

REDACTED DECISION – DK# 24-1036

**BY: MICHAEL E. BEVERS, ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON SEPTEMBER 12, 2025
ISSUED ON MARCH 6, 2026**

FINAL DECISION

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

The Taxpayer filed two Petitions for Appeal with this tribunal—one for the Harrison County wells and the other for the Taylor County wells—challenging the State Tax Commissioner’s valuation of the wells, and the two Petitions were consolidated into a single appeal. This tribunal held an Evidentiary Hearing on May 15, 2025. The parties filed post-hearing briefs, and the matter became ripe for decision when the record closed on September 12, 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 (hereafter “Company ABC” or “Petitioner”).
2. The Respondent is the State Tax Commissioner of West Virginia (“Tax Commissioner” or “Respondent”).
3. Company ABC owns working interests in oil and natural gas wells in West Virginia. Evidentiary Hearing Transcript (“Transcript”) at p. 7.
4. Company ABC’s headquarters are in Pittsburgh, but most of its assets are in West Virginia. Transcript at p. 7.

5. Company ABC is involved in production and midstream operations, including horizontal drilling into the Marcellus Shale Formation. Transcript at p. 7.

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

7. In addition to operating established wells that began producing before 2022, Company ABC operates four First-Year Wells in Harrison County. These four First-Year Wells are identified in Petitioner’s Exhibits (“PX–”) 4, 6, and 8; see also Transcript at pp. 1, 17, 36–37, 60.¹

8. Company ABC also operates three First-Year Wells in Taylor County, identified in Exhibits PX–4, PX–6, and PX–8; see also Transcript at pp. 1, 17, 36–37, 60.

9. For Tax Year 2024, the Tax Commissioner used production from Calendar Year 2022 to value natural gas wells.²

10. Company ABC’s Harrison County First-Year Wells began production on April 17, 2022. Transcript at pp. 42, 73.

11. Company ABC’s Taylor County First-Year Wells began production on August 27, 2022. Transcript at pp. 42, 73.

12. Company ABC filed a Producer/Operator Property Tax Return for Tax Year 2024 on July 24, 2023, which the West Virginia Tax Division rejected. Company ABC timely filed a corrected property tax return on August 1, 2023. Transcript at pp. 42, 45, 55.

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 appraisals were based on gross receipts from Tax Year 2021, and 2025 appraisals were based on gross receipts from Tax Year 2023.

13. Although the information was available, Company ABC did not provide its 2023 actual gross receipts or operating expense information with its 2023 Property Tax Return, only its 2022 actual gross receipts and operating expense information. Transcript at pp. 45–46.

14. The Tax Division had not received any of Company ABC's 2023 actual gross receipts or operating expense information when it calculated the tentative appraisal values in January 2024. Transcript at pp. 15, 38–39, 60–61, 71–72, 74.

15. The Tax Division provided Company ABC's tentative appraisals of its First-Year Wells for Tax Year 2024 on January 11, 2024, approximately three 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, 43, 44, 51, 52, 55–56, 66, 73, 74–75.

16. Company ABC filed the underlying Petitions for Appeal on February 16, 2024.

17. The Petitions for Appeal state 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 (Harrison County) at unnumbered p. 9 of 11; Petition for Appeal (Taylor County) at unnumbered p. 9 of 11.

18. Between filing its property tax return in August 2023 and filing its Petitions for Appeal in February 2024, Company ABC did not notify the Tax Division that it intended to provide the first 12 months of actual gross receipts and expense information. Transcript at pp. 15, 38–39.

19. In September 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 expense information. Transcript at p. 38.

20. On February 4, 2025, while preparing for the Evidentiary Hearing, Company ABC sent the Tax Division a reformatted version of the first 12 months of its actual gross receipts and operating expense information. PX–4: Transcript at pp. 16–17, 38, 44.

DISCUSSION

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

I. BACKGROUND INFORMATION

This appeal is one of several first-year well cases involving Property Tax Year 2024—the cases are Docket Numbers 24-1032, 24-1036 (the underlying appeal), 24-1042, 24-1043, 24-1047, 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, less expenses, by the number of days of production to obtain a daily amount and then multiplies that daily amount by 365. For example, if a well began production on July 1, 2022, the producer would report six months of gross receipts and actual expenses, so the Tax Commissioner would essentially double the reported amount to extrapolate 12 months of production. The legislation also allows working interest owners, such as Company ABC, to provide actual gross receipts and 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 Roe, a property tax consultant with Ryan LLC, a third-party firm that Company

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

Ms. Roe has been a property tax consultant for approximately 24 years and has focused on valuing oil and gas assets in West Virginia, Kentucky, Tennessee, and Virginia for about 15 years. Ms. Roe testified that Ryan LLC did not prepare Company ABC's 2024 property tax returns, but it reviewed them. Ms. Roe explained that the West Virginia Code changed in 2021, 2022, and 2023, affecting the yield capitalization model and allowing producers to claim actual operating expenses rather than being limited to the industry average. She noted that before the legislative changes, producers usually provided supplemental data in December after receiving the tentative appraisals from the Tax Division, but starting in 2023, actuals would supplement or replace the Commissioner's annualization.

Ms. Roe testified that Company ABC's Harrison County First-Year Wells began production on April 17, 2022, and Company ABC's Taylor County First-Year Wells began production on August 27, 2022; that Company ABC timely filed its Property Tax Returns on August 1, 2023; that Company ABC received tentative appraisals from the Tax Commissioner on January 11, 2024; that Company ABC filed the underlying Petition for Appeal on February 16, 2024; and that the appraisals have not changed since the tentative appraisals were issued. Ms. Roe also verified that Company ABC first sent 12 months of actuals in September 2024 and sent a reformatted version on February 4, 2025.

Ms. Roe testified that although Company ABC had its first 12 months of actuals in January 2024, it did not provide them until September 2024, nine months later. Ms. Roe testified that rather than sending the Tax Commissioner its actuals by the end of January 2024, just after receiving the tentative appraisals, Company ABC filed a protective appeal on February 16, 2024. Company ABC did not include the first 12 months of actuals with its appeal, although it could have.

Ms. Roe testified that if a well began producing on July 1, 2022, and the 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 the actuals for July 2022 to July 2023 with the Return filed in August 2023 because the Return was not set up to do so, and Company ABC did not want to include them because it might have resulted in over-assessment. Instead, Company ABC wants this tribunal to consider its actuals from the first 12 months of production.

Deanna Sheets is the Director of the Tax Division's Property Tax Division. When discussing the events leading to this appeal, Ms. Sheets corroborated Ms. Roe's testimony. She testified that Company ABC filed a Property Tax Return on July 24, 2023, which the Tax Division rejected; Company ABC timely filed a corrected property tax return on August 1, 2023; the Tax Division had not received the first 12 months of Company ABC's actuals when it calculated the tentative appraisals; the Tax Division issued the tentative appraisals on January 11, 2024; Company ABC filed the underlying Petition for Appeal on February 16, 2024; and the appraisals have not changed since the tentative appraisals were issued.

Ms. Sheets testified that West Virginia counties' land books close on March 3 every year, and property values cannot change after the land books close on March 3. She explained that the counties take over from the Tax Division on January 15 each year. She noted that Company ABC could have filed supplemental information between the time it filed its return in August 2023 and when the counties took over in January 2024, but it did not. She explained that before the legislative changes, producers filed their property tax returns in August or September and generally provided supplemental data to the Tax Division in November, December, or January.

Ms. Sheets testified that between the filing of Company ABC's Property Tax Return in August 2023 and the filing of its appeal with this tribunal in February 2024, Company ABC did not notify the Tax Division that it wished to provide actuals. She explained that the Tax Division tries to obtain as many months of actuals as possible to provide the most accurate picture of what a well may be producing and to apply the yield capitalization model to value the well, "[b]ut I think our stance has been that we always want to try to capture the best picture that we can to value the well." Transcript

at p. 78. When asked if she could understand why the producers would be “a little bit skeptical” about the Tax Division’s ability to process 12 months of actuals if the producers provided them in mid-January 2024, she answered, “[a]ctually, no, I cannot. But that’s a matter of personal opinion.” *Id.* at p. 80.

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 requires the State Tax Commissioner 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 property 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

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 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 model assumes an annual income stream, and because first-year wells produce for less than 12 months, they are annualized accordingly. Producers may provide actuals that will supplement or replace 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 typically allege that the Tax Commissioner or a county assessor took some action that was erroneous or unlawful. In this case, the Petitions for Appeal state that for Property Tax Year 2024, the Tax Commissioner missed the statutory deadline for providing Company ABC's tentative appraisals, and Company ABC intended to send the Tax Commissioner its actuals later, expecting the actuals 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 this appeal, and 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 the 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

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.

and the other producers who filed similar appeals all contend 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.

This appeal differs because of the variations in Company ABC's argument. The central theme of Company ABC's argument is that it was forced to file an appeal with this tribunal because the Tax Commissioner failed to provide its tentative appraisals 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 yet completed calculating its actuals for the first-year wells that began production in calendar year 2022. Petition for Appeal (Harrison County) at unnumbered p. 9 of 11; Petition for Appeal (Taylor County) at unnumbered p. 9 of 11.
- At the Prehearing Conference, Company ABC took a different approach, claiming that the Tax Commissioner had refused to consider its actuals.
- At the Evidentiary Hearing, Ms. Roe testified that, since Company ABC's Harrison County First-Year Wells began production on April 17, 2022, Company ABC could have provided 12 months of actuals in August 2023 when it filed its Harrison County property tax returns; "had there been a known mandate to provide them with the return, we could have filed the return per the form, which does not have a space to put that, but then provided a supplemental schedule. And had we been aware that was, you know, a necessity, we would have done that. But as I testified earlier, I don't --- you know, there's no guidance that said that was --- had to be done. So, it was not." Transcript at pp. 45–46.

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).

- Ms. Roe also testified that Company ABC could have provided 12 months of actuals in January 2024 when it received the tentative appraisals, but “we didn’t see a reason to provide them and, you know, or to provide notification that we might provide them.” Transcript at p. 15.
- Then, in its post-hearing briefs, Company ABC’s argument took on a new color— “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 ability to issue appraisals consistent with the statutes and regulations. And like the other producers challenging the appraisals of their first-year wells, Company ABC seems to have waited to see how the Tax Division would apply the legislative changes.

What happened here is evident. 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. Roe summarized why Company ABC filed this appeal:

ATTORNEY GRIFFITH: Can you just explain why that appeal was filed?

⁶ As noted above, it appears that although Ryan LLC, Company ABC’s third-party consulting firm, communicated with the producers about their first-year wells, it was making many of the tax strategy decisions.

[MS. ROE]: Sure. So, when we received the tentatives and took a look at how they were valued compared to the --- what was expected, and then just what the first-year wells had actually done in the first 12 months, based on the data that was available at that time, we decided that there was a reason to appeal, or likely a reason to appeal based on what we were seeing.

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[MS. ROE]: We were not provided tentative values by the time we should have. You know, perhaps that would have changed the timeline of this whole discussion.

ATTORNEY GRIFFITH: Okay. And that was the reason this appeal was filed in the first place, was the late receipt of those tentative values.

[MS. ROE]: Correct. Without an opportunity to review them and provide commentary before an appeal was done, you're kind of forced to just file the appeal.

Transcript at pp. 14, 40–41.

The most important question we must answer is why Company ABC withheld its actuals until nine months after receiving 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.

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. Roe and Ms. Sheets both testified that Company ABC did not communicate with anyone in the Tax Division about providing 12 months of actuals before filing this appeal. Considering the testimony and 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.

When asked whether Company ABC could have provided 12 months of actuals with its property tax returns, Ms. Roe testified that Company ABC could have done so:

And had we been aware that was, you know, a necessity, we would have done that. But as I testified earlier, I don't --- you know, there's no guidance that said that was --- had to be done. So, it was not. Now, for tax year 2025, we did review year one at the time of filing to determine whether anything should be reported because we knew this conversation was being had. But I would also say that I'm not sure that precludes them from appealing the wells later, should the value be determined --- you know, you haven't seen a value at that point. So, you know, *it can't stop a taxpayer from appealing the value of their well and having, you know, an opportunity to present data.*

Transcript at pp. 45–46 (emphasis added). Ms. Roe explained why Company ABC first sent 12 months of its actuals in September 2024, and then sent a reformatted version of those actuals in February 2025:

JUDGE BEVERS: So, why did [Company ABC] wait until February 2025, which was a year after filing the appeal, to send the Tax Division the actual gross receipts and operating expense information?

[MS. ROE]: So, once the appeal was filed, correspondence then shifts between the attorneys. As I mentioned earlier, there are several taxpayers who were going through this same kind of appeal facts, so very similar cases. It was being discussed whether the cases should be consolidated and a sample heard. One taxpayer was chosen to have a sample hearing for. It was not [Company ABC]. So, whether we had to provide --- I mean it's a lot of work to provide all these schedules and pull them together. So, ---

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[MS. ROE]: So, the test case was not [Company ABC]. And so, we waited to receive instructions from the test case to see how this was going to be handled before we started pulling together the exhibits. So, the test case, I guess, went forward. It was then decided that there would be separate hearings, I believe. Again, all of this happened between the attorneys. There was a --- I don't know the official term for it, whether it was a pre-hearing conference or some sort of meeting for [Company ABC] specifically in September. We provided schedules for that hearing. That is when the feedback came back that those schedules were not in the right format. But it also, at that point, was discussed that there really was no appetite for settling this and that we would be having these hearings. . . . So, that, I mean, I don't know if that helps with the timing of why February? Why was it February 2025, by the time we said, here are these exhibits for this? Because the target kept changing. We would get to a point and say, okay, we're doing a test case, and then we would pause, and then it was like, nope, we're going

forward with [Company ABC]. So, we provided schedules for that. The schedules were not the right format. Then we provided them in the right format, leading up to this.

Transcript at pp. 46-48. And in its brief, Company ABC admitted that it believed 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. 26, footnote 18.⁷

Perhaps just as telling is Jane Doe’s testimony in the January 23, 2025 Company XYZ hearing, quoted below.⁸ When Ms. Doe, who works for Cirrus Advisors, Company XYZ’s third-party

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 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 appraisals, then nothing happened before Company ABC filed its appeal for this tribunal 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 appraisals:

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 six 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).

consulting firm, 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 to provide Company ABC’s tentative appraisals 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, paint a clear picture that the producers were concerned about how the new statutory and regulatory changes would unfold. When Ms. Doe was asked whether the reason producers needed the tentative appraisals before they could provide their actuals was so they could determine whether submitting 12 months of actuals would reduce their tax liabilities, her answer was not affirmative—“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 p. 58.

Neither the word “null” nor the word “nullity” appears anywhere in either of 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 unavailable. Or, to put it another way, if the Tax Commissioner missed the December 1 deadline to provide Company ABC’s tentative appraisals, 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 resulted in a loss of 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 presented evidence showing a financial detriment to providing its actuals before it received its tentative appraisals, 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 has original and exclusive jurisdiction to hear appeals by any party aggrieved by determinations of property classifications, determinations of property taxability, or the 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 Petitioner bears the burden of proof 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 and often need 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 proportionally to its value, as determined by law. W. Va. Const. art. X, § 1.

7. The Tax Commissioner must faithfully enforce the laws governing property assessment and collection of 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 determine the fair market value of industrial and natural resource properties 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 the 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).

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 Roedale, 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).

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 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