

HUEY STEVEN KIRKLAND
Route 1, Box 114
Columbia, Alabama 36319,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. MISC. 96-260

FINAL ORDER

The Revenue Department assessed motor fuel excise tax against Huey Steven Kirkland ("Taxpayer") for the period December 4, 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 22, 1996. The Taxpayer represented himself at the hearing.

Assistant Counsel Claude Patton and Legal Assistant Vicky Underwood represented the Department.

The issue in this case is whether the \$1,000.00 penalty levied against the Taxpayer pursuant to Code of Ala. 1975, §40-12-198(m)(4)c. should be waived for reasonable cause.

The Revenue Department stopped the Taxpayer's truck on December 4, 1995, and discovered dyed fuel in the truck's gas tank.

Dyed fuel is untaxed fuel that should be used for off-road purposes only. The Department accordingly assessed the Taxpayer the \$1,000.00 penalty levied at §40-12-198(m)(4)c.

The Taxpayer concedes that dyed fuel was in his truck's gas tank. He explains, however, that his business partner purchased the vehicle two days earlier on December 2, 1995, and that the dyed fuel was in the gas tank when the truck was purchased. The Taxpayer

contends that the truck's gas gauge was broken, and he purchased \$10.00 worth of gas at a service station on December 2 to insure that the truck did not run out of gas. He later filled the truck up at a gas station on December 3, buying \$22.65 worth of taxed fuel. The Taxpayer has an off-road fuel supply tank at his business location. However, he testified that he did not pump any of his dyed fuel in the truck.

Code of Ala. 1975, §40-2A-11(h), as amended by Act 95-607, provides that no penalty levied 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. The above waiver statute expressly applies to all penalties levied in Title 40, not just those penalties in §40-2A-11.

I believe the Taxpayer in this case. He testified that he purchased only taxed fuel and did not put any dyed fuel in the truck. The truck contained some fuel when it was purchased. If the existing fuel was dyed, the additional fuel pumped into the tank would also be dyed.

Under the circumstances, the Taxpayer acted in good faith and could not have reasonably known that the existing fuel in the tank was dyed. Consequently, reasonable cause exists to waive the penalty in question. The final assessment is accordingly dismissed.

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

Entered July 24, 1996.

BILL THOMPSON
Chief Administrative Law Judge