

§ 105-449.87. Backup tax and liability for the tax.

(a) Tax. – An excise tax at the motor fuel rate is imposed on the following:

- (1) Dyed diesel fuel that is used to operate a highway vehicle for a use that is not a nontaxable use under § 4082(b) of the Code.
- (2) Motor fuel that was allowed an exemption from the motor fuel tax and was then used for a taxable purpose.
- (3) Motor fuel that is used to operate a highway vehicle after an application for a refund of tax paid on the motor fuel is made or allowed under G.S. 105-449.107(a) on the basis that the motor fuel was used for an off-highway purpose.
- (4) Repealed by Session Laws 1995 (Regular Session, 1996), c. 647, s. 19.
- (5) Motor fuel that, based on its shipping document, is destined for delivery to another state and is then diverted and delivered in this State.

(b) General Liability. – The operator of a highway vehicle that uses motor fuel that is taxable under subdivisions (a)(1) through (a)(3) of this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for the tax. If the end-seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the end-seller is jointly and severally liable for the tax. If the Secretary determines that a bulk end-user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel is 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. 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.

(c) Diverted Fuel. – The person who authorizes a change in the destination state of motor fuel from the state given on the fuel's shipping document to North Carolina is liable for the tax due on the motor fuel. If motor fuel is diverted from North Carolina to another state, only the person who authorized the fuel to be diverted is eligible for a refund of the amount of tax paid on the fuel. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 19; 1997-60, s. 8; 1998-146, s. 5; 1999-438, s. 22; 2002-108, s. 10; 2008-134, s. 38.)