

STATE OF ALABAMA  
DEPARTMENT OF REVENUE

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ADMINISTRATIVE LAW DIVISION

V.  
EDD OIL COMPANY, INC.,  
Taxpayer.

DOCKET NO. M. FUEL 83-102

FINAL ORDER

This matter involves a preliminary assessment of lubricating tax entered by the Revenue Department on November 14, 1983 against Edd Oil Company, Inc. for the period October 1, 1980 through September 30, 1983 in the amount of \$9,361.03.

A hearing was held on January 26, 1984 at which Edd Oil Company, Inc. was represented by its President, Mr. Wallace Eddins, and the Revenue Department was represented through counsel. Based on the testimony and exhibits introduced at the hearing, the following findings and conclusions are hereby entered.

FINDINGS OF FACT

Edd Oil Company, Inc. (hereinafter referred to as taxpayer) is based in Pachuta, Mississippi and does business in Florida, Alabama and Louisiana as well as Mississippi. Approximately eight-five percent of the taxpayer's business involves the sale of lubricating oil for use on drilling rigs, including stationary motors which are a part of said rigs.

Code of Alabama 1975, '40-17-171 levies a \$.02 per gallon excise tax on the sale of lubricating oil by any distributor, manufacturer or dealer. The taxpayer's liability for the \$.02 per

gallon tax is not in issue.

In 1980, the Legislature enacted Act No. 427, presently codified at Code of Alabama 1975, '49-17-220, which levies an additional \$.04 per gallon excise tax on lubricating oil as follows:

(b) Every manufacturer, distributor, refiner, retail dealer, storer or user of gasoline, motor fuel or lubricating oil shall collect and pay over to the state department of revenue an excise tax of \$.04 per gallon upon the selling, use or consumption, distributing, storing or withdrawing from storage int his state for any use of gasoline, motor fuel or lubricating oil as defined or otherwise referred to in this article, except gasoline, motor fuel and lubricating oil expressly exempted by the provisions of this article.

Subsection (d) of '40-17-220 states in part as follows:

(d) The following are expressly exempted from the provisions of this article:

\* \* \*

(5) Gasoline, motor fuel and lubricating oil sold to be used in off-road vehicles which presently do not require state licensing; specifically, but not limited to, forklifts and other like devices not for use on the streets and highways of this state;

Shortly after passage of Act 80-427, the Revenue Department mailed a copy of the Act to all dealers, distributors, storers and/or dual users of gasoline, motor fuel and lubricating oil. The Department cover letter mailed with the Act did not attempt to interpret Act 80-427, other than to say that an additional \$.04 per gallon lubricating oil tax was due, effective August 1, 1989.

The taxpayer, being unsure as to the scope of the new \$.04 per

gallon tax and exemptions relating thereto, called the Revenue Department for assistance. According to the testimony of Mr. Eddins, an unidentified employee of the Revenue Department informed him that sales made to service stations would be subject to both the \$.02 and \$.04 per gallon taxes, whereas all sales for non-highway use would be subject to the pre-1980 \$.02 per gallon tax only. Thereafter, the taxpayer collected and paid over \$.02 per gallon on lubricating oil sold for use in stationary drilling rig motors.

In October, 1983, the Revenue Department performed a lubricating oil tax audit on the taxpayer for the period October 1, 1980 through September 30, 1983. The Department found that during the audit period the taxpayer had reported and paid \$.02 per gallon on all lubricating oil sold for use on stationary drilling rigs.

Taking the position that the exemption contained in '40-17-220(d)(5) did not apply to lubricating oil sold for use in stationary motors such as those found on drilling rigs, the Department examiners set up an additional \$.04 per gallon tax on all sales made by the taxpayer during the period in question of lubricating oil used in stationary drilling rig motors. The assessment in issue is based entirely on the Department's finding that the additional \$.04 per gallon tax is due on the sale of oil used in stationary rig motors.

The taxpayer disputes the additional tax liability on the

grounds that during the period in issue the law was unclear to both the public and the Revenue Department and also that some distributors, dealers and oil companies were not being required to pay the additional \$.04 tax on the sale of lubricating oil for use in stationary drilling rigs motors. Further the taxpayer argues that it was informed by a Revenue Department employee that the tax was not due on the sale of lubricating oil for non-highway use.

The testimony of Revenue Department employee Jim Holmes does establish that some dealers and distributors, as well as some Revenue Department employees, were initially unsure as to the scope of Act 80-427. Such confusion is evidenced by a memorandum dated October 1, 1983 in which the Revenue Department saw the need to explain line by line the form used by dealers and distributors in reporting the lubricating oil tax. In the memorandum, the Revenue Department set out at line 11(5) that lubricating products sold to be used in off-road vehicles not requiring a state license are exempt from the additional \$.04 per gallon tax, but that the exemption does not apply to oil used in industrial or stationary machinery.

There is no evidence to support the taxpayer's position that oil companies and other dealers and distributors have not been required to pay the additional \$.04 per gallon tax on sales of oil for use in stationary motors. To the contrary, the testimony indicates that within the Department's knowledge the additional

\$.04 per gallon tax has been assessed against all other individuals and corporations under similar circumstances.

CONCLUSIONS OF LAW

The bottom issue in this matter is whether lubricating oil sold for use in servicing stationary drilling rig motors is subject to the \$.04 per gallon tax levied by Code of Alabama 1975, '40-17-220. The sale of such oil is clearly subject to the tax unless exempted therefrom under the provisions of '40-17-220(d)(5).

Subsection (d)(5) exempts "lubricating oil sold to be used in off-road vehicles which presently do not require state licensing;..." Thus, the issue turns on whether stationary drilling rig motors fit within the definition of "off-road vehicles", as that term is utilized in subsection (b)(5).

A standard rule of statutory construction holds that a word or term found in a statute is to be given its plain meaning as commonly accepted in every day usage. Barron-Leggett Electric, Inc. v. Department of Revenue, 336 So.2d 1124 (1976); Guthrie v. Civil Service Board of City of Jasper, 342 So.2d 372 (1977); Rush v. Department of Revenue of the State of Alabama, 416 So.2d 1023 (1982). In common parlance, the word "vehicle" denotes a means of conveyance or transportation. This definition is supported by Black's Law Dictionary, Revised Fourth Edition, which defines "vehicle" as follows:

That in or on which a person or thing is or may be carried from one place to another, especially along the

ground, also through the air; any moving support or container fitted or used for the conveyance of bulky objects; a means of conveyance. *Moffitt v. State Automobile Ins. Ass'n*, 140 Neb. 578, 300 N.W. 837, 838.

Any carriage moving on land, either on wheels or runners; a conveyance; which is used as an instrument of conveyance, transmission or communication. *Burford-Toothaker Tractor Company v. Curry*, 241 Ala. 350, 2 So.2d 420, 421; *People v. Curnuch*, 177 Misc. 606, 31 N.Y.S.2d 105, 107.

Further, the second clause of subdivision (d)(5) specifies that the exemption was intended to apply to "forklifts and other like devices". A forklift, being a mobile device used to convey or transport tangible property, is clearly a "vehicle" as above defined. Utilizing the "ejusdem generis rule", which holds that where general words are to be limited to the same general class as those specifically mentioned, the general words "other like devices" must be construed to mean any mobile vehicle similar to a forklift which is capable of carrying or transporting tangible property.

Accordingly, from the above it must be concluded that a stationary drilling rig motor is not a vehicle and consequently, the sale of lubricating oil for use thereon does not come within the exemption set out in subdivision (d)(5) of 40-17-229.

The taxpayer argues that the assessment should be voided in that it was wrongly informed by a Revenue Department employee that the \$.04 per gallon tax was not due on lubricating oil sold for use on any off-road device, which was taken by the taxpayer to include stationary drilling rig motors.

In the landmark decision, State v. Maddox Tractor and Equipment Company, 69 So.2d 426 (1953) the Alabama Supreme Court rejected an argument similar to that forwarded by the taxpayer in the present case as follows:

[3] II. But it is argued that the State should be estopped from taking the position which it has taken in this case and from assessing the tax when the appellees were advised that they were not responsible for the tax. In the assessment and collection of taxes the State is acting in its governmental capacity and it cannot be estopped with reference to these matters. In the case of Duhame v. State Tax Commission, 65 Ariz. 268, 179 P.2d 252, 260, 171 A.L.R. 684, the court said:

"It is true that during the time plaintiff was engaged in the contracting here in question he might have passed this tax on to the government had he not been misled, by an improper interpretation of the Act by the Commission, into believing no tax was due. Still, it is the settled law of the land and of this jurisdiction that as taxation is a governmental function, there can be no estoppel against a government or governmental agency with reference to the enforcement of taxes. Were this not the rule the taxing officials could waive most of the state's revenue. \* \* \*"

Based on the above determinations, it is hereby ordered that the preliminary assessment against the taxpayer for lubricating oil tax for the period October 1, 1989 through September 30, 1983 be made final in the amount of \$9,518.33.

Done this 9th day of February, 1984.

BILL THOMPSON