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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

DOCKET NO. MISC. 98-534

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER ON
APPLICATION FOR REHEARING

The Final Order entered in this case on April 8, 1999 held that the dyed fuel penalty levied at Code of Ala. 1975, ' 40-12-198(m)(4)c. did not apply to a truck used by the Taxpayer to haul logs out of the woods. Assistant Counsel Keith Maddox applied for a rehearing for the Department, and submitted an excellent brief in support of the application. On review, I now agree with the Department that the Taxpayer is required to use taxed, undyed fuel in the truck. However, as explained below, the \$1000 penalty in issue should be waived for reasonable cause.

I affirm the holding that Aspecial mobile equipment@can use dyed fuel and not be subject to the dyed fuel penalty provisions. The fertilizer spreader in issue in Escambia Farm & Seed Co. v. State of Alabama, Docket MISC. 97-473 (Admin. Law Div. 3/2/98), is a good example of special mobile equipment.

The Final Order in this case held that the Taxpayer's truck also constituted

special mobile equipment. That holding is incorrect. As convincingly argued by the Department, the Taxpayer's truck is not special mobile equipment because it is not ~~A~~only incidentally

operated^o on the highways of Alabama. Rather, the Taxpayer uses the truck regularly and systematically to haul logs over the highway.

The Department is correct that the truck may travel more miles on-road than off-road on any given day. The truck travels on-road only a couple of miles to and from the dollying down area, but it does that daily on a regular basis. The motor fuel excise taxes are used to maintain Alabama's roads and bridges. The Taxpayer benefits from those roads and bridges when he regularly uses the truck on-road. He should be required to pay his fair share. The Taxpayer must use taxed, undyed diesel in all of his trucks used on-road, including the truck in issue.

Any penalty levied in Title 40, Code of Ala. 1975, including the dyed fuel penalty, can be waived for reasonable cause. Reasonable cause includes those instances in which a taxpayer acts in good faith. Code of Ala. 1975, ' 40-2A-11(h).

The Taxpayer's testimony at the March 2 hearing established that he believed in good faith that he could use dyed fuel in the truck in issue. The Taxpayer telephoned the Revenue Department to confirm that he could use dyed fuel in the truck. A Department employee informed him that dyed fuel could be used if the truck was unlicensed and was used off-road. The truck was unlicensed, and the Taxpayer believed that the truck was being used for off-road purposes. The Taxpayer was wrong in that the truck was also used on-road. But based on his conversation with the Department, the Taxpayer believed in good faith that he could use dyed fuel in the truck. The Final Order is affirmed to the extent that the

final assessment in issue is dismissed.

The Taxpayer is on notice that taxed, undyed fuel must be used in all three of his trucks used on-road.

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

Entered May 24, 1999.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

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