

OASIS AVIATION, INC. §
5777 West Century Blvd., Suite 1205
Los Angeles, California 90045, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

DOCKET NO. MISC. 96-174

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department denied a refund of motor fuel excise tax requested by Oasis Aviation, Inc. ("Oasis") for March and April 1993. Oasis appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on August 22, 1996. Oasis filed a written response in lieu of appearing. Assistant Counsel Claude Patton represented the Department.

The issues are (1) was the tax in issue erroneously paid, and (2) should the refund be denied in any case because Oasis did not pay the tax directly to the Department.

Oasis purchased 50,974 gallons of diesel fuel from Louis Dreyfus Energy ("Dreyfus") in March and April 1993. Oasis paid Dreyfus \$8,665.00 in Alabama excise tax when it purchased the diesel. Oasis subsequently resold the diesel to International Paper, which used the fuel for exempt off-road purposes in Alabama.

When Oasis purchased the diesel, it also applied for an Alabama gasoline license with the Department. However, a license was not issued until October 1993 because Oasis failed to initially provide the necessary information.

Oasis later learned that International Paper intended to use

the fuel for an exempt off-road purpose. Oasis petitioned the Department for a refund of the tax paid to Dreyfus. The Department denied the refund, and Oasis appealed to the Administrative Law Division.

Motor fuel is taxable in Alabama only if used for on-road purposes. Section §40-17-11 provides that the sale of motor fuel is not taxable unless (1) the seller delivers the motor fuel into a vehicle for on-road use, (2) the seller delivers the motor fuel into dispensing equipment designed and used to supply motor fuel into on-road vehicles, or (3) the seller otherwise knows or has reason to know that the fuel will be used for on-road purposes. Tax is not owed unless one of the three circumstances above is present, even if the purchaser is unlicensed.

Oasis was unlicensed when it purchased the motor fuel in issue. But it is undisputed that the motor fuel was intended to be used and was used by International Paper for exempt off-road purposes. Consequently, Oasis should not have paid tax when it purchased the fuel from Dreyfus. See also, Department of Revenue v. Petroleum Suppliers, Inc., Misc. 92-191 (Admin. Law Div. 2/10/94).

However, a refund still cannot be issued to Oasis because Oasis did not pay the tax to the Department. Oasis paid Dreyfus, and Dreyfus remitted the tax to the Department. Oasis should accordingly amend its petition for refund by filing an amended

petition jointly with Dreyfus. The refund should then be granted. Otherwise, the refund must be denied.

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

Entered September 3, 1996.

BILL THOMPSON
Chief Administrative Law Judge