

BYROM OIL COMPANY, INC. '
605 Oakwood Avenue '
Huntsville, AL 35804, '

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, '
v. '

DOCKET NO. MISC. 99-465
MISC. 99-470

STATE OF ALABAMA '
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed gasoline excise tax against Byrom Oil Company, Inc. (ATaxpayer@) for June and July 1999. The Department also assessed the Taxpayer for motor fuel excise tax for July 1999. The Taxpayer appealed the final assessments to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(b)(5)a.

The Department also notified the Taxpayer that it intended to revoke the Taxpayer's gasoline distributor's license. The Taxpayer appealed the intended revocation of its license to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-8(a).

The appeals were consolidated, and a hearing was conducted on December 8, 1999. The Taxpayer's President, Jerry Byrom, and CPA Danny Alm represented the Taxpayer. Assistant Counsel John Breckenridge represented the Department.

The Taxpayer concedes that the tax, interest, and disallowed discounts assessed by the Department are correct. The disputed issues are:

- (1) Should the penalties assessed by the Department be waived for reasonable cause pursuant to Code of Ala. 1975, ' 40-2A-11(h); and

(2) Is the Department authorized to revoke the Taxpayer's distributor's license pursuant to Code of Ala. 1975, ' 40-12-195?

The Taxpayer is a licensed gasoline and motor fuel distributor, and has operated in Alabama for approximately thirty years. The Taxpayer failed to timely pay its Alabama gasoline tax liability for June 1999. The Taxpayer also failed to timely report and pay its July 1999 gasoline and motor fuel liabilities. The Department accordingly assessed the Taxpayer for the reported amounts due. The ten percent failure to timely pay penalty was added to the June 1999 gasoline tax final assessment. The ten percent failure to timely pay and file penalties were both added to the July 1999 gasoline and motor fuel final assessments. The Department also added applicable interest, and disallowed the discounts claimed by the Taxpayer pursuant to Code of Ala. 1975, ' 40-17-38, relating to the gasoline tax, and Code of Ala. 1975, ' 40-17-290, relating to the motor fuel tax.

The Department subsequently notified the Taxpayer that its gasoline distributor's license would be revoked if the June and July 1999 liabilities were not paid. The Taxpayer appealed the proposed revocation of its license to the Administrative Law Division.

Issue I - The Penalties.

The Department is authorized to waive a penalty for reasonable cause. ' 40-2A-11(h). The Taxpayer argued at the December 8 hearing that the penalties in issue should be waived based on its exemplary past filing history of timely filing and paying its taxes. I disagree.

The Department established that the Taxpayer failed to timely report and pay its gasoline liabilities for July, August, and September 1998, and also February and May

1999. The Taxpayer also failed to timely report and pay its motor fuel taxes for July and December 1988, and January and April 1999. The Taxpayer still owes outstanding tax, interest, and penalties for those months, in addition to the outstanding tax, interest, and penalties owed on the June and July 1999 final assessments in issue. Under the circumstances, reasonable cause does not exist to waive the delinquent penalties assessed by the Department.

Issue II - Revocation of the Taxpayer's Distributor's License.

The Revenue Department is authorized to revoke a distributor's license if the distributor shall fail to comply with any of the provisions of this article or to pay within the time required by law all excise taxes and penalties required to be paid by such distributor.®

As indicated, the Taxpayer acknowledges that it owes delinquent taxes. The Taxpayer claims, however, that it is in the process of selling property valued at approximately \$3 million for the purpose of paying off its Alabama gasoline and motor fuel liabilities.

I hope the Taxpayer is successful. However, the discretion to revoke a distributor's license is with the Department. As of December 8, 1999, the Taxpayer owed almost \$540,000 in delinquent gasoline and motor fuel taxes. With penalties and interest, the total amount owed was approximately \$639,000. The gasoline and motor fuel taxes are not levied on the Taxpayer, but rather are trust fund taxes that the Taxpayer is required to collect from its customers and remit to the Department. The Taxpayer instead collected and used the taxes to pay other creditors. Failure to remit the trust fund taxes clearly is sufficient cause to revoke the Taxpayer's license. The Department did not abuse its discretion in this case.

The final assessments in issue are affirmed. Judgment is entered against the Taxpayer for June 1999 gasoline tax in the amount of \$226,572.48, July 1999 gasoline tax in the amount of \$213,589.43, and July 1999 motor fuel excise tax in the amount of \$39,250.99. Applicable interest is also owed from the date of entry of the final assessments, August 27, 1999. The Department's revocation of the Taxpayer's distributor's license is affirmed.

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

Entered January 7, 2000.

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BILL THOMPSON  
Chief Administrative Law Judge

BT:dr

cc: John J. Breckenridge, Esq.  
Jerry Byrom, Jr.  
Danny Alm, CPA  
Floyd Atkins