

REDACTED DECISION—09-283 MFE—BY GEORGE V. PIPER, ALJ—SUBMITTED FOR DECISION on JULY 23, 2010 —ISSUED on DECEMBER 22, 2010.

SYNOPSIS

A person found to be engaging in any business activity for which a license is required without first obtaining that license is subject to the civil penalty set forth in W.Va. Code § 11-14C-38(a), inasmuch as the state legislature has not articulated the component of intent as necessary to its application.

FINAL DECISION

On May 26, 2009 the Criminal Investigation Division of the West Virginia State Tax Commissioner's Office ("the respondent") issued three (3) separate motor fuel excise tax assessments against the petitioner. The assessments were issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 14C of the West Virginia Code. The assessments were for engaging in business without a motor fuel license; the first was for a civil penalty in the amount of \$_____ for an illegal haul which took place on April 11, 2008, and the other two were each in the amount of \$_____ for illegal hauls which took place on September 24, 2007 and August 1, 2008, respectively, for a total liability of \$_____. Written notice of these assessments was served on the petitioner as required by law.

Thereafter, by mail postmarked August 10, 2009, Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. *See* W.Va. Code § 11-10A-8(1) [2007] and 11-10A-9 [2005].

FINDINGS OF FACT

1. Petitioner is a Maryland corporation which never sought nor received a West Virginia motor fuel excise license to haul fuel into the State of West Virginia.

2. Company A had such a license and Petitioner contracted with it to haul biodiesel from Maryland to a city in West Virginia.

3. Upon entering into the contract, Company A informed Petitioner that Company A did not in fact have the proper equipment available to make the haul and Petitioner agreed to do it.

4. Petitioner's representative testified that it believed then that it could lawfully haul the fuel into West Virginia because it had a valid West Virginia business registration certificate.

5. Petitioner's representative further testified that he knows now that he did break the law by not having a motor fuel excise license prior to hauling biodiesel fuel on three occasions into the State of West Virginia.

DISCUSSION

W.Va. Code § 11-14C-38(a) provides that any person who “[e]ngages in any business activity for which a license is required by this article without having first obtained and subsequently retained such a valid license” is subject to a civil penalty of five thousand dollars for the first violation and ten thousand dollars for each subsequent violation.

Petitioner does not dispute that it violated the law; however, its representative asks the undersigned to consider the lack of intent to do so.

W.Va. Code § 11-14C-38 as it pertains to persons who engage in business without a proper license is a strict liability statute. Inasmuch as the statute offers no exceptions as to its

application, Petitioner's intent is irrelevant in this matter. Petitioner engaged in business in West Virginia without a motor fuel excise license on three separate occasions and is therefore subject to the civil penalties as provided for in the statute.

CONCLUSIONS OF LAW

Based upon all of the above is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon a petitioner to show that the assessment is erroneous, unlawful, void or otherwise invalid. *See* W.Va Code § 11-10A-10(e) [2002] and W.Va. Code St R. § 121-1-63.1 and 69.2 (Apr. 20, 2003).

2. The petitioner in this matter has failed to carry his burden of proof with respect to the civil penalties set forth in W.Va. Code § 11-14C-38(a), inasmuch as the state legislature has not articulated the component of intent as being necessary to its application.

DISPOSITION

WHEREFORE, it is the final decision of the West Virginia Office of Tax Appeals that the motor fuel excise tax assessments issued against the petitioner for combined civil penalties of \$_____, should be and are hereby **AFFIRMED**.