

REDACTED DECISION – DK# 19-008, 19-064

**BY: A.M. “FENWAY” POLLACK, CHIEF ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON FEBRUARY 3, 2022
DECISION ENTERED ON AUGUST 18, 2022**

FINAL DECISION

On November 15, 2018, the Tax Account Administration Division of the West Virginia State Tax Commissioner’s Office (hereinafter “Tax Commissioner” or “Respondent”) issued a Refund Decreased Letter to the Petitioner, Producer Inc. (hereinafter “Producer Inc.” or “Petitioner”). This letter reduced the Petitioner’s refund of Severance Tax, for tax year 2014, from the requested \$_____ to \$_____, for a reduction of \$_____. This refund denial was issued pursuant to the authority of the State Tax Commissioner, granted to him by the provisions of Chapter 11, Article 10 *et seq*, of the West Virginia Code. Thereafter, on December 20, 2018, the Tax Commissioner issued a second Refund Decreased letter, this time for tax year 2016. This letter decreased the Petitioner’s Severance Tax refund by the requested \$_____ to \$_____, for a reduction of \$_____.

Thereafter, on January 10, 2019, the Petitioner timely filed with this Tribunal, a petition of appeal regarding the November 15, 2018, refund reduction. On February 19, 2019, the Petitioner timely filed a second petition of appeal, regarding the December 20, 2018, refund reduction. An evidentiary hearing was held in this matter on April 28, 2021, at the conclusion of which, the parties filed legal briefs.¹ The matter became ripe for a decision at the conclusion of the briefing schedule.

FINDINGS OF FACT

1. The Petitioner is a Delaware corporation, with its principal place of business in Houston, Texas. Tr. P100-101.

¹ Upon receipt of the transcript of the evidentiary hearing, the parties discovered numerous errors. This necessitated the transcriptionist to correct the transcript. After the first correction, errors were still present, necessitating a second corrected transcript. This process delayed the filing of briefs and the date when this matter became ripe for decision.

2. The Petitioner is in the business of exploring for and producing oil, natural gas, and selling the same. Tr. P101 at 16-18.

3. At the Petitioner's natural gas wells they produce what they call "raw gas" which is a combination of water, sand, natural gas liquids, and dry gas. Tr. P27-28 & Tr. P54-55 at 12-6 & Petitioner's Ex. 2.

4. Once this raw gas comes out of the ground, it goes through pieces of equipment owned by the Petitioner, such as line heaters, three (3) phase separators and gas dehydrators. Petitioner's Ex. 2. These pieces of equipment are part of the Petitioner's transportation and transmission system.

5. At some point the raw gas arrives at a processing plant, owned by a third party. Petitioner's Ex. 2.

6. Upon arrival at these processing plants, the Petitioner considers title to the raw gas to have passed to these third parties and the sale of the raw gas to have been completed. Tr. P46 at 6-9.

7. Once work on the gas is completed, two (2) products are created, "raw make NGLs" and "residue gas". Petitioner's Ex. 2.

8. The Petitioner confusingly testifies that title to all the gas passes once it arrives at the processing plant. However, on cross examination, Petitioner testifies that title to the "residue gas" stays with the Petitioner while it is in the processing plant, and the Petitioner sells this gas once it leaves the processing plant. Tr. P50 at 8-17.

9. Once they leave the processing plant, the raw make NGLs go to another plant for fractionation. Petitioner's Ex. 2. Once they leave the fractionation plant the raw make NGLs are now just NGLs, and these are sold by the third parties who operate the plants. Tr. P26-27 at 21-4.

10. At hearing, both parties introduced and relied on documents labeled "Percent of Proceeds Statement", which the parties referred to as "settlement statements." Petitioner's Ex. 4 and Respondent's Ex. 1.

11. These settlement statements are produced by the purchaser of the raw gas/operator of the processing and fractionation plants.

12. The settlement statements contain numerous pieces of information about the gas purchases. Most importantly regarding the dispute between the parties, they contain three (3) dollar values, “product value”, “fees and adjustments”, and “net value.” The net value is the product value minus the fees and adjustments. At the bottom left corner of each statement is a box detailing the fees and adjustments. For example, one statement in Petitioner’s Ex. 4 is dated January 31, 2015, and the various fee types are:

- a. Marketing fee;
- b. Pipeline fee Tier 1;
- c. Pipeline fee Tier 2;
- d. Fractionation fee;
- e. Plant fuel;
- f. Fractionation fuel;
- g. Teppco Transport;
- h. Rail loading fee; and
- i. Electric fee

13. This January 31, 2015, statement contains a product value of \$_____, fees and adjustments of \$_____, for a net value of \$_____.

14. It is undisputed between the parties that the Petitioner receives payment from the purchaser/plant operator in the amounts listed in the settlement statements as the net value.

15. The Petitioner testified throughout that the fees and adjustments are costs incurred by the purchaser/plant operator.

16. West Virginia’s severance tax rate on natural gas is five (5) percent of the gross value, as shown by the gross proceeds derived from the sale. For natural gas, gross value is defined as the value at the wellhead, immediately preceding transportation and transmission. The legislative rules governing the severance tax on oil and gas clarify that producers can deduct their transportation and transmission costs from the gross value. The producers can either take a specific deduction of these costs, or utilize a 15% safe harbor. Aside from these transportation and transmission costs, producers cannot deduct any other expenses.

17. In January of 2018, the Petitioner filed a second amended tax return for 2014. In December of 2018, the Petitioner filed a second amended tax return for 2016. Tr. P153 at 7-19.

18. The Tax Commissioner’s review of these amended returns led him to determine that the Petitioner was seeking both the 15% safe harbor deduction for transportation and transmission costs, and a deduction for the costs discussed above, costs that the Petitioner argues are those of the purchaser/plant operators.

19. This determination is what led to the refund reduction letters that form the basis of this appeal.

DISCUSSION

There is only one issue of dispute between the parties, namely, what is the amount of “gross proceeds” the Petitioner receives for the natural gas it produces. This issue centers around the settlement statements discussed in Findings of Fact 10 through 15 above, and to a lesser extent, the contracts between the Petitioner and the purchaser.²

² We use the phrase “lesser extent” because, as will be discussed in greater detail below, while the Petitioner introduced two contracts, and the Tax Commissioner indicated that the contractual language would be critical to resolution, at the end of the day, there was little discussion of the contracts during the hearing or in post hearing briefs.

The severance tax for the privilege of severing natural gas is contained in Section 3a of Article 13A, Chapter 11 of the West Virginia Code.

Rate and measure of tax. --The tax imposed in subsection (a) of this section is five percent of the gross value of the natural gas or oil produced by the producer as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

W. Va. Code Ann. § 11-13A-3a (West).

Gross proceeds, the amount of which is the sole issue in this case, is defined in Section 2(b)(5) of Article 13A. “Gross proceeds’ means the value, whether in money or other property, actually proceeding from the sale or lease of tangible personal property, or from the rendering of services, **without any deduction for** the cost of property sold or leased or **expenses of any kind.**” W. Va. Code Ann. § 11-13A-2(b)(5) (West)(emphasis added). Regarding natural gas, Subsection (c) of Section 2 states, “For natural gas, gross value is the value of the natural gas at the wellhead immediately preceding transportation and transmission.” *Id.*, at (c)(6)(G).

The legislative rules regarding severance taxes also discuss/define gross proceeds, and closely mirror Section 2(b)(5).

Gross Value. -- The term “gross value” in the case of natural resources means the market value of the natural resource product, in the immediate vicinity, where severed, determined after application of post production processing generally applied by the industry to obtain commercially marketable or usable natural resource products. . . . **Further, no deduction will be allowed for sales commissions, royalties, or other costs, expenses or fees incurred by a producer and ultimately paid to third parties.**

W. Va. Code R. § 110-13A-2.7 (1992)(emphasis added).

As is this Tribunal’s habit, we note at the outset of the discussion that neither party argues that the statutory and regulatory provisions at issue are ambiguous. As such, we will apply them as written and give the words their common ordinary meaning. *See e.g. Davis Mem’l Hosp. v. W. Virginia*

State Tax Com'r, 222 W. Va. 677, 671 S.E.2d 682 (2008) (where the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation).

At hearing and in post hearing briefs, the Petitioner consistently argued that the “net value” amount on the settlement sheets it receives from the purchaser/processor is really its “gross proceeds derived from the sale,” as that phrase is used in West Virginia Code Section 11-13A-3a. The Tax Commissioner argues that the “product value” on the settlement statements represents the gross proceeds, and that the Petitioner is attempting to deduct fees and expenses that the purchaser charges it. Specifically, the Petitioner argues that the fees and adjustments reflected on the settlement statements are incurred by the purchaser after title to the gas has passed, and as such, these fees incurred after the sale has occurred have nothing to do with the Petitioner. It should be noted that the Petitioner’s witness was quite insistent on this point.

ATTORNEY PAPADOPOULOS: Okay. So it’s your understanding that these are [Purchaser] production costs or [Producer Inc.]’s production costs?

MR. GAYTAN: They are [Purchaser] processing costs. Tr. P32 at 6-8.

ATTORNEY PAPADOPOULOS: Okay. Okay. And from your understanding, the marketing fees, the pipeline fees, the different fees in the fee summary, are any of those activities conducted by [Producer Inc.]?

MR. GAYTAN: They are not.

ATTORNEY PAPADOPOULOS: Okay. Okay. Who were those activities conducted by?

MR. GAYTAN: [Purchaser].

Tr. P33 at 9-15.

ATTORNEY PAPADOPOULOS: And again, just for clarity, those expenses when you said the net of the expenses incurred, who incurred those? Which party incurred those expenses?

MR. GAYTAN: [Purchaser] did, and those expenses are the marketing fees, pipeline fee, the fractionation fees listed on the fee schedule and the [Purchaser] statement.

Tr. P36 at 15-19.

ATTORNEY PAPADOPOULOS: Okay. And can you explain to me why [Producer Inc.] takes the position that the State's stance here is incorrect?

MR. GAYTAN: Yes, [Producer Inc.] doesn't operate the plants where those marketing fees are incurred. That is post sale, so those are [Purchaser] fees, and [Producer Inc.]'s entitled to the --- [Producer Inc.] in no way, shape, or form has control of those plants or are those [Producer Inc.]'s actual expenditures because that's not [Producer Inc.]'s system. It's [Purchaser]'s system.

ATTORNEY PAPADOPOULOS: Okay. When you said it's post sale, which sale are you referring to?

MR. GAYTAN: The sale of commodity.

ATTORNEY PAPADOPOULOS: From who to who?

MR. GAYTAN: From [Producer Inc.] to [Purchaser].

Tr. P38 at 3-13.

ATTORNEY PAPADOPOULOS: Okay. On the settlement statements, I see pipeline fees. I see a transportation --- Teppco transportation, a few other things that indicate transportation. What's your understanding of what those fees were for?

MR. GAYTAN: Those are fees that [Purchaser] incurred through its system to get it to their point still when they sold it.

ATTORNEY PAPADOPOULOS: So, explain in a little more detail when you say the fees that they incurred. From where to where to the best of your knowledge?

MR. GAYTAN: From if we go back to my schematic from the red line forward. I can't speak to each one specifically, but it's in [Purchaser]'s possession, custody, and control at that point.

Tr. P39 at 1-10.

In post-hearing briefs the Petitioner repeated this argument.

Thus, [Producer Inc.]³ is only entitled to receive the value of the Fractioned Products sold, less any third-party costs incurred by [Purchaser] and [Purchaser]'s contractual costs agreed to by [Producer Inc.]. These costs are incurred by [Purchaser], in [Purchaser]'s system, after [Producer Inc.] has sold the raw gas at the Plant Inlet of the Processing Plant and while [Purchaser] has sole custody, control and possession of the gas.

See Petitioner's Brief P. 8.

³ After the refund decrease letters were issued by the Tax Commissioner, the Petitioner underwent a name change.

Despite the Petitioner's repeated insistence that the fees and adjustments on the settlement statements are those of the purchaser, the facts and evidence of this case counsels otherwise. The most important piece of evidence in this regard is Respondent's Ex. 1, which is a settlement statement from July of 2018. This statement shows a product gross value of \$____, fees and adjustments of \$____ and a net value of (\$____). Upon cross examination, the Petitioner's witness acknowledged that in July of 2018, the Petitioner had to write a check to the purchaser for almost one million dollars.

ATTORNEY WINTER: Okay. I just wanted to ask you, the net value on this invoice, it's in parentheses, correct?

MR. GAYTAN: Yes. I'm sorry. You're asking me, right?

ATTORNEY WINTER: Yes. Yeah.

MR. GAYTAN: I just want to make sure.

ATTORNEY WINTER: And what --- that means that you had to issue [Purchaser] the check for that amount?

MR. GAYTAN: Contractually, yes.

ATTORNEY WINTER: And that's because, at least for this invoice, the fees and adjustments were more than the product value, correct?

MR. GAYTAN: Yes.

Tr. P67 at 12-22.

We are mindful of the fact that State's Ex. 1 concerns 2018, which is not one of the tax years at issue in this matter, however, we do not believe that fact affects our decision. Nor do we think it is determinative that the fees being charged to the Petitioner are in fact for activities that are occurring in the purchaser's processing plant. No matter how many times the Petitioner insists that the fees are "costs" of the purchaser, if it is writing a million-dollar check, then that fact counsels otherwise. The Petitioner simply cannot insist that these fees have nothing to do with it, when it is the one writing the check. As West Virginia Code Section 11-13A-2(b)(5) clearly states, gross proceeds is the **value**

of the product sold, without any deduction for expenses of any kind. It is impossible to see how the fees being charged to the Petitioner are not its expenses.

It's clear from reading all of the relevant statutory and regulatory provisions in this matter that the Legislature intended that natural gas producers would pay severance tax on the **value** of the natural gas produced. It is equally clear that they equated the amount of the check written as representing that value. The Petitioner in this matter wants to rewrite the statutory and regulatory provisions so that the severance tax amount is simply five (5) percent of the amount of the check written, while relabeling its expenses as those of the purchaser. The problem with this approach is that the Petitioner cannot escape the settlement statements. The statements clearly identify two (2) values, the product value and the net value. If the amount the Petitioner receives for its gas is actually the market value in the vicinity of the wellhead or where severed, as those terms are used in the statute or regulations, then what does the "product value" on the settlement statements represent? Counsel for the Tax Commissioner attempted to cross examine the Petitioner's witness on this point, however, his responses were less than illuminating.

ATTORNEY WINTER: Okay. And it's not a case of a sale where you've sold this gas at the receipt point according to you. It's not a case where you've sold the gas to [Purchaser] and they can go on --- and if you sold it for \$50, they can't go ahead and sell it for \$100 and take \$50 as profit, correct?

MR. GAYTAN: I don't know.

ATTORNEY WINTER: Under the contracts it says that you received ---.

MR. GAYTAN: I guess [Purchaser] --- just to clarify. [Purchaser] sells it. They get that value, right? [Purchaser] is the one that gets on the settlement statement the product value number.

ATTORNEY WINTER: Uh-huh.

MR. GAYTAN: [Purchaser] receives that. [Producer Inc.] is never entitled to or even has access to that dollar value.

ATTORNEY WINTER: Right. But the dollar value on the receipt is what they received from the sale, correct? What [Purchaser] received from the sale?

MR. GAYTAN: Which one? There's not a dollar value.

ATTORNEY WINTER: The sale --- the product value you're saying is on the settlement sheets is what [Purchaser] received from the sale of the gas.

MR. GAYTAN: I wouldn't know. I just know that that's what's on the settlement statement. I can't speak to that's exactly what they received or not.

Tr. P47-48.

Even if we look beyond the witness's equivocations, the idea that the product value on the settlement statements is what the purchaser received for the sale of the gas is ridiculous. The math on the few settlement statements in evidence is always the same, product value minus fees equals net value, or what is paid to the Petitioner. Using that math, if we create a fictional settlement statement with a \$100,000 product value, and \$20,000 in fees, then the Petitioner receives \$80,000. If the Petitioner is correct, and the fees are exclusively the costs of the purchaser, and have nothing to do with the Petitioner, and if the product value is what the purchaser sells the processed gas for, then the purchaser makes zero dollars. In our fictional example they pay \$80,000 (net price) to buy the gas from the Petitioner. They then spend \$20,000 (their "costs" according to the testimony) and then sell it for \$100,000, making a profit of \$0. Obviously, that scenario does not pass the straight face test. Common sense tells us that the "product value" on the settlement statements is just that, the market value at the wellhead. The purchaser charges the Petitioner for certain services rendered and pays them the remainder. The price the purchaser receives when it sells the gas after processing, is just as the witness eventually testified to, unknown. On the other hand, if we examine the witness' alternative testimony, namely that he does not know how much the purchaser receives when it sells the processed gas, then the Petitioner's argument also is unavailing. If the "product value" is not the amount the purchaser receives upon resale, that begs the question, what does the product value

number on the settlement statements represent? One fact is certain, in an industry where billions of dollars regularly change hands, it is not a made-up number. The Petitioner presented no credible evidence to explain what that number represents, and as such this Tribunal must use its common sense to ascertain the truth. As stated above, common sense tells us that the number is exactly as described on the statements, namely, the value of the gas at the wellhead, from which certain fees charged to the Petitioner are deducted.

Moreover, the evidence in this matter shows that the purchaser is providing a service to the Petitioner, despite more contradictory testimony. On direct examination, the Petitioner's witness testified that these "costs" that were exclusively the purchasers, are incurred after title to the gas has passed. In fact, the Petitioner relies heavily on this fact, that once title has passed, there is no way these costs could be theirs. However, upon cross examination it was revealed that for some of the gas, namely "residue gas" title never passes out of the Petitioner's hands, instead it is merely processed by the third party purchaser.

ATTORNEY WINTER: I'm looking at the schematic still.

MR. GAYTAN: Okay. Perfect.

ATTORNEY WINTER: Residue gas sort of juts out there from the processing plant on your schematic.

MR. GAYTAN: The natural gas production flow?

ATTORNEY WINTER: Yes.

MR. GAYTAN: Okay.

ATTORNEY WINTER: And it's residue gas that comes out there. Residue gas, what happens to the residue gas?

MR. GAYTAN: That gets sold.

ATTORNEY WINTER: By who?

MR. GAYTAN: I'm sorry?

ATTORNEY WINTER: Who sells that?

MR. GAYTAN: [Producer Inc.].

ATTORNEY WINTER: [Producer Inc.]. So, you, and on your contract, you retained title to this residue gas, correct? Through this entire process.

MR. GAYTAN: I believe that's what the contract says.

Tr. P50.

Through cross examination, counsel for the Tax Commissioner attempted to find out what portion of the fees on the settlement statements was for processing this residue gas, but a satisfactory answer was never given.

ATTORNEY WINTER: All right. What fees are incurred in the processing plant?

MR. GAYTAN: I'm sorry?

ATTORNEY WINTER: What fees --- I mean, I assume they don't process your gas for free. They charge you for something that happens at the processing plant, correct?

MR. GAYTAN: It doesn't break it out in the contract. I can't --- I don't know in the contract. I didn't focus on that in the contracts.

ATTORNEY WINTER: Okay.

MR. GAYTAN: So, I can't really speak to it.

Tr. P57 at 2-9.

We find this testimony to be particularly troublesome, for two (2) reasons. First, on direct examination, the Petitioner's witness professed to be extremely well versed in the contracts⁴ but when asked the proverbial "million dollar" question he professed ignorance. More importantly, this testimony shows that some, or all of these "costs" that purportedly are exclusively the purchasers are

⁴ ATTORNEY PAPADOPOULOS: Okay. That sounds good. You're familiar with the contracts. There's some discussion of certain in-kind options which I don't want to get into a lot of detail about, but are you familiar with the references to in-kind options?

MR. GAYTAN: Unfortunately, yes, I'm very familiar with the contract, and there I can smile and appreciate as well. . . .

Tr. P35 at 3-7.

in fact the Petitioners. As counsel for the Tax Commissioner astutely observed, there is no way the purchaser is processing this residue gas for free.

There were two (2) contracts introduced into evidence in this matter, and they both bolster the Tax Commissioner's argument that the Petitioner is seeking to net out its own expenses prior to calculating its gross proceeds. Simply put, at numerous places they discuss the fees charged to the Petitioner. "Commencing of the effective date, the following **fees and expenses** shall be paid by Producer to Purchaser in connection with the receipt and exchange of Producer's Raw Make for Fractionated Products delivered at the Delivery Point, whether taken-in-kind or purchased, as the case may be:" Petitioner's Ex. 6 at P 2, Section 4E (emphasis added).⁵ "Commencing on the date hereof, Purchaser will charge Producer Inc. a **processing fee** equal to \$0.262 per Dth of Producer Inc.'s gas processed, . . ." Petitioner's Ex. 5 at P 24, Section 10.1 (emphasis added). Obviously, these contracts, which were introduced by the Petitioner, speak for themselves. At hearing, and in post hearing briefs, neither party testified about, or offered legal arguments regarding the quoted sections above.

Finally, the Petitioner seeks to have this Tribunal follow a previous ruling in a decision issued in 2004. That decision, like this one, involved the amount of gross proceeds received by producers of natural gas. Interestingly, despite the fact that the decision involved ten (10) different natural gas producers, no evidentiary hearing was held. Instead, it appears that the decision was based upon stipulated facts. Based upon this, and the many years since the decision was issued, we find that it is less than helpful to the resolution of this matter, particularly because this decision had the benefit of testimony and exhibits subject to examination and cross-examination.

In summation, the evidence in this matter shows that the Petitioner was charged fees by purchasers of its natural gas, and that it impermissibly sought to deduct these fees from the gross proceeds of the sale. To adopt the Petitioner's reasoning would require this Tribunal to ignore the

⁵ Petitioner's Exhibit 6 contains a typographical error, in that it contains two page 2s, hence our reference to the section number cited.

clear legislative mandate for the severance taxes at issue to be based upon a percentage of the value of the natural resource. We are unpersuaded by the Petitioner's contention that the only factor in determining its gross proceeds is the amount of the check it receives for the sales. Ultimately, the Petitioner was unable to satisfactorily explain how the purchaser's beginning number, the number the purchaser calls "product value" does not represent the value of the natural gas at the wellhead. Nor was the Petitioner able to adequately explain the nature of the fees it is charged by the purchaser, or to prove that these fees are not for services rendered by the purchaser. And finally, and most importantly, even if one accepts the Petitioner's labeling these fees as "costs" of the purchaser, it is undisputed that once the Petitioner pays these costs they clearly become the Petitioner's expenses.

CONCLUSIONS OF LAW

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

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

3. For the privilege of severing natural gas, West Virginia imposes a severance tax of five percent of the gross value of the natural gas or oil produced by the producer as shown by the gross proceeds derived from the sale by the producer. *See* W. Va. Code Ann. § 11-13A-3a (West).

4. "For natural gas, gross value is the value of the natural gas at the wellhead immediately preceding transportation and transmission." W. Va. Code Ann. § 11-13A-2(c)(6)(G)(West).

5. "'Gross proceeds' means the value, whether in money or other property, actually proceeding from the sale or lease of tangible personal property, or from the rendering of services, without any deduction for the cost of property sold or leased or expenses of any kind." W. Va. Code Ann. § 11-13A-2(b)(5)(West).

6. Gross Value. -- The term “gross value” in the case of natural resources means the market value of the natural resource product, in the immediate vicinity, where severed, determined after application of post production processing generally applied by the industry to obtain commercially marketable or usable natural resource products. . . .Further, no deduction will be allowed for sales commissions, royalties, or other costs, expenses or fees incurred by a producer and ultimately paid to third parties. W. Va. Code R. § 110-13A-2.7 (1992).

7. None of the statutory or regulatory provisions at issue in this matter are ambiguous, and as such we will apply them as written and give the words their common ordinary meaning. *See Davis Mem’l Hosp. v. W. Virginia State Tax Com’r*, 222 W. Va. 677, 671 S.E.2d 682 (2008).

8. The market value of the natural gas in the vicinity of the wellhead, as those terms are used under West Virginia law, is the amount reflected as the “product value” on the settlement sheets introduced in this matter.

9. The fees contractually charged to the Petitioner are “expenses” of the Petitioner, as that term is used in West Virginia Code Section 11-13A-2(b)(5) and Section 2.7 of Title 110, Series 13A of the West Virginia Code of State Rules.

10. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the Petitioner to show that any assessment of tax against it is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010); W. Va. Code. R. §§ 121-1-63.1 and 69.2 (2003).

11. The Petitioner in this matter has not met its burden of proof showing that the November 15, 2018, and December 20, 2018, refund decrease letters issued to it, were erroneous, as discussed above.

DISPOSITION

WHEREFORE, it is the final decision of the West Virginia Office of Tax Appeals that:
The November 15, 2018, and December 20, 2018, refund decreased letters issued to the Petitioner are hereby **AFFIRMED**.

WEST VIRGINIA OFFICE OF TAX APPEALS

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

Date Entered