

REDACTED DECISION – DK#’S 23-157

**BY: A.M. “FENWAY” POLLACK, CHIEF ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON APRIL 1, 2025
ISSUED ON MAY 27, 2025**

FINAL DECISION AND ORDER CHANGING STYLE OF CASE

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 Producer tax for the period of November 30, 2022, through June 30, 2023, for a total assessed tax liability of \$4,143,034.59. Written notice of this assessment was served on the Petitioner, as required by law.

Thereafter, on October 26, 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).

Thereafter, at some unknown time prior to the evidentiary hearing in this matter, the assessment described above was withdrawn. On November 20, 2024, a new assessment was issued. This assessment was issued against BBB. The purpose of the withdrawal and issuance of a new assessment was due to the fact that the parties agreed that the original assessment had been issued against the wrong Taxpayer. During the evidentiary hearing that was held in this matter, the parties orally stipulated to that fact. The November 20, 2024, assessment contained an identical amount of tax due, however, it differed in the amounts of additions and the amounts of interest due. As will be discussed in greater detail below, the Tax Commissioner has agreed to waive the additions to the tax assessed.

On December 16, 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 Delaware limited liability company, with its headquarters in CCC, West Virginia. The Petitioner is exclusively a manufacturer of methanol, which it produces at its manufacturing facility in DDD, West Virginia. Hr'g Tr. pp. 9:7-14.

2. The Petitioner sells the methanol it manufactures to one customer only. Hr'g Tr. pp. 12:18-22.

3. At some indeterminate time prior to issuing the first assessment in this matter, it came to the attention of the Tax Division that AAA was producing and transporting methanol in this state. Hr'g Tr. pp. 29:8-22.

4. Based upon its investigation, the Tax Division sent a letter to AAA, asking it to fill out the proper paperwork to be designated a motor fuel producer. AAA failed to respond to this letter, which led to the issuance of the first assessment. Hr'g Tr. pp. 30:9-19.

5. Once the confusion regarding exactly what entity was producing and transporting the methanol at issue was resolved, the second assessment was issued, this time against BBB. Hr'g Tr. pp. 31:2-16.

6. Prior to the evidentiary hearing in this matter, this Tribunal conducted a hearing in Docket No. 23-156. The facts of Docket No. 23-156 are almost identical to the facts of this matter.¹ The main witness for the Petitioner in Docket No. 23-156 was EEE, the Chief Executive Officer of the FFF, the trade association for the global methanol industry. For the sake of judicial

¹ In Docket No. 23-156, the Petitioner produced its methanol at plants outside of West Virginia. As a result, one of the issues in that matter was whether or not the Petitioner was an importer of motor fuel into West Virginia.

economy, the parties in this matter agreed to forsake calling Mr. EEE to testify a second time. Instead, the parties agreed to essentially stipulate that Mr. EEE's testimony in this matter would be identical to his previous testimony. Rather than enter a formal stipulation of facts, the parties agreed to enter into the record, as an exhibit, the pages of Mr. EEE's testimony in the prior hearing. *See* Petitioner's Ex. 1. As such, findings of fact numbers 7-15 below are based upon Mr. EEE's previous testimony.

7. The methanol the Petitioner produces is a chemical compound with its formula being CH₃OH.

8. No methanol is sold in this country for use as a motor fuel.

9. 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.

10. In cold weather the methanol at issue will not vaporize enough to ignite.

11. 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 methanol to ensure vaporization and ignition.

12. 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.

13. In similar fashion to Finding of Fact Number 11 above, in 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.

14. 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.

15. Putting methanol in a vehicle engine in the United States would immediately void the warranty. Hr'g Tr. pp. 19:12-21.

16. The Tax Commissioner is willing to waive the additions assessed in this matter in the amount of \$355,314.47.

DISCUSSION

There is essentially only one issue of contention between the parties, namely is the methanol produced and sold by the Petitioner “special fuel” as defined under West Virginia Code Section 11-14C-2(79), and thus subject to the motor fuel excise tax.

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).²

The Petitioner makes numerous arguments as to why it is not subject to the motor fuel excise tax. Normally we would address the Petitioner's arguments in the order presented, however, for reasons that will be explained below, we turn to the Petitioner's second argument first. There, the Petitioner argues that the methanol it manufactures and sells is not suitable for use in an internal combustion engine, and therefore, it is not special fuel, under West Virginia law. 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. As stated above, both this Petitioner and the Petitioner in Docket No. 23-156 relied on the testimony of Chairman EEE. Given his un rebutted testimony, we have no choice but to rule for the Petitioner in this matter.

In keeping with the Tax Commissioner's theory of this case, on cross examination of Mr. EEE, counsel for the Tax Commissioner essentially asked him only 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. EEE 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 any particular special fuel must be suitable to start an engine, it must be suitable for **use**. The myriad un rebutted facts that the Tax Commissioner ignores show 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 immediately voiding a car's warranty regarding the car's

² 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.

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. EEE 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. EEE, 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 (last visited Mar. 13, 2025).³ 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 the use of methanol in car engines in this country will exacerbate the wear and tear. And those facts bring us back to “suitable” and show without a doubt that the methanol is not suitable for use.

The Petitioner’s first argument is that its methanol is not special fuel, based upon the second sentence of Subdivision (79). That sentence 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 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

³ The Motor Fuels Act also contains a definition of “use”. “Use means the actual consumption or receipt of motor fuel by any person into a motor vehicle, aircraft, or watercraft.” W. Va. Code Ann. § 11-14C-2(89) (West 2025).

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 Subdivision 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.⁴ Specifically, the Legislature has created a group of liquids and gases that are special fuel, under certain circumstances, like methanol and ethanol. 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 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.” Just using the methanol at issue in this matter as an example reveals the ambiguity. It is both a liquid, and a chemical compound, as is alcohol. Hence the Petitioner’s ability to claim, with a

⁴ 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).

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 part 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.

The Petitioner also points out that to construe Subdivision (79) as the Tax Commissioner seeks would lead to the potential absurd result of subjecting the producers/importers of alcoholic beverages, rubbing alcohol, mouthwash, etc. to the motor fuels act. To the extent that construing Subdivision (79) is necessary, the Petitioner’s argument is well founded. If the Tax Commissioner’s theory is correct, and the Petitioner’s methanol is subject to the act, merely because you could get a car to start and travel down the road, then perhaps the Tax Commissioner would be better served to go after the makers of the other products mentioned above. As stated, below certain temperatures, the methanol at issue will not even create the necessary spark need for ignition. While there was no evidence produced on this point, it is possible that whisky would

create a spark and ignition at lower temperatures than methanol is able to do. The Petitioner's introduction of this argument shows the fallacy of the Tax Commissioner's position. Obviously, whisky is not suitable for use in an internal combustion engine, and that is why the Tax Commissioner cannot, with a straight face, issue the makers of Jack Daniels a motor fuel tax assessment. The problem is that the absurdity that the Petitioner points out is somewhat hidden by the patina contained in this case. Methanol was used as motor fuel in this country in the past, and it is currently used in other countries. So, at first glance, this lends a certain credence to the Tax Commissioner's assessment. However, as the Petitioner points out, if the standard is just to get a car to start and move, then why not assess Jack Daniels. Obviously, this Tribunal agrees that this would lead to an absurd result. It is well settled that such an outcome is to be avoided, and in its post-hearing brief the Petitioner provides citation to numerous authorities standing for this proposition. For his part, the Tax Commissioner offers no response to this argument.

The Petitioner next argues that there is persuasive evidence that methanol is not and has not been taxed as a special fuel. That evidence is the fiscal note presented to an unnamed committee by Mark Muchow, West Virginia's long time budget analyst. The note was prepared during the 2023 legislative session as part of the process in S.B. 446, which as discussed above, removed methanol from the "includes products commonly known "as" category of Subdivision (79). During the evidentiary hearing the Petitioner introduced the fiscal note, which showed that in someone's opinion,⁵ there would be no effect on the state's revenue collections/budget by removing methanol from the definition of special fuel. The fiscal note is self-explanatory, and

⁵ During the evidentiary hearing there was conflicting testimony regarding the fiscal note. At times it was characterized as representing the opinion of Mr. Muchow, and at other times it was acknowledged that the identity of who drafted it was unknown. A fair reading is that the parties would have to agree that it was the position of the Executive Branch, through both the Tax Division and the Department of Revenue that there would be no financial impact if methanol was removed as a special fuel under the Motor Fuel Act.

shows exactly what the Petitioner argues. However, in this matter we are not called to determine if this Tax Commissioner, or previous Tax Commissioners have ever taxed methanol.⁶ Our task is to determine if the product produced by the Petitioner in this matter is subject to West Virginia's Motor Fuels Excise Tax Act, (hereafter "Motor Fuels Act") and more specifically, is it special fuel, as defined in the Act.

The Petitioner's next argument aligns closely with its argument regarding the significance of the fiscal note. Specifically, the Petitioner argues that the doctrine of desuetude should be applied to the Tax Commissioner's attempts to enforce the Motor Fuels Act against it, and that under the doctrine the assessment would be considered unfair and unfounded. The doctrine is utilized to void outdated laws, especially laws that have not been enforced in years. The West Virginia Supreme Court of Appeals has applied the doctrine in a handful of cases, although, as the Petitioner correctly points out, the Court has generally applied it in the context of criminal statutes that have not been enforced in many years. In its post-hearing brief, the Petitioner also provides citation to two out of jurisdiction Federal cases whereby the doctrine was applied in civil matters, including one taxation case. Here again, the Tax Commissioner offers no argument in opposition to the Petitioner's points.

While the guidance from the West Virginia Supreme Court of Appeals comes generally from criminal matters, the Court has, on at least one occasion, cited Blacks Law Dictionary to lay out the basic foundation of the doctrine. "Desuetude is defined as "1. Lack of use; obsolescence through disuse. 2. The doctrine holding that if a statute or treaty is left unenforced long enough, the courts will no longer regard it as having any legal effect even though it has not been repealed."

⁶ This Tribunal has ruled on more than one occasion that it has the capability to hear "as applied" constitutional arguments. *See e.g.*, Docket No. 12-042. However, in its post-hearing briefs the Petitioner does not argue that the Tax Commissioner is applying the Motor Fuel Act in an unconstitutional manner.

Black's Law Dictionary 458 (7th ed.1999).” State ex rel. Canterbury v. Blake, 213 W. Va. 656, 660, 584 S.E.2d 512, 516 (West 2003).

The Petitioner argues that methanol has not been used in decades as a motor fuel in West Virginia, or anywhere in America for that matter. The Petitioner also relies on testimony from one of the Tax Division’s witnesses to establish that the State has not taxed methanol as a motor fuel. Therefore, the Petitioner argues that under the doctrine it would violate fundamental fairness and cause financial harm to apply the Act to its methanol sales. This Tribunal finds this argument unpersuasive. We do so because the Petitioner fails to discuss testimony from another Tax Division witness, Stacy Acree, Director of Tax Account Administration. Ms. Acree clarified that sometime around 2020 or 2021 the Tax Division changed the motor fuel tax returns to specifically include certain special fuels, such as methanol. Prior to that, methanol and other special fuels were characterized under the general heading “gasohol”.

JUDGE POLLACK: So in 2020, ‘21, somewhere near the tax return was changed, and simply put, methanol was broken out into its own line.

MS. ACREE: Yeah. Yes.

JUDGE POLLACK: Before that ---.

MS. ACREE: Because it was lumped together before so we could track it to see ---.

JUDGE POLLACK: And before that, it was gasohol on the return?

MS. ACREE: Yes, because it was basically at that point not being monitored or picked up as an individual. It was just basically, okay, we're trusting you that you're paying it. And then when we went through and added these little boxes in gasohol to say, okay, it's --- and I don't know everything that was added, but we added --- you can select, it's methanol, it's dyed diesel, whatever those were. But that little methanol checkbox was added. And, so when the transporter, the importer, or the exporter reported the fuel that they were importing, exporting, or transporting, they could select methanol in 2021. And then we would know that, hey, methanol is being brought in or taken out of the state.

Hr'g Tr. pp. 81:21-23, 82:1-11.

Ms. Acree’s testimony brings into sharp focus the difference between the disuse that would invoke the doctrine of desuetude, and the Tax Commissioner’s enforcement of the West Virginia’s Motor Fuels Act. There is a big difference between, say, a seventy or eighty year old criminal statute saying it shall be illegal for any citizen to travel the public byways between the hours of ten p.m., and six a.m., while wearing a mask or other face covering and the West Virginia Motor Fuels Act. In the former, if a citizen is the first person prosecuted since the passage of that law, while many people over the decades have worn masks after ten p.m., particularly on Halloween, then an argument can reasonably be made to invoke the doctrine. On the other hand, Ms. Acree’s statement that “we’re trusting you that you’re paying it” clearly shows that it has consistently been the Tax Division’s intention to apply the Motor Fuels Act to special fuels. The change to the motor fuel returns just evidences a more robust enforcement.

Next the Petitioner argues that even if the methanol it produces is special fuel, its customer should be responsible for payment of the motor fuel tax, and that enforcing the assessment against it would lead to double taxation. The Petitioner relies on two definitions for this proposition, the definition of producer/manufacturer contained in Subsection (69) of Chapter 11, Article 14C and the definition of distributor in Subsection (32).⁷ The Petitioner also cites West Virginia Code Section 11-14C-1 as standing for the proposition that the motor fuel tax is paid by the ultimate consumer. The Tax Commissioner offers no response to this argument. At the outset we note that the Petitioner is essentially seeking an advisory opinion, because no evidence was introduced at hearing regarding the Petitioner’s customer having a legal duty to collect the tax. Moreover, the

⁷ (32) “Distributor” means a person who acquires motor fuel from a licensed supplier, permissive supplier or from another licensed distributor for subsequent sale or use. . . .(69) “Producer/manufacturer” means a person who produces, refines, blends, distills, manufactures or compounds motor fuel. W. Va. Code Ann. § 11-14C-2 (West 2025).

Petitioner's argument on this point is one scant paragraph. Finally, Section 6 of the Motor Fuel Act addresses the imposition of the tax and states:

(b) Except as provided in subsection (a) of this section, the tax levied pursuant to section five of this article is measured by invoiced gallons of motor fuel removed, other than by a bulk transfer:

(1) From the bulk transfer/terminal system within this state;

(2) From the bulk transfer/terminal system outside this state for delivery to a location in this state as represented on the shipping papers: *Provided*, That the supplier imports the motor fuel for the account of the supplier; and

(3) Upon sale or transfer in a terminal or refinery in this state to any person not holding a supplier's license and payable by the person selling or transferring the motor fuel.

W. Va. Code Ann. § 11-14C-6 (West 2025). Subdivision (3) above seems to address the sale from the Petitioner to its customer, because it is selling from a refinery in this state to a person not holding a supplier's license. It is less clear how Subdivision (3) would apply to the Petitioner's customer. We are also unclear on why Subdivision (2) has an "and" at the end, as opposed to an "or". Due to the fact that Subsection (b) is less than clear, and that these questions of law were not discussed during the pre-hearing conference in this matter, we find the Petitioner's arguments in this regard less than persuasive.

Finally, the Petitioner argues that there are exemptions in both the variable and flat rates of the motor fuel tax, and that if this Tribunal were to rule that its product is special fuel these exemptions would apply. The Tax Commissioner argues that the exemptions at issue are refundable exemptions and that because the Petitioner never paid the tax they are not entitled to the exemptions. The Tax Commissioner further argues that there is a statutory deadline to apply for these refunds and the Petitioner has missed it. We need not offer citation to any authority for these arguments, because neither party discusses the ultimate conclusion that needs to be reached. The Petitioner is correct that there are refundable exemptions from the motor fuel tax. The Tax

Commissioner is also correct, that you must pay the tax and then seek the refund, and that there is a statute of limitations on seeking it. However, neither party offers citation to any authority that would answer the question posed, or put another way, neither party posed the question this Tribunal believes is at issue. That question is, if the Petitioner did not pay the tax because they believed it did not apply to their product, and obviously never requested the refundable exemption, then does the filing of an appeal before this Tribunal essentially toll the statute of limitations. We are of the opinion that if an appellate court should determine that the Petitioner's product is special fuel, then a remand would be necessary to answer the question 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 Tax Commissioner's interpretation of the definition of special fuel would lead to the absurd result of the necessity of subjecting numerous liquids to the Motor Fuel Act merely because they could create a spark for ignition and perhaps propel a vehicle a certain distance. Additionally, 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. Finally, the Petitioner has not proven an as applied constitutional argument, nor has it proven that the doctrine of desuetude should be applied to the definition of special fuels.

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

5. “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).

6. 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.

7. 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.

8. The Petitioner is not arguing that the Tax Commissioner has applied the Motor Fuels Act to it in an unconstitutional way.

9. “Desuetude is defined as “1. Lack of use; obsolescence through disuse. 2. The doctrine holding that if a statute or treaty is left unenforced long enough, the courts will no longer regard it as having any legal effect even though it has not been repealed.” Black's Law Dictionary 458 (7th ed.1999).” State ex rel. Canterbury v. Blake, 213 W. Va. 656, 660, 584 S.E.2d 512, 516 (West 2003).

10. The doctrine of desuetude is not applicable to the Tax Commissioner’s enforcement of the Motor Fuels Act, because the evidence in this matter shows that methanol may have been taxed in the past under the category of gasohol.

11. 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).

12. 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 on November 20, 2024, against BBB. In the amount of \$4,928,010.70 is hereby **VACATED**.

It is further **ORDERED** that should this decision be overruled by any appellate court, based upon Finding of Fact number 16 above, the additions to tax in the amount of \$355,314.47 are hereby **WAIVED**.

It is further **ORDERED** that the style of this case is changed to reflect the proper party and shall now be:

BEFORE THE WEST VIRGINIA OFFICE OF TAX APPEALS

BBB,)	DOCKET NO. 23-157 MOTOR FUEL
Petitioner,)	
)	
v.)	
)	
MATTHEW R. IRBY as)	
STATE TAX COMMISSIONER of)	
WEST VIRGINIA,)	
Respondent.)	

WEST VIRGINIA OFFICE OF TAX APPEALS

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

Date Entered