APPENDIX

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APPENDIX A

FILED
June 13, 2023
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Antero Resources Corporation,
Petitioner Below, Petitioner

vs.) No. 22-0048 (Harrison County 20-P-83-2)

Matthew R. Irby,
West Virginia Tax Commissioner,
Joseph Romano, Assessor of
Harrison County, and The County Commission
of Harrison County, sitting
as the Board of Assessment Appeals,
Respondents Below, Respondents

and

Antero Resources Corporation,
Petitioner Below, Petitioner

vs.) No. 22-0049 (Ritchie County CC-43-2018-AA-1)

Matthew R. Irby,
West Virginia Tax Commissioner,
Arlene Mossor, Assessor of

Ritchie County, and Ritchie County Commission,
Respondents Below, Respondents

and

Antero Resources Corporation,
Petitioner Below, Petitioner

vs.) No. 22-0050 (Harrison County 18-F-235-3)

Matthew R. Irby,
West Virginia Tax Commissioner,
Joseph R. Romano, Assessor of Harrison County, and the County Commission of Harrison County,
Respondents Below, Respondents

and

Antero Resources Corporation,
Petitioner Below, Petitioner

vs.) No. 22-0051 (Doddridge County CC-09-2019-AA-1)

Matthew R. Irby,
West Virginia Tax Commissioner,
David Sponaugle, Assessor of

Doddridge County, and Doddridge County Commission,
Respondents Below, Respondents

and

Antero Resources Corporation,
Petitioner Below, Petitioner

vs.) No. 22-0052 (Doddridge County CC-09-2018-AA-1)

Matthew R. Irby,
West Virginia Tax Commissioner,
David Sponaugle, Assessor of Doddridge County,
and County Commission of Doddridge County,
Respondents Below, Respondents

and

Antero Resources Corporation,
Petitioner Below, Petitioner

vs.) No. 22-0144 (Tyler County 18-AA-1)

Matthew R. Irby,
West Virginia Tax Commissioner,
Lisa Jackson,
Assessor of Tyler County, and

The County Commission of Tyler County sitting as the Board of Assessment Appeals, Respondents Below, Respondents

MEMORANDUM DECISION

In these consolidated cases, Petitioner Antero Resources Corporation ("Antero") appeals several business court orders entered in four counties in December 2021 and January 2022. Respondents are State Tax Commissioner Matthew R. Irby ("the tax commissioner"), Doddridge County Assessor David Sponaugle, Tyler County Assessor Lisa Jackson, Harrison County Assessor Joseph Romano, Ritchie County Assessor Arlene Mossor (collectively, "the assessors"), and the County Commissions of Doddridge, Harrison, and Tyler Counties (collectively, "the county commissions").[1] Upon our review, we determine that oral argument is unnecessary and that a memorandum decision is appropriate. *See* W. Va. R. App. Proc. 21.

Antero asks us to return to the issues we considered in *Steager v. Consol Energy, Inc.*, 242 W. Va. 209, 832 S.E.2d 135 (2019), wherein we reviewed the tax commissioner's methods of valuing gas-producing wells in this state for the 2016 and 2017 tax years, insofar as the business court relied on that precedent

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[1] Antero appears by counsel Ancil G. Ramey and John J. Meadows. The tax commissioner and the assessors appear by West Virginia Attorney General Patrick Morrisey and Deputy Attorney General Sean M. Whelan. Two county commissions (Harrison and Doddridge) appear by counsel R. Terrance Rodgers and Jonathan Nicol. Another county commission (Tyler) appears by counsel D. Luke Furbee.

to affirm several tax assessments of Antero's natural resource holdings for the 2018 and 2019 tax years. Pursuing this end, Antero presents six assignments of error. It argues that the business court erred in (1) finding preclusive effect in *Consol Energy, Inc.*; (2) declining to apply a "2020 Guidance" ("the guidance" or "the 2020 guidance") written by the tax commissioner retroactively to the 2018 and 2019 tax years; (3) failing to find that the tax commissioner's refusal to retroactively apply the guidance is arbitrary and capricious and, thus, in violation of the state Administrative Procedures Act; (4) failing to recognize that the tax assessments violate due process principles; (5) failing to recognize that the tax assessments violate state and federal constitutional equal protection principles; and (6) failing to recognize that the tax assessments violate the dormant Commerce Clause of the federal constitution. We review these assignments of error under the following standard:

> "'An assessment made by a board of review and equalization and approved by the circuit court will not be reversed when supported by substantial evidence unless plainly wrong.' Syllabus Point 1, *West Penn Power Co. v. Board of Review and Equalization*, 112 W.Va. 442, 164 S.E. 862 (1932) (other internal citations omitted)." Syllabus Point 3, *In re: Tax Assessment of Foster Foundation's Woodlands Retirement Community*, 223 W.Va. 14, 672 S.E.2d 150 (2008)." Syllabus Point 2, *Mountain America, LLC v. Huffman*, 224 W.Va. 669, 687 S.E.2d 768 (2009).

Syl. Pt. 2, *Lee Trace, LLC v. Raynes*, 232 W. Va. 183, 751 S.E.2d 703 (2013).

Each of Antero's six assignments of error ultimately attacks the tax commissioner's *ad valorem* taxation of the natural resource properties on the ground that the tax commissioner exceeded his authority in declining the deduction of certain post-production expenses from the valuation of gas and oil producing wells.[2] The assessments were upheld by the county commissions, each sitting as a board of review and equalization, and then appealed and referred to the business court. When we considered Antero's challenges to prior tax year assessments in *Consol Energy, Inc.*, the non-deduction of post-production expenses was a central consideration, and we declined to find error in the tax commissioner's assessment, because the tax commissioner's statutory interpretation was reasonable:

> [W]e cannot say that the Tax Department's position that gathering, compressing, processing, and transporting expenses are not "directly related" to the "maintenance and production" of natural gas is arbitrary, capricious, or manifestly contrary to the enabling taxation statute. In accordance with our precedent, its position "must be sustained if it falls within the range of permissible construction." *W. Va. Health Care Cost Review Auth.* [*v. Boone Memorial Hospital*], 196 W. Va. [326] at 339, 472 S.E.2d [411] at 424 [1996]. More importantly, the

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[2] *Consol Energy, Inc.* addressed the taxation of gas-producing wells. After remand, Antero asked us to further address the tax commissioner's methodology as it related to wells that produced both oil and gas. *Antero Res. Corp. v. Irby*, Nos. 20-0530, 20-0531, and 20-0579, 2022 WL 1055446 (W. Va. Apr. 8, 2022) (memorandum decision).

> equity of such an interpretation is well beyond the reach of this Court under these circumstances. It is sufficient to conclude that the Tax Department's exclusion of these expenses from its average expense calculation is a reasonable construction of the regulation and not facially inconsistent with the enabling statute.

Consol Energy, Inc., 242 W. Va. at 223, 832 S.E.2d at 149.

While our analysis of this issue as it affected Antero's 2016 and 2017 tax assessments does not preclude Antero from challenging its later tax assessments on the same ground, the legal precedent is nevertheless controlling.[3] Antero argues, however, that the tax commissioner's guidance, published in June of 2020 (for the 2021 property tax year), changed the landscape of natural resource property assessment, because it effectively communicated a

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[3] Antero's first assignment of error, as noted in the body of this decision, argues that the business court "erred by ruling that Antero's claims in this case were precluded" by *Consol Energy, Inc*. It is apparent from our reading of the business court's orders that, though the business court characterized *Consol Energy, Inc*. as collaterally estopping Antero's claims, the court was discussing the application of *Consol Energy, Inc*. as settled precedent. Certainly, the business court explained that "Antero makes the same arguments with regard to its position as to why postproduction costs should be included in the calculat[ion] in determining its operating expenses" as it did when appearing for *Consol Energy, Inc*. The court applied the settled law to the facts before it, then went on to discuss Antero's additional arguments (such as the potential force of the 2020 guidance) that were not resolved by *Consol Energy, Inc*. We, therefore, find no error in the circuit court's application of *Consol Energy, Inc*. to the facts presented in this case.

position on an issue over which state law was previously silent. The guidance, prior to its withdrawal in October of 2020, provided, "To avoid having your well overvalued for property tax purposes, it is important that you appropriately adjust actual gross proceeds of sale to properly reflect the gross receipts you would have received had the sales transaction been a field line point of sale." This adjustment, presumably, was designed to account for the post-production expenses associated with delivering a natural resource to a remote market, the very expenses that Antero would deduct in the valuation of its wells. Antero argues that the guidance amounts to a retroactive interpretive rule that permits the deduction of expenses beyond the singular monetary average discussed in *Consol Energy, Inc*.

Upon thorough consideration of the arguments supporting Antero's second and third assignments of error, we disagree that the guidance is a retroactive interpretive rule that binds the tax commissioner to a specified course of action.[4] The characterization of a

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[4] We note that Antero previously raised this issue regarding its 2016 and 2017 tax assessments, and we declined to address it because the 2020 guidance was published after the business court entered its orders related to those tax assessments. *Antero Res. Corp. v. Irby*, Nos. 20-0530, 20-0531, and 20-0579, 2022 WL 1055446, at *5 (W. Va. Apr. 8, 2022)(memorandum decision). We explained that we "will not decide nonjurisidictional questions which were not considered and decided by the court from which the appeal has been taken." *Id*. (quoting, in part, Syl. Pt. 7, *In re Michael Ray T.*, 206 W. Va. 434, 525 S.E.2d 315 (1999)). In asking the business court in this case to consider the application of the 2020 guidance, which was not available to the boards of review and equalization, Antero essentially asked the business court to do what we previously declined to do.

rule as legislative or interpretive, or indeed the determination of whether a particular communique is a rule at all, can require arduous deliberation. Furthermore, the determination of the nature of a rule significantly controls the force of that rule. *See Appalachian Power Co. v. State Tax Dep't of W. Va.*, 195 W. Va. 573, 583-84, 466 S.E.2d 424, 434-35 (1995).[5] However, because Antero does not ask us to characterize the rule as legislative or interpretive, but only to treat it as an interpretive rule, we need not classify the guidance. Instead, we need merely ask whether the characterization of the 2020 guidance as an interpretive rule would have required the circuit court to afford Antero the relief it seeks. We conclude, without determining the nature of the 2020 guidance,

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[5] In that case, we explained:

> Under West Virginia law, there are three types of rules—legislative, interpretive, and procedural. We are not concerned with procedural rules in this case. Legislative rules are those "affecting private rights, privileges or interests," in what amounts to a legislative act. W. Va. Code, 29A-1-2(i) (1982). Legislative rules have "the force of law[.]" W. Va. Code, 29A-1-2(d) (1982). *See also Chico Dairy Co. v. West Va. Human Rights Comm'n*, 181 W.Va. 238, 382 S.E.2d 75 (1989) (to be valid, the promulgation of legislative rules must be authorized by the West Virginia Legislature). Interpretive rules, on the other hand, do not create rights but merely clarify an existing statute or regulation. *See* W. Va. Code, 29A-1-2(c) (1982). Because they only clarify existing law, interpretive rules need not go through the legislative authorization process. *See* W. Va. Code, 29A-3-1, *et seq.*; *Chico Dairy Co. v. West Virginia Human Rights Comm'n, supra.*

Appalachian Power Co. v. State Tax Dep't of W. Va., 195 W. Va. 573, 583, 466 S.E.2d 424, 434 (1995).

that the business court was not clearly wrong in finding that its publication did not affect the analysis we prescribed in *Consol Energy, Inc.*

"Although they are entitled to some deference from the courts, interpretive rules do not have the force of law nor are they irrevocably binding on the agency or the court. They are entitled on judicial review only to the weight that their inherent persuasiveness commands." *Appalachian Power Co.*, 195 W. Va. at 583, 466 S.E.2d at 434. The 2020 guidance simply is not persuasive in this instance. As explained above, Antero advocates for the application of the rescinded 2020 guidance, initially written for the 2021 tax year, to its 2018 and 2019 tax assessments. In this simplified description of Antero's argument, we find the essence of the business court's determination that the guidance did not rouse the "sea change" that Antero suggests. First, the 2020 guidance was not before the county boards of review and equalization when they considered Antero's challenges to these tax assessments. Second, the post-assessment publication of the 2020 guidance neither affected the calculation for the valuation of the natural resource properties, nor created an expectation on which Antero detrimentally relied. Moreover, the tax commissioner rescinded the 2020 guidance almost immediately on publication. To paraphrase the business court, the 2020 guidance is inadequately persuasive to overcome the *Consol Energy, Inc*. holding affording deference to the tax commissioner's decision to forego the deduction of post-production expenses for valuation of natural resource properties, at least for the 2018 and 2019 tax years.

We turn to Antero's fourth, fifth, and sixth assignments of error, in which Antero argues that the tax commissioner's assessment process breaches several constitutional safeguards. With respect to these arguments, the business court explained:

> As [*Consol Energy, Inc*.] explicitly found that the non-deductibility of those postproduction expenses was permissible, this Court must reject Antero's instant argument that the County Commission's revalued assessment[s . . .] of Antero's wells are impermissible because they do not include the deduction of postproduction expenses, which Antero argues violates statutory provisions, is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion and violates constitutional provisions, including the federal and state Due Process Clauses, federal Equal Protection Clause, state Equal and Uniform Taxation Clause, and dormant Commerce Clause.

Antero's assertion that it has been denied due process, which it offers here in a brief, two-paragraph argument that cites no legal precedent, rests entirely on application of the 2020 guidance. We have found the guidance unpersuasive, and we disagree that any statement in it proves a due process violation. Furthermore, equal protection concerns were of considerable importance in our determination of *Consol Energy, Inc*., and Antero's argument here (equal in brevity to that of its due process argument) does not induce us to doubt that we thoroughly considered the equality and uniformity of the provisions at issue. Finally, Antero argues (also somewhat briefly, in view of the magnitude of the accusation) that the denial of the post-production expenses deduction violates the dormant Commerce Clause because it discriminates against interstate commerce and subjects Antero to the risk of multiple taxation.[6] Antero cites no legal authority to support its position that the dormant Commerce Clause requires states to allow an entity to deduct the expenses associated with transporting the entity's product to its

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[6] The dormant Commerce Clause prohibits state taxation that would negatively affect interstate commerce.

> The Commerce Clause grants Congress power to "regulate Commerce . . . among the several States." [U.S. Const.] Art. I, § 8, cl. 3. Although the Clause is framed as a positive grant of power to Congress, "we have consistently held this language to contain a further, negative command, known as the dormant Commerce Clause, prohibiting certain state taxation even when Congress has failed to legislate on the subject." *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179, 115 S.Ct. 1331, [1335,] 131 L.Ed.2d 261 (1995).
>
> ....
>
> Under our precedents, the dormant Commerce Clause precludes States from "discriminat[ing] between transactions on the basis of some interstate element." *Boston Stock Exchange v. State Tax Comm'n*, 429 U.S. 318, 332, n. 12, 97 S.Ct. 599, [608, n. 12,] 50 L.Ed.2d 514 (1977). This means, among other things, that a State "may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State." *Armco Inc. v. Hardesty*, 467 U.S. 638, 642, 104 S.Ct. 2620, [2622,] 81 L.Ed.2d 540 (1984). "Nor may a State impose a tax which discriminates against interstate commerce either by providing a direct commercial advantage to local business, or by subjecting interstate commerce to the burden of 'multiple taxation.'" *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 458, 79 S.Ct. 357, [362,] 3 L.Ed.2d 421 (1959) (citations omitted).

Matkovich v. CSX Transportation, Inc., 238 W. Va. 238, 244, 793 S.E.2d 888, 894 (2016) (quoting *Comptroller of the Treasury of Maryland v. Wynne*, 575 U.S. 542 (2015)).

chosen marketplace. We are presented with no evidence that such a deduction is critical to interstate commerce. We, therefore, find no error in the business court's order.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: June 13, 2023

CONCURRED IN BY:

Chief Justice Elizabeth D. Walker
Justice Tim Armstead
Justice John A. Hutchison
Justice William R. Wooton

DISQUALIFIED:

Justice C. Haley Bunn

APPENDIX B

Dave Hardy
Secretary of
Revenue

Dale W. Steager
State Tax
Commissioner

STATE TAX DEPARTMENT

ADMINISTRATIVE NOTICE 2020-08

PROPERTY TAX
STATE TAX COMMISSIONER'S STATEMENT FOR THE DETERMINATION OF OIL AND GAS OPERATING EXPENSES FOR PROPERTY TAX PURPOSES FOR TAX YEAR 2020, PURSUANT TO § 110 CSR 1J-4.3

The Legislative Rule for the appraisal of oil and gas properties (See §§ 110 CSR IJ-1, *et seq.*) became effective June 1, 2005. This notice will address one of the valuation variables referenced in the Rule, oil and gas operating expenses, setting forth procedures used in developing these expenses and their application against receipts for the working interest of oil and gas producing properties.

DISCUSSION

In 2019 the Tax Department reviewed data supplied in various court cases. This information involved the average annual operating expenses for many West Virginia wells under present economic conditions. The Tax Department has developed the following criteria for the direct ordinary operating expenses as a result of this review. Direct ordinary operating expenses will be estimated to be $5,000 for a conventional gas producing well, $5,750 for an oil producing well and $9,000 for a vertical coalbed methane gas producing well or enhanced recovery oil producing well. In instances where the well is producing both oil and gas, $5,750 will be distributed depending on the percentage of gas versus oil receipts involved for conventional wells and $9,000 will be distributed for vertical coalbed methane and enhanced recovery oil depending on the percentage of gas versus oil receipts. For Marcellus/Utica vertical wells, the operating expense allowed is $15,000 for production derived from gas. For Marcellus/Utica horizontal wells the operating expense allowed is $125,000 for production derived from gas. For horizontal, other than Marcellus/Utica, the operating expenses allowed is $20,000 for production derived from gas.

For Marcellus vertical wells in which the well is producing both oil and gas, $15,000 will be distributed depending on the percentage of gas versus oil receipts involved. For Marcellus horizontal wells the allowable operating expense is $5,750 for the oil and $125,000 for the gas. For horizontal, other than Marcellus, the $20,000 will be distributed depending upon the percentage of gas versus oil receipts involved. As required in the amended Rule, the Tax Department will review such rates every five years.

For additional information concerning oil and gas annual operating expenses see § 110 CSR 1J-1 et seq. or call the State Tax Department at (304) 558-3940.

Notice of this determination will be filed in the West Virginia Register.

Issued: January 30, 2020	
	Dale W. Steager State Tax Commissioner
State Tax Department Property Tax Division P.O. Box 2389 Charleston, WV 25328-2389	Operator on Duty 8:00 am - 5:00 pm Monday through Friday Phone: (304) 558-3940 FAX: (304) 558-1843

APPENDIX C

W. Va. Code St. R. § 110-1J-1 provides as follows:

§ 110-1J-1. General.

1.1. *Scope*. — This rule provides the mass appraisal methodology the State Tax Commissioner shall use to determine the appraised value of producing and reserve oil and natural gas properties for ad valorem tax purposes.

1.2. *Authority*. — W. Va. Code §§ 11-1C-5(b), 11-1C-5a, and 11-1C-10(d).

1.3. *Filing date*. — April 24, 2023.

1.4. *Effective date*. — April 24, 2023.

1.5. *Sunset Provision*. — This rule shall terminate and have no further force or effect on August 1, 2028.

W. Va. Code St. R. § 110-1J-3 provides as follows:

§ 110-1J-3. Definitions.

Currentness

As used in this rule and unless the context clearly requires a different meaning, the following terms have the meaning ascribed in this section.

3.1. "Abandoned well" means any well which is required to be plugged under the provisions of W. Va. Code § 22-6-19.

3.2. "Actual annual operating costs" means all lease operating expenses, lifting costs, gathering, compression, processing, separation, fractionation, and transportation costs. These costs are limited to the actual costs incurred by the producer, prior to the arm-length sale of the well output to a buyer, without reference to items such as general administration, overhead, or any costs indirectly related to producing, processing, or transporting the well output.

3.3. "Appraised value" means the value of oil producing properties or natural gas producing properties, including real and personal property, determined in accordance with this rule.

3.4. "Assessment date" means the July 1 date preceding the start of the property tax year as defined in W. Va. Code § 11-3-1, *et seq*.

3.5. "Bands of investment discount component" means a discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing, as specified in the annual variables filed pursuant to section heading 10 of this rule.

3.6. "Barrel" or "BBL" means a unit of measurement of volume equal to 42 US gallons.

3.7. "Barren property" means those acres, tracts, and parcels owned in fee in West Virginia where data suggests with reasonable certainty that the presence of oil, natural gas liquids, or natural gas is very unlikely.

3.8. "Capitalization rate" means a single state-wide capitalization rate for oil, natural gas, and natural gas liquids producing property, which shall be determined annually by the Tax Department based on a "Build-up-Model" of the Weighted Average Cost of Capital (WACC).

3.9. "Coalbed methane" means methane gas, and other well output which can be produced from a coal seam, the rock or other strata in communication with a coal seam, a mined-out area, or a gob well.

3.10. "Commissioner" or "Tax Commissioner" means the Tax Commissioner of the State of West Virginia, or his or her delegate.

3.11. "Communitized area" means an area involving more than one lease, due to a cooperative agreement or legal mandate, and is developed for the drilling and operation of a single or multiple oil or gas wells, or both, by one or more operator.

3.12. "Compression costs" are the actual costs in the process of raising the pressure of minerals.

3.13. "Condensate" means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without processing. For purposes of this rule, condensate, along with certain other components of well output, constitutes a natural gas liquid.

3.14. "Deeded acre" means an acre of land one owner transferred, or deeded, to a new owner.

3.15. "Discount component" means an element in the determination of a rate reflecting a provision for returning to an investor a sum of money equal to the aggregate of the anticipated return-on-investment over the economic life of an investment.

3.16. "Economic interest" in oil, natural gas liquids or natural gas means that the person has acquired by investment any interest in oil, natural gas liquids or natural gas in place and secures, by any form of legal relationship, current, future, or potential income derived from the extraction of the oil, natural gas liquids or natural gas, to which the person must look for a return of the person's capital.

3.17. "Farm-use well" means a gas well that produces gas solely for the use of the farmer who owns the land where the gas is in place. Ownership of the gas by the farmer is not required to qualify as a farm-use well. The gas produced may not be sold, traded, or bartered.

3.18. "Flat Rate royalty" means a royalty rate in which the amount paid per year (e.g., $100 per year) is set within a lease and is not dependent on the production or income derived from the well.

3.19. "Flush production" means the production of oil and/or natural gas from any well on an oil and/or natural gas property with an initial production date that is two (2) calendar years or less prior to the July 1st assessment date. Production beginning after December 31st and prior to the July 1st assessment date must be reported.

3.20. "Gathering costs" means the actual costs of transportation of oil, natural gas, natural gas liquids, condensate, or any combination thereof from multiple wells by separate and individual pipelines to a central point of accumulation, dehydration, compression, separation, heating and treating or storage.

3.21. "Fractionation costs" means the actual costs incurred by the producer in fractionation. Fractionation is the separating of components of a mixture through differences in physical or chemical properties. Fractionation is the process by which raw hydrocarbons are separated into products.

3.22. "Gross receipts" or "gross proceeds" means the total income received for the production on any well, without reduction for any royalties, costs, allowances, expenses, or adjustments of any kind, determined at the point of a metered or measured first sale to an unrelated third party. "Gross receipts" or "gross proceeds" includes total monies and other consideration paid, payable or accruing to a producer for the disposition of the oil, natural gas liquids, natural gas, residue gas, well output, or gas plant products, or any combination thereof, produced. "Gross receipts" or "gross proceeds" also includes, but is not limited to, payments and accruals to the operator for certain services such as metering, dehydration, liquids separation, measurement, and gathering, or any combination thereof. Monies and other consideration, to which an operator is contractually or legally entitled, but which the operator does not seek to collect through reasonable efforts, are also part of "gross receipts" or "gross proceeds." For purposes of this definition, the total amounts paid, payable, or accruing shall be determined under the method of accounting used for federal income tax purposes.

3.23. "Horizontal well" or "directional well" -- For purposes of this rule, and notwithstanding the definitions set forth in W. Va. Code § 22-6A-4 and § 22-6B-2, the term "horizontal well" or "directional well" means a well, the wellbore of which is initially drilled on a vertical or directional plane and which is curved to become horizontal or nearly horizontal, in order to parallel a particular geological formation and which may include multiple horizontal or stacked laterals.

3.24. "Home-use well" means a gas well that produces gas solely for the use of the homeowner who occupies the land where the gas in place. Ownership of the gas by the homeowner is not required to qualify as a home-use well. The gas produced may not be sold, traded, or bartered.

3.25. "Lease" means the area encompassed in the leasehold granting the right to explore for or produce oil or natural gas, which may include a single tract or multiple tracts of land described in the instrument granting the leasehold;

3.26. "Lease operating expenses" means the actual costs incurred to bring the subsurface minerals (oil, natural gas, and natural gas liquids) up to the surface and convert them to marketable products. Lease operating expenses refers to the costs of operating the wells and equipment. "Lease operating expenses" includes actual costs of labor, fuel, utilities, materials, rent or supplies, which are directly related to the production, processing, or transportation of oil, natural gas, natural gas liquids, or any combination thereof and that can be documented by the producer. For the purposes of this calculation, depreciation, depletion, extraordinary expenses, ad valorem taxes, capital expenditures, intangible drilling costs, expenditures relating to vehicles or other tangible personal property not permanently used in the production of oil, natural gas, natural gas liquids, or any combination thereof shall not be included as lease operating expenses.

3.27. "Lifting costs" means the actual costs incurred to operate a well during production.

3.28. "Marginal well" means a well that, in the calendar year immediately preceding the July 1 assessment date, has an average daily production of two (2) barrels of oil or less, and an average daily production of ten (10) MCF of natural gas or less.

3.29. "Marketing affiliate" means an affiliate of the lessee whose function is to acquire only the lessee's production and to market that production.

3.30. "M.C.F." or "MCF" when used with respect to natural gas, means 1,000 cubic feet of natural gas measured at a pressure of 14.73 pounds per square inch (absolute) and a temperature of 60 degrees Fahrenheit.

3.31. "Natural gas" means natural gas, coalbed methane, synthetic gas useable for fuel, or mixtures of natural gas and synthetic gas. For purposes of the valuation of natural gas producing property under this rule, references to "natural gas" includes natural gas liquids and liquefied natural gas when those products have not been processed from the natural gas.

3.32. "Natural gas liquids" means propane, ethane, butanes, and pentanes (also referred to as condensate), or a combination of them that are subject to recovery from raw gas liquids by processing in field separators, scrubbers, gas processing and reprocessing plants, or cycling plants.

3.33. "Natural gas producing property" means the property from which natural gas or natural gas liquids has been produced or extracted at any time during the calendar year preceding the July 1 assessment date. Natural gas producing property includes the interest or interests underlying an area of up to one hundred twenty-five (125) acres of surface per vertical well for property with active wells on the parcel; and communitized acres of surface per horizonal well for properties with one or more active wells. All acreage of a natural gas producing property in excess of one hundred twenty-five (125) acres per vertical well, or the communitized acres per horizontal well, shall be valued at the non-producing rate per acre referenced in section heading 4 of this rule.

3.34. "Net proceeds" means actual gross receipts on a sales volume basis determined from the actual price received by the taxpayers as reported on the taxpayer's returns, less royalty interest receipts, and less actual annual operating costs as reported on the taxpayer's returns.

3.35. "Non-Producing or Shut-in Well" means a well, which due to the producer's decisions, market reasons, or product performance, or any other reason or combination of reasons, was non-productive during the entire most recent calendar year preceding the July 1 assessment date.

3.36. "Non-producing property" means properties that were not engaged in production of well output, as herein defined, during the calendar year next preceding the July 1 assessment date. This category includes any acreage that has been shut-in for the entire year.

3.37. "Oil" means natural crude oil or petroleum, and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir.

3.38. "Oil producing property" means property from which oil has been produced or extracted at any time during the calendar year preceding the July 1 assessment date. Oil producing property includes the interest or interests underlying an area of up to forty (40) acres of surface per well with one (1) or more active well(s) on the parcel. All acreage of an oil producing property in excess of forty (40) acres per well, shall be valued at the non-producing rate per acre referenced in section heading 4 of this rule.

3.39. "Overriding royalty" means the fractional interest in the gross production payable to a person who is neither the producer nor the owner of the oil or natural gas estate and who is not required to bear a share of the development or operating costs of the well.

3.40. "Personal property" used in oil or natural gas production means machinery and equipment on the lease or communitized area used in oil production or natural gas production from the well to the point of sale. It shall not include vehicles or other tangible personal property not permanently used in production, nor shall it include third party equipment used to enhance or remarket the gas after the oil or natural gas has left the lease or communitized area.

3.41. "Plant gas products" means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing natural gas, excluding residual gas.

3.42. "Plugged and abandoned well property" means plugged and abandoned wells that produced or were intended to produce well output, as herein defined, without regard to whether the well historically produced well output or was a so-called "dry hole" that failed to produce well output.

3.43. "Processing costs" means the actual costs incurred by the producer for activities occurring beyond the inlet to an oil, natural gas, or natural gas liquids processing facility that changes the physical or chemical characteristics, enhances the marketability, or enhances the value of the separate components. Processing costs are limited to the costs for the following activities: fractionation, adsorption, flashing, refrigeration, cryogenics, sweetening, dehydration within a processing facility, beneficiation, stabilizing, compression, and separation which occurs within a processing facility.

3.44. "Processing, separation and fractionation costs" means de-ethnization fees, processing or fractionation fees, pipeline or transportation fees, fuel fees, and electric fees charged by a processing or fractionation plant to the producer.

3.45. "Producer" or "Operator" means any person or persons, corporation, partnership, joint venture or other enterprise or entity that proposes to or does locate, drill, produce, manage, or abandon any well. "Producer" or "Operator" includes, but is not limited to, lessees, as herein defined, and any person or persons, corporations, partnership, joint venture or other enterprise or entity that owns the economic interest in the natural resource produced, as the term economic interest is defined in § 110-13A-1, *et seq.*, Code of State Rules.

3.46. "Property owner" means the person or persons who own the natural gas or oil in place, except where a different meaning is required by the context in which "property owner" is used in this article.

3.47. "Raw gas" or "raw natural gas" means natural gas as it is produced from the underground reservoir.

3.48. "Raw gas liquids" or "raw make" is a combined stream of propane, butane and pentanes, plus any other liquid hydrocarbon, or any mixtures thereof, which are separated from residue gas and processed at a processing or fractionation plant into plant gas products.

3.49. "Related parties" shall have the same meaning as in the Severance And Business Privilege Tax Act, W.Va. Code § 11-13A-1, *et. seq*.

3.50. "Residue gas" means the hydrocarbon gas, consisting principally of methane, resulting from processing gas.

3.51. "Risk rate" means a rate reflecting a return to an investor necessary to attract capital to an investment containing a possible loss of principal, or interest, or both.

3.52. "Royalty interest" means the fractional interest in oil production or natural gas production, or both, that may or may not be subject to development costs or operating expenses and extends undiminished over the life of the property. Typically, it is retained by the oil or natural gas rights owner or lessor or the oil or natural gas, or both.

3.53. "Storage wells" means drilled and completed wells on any property used for the artificial injection or storage of natural gas into a natural reservoir strata.

3.54. "Total Production" means the total amount of well output. It includes the total amount of oil, measured in barrels, total amount of natural gas liquids, measured in MCF, and the total amount of natural gas, measured in MCF, of all oil, natural gas liquids and, natural gas actually produced and sold from a single well that is developed and producing on the assessment date. For commonly metered wells, "total production" means the total amount of oil, the total amount of natural gas, and the total amount of natural gas liquids, of all oil, natural gas liquids, and natural gas actually produced and sold from the commonly metered wells divided by the number of the commonly metered wells.

3.55. "Transportation costs" means the actual costs of moving oil, natural gas, natural gas liquids, unprocessed gas, residue gas, or gas plant products or any combination thereof to a point of sale.

3.56. "Vertical well" means any well producing either gas or oil, or both gas and oil, that is not a horizontal well as defined in this rule.

3.57. "Well" means any shaft or hole sunk, drilled, bored, or dug into the earth or into underground strata for the extraction of oil or gas.

3.58. "Well output" means oil, natural gas liquids, natural gas, condensate, raw gas, raw natural gas liquids, plant gas products, residue gas, or any other natural resource produced from a well or any combination thereof.

3.59. "Working interest" means the fractional interest in oil production or natural gas production, or both, subject to development and operating expenses and owned by the leaseholder or operator, or both.

W. Va. Code St. R. § 110-1J-4 provides as follows:

§ 110-1J-4. Methods of Valuation

Currentness

4.1. General. — The value of oil producing property or natural gas producing property, or property producing both, shall be determined through the process of applying a yield capitalization model to the net receipts (gross receipts less royalties paid and less actual annual operating costs) for the working interest and a yield capitalization model applied to the gross royalty payments for the royalty interest. Where ownership is split through a lease or royalty arrangement, different values shall be determined for the working interest and the royalty interest. If the well produced for less than twelve (12) months during the first calendar year of production, or during the first calendar year of production after being shut-in during the previous calendar year, the gross receipts and royalties paid shall be annualized prior to the process of applying a yield capitalization rate. Each term in this valuation is discussed below.

4.2. Method for valuing oil producing property. -- Except as otherwise provided in this section, the appraised value of a producing oil well, including personal property at the well necessary to recover the oil, shall be determined as follows:

4.2.1. For producing oil wells, the appraised value shall be determined as in section heading 5 of this rule.

4.2.2. Safe harbor. — The Tax Commissioner may annually determine a safe harbor amount for operating costs for marginal wells to be published in the State Register. For those operators choosing to use the safe harbor amount rather than calculate their actual annual operating costs, that safe harbor amount will be considered the costs associated with the production of the oil, typical of the producing area and strata.

4.2.3. For the purposes of valuing oil wells, the appraised value is to include the net proceeds from the sale of oil and the net proceeds from the disposition of any condensate recovered after the decline rate and capitalization rate has been applied to each product.

4.3. Method for valuing natural gas producing property. — Except as otherwise provided in this section, the appraised value of a producing gas well on assessment dates beginning on and after the effective date of this rule, including personal property on the lease or communitized area necessary to recover the gas, shall be determined under this section.

4.3.1. For producing natural gas wells, the appraised value shall be determined as in section heading 5 of this rule.

4.3.2. Safe Harbor. — The Tax Commissioner may annually determine a safe harbor amount for operating costs for marginal wells to be published in the State Register. For those operators choosing to use the safe harbor amount rather than calculate their actual annual operating costs, that safe harbor amount will be considered the costs associated with the production of the natural gas and natural gas liquids, typical of the producing area and strata.

4.3.3. For the purposes of valuing natural gas wells, if the natural gas is sold after processing or fractionation or if the producer receives proceeds from the sale of processed natural gas liquids based upon its sales contract, the appraised value is to include the combined net proceeds from the disposition of the plant gas products and the gross proceeds from disposition of the residue gas after the decline rate and capitalization rate has been applied to each product. If the natural gas is sold prior to processing, then the appraised value is to include the net proceeds from the disposition of the raw gas after the decline rate and capitalization rate has been applied.

4.4. Percentage interest in oil, natural gas liquids, or natural gas, or a combination thereof. — Where the ownership of oil, natural gas liquids, or natural gas in place is divided through a lease or other arrangement, leases typically contain a royalty clause, designating the compensation to the property owner, typically measured as a percentage or portion of the gross value of production without deduction of costs of production.

4.4.1. For example: Where the ownership of oil or natural gas in place, or both, is divided through a lease or other arrangement, the compensation to the property owner is typically derived by designating a percentage (generally one-eighth) of the production income to be the royalty payment to the owner. The remainder (generally seven-eighths) is the working interest. Royalty clauses may have any number of different measures for calculation of royalties.

4.4.2. The Tax Commissioner shall annually determine working and royalty percentage interests on a per well or lease basis, through a review of oil and natural gas producer annual property tax returns. These percentages shall be determined annually by dividing the total royalty paid by the reported gross income.

4.5. Valuation of home-use only wells. — The appraised value of home-use wells will be an annual appraised value determined from information published by the U.S. Department of Energy, Energy Information Administration. If the home-use well owner has ownership in the mineral rights, the assessed value will be added to the real property assessment. However, if the home-use well owner only has rights in the surface, the assessed value will be added to the personal property assessment. This value of home use gas wells will be included in the tentative natural resource variables published in the State Register on or before July 1 each year. If the well also produces oil, that portion of the well will be separately valued.

4.6. Valuation of industrial use wells. The appraised value of wells used for industrial purposes only will be based on the actual most recent calendar year preceding the July 1 appraisal date MCF usage times the average West Virginia spot price for that calendar year determined by the "Natural Gas Monthly," published by the U.S. Department of Energy, Energy Information Administration.

4.7. Valuation of farm-use gas wells. — The appraised value of a gas well, when the gas produced by the well is used only for farm purposes, such as heating the barn and farmhouse, will be an annual appraised value determined from information published by the U.S. Department of Energy, Energy Information Administration. If the farm-use well owner has ownership in the mineral rights, the assessed value will be added to the real property assessment. However, if the farm-use well owner only has rights in the surface, the assessed value will be added to the personal property assessment. This value shall be included in the tentative natural resource variables published in the State Register on or before July 1 each year. If the well also produces oil, that portion of the well will be separately valued.

4.8. Valuation of non-producing acreage. — The value per acre of non-producing acreage, which includes shut-in wells, shall equal the discounted annual lease payment per acre. A valuation schedule for non-producing properties shall be determined annually by the Tax Commissioner for each district within a county, where data is available. The Tax Commissioner shall annually conduct a review of oil or natural gas lease agreements, or lease agreements addressing both, transacted at arms-length in all fifty-five (55) counties to determine the average annual delay rental lease payment per acre, and lease term. The per-acre value for nonproducing property shall be the sum of the projected annual income stream from delay rental during the lease term discounted in each year by a capitalization rate. A valuation of $1.00 per acre shall be used where property is located in those areas of the State where drilling activity or production have not been established and the property is presumed to be barren.

4.9. Valuation of plugged acreage. — The appraised value of plugged well property acreage shall be valued to the oil or gas owner at the nominal rate of one dollar ($1.00) per acre. This category includes any plugged and abandoned acreage of up to one hundred twenty-five (125) acres per natural gas well, and the communitized acres per horizontal gas well. In the case of a plugged oil well, this section shall apply to up to forty (40) acres per vertical oil well and the communitized acreage per horizontal oil well. Any additional acreage will be valued as reserve acreage.

4.10. Valuation of abandoned well property acreage.— The appraised value of abandoned well acreage shall revert to the value of reserve oil and gas acreage in the county provided there is no other producing or plugged well on the property.

4.11. Valuation of barren oil and natural gas areas.— The appraised value of oil or natural gas interests in barren oil and natural gas property shall be one dollar ($1.00) per deeded acre. When two or more persons own the acreage, this appraised value shall be allocated among the owners based upon the percentage of their ownership of the acreage.

4.12. Valuation of wells that produce both oil and natural gas.— The appraised value of wells that produce both oil and natural gas shall be determined by use of the methods described in this rule. These values shall then be summed to result in the overall value of the oil or natural gas producing acreage or acreage producing both oil and natural gas.

4.13. Valuation of storage well areas.— The valuation of storage well areas shall equal the discounted annual lease payment per acre that is applied to the reserve oil and gas acreage within the county. The minimum value applied to the areas will not be less than $5.00 per deeded acre. The value shall not include inventories stored within. Natural gas storage inventories shall be assessed to the inventory owner.

4.14. Farm properties. — The oil and gas rights, that are part of a "fee" estate where the use of the surface has qualified for farm use appraisal, shall be valued as described in the Tax Commission's rule, Valuation of Farmland and Structures Situated Thereon For Ad Valorem Property Tax Purposes, 110 C.S.R. 1A. For purposes of this subsection, "farm fee estate" means absolute ownership of the farmland unencumbered by any other interest or estate.

4.15. Valuation of the Producer's Personal Property at Non-Producing or Shut-In wells.—The appraised value of the producer's personal property that is part of a non-producing or shut-in well's appraisal will be assigned to the producer at the same appraised value applied to machinery and equipment at home use only wells.

4.16. Valuation of Pre-Production or Permit Leaseholds—Chattel real accounts (personal property) for pre-production/permit leaseholds will be valued by the county assessor.

4.17. Valuation of Producing Flat-Rate Royalty accounts—The appraised value of a producing flat-rate royalty will be valued using a discounted cash flow series of the flat rate. It will not include production decline rates.

4.18. Valuation of tangible personal property not used in the production of gas or oil, or both gas and oil, in and about the well shall be valued by the county assessor, except that pipelines of public service businesses that are operating property shall be valued by the Board of Public Works as provided in W. Va. Code § 11-6-1 *et seq*.

W. Va. Code, § 11-1C-10 provides as follows:

§ 11-1C-10. Valuation of industrial property and natural resources property by Tax Commissioner; penalties; methods; values sent to assessors

Effective: June 9, 2022
Currentness

(a) As used in this section:

(1) "Industrial property" means real and personal property integrated as a functioning unit intended for the assembling, processing and manufacturing of finished or partially finished products.

(2) "Natural resources property" means coal, oil, natural gas, limestone, fireclay, dolomite, sandstone, shale, sand and gravel, salt, lead, zinc, manganese, iron ore, radioactive minerals, oil shale, managed timberland as defined in section two of this article, and other minerals.

(b) All owners of industrial property and natural resources property each year shall make a return to the State Tax Commissioner and, if requested in writing by the assessor of the county where situated, to such county assessor at a time and in the form specified by the commissioner of all industrial or natural resources property owned by them. The commissioner may require any information to be filed which would be useful in valuing the property covered in the return. Any penalties provided for in this chapter or elsewhere in this code relating to failure to list any property or to file any return or report may be applied to any owner of property required to make a return pursuant to this section.

(c) The State Tax Commissioner shall value all industrial property in the state at its fair market value within three years of the approval date of the plan for industrial property required in subsection (e) of this section. The commissioner shall thereafter maintain accurate values for all such property. The Tax Commissioner shall forward each industrial property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate for each tax year. The commissioner shall supply support data that the assessor might need to evaluate the appraisal.

(d) Within three years of the approval date of the plan required for natural resources property required pursuant to subsection (e) of this section, the State Tax Commissioner shall determine the fair market value of all natural resources property in the state and thereafter maintain accurate values for all such property.

(1) In order to qualify for identification as managed timberland for property tax purposes the owner must annually certify, in writing to the Division of Forestry, that the property meets the definition of managed timberland as set forth in this article and contracts to manage property according to a plan that will maintain the property as managed timberland. In addition, each owner's certification must state that forest management practices will be

conducted in accordance with approved practices from the publication "Best Management Practices for Forestry". Property certified as managed timberland shall be valued according to its use and productive potential. The Tax Commissioner shall promulgate rules for certification as managed timberland.

(2) In the case of all other natural resources property, the commissioner shall develop an inventory on a county by county basis of all such property and may use any resources, including, but not limited to, geological survey information; exploratory, drilling, mining and other information supplied by natural resources property owners; and maps and other information on file with the state Division of Environmental Protection and office of miners' health, safety and training. Any information supplied by natural resources owners or any proprietary or otherwise privileged information supplied by the state Division of Environmental Protection and office of miner's health, safety and training shall be kept confidential unless needed to defend an appraisal challenged by a natural resources owner. Formulas for natural resources valuation may contain differing variables based upon known geological or other common factors. The Tax Commissioner shall forward each natural resources property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate, for each tax year. The commissioner shall supply support data that the assessor might need to explain or defend the appraisal. The commissioner shall directly defend

any challenged appraisal when the assessed value of the property in question exceeds $2 million or an owner challenging an appraisal holds or controls property situated in the same county with an assessed value exceeding $2 million. At least every five years, the commissioner shall review current technology for the recovery of natural resources property to determine if valuation methodologies need to be adjusted to reflect changes in value which result from development of new recovery technologies.

(3) *Property producing oil, natural gas, natural gas liquids —*

(A) The Tax Commissioner shall value property producing oil, natural gas, natural gas liquids, or any combination thereof in the state at its fair market value determined through the process of applying a yield capitalization model to the net proceeds.

(B) For the purposes of this subdivision:

(i) "Natural gas liquids" means propane, ethane, butanes, and pentanes (also referred to as condensate), or a combination of them that are subject to recovery from raw gas liquids by processing in field separators, scrubbers, gas processing and reprocessing plants, or cycling plants.

(ii) "Actual annual operating costs" shall include, without limitation, all lease operating expenses, lifting costs, gathering, compression, processing, separation, fractionation, and transportation costs; as further defined herein.

(iii) "Net proceeds" means actual gross receipts on a sales volume basis determined from the actual price received by the taxpayers as reported on the taxpayer's returns, less royalty interest receipts, and less actual annual operating costs as reported on the taxpayer's returns.

(iv) "Royalty interest receipts" means the fractional interest in production of oil, natural gas, natural gas liquids, or any combination thereof, that may or may not be subject to development costs or operating expenses and extends undiminished over the life of the property. Typically, it is retained by the mineral owner, mineral lessor, or both.

(v) "Capitalization rate" means a single state-wide capitalization rate for oil, natural gas, and natural gas liquids producing property, which shall be determined annually by the Tax Department based on a "Build-up-Model" of the Weighted Average Cost of Capital (WACC).

(vi) "Lease operating expenses" means the actual costs incurred to bring the subsurface minerals (oil, natural gas, and natural gas liquids) up to the surface and convert them to marketable products. Lease operating expenses refers to the costs of operating the wells and equipment. "Lease operating expenses" includes actual costs of labor, fuel, utilities, materials, rent or supplies, which are directly related to the production, processing, or transportation of oil, natural gas, natural gas liquids, or any combination thereof and that can be documented by the producer. For the purposes of this calculation, depreciation, depletion, extraordinary expenses, ad valorem taxes, capital expenditures, intangible drilling costs, expenditures relating to vehicles or other tangible personal property not permanently used in the production of oil, natural gas, natural gas liquids, or any combination thereof shall not be included as lease operating expenses.

(vii) "Lifting costs" means the actual costs incurred to operate a well during production.

(viii) "Gathering costs" means the actual costs of transportation of oil, natural gas, natural gas liquids, condensate, or any combination thereof from multiple wells by separate and individual pipelines to a central point of accumulation, dehydration, compression, separation, heating and treating or storage.

(ix) "Compression costs" are the actual costs in the process of raising the pressure of minerals.

(x) "Processing, Separation and Fractionation costs" means de-ethnization fees, processing or fractionation fees, pipeline or transportation fees, fuel fees, and electric fees charged by a processing or fractionation plant to the producer.

(xi) "Fractionation costs" means the actual costs incurred by the producer in fractionation. Fractionation is the separating of components of a mixture through differences in physical or chemical properties. Fractionation is the process by which raw hydrocarbons are separated into products.

(xii) "Processing costs" means the actual costs incurred by the producer for activities occurring beyond the inlet to an oil, natural gas, or natural gas liquids processing facility that changes the physical or chemical characteristics, enhances the marketability, or enhances the value of the separate components. Processing costs are limited to the costs for the following activities: fractionation, adsorption, flashing, refrigeration, cryogenics, sweetening, dehydration within a processing facility, beneficiation, stabilizing, compression, and separation which occurs within a processing facility.

(xiii) "Transportation costs" means the actual costs of moving oil, natural gas, natural gas liquids, unprocessed gas, residue gas, or gas plant products or any combination thereof to a point of sale.

(xiv) "Marginal well" means in the calendar year immediately preceding the July 1 assessment date a well with an average daily production of 2 barrels of oil or less and an average daily production of 10 MCF or less of natural gas.

(C)(i) For all assessments made on or after July 1, 2022, the valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof shall be calculated using a yield capitalization model. The yield capitalization model shall be composed of a working interest model and a royalty interest model. The summation of the working interest model and the royalty interest model shall represent the fair market value of the property.

(I)The working interest model shall be calculated as the sum of the working interest net proceeds income series for natural gas, oil, and natural gas liquids. The net proceeds income series shall be calculated as a terminating series of net proceeds discounted by applying a capitalization rate multiplier and a de=cline rate multiplier. The initial term of the terminating series of net proceeds shall be the net proceeds for that product multiplied by a six month capitalization rate multiplier and an eighteen month decline rate multiplier.

In each subsequent term of the net proceeds income series, the calculation shall use the value from the previous term and multiply that term by a capitalization rate multiplier and an applicable twelve-month decline rate multiplier.

(II) The royalty interest model shall be calculated as the sum of the royalty interest receipts income series for natural gas, oil, and natural gas liquids. The royalty interest receipts income series shall be calculated as a terminating series of royalty interest receipts discounted by applying a capitalization rate multiplier and a decline rate multiplier. The initial term of the terminating series of royalty interest receipts shall be the royalty interest receipts for that product multiplied by a six month capitalization rate multiplier and an eighteen month decline rate multiplier.

In each subsequent term of the royalty interest receipts income series, the calculation shall use the value from the previous term and multiply that term by a capitalization rate multiplier and an applicable twelve-month decline rate multiplier.

(ii) For all assessments made on or after July 1, 2022, the Tax Commissioner shall annualize gross receipts and actual annual operating expenses before calculation of the working interest model and the royalty interest model for wells that produced for less than 12 months during the first calendar year of production or during the first calendar year of production after being shut-in during the previous calendar year. Companies may provide additional actual gross receipts and actual operating expense information that will be supplemented or used in lieu of the Tax Commissioner annualization calculations.

(iii) For all assessments made on or after July 1, 2024, but not before, the Tax Commissioner may not include a minimum valuation for any calculation related to determining the value of any well. For all assessments made prior to July 1, 2024, no minimum valuation shall exceed the values of $0.30 per MCF of natural gas, $10.00 per barrel of oil, or $0.30 per unit of natural gas liquids, as established in a Notice to taxpayers from the State Tax Department dated on or about December 22, 2021.

(D) *Safe harbor.*—The Tax Commissioner shall annually determine a safe harbor amount for actual annual operating costs to be published in the State Register for all marginal wells producing oil, natural gas, natural gas liquids, or any combination thereof. For operators of marginal wells choosing to use the safe harbor amount rather than calculate their actual annual operating costs, that safe harbor amount will be considered the costs associated with the production of the oil, natural gas, natural gas liquids, or any combination thereof, typical of the producing geographical area and geological strata.

(E) The Tax Commissioner shall collect, retain, and report to the Speaker of the House of Delegates and the President of the Senate on or before April 1, 2023, and each April 1 thereafter, all information requested by the Division of Regulatory and Fiscal Affairs regarding the valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof.

(F) This subdivision shall be effective for all assessments made on or after July 1, 2022 and shall have no further force or effect for any assessments made on or after July 1, 2025, unless reenacted by the legislature.

(G) The Tax Commissioner shall propose rules required to administer this subdivision, including emergency rules, in accordance with § 29A-3-1 *et seq*. of this code, regarding valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof.

(e) The Tax Commissioner shall develop a plan for the valuation of industrial property and a plan for the valuation of natural resources property. The plans shall include expected costs and reimbursements, and shall be submitted to the property valuation training and procedures commission on or before January 1, 1991, for its approval on or before July 1, of such year. Such plan shall be revised, resubmitted to the commission and approved every three years thereafter.

(f) To perform the valuation duties under this section, the State Tax Commissioner has the authority to contract with a competent property appraisal firm or firms to assist with or to conduct the valuation process as to any discernible species of property statewide if the contract and the entity performing such contract is specifically included in a plan required by subsection (e) of this section or otherwise approved by the commission. If the Tax Commissioner desires to contract for valuation services only in one county or a group of counties, the contract must be approved by the commission.

(g) The county assessor may accept the appraisal provided, pursuant to this section, by the State Tax Commissioner: *Provided*, That if the county assessor fails to accept the appraisal provided by the State Tax Commissioner, the county assessor shall show just cause to the valuation commission for the failure to accept such appraisal and shall further provide to the valuation commission a plan by which a different appraisal will be conducted.

(h) The costs of appraising the industrial and natural resources property within each county, and any costs of defending same shall be paid by the state: *Provided*, That the office of the state Attorney General shall provide legal representation on behalf of the Tax Commissioner or assessor, at no cost, in the event the industrial and natural resources appraisal is challenged in court.

(i) For purposes of revaluing managed timberland as defined in section two of this article, any increase or decrease in valuation by the commissioner does not become effective prior to July 1, 1991. The property owner may request a hearing by the director of the Division of Forestry, who may thereafter rescind the disqualification or allow the property owner a reasonable period of time in which to qualify the property. A property owner may appeal a disqualification to the circuit court of the county in which the property is located.

APPENDIX D

IN RE:

ALTUS GROUP / ANTERO CORPORATION

ASSESSMENT APPEAL

* * *

H E A R I N G

BEFORE: Tyler County Board of Assessment Appeals

DATE: Monday, October 7, 2019

TIME: 10:33 a.m.—11:37 a.m.

* * *

Whereupon, the above-referenced matter came on for hearing at the Tyler County Courthouse, 121 Main Street, Middlebourne, West Virginia, and the proceedings were as follows:

APPEARANCES:

Board of Assessment Appeals members:

Mike Smith

John F. Stender

Eric Vincent

On behalf of Antero Resources:

CRAIG GRIFFITH, Esquire

Steptoe & Johnson, PLLC, Chase Tower, 17th Floor, 707 Virginia Street, East, Charleston, West Virginia 25301

Telephone: (304) 353-8000
Fax: (304) 353-8180
E-mail: craig.griffith@steptoe-johnson.com

On behalf of the State of West Virginia, State Tax Department, Property Tax Division:

JAN P . MUDRINICH, Esquire

State of West Virginia, State Tax Department,
1124 Smith Street, Second Floor, Charleston,
West Virginia 25301

Telephone: (304) 558-0766
Fax: (304) 558-1843
E-mail: Jan.P.Mudrinich@wv.gov

ALSO PRESENT:

Lisa Jackson—Tyler County Assessor's Office

Stephanie Miller—Tyler County Assessor's Office

Jessica Turner—Tyler County Assessor's Office

Kirsten Evans, Director—Altus Group

Phil Yoo, Vice President, Accounting and Chief Accounting Officer, Corporate Controller—Antero Resources

Luke Furbee, Tyler County Prosecuting Attorney

Cynthia R. Hoove —West Virginia State Tax Department

Kris Pinkerman — West Virginia State Tax Department

* * *

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* * *

BY MR. MUDRINICH:

Q. You've been—there's been some testimony about the fieldline point of sale.

A. Uh-huh.

Q. And in the regulation, you get a—defines personal property as used in oil and natural gas production means machinery and equipment in and about the well and all other tangible personal property used in the well and/or natural gas production from the well to the fieldline point of sale. And what you're arguing here today and in previous years is all these post-production expenses are too—you've characterized the fieldline point of sale before it's been—this is Chicago—to allow you to deduct all these post-production expenses. Is that Antero's argument?

A. It is. Because by not deducting them, you're including a value in Antero's assessment for

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property that they don't own by not acknowledging that they paid a third party to get that revenue. You're including an income approach, a discounted cash flow of revenue that had a significant expense allowed with it.

Q. The Supreme Court ruled that the deduction of post-production expenses was not a direct operating expense of the well; correct?

A. They ruled that that was not an arbitrary conclusion reached by the State Tax Department.

Q. So essentially they ruled that the fieldline point of sale is at that little gathering line or meter right outside the well. It is a practical effect because it's not allowing you to deduct all these other things that you want to deduct.

A. So that—I mean, that's an interesting point you bring up because if that is where the—the Supreme Court has ruled the point of sale has to be and Antero's is in Chicago, which it's not, but we can use that as a representative example, then there's a lot that needs to be deducted from their gross revenue in order to arrive at the point of sale, which is the point we were making in Exhibit 6 -- 5?

MR. GRIFFITH: Five. Yeah. I think 5.

A. Right now the State is kind of getting their

[Tr. Page 27]

cake and eating it, too, or whatever the—you can't say that operating expenses are limited at the wellhead but then take the revenue well far past the wellhead without acknowledging that there's a lot of expenses to get there. So gross revenue for Antero, because there is no other point of sale, the fieldline point of sale, the only point of sale is where they're selling the gas. So if you want to bring it back to the wellhead, then revenue would have to be adjusted.

BY MR . MUDRINICH:

Q. Doesn't the producer get to pick where he wishes to sell it? He's not bound to sell it in Chicago. He can sell it at the wellhead. He can sell it prior to entering the processing plant; correct? I mean, they can choose where they want to sell it.

A. Yeah. And you would—

Q. It's their choice.

A. —be reducing the amount of—yes, you can choose where you would like to sell it.

Q. You can choose.

* * *

IN THE COUNTY COMMISSION OF
DODDRIDGE COUNTY, WEST VIRGINIA
IN ITS CAPACITY AS A BOARD OF
EQUALIZATION AND REVIEW

IN RE: TAX ASSESSMENT OF ANTERO
RESOURCES

HEARING October 8, 2019

Transcript of the hearing held before the Doddridge County Commission, at 10:00 a.m., Tuesday, October 8, 2019 at the Doddridge County courtroom, 108 Court Street, West Union, West Virginia

APPEARANCES:

DODDRIDGE COUNTY COMMISSIONERS:

Ronald L. Travis

Clinton Means

Shawn Glaspell

APPEARING FOR THE PETITIONER:

Craig Griffith, Esquire

STEPTOE & JOHNSON

Bank One Building, 7th Floor

707 Virginia Street, East

Charleston, WV 25326

APPEARING FOR THE RESPONDENT:

Jan P . Mudrinich, Esquire

STATE OF WEST VIRGINIA

STATE TAX DEPARTMENT

1124 Smith Street, 2nd Floor

P.O. Box 2389

Charleston, WV 25322

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[MR. MUDRINICH:] I don't know if you touched on—yeah, there's one about the wellhead—might be exhibit—which one shows—

MR. GRIFFITH: 5, at the bottom, wellhead price.

Q. Yeah. These sales prices , how did you determine these—the points of sale—

A. So going to Antero's graph, so we started with the 3.79 based off the 2.37 billion of reported gross revenues.

Q. Statewide?

A. For horizontal Marcellus for Antero.

Q. Statewide?

A. Yes.

Q. Correct?

A. Yes. Took that over their MCF production. So that's where we came up with that price. And then on the Exhibit 4, we converted all of the Antero costs for 2017 in a per MCF amount. And so their total

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disallowed for gathering compression and transportation came to $1.17. So if you take, you know, 379 less 117 gets you 262.

Q. Okay. And is there anything that prevents a producer from selling it to wellhead? Doesn't the producer basically pick where they want to sell their gas?

A. There's many factors that go into where companies are selling their gas.

Q. So if the company didn't want to incur all these expenses that drive down the value of these wells, they could sell at the wellhead?

A. Well, they would incur the cost if they're selling at the wellhead by the price that they're—

Q. —all these—

A. —receiving.

Q. But they could—they wouldn't have to spend all this money on gathering, transportation and processing if they sold at the wellhead?

A. They effectively would be spending money on that through the price of their receiving near the wellhead.

Q. They're receiving less money; they're not spending money. There is a big difference?

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A. No, they would be effectively incurring the cost because they're achieving a lesser gross gas price.

* * *

In The Matter Of: *Harrison County Commission*
Hearings *October 10, 2019*
WV Depos *2413 East Pike Street, Suite 119* *Clarksburg, West Virginia 26301* *304-566-7800* *www.wvdepos.com*
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HARRISON COUNTY COMMISSION HEARING

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BY MR. MUDRINICH:

Q. And that would be the one with Harrison County. You mentioned, when you were talking about this exhibit, that there's a uniformity issue with respect to Antero. Could you explain what you mean by that?

A. I mean that there are other taxpayers in Harrison County that are — may not have a point of sale that is similar to Antero and that they're selling it — their gas near the well.

And so their net cashflow that's being applied in the model is going to be lower as a result of where their point of sale is.

Antero's point of sale is post processing, so their gross receipts are higher, but they incurred a substantial larger amount of expenses.

Q. But with respect to uniformity, don't all producers get, as a result of the supreme court decision, a $175,000 expense deduction?

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A. Right. But the appraisal model of a yield cap is supposed to be based off of a net cashflow, so the supreme court missed that point at — you know, there are — based on points of sale, they're going to be differences in what the net cashflow would be in that model, so points of sale is creating a uniformity issue in the model.

Q. So you don't agree with the supreme court decision?

A. We do not.

Q. Let's turn to Exhibit No. 5. We'll start with the middle part of the exhibit. I see under your example you have a gas — gas working interest receipts of 10,000,000, expenses 175,000 and — go up — go up one to the 7,000,000 gross receipts, expenses 170,000, and we've got an appraised value per the tax department calculation of 10.6 million. Do you see that?

A. Yeah.

Q. Wells generate gross receipts over a period of time; don't they?

A. Correct.

Q. And the idea behind a yield capital model is you're going to try to figure out what you would

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sell the item for today to give up all that income that you're going to receive over time, correct?

A. The net — the net income. Yes.

Q. Income, one way or another. Are you telling me that a well that generates $10,000,000 that's going to go off for a period of time that an appraised value of 15.6 million, less than just — not even double one year's gross receipts in an unfair valuation?

A. There's many factors that go into converting an income-producing property for appraisal purposes, so to oversimplify the value that's being a result in this model, 1 don't think that that's a fair observation.

Q. So —

A. We're asking that the net cashflow, which is an Appraisal Institute methodology employed in states all over the country, be applied in this regard for these properties.

Q. You understand this is a mass appraisal system?

A. I do understand that.

Q. And we're appraising them all the same?

A. They're not being appraised the same.

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Q. So basically, you're saying that something that has $10,000,000 in gross receipts, you'd sell it for less than $10,000,000?

A. We're asking that the net cashflow be applied uniformly for —

Q. Then what kind of numbers are we going to get out of that, based on your theory?

A. I can't speculate based on the example there.

Q. Let's talk about the lower part of this exhibit, and it shows sales price at a wellhead after gathering and compression after processing and after transmission. Isn't it the producer's business decision where they sell their gas?

A. Yes, that is a business decision.

Q And if they choose to sell it after transmission and receive a higher price, don't a lot of factors come into that business decision—

A. That's—

Q. — where they're going to sell it —

A. Yeah. That's —

Q. — including the taxes that will be involved?

A. I don't think —

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Q. Isn't taxes part of a business decision?

A. I can't speak to Antero's decision around where they're selling their gas.

Q. But they can choose to sell their gas at the wellhead and pay less taxes, pay less property taxes, according to —

A. I don't think tax is a motivation as to where companies are selling their gas.

Q. So it's not a motivation; therefore, it's not a burden?

A. It's a burden in that they're not being uniformly treated in a — this kind of cashflow model.

* * *

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getting an assessed value multiple of 2.84, compared to like kind horizontal Marcellus wells in their counties they're getting a lower — those peers are getting a lower assessed value, so it's a uniformity concern.

Q. So but also wouldn't this lower assessed value be a result of their competitors not getting as much money for their gas as Antero is?

A. The lower — the lower assessment is a result of their having a lower net cashflow in the appraisal model, and that more than likely is a result of where the companies arc selling the gas, the points of sale.

Q. Given our appraisal model is based on gross proceeds, it would have to be a competitive company with that much — a similar amount of MCF is obviously getting less for an MCF than Antero; wouldn't that be the case?

A. The model is based off of gross receipts less operating expense.

Q. And everybody gets the same operating expense.

A. Right.

Q. So if they're getting — if they have a

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lower value per MCF, it would be because they would have a lower sales price per MCF?

A. More than likely. And that's because of the uniformity concern. The net cashflow and the cost, incremental cost, to get those higher prices are not being factored in.

Q. That's a uniformity concern and not simply a fact that .Antero is selling it for more?

A. They're selling it for an incremental difference, but as we demonstrated in — was that Exhibit No. 4-A or 4-B?

Q. Maybe No. 5.

A. Or No. 5.

Q. Yeah.

A. Yeah, No. 5. So in Exhibit No. 5, what we're demonstrating, there's a wellhead price of $2.62 and there is a price post processing and transportation of $3.79. That's $1.17 incremental cost that Antero is incurring. They're not getting $1.17. They're getting maybe 20 cents more.

Q. No. They're getting $1.17 more because of gross.

A. No. The state is including $1.17 in their model.

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Q. They're getting $1.17 more as compared to $2.62 to $3.79?

A. No, they're not. That's a net cashflow. They're incurring $1.17, and they may be incrementally selling it for $1.37, so they would be making 20 cents more, not $1.17 more.

Q. So the supreme court decision said that there is no cap, that to use a mathematical average as a — as the allowable expenses in this mass appraisal system, correct?

A. Yes.

Q. But what you're asking for here today, if I understand it, is you want a percentage deduction that the supreme court disallowed; in other words, if they sell for 3.79, you want a percentage deduction of some sort to reduce that 3.79?

A. That's correct.

MR. MUDRINICH: I have no further questions.

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