

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

(a) **Initial Bond.** – An applicant for a license as a refiner, a terminal operator, a supplier, an importer, a blender, a permissive supplier, or a distributor must file with the Secretary a bond or an irrevocable letter of credit. A bond or an irrevocable letter of credit 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 five hundred thousand dollars (\$500,000):
 - a. Repealed by Session Laws 2007-527, s. 17(a), effective October 1, 2007.
 - b. An occasional importer.
 - c. A tank wagon importer.
 - d. A distributor.
 - e. Repealed by Session Laws 1997-60, s. 5, effective October 5, 1997.
- (3) For an applicant for a license as any of the following, 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.
 - a. A blender.
 - b. A supplier that is a fuel alcohol provider or a biodiesel provider but is neither a position holder nor a person that receives motor fuel pursuant to a two-party exchange.

(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 licensee, however, may not exceed the limits set in subdivision (a)(2) of this section.

(d) Replacements. – When a licensee files a bond or an irrevocable letter of credit as a replacement for a previously filed bond or letter of credit and the licensee has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions:

- (1) Return the previously filed bond or letter of credit.
- (2) Notify the person liable on the previously filed bond that the person is released from liability on the bond.

(e) Credit Card Companies. – The Secretary may require a credit card company to file with the Secretary a bond if the company applies for a refund under G.S. 105-449.105(a) and the Secretary determines after an audit that a bond is needed to protect the State from loss in collecting any additional tax due pursuant to the audit. The 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 a bond required under this subsection is two times the average monthly refund due, subject to the minimum and maximum amounts provided in subdivision (a)(2) of this section.

(f) Exemption. – The requirement to obtain a bond or an irrevocable letter of credit does not apply to a distributor, an importer, or a motor fuel transporter who supplies motor fuel when the market for motor fuel is disrupted and emergency supplies are needed, as identified by an executive order of the Governor. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 10; 1997-60, s. 5; 1998-146, s. 4; 2001-205, s. 5; 2002-108, ss. 7, 8; 2003-349, s. 10.6; 2004-170, s. 28; 2007-527, s. 17(a); 2009-445, s. 33; 2017-204, s. 4.5(b).)