

REDACTED DECISION – DK#'s 24-1041

**BY: MICHAEL E. BEVERS, ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON NOVEMBER 11, 2024
ISSUED ON APRIL 14, 2025**

FINAL DECISION

This property tax appeal seeks to overturn a set of appraisals of natural resources royalty interests. The Petitioners own royalty interests in natural gas wells located in Brooke County and Ohio County, West Virginia. The State Tax Commissioner appraised the value of the Petitioners' royalty interests, the Brooke County and Ohio County Assessors assessed the property based on the Tax Commissioner's appraisals, and the Petitioners filed the underlying appeal to challenge those assessments.

The Petitioners filed a Petition for Appeal with this Tribunal on February 20, 2024. On July 23, 2024, the parties appeared by Videoconference for an Evidentiary Hearing. J. Anthony Edmond Jr., Esq., of Edmond & Baum, PLLC, represented the Petitioners, and Robert B. Wilson, Esq., of the State Tax Department, represented the Tax Commissioner. The matter became ripe for decision on November 11, 2024, when the post-hearing brief filing period ended and the record closed.

Having reviewed the exhibits, hearing transcript, briefs and arguments of the parties, and the applicable authorities, this Tribunal finds that the Petitioners have *not* met their burden of proving by a preponderance of the evidence that the Tax Commissioner's actions were erroneous.

FINDINGS OF FACT

1. The Petitioners in this matter are XX and XX (hereafter referenced collectively as "Petitioners").

2. The Respondent in this matter is the State Tax Commissioner of West Virginia (“Tax Commissioner” or “Respondent”).

3. The parties agree on which mineral interests are in dispute, as stated in Findings of Fact Numbers 4 to 12 below.

4. The Petitioners own royalty interests in five natural gas wells located in Brooke County, West Virginia, which produce natural gas from the Marcellus Shale formation. These wells are contained in County Parcel Number XX and are assigned NRA Account Numbers XX, XX, XX, XX, and XX.

5. Company A, the producer, reported that in Tax Year 2022, on which the Tax Year 2024 appraisals at issue here were based,¹ the total amount of the royalties each Petitioner received from the Brooke County wells was \$785,885.00 — the total amount of royalties represents royalties of \$171,767.00 from Account No. XX, \$278,171.00 from Account No. XX, \$177,335.00 from Account No. XX, \$90,281.00 from Account No. XX, and \$68,331.00 from Account No. XX. Joint Exhibit (“JX–”) 2 at pp. 000005–000011.

6. The Tax Commissioner’s total appraised value for the Petitioners’ Brooke County mineral interests for the 2024 Tax Year is \$1,934,036.00 for Petitioner XX (“Mr. XX”) and \$1,934,036.00 for Petitioner XX (“XX”). JX–2 at pp. 000005, 000011.

¹ Valuation of gas-producing wells is based on the gross receipts received during the production year that precedes the July 1 assessment date. The assessment date for Tax Year 2024 was July 1, 2023. In this case, the Tax Commissioner valued the Petitioners’ 2024 mineral interests based on the Tax Year 2022 royalties as reported by the producer Company A. For example, 2023 valuations would have been based on royalties received in Tax Year 2021, the 2024 values disputed here were based on royalties received in Tax Year 2022, and 2025 valuations would be based on royalties received in Tax Year 2023. *See* W. Va. Code R. § 110-1J-5.1 (2023).

7. The property taxes for both Petitioners estimated by the Tax Commissioner based on the 2023 Brooke County levy rate of 2.66% were \$30,830.00. JX-2 at pp. 000005, 000011; *see also* Hearing Transcript (“Transcript”) at p. 8.

8. The Petitioners also own royalty interests in nine natural gas wells located in Ohio County, West Virginia, which produce natural gas from the Marcellus Shale formation. These wells are contained in County Parcel No. XX and are assigned NRA Account Numbers XX, XX, XX, XX, XX, XX, XX, XX, and XX. JX-2 at pp. 000017, 000027.

9. Company A reported that in Tax Year 2022, the total amount of the royalties XX received from the Ohio County wells was \$130,923.00 — the total amount of royalties represents royalties of \$6.00 from Account No. XX, \$472.00 from Account No. XX, \$9,678.00 from Account No. XX, \$822.00 from Account No. XX, \$15,453.00 from Account No. XX, \$491.00 from Account No. XX, \$127.00 from Account No. XX, \$972.00 from Account No. XX, and \$102,902.00 from Account No. XX. JX-2 at pp. 000017–000026.

10. Company A reported that in Tax Year 2022, the total amount of the royalties XX received from the Ohio County wells was \$131,438.00 — the total amount of royalties represents royalties of \$6.00 from Account No. XX, \$473.00 from Account No. XX, \$9,715.00 from Account No. XX, \$822.00 from Account No. XX, \$15,498.00 from Account No. XX, \$493.00 from Account No. XX, \$127.00 from Account No. XX, \$972.00 from Account No. XX, and \$103,332.00 from Account No. XX. JX-2 at pp. 000027–000036.

11. The Tax Commissioner’s total appraised value for the Petitioners’ Ohio County mineral interests for the 2024 Tax Year is \$326,650.00 for XX and \$327,935.00 for XX. JX-2 at pp. 000017, 000027.

12. The property taxes estimated by the Tax Commissioner based on the 2023 Ohio County levy rate of 2.31% were \$4,527.00 for XX and \$4,545.00 for XX. JX-2 at pp. 000017, 000027; *see also* Transcript at p.12.

13. Rachel L. Vass, Managing Member of Vass Engineering and Mineral Appraisals, PLLC, is a Registered Professional Geologist in Kentucky and Pennsylvania and is an Engineering Intern in West Virginia. JX-5. Ms. Vass testified as a witness for the Petitioners and provided an expert report and a one-page curriculum vitae. JX-3; JX-5.

14. Jeffrey R. Kern, who has been President and Senior Appraiser of Resource Technologies Corporation since 1980, is a Certified General Appraiser in Arkansas, Georgia, Indiana, Kentucky, Maryland, Michigan, New York, Ohio, Pennsylvania, Virginia, and West Virginia. JX-6 at p. 000002. Mr. Kern testified as a witness for the Tax Commissioner and provided an 11-page curriculum vitae. JX-6.

15. The Petitioners valued their gas-producing royalty interests by manipulating the decline rate to create values comparable to the sale prices of other properties, working back from what Ms. Vass thought was an average per-acre market rate for gas lease sales, and applying a single set of decline rates to all wells, despite their age, to arrive at an average per-acre value. *See* Transcript at pp. 19-23, 24, 27, 41; JX-3 at p. 000002.

16. The Tax Commissioner valued the Petitioners' gas-producing royalty interests by applying the statewide oil and gas capitalization rate multiplier and specific decline rate for the Petitioners' wells based on the ages of the wells and the producer's reporting of the gross royalties paid to the Petitioners.

DISCUSSION

The central issue presented in this appeal is whether the Tax Commissioner properly valued the Petitioners' royalty interests for Tax Year 2024. The Petitioners argue that the Tax Commissioner misinterpreted and misapplied the law. The Tax Commissioner counters that he followed the law.

The Petitioners argue that the Tax Commissioner did not value their mineral interests at their true and actual value and that the Tax Commissioner should have valued the Petitioners' mineral

interests based on acreage rather than on royalties received because the Petitioners have no ownership interest in any of the wells. The Tax Commissioner responds that he valued the Petitioners' mineral interests at their true and actual value by following the statutory valuation method set out in West Virginia Code Chapter 11, Article 1C, Section 11-1C-10 and that West Virginia law requires the Tax Commissioner to value the Petitioners' mineral interests based on royalties received rather than on acreage. The Tax Commissioner did not respond directly to the Petitioners' assertion that they have no ownership interest in any of the wells from which they received royalties.

The Petitioners own mineral interests in five natural gas wells in Brooke County and nine natural gas wells in Ohio County. XX testified that he collected royalty payments based on each well's production. He thinks that the Tax Commissioner's valuation is too high because it is about twice as high as any offers to buy the minerals that the Petitioners have received.

Rachel Vass, the Petitioners' expert, testified that she reviewed the Tax Commissioner's spreadsheets (JX-2) and variable document (JX-4) and verified that there were no errors in the data entries or calculations. She then created a theoretical "what-if" scenario because she believed the Tax Commissioner's dollar-per-acre value was higher than the market value. She adjusted the decline factor, which she found was the easiest variable to manipulate, to match more closely what she considered an average dollar-per-acre value. She worked backward from her perceived average per-acre market rate for gas lease sales, applying a single set of decline rates, starting with a 52% decline rate to all of the wells, regardless of their age, to arrive at what seemed to be an average per-acre value for the wells. She provided her final calculations to the Tax Department but did not include her trial-and-error engineering methods. She acknowledged that the Tax Department did not misinterpret or misapply the applicable statutes.

Jeffrey R. Kern, the Tax Commissioner's expert, testified that Resource Technologies Corporation, his firm, produces the discount rate for the Tax Commissioner each year. Mr. Kern explained that the applicable decline rates were determined roughly ten years ago and how those decline rates are applied within the mass appraisal system. The Tax Commissioner uses the Inwood Table (incorrectly transcribed as "inward table" at Transcript p. 51) to discount the present value of a future income stream and applies the decline rate until the well reaches its projected 30-year lifespan.² Mr. Kern explained that Marcellus Shale wells decline by a harmonic curve, which means that production declines rapidly early in the well's life and more slowly as the well ages. "It's very steep in the beginning and flattens out in the end." Transcript at p. 49.

Mr. Kern testified that the Tax Division taxes wells based on their value rather than acreage. The Tax Division assesses the value of a well, not the value of the surrounding land. Mr. Kern explained that valuing a well based on dollars per acre would be very difficult, so the Tax Division takes into account gas prices, the well's performance, and its decline. If it were coal, he would value it by both the acreage and the tonnage remaining in the ground, but with gas, he must estimate what will remain based on what has been extracted and the decline rate. He affirmed that the Tax Department's valuations comport with the statutes and explained why Ms. Vass's valuation methodology is incorrect.

² Oil and gas reserves that are actively produced represent depleting assets. The valuation of these reserves must take the rate of depletion into account by calculating the present worth of the expected future income from ongoing production. The present worth of the future income stream is determined by discounting the estimated annual production income. The Tax Department applies an annual calculation when valuing natural gas and oil producing properties based on a "Build-up-Model" of the Weighted Average Cost of Capital ("WACC"). The WACC provides an estimate of the overall expected rate of return required by industry equity participants and financial investors to continue investing in the relevant ongoing industry and in comparison to other investment options. This rate is converted into a table of annual multipliers known as the "Inwood Table." W. Va. Code R. § 110-1J-5.3 (2023).

The statutes and regulations that govern this matter are unambiguous. Hence, this Tribunal will give force and effect to every word and give the words their plain and ordinary meaning.³

The West Virginia Constitution provides that “taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law.” W. Va. Const. art. X, § 1. All property subject to ad valorem taxation is assessed at 60% of its true and actual value. W. Va. Const. art. X, § 1b; *Kline v. McCloud*, 174 W. Va. 369, 377, 326 S.E.2d 715, 724 (1984).

West Virginia Code Chapter 11, Article 1C, Section 10 provides that the State Tax Commissioner determines the fair market value of natural resource properties and maintains accurate values for such properties. The Tax Commissioner must value properties producing oil, natural gas, natural gas liquids, or any combination thereof within the state at their fair market value, determined by applying a yield capitalization model to the *net proceeds*. W. Va. Code Ann. § 11-1C-10(d)(3)(A) (West 2024). “Net proceeds” means actual gross receipts based on sales volume determined from the actual price received by the taxpayers as reported on their returns, less royalty interest receipts and actual annual operating costs. W. Va. Code Ann. § 11-1C-10(d)(3)(A)(iii) (West 2024). The “capitalization rate” is a single state-wide capitalization rate for properties producing oil, natural gas, and natural gas liquids, which the Tax Commissioner determines annually based on a “Build-up Model” of the Weighted Average Cost of Capital. W. Va. Code Ann. § 11-1C-10(d)(3)(A)(v) (West 2024).

³ E.g., Syl. Pt. 4, *Antero Resources Corporation v. Steager*, 244 W. Va. 81, 851 S.E.2d 527 (2020); *State ex rel. Prosecuting Attorney of Kanawha County v. Bayer Corporation*, 223 W. Va. 146, 157, 672 S.E.2d 282, 293 (2008); Syl. Pt. 2 *Fountain Place Cinema 8, LLC v. Morris*, 227 W. Va. 249, 707 S.E.2d 859 (2011).

West Virginia uses a yield capitalization model to assess property that produces oil, natural gas, natural gas liquids, or any combination of these resources. The yield capitalization model consists of a working interest model and a royalty interest model, and the combined total of both models reflects the property's fair market value. W. Va. Code § 11-1C-10(d)(3)(C)(i) (West 2024). The royalty interest model is 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.

W. Va. Code § 11-1C-10(d)(3)(C)(i)(II) (West 2024).

The West Virginia Code of State Rules implements the statutes in West Virginia Code Chapter 11, Article 1C, Section 10. The value of natural gas producing property is determined, in part, by applying a yield capitalization model to the "net receipts," which are defined parenthetically as "gross receipts less royalties paid and less actual annual operating costs." W. Va. Code R. § 110-1J-4.1 (2023). The yield capitalization model uses the gross receipts from the total production amounts of the calendar year that precedes the July 1 assessment date as a starting point, and the total gross proceeds are apportioned to the working interest model and royalty interest model. W. Va. Code R. § 110-1J-5.1 (2023). Here, the assessment date for Tax Year 2024 was July 1, 2023, so the Tax Commissioner valued the Petitioners' 2024 mineral interests based on the Tax Year 2022 royalties as reported by the producer Company A.

Legislative Rule Title 110, Series 1J, Subsection 5.2.2 provides that to determine the value using the royalty interest model:

the total gross receipts referenced in section 5.1 of this section heading 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 proportionally distributed to each royalty owner based on the royalty percentage received during the most recent calendar year [that precedes] 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. . . .

W. Va. Code R. § 110-1J-5.2.2 (2023). In turn, Legislative Rule Title 110, Series 1J, Subsection 5.3 provides that to determine the decline rate:

the net royalty interest receipts 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. Net 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. . . .

W. Va. Code R. § 110-1J-5.3 (2023).

This Tribunal will consider the Parties' arguments with these legal standards in mind.

The Petitioners argue that the Tax Commissioner did not value their mineral interests at their true and actual value and that the Tax Commissioner should have valued the Petitioners' mineral interests based on acreage rather than on royalties received because the Petitioners have no ownership interest in any of the wells. The Tax Commissioner responds that he followed West Virginia law and valued the Petitioners' mineral interests based on royalties received rather than on acreage. To resolve this controversy, this Tribunal needs only to heed Justice Felix Frankfurter's timeless advice: "(1) Read the statute; (2) read the statute; (3) read the statute!" *Kellmer v. Raines*, 674 F.3d 848, 850, 400 U.S. App. D.C. 65, 67 (D.C. Cir. 2012) (quoting Henry J.

Friendly, *Mr. Justice Frankfurter and the Reading of Statutes*, in *Benchmarks* 196, 202 (1967); see also *Wickwire Gavin, P.C. v. U.S. Postal Service*, 356 F.3d 588, 594 (4th Cir. 2004).

The Petitioners' Primary Argument is that the Tax Commissioner did not value their mineral interests at their true and actual value. Their argument is not well-supported. The Tax Commissioner correctly valued the Petitioners' mineral interests based on their true and actual value.

The West Virginia Tax Division calculates the value of oil and gas royalty interests using an income approach to valuation. This means that the current appraised value of a well is based on projected earnings over its remaining life. This calculation determines the interest's value if sold at market value rather than the actual income received. Several factors are used in this calculation, including whether the producing well is horizontal or vertical, the geographic location of the well, the formation from which it is producing, and the age of the well. The producer provides these factors, along with the actual royalties paid to a royalty owner. JX-2 at p. 000003.

The Petitioners rely heavily on West Virginia Code Chapter 11, Article 3, Subsection 1(a), which defines "true and actual value" as the price at which the property would sell if voluntarily offered for sale by its owner, under terms reflecting the usual sale price, rather than the price that might be realized in a forced sale. But they disregard the valuation method for assessing natural resource interests outlined in West Virginia Code Chapter 11, Article 1C, Section 10, and West Virginia Code of State Rules Title 110, Series 1J. These provisions state that the Tax Commissioner values natural gas producing property by applying a yield capitalization model to the net proceeds and applying the applicable decline rate based on the age of the well.

Ms. Vass acknowledged that the Tax Commissioner's spreadsheets (JX-2) and variable document (JX-4) contained no errors. She also acknowledged that the Tax Department did not misinterpret or misapply the applicable statutes:

JUDGE BEVERS: [A]re you saying that the Tax Department got it wrong, that they misapplied the statute?

MS. VASS: *No, that's not what I'm saying at all.*

JUDGE BEVERS: Okay. All right.

MS. VASS: I'm saying what is performed in there is according to the statute. But I think what a lot is being missed when saying, are we doing it according to statute, the statute also talks about the resultant value should be a fair market value. . . .

JUDGE BEVERS: All right, so are you saying then that the Tax Department misapplied the statute?

MS. VASS: *No, I'm saying that there should be a checks and balances system when these calculations are performed to make sure that the resultant value is a fair market value according to the current market, rather than just following through A plus B plus C of a certain formula without any real checks and balances.*

JUDGE BEVERS: Okay. All right. So, I hope you understand my position. *I have to abide by the statutes. We all do.* So, I just need to know if you are saying that the Tax Department misapplied the statute or misinterpreted the statute, I get the feeling you're not coming out to say that they misapplied the statute or misinterpreted the statute. Am I understanding that correctly?

MS. VASS: *No, that is correct.* But I believe there's more to the statute than just this formula. There's the part about that it should actually be a fair market value.

JUDGE BEVERS: Sure, sure, I understand you. . . . But what you're providing here is an alternative method of calculation which you believe is more closely represents the fair market value of these wells?

MS. VASS: Well, I could get onto a soapbox. I feel like the whole process needs revised. I merely wanted to show that by changing this one variable, how the State Tax Office could get to a more comparable fair market value. *I do not actually think that my method should be used to calculate everyone's oil and gas fair market value*

to then be assessed on and the appraisal, and then to be assessed. I do not think this should be the process going forward. I do feel like the process needs revised because it should be a comparable fair market value and all we're missing is a checks and balances system.

Transcript at pp. 36-38 (emphasis added). Ms. Vass's admissions that the Tax Division should not use her theoretical what-if scenario to calculate everyone's oil and gas fair market value and should not use it going forward implicitly acknowledge that the formulas she engineered do not conform to West Virginia law.

The Tax Commissioner has the authority to contract with a competent appraisal firm to assist with, or conduct, the valuation process for any discernible species of property statewide. W. Va. Code §11-1C-10(f) (West 2024). Each year, the Tax Commissioner publishes and files in the State Register an annual summary of the variables to consider when determining the value of oil or natural gas-related property. W. Va. Code R. § 110-1J-10 (2023). Resource Technologies Corporation, Mr. Kern's firm, produces the capitalization rate for the Tax Commissioner each year. Resource Technologies Corporation determined that Marcellus Shale formation wells decline in production and value by 52% in their first year, 23% in their second year, and 18% in their third year and beyond. JX-2 at p. 000003; Transcript at p. 49. The Tax Commissioner published those decline rates in the Oil and Natural Gas Properties Analysis Tax Year 2024, dated September 1, 2023. JX-4.

Ms. Vass testified that to arrive at what she considered a fair market value for the Petitioners' property interests, she adjusted the decline rate to create values comparable to the sale prices of other properties. She worked backward from what she believed was an average per-acre market rate for gas lease sales and applied a single set of decline rates, starting with a 52% decline rate for all wells – regardless of age – to derive an average per-acre value. Under her method, a first year well would decline by 52% in the year she valued it, a five-year-old well would decline by 52% in the year she

valued it, a ten-year-old well would decline by 52% in the year she valued it, and even a 29-year-old well would decline by 52% in the year she valued it.

Referring to Joint Exhibit 2 on p. 6 and Joint Exhibit 3 on p. 7, which refers to a five-year-old well, Mr. Kern explained why Ms. Vass's methodology is incorrect:

JUDGE BEVERS: This is Ms. Vass's method of calculating. Looks like what she did, and it's highlighted in yellow, years one, two and three up above are 52%, 23% and 18%?

MR. KERN: Yes.

JUDGE BEVERS: And then in the table below, it says on the left, delta year. . . . Is that the same as projected year?

MR. KERN: Yes.

JUDGE BEVERS: All right. But she used a different method that she thought was more maybe fair and equitable, but she applied a 52% decline to year one, a 23% decline to year two and 18% to each of the following years. Is her methodology incorrect?

MR. KERN: Yes.

JUDGE BEVERS: Okay. Why?

MR. KERN: Because it's a five year old well, it would never have 52% decline in the fifth year. What she's saying is that if this is a five year old well, it's going to decline 52% that year and it's not. It's going to decline, based on the survey and the data we have in front of us, it would decline 18%, but not 52 or 23.

JUDGE BEVERS: All right.

MR. KERN: If it was a zero year old well, yeah, it would decline 52% that year in the first year.

Transcript at p. 67. Mr. Kern testified unequivocally that to apply an initial decline rate to any well other than a new well is a geologic mistake, a mathematical mistake, and a gas well engineering mistake. *Id.* at p. 53.

The Petitioners seek to reduce the value of their mineral interests using a methodology Ms. Vass engineered. But they have gone astray, inventing a method at odds with the language in the governing statutes and regulations.

The Petitioners' Secondary Argument is that the Tax Commissioner should have valued the Petitioners' mineral interests based on acreage rather than on royalties received because the Petitioners have no ownership interest in any of the wells. This argument is neither well-supported nor well-reasoned. The Tax Commissioner was correct in valuing the petitioners' mineral interests based on royalties received.

The Petitioners incorrectly argue that their expert witness can determine the actual value of their mineral interests based on her knowledge of comparable per-acre values. As noted above, Ms. Vass testified that, to reach what she believed to be the fair market value of the Petitioners' property, she adjusted the decline rate to align values with the sale prices of other properties. Although she claimed to have used the formulas provided by the Tax Division for her calculations, the "what-if" scenario she engineered starts with the price per acre rather than the royalty payments reported by the producer, thus violating West Virginia Code Chapter 11, Article 1C, Clause 10 (d)(3)(A) and West Virginia Code of State Rules Title 110, Series 1J, Section 5.1 and Subsection 5.2.2

County Assessors appraise residential land parcels based on acreage or square footage and the comparable sales approach to valuation.⁴ But this case is not a residential property tax appeal. It is a mineral interest appeal.

⁴ The Tax Commissioner's Integrated Assessment System uses data on comparable sales of land entered by the local assessor and then values this land on a price per front foot or square foot for smaller parcels or a monetary per-acre value for larger parcels in each neighborhood. West Virginia Tax Division Administrative Notice 2021-15, issued January 29, 2021.

The Petitioners disregard the controlling statutes and regulations, which specify that the methodology for determining the value of mineral rights begins with the royalty payments reported by the producer — not with acreage. The Petitioners’ value calculations are based on a methodology that Ms. Vass developed herself. Furthermore, the Petitioners cite no material legal authority to support Ms. Vass’s methodology.

The Petitioners seek to use valuation based on acreage as an alternative appraisal to challenge the Tax Commissioner’s valuation. Although the Petitioners do not expressly invoke equity, they argue that the Tax Commissioner’s values are “completely unconscionable” and that their valuation method is based on their expert’s opinion of a “fair” price per acre rather than on the royalties they received. The Office of Tax Appeals has limited jurisdiction. It is not a court of equity and cannot provide an equitable remedy based on such arguments. Syl. Pt. 4, *McDaniel v. West Virginia Division of Labor*, 214 W. Va. 719, 591 S.E.2d 277 (2003) (citing Syl. Pt. 3, *Mountaineer Disposal Service, Inc. v. Dyer*, 156 W. Va. 766, 197 S.E.2d 111 (1973)); accord, Syl. Pt. 3, *Appalachian Regional Health Care, Inc. v. West Virginia Human Rights Commission*, 180 W. Va. 303, 376 S.E.2d 317 (1988).

When the Tax Commissioner determined the values of the Petitioners’ royalty interests, he followed the law as written. The Petitioners cite no legal authority that would permit the Tax Commissioner to disregard or rewrite any statute based on a taxpayer’s – or even the Commissioner’s – perception of unfairness. The Tax Commissioner has no such authority.

So too with this Tribunal. Agencies are authorized to perform administrative and executive functions, often needing to interpret their statutory and regulatory authority to fit the specifics of a given case. But no agency may alter or rewrite statutes under the guise of interpretation. Syl. Pt. 5, *Steager v. Consol Energy, Inc.*, 242 W. Va. 209, 832 S.E.2d 135 (2019).

Finally, the Petitioners' ancillary assertion that they have no ownership interest in any of the wells lacks merit. The Petitioners quote the definition of "property owner" as 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. W. Va. Code R. § 110-1J-3.46 (2023). Although the Petitioners' quote from the regulation is accurate, their reliance on it is misplaced.

The Petitioners admit that they are property owners as defined by the regulation, but then argue, "Petitioners have no interest in the well itself. In fact, to accurately portray the Petitioners' ownership interest in any of the wells producing their royalty interest, is zero." Petitioners' Brief at p. 5. They seem to be arguing that they own a portion of the natural gas in the wells but no portion of the wells themselves. This is a distinction without a difference.

Royalties are payments made to a person or company for the ongoing use of their property, such as copyrighted works, franchises, patents, or natural resources. "Royalty interest" means the fractional interest in oil or natural gas production that may or may not be subject to development costs or operating expenses and extends undiminished over the life of the property, which is usually retained by the oil or natural gas rights owner, by the oil or natural gas rights lessor, or by both. W. Va. Code Ann. § 11-1C-10(d)(3)(B)(iv) (West 2024); W. Va. Code R. § 110-1J-3.52 (2023).

Nobody disputes that the Petitioners own royalty interests in the natural gas production from the wells at issue. They received royalty payments based on the production of these wells. But it does not matter whether they own royalty interests in the natural gas production or interests in the wells themselves. They are property owners and are subject to paying property tax on their ownership interests. W. Va. Const. art. X, §§ 1 and 1b; Syl. Pt. 1, *In re Hillcrest Memorial Gardens, Inc.*, 146 W. Va. 337, 119 S.E.2d 753 (1961) (holding that all real and personal property shall be taxed except for property exempted by the legislature).

The Tax Commissioner must faithfully enforce the laws governing the assessment and collection of all taxes and levies. *See* W. Va. Code Ann. § 11-1-2 (1933). The Tax Commissioner, like this Tribunal, may not disregard any law because of a taxpayer's perception of unfairness. Here, the Tax Commissioner did what he was supposed to do — he followed the law as written.

The Petitioners have adduced no reliable evidence that the tax valuation on which their royalty interests are appraised is incorrect. The Petitioners bear the burden of proving that the Tax Commissioner's valuations are excessive. They have not done so — they have only offered an alternative valuation method they created. That is not enough.

Hence, this Tribunal concludes that the Petitioners have not met their burden of proving that the Tax Commissioner's valuations of their property were incorrect.

CONCLUSIONS OF LAW

1. The West Virginia Office of Tax Appeals holds original and exclusive jurisdiction to hear appeals by any party aggrieved by determinations of property classifications, determinations of property taxability, or by valuation of real and personal property tax assessments. W. Va. Code Ann. § 11-10A-8(7) (West 2021).

2. All hearings before the Office of Tax Appeals are conducted *de novo*. W. Va. Code Ann. § 11-3-25b (West 2021).

3. In a property tax appeal before the West Virginia Office of Tax Appeals, the petitioner bears the burden of proving that any property valuation for taxation purposes or tax assessment is erroneous, unlawful, void, or otherwise invalid. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2021); W. Va. Code R. §§ 121-1-37.5 and 51.12.1 (2023).

4. The Office of Tax Appeals has limited jurisdiction. It is not a court of equity and cannot provide equitable remedies. Syl. Pt. 4, *McDaniel v. West Virginia Division of Labor*, 214 W.

Va. 719, 591 S.E.2d 277 (2003) (citing Syl. Pt. 3, *Mountaineer Disposal Service, Inc. v. Dyer*, 156 W. Va. 766, 197 S.E.2d 111 (1973)); accord, Syl. Pt. 3, *Appalachian Regional Health Care, Inc. v. West Virginia Human Rights Commission*, 180 W. Va. 303, 376 S.E.2d 317 (1988).

5. Agencies are authorized to perform administrative and executive functions, often needing to interpret their statutory and regulatory authority to fit the specifics of a given case, but no agency may alter or rewrite statutes under the guise of interpretation. Syl. Pt. 5, *Steager v. Consol Energy, Inc.*, 242 W. Va. 209, 832 S.E.2d 135 (2019).

6. “Under the Constitution of this state all property both real and personal shall be taxed except such property as the Legislature may exempt under the exceptions contained therein.” Syl. Pt. 1, *In re Hillcrest Memorial Gardens, Inc.*, 146 W. Va. 337, 119 S.E.2d 753 (1961) (quoting Syl. Pt.1, *Reynolds Memorial Hospital et al. v. County Court of Marshall County*, 78 W. Va. 685, 90 S.E. 238 (1916)).

7. States have wide discretion in levying taxes; in structuring taxation schemes, “the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.” *Williams v. Vermont*, 472 U.S. 14, 22 (1985) (quoting *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973)); see also, *Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 547 (1983).

8. Taxation must be equal and uniform throughout the state, and all real and personal property must be taxed proportionately to its value to be determined under the law. W. Va. Const. art. X, § 1.

9. Property must be assessed at its true and actual value for taxation purposes. “True and actual value” means fair market value — what property would sell for if sold on the open market. W. Va. Code Ann. § 11-3-1 (West 2014).

10. “Value,” “market value,” and “true and actual value” all have the same meaning, which is the price for which a particular parcel or species of property would sell if it were sold to a willing buyer by a willing seller in an arm’s length transaction without either the buyer or the seller being under any compulsion to buy or sell. W. Va. Code Ann. § 11-1A-3(i) (West 1986).

11. An assessing officer’s property valuation for taxation purposes is presumed to be correct.⁵

12. The Tax Commissioner must faithfully enforce the laws governing assessing and collecting all taxes and levies. W. Va. Code Ann. § 11-1-2 (West 2010).

13. The Tax Commissioner has the power and duty to determine the valuation methods for real and personal property. W. Va. Code Ann. § 11-1C- 5(a)(2) (West 1990).

14. The Tax Commissioner must value natural gas royalty interest properties as specified in West Virginia Code Chapter 11, Article 1C, Clause 10(d)(3)(C)(i)(II) and West Virginia Code of State Rules Title 110, Series 1J, Subsection 5.2.2.

15. The valuation of gas-producing wells is based on the gross receipts received during the production year that precedes the July 1 assessment date. W. Va. Code R. § 110-1J-5.1 (2023).

16. 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 by applying a yield capitalization model to the net proceeds. W. Va. Code Ann. § 11-1C-10(d)(3)(A) (West 2024).

⁵ E.g., Syl. Pt. 1, *Berkeley County Council v. Gov’t Properties Income Trust LLC*, 247 W. Va. 395, 880 S.E.2d 487 (2022) (it is a general rule that valuations for taxation purposes fixed by an assessing officer are presumed to be correct); Syl. Pt. 1, *Musick v. University Park at Evansdale, LLC*, 241 W. Va. 194, 820 S.E.2d 901 (2018) (same holding); *In re Tax Assessment of Foster Foundation’s Woodlands Retirement Community*, 223 W. Va. 14, 672 S.E.2d 150 (2008) (same holding); *In re Tax Assessment Against American Bituminous Power Partners, L.P.*, 208 W. Va. 250, 539 S.E.2d 757 (2000) (same holding); Syl. Pt. 7, *In re Tax Assessments Against Pocahontas Land Co.*, 172 W. Va. 53, 303 S.E.2d 691 (1983) (same holding).

17. “Actual annual operating costs” include, without limitation, all lease operating expenses, lifting costs, gathering, compression, processing, separation, fractionation, and transportation costs; as further defined herein. W. Va. Code Ann. § 11-1C-10(d)(3)(B)(ii) (West 2024).

18. “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. W. Va. Code Ann. § 11-1C-10(d)(3)(B)(iii) (West 2024).

19. “Royalty interest” 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, which is typically retained by the mineral owner, mineral lessor, or both. W. Va. Code Ann. § 11-1C-10(d)(3)(B)(iv) (West 2024); W. Va. Code R. § 110-1J-3.52 (2023).

20. “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). W. Va. Code Ann. § 11-1C-10(d)(3)(B)(v) (West 2024).

21. The royalty interest model is calculated as the sum of the royalty interest income series for natural gas, oil, and natural gas liquids; the royalty interest receipts income series is calculated as a terminating series of royalty interest receipts discounted by applying a capitalization rate multiplier and a decline rate multiplier calculated by the Tax Commissioner; the first 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; and in each later 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. W. Va. Code Ann. § 11-1C-10(d)(3)(C)(i)(II) (West 2024).

22. The value of natural gas producing property is determined by 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; if ownership is split through a lease or royalty arrangement, different values shall be determined for the working interest and the royalty interest. *See* W. Va. Code R. § 110-1J-4.1 (2023).

23. The yield capitalization model starts with and includes for each producing well, the gross receipts (both working interest and royalty interest) based on the total production amounts from the tax year coming before the July 1 assessment date; this total gross proceeds amount is apportioned to the working interest model and royalty interest model. W. Va. Code R. § 110-1J-5.1 (2023).

24. To determine the value using the royalty interest model, the total gross receipts referenced in Section 5.1 of Section Heading 5 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 Section Heading 5; this amount will then be proportionally distributed to each royalty owner based on the royalty percentage received during the calendar year that comes before the July 1 assessment date; and 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 125 acres per producing natural gas well. W. Va. Code R. § 110-1J-5.2.2 (2023).

25. The net working interest receipts and the net royalty interest receipts are multiplied by the applicable decline rates; the amounts determined under Section 5.2 of this Section Heading are adjusted by a production decline rate of 18 months that is derived and applied based on the age of the well and typical of the producing area and strata; then the net receipts and production amounts are proportionately reduced by applying the appropriate annual rate to yield a declining terminal income series typical of the producing area and strata. W. Va. Code R. § 110-1J-5.3 (2023).

17. The Petitioners' method of valuing their royalty interests by manipulating the decline rate to create values comparable to the sale prices of other properties, working back from what they thought was an average per-acre market rate for gas lease sales, and applying a single set of decline rates to all wells, despite their age, does not follow West Virginia law.

26. The Tax Commissioner followed West Virginia law and accurately valued the Petitioners' gas-producing royalty interests by applying the statewide oil and gas capitalization rate multiplier and specific decline rate for the Petitioners' producing formation based on the gross royalties received by the Petitioners as reported by the producer.

27. The Petitioners have not met their burden of proving that the Tax Commissioner's actions were erroneous, unlawful, void, or otherwise invalid.

DISPOSITION

Based upon the above, it is the **FINAL DECISION** of the West Virginia Office of Tax Appeals that the valuations by the Tax Commissioner are hereby deemed **CORRECT**, and are **AFFIRMED**.

WEST VIRGINIA OFFICE OF TAX APPEALS

Michael E. Bevers
Administrative Law Judge

Date