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REDACTED DECISION – DKT NO. 24-1032

BY: A.M. "FENWAY" POLLACK, CHIEF ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON MAY 28, 2025
ISSUED ON MARCH 6, 2026

FINAL DECISION

The Property owner in this matter is the working interest owner of eight (8) natural gas wells in Tyler County, West Virginia. On February 15, 2024, it filed an appeal with this Tribunal concerning what are colloquially called "first-year wells". Normally, appeals to this Tribunal contain some allegation of an error, either on the part of the Tax Commissioner or a county assessor. In this case, the Petition filed by the property owner simply stated that for property tax year 2024, the property owner planned, on some future date, to provide the Tax Division with its actual gross receipts and operating expenses. The Petition further stated that it was anticipated that these actual numbers would lower the property tax valuation for these eight (8) wells.

An evidentiary hearing was held on January 23, 2025, after which the parties filed post hearing briefs, and the matter became ripe for a decision at the conclusion of the briefing schedule.

FINDINGS OF FACT

1. The Property owner is a limited liability company whose primary business is the production of natural gas and other natural resource products. Hr'g Tr. pp. 38:11-23, 39:1-6.
2. The eight (8) wells that form the basis of this matter are identified in Petitioner's Exhibit 7.
3. All eight are "first-year wells," meaning that they produced for less than twelve (12) months during the first **calendar** year of production.[1]

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[1] We bold the word calendar because the way first-year wells are inventoried can be confusing at first glance. Generally, pursuant to West Virginia Code Section 11-3-1, for property tax purposes, there is an "assessment date" an "assessment year" and a "property tax year". Simply put, the assessment date is July 1st of the assessment year, which runs from July 1 to June 30. So whatever property is owned on July 1st of any given year is what is taxed for that

4. During the 2022 Legislative session, H.B. 4336 was passed. This legislation directed the Tax Commissioner, beginning with assessments made on or after July 1, 2022, to annualize the gross receipts and expenses of these first-year wells (hereafter "annualized"). The legislation also allows the working interest owners, such as the property owner here, to provide actual gross receipts and expenses information (hereafter "actuals") for the Tax Commissioner to utilize in lieu of his or her annualized calculations. This statutory change was codified in West Virginia Code Section 11-1C-10(d)(3)(C)(ii).
5. This matter involves property tax year 2024, with an assessment date of July 1, 2023.
6. The property owner filed its 2024 property tax return in July of 2023. *See* Respondent's Ex. 3.
7. In its July 2023 filing, the property owner did not provide the actual gross receipt and expense data allowed for in Subparagraph (ii).
8. On January 11, 2025, the property owner received from the Tax Division the tentative valuations of its producing wells for property tax year 2024. Hr'g Tr. pp. 23:3-6. This was approximately six (6) weeks after the Tax Commissioner's statutory deadline to provide such valuations, pursuant to West Virginia Code Section 11-6K-4(e)(1).
9. The property owner filed its appeal with this Tribunal on February 15, 2024.
10. Between the filing of its property tax return in July of 2023 and the filing of its appeal with this Tribunal, the property owner had no communication, either oral or written, with the

assessment year. However, pursuant to Section 3.33 of Series 1J, Title 110 of the West Virginia Code of State Rules, natural gas producing property is "property from which natural gas or natural gas liquids has been produced or extracted at any time **during the calendar year preceding the July 1 assessment date".** W. Va. Code R. § 110-1J-3.33 (April 24, 2023)(emphasis added). The simple version of this interplay is that if a person buys a new car on June 1st, then that vehicle becomes part of their taxed personal property one month later, on the July 1st assessment date. However, if a natural resource producer taps a "first-year well" on the same day as the car is bought, that well is not considered for valuation and taxation until the following July 1st.

Tax Division regarding the filing of its actual gross receipts and expenses data. Hr'g Tr. pp. 127:15-21.[2]

11. At the time of the filing of its appeal, in February of 2024, the property owner indicated that it still had not calculated its actual gross receipts and expense data for its first year wells. *See* Property Owner's Petition for Appeal, Attachment P.2.
12. The property owner provided its actual gross receipts and expense data to the Tax Division in two batches, one in June of 2024 and the other in September of 2024. Hr'g Tr. pp. 79.

DISCUSSION

The issue of contention between the parties is clear, and the facts of what happened between the parties are generally clear. The property owner wants to provide its actual gross receipts and expense information, as provided in West Virginia Code Section 11-1C-10(d)(3)(C)(ii). As one might expect, the Tax Commissioner's argument is simple, namely that prior to the property owner filing its appeal with this Tribunal, it never received any communication whatsoever from the property owner regarding the filing of its actuals, let alone receiving them.

There is no debate between the parties regarding the law of this case. First, as stated above in finding of fact number 4, we have Chapter 11, Article 1C, Section 10(d)(3)(C)(ii). However, Subparagraph (ii) does not have a deadline for property owners to provide their actuals. Moreover, as will be discussed in greater detail below, the disagreement between the parties is also tangentially connected to West Virginia Code Section 11-6K-4(e)(1), which states: ". . .in the case of oil property, natural gas property and managed timberland, the Tax Commissioner **shall** complete the preparation of tentative appraisals **and notify the affected owner or operator by**

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[2] It should be noted that no member of the property owner's LLC testified in this matter. The property owner's sole witness was an employee of a third-party firm utilized by the property owner in taxation matters.

December 1 of the assessment year, . . ." W. Va. Code Ann. § 11-6K-4(e)(1)(West 2025)(emphasis added).[3]

In virtually every decision issued by this Tribunal, the discussion section begins with a brief recitation of the dispute between the parties, followed by citation to the law of the case. Then, hopefully, if the relevant facts have been elicited, those facts are properly applied to the law of the case. Almost never is there a meaningful question about what has transpired factually. This matter is quite different. The difference is the various permutations that the property owner's arguments have taken[4]. At the time of the filing of its appeal, in February of 2024, it stated that it had not completed its calculations of its actual gross receipts and expenses for the first-year wells that began production in calendar year 2022. Then, during the prehearing conference, the property owner totally switched gears and claimed that the Tax Commissioner had refused to consider its actuals. During the evidentiary hearing, the property owner's sole witness provided a third version of events. This testimony revealed that prior to the filing of this current appeal, the property owner had never had any communication with anyone at the Tax Division regarding providing its actuals. And the reason it had not contacted the Tax Division was because it was waiting to see how the Property Tax Division applied the statutory and regulatory changes that had been promulgated during the previous few years[5].

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[3] It should be noted that pursuant to West Virginia Code Sections 11-6K-4 and 11-6K-6, the Tax Commissioner has two deadlines to provide information to natural resource property owners. Section 4 provides a December 1st deadline for providing tentative appraised values and Section 6 contains a December 15th deadline for providing finalized appraised values. This Tribunal conducted numerous hearings regarding first year wells and the testimony was not always consistent. Generally, the witnesses testified about the Tax Commissioner's failure to timely "provide tentative values", without distinction between the December 1st and December 15th deadlines.

[4] It should again be reiterated that when we discuss the "property owner's" actions, it appears from the record, taken in its entirety, that the third-party consulting firm, while in consultation with the property owner, was making many of the taxation strategy decisions.

[5] In 2021 and 2022, the West Virginia Legislature passed extensive changes to both the statutes and regulations governing the valuation of natural gas property.

> JUDGE POLLACK: Well, let's not even be coy. Let's just straight up say it. Is it a scenario where in a perfect world, BBB 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?
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> MS. AAA: **Well, the producers would have an idea going into it if it's going to 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. That's just kind of an extra layer to it. So, you know, I think that's kind of the hesitancy for tax year '24. I mean, you know, tax year '25, you know, I'll say BBB 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, BBB 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.

Hr'g Tr. pp. 57:18-23, 58:1-10. (emphasis added).

By the time of post-hearing briefs, the property owner's argument had changed again, stating that "BBB's review of the tentative values would have allowed it to address with Respondent any errors or other issues it saw with the Respondent's values, including a determination of whether it would be beneficial to have its First-Year Wells revalued using actual gross receipts and expense information." *See* Initial Brief Of The Petitioner In Support Of Its Petition For Appeal Of Respondent's Tax Year 2024 Property Tax Appraisal. P. 18.

Numerous other natural gas working interest property owners filed identical appeals to this matter. The evidentiary hearings in those matters were conducted after the property owner in this matter filed its initial brief. In all of the subsequent hearings, the property owners' arguments mirrored the final argument advanced by the property owner in this matter, namely, that they all had no choice but to file an appeal with this Tribunal, because the Tax Commissioner missed his

December 1st deadline to provide them with their tentative values. We find this argument to be an expedient litigation position at odds with the facts elicited in the first hearing, and as such are unconvinced. To be clear, this Tribunal finds the most relevant fact to be Ms. AAA's testimony cited above. The property owner did not feel that it had no choice but to withhold its actuals until it received the tentative values from the Tax Commissioner. Instead, it chose to wait, because it wanted to double check to see if, and how, the Tax Commissioner was applying the new statutory and regulatory framework. As such, there is no question as to what happened; this property owner and all the others waited till they received their tentative values. However, we rule that the most relevant facts are not revealed by **what** happened, but rather **why**.

The reason the why of what happened in this matter is the most important question to be answered and brings us to the law of this case. Generally, both parties argue as one might expect. The property owner argues that both West Virginia Code Section 11-1C-10(d)(3)(C)(ii) and its accompanying regulations evidence the Legislature's intent that it be allowed to provide the Tax Commissioner with its actuals. The Tax Commissioner is essentially incredulous that he has been hauled before the Office of Tax Appeals when the property owner never, prior to filing its appeal, said a word to anyone at the Tax Division about providing its actuals. Both parties are correct in their general assertions. The problem for the property owner is that it seeks to have this Tribunal rewrite West Virginia Code Section 11-6K-4(e)(1) to create a remedy when the Tax Commissioner fails to meet his or her December 1st deadline to provide tentative values. It should be noted that this property owner, and the others who have filed similar appeals, all take pains to say that they **are not** trying to create a remedy; they merely want this Tribunal to order the Tax Commissioner to accept their actuals for property tax year 2024.[6] This circular logic is troublesome. In the three (3) years since this Tribunal has begun hearing property tax matters, numerous property owners have argued that the Tax Commissioner's failure to perform this or that act by a certain deadline, such as providing tentative values by December 1st, should be actionable. In each of those matters, this Tribunal has ruled that because we are an executive branch agency, we are both unwilling and unable to rewrite statutes or regulations. The conundrum in this case is that we must overlay West Virginia Code Section 11-1C-10(d)(3)(C)(ii) with West Virginia Code Section 11-6K-4(e)(1).

Nowhere in the property owner's two post-hearing briefs does the word "nullity" appear. However, that is essentially what the property owner is arguing. It is arguing that it could not avail itself of the benefits bestowed by West Virginia Code Section 11-1C-10(d)(3)(C)(ii) until it received its tentative values. Or to put it another way, when the Tax Commissioner misses his or her December 1st deadline to provide tentative values, it renders West Virginia Code Section 11-1C-10(d)(3)(C)(ii) a nullity.[7] Unfortunately for the property owner, it presented no facts, no statutory authority, no regulatory authority, nor any case law to advance this proposition. Simply put, this Tribunal is unable to rule for the property owner, absent some evidence that if it provided its actuals **before** it received its tentative values, it would lose the possible economic benefit called for in West Virginia Code Section 11-1C-10(d)(3)(C)(ii). On the contrary, when asked the question "if I wait until December to see my tentatives, then I know whether I'm going to make money or

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[6] If this matter is appealed to a higher court, the property owner will undoubtably argue (as it did in footnote 6 of its initial brief) that because this Tribunal hears matters *de novo*, it has the ability to order the Tax Commissioner to review its actuals. However, *de novo* means "anew" *See* Black's Law Dictionary 1430 (7th ed. 1999). If we take the Petitioner 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 1st deadline to provide tentative values, then there is nothing that transpired prior to the property owner filing its appeal for this Tribunal to look at anew.

[7] The Supreme Court has consistently cautioned against statutory construction that renders statutes null. *See e.g.* Board of Educ. of County of Wood v. Airhart, 212 W.Va. 175, 569 S.E.2d 422 (W.Va.,2002); Dunlap v. Friedman's, Inc., 213 W.Va. 394, 582 S.E.2d 841 (W.Va.,2003); State v. Lucas, 201 W.Va. 271, 496 S.E.2d 221 (W.Va.,1997).

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?" the answer was an unequivocal no; "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."[8] We rule that the only way for the property owner to have prevailed in this matter would have been to offer evidence showing a financial detriment to providing its actuals before it received its tentatives, and thereby rendering West Virginia Code Section 11-1C-10(d)(3)(C)(ii) a nullity. The property owner never even attempted such an argument, let alone convincingly making such a showing.

CONCLUSIONS OF LAW

1. It is the duty of the Tax Commissioner to see that the laws concerning the assessment and collection of all taxes and levies are faithfully enforced. *See* W. Va. Code Ann. §11-1-2 (West 2025).

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

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[8] It should be noted that when the witness used the phrase "values being issued consistent with the rule and the code," she was not talking about the Tax Commissioner's December 1st deadline to issue tentatives. Her testimony, along with the testimony in the other hearings, taken in their entirety, paints a clear picture that certain natural gas producers were concerned about how the numerous statutory and regulatory changes would play out. What has never been made clear is why the property owner felt the need to see how the Tax Commissioner was applying the statutory and regulatory changes before it was willing to provide actuals. Taking all of the testimony in its entirety, it appears that all the property owners mistakenly believed that they had an appeal of right with this Tribunal, no matter what the facts.

3. Subject to the exceptions in this section contained, 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.

4. All industrial property and natural resources property shall be assessed annually as of the assessment date at sixty (60) percent of its true and actual value. W. Va. Code Ann. § 11-6K-1(a) (West 2025).

5. (A) 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 determined through the process of applying a yield capitalization model to the net proceeds. WV LEGIS 274 (2022), 2022 West Virginia Laws Ch. 274 (H.B. 4336).

6. For all assessments made on or after July 1, 2022, the Tax Commissioner shall annualize gross receipts and actual annual operating expenses before calculation of 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. Companies may provide additional actual gross receipts and actual operating expense information that will be supplemented or used in lieu of the Tax Commissioner's annualization calculations. W. Va. Code Ann. § 11-1C-10 (West 2025).

7. ". . .in the case of oil property, natural gas property and managed timberland, the Tax Commissioner **shall** complete the preparation of tentative appraisals and notify the affected owner or operator by December 1 of the assessment year, . . ." W. Va. Code Ann. § 11-6K-4(e)(1)(West 2025).

8. This Tribunal cannot construe any statute in a way that renders it null. *See e.g.* Board of Educ. of County of Wood v. Airhart, 212 W.Va. 175, 569 S.E.2d 422 (W.Va.,2002);

Dunlap v. Friedman's, Inc., 213 W.Va. 394, 582 S.E.2d 841 (W.Va.,2003); State v. Lucas, 201 W.Va. 271, 496 S.E.2d 221 (W.Va.,1997).

9. In a hearing before the West Virginia Office of Tax Appeals, 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).

10. The property owner has not met its burden of showing that the Tax Commissioner's failure to meet his December 1, 2023, deadline to provide it with the tentative values of its natural gas producing property 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 the Petitioner's request that this Tribunal issue an Order, directing the Tax Commissioner to modify the valuations of its first year wells for property tax year 2024 is hereby **DENIED**.

WEST VIRGINIA OFFICE OF TAX APPEALS

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

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Date Entered