

STATE OF ALABAMA
DEPARTMENT OF REVENUE

§ STATE OF ALABAMA
DEPARTMENT OF REVENUE
§ ADMINISTRATIVE LAW DIVISION

v.

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HOPE OIL COMPANY, INC.
P.O. Box 800
Memphis, Tennessee 38101,

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Taxpayer.

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ORDER

This matter involves a joint petition for refund of motor fuel excise tax filed by Ergon, Inc. and Hope Oil Company, Inc. (Taxpayer) concerning the period March 30, 1982 through June 30, 1982. A hearing was conducted by the Administrative Law Division on October 16, 1985. Representing, the parties were attorney Robert French, for the Taxpayer, and assistant counsel John J. Breckenridge, for the Department. Based on the evidence submitted at said hearing, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

In February, 1982, the Taxpayer entered into a contract to sell diesel fuel to the Tennessee Valley Authority (TVA). The contract specified that the diesel fuel was not intended for use in highway operated vehicles. During the period presently in issue, the Taxpayer purchased fuel from Ergon, Inc. and resold said fuel to the TVA in accordance with the above contract. For the months of March, 1982 through June, 1982, Ergon, Inc. filed monthly motor fuel tax returns with the Revenue Department and reported and paid

the motor fuel excise taxes levied under Code of Alabama 1975, §§40-17-2 and 40-17-220 on its sales of fuel to the Taxpayer. The monthly returns were filed, and the tax paid thereon, as follows: March, 1982 was filed and paid on April 22, 1982; April, 1982 was filed and paid on May 24, 1982; May, 1982 was filed and paid on June 23, 1982; June, 1982 was filed and paid on July 23, 1982.

On March 12, 1982, the Taxpayer filed an application with the Revenue Department for an Alabama gasoline license. On March 15, 1982, the Revenue Department approved said application subject to the posting of a sufficient bond by the Taxpayer. The Department's approval indicated that a license would be issued when the bond was received and approved by the Department. By letter dated July 28, 1982, the Department acknowledged receipt of a bond from the Taxpayer and thereafter issued gasoline license number 1515, effective July 1, 1982.

On July 16, 1985, the Revenue Department received a joint petition for refund of motor fuel excise taxes from Ergon, Inc. and the Taxpayer concerning the period March 30, 1982 through June 30, 1982. The Revenue Department denied said petition on the grounds that the petition was not filed within the statutory limitation period for filing refund petitions as set out at Code of Alabama 1975, §§40-1-34, 40-17-40 and 40-17-42, and that the Taxpayer did not have a gasoline license during the petition period.

CONCLUSIONS OF LAW

The first issue to be addressed is whether the Taxpayer's refund petition was timely filed within the purview of Code of Alabama 1975, §§40-1-34, 40-17-40 and 40-17-42. Section 40-1-34 provides in pertinent part that any application for refund "must be made within three years from the date of such payment". Section 40-17-40 provides for a credit against future taxes for any overpayment, "or such excess may be refunded pursuant to the provisions of §40-1-34". Section 40-17-42 provides that the three year statute contained in §§40-17-40 and 40-17-41 shall apply to all motor fuel excise taxes included in Title 40. Section 40-17-41 concerns actions by the State for recovery of additional tax and is not relevant in the present case.

From a reading of the above statute, it is clear that a refund petition for motor fuel tax must be filed within three years from the date of payment of said tax. The petition in issue was filed on July 16, 1985. From the evidence presented, the tax in question was paid in increments on April 22, 1982, May 24, 1982, June 23, 1982, and July 23, 1982. Consequently, the refund petition is barred by the statute of limitations except relative to the payment made on July 23, 1982 concerning the month of June, 1982. Accordingly, only the tax paid for the month of June, 1982 can be refunded to the, Taxpayer.

The taxes in question are the \$.08 per gallon tax levied at @40-17-2, and the \$.04 per gallon tax levied at §40-37-220. The §40-

17-2 tax is levied on motor fuel that is "for use in the operation of any motor vehicle upon the highways of this state". In the present case, the evidence is clear that the motor fuel was not sold for the operation of on-road vehicles. Accordingly, the §40-17-2 tax is not due on the fuel in issue. The §40-17-220 tax is levied against all motor fuel "for any use", except as exempted by statute. Subsection (c) of §40-17-220 exempts motor fuel that is used and paid for by the United States. Thus, the motor fuel in issue is also exempt from the §40-17-220 tax as it was sold to and used by the TVA, a U.S. Government agency.

The Department argues that no tax can be refunded because the Taxpayer did not have a gasoline license during the period in issue. However, no authority can be found to support that argument. That is, if the motor fuel is exempt from taxation, then any tax that was erroneously collected relative thereto should be refunded (if timely petitioned), regardless of the fact that one of the parties (Taxpayer) in the line of distribution was not properly licensed as a gasoline distributor.

Based on the above, it is hereby determined that the Taxpayer should be allowed a refund of the motor fuel excise tax paid on July 23, 1982 for the month of June, 1982. The Revenue Department is hereby directed to compute said amount and issue a refund accordingly.

Done this 15th day of November, 1985.

BILL THOMPSON
Chief Administrative Law Judge