

810-8-1-.61 Penalty for Sale or Use of Motor Fuel Without Payment of Motor Fuel Tax - Dyed Motor Fuel. (REPEALED)

(1) Any person who willfully sells for use or who willfully uses motor fuel in the operation of a motor vehicle in Alabama upon which the motor fuel tax levied by Chapter 17 of Title 40 of the Code of Alabama, has not been paid or the payment thereof assumed by a distributor licensed by the Alabama Department of Revenue, and which is not tax-exempt, shall for each failure be subject to a penalty imposed by the Department of Revenue of not less than \$100 nor more than \$10,000.

(2) The term "willfully" is defined as an intentional violation of a known legal duty.

(3) This penalty does not apply to the tax-exempt use of motor fuel for off-road. Motor fuel that is indelibly dyed and chemically marked in accordance with regulations issued by the U.S. Secretary of the Treasury under 26 U.S.C. 4082 is exempt from both federal motor fuels tax and Alabama motor fuels tax because it is for tax-exempt off-road use. With the exception of on-road use specifically provided by 26 U.S.C. 4082, such motor fuel may not be sold or used for non-exempt purposes such as in the operation of a motor vehicle on the highways of Alabama. This legal duty not to use dyed or marked motor fuel is well known because of the readily visible color of the fuel. Dyed or marked fuel found in the supply tank of a motor vehicle being operated on the highways of Alabama is prima facie evidence of willfulness in failure to pay the proper Alabama motor fuel tax.

(4) Any person, firm or corporation who knowingly dispenses dyed or marked motor fuel into the supply tank of any motor vehicle to be used on the highways of Alabama for non-exempt purposes shall also be subject to this penalty.

(5) This penalty shall be applied so that it increases in severity with multiple offenses. For the first offense, the amount of the penalty shall be the greater of \$10 for each gallon of untaxed motor fuel involved or a minimum \$100, but not to exceed \$10,000. For each subsequent offense, the penalty shall increase an additional \$10 per gallon of untaxed motor fuel involved. For example, upon the second offense the penalty shall be the greater of \$20 per gallon or a minimum \$100, but not to exceed \$10,000. For the third offense, the penalty shall be the greater of \$30 per gallon or a minimum \$100, but not to exceed \$10,000.

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Authority: Section 40-17-22, Code of Alabama 1975

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