the sale and any
29 applicable penalties and interest. A distributor or a wholesale dealer who does not pay
30 tax on motor oil in reliance on a person's written notification of intent to resell the item in
31 an exempt transaction is not liable for any tax assessed on the item.

32 **"§ 105-113.127. Use of tax proceeds.**

33 The Secretary shall credit five percent (5%) of the tax collected under this Article to
34 the Solid Waste Management Trust Fund. The Secretary shall credit the remaining
35 ninety-five percent (95%) of the tax collected under this Article to the Used Oil
36 Collection Fund to be used in accordance with the provisions of Part 2E of Article 9 of
37 Chapter 130A of the General Statutes."

38 Sec. 2. Article 9 of Chapter 130A of the General Statutes is amended by
39 adding a new Part to read:

40 **"PART 2E. USED OIL COLLECTION PROGRAM.**

41 **"§ 130A-309.90. Findings; intent.**

42 (a) The General Assembly finds that used oil is a valuable resource that can be
43 used as an environmentally acceptable source of energy or as a clean rerefined product.

1 Despite its potential value, a significant amount of used motor oil is improperly disposed
2 of, resulting in a significant environmental problem and a waste of a valuable energy
3 resource.

4 (b) The General Assembly finds that, although there is an existing system for the
5 collection and recycling of used oil generated by business and industry, private citizens
6 who change their own motor oil have only limited access to that system and often dispose
7 of their used oil on land or in landfills, sewers, drainage systems, septic tanks, surface or
8 ground waters, and elsewhere.

9 (c) It is the intent of the General Assembly to reduce the amount of improperly
10 disposed used oil by providing incentives to encourage the establishment of more
11 certified used oil collection centers and to expand curbside collection programs to receive
12 used oil from Do-It-Yourselfers.

13 **"§ 130A-309.91. Definitions.**

14 As used in this Part, unless the context requires otherwise:

15 (1) 'Do-It-Yourselfer (DIYer)' means an individual who removes used oil
16 from any of the following engines owned or operated by that individual:

17 a. A light-duty motor vehicle.

18 b. A small utility engine.

19 c. A noncommercial motor vehicle.

20 d. Farm equipment.

21 (2) 'Motor oil' has the same meaning as in G.S. 105-113.120.

22 (3) 'Reclaiming' means the use of methods, other than those used in
23 rerefining, to purify used oil primarily to remove insoluble
24 contaminants, making the oil suitable for further use. The methods used
25 may include settling, heating, dehydration, filtration, or centrifuging.

26 (4) 'Recycle oil' means to prepare, in a safe, legal, and environmentally
27 sound manner, used oil for reuse as a petroleum product by reclaiming,
28 reprocesssing, energy recovery, rerefining, or another means.

29 (5) 'Rerefining' means the use of refining processes on used oil to produce
30 high-quality base stocks for lubricants or other petroleum products.
31 Rerefining may include distillation, hydrotreating, or treatments
32 employing acid, caustic, solvent, clay, or other chemicals, or other
33 physical treatments other than those used in reclaiming.

34 (6) 'Retailer' means a person who sells motor oil to the consumer.

35 (7) 'Used oil' means any oil which has been refined from crude oil or
36 synthetic oil and, as a result of use, storage, or handling, has become
37 unsuitable for its original purpose due to the presence of impurities or
38 loss of original properties, but which may be suitable for further use and
39 is economically recyclable. As used in this Article, used oil does not
40 include an oil filter that has been drained of free-flowing used oil or an
41 oil-contaminated material.

- 1 (8) 'Used oil collection center' means a facility, including a fixed location,
2 tank, truck, or container, that serves as a centralized collection center
3 that accepts used motor oil from DIYers.

4 **"§ 130A-309.92. Used Oil Collection Fund.**

5 (a) The Used Oil Collection Fund is created as a nonreverting fund within the
6 Department. The Used Oil Collection Fund consists of:

- 7 (1) The proceeds of the motor oil tax imposed under Article 2E of Chapter
8 105 of the General Statutes.

- 9 (2) Any contributions and grants from public or private sources.

10 (b) The Used Oil Collection Fund may be used for:

- 11 (1) Grants to public or private entities to establish certified used oil
12 collection centers.

- 13 (2) Grants to units of local government or private collectors that offer or
14 include, as part of municipal solid waste collection services, curbside
15 collection of used oil from households, including grants for the
16 reasonable costs of household containers, truck retrofitting, tanks, and
17 similar costs associated with the curbside collection of used oil.

- 18 (3) Grants for advertising, training, and other programs to promote the
19 collection and recycling of used oil from the public.

- 20 (4) Grants for public education programs concerning the proper handling
21 and recycling of used oil.

- 22 (5) Incentives pursuant to G.S. 130A-309.99 to encourage individuals who
23 change their own oil to return the oil to used oil collection centers.

- 24 (6) Grants to indemnify a used oil collection center for the costs arising out
25 of used oil collected from the public that is unsuitable for reuse or
26 recycling, results from spills or contamination, or results from the
27 additional liability associated with the operation of the used oil
28 collection center.

- 29 (7) The costs that the Department directly incurs in developing and
30 administering the Used Oil Collection Program under this Part, not to
31 exceed seven percent (7%) of the Fund.

32 **"§ 130A-309.93. Used Oil Collection Program; duties of the Department.**

33 (a) The Department shall develop and administer a used oil collection program to
34 encourage the proper disposal of used oil generated by DIYers and shall adopt rules to
35 implement this program. The Used Oil Collection Program shall include provisions
36 regarding:

- 37 (1) All grants that may be paid from the Used Oil Collection Fund under
38 G.S. 130A-309.92.

- 39 (2) Technical assistance to persons who develop the used oil collection
40 center programs or the curbside collection of used oil as part of
41 municipal solid waste collection.

- 42 (3) Management standards and certification requirements for used oil
43 collection centers, transporters of used oil, and used oil recyclers

1 consistent with the provisions of this Part and applicable federal laws
2 and regulations.

3 (b) The Department shall develop criteria for selecting the recipients of the grants
4 that may be paid from the Used Oil Collection Fund under G.S. 130A-309.92 and shall
5 select the recipients of these grants.

6 (c) The Department shall establish and maintain a toll-free telephone number for
7 the purpose of disseminating information regarding:

8 (1) The locations and phone numbers of used oil collection centers within
9 the State.

10 (2) The availability, dates, and requirements for curbside collection where
11 available.

12 (3) Alternate locations that accept commercial used oil.

13 (d) The Department may adopt rules to implement this Part.

14 **"§ 130A-309.94. Report requirement.**

15 No later than 1 March of each year, the Department shall submit a report to the
16 Environmental Review Commission on the Used Oil Collection Program. The report
17 shall include:

18 (1) The total motor oil tax proceeds collected pursuant to Article 2E of
19 Chapter 105 of the General Statutes during the preceding tax year, the
20 total motor oil tax proceeds credited to the Used Oil Collection Fund
21 during the preceding tax year, and the total motor oil tax proceeds
22 credited to the Solid Waste Management Trust Fund during the
23 preceding tax year.

24 (2) The total amount expended from the Used Oil Collection Fund during
25 the preceding calendar year.

26 (3) Information identifying each grant recipient, the amount of each grant
27 received, and the proposed use of the grant moneys.

28 (4) The number of gallons of used oil collected under the Used Oil
29 Collection Program.

30 (5) The cost of developing and administering the Used Oil Collection
31 Program.

32 (6) A calculation of the per gallon cost of the Used Oil Collection Program,
33 including the administrative cost of the program.

34 **"§ 130A-309.95. Advisory committee.**

35 The Secretary shall appoint an advisory committee for the Used Oil Collection
36 Program. The advisory committee shall consist of seven members who shall serve at the
37 pleasure of the Secretary. In making appointments to the advisory committee, the
38 Secretary shall select persons who represent the various interests affected by the Used Oil
39 Collection Program. The advisory committee shall recommend criteria for selecting
40 recipients of the grants that may be paid from the Used Oil Collection Fund under G.S.
41 130A-309.92 and shall recommend recipients of these grants. Members of the advisory
42 committee shall receive necessary travel and subsistence expenses while on official
43 business of the committee in accordance with G.S. 138-5 and G.S. 138-6.

1 **"§ 130A-309.96. Used oil collection centers.**

2 (a) A used oil collection center must be certified by the Department. To be
3 certified, a center must:

4 (1) Participate in the State toll-free telephone used oil information network
5 system.

6 (2) Meet the minimum requirements for hours of operation and other
7 standards established by the Department.

8 (3) Demonstrate that the center complies with all State rules concerning
9 tank structure and integrity, maintenance, supervision, employee
10 training, and housekeeping.

11 (b) Used oil collection centers shall transfer used oil only to certified transporters
12 and shall maintain records of all volumes of material collected, including the identity of
13 the hauler and the name and location of the recycling facility to which the oil is being
14 transported.

15 **"§ 130A-309.97. Oil releases from collection centers.**

16 Upon detecting a release of used oil to the environment at a used oil collection center,
17 the owner, operator, or lessor of the used collection center shall notify the Department of
18 the release and shall:

19 (1) Stop the release.

20 (2) Contain the released used oil.

21 (3) Clean up and properly manage the released used oil.

22 (4) Repair and replace any leaking used oil storage containers or tanks prior
23 to returning them to service, if necessary to prevent future used oil
24 releases.

25 **"§ 130A-309.98. Limitation of liability.**

26 (a) A person or the State shall not recover from the owner, operator, or lessor of a
27 certified used oil collection center any costs of response actions resulting from a release
28 of used oil collected at the center or subsequently handled or disposed of by others if:

29 (1) The owner, operator, or lessor of the used oil collection center does not
30 mix the used oil collected with any hazardous substance.

31 (2) The owner, operator, or lessor of the used oil collection center does not
32 accept used oil that the owner, operator, or lessor knows contains
33 hazardous substances.

34 (3) The used oil collection center is in compliance with management
35 standards issued by the Department.

36 (4) The used oil is removed from the premises by a transporter certified
37 pursuant to G.S. 130A-309.101.

38 (b) For purposes of this section, the owner, operator, or lessor of a used oil
39 collection center may presume that a quantity of less than five gallons of used oil
40 accepted at any one time from any member of the public is not mixed with a hazardous
41 substance, provided that the owner or operator acts in good faith.

1 (c) This section applies only to activities directly related to the collection of used
2 oil by a used oil collection center. This section does not apply to grossly negligent
3 activities related to the operations of a used oil collection center.

4 **"§§ 130A-309.99 through 130A-309.102: Reserved.**

5 **"§ 130A-309.103. Used oil filters.**

6 Prior to disposal, used oil filters shall be prepared for disposal in one of the following
7 ways:

8 (1) Punctured and hot-drained for a minimum of 12 hours.

9 (2) Punctured and cold-drained for a minimum of 24 hours.

10 (3) Drained and crushed.

11 (4) Otherwise prepared for disposal consistent with rules adopted by the
12 Commission.

13 **"§ 130A-309.104. Retail sales of motor oil.**

14 Any retailer of motor oil that is not a used oil collection center shall post and maintain
15 at or near the point of motor oil display or sale a durable and legible sign (minimum size
16 of eight and one-half by 11 inches) informing the public of the importance of proper
17 collection and disposal of used oil and the State toll-free number for information
18 regarding used oil collection centers.

19 **"§§ 130A-309.105 through 130A-309.107: Reserved."**

20 Sec. 3. G.S. 130A-290(b), 130A-309.16, 130A-309.20, 130A-309.22, and
21 130A-309.23 are repealed.

22 Sec. 4. G.S. 130A-309.15 is recodified as G.S. 130A-309.105, which is
23 reserved under Section 2 of this act.

24 Sec. 5. G.S. 130A-309.15, recodified as G.S. 130A-309.105 in Section 4 of
25 this act, reads as rewritten:

26 **"§ 130A-309.105. Prohibited acts regarding used oil.**

27 (a) No person may knowingly:

28 (1) Collect, transport, store, recycle, use, or dispose of used oil in any
29 manner which endangers the public health or welfare.

30 (2) Discharge used oil into sewers, drainage systems, septic tanks, surface
31 waters, groundwaters, watercourses, or marine waters.

32 (3) Dispose of used oil in landfills in the State unless such disposal has
33 been approved by the Department.

34 (4) Mix used oil with solid waste that is to be disposed of in landfills.

35 (5) Mix used oil with hazardous substances that make it unsuitable for
36 recycling or beneficial use.

37 (b) A person who violates subsection (a) of this section shall be ~~guilty of a~~
38 ~~misdemeanor and upon conviction shall be punished as provided by G.S. 130A-25(a) and G.S.~~
39 ~~14-3-~~subject to an administrative penalty not to exceed five thousand dollars (\$5,000) per
40 violation.

41 (c) A person who disposes of used oil in a landfill where such used oil has been
42 mixed with other solid waste which may be lawfully disposed of in such landfill, and who

1 is without knowledge that such solid waste has been mixed with used oil, is not guilty of
2 a violation under this section.

3 (d) Used oil shall not be used for road oiling, dust control, weed abatement, or
4 other similar purposes that have the potential to release used oil into the environment."

5 Sec. 6. G.S. 130A-309.17 is recodified as G.S. 130A-309.100, which is
6 reserved under Section 2 of this act.

7 Sec. 7. G.S. 130A-309.17, recodified as G.S. 130A-309.100 in Section 6 of
8 this act, reads as rewritten:

9 **"§ 130A-309.100. Registration of persons transporting, collecting, or recycling used**
10 **oil; fees; reports and records.**

11 (a) The following persons shall register annually with the Department pursuant to
12 rules of the Department on forms prescribed by it:

13 (1) Any person who transports over public highways more than 500 gallons
14 of used oil per ~~week~~-week or more than 55 gallons at any time.

15 (2) Any person who maintains a collection facility ~~that receives more than~~
16 ~~6,000 gallons of used oil annually. For purposes of registration, the~~
17 ~~amount received does not include used oil delivered to collection~~
18 ~~centers by individuals that change their own personal motor oil. that~~
19 accepts more than 6,000 gallons of used oil annually from generators
20 other than DIYers.

21 (3) Any facility that recycles ~~more than 10,000 gallons of used oil annually.~~
22 used oil.

23 (b) An electric utility which generates during its operation used oil that is then
24 reclaimed, recycled, or rerefined by the electric utility for use in its operations is not
25 required to register or report pursuant to this section.

26 (c) An on-site burner which only burns a specification used oil generated by the
27 burner is not required to register or report pursuant to this section, provided that the
28 burning is done in compliance with any air permits issued by the Department.

29 (d) The Department may prescribe a fee for the registration required by this
30 section in an amount which is sufficient to cover the cost of processing applications but
31 which does not exceed twenty-five dollars (\$25.00).

32 (e) The Department shall require each registered person to submit, no later than 1
33 July of each year, a report which specifies the type and quantity of used oil transported,
34 collected, and recycled during the preceding calendar year.

35 (f) Each registered person who transports or recycles used oil shall maintain
36 records which identify:

37 (1) The source of the materials transported or recycled;

38 (2) The quantity of materials received;

39 (3) The date of receipt; and

40 (4) The destination or end use of the materials.

41 (g) The Department shall perform technical studies to sample used oil at facilities
42 of representative used oil transporters and at representative recycling facilities to

1 determine the incidence of contamination of used oil with hazardous, toxic, or other
2 harmful substances.

3 (h) Any person who fails to register with the Department as required by this
4 section shall be guilty of a misdemeanor and upon conviction shall be punished as
5 provided by G.S. 130A-25(a) and G.S. 14-3.

6 (i) The proceeds from the registration fees imposed by this section shall be
7 deposited into the Solid Waste Management Trust Fund."

8 Sec. 8. G.S. 130A-309.23 is recodified as G.S. 130A-309.101, which is
9 reserved under Section 2 of this act.

10 Sec. 9. G.S. 130A-309.23, recodified as G.S. 130A-309.101 in Section 8 of
11 this act, reads as rewritten:

12 **"§ 130A-309.101. Certification of used oil transporters.**

13 (a) Any person who transports over public highways after 1 January 1992, more
14 than 500 gallons of used oil in any week must be a certified transporter or must be
15 employed by a person who is a certified transporter.

16 (b) The Department of Transportation shall develop a certification program for
17 transporters of used oil, and shall issue, deny, or revoke certifications authorizing the
18 holder to transport used oil. Certification requirements shall ~~help assure~~ require that a
19 used oil transporter is familiar with appropriate rules and used oil management
20 procedures.

21 (c) The Department of Transportation shall adopt rules governing certification,
22 which shall include requirements for the following:

23 (1) Registration and annual reporting pursuant to G.S. ~~130A-309.17.~~ 130A-
24 309.100.

25 (2) Evidence of familiarity with applicable State laws and rules governing
26 used oil ~~transportation.~~ transportation and proper used oil management.

27 (3) Proof of liability insurance or other means of financial responsibility for
28 any liability which may be incurred in the transport of used oil.

29 (4) Marking, by the certified transporter of used oil, of all vehicles which
30 transport used oil or all containers of used oil when it is not feasible to
31 mark the vehicle. The mark must clearly identify the certified used oil
32 transporter and clearly indicate that the vehicle is used to transport used
33 oil. The marking must be visible to others travelling on the highway.

34 (5) Equipment in the transportation vehicle being in good mechanical
35 condition and suitable for the transportation of used oil.

36 (6) Documentation, maintained by the transporter, that indicates whether all
37 used oil is delivered to qualified customers or certified recyclers.

38 (d) Where used oil is sold directly by the transporter to an end user, the
39 documentation required under subsection (c) of this section shall include test results
40 showing that the used oil meets all applicable standards established by Department rules."

41 Sec. 10. G.S. 130A-309.18, 130A-309.19, 130A-309.21 and 130A-309.24 are
42 recodified as G.S. 130A-309.107, 130A-309.106, 130A-309.99, and 130A-309.102
43 respectively, which sections are reserved under Section 2 of this act.

1 Sec. 11. This act becomes effective January 1, 1996.