

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

vs.

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DOCKET NO. MISC. 91-156

LL&E PETROLEUM MARKETING, INC.
P. O. Box 60350
New Orleans, LA, 70160,

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Taxpayer.

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FINAL ORDER

The Revenue Department assessed motor fuel tax and gasoline tax against LL&E Petroleum Marketing, Inc. (Taxpayer) for the period March, 1987 through February, 1990. The Taxpayer appealed both assessments to the Administrative Law Division and a hearing was conducted on February 17, 1993. Joe DeSalvo and Michael A. LeBlanc appeared for the Taxpayer. Assistant counsel John J. Breckenridge represented the Department.

The facts are undisputed.

The Taxpayer sold motor fuel in Alabama during the period in issue to Cenac Towing Company, Indiana Farm Bureau, LaGloria Oil and Gas Company and Rio Energy International, Inc. None of the purchasers were licensed as motor fuel distributors in Alabama.

The Taxpayer delivered the fuel directly to common carrier shippers at the Port of Mobile. The common carriers were hired by the purchasers and transported the fuel either to Kingston, Jamaica, in the case of the Rio Energy sales, or to ports in other

states. The fuel was not intended for use and was not used in Alabama.

The Taxpayer also sold gasoline to LaGloria Oil and Gas during the audit period. The Taxpayer delivered the gasoline to common carrier shippers at the Port of Mobile for delivery to Panama City, Florida.

The Motor Fuel Assessment

To begin, the Department now concedes that it is barred from taxing the sales to Rio Energy because of the Import-Export Clause of the United States Constitution, Art. 1, §10, Cl.2. See, Louisiana Land and Exploration v. Pilot Petroleum, 900 F.2d 816 (1990). Consequently, the motor fuel sold to Rio Energy should be removed from the assessment.

The Department contends that the remaining motor fuel sales in issue were taxable because they were made to unlicensed dealers in Alabama.

The Taxpayer concedes that the sales were to unlicensed dealers in Alabama, but argues that the sales were not taxable because the motor fuel was not used in Alabama. The Taxpayer also argues that a tax on the sales would be an unconstitutional levy on interstate commerce in violation of the Commerce Clause of the U. S. Constitution, Art. 1, §8.

The sale of motor fuel by a distributor to another licensed distributor is exempt from motor fuel tax. See last sentence of

§40-17-11. However, it does not follow that all sales to an unlicensed distributor are taxable. Rather, a sale to an unlicensed distributor is taxable only if the fuel is to be used in Alabama,¹ and the distributor knows or has reason to know at the time of the sale that the fuel will be used in Alabama. See, §40-17-11(1)(2) and (3).

The fuel in issue was not used in Alabama and the Taxpayer knew at the time of sale that the fuel would not be used in Alabama. Consequently, the sales were not subject to the motor fuel taxes.

The first paragraph of §40-17-11 specifies that all sales of motor fuel shall be without liability except under the circumstances described in paragraphs (1) and (2) and (3). If the Department is correct and all sales to unlicensed purchasers are taxable, then §40-17-11(1)(2) and (3) would be meaningless.

On the other hand, the Department argues that if an unlicensed purchaser can buy motor fuel tax-free, then the various motor fuel licensing requirements are meaningless. I disagree.

The motor fuel law does contain several licensing statutes, see §§40-12-191, 40-17-12, and 40-17-14, but those sections all relate to the licensing of distributors (or bulk purchasers) that sell, withdraw or use motor fuel in Alabama. The purchasers in

¹Sections 40-17-1, 40-17-3, 40-17-5 and 40-17-11 all specify that motor fuel is taxable only if it is used in the operation of a motor vehicle on the highways of Alabama.

this case did not resell or use the fuel in Alabama, and thus were not required to be licensed in Alabama, at least relating to the transactions in issue.

Department Reg. 810-8-1-.18(2)(a) is contrary to law insofar as it states that the sale of motor fuel to an unlicensed out-of-state purchaser is taxable even when the fuel is to be used outside of Alabama. Rather, a sale to an unlicensed in-state or out-of-state dealer is taxable only if the fuel is to be used in Alabama.

The Gasoline Tax Assessment

The gasoline tax levied at §40-17-30, et seq., is levied on the sale, use, etc. of gasoline in Alabama. The gasoline tax can be distinguished from the motor fuel tax in that the gasoline tax applies to all sales in Alabama regardless of where the gasoline is used, whereas the motor fuel tax applies only to motor fuel used in Alabama.

The sale of the gasoline in this case occurred when the Taxpayer delivered the fuel to the common carrier shippers at the Port of Mobile.² Consequently, the sales occurred in Alabama and the Alabama gasoline tax is due.

The fact that the gasoline was subsequently transported outside of Alabama for use in another state does not prohibit the

² Under Alabama law, a sale occurs upon transfer of title to the goods sold. Code of Ala. 1975, §7-2-106(1). Unless otherwise agreed, title passes when the seller completes delivery of the goods to the buyer. Code of Ala. 1975, §7-2-401(2).

Department from taxing the sale of the gasoline in Alabama. The taxable event - the sale of the gasoline - was not in interstate commerce but rather was a closed, intrastate transaction. Rite Tile Company v. State, 176 So.2d 31; American Cast Iron Pipe Company v. Boswell, 350 So.2d 438.

The above considered, the motor fuel assessment is voided and no additional motor fuel tax is owed by the Taxpayer for the period in issue. The gasoline tax assessment is upheld. Judgment is entered against the Taxpayer for gasoline tax for the period in issue in the amount of \$359,697.33, with additional interest computed from May 10, 1991.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on April 29, 1993.

BILL THOMPSON
Chief Administrative Law Judge