

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 2003

Short Title: Biofuels Incentives. (Public)

Sponsors: Representatives Harrison, Tolson, Hill, Wray (Primary Sponsors); Faison and Glazier.

Referred to: Commerce, Small Business and Entrepreneurship, if favorable, Finance.

May 10, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE INCENTIVES FOR THE DEVELOPMENT OF THE
BIOFUELS INDUSTRY IN THIS STATE.

The General Assembly of North Carolina enacts:

PART I. BIODIESEL DISCOUNT ALLOWANCE.

SECTION 1.1. G.S. 105-449.93 reads as rewritten:

"§ 105-449.93. Percentage discount for licensed distributors and some licensed importers.

(a) Repealed by Session Laws 2006-162, s. 14(d), effective January 1, 2007, and applicable to motor fuel purchased on or after that date.

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

(c) Biodiesel Discount. – A licensed distributor that pays the tax due a supplier on biodiesel may deduct from the amount due a discount as provided in this subsection. The discount per gallon is equal to the motor fuels tax rate multiplied by the percentage of the biodiesel that is not petroleum-based.

SECTION 1.2. G.S. 105-449.97 reads as rewritten:

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

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

4 (1) A licensed distributor.

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

7 (3) Repealed by Session Laws 1995, c. 647, s. 32.

8 A supplier is not liable for tax a license holder listed in this subsection owes the
9 supplier but fails to pay. If a listed license holder pays tax owed to a supplier after the
10 supplier deducts the amount on a return, the supplier must promptly remit the payment
11 to the Secretary.

12 (b) Administrative Discount. – A supplier that files a timely return and sends a
13 timely payment may deduct from the amount of tax payable with the return an
14 administrative discount of one-tenth of one percent (0.1%) of the amount of tax payable
15 to this State as the trustee, not to exceed eight thousand dollars (\$8,000) a month. The
16 discount covers expenses incurred in collecting taxes on motor fuel.

17 (c) Percentage Discount. – A supplier that sells motor fuel directly to an
18 unlicensed distributor or to the bulk-end user, the retailer, or the user of the fuel may
19 take the same percentage discount on the fuel that a licensed distributor may take under
20 G.S. 105-449.93(b) when making deferred payments of tax to the supplier.

21 (c1) Biodiesel Discount. – A supplier that sells biodiesel directly to an unlicensed
22 distributor or the bulk-end user, the retailer, or the use of the fuel may take the same
23 percentage discount on the fuel that a licensed distributor may take under
24 G.S. 105-449.93(c).

25 (d) Taxes Paid on Exempt Retail Sales. – When filing a return, a supplier that
26 issues or authorizes the issuance of an exempt card or code to a person that enables the
27 person to buy motor fuel without paying tax on the fuel may deduct the amount of
28 excise tax imposed on fuel purchased with the exempt card or code. The amount of
29 excise tax imposed on fuel purchased with an exempt card or code is the amount that
30 was imposed on the fuel when it was delivered to the retailer of the fuel."

31 **SECTION 1.3.** There is appropriated from the General Fund to the Highway
32 Fund a recurring sum of monies to offset the loss to the Highway Fund from this part.

33 **SECTION 1.4.** This part becomes effective January 1, 2008.

34 **PART II. TAX ETHANOL BASED ON ENERGY CONTENT OF FUEL.**

35 **SECTION 2.1.** G.S. 105-449.60 is amended by adding a new subdivision to
36 read:

37 "**§ 105-449.60. Definitions.**

38 The following definitions apply in this Article:

39 ...

40 (9a) E-85. – A blended fuel composed of gasoline and fuel grade ethanol
41 where the fuel grade ethanol is at least eighty-five percent (85%) of the
42 blend."

43 **SECTION 2.2.** G.S. 105-449.81 reads as rewritten:

44 "**§ 105-449.81. Excise tax on motor fuel.**

1 (a) Most motor fuels. – An excise tax at the motor fuel rate is imposed on motor
2 fuel that is:

3 (1) Removed from a refinery or a terminal and, upon removal, is subject to
4 the federal excise tax imposed by § 4081 of the Code.

5 (2) Imported by a system transfer to a refinery or a terminal and, upon
6 importation, is subject to the federal excise tax imposed by § 4081 of
7 the Code.

8 (3) Imported by a means of transfer outside the terminal transfer system
9 for sale, use, or storage in this State and would have been subject to
10 the federal excise tax imposed by § 4081 of the Code if it had been
11 removed at a terminal or bulk plant rack in this State instead of
12 imported.

13 (3a) Fuel alcohol or biodiesel, if it meets either of the following
14 descriptions:

15 a. Is removed from a terminal or another storage and distribution
16 facility, unless the removed fuel is received by a supplier for
17 subsequent sale.

18 b. Is imported to this State outside the terminal transfer system by
19 a means other than a marine vessel, a transport truck, or a
20 railroad tank car.

21 (4) Blended fuel other than E-85 made in this State or imported to this
22 State.

23 (5) Transferred within the terminal transfer system and, upon transfer, is
24 subject to the federal excise tax imposed by section 4081 of the Code.

25 (b) E-85. – An excise tax at seventy-one percent (71%) of the motor fuel rate is
26 imposed on E-85 that is made in this State or imported to this State."

27 **SECTION 2.3.** This act becomes effective January 1, 2008.