

**SANITIZED DECISION – DOCKET NO. 05-550 RMFE – GEORGE V. PIPER,
ALJ – SUBMITTED for DECISION on NOVEMBER 28, 2005 – ISSUED on
DECEMBER 2, 2005**

SYNOPSIS

MOTOR FUEL EXCISE TAX – UNTIMELY FILED REFUND CLAIM MUST BE DENIED – Although W. Va. Code § 11-14C-9(d)(4) provides a refundable exemption from excise tax on fuel used by municipalities, 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 20, 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 Excise Tax Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or the “Respondent”), by letter dated September 27, 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 20, 2005, was untimely filed, in alleged violation of W. Va. Code § 11-14C-31(c)(3) [2003].

Thereafter, by mail postmarked October 13, 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].

In its petition for refund the Petitioner waived its right to a hearing in person, opting instead for a decision based upon the documents previously supplied in the case

FINDING OF FACTS

1. On September 20, 2005, Petitioner filed two (2) “Motor Fuel Excise Tax Government Refund Applications” for a combined total 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 27, 2005, as being untimely filed because the same had not been filed until September 20, 2005, twenty (20) 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)(4) does provide a refundable exemption from excise tax on fuel used by municipalities. 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 argued that it was unaware of the statutory deadline but requested that the refund be granted anyway.

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, 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 20, 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, should be and is hereby **DENIED**.