

CAMPBELL & SONS OIL CO., INC.
P.O. Box 18968
Huntsville, AL 35804,

Petitioner,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NOS. MISC. 01-267
MISC. 01-309

FINAL ORDER

Campbell & Sons Oil Company, Inc. (APetitioner@) appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-8(a) concerning (1) the Department's proposed revocation of its motor fuel distributor's license, and (2) the Department's demand that the Petitioner file a new distributor's bond pursuant to Code of Ala. 1975, ' 40-12-194(b). The appeals were consolidated, and a hearing was conducted on June 20, 2001. Jim Sizemore represented the Petitioner. Assistant Counsel John Breckenridge represented the Department.

ISSUES

The issues in this case are:

- (1) Should the Petitioner's motor fuel distributor's license be revoked because it failed to timely pay its January 2001 excise tax; and,
- (2) Did the Department properly make a demand on the Petitioner for a new distributor's bond, as provided at ' 40-12-194(b)?

FACTS

The Petitioner is a licensed motor fuel distributor in Alabama. The Petitioner filed its

January 2001 motor fuel excise tax return with the Department on February 20, 2001. The return reported tax due of \$563,759.68. The electronic funds transfer payment submitted for the tax due was dishonored. The Department consequently assessed the Petitioner for the tax due, plus interest and penalty. The Department also notified the Petitioner on March 1, 2001 that its distributor's license would be revoked if the January 2001 liability was not paid by March 30, 2001. The Petitioner timely appealed

The Department notified the Petitioner on April 4, 2001 that pursuant to ' 40-12-194(b), it was increasing the amount of the Petitioner's required distributor's bond to \$615,000. The Department determined the amount of the new bond based on the Petitioner's average monthly liability of \$590,000, plus the original \$25,000 bond amount specified in ' 40-12-194(a). The Petitioner again timely appealed.

Issue (1) - The License Revocation.

The Petitioner does not dispute the amount of tax it owes for January 2001. Rather, it argues that its license should not be revoked for nonpayment of that liability because it entered into an installment payment agreement with the Department pursuant to Code of Ala. 1975, ' 40-2A-4(b)(6), and is currently making payments under that agreement. The Petitioner submitted into evidence at the June 20 hearing a document entitled An Installment Payment Agreement. The document is dated May 7, 2001, and specifies that the Petitioner will pay the Department \$15,500 a month for 11 months, and will pay the balance due in April 2002. The document is signed by the Petitioner's president, with a handwritten notation that a check for \$15,500 was delivered to the chief of the Department's Collection Services Division on May 9, 2001. Although the document is not signed by a Department representative, the Department

concedes it has agreed to the terms of the agreement.

Code of Ala. 1975, ' 40-12-195 authorizes the Department to revoke a motor fuel distributor's license if the distributor fails to pay all motor fuel excise taxes owed the State. However, ' 40-12-195 must be read in conjunction with ' 40-2A-4(b)(6).

As indicated, ' 40-2A-4(b)(6) authorizes the Department to enter into installment payment agreements with a taxpayer. The Department has entered into an installment payment agreement allowing the Petitioner to pay its January 2001 liability in installments. The Petitioner has complied with the agreement, and thus is paying the liability within the time allowed by law. Having agreed to allow the Petitioner to pay in installments, it would be incongruous to revoke the Petitioner's license for having failed to pay the tax. By doing so, the Department would in effect eliminate the Petitioner's means for complying with the installment payment agreement. The Department may in its discretion terminate the agreement. Code of Ala. 1975, ' 40-2A-4(b)(6)c. But unless the agreement is terminated, or the Petitioner fails to comply with the terms of the agreement, the Petitioner's distributor's license should not be revoked because it has failed to pay the liability.

Issue (2) - The Increased Bond.

A motor fuel distributor is required to obtain a maximum \$25,000 bond, conditioned to pay all taxes due the State. Section 40-12-194(a). The Department may, however, require a new or additional bond if the Department determines that the existing bond is unsatisfactory, or is insufficient to pay all motor fuel excise taxes owed the State. The new bond may not exceed the average monthly tax owed by the distributor. Code of Ala. 1975, ' 40-12-194(b).

In this case, the Department made demand upon the Petitioner to obtain a new bond in

the amount of \$615,000. The demand was based on the Petitioner's failure to timely pay its January 2001 liability.

The Petitioner argues that the Department's demand for an additional bond is arbitrary. I disagree. Section 40-12-194(b) clearly gives the Department discretion to require an increased bond if the Department determines that the existing \$25,000 bond is insufficient. The Department reasonably exercised that discretion in this case based on the Petitioner's failure to pay its January 2001 liability.

The Department's demand for the Petitioner to submit a new bond to the Department is affirmed. The amount of such bond, however, is limited to the Petitioner's average monthly liability, which the parties agree is \$590,000. Consequently, the \$615,000 bond demanded by the Department is excessive.

The Petitioner is directed to submit a new bond for \$590,000 to the Department within 30 days of this Final Order. Otherwise, the Department may revoke the Petitioner's distributor's license pursuant to ' 40-12-195.¹

This Final Order may be appealed to circuit court within 30 days pursuant to Code of

¹The Department's April 4, 2001 demand for an additional bond to the Petitioner did not indicate that if the Petitioner failed to comply, the Department intended to revoke its distributor's license. Consequently, due process requires that the Petitioner be allowed time to submit a bond in the reduced amount of \$590,000. If the Petitioner fails to comply, the Department may, but is not required to, revoke the Petitioner's distributor's license.

Ala. 1975, ' 40-2A-9(g).

Entered July 27, 2001.