

QUALITY PETROLEUM OF ALA., INC. §
112 Trade Center Drive
Birmingham, AL 35244,
DIVISION

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW

Petitioner,

§ DOCKET NO. MISC. 00-382

v.

§

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department denied refunds of gasoline and motor fuel excise tax claimed by Quality Petroleum of Alabama, Inc. ("Petitioner") for December 1996 through November 1999. The Petitioner appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on November 2, 2000. Warren Matthews represented the Petitioner. Assistant Counsel John Breckenridge represented the Department.

ISSUE

The issue in this case is whether the sale of gasoline and motor fuel by the Petitioner to the City of Anniston Housing Authority ("Housing Authority") was exempt from motor fuel and gasoline excise tax pursuant to Code of Ala. 1975, §§40-17-2(2)c. and 40-17-220(d)(4), respectively.

FACTS

The Petitioner is a licensed Alabama motor fuel distributor. The Petitioner sold gasoline and motor fuel to the Housing Authority during the period in question. The Petitioner collected motor fuel and gasoline excise tax on the products, and remitted the tax to the Department. The Petitioner subsequently

petitioned the Department for a refund of the tax. The Department denied the refund. The Petitioner appealed.

The Housing Authority was established as a nonprofit corporation by the City of Anniston in 1938. The Housing Authority is governed by a five member board appointed by the mayor of Anniston. The City of Anniston provides the Housing Authority with vehicles, which have municipal license tags. The Housing Authority is funded by rents from its housing units, and with operating funds from the Department of Housing and Urban Development.

Before the period in issue, the Housing Authority obtained its motor fuel and gasoline from the City of Anniston. Beginning in 1996, the Housing Authority began buying gasoline and motor fuel directly from the Petitioner. As indicated, the Petitioner collected gasoline and motor fuel tax on its sales to the Housing Authority, and remitted those amounts to the Department.

ANALYSIS

Section 40-17-2(2)c. exempts “all governing bodies of counties and incorporated municipalities” from the \$.13 per gallon motor fuel tax levied at Code of Ala. 1975, §40-17-2(1). Section 40-17-220(d)(4) also exempts “governing bodies of counties and incorporated municipalities” from the \$.04 per gallon tax levied at Code of Ala. 1975, §40-17-220(a).

The first question is whether the Housing Authority is an agency of the City of Anniston. The Alabama Supreme Court has held that a public corporation created by a municipal government to perform a municipal function is an agency of the municipality. *City of Montgomery v. Waterworks and Sanitary Sewer Board of the City of Montgomery*, 660 So.2d 588 (Ala. 1995). See also, *In re Opinion of the Justices*, 179 So. 535 (Ala. 1938). The Housing Authority created by the City of Anniston for the public purpose of providing

affordable housing to Anniston's low income citizens is thus an agency of that City.

The next question is whether an agency of a municipality is also exempt pursuant to the above statutes. A cardinal rule of statutory construction is that an exemption should be narrowly construed for the Department and against the exemption. *Fleming Foods of Alabama, Inc. v. Dept. of Revenue*, 648 So.2d 580, cert. denied 115 S.Ct. 1690 (1995); *State v. Chesebrough-Ponds, Inc.*, 441 So.2d 598 (1983).

The statutes in question exempt the governing bodies of counties and incorporated municipalities. Dept. Reg. 810-8-1-.22 reasonably defines "governing body" to be "that body of the county or incorporated municipality which performs the legislative function and has the ultimate power to determine the policies of the county or incorporated municipality and control the activities of the county or municipality." The Housing Authority clearly is not a governing body pursuant to the above definition.

The Legislature could have exempted agencies of counties and incorporated municipalities. It failed to do so. Applying the above rule of statutory construction, the Housing Authority is not the governing body of the City of Anniston, and thus is not exempt under §§40-17-2(2)c. and 40-17-220(d)(4). The refunds were properly denied by the Department.

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

Entered January 10, 2001.