

REDACTED DECISION – DK# 24-1047

**BY: MICHAEL E. BEVERS, ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON AUGUST 28, 2025
ISSUED ON MARCH 6, 2026**

FINAL DECISION

This is a Natural Resources Property Tax Appeal involving the 2024 Tax Year. The Taxpayer, an oil and natural gas producer, owns working interests in wells located in West Virginia and other states. The underlying dispute centers on the valuation of certain wells in Marshall County that began production in 2022, the year preceding their first assessment in July 2023.

The Taxpayer filed three Petitions for Appeal with this tribunal challenging the State Tax Commissioner's valuation of the Taxpayer's working interests in natural gas wells in Marshall, Marion, and Wetzel Counties, West Virginia, and the three Petitions were consolidated into a single appeal. The Taxpayer later withdrew the Marion County and Wetzel County appeals and proceeded only with the Marshall County appeal.

This tribunal held an Evidentiary Hearing on May 8, 2025, the parties filed post-hearing briefs, and the matter became ripe for a decision when the record closed on August 28, 2025. Having reviewed the exhibits, the hearing transcript, the parties' briefs and arguments, and the applicable authorities, this tribunal finds that the Petitioner has *not* met its burden of proving that the Tax Commissioner's actions were wrong.

FINDINGS OF FACT

1. The Petitioner is Company ABC, doing business as Company ABC (hereafter "Company ABC" or "Petitioner").
2. The Respondent is the State Tax Commissioner of West Virginia ("Tax Commissioner" or "Respondent").

3. Company ABC is a publicly traded C Corporation that has been authorized to do business in West Virginia since 2001. Evidentiary Hearing Transcript (“Transcript”) at p. 6.

4. Company ABC owns working interests in oil and natural gas wells in West Virginia and other states, and produces natural gas and other similar products; its operations in Marshall County are focused on natural gas. Transcript at p. 6.

5. Wells that produce for less than 12 months during their first calendar year of production are commonly called “first-year wells.”

6. In addition to its established wells that started producing before 2022, Company ABC operates 35 First-Year Wells in Marshall County, which are identified in Petitioner’s Exhibit (“PX–”) 4 and PX–6.¹

7. For Tax Year 2024, the Tax Commissioner used Calendar Year 2022 to value producing natural gas wells.²

8. Company ABC’s First-Year Wells started production in Calendar Year 2022, the year preceding the Tax Year 2024 assessment date of July 1, 2023. Transcript at pp. 6–7.

9. More than half of Company ABC’s First-Year Wells started in August 2022 or later. Transcript pp. 6, 7, 31, 32.

10. Company ABC filed its Producer/Operator Property Tax Return for Tax Year 2024 on July 31, 2023. Transcript at pp. 32, 36, 46–47, 71.

¹ This Decision distinguishes between first-year wells in general and the specific first-year wells in controversy here by referring to first-year wells in general as “first-year wells” (each word lower case) and referring to Company ABC’s first-year wells in controversy as “First-Year Wells” (each word capitalized).

² 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). The assessment date for Tax Year 2024 was July 1, 2023, so the Tax Commissioner valued the Petitioner’s 2024 mineral interests based on the Tax Year 2022 income. In like manner, 2023 valuations were based on gross receipts from Tax Year 2021, and 2025 valuations were based on gross receipts from Tax Year 2023.

11. Although the information was available, Company ABC did not provide any 2023 actual gross receipts or operating expense information with its 2024 Property Tax Return, only its 2022 actual gross receipts and operating expense information. Transcript at pp. 25, 32, 35.

12. The Tax Division calculated the tentative appraisal values of Company ABC's producing wells based on the information in Company ABC's 2024 Property Tax Return. Transcript at pp. 11, 46, 60.

13. The Tax Division had not received Company ABC's actual gross receipts and actual operating expense information when it calculated the tentative appraisal values. Transcript at p. 53.

14. The Tax Division provided Company ABC's tentative appraisals of its First-Year Wells for Tax Year 2024 on January 19, 2024, approximately four weeks after the December 15, 2023 deadline to issue Company ABC's final appraisals as provided in West Virginia Code Chapter 11, Article 6K, Subsection 6(b). PX-3; Transcript at pp. 14, 15, 25, 32, 56-57, 72.

15. Company ABC filed the underlying Petition for Appeal on February 20, 2024.

16. The Petition for Appeal states that Company ABC had not yet calculated its actual gross receipts and expense data for the first 12 months of operations of the disputed wells, but that it planned to provide that information to the Tax Division later. Petition for Appeal at unnumbered p. 19.

17. Between the filing of its property tax return in July 2023 and the filing of its Petition for Appeal in February 2024, Company ABC did not inform the Tax Division that it wished to provide the first 12 months of actual gross receipts and actual operating expense information. Transcript at pp. 15-16, 54.

18. On September 25, 2024, approximately 14 months after filing its 2024 tax return and nine months after receiving its tentative appraisals from the Tax Division, Company ABC first sent the Tax Division the first 12 months of its actual gross receipts and actual operating expense information. PX-4: Transcript at pp. 16-17, 26, 33-34, 47, 63, 72.

DISCUSSION

The central issue presented in this appeal is whether the Tax Commissioner properly valued Company ABC's natural resources property for the 2024 Tax Year.

I. BACKGROUND INFORMATION

This appeal is one of several first-year well cases filed involving Property Tax Year 2024—Office of Tax Appeals Docket Numbers 24-1032, 24-1036, 24-1042, 24-1043, 24-1047 (the underlying appeal), 24-1060, and 24-1061. Docket Numbers 24-1043, 24-1060, and 24-1061 were consolidated into a single appeal because the same taxpayer filed three separate Petitions for Appeal. The operative facts and issues in all these cases are nearly identical, and the applicable law is the same. Docket Number 24-1032 was filed first and was heard first on January 23, 2025. Accordingly, it was treated as a test case to guide the litigation and disposition of the other cases.

During the 2022 Legislative session, the Legislature passed House Bill 4336, which directed the Tax Commissioner to annualize the gross receipts and expenses of first-year wells beginning with assessments made on or after July 1, 2022. To annualize a well's first-year production, the Tax Commissioner divides the well's gross receipts, minus expenses, by the number of days of production to determine a daily amount and then multiplies that daily amount by 365. For example, if a well began producing on July 1, 2022, the producer would have six months of gross receipts and actual expenses to report, so the Tax Commissioner would essentially double the reported amount to extrapolate 12 months of production. The legislation also allows working interest owners like Company ABC to provide actual gross receipts and actual operating expense information ("actuals") for the Tax Commissioner to use in place of annualized calculations.

At the hearing of this case, like at the hearings of all the 2024 first-year well cases listed above, no director or officer of Company ABC, or any other respective producer, testified. Company ABC's only witness was Jane Doe, who is a property tax consultant with Cirrus Advisors, a third-party firm

that Company ABC uses in tax matters. Company ABC consulted with Cirrus Advisors, but it appears that Cirrus Advisors made many of the tax strategy decisions.

Ms. Doe, a certified public accountant licensed in Virginia, helped Company ABC prepare its 2024 tax returns. Ms. Doe testified that before the 2022 legislative changes, producers typically provided supplemental data in mid-December. She noted that, starting in 2023, actual gross receipts and actual operating expense information (“actuals”) would supplement the Commissioner’s annualization.

Ms. Doe testified that more than half of Company ABC’s First-Year Wells in controversy here began production in August 2022 or later; that Company ABC timely filed its Property Tax Returns on July 31, 2023; that Company ABC received tentative appraisals from the Tax Commissioner on January 19, 2024; and that Company ABC filed the underlying Petition for Appeal on February 20, 2024. She noted that Company ABC paid its taxes based on the tentative valuations, and the valuations have not changed since the tentative valuations were issued. She also verified that Company ABC sent the first 12 months of its actuals to the Tax Division on September 25, 2024.

Ms. Doe testified that Company ABC received the 2024 tentative valuations about six weeks after the Tax Commissioner’s December 1, 2023 deadline to provide the tentative valuations. Although Company ABC had its actuals in January 2024, it did not provide them until September 25, 2024, nine months later. Ms. Doe testified that rather than trying to send the Tax Commissioner its actuals by the end of January 2024, just after receiving the tentative valuations, Company ABC filed a protective appeal on February 20, 2024. Company ABC did not include its actuals with its appeal, although it could have done so.

Ms. Doe testified that if a well started producing on July 1, 2022, and a producer filed its Property Tax Return on August 1, 2023, the Tax Commissioner would annualize the income and expense information from July 1, 2022, to December 31, 2022. She noted that Company ABC did not include July 2022 to July 2023 actuals with the Return filed in August 2023 because the return was not

set up for that, and Company ABC did not want to do that because it might have been over-assessed. She also noted that Company ABC wants this tribunal to consider its actuals from the first 12 months of production.

Frank Capehart is an Assistant Director of the Tax Division's Property Tax Division. When discussing the events leading to this appeal, although his perspective was slightly different, Mr. Capehart's testimony was almost identical to Ms. Doe's testimony. Mr. Capehart testified that the Tax Division received Company ABC's Property Tax Return on July 31, 2023; that the Tax Division calculated the tentative appraisal values of Company ABC's producing wells based on the information in Company ABC's July 2023 tax return; that the Tax Division had not received Company ABC's actuals when it calculated the tentative values; that the Tax Division issued the tentative values on January 19, 2024; that Company ABC filed the underlying Petition for Appeal on February 20, 2024; that the Tax Division issued the final valuations of the wells on May 3, 2024; that the valuations have not changed since the tentative valuations were issued; and that the Tax Division first received Company ABC's actuals on September 25, 2024, which was 14 months after its Property Tax Return was filed. Mr. Capehart noted that Company ABC could have filed supplemental information between July 31, 2023, the time it filed its return, and January 15, 2024, the time the counties took over from the Tax Division, but it did not.

Mr. Capehart testified that West Virginia counties' land books close on March 3 every year. The counties take over from the Tax Division on January 15 each year, and the counties have consistently told the Tax Division that no changes in value can be made after the land books close on March 3. However, county commissions are usually willing to accept information from assessors.

Mr. Capehart testified that between the filing of Company ABC's Property Tax Return in July 2023 and the filing of its appeal with this tribunal in February 2024, Company ABC did not inform the Tax Division that it wished to provide its actuals. He explained that supplemental data is better than an amended return, and the Tax Division "[accepts] adjusted information and corrected

information as long as humanly possible to try to get the accurate valuations out there for all taxpayers involved.” Transcript at p. 64.

II. STATUTORY FRAMEWORK

The statutes 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 actual value. W. Va. Const. art. X, § 1b; *Kline v. McCloud*, 174 W. Va. 369, 377, 326 S.E.2d 715, 724 (1984). Likewise, all natural resources property and industrial property are assessed at 60% of their actual value. W. Va. Code Ann. § 11-6K-1(a) (West 2025).

West Virginia Code Chapter 11, Article 1C, Section 10 provides that the State Tax Commissioner is required to determine the fair market value of natural resources property within the state and maintain accurate values for such property. W. Va. Code Ann. § 11-1C-10(d) (West 2025). The fair market value of such properties is determined by applying a yield capitalization model to the net proceeds. W. Va. Code Ann. § 11-1C-10(d)(3)(A) (West 2025). 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 Ann. § 11-1C-10(d)(3)(C)(i) (West 2025).

As noted above, beginning with assessments made on July 1, 2022, the Tax Commissioner has been required to annualize the gross receipts and expenses of first-year wells. The yield capitalization

³ E.g., Syl. Pt. 4, *Antero Resources Corporation v. Steager*, 244 W. Va. 81, 851 S.E.2d 527 (2020); Syl. Pt. 2 *Fountain Place Cinema 8, LLC v. Morris*, 227 W. Va. 249, 707 S.E.2d 859 (2011) (holding that when interpreting a legislative enactment, absent any definition of the intended meaning of the act’s words or terms, they will be given their common, ordinary, and accepted meaning as used); *State ex rel. Prosecuting Attorney of Kanawha County v. Bayer Corporation*, 223 W. Va. 146, 157, 672 S.E.2d 282, 293 (2008) (same holding); *Jackson v. Kittle*, 34 W. Va. 207, 12 S.E. 484 (1890) (it is necessary to give effect to every word and part of a statute to effectuate its true meaning).

model assumes an annual income stream, and since first-year wells had less than 12 months of production, they are annualized. Producers may provide actuals that will supplement or be used in place of the Tax Commissioner's annualized calculations. W. Va. Code Ann. § 11-1C-10 (West 2025).

The Tax Commissioner must prepare tentative appraisals of industrial and natural resources property by December 1 of the assessment year, which is the twelve-month period that begins on the July 1 assessment date, and if the tentative appraisal of the property has increased more than \$1,000.00 or ten percent from the prior year's appraisal, must notify the property owner or operator. W. Va. Code Ann. § 11-6K-4(e)(1) (West 2025).

The Tax Commissioner must finalize the tentative appraisals of industrial property and natural resources property and forward each appraisal to the county assessor of the county in which the property is located on or before December 15 of the assessment year. W. Va. Code Ann. §§ 11-6K-6(a) and 6(b) (West 2010).

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

III. ANALYSIS

Appeals to this tribunal usually allege that the Tax Commissioner or a county assessor took some action that was erroneous or unlawful. In this case, the Petition for Appeal states that for Property Tax Year 2024, the Tax Commissioner missed the statutory deadline for providing Company ABC's tentative values, and Company ABC intended to send the Tax Commissioner its actuals later, expecting the actual figures to reduce the tax valuation for the wells.

The parties do not dispute the law that controls this case. West Virginia Code Chapter 11, Article 1C, Subparagraph 10(d)(3)(C)(ii) provides that, beginning with assessments made on or after July 1, 2022, the Tax Commissioner must annualize the gross receipts and expenses of first-year wells, and working interest owners may provide actuals for the Tax Commissioner to use in place of annualized calculations, but it does not specify any deadline for property owners to provide their

actuals. W. Va. Code Ann. § 11-1C-10(d)(3)(C)(ii) (West 2025). West Virginia Code Chapter 11, Article 6K, Subdivision 4(e)(1), provides that the Tax Commissioner must prepare tentative appraisals of industrial and natural resources property by December 1 of the assessment year, and if the tentative appraisal of the property has increased more than \$1,000.00 or ten percent from the prior year's appraisal, must notify the property owner or operator. W. Va. Code Ann. § 11-6K-4(e)(1) (West 2025). And West Virginia Code Chapter 11, Article 6K, Section 6 provides that the Tax Commissioner must finalize the tentative appraisals of industrial property and natural resources property and forward each appraisal to the county assessor of the county in which the property is located by December 15 of the assessment year. W. Va. Code Ann. §§ 11-6K-6(a) and 6(b) (West 2010).

The issue in controversy is clear, and generally, both parties argue as one might expect. Company ABC argues that West Virginia Code Chapter 11, Article 1C, Subparagraph 10(d)(3)(C)(ii) and its accompanying regulations confirm that the Legislature intended to allow Company ABC to provide the Tax Commissioner with its actuals, so this tribunal should vacate the Tax Commissioner's annualization of the 2022 production data and consider Company ABC's actuals instead. The Tax Commissioner, on the other hand, argues that he took no adverse action because Company ABC did not provide its actuals before filing its appeal, and he is dismayed that he has been dragged before the Office of Tax Appeals when Company ABC never said anything to anyone at the Tax Division about providing its actuals before filing this appeal.

As noted above, this appeal is one of several first-year well cases involving Tax Year 2024, and the operative facts and issues in each case are essentially the same. *Company XYZ v. State Tax Commissioner*, Docket No. 24-1032, which was filed first, was heard on January 23, 2025, and Company XYZ filed its post-hearing brief on April 7, 2025. The hearings in the other first-year well cases were held in April, May, and July 2025, following Company XYZ's filing of its initial brief.

In all the first-year well cases that followed Company XYZ, the producers' arguments mirrored Company XYZ's—that their only choice was to file an appeal with this tribunal because the Tax

Commissioner failed to provide their tentative appraisals by the December 1, 2023 deadline. The producers argue that they were forced to file an appeal with this tribunal because the Tax Commissioner missed the December 1 deadline set out in West Virginia Code Chapter 11, Article 6K, Subdivision 4(e)(1) and the December 15 deadline set out in West Virginia Code Chapter 11, Article 6K, Subsection 6(b). We find that this argument is an expedient litigation position, at odds with the facts presented at the Company XYZ hearing and all subsequent hearings. We are therefore unconvinced.⁴

Both parties are correct in their general factual assertions. Company ABC's problem is that it asks us to expand West Virginia Code Chapter 11, Article 6K, Subdivision 4(e)(1), and West Virginia Code Chapter 11, Article 6K, Section 6, so that, since the Tax Commissioner missed the December 1 deadline for issuing tentative appraisals and the December 15 deadline for issuing final appraisals, we should order the Tax Commissioner to use Company ABC's first 12 months of actuals, even though it withheld those actuals until several months after its tentative appraisals were finalized. Company ABC and the other producers who filed similar appeals all assert that they are not asking this tribunal to fashion a remedy, but that is the practical effect of what they seek.⁵

In most of this tribunal's decisions, the discussion section begins with a description of the dispute between the parties, followed by citations to the controlling law. Then, if the relevant facts have been brought out, the controlling law is applied. A significant dispute over the facts is rare.

⁴ Under West Virginia Code Chapter 11, Article 6K, Sections 4 and 6, the Tax Commissioner has two deadlines to provide information to natural resources property owners. Section 4 provides a December 1 deadline for providing tentative appraised values, and Section 6 provides a December 15 deadline for providing finalized appraised values. During the evidentiary hearings of the first-year well cases, the producers' witnesses' testimony was not always consistent. Generally, the witnesses testified that the Tax Commissioner failed to timely "provide tentative values," without distinguishing between the December 1 and December 15 deadlines.

⁵ The Office of Tax Appeals 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).

This appeal is different because of the variations in Company ABC's argument. The central theme in Company ABC's argument is that it was forced to file an appeal with this tribunal because the Tax Commissioner failed to provide the tentative values by the December 1, 2023 deadline. But during the litigation, Company ABC added several variations to its theme:

- When Company ABC filed its appeal in February 2024, it stated that it had not completed calculating its actuals for the first-year wells that began production in calendar year 2022.
- At the Prehearing Conference, Company ABC took a different approach and claimed that the Tax Commissioner had refused to consider its actuals.
- At the Evidentiary Hearing, Ms. Doe testified that Company ABC could have provided 12 months of actuals in January 2024 when it received the tentative values, but there was no reason to provide that information at that time. Transcript at p. 27.
- Then, in its post-hearing briefs, Company ABC's argument took on a new patina—"Company ABC's review of the tentative values would have allowed it to address with Respondent any errors or other issues it saw with Respondent's values, including a determination of whether it made financial sense to pursue having its First-Year Wells revalued using actual gross receipts and expense information." Initial Brief of Company ABC at p. 22.

In its Prehearing Statement, at the Prehearing Conference, at the Evidentiary Hearing, and in its post-hearing briefs, Company ABC argued that it was prejudiced because the Tax Commissioner missed the December deadlines to provide its tentative appraisals and finalize those appraisals, and expressed its skepticism about the Tax Commissioner's competence to issue appraisals consistent with the statutes and regulations. And like the other producers challenging the appraisals of their first-year wells, Company ABC appears to have waited to see how the Tax Division would apply the legislative changes.

What happened here is apparent. Company ABC did not believe that its only choice was to provide its actuals after it received tentative appraisals from the Tax Commissioner. Instead, it waited

until it received its tentative appraisals to see how the Tax Division would apply the new statutes and regulations.⁶

Nevertheless, we find that the most material facts are not revealed by what happened, but rather by why they happened. Ms. Doe summarized why Company ABC filed this appeal:

[Company ABC] filed appeals to preserve its right to have the Tax Division revalue its first-year wells using actual receipts and operating expense information. The Tax Division did not complete the tentative values of wells by December 1st as required by statute. . . . So, the failure of the Tax Division to timely calculate tentative values prevented [Company ABC] from being able to review the values last December and work through issues at that time.

. . . .

The appeal was to preserve the right to continue discussing valuation issues and provide, you know, an appeal, that protective --- file the protective appeal, you know, by the deadline. You know, at that point, then, it was expected that there would be communication and a willingness to review data and discuss that data, and that was not the response received from the Tax Division. So at that point, additional information was not provided.

Transcript at pp. 15, 29.

The most important question we must answer is why Company ABC withheld its actuals until nine months after it received its tentative appraisals, which brings us back to the law of this case. Since this tribunal began hearing property tax matters, many petitioners have argued that the Tax Commissioner's failure to perform a specific act by a certain deadline, such as providing tentative appraisals by December 1, should be actionable. And we have consistently ruled that, as an executive branch agency, we cannot and will not rewrite statutes or regulations. Our conundrum here is that we must resolve any conflict between West Virginia Code Chapter 11, Article 1C, Subparagraph 10(d)(3)(C)(ii)—which allows producers to provide actuals for the Tax Commissioner to use in place of annualized calculations—and West Virginia Code Chapter 11, Article 6K, Sections 4 and 6—which set out a December 1 deadline for tentative appraised values and a December 15 deadline for finalized appraised values.

⁶ As noted above, it appears that although Cirrus Advisors, Company ABC's third-party consulting firm, communicated with the producers with first-year wells, it was making many of the taxation strategy decisions.

Why Company ABC waited to see how the Tax Commissioner was applying the statutory and regulatory changes before it was willing to provide its actuals is unclear. Ms. Doe and Mr. Capehart both testified that Company ABC did not communicate with anyone at the Tax Division about providing 12 months of actuals before it filed this appeal. Considering all of Ms. Doe’s testimony and the producers’ arguments in the Tax Year 2024 first-year well cases, it appears that all the producers mistakenly believed they had an appeal as of right with this tribunal, regardless of the facts.

Ms. Doe explained why Company ABC withheld its actuals until September 2024:

ATTORNEY GRIFFITH: [Jane], can you address why [Company ABC] waited until September of 2024 to provide the actual receipts and expenses to the Tax Division?

[MS. DOE]: As mentioned, the actual gross receipts and operating expenses would have been provided to the Tax Division in December of 2023 if the tentative values had been available on December 1st, you know, as required by West Virginia code.

. . . .

[MS. DOE]: However, since the Tax Division did not meet any of its statutory deadlines to finalize the tentative values, [Company ABC] elected to file an appeal and provide actual receipts and expenses to the Tax Division, you know, pursuant to that appeal. The Tax Division’s answer to the petition for appeal indicated that it did not plan to recalculate the values of [Company ABC’s] wells based on that actual gross receipts and expense information. As a result, there was no urgency to provide the actual receipts and expenses to the Tax Division. Additionally, my understanding was that the plan was to do a test case involving one producer, which was not [Company ABC]. So, that also kind of fed into the lack of urgency to provide that data.

Transcript at p. 17. And in its brief, Company ABC admitted its belief that it had an appeal as of right:

[Company ABC] acknowledges that, absent the filing of an appeal, it would not be entitled to relief if it had waited until September of 2024 to provide the “actual” production information. However, after the appeal was filed, the time frame for providing the “actual” production data to Respondent became a moot point, given that this tribunal hears matters *de novo*.

Initial Brief of Company ABC at p. 25, footnote 18.⁷

⁷ If this matter is appealed to a higher court, Company ABC will probably argue—as it does in its initial brief—that because this tribunal hears matters *de novo*, it can order the Tax Commissioner to review Company ABC’s (cont’d)

Perhaps most telling is Ms. Doe’s testimony in the January 23, 2025 Company XYZ hearing, quoted below.⁸ When Ms. Doe referred to the point at which a producer can rely on the Tax Commissioner to follow the law, she could not have meant the Tax Commissioner’s December 1 deadline for issuing tentative values or December 15 deadline to issue final appraisals—her testimony in the Company XYZ hearing, along with the testimony of the producers’ witnesses in all the following hearings, taken as a whole, makes clear that producers were concerned about how the new statutory and regulatory changes would unfold. When she was asked whether the reason producers needed to receive the tentative valuations before providing their actuals was so they could determine whether submitting 12 months of actuals would reduce their tax liabilities, she declined to answer yes—“I think once you kind of get to that point where you can rely on those values being issued consistent with the

(cont’d)

actuals. However, *de novo* means “anew.” See *Black’s Law Dictionary* 1430 (7th ed. 1999). If we take Company ABC at its word when it says that it is not trying to create a remedy for the Tax Commissioner’s failure to meet his December 1 deadline to provide tentative values, then nothing happened before Company ABC filed its appeal for us to review anew.

⁸ At the hearing of *Company XYZ v. State Tax Commissioner*, Docket No. 24-1032, Ms. Doe testified that the producers did not want to provide actuals to the Tax Commissioner before they received their tentative values:

JUDGE POLLACK: Let’s just straight up say it. Is it a scenario where in a perfect world, [Company XYZ] would like to wait past September 1st return date, see the tentatives, and then decide, run the numbers, and decide if I provide --- if I wait until December to see my tentatives, then I know whether I’m going to make money or lose money by providing 12 months of actuals versus 6 months of actuals --- six months of actuals annualized. I mean, you know, is that what we’re talking about?

[MS. DOE]: *Well, the producers would have an idea going into it if it’s going to [be] beneficial because they are running the model and can see that. So again, I think the issue is whether those tentative values were reflecting the model or not. . . . I think that’s kind of the hesitancy for tax year ’24. I mean, you know, tax year ’25, you know, I’ll say [Company XYZ] received their values mid-December and they were issued consistent with the legislative rule, and, you know, it’s definitely encouraging for looking ahead and kind of how, you know, [Company XYZ] will review its values. I think once you kind of get to that point where you can rely on those values being issued consistent with the rule and the code, then you are more comfortable with not having to see the tentative values first.*

Company XYZ v. State Tax Commissioner, Docket No. 24-1032, Hearing Transcript at pp. 57–58 (emphasis added).

rule and the code, then you are more comfortable with not having to see the tentative values first.” *Company XYZ v. State Tax Commissioner*, Docket No. 24-1032, Hearing Transcript at p. 58.

Neither the word “null” nor the word “nullity” appears anywhere in Company ABC’s two post-hearing briefs, yet Company ABC essentially argues that until it received its tentative appraisals, the economic benefit conferred by West Virginia Code Chapter 11, Article 1C, Subparagraph 10(d)(3)(C)(ii) was beyond its reach. Or, to put it another way, if the Tax Commissioner missed the December 1 deadline to provide tentative values, then Chapter 11, Article 1C, Subparagraph 10(d)(3)(C)(ii) would be rendered null. Unfortunately for Company ABC, it presented no facts, statutory authority, regulatory authority, or case law to support this proposition.

Simply put, this tribunal cannot rule in Company ABC’s favor absent evidence that providing its actuals before it received its tentative appraisals would have caused it to lose the economic benefit provided in Chapter 11, Article 1C, Subparagraph 10(d)(3)(C)(ii). Accordingly, we find that Company ABC could have prevailed in this matter only if it had offered evidence that showed a financial detriment to providing its actuals before it received its tentative values, which would have rendered West Virginia Code Chapter 11, Article 1C, Subparagraph 10(d)(3)(C)(ii) null. But Company ABC made no such showing.

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 classification or 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 this tribunal are conducted *de novo*. W. Va. Code Ann. § 11-3-25b (West 2021).

3. In an appeal before this tribunal, the burden of proof is upon the Petitioner to show that the actions taken by the Tax Commissioner are erroneous, unlawful, void, or otherwise invalid. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010); W. Va. Code R. §§ 121-1-37.5 (2023).

4. 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).

5. 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).

6. 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.

7. 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).

8. 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).

9. It is the duty of the Tax Commissioner to ascertain the fair market value of industrial and natural resource property in West Virginia. W. Va. Code Ann. § 11-1C-10 (West 2025).

10. 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).

11. “Value,” “market value,” and “true and actual value” all mean 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).

12. All property subject to ad valorem taxation shall be assessed at 60% of its true and actual value. W. Va. Const. art. X, § 1b; *Kline v. McCloud*, 174 W. Va. 369, 326 S.E.2d 715 (1984).

13. All natural resources property and industrial property in West Virginia shall be assessed annually at 60% of its true and actual value. W. Va. Code Ann. § 11-6K-1(a) (West 2025).

14. An assessing officer’s property valuation for taxation purposes is presumed to be correct.⁹

15. 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).

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

17. For all assessments made on or after July 1, 2022, the Tax Commissioner shall annualize gross receipts and actual annual operating expenses before calculating the working interest model and the royalty interest model for wells that produced for less than 12 months during the first calendar year of production or during the first calendar year of production after being shut-in during the previous calendar year. Producers may provide additional actual gross receipts and actual operating expense

⁹ 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).

information, which may be used instead of or to supplement the Tax Commissioner's annualization calculations. W. Va. Code Ann. § 11-1C-10 (West 2025).

18. The Tax Commissioner must prepare tentative appraisals of industrial and natural resources property by December 1 of the assessment year, but must notify the property owner or operator only if the tentative appraisal of the property increases more than \$1,000.00 or ten percent from the prior year's appraisal. W. Va. Code Ann. § 11-6K-4(e)(1) (West 2025).

19. The Tax Commissioner must finalize the tentative appraisals of industrial and natural resources property no later than December 15 of the assessment year. W. Va. Code Ann. § 11-6K-6(a) (West 2010).

20. The Tax Commissioner must forward all final appraisals of industrial property and natural resources property to the county assessor of the county in which that property is located no later than December 15 of the assessment year. W. Va. Code Ann. § 11-6K-6(b) (West 2010).

21. This tribunal cannot construe any statute in a way that renders it null. *See, e.g., Dunlap v. Friedman's, Inc.*, 213 W. Va. 394, 582 S.E.2d 841 (2003); *Board of Educ. of County of Wood v. Airhart*, 212 W. Va. 175, 569 S.E.2d 422 (2002); *State v. Lucas*, 201 W. Va. 271, 496 S.E.2d 221 (1997).

22. The Tax Commissioner was *not* required to notify Company ABC of the tentative appraisals of its First-Year Wells by December 1, 2023.

23. Company ABC has not met its burden of showing that the Tax Commissioner's failure to issue the final appraisals of its natural resources property by December 15, 2023, rendered its ability to provide additional actual gross receipts and actual operating expense information for its first-year wells null and void.

DISPOSITION

Based upon the foregoing, it is hereby **ORDERED** that Company ABC's request that this tribunal issue an Order directing the Tax Commissioner to modify the valuations of Company ABC's First-Year Wells for Property Tax Year 2024 is **DENIED**.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____
Michael E. Bevers
Administrative Law Judge

Date Entered