

**SANITIZED DECISION – 05-547 MFE – GEORGE V. PIPER – ISSUED DATE –
JUNE 6, 2006**

SYNOPSIS

MOTOR FUEL EXCISE TAX – UNTIMELY FILED REFUND CLAIM MUST BE DENIED – Although W. Va. Code § 11-14C-9(d)(1) provides an exemption whereby the federal government can claim same by first paying the tax levied by this article and then applying to the Tax Commissioner for a refund, said refund claim must by law be filed no later than the thirty-first day of August for purchases of motor fuel made during the preceding fiscal year ending the thirtieth day of June, and failing to do so mandates that the refund claim be denied *in toto*. See W. Va. Code § 11-14C-31(c)(3) & W.Va. § 11-14C-31(d).

FINAL DECISION

On September 13, 2005, the Petitioner, filed a claim for refund, of motor fuel excise tax for the period of July 1, 2004 through June 30, 2005. The Assistant Director of the Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or the “Respondent”), by letter dated September 23, 2005, denied the entire refund claim. The reason stated for the denial was that refunds of fuel purchased between July 1, 2004 and June 30, 2005 must be filed with a postmark date of no later than August 31, 2005 and, therefore, Petitioner’s claim for refund filed on September 12, 2005, was untimely filed, in violation of W. Va. Code § 11-14C-31(c)(3) [2003].

Thereafter, by mail postmarked October 11, 2005, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for refund. See W. Va. Code § 11-10A-8(2) [2002] and 11-10A-9(a)-(b) [2002].

Subsequently, notice of hearing on the petition was sent to the parties and a hearing was held in accordance with the provisions of W.Va. Code § 11-10A-10 [2002] and W.Va. Code St. R. § 121-1-61.3.3 (Apr. 20, 2003).

There was no appearance on behalf of the Petitioner when the hearing was convened. The hearing was held, however, without an appearance on behalf of the

Petitioner, see W.Va. Code § 11-10A-10(a) [2002] and W.Va. Code St. R. 121-1-69.1 (Apr. 20, 2003).

FINDING OF FACTS

1. On September 13, 2005, Petitioner filed a “Motor Fuel Excise Tax Government Refund Application” for a total of 2,300 gallons of product which it had purchased during the period prior to June 30, 2005.

2. Petitioner’s refund application was totally denied by Respondent on September 23, 2005, as being untimely filed, because the same had not been filed until September 12, 2005, twelve (12) days after the August 31, 2005 deadline.

DISCUSSION

The only issue is whether Petitioner has shown that it is indeed entitled to the motor fuel excise tax refund previously denied.

W. Va. Code § 11-14C-9(d)(1) does provide a refundable exemption from excise tax on fuel used by the federal government. However, W. Va. Code § 11-14C-31(c)(3) requires that such an application for refund must be filed no later than the thirty-first of August for purchases of motor fuel made during the preceding fiscal year ending the thirtieth day of June.

W. Va. Code § 11-14C-31(d) provides that untimely refund requests are not to be construed as moral obligations of the State.

In this case, Petitioner in its petition argued that it filed the refund claim during the federal government fiscal year in accordance with federal accounting requirements.

That may well be; however, the statute above makes no allowance for that, requiring the federal government, just like every other government entity, to file for a refund within the allotted period, and failing to do so mandates that the refund claim be denied *in toto*.

CONCLUSIONS OF LAW

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon a petitioner-taxpayer, to show that the petitioner-taxpayer is entitled to the refund. *See* W. Va. Code § 11-10A-10(e) [2002] and W. Va. Code St. R. § 121-1-63.1 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to its contention that it is entitled to the refund because the statute, W. Va. Code § 11-14C-31(c)(3), explicitly requires that such refund must be filed no later than August 31, 2005, while the record clearly shows that Petitioner's claim for refund was not filed until September 12, 2005. *See* W. Va. Code St. R. § 121-1-69.2 (Apr. 20, 2003). Ignorance of the law is no excuse. The statute itself constitutes constructive notice of the law to everyone.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioner's petition for refund of motor fuel excise tax, for the period of July 1, 2004 through June 30, 2005, must be and is hereby **DENIED**.