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JUL 11 2022

WEST VIRGINIA DEPARTMENT
OF REVENUE

July 11, 2022

Mark Morton
West Virginia State Tax Department
P.O. Box 1005
Charleston, West Virginia 25324-1005

VIA ELECTRONIC MAIL AND U.S.
MAIL

(taxlegal@wv.gov)

Re: GOWV Comments on Proposed Legislative Rule 110 WVCSR Series 1J

Dear Mark:

The Gas and Oil Association of WV, Inc. ("GOWV") truly appreciates the Tax Department's efforts to issue the proposed amendment to legislative rule regarding Series 1J (the "Rule"). We strongly believe the work completed by the Tax Department and industry prior to the filing of the Rule significantly improved the proposed Rule. GOWV's tax committee, several GOWV's members and its Board of Directors reviewed the Rule, and, on their behalf, we submit the following general comments, followed by more specific comments for your consideration.

General Comments

As you know, Property Tax valuation has been the topic of much debate in our industry over the last several years. Article X, Section 1 of The West Virginia Constitution provides that "taxation shall be equal and uniform throughout the state, and all property, real and personal, shall be taxed in proportion to its value to be ascertained as directed by law." West Virginia Code Section 11-6K-1 states that "All industrial and natural resource property shall be assessed annually as of the assessment date at sixty percent of its true and actual value." West Virginia Code Section 11-3-1 defines true and actual value as "... a price for which the property would sell if voluntarily offered for sale by the owner thereof, upon the terms as the property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if the property were sold at a forced sale." Gas and oil producers are required by law to have their wells taxed based on their true and actual value in the marketplace.

There is concern that the Tax Department is attempting to manipulate the value of a well by decreasing the capitalization rate that is used in the discounted cash flow calculation. Historically the Tax Department has computed a capitalization rate that has averaged approximately 15%. The historical capitalization rate used in West Virginia is consistent with the capitalization rates used in Kentucky and Ohio to value producing oil and gas reserves. It is critical that West Virginia remain competitive with its surrounding states. The Tax Department published the tentative variables for the 2023 assessment year and estimates the capitalization rate to be 11.07%. Industry understands that

the capitalization rate can fluctuate based on market changes and questions what specific market changes would cause the capitalization rate to drastically change from the historical 15% average. The Tax Department is afforded too much discretion in deriving the capitalization rate when valuing a well.

The proposed tax year 2023 capitalization rate of 11.07% was calculated using the Weighted Average Cost of Capital (WACC) Method. Similarly, the Texas Comptroller computes a WACC in a study published in November 2021. To account for inherent risk associated with oil and gas production from a single property rather than a company-wide portfolio of producing properties, the Texas Comptroller adds two percentage points to the overall mean WACC to establish the base discount rate for each oil and gas property. The Texas Comptroller study published in November 2021 computes an overall mean WACC of 12.45% to establish the base discount rate of 14.45%. Ad valorem tax rates are then added to the base rate to determine the property specific discount rate. While specific local ad valorem tax rates vary in Texas, using an average ad valorem tax rate of 1.8%, the total capitalization rate for Texas is 16.22%, which is practically 4.5 percentage points greater than West Virginia's preliminary Tax Year 2023 capitalization rate of 11.07%.

The proposed Rule contains provisions disallowing the use of affiliate contractual arrangements for determining allowable revenues and expenses. Given industry regulation and current practices, our experience is that affiliate contracts should reflect market pricing at arm's length. As a result, we believe that affiliate contracts should be considered as a starting point with regard to the determination of gross proceeds when it can be supported that these contracts represent arm's length market pricing. Industry agrees that in the situations where a market gross price is reduced for incremental actual expenses (a common practice in the industry regardless of whether a marketing company is affiliated), a company should not report the expense adjustment separately on the property tax return if the expense is already reflected in the gross price received.

Specific Comments and Questions

Specific concerns pertaining to the proposed calculation of the capitalization rate are as follows:

With respect to affiliate arm's length language:

Section 6.2 – amend the first sentence to state that “The Tax Commissioner has the burden of demonstrating that a contract is not arm's-length.”

Section 6.3 – amend to state that “If the Tax Commissioner demonstrates that the gross proceeds claimed by a producer are not received pursuant to an arm's-length contract, then the Tax Commissioner may adjust the amount of the gross proceeds in accordance with the following methods.”

Section 7.1.1 – amend the last sentence to state that “The Tax Commissioner shall have the burden of demonstrating that a contract is not arm's-length.”

Section 7.1.2 – amend to state that “If the Tax Commissioner demonstrates that a transportation, processing, or fractionating contract is not arm’s-length, then annual actual operating costs may be adjusted by the Tax Commissioner to bring the costs in line with industry average.”

With respect to the yield capitalization sections:

Section 4.4.2 – Remove the last sentence “These percentages shall be determined annually by dividing the total royalty paid by the reported gross income.” because the apportionment method is defined in sections 5.2.1 and 5.2.2.

Section 5.1 - Remove the last sentence “This total gross proceeds amount will be apportioned to the working interest model and royalty interest model.” because the apportionment method is defined in sections 5.2.1 and 5.2.2.

Section 5.2.1 – the below modifications (additions in red and deletions in blue) are suggested to align the language with the language from HB4336 and are relevant to these sections.

In order to determine the working interest ~~gross receipts~~ income series, the ~~total~~ working interest gross receipts referenced in section 5.1 of this section heading shall be reduced by the actual annual operating expenses as set forth in this rule to yield a net working interest income series. 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 referenced in section 5.4 of this section heading and a decline rate multiplier referenced in section 5.3 of this section. 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. ~~The net working interest income series shall be discounted by applying, on an annual basis, a decline rate and a mid-year life-inwood factor reflecting the capitalization rate referenced in section 5.4 of this section heading.~~ This amount will then be apportioned to each working interest owner based on the working interest receipts reported during the most recent calendar year to the July 1 assessment date. The total of the annual discounted income stream shall be the market value estimate for the working interest of the producing oil or natural gas wells, including personal property. The minimum appraised value for any producing well will not be less than the machinery and equipment value. This minimum rate will not apply to home-use only wells or farm-use wells. 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 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.

Section 5.2.2 – the below modifications (additions in red and deletions in blue) are suggested to align the language with the language from HB4336 and are relevant to these sections.

In order to determine the royalty interest gross receipts income series, the total royalty interest gross receipts referenced in section 5.1 of this section heading 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 referenced in section 5.4 of this section and a decline rate multiplier referenced in section 5.3 of this section. 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 (discounted by applying, on an annual basis, a decline rate and a mid-year life-in-well factor reflecting the capitalization rate referenced in section 5.4 of this section heading. This amount will then be apportioned proportionally distributed to each royalty owner based on the royalty percentage receipts reported received during the most recent calendar year to the July 1 assessment date. The summation of the annual discounted income streams shall be the market value estimate for the royalty interest of the producing oil or natural gas well for an area of up to one hundred twenty-five (125) acres per producing natural gas wells and up to forty (40) acres per producing oil wells. For all assessments made on or after July 1, 2022, the Tax Commissioner shall annualize gross receipts before calculation of 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 that will be supplemented or used in lieu of the Tax Commissioner annualization calculations.

Section 5.3 – The suggested modifications to this section below are due to relevancy in the placement of this section or inaccurate descriptions.


The net working interest gross receipts income series and the net royalty interest gross receipts income series will be multiplied by the applicable decline rates. The amounts determined under section 5.2 of this section heading will be adjusted by an appropriate production decline rate of 18 months that is derived and applied based upon the age of the well and typical of the producing area and strata. Gross receipts and production amounts shall then be proportionately reduced by application of the appropriate annual rate to yield a declining terminal income series typical of the producing areas and strata. Where the well did not produce during the entire calendar year, the gross receipts and royalties paid will be annualized prior to the process of applying a yield capitalization procedure. This net amount is then multiplied by the applicable capitalization rate. Nothing shall prohibit a taxpayer

Mark Morton
July 11, 2022
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~~from supplying information concerning additional actual gross receipts and actual operating expense information that may be supplemented or used in lieu of the unavailability calculations.~~

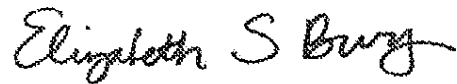
We appreciate the opportunity to review and provide comments on the proposed Rule and the opportunity to work together with the Tax Department to create a property tax system that encourages additional oil and gas development and investment our State.

Respectfully submitted,



Marc A. Monteleone
Co-Chair, GOWV Tax Committee

Respectfully submitted,



Elizabeth Burg, CPA
Co-Chair, GOWV Tax Committee



Antero Resources
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Denver, CO 80202
Office 303.551.7319
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July 13, 2022

Via Hand Delivery and Electronic Mail

West Virginia State Tax Department
Attention: Mark Morton
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Charleston, West Virginia 25324
taxlegal@wv.gov

Re: Public Comments to Draft Legislative Rule for the Valuation of Producing and Reserve Oil and Natural Gas Property for Ad Valorem Property Tax Purposes, W. Va. Code of St. R. §§ 110-1J-1 *et seq.*

Dear Mr. Morton:

Currently, producing and reserve oil, natural gas liquids, and natural gas properties are valued for *ad valorem* property tax purposes via an emergency rule that was filed in June of 2021, W. Va. Code of St. R. §§ 110-1J-1 *et seq.* (the "Emergency Rule"). A draft legislative rule was also submitted by the West Virginia State Tax Department (the "Tax Department") in June of 2021 but was rejected by the Legislative Rule-Making Review Committee in January of 2022.

An updated draft of W. Va. Code of St. R. §§ 110-1J-1 *et seq.* (the "Draft Legislative Rule") was filed by the Tax Department with the West Virginia Secretary of State on June 13, 2022, with an identical updated emergency rule (the "Draft Emergency Rule") filed on the same day.

Both the Draft Legislative Rule and Draft Emergency Rule are intended to provide guidance on changes to the valuation of oil, natural gas, and natural gas liquids for property tax purposes following the passage of HB2581 during the 2021 regular legislative session and HB4336 during the 2022 regular legislative session. The provisions of the Draft Emergency Rule will be used by the Tax Department for the valuation of oil, natural gas, and natural gas liquids for property tax year 2023.

Antero Resources Corporation ("Antero") submits the following public comments to aid the Tax Department as it continues to review and revise the Draft Legislative Rule. While public comments are not required as part of the process for enactment of the Draft Emergency Rule,

Antero's public comments to the Draft Legislative Rule equally apply to the Draft Emergency Rule.

- **Timeliness of Delivery of Producing Well Values** -- W. Va. Code § 11-6K-4(e)(1) requires the Tax Commissioner to complete the preparation of tentative appraisals of oil and natural gas property and notify the affected owner or operator by December 1 of the assessment year. However, no notification is required where the total increase in the aggregate amount of the tentative appraisals to the affected owner or operator does not exceed \$1,000 and the total tentative appraisals did not increase by more than 10% from the prior year's appraisals. The Tax Commissioner is given discretion to notify owners or operators via a written notice, electronic notice, or by any other means designed to communicate in a timely and efficient manner.

Antero recognizes that the Draft Legislative Rule cannot alter the statutory provisions regarding the timeframe for delivery of tentative values; however, § 110-1J-9 could be amended to state that the Tax Commissioner will provide tentative appraised values of oil, natural gas liquids, and natural gas property to owners and producers as soon as possible, *and upon request regardless of whether there is an increase in the appraised value*, given that the Tax Commissioner is required under W. Va. Code § 11-6K-6 to finalize the tentative values of same and provide the final values to assessors on or before December 15th of the assessment year. The two-week time frame to review tentative appraised values of oil, natural gas liquids, and natural gas properties prior to the values being finalized puts a strain on owners and producers, as well as royalty owners and assessors. If the Tax Department is able to provide the tentative values prior to December 1, it should do so, and this should be reflected in the Draft Legislative Rule.

Additionally, the Draft Legislative Rule should provide that producers and operators that file property tax returns electronically may request that tentative and final values shall be provided electronically by the Tax Commissioner, and that the Tax Commissioner shall provide electronic versions of the worksheets used by the Tax Department in calculating the appraised values of the producing wells.

- **Transparency** -- § 110-1J-10 addresses the Tax Commissioner's duty to publish and file in the State Register an annual summary of variables to be considered in arriving at the value of the specific oil or natural gas related property, with the final valuation variables to be filed in the State Register on or before September 1st, following a public comment period.

Antero supports these provisions, but requests that the Tax Department add a new subsection 10.3 that requires the Tax Commissioner to annually post valuation worksheets on the property tax tab on www.wvtax.gov following the release of the final valuation variables. Currently, the Tax Department includes valuation worksheets on its website for Year 1, Year 2, and Year 3+ wells for tax years 2015-17. The Tax Department should be required to annually post updated valuation

worksheets to allow producers to estimate the working interest and royalty interest of producing wells using the Tax Department's valuation variables and methodology. As with the current valuation worksheets on the Tax Department's website, worksheets should be provided for three property tax years.

Antero appreciates the time and effort the Tax Department has put into the Draft Legislative Rule and appreciates the Tax Department's consideration of the points raised by Antero in this letter to ensure that the State of West Virginia has a valuation methodology that will value all producing wells based on their true and actual value.

Please feel free to contact me if you have any immediate questions.

Very truly yours,



Sheri L. Pearce
Chief Accounting Officer & SVP Accounting

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7/7/2022



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July 12, 2022

**VIA ELECTRONIC MAIL/
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RECEIVED

JUL 12 2022

WV TAX DEPARTMENT
 LEGAL DIVISION

Re: Public Comments on 110 WVCSR Series 1J Legislative Rule

Dear Mr. Morton,

Thank you for providing us with an opportunity to provide comments on the recent proposed revision of Title 110, Series 1J legislative rule (the "Rule") for the "Valuation of Producing and Reserve Oil, Natural Gas Liquids, and Natural Gas for Ad Valorem Property Tax Purposes."

EQT agrees with the West Virginia State Tax Department (the "Tax Department") and industry groups (including the Gas and Oil Association of West Virginia or "GO-WV") that the prior version of the legislative rule, which was used through property tax year 2021, was outdated and no longer adequately reflected the status of the oil and gas industry and its business models. EQT understands the need to amend the Rule and the difficulties faced when promulgating guidance to value tens of thousands of wells on an annual basis using a mass appraisal system.

EQT and GO-WV provided public comments to Tax Department in July of 2021 when proposed revisions to Title 110, Series 1J were filed with the West Virginia Secretary of State, along with an emergency rule for Title 110, Series 1J that was used in valuing producing oil and natural gas wells for property tax year 2022. Ultimately, the Legislative Rule—Making Committee rejected the draft legislative rule that was introduced in 2021, necessitating a new proposed Rule.

While many of the issues raised by GO-WV and producers in 2021 have been addressed in the Rule, EQT continues to object to the provisions regarding affiliated contractual arrangements, the primary issue that EQT commented on in 2021. Section 6.1.3 of the proposed Rule expressly disallows affiliated contractual arrangements, including between a producer and a marketing affiliate, in determining the gross receipts or gross proceeds to be considered for valuation purposes and instead requires that producing wells be valued based on gross proceeds derived from the sale of the oil or natural gas by the marketing affiliate, regardless of whether the sale from the producer to the marketing affiliate is pursuant to an arm's length contract. Section 6.2 of the proposed Rule places the burden of demonstrating that a contract is arm's-length on the lessee, subject to monitoring, review and audit by the Tax Commissioner, and section 6.3 gives the Tax Commissioner broad authority to adjust the amount of gross proceeds if he or she deems that the lessee has not demonstrated that a contract is arm's-length. The proposed Rule language regarding arm's length contracts or transactions and affiliated entities is not supported by language in the West Virginia Code.

EQT recommends the following revisions to the proposed Rule:

- W. Va. Code St. R. § 3.4 – amend to state that "Arm's-length" means a contract, agreement or transaction that has been arrived at between entities or persons with opposing or adverse economic interests regarding that contract.
- W. Va. Code St. R. § 3.30 – stricken in its entirety.
- W. Va. Code St. R. § 6.1.3 – stricken in its entirety.
- W. Va. Code St. R. § 6.2 – amend the first sentence to state that "The Tax Commissioner has the burden of demonstrating that a contract is not arm's-length."

- W. Va. Code St. R. § 6.3 – amend to state that “If the Tax Commissioner demonstrates that the gross proceeds claimed by a producer are not received pursuant to an arm’s-length contract, then the Tax Commissioner may adjust the amount of the gross proceeds in accordance with the following methods.”
- W. Va. Code St. R. § 7.1.1 – amend the last sentence to state that “The Tax Commissioner shall have the burden of demonstrating that a contract is not arm’s-length.”
- W. Va. Code St. R. § 7.1.2 – amend to state that “If the Tax Commissioner demonstrates that a transportation, processing, or fractionating contract is not arm’s-length, then annual actual operating costs may be adjusted by the Tax Commissioner to bring the costs in line with industry average.”

These proposed revisions accomplish the goal of ensuring that gross proceeds and annual actual operating costs from transactions are based on fair market value but does not simply ignore corporate structure and any associated affiliated agreements or give unsupported discretion to the Tax Commissioner.

EQT agrees with the detailed concerns included in GO-WV’s public comments. EQT representatives are available to discuss our comments and feel that it is imperative that the industry stakeholders, the Tax Department and the Legislature have an opportunity to work together on the concerns addressed above to avoid future disputes.

Best regards,

DocuSigned by:

Kimberlee A. Hoinkes

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Kimberlee Hoinkes
Manager Corporate Tax

cc: Thomas Quinlan, VP Tax, EQT
John Bane, Director Government Affairs, EQT
Matthew Irby, WV Department of Tax

PUBLIC COMMENTS AND RESPONSES

110CSR01J

VALUATION OF PRODUCING AND RESERVE OIL, NATURAL GAS LIQUIDS, AND NATURAL GAS PROPERTY FOR AD VALOREM PURPOSES

Regarding the proposed amendments to Legislative Rule 110 C.S.R. 1J, the State Tax Department received comments from Marc Monteleone and Elizabeth Burg, co-chairs of the Tax Committee of the Gas & Oil Association of West Virginia (“GOWV”); Kimberlee Hoinkes, Manager, Corporate Tax of EQT Corporation (“EQT”); and Sheri L. Pearce, Chief Accounting Officer and SVP Accounting of Antero Resources (“Antero”).

Comments are summarized with the Tax Department’s responses below:

GOWV

GOWV’s comments are divided into “General Comments” and “Specific Comments and Questions.” The “General Comments” begin with a summarized recitation of the West Virginia Constitution and West Virginia Code requirements that ad valorem property taxation must be equal and uniform, and must reflect the property’s true and actual value. The “General Comments” proceed to express concern regarding the capitalization rate used in valuing oil and gas properties:

There is concern that the Tax Department is attempting to manipulate the value of a well by decreasing the capitalization rate that is used in the discounted cash flow calculation. Historically the Tax Department has computed a capitalization rate that has averaged approximately 15%. The historical capitalization rate used in West Virginia is consistent with the capitalization rates used in Kentucky and Ohio to value producing oil and gas reserves. It is critical that West Virginia remain competitive with its surrounding states. The Tax Department published the tentative variables for the 2023 assessment year and estimates the capitalization rate to be 11.07%. Industry understands that the capitalization rate can fluctuate based on market changes and questions what specific market changes would cause the capitalization rate to drastically change from the historical 15% average. The Tax Department is afforded too much discretion in deriving the capitalization rate when valuing a well.

The proposed tax year 2023 capitalization rate of 11.07% was calculated using the Weighted Average Cost of Capital (WACC) Method. Similarly, the Texas Comptroller computes a WACC in a study published in November 2021. To account for inherent risk associated with oil and gas production from a single property rather than a company-wide portfolio of producing properties, the Texas Comptroller adds two percentage points to the overall mean WACC to establish the base discount rate for each oil and gas property. The Texas Comptroller study published in November 2021 computes an overall mean WACC of 12.45% to

establish the base discount rate of 14.45%. Ad valorem tax rates are then added to the base rate to determine the property specific discount rate. While specific local ad valorem tax rates vary in Texas, using an average ad valorem tax rate of 1.8%, the total capitalization rate for Texas is 16.22%, which is practically 4.5 percentage points greater than West Virginia's preliminary Tax Year 2023 capitalization rate of 11.07%.

Response: This comment appears to be more related to the tentative variables that the Tax Commissioner published on July 1, 2022, and is not a comment regarding the language of this Rule. The Tax Commissioner will respond to this comment when the final variables are published.

Also in its "General Comments," GOWV states:

The proposed Rule contains provisions disallowing the use of affiliate contractual arrangements for determining allowable revenues and expenses. Given industry regulation and current practices, our experience is that affiliate contracts should reflect market pricing at arm's length. As a result, we believe that affiliate contracts should be considered as a starting point with regard to the determination of gross proceeds when it can be supported that these contracts represent arm's length market pricing. Industry agrees that in the situations where a market gross price is reduced for incremental actual expenses (a common practice in the industry regardless of whether a marketing company is affiliated), a company should not report the expense adjustment separately on the property tax return if the expense is already reflected in the gross price received.

Response:

This comment appears to not directly contradict anything in the proposed rule, so no response is necessary. However, the Tax Commissioner agrees that a company should not be able to artificially reduce the gross proceeds from a sale by deducting costs that are already reflected the sale price. This is most likely to occur in sales between related or affiliated companies.

In its "Specific Comments and Questions," GOWV proposes language in section headings 6 and 7 of the proposed rule that would change the burden of proof regarding whether a particular contract is arm's length:

With respect to affiliate arm's length language:

Section 6.2 – amend the first sentence to state that "The Tax Commissioner has the burden of demonstrating that a contract is not arm's-length."

Section 6.3 – amend to state that "If the Tax Commissioner demonstrates that the gross proceeds claimed by a producer are not received pursuant to an arm's-length contract, then the Tax Commissioner may adjust the amount of the gross proceeds in accordance with the following methods."

Section 7.1.1 – amend the last sentence to state that “The Tax Commissioner shall have the burden of demonstrating that a contract is not arm’s-length.”

Section 7.1.2 – amend to state that “If the Tax Commissioner demonstrates that a transportation, processing, or fractionating contract is not arm’s-length, then annual actual operating costs may be adjusted by the Tax Commissioner to bring the costs in line with industry average.”

Response: The burden is always on the taxpayer to prove that the numbers reported on their tax returns are accurate. However, the Tax Commissioner has removed the references to “arms-length” transactions in Section 6.2, 6.3, 7.1.1. and 7.1.2. The Tax Commissioner has added language in 6.1.4, to make it clear that the Tax Department will treat sales transactions between related parties the same way that it has long done under the Severance and Business Privilege Tax Act.

Also in its “Specific Comments and Questions,” GOWV makes the following suggestions:

With respect to the yield capitalization sections:

Section 4.4.2 – Remove the last sentence “These percentages shall be determined annually by dividing the total royalty paid by the reported gross income.” because the apportionment method is defined in sections 5.2.1 and 5.2.2.

Section 5.1 - Remove the last sentence “This total gross proceeds amount will be apportioned to the working interest model and royalty interest model.” because the apportionment method is defined in sections 5.2.1 and 5.2.2.

These suggestions are predicated on adaptation of suggested wholesale changes being made to subsections 5.2.1 and 5.2.2, which are spelled out further:

Section 5.2.1 – the below modifications (additions in red and deletions in blue) [**for formatting purposes, suggested additions are reflected by underlining, while suggested deletions are struck through**] are suggested to align the language with the language from HB4336 and are relevant to these sections.

In order to determine the working interest ~~gross receipts~~ income series, the ~~total~~ working interest gross receipts referenced in section 5.1 of this section heading shall be reduced by the actual annual operating expenses as set forth in this rule to yield a net working interest income series. 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 referenced in section 5.4 of this section heading and a decline rate multiplier referenced in section 5.3 of this section. 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. The net working interest income series shall be discounted by applying, on an annual basis, a decline rate and a mid-year life Inwood factor reflecting the capitalization rate referenced in section 5.4 of this section heading. This amount will then be apportioned to each working interest owner based on the working interest receipts reported during the most recent calendar year to the July 1 assessment date. The total of the annual discounted income stream shall be the market value estimate for the working interest of the producing oil or natural gas wells, including personal property. The minimum appraised value for any producing well will not be less than the machinery and equipment value. This minimum rate will not apply to home-use only wells or farm-use wells. 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 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.

Section 5.2.2 – the below modifications (additions in red and deletions in blue) **[again, changed to underlining and striking through]** are suggested to align the language with the language from HB4336 and are relevant to these sections.

In order to determine the royalty interest gross receipts income series, the ~~total~~ royalty interest gross receipts referenced in section 5.1 of this section heading 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 referenced in section 5.4 of this section and a decline rate multiplier referenced in section 5.3 of this section. 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 ~~discounted by applying, on an annual basis, a decline rate and a mid-year life Inwood factor reflecting the capitalization rate referenced in section 5.4 of this section heading.~~ This amount will then be apportioned ~~proportionally distributed~~ to each royalty owner based on the royalty ~~percentage~~ receipts reported received during the most recent calendar year to the July 1 assessment date. The summation of the annual discounted income streams shall be the market value estimate for the royalty interest of the producing oil or natural gas well for an area of up to one hundred twenty-five (125) acres per producing natural gas wells and up to forty (40) acres per producing oil wells. For all assessments made on or after July 1, 2022, the Tax Commissioner shall annualize gross receipts before calculation of 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 that will be supplemented or used in lieu of the Tax Commissioner annualization calculations.

Response: The Tax Commissioner is unclear how this language changes the valuation methodology from the methodology already set forth in the proposed rule. The Tax Commissioner believes that the language of the proposed rule more accurately reflects the mandate of HB 4336 to calculate the true and actual value of the oil and gas properties at issue. Therefore, the Tax Commissioner declines to adopt the language suggested by GOWV. If GOWV would provide additional information as to why they believe these changes are warranted, the Tax Commissioner may consider them.

Finally, GOWV suggests changes to section 5.3, “due to relevancy in the placement of this section or inaccurate descriptions”:

~~The net working interest gross receipts income series and the net royalty interest gross receipts income series will be multiplied by the applicable decline rates. The amounts determined under section 5.2 of this section heading will be adjusted by an appropriate production decline rate of 18 months that is derived and applied based upon the age of the well and typical of the producing area and strata. Gross receipts and production amounts shall then be proportionately reduced by application of the appropriate annual rate to yield a declining terminal income series typical of the producing area and strata. Where the well did not produce during the entire calendar year, the gross receipts and royalties paid will be annualized prior to the process of applying a yield capitalization procedure. This net amount is then multiplied by the applicable capitalization rate. Nothing shall prohibit a taxpayer from supplying information concerning additional actual gross receipts and actual operating expense information that may be supplemented or used in lieu of the annualization calculations.~~

Response: Although the comment claims to be made on the bases of relevancy of placement and inaccurate descriptions, it fails to identify how relevancy in placement is involved or how any of the descriptions in the proposed rule are inaccurate. The Tax Commissioner declines to adopt the suggested changes. The Tax Commissioner has adjusted the rule to reflect that the declining income series will begin with “net receipts” instead of “gross receipts”

EQT

Generally, EQT stated that it “agrees with the detailed concerns included in GO-WV’s public comments.” EQT also states:

While many of the issues raised by GO-WV and producers in 2021 have been addressed in the Rule, EQT continues to object to the provisions regarding affiliated contractual arrangements, the primary issue that EQT commented on in 2021. Section 6.1.3 of the proposed Rule expressly disallows affiliated contractual arrangements, including between a producer and a marketing affiliate, in determining the gross receipts or gross proceeds to be considered for valuation purposes and instead requires that producing wells be valued based on gross proceeds derived from the sale of the oil or natural gas by the marketing affiliate, regardless of whether the sale from the producer to the marketing affiliate is pursuant to an arm's length contract. Section 6.2 of the proposed Rule places the burden of demonstrating that a contract is arm's-length on the lessee, subject to monitoring, review and audit by the Tax Commissioner, and section 6.3 gives the Tax Commissioner broad authority to adjust the amount of gross proceeds if he or she deems that the lessee has not demonstrated that a contract is arm's-length. The proposed Rule language regarding arm's length contracts or transactions and affiliated entities is not supported by language in the West Virginia Code.

With that statement as a backdrop, EQT then makes the following suggestions for revising the proposed rule:

W. Va. Code St. R. § 3.4 – amend to state that “Arm's-length” means a contract, agreement or transaction that has been arrived at between entities or persons with opposing or adverse economic interests regarding that contract.

W. Va. Code St. R. § 3.30 – stricken in its entirety.

W. Va. Code St. R. § 6.1.3 – stricken in its entirety.

W. Va. Code St. R. § 6.2 – amend the first sentence to state that “The Tax Commissioner has the burden of demonstrating that a contract is not arm's-length.”

W. Va. Code St. R. § 6.3 – amend to state that “If the Tax Commissioner demonstrates that the gross proceeds claimed by a producer are not received pursuant to an arm's-length contract, then the Tax Commissioner may adjust the amount of the gross proceeds in accordance with the following methods.”

W. Va. Code St. R. § 7.1.1 – amend the last sentence to state that “The Tax Commissioner shall have the burden of demonstrating that a contract is not arm's-length.”

W. Va. Code St. R. § 7.1.2 – amend to state that “If the Tax Commissioner demonstrates that a transportation, processing, or fractionating contract is not arm's-length, then annual actual operating costs may be adjusted by the Tax Commissioner to bring the costs in line with industry average.”

Response: The burden is always on the taxpayer to prove that the price it claims on a tax return is accurate. However, the Tax Commissioner has removed the references to “arms-length” transactions in Section 6.2, 6.3, 7.1.1, and 7.1.2. Tax Commissioner declines to strike Sections 3.30 and 6.1.3. The definition of “arm's length” under Section 3.4 has been removed. The Tax Commissioner has changed the language of 6.1.3, and added a definition of related parties in order to make it clear that the Tax Department will treat sales transactions between related parties the same way that it has long done under the Severance and Business Privilege Tax Act.

Antero

Antero provided comments under two categories: “Timeliness of Delivery of Producing Well Values,” and “Transparency.” Regarding timeliness, Antero commented:

W. Va. Code §11-6K-4(e)(1) requires the Tax Commissioner to complete the preparation of tentative appraisals of oil and natural gas property and notify the affected owner or operator by December 1 of the assessment year. However, no notification is required where the total increase in the aggregate amount of the appraisals to the affected owner or operator does not exceed \$1,000 and the total tentative appraisals did not increase by more than 10% from the prior year's appraisals. The Tax Commissioner is given discretion to notify owners or operators via a written notice, electronic notice, or by any other means designed to communicate in a timely and efficient manner.

Antero recognizes that the Draft Legislative Rule cannot alter the statutory provisions regarding the timeframe for delivery of tentative values; however, § 110-IJ-9 could be amended to state that the Tax Commissioner will provide tentative appraised values of oil, natural gas liquids, and natural gas property to owners and producers as soon as possible, *and upon request regardless of whether there is an increase in the appraised value* [emphasis in original], given that the Tax Commissioner is required under W. Va. Code §11-6K-6 to finalize the tentative values of same and provide the final values to assessors on or before December 15th of the assessment year. The two-week time frame to review tentative appraised values of oil, natural gas liquids, and natural gas properties prior to the values being finalized puts a strain on owners and producers, as well as royalty owners and assessors. If the Tax Department is able to provide the tentative values prior to December 1, it should do so, and this should be reflected in the Draft Legislative Rule.

Additionally, the Draft Legislative Rule should provide that producers and operators that file property tax returns electronically may request that tentative and final values shall be provided electronically by the Tax Commissioner, and that the Tax Commissioner shall provide electronic versions of the worksheets used by the Tax Department in calculating the appraised values of the producing wells.

Response: The Tax Commissioner currently provides tentative appraised values as soon as possible and in compliance with the requirements of W. Va. Code §11-6K-4. No change in the proposed rule is needed for the Tax Commissioner to continue providing tentative appraised values as soon as possible when the aggregate amount of the appraisals to the affected taxpayer exceeds \$1,000 and the total tentative appraisals increase by more than 10% from the prior year's appraisals. However, the proposal to change the proposed rule to require that the Tax Commissioner provide tentative appraisals to owners and producers upon request, regardless of whether the tentative appraisals show an increase beyond the statutory thresholds, would be unduly

burdensome on the Tax Commissioner, and the Tax Commissioner declines to implement that proposed change.

Regarding transparency, Antero commented:

110-1J-10 addresses the Tax Commissioner's duty to publish and file in the State Register an annual summary of variables to be considered in arriving at the value of the specific oil or natural gas related property, with the final valuation variables to be filed in the State Register on or before September 1st, following a public comment period.

Antero supports these provisions, but requests that the Tax Department add a new subsection 10.3 that requires the Tax Commissioner to annually post valuation worksheets on the property tax tab on www.wvtax.gov following the release of the final valuation variables. Currently, the Tax Department includes valuation worksheets on its website for Year 1, Year 2, and Year 3+ wells for tax years 2015-17. The Tax Department should be required to annually post updated valuation worksheets to allow producers to estimate the working interest and royalty interest of producing wells using the Tax Department's valuation variables and methodology. As with the current valuation worksheets on the Tax Department's website, worksheets should be provided for three property tax years.

Response: Any regulation on what the Tax Department must put on its website is unnecessary and could be burdensome on the Department. The Tax Commissioner annually publishes detailed descriptions of how the valuation variables were determined. Taxpayers are given an opportunity each year to comment on the tentative version of these variables. Also, the Tax Department posts Oil and Gas Property Tax returns and instructions. The Tax Department, instead of providing a worksheet like in the past, has begun publishing an Excel spreadsheet that can be used to calculate valuation, but also be submitted as an EZ Form tax return.