

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. MISC. 89-121

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

§

§

Taxpayer.

§

FINAL ORDER

The Revenue Department assessed motor fuel tax against Dean Oil Company, Inc. (Taxpayer) for the period October, 1986 through March, 1988. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on April 4, 1990. H. Dean Mooty, Esq. represented the Taxpayer. Assistant counsel John J. Breckenridge appeared for the Department. This Final Order is entered based on the evidence and arguments presented by the parties.

FINDINGS OF FACT

A motor fuel distributor is liable for the motor fuel tax levied at Code of Ala. 1975 §40-17-2 based on the sale or distribution of motor fuel that is used "on-road" in the operation of any motor vehicle on the highways of Alabama. Motor fuel sold or distributed for "off-road" use is not taxable.

The Taxpayer claimed a credit on its motor fuel tax returns for the subject period for diesel fuel sold for off-road use. The Department denied most of the off-road sales claimed by the Taxpayer because (1) the alleged off-road sales were not separately

metered as required by Code of Ala. 1975, 540-17-21, and (2) the Taxpayer failed to otherwise provide sufficient records from which the exempt off-road sales could be verified.

The Taxpayer sold diesel fuel directly to numerous individuals and also to five retail outlets during the subject period. The Taxpayer maintained invoices concerning the individual sales but the invoices failed to indicate that the fuel was purchased for off-road use. Most of the individuals signed a statement prepared by the Taxpayer during the course of the Department's audit which stated that "all diesel purchased was used as off-road, or nonhighway use, during the period of October, 1986 thru March, 1988".

The five retail outlets that purchased diesel fuel from the Taxpayer were Cold Springs, Jim's Amoco, Pit Stop, Addison Tire Company, and I-65. The Taxpayer reported and paid its motor fuel tax on total sales to the above outlets less off-road sales as verbally reported to the Taxpayer by each outlet.

Each outlet operator signed a statement prepared by the Taxpayer during the audit stating that all off-road sales reported to the Taxpayer were in fact made for off-road use.' Each outlet also provided the Taxpayer with its diesel fuel sales tickets. Some of the sales tickets indicate "off-road diesel" while others do not. The only outlet that had a separately metered pump during the subject period was the Pit Stop, which had a single pump marked "off-road" on one side and "road" on the other.

CONCLUSIONS OF LAW

The Issue to be decided is whether the Taxpayer provided the Department with adequate records as required by law from which the off-road sales could be verified.

A motor fuel distributor is required to keep adequate records from which his motor fuel tax liability can be accurately computed, see Code of Ala. 1975, §40-17-7. Generally, no particular method of record keeping is required as long as the records are sufficient to reveal the proper amount of tax due, see State v. Ludlam, 384 So.2d 1089, and State v. Mack, 411 So.2d 799, both concerning sales and use tax.

However, Code of Ala. 1975 §40-17-21 specifically requires that sales of off-road diesel must be separately metered. Thus, any sales not separately metered cannot be excluded from tax, even if the distributor otherwise maintained adequate records.

What the Legislature intended by "separately metered" is unclear, see transcript at pp. 60-74. However, the Department conceded at the hearing that a pump with "off-road" clearly marked on one side and "road" marked on the other is sufficient to meet the "separately metered" requirements of §40-17-21, see transcript at p. 72.

The Taxpayer concedes that the only separately metered pump during the audit period was at the Pit Stop, see transcript at pp. 62 and 65. Consequently, all of the sales from the other four

outlets were not separately metered and cannot be exempted.

The question then narrows to which sales at the Pit Stop should be exempted. Section 40-17-21 also requires that proper records must be maintained to account for the off-road sales. As stated, no particular form of record is necessary. However, the verbal assertions of a taxpayer are insufficient, see State v. Ludlum, supra. Self-serving statements prepared after the fact are also inadequate. Rather, contemporaneous records reasonably identifying the customer, the amount of the sale, and that it was for off-road use should be accepted unless other evidence raises a reasonable suspicion that the records are false or inaccurate.

In this case, the Taxpayer should be allowed credit for those sales tickets from the Pit Stop which specify the customer, the amount of the sales and that the sale was for off-road use. A review of the invoices provided by the Taxpayer shows that 330 sales tickets from the Pit Stop are clearly marked "off-road diesel". Those tickets involve 9,458.59 gallons of diesel fuel and the Taxpayer should be allowed that amount as exempt off-road sales. All other unmetered or undocumented sales were properly taxed.

The above considered, the Department is to assessment as set out above and thereafter make final, with applicable interest.

Entered this 3rd day of July, 1990.

BILL THOMPSON

