

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-60
SENATE BILL 98

AN ACT TO IMPROVE THE ADMINISTRATION OF THE MOTOR FUEL TAX
LAWS.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.62. Nature of tax.

This Article imposes a tax on motor fuel to provide revenue for the State's transportation needs and for the other purposes listed in Part 7 of this Article. The tax is collected from the supplier or importer of the fuel because this method is the most efficient way to collect the tax. The tax is designed, however, to be paid ultimately by the person who consumes the fuel. The tax becomes a part of the cost of the fuel and is consequently paid by those who subsequently purchase and consume the fuel."

Section 2. G.S. 105-449.65(a)(5), as repealed by Section 3 of Chapter 647 of the 1995 Session Laws (Reg. Sess. 1996), is reenacted and G.S. 105-449.65, with the reenactment, reads as rewritten:

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

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

- (1) A refiner.
- (2) A supplier.
- (3) A terminal operator.
- (4) An importer.
- (5) ~~An exporter, if the Secretary imposes this requirement by rule.~~
exporter.
- (6) A blender.
- (7) A motor fuel transporter.
- (8) A bulk-end user of undyed diesel fuel.
- (9) A retailer of undyed diesel fuel.

(b) Multiple Activity. – A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier is not required to obtain a separate license for any other activity for which a license is required and is considered to have a license as a distributor. A person who is licensed as an occasional

importer or a tank wagon importer is not required to obtain a separate license as a distributor. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier. supplier and is not required to obtain a separate license as an exporter. A person who is licensed as a distributor or a blender is not required to obtain a separate license as a motor fuel transporter if the distributor or blender does not transport motor fuel for others for hire."

Section 3. G.S. 105-449.66 reads as rewritten:

"§ 105-449.66. Types of importers; restrictions on who can get a license as an importer.

(a) Types. – An applicant for a license as an importer must indicate the type of importer license sought. The types of importers are as follows:

- (1) Bonded importer. – A bonded importer is a person, other than a supplier, who imports, by transport truck or another means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in another state in any of the following circumstances:
 - a. The state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal either at that state's rate or the rate of the destination state.
 - b. The supplier of the fuel is not an elective supplier.
 - c. The supplier of the fuel is not a permissive supplier.
- (2) Occasional importer. – An occasional importer is any of the following that imports motor fuel by any means outside the terminal transfer system:
 - a. A distributor that imports motor fuel on an average basis of no more than once a month during a calendar year.
 - b. A bulk-end user that is not a distributor. user that acquires motor fuel for import from a bulk plant and is not required to be licensed as a bonded importer.
 - c. A distributor that imports motor fuel for use in a race car.
- (3) Tank wagon importer. – A tank wagon importer is a person who imports, only by means of a tank wagon, motor fuel that is removed from a terminal or a bulk plant located in another state.

(b) Restrictions. – A person may not be licensed as more than one type of importer. ~~A person who is a bulk end user and is not also a distributor may not be licensed as a bonded importer. A person who is a bulk end user and is not also a distributor may be licensed as an occasional importer with the restriction that the person acquire motor fuel for import only from an elective supplier or a permissive supplier or from a bulk plant.~~ A bulk-end user that imports motor fuel from a terminal of a supplier that is not an elective or a permissive supplier must be licensed as a bonded importer. A bulk-end user that imports motor fuel from a bulk plant and is not required to be licensed as a bonded importer must be licensed as an occasional importer. A bulk-end user that imports motor fuel only from a terminal of an elective or a permissive supplier is not required to be licensed as an importer."

Section 4. G.S. 105-449.67 reads as rewritten:

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

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

- ~~(1) A distributor.~~
- ~~(2) A permissive supplier.~~
- ~~(3) An exporter.~~

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

~~(c) Multiple Activity.—A person who is licensed as a distributor is considered to have a license as an exporter.~~

A person who is engaged in business as any of the following may obtain a license issued by the Secretary for that business:

- (1) A distributor.
- (2) A permissive supplier."

Section 5. G.S. 105-449.72 reads as rewritten:

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

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

- (1) For an applicant for a license as any of the following, the amount is two million dollars (\$2,000,000):
 - a. A refiner.
 - b. A terminal operator.
 - c. A supplier that is a position holder or a person that receives motor fuel pursuant to a two-party exchange.
 - d. A bonded importer.
 - e. A permissive supplier.
- (2) For an applicant for a license as any of the following, the amount is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. The amount may not be less than two thousand dollars (\$2,000) and may not be more than two hundred fifty thousand dollars (\$250,000):
 - a. A supplier that is a fuel alcohol provider but is neither a position holder nor a person that receives motor fuel pursuant to a two-party exchange.
 - b. An occasional importer.
 - c. A tank wagon importer.

d. A distributor.

e. ~~An exporter.~~

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

(b) Multiple Activity. – An applicant for a license as a distributor and as a bonded importer must file only the bond required of a bonded importer. An applicant for two or more of the licenses listed in subdivision (a)(2) or (a)(3) of this section may file one bond that covers the combined liabilities of the applicant under all the activities. A bond for these combined activities may not exceed the maximum amount set in subdivision (a)(2) of this subsection.

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

Section 6. G.S. 105-449.77(b) reads as rewritten:

"(b) Supplier Lists. – The Secretary must give a list of licensed suppliers, licensed terminal operators, licensed importers, licensed distributors, and licensed exporters to each licensed supplier. The list must state the name, account number, and business address of each license holder on the list. The Secretary must send a monthly update of the list to each licensed supplier.

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

Section 7. G.S. 105-449.82(c) reads as rewritten:

"(c) Terminal Rack Removal. – The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed at a terminal rack in this State is payable by the person that first receives the fuel upon its removal from the terminal. If the motor fuel is removed by an unlicensed distributor, the supplier of the fuel is jointly and severally liable for the tax due on the fuel. If the motor fuel is sold by a person who is not licensed as a supplier, as required by this Article, the terminal operator, the person selling the fuel, and the person removing the fuel are jointly and severally liable for the tax due on the fuel. If the motor

fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person removing the fuel are jointly and severally liable for the tax due on the fuel.

If the motor fuel is removed for export by an unlicensed exporter, the exporter is liable for tax on the fuel at the motor fuel rate and at the rate of the destination state. The liability for the tax at the motor fuel rate applies when the Department assesses the unlicensed exporter for the tax."

Section 8. G.S. 105-449.87(c) reads as rewritten:

~~"(c) Imputed Knowledge. – An end seller of dyed diesel fuel is considered to have known or had reason to know that the fuel would be used for a purpose that is taxable under this section unless the end seller delivered the fuel into a storage facility that meets one of the following requirements:~~

- ~~(1) It contains fuel used only in heating, drying crops, or a manufacturing process and is installed in a manner that makes use of the fuel for any other purpose improbable.~~
- ~~(2) It is marked as follows with the phrase "Dyed Diesel", "For Nonhighway Use", or a similar phrase that clearly indicates the fuel is not to be used to operate a highway vehicle:~~
 - ~~a. The storage tank of the storage facility is marked if the storage tank is visible.~~
 - ~~b. The fillcap or spill containment box of the storage facility is marked.~~
 - ~~c. The dispensing device that serves the storage facility is marked.~~

An end seller of dyed diesel fuel is considered to have known or had reason to know that the fuel would be used for a purpose that is taxable under this section if the end seller delivered the fuel into a storage facility that was not marked as required by G.S. 105-449.123."

Section 9. Part 3 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.88A. Liability for tax due on motor fuel designated as exempt by the use of cards or codes.

(a) Exempt Cards at Rack. – When a licensed distributor or licensed importer removes motor fuel from a terminal by means of an exempt card or exempt access code issued by the supplier, the distributor or importer represents that the fuel removed will be resold to a governmental unit that is exempt from the tax. A supplier may rely on this representation. A licensed distributor or licensed importer that does not resell motor fuel removed from a terminal by means of an exempt card or exempt access code to an exempt governmental unit is liable for any tax due on the fuel.

(b) Exempt Cards at Retail. – A supplier that issues to, or authorizes another person to issue to, another person a credit card or an access code that enables the person to buy motor fuel at retail without paying the tax on the fuel has a duty to determine if the person is exempt from the tax. A supplier is liable for tax due on motor fuel purchased at retail by use of a credit card or an access code issued to a person who is not exempt from the tax.

(c) Card Holder. – A person to whom an exempt card or exempt access card is issued for use at a terminal or at retail is liable for any tax due on fuel purchased with the card for a purpose that is not exempt. A person who misuses an exempt card or code by purchasing fuel with the card or code for a purpose that is not exempt is liable for the tax due on the fuel."

Section 10. G.S. 105-449.89 reads as rewritten:

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

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

- ~~(1) Upon payment to the supplier of tax on the motor fuel at the motor fuel rate.~~
- ~~(2) Upon payment to the supplier of destination, state tax on the motor fuel, if the bulk-end user acquires the fuel from a supplier who, with respect to the destination state of the fuel, is either a permissive supplier or an elective supplier and therefore collects the destination state tax on the fuel.~~

An out-of-state bulk-end user may not remove motor fuel from a terminal in this State for use in the state in which the bulk-end user is located unless the bulk-end user is licensed under this Article as an exporter. An out-of-state bulk-end user that is not licensed under this Article may remove motor fuel from a bulk plant in this State."

Section 11. G.S. 105-449.90 reads as rewritten:

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

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

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

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

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

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

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

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

- (1) A refiner.
- (2) A supplier.

- (3) A bonded importer.
- (4) A blender.
- (5) A tank wagon importer.
- (6) A person that incurred a liability under G.S. 105-449.86 during the preceding month for the tax on dyed diesel fuel used to operate certain highway vehicles.
- (7) A person that incurred a liability under G.S. 105-449.87 during the preceding month for the backup tax on motor fuel.

(e) Monthly Filers on ~~1st~~ 3rd. – An occasional importer must file a monthly return by the ~~1st~~ third day of each month. An occasional importer is not required to file a return, however, if all the motor fuel imported by the importer in a reporting period was removed at a terminal located in another state and the supplier of the fuel is an elective supplier or a permissive supplier."

Section 12. G.S. 105-449.91 reads as rewritten:

"§ 105-449.91. Remittance of tax to supplier.

(a) Distributor. – A distributor must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. A licensed distributor has the right to defer the remittance of tax to the supplier, as trustee, until the date the trustee must pay the tax to this State or to another state. The time when an unlicensed distributor must remit tax to a supplier is governed by the terms of the contract between the supplier and the unlicensed distributor.

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

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

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

Section 13. G.S. 105-449.92(b) reads as rewritten:

"(b) Effect of Notice. – A supplier that sells motor fuel to a distributor ~~or an exporter~~ after receiving notice from the Secretary that the Secretary has cancelled the distributor's ~~or exporter's~~ license is jointly and severally liable with the distributor ~~or exporter~~ for any tax due on motor fuel the supplier sells to the distributor ~~or exporter~~

after receiving the notice. This joint and several liability does not apply to excise tax due on motor fuel sold to a previously unlicensed distributor ~~or unlicensed exporter~~ after the supplier receives notice from the Secretary that the Secretary has issued another license to the ~~distributor or exporter.~~ distributor."

Section 14. G.S. 105-449.96 reads as rewritten:

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

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

- (1) The number of gallons of tax-paid motor fuel received by the supplier during the month, sorted by type of fuel, seller, point of origin, destination state, and carrier.
- (2) The number of gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of fuel, person receiving ~~distributor, exporter, or importer,~~ the fuel, terminal code, and carrier.
- (3) The number of gallons of motor fuel removed during the month for export, sorted by type of fuel, person receiving ~~distributor or exporter,~~ the fuel, terminal code, destination state, and carrier.
- (4) The number of gallons of motor fuel removed during the month at a terminal located in another state for destination to this State, as indicated on the shipping document for the fuel, sorted by type of fuel, person receiving ~~distributor, exporter, or importer,~~ the fuel, terminal code, and carrier.
- (5) The number of gallons of motor fuel the supplier sold during the month to any of the following, sorted by type of fuel, exempt entity, person receiving ~~distributor,~~ the fuel, terminal code, and carrier:
 - a. A governmental unit whose use of fuel is exempt from the tax.
 - b. A licensed distributor or importer that resold the motor fuel to a governmental unit whose use of fuel is exempt from the tax, as indicated by the ~~distributor.~~ distributor or importer.
 - c. A licensed exporter that resold the motor fuel to a person whose use of fuel is exempt from tax in the destination state, as indicated by the exporter.
- (6) The amount of discounts allowed under G.S. 105-449.93(b) on motor fuel sold during the month to licensed distributors or licensed importers."

Section 15. G.S. 105-449.97 reads as rewritten:

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

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

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

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

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

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

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

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

Section 16. G.S. 105-449.98 reads as rewritten:

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

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

(b) ~~Notification to Distributor or Exporter.~~ Notice of Fuel Received. – A supplier must notify a licensed ~~distributor or licensed exporter~~ distributor, a licensed exporter, or a licensed importer that received motor fuel from the supplier during a reporting period of the number of taxable gallons received. The supplier must give this notice after the end of each reporting period and before the ~~licensed distributor or licensed exporter~~ license holder must remit to the supplier the amount of tax due on the fuel.

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

(d) Payment Application. – A supplier that receives a payment of tax from a ~~distributor or a licensed exporter~~ licensed distributor, a licensed exporter, or a licensed

importer may not apply the payment to ~~debts~~ a debt that person owes the supplier for motor fuel purchased from the supplier."

Section 17. G.S. 105-449.105(a) reads as rewritten:

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

Section 18. G.S. 105-449.116 reads as rewritten:

"§ 105-449.116. Import confirmation number required for some imported motor fuel.

(a) Requirement. – A bonded importer or an occasional importer that acquires motor fuel for import by transport truck from a supplier that is not an elective supplier or a permissive supplier, and therefore will not be acting as trustee for the remittance of tax to the State on behalf of the importer, must obtain an import confirmation number from the Secretary before importing the motor fuel. The importer must write the import confirmation number on the shipping document issued for the fuel. The importer must obtain a separate import confirmation number for each transport truck delivery of motor fuel into this State.

(b) Penalty. – An importer that does not obtain an import confirmation number when required by this section is liable for a civil penalty. The civil penalty is payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue and is payable by the person in whose name the transport truck is registered. The amount of the penalty depends on whether the person against whom the penalty is assessed has previously been assessed a penalty under this subsection. For a first assessment under this subsection, the penalty is the same as the amount for a first assessment under G.S. 105-449.115(f). For a second or subsequent assessment under this subsection, the penalty is the same as the amount for a second or subsequent assessment under G.S. 105-449.115(f). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

Section 19. G.S. 105-449.117 reads as rewritten:

"§ 105-449.117. Penalties for highway use of dyed diesel or other non-tax-paid fuel.

It is unlawful to use dyed diesel fuel for a highway use in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless that use is permitted allowed under section 4082 of the Code. It is unlawful to use undyed diesel fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes unless the tax imposed by this Article has been paid. A person who operates on a highway a highway vehicle whose supply tank contains dyed diesel fuel whose use is unlawful under this section or contains other fuel on which the

~~tax imposed by this Article has not been paid~~ violates this section is guilty of a Class 1 misdemeanor and is liable for a civil penalty.

The civil penalty is payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue and is payable by the person in whose name the highway vehicle is registered. The amount of the penalty depends on the amount of fuel in the supply tank of the highway vehicle. The penalty is the greater of one thousand dollars (\$1,000) or five times the amount of motor fuel tax payable on the fuel in the supply tank. A penalty imposed under this section is in addition to any motor fuel tax assessed."

Section 20. G.S. 105-449.120(a)(3) reads as rewritten:

"(3) Willfully fails to pay a tax when due under this ~~Article~~. ~~Article~~ or under former Article 36 or 36A of this Chapter. Failure to comply with a requirement of a supplier to remit tax payable to the supplier by electronic funds transfer is considered a failure to make a timely payment."

Section 21. The catch line to G.S. 105-449.122 reads as rewritten:

"§ 105-449.122. Miscellaneous Equipment requirements."

Section 22. Part 6 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.123. Marking requirements for dyed diesel fuel storage facilities.

(a) Requirements. – A person who is a retailer of dyed diesel fuel or who stores both dyed and undyed diesel fuel for use by that person or another person must mark the storage facility for the dyed diesel fuel as follows with the phrase 'Dyed Diesel', 'For Nonhighway Use', or a similar phrase that clearly indicates the diesel fuel is not to be used to operate a highway vehicle:

- (1) The storage tank of the storage facility must be marked if the storage tank is visible.
- (2) The fillcap or spill containment box of the storage facility must be marked.
- (3) The dispensing device that serves the storage facility must be marked.

(b) Exception. – The marking requirements of this section do not apply to a storage facility that contains fuel used only in heating, drying crops, or a manufacturing process, and is installed in a manner that makes use of the fuel for any other purpose improbable."

Section 23. G.S. 105-449.133 reads as rewritten:

"§ 105-449.133. Bond or letter of credit required as a condition of obtaining and keeping license as alternative fuel provider. certain licenses.

(a) Who Must Have Bond. – ~~An applicant~~ The following applicants for a license as ~~an alternative fuel provider~~ must file with the Secretary a bond or an irrevocable letter of credit in ~~an~~ credit:

- (1) An alternative fuel provider.
- (2) A retailer or a bulk-end user that intends to store highway and nonhighway alternative fuel in the same storage facility.

(b) Amount. – The amount of the bond is the amount that would be required if the fuel the applicant intended to provide or store was motor fuel rather than alternative fuel. An applicant that is also required to file a bond or an irrevocable letter of credit under G.S. 105-449.72 to obtain a license as a distributor of motor fuel may file a single bond or irrevocable letter of credit under that section for the combined amount.

A bond filed under this subsection must be conditioned upon compliance with this Article, be payable to the State, and be in the form required by the Secretary. The Secretary may require a bond issued under this subsection to be adjusted in accordance with the procedure set out in G.S. 105-449.72 for adjusting a bond filed by a distributor of motor fuel."

Section 24. G.S. 105-449.137(a) reads as rewritten:

"(a) Liability. – A bulk-end user or retailer that stores highway and nonhighway alternative fuel in the same storage facility is liable for the tax imposed by this Article. The tax payable by a bulk-end user or retailer applies when fuel is withdrawn from the storage facility. The alternative fuel provider that sells or delivers alternative fuel is liable for the tax imposed by this ~~Article.~~ Article on all other alternative fuel."

Section 25. G.S. 105-449.138 reads as rewritten:

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

(a) Informational Return. – A bulk-end user and a retailer must file a quarterly informational return with the Secretary. A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return.

The return must give the following information and any other information required by the Secretary:

- (1) The amount of alternative fuel received during the quarter.
- (2) The amount of alternative fuel sold or used during the quarter.

(b) Storage. – ~~A storage facility used by a bulk-end user or a retailer must be marked in a manner similar to that required for diesel fuel by G.S. 105-449.87(e) if the alternative fuel stored in the facility is to be used for a purpose other than to operate a highway vehicle.~~ A bulk-end user or a retailer may store highway and nonhighway alternative fuel in separate storage facilities or in the same storage facility. If highway and nonhighway alternative fuel are stored in separate storage facilities, the facility for the nonhighway fuel must be marked in accordance with the requirements set by G.S. 105-449.123 for dyed diesel storage facilities. If highway and nonhighway alternative fuel are stored in the same storage facility, the storage facility must be equipped with separate metering devices for the highway fuel and the nonhighway fuel. If the Secretary determines that a bulk-end user or retailer used or sold alternative fuel to operate a highway vehicle when the fuel was dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle."

Section 26. Sections 1, 19, and 20 of this act are effective when this act becomes law. The remaining sections of this act become effective October 1, 1997.

In the General Assembly read three times and ratified this the 8th day of May, 1997.

s/ Dennis A. Wicker

President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 12:50 p.m. this 16th day of May, 1997