

HALE COUNTY EMERGENCY
MEDICAL SERVICE
P.O. Box 398
Greensboro, AL 36744,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Petitioner,

DOCKET NO. MISC. 98-515

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER
ON APPLICATION FOR REHEARING

This appeal involves a disputed refund of motor fuel excise tax requested by Hale County Emergency Medical Service. The Emergency Medical Service paid the tax in issue when it purchased fuel for use in its ambulances. A hearing was conducted on February 4, 1999. A Final Order was entered on February 12, 1999 holding that the refund should be issued. The Department applied for a rehearing, and a rehearing was conducted on April 15, 1999. Colonel Charles Ramsey again represented the Emergency Medical Service. Assistant Counsel Keith Maddox again represented the Department.

This case involves two exemption statutes, Code of Ala. 1975, ' 22-21-333 and 40-17-2(2)c.

Section 22-21-333 exempts Health Care Authorities from all taxation by the State, including all excise taxes. The Final Order held that the Emergency Medical Service, as a part of The Hale County Health Care Authority, is exempt from motor fuel excise tax pursuant to ' 22-21-333.

The Department argues on rehearing that ' 22-21-333 does not apply because the

motor fuel tax was on the party that sold the fuel to the Emergency Medical Service, and not directly on the Emergency Medical Service. Consequently, according to the Department, the sale by the non-exempt seller was the taxable event, and it is irrelevant that the Emergency Medical Service is exempt. The Department may be correct on that point. But even if the fuel is not exempt pursuant to '22-21-333, it is exempt under '40-17-2(2)c.

Section 40-17-2(2)c. exempts the sale of motor fuel to governing bodies of counties and incorporated municipalities. Section 40-17-2(3) provides that the end user may apply for a refund of tax if the fuel was used for an exempt purpose or sold to an exempt entity, including sales to the governing body of a county.

The Department concedes that the Emergency Medical Service is part of The Hale County Health Care Authority. It argues, however, that The Hale County Health Care Authority is not exempt pursuant to '40-17-2(2)c. because it is not part of the governing body of Hale County. The Department distinguishes between **A**governing body[@] and **A**authority[@] based on the statutory definition of those terms at Code of Ala. 1975, '' 22-21-311(a)(2) and 22-21-311(a)(12). The Department contends that the terms are not interchangeable.

I agree that a Health Care Authority is, by definition, distinct from a county commission. In this case, however, The Hale County Commission designated The Hale County Health Care Authority as an agent of Hale County on November 23, 1993. An agent or agency acts on behalf of the principal in performing the duties for which the

agency status was granted. Consequently, the Emergency Medical Service, as part of The Hale County Health Care Authority, was acting as an agent of the Hale County

Commission when it purchased the motor fuel in issue. The Emergency Medical Service is thus entitled to a refund.

The Final Order is affirmed. This Final Order On Application For Rehearing may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, '' 40-2A-9(f) and (g).

Entered April 23, 1999.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: Keith Maddox, Esq.
Colonel Charles E. Ramsey, Jr.
Floyd Atkins