

No.

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

PILGRIM'S PRIDE CORPORATION, and  
PILGRIM'S PRIDE CORPORATION OF  
WEST VIRGINIA, INC.,

Petitioners,

v.

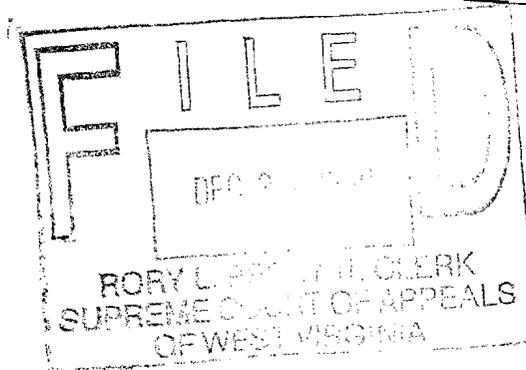
CHRISTOPHER G. MORRIS,  
State Tax Commissioner of the  
State of West Virginia, and  
JIM B. WRATCHFORD,  
County Assessor of Hardy County,  
West Virginia,

Respondents.

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FROM THE CIRCUIT COURT OF HARDY COUNTY, WEST VIRGINIA

**PETITION FOR APPEAL**

Respectfully submitted,

PILGRIM'S PRIDE CORPORATION and  
PILGRIM'S PRIDE CORPORATION OF  
WEST VIRGINIA, INC.

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**Respondents.**

**FROM THE CIRCUIT COURT OF HARDY COUNTY, WEST VIRGINIA**

**APPEAL PETITION OF PILGRIM'S PRIDE CORPORATION AND PILGRIM'S  
PRIDE CORPORATION OF WEST VIRGINIA, INC**

Pilgrim's Pride Corporation and Pilgrim's Pride Corporation of West Virginia, Inc. (hereinafter referred to collectively as "Pilgrim's Pride" or "Petitioner") bring this appeal from an Order entered August 11, 2010, in which the Circuit Court of Hardy County, West Virginia denied, in part, Petitioner's motion for summary judgment and granted the West Virginia State Tax Department and the Hardy County Assessor's (collectively, "Respondents") motions for summary judgment.

**I. KIND OF PROCEEDING AND NATURE OF LOWER COURT'S RULING**

This civil litigation pertains to Pilgrim's Pride's West Virginia *ad valorem* tax obligation for Hardy County in its 2009 tax year. Specifically, Pilgrim's Pride claimed two tax exemptions

on five of its industrial personal property returns: one tax exemption for personal property used in the subsistence of livestock, which is codified in W. Va. Code § 11-3-9 (21) (the “Subsistence of Livestock Exemption”), and another tax exemption for personal property used in commercial farming activities, which is codified in W. Va. Code § 11-3-9(28) (the “Farm Use Exemption”). Pilgrim’s Pride claimed one or both of these exemptions for personal property assets associated with its poultry 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. Stipulation 15.

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. Stipulation 10. 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. Stipulation 12.

On March 18, 2009, Pilgrim’s Pride filed an appeal to the Circuit Court of Hardy County contesting the determination. Both parties moved for summary judgment on June 22, 2010, and oral argument on the cross motions was heard on August 5, 2010 before Judge Jerry D. Moore. On August 11, 2010, Judge Moore entered an order granting the Respondents’ motion for summary judgment and granting Pilgrim’s Pride’s motion for summary judgment in part and denying it in part (the “Order”). Judge Moore ruled that only Pilgrim’s Pride’s hatchery qualified for the Subsistence of Livestock Exemption and nothing qualified for the Farm Use Exemption.

The statutory exemptions at issue in this case were enacted in 1998 and 2006, and have not been the subject of litigation since that time. Accordingly, this case presents the Court with an issue of first impression in West Virginia.

## II. STATEMENT OF FACTS

The facts of this case were largely stipulated by the parties and this stipulation was incorporated into the Order in the portion of the Order entitled “Facts.” Petitioner agrees these stipulated facts—and thus, this particular section of the Order—are correct. Nonetheless, the Order failed to discuss the relationship between Pilgrim’s Pride and certain third-party growers with specificity. For reasons explained in the Argument section of this Petition, understanding the relationship between these parties is critical to understanding the issues in this appeal and thus, it warrants additional discussion.

As a summary, Pilgrim’s Pride operates a vertically integrated, poultry production business in Hardy County that involves all phases of the poultry production process. See Joint Exhibit 1. Pilgrim’s Pride’s flocks are hatched in hatcheries owned and operated by Pilgrim’s Pride. Stipulation 23. The flocks are then relocated to unrelated, third-party growers while they mature or “grow out.” Stipulation 25. Pilgrim’s Pride retains title to the birds and bears the financial risk of loss while the birds are on the third-party grower’s property. Pilgrim’s Pride also provides the feed for the flocks during the grow out process. Stipulation 31. After the birds have matured, Pilgrim’s Pride’s “live haul” crews transport the birds to the fresh processing plant, where the birds are processed into fresh chicken products. Stipulation 35. Offal and feathers from the processing plant are transferred to the protein conversion facility to be converted into poultry meal, poultry fat, and feathers meal that are sold on commodity markets. Stipulation 42.

The third-party growers, which are independent contractors, provide facilities and labor during the grow out phase of the process. The relationship between the third-party growers and Pilgrim's Pride is governed by a "Boiler Production Agreement," which Pilgrim's Pride enters into with all third-party growers. The "Boiler Production Agreement" specifies the responsibilities of each party during the grow out process. A copy of Pilgrim's Pride's standard "Boiler Production Agreement" is appended to this petition as Exhibit A.

As specified in the "Boiler Production Agreement," Pilgrim's Pride provides all necessary medical care for the birds. Stipulation 28. Pilgrim's Pride also prepares and provides a special proprietary chicken feed that is fed to the birds. Id. In fact, Pilgrim's Pride provides all feed consumed by the birds. Moreover, Pilgrim's Pride's field service supervisors also visit the third-party growers regularly and remain "on call" 24 hours a day, 7 days a week to provide advice and assistance necessary to ensure the best possible grow out conditions for the birds. The "Boiler Production Agreement" also provides that independent growers will provide and maintain proper housing, equipment, litter, and utilities in accordance with Pilgrim's Pride's specifications. Under the agreement, independent growers will follow Pilgrim's Pride's verbal and written management recommendations, including but not limited to, watering, feeding, brooding, sanitation, litter, vaccination, medication, housing environment, lighting, pest control, and security. Independent growers also agree to dispose of all dead birds, manure and poultry house litter in accordance with Pilgrim's Pride's "Dead Bird and Poultry House Litter Best Management Practices" and to not use any feeds, insecticides, medications, disinfectants, herbicides, pesticides, wood preservatives, floor treatments, rodenticide or other similar materials on the farm premises without the approval of Pilgrim's Pride.

### **III. ASSIGNMENTS OF ERROR**

- A. THE CIRCUIT COURT ERRED IN HOLDING THAT NONE OF PILGRIM'S PRIDE'S PROPERTY LOCATED IN HARDY COUNTY IS ELIGIBLE FOR THE FARM USE EXEMPTION.
  
- B. THE CIRCUIT COURT ERRED IN HOLDING THAT PILGRIM'S PRIDE'S PROPERTY LOCATED AT ITS FEED MILL AND LIVE HAUL CENTER IS NOT ELIGIBLE FOR THE SUBSISTENCE OF LIVESTOCK EXEMPTION.

### **IV. STANDARD OF REVIEW**

The assignments of error in this petition involve the trial court's ruling on motions for summary judgment, which are subject to *de novo* review on appeal. See Frederick Mgmt. Co., L.L.C. v. City Nat'l Bank, 2010 W. Va. LEXIS 144 at \*26 (W.Va. Nov. 23, 2010) citing Syl. Pt. 1, Toth v. Board of Parks and Recreation Com'rs, 215 W.Va. 51, 593 S.E.2d 576 (2003) ("It is well established that "[a] circuit court's entry of summary judgment is reviewed *de novo*.")

In conducting a *de novo* review, the appellate court applies the same standard utilized in the circuit court. Frederick Mgmt. Co., L.L.C., 2010 W. Va. LEXIS 144 at \*26. "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). "A dispute about a material fact is 'genuine' only when a reasonable jury could render a verdict for the nonmoving party if the record at trial were identical to the record compiled in the summary judgment proceedings before the circuit court." Powderidge Unit Owners Association v. Highland Properties, Ltd., 196 W.Va. 692, 474 S.E.2d 872, 887 (1996).

## V. ARGUMENT

### A. THE CIRCUIT COURT ERRED IN HOLDING THAT NONE OF PILGRIM'S PRIDE'S PROPERTY LOCATED IN HARDY COUNTY IS ELIGIBLE FOR THE FARM USE EXEMPTION.

One of the primary assignments of error in this appeal petition is the failure of the lower court to hold as a matter of law that the property associated with Pilgrim's Pride's hatchery, feed mill, "live haul" center, processing plant, and protein conversion facility in Hardy County, West Virginia qualified for the Farm Use Exemption from West Virginia *ad valorem* tax. The Circuit Court erroneously ruled that Pilgrim's Pride cannot claim the Farm Use Exemption because Pilgrim's Pride is not in the business of farming, even though the Respondents have conceded that the hatchery and protein conversion facility, *i.e.*, the starting and ending points of the poultry production process, are used as part of a farming operation and that the live haul center is also part of a farming operation. Moreover, the Circuit Court erred in not recognizing that the feed mill and the fresh processing plant form a single, vertically integrated business with these other operations in order to produce an agricultural product—poultry—ready for consumption. Thus, Petitioner asks that this Court reverse the lower court and grant summary judgment in favor of Pilgrim's Pride.

The Farm Use Exemption, found in W. Va. Code § 11-3-9(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[.]

Therefore, the exemption is available to any farm or farming operation that produces agricultural products. Additionally, W. Va. Code § 11-1A-10(b) requires a corporation's principal activity to be the business of farming before it can be considered "engaged in farming."

Pilgrim's Pride, a corporation, is engaged in the business of farming. Pilgrim's Pride hatches chicks at its hatchery. Stipulation 23. As they grow out, Pilgrim's Pride provides medication and other services to the birds. Stipulation 28. Pilgrim's Pride prepares food for the birds at its feed mill. Stipulation 32. Pilgrim's Pride humanely transports the birds using its "live haul" crews and ultimately, Pilgrim's Pride processes the birds at its processing plants for public consumption. Stipulations 35 and 38. Pilgrim's Pride does not and has never operated any other type of business in Hardy County. Stipulations 7 and 8. Respondents have conceded that Pilgrim's Pride's hatchery, live haul center, and protein conversion plant—three of the five properties at issue—qualify as farming operations. (Order at page 15). Moreover, there is no debate that Pilgrim's Pride's entire operation is structured to produce and sell poultry products, i.e., chicken meat and other related products ready for sale, and these poultry products are considered to be "agricultural products" as that term is defined in W. Va. Code § 11-1A-3(g). Stipulation 5. Thus, Pilgrim's Pride's personal property is used exclusively in agriculture. Nonetheless, the Circuit Court erroneously ruled that Pilgrim's Pride's principal activity is not the business of farming.

In the context of a real property tax assessment, the State Tax Commissioner has previously ruled that a corporation is primarily engaged in the business of farming if at least 50%

of its annual gross income is derived from the sale of farm products. See Property Tax Ruling 97-40, appended to this petition as Exhibit B, (applying this gross income test based on guidance from the West Virginia Legislative Rules). During its 2009 fiscal year, over 60% of Pilgrim's Pride's net sales were attributable to fresh chicken products, e.g., processed poultry meat, and chicken by-products, such as feathers meal. See Pilgrim's Pride Corporation, Annual Report (Form 10-K), at 17 (Sept. 26, 2009). Because chicken meat and by-products are indisputably farm products, and over 50% of Pilgrim's Pride's annual net sales was derived from the sale of these farm products, Pilgrim's Pride is primarily engaged in the business of farming under the 50% test set forth in Property Tax Ruling 97-40. See also 110 C.S.R. 1A, §2.5.1 ("Agriculture" includes "storage, packing, shipping and marketing" of farm products (including poultry), but does not include "manufacturing, milling or processing of such products by persons other than the producer thereof." (emphasis added)).

The lower court, however, did not apply any discernable standard in reaching its conclusion that Pilgrim's Pride is not engaged in the business of farming. Instead, the court simply concluded that because the feed mill and fresh processing plant were not, in its estimation, part of a farm or farming operation, Pilgrim's Pride cannot be in the business of farming. The court's analysis overlooked the fact that Pilgrim's Pride produces one agricultural product—fresh chicken—rather than five (i.e., a different product for each phase of production) and all phases of its business are necessary to produce this product. Ignoring this essential fact discounts the interplay and interdependence of the various phases of Pilgrim's Pride's vertically integrated business. Moreover, as discussed above, the Respondents have conceded that three of the phases in this vertically integrated chain qualify as part of a farming operation. The court simply failed to consider Pilgrim's Pride's entire operation as a whole and instead focused on the

two phases of the operation that the Respondents contested: the feed mill and the fresh processing plant. Although these phases should be considered in the context of Pilgrim's Pride's overall operation, even when each of these phases are considered discretely, it is evident that they are part of a farming operation.

The Circuit Court's conclusion that Pilgrim's Pride's feed mill is not used for farming purposes was based on the assertion that the feed it produces is only used by third-party growers. (Order, page 17). While the feed was distributed to third-party growers, Pilgrim's Pride's feed mill is not remotely akin to a feed store, as the court's analysis implies. To the contrary, this proprietary feed mixture—unique to Pilgrim's Pride—was issued to third-party growers contracted by Pilgrim's Pride to feed chickens owned by Pilgrim's Pride.<sup>1</sup> In other words, Pilgrim's Pride's feed mill provides essential nourishment to its own chickens. Making the feed for one's chickens is a farm practice necessary to the conduct of poultry husbandry, which falls under the definition of farming. See W. Va. Code § 11-23-3(b)(8).

The Circuit Court's analysis with respect to Pilgrim's Pride's fresh processing plant is also flawed. The court concluded that Pilgrim's Pride's fresh processing plant is a slaughterhouse and, thus, not part of a farming operation. As discussed above, the fresh processing plant is an integral link in Pilgrim's Pride's vertically integrated poultry production process which constitutes a farming operation, but even by itself, the fresh processing plant properly qualifies as a farming operation. In fact, the Respondents' position regarding the other elements of Pilgrim's Pride's poultry production process supports the categorization of the fresh

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<sup>1</sup> Pilgrim's Pride devotes considerable resources to improving feed formulations for its livestock in order to increase yield, reduce fatalities, and reduce vaccination costs. Often due to environmental variances, feed formulations that work well in one area of the country do not achieve the same results in other parts of the country. Pilgrim's Pride has received a patent for certain feed formulations, such as the Egg Plus formula that is designed to increase the Omega 3 fatty acid levels in eggs.

processing plant as a farming operation. The Respondents have conceded that the live haul center, which brings the chickens to the fresh processing plant, is a farming operation. (Order, page 15). They have also conceded that the protein conversion facility, which converts offal and feathers from the processing plant into poultry meal, poultry fat, and feathers meal is a farming operation. (Order, page 15). The Circuit Court presumably did not take issue with these concessions because it did not analyze either the hatchery, live haul operation, or protein conversion plant in the Order. Yet the Circuit Court’s analysis would suggest that the fresh chicken meat produced by the fresh processing plant is not a product of agriculture. This result is inconsistent with Respondents’ concessions—and the court’s implicit acceptance—that: (1) the meal produced at the protein conversion facility is a product of agriculture; and (2) that meal is produced from the same birds as the fresh chicken meat produced at the fresh processing plant. (West Virginia Tax Department’s Memorandum of Law In Support of Motion For Summary Judgment at page 8). In essence, the Circuit Court’s conclusion would suggest that part of the chickens that Pilgrim’s Pride harvests is a product of agriculture, *viz.*, the feathers, and part is not, *viz.*, the meat.

The Circuit Court’s conclusion that Pilgrim’s Pride is little more than a slaughterhouse is a result of the Circuit Court ignoring all of Pilgrim’s Pride’s operations designed to raise healthy flocks of chickens. Much like a customer buys an ear of corn rather than an entire stalk, Pilgrim’s Pride’s customers purchase processed chicken meat ready to cook, rather than a live chicken. For this reason, the exemption specifically contemplates that a taxpayer may process its poultry “as an incident to the marketing of the raw material.” W. Va. Code § 11-5-3. At bottom, the court simply failed to consider Pilgrim’s Pride’s entire operation in Hardy County and did

not acknowledge that its overall operational goal is to produce a product of agriculture—specifically, poultry products—for sale.

Because the court incorrectly concluded that Pilgrim’s Pride is in the business of operating a slaughterhouse, most of its analysis concerned whether Pilgrim’s Pride is the “producer” of the chickens it processes. Under the court’s reasoning, processing chickens does not constitute farming unless the processor is considered the producer of those chickens. (Order, page 15). The court cited W. Va. Code § 11-23-3(b)(8) for this producer requirement.

Pilgrim’s Pride is clearly the producer of its chickens. A “producer” is defined as “the person actually engaged in the agriculture, horticulture, and grazing which gives existence and fruition to products of agriculture as distinguished from the broker or middleman.” W. Va. Code § 11-5-3 (emphasis added). The chickens that are ultimately processed and sold by Pilgrim’s Pride literally come into existence when they are hatched at Pilgrim’s Pride’s hatchery. The marketable agricultural product (processed chicken meat) comes to fruition in Pilgrim’s Pride’s fresh processing plant. Pilgrim’s Pride is clearly not a middleman or broker of these chickens, because it has owned these chickens from the time they were hatched at Pilgrim’s Pride’s hatcheries. Therefore, Pilgrim’s Pride, by definition, is the producer of its chickens and the poultry products it sells.

Despite these undisputed facts, the Circuit Court ruled that Pilgrim’s Pride’s chickens are actually produced by the unrelated, third-party growers that assist Pilgrim’s Pride during the course of the grow out process. Implicit in this position is that the independent contractors that Pilgrim’s Pride hires to assist with its grow out operations should be treated differently than Pilgrim’s Pride’s employees for purposes of the Farm Use Exemption. The lower court cites no authority for this distinction. Further, as the “Boiler Production Agreement” clearly shows, the

independent contractors perform work for Pilgrim's Pride using supplies furnished by Pilgrim's Pride and with the assistance of Pilgrim's Pride. There is no reasonable basis for allowing the contractual relationship between Pilgrim's Pride and the individuals performing the work (*i.e.*, employee vis-à-vis independent contractor) to dictate the identity of the producer of the chickens. Pilgrim's Pride pays individuals to assist it in performing a phase of its vertically integrated chicken processing operation, and Pilgrim's Pride is the producer of the fresh chicken meat that is ultimately sold to the public.

Assuming *arguendo* that Pilgrim's Pride must itself participate in the grow out process to be a producer, Pilgrim's Pride's role in that process is sufficient to be considered a producer pursuant to West Virginia Code § 11-5-3. As discussed above, the "Boiler Production Agreement" shows that the unrelated growers depend on Pilgrim's Pride to supply the chickens, the feed, and to provide veterinary supplies used to care for the birds. The growers also work closely with Pilgrim's Pride's service technicians to ensure the best grow out conditions for the birds. Pilgrim's Pride's hands-on approach is understandable given that, as the owner of the birds, it bears the risk of loss before, during, and after the grow out process. Accordingly, Pilgrim's Pride plays a significant role in each of these phases.

As to the Circuit Court's finding that the unrelated, third-party growers are the producers of Pilgrim's Pride's chickens, it is important to take notice of the fact that there is no statutory requirement that a product of agriculture have only one producer. While there is no transcript of the oral argument on the motions for summary judgment, counsel for the Respondents agreed at oral argument that there may be two or more producers of the same agricultural product. In other words, Pilgrim's Pride and the third-party growers could both be considered producers of poultry products, and each may qualify for the Farm Use Exemption if all of the statutory requirements

were satisfied.<sup>2</sup> Nonetheless, in the Order, the court failed to consider or even acknowledge this possibility.

As discussed above, the Circuit Court simply did not consider the integrated nature of Pilgrim's Pride's business when it concluded that Pilgrim's Pride was not the producer of its chickens. All of the five phases are necessary to produce the poultry products that Pilgrim's Pride sells to its consumers. Respondents have conceded that three of these phases are part of a farming operation. Moreover, as Pilgrim's Pride has shown, it is and always has been a producer of agricultural products. Thus, it is a farm or farming operation and entitled to claim the Farm Use Exemption with respect to the property used in such operations. Further, its property is used exclusively in agriculture because Pilgrim's Pride conducts no other business in West Virginia. Therefore, it was plain error for the lower court to grant summary judgment in favor of the Respondents. Petitioner asks this Court to reverse the Circuit Court's ruling and grant summary judgment in favor of Petitioner with respect to this issue.

**B. THE CIRCUIT COURT ERRED IN HOLDING THAT PILGRIM'S PRIDE'S PROPERTY LOCATED AT ITS FEED MILL AND LIVE HAUL CENTER IS NOT ELIGIBLE FOR THE SUBSISTENCE OF LIVESTOCK EXEMPTION.**

Petitioner's second assignment of error concerns the failure of the lower court to hold as a matter of law that the property associated with Pilgrim's Pride's feed mill and live haul center in Hardy County, West Virginia qualified for the Subsistence of Livestock Exemption from West Virginia *ad valorem* tax.

The Subsistence of Livestock Exemption applies to "[a]ll property on hand to be used in the subsistence of livestock on hand at the commencement of the assessment year." W. Va. Code

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<sup>2</sup> Pilgrim's Pride has not and does not claim either the Farm Use Exemption or Subsistence of Livestock Exemption for assets owned by third-party growers. It would be entirely reasonable for the third party growers to claim one of the exemptions with respect to their own property which they use in providing services to Pilgrim's Pride during the grow-out process.

§ 11-3-9(21). To qualify for the exemption: (1) the taxpayer must use personal property in the care and feeding of livestock; (2) the personal property must be owned at the beginning of the tax year; and (3) the livestock must be owned at the beginning of the tax year.

The Circuit Court erroneously ruled that Pilgrim's Pride's personal property does not qualify for the Subsistence of Livestock Exemption because some of Pilgrim's Pride's chickens are located on the premises of independent contractors hired by Pilgrim's Pride to assist in the grow out process. The Circuit Court implicitly interpreted the phrase "livestock on hand" to require that the livestock sustained by the claimed property be physically located on the taxpayer's premises at the time of assessment. While the lower court observed that the phrase "on hand" is not defined by statute, it nonetheless cited to general principles of statutory construction as license to impose this additional requirement.

The Circuit Court's analysis ignored the fact that the phrase "on hand" is not used exclusively with respect to the livestock, but also with respect to the property for which the exemption is being claimed. Specifically, the exemption applies to "[a]ll property on hand to be used in the subsistence of livestock on hand at the commencement of the assessment year." W. Va. Code § 11-3-9(a)(21) (emphasis added). The phrase "property on hand to be used in the subsistence of livestock" is defined in the Code of State Rules to include "all personal property primarily, actually, and directly used for, and reasonably necessary for the care or feeding of livestock." 110 C.S.R. 3, §2.51. In other words, the definition does not impose a requirement that the property be physically located on the taxpayer's premises when the exemption is claimed. In effect, if the Circuit Court's analysis were correct, the phrase "on hand" would take on different meanings within the same statute, depending on whether the phrase modified livestock or property to be used in the subsistence of such livestock.

The Circuit Court's conclusion that Pilgrim's Pride's property at the feed mill and live haul center is not used for the subsistence of livestock is also incorrect. As discussed above, the feed produced at Pilgrim's Pride's feed mill is used to feed Pilgrim's Pride's flocks during the grow out process. By definition, the feed mill is used in the subsistence of livestock because it creates the feed that is used to give sustenance to Pilgrim's Pride's flocks. The property located at Pilgrim's Pride's live haul center is also used in the subsistence of livestock because it is used to ensure the humane and safe transportation of the birds during the production process. The live haul operation is designed with the safety of the birds in mind, in order to allow the livestock to subsist.

At bottom, the property located at Pilgrim's Pride's feed mill and live haul center was used in the care and feeding of chickens owned by Pilgrim's Pride during the period at issue. This is all that is required to claim the Subsistence of Livestock Exemption. Thus, it was plain error for the lower court to grant summary judgment in favor of the Respondents. Petitioner asks this Court to reverse the Circuit Court's ruling and grant summary judgment in favor of Petitioner with respect to this issue.

## VI. CONCLUSION

Because the Order entered by the Circuit Court of Hardy County contains numerous conclusions of law that are factually unsupported or otherwise erroneous, this Court should reverse the decision in the Order and grant Pilgrim's Pride's motion for summary judgment in full on the grounds that the claimed Farm Use and Subsistence of Livestock Exemptions were proper, and provide such other relief as may be appropriate.

Respectfully submitted,

PILGRIM'S PRIDE CORPORATION, and  
PILGRIM'S PRIDE CORPORATION OF  
WEST VIRGINIA, INC.

By Counsel



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**EXHIBITS**

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