

GILES, INC. § STATE OF ALABAMA
Route 2, Box 72 DEPARTMENT OF REVENUE
Maplesville, Alabama 36750, § ADMINISTRATIVE LAW DIVISION
Taxpayer, § DOCKET NO. MISC. 96-284
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed motor fuel excise tax against Giles, Inc. ("Taxpayer") for the period March 5, 1996. 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 August 20, 1996. Betty Giles 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 penalty levied at Code of Ala. 1975, §40-12-198(m)(4)c. If so, should the penalty be waived for reasonable cause.

A Department enforcement officer stopped a truck owned by the Taxpayer on Highway 80 in Mt. Meigs, Alabama on March 5, 1996. The officer inspected the vehicle and discovered red-dyed diesel fuel in the gas tank. Dyed fuel is untaxed fuel that should only be used for off-road purposes. The Department accordingly assessed the Taxpayer the minimum \$1,000.00 penalty levied at §40-12-198(m)(4)c. for using dyed fuel on the highway.

The Taxpayer concedes that the vehicle had red dye in its fuel tank. The Taxpayer explains, however, that the truck was out of

gas and two employees in the truck pumped dyed fuel from a supply tank on the truck into the truck's fuel tank so they could drive to the closest gas station to refuel. Betty Giles testified that she did not know how many gallons of dyed fuel were pumped into the vehicle's fuel tank.

The laboratory analysis of the fuel sample taken by the Department indicated a dye level at 13.3 parts per million. Billy Dyer, an IRS employee, testified that the 13.3 reading indicates that the tank contained almost 100 percent dyed fuel.

The penalty levied at §40-12-198(m)(4)c. applies in this case because the subject vehicle had dyed fuel in its tank. The question then is whether reasonable cause exists to waive the penalty. In my opinion, it does not.

Section 40-12-198 clearly prohibits the use of dyed fuel for on-road purposes. I can understand why the Taxpayer's employees decided to put the dyed fuel in the truck. However, by doing so they violated §40-12-198. Although it would have been inconvenient, the employees could have waited and put taxed fuel in the truck. They elected not to. The high level of dye in the fuel analysis also raises questions about how much dyed fuel was put in the vehicle.

Because the Taxpayer's employees knowingly used dyed fuel for on-road purposes, reasonable cause does not exist to waive the minimum \$1,000.00 penalty in question. The final assessment is

affirmed. Judgment is entered accordingly.

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

Entered August 22, 1996.

BILL THOMPSON
Chief Administrative Law Judge