

BELCHER OIL COMPANY, INC.
P.O. Box 310
Brent, AL 35034,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

OLON BELCHER LUMBER CO., INC.
P.O. Box 310
Brent, AL 35034,

DOCKET NO. MISC. 96-491

Taxpayers,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER
ON APPLICATION FOR REHEARING

Olon Belcher Lumber Company and Belcher Oil Company (together ATaxpayers@) applied for a rehearing from the Final Order entered in this case on February 2, 1999. That Final Order held that Belcher Lumber was liable for the motor fuel excise tax on diesel purchased from Hunt Oil during the period June 1991 through April 1993.

The Taxpayers concede that the diesel in issue was purchased from Hunt Oil with a Belcher Lumber tax-free purchase card. They argue, however, that no one at either Belcher Lumber or Belcher Oil knew that the Belcher Lumber card was being used to purchase the diesel tax-free, and that no one realized that the combined 37 cents per gallon Alabama and federal excise taxes were not being paid. The Taxpayers= application is denied.

Before June 1991, Belcher Oil and Belcher Lumber both purchased diesel tax-free from the Hunt Oil terminal. The diesel was picked up at the Hunt Oil terminal by a

Belcher Oil driver in a Belcher Oil truck. The driver used the Belcher Oil tax-free card when he purchased diesel for Belcher Oil. He used the Belcher Lumber tax-free card when he purchased diesel for Belcher Lumber.

The driver, Cecil Lagrone, testified at the April 28 rehearing that he could not distinguish one purchase card from the other. He testified that a card was always in the tanker truck when he got to work. He used that card when he purchased the fuel at the Hunt Oil terminal. He did not know who put the different cards in the truck. Before June 1991, the Belcher Oil card was used to purchase approximately 90,000 gallons of diesel a month. The Belcher Lumber card was used to purchase approximately 10,000 gallons of diesel a month during the same period.

After the Department revoked Belcher Oil's motor fuel dealer's license in May 1991, Hunt Oil canceled Belcher Oil's tax-free purchase card and issued it a tax-paid purchase card. However, the Belcher Oil tax-paid card was never used. Rather, after June 1991, the Belcher Lumber tax-free card was used to purchase from 60,000 to 130,000 gallons of diesel a month tax-free. That was approximately the same volume purchased by Belcher Oil and Belcher Lumber combined before June 1991. I cannot believe that the consistent use of the Belcher Lumber tax-free card after May 1991 was an unintended coincidence or an inadvertent mistake.

As shown, before June 1991, someone at Belcher Oil obviously knew whether Belcher Oil or Belcher Lumber was purchasing diesel from Hunt Oil on a given day. That person or persons certainly knew which card belonged to which company, and made sure

the appropriate card was given to the driver or put in the tanker truck for the driver to use when making the purchase. However, the Taxpayers argue that after Belcher Oil's license was revoked in May 1991, no one kept up with the purchase cards, and the exclusive use of the Belcher Lumber tax-free card was a careless mistake. Given the meticulous care with which the different cards were used before June 1991, I cannot believe that no one maintained or controlled the use of the cards after June 1991.

I also cannot believe that no one was aware after June 1991 that the fuel was being purchased without payment of the 37 cents per gallon State and federal excise taxes. Before June 1991, Belcher Oil purchased the diesel tax-free. After June 1991, Belcher Oil knew it could no longer purchase the diesel tax-free, yet it continued to pay Hunt Oil the same tax-free price. I understand that Hunt Oil did not issue the Belcher Oil driver an invoice. But it should have been obvious that after June 1991, the same tax-free price was being paid as before June 1991. I cannot believe that no one paid enough attention to notice that the 37 cents per gallon taxes were not being paid. Thirty seven cents per gallon on the large volume purchased from Hunt Oil amounted to a large sum of money.

In any case, the fact that the Belcher Lumber card was used to purchase the diesel is sufficient to hold Belcher Lumber liable for the unpaid tax on the diesel. Belcher Oil and Belcher Lumber are separate corporations, but they are controlled by the same individual. The close relationship between the two corporations is evidenced by the fact that Belcher Lumber authorized the Belcher Oil driver to purchase diesel at the Hunt Oil

terminal using the Belcher Lumber purchase card. In substance, the Belcher Oil driver purchased the diesel as agent for Belcher Lumber. Having allowed the Belcher Oil driver to purchase diesel using the Belcher Lumber purchase card, Belcher Lumber cannot now deny responsibility for the tax due on the diesel.

The Taxpayers' application for rehearing is denied. The Final Order is affirmed. This Final Order On Application For Rehearing may be appealed to circuit court within 30 days. Code of Ala. 1975, ' 40-2A-9(g).

Entered July 21, 1999.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

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