

STATE OF ALABAMA,  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

vs.

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H. J. WALKER OIL COMPANY, INC.  
P. O. Box 268  
South Pittsburg, TN 37380,

DOCKET NO. MISC. 93-292

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Taxpayer.

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FINAL ORDER

The Revenue Department assessed motor fuel tax against H. J. Walker Oil Company, Inc. ("Taxpayer") for the months of September, October, November and December, 1992. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on February 23, 1994. Trey Walker appeared for the Taxpayer. Assistant counsel John J. Breckenridge represented the Department.

The issues in this case are: (1) Did the Department properly revoke the Taxpayer's gasoline distributor's license effective August 25, 1992; and (2) If the license was properly revoked, is the Taxpayer liable for motor fuel tax on otherwise tax-free off-road sales made after its license was revoked.

The facts are undisputed.

The Department notified the Taxpayer on July 31, 1992 that its gasoline distributor's license would be revoked if a delinquent liability for October 1991 was not paid.<sup>1</sup> The Taxpayer failed to

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<sup>1</sup> The Taxpayer had also issued 14 bad checks to the Department during the previous 20 months.

respond, and the Department subsequently revoked the Taxpayer's license by letter dated August 25, 1992, effective that date. The July 31, 1992 and August 25, 1992 letters were both properly served on the Taxpayer by certified mail.

The Taxpayer concedes that it received the August 25 revocation letter, but argues that the letter was lost before it could be opened. The Taxpayer thus was not aware that its license had been revoked. The Taxpayer continued operating in Alabama and filed returns for the months in issue, September through December 1992. The Taxpayer paid the tax due on the on-road sales as reported in the returns.

The Department accepted the returns for September through December 1992 as filed, except the tax-free off-road sales claimed on the returns were disallowed. The final assessments in issue are based on those disallowed off-road sales.

The Department notified the Taxpayer in January 1993 that it was operating without a license. The Taxpayer attempted but failed to obtain another license from the Department, and finally stopped operating in Alabama in August 1993.

The Taxpayer's gasoline license was properly revoked by the Department as allowed by Code of Ala. 1975, §40-12-195. The revocation letter was properly delivered to the Taxpayer's business address, and the fact that the Taxpayer lost the letter and thus

was not aware that its license had been revoked does not alter the effective date of the revocation.

If the Taxpayer's license was properly revoked, is the Taxpayer liable on its off-road sales made after the license was revoked? That is, are otherwise tax-free off-road sales taxable when made by an unlicensed distributor?

The motor fuel tax is levied only on fuel sold for on-road use. Fuel sold for off-road use cannot be taxed. However, the Department claims that the sale of otherwise exempt off-road fuel is taxable if sold by an unlicensed distributor. I disagree.

An unlicensed distributor is subject to and liable for motor fuel tax the same as a licensed distributor. Thus, the Taxpayer, although unlicensed during the subject period, properly reported and paid tax on its on-road sales, but likewise is not liable on its tax-exempt off-road sales.

I agree that all distributors selling motor fuel in Alabama should be licensed. However, the fact that a distributor is unlicensed does not convert an otherwise tax-free off-road sale by the distributor into a taxable transaction. Rather, the proper remedy is for the Department to enjoin the unlicensed distributor as allowed at Code of Ala. 1975, §§40-12-204 and 40-17-20.

An unlicensed distributor that improperly operates in Alabama is also prohibited from operating in Alabama for one year, and may be penalized \$1,000.00 "for each such offense" of operating in

Alabama without a license. Code of Ala. 1975, §40-12-196. The Department has in fact assessed the \$1,000.00 penalty against the Taxpayer in this case for both motor fuel and gasoline tax for each month that the Taxpayer operated in Alabama without a license, August 25, 1992 through August, 1993.

The Department assessed the Taxpayer's off-road sales only because the Taxpayer was unlicensed during the assessment period.

The Department does not claim that the fuel was not used off-road, or that the sales were not properly documented. Accordingly, because off-road sales by an unlicensed distributor are not subject to motor fuel tax, the final assessments in issue are dismissed.

The Department may, however, proceed with the assessments based on the §40-12-196 penalty.

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

Entered on June 20, 1994.

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BILL THOMPSON  
Chief Administrative Law Judge