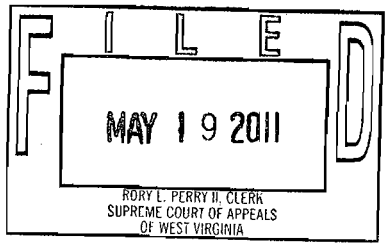
No. 101627

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.

SUPPLEMENTAL BRIEF OF PILGRIM'S PRIDE CORPORATION AND PILGRIM'S PRIDE CORPORATION OF WEST VIRGINIA, INC.

Respectfully submitted,

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

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Respondents.

SUPPLEMENTAL BRIEF 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") present this Supplemental Brief in accordance with this Court's order dated April 14, 2011. This Supplemental Brief supplements Petitioner's Petition For Appeal ("Petition") filed with this Court on December 13, 2010.

The procedural history and the relevant facts of this case as well as the appropriate standard of review are set forth in the Petition. Per the Court's instructions, they will not be repeated herein.

ARGUMENT

A. PILGRIM'S PRIDE'S PERSONAL PROPERTY IN HARDY COUNTY IS ENTITLED TO THE FARMING OPERATION EXEMPTION

Pilgrim's Pride is in the business of producing and selling poultry meat and poultry-related products. The State Tax Commissioner of the State of West Virginia and the County Assessor of Hardy County (collectively referred to as "Respondents") agree that "Pilgrim's Pride is a vertically integrated chicken company, which means [it is] involved in the entire production process, allowing [it] to control quality throughout every step of [its] operation—from farm to plate."[1] See Joint Exhibit 1. The question before this Court is whether Pilgrim's Pride's operations in Hardy County constitute a farm or farming operation for purposes of W.Va. Code § 11-3-9(a)(28). If so, Pilgrim's Pride is entitled to claim an exemption from *ad valorem* tax with respect to personal property employed in its farm or farming operation in Hardy County, West Virginia for its 2009 tax year.

Personal property employed on a farm or in a farming operation is exempt from West Virginia *ad valorem* taxes. Specifically, W.Va. Code § 11-3-9(a)(28) provides an exemption for:

> Personal property . . . 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.

Thus, to qualify for this exemption (herein referred to as the "Farming Operation Exemption")[2] Pilgrim's Pride must: (1) employ personal property exclusively in agriculture; (2) annually

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[1] See also Stipulation ¶ 7, in which the parties agreed that Pilgrim's Pride conducted no business activities in Hardy County, West Virginia other than those described by Joint Exhibit 1.

[2] Petitioner has previously referred to this exemption as the farm use exemption. Respondents have taken issue with this nomenclature. To avoid any potential confusion, Petitioner has made the necessary adjustments.

produce products of agriculture for sale; and (3) produce these products of agriculture on a farm or farming operation. Because Pilgrim's Pride satisfies each of these statutory requirements, it is entitled to claim the Farming Operation Exemption.

1. Pilgrim's Pride Uses Its Personal Property Exclusively in Agriculture in Hardy County, West Virginia

Pilgrim's Pride grows, nurtures, processes, and sells poultry and poultry-related products. These activities are inherently agricultural in nature and are entirely consistent with the applicable statutory definition of "agriculture," which includes "the breeding and management of livestock." W. Va. Code § 11-5-3.

As noted above, the parties stipulated that "Pilgrim's Pride is . . . involved in the entire production process, allowing [it] to control quality throughout every step of [its] operation—from farm to plate." The parties also stipulated that this is the only business that Pilgrim's Pride conducts in Hardy County, West Virginia. Stipulation ¶ 7. Thus, all of Pilgrim's Pride's personal property in Hardy County is only used to hatch, nurture, and process chickens into marketable chicken meat as part of Pilgrim's Pride's vertically integrated chicken farming operation and for no other purpose. Moreover, the parties stipulated that Pilgrim's Pride has not substantially changed its business operations since 2001. Stipulation ¶ 8. There is no doubt that all of Pilgrim's Pride's personal property in Hardy County is engaged in agriculture for purposes of qualifying for the Farming Operation Exemption for the 2009 tax year.

2. Pilgrim's Pride Annually Produces Agricultural Products in Hardy County, West Virginia

Pilgrim's Pride annually produces agricultural products for sale and thus, satisfies the second element of the Farming Operation Exemption. "Products of agriculture" are 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 (emphasis added). The parties stipulated that "Pilgrim's Pride sells processed chicken meat and prepared chicken products for consumption in wholesale and retail markets." Stipulation ¶ 5. Because the vast majority of Pilgrim's Pride's customers are not interested in buying live chickens, processing the live chickens into chicken meat is a necessary step that must occur prior to marketing the raw material to Pilgrim's Pride's customers. Thus, the processed chicken meat produced by Pilgrim's Pride is a product of agriculture, because the processing is necessary to package the raw material into a marketable product.

Moreover, as noted above, the parties stipulated that Pilgrim's Pride has not substantially changed its business operations since 2001. Stipulation ¶ 8. Because Pilgrim's Pride produces agricultural products on an annual basis, the second element is satisfied.

a. The Business Franchise Tax "Producer" Requirement Has No Application in This *Ad Valorem* Property Tax Case

Respondents claim that Pilgrim's Pride cannot produce a product of agriculture because it does not qualify as a producer of the chickens prior to processing. Respondents' claim relies on a provision in Chapter 11, Article 23 of the West Virginia statutes, which addresses West Virginia's business franchise tax. This provision, in relevant part, defines "doing business" for purposes of the business franchise tax. W. Va. Code § 11-23-3(b)(8).

Within this definition of what constitutes "doing business" for business franchise tax purposes, "the activity of agriculture and farming" is also defined. Id. Like the definition of "farming purposes" for property tax purposes found in W. Va. Code § 11-1A-3(g), "the activity of agriculture and farming" for business franchise tax purposes includes poultry production. Id. Nonetheless, the definition for business franchise tax purposes specifically excludes "any manufacturing, milling or processing of such products by persons other than the producer

thereof." Id. A similar exclusion is not found in the definition of "farming purposes" for property tax purposes. *Cf.* W. Va. Code § 11-1A-3(g). Yet Respondents claim that this "producer" requirement applies for property tax purposes because "[t]he West Virginia Legislature has expressly tied the W. Va. Code § 11-23-3(b)(8), tax to *ad valorem* property tax exemptions." This claim is without merit.

Respondents' analysis relies on a cross-reference in the statute defining "doing business" for business franchise tax purposes to Article 1A of Chapter 11:

> 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) (emphasis added).

The cross-reference underlined above cites to the corporate "principal activity" test found in the property tax section of the West Virginia Code, which is discussed in detail below. According to Respondents, this cross-reference bridges the business franchise tax and property tax sections of the West Virginia Code and requires the property tax definition of "farming purposes" to adopt the limitation found in the business franchise tax definition of "the activity of agriculture and farming." Such a position is inconsistent with this Court's ruling in the recent case of Morris v. Heartwood Forestland Fund Limited.[3]

In Heartwood Forestland, the Tax Department argued that it was entitled to apply the property tax definition of "farming" when interpreting the definition of "the activity of agriculture and farming" for business franchise tax purposes. The Tax Department maintained that such a reading was warranted "because there is a cross-reference made in the business franchise tax statute to the property tax portion of the Code regarding the valuation of farm

[3] Case No. 35476 (W.Va. S. Ct., Nov. 18, 2010).

property." Heartwood Forestland at 5 (internal citations omitted). This Court found that the cross-reference to the property tax portion of the Code was intended to "determin[e] whether agriculture and farming are a 'principal business activit[y],' not with how agriculture and farming are defined." Id. at 10-11 (Emphasis added.)

In doing so, this Court held that the taxpayers were exempt from the business franchise tax because their timber management business satisfied the business franchise tax definition of "the activity of agriculture and farming," even though timber management is specifically excluded under the definition of farming for property tax purposes. In short, the Court implicitly ruled that the definitions for "agriculture and farming" for the two taxes are different. Id. at 11.

Here, Respondents are attempting to intermix the property tax and business franchise tax sections of the Code using the same justification that this Court rejected in Heartwood Forestland. Thus, Respondents' position that the "producer" requirement found in the business franchise tax section of the Code should apply to the Farming Operation Exemption located in the property tax section is untenable and its conclusions on this issue are irrelevant.

b. Pilgrim's Pride Satisfies the Business Franchise Tax "Producer" Requirement

Even if, *arguendo*, Pilgrim's Pride were required to be a producer of chickens prior to their processing, as required for the business franchise tax, in order to qualify for the Farming Operation Exemption, Pilgrim's Pride satisfies this requirement because it produces the chickens prior to processing them into chicken meat. West Virginia law is very clear on what it takes to qualify as a "producer." A producer is "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 regulations addressing business registration certificates also provide a similar, although

expansively modified, definition: "'[p]roducer of a product of agriculture' 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, or third party manufacturer or food processor." 110 C.S.R. 12D, § 3.16 (emphasis added). The thrust of these definitions is that one does not qualify as a producer by simply buying and selling agricultural products. A producer is involved with the creation of the product itself.

(i) Pilgrim's Pride Is a Producer of the Chickens that it Processes.

Pilgrim's Pride is not a stranger to the chickens it processes and sells. As noted above, the parties have stipulated that "Pilgrim's Pride is a vertically integrated chicken company, which means [it is] involved in the entire production process . . . —from farm to plate." Joint Exhibit 1. This means that Pilgrim's Pride hatches eggs at its hatcheries. Its feed mill prepares food for the pullets while they grow. Once mature, Pilgrim's Pride processes the birds at its facility and prepares them to be sold at retail. Unlike the distinguishing examples cited in the guidance above, Pilgrim's Pride does not merely facilitate the distribution of a farm product or convert a raw farm product into a marketable good. The chicken meat that it ultimately sells is derived from the same birds that it incubated and hatched in its hatcheries. Given these circumstances, Pilgrim's Pride must not be considered a producer of the chickens it processes.

(ii) Pilgrim's Pride Is Not in the Business of "Animal Slaughtering and Processing."

Despite the facts establishing that Pilgrim's Pride is a producer, Respondents argue that Pilgrim's Pride's business is limited to "animal slaughtering and processing." While the processing component of its business is important and necessary (as not many consumers purchase live chickens at retail), this description is incomplete. Pilgrim's Pride is not a third party food processor. In other words, Pilgrim's Pride does not process the livestock of other

farmers for a fee nor does it buy the livestock of other farmers to process and sell. Instead, Pilgrim's Pride processes its own birds, the same birds that it has retained title to since the hatchery. Ultimately, Pilgrim's Pride's revenues come not from the act of processing the chicken, but from the sale of processed chicken meat — an agricultural product — to its customers. This product results from a series of integrated steps that carry the bird through maturity and ultimately prepare it for processing and resale.

(iii) Pilgrim's Pride Use of Independent Family Farmers Does Not Affect Its Status as a Producer of the Chickens that it Processes.

Respondents rely on Pilgrim's Pride's use of independent family farmers, who Petitioner contracts with in order to assist it during certain stages of the birds' development. Specifically, Respondents allege that these family farmers in Hardy County break the chain of Pilgrim's Pride's involvement in the production of the birds. As an initial matter, there is no statutory reason to distinguish between Pilgrim's Pride contracting with independent growers to assist it during the "grow out" phase of its operations rather than hiring the individuals as employees to perform the work. There is no operational distinction from the point of view of Pilgrim's Pride. Much like crop farmers can hire third party laborers to till soil and water crops on a seasonal basis, Pilgrim's Pride contracts with independent growers to provide flexibility to its business. Based on Respondents' arguments, crop farmers that use third party contractors would not be considered farmers at all because the independent contractors would be performing much of the labor associated with raising the crops. Such a distinction is without merit.

If, *arguendo,* Respondents' reading of the Farming Operation Exemption were correct, the use of the independent family farmers would actually prevent larger farming operations from claiming a Farming Operation Exemption. Thus, in order to qualify for the Farming Operation

Exemption, companies would potentially have a tax incentive to either buy out or discontinue use of the independent family farmers that previously assisted them. Such a result could not have been the intent of the West Virginia Legislature.

If Pilgrim's Pride is required to be a producer during the "grow out" process, it separately satisfies this requirement. As an initial matter, there is no statutory requirement that there can be only one producer of an agricultural product. While there is no transcript, counsel for Respondents agreed during oral argument in the Circuit Court below that there may be two or more producers of the same agricultural product. Under the instant facts, it is clear that both Pilgrim's Pride and the third-party growers play significant roles in the "grow out" of Pilgrim's Pride's birds. While the family farmers provide facilities and labor during the "grow out" process, Pilgrim's Pride provides the birds, feed, technical guidance, and veterinary services to ensure a successful grow out. Pilgrim's Pride does not simply drop off the pullets with the third-party growers and pick them up a few weeks later as Respondents imply. It is involved in every part of the process, including the "grow out" phase.[4] Thus, the third-party contractors do not act as a break in Pilgrim's Pride's vertical chain, and they do not affect Pilgrim's Pride's status as a producer of the chickens that it processes.[5]

3. Pilgrim's Pride Operates a Farm or Farming Operation in Hardy County, West Virginia

Pilgrim's Pride's activities in Hardy County are also properly categorized as occurring on a farm or farming operation, because Pilgrim's Pride produces agricultural products, i.e.,

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[4] See generally, Pilgrim's Pride Corporation Boiler Production Agreement, §§ F(1), (2), (3), (11), (12), (13) and G(2).

[5] Pilgrim's Pride has not and does not claim either the Farming Operation Exemption or Subsistence of Livestock Exemption (defined below) 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.

marketable chicken meat, at its facilities in Hardy County. A "farm" is defined to "mean and include land currently being used primarily for farming purposes . . .." W. Va. Code § 11-1A-3(f). "Farming purposes" is defined to include "the utilization of land to produce for sale, consumption or use, any agricultural products, including, but not limited to . . . poultry." W. Va. Code § 11-1A-3(g). "Products of agriculture" are defined as "[t]hose things the existence of which follows directly from the activity of agriculture, horticulture or grazing, including . . . poultry . . . , whether in the natural form or processed as an incident to the marketing of the raw material." W. Va. Code § 11-5-3. Thus, to qualify as a farm under the statutory definition, Pilgrim's Pride needs only to use its personal property to primarily produce an agricultural product, such as poultry.

The parties stipulated that Pilgrim's Pride sells processed chicken meat for consumption. Stipulation ¶ 5. As discussed above, there can be little doubt that processed, marketable chicken meat qualifies under the statute's definition of an agricultural product. Further, the parties stipulated that Pilgrim's Pride's vertically-integrated production of chicken meat is Pilgrim's Pride's only business activity in Hardy County. Stipulation ¶ 7. Thus, Pilgrim's Pride's operations in Hardy County are conducted on a farm pursuant to the relevant statutory definition.

As noted above, the Farming Operation Exemption is available "in the case of such personal property used <u>on a farm or farming operation</u> that annually produces for sale agricultural products." W.Va. Code § 11-3-9(a)(28) (emphasis added). Thus, even if the personal property in question was not used on a farm, the Farming Operation Exemption provides that a taxpayer may nonetheless be eligible for the Farming Operation Exemption if it uses its personal property in a "farming operation."

While the term "farming operation" is not statutorily defined, a plain reading of the facial language of the Farming Operation Exemption makes clear that a "farming operation" is distinct from a "farm." The West Virginia canons of statutory construction state that "an interpretation of a statute which gives a word . . . no function to perform, or makes it, in effect, a mere repetition of another word . . . must be rejected as being unsound." Syllabus Point 2, L.H. Jones Equipment Co. v. Swenson Spreader, LLC, 224 W. Va. 570, 687 S.E.2d 353, 358 (2009) quoting Syllabus Point 7, Ex parte Watson, 82 W. Va. 201, 95 S.E.2d 648 (1918). As such, "farm" and "farming operation" cannot be synonymous.

West Virginia courts have long held that "[p]lain language should be afforded its plain meaning." West Virginia University Board of Governors v. West Virginia Higher Education Policy Commission, 221 W. Va. 187, 653 S.E.2d 649, 657 (2007) quoting Crockett v. Andrews, 153 W. Va. 714, 172 S.E.2d 384, 387 (1970). Accordingly, the term "farming operation" should also be interpreted using its plain and ordinary meaning. Applying these principles, the term "farming operation" appears to focus on what the taxpayer is doing rather than where the taxpayer is doing it. Therefore, Petitioner contends that a taxpayer may qualify as a "farming operation" if it produces products of agriculture, even though its activities are not performed at a location meeting the statutory definition of "farm."

The focus should be on whether the taxpayer is using its own property to produce the products of agriculture. As discussed above and as stipulated by the parties, Pilgrim's Pride uses its personal property to produce poultry meat "for sale, consumption, or use" to the public. Thus, it produces "products of agriculture." Because Pilgrim's Pride annually produces products of agriculture, it conducts a farming operation for purposes of the Farming Operation Exemption.

a. There Is No Corporate "Principal Activity" Requirement

Although Pilgrim's Pride satisfies the statutory terms to qualify as a farm or farming operation, Respondents insist that Pilgrim's Pride must also clear additional hurdles outside the four corners of the Farming Operation Exemption. One such alleged hurdle is the corporate "principal activity" requirement found in W. Va. Code § 11-1A-10(b). This irrelevant statute applies, as evinced by its title, to the "Valuation of Farm Property" and provides:

> (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).

This section modifies W. Va. Code § 11-1A-10(a), which provides a special valuation rule for farm property.[6] In short, the "principal activity" requirement provides that a corporation's "principal activity" must be the business of farming before it can use this special valuation rule for its real property.

In this case, Pilgrim's Pride is not claiming this special valuation rule for its real property. Instead, it contends that an exemption located in another article of the West Virginia Code applies to exempt its personal property from *ad valorem* taxes altogether. The statutory provision relied upon by Respondents is simply not relevant or applicable to this case.

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[6] This provision provides in full as follows:

> With respect to farm property, the tax commissioner shall appraise such property so as to ascertain its fair and reasonable value for farming purposes regardless of what the value of the property would be if used for some other purpose, and the value shall be arrived at by giving consideration to the fair and reasonable income which the property might be expected to earn in the locality wherein situated, if rented. The fair and reasonable value for farming purposes shall be deemed to be the market value of such property for appraisement purposes.

Moreover, although Respondents seek to apply the corporate "principal activity" requirement in W. Va. Code § 11-1A-10(b), they refuse to apply the regulations that provide the test to determine when the "principal activity" requirement has been satisfied.

The corresponding regulations state that a corporation "shall be deemed to be primarily engaged in the business of farming if, the wholesale value of farm commodities or products . . . is fifty percent (50%) or more of the annual gross income of the corporation." 110 C.S.R. 1A, § 2.6.6.3.c.2.

Instead of applying the test provided in the regulation, Respondents devise their own test to determine when the "principal activity" requirement is met. The test applied by Respondents does not define a business based on how the business generates income, as required by the regulation. Respondents' test disassembles Pilgrim's Pride's vertically integrated business and considers each segment of the business in isolation. Respondents then separate Pilgrim's Pride's business segments into two groups: those that they contend constitute farms or farming operations and those that they contend do not constitute farms or farming operations. It then determines Pilgrim's Pride's principal activity by comparing the values of the personal property held by the purportedly exempt and non-exempt segments. Ultimately, respondents cite no legal authority for this test.

Respondents instead argue that the test found in the regulations interpreting the corporate "principal activity" requirement simply cannot apply, citing the scope of the regulations as evidence. The scope provides that the regulation "prescribes how the appraised value of farmland and the 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. 1A, § 2.1. It is hardly surprising that the regulation is limited in scope to appraisal of

property given that the corporate "principal activity" requirement is found in an article of the West Virginia Code entitled "Appraisal of Property." But if Respondents erroneously insist on applying a statutory provision found in a real property valuation statute, then the interpretive regulations must also apply. Respondents should not be allowed to have their cake and eat it, too.

In sum, either the "principal activity" requirement does not apply; or, if it does, the appropriate test is based on the annual gross income of the corporation. Respondents cannot pick and choose amongst the provisions that they like. Assuming, *arguendo,* that the "principal activity" test applies, Pilgrim's Pride's "principal activity" is farming because over 60% of its net sales are attributable to fresh chicken products.[7]

In conclusion, Pilgrim's Pride satisfies all statutory requirements to claim the Farming Operation Exemption. It is engaged in agriculture. It produces chicken meat—a product of agriculture—for sale. Finally, it produces these chickens as part of a farm or farming operation. As such, its personal property in Hardy County should be exempt from *ad valorem* property taxes and the ruling of the Circuit Court should be reversed.

B. PILGRIM'S PRIDE'S HATCHERY, FEED MILL, AND LIVE HAUL OPERATION QUALIFY FOR THE SUBSISTENCE OF LIVESTOCK EXEMPTION

Personal property used in the subsistence of livestock is exempt from West Virginia *ad valorem* taxes. Specifically, W. Va. Code § 11-3-9(a)(21) provides an exemption for: "All property on hand to be used in the subsistence of livestock on hand at the commencement of the assessment year." This exemption is referred to herein as the "Subsistence of Livestock Exemption." Pilgrim's Pride' s property associated with its hatchery, feed mill, and live haul

[7] For further discussion, see Petition at 7-8.

operations in Hardy County satisfies the statutory requirements to be exempted under this provision.

1. Pilgrim's Pride's Hatchery, Feed Mill, and Live Haul Operations Meet the Statutory Requirements to Claim the Subsistence of Livestock Exemption

The personal property used in Pilgrim's Pride's hatchery, feed mill, and live haul operations are necessary to care for and protect Pilgrim's Pride's birds. Respondents agree that personal property at Pilgrim's Pride's hatchery qualifies for the Subsistence of Livestock Exemption.[8] However, Respondents contend that property associated with Pilgrim's Pride's feed mill and live haul operations do not qualify for the Subsistence of Livestock Exemption.

a. Feed Mill

Pilgrim's Pride's feed mill produces chicken feed that is vital and necessary to the subsistence of chickens owned and readily accessible to Pilgrim's Pride. Respondents do not contest that the feed produced at the feed mill is necessary for the sustenance of Pilgrim's Pride's birds. Thus, by the terms of the statute, personal property located at the feed mill qualifies for the Subsistence of Livestock Exemption.

Respondents' sole argument to exclude the feed mill from the Subsistence of Livestock Exemption is that the chickens, which consume the feed, are physically located on the property of third parties. The crux of Respondents' argument is that the phrase "livestock on hand" in the statute means that "livestock must be located with the taxpayer."[9] Respondents cite no authority to support this interpretation, and, as discussed below, their interpretation is internally inconsistent.

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[8] Tax Department's Response to Petition for Appeal ("Response") at 18. See Stipulation ¶¶ 21-24. Pilgrim's Pride's hatcheries incubate between 1.8-2.1 million eggs a week. As such, it is fundamental to the subsistence of its flocks.

[9] Response at 21.

The internal inconsistency of Respondents' position is due to the fact that the phrase "on hand" appears in the statute not once, but twice, and the Respondents' interpretation cannot apply to both instances. The phrase "on hand" appears once in the context of "livestock on hand" and again in the context of "property on hand." While "livestock on hand" is undefined, "property on hand" is defined by 110 C.S.R. 3, § 2.51 The regulation provides that "property on hand to be used in the subsistence of livestock" includes "all personal property primarily, actually, and directly used for, and reasonably necessary for the care or feeding of livestock." In other words, there is no requirement in the regulation that the property be held in any particular location. Instead, the focus is on how the property is used. The Tax Department insists that "livestock on hand" must be located on the taxpayer's property. Yet it cannot explain why "on hand" would take on different definitions in the context of a single statute, let alone within the same sentence.

Petitioner does agree with Respondents on one point: the term "on hand" means something. Petitioner simply disagrees with Respondents' unreasonably restrictive definition of "on hand." The Merriam-Webster Dictionary defines "on hand" to mean "in present possession or readily available."[10] Petitioner believes that this is the better reading of "on hand." For one, this harmonizes the definition of "on hand" with the definition of "property on hand to be used in the subsistence of livestock" found in 110 C.S.R. 3, § 2.51 because it does not impose a specific location requirement that is not in the Code of State Regulations. Second, this definition prevents absurd results in other parts of the Code. For example, W. Va. Code § 11-15-8b

[10] MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY, 526 (10th ed. 1993). This Court has previously referred to dictionaries when determining the commonly accepted usage of undefined terms. See, e.g., Coordinating Council for Independent Living, Inc. v. Palmer, 546 S.E.2d 454 (W.V. 2001)(citing WEBSTER'S for the definition of "certain"). See also, State v. Miller, 350 S.E.2d 724 (1986)(citing WEBSTER'S for the definition of "Catch-22").

requires that nonresident contractors "file a statement with the tax commissioner itemizing the machinery, materials, supplies, and equipment he has or will have on hand at the time he begins the fulfillment of the contract" (emphasis added) and pay any associated sales or use taxes. In essence, it provides a use tax reporting enforcement mechanism for nonresident contractors. "On hand" is not defined in the statute. If the plain and ordinary meaning of "on hand" is "must be located with the taxpayer" as alleged by Respondents, nonresident contractors could simply skirt the requirement and undermine the use tax reporting enforcement mechanism by shipping valuable equipment to third-parties for storage in the state and retrieving that equipment after the contractor "begins the fulfillment of the contract." It is doubtful that Respondents would define "on hand" so narrowly in such an instance. Instead, the statute is more meaningfully read as including all of the contractor's property in the state to which it has ready access.

This common sense reading of "on hand" should not change when interpreting the Subsistence of Livestock Exemption. If Pilgrim's Pride has ready access to property and that property is used in the subsistence of livestock to which Pilgrim's Pride also has ready access, then the requirements to claim the exemption are satisfied. Even when the birds are located on the property of the independent third-party growers, Pilgrim's Pride retains title to the birds and can schedule them for pick up when it chooses.[11] Thus, the birds are readily available to Pilgrim's Pride. Such a reading does not offend the intent of the Legislature. After all, the taxpayer must still own the property and use that property in the subsistence of its livestock to claim the exemption.

Because Respondents' reading of the Subsistence of Livestock Exemption is overly narrow and unworkable in practice, their interpretation should be rejected, and their argument

[11] Pilgrim's Pride Corporation Boiler Production Agreement, §§ F(1),(3).

should carry no weight. Instead, the feed mill should be exempt because Pilgrim's Pride's feed mill is used to create feed for its own chickens. The fact that the chickens are located "two miles down the road" is of no consequence. Pilgrim's Pride has ready access to the chickens and in fact does access the chickens to ensure that they are being raised in accordance with its specifications.[12] Thus, under a reasonable reading of the statute, the personal property associated with Pilgrim's Pride's feed mill should also qualify for the Subsistence of Livestock Exemption.

b. Live Haul Operation

Property associated with Pilgrim's Pride's live haul operations should also be exempt under the Subsistence of Livestock Exemption. The live haul operation is vitally important to the safety of Pilgrim's Pride's birds. It is a critical link in Pilgrim's Pride's vertically integrated chain because (1) it is necessary to transport the birds from the grow out farms and (2) it is necessary to do so in a manner that minimizes casualties in the flock. The transportation of Pilgrim's Pride's flocks from the grow out farms is a very complex operation. The move places tremendous stress on the birds and without proper planning, it can result in numerous premature fatalities. Thus, the live haul operation is designed with not only the transportation of the birds in mind, but also ensures that animal welfare practices are employed and that the poultry's wellbeing and safety are accounted for during their delivery.

While Respondents did not address the live haul operation in their Response, the court below found that Pilgrim's Pride's live haul operations were used not for the subsistence of livestock, but for the purpose of transporting the chickens to the processing plant. The court cites no support for this proposition and there is in fact no basis for its conclusion. As discussed above, Pilgrim's Pride's live haul operation does not merely move the birds from point A to

[12] See Pilgrim's Pride Corporation Boiler Production Agreement, sec. F(12).

point B. They do so in a manner that is designed to minimize stress and prevent harm to the birds, a fact that was overlooked by the court below.

As noted above, the regulations require only that the property be "directly used for, and reasonably necessary for the care or feeding of livestock." The property used in Pilgrim's Pride's live haul operations is used for the safe and humane transport of its chickens. In other words, it is used directly for their care, and it is necessary to provide them safe passage to the processing plant. This is all that the regulations require. Thus, both Pilgrim's Pride's live haul operations and feed mill satisfy the statutory requirements for receiving the Subsistence of Livestock Exemption and are entitled to receive it. The decision of the Circuit Court should be reversed to the extent that it ruled to the contrary.

C. CONCLUSION

In sum, Pilgrim's Pride is entitled to claim the Farming Operation Exemption from West Virginia *ad valorem* taxes for its vertically integrated chicken operation, which includes its hatchery, feed mill, live haul operations, processing plant, and protein conversion plant. Each of these phases is necessary and incident to Pilgrim's Pride's farming operation in Hardy County, which produces processed poultry meat—a product of agriculture—for retail sale. Pilgrim's Pride is also entitled to claim the Subsistence of Livestock Exemption from West Virginia *ad valorem* taxes for its personal property associated with the hatchery, feed mill, and live haul operations. The personal property used in these phases of Pilgrim's Pride's business is necessary to care for Pilgrim's Pride's birds. Petitioner respectfully requests that this Court reverse the court below as necessary to accomplish this end.

Respectfully submitted,

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

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CERTIFICATE OF SERVICE

I, Stephen Stockton, Counsel for Petitioners, do hereby certify that a true and exact copy of the foregoing Supplemental Brief of Pilgrim's Pride Corporation and Pilgrim's Pride Corporation of West Virginia, Inc. was served by deposition the same postage prepaid in the United States Mail, this `19th day of May, 2011, addressed as follows:

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