



6. Letter dated January 31, 2003 from [Taxpayer's wife] to Lilly Thorpe of the Division received February 6, 2003 renewing request for hearing.
7. Letter dated February 7, 2003 from Christopher E. Allen to [Taxpayer's wife] responding to request for a hearing, requesting additional information, and referring the matter to the Secretary of Revenue for a hearing.
8. Letter dated February 12, 2003 from Eugene J. Cella to Taxpayer scheduling a hearing for March 27, 2003.
9. Memorandum dated May 16, 2001 from Secretary Tolson to Mr. Eugene J. Cella authorizing Mr. Cella to conduct administrative tax hearings.
10. Brief for Tax Hearing submitted by the Division on February 25, 2003.
11. Testimony of Division Investigator Donald R. Farmer
12. Testimony of [an employee with the Motor Fuels Laboratory], Department of Agriculture and Consumer Services.

Taxpayer presented a letter from his mechanic (TP-1) and offered testimony.

#### **FINDINGS OF FACT**

Based upon the forgoing evidence of record, the Assistant Secretary for Administrative Tax Hearings makes the following findings of fact:

1. Division Investigators inspected [a truck] bearing [a license plate number] inspected [in North Carolina] on November 6, 2002.
2. The investigators had authority pursuant to G.S. § 105-449.121(b) to inspect the supply tank of the vehicle, and also obtained permission from the landowner to enter the premises.
3. Upon inspecting the supply tank of the subject vehicle, investigators discovered the presence of red-colored fuel and took a fuel sample for testing purposes and prepared a Receipt of Dyed Fuel Sample bearing [a license plate number].
4. A roadside test of the fuel sample taken from the vehicle bearing [a license plate number] using a [portable screening device] indicated 0.0 parts per million.
5. Following stated Division policy, Division Investigator Powell did not issue a citation at that time, but rather forwarded the sealed and initialed sample bearing [a license plate number] to the Department of Agriculture motor fuels laboratory for further analysis.
6. On November 12, 2002, the Department of Agriculture conducted testing of the sample bearing [a license plate number] and determined that the fuel sample contained a concentration of .9 parts-per-million (PPM) of red dye, confirming a violation of G.S § 105-449.117.

7. On November 15, 2002, the Division issued a civil penalty citation to Taxpayer for the unlawful use of dyed diesel fuel in the highway vehicle bearing [a license plate number].
8. Taxpayer timely applied for a hearing, enclosing payment of the assessed penalty, and requested a refund of the penalty paid.
9. The Division, by letter dated February 7, 2003, requested further explanation from Taxpayer pursuant to N.C.G.S. 105-449.119 as to why the person is not liable for the penalty.
10. No response was forthcoming from Taxpayer, and a hearing was conducted at the request of Taxpayer pursuant to G.S. § 105-449.119.
11. During the hearing, Taxpayer admitted that he placed a small amount of dyed, off-road fuel into the supply tank in order to start the engine and drive the vehicle on the highways of this State.

### **CONCLUSIONS OF LAW**

1. Division investigators had authority to inspect the fuel supply tank of the vehicle bearing a license plate number] pursuant to G.S. § 105-449.121(b).
2. Visual inspection of the sample taken from the supply tank of the vehicle revealed an indication of red- colored (dyed) diesel fuel, which if confirmed would constitute a violation of G.S. § 105-449.117.
3. Roadside analysis of the fuel sample taken indicated 0.0 parts-per-million (PPM), or no presence of red dye in the fuel sample, and thus no violation of the Motor Fuels Tax Laws.
4. Following stated Division procedures, investigators did not issue a citation at that time, but instead forwarded the sample of the red-colored fuel taken from Taxpayer's vehicle bearing [a license plate number] to the Department of Agriculture and Consumer Services motor fuels testing laboratory for more precise analysis.
5. Subsequent analysis by the Department of Agriculture revealed the presence of .9 PPM red dye in the fuel sample bearing [a license plate number], thereby confirming a violation of G.S. § 105-449.117.
6. During the hearing Taxpayer admitted placing red, off-road diesel fuel in the supply tank of his vehicle in order to start the engine and drive it on the highways of this State.

### **DECISION**

Division investigators properly inspected, withdrew, and analyzed the sample of fuel taken from Taxpayer; vehicle on November 12, 2002. The fuel sample was marked, sealed, and forwarded to the Department of Agriculture and Consumer Services motor fuels testing

laboratory for subsequent analysis. The record discloses that there was a proper chain of custody of the fuel sample taken from the vehicle bearing [a license plate number]. Laboratory analysis disclosed the presence of dye in the fuel sample. The quantity of dye in the sample taken from the vehicle bearing [a license plate number] was sufficient to establish that off-road fuel was used in a licensed highway vehicle. G.S. § 105-449.117 states in pertinent part that "[I]t is unlawful to use dyed diesel fuel in a highway vehicle that is licensed or required to be licensed under Chapter 20 of the General Statutes...."

**WHEREFORE**, based upon the above findings of fact and conclusions of law, the undersigned Assistant Secretary of Revenue **HEREBY AFFIRMS** in its entirety the proposed civil penalty assessment of \$1,000.00 issued herein November 15, 2002.

This the 27<sup>th</sup> day of June, 2003.

Signature \_\_\_\_\_

Eugene J. Cella  
Assistant Secretary of Revenue