

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

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DOCKET NO. U. 88-116

MAJOR OIL COMPANY, INC.,
d/b/a Major Lubricants Co.
3423 Money Road
Montgomery, AL 36108,

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Taxpayer.

FINAL ORDER

The Revenue Department assessed State, Montgomery County and City of Montgomery sales tax and Autauga County, Elmore County and City of Selma use tax against Major Oil Company, Inc. (Taxpayer) concerning the period April 1, 1984 through March 31, 1987. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted in the matter on December 13, 1989. Hon. Perry O. Hooper, Sr. and Lucie McLemore, Esq., appeared for the Taxpayer.

Assistant counsel J. Wade Hope represented the Department. The following Final Order is entered based on the evidence submitted by the parties.

FINDINGS OF FACT

The Taxpayer is located in Montgomery, Alabama and is in the business of making retail and wholesale sales of gasoline, diesel fuel, lubricants, hydraulic oil and other related items. The Department audited the Taxpayer for sales and use tax for the period April 1, 1984 through March 31, 1987 and entered the preliminary assessments in issue against the Taxpayer on June 30, 1987. The assessments were subsequently reduced after an informal

conference between the Taxpayer and the Department's Sales and Use Tax Division.

The only issue in dispute concerns the Taxpayer's liability for sales and use tax on hydraulic oil sold by the Taxpayer during the assessment period. The Taxpayer concedes that hydraulic oil is taxable, but argues that it should not be held liable for any past deficiency because it did not know during the audit period that hydraulic oil was subject to tax. The Taxpayer further argues that the Department should be estopped from collecting the tax because the Department failed to specifically inform the Taxpayer that hydraulic oil was subject to sales and use tax.

The Taxpayer's position is based in part on a Department memorandum dated March 15, 1979 which clarifies that hydraulic oils are subject to the four percent sales tax and not the two percent per gallon lubricating tax. The memorandum was mailed to all Persons, firms and corporations that had a lubricating oil account with the Department at the time, which did not include the Taxpayer.

However, the testimony at the administrative hearing indicated that the Taxpayer was not an on-going business at the time the memorandum was issued in 1979. The Taxpayer had operated some years earlier, but had ceased operations in the early 1970's and its sales tax number was cancelled at that time. The Taxpayer applied for a new sales tax number in March, 1983. The application was filed by Jesse McNeill, the Secretary/Treasurer of the

corporation. Mr. McNeill is a long-time partner in Major Oil Company, Inc. and also in a related oil company, Jones Brothers Oil Company. Jones Brothers Oil has for years filed monthly lubricating tax returns with the Department. The instructions on the lubricating tax returns specifically state that hydraulic oil is not subject to lubricating tax since it is a sales tax item. However, Mr. McNeill testified that he had never read the instructions and did not know that lubricating oil was subject to sales tax until the time of the current audit.

CONCLUSIONS OF LAW

In the assessment of taxes, the Revenue Department is acting in its governmental capacity and thus cannot be estopped in the assessment of taxes that are properly due. State v. Maddox Tractor and Equipment Company, 69 So.2d 426; Boswell v. Abex Corporation, 317 So.2d 317; State v. Norman Tie and Lumber Company, 393 So.2d 1022.

The above cases hold that a taxpayer cannot be excused from liability for a tax even if the taxpayer is misled by a Department employee into believing that no tax is due. In the present case, the Taxpayer was not misled by the Department. Rather, the Department simply did not specifically notify the Taxpayer that lubricating oil was subject to sales and use tax. However, the Department is under no affirmative duty to notify each taxpayer as to what specific taxes should be collected and paid. The Department may on occasion issue clarifying memorandum, as it did

with the memorandum dated March 15, 1979 concerning the taxability of lubricating oil. However, the fact that a specific taxpayer may not have been notified would not relieve that taxpayer from liability for the tax. In any case, the Taxpayer was not an active business when the memorandum was issued in 1979.

The above considered, the assessments in issue should be made final, with appropriate interest. Any penalty included in the assessments should be waived.

Entered this 22nd day of January, 1990.

BILL THOMPSON
Chief Administrative Law Judge