H. W. WATSON D/B/A H. W. WATSON & SON LOGGING INCORPORATED 2441 Hwy. 9 Vina, AL 35593,	'	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	'	DOCKET NO. MISC. 98-534
v.	'	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	'	

FINAL ORDER

The Revenue Department assessed a penalty against H. W. Watson & Son Logging, Inc. for using dyed diesel fuel in a vehicle on a highway in Alabama. H. W. Watson (ATaxpayer@) appealed to the Administrative Law Division pursuant to Code of Ala. 1975, '40-2A-7(b)(5)a. A hearing was conducted on March 2, 1999. Assistant Counsel Keith Maddox represented the Department. The Taxpayer represented his corporation.

Code of Ala. 1975, '40-12-198(m)(4)c. levies a minimum $1,000 penalty for using untaxed, dyed fuel in a motor vehicle on the highways of Alabama. The issue in this case is whether the penalty applies to a vehicle used primarily for off-road purposes, and only incidentally used on a highway in Alabama.

The Taxpayer owns and operates a logging business in North Alabama. On June 29, 1998, an Alabama State Trooper stopped a truck owned by the Taxpayer on a highway in Franklin County, Alabama. A fuel sample taken from the truck contained 14.7 milligrams per liter of dye. The Department consequently assessed

the Taxpayer for the $1,000 penalty levied at '40-12-198(m)(4)c. The Taxpayer appealed.

The Taxpayer concedes that the vehicle contained dyed fuel. He argues, however, that the vehicle is used primarily off-road to haul logs out of the woods, and is only incidentally driven on-road.

The Taxpayer uses three large trucks in his logging operation. Two of the trucks are used to haul logs over the highways. The Taxpayer uses taxed, undyed fuel in those trucks. The Taxpayer uses the truck in issue to pull trailers loaded with logs out of the woods to a central location, or Adollying down@ area. The loaded trailers are later picked up by one of the Taxpayer=s on-road trucks and delivered to the customer. The Taxpayer tries to select a dollying down area that is centrally located to the area he is logging.

The truck in issue must generally travel a short distance on-road from the woods to the dollying down area. The distance generally is not more than a mile or two. The truck was either taking a loaded trailer to the dollying down area or returning to the woods with an empty trailer when it was stopped by the State Trooper. When the Taxpayer completes logging in an area, the truck is loaded on a low-boy trailer and moved to the next logging site, the same as the Taxpayer=s skidder, loader, and other off-road equipment.

The Taxpayer purchased the truck in 1994 and 1995. He has always used dyed fuel in the truck, and has never purchased a tag for the vehicle. The Taxpayer telephoned the Revenue Department and inquired whether he could use dyed fuel in the truck. The Taxpayer claims that the Department employee

that he talked to, Vince Arnold, told him that if the truck was not tagged and was not used on the highway, it could be operated with dyed fuel. That conversation confirmed the Taxpayer=s understanding that he could use dyed fuel in the truck.

The dyed fuel penalty applies to any motor vehicle using dyed fuel on a highway in Alabama. '40-12-198(m)(4)c. The statute does not specify that a minimum amount of on-road use is required before the penalty applies. In interpreting a statute, however, the intent of the Legislature must be followed. Gulf Coast Media, Inc. v. The Mobile Press Register, 470 So.2d 1211 (1986). In determining the Legislature=s intent, the purpose and object of a statute must be considered, and a Asensible construction must be given to a statute and any general terms used in a statute should be so limited as to give a practical, reasonable, and sensible application@. Bean Dredging Corp. v. State, 454 So.2d 1009, 1011 (1984); BP Exploration and Oil, Inc. v. Hopkins, 678 So.2d 1052 (1996); McGuire Oil Company v. Mapco, Inc., 612 So.2d 417 (1992) The Aplain language rule@ of statutory construction should not be followed when the practical consequences would lead to unjust or impractical results. Birmingham News Company v. Patterson, 202 F. Supp. 881 (1960).

In Escambia Farm and Seed Co., Inc. v. State of Alabama, Docket Misc. 97-473 (Admin. Law Div. 03/02/98) the Administrative Law Division ruled that a fertilizer spreader used primarily for off-road purposes and only incidentally moved on the highway could use dyed fuel and was not subject to the penalty.

> A...The dyed fuel penalty should not be construed to apply to farm and other equipment that is designed and used solely for off-road purposes and is only incidentally moved over a highway to get from one location to another. The above category would generally include those vehicles defined as >special mobile equipment= at '32-8-2(20), and which are exempt from the title law. Such equipment is easily identified, and this holding will not hinder the State from enforcing the dyed fuel law. An exception would be a vehicle originally designed for off-road use that is being used to transport persons or property on-road. Such exceptions would be determined on the facts of each case.@

Escambia Farm and Seed, at pp. 3, 4.

ASpecial mobile equipment@ is defined as Aevery vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over the highway,...@ Section 32-8-2(20). The Taxpayer=s truck can be distinguished from the fertilizer spreader in Escambia Farm and Seed because it was not designed for off-road use. As modified, however, the truck is used by the Taxpayer primarily for off-road purposes, and is only incidentally used on-road when traveling to and from the dollying down area. Consequently, the truck, as used by the Taxpayer, constitutes special mobile equipment, and is not subject to the dyed fuel penalty. The final assessment is accordingly dismissed.

The State Trooper that cited the Taxpayer did his duty because he understood that any truck being operated on-road must use undyed fuel. It is clear from the circumstances, however, that the truck is used primarily off-road, and is only incidentally used on-road. I do not believe that the Legislature intended for

the penalty to apply in those circumstances. Whether a vehicle should be cited for the penalty must be determined on the facts of each case. The burden of proving that a vehicle is being used primarily off-road and only incidentally on-road is clearly on the owner/operator. The Taxpayer carried that burden in this case.

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

Entered April 8, 1999.

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BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: Keith Maddox, Esq.
H. W. Watson
Floyd Atkins