



Officer Lavadure that the vehicle contained dyed diesel. The Appellant stated that he placed dyed diesel in the vehicle and admittedly was aware he was burning dyed diesel when he was pulled over by Officer Lavadure.

A sample of fuel taken from the Appellant's vehicle was analyzed at the Montana Department of Transportation Chemistry laboratory and indicated a dyed fuel concentration of 17.2 parts per million (ppm). The presence of red dye at a concentration of 2.0 ppm or greater is considered to be in violation of the laws of Montana. (ARM 18.10.112(1)(b).)

Officer Lavadure issued Citation #DFS 5640522 to the Appellant on November 14, 2008, for violation of §15-70-330(3)(a), MCA. The MDOT, after determining the Appellant violated §15-70-330, MCA, imposed the maximum civil penalty pursuant to §15-70-372(2), MCA.

The Appellant requested a formal review which was conducted by Norman C. Peterson, Hearing Examiner, Agency Legal Services Bureau, Montana Department of Justice, on December 8, 2009. The Hearing Examiner concluded "Mr. Larry Coleman violated § 15-7-330, when a motorized vehicle, a truck owned by him, was driven on a public highway and such vehicle had an amount of special dyed diesel fuel in its fuel tank in excess of the amount allowed by the State of Montana. ARM 18.10.112(1)(b). That violation is subject to a penalty under MCA §15-70-372 and a motor fuel tax owed under MCA §15-70-330 and ARM 18.10.108."

The Hearing Examiner's proposed Findings of Fact, Conclusions of Law and Proposed Order were adopted as the final decision of the MDOT on April 21, 2010.

### **CONCLUSIONS OF LAW AND BOARD DISCUSSION**

The State Tax Appeal Board has jurisdiction over this matter pursuant to §15-70-111, MCA, and §15-2-201(3), MCA. The Board's function is to review the record and, from that

review, to determine if the Board should affirm, modify or reverse the final agency decision of the MDOT. See §15-70-111, MCA.

In determining whether to affirm, modify or reverse the final agency action, we will not substitute our judgment for that of the Hearing Examiner as to the weight of the evidence. Although there are no statutes setting forth appellate standards of review for use by the tax appeal board, we look to the concepts used by the district court in its appellate capacity. *See, e.g.*, §2-4-704, MCA. In addition, we will only reverse or modify the decision when a substantial right of the Appellant has been prejudiced.

At no point in this appeal has the Appellant denied purposeful or knowing use of dyed fuel on Montana public roads and highways. *See* §15-70-330(3)(a) MCA. He did request an exemption under Rule 18.10.110 (1) and (2), ARM, claiming his truck qualified as an off-road vehicle, which would allow use of dyed fuel on Montana public roads and highways.

The Hearings Examiner set forth well-reasoned Findings of Fact and Conclusions of Law. The Hearings Examiner found that Coleman admitted “that his vehicle was a truck originally designed for use on the highway.” FOF 11. On the day in question, Coleman’s “only purpose for using the vehicle that day and being on a public highway was to pick up materials from Charlo and transport it to his ranch.” FOF 12.

In reviewing the taxpayer’s claim that he was entitled to an exemption under ARM 18.10.110(1) and (2), the Hearings Examiner analyzed the language of the rule, and applied said rule to the vehicle in question. He concluded that the MDOT construction of the administrative rule was reasonable, and further concluded that the exception did not apply to the subject vehicle. We see no evidence that would require this Board to overturn the decision of the hearings examiner.

The hearings examiner in this case determined that the appellant's truck was used to transport property on a public highway which, when fueled with non-taxed dyed diesel fuel, is a violation of §15-70-330 MCA. (COL, Pg. 7.) We concur with this legal interpretation.

The Appellant also argues the Department's policy and application to implement the maximum fine for all persons found to be purposefully or knowingly using dyed fuel on the highway is inappropriate under law. This Board concludes that § 15-70-372(2) MCA, in no way prevents the MDOT from assessing the maximum penalty and their application was appropriate under law.

Therefore, after review of the transcript, exhibits, pleadings, and all other materials relating to this matter, the Board concludes that the Hearing Examiner's Finding of Fact, Conclusions of Law, and Proposed Order are supported by evidence and are not clearly erroneous.

**ORDER**

Upon review of the administrative record and the arguments of the parties, the Final Agency Decision of the Department of Transportation is affirmed.

Dated this 13th day of September, 2010.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

/s/ \_\_\_\_\_  
KAREN E. POWELL, Chairwoman

/s/ \_\_\_\_\_  
DOUGLAS A. KAERCHER, Member

/s/ \_\_\_\_\_  
SAMANTHA SANCHEZ, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-70-111, MCA, and 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court of Lewis and Clark County within 60 days following the service of this Order.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 14<sup>th</sup> day of September, 2010, the foregoing Order of the Board was served on the parties hereto by the method indicated below and addressed as follows:

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