CENTRAL ALABAMA FARMERS COOPERATIVE, INC. P.O. Box 1090 Selma, AL 36702-1090, ATMORE TRUCKERS ASSOCIATION P.O. Box 367 Atmore, AL 36504-0367, Taxpayers, v. STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION DOCKET NOS. MISC. 01-344 MV. 01-119

FINAL ORDER

The Revenue Department assessed Central Alabama Farmers Cooperative, Inc. ("Central Alabama Co-op" or "Co-op") for the $1,000 penalty levied at Code of Ala. 1975, §40-12-198(m)(4)c. for using untaxed, dyed fuel in a fertilizer spreader on the highways of Alabama. Central Alabama Co-op appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. The Department also assessed Atmore Truckers Association ("Atmore Truckers") for failing to license and register a converted 1988 Ford truck that it used as a fertilizer spreader. Atmore Truckers also appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. The appeals were consolidated and heard on September 28, 2001. Larry Weaver represented Central Alabama Co-op and Atmore Truckers. Assistant Counsel Keith Maddox represented the Department.

ISSUES

The issue concerning the dyed fuel penalty is whether the Co-op can use untaxed, dyed fuel in a fertilizer spreader used primarily to spread fertilizer off-road, but that is occasionally moved from field to field over the highways of Alabama.

The issue concerning the Atmore Truckers' assessment is whether a vehicle originally manufactured as a truck, but later modified and used exclusively as an off-road fertilizer spreader, must be licensed as a "truck" pursuant to Code of Ala. 1975, §40-12-248.

FACTS

(I) Central Alabama Co-op.

Central Alabama Co-op is a farmers marketing association organized under Code of Ala. 1975, §2-10-90, et seq. It provides services to farmers in ten counties in West-Central Alabama.

The Co-op owned and operated a fertilizer spreader based at its facility in Dallas County, Alabama during the subject period. The spreader was manufactured and designed as a fertilizer spreader by a manufacturer in Illinois. The Co-op used the spreader exclusively to spread fertilizer and herbicides on agricultural fields owned by its members.

The spreader has large flotation tires designed exclusively for use in agricultural fields. The Co-op used the spreader within a 25-mile radius of its Dallas County facility during the subject period. The Co-op generally moved the spreader on-road from field to field over short distances. However, because the spreader was not designed for on-road use, and because on-road use caused excessive wear to the expensive flotation tires, the Co-op generally hauled the spreader on a trailer over longer distances. During peak usage periods, the spreader traveled on highway a maximum of 100 miles a week. Overall, however, it traveled less than 5 percent of its total miles on highway.

A Department enforcement officer stopped the spreader at the intersection of Highways 80 and 14 in Dallas County, Alabama on August 17, 2000. The officer took a fuel sample from the spreader's fuel tank, which was later determined to be untaxed, dyed motor fuel. The Department consequently assessed the Co-op for

the $1,000 penalty levied at §40-12-198(m)(4)c. for using dyed fuel in an on-road vehicle. The Co-op appealed.

(II) Atmore Truckers.

Atmore Truckers is also a farmers marketing association organized under §2-10-90, et seq. It serves farmers in the vicinity of Atmore, Alabama.

Atmore Truckers owns two fertilizer spreaders, which it uses exclusively to spread fertilizer on agricultural fields owned by its members. One of the spreaders was manufactured as a spreader. The Department concedes that spreader is not required to be licensed as a "truck" pursuant to §40-12-248.

The other spreader was originally manufactured as a truck for highway use. Atmore Truckers purchased the cab and chassis of the truck used from a Georgia dealer. It subsequently added a fertilizer hopper to the back of the truck, modified the rear axle to accommodate large flotation tires, and installed a global positioning system.

Both spreaders operate within a 20-mile radius of Atmore. They generally travel from field to field over the highway. However, like the Co-op's spreader discussed above, because neither spreader is designed for on-road use, and because on-road use causes excessive wear to the flotation tires, Atmore Truckers hauls the spreaders on a trailer over longer distances. The spreaders generally travel on highway without a load of fertilizer because, as indicated, the expensive flotation tires are not designed or practical for on-road use. Rather, Atmore Truckers generally delivers the fertilizer to the fields in licensed, on-road trucks.

On March 8, 2000, a Department enforcement officer observed the fertilizer spreader in issue traveling on-road in Alabama without a tag. Because the spreader had been manufactured as a truck, the Department assessed Atmore Truckers for the license taxes and registration fees levied at §40-12-248. Atmore Truckers appealed.

ANALYSIS

(I) Central Alabama Co-op.

Section 40-12-198(m)(4)c. levies a $1,000 penalty for the improper use of untaxed, dyed fuel on the highways of Alabama. However, the penalty does not apply to a vehicle used primarily for off-road agricultural purposes that is only incidentally moved over the highway. The fertilizer spreader operated by Central Alabama Co-op is such a vehicle.

"Special mobile equipment" is defined at Code of Ala. 1975, §32-8-2(20) as a "vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over the highways; . . . ." Special mobile equipment is not required to be titled, Code of Ala. 1975, §32-8-31(7), and, as indicated, may also use untaxed, dyed fuel.

A fertilizer spreader is designed and used primarily to spread fertilizer off-road. It is not designed for the on-road transportation of persons or property, and is only incidentally moved over the highways when traveling short distances from field to field. A spreader thus qualifies as special mobile equipment, and may use dyed fuel, even when traveling over the highway.

The Administrative Law Division previously ruled in *Escambia Farm & Seed Co., Inc. v. State of Alabama*, Misc. 97-473 (Admin. Law Div. 3/2/98), that a fertilizer spreader occasionally moved from field to field over the highways of Alabama was not subject to the dyed fuel penalty.

> A statute must be construed to comply with the intent of the Legislature. Gulf Coast Media, Inc. v. The Mobile Press Register, 470 So.2d 1211 (1986). The Legislature enacted the dyed fuel law to prevent or discourage the unlawful use of untaxed fuel in vehicles designed and used for on-road purposes, i.e. truck tractors, passenger trucks, and automobiles, etc. The law has proved an effective policing tool for that purpose.
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> Fuel used for off-road purposes is not subject to the motor fuel tax. Consequently, agricultural equipment or vehicles that are

designed and used for off-road purposes are allowed to use untaxed dyed fuel. The fertilizer spreader in issue is such a vehicle. The spreader is "special mobile equipment", and thus is not required to be titled under Alabama's motor vehicle titling law. Code of Ala. 1975, §32-8-31(7). "Special mobile equipment" is defined as "any vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over the highway..." Code of Ala. 1975, §32-8-2(20).

The Department argues that no vehicle can be operated on-road in Alabama with dyed fuel in its tank, including an off-road farm vehicle that is otherwise allowed to use dyed fuel. If the Department's strict interpretation is accepted, a farmer would be required to either (1) pump the dyed fuel out of his off-road equipment and replace it with taxed, undyed fuel before entering the highway, and then reverse the process when the equipment left the highway (this would technically be required even to move the equipment across the highway), or (2) load the equipment on to a flatbed trailer and haul it the short distance to the next field or job site. The Legislature could not have intended such an impractical interpretation.

The purpose and object of a statute must be considered, and a "sensible construction must be given to a statute and any general terms used in the statute should be so limited as to give a practical, reasonable, and sensible application." Bean Dredging Corp. v. State, 454 So.2d 1009, 1011 (1984); McGuire Oil Co. v. Mapco, Inc., 612 So.2d 417 (1992); BP Exploration and Oil, Inc. v. Hopkins, 678 So.2d 1052 (1996). The "plain language rule" of statutory construction should not be followed when the practical consequences would lead to unjust or impractical results. Birmingham News Co. v. Patterson, 202 F.Supp. 881 (1960).

Based on the above, the dyed fuel penalty should not be construed to apply to farm and other equipment that is designed and used solely for off-road purposes, and is only incidentally moved over a highway to get from one location to another. The above category would generally include those vehicles defined as "special mobile equipment" at §32-8-2(20), and which are exempt from the title law. Such equipment is easily identified, and this holding will not hinder the State from enforcing the dyed fuel law.

The Department did not appeal *Escambia Farm & Seed* to circuit court. It argues, however, that *Escambia Farm & Seed* can be factually distinguished

because the fertilizer spreader in issue was used more than "incidentally" over the highways of Alabama. I disagree.

The spreader occasionally traveled on-road only when it was being moved from field to field. But it was not designed for on-road use, and traveled less than five percent of its total miles on-road. The on-road use was clearly incidental to the spreader's primary function of spreading fertilizer off-road.

The Co-op also argues that the dyed fuel penalty does not apply because (1) the Co-op is exempt from taxation pursuant to Code of Ala. 1975, §2-10-105; (2) the spreader is excepted from the dyed fuel penalty because it is permitted to use such fuel by 26 U.S.C. §4082 (see first sentence of §40-12-198(m)(4)c.); and (3) the spreader is a "farm tractor" or "implement of husbandry," and thus exempt from the motor fuel excise tax. The above arguments are moot given the above holding, and thus will not be addressed.

(II) Atmore Truckers.

Alabama levies an annual license tax and registration fee on every truck using the highways of Alabama. "Truck" is defined as "every self-propelled motor vehicle designed and used primarily for the transportation of property . . . ." Code of Ala. 1975, §40-12-240(24). Although initially manufactured as a truck, as modified and used by Atmore Truckers, the fertilizer spreader in issue is not a truck as defined above because it is not "designed and used primarily for the transportation of property . . . ." Rather, it is designed and used primarily to spread fertilizer and herbicides in the agricultural fields of its members. Consequently, it is not a truck required to be licensed under §40-12-248.

The spreader is also an implement of husbandry, and thus not subject to licensing when used on-road. "Implement of husbandry" is defined as "[e]very vehicle designed and adapted exclusively for agricultural, horticultural or livestock

raising operations or for lifting or carrying an implement of husbandry and in either case not subject to licensing and registration if used upon the highways." Code of Ala. 1975, §32-8-2(5).

The fertilizer spreader in issue is an implement of husbandry because, as modified by Atmore Truckers, it is designed, adapted, and used for exclusively agricultural purposes. The fact that the cab and chassis were initially manufactured as a truck is irrelevant. The purpose for which the spreader was designed and used by Atmore Truckers is controlling. As an implement of husbandry, the spreader is not subject to the §40-12-248 licensing provisions.

Atmore Truckers also raises several alternative arguments as to why the spreader is not subject to licensing, including (1) it is exempt from all taxation pursuant to §2-10-105, and (2) the spreader is a "farm tractor," and thus exempt from licensing under §40-12-251. However, like the alternative arguments made by Central Alabama Co-op, the above arguments are moot based on the above holding, and will not be addressed.

The final assessments in issue are dismissed.

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

Entered January 18, 2002.