



# TaxNewsFlash

United States



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## Eleventh Circuit: Taxpayer's claim for reimbursement of "protest payments" denied, no statutory basis for refund

The U.S. Court of Appeals for the Eleventh Circuit today upheld a federal district court's grant of summary judgment denying a taxpayer's claim for reimbursement of "protest payments" made to the IRS after the IRS "claw-backed" an alternative fuel tax credit it had previously granted.

The appeals court rejected the taxpayer's claim that federal courts may order the government to pay out money from the Treasury based solely on equitable principles, noting that the U.S. Supreme Court held in *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990), that "payments of money from the Federal Treasury are limited to those authorized by statute."

The case is: *Affordable Bio Feedstock, Inc. v. United States*, No. 21-11850 (11<sup>th</sup> Cir. July 26, 2022). Read the Eleventh Circuit's [decision](#) [PDF 82 KB]

### Background

The taxpayer was a waste-to-energy company that acquired oil and food waste ("brown grease") from restaurants and processed it for use as alternative fuel.

Section 4041(a)(2) imposes an excise tax for certain alternative fuels. Taxpayers must register for this excise tax, and Treasury regulations require taxpayers registering for the excise tax to submit a Form 637 application. Once the IRS approves the application, the taxpayer is eligible to claim an alternative fuel excise tax credit pursuant to section 6427(e)(2).

The taxpayer submitted its Form 637 applications in May and June 2013, requesting activity letter registrations. The IRS eventually approved the taxpayer's activity letter registrations, and these remained valid when, in 2016, the taxpayer filed separate Forms 8849 claiming refunds of over \$423,000 for 2015 and over \$42,000 for 2016 as the alternative fuel excise tax credit. The IRS paid these claims in 2016.

The IRS audited the taxpayer and in 2018 sent letters to the taxpayer revoking its activity letter registrations. In 2018, the IRS sought reimbursement from the taxpayer of the paid amounts of the alternative tax credit along with interest and penalties.

The taxpayer (which in the meantime had sold its assets to a third party) remitted “under protest” a portion of the paid tax credits of about \$51,000. The taxpayer then initiated a refund claim for this amount that it had remitted to the government.

The federal district court in 2021 granted the government’s motion for summary judgment, and the taxpayer appealed.

### **Eleventh Circuit**

The Eleventh Circuit today affirmed the district court’s grant of summary judgment.

As the appellate court explained, the taxpayer had sought to recover the money it had already paid to the IRS and the fact that the taxpayer had paid this money “under protest” was irrelevant. Rather, the Eleventh Circuit noted that the “only relevant fact” was that this money was currently with the Treasury, and for the IRS to refund the amount, the money would have to be withdrawn from the Treasury. The court continued to explain that under the Supreme Court’s 1990 decision, the Appropriation Clause’s “explicit rule of decision” for withdrawing funds from the Treasury requires that “the payment of money from the Treasury must be authorized by a statute.”

Because the taxpayer had waived any argument that its activities qualified it for the alternative fuel tax credit under section 6426 and given that it presented no other statutes as a potential basis for recovery, the taxpayer could not recover monetary damages from the Treasury.

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