

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

10-1627

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

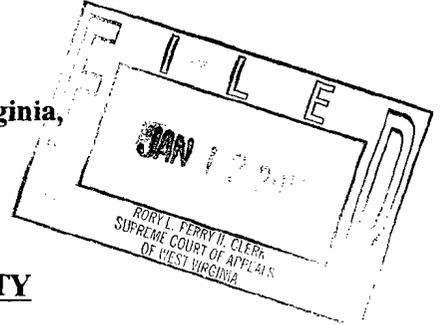
Petitioner,

v.

CRAIG A. GRIFFITH, State Tax Commissioner, and
JIM B. WRATCHFORD, County Assessor of Hardy County, West Virginia,

Respondents.

FROM THE CIRCUIT COURT OF HARDY COUNTY



COUNTY ASSESSOR'S RESPONSE TO
PETITION FOR APPEAL

I. PROCEDURAL HISTORY

What is a farm? That is the central question presented to the Court. The application of the tax exemptions is really pretty simple once you decide what is a farm or farming operation.

In 2009 the Honorable Jim B. Wratchford, Assessor of Hardy County, asked the Tax Department to determine whether Pilgrim's Pride is exempt from *ad valorem* property taxes pursuant to W. Va. Code § 11-3-9(a)(28) or 9(a)(21). Pilgrim's Pride submitted additional information to the Tax Department for consideration. Subsequently, the Tax Department issued Property Tax Ruling 09-38 which concluded that neither exemption was applicable. *See* W. Va. Code § 11-3-24a. Consequently, all of Pilgrim's Pride's industrial personal property would be subject to *ad valorem* property tax.

Pilgrim's Pride appealed the Tax Department's determination to the Circuit Court of Hardy County in March 2009. All parties engaged in significant discovery at the circuit court level and, submitted motions for summary judgment to the Court. Subsequently, the parties briefed the Circuit Court on all relevant issues. Oral arguments were heard on August 11, 2010, on the respective motions for summary judgment.

The Circuit Court noted in its decision that both the Tax Department and the Hardy County Assessor agreed with Pilgrim's Pride that the Hatcheries and Grow Out Facilities would qualify for the subsistence of livestock tax exemption at issue. *See Circuit Court Order* at P. 10. The Circuit Court determined that all other industrial personal property owned by Pilgrim's Pride in Hardy County would be subject to *ad valorem* property tax.

Pilgrim's Pride filed the instant *Petition For Appeal* with the Supreme Court seeking a reversal of the Circuit Court's decision.

II. STANDARD OF REVIEW

The West Virginia Supreme Court of Appeals has frequently addressed the standard of review on appeal. Factual findings made by the Tax Department or any other administrative agency receive deference. *See CB&T Operation, Co. v. Tax Commission*, 2311 W. Va. 198, 564 S.E. 2D 408 at Syll. Pt. 2 (WV 2002). On the other hand, questions of law are subject to *de novo* review. *CB&T*, at Syll. Pt.1; *See also Muscatell v. Cline*, 196 W.Va. 588, 474 S.E. 2D 518 (WV 1996) at Syll. Pt.1; and *Helton v. REM Community Options, Inc.*, 218 W.Va. 165 at 167-168, 624 S.E.2d 512 at 514-515 (WV 2005). The case before the Court was based upon agreed stipulations which were submitted to the Circuit Court of Hardy County. Therefore, the case only presents a

legal question regarding whether Pilgrim's Pride is exempt from *ad valorem* property tax pursuant to West Virginia Code §11-3-9(a)(28) or 9(a)(21).

III. STATUTORY ANALYSIS

Pilgrim's Pride argues that it should be exempt from *ad valorem* property tax based on two different statutory exemptions - West Virginia Code §11-3-9(a)(28) and 9(a)(21). The Circuit Court concluded that the vast majority of Pilgrim's Pride's industrial personal property does not qualify for either exemption.

A. THE FARM OR FARMING OPERATION EXEMPTION

Primarily, Pilgrim's Pride claims that its industrial personal property should be exempt and relies on the exemption from *ad valorem* property tax for property used on a farm or farming operation.¹ Pilgrim's Pride argues that it is engaged in the business of farming. *See Petition for Appeal* at Page 6. However, the exemption is not open ended as argued by the Taxpayer.

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

....

¹The Taxpayer repeatedly refers to the "farm use exemption" in its *Petition For Appeal* to the Supreme Court. *See, for example, Petition For Appeal* at PP. 6 & 13. The term "farm use exemption" is somewhat of a misnomer. The exemption at issue does exempt property that qualifies for a "farm use exemption certificate pursuant to [WV Code § 17A-3-2(a)(2)]..." which concerns vehicles and farming equipment, such as tractors, used on a farm and that may be driven for short distances on a public highway. WV Code § 17A-3-2 exempts farm use vehicles from the registration requirements under the motor vehicle code of this State. The Tax Department has referred to the exemption as the "farm or farming operation" exemption since the statute restricts the exemption to property used on a farm or farming operation.

- (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;

W. Va. Code § 11-3-9(a)(28) (emphasis added).

The language of the exemption was analyzed by the Circuit Court which concluded :

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.

Circuit Court Order at P. 17 (emphasis added).

Pilgrim's Pride argues that the Circuit Court's conclusion is erroneous.

The simplest definition of agriculture is the growing of crops and livestock. *See* West Virginia Code § 11-5-3. Certainly, the West Virginia Legislature has the authority to exempt all phases of agriculture from property taxes. However, the Legislature chose to limit the exemption to personal property "used on a farm or farming operation." Clearly, raising chickens would fall within the general rubric of agriculture by anybody's definition of the term. However, simply being involved in agriculture in the broadest sense of the word is insufficient to claim the exemption from property tax. In order to qualify for the exemption, the industrial personal

property must be used on a farm or farming operation.² The question becomes whether the Taxpayer is utilizing the industrial personal property on a farm or farming operation as those terms are specifically defined for *ad valorem* tax purposes.

It is a fundamental precept of tax law that an individual claiming to be exempt from a tax bears the burden of proving that he is entitled to the exemption. In an *ad valorem* property tax context, the West Virginia Supreme Court 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(WV 1990) at Syll. Pt. 2 (“Constitutional and statutory provisions exempting property from taxation are strictly construed. It is incumbent upon a person who claims his property is exempt from taxation to show that such property clearly falls within the terms of the exemption; and if any doubt arises as to the exemption, that doubt must be resolved against the one claiming it.” Syllabus Point 2, *In re Hillcrest Memorial Gardens, Inc.*, 146 W.Va. 337, 119 S.E.2d 753 (1961)); see also *In re Maier*, 173 W.Va. 641, 319 S.E. 2d 410 at Syllabus Pt. 2 (quoting *In re Hillcrest Memorial Gardens, Inc.*) (WV 1984). The West Virginia Supreme Court has repeatedly stated that the taxpayer must prove that it is entitled to the exemption. See *RGIS Inventory Specialists v. Palmer*, 209 W. Va. 152, 544 S.E.2d 79 (WV 2001) at Syll. Pt. 1 (“Where a person claims an exemption from a law imposing a license or tax, such law is strictly construed against the person claiming the exemption.” Syllabus Point 4, *Shawnee bank v. Paige* 200 W.Va. 20, 488 S.E. 2d 20 (WV 1977)

² The language in the *ad valorem* property tax exemption at issue should be contrasted with the language in W. Va. Code § 11-15-9(a)(18) which grants a blanket exemption under the Consumers Sales Tax for “... sales of propane for poultry house heating purposes...” Clearly, the West Virginia Legislature knows how to enact both broad tax exemptions for businesses engaged in agriculture and narrowly focused exemptions as in W. Va. Code § 11-3-9(a)(28).

(citations omitted)); *see also Wooddell v. Dailey*, 160 W. Va. 65, 230 S.E. 2d 466 (1977) at Syll. Pt. 1; *Tony P. Sellitti Construction Company v. Caryl*, 185 W. Va. 584, 408 S.E. 2d 336 (1991) at Syll. Pt. 2; *Pennsylvania and West Virginia Supply Corp. V. Rose*; 178 W. Va. 317, 368 S.E. 2d 101 (1988) at Syll. Pt. 5; and *CB & T Operations Company, Inc., v. Tax Commissioner of State of West Virginia*, 211 W.Va. 198, 564 S.E.2d 408 (WV 2002) at Syll. Pt. 5. Under West Virginia law there is no room for doubt; Pilgrim's Pride bears the burden of proving that its industrial personal property is exempt from *ad valorem* property tax.

The West Virginia Legislature has defined the word "farm" as ". . . land currently being used primarily for farming purposes," West Virginia Code §11-1A-3(f). In turn, the West Virginia Legislature defined the phrase "farming purposes" to mean the ". . . utilization of land to produce for sale, consumption or use, any agricultural products, including, but not limited to, livestock, [and] poultry" West Virginia Code §11-1A-3(f). The taxpayers specifically argue that they utilize industrial personal property on a farm and in a farming operation as defined by West Virginia Code § 11-1A-3(f) and -3(g).

The Circuit Court noted that the West Virginia Legislature has expressly imposed a statutory restriction for *ad valorem* property tax purposes which precludes the Taxpayer from qualifying for the farm or a farming operation exemption. *See Circuit Court Order* at PP. 13 & 14. The Court analyzed the specific statutory language related to farming :

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.

W. Va. Code § 11-1A-10(b) (emphasis added).

Pilgrim's Pride Corporation and Pilgrim's Pride of West Virginia, Inc., are both corporations. *See Circuit Court Order* at Findings 1 & 3. Thus, in order to qualify for the farm or farming operation exemption from *ad valorem* property tax, the Taxpayer's principal activity must be the business of farming. The fundamental question becomes - what is Pilgrim's Pride's principal activity?

West Virginia Code §11-5-3 specifically addresses personal property for *ad valorem* tax purposes. However, the Taxpayer ignores a key element which is required in the taxation of industrial personal property. According to West Virginia Code §11-1A-10(b), a corporation is not engaged in farming unless its principal activity is the business of farming. Although Article 5 does not define the term "the business of farming", the Business Franchise Tax does define the relationship between "doing business" and "agriculture and farming."

- (b) Terms defined.
- (8) 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.

W. Va. Code § 11-23-3(b)(8)³ (emphasis added).

The West Virginia Legislature has expressly tied the definitions of “agriculture and farming” for purposes of the Business Franchise Tax to the *ad valorem* property tax exemptions. Is Pilgrim’s Pride’s principal business activity a “Poultry Farmer” as claimed on the *ad valorem* tax returns for the 2009 tax year or is Pilgrim’s Pride’s principal business activity the business of animal slaughtering and processing?

Adopting the Taxpayer’s argument would open Pandora’s Box and extend the limited exemption for farms and farming operations beyond what the West Virginia Legislature adopted. The fact that Pilgrim’s Pride operates a vertically integrated poultry processing business should not be allowed to camouflage the analysis of the individual business segments operated in Hardy County. According to the *ad valorem* tax returns Pilgrim’s Pride operates seven individual business segments in Hardy County and each business segment has its own tax account number for tax purposes. Therefore, it is only logical to analyze the individual business segments separately.

³ See also W. Va. Code § 11-12-2(b)(1) for a substantially similar definition of “agriculture and farming” under the Business Registration Tax. Persons engaged in the business of “agriculture and farming” are exempt from payment of the Business Registration Tax pursuant to W. Va. Code § 11-12-3(d)(5).

Eight business activities occur in Hardy County. Pilgrim's Pride's business activities breakdown into seven distinct components. The true and actual value of Pilgrim's Pride's industrial personal property utilized in the seven business components for the 2009 *ad valorem* tax year is set forth below.

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

See *Circuit Court Order* at Finding No. 14. As noted *infra*, the eighth business activity – actually raising the chickens to maturity - is performed by unrelated family farmers in Hardy County and not by Pilgrim's Pride. See *Circuit Court Order* at Findings No. 26 & 27.

The individual business segments must be examined in order to determine whether Pilgrim's Pride's principal activity is the business of farming. Clearly, the Hatchery & Garage and the Live Haul & Catching Operations would qualify as farming operations or farms under West Virginia Code §§11-1A-3(f) and 3(g). The offal⁴ and feathers from the processing plant are converted into poultry meal, poultry fat and feathers meal, for sale on commodity markets. See *Circuit Court Order* at Finding No. 42. Certainly, the production of poultry meal, poultry fat, and

⁴ The Oxford English Dictionary defines the word "offal" as "...That which is thrown off, as chips in dressing wood, dross in melting metals, etc.; the part which, in any process, is allowed to fall off or neglected as valueless or of no immediate use; refuse, waste; ..." *Oxford English Dictionary*, Second Edition at First Definition, Oxford University Press, 1991. The Tax Department has viewed the term "offal" as meaning the waste products generated by the process of slaughtering the chicken flock at the Fresh Processing Plant. Pilgrim's Pride produces the offal as it slaughters the flock of chickens.

feathers meal, would constitute products of agriculture under W. Va. Code § 11-5-3. Consequently, the Protein Conversion Plant would also qualify as a farming operation.

Is the Fresh Processing Plant exempt pursuant to West Virginia Code §11-3-9(a)(28) as personal property employed exclusively in agriculture on a farm or farming operation? Pilgrim's Pride argues that it is engaged in agriculture and, specifically, bases the argument on West Virginia Code §11-5-3. *See Petition for Appeal* at P. 11. Pilgrim's Pride slaughters and de-feathers the chickens, and processes the chickens carcasses into separate chicken parts for sale. *See Circuit Court Order* at Finding No. 38. Is the Fresh Processing Plant a farm or an animal slaughtering and processing facility? The question is central to the outcome of this case. What business is being conducted at the Fresh Processing Plant?

As noted *supra*, the definition of the "activity of agriculture and farming" specifically excludes "... any manufacturing, milling or processing of such [agricultural] products..." unless it is conducted by the producer of the agricultural products. For the purposes of *ad valorem* property taxes, being the producer of the chickens is critical.

"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.
W. Va. Code § 11-5-3 (emphasis added).

The question becomes – Who is the producer of the chickens?

Pilgrim's Pride relocates the chickens to unrelated, third-party growers who provide the facilities and labor to raise the chickens to maturity. *See Circuit Court Order* at Findings No. 25 & 26. The business diagram in Joint Exhibit 1 clearly 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 *Circuit Court Order* at Finding No. 27. Clearly, the 61 family farmers are the backbone of the Taxpayer's business operations in Hardy County. Consequently, for *ad valorem* tax purposes pursuant to West Virginia 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 West Virginia 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. West Virginia Code §11-5-3 clearly states that the producer of an agricultural product is the party who is ". . . actually engaged . . ." in agriculture. Since the family farmers are actually raising the chickens to maturity - not Pilgrim's Pride, by design - 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. West Virginia Code §11-3-9(a)(28) clearly 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. West Virginia Code §11-3-9(a)(28) does not exempt property from *ad valorem* taxation which is used by the owners of livestock. Clearly, 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. Pilgrim's Pride does not meet the express language set forth in the exemption.

Similarly, the Feed Mill & Grow Out facility would not be classified as land being utilized for a farming purpose by Pilgrim's Pride. The Feed Mill blends together various grains which are fed to chickens by unrelated third-party growers. *See Circuit Court Order* at Findings No. 31 & 32. The blending of chicken feed from various grains and proteins is not a product derived from Pilgrim's Pride's poultry business as required by West Virginia Code Section §11-1A-3(f). As noted *infra*, Pilgrim's Pride utilizes approximately 61 unrelated, third-party growers to raise the chickens to maturity. *See Circuit Court Order* at Finding No. 27. The chicken feed which is produced at the Feed Mill is transferred from Pilgrim's Pride to the third-party chicken growers. The chicken feed is actually utilized by the subcontract chicken growers and not utilized by Pilgrim's Pride on a farm or in a farming operation.

Would a free standing feed mill be exempt from *ad valorem* property taxation pursuant to W. Va. Code § 11-3-9(a)(28)? Did the Legislature intend to exempt the local Southern States feed store from *ad valorem* property tax? Under Pilgrim's Pride's theory any business in the field of agriculture would be exempt from property tax. According to Pilgrim's Pride's theory, the local feed store would be exempt from property tax as a farm or farming operation. The County Assessor argues that the local feed store is not a farm or farming operation and would not be exempt from property tax. Pilgrim's Pride would receive the same treatment under the tax laws for *ad valorem* tax purposes as a free standing feed store.

All parties have agreed that the Prep Foods Facility Center and the Cold Storage Unit are subject to *ad valorem* property tax for the 2009 tax year. *See Circuit Court Order* at Finding No.

15. Therefore, Pilgrim's Pride has conceded that there are two business segments which are not being utilized for farming purposes.

For the purposes of W. Va. Code § 11-1A-10, the key question is whether Pilgrim's Pride's primary activity is the business of farming. Eight business activities occur in Hardy County. The County Assessor concedes that three of those business activities which are actually performed by Pilgrim's Pride would fall within the statutory definition of the business of farming – the Hatchery & Garage, the Live Haul & Catching Operations, and the Protein Conversion Plant. Based upon the assessed values of those three business segments in the *Circuit Court Order* at Finding No. 14, the total value of the industrial personal property used in exempt activities equals \$ 2,711,994.00. Four of the business activities conducted by Pilgrim's Pride do not qualify do not qualify as the business of farming – the Fresh Processing Plant since the third-party growers actually raise the chickens to maturity and not Pilgrim's Pride; the Feed Mill & Grow Out Operations; the Prep Foods Plant; and the Cold Storage Facility. Based upon the assessed values of the industrial personal property used in these four business activities in the *Circuit Court Order* at Finding No. 14, the total value of the personal property used in taxable activities equals \$ 25,046,756.00.

The majority of the business activities conducted by Pilgrim's Pride do not fall within the statutory definition of the business of agriculture and farming pursuant to W. Va. Code § 11-23-3(b)(8) as it statutorily references *ad valorem* property taxation. When the business activities are based upon the undisputed value of the industrial personal property utilized in each business segment, approximately 9.8 % of the industrial personal property is utilized in activities which fall within the definition of the business of agriculture and farming. In addition, the impact

of Findings No. 25, 26, 27, and 28 the *Circuit Court Order*, is clear. The 61 unrelated, third-party contract growers actually raise the pullets to maturity and not Pilgrim's Pride. Pilgrim's Pride's primary activity cannot be the business of farming when its very business model is to subcontract the growing of the chickens to third parties. The vast majority of Pilgrim's Pride's business activities in Hardy County fall into the category of animal slaughtering and processing.

Pilgrim's Pride argues that the Circuit Court did not apply any discernable standard in reaching the conclusion that it is not engaged in a farm or farming operation. *See Petition For Appeal* at P. 8, Paragraph 2. Based upon the undisputed value of the industrial personal property owned and employed by Pilgrim's Pride in Hardy County, 9.8% of the industrial personal property is utilized in exempt activities and 91.2 % is utilized in taxable activities. Ninety-one percent is a pretty obvious standard.

Furthermore, Pilgrim's Pride argues that it is engaged in a farm or farming operation based upon Property Tax Ruling 97-40. *See Petition For Appeal* at PP. 7 & 8 (PTR 97-40 is attached as an exhibit to the *Petition For Appeal*.) The Taxpayer cites PTR 97-40 for the proposition that the slaughterhouse and all other industrial facilities should be classified as a farm since Pilgrim's Pride received more than fifty percent of its annual net sales from sales of chicken products. *See Petition For Appeal* at P. 8.

Property Tax Ruling 97-40 is not controlling on the issues before the Court for several reasons. First, there is a significant factual distinction between Pilgrim's Pride and Maple Land Company, Inc., the taxpayer in PTR 97-40. According to the facts in the property tax ruling, Maple Land Company owned the real property at issue and raised hay, alfalfa, cattle, and chickens,

on its own real property as well as property it leased from other landowners. *See Property Tax Ruling 97-40* at P. 2. Pilgrim's Pride has read the property tax ruling backwards. In the case before this court, the 61 unrelated third-party growers or contract farmers are utilizing their own land to raise Pilgrim's Pride's chickens to maturity. *See Circuit Court Order* at Findings No. 20, 26 & 27. The County Assessor has readily admitted that the 61 family farmers would be engaged in operating a farm or farming operation. In all probability the 61 contract growers would be also be eligible for farm use valuation for their real property. However, Pilgrim's Pride raises a different question before this court. Can Pilgrim's Pride claim its industrial personal property is exempt from *ad valorem* property tax based upon the fact that the 61 unrelated family farmers actually raise Pilgrim's Pride's chickens? The answer is no.

Second, PTR 97-40 concerned the classification of real property as opposed to industrial personal property. The issue under consideration in PTR 97-40 was "[w]hether real property owned by a corporation the primary business of which for the current assessment year is farming qualifies for Farm Use Valuation." *See PTR 97-40* at P. 4. The question before the Circuit Court on appeal is not whether the real property owned by the 61 unrelated third-party farmers qualifies for Farm Use Valuation. The question before the Circuit Court is whether the industrial personal property owned by Pilgrim's Pride is used on a farm or farming operation and is, therefore, exempt from *ad valorem* property tax pursuant to W. Va. Code § 11-3-9(a)(28).

Third, Property Tax Ruling 97-40 was clearly based on the West Virginia Legislative Regulations 110 C.S.R. 1A - "Valuation of Farmland and Structures Situated There on For *Ad Valorem* Property Tax Purposes". The scope of the legislative rule states:

§110-1A-2. Valuation Rule.

2.1. Scope. This rule prescribes how the appraised value of farmland and structures situated thereon will be determined for property tax purposes. **This rule does not define what property is subject to assessment for *ad valorem* property taxes.**

110 C.S.R. §110-1A-2.1 (emphasis added).

It is doubtful that a property tax ruling based on a legislative rule which specifically excludes the question of what property is subject to property tax, provides much insight on the issue of whether Pilgrim's Pride's property is subject to *ad valorem* property tax.

Fourth, Property Tax Ruling 97-40 was issued by the Tax Department on December 18, 1997. The farm or farming operation exemption which exempts personal property from *ad valorem* taxes was enacted in 2006. A simple reading of Property Tax Ruling 97-40 reveals that the ruling does not address the farm or farming operation exemption pursuant to W. Va. Code § 11-3-9(a)(28). The Taxpayer argues that PTR 97-40 should be read to control a statutory exemption which was enacted nine years afterwards. Furthermore, the fifty percent rule applied in the property tax ruling was authorized in the legislative rule while W. Va. Code § 11-3-9(a)(28) does not include the fifty percent rule on which PTR 97-40 relied. The argument fails.

The case boils down to a very simple proposition. If the corporate Taxpayer's principal activity is not the business of farming, then the corporate Taxpayer does not operate a farm or farming operation for *ad valorem* tax purposes. Since Pilgrim's Pride's principal activity is animal slaughtering and processing as opposed to farming, Pilgrim's Pride Corporation is not engaged in business of farming pursuant to 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.

Furthermore, Pilgrim's Pride's argument is inconsistent. Based upon the *ad valorem* property tax returns filed by Pilgrim's Pride for the 2009 tax year, the Taxpayer described its business activity as "Poultry Farmer." See Appendix 1. Pilgrim's Pride claims to be a Poultry Farmer in all seven business segments - from Hatchery to Cold Storage. Yet, the Taxpayer has conceded that the Prep Foods Plant and the Cold Storage Facility are **not** exempt from property taxes. Clearly, all personal property used by a Poultry Farmer would be exempt from property tax pursuant to West Virginia Code §11-3-9(a)(28). The conclusion is obvious. Pilgrim's Pride is really engaged in animal slaughtering and processing and not engaged in Poultry Farming.

It is interesting to note how Pilgrim's Pride described its business activities in previous tax years. See Appendix 1. In 2008, Pilgrim's Pride described all seven business segments as "Vertically Integrated Poultry Processor." In 2007, the business activity was described as "Vertically Integrated Poultry Producer/Processor." In 2006, Pilgrim's Pride was engaged in the business of "Vertically Integrated Poultry Producer", "Vertically Integrated Poultry Manufacturer," "Poultry Processing" or simply "Poultry."

Pilgrim's Pride Corporation began business operations in West Virginia in 2001. According to the business registration application, its primary business class was listed as "3116 - Animal Slaughtering and Processing"; alternatively, the Taxpayer stated in 2001 that its primary business activity was "Poultry Manufacturing and Sales." The Taxpayer stated the secondary business class of "1123 - Poultry and Egg Production." See Joint Exhibit 2. Pilgrim's Pride has not substantially changed its business operations since 2001. See *Circuit Court Order* at Finding No. 8. Contrary to the Business Registration Application filed in 2001, Pilgrim's Pride discovered in 2009 that its business activity is actually "Poultry Farmer" and that is not engaged

activity “3116 - Animal Slaughtering and Processing” at all. Pilgrim’s Pride is not a “Poultry Farmer” as it claimed on the 2009 *ad valorem* tax returns; Pilgrim’s Pride is really shopping for a tax exemption.

Pilgrim’s Pride does not meet the statutory qualifications to claim the exemption from *ad valorem* property tax set forth in W. Va. Code §11-3-9(a)(28). Pilgrim’s Pride has failed to carry the burden of proof to demonstrate that it is entitled to claim the tax exemption. Therefore, Pilgrim’s Pride is not exempt and must pay the proper *ad valorem* tax to Hardy County.

B. THE SUBSISTENCE OF LIVESTOCK EXEMPTION

Pilgrim’s Pride raises as a second assignment. The Circuit Court concluded that the industrial personal property located at the feed mill and the live haul center is not exempt from *ad valorem* property tax as property to be used in the subsistence of livestock on hand. *See Petition For Appeal* at P. 13. Pilgrim’s Pride argues that the Circuit Court’s conclusion is erroneous.

The Circuit Court noted in its decision that both the Tax Department and the County Assessor agreed with Pilgrim’s Pride that the Hatcheries and Grow Out Facilities would qualify for the subsistence of livestock tax exemption at issue. *See Circuit Court Order* at P. 10. Pilgrim’s Pride did not claim the exemption for the subsistence of livestock for the fresh processing plant or the protein conversion plant. *See Circuit Court Order* at P. 18. Pilgrim’s Pride did not claim the exemption from *ad valorem* property taxes for the Prep Foods Facility Center or the Cold Storage Units for the tax year at issue under either exemption. *See Finding No. 15.* Consequently, only the industrial personal property located at the feed mill and the live haul center were contested issues under the subsistence of livestock exemption. *See Circuit Court Order* at P. 18.

Once again the language of the exemption must be analyzed in light of the Taxpayer's business operations.

- (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;

W. Va. Code § 11-3-9(a)(21) (emphasis added).

Obviously, chickens fall within the definition of livestock for *ad valorem* tax purposes. See 110 CSR § 110-3-2.37. On July 1, 2008, the assessment date at issue, Pilgrim's Pride owned 4,014,990 live chickens located in Hardy County. Of those live chickens, 443,060 chickens were located at the Hatchery and 389,810 chickens were located at the Fresh Processing Plant. See Finding No. 19. The remaining 3,182,120 live chickens were physically located on real property owned by the 61 family farmers in Hardy County. See Finding No. 20.

In order to qualify for the subsistence of livestock exemption, the chickens must be "on hand." The tax code does not define the term "on hand" as used in the *ad valorem* tax exemption.⁵ It is a cardinal rule of statutory construction that undefined terms will be given their ordinary, everyday meaning. See *In re American Bituminous Power Partners*, 208 W. Va. 250, 539 S.E.2d 757 at Syll. Pt. 2 (WV 2000) ("In the absence of any definition of the intended meaning of words or terms used in a legislative enactment, they will, in the interpretation of the act, be given their common, ordinary and accepted meaning in the connection in which they are used.")

⁵ The Gasoline and Special Fuel Excise Tax did impose a tax on all gasoline "...on hand or in inventory ..." pursuant to W. Va. Code 11-14-3a. See also *State v. Penn Oak Oil & Gas, Inc.*, 128 W.Va. 212, 36 S.E. 2d 595 (WV 1946) which generally quoted the statute but did not define the term "on hand." The Gasoline and Special Fuel Excise Tax was repealed in 2003.

Syll. pt. 1, *Miners in General Group v. Hix*, 123 W.Va. 637, 17 S.E.2d 810 (WV 1941), overruled on other grounds, *Lee-Norse Co., v. Rutledge*, 170 W.Va. 162, 291 S.E. 2d 477 (WV 1982)). Furthermore, individual words or phrases should not be analyzed in isolation; rather words and phrases should be analyzed in light of the whole statute. See *American Bituminous* at Syll. Pt. 2.

It is a fundamental cannon of statutory construction that the Legislature meant to say what it said. The best indication of legislative intent is the actual language enacted by the Legislature and signed into law by the Governor. The Tax Department did not issue a decree limiting the exemption to property on hand used for the subsistence of livestock on hand; the WV Legislature specifically chose to limit the exemption to the subsistence of livestock on hand. Either the phrase “on hand ” means something or it doesn’t.

Pilgrim’s Pride argues that the property will be exempt if it meets three criteria.

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.

See *Petition For Appeal* at P. 14, Lines 1-3.

Pilgrim’s Pride’s argument ignores the clear statutory language that the livestock must be “on hand” in order to be exempt. Based upon the joint stipulations in this case, approximately 71% of Pilgrim’s Pride’s livestock is located elsewhere and, consequently, cannot be “on hand” for the purposes of Pilgrim’s Pride claiming the subsistence of livestock exemption.

Pilgrim’s Pride’s further cites the definition of “property on hand for the subsistence of livestock” as support for its argument that the livestock need not be on hand. See *Petition For Appeal* at P. 14, Paragraph 3. The legislative regulation cited by Pilgrim’s Pride does not define the phrase “livestock on hand ” rather the phrase defines property on hand.

When an undefined phrase is used in a statute, the phrase takes its ordinary meaning. The County Assess argues that “on hand” simply means that the livestock must be located with the taxpayer – on the real property of the taxpayer claiming the exemption from *ad valorem* property tax– and cannot be located two miles down the road on a third party’s farm. Certainly, the 832,870 live chickens located at the Hatchery and the Fresh Processing Plant– located on real property owned by Pilgrim’s Pride – would be “on hand” for *ad valorem* tax purposes. However, the 3.18 million chickens located on the 61 family farms would not be “on hand” for purposes of Pilgrim’s Pride claiming the exemption from *ad valorem* property taxes. The language of Section 11-3-9(a)(21) does not exempt personal property used for the subsistence of livestock located with third parties. The Taxpayers have offered no authority for the proposition that livestock located on an unrelated, third-party grower’s real property is “on hand.” The family farmers provide all of the “. . . labor, housing, litter, utilities and most important, knowledge and expertise . . .” to raise the chickens to maternity. See Joint Exhibit 1. Consequently, the personal property owned by the family farmers would be exempt. However, the 3.18 million chickens located with the unrelated family farmers would not be “on hand” for the purposes of allowing Pilgrims Pride to claim the exemption.

The Feed Mill blends grains and other ingredients to create a proprietary chicken feed which is transferred to the 61 unrelated, third-party growers who raise the chickens to maturity. See Joint Stipulations 31,32 and 26; see also Findings 26 & 27. However, as argued above, 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, the Feed Mill is not exempt.

The Circuit Court was correct to conclude that the Feed Mill would not qualify for the *ad valorem* property tax exemption as industrial personal property used for the subsistence of livestock on hand.

IV. CONCLUSION

The Circuit Court of Hardy County was correct in concluding that Pilgrim's Pride's principal business activity is not the business of farming but animal slaughtering and processing. The Taxpayer does not qualify for the *ad valorem* property tax exemption for personal property used on a farm or farming operation as set forth in W. Va. Code § 11-3-9(a)(28). In addition, the Circuit Court correctly concluded that only the Hatchery and the Grow Out Facility would qualify as personal property used for the subsistence of livestock pursuant to W. Va. Code § 11-3-9(a)(21). The Supreme Court should refuse the Petition For Appeal and affirm the decision of the Circuit Court of Hardy County.

Respectfully submitted,

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APPENDIX 1

Based upon a review of the *ad valorem* property tax returns filed by Pilgrim's Pride for the tax years 2009, 2008, 2007 and 2006, Pilgrim's Pride listed the "Description of Business Activity"

on Schedule I on page 4 of the returns for each business segment as follows. The *ad valorem* property tax returns are included in Joint Exhibits 6-11 in the Circuit Court record.

<u>2009 TYE</u>	<u>Description of Business Activity</u>
Protein Conversion Plant	Poultry Farmer
Cold Storage	Poultry Farmer
Live Haul & Catching	Poultry Farmer
Hatchery & Garage	Poultry Farmer
Feed Mill & Grow Out	Poultry Farmer
Prep Foods Plant	Poultry Farmer
Fresh Processing Plant	Poultry Farmer

2008 TYE

Protein Conversion Plant	Vertically Integrated Poultry Processor
Cold Storage	Vertically Integrated Poultry Processor
Live Haul & Catching	Vertically Integrated Poultry Processor
Hatchery & Garage	Vertically Integrated Poultry Processor
Feed Mill & Grow Out	Vertically Integrated Poultry Processor
Prep Foods Plant	Vertically Integrated Poultry Processor
Fresh Processing Plant	Vertically Integrated Poultry Processor

2007 TYE

Protein Conversion Plant Producer/Processor	Vertically	Integrated	Poultry
Cold Storage reported	Return says "Delete Account" property under different account numbers		
Live Haul & Catching Producer/Processor	Vertically	Integrated	Poultry
Hatchery & Garage Producer/Processor	Vertically	Integrated	Poultry
Feed Mill & Grow Out Producer/Processor	Vertically	Integrated	Poultry
Prep Foods Plant Producer/Processor	Vertically	Integrated	Poultry
Fresh Processing Plant Producer/Processor	Vertically	Integrated	Poultry

2006 TYE

Protein Conversion Plant	Poultry Processor
Cold Storage	Vertically Integrated Poultry Producer
Live Haul & Catching	Vertically Integrated Poultry Manufacturer
Hatchery & Garage	Vertically Integrated Poultry Producer
Feed Mill & Grow Out	Poultry
Prep Foods Plant	Vertically Integrated Poultry Producer
Fresh Processing Plant	Poultry Processing