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IN THE CIRCUIT COURT OF HARDY COUNTY, WEST VIRGINIA

PILGRIM'S PRIDE CORPORATION, and
PILGRIM'S PRIDE CORPORATION of
WEST VIRGINIA, INC.,
Petitioner

vs. Civil Action No. 09-AA-1

CHRISTOPHER G. MORRIS, State Tax
Commissioner of the State of West Virginia,
and JIM B. WRATCHFORD, County Assessor
of Hardy County, West Virginia,
Respondents

ORDER

On this 11th day of August, 2010, this matter came on for consideration of Petitioners' Motion for Summary Judgment, the West Virginia State Tax Department's and the Hardy County Assessor's Motions for Summary Judgment. Each Motion was accompanied by a Brief, and was filed on June 22, 2010. The Petitioners' filed a Response to the Brief of the West Virginia State Tax Department and the Hardy County Assessor on July 26, 2010. The West Virginia State Tax Department filed a Response to Petitioners' Brief on July 23, 2010.

By Order dated June 30, 2010, the parties agreed that the matter should be considered as submitted upon the aforesaid pleadings unless the Court deemed oral

argument necessary. By Order dated July 2, 2010, the Court set the matter for oral argument on August 5, 2010.

Upon consideration of all of which the Court GRANTS the State Tax Commissioner's and the Hardy County Assessor's Motions for Summary Judgment, and GRANTS Pilgrim's Pride's Motion for Summary Judgment, but only with regard to Pilgrim's Pride's claim for a tax exemption for personal property located at its hatcheries. Further, the Court DENIES Pilgrim's Pride's Motion for Summary Judgment on all other claims. The Court's decision is based upon the following Findings of Fact and Conclusions of Law.

BACKGROUND AND PROCEDURAL HISTORY

Pilgrim's Pride, which was incorporated in Texas in 1968, and reincorporated in Delaware in 1986, is one of the world's largest poultry producers, and has one of the best known brand names in the poultry industry. Its personal property in Hardy County includes property used in its hatcheries, feed mill, "live haul" center, fresh processing plant, protein conversion facility, prepared foods facility, and cold storage facility. Each individual business segment has a separate account number for tax purposes.

In 2006, Pilgrim's Pride described its business activities as "Vertically Integrated Poultry Producer," "Vertically Integrated Poultry Manufacturer," "Poultry Processing"

or simply "Poultry." In 2007, all business activity was described as "Vertically Integrated Poultry Producer/Processor," and in 2008, the same was described as "Vertically Integrated Poultry Processor."

For tax year 2009, Pilgrim's Pride filed five industrial personal property returns describing its businesses as "Poultry Farmer" and claiming tax exemption allowed for commercial farming activities found in W. Va. Code § 11-3-9(a)(21) (the "Subsistence of Livestock" Exemption), and W. Va. Code § 11-3-9(a)(28) (the "Farm Use" Exemption). Pilgrim's Pride claimed one or both of these exemptions for assets associated with its hatcheries, feed mill, "live haul" center, fresh processing plant, and protein conversion facility. Pilgrim's Pride did not claim either exemption for personal property associated with its prepared foods operations or cold storage facility.

On or about January 2, 2009, the Assessor of Hardy County (the "Assessor") submitted a request for a ruling to the State Tax Commissioner of the State of West Virginia (the "Commissioner") asking whether any personal property owned by Pilgrim's Pride and located in Hardy County is exempt from *ad valorem* taxation under the aforementioned exemptions. On or about February 26, 2009, the Commissioner issued Ruling 09-38, stating "that the property located in Hardy County and owned by Pilgrim's Pride Corporation, is subject to *ad valorem* property taxation" because Pilgrim's Pride is vertically integrated. On March 18, 2009, Pilgrim's Pride filed this appeal.

FACTS

The parties have stipulated to the following facts:

1. Pilgrim's Pride Corporation is a Delaware corporation.

2. Pilgrim's Pride Corporation's principal address is 4845 US Highway 271 North, Pittsburg, Texas 75686-0093.

3. Pilgrim's Pride of West Virginia, Inc. is a wholly-owned subsidiary of Pilgrim's Pride Corporation.

4. Pilgrim's Pride of West Virginia, Inc.'s principal address is 129 Potomac Avenue, Moorefield, West Virginia 26836-1246.

5. Pilgrim's Pride sells processed chicken meat and prepared chicken products for consumption in wholesale and retail markets.

6. Pilgrim's Pride's website provides a general description of its business operations. A copy of this description is identified in the stipulation of facts in **Joint Exhibit 1.**

7. Pilgrim's Pride conducts no business activities in Hardy County, West Virginia other than those identified in the stipulation of facts in **Joint Exhibit 1.**

8. Pilgrim's Pride has not substantially changed its business operations in Hardy County since it began operation in 2001.

9. A true and accurate copy of the West Virginia Business Registration

Application ("Form 801") filed by Pilgrim's Pride in November 2001 is identified in **Joint Exhibit 2.** The Joint Exhibit also includes a true and accurate copy of page 18 from the instruction booklet for Form 801, which lists the North American Industry Classification System ("NAICS") utilized in completing Form 801.

10. On or about January 2, 2009, the Assessor of Hardy County (the "Assessor") submitted a request for a ruling to the State Tax Commissioner of the State of West Virginia (the "Commissioner") on whether certain personal property owned by Pilgrim's Pride and located in Hardy County is exempt from *ad valorem* taxation. A copy of this request is identified in **Joint Exhibit 3.**

11. On or about January 7, 2009, Pilgrim's Pride submitted a letter to the Commissioner providing information about Pilgrim's Pride's business activities in Hardy County. A copy of this letter is identified in **Joint Exhibit 4.**

12. On or about February 26, 2009, the Commissioner responded to the Assessor and issued Ruling 09-38, stating "that the property located in Hardy County and owned by Pilgrim's Pride Corporation, is subject to *ad valorem* property taxation." A copy of Ruling 09-38 is identified in **Joint Exhibit 5.**

13. A true and accurate copy of the *ad valorem* property tax returns as maintained in the records of the West Virginia State Tax Department ("Tax Department") for the tax years 2009, 2008, 2007, and 2006, is identified in **Joint Exhibits 6** (2009), **7** and **8** (2008), **9** and **10** (2007), and **11** (2006), which include

the tax returns as filed by Pilgrim's Pride and the valuation calculations performed by the Tax Department.

14. The true and actual value of Pilgrim's Pride's industrial personal property for the 2009 *ad valorem* tax year is set forth below:

	Appraised Value	Assessed Value
Hatchery & Garage	$ 2,152,255	$ 1,291,353
Feed Mill & Grow Out	$ 4,833,958	$ 2,900,375
Live Haul	$ 358,434	$ 215,060
Fresh Processing Plant	$ 21,050,958	$ 12,630,575
Protein Conversion Plant	$ 2,009,302	$ 1,205,581
Prep Foods Plant	$ 15,730,126	$ 9,438,076
Cold Storage	$ 129,550	$ 77,730

15. All parties agree that the Prep Foods Facility Center and the Cold Storage units located in Hardy County, West Virginia, are not claimed as exempt from *ad valorem* property tax for the 2009 tax year pursuant to W. Va. Code §§ 11-3-9(a)(21) and 11-3-9(a)(28).

II. Pilgrim's Pride's Activities in Hardy County, West Virginia

16. Pilgrim's Pride owns personal property in Hardy County, West Virginia.

17. Pilgrim's Pride's personal property in Hardy County includes property used in its hatcheries, feed mill, fresh processing plant, protein conversion

facility, and live haul center.

18. Pilgrim's Pride employs approximately 2,000 individuals at its Hardy County, West Virginia, facilities.

19. On July 1, 2008, Pilgrim's Pride owned 4,014,990 live chickens, which were physically located in Hardy County, West Virginia. Of those live chickens, 443,060 chickens were located at the hatcheries and 389,810 chickens were located at the fresh processing plant. The live chickens located at the hatcheries and the fresh processing plant were located on real property owned by Pilgrim's Pride.

20. On July 1, 2008, Pilgrim's Pride owned 3,182,120 live chickens which were physically located at the contract broiler farms in Hardy County utilized by Pilgrim's Pride. Pilgrim's Pride does not own the real property on which the contract broiler farms are located.

A. Hatcheries

21. A true and accurate list of personal property used by Pilgrim's Pride in its hatcheries in Hardy County, West Virginia, is listed on **Joint Exhibit 12**. The book values of the listed assets as of September 15, 2008 are also included therein.

22. Pilgrim's Pride's hatcheries are located at 186 Industrial Park Drive, Moorefield, West Virginia 26836.

23. Pilgrim's Pride incubates chicken eggs, which are hatched in its hatcheries.

24. The hatcheries receive 1.8 to 2.1 million eggs weekly from contract breeder operations and incubate the eggs, which hatch into chicks.

B. "Grow Out" Process

25. After the eggs are hatched, Pilgrim's Pride relocates the chicks to broiler farms to mature or "grow out."

26. Pilgrim's Pride contracts with unrelated third-party growers to provide facilities and labor for the "grow out" process.

27. During the 2009 tax year, Pilgrim's Pride utilized approximately 61 unrelated third-party growers in the "grow out" process.

28. During the "grow out" process, Pilgrim's Pride provides the feed, and technical and veterinary services necessary to care for the birds.

C. Feed Mill

29. A true and accurate list of personal property used by Pilgrim's Pride in its feed mill in Hardy County, West Virginia, is listed on **Joint Exhibit 13**. The book values of the listed assets as of September 15, 2008 are also included therein.

30. Pilgrim's Pride's feed mill is located at 220 South Industrial Park in Hardy County, West Virginia.

31. At the feed mill, Pilgrim's Pride receives grain, corn, and soybean meal and other ingredients necessary to create its proprietary chicken feed mixture.

32. Pilgrim's Pride transfers its proprietary chicken feed mixture to the local "grow out" farms to be used during the "grow out" process.

D. "Catch and Haul"

33. A true and accurate list of personal property used by Pilgrim's Pride in its live haul center in Moorefield, West Virginia, is listed on **Joint Exhibit 14**. The book values of the listed assets as of September 15, 2008 are also included therein.

34. Pilgrim's Pride's "catch and haul" crews operate out of Pilgrim's Pride's live haul center, located at 220 South Industrial Park Road, Moorefield, West Virginia.

35. When the birds reach maturity, Pilgrim's Pride's "catch and haul" crews transfer the flock, including chickens located on broiler farms owned by third-party growers, to Pilgrim's Pride's fresh processing plant.

E. Processing Plant

36. A true and accurate list of personal property used by Pilgrim's Pride in its fresh processing plant in Hardy County, West Virginia, is listed on **Joint Exhibit 15.** The book values of the listed assets as of September 15, 2008 are also included therein.

37. Pilgrim's Pride's fresh processing plant is located at 129 Potomac Ave, Moorefield, West Virginia 26836.

38. At the fresh processing plant, Pilgrim's Pride slaughters and de-feathers the flock, and separates the individual parts from their carcasses.

39. The fresh processing plant harvests approximately 2.0 to 2.2 million

broilers per week into fresh chicken for retail, foodservice, and distributors.

F. Protein Conversion Facility

40. A true and accurate list of personal property used by Pilgrim's Pride in its protein conversion facility in Hardy County, West Virginia, is listed on **Joint Exhibit 16**, attached hereto. The book values of the listed assets as of September 15, 2008 are also included therein.

41. Pilgrim's Pride's protein conversion facility is located at 129 Potomac Ave, Moorefield, West Virginia 26836.

42. In Pilgrim's Pride's protein conversion facility, Pilgrim's Pride converts offal and feathers from the processing plant into poultry meal, poultry fat, and feathers meal to be sold on commodity markets.

DISCUSSION

In their Briefs and in oral argument, the State Tax Commissioner and County Assessor agree that Pilgrim's Pride hatcheries and "grow out" facilities are exempt from *ad valorem* taxation under the "Subsistence of Livestock Exemption" as set forth in W.Va. Code § 11-3-9(a)(21). Pilgrim's Pride does not claim an exemption for personal property located in its prepared foods facility and cold storage facility. The issues for summary judgment are whether Pilgrim's Pride's feed mill, "live haul" center, fresh processing plant, and protein conversion facility are exempt from *ad valorem* tax under W.Va. Code § 11-3-9(a)(28) known as the

Farm Use Exemption and whether Pilgrim's Pride's feed mill and "live haul" center are exempt from *ad valorem tax* under W.Va. Code § 11-3-9(a)(21) known as the Subsistence of Livestock Exemption.

"When ruling on a motion for summary judgment, the trial court must determine whether there is a genuine issue as to any material fact, and whether the moving party is entitled to judgment as a matter of law." Floyd v. Equitable Life Assurance Society, 164 W. Va. 661, 264 S.E.2d 648 (1980). The parties agree that there are no genuine issues as to any material fact and that this case should be decided upon the Parties' Motions for Summary Judgment.

It is a fundamental precept of tax law that an individual claiming to be exempt from a tax bears the burden of proving entitlement to the exemption. In an *ad valorem* property tax context, the West Virginia Supreme Court of Appeals has specifically stated that a party claiming to be exempt from property taxes must prove that it is entitled to claim the exemption. See In re Northview Services, Inc., 183 W.Va. 683, 398 S.E.2d 165 (1990) at Syll. Pt. 2.

In rendering a decision the Court must interpret exemptions set forth in W.Va. Code § 11-3-9(a)(28) and (21). In interpreting the statutes, the Court must consider three general principals applicable to statutory construction. First, "[w]here the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation." L.H. Jones Equipment Co. v. Swenson Spreader, LLC, 224 W. Va. 570, 687 S.E.2d 353, 358

(2009) citing State v. Elder, 152 W. Va. 571, 165 S.E.2d 108 (1968). Second, "every word in a statute should be given its typical meaning." Id. Finally, "the intent of the legislature [must] be acknowledged when interpreting a statute." Id.

Farm Use Exemption

The Farm Use Exemption found in W. Va. Code § 11-3-9(a)(28) provides that personal property used on a farm or in a farming operation is exempt from West Virginia *ad valorem* property taxation. Specifically, the statute reads:

> (a) All property, real and personal, described in this subsection, and to the extent limited by this section, is exempt from taxation:
>
> . . .
>
> (28) Personal property, including vehicles that qualify for a farm use exemption certificate pursuant to section two, article three, chapter seventeen-a of this code and livestock, employed exclusively in agriculture, as defined in article ten, section one of the West Virginia Constitution: Provided, that this exemption only applies in the case of such personal property used on a farm or farming operation that annually produces for sale agricultural products, as defined in rules of the Tax Commissioner; [emphasis added]

On its face, the statute requires (1) a taxpayer employ personal property exclusively in agriculture, and (2) the personal property must be located on a farm or part of a farming operation.

While the phrase "employed exclusively in agriculture" is found in the West Virginia Constitution, it is not explicitly defined, but includes "horticulture and grazing." W.Va. Constitution Art. X, § 1. It is further defined in W. Va. Code § 11-5-3, which states that property is used in "agriculture" if it is used primarily

in "the cultivation of the soil, including the planting and harvesting of crops and the breeding and management of livestock."

A farm is defined to mean and include "land currently being used primarily for farming purposes . . . ." W.Va. Code §11-1A-3(f). Land is used for "farming purposes" if it is used "to produce for sale, consumption or use, any agricultural products, including, but not limited to, livestock, poultry . . . or any of the products derived from any of the foregoing . . . ." W.Va. Code § 11-1A-3(g). Thus, for purposes of determining whether land is used for farming purposes, "agricultural products" are specifically defined to include poultry and any of the products derived from poultry. Id. Moreover, the synonymous term "products of agriculture" is defined as "those things the existence of which follows directly from the activity of agriculture, horticulture or grazing, including dairy, poultry, bee and any other similar products, whether in the natural form or processed as an incident to the marketing of the raw material." W. Va. Code § 11-5-3. A "farming operation" is not defined.

However, the West Virginia Legislature has expressly imposed a statutory restriction for *ad valorem* property tax purposes which places an additional restriction on a corporation. W. Va. Code § 11-1A-10(b) provides:

> Valuation of farm property
>
> (b) A person is not engaged in farming if he is primarily engaged in forestry or growing timber. Additionally, **a corporation is not engaged in farming unless its principal activity is the business**

> **of farming**, and in the event that the controlling stock interest in the corporation is owned by another corporation, the corporation owning the controlling interest must also be primarily engaged in the business of farming. [emphasis added]

Thus, in order to qualify for the farm or farming operation exemption from *ad valorem* property tax, the Pilgrim's Pride's principal activity must be the business of farming. The fundamental questions become (1) What is the "business of farming" and (2) What is Pilgrim's Pride's principal activity?

While Article 5, Chapter 11 of the West Virginia Code does not define "business of farming," W. Va. Code § 11-23-3(b)(8) does define the relationship between "doing business" and "agriculture and farming."

> Doing business – The term "doing business" means any activity of a corporation or partnership which enjoys the benefits and protection of the government and laws of this state, except **the activity of agriculture and farming, which shall mean the production of food, fiber and woodland products** (but not timbering activity) by means of cultivation, tillage of the soil and **by the conduct of** animal, livestock, dairy, apiary, equine or **poultry husbandry**, horticulture, or any other plant or animal production and all farm practices related, usual or incidental thereto, including the storage, packing, shipping and marketing, **but not including any manufacturing, milling or processing of such products by persons other than the producer thereof.**
>
> **The activity of agriculture and farming shall mean such activity, as above defined**, occurring on not less than five acres of land and the improvements thereon, used in the production of the aforementioned activities, and shall mean the production of at least one thousand dollars of products per annum **through the conduct of such principal business activities as set forth in section ten, article one-a, chapter eleven of this code.** [emphasis added]

The aforesaid statute expressly ties the definitions of "agriculture and farming" for purposes of the Business Franchise Tax to the *ad valorem* property tax exemptions.

The aforesaid statute specifically excludes " ... any manufacturing, milling or processing of such [agricultural] products ..." under the definition of the "activity of agriculture and farming" unless it is conducted by the producer of the agricultural products. For the purpose of this exemption, Pilgrim's Pride must be the producer of the chickens. W. Va. Code § 11-5-3 provides:

> **"Producer" means the person who is actually engaged in the agriculture,** horticulture and grazing which gives existence and fruition to products of agriculture as distinguished from the broker or middleman. [emphasis added]

The Court must determine who is the producer of the chickens.

The Commissioner and the Assessor concede that the hatchery, live haul center, and protein conversion plant qualify as farming operations. Pilgrim's Pride's operations, fresh processing plant, and feed mill must be examined pursuant to the aforesaid statutes.

According to Joint Stipulation 26, Pilgrim's Pride relocates the chickens to unrelated, third-party growers who provide the facilities and labor to raise the chickens to maturity. The business diagram in Joint Exhibit 1 states that Pilgrim's Pride relies on family farmers who "... provide the labor, housing, litter, utilities, and most important, the knowledge and expertise that's essential to maintaining the Pilgrim's Pride standard of excellence." Pilgrim's Pride utilizes approximately 61

unrelated, third-party growers to raise the chickens to maturity. *See* Joint Stipulation 27. Clearly, the 61 family farmers are the backbone of the Pilgrim's Pride's business operations in Hardy County. Consequently, for *ad valorem* tax purposes pursuant to W. Va. Code § 11-5-3, the 61 family farmers, the individuals who actually raises the chickens from pullets to maturity, are the producers. Therefore, the 61 unrelated subcontract family farmers would be exempt pursuant to W. Va. Code § 11-3-9(a)(28).

It is beyond dispute that the 61 family farmers in Hardy County actually raise the chickens to maturity under the supervision of Pilgrim's Pride. W. Va. Code § 11-5-3 states that the producer of an agricultural product is the party who is "actually engaged" in agriculture. Because the family farmers, not Pilgrim's Pride, are actually raising the chickens to maturity, Pilgrim's Pride is not the producer of the chickens. Therefore, to the extent that Pilgrim's Pride is processing live chickens through the Fresh Processing Plant (the slaughter house), Pilgrim's Pride is engaged in the animal slaughtering and processing business, and is not a farmer. W. Va. Code § 11-3-9(a)(28) exempts farms and farming operations from *ad valorem* property tax and not commercial food processors or slaughterhouses.

According to the joint stipulations, Pilgrim's Pride owns the chickens at all times during the business activities, which occur in Hardy County. W. Va. Code § 11-3-9(a)(28) does not exempt property from *ad valorem* taxation which is used by the owners of livestock. The West Virginia Legislature could have adopted such

a very broad exemption for livestock owners in 2006. However, the Legislature chose not to do so and adopted a limited exemption for property used on a farm or farming operation. The Court finds that Pilgrim's Pride does not meet the express language set forth in the exemption.

The Court further finds that the feed mill which blends together various grains that are fed to the chickens by approximately 61 unrelated, third party growers, cannot be classified as land being used for a farming purpose. The feed is utilized by subcontract chicken growers and not utilized by Pilgrim's Pride on a farm or in a farming operation. The feed mill is not exempt from *ad valorem* tax under W. Va. Code § 11-3-9(a)(28).

The Court finds that Pilgrim's Pride's principle activity is not the business of farming, that it does not operate a farm or farming operation for *ad valorem* tax purposes, and that its principal activity is animal slaughtering and processing under W. Va. Code § 11-1A-10. Therefore, Pilgrim's Pride cannot claim the exemption from *ad valorem* property tax pursuant to W. Va. Code § 11-3-9(a)(28), which is expressly limited to property used on a farm or farming operation.

Subsistence of Livestock Exemption

W. Va. Code § 11-3-9(a)(21) provides:

(a) All property, real and personal, described in this subsection, and to **the extent limited by this section,** is exempt from taxation:

(21) All property on hand to be **used in the subsistence of livestock on hand** at the commencement of the assessment year; [emphasis added]

While the tax code does not define the term "on hand," it is a cardinal rule of statutory construction that undefined terms will be given their ordinary, everyday meaning. *See* Syll. Pt. 2, In re American Bituminous Power Partners, 208 W. Va. 250, 539 S.E.2d 757 (2000).

Accordingly to Joint Stipulation 19, Pilgrim's Pride owned 4,014,990 live chickens on the assessment date at issue. Of those live chickens, 443,060 chickens were located at the hatcheries, and 389,810 chickens were located at the Fresh Processing Plant. *See* Joint Stipulation 19. The remaining 3,182,120 live chickens were located with the 61 family farmers in Hardy County. *See* Joint Stipulation 20.

The Commissioner and the Assessor agree that the chickens located at the hatcheries would be on hand and used in the subsistence of livestock, and therefore, personal property located at the hatcheries would be exempt from *ad valorem* taxes under W. Va. Code § 11-3-9(a)(21).

Pilgrim's Pride does not claim a subsistence of livestock exemption for personal property located at its fresh processing plant or protein conversion plant. This narrows the issue to personal property located at the live haul center and the feed mill. The Court finds that personal property located at the live haul center is not used for the subsistence of farming, but for the purpose of transporting the chickens to the slaughter house. The feed mill is used for the subsistence of

livestock, which is located with unrelated, third-parties, and that livestock is not "on hand" for purposes of exempting Pilgrim's Pride's industrial personal property. Therefore, neither the personal property located at the live haul center, nor at the feed mill qualifies for the subsistence of livestock exemption.

The Court would find that Pilgrim's Pride is entitled to the subsistence of livestock exemption for property located at its hatcheries, but is not entitled to said exemption pursuant to W.Va. Code § 11-3-9(a)(21) for all other personal property.

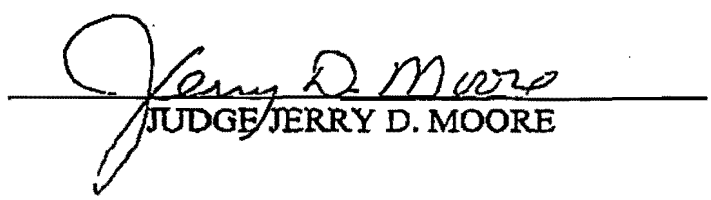
CONCLUSION

It is Ordered that all personal property owned by Pilgrim's Pride located at its hatcheries shall be exempt from ad valorem taxes under W. Va. Code § 11-3-9(a)(21).

It is further Ordered that all other personal property owned by Pilgrim's Pride located at its feed mill, live haul center, fresh processing plant, protein conversion facility, prepared food facility, and cold storage facility shall be subject to *ad valorem* tax, and are not exempt under W. Va. Code § 11-3-9(a)(21) or (28). Objections and exceptions are saved to each party.

*The Clerk is directed to forward a copy of this order to counsel of record.

ENTERED this 11th day of August, 2010.



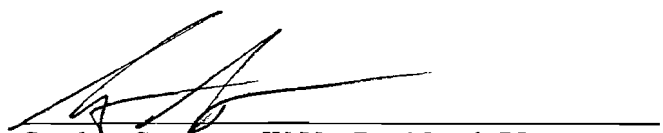
JUDGE JERRY D. MOORE

CERTIFICATE OF SERVICE

I, Stephen Stockton, Counsel for Petitioners, do hereby certify that a true and exact copy of the foregoing **Docketing Statement** was served by depositing the same postage prepaid in the United States Mail, this 13th day of December, 2010, addressed as follows:

Wayne Williams
Tax Division
Attorney General's Office
State Capitol, Room W-435
Charleston, WV 25305

Lucas J. See
Prosecuting Attorney
Hardy County Prosecutor's Office
204 Washington Street, Room 104
Moorefield, WV 26836



Stephen Stockton, W.Va. Bar No. 6175