

WILLIAM M. HESTER
327 Lonnie Drive
Muscle Shoals, AL 35661,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

' STATE OF ALABAMA
' DEPARTMENT OF REVENUE
' ADMINISTRATIVE LAW DIVISION

' DOCKET NO. MISC. 99-301

FINAL ORDER

The Revenue Department assessed motor fuel excise tax against William M. Hester (ATaxpayer@) for August 31, 1998. 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 September 1, 1999. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel John Breckenridge represented the Department.

The issue in this case is whether the Department properly assessed the Taxpayer for the \$1,000 penalty levied at Code of Ala. 1975, ' 40-12-198(m)(4)c. for using dyed motor fuel on the highways of Alabama.

An Alabama State Trooper stopped a 1980 Volvo truck owned by the Taxpayer on August 31, 1998 in Jefferson County, Alabama. The truck was being driven by James J. Wehunt. The trooper obtained a fuel sample from the vehicle's gas tank. The sample was submitted to the U. S. Air Force Aerospace Fuels Laboratory, which concluded that the sample contained 8.3Mg/L of dyed fuel.

The Department accordingly assessed the Taxpayer the \$1,000 penalty levied at '40-12-198(m)(4)c. for using dyed fuel for on-road purposes. The Taxpayer appealed.

The Taxpayer's appeal letter reads as follows:

We would like to request an abatement of the penalty on the attached form. On August 31, 1998 I told James J. Wehunt to drive a 1980 Volvo from a completed job-site to one we were starting. These sites were about 15 miles apart. While moving this truck an officer checked the fuel and found non-tax fuel in the tank and wrote him a citation.

This truck is used on job-sites for mechanical work. Unknown to Mr. Wehunt and myself, another employee had put this non-tax fuel in the truck. This action was not approved by myself or the job-site foreman. All employees are instructed to use on-road fuel in any vehicle that can be driven on the road, and the tanks are properly marked. The person who put the fuel in the truck has not worked for me since July, 1998. This truck is driven less than 250 miles per year.@

I understand that the Taxpayer was not aware that one of his employees had put dyed fuel in the vehicle. However, the Taxpayer is responsible for and must bear the consequences of his employees' actions. Because it is undisputed that the vehicle unlawfully contained untaxed dyed fuel, the penalty must be affirmed. Judgment is entered against the Taxpayer for \$1000.

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

Entered September 10, 1999.

BILL THOMPSON
Chief Administrative Law Judge

BT: ks

cc: John Breckenridge, Esq.
William M. Hester
Floyd Atkins