

**REDACTED DECISION – DK#’S 23-156**

**BY: A.M. “FENWAY” POLLACK, CHIEF ADMINISTRATIVE LAW JUDGE  
SUBMITTED FOR DECISION ON FEBRUARY 20, 2025  
ISSUED ON MAY 27, 2025**

**FINAL DECISION**

On October 5, 2023, the Taxpayer Services Division of the West Virginia State Tax Department (hereinafter the “Tax Commissioner” or “Respondent”) issued a Notice of Assessment, against the Petitioner, AAA (hereinafter the “Petitioner”). This assessment was issued pursuant to the authority of the State Tax Commissioner, granted to him by the provisions of Chapter 11, Article 10 *et seq*, of the West Virginia Code. The assessment was for Motor Fuel Importer Tax for the period of December 31, 2020, through January 31, 2023, for a total assessed tax liability of \$XX. Written notice of this assessment was served on the Petitioner, as required by law.

Thereafter, on October 24, 2023, the Petitioner timely filed with this Tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. *See* W. Va. Code Ann. §§ 11-10A-8(1); 11-10A-9 (West 2010).

On November 6, 2024, in accordance with the provisions of West Virginia Code Section 11-10A-10 an evidentiary hearing was held. The parties then filed post-hearing briefs, and the matter became ripe for decision at the conclusion of the briefing schedule.

**FINDINGS OF FACT**

1. The Petitioner is a limited liability company whose primary business is the purchasing, marketing, and selling of methanol. It operates in various states in this country and in Canada.<sup>1</sup> Hr’g Tr. pp. 76.

---

<sup>1</sup> During the evidentiary hearing, the LLC’s representative witness was unsure when and where the LLC was formed and was also unsure if it was single or multi-member.

2. The product that the Petitioner markets and sells is manufactured at various plants outside of West Virginia and sold to customers here, who use it as a feedstock for producing petrochemical derivatives. Hr'g Tr. pp. 40:13-15.

3. The methanol the Petitioner produces is a chemical compound, with its formula being CH<sub>3</sub>OH. Hr'g Tr. pp. 27:4-9.

4. Sometime in 2021, employees of the West Virginia State Tax Department were reviewing the records of barge operators. They noticed many thousands of gallons of an unidentified chemical being transported into this state. Upon further inquiry they discovered it was methanol. Hr'g Tr. pp. 83:16-22.

5. The employees inquired further and ascertained the identity of who was hiring the transport barges to bring the methanol into the state. The entity hiring the barges was the Petitioner. Hr'g Tr. pp. 84:11-17.

6. The Tax Commissioner's next action was to send a letter to the Petitioner, informing it that a motor fuel importer's license was required to import motor fuel into West Virginia. Hr'g Tr. pp. 84:20-23, Hr'g Tr. pp. 85:1-3.

7. In April of 2022, representatives of the Petitioner and Tax Department employees conducted a conference call. The discussion during this call concerned the Tax Commissioner's contention that the methanol being sold to the Petitioner's customer in this state was motor fuel, and the Petitioner's insistence that it was not motor fuel. Hr'g Tr. pp. 114:17-23, Hr'g Tr. pp. 115:1-4.

8. Sometime after the conference call between the parties, the Petitioner submitted some informational material about methanol. Hr'g Tr. pp. 115:7-11, Hr'g Tr. pp. 86:12-17.

9. The Tax Commissioner did not feel that the material sent by the Petitioner was responsive to the question of whether or not the methanol sold by the Petitioner was or was not motor fuel, under West Virginia law. As a result, the assessment that forms the basis of this matter was issued. Hr'g Tr. pp. 118.

10. No methanol is sold in this country for use as a motor fuel. Hr'g Tr. pp. 12:21-23, 13:1-6.

11. If the methanol sold by the Petitioner were put into an internal combustion engine, such as the type contained in vehicles used in this country, it would, in certain circumstances, be capable of starting such an engine. Hr'g Tr. pp. 16:21-23, 17:1-5.

12. In cold weather the methanol at issue will not vaporize enough to ignite. Hr'g Tr. pp. 25:4-23, 78:21-23, 79:1-10.

13. Due to the fact that the methanol at issue will not vaporize enough to ignite in cold weather, in those places where it is used to power internal combustion engines, (primarily China) a second fuel tank to hold gasoline is necessary. This gasoline is mixed with the methanol to ensure vaporization and ignition. Hr'g Tr. pp. 25:7-23.

14. If the methanol at issue in this matter was to be put into any internal combustion engine utilized in this country, it would, after a certain period of time corrode certain rubber components of the engine, such as gaskets. This corrosion would eventually cause the engine to stop running altogether. Hr'g Tr. pp. 22:3-8.

15. In similar fashion to Finding of Fact Number 12, those places, like China, where methanol is utilized, the engines are modified to exchange those parts that would be corroded by methanol usage to compatible parts. Hr'g Tr. pp. 22:9-21.

16. In certain circumstances, usage of methanol in un-modified internal combustion engines, such as we use in this country, could lead to corrosion in the fuel lines, which could lead to a vehicle fire. Hr'g Tr. pp. 20:22-23, 21:1-3.

17. Putting methanol in a vehicle engine in the United States would immediately void any warranty in effect regarding the fuel systems for that vehicle. Hr'g Tr. pp. 59:19-23. Pet. Ex. 7.

18. The methanol sold by the Petitioner was shipped primarily by barge. The shipping terms utilized by the Petitioner and its customers are primarily FOB (Free On Board) or CFR (Cost and Freight). For a brief period of time, from December 10, 2020, to January 31, 2021, the Petitioner switched to shipping by rail car, at which time the terms were FCA (Free Carrier).<sup>2</sup> Hr'g Tr. pp. 80:2-7.

19. Under all three shipping methods, FOB, CFR, and FCA title passes to the seller once the methanol is placed into the transport vehicle, be it a barge or rail car. Hr'g Tr. pp. 69:11-14, 80:8-23, 81:1-7.

20. The Tax Commissioner is willing to waive the additions assessed in this matter in the amount of \$957,581.09.

## **DISCUSSION**

There are two issues of contention between the parties. The first issue concerns the question of whether the methanol sold by the Petitioner is “special fuel” as that term is defined in West Virginia Code Section 11-14C-2(79). If it is special fuel then the second question comes

---

<sup>2</sup> The shipping terms testified to, and the meaning of those terms are standardized by the shipping industry. Pet'r. Ex. 13. No testimony was offered as to what entity creates and oversees the terms and standards of shipping in the United States.

into play, namely, is the Petitioner an “importer” as that term is used in West Virginia Code Section 11-14C-2(53).

The through line of the law of this case is simple. Pursuant to West Virginia Code Section 11-14C-6, an excise tax is levied on motor fuel in this state, including motor fuel imported from outside this state. The motor fuel subject to the tax includes special fuels. *See* W. Va. Code Ann. § 11-14C-2(61) (West 2025). Special fuels are defined as:

“Special fuel” means a **gas or liquid, other than gasoline, used or suitable for use as motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle**, machine, or mechanical contrivance and includes products commonly known as natural or casing-head gasoline, diesel fuel, dyed diesel fuel, biodiesel fuel, transmix, methanol, ethanol, methanol fuel, M100, ethanol fuel, E100, ethanol fuel blend, E85 and any fuel mixture that contains eighty-five percent or more alcohol by volume when combined with gasoline or other fuels and liquid fuel derived from coal through the Fischer-Tropsch process. “Special fuel” does not include alternative fuel or any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil or lubricant, unless blended in or sold for use as motor fuel in an internal combustion engine.

W. Va. Code Ann. § 11-14C-2(79) (West 2013)(emphasis added).<sup>3</sup>

The facts above are what the Petitioner relies on in its argument that the methanol sold to its customers in West Virginia is not special fuel. For his part, the Tax Commissioner hitches his horse to one fact only, namely that the methanol at issue, if put into any car engine in this country, would allow that car to start, and presumably move down the road. We find the Tax Commissioner’s argument to be particularly unpersuasive. The main witness in this matter was BBB, Chief Executive Officer of the CCC, the trade association of the global methanol industry. On cross examination of Mr. BBB, counsel for the Tax Commissioner essentially asked him only

---

<sup>3</sup> The definition of special fuel was changed to remove methanol and methanol fuel from the category of special fuels. This Legislative change was effective July 1, 2023, which is after the periods at issue in this matter.

one question, would the methanol at issue start a car and allow it to proceed down the roadway. The answer to that question was an equivocal yes, with Mr. BBB pointing out that many things, including whisky would start most combustion engines in this country. However, we are not concerned with whether the methanol at issue would start an engine in this country and allow it to proceed an indeterminate distance. The reason we are unconcerned is because West Virginia Code Section 11-14C-2(79) does not state that that any particular special fuel must be suitable to start an engine, it must be suitable for **use**. The myriad of unrebutted facts that the Tax Commissioner ignore shows that the methanol at issue is particularly unsuitable for any of the internal combustion engines currently used in this country. Facts such as methanol's usage would immediately void a car's warranty regarding the car's fuel systems. Or the fact that the methanol would not even start a U.S. car engine if the weather was too cold. This fact is why Mr. BBB testified that everywhere in the world where methanol is used in internal combustion engines a second tank must be added. This second tank must contain gasoline to be mixed with the methanol in cold weather, to allow the initial spark for combustion. Either one of the two facts immediately above would be enough to rule that the Petitioner's product is not special fuel under West Virginia law. However, this Tribunal finds two other facts to be much more damaging to the Tax Commissioner's argument. First, is the fact that if an owner in this country were to put methanol into their vehicle it would, at some indeterminate time, begin to eat away at certain plastic components of the engine, causing it to stop operating. The most damaging testimony to the Tax Commissioner's theory of the case is the fact that in certain circumstances, the methanol could eat away at certain components of the fuel lines/systems, and potentially cause an engine fire. Based upon the unrebutted facts from Mr. BBB, this Tribunal finds that the methanol sold by the Petitioner to customers in this state is particularly **unsuitable for use** in any internal combustion engine sold in this country.

In order to rule for the Tax Commissioner, we would be forced to rewrite Subdivision (79) so that it reads “gas or liquid, other than gasoline, used or suitable for use as motor fuel in an internal combustion engine or motor to start it in certain temperatures and propel it an indeterminate distance for an indeterminate amount of time”. Obviously, we are unable to rewrite statutes, and we must apply unambiguous statutes as they are written, giving force and effect to every word. *See e.g. Jackson v. Belcher*, 232 W. Va. 513, 753 S.E.2d 11 (2013); *Jackson v. Kittle*, 34 W. Va. 207, 12 S.E. 484 (1890) (it is necessary to give effect to every word and part of a statute in order to effectuate its true meaning). *See also* Syllabus Point 2 *Fountain Place Cinema 8, LLC v. Morris*, 227 W. Va. 249, 707 S.E.2d 859 (2011). (In the absence of any definition of the intended meaning of words or terms used in a legislative enactment, they will, in the interpretation of the act, be given their common, ordinary, and accepted meaning in the connection in which they are used.).

The common ordinary meaning of the word “use” is

The act of putting something to work, or employing or applying a thing, for any (esp. a beneficial or productive) purpose; the fact, state, or condition of being put to work, employed, or applied in this way; utilization or appropriation, esp. in order to achieve an end or pursue one's purpose.

Oxford English Dictionary, “use,”

[https://www.oed.com/dictionary/use\\_n?tab=meaning\\_and\\_use#1601002](https://www.oed.com/dictionary/use_n?tab=meaning_and_use#1601002) (last visited Mar. 13, 2025). Obviously, it strains credibility to suggest that usage of a particular fuel in a car engine that resulted in voiding a portion of the warranty, possible failure to start, and destruction of certain engine components would be considered suitable.

The Tax Commissioner argues that all car engines suffer wear and tear, and eventually wear out, and he is correct. What the Tax Commissioner fails to discuss, and what is fatal to this

argument is that the un-rebutted facts in this case show that use of methanol in car engines in this country will exacerbate the wear and tear. Those facts bring us back to “suitable” and show without a doubt that the methanol is not suitable for use.

The Petitioner next argues that it is not an “importer” as that term is defined in West Virginia Code Section 11-14C-2(53).

“Importer” means a person that imports motor fuel into this state. The seller is the importer for motor fuel delivered into this state from outside of this state by or for the seller and the purchaser is the importer for motor fuel delivered into this state from outside of this state by or for the purchaser.

W. Va. Code Ann. § 11-14C-2(53) (West 2025).<sup>4</sup> At hearing, an employee of the Petitioner testified that the ethanol at issue was shipped to its customer in West Virginia primarily by barge<sup>5</sup>, and that the barges are loaded at the Petitioner’s manufacturing facilities, none of which are located in West Virginia. The employee further testified that the Petitioner and its customer primarily utilized two shipping methods, FOB and CFR. Under all three shipping methods, title to the methanol passes to the buyer once the product is loaded onto either a barge or a rail car.

All of the testimony concerning how the methanol at issue was shipped, and therefore, who should be considered the importer, under West Virginia law, came from the Petitioner’s Vice President of Marketing and Logistics. The Petitioner also introduced its contracts with its customer in West Virginia, and various Incoterms definitional documents. The testimony was un-rebutted, and the contracts clearly back up the testimony that title passes once the transport vehicle is loaded, outside of West Virginia.

---

<sup>4</sup> The motor fuel tax assessed against the Petitioner is payable by the person importing the fuel into this state. W. Va. Code Ann. § 11-14C-6(a) (West 2025)(The tax levied pursuant to section five of this article is imposed at the time motor fuel is imported into this state, . . .and is payable by the person importing the motor fuel).

<sup>5</sup> For a very brief period of the time involved in this matter, approximately one month, some of the methanol was shipped by rail. That method is termed FCA or Free Carrier. Neither party argues that these rail shipments are more or less determinative of whether or not the Petitioner is an importer under West Virginia law.

Subdivision (53) is not the most clear definition in West Virginia's tax code, however, the testimony in this matter, taken in its entirety, shows that the Petitioner's customer is the importer. First, Subdivision (53) seems to suggest that the seller is the importer, if the seller causes the motor fuel to be brought into the state. We take that to mean the seller still has title to the fuel once it comes into the state, and then the seller sells it. It further appears that the Legislature intended for the buyer to be considered the importer, under facts such as we have in this matter, namely the buyer buys the fuel outside of this state and, for all intents and purposes, sends a transport vehicle to the purchase location, and arranges for transport of the fuel back to West Virginia. Any doubts this Tribunal has regarding the Legislature's intentions are put to rest by the fact that the Tax Commissioner's own witness admitted that, given the facts testified to at hearing, it does appear that the Petitioner's customer is in fact the importer.

JUDGE POLLACK: But let's say I'm buying some special gasoline or some other special fuel for whatever purpose I need in West Virginia, and I'm buying it from someone not in West Virginia. Am I the importer, or is the person I'm buying it from the importer?

MS. ACREE: So the --- unless there is a specific contract in place, the person that is buying the fuel product and bringing it into the state, that --- the person buying it and bringing it into the state is the importer, and they're the one that should pay the tax on it.

JUDGE POLLACK: Okay.

Hr'g Tr. pp. 130:14-20.<sup>6</sup>

Finally, the Petitioner also relies on the second sentence of Subdivision (79), which states, "Special fuel" does not include alternative fuel or any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil or lubricant, unless blended in or sold for use

---

<sup>6</sup> In his post-hearing brief, the Tax Commissioner does not address this testimony from his own witness. Nor does he offer any discussion of the definition of importer. Instead, he briefly argues that the Petitioner would have been better served by informing the Tax Department sooner that it did not consider itself an importer under West Virginia law.

as motor fuel in an internal combustion engine.” W. Va. Code Ann. § 11-14C-2(79) (West 2013). Specifically, it argues that the methanol it produces is a petroleum product or chemical compound that is not “blended in or sold for use as motor fuel in an internal combustion engine.” *Id.* In his reply brief, the Tax Commissioner offers no argument on this point. Despite the Tax Commissioner’s silence on this point, we are not persuaded by the Petitioner’s argument in this regard.

The first sentence of Subdivision (79) expressly mentions fuel that is **used or suitable for use** in internal combustion engines. The second sentence of Subdivision (79) expressly mentions fuel that is **blended in or sold for use** in an internal combustion engine. The Petitioner’s reliance on the second sentence of the Subsection is obvious, because it is clear that its product is not blended in or sold for use as a motor fuel. The first sentence of the Subdivision attempts to define what is special fuel, and lists such products as methanol and ethanol, but the sentence also limits what is special fuel by the, “used or suitable for use” language. The second sentence attempts to define another category of products that are not special fuel, and lists such products as alcohol and industrial solvents, and limits this category to products that are actually used as motor fuel.

At first reading, the rule of statutory construction *expressio unius est exclusio alterius* (the express mention of one thing implies the exclusion of another) would seem to apply.<sup>7</sup> Specifically, the Legislature has created a group of liquids and gases, like methanol and ethanol, that are special fuel under certain circumstances. In the second sentence, we have what is not special fuel, products like alcohol and industrial solvents, again under different circumstances. Hence, the express mention of certain products in the first sentence and the express mention of other products in the

---

<sup>7</sup> The West Virginia Supreme Court of Appeals has utilized the maxim on many occasions, and it is considered a basic tool of statutory construction. *See e.g. State v. Folse*, 249 W. Va. 523, 896 S.E.2d 689 (2023).

second sentence. The problem arises in the broad generalization language in both the first and second sentences, namely, “gas or liquid” and “petroleum product or chemical compound.” The ambiguity is revealed by using the methanol at issue in this matter, as an example. It is both a liquid and a chemical compound, as is alcohol. Hence the Petitioner’s ability to claim, with a straight face, “I’m selling a chemical compound that is not blended in or sold for use as a motor fuel. Therefore, it is not special fuel and we are not subject to the motor fuel tax.” This Tribunal believes that this ambiguity is resolved by the maxim above. The Legislature has created two categories of products, those like methanol and ethanol that merely need to be either used or suitable for use in a combustion engine, and the second group like alcohol and solvents, which must actually be blended in (with other motor fuels) or used in such an engine. If we are construing Subdivision (79) then the inclusion of methanol in the first sentence of the Subdivision implies its exclusion in the second sentence. Moreover, to rule for the Petitioner on this point would render the first sentence a nullity. If the Petitioner’s product is a chemical compound that is not blended in or used in an internal combustion engine, and therefore not special fuel, then what are we to conclude if it is determined that it is a liquid that is suitable for use (but not actually used) in an internal combustion engine? Simply put, special fuel cannot be both a liquid **suitable** for use in an internal combustion engine, and a chemical compound that must **actually be used** in such an engine. Again, we believe that this internal inconsistency in Subdivision (79) is resolved by the rule, *expressio unius est exclusio alterius*, as discussed above.

In summation, the methanol at issue in this matter is not special fuel, under West Virginia law, because it is not suitable for use in an internal combustion engine, for the reasons discussed above. Moreover, the Petitioner is not an importer, under West Virginia law, because the methanol at issue is brought into this state by and for the buyer of the Petitioner’s product. Finally, there are

two categories of special fuel under West Virginia law, and the methanol at issue in this matter is part of the category of special fuels that must be either used or suitable for use in an internal combustion engine in order to be considered special fuels. This is opposed to the other category of special fuels, such as alcohol, which must be either blended in or sold for use as a motor fuel.

### CONCLUSIONS OF LAW

1. It is the duty of the Tax Commissioner to see that the laws concerning the assessment and collection of all taxes and levies are faithfully enforced. *See* W. Va. Code Ann. §11-1-2 (West 2010).

2. “The Tax Commissioner shall collect the taxes, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter to which this article is applicable.” W. Va. Code Ann. §11-10-11(a) (West 2010).

3. There is hereby levied on all motor fuel an excise tax composed of a flat rate equal to \$.205 per invoiced gallon and, on alternative fuel, on each gallon equivalent, plus a variable component comprised of: On motor fuel other than alternative fuel, either the tax imposed by section eighteen-b, article fifteen of this chapter or the tax imposed under section thirteen-a, article fifteen-a of this chapter, as applicable. W. Va. Code Ann. § 11-14C-5 (West 2025).

4. The tax levied pursuant to section five of this article is imposed at the time motor fuel is imported into this state, . . .and is payable by the person importing the motor fuel. W. Va. Code Ann. § 11-14C-6(a) (West 2025).

5. “Motor fuel” means gasoline, blended fuel, aviation fuel, any special fuel and alternative fuel. W. Va. Code Ann. § 11-14C-2(61) (West 2025).

6. “Special fuel” means a gas or liquid, other than gasoline, used or suitable for use as motor fuel in an internal combustion engine or motor to propel or operate any form of vehicle, machine, or mechanical contrivance and includes products commonly known as natural or casing-head gasoline, diesel fuel, dyed diesel fuel, biodiesel fuel, transmix, methanol, ethanol, methanol fuel, M100, ethanol fuel, E100, ethanol fuel blend, E85 and any fuel mixture that contains eighty-five percent or more alcohol by volume when combined with gasoline or other fuels and liquid fuel derived from coal through the Fischer-Tropsch process. “Special fuel” does not include alternative fuel or any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil or lubricant, unless blended in or sold for use as motor fuel in an internal combustion engine. W. Va. Code Ann. § 11-14C-2(79) (West 2013).

7. The methanol sold by the Petitioner to customers in West Virginia is not special fuel because it is not used or suitable for use in any internal combustion engine utilized by vehicles in this country.

8. The motor fuel tax at issue in this matter “is imposed at the time motor fuel is imported into this state, . . . and is payable by the person importing the motor fuel unless otherwise specified in this section.” W. Va. Code Ann. § 11-14C-6(a) (West 2025).

9. “Importer” means a person that imports motor fuel into this state. The seller is the importer for motor fuel delivered into this state from outside of this state by or for the seller and the purchaser is the importer for motor fuel delivered into this state from outside of this state by or for the purchaser. W. Va. Code Ann. § 11-14C-2(53) (West 2025).

10. The three shipping methods utilized to transport the methanol at issue into this state all provide for title passing from the Petitioner to the buyer at the facility where the methanol is manufactured. Under that fact, the Petitioner’s customer is the importer, under West Virginia law.

11. The methanol at issue in this matter is part of the category of special fuels that must be either used or suitable for use in an internal combustion engine in order to be considered special fuels.

12. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the Petitioner to show that any assessment of tax against it is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2025); W. Va. Code. R. §§ 121-1-37.5 (2023).

13. The Petitioner in this matter has met its burden of showing that the motor fuel importer tax assessment issued against it was erroneous.

#### **DISPOSITION**

**WHEREFORE**, it is the final decision of the West Virginia Office of Tax Appeals that the motor fuel importer tax assessment issued against AAA, on October 5, 2023, for a total assessed tax liability of \$11,827,933.09 is hereby **VACATED**.

It is further **ORDERED** that should this decision be overruled by any appellate court, based upon Finding of Fact number 20 above, the additions to tax in the amount of \$957,581.09 are hereby **WAIVED**.

#### **WEST VIRGINIA OFFICE OF TAX APPEALS**

By: \_\_\_\_\_  
A. M. "Fenway" Pollack  
Chief Administrative Law Judge

\_\_\_\_\_  
Date Entered