

CAMPBELL & SONS OIL CO., INC.
P.O. Box 18968
Huntsville, AL 35804,

Petitioner,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NOS. MISC. 01-267
MISC. 01-309

**FINAL ORDER DENYING DEPARTMENT-S
APPLICATION FOR REHEARING**

This case involves two issues:

- (1) Should the Department revoke the Petitioner-s motor fuel distributor-s license because the Petitioner failed to pay its January 2001 motor fuel liability; and
- (2) Is the Department authorized to require the Petitioner to submit an additional bond to the Department?

The Administrative Law Division entered a Final Order in the case on July 27, 2001. The Order affirmed in substance the Department-s demand that the Petitioner submit an additional bond. Concerning the license revocation, the Order held that because the Department had entered into an installment payment agreement with the Petitioner concerning the January 2001 liability, it could not also revoke the Petitioner-s distributor-s license because it had failed to pay the liability by the due date. The Department applied for a rehearing on that issue.

Statutes in *pari materia*, or relating to the same subject matter, must be read together. *McDonald-s Corp. v. DeVenney*, 415 So.2d 1075 (Ala. 1982). The Department argues that the above rule of statutory construction does not apply in this case because the installment

payment agreement provision at Code of Ala. 1975, ' 40-2A-4(b)(6), and the license revocation provision at Code of Ala. 1975, ' 40-12-195, are unrelated. I disagree.

The installment agreement agreed to by the Department relates to the Petitioner's January 2001 liability. Likewise, the Department is seeking to revoke the Petitioner's license based on the Petitioner's failure to pay the same January 2001 liability in full. In the context of this case, the two statutes relate to the same subject matter, the Petitioner's January 2001 motor fuel liability. It is inconsistent for the Department to on the one hand agree to allow the Petitioner to pay the liability in installments, and on the other hand revoke the Petitioner's license because the liability was not timely paid in a lump sum.

Section 40-12-195 authorizes the Department to revoke a motor fuel distributor's license if the distributor fails to pay all taxes within the time required by law. . . . By complying with the installment payment agreement, which to date the Petitioner has done, the Petitioner is paying its January 2001 liability within the time required by law, i.e. the installment payment agreement statute. The Department thus cannot revoke the Petitioner's license for failing to pay the January 2001 liability unless and until the Department revokes the installment payment agreement for any of the reasons set out in ' 40-2A-4(b)(6)b.

Finally, the Department argues that its decision to revoke the Petitioner's license should not be questioned unless it constitutes an abuse of discretion. Applying that standard, allowing the Petitioner to pay the subject liability in installments and then

revoking the Petitioner's license because it failed to pay the liability in a lump sum, constitutes an abuse of discretion by the Department.

The Department's application for rehearing is denied. The Final Order previously entered in the case is affirmed.

This Final Order Denying Department's Application for Rehearing may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, ' 40-2A-9(g).

Entered August 31, 2001.