

TJs BP, INC.
2502 AL HWY. 137
WING, AL 36483-2103,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 11-279

FINAL ORDER

The Revenue Department assessed TJs BP, Inc. ("Taxpayer") for sales tax for May 2006 through March 2009. 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 10, 2011. Charles McQuaid and Angela English represented the Taxpayer. Assistant Counsel Lionel Williams represented the Department.

The Taxpayer operates a convenience store/gas station in rural Covington County, Alabama. The disputed issue is whether the Taxpayer's diesel fuel sales during the audit period were exempt from sales tax pursuant to Code of Ala. 1975, §40-23-4(a)(38). That statute exempts fuel used for off-road agricultural purposes. The Department taxed the Taxpayer's fuel sales during the audit period because the Taxpayer did not have specific records showing that its diesel sales had been to off-road agricultural users.

At the November 10, 2011 hearing in the case, Department examiner Wendy Ballard testified that if the Taxpayer could provide various invoices/records that it had provided to its diesel customers during the audit period, she would attempt to compute the Taxpayer's exempt sales using those records. The Taxpayer subsequently provided some records. A copy of the Department's response is enclosed with the Taxpayer's copy of this Order.

The Department indicates that the final assessment should be reduced to tax of

\$7,064.80 and interest through March 7, 2012 of \$253.75. Additional interest is also due from that date. Judgment is entered accordingly.

I must add that the Department examiner, Ms. Wendy Ballard, did a thorough, professional job in computing the adjusted tax due. Her good work and articulate response is appreciated.

The Taxpayer, and any other taxpayer reading this Order that sells diesel for off-road agricultural purposes, should also note that contemporaneous and detailed records of each exempt diesel sale must be maintained. As indicated in the examiner's response, at the least the records should include the purchaser's name, signature, and address, and also whether the off-road diesel was being purchased for an exempt purpose, i.e., farming or logging, or for a taxable purpose, i.e., construction, lawn care, etc. The records must also be legible.

I would also suggest that the Department should promulgate a regulation specifying what records/information a taxpayer should maintain to verify its exempt off-road diesel sales, and then notify all known sellers of the recordkeeping requirements. If the requirements are reasonable, any seller not complying with the requirements would be held liable for the sales not so properly documented as exempt. *Ex parte White (Re Shellcast Corporation v. White)*, 477 So.2d 422 (Ala. 1985); *State v. Ludlum*, 384 So.2d 1089 (Ala. Civ. App. 1980).

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

Entered April 11, 2012.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Lionel C. Williams, Esq.
Charles L. McQuaid (w/enc.)
Joe Walls
Mike Emfinger