

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. MISC. 89-121

DEAN OIL COMPANY
909 North Main Street
Cullman, AL 35055,

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Taxpayer.

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ORDER ON APPLICATION FOR REHEARING

The Taxpayer initially claimed that 105,302 gallons of diesel fuel were sold for off-road use during the period in issue. The Final order entered on July 3, 1990 denied all of the claimed off-road sales except 330 made at the Pit Stop totaling 9,458.59 gallons. The Department now argues that those sales should also be disallowed.

Code of Ala. 1975, §40-17-21 allows a motor fuel dealer to sell diesel fuel from the same pump for both taxable on-road and nontaxable off-road use provided that the off-road sales are (1) separately metered and (2) proper records are maintained to account for said sales.

The Department acknowledged at the administrative hearing that the Pit Stop's separately metered "off-road" pump was sufficient to meet the separate metering requirements of §40-17-21, see transcript at pages 71 and 72. The remaining issue is whether the Taxpayer maintained proper records to account for the off-road sales.

The Taxpayer provided the Pit Stop's sales invoices and also

the testimony of its office manager Marion Brock in support of its position that over 64,000 gallons had been sold by the 'Pit Stop for off-road use. Mr. Brock testified that he could determine which sales were for off-road use based on the price charged to the customer, see transcript at page 52.

The verbal assertions of a taxpayer cannot be accepted to verify a claimed deduction, State v. Ludlam, 384 So.2d 1089. Consequently, Mr. Brock's testimony was insufficient to verify the off-road sales and was not the basis for allowing the 330 sales at the Pit Stop.

The majority of the Pit Stop's sales invoices were also rejected because they did not show that the sales were for off-road use. However, the 330 sales Invoices in question were accepted because each one showed the date of the sale, the purchaser's name, the volume and dollar amount of the sale, and each clearly designated that the sale was for off-road use.

The Department argues that the Invoices should be rejected because they do not comply with the specific requirements of Department Regs. 810-8-1-.17 and 810-8-1-.56. Specifically, the Department argues that the Invoices are not properly numbered and are not on printed "Pit Stop" forms, and also that the purchaser's address is not Included on each invoice, see transcript at page 79.

Section 40-17-21 requires only that "proper records" must be maintained. No particular form of record Is required as long as

it is adequate to allow the Department to compute and verify the proper amount of tax due or the proper amount that should be excluded from tax. State v. Ludlam, supra; State v. Mack, 411 So.2d 799.

The 330 invoices in question identify the purchaser, the dollar amount and volume of the sale, and each one specifies that the diesel was sold for off-road use. All invoices that were incomplete or did not contain all of the above information were rejected. The 330 Invoices contain enough information to substantially comply with the above regulations and are clearly sufficient to allow the Department to verify the amount of off-road sales.

Ex parte White, 477 So.2d 417, is not on point because the Taxpayer is not attempting to use another method to verify the exempt off-road sales. The invoices provide adequate Information and should not be rejected because they may not contain every bit of information required by the regulations.

The Department's Application For Rehearing is denied and the Department is directed to recompute the amount due in accordance with the Final order entered on July 3, 1990.

Entered on July 31, 1990.

BILL THOMPSON
Chief Administrative Law Judge