

MERRITT OIL COMPANY, INC.
952 2 S. Conception Street
Mobile, Alabama 36652,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. MISC. 96-441

FINAL ORDER

The Revenue Department assessed Lowndes County gasoline excise tax against Merritt Oil Company, Inc. ("Taxpayer") for February 1994 through January 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 January 9, 1997 in Mobile. Jerome Speegle represented the Taxpayer. Assistant Counsel Duncan Crow represented the Department.

This case involves two issues:

(1) Was the Taxpayer denied due process because the Department failed to notify it concerning the existence of the Lowndes County tax; and

(2) Are the Legislative Acts under which the Lowndes County tax was levied unconstitutional. Specifically, do the Acts violate ' 354 of the Alabama Constitution because the proceeds are designated for something other than highway or bridge use, and did Act 88-267 incorrectly originate in the Senate, in violation of Art. 4, ' 70 of the Alabama Constitution.

The facts are as follows:

The Taxpayer is a motor fuel distributor located in Mobile, Alabama. The Taxpayer sold gasoline to Stuckey's on I-65 in Lowndes County during the subject period. The gasoline was delivered by common carrier to the Stuckey's location. However, the billing location was "Stuckey's Hope Hull, Alabama." Hope Hull is located in Montgomery County. Consequently, the Taxpayer was unaware that Lowndes County tax might be due.

The Alabama Legislature passed four Acts from 1987 through 1989 that allowed Lowndes County to levy a gasoline excise tax. The Lowndes County Commission passed a resolution in July 1988 authorizing a \$.02 per gallon tax.

The Department's procedure is to notify all licensed gasoline distributors in Alabama when a city or county enacts a new motor fuel tax. However, it is not known whether the Department actually notified the Taxpayer in this case concerning the Lowndes County tax. The Taxpayer's vice president testified that he never saw a notice, although his partner usually opens the mail.

The Taxpayer failed to collect and remit the Lowndes County tax in issue until August or September 1995. Someone from Montgomery contacted the Taxpayer at that time and inquired concerning the Lowndes County tax. The Taxpayer subsequently realized that Stuckey's was in Lowndes County, and accordingly began collecting and remitting the Lowndes County tax to the Department.

The Department audited the Taxpayer for February 1994 through January 1996. The auditor discovered that the Taxpayer had failed to pay the Lowndes County tax

before September 1995, and accordingly assessed the tax in issue.

Concerning the Taxpayer's due process argument, I know of no statute or Department regulation requiring the Department to notify a specific taxpayer or group of taxpayers concerning the passage or existence of any tax. Nonetheless, the Department routinely notifies all gasoline distributors in Alabama when a new local tax is enacted. But as stated, there is no evidence in this case that the Taxpayer was notified by the Department concerning the Lowndes County tax.

In any case, however, the notice issue is a constitutional due process question. The Department is correct that the Administrative Law Division is without authority to decide such questions. Beaird v. City of Hokes Bluff, 595 So.2d 903 (1992); Curtis v. Taylor, 648 F.2d 946 (1980).

Likewise, the Taxpayer's remaining arguments concerning the validity of the Legislative Acts are also constitutional questions that cannot be addressed by the Administrative Law Division.

Aside from the constitutional issues, the Taxpayer does not dispute the amount of the assessment. Accordingly, the assessment is affirmed. Judgment is entered against the Taxpayer for Lowndes County excise tax of \$43,605.32, plus applicable interest.

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

Entered March 12, 1997.

BILL THOMPSON

Chief Administrative Law Judge