

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. MISC. 91-135

ALLIED PETROLEUM, INC. §
9000 Southwest Freeway, Suite 107
Houston, TX 77074, §

Taxpayer. §

FINAL ORDER

Allied Petroleum, Inc. (Petitioner) and Louis Dreyfus Energy Corporation (Dreyfus) filed a joint petition for refund of gasoline and motor fuel taxes for the period May, 1989 through August, 1989.

The Department denied the petition and the Petitioner appealed to the Administrative Law Division. The case was submitted for decision on a joint stipulation of facts and briefs. The Petitioner was represented by Gerald Pratt. Assistant counsel Beth Acker represented the Department. This Final Order is based on the facts and arguments presented by the parties.

FINDINGS OF FACT

The facts are undisputed.

The Petitioner obtained an Alabama gasoline and motor fuel distributor's license from the Revenue Department on August 24, 1989. However, prior to that date the Petitioner had purchased gasoline and motor fuel from Dreyfus in Alabama and subsequently resold the products to the U.S. Government in Alabama. Dreyfus collected the applicable Alabama gasoline and diesel fuel taxes from the Petitioner and remitted the taxes to the Department. The

Petitioner and Dreyfus subsequently filed the joint petition for refund in issue. The Department denied the petition and the Petitioner appealed to the Administrative Law Division.

The Department argues that the sales by Dreyfus to the Petitioner were taxable because the Petitioner was unlicensed at the time of the sales and also because the sales were not directly to the exempt U.S. Government.

The Petitioner argues that the taxes should be refunded because the products were ultimately sold to and used by the exempt U. S. Government.

CONCLUSIONS OF LAW

The issue is whether gasoline and diesel fuel taxes are due when the products are sold by a licensed distributor to an unlicensed distributor and then resold to the U.S. Government.

Alabama's gasoline and diesel fuel taxes are levied against the sale, use or distribution of gasoline or diesel fuel. The diesel fuel taxes are levied at Code of Ala. 1975, §§40-17-2 (\$.08 per gallon) and 40-17-220(a) (\$.04 per gallon). The gasoline taxes are levied at Code of Ala. 1975, §§40-17-31(a) (\$.08 per gallon) and again at 40-17-220(a) (\$.04 per gallon).

The taxable event under the above statutes is the sale of the gasoline and diesel fuel by the distributor. The sale is exempt if made directly to the U.S. Government, see Code of Ala. 1975 §§40-17-31(b) and 40-17-220(c), or by a licensed distributor to another

licensed distributor, see Code of Ala. 1975, §§40-17-31(b) and 40-17-220(c), or by a licensed distributor, see Code of Ala. 1975, §§40-17-11 and 40-17-32.

In this case the sales by Dreyfus to the Petitioner were taxable sales to an unlicensed distributor and not to the exempt U.S. Government. Consequently, Dreyfus properly reported and paid the gasoline and diesel fuel taxes to the Department and no refund is due. The fact that the products were subsequently sold to the U.S. Government does not cause the earlier taxable sales by Dreyfus to the Petitioner to be exempt.

Alabama law clearly requires that a distributor must be licensed before doing business in Alabama. See, Code of Ala. 1975, §§40-12-191 and 40-17-14. Only licensed distributors can purchase tax-free and assume responsibility for payment of the tax. Sales to an unlicensed distributor are taxable, even if the unlicensed distributor resells the products to an exempt entity, as in this case.

An analogous situation concerning sales tax would be the sale of property to an unlicensed dealer for resale. The otherwise nontaxable wholesale sale would be taxable because the dealer was unlicensed at the time of the sale. See, State v. Advertise Company, 337 So.2d 942 (1976).

The Administrative Law Judge granted a refund to a distributor

in an earlier case involving similar facts based on the reasoning that the subsequent sale to the exempt U. S. Government related back and caused the entire transaction to be exempt. See, Docket No MISC. 88-118. The Department appealed that decision to circuit court, but the appeal was dismissed on procedural grounds. The Department agrees with the Administrative Law Judge that the decision in MISC. 88-118 was incorrect and that this Final Order is correct. Sales to an unlicensed distributor are taxable notwithstanding that the gasoline and diesel fuel is subsequently sold to the U. S. Government. Only sales directly to the U. S. Government and an unlicensed distributor must bear the consequences to obtain a motor fuel distributors license as required by Alabama law.

This is a Final Order issued by the Commissioner of Revenue which may be appealed by the Petitioner pursuant to Code of Ala. 1975, §41-22-20.

Entered on September 5, 1991.

BILL THOMPSON
Chief Administrative Law Judge