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REDACTED DECISION – DK # 25-1082

**BY: MICHAEL E. BEVERS, ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON JANUARY 27, 2026
ISSUED ON MARCH 30, 2026**

FINAL DECISION

This is a Property Tax Appeal for the 2025 Tax Year, asking this tribunal to overturn a natural resources appraisal. The Taxpayer owns coal reserves in wells located in Boone County, West Virginia. The State Tax Commissioner appraised the value of the Petitioner's coal reserves, and the Boone County Assessor assessed the property based on the Tax Commissioner's appraisal.

The Taxpayer filed a Petition for Appeal with this tribunal, challenging the State Tax Commissioner's valuation of the coal reserves. This tribunal held an Evidentiary Hearing on October 3, 2025, at which Floyd M. Sayre III represented the Petitioner and Robert B. Wilson represented the Respondent. The parties filed post-hearing briefs, and the case became ripe for decision when the record closed on January 27, 2026. Having reviewed the exhibits, the hearing transcript, the parties' briefs and arguments, and the relevant authorities, this tribunal finds that the Petitioner has not met its burden of proving that the Tax Commissioner's actions were incorrect.

FINDINGS OF FACT

1. The Petitioner is Blackacre Land Company (hereafter "Blackacre" or "Petitioner").

2. The Respondent is the State Tax Commissioner of West Virginia ("Tax Commissioner" or "Respondent").

3. Blackacre owns coal reserves in Boone County, West Virginia. Evidentiary Hearing Transcript ("Transcript") at p. 7.

4. The Parcel in dispute is Boone County Parcel No. 00-0000-0000-0000-0000. Petitioner's Exhibit ("PX–") B; PX–C4; Respondent's Exhibit ("RX–") 3; RX–4; Transcript at pp. 1, 43.

5. Blackacre's property has 25 seams of coal. Transcript at p. 10.

6. Seven of the 25 coal seams on Blackacre's property are mineable. Transcript at p. 10.

7. The appraised value of Blackacre's coal reserves for Property Tax Year 2024 was $21,530.00. *See* PX–B at unnumbered p. 1; RX–3; Transcript at p. 7.

8. The appraised value of Blackacre's coal reserves for Property Tax Year 2025 is $155,840.00. *See* PX–B at unnumbered p. 2; RX–4; Transcript at p. 7.

9. The Tax Division provided the Tentative Appraised Values of Blackacre's coal reserves for Tax Year 2025 on October 15, 2024. Petitioner's Brief at p. 3.

10. Rather than sending information to the Tax Commissioner after it received the Tentative Appraisals, Blackacre requested an Audit. Transcript at pp. 61–62.

11. The Audit showed no clerical or administrative errors by the Tax Commissioner, the Auditor, or the Assessor, so the valuation did not change. Transcript at pp. 72, 73.

12. Blackacre filed the underlying Petition for Appeal on March 31, 2025.

13. The Tax Division provided the final appraisals of Blackacre's coal reserves for Tax Year 2025 on May 13, 2025. Transcript at p. 42.

14. Blackacre has provided no information to the Tax Division in response to the tentative appraisal. Transcript at pp. 61–62.

15. Lori Frees, a geologist and lead worker with the Property Tax Division of the Tax Division, was the only witness who testified.

16. Blackacre alleges that the 2025 appraisal value should not be higher than the 2024 appraisal value.

17. At the Hearing, Blackacre acknowledged that the Tax Division's methodology is valid, but argued that the valuation was wrong. Transcript at p. 3.

18. Blackacre continues to argue that the Tax Division's valuation is wrong.

DISCUSSION

The main issue in this appeal is whether the Tax Commissioner properly valued Blackacre's coal reserves for the 2025 Property Tax Year. Blackacre claims that the Tax Commissioner misapplied the law and did not appraise its mineral interests at their true and fair value. The Tax Commissioner argues that he followed the law and accurately valued Blackacre's mineral interests by adhering to the statutory and regulatory valuation methods outlined in West Virginia Code Chapter 11, Article 1C, Section 10, and West Virginia Code of State Rules Title 110, Series 1I, Section 4.2.

I. STATUTORY AND REGULATORY FRAMEWORK

The statutes and regulations related to this matter are unambiguous. Therefore, this tribunal will enforce all words and give them their plain and usual meaning.[1]

[1] *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).

The West Virginia Constitution states 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). And by extension, all natural resources property is assessed at 60% of its actual value. W. Va. Code Ann. § 11-6K-1(a) (West 2025).

An assessing officer's property valuation for taxation purposes is presumed to be correct.[2] In a hearing before the West Virginia Office of Tax Appeals, the petitioner must prove that a property appraisal is mistaken, unlawful, or otherwise invalid. W. Va. Code Ann. § 11-10A-10(e) (West 2021); *see also* W. Va. Code St. R. §§ 121-1-37.5 and 51.12.1 (2023). To meet its burden of proof, the petitioner must prove its case by a preponderance of the evidence. W. Va. Code Ann. §§ 11-3-24(k), 11-3-24a(e), and 11-10A-10(h) (West 2021). If the evidence supports both sides equally, the party bearing the burden of proof has not met its burden. *Adkins v. Smith*, 142 W. Va. 772, 98 S.E.2d 712 (1957).

West Virginia Code Chapter 11, Article 1C, Section 10, governs the valuation of natural resources property by the Tax Commissioner; "natural resources property" includes, but is not limited to coal, oil, natural gas, managed timberland, limestone, dolomite, sandstone, shale, sand, gravel, salt, lead, zinc, manganese, iron ore, radioactive minerals, and other minerals. W. Va. Code Ann. § 11-1C-10(a) (West 2025). Chapter 11, Article 1C, Section 10, subsection (d), requires the

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[2] *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).

State Tax Commissioner to assess the fair market value of natural resources property within the state and keep accurate records of these values. W. Va. Code Ann. § 11-1C-10(d) (West 2025). Chapter 11, Article 1C, Section 10, subsection (d), subdivision (2), provides that in cases of natural resources property other than managed timberland:

> the commissioner shall develop an inventory on a county by county basis of all such property and may use any resources, including, but not limited to, geological survey information; exploratory, drilling, mining and other information supplied by natural resources property owners; and maps and other information on file with the state Department of Environmental Protection and office of miners' health, safety and training. . . . Formulas for natural resources valuation may contain differing variables based upon known geological or other common factors. . . . At least every five years, the commissioner shall review current technology for the recovery of natural resources property to determine if valuation methodologies need to be adjusted to reflect changes in value which result from development of new recovery technologies.

W. Va. Code Ann. § 11-1C-10(d)(2) (West 2025). And Chapter 11, Article 1C, Section 10, subsection (e), provides:

> The Tax Commissioner shall develop [plans] for the valuation of industrial property and . . . natural resources property. The plans shall include expected costs and reimbursements, and shall be submitted to the property valuation training and procedures commission on or before January 1, 1991, for its approval on or before July 1, of such year. Such plan[s] shall be revised, resubmitted to the commission and approved every three years thereafter.

W. Va. Code Ann. § 11-1C-10(e) (West 2025).

The West Virginia Code of State Rules clarifies and implements the statutes in West Virginia Code Chapter 11, Article 1C, Section 10. West Virginia Code of State Rules Title 110, Series 1I [Number One, Letter I], governs the appraisal of active and reserve coal properties at market value for ad valorem property tax purposes. Title 110, Series 1I, Section 2.1, states that coal is one of several estates in real property that can be owned either separately or together with other estates; that if coal is owned as a separate estate, West Virginia property tax law requires that ownership be listed, appraised, and taxed; and that coal can be owned without being mined. W. Va. Code R. § 110-1I-2.1 (2025).

West Virginia Code of State Rules Title 110, Series 1I, Section 4.2 governs the valuation of reserve coal properties. This regulation provides that reserve coal is valued using the Reserve Coal Valuation Model ("RCVM") (W. Va. Code R. § 110-1I-2.1 (2025)), which is defined as the computerized valuation method applied in a mass appraisal setting to estimate the value of reserve coal property for ad valorem property tax purposes (W. Va. Code R. § 110-1I-3.50 (2025)). The RCVM consists of a computer model that uses a database with coal beds, characteristics, property locations, mine locations, sales, transportation, and other related data for the entire state. An extensive algorithm calculates in-place tonnage, expected mining time, and present value for all mineable coal on every property. Thus, there are no set rates available on reserve coal under the Rule. PX–D at p. 28 of 33; RX–1 at p. 28 of 33.

Code of State Rules Title 110, Series 1I, Subsection 4.2.3 sets out the procedure the Tax Commissioner uses to determine the RCVM portion of the value of reserves in West Virginia. W. Va. Code R. § 110-1I-4.2.3 (2025). Subdivision 4.2.3.17 provides that the Tax Commissioner shall establish a valuation factor for each reserve coal bed by assigning numerical values to six specific factors. W. Va. Code R. § 110-1I-4.2.3.17 (2025). These six valuation factors are:

1. Market Interest Factor: Defined as an index indicating the relative coal market activity in a specific area (W. Va. Code R. § 110-1I-3.33 (2025)), this factor pertains to transactions (sales, leases, prospects, permit applications, etc.) and mining concerning properties and locations, counting the number of transactions within a five-mile radius. The Tax Commissioner assigns a relative market interest factor based on geographic information system maps of market transactions. Using geostatistical analysis of the correlation between transaction density and mining activity, a factor between 20 and 80 is assigned to each property. W. Va. Code R. § 110-1I-4.2.3.17.a (2025). If more than 100 transactions occur within a five-mile radius, the factor is 20; if between 70 and 100 transactions, the factor is 40; and if fewer than 70 transactions, the factor is 80. *See* PX–D at p. 28 of 33; RX–1 at p. 28 of 33.

2. Market Mineability Factor: Defined as an index indicating the relative cost of mining in a specific area (W. Va. Code R. § 110-1I-3.34 (2025)), this factor reflects the relationship between property location and mining activities over time by counting the number of mines within a 2½-mile radius. The Tax Commissioner assigns a market mineability factor based on the mining history within a certain radius (determined biannually through geostatistical analysis) around the property. If there is no record of mining in the area, the factor is 80; if mining occurred only between 1974 and 1983, the factor is 40; and if mining took place before 1974 and has continued to the present, the factor is 20. W. Va. Code R. § 110-1I-4.2.3.17.b (2025).

3. Prime Coal Bed Factor: Defined as an index indicating the relative coal market activity in a specific area (W. Va. Code R. § 110-1I-3.44 (2025)), the Tax Commissioner assigns a prime coal bed factor based on whether the coal bed is designated as a prime coal bed. "Prime coal bed" means the thickest, previously mined, stratigraphically highest coal bed in an area, with enough mineable tons to sustain mining for two years at the average rate of mining in the general area of the bed for the most recent three calendar years, or at a default rate of 100,000 tons per year. W. Va. Code R. § 110-1I-3.43 (2025). The coal bed designated as the prime coal bed receives a factor of 20, and all other coal beds receive a factor of 80. W. Va. Code R. § 110-1I-4.2.3.17.c (2025).

4. Environmental Factor: Defined as an index that measures environmental obstacles to mining, such as wild and scenic rivers, severe acid mine drainage problems, and areas deemed unsuitable for mining by the Division of Environmental Protection. (W. Va. Code R. § 110-1I-3.27 (2025)). This factor connects known environmental hazards and barriers to mining at the coal bed. If an environmental obstacle significantly blocks mining, the environmental factor is 80; if it significantly hampers mining, the factor is 40; if it might affect mining to a lesser extent, the factor is 20; and if no environmental issues impact mining, the factor is 0. W. Va. Code R. § 110-1I-4.2.3.17.d (2025).

5. Use Conflict Factor: This factor indicates the relationship between oil and gas well drilling and mining based on the property's location. The Tax Commissioner assigns a use conflict factor for each coal bed on a property, based on geostatistical analysis comparing the distribution of oil and gas wells with active coal mines. The assigned factor ranges from 0 to 80, depending on the analysis results. W. Va. Code R. § 110-1I-4.2.3.17.e (2025). If there are fewer than three wells per square mile, the factor is 0; three or four wells per square mile, the factor is 20; five or six wells per square mile, the factor is 40; and seven or more wells per square mile, the factor is 80. See PX–D at p. 29 of 33; RX–1 at p. 29 of 33.

6. Volatility Factor: Defined as a measure used to identify coal with a low enough volatility content to make it unsuitable for steam coal markets (W. Va. Code R. § 110-1I-3.60 (2025)), it evaluates the quality of coal. The Tax Commissioner uses geographic information system maps and data files of coal bed

> characteristics to assign the volatility factor based on the volatility content of each coal bed on the property. "Volatility content" is a decimal representing the percentage of volatile matter in dry coal. W. Va. Code R. § 110-1I-3.59 (2025). If the volatility content exceeds 17%, the factor is 0; if it is 17% or less, the factor is 80. W. Va. Code R. § 110-1I-4.2.3.17.f (2025).

After calculating the six specific reserve coal bed valuation factors listed above, the Tax Commissioner determines the Coal Bed Index Factor, which is used as the exponent "t" for each coal bed (and is commonly called the "T Factor"). W. Va. Code R. § 110-1I-4.2.3.17.g (2025). The Coal Bed Index Factor is assigned to each coal bed and is expressed as the sum of all the reserve coal bed valuation factors referenced above, divided by three, and rounded to the nearest value of 20, 40, or 80. *E.g.*, *id.*; W. Va. Code R. § 110-1I-3.21 (2025).

The scope of an administrative agency's authority is limited to what is granted by law. The law creates administrative agencies and their executive officers, and the Legislature delegates their duties. Their power relies on statutes, so any authority they claim must be found within those statutes. Agencies and their officers have no general or common-law powers, only those explicitly or implicitly granted by law. 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)).

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

II. BACKGROUND INFORMATION

No owner, director, or officer of Blackacre testified at the hearing. The only witness was Lori Frees, a geologist with the Property Tax Division of the Tax Division. Ms. Frees, who is the lead worker who handles all the coal properties, has been a Geologist IV for over a year and was a Geologist II for seven years.

Ms. Frees noted that Blackacre did not send any information to the Tax Commissioner between the time it received the Tentative Appraised Value and the Final Appraised Value. It requested an audit. The audit revealed no clerical or administrative errors by the Tax Division, so the Tax Division made no changes.

Ms. Frees testified about how the Tax Division generally values coal reserve property and how it valued Blackacre's coal reserves. She explained how the Tax Division determined the six valuation factors for Blackacre's coal reserves and calculated the overall Coal Bed Index Factor, or T Factor. Her testimony followed the applicable regulations in the Code of State Rules Title 110, Series 1I, Subdivision 4.2.3.17, paragraphs a through g.[3]

Ms. Frees testified that for Tax Year 2024, the value of Blackacre's coal reserves was $21,530.00, and for Tax Year 2025, the value was $155,840.00. Ms. Frees explained that the Tax Division uses the Reserve Coal Valuation Method's six factors to estimate coal reserve values: (1) the well factor; (2) the mine factor; (3) the transactions factor; (4) the volatility factor; (5) the environmental factor; and (6) the seam factor. She noted that, in this case, the only factor that changed from 2024 to 2025 was the transactions (market interest) factor—the other five factors remained the same.

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[3] Some of the terms Ms. Frees used in her testimony and exhibits differ from the terms in the regulations, presumably to simplify conversations and to save space in spreadsheets and other documents—as she testified, "I believe we're colloquial sometimes with them." Transcript at p. 35. Given here in the order listed in the regulations, the differences and uniformities are: first, the regulations use the term "market interest factor," but Ms. Frees uses the term "transactions factor;" second, the regulations use the term "market mineability factor," but Ms. Frees uses the term "mine factor;" third, the regulations use the term "prime coal bed factor," but Ms. Frees uses the term "seam factor;" fourth, the regulations and Ms. Frees both use the term "environmental factor;" fifth, the regulations use the term "use conflict factor," but Ms. Frees uses the term "well factor;" and sixth, the regulations and Ms. Frees both use the term "volatility factor." The differences in the terms could be confusing, but this tribunal finds that these differences do not detract from the probative value of Ms. Frees's exhibits or testimony.

Market Interest Factor: Ms. Frees testified that this factor measures the number of ownership changes, conveyances, sales, leases, and mine permits issued within a five-mile radius, indicating economic activity or desirability. In 2024, the transactions (market interest) factor was 80, and in 2025, it was 20. This was the only reserve coal bed valuation factor that changed between 2024 and 2025.

Ms. Frees testified that the Tax Division identified 200 transactions within a five-mile radius, most of which occurred in 2022 and 2023. She explained that the Tax Division calculates the number of transactions based on ownership information received from county assessors, which means, for example, that a property transferring from one owner to multiple owners would not count as a single transaction but would be counted as the number of recipients.

Ms. Frees testified that the Tax Commissioner updates the transaction factor variables every other year. For Tax Year 2024, the Tax Commissioner included two years' worth of transactions when calculating the transaction factor. In 2025, the Tax Commissioner used three years' worth. Ms. Frees noted that the length of the look-back period for counting transactions is cumulative at the discretion of the Tax Commissioner, that it is not limited to only two years of transactions, and that an increase from 28 transactions in 2024 to more than 200 transactions in 2025 seemed reasonable.

Market Mineability Factor: Ms. Frees testified that this factor considers the depth of the coal and whether it can be mined with current industry technology. Ms. Frees explained that the mine (market mineability) factor was 20 in both 2024 and 2025. She noted that the history of mining on the property shows that two coal mines filed tax returns that included this parcel number—the Hobet Mine had a permit to operate from 1998 through 2024 but did not mine enough coal to reach a certain lower threshold, and the Alma Deep Mine No. 3 filed returns from 2004 to 2022, meaning that mining stopped in or before 2022.

Prime Coal Bed Factor: Ms. Frees testified that Blackacre's property has 25 coal seams, of which seven are mineable. The highest and thickest seam on the property is the prime coal bed. Ms. Frees noted that although prime coal beds can shift, the Powhatan Seam was Blackacre's prime coal bed in 2024 and 2025, and most of the reserve coal value is based on the Powhatan Seam. She explained that a coal bed designated as the property's prime coal bed receives a seam factor of 20, while all others receive a factor of 80. That is why in both 2024 and 2025, the Powhatan Seam—the designated prime coal bed—received a seam factor of 20, and all other seams received a factor of 80.

Environmental Factor: Ms. Frees testified that this factor relates to known environmental hazards and barriers that could affect the likelihood of mining at the coal bed. It considers elements such as windmill farms, high sulfur content, protected lands, national parks, and state parks, which could negatively impact the desirability or availability of coal. The environmental factor was 0 in both 2024 and 2025 because the Tax Division found no environmental issues that would impact mining.

Use Conflict Factor: Ms. Frees testified that this factor shows the relationship between oil and gas well drilling and mining, based on the number of gas wells or other infrastructure placed into or around the coal seams. Here, there were fewer than three wells per square mile, and the number of wells did not increase from 2024 to 2025. Consequently, the well use conflict factor assigned to the property for the Powhatan Seam was 20 in both 2024 and 2025.

Volatility Factor: Ms. Frees testified that this factor measures the quality of coal, or "is it good or bad to burn?" Transcript at p. 15. Here, the coal's quality made it suitable for the steam coal markets, so the volatility factor was 0. The quality of the coal did not change between 2024 and 2025, so the volatility factor remained 0.

Ms. Frees explained that Blackacre's coal reserves increased in value because the overall Coal Bed Index Factor (T Factor) changed from a T Factor of 40 in 2024 to a T Factor of 20 in 2025. In 2024, the six factors totaled 140, which was divided by 3 to get 46.67, then rounded to the nearest value of either 20, 40, or 80 (here it was 40), resulting in a T Factor of 40. In 2025, the six factors totaled 80, divided by 3 to get 26.67, then rounded to 20.

III. ANALYSIS

Blackacre presents three arguments: (1) the Commissioner improperly calculated the T Factor by arbitrarily using three years of transactions instead of two; (2) the Commissioner incorrectly determined the T Factor by ignoring the actual number of parcel transactions and substituting unsupported figures; and (3) the Tax Commissioner miscalculated the mineability factor. Petitioner's Brief at p. 9. The Tax Commissioner responds: (1) the look-back period is cumulative and not limited to two years of transactions; (2) the Tax Commissioner correctly found that ownership changes, sales, leases, and mine permits issued within a five-mile radius totaled more than 200 transactions; and (3) the Tax Commissioner's mineability factor calculation was correct.

Blackacre's First Argument—that the Tax Commissioner improperly calculated the T Factor by arbitrarily using three years of transactions instead of two years—fails because Blackacre has presented no facts, statutory authority, regulatory authority, or case law that supports it. Curiously, Blackacre begins its argument, "[w]hat West Virginia Code § 11-3-24 does not give to the appellant [Blackacre] is any authority to exacerbate errors in assessments made by the assessor or to, in any event, attempt to override the authority of the West Virginia Tax

Commissioner to value natural resource properties." Petitioner's Brief at p. 9. This admission alone scuttles Blackacre's arguments.

The section of Blackacre's Brief that contains its first argument includes mostly quotes from and summaries of statutes and regulations, some of which support Blackacre's overall theory. Petitioner's Brief at pp. 9 to 16. Yet the statutes and regulations on which Blackacre relies neither directly state nor clearly support Blackacre's allegation that the Tax Commissioner is limited to a two-year look-back period.

The governing authorities specify that maps and data files related to several valuation factors for the reserve coal bed must be updated at least twice a year. This does *not* mean that the factors can only contain data from the last two years. It means that the most recent two years of data must be added.

Ms. Frees testified that the transactions the Tax Division considered in 2025 are a cumulative total of transactions within a five-mile radius of Blackacre's property. She explained that the goal is to determine the total sum of the transactions. When asked how far back the transactions go to determine the transactions (market interest) factor, she said, "I'm uncertain of the year, but my understanding is it's cumulative at the discretion of the tax commissioner." Transcript at p. 21. When asked if the information compiled for 2025 would become historical data not used for Tax Year 2027, she explained, "It is — my understanding is it is used. It's a cumulative accrual, as best of my understanding. But this particular, the accrual of it and what qualifies isn't my purview, from what I understand. *It's not zeroed out*." Transcript at p. 80 (emphasis added).

The look-back period is not limited to two years of transactions—it is cumulative. Although Blackacre disputes the Tax Commissioner's appraisal, it has provided no legal authority, documentary evidence, or testimonial proof that the Tax Commissioner's decision to use three years of transactions instead of two was incorrect. As a result, its first argument is without merit.

Blackacre's Second Argument also disputes the Tax Commissioner's method of calculating the market interest (transactions) factor, but from a different perspective. Blackacre argues that the Tax Commissioner incorrectly determined the T Factor by ignoring the actual number of parcel transactions and substituting a figure not supported by the evidence. But this argument fails because the record does not support Blackacre's claim

The second argument section of Blackacre's Brief consists of three paragraphs, one of which contains a single sentence. Petitioner's Brief at pp. 16–17. Blackacre claims that more than 90% of its parcels have multiple listings and argues, "[i]t is inconceivable that the legislature contemplated that a very fertile octogenarian who produces 53 heirs should count for 53 transactions in the calculations." *Id.* at p. 16. Blackacre then argues that the Commissioner's use of three years of data instead of two, along with the "incomprehensible method of counting two parcel transactions and 104 transactions, are clearly ultra vires and void." *Id.* This is nearly unintelligible.

Transactions include conveyances, sales, leases, prospects, and permit applications within a five-mile radius of the property. When asked how a conveyance of one parcel of land could count as more than one transaction, Ms. Frees testified:

> ATTORNEY SAYRE: How do you explain the multiple parcel listings on these transactions?
>
> MS. FREES: The --- some of these parcels that are duplicated, and we were aware of that coming into it. They have multiple owners. Let's say --- this is one --- this is one of the reasons. Let's say maybe that the parcel you mentioned has a --- grandpa left it to his 20 kids, and there are 20 co-owners of that. A singular transaction. They sold it to their next generation. That is 20 transactions at that point because each co-owner is an independent, unique owner of the parcel.

> ATTORNEY SAYRE: So.
>
> MS. FREES: That's one of the reasons.
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> ATTORNEY SAYRE: So, your transaction factor, if, for instance, we have an example like that, where grandma and grandpa passed and [there are] now 20 grandchildren that have an interest in the estate, and I, as the coal company, come and purchase that one track of land, you're listing that as 20 transactions?
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> MS. FREES: We do.
>
> ATTORNEY SAYRE: Even though it may just be one deed with 20 signatures on it?
>
> MS. FREES: They would be listed. . . . However the county assessor [has] split it. If they have split it into co-owners in our database with separate, unique identifying owner sequence numbers, it would be.

Transcript at p. 29.

The definition of "Transactions" specifically includes "grantor/grantee of all coal property leases, sales, and permit applications in the State of West Virginia, as available." W. Va. Code R. § 110-1I-4.2.3.5 (2025). The governing regulation provides that if more than 100 transactions occur within a five-mile radius of the property, the resulting market mineability factor is 20. W. Va. Code R. § 110-1I-4.2.3.17.a (2025). Blackacre's Market Data map shows two leases represented by blue stars and numerous sales and lease transactions (too many to count with the naked eye) represented by red diamonds within that five-mile radius. PX–C-4. And Ms. Frees testified that the Tax Division identified 200 transactions within the five-mile radius surrounding Blackacre's property.

The record supports the Tax Commissioner's conclusion that all ownership changes, sales, leases, and mine permits that were issued within a five-mile radius number more than 200 transactions. Neither the documentary nor testamentary evidence supports Blackacre's second argument. For that reason, it is unpersuasive.

Blackacre's Third Argument—that the Tax Commissioner incorrectly calculated the market mineability factor—is flawed and undermines itself. It fails because it is not supported by the relevant regulation, which is Code of State Rules Title 110, Series 1I, paragraph 4.2.3.17.b.

The mine (market mineability) factor was 20 in 2024 and again in 2025. The Commissioner's 2024 market mineability factor determination is final and can no longer be challenged. The Commissioner's 2025 market mineability factor determination would be fair game if Blackacre could show a change in circumstances, but Blackacre has shown no such change, so its challenge falls short.

Blackacre asks this tribunal to double the market mineability factor from 20 to 40. Unfortunately for Blackacre, the controlling regulation does not support this request.

The controlling regulation considers the depth of the coal and how easily it can be mined. It provides that, based on mining history, the Tax Commissioner determines the market mineability factor by counting the number of mines within a 2½-mile radius. If there is no record of mining in the area, the factor is 80; if mining occurred only between 1974 and 1983, the factor is 40; and if mining took place before 1974 and has continued to the present, the factor is 20. W. Va. Code R. § 110-1I-4.2.3.17.b (2025).

Blackacre's first problem is that it asks this tribunal to assume there are no active mines within the 2½-mile radius of Blackacre's property. We cannot do that.

Nobody disputes that mining on Blackacre's property stopped in or before 2022. Ms. Frees testified that mining on Blackacre's property ceased in or before 2022 (Transcript at pp. 32-33), and Blackacre states, "[m]ining ceased on the subject property in 2022" (Petitioner's Brief at p. 17; Petitioner's Reply Brief at p. 1). Ms. Frees testified that the Hobet Mine had a permit to operate from 1998 through 2024, but it mined little or no coal, and the Alma Deep Mine No. 3 stopped filing returns after 2022, meaning that mining stopped in or before 2022.

Although the record shows that Blackacre's property no longer has active mines, it does *not* show that the 2½-mile radius around Blackacre's property has no active mines, which is what Blackacre must prove. The *area* surrounding Blackacre's property is what matters here, and Blackacre has not shown that this surrounding area contains no active mines.

Blackacre's second problem is that it asks us to interpret the regulation in an illogical way. We cannot do that either.

Properly promulgated legislative rules that have gone through legislative rulemaking carry the force and effect of law, regardless of how much the executive branch was involved in their drafting. *See*, *Appalachian Power Company v. State Tax Department of West Virginia*, 195 W. Va. 573, 466 S.E.2d 424 (1995) (holding that as an act of the West Virginia Legislature, legislatively approved rules are entitled to more than deference; they are entitled to controlling weight).

The controlling regulation provides that if there is no record of mining in the area, the market mineability factor is 80; if mining occurred only between 1974 and 1983, the factor is 40; and if mining took place before 1974 and has continued to the present, the factor is 20. W. Va. Code R. § 110-1I-4.2.3.17.b (2025). Blackacre's property has a clear record of mining, so the market mineability factor cannot be 80. And Blackacre's property has a clear record of mining that occurred after 1983, so the market mineability factor cannot be 40.

That leaves mining that took place before 1974 and has continued to the present, which produces a market mineability factor of 20. The record is silent on when mining in the area began or whether there are currently active mines in the surrounding area. But since the record shows active mining on Blackacre's property until almost 40 years after 1983, the Tax Commissioner was correct in determining that the market mineability factor is 20. Accordingly, Blackacre's third argument lacks merit.

The Tax Commissioner did what he was obligated to do. He followed the law as it is written. Blackacre does not cite any legal authority that would permit the Tax Commissioner to ignore or modify any statute or regulation based on a perception of unfairness. The Tax Commissioner lacks such authority.

This tribunal also lacks that authority. Agencies are authorized to carry out administrative and executive functions, often needing to interpret their statutory and regulatory powers to suit the specifics of a case. But no agency may modify or rewrite statutes or regulations under the pretense of interpretation. Syl. Pt. 5, *Steager v. Consol Energy, Inc.*, 242 W. Va. 209, 832 S.E.2d 135 (2019).

The Office of Tax Appeals cannot ignore or rewrite any West Virginia law. For example, we are not permitted to create equitable remedies or award monetary damages to soften what might seem like a harsh outcome. We must adhere strictly to statutes and regulations as written. Therefore, we must uphold the Tax Commissioner's decision.

CONCLUSIONS OF LAW

1. The West Virginia Office of Tax Appeals has exclusive jurisdiction to hear appeals from any party dissatisfied with property classifications, property taxability determinations, 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 has the burden of proof to demonstrate that the actions taken by the Tax Commissioner are incorrect, 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. If the evidence supports both sides equally, the party that bears the burden of proof has not met its burden. *Adkins v. Smith*, 142 W. Va. 772, 98 S.E.2d 712 (1957).

5. 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).

6. 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).

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

8. Properly promulgated legislative rules that have gone through legislative rulemaking carry the force and effect of law, regardless of how much the executive branch was involved in their drafting. *See, Appalachian Power Company v. State Tax Department of West Virginia*, 195 W. Va. 573, 466 S.E.2d 424 (1995) (holding that as an act of the West Virginia Legislature, legislatively approved rules are entitled to more than deference; they are entitled to controlling weight).

9. 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.

10. The Tax Commissioner must diligently enforce the laws regulating property assessment and the collection of all taxes and levies. W. Va. Code Ann. § 11-1-2 (West 2010).

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

12. 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).

13. 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).

14. "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).

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

16. An assessing officer's property valuation for taxation purposes is presumed to be correct.[4]

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[4] *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 (cont'd)

17. Reserve coal is valued using the Reserve Coal Valuation Model ("RCVM"). W. Va. Code R. § 110-1I-2.1 (2025).

18. The RCVM is the computerized valuation method applied in a mass appraisal setting to estimate the value of reserve coal property for ad valorem property tax purposes. W. Va. Code R. § 110-1I-3.50 (2025).

19. The Tax Commissioner establishes a valuation factor for each reserve coal bed by assigning numerical values to six specific factors: (1) the market interest factor; (2) the market mineability factor; (3) the prime coal bed factor; (4) the environmental factor; (5) the use conflict factor; and (6) the volatility factor. W. Va. Code R. § 110-1I-4.2.3.17 (2025).

20. The Tax Commissioner determines the overall Coal Bed Index Factor by adding the six specific subfactors listed above, dividing the total by three, and rounding to the nearest value of 20, 40, or 80. W. Va. Code R. § 110-1I-4.2.3.17.g (2025).

21. The Tax Commissioner's appraisal was based on the correct use of the West Virginia Coal Reserve Valuation Model.

22. Blackacre failed to meet its burden of showing that the Tax Commissioner's valuation was erroneous, unlawful, void, or otherwise invalid.

DISPOSITION

Based upon the foregoing, it is hereby **ORDERED** that the Tax Commissioner's valuation of Blackacre's coal reserves for Property Tax Year 2025 is deemed to be correct and is

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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).

AFFIRMED. And thus, Blackacre's request that this tribunal issue an Order directing the Tax Commissioner to modify the valuations of its coal reserves for Property Tax Year 2025 is **DENIED.**

WEST VIRGINIA OFFICE OF TAX APPEALS

By: ______________________________________
Michael E. Bevers
Administrative Law Judge

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Date Entered