

M. F. GARDNER OIL CO., INC.
P.O. Box 218
Scottsboro, AL 35768,

' STATE OF ALABAMA
DEPARTMENT OF REVENUE
' ADMINISTRATIVE LAW DIVISION

Taxpayer,

' DOCKET NO. MISC. 99-291

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department denied a refund of motor fuel excise tax requested by M. F. Gardner Oil Company, Inc. (ATaxpayer@) for January and February 1998. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(c)(5)a. A hearing was conducted on August 17, 1999. M. F. Gardner, Sr. represented the Taxpayer. Assistant Counsel Keith Maddox represented the Department.

The issue in this case is whether the Department is authorized or required to issue the Taxpayer a refund of the tax in question.

The Taxpayer is a licensed motor fuel distributor in Scottsboro, Alabama. The Taxpayer purchased motor fuel from a Tennessee supplier during the subject months. The Taxpayer resold the fuel tax-free to tax-exempt entities in Alabama.

When the Taxpayer purchased the fuel from the Tennessee supplier, Tennessee law required the Taxpayer to pay either the Tennessee motor fuel tax, or the motor fuel tax levied by the state in which the fuel was to be resold.

Because the Taxpayer intended to resell the fuel in Alabama, it accordingly paid the Alabama motor fuel tax to the Tennessee supplier. The Tennessee supplier remitted the tax to the Alabama Revenue Department.

The Taxpayer petitioned for a refund because the fuel was sold to tax-exempt entities in Alabama. The Department concedes that the tax was sold to exempt entities in Alabama. The Department denied the refund, however, because the Tennessee supplier paid the tax to the Department, not the Taxpayer. The Department contends that under the circumstances, only the end-user can apply for a refund, citing Code of Ala. 1975, ' 40-17-220(g). I disagree.

Section 40-12-220(g) concerns situations where the end-user has paid motor fuel tax on fuel that is later used for an exempt purpose. In that case, the end-user is allowed to apply for a refund on a quarterly basis.

Section 40-12-220(g) does not apply in this case because the end user did not pay the tax. Rather, the Taxpayer paid the Tennessee supplier, and the supplier remitted the tax to the Department. Code of Ala. 1975, ' 40-17-220(f) specifies that a licensed distributor may request a refund for certain exempt sales of motor fuel on which tax was paid. As indicated, the fuel in question was sold for an exempt purpose. Consequently, if the Taxpayer had paid the tax to the Department, there is no question it would be entitled to a refund. The Taxpayer should amend its petition for refund by filing a joint petition with the Tennessee supplier. The refund should then be granted. Otherwise, the refund cannot be issued. See, Oasis Aviation, Inc. v. State of Alabama, Misc. 96-174 (Admin. Law Div. 9/3/96).

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

Entered August 31, 1999.

BILL THOMPSON
Chief Administrative Law Judge

BT: ks

cc: Keith Maddox, Esq.
M. F. Gardner
Floyd Atkins