

The issue in this case is whether the Alabama motor carrier fuel tax set out at Code of Ala. 1975, §40-17-140, et seq. is levied on all fuel used by a motor carrier in Alabama, as argued by the Department, or only on fuel used on the highways of Alabama, as argued by the Taxpayers.

The facts are undisputed.

The Taxpayers are motor carriers that operate trucks in Alabama and throughout the United States. The Taxpayers' trucks burn motor fuel while traveling on the highways of Alabama ("on-road" fuel), and also when the trucks are idling while being loaded or unloaded, when the driver has stopped to eat, to keep the cab cool while the driver is sleeping, etc. ("off-road" fuel).

The Taxpayers argue that only fuel used for on-road purposes should be taxed. I disagree.

The intent of the motor carrier tax is to tax all fuel used by a motor carrier in Alabama on which the Alabama motor fuel tax has not already been paid. Thus, the tax is levied on all "motor fuel used (in a carrier's) operations within this state . . .", Code of Ala. 1975, §40-17-141, and the carrier is then allowed a credit for the motor fuel tax previously paid on that part of the fuel purchased in Alabama. Code of Ala. 1975, §40-17-142.

"Operations" is defined at Code of Ala. 1975, 40-17-140(3).

Unfortunately, the definition does not specify if "operations" includes only on-road activity or both on-road and off-road

activity. Where a word used in a statute is not defined or is inadequately defined, the term must be given its ordinary, common meaning. Daniels v. Bowers, 518 So.2d 736 (1987); Ex parte Etowah Co. Bd. of Educ., 584 So.2d 528 (1991).

A motor carrier's operations in Alabama includes all activities by the carrier's trucks in Alabama, including use of the trucks for off-road purposes. The off-road activities in question all occur in the normal course of a carrier's operations in Alabama. Consequently, all fuel used by the Taxpayers for both on-road and off-road purposes in Alabama is subject to the Alabama motor carrier fuel tax.

The Taxpayers argue that the motor carrier fuel tax and the motor fuel tax (§40-17-1 et seq.) are similar in that both should apply only to fuel used on-road. However, the two taxes are obviously different. The motor fuel tax is specifically levied only on fuel used "in the operation of motor vehicles on the highways" of Alabama, whereas the motor carrier tax is broadly levied on all fuel used by a carrier within Alabama. The only connection between the two taxes is that the motor carrier tax is levied at the same rate as the motor fuel tax. Code of Ala. 1975, §40-17-141.

A comparison of the two taxes actually supports the Department's position. If the Legislature had intended for the motor carrier tax to apply only to fuel used on-road, it would have

used the same language that it used in levying the motor fuel tax.

Consequently, the broad wording of §40-17-141 indicates that the Legislature intended for the tax to apply to fuel used for all purposes by a motor carrier in Alabama.

The above considered, the assessments in issue are upheld and judgment is entered against Zerkle Trucking Company for motor carrier fuel tax in the amount of \$270.30, against Southwest Motor Freight, Inc. for motor carrier fuel tax in the amount of \$7,953.64, and against U. S. Xpress, Inc. for motor carrier fuel tax in the amount of \$6,777.16. Additional interest is also due from October 16, 1992.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on February 15, 1994.

BILL THOMPSON
Chief Administrative Law Judge