

EBRAHIM MOKHTARI
7635 WALL TRIANA HWY.
HARVEST, AL 35749-8860,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 08-571

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Ebrahim Mokhtari (“Taxpayer”) for State sales tax for February 2005 through July 2007. 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 November 20, 2008 in Huntsville, Alabama. The Taxpayer attended the hearing. Assistant Counsel Keith Maddox represented the Department.

The Taxpayer has operated a gasoline station/convenience store in Harvest, Alabama for over ten years. He sells both on-road diesel and dyed off-road diesel at the store. On-road diesel is subject to the motor fuel tax levied at Code of Ala. 1975, §40-17-1 et seq., but is exempt from sales tax. Dept. Reg. 810-6-3-.28(b). Dyed diesel can be used only for off-road purposes, and is exempt from the motor fuel tax. Dyed diesel is, however, subject to sales tax, unless it is used for exempt agricultural purposes. Code of Ala. 1975, §40-23-4(a)(38).

The Taxpayer did not charge sales tax on any of the off-road diesel he sold during the period in issue (or in prior years) because he understood that all off-road diesel was exempt from sales tax. That belief was affirmed by the fact that the pumps at the station provided by his motor fuel jobber, Williamson Oil Company, indicated that the price for the diesel included all applicable taxes. The Taxpayer understood that to include any sales tax

due.

The Department audited the Taxpayer for sales tax for the period in issue. The Department examiner discovered that the Taxpayer had sold all off-road diesel sales tax free, but had failed to document that the diesel was to be used for exempt agricultural purposes. She consequently assessed the Taxpayer for sales tax on his dyed diesel sales.

The Taxpayer contends that no business in the Huntsville area charges sales tax on dyed diesel. He presented an affidavit at the November 20 hearing signed by representatives from 23 farms, construction and landscaping companies, and other businesses in the Huntsville area that use diesel for off-road purposes. The affidavit states that the 23 businesses purchased off-road diesel from the Taxpayer during the subject period, and did not pay sales tax on the diesel. The Taxpayer claims that the Department never informed him that off-road diesel not used for agricultural purposes was subject to sales tax.

The Taxpayer testified openly and honestly at the November 20 hearing that he sincerely believed that all diesel fuel was exempt from sales tax. Unfortunately for the Taxpayer, that is not the case. As discussed, off-road dyed diesel is generally subject to sales tax, and is exempt only if used for agricultural purposes.

The Taxpayer certainly sold much of his dyed diesel for agricultural use during the subject period. The affidavit he submitted includes numerous farmers, pulpwooders, etc., that used the dyed diesel for exempt agricultural purposes. Some of the other businesses listed in the affidavits were, however, engaged in construction or other non-exempt activities. In any case, the burden was on the Taxpayer to document the exempt sales.

State v. Ludlum, 384 So.2d 1089 (Ala. Civ. App.), cert. denied, 384 So.2d 1094 (Ala. 1980).

He failed to do so.¹

The fact that the Department never directly notified the Taxpayer that dyed diesel was taxable unless used for agricultural purposes also cannot relieve the Taxpayer from liability. All taxpayers are under a duty to know and comply with all applicable laws. Also, as recognized by the Taxpayer at the November 20 hearing, the Department cannot be estopped from collecting all tax that is due. Consequently, he would still be liable, even if the Department had erroneously informed him that all dyed diesel fuel was exempt. *Community Action Agency of Huntsville, Madison County, Inc. v. State*, 406 So.2d 890 (Ala. 1981).

The Taxpayer also submitted with the above discussed affidavit a statement by Paul R. Page, a farmer in Toney, Alabama that grows fruits and vegetables. Page attested that he purchased dyed diesel from the Taxpayer for agricultural purposes during the period in issue. He also indicated that he could produce his off-road diesel receipts for 2007.

If the Taxpayer can obtain receipts from Page and his other customers in the agricultural business showing that they purchased dyed diesel from the Taxpayer during the subject year, the Taxpayer would not be liable for tax on those sales. The Taxpayer is allowed until February 13, 2009 to submit that information to the Administrative Law Division. The information will then be forwarded to the Department for review and response.

¹ The examiner testified that the Taxpayer otherwise maintained excellent records.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered January 8, 2009.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.
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Joe Cowen
Mike Emfinger