

House Bill 1459 (AS PASSED HOUSE AND SENATE)

By: Representatives Borders of the 142nd, Jamieson of the 22nd, Porter of the 119th, Keen of the 146th, Williams of the 4th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to change certain provisions regarding compensation of dealers for reporting
3 and paying sales and use taxes and motor fuel taxes; to change certain provisions regarding
4 the levy of motor fuel taxes; to change certain provisions regarding licensing of certain fuel
5 or gas distributors; to change certain provisions regarding motor fuel distributor tax reports;
6 to change certain provisions regarding refunds of motor fuel taxes; to provide for related
7 matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
11 amended in subsection (b) of Code Section 48-8-50, relating to compensation of dealers for
12 reporting and paying sales and use taxes and motor fuel taxes, by striking "and" at the end
13 of paragraph (2), by striking the period at the end of paragraph (3) and inserting in its place
14 "; and", and by adding a new paragraph immediately following paragraph (3) to be
15 designated paragraph (4) to read as follows:

16 "(4) A deduction with respect to Code Section 48-9-14, as defined in paragraph (5.1) of
17 Code Section 48-8-2, shall be at the rate of one-half percent of the total amount due of
18 the prepaid state tax reported due on such return, so long as the payment is timely,
19 regardless of the classification of tax return upon which the remittance is made."

20 **SECTION 2.**

21 Said title is further amended by striking subsections (a) and (b) of Code Section 48-9-3,
22 relating to the levy of motor fuel taxes, and inserting in their place new subsections (a) and
23 (b) to read as follows:

1 "(a)(1) An excise tax is imposed at the rate of 7 1/2¢ per gallon on distributors who sell
2 or use motor fuel within this state. It is the intention of the General Assembly that the
3 legal incidence of the tax be imposed upon the distributor.

4 (2) In the event any motor fuels which are not commonly sold or measured by the gallon
5 are used in any motor vehicles on the public highways of this state, the commissioner
6 may assess, levy, and collect a tax upon such fuels, under such regulations as ~~he~~ the
7 commissioner may promulgate, in accordance with and measured by the nearest power
8 potential equivalent to that of one gallon of regular grade gasoline. Any determination by
9 the commissioner of the power potential equivalent of such motor fuels shall be
10 prima-facie correct. Upon each such quantity of such fuels used upon the public highways
11 of this state, a tax at the same rate per gallon imposed on motor fuel under paragraph (1)
12 of this subsection shall be assessed and collected.

13 (3) No county, municipality, or other political subdivision of this state shall levy any fee,
14 license, or other excise tax on a gallonage basis upon the sale, purchase, storage, receipt,
15 distribution, use, consumption, or other disposition of motor fuel. Nothing contained in
16 this article shall be construed to prevent a county, municipality, or other political
17 subdivision of this state from levying license fees or taxes upon any business selling
18 motor fuel.

19 (4) For purposes of this subsection, and notwithstanding the provisions of paragraph (2)
20 of this subsection and any provision contained in the National Bureau of Standards
21 Handbook or any other national standard that may be adopted by law or regulation, the
22 gallon equivalent of compressed natural gas shall be not less than 110,000 British thermal
23 units. As used in this paragraph, the term 'compressed natural gas' means a mixture of
24 hydrocarbon gases and vapors, consisting principally of methane in gaseous form, that
25 has been compressed for use as a motor fuel.

26 (b) No tax is imposed by this article upon or with respect to the following sales by duly
27 licensed distributors:

28 (1) Bulk sales to a duly licensed distributor;

29 (2) Sales of motor fuel for export from this state when exempted by any provisions of
30 the Constitutions of the United States or this state;

31 (3) Sales of motor fuel to a licensed distributor for export from this state;

32 (4) Sales of motor fuel to the United States for the exclusive use of the United States
33 when the motor fuel is purchased and paid for by the United States;

34 (5) Sales of aviation gasoline to a duly licensed aviation gasoline dealer, except for 1¢
35 per gallon of the tax imposed by paragraph (1) of subsection (a) of this Code section and
36 all of the tax imposed by Code Section 48-9-14;

1 (6) Bulk sales of ~~fuel oils~~, compressed petroleum gas; or special fuel to a duly licensed
2 consumer distributor;

3 (7)(A) Sales of ~~fuel oils~~, compressed petroleum gas; or special fuel to a consumer who
4 has no highway use of the fuel at the time of the sale and does not resell the fuel.
5 Consumers of ~~fuel oils~~, compressed petroleum gas; or special fuel who have both
6 highway and nonhighway use of the fuel and resellers of such fuel must be licensed as
7 distributors in order for sales of the fuel to be tax exempt. Each type of motor fuel is to
8 be considered separately under this exemption.

9 (B)(i) In instances where a sale of compressed petroleum gas has been made to an
10 ultimate consumer who has both highway and nonhighway use of that type of motor
11 fuel and no tax has been paid by the distributor on the sale, the consumer shall
12 become licensed as a consumer distributor of that type of motor fuel. After the
13 consumer is licensed as a consumer distributor and if it is demonstrated to the
14 satisfaction of the commissioner that the motor fuel purchased prior to the licensee's
15 becoming licensed as a consumer distributor was used for nonhighway purposes, such
16 sales shall be exempt from the tax imposed by this article; provided, however, that,
17 if at the time of demonstration the ultimate consumer does not have both highway and
18 nonhighway use of such fuel but it can be demonstrated by the distributor to the
19 satisfaction of the commissioner that the motor fuel was used for nonhighway
20 purposes, the sales shall be exempt from the tax imposed by this article; and

21 (ii)(I) Any ~~fuel oils~~ or special fuel sold by a distributor to a purchaser who has a
22 storage receptacle which has a connection to a withdrawal outlet that may be used
23 for highway use, as defined in paragraph (8) of Code Section 48-9-2, is not exempt
24 from the motor fuel and road taxes imposed by this article unless: (1) the purchaser
25 is at the time of sale a valid licensed distributor of that type of motor fuel, or (2) an
26 exemption certificate has been obtained from the purchaser on forms furnished by
27 the Department of Revenue showing that the purchaser has no highway use of such
28 fuels and is not a reseller of such fuels. Each exemption certificate shall be valid for
29 a period of not more than three years and shall be kept by the distributor as one of
30 the records specified in Code Section 48-9-8. It shall be the responsibility of the
31 purchaser to notify the distributor when the purchaser is no longer qualified for the
32 nonhighway exemption. All applicable taxes must be charged the purchaser until the
33 purchaser is granted a valid distributor's license for that type of motor fuel.

34 (II) Any such purchaser granted an exemption under subdivision (I) of this division
35 who falsely claims the exemption or fails to rescind the purchaser's exemption
36 certificate to the distributor in writing when he or she is no longer eligible for the
37 exemption shall be deemed a distributor for purposes of taxation and is subject to

1 all provisions of this article relating to distributors. This division in no way shall
 2 restrict the option of the purchaser to become licensed as a distributor. If the
 3 distributor sells ~~fuel oils~~ or special fuel to a purchaser who has a storage receptacle
 4 which has a connection to a withdrawal outlet that may be used for highway use, as
 5 defined in paragraph (8) of Code Section 48-9-2, and the purchaser is not a valid
 6 licensed distributor and has not executed a valid signed exemption certificate, the
 7 taxes imposed by this article are due from the distributor and not the purchaser on
 8 all sales of that type of fuel to that purchaser;

9 (8) Sales of fuel oils, compressed petroleum gas; or special fuel directly to an ultimate
 10 consumer to be used for heating purposes only. The delivery of fuel oils, compressed
 11 petroleum gas; or special fuel directly to an ultimate consumer to be used for heating
 12 purposes only shall be made directly into the storage receptacle of the heating unit of the
 13 consumer by the licensed distributor. To qualify for this exemption, sales must be
 14 delivered into storage receptacles that are not equipped with any secondary withdrawal
 15 outlets for the motor fuel; or

16 (9) Sales of dyed fuel oils to a consumer for other than highway use as defined in
 17 paragraph (8) of Code Section 48-9-2."

18 SECTION 3.

19 Said title is further amended by striking subsection (a) of Code Section 48-9-5, relating to
 20 licensing of certain fuel or gas distributors, and inserting in its place a new subsection (a) to
 21 read as follows:

22 "(a) Any person who has both highway and nonhighway use of ~~fuel oils~~, compressed
 23 petroleum gas; or special fuel may elect to become licensed as a distributor of that type of
 24 motor fuel. The distributor shall be qualified to purchase motor fuel of that type exempt
 25 from the taxes imposed by this article only after becoming licensed; provided, however,
 26 that no license shall be required from a person whose only nonhighway use is of dyed fuel
 27 oils. The distributor shall be subject to this article."

28 SECTION 4.

29 Said title is further amended by striking subsection (b) of Code Section 48-9-8, relating to
 30 motor fuel distributor tax reports, and inserting in its place a new subsection (b) to read as
 31 follows:

32 "(b) At the time of submitting the report required by subsection (a) of this Code section,
 33 the distributor shall pay to the commissioner the tax imposed by paragraph (1) of
 34 subsection (a) of Code Section 48-9-3 on all gasoline, fuel oils, compressed petroleum gas,
 35 special fuel, and aviation gasoline sold or used in this state during the preceding calendar

1 month, less an allowance of 1 percent of the ~~first 5 1/2¢ per gallon of the state tax as~~
2 compensation to cover losses and expenses incurred in reporting the tax to the state. The
3 allowance shall not be deductible unless the payment of tax is made on or before the
4 twentieth day of the month as required by this article."

5 **SECTION 5.**

6 Said title is further amended by striking subsection (b) of Code Section 48-9-10, relating to
7 refunds of motor fuel taxes, and inserting in its place a new subsection (b) to read as follows:

8 "(b)(1) Every person who purchases gasoline in quantities of 25 gallons or more, when
9 the gasoline is used in operating farm tractors and other equipment used for the
10 production of agricultural crops on land owned or leased by such person, shall be entitled
11 to a refund of all of the taxes imposed on gasoline by paragraph (1) of subsection (a) of
12 Code Section 48-9-3 except 1¢ per gallon, subject to the rules and regulations adopted
13 by the commissioner. All applications for refunds must be filed with the commissioner
14 within 18 months from the date of purchase of the gasoline on which the refund is
15 claimed.

16 (2) Every person who purchases fuel oils, except those dyed fuel oils as defined in Code
17 Section 48-9-2, in quantities of 25 gallons or more, when the fuel oils are used in
18 operating equipment used for nonhighway purposes, shall be entitled to a refund of all
19 of the taxes imposed on fuel oils by paragraph (1) of subsection (a) of Code Section
20 48-9-3 except that no interest shall be paid. All applications for refunds must be filed
21 with the commissioner within 18 months from the date of purchase of the fuel oils on
22 which the refund is claimed."

23 **SECTION 6.**

24 This Act shall become effective on July 1, 2004.

25 **SECTION 7.**

26 All laws and parts of laws in conflict with this Act are repealed.