

REDACTED DECISION – DK#’S 24-1013

**BY: MICHAEL E. BEVERS ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON NOVEMBER 29, 2024
ISSUED ON MAY 28, 2025**

FINAL DECISION

On December 26, 2023, Respondent Matthew R. Irby, State Tax Commissioner (hereafter “Tax Commissioner” or “Respondent”), issued a Property Tax Ruling that upheld the decision by the Assessor of Mountainside County, West Virginia (“Assessor”), to deny Farm Use Valuation to the Petitioners Richard XX, Mary XX, James XX, John XX, and Janet XX (hereafter referenced collectively as “Petitioners”) for Tax Year 2024. The Assessor denied their application as untimely filed and certified the question of Farm Use Valuation to the Tax Commissioner.

The Petitioners challenged the Tax Commissioner’s Property Tax Ruling by filing a Petition for Appeal with the Office of Tax Appeals on February 13, 2024. On August 15, 2024, the parties appeared by Videoconference for an Evidentiary Hearing in Charleston, West Virginia. Petitioner John XX (“Mr. XX”) appeared *pro se*, and Seth E. Harper, Assistant Attorney General, represented the Tax Commissioner. The matter became ripe for decision on November 29, 2024, when the post-hearing brief filing period ended, and the hearing record closed.

The following Findings of Fact are based on a review of the record created, which includes the evidentiary hearing transcript, exhibits, and the briefs and arguments of the parties.

FINDINGS OF FACT

1. The Petitioners are West Virginia Residents who own property in Mountainside County, West Virginia. Joint Exhibit (“JX–”) 2 (Petition for Appeal).

2. The Petitioners have ownership interests in the subject properties, County Parcel Numbers XX, XX, XX, and XX, which are located in Mountainside County, West Virginia. Petitioners' Exhibits ("PX-") 1, 2, 3, 4.

3. Petitioners Richard XX and John XX signed an Application for Farm Use Valuation on August 30, 2023. Evidentiary Hearing Transcript ("Transcript") at p. 40.

4. Petitioner John XX testified that he mailed the Application form from a UPS Store in Seaside, Atlantic State, on August 31, 2023. Transcript at p. 41.

5. Mr. XX did not offer any documentary evidence of the date he left the Application with UPS, such as a receipt or tracking information. Transcript at p. 35.

6. UPS never delivered the Application form that Mr. XX left with its store in Atlantic State to the Mountainside County Assessor's Office. Transcript at pp. 69–70.

7. The Assessor did not receive an Application for Farm Use Valuation from the Petitioners, whether by mail or hand-delivery, by the September 1, 2023 statutory deadline. Transcript at pp. 69–71.

8. The Petitioners had previously qualified for Farm Use Valuation for several years, but the Assessor denied the Petitioners' Application for Tax Year 2024 because the Assessor's Office did not receive the Application by September 1, 2023. Transcript at pp. 69–70.

9. After the September 1, 2023 deadline had passed, the Assessor's Office mailed a postcard to Petitioners Richard and Mary XX notifying them that they did not qualify for the 2024 Farm Use Valuation. Transcript at p. 70.

10. Mr. XX brought the denial postcard and an Application for Farm Use Valuation to the Assessor's Office on November 3, 2023. Transcript at pp. 44–45.

11. The Assessor denied the application as untimely filed and certified the question of whether the Petitioners qualified for Farm Use Valuation to the Tax Commissioner on November 13, 2023. JX-1 at p. 2.

12. On December 26, 2023, the Tax Commissioner issued Property Tax Ruling 24-15, which upheld the Mountainside County Assessor's denial of Farm Use Valuation for Tax Year 2024. JX-1.

13. The Petitioners filed the underlying Petition for Appeal with the Office of Tax Appeals on February 13, 2024. JX-2.

DISCUSSION

This case raises the question of whether real property may receive the Farm Use Valuation when the property owner does not file the yearly Application for Farm Use Valuation with the County Assessor on or before the statutory deadline. The Petitioners argue that since they had qualified for Farm Use Valuation for the previous 18 years, they should qualify for Farm Use Valuation for Property Tax Year 2024 because they mailed their application from Atlantic State on August 31, 2024. The Tax Commissioner, on the other hand, argues that the Petitioners missed the statutory filing deadline.

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.¹

¹ E.g., Syl. Pt. 4, *Antero Resources Corporation v. Steager*, 244 W. Va. 81, 851 S.E.2d 527 (2020); *Jackson v. Belcher*, 232 W. Va. 513, 753 S.E.2d 11 (2013); Syl. Pt. 2 *Fountain Place Cinema 8, LLC v. Morris*, 227 W. Va. 249, 707 S.E.2d 859 (2011); *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. 3, *Bluestone Paving, Inc., v. Tax Commissioner of the State of West Virginia*, 214 W. Va. 684, 591 S.E.2d 242 (2003); Syl. Pt. 2, *State v. Elder*, 152 W. Va. 571, 165 S.E.2d 108 (1968).

STATUTORY AND REGULATORY FRAMEWORK

Farm Use Valuation is a reduced property valuation available to taxpayers who use their land for farming or agriculture. *E.g.*, W. Va. Code St. R. §§ 110-1A-2.6.1 and 2.6.3 (2021). The statutes and regulations that govern Farm Use Valuation are West Virginia Code Chapter 11, Article 1A, Section 10, and West Virginia Code of State Rules Title 110, Series 1A, Section Headings 1 and 2, and Appendices 1 and 2. West Virginia Code Chapter 11, Article 1A, subsection 3(f) defines “farm” as “land currently being used primarily for farming purposes,” and West Virginia Code Chapter 11, Article 1A, subsection 3(g) defines “farming purposes” to include “the utilization of land to produce for sale, consumption or use, any agricultural products[.]” W. Va. Code Ann. §§ 11-1A-3(f) and 3(g) (West 2007).

The West Virginia Code and West Virginia Code of State Rules govern Farm Use Valuation. West Virginia Code Chapter 11, Article 3, Section 24a governs protests to the assessor, appeals to the Tax Commissioner, and appeals to the Office of Tax Appeals over classification and taxability determinations. W. Va. Code Ann. § 11-3-24a (West 2021). West Virginia Code of State Rules Title 110, Series 1A governs the valuation of farmland and farm structures and whether the property receives Farm Use Valuation; the Valuation Rule must be followed by those valuing farmland and farm structures in all counties in which the property is located or has a tax situs. W. Va. Code St. R. § 110-1A-2.2 (2021).

To qualify for Farm Use Valuation, a property owner must file an Application for Farm Use Valuation between July 1 and September 1 each year they seek the special tax treatment. *See, e.g.*, W. Va. Code St. R. §§ 110-1A-2.5.12, 110-1A-2.5.14, and 110-1A-2.8.1 (2021). “Filing date” means the date by which the annual application for farm use must be received by the assessor of the county where the property is situated. W. Va. Code St. R. § 110-1A-2.5.14 (2021). This

application for farm use must be filed and received by the assessor no later than September 1st following the July 1st assessment date. *Id.*

The applicable statutes and regulations contain no exceptions to the requirement that the application be received by September 1. The parties rely on West Virginia Code Chapter 2, Article 2, Subsection 2(a) for the proposition that a filing deadline may be extended if the date falls on a Saturday, Sunday, legal holiday, inclement weather, or other emergency day.² But that statute concerns judicial proceedings, acts to be done on a particular day of the month or within a time period, and statutes of limitation. Although reasonable persons could believe that an application filing deadline was an act to be done within a time period, this Tribunal is not prepared to find that an Application for Farm Use Valuation is a judicial proceeding, action, or suit contemplated by this statute.

Thus, this Tribunal believes that the controlling statute is West Virginia Code Chapter 2, Article 2, Subsection 1(e), which provides:

If any applicable provision of this code or any legislative rule or other administrative rule or regulation promulgated pursuant to the provisions of this code designates a particular date on, before or after which an act, event, default or omission is required or allowed to occur, and if the particular date designated falls on a Saturday, Sunday, legal holiday or designated day off, then the date on which the act, event, default or omission is required or allowed to occur is the next day that is not a Saturday, Sunday, legal holiday or designated day off.

² That statute provides, in pertinent part:

When a proceeding is directed to take place or any act to be done on any particular day of the month or within any period of time prescribed or allowed, including those provided by article two, chapter fifty-five, of this code [which governs limitation of actions and suits], if that day or the last day falls on a Saturday, Sunday, legal holiday, or a weather or other emergency day, the next day that is not a Saturday, Sunday, legal holiday, or a weather or other emergency day shall be deemed to be the one intended. . . .

W. Va. Code Ann. § 2-2-2(a) (West 1998).

W. Va. Code Ann. § 2-2-1(e) (West 2006).

Ultimately, the statutes that provide for two or three-day continuances of proceedings, extensions of deadlines, or limitations of actions to allow for weekends and holidays are immaterial here. September 1, 2023, the application filing deadline, was a Friday. But instead of the Petitioners' application being a day or two late because of a weekend, holiday, weather, or emergency, it was two months late.

The regulation that governs how to appeal the denial of an Application for Farm Use Valuation is clear. West Virginia Code of State Rules Title 110, Series 1A, Subsection 2.8 provides that if an applicant certifies a question about Farm Use Valuation to the Tax Commissioner, "The Tax Commissioner shall decide *only* the issue of whether the property constitutes a 'farm' or 'farms' within the meaning of W. Va. Code § 11-1a-3(i) and these regulations." W. Va. Code St. R. § 110-1A-2.8.3 (2021) (emphasis added). What is unclear to this Tribunal is why the Assessor, who had found for several years that the subject property qualified for Farm Use Valuation because it was a farm, asked the Tax Commissioner to review whether the Petitioners' application was timely filed.

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

ANALYSIS

The issue in this case is whether real property may receive Farm Use Valuation if the annual Application for Farm Use Valuation is not filed by the statutory deadline. Although the sequence of events below that led to the Property Tax Ruling on which this appeal is based deviated from the procedure envisioned by the regulation, added an unnecessary step to the appeal process, and created additional work for the Tax Commissioner, that does not deprive this Tribunal of its

jurisdiction or authority to consider and rule on this appeal. Although the Petitioners could have appealed to this Tribunal when the Assessor denied their Application for Farm Use Valuation rather than waiting for the Tax Commissioner to issue the Property Tax Ruling, they have exercised their right of appeal to this Tribunal and have suffered no actual harm from the Assessor certifying its question to the Tax Commissioner.

The Petitioners brought their Application for Farm Use Valuation for Tax Year 2024 to the Assessor's Office after receiving a postcard informing them that the Assessor had denied Farm Use Valuation for 2024. The Assessor denied 2024 Farm Use Valuation because he had not received an Application for Farm Use Valuation by the September 1, 2023 statutory deadline, and the Tax Commissioner upheld the Assessor's denial of Farm Use Valuation.

Petitioner Janet XX is married to Petitioner John XX. Mrs. XX testified that she and Mr. XX were vacationing in Garden City, Atlantic State, around August 29, 2023. She remembered Mr. XX going out to mail a letter, which he had never done while they were vacationing. She handles the household finances and mails all the bills, and Mr. XX takes care of taxes and anything involving the farm.

Petitioner John XX testified that he sent the Application for Farm Use Valuation from Atlantic State by UPS on August 31, 2023, the day before the filing deadline. But he could not provide a UPS receipt, tracking information, or other proof of mailing. He alleges that the Assessor misfiled, misplaced, or threw away the application, but admitted that he does not know what happened with the application. "All I know is that we mailed the form. We mailed it some years; I've hand delivered it some years. I'm just testifying that I sent the appropriate form out that was completed. I don't know if it was a clerical issue, and I don't know if they received it." Transcript at p. 35.

Mr. XX also testified that when he asked Mountainside County Assessor John YY how best to resolve the dispute, Mr. YY told Mr. XX that he could provide a receipt from the UPS store showing the date he left the application with them. Curiously, Mr. XX did not want to obtain a receipt from the UPS store. He testified, “they told me they could provide me with that receipt, but I didn’t feel it was ethical to do that. So, now we’re here. In hindsight, it probably would have benefited me.” Transcript at p. 54. Mr. XX denied knowing that he could have filed the Application for Farm Use Valuation online.

John YY is the Assessor of Mountainside County, West Virginia. Mr. YY testified that the Assessor’s Office did not receive the Petitioners’ Application for Farm Use Valuation by the September 1 filing deadline. He noted that the Petitioners had not previously missed any deadlines. He testified that the Assessor’s Office had not misfiled any Applications for Farm Use Valuation during his time as Assessor.

Jane ZZ works in the Mountainside County Assessor’s Office, where her duties include receiving and processing Applications for Farm Use Valuation. Ms. ZZ testified about the Farm Use Valuation process. She noted that the Petitioners had qualified for Farm Use Valuation for several years, but their application for 2024 was denied because it was not timely filed. She explained that the application receipt timeframe is July 1 to September 1, but that the Assessor would accept an application if it were postmarked before September 1.

Mr. XX testified that he left the 2024 Applications for Farm Use Valuation with a UPS Store in Atlantic State on August 31, 2023:

ATTORNEY HARPER: [Y]ou were in [Atlantic State] in late August, is that right?

MR. [XX]: That’s correct.

....

ATTORNEY HARPER: Okay. And you went down and you were there on vacation, where did you mail the application from?

MR. [XX]: I went to, actually went to two different locations. One was clear out the door, so I ended up mailing it from one of the UPS stores.

ATTORNEY HARPER: Okay. What date was that?

MR. [XX]: I mean, I don't want to mis-testify. It was on or around the 29th or 30th.

. . . .

MR. [XX]: It must have been --- I believe I took it with me on the 30th. It would have been mailed that day or the day after.

ATTORNEY HARPER: So, the one that we're talking about is in Exhibit 9. And there's a 24 with a circle around it and that's copied up in the right hand corner. It must be filed with your County Assessor office by September 1, 2023. Is that the one we're talking about?

MR. [XX]: Yes, sir.

ATTORNEY HARPER: And at the bottom of that, is that your signature?

MR. [XX]: My signature and I had my father sign it.

ATTORNEY HARPER: Okay. And what is the date next to your signature?

MR. [XX]: 08/30.

. . . .

ATTORNEY HARPER: So, you would have mailed it out the day after that?

MR. [XX]: Correct. I believe that's correct.

ATTORNEY HARPER: So, August 31?

MR. [XX]: The best of my knowledge is the day after. I don't think it was the day we got there.

Transcript at pp. 39–41. Mr. XX also testified about what he thought was the application filing deadline:

ATTORNEY HARPER: When is your understanding that you have to have this application filed by?

MR. [XX]: I always knew it was before September 1.

ATTORNEY HARPER: And when you went to the UPS store in [Atlantic State], how did you mail it?

MR. [XX]: I just mailed it. Just mailed it out regular mail. I assumed they would postmark it, and I did not keep a copy of the postmark. I did not keep a copy of that.

ATTORNEY HARPER: Would you agree with me that it's very unlikely that it would have been received in Fairmont, West Virginia, by September 1 if you mailed it out from [Atlantic State] on August 31?

MR. [XX]: Well, I believe West Virginia state code follows the same as a federal or state tax return, as long as it's postmarked by the time in question.

ATTORNEY HARPER: Well, that's for tax returns, but I believe in this case, it has to be received --- you know, there are provisions in the code for if it happens on a Friday or happens a weekend, then there are the things. But I don't --- it doesn't say mailed by. It has to be received by. . . .

MR. [XX]: I believe that timeframe is over a weekend.

ATTORNEY HARPER: Well, that was my next question. I'm looking at the dates right now on my computer. Looks like August 29, it looks like it was a Tuesday. Wednesday was the 30th, Thursday was the 31st. Does that sound right for you when you went on your vacation?

. . . .

MR. [XX]: I can't recall. I mean, we flew in.

ATTORNEY HARPER: And I'm just looking at the calendar, would you agree or disagree if I told you that September 1, 2023 was a Friday?

MR. [XX]: I do see that. I just pulled it up. That's correct.

Transcript at pp. 41–42.

The governing regulations are unambiguous. The time frame within which to apply for preferential Farm Use Valuation is between June 30 and September 1 of each year. W. Va. Code St. R. § 110-1A-2.8.1 (2021). “Farm Use Application” means the application form the landowner “must complete and file with the county assessor *on or before September 1 of each year*” to claim Farm Use Valuation. W. Va. Code St. R. § 110-1A-2.5.11 (2021) (emphasis added). “Application

Form” means “[t]he application form required to be filed with the assessor *on or before September 1st of each year . . .*” W. Va. Code St. R. § 110-1A-2.5.12 (2021) (emphasis added).

Date filed means the date received by the Assessor. “Filing Date” means “the date by which the annual application for farm use must be received by the assessor of the county wherein the property is situated. This application for farm use must be annually filed and *received by the assessor on or before September 1st* following the July 1st assessment date.” W. Va. Code St. R. § 110-1A-2.5.14 (2021) (emphasis added). The filing date is when the assessor receives the application, not when the taxpayer mails the application.

The Petitioners here did not satisfy the timely filing requirement. The Assessor did not receive the application until Mr. XX brought it to the Assessor’s office on November 3, 2023. The regulations require that the application be filed with the Assessor on or before September 1. The Petitioners missed this deadline by two months.

When the Assessor denied the Petitioners’ late filing of the Application for Farm Use Valuation, he followed the law as written. The Petitioners cite no legal authority that would permit the Assessor to disregard or rewrite any statute based on a taxpayer’s – or even the Assessor’s – perception of unfairness. The Assessor has no such authority.

Nor does this Tribunal. Agencies are authorized to perform administrative and executive functions, often needing to interpret their statutes and regulations 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).

The Office of Tax Appeals lacks the authority to ignore or rewrite any West Virginia law. For example, we are not authorized to award monetary damages or to fashion equitable remedies

if following the law may lead to a harsh result. We must follow statutes and regulations as they are written.

Hence, having reviewed the exhibits and evidentiary hearing transcript, the briefs and arguments of the parties, and all other matters of record, this Tribunal finds that the Petitioners have not met their burden of proving that the Tax Commissioner was wrong in upholding the Assessor's denial of the Petitioners' Application for Farm Use Valuation as untimely filed.

The following Conclusions of Law support the decision rendered.

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 an appeal before the Office of Tax Appeals, the petitioner bears the burden of proving that any property appraisal, classification determination, or taxability determination is incorrect, unlawful, void, or otherwise invalid. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2021); W. Va. Code St. R. §§ 121-1-37.5 and 51.12.1 (2023).

4. To meet its burden, the petitioner must prove its case by a preponderance of the evidence. W. Va. Code Ann. §§ 11-3-24(k), 11-3-24a(e), and 11-10A-10(h) (West 2021).

5. If the evidence supports both sides equally, the party that bears the burden of proof has not met its burden. *Adkins v. Smith*, 142 W. Va. 772, 98 S.E.2d 712 (1957).

6. 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 change 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).

7. If the language of a statute or regulation is unambiguous, its plain meaning must be accepted without resorting to the rules of statutory interpretation. Syl. Pt. 2, *State v. Elder*, 152 W. Va. 571, 165 S.E.2d 108 (1968); *see also*, *State v. Scruggs*, 242 W. Va. 499, 502, 836 S.E.2d 466, 469 (2019).

8. Properly promulgated legislative rules that have undergone legislative rulemaking carry the force and effect of law, regardless of the extent to which the executive branch participated in their drafting. *See*, *Appalachian Power Company v. State Tax Department of West Virginia*, 195 W. Va. 573, 466 S.E.2d 424 (1995).

9. The Office of Tax Appeals has limited jurisdiction; it is not a court of equity and cannot create equitable remedies. *See*, 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. W. Va. Human Rights Commission*, 180 W. Va. 303, 376 S.E.2d 317 (1988).

10. Under the West Virginia Constitution, all real and personal property must be taxed unless the Legislature has exempted it from taxation. 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)).

11. Farm Use Valuation is available to property owners whose land is used for farming or agricultural purposes. W. Va. Code St. R. § 110-1A-1 to § 110-1A App. 2 (2021).

12. “Farm” is defined as “land currently being used primarily for farming purposes.” W. Va. Code Ann. § 11-1A-3(f) (West 2007).

13. “Farming purposes” means “the utilization of land to produce for sale, consumption or use, any agricultural products, including, but not limited to, livestock, poultry, fruit, vegetables, grains or hays or any of the products derived from any of the foregoing. . . .” W. Va. Code Ann. § 11-1A-3(g) (West 2007).

14. “Farm Use Application” means the application form that the landowner “must complete and file with the county assessor on or before September 1 of each year” to claim Farm Use Valuation for the assessment year. W. Va. Code St. R. § 110-1A-2.5.11 (2021).

15. “Application Form” means “[t]he application form required to be filed with the assessor on or before September 1st of each year” W. Va. Code St. R. § 110-1A-2.5.12 (2021).

16. “Filing Date” means “the date by which the annual application for farm use must be received by the assessor of the county wherein the property is situated. This application for farm use must be annually filed and received by the assessor on or before September 1st following the July 1st assessment date.” W. Va. Code St. R. § 110-1A-2.5.14 (2021).

17. To qualify for Farm Use Valuation, the landowner must apply to the County Assessor between June 30 and September 1 of each year. W. Va. Code St. R. § 110-1A-2.8.1 (2021).

18. Here, the deadline for the Petitioners to file the 2024 Farm Use Application was September 1, 2023, but the Assessor did not receive it until November 3, 2023.

19. Thus, the Petitioners' Application for Farm Use Valuation was not timely filed as required by statute and regulations.

DISPOSITION

Based on the testimony, the exhibits, the hearing transcript, the arguments and briefs of the parties, and all other matters of record, it is the **FINAL DECISION** of the West Virginia Office of Tax Appeals that the underlying classification determination by the Mountainside County Assessor as upheld by the Tax Commissioner is hereby deemed to be **CORRECT**, and is **AFFIRMED**.

WEST VIRGINIA OFFICE OF TAX APPEALS

Michael E. Bevers
Administrative Law Judge

Date