

BAMA CONCRETE PRODUCTS CO., INC.	§	STATE OF ALABAMA
Post Office Box 1099		DEPARTMENT OF REVENUE
Tuscaloosa, Alabama 35403,	§	ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. MISC. 96-220
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

The Revenue Department assessed motor fuel excise tax against Bama Concrete Products Co., Inc. ("Taxpayer") for the period November 2, 1995. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on July 19, 1996. Ronald H. Davis represented the Taxpayer. Assistant Counsel John Breckenridge represented the Department.

The issue in this case is whether the Department correctly assessed the Taxpayer for the \$1,000.00 per truck penalty levied at Code of Ala. 1975, §40-12-198(m)(4)c. That section levies a penalty on any vehicle using dyed fuel for highway purposes.

The Taxpayer operates a trucking company in Tuscaloosa, Alabama. The IRS inspected five of the Taxpayer's trucks on November 2, 1995, and found dyed fuel in the fuel tanks. Dyed fuel is untaxed fuel that can only be used for tax-exempt off-road purposes.

Using the IRS information, the Department assessed the \$1,000.00 per vehicle penalty levied at §40-12-198(m)(4)c. That section levies a penalty of \$1,000.00 or \$10.00 per gallon,

whichever is greater, against any person using dyed fuel in a motor vehicle on the highways of Alabama.

The Taxpayer concedes that the five trucks were using dyed fuel. However, it argues that the dyed fuel was pumped into its on-road supply tank by mistake or oversight by an employee. According to the Taxpayer, a supplier delivered off-road fuel to its Tuscaloosa plant on October 26, 1995. After the off-road supply tank was filled, one of the Taxpayer's employees directed the supplier to pump the remainder of the dyed off-road fuel into the on-road supply tank. The Taxpayer argues that it was unaware of the mistake until the IRS inspection.

Code of Ala. 1975, §40-2A-11(h), as amended by Act 95-607, provides that no penalty under Title 40 shall be assessed, and if assessed, shall be waived, for reasonable cause. Reasonable cause includes those instances in which a taxpayer has acted in good faith. See generally, Compaq Computer Corp. v. State, Admin. Law Docket No. F. 95-435, decided February 12, 1996.

Unfortunately for the Taxpayer, oversight or neglect by an employee does not constitute reasonable cause to waive the penalties in question. While management might not have known about the mistake, the Taxpayer must be held responsible for the actions of its employees.

The above considered, the final assessment is affirmed. Judgment is entered against the Taxpayer for \$5,000.00.

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

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Entered July 24, 1996.

BILL THOMPSON
Chief Administrative Law Judge