

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1407 (Second Edition)

SHORT TITLE: Contracts to Reimburse Fuel Tax

SPONSOR(S): Senator Kerr

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2002-03</u>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
REVENUES					
General Fund					*No Impact*
Highway Fund					*No Estimate Available - See Assumptions and Methodology*
Highway Trust Fund					*No Estimate Available - See Assumptions and Methodology*
Local Governments					*See Assumptions and Methodology*
EXPENDITURES					
Motor Fuels					Slight savings will be realized.
POSITIONS:					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: N.C. Department of Revenue Motor Fuels Division; N.C. Department of Transportation – Division of Motor Vehicles; Local Governments					
EFFECTIVE DATE: Section 1 of the act is effective September 1, 2002, for contracts entered into or renewed on or after that date, as well as all contracts in effect on that date that have no expiration date and are continuing contracts. Does not apply to a contract in effect on September 1, 2002, that, by its terms, will terminate on a later date. The remainder of the act becomes effective January 1, 2003.					

BILL SUMMARY: Section 1 of the legislation establishes a contract right regarding the timing of payments under contracts requiring reimbursement of federal fuel excise taxes. The party making reimbursements will not be required to tender payment for the taxes more than one business day before the day the second party is required to remit the taxes to the IRS. The procedures and security provisions for exercising this right are set out in the bill.

The remaining sections of the bill make technical changes to the motor fuel tax statutes.

ASSUMPTIONS AND METHODOLOGY:

Section 1 of the bill establishes the timing in which payments under contracts requiring reimbursements of the federal fuel excise taxes must be paid. Current state law gives the licensed distributor the right to defer the remittance of any state tax to the supplier until the date the supplier, as trustee, must pay the tax to this state or to another state. This allows the distributor to retain the interest on the state tax monies until they are due for payment. The proposed bill would provide that a contract subject to North Carolina law must afford the distributor the same election for the timing of federal tax remittance that the distributor has for state tax remittance. The proposed change will have no state General Fund impact. The legislation will have no impact on the state's Department of Revenue fuel tax collections, revenues, or payment schedules. Rather, it is designed to affect the timing of payments on the federal excise tax by fuel distributors.

The remainder of the bill includes technical changes to the motor fuel tax, some of which will have minimal fiscal impact. The Motor Fuels Division of the N.C. Department of Revenue (the Division) is responsible for the implementation and enforcement of the changes. *This fiscal note will focus solely on those sections of the proposed legislation that have a financial impact.*

Section 4 of the bill adds a penalty for improper use of vehicle identification markers that are necessary under the International Fuel Tax Agreement (IFTA) for legal travel in the United States and Canada. When the Secretary of Revenue registers a motor carrier, the Secretary must issue at least one identification marker for each motor vehicle operated by the motor carrier. However, the markers are not assigned on a Vehicle Identification Number (VIN) basis. Rather, each motor carrier requests a certain number of markers for its fleet and is then responsible for accounting for each marker listed with the company. The markers must be maintained for audit purposes and, most often, the Division finds a higher incidence of missing and unaccounted for markers (proposed \$100 penalty) than display of unlawfully obtained markers (proposed \$1,000 penalty.) Revenues realized from this penalty are difficult to estimate because accountability efforts, enforcement practices, and auditing opportunities will change after the penalty is put into effect. However, Fiscal Research can establish a base estimate from current Division data. The Secretary of Revenue assigned over 100,000 markers in the state for 2002. The Division is required to audit 3% of its motor carrier base each year. There were 129 markers unaccounted for in the six-month period between January and June 2002. Doubling this for an annual estimate would generate \$25,800 in penalties. All the revenues generated from these two penalties are payable to the Department of Revenue or the Division of Motor Vehicles.

Section 10(a)(1) of the bill removes the motor fuel excise tax exemption on dyed diesel fuel used to operate special mobile equipment. This proposed change conforms the state to federal law by not allowing it to use dyed diesel fuel on the highway. The Division will see increased motor fuel tax revenues; however, because data are not maintained on the total number of special mobile equipment vehicles, no exact estimate can be made.

Section 10(a)(5) of the bill clarifies that the motor fuel excise tax is due on motor fuel that is destined for delivery to another state and is then diverted and delivered in this state. This practice is in place today; however, suppliers are currently accounting for it in a variety of different ways on one of four motor fuel tax forms to reflect the new delivery state. The suppliers are not obligated to perform this function, and many do not or could cease doing so in the future. The legislation seeks to require the distributors to perform the paperwork change by

requiring the backup tax form to be filled out with the proper diversion number for the new destination. This change will make it more apparent when a diversion has occurred and to which state motor fuel taxes are due. It will also be easier for the Division to compare the monthly diversion report to the backup tax forms for audit purposes. Due to the increased ease of auditing a motor carrier, the Division will potentially see a minimal increase in motor fuel tax revenues.

Sections 11 and 13 of the bill exempt local government entities from paying a motor fuel tax and thus necessitating the need for receiving a refund. The following table shows the refunds issued in recent years.

Fiscal Year	1999-2000		2000-2001	
	City	County	City	County
Quarter 1	\$1,489,630.54	\$754,584.10	\$1,575,095.15	\$916,539.92
Quarter 2	\$1,551,601.65	\$829,986.70	\$1,080,506.83	\$748,063.84
Quarter 3	\$1,426,540.97	\$712,121.66	\$2,160,325.59	\$944,865.85
Quarter 4	\$1,644,436.73	\$786,002.66	\$469,891.98	\$360,380.05
Subtotal	\$6,112,209.89	\$3,082,695.12	\$5,285,819.55	\$2,969,849.66
FY Total	\$9,194,905.01		\$8,255,669.21	

The proposed exemption will be slightly revenue positive for local governments because of the interest that will be earned on funds that once went to fuel tax payments before being refunded. The proposal will save the Division from processing the quarterly refunds to local governments. Float will no longer be generated on the tax revenue paid by local governments before the state refunds the funds. Fiscal Research estimates the annual float loss would have been \$227,030 for fiscal year 2000-01 and \$252,860 for fiscal year 1999-00 (calculated by using half the fiscal year total at a 5.5% interest rate). The average annual estimated loss from the Highway Fund is approximately \$240,000.

Sections 15 of the bill simplifies the penalty against transporters for transporting motor fuel without a shipping document or with a false or incomplete shipping document and delivering motor fuel to a destination state other than that shown on the shipping document. The penalty is \$5,000 for railroad tank car or a transport truck. For the penalty to be assessed, actual offloading of the fuel must be seen. Officers will now be able to enforce the penalty on-site after a vehicle is stopped, which is the same as current dyed diesel penalty enforcement. Although this penalty has not been used heavily to date, the proposed changes may increase assessments and revenues. Revenues generated from the penalties are payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue to split between the Highway Fund and the Highway Trust Fund as mandated by statute.

Section 16 of the bill regulates motor fuel transported by a tank wagon after the fuel has left the terminal. Proper documentation as mandated in the statute must be included in the vehicle at all times. A violation of this statute would be grounds for a civil penalty in the amount of \$1,000. Revenues generated from the penalties are payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue to split between the Highway Fund and the Highway Trust Fund as mandated by statute. However, the Division has no way to determine how many penalties will be assessed under the new regulations.

Section 17 of the bill changes the penalty for buying or selling non-tax-paid motor fuel to a flat penalty of \$250 from the varying amounts based on gallons dispensed currently listed in the statutes. Officers have not been assessing the penalty because it was not possible to determine the number of gallons dispensed. The proposed changes will remove the gallon provision and allow a flat penalty to be assessed. Revenues generated from the penalties are payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue to split between the Highway Fund and the Highway Trust Fund as mandated by statute. It is not possible to estimate how many penalties will be assessed under the new process.

SOURCES OF DATA: N.C. Department of Revenue Motor Fuels Division

TECHNICAL CONSIDERATIONS: Pending court proceedings may change the fund designation for the collected penalties. Instead of having the funds earmarked for the Highway Fund or Highway Trust Fund, the outcome of the legal proceedings could require the funds to be allocated to local public school units.

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