

LEADER TRANSPORT, INC.
P.O. BOX 213
HOLLY POND, AL 35083-0213,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. MISC. 06-723

v.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed Leader Transport, Inc. ("Taxpayer") for gasoline excise tax for April 2 and April 9, 2006. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on October 10, 2006. Juritta Neal and Chuck Moore represented the Taxpayer. Assistant Counsel Keith Maddox represented the Department.

The Taxpayer transports gasoline and other petroleum products for various oil companies. On April 2 and April 9, 2006, one of the Taxpayer's trucks delivered gasoline and diesel fuel from Mississippi into Alabama for Herndon Oil Company. The bills of lading from the terminal showed, however, that on both dates the destination state was Florida, not Alabama. The Department consequently assessed the Taxpayer for the penalty levied at Code of Ala. 1975, §40-12-198(m)(4)b. for delivering fuel to a destination state other than the one shown on the shipping document.

The Taxpayer's representative explained at the October 10 hearing that the product picked up by their driver on April 2 was intended for Alabama. Unfortunately, when the driver pulled the product at the terminal in Mississippi, he erroneously used the Herndon Oil card that showed a Florida destination instead of the Herndon Oil Alabama card. Consequently, the bill of lading showed a Florida destination. The driver apparently did not

realize the mistake, and subsequently deliver the product to the Alabama destination as planned without first reporting a diversion.

The Taxpayer's main office in Holly Pond, Alabama discovered the mistake when it received the paperwork the subsequent Thursday, April 6, 2006. The Taxpayer immediately filed a Diversion Report with the National Fuel Diversion Registry indicating that the diesel and gasoline had been diverted and delivered to Alabama, not Florida.

On April 9, 2006, the same Taxpayer driver again pulled gasoline from the Mississippi facility for Herndon Oil for delivery into Alabama. Unfortunately, the driver again incorrectly used the Herndon Oil card that showed a Florida destination. He was again unaware of the mistake, and delivered the gasoline to Alabama. The Taxpayer's main office later received the paperwork that showed a Florida destination, and immediately filed another Diversion Report on April 14, 2006.

Section 40-12-198(m)(4)b. imposes a penalty if fuel is delivered to a destination state other than the state shown on the shipping documents. The first penalty assessed is for twice the excise tax due on the product. When the Department discovered that the Taxpayer had delivered the products to the wrong destination state on both April 2 and April 9, 2006, it assessed the Taxpayer for the above penalty in the amount of \$3,554.16.¹

It is undisputed that the Taxpayer triggered the §40-12-198(m)(4)b. penalty when its driver delivered the subject diesel and gasoline to a destination state other than the one shown on the shipping documents. The issue is whether all or part of the penalty can be

¹ The April 2 delivery involved 1,188 gallons of diesel on which the tax due was \$225.72, and also 7,321 gallons of gasoline on which the tax due was \$1,171.36. The April 9 delivery involved 2,375 gallons of gasoline on which the tax due was \$380. The total tax due doubled, as required by the penalty statute, equaled the amount of the penalty assessed, i.e., \$3,554.16.

waived for reasonable cause pursuant to Code of Ala. 1975, §40-2A-11(h). That section provides that “[r]easonable cause shall include, but not be limited to, those instances in which the taxpayer has acted in good faith.” Rev. Proc. 97-003 further specifies that “reasonable cause” shall include a “non-recurring honest mistake.”

The improper delivery of the product in issue resulted from an inadvertent oversight by the Taxpayer’s driver. The Department acknowledged at the October 10 hearing that the Taxpayer had never before been cited for improperly delivering product to the wrong destination state. Consequently, the improper delivery on April 2, 2006 was a first time mistake, and the related penalties should be waived for cause.

The Taxpayer discovered on April 6 that the driver had used the wrong card when he pulled the product in Mississippi on April 2. It is assumed that the Taxpayer notified the driver of his mistake. Unfortunately, the driver repeated the mistake on April 9. The incorrect paperwork on that date was not a first time mistake. The Taxpayer thus must be held responsible under the circumstances for its driver’s mistake.

The penalty of \$760 relating to the improper April 9 diversion is affirmed. The penalty relating to the April 2 delivery is waived for cause. The final assessment is reduced accordingly. Judgment is entered against the Taxpayer for \$760, plus applicable interest.

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

Entered October 17, 2006.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.
Juritta Neal
Curtis Stewart
Joe Cowen