

DEWEY J. DILL
2725 Firethorn Drive
Tuscaloosa, AL 35404,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. MISC. 98-418

FINAL ORDER

The Revenue Department assessed a penalty against Dewey J. Dill (ATaxpayer@) for using untaxed dyed fuel in a vehicle on the highways of Alabama. 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 December 9, 1998. The Taxpayer represented himself. Assistant Counsel John Breckenridge represented the Department.

Code of Ala. 1975, ' 40-12-198(m)(4)c. levies a penalty against any person using untaxed, dyed fuel on a highway in Alabama. The issue in this case is whether the Department correctly assessed the Taxpayer for the dyed fuel penalty. If so, a second issue is whether the penalty should be waived for reasonable cause.

The Taxpayer, a retired aircraft mechanic, buys and sells horses as a hobby. He transports horses in a horse trailer pulled by a Ford truck.

A Revenue Department Enforcement Officer stopped the Taxpayer in his truck in Moulton, Alabama on January 6, 1998. The Enforcement Officer obtained

a fuel sample from the truck's fuel tank. The fuel was tested by the United States Air Force Aerospace Fuels Laboratory. The test indicated that the fuel contained 1.3 mg/L of red dye (Exhibit 2). Mg/L indicates milligrams per liter. The Department accordingly assessed the

Taxpayer for the minimum \$1000 dyed fuel penalty levied at ' 40-12-198(m)(4)c.

The Taxpayer denies that he intentionally used dyed fuel in his truck. He argues that he uses the truck on-road only a few times a year to haul horses, and that it would be foolish for him to risk using dyed fuel to save only a few cents a year. The Taxpayer explained that if dyed fuel was in his truck, it was because an undyed fuel supply tank at one of the gas stations at which he purchased diesel was contaminated with dyed fuel. Section 40-12-198(m)(4)c. does not specify a minimum level of dye necessary to trigger the penalty. There is evidence that the Taxpayer's truck contained dyed fuel. The penalty thus applies in this case. The question is whether the penalty should be waived for reasonable cause.

The Department follows the IRS policy that if a fuel sample contains less than 1.0 mg/L of dye, no penalty will be assessed. The dye level in the Taxpayer's truck measured 1.3 mg/L, or just over the allowable amount.

The Enforcement Officer that stopped the Taxpayer testified that most fuel distributors over-dye fuel intended for off-road use to insure that it can be detected. Hunt Oil, a major oil distributor in Alabama, normally puts 43 milligrams

of dye per gallon in its off-road diesel. In prior dyed fuel penalty appeals heard by the Administrative Law Division, the dye level in the fuel greatly exceeded the 1.0 mg/L level. For example, in

Giles, Inc. v. State of Alabama, Docket Misc. 96-284 (Admin. Law Div.8/22/96), the dye measured 13.3 mg/L. In H. W. Watson and Son Logging v. State of Alabama, Docket Misc. 98-534 (Admin. Law Div. Final Order on Application for Rehearing 5/24/99), the dye level was 14.7 mg/L.

The above facts indicate that if the Taxpayer had filled his truck with dyed fuel, the dye level would have been much higher than 1.3 mg/L. It is also possible that a gasoline station's undyed fuel supply tank could become contaminated with dyed fuel. I assume that is why the Department allows some dye in on-road fuel without assessing the penalty. I also believe the Taxpayer's sworn testimony that he did not intentionally put dyed fuel in his truck. Given that the dye level in the Taxpayer's truck was only a small fraction over the 1.0 mg/L level allowed by the Department, it is reasonable to conclude that the Taxpayer did not intentionally put dyed fuel in the truck. The penalty is waived for reasonable cause pursuant to Code of Ala. 1975, ' 40-2A-11(h).

The Taxpayer is concerned that if he is stopped again, dyed fuel may again be found in his truck. I would suggest that the Taxpayer remove all traces of dyed fuel from the truck. He should keep an exact log of all diesel purchased, the truck's odometer reading at the time of purchase, and the gallons purchased. He should also obtain dated, signed receipts from the seller showing that he purchased taxed, undyed fuel.

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

Entered June 17, 1999.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: John Breckenridge, Esq.
Dewey J. Dill
Floyd Atkins