

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

10-1627

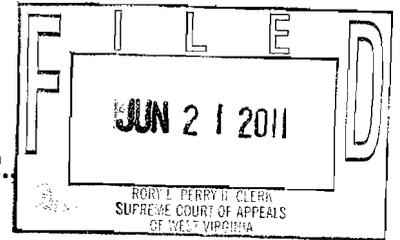
**PILGRIM'S PRIDE CORPORATION, and
PILGRIM'S PRIDE CORPORATION OF WEST VIRGINIA, INC.**

Petitioner,

v.

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

Respondents.



**TAX DEPARTMENT'S RESPONSE TO
SUPPLEMENTAL BRIEF OF
PILGRIM'S PRIDE CORPORATION AND
PILGRIM'S PRIDE CORPORATION OF WEST VIRGINIA, INC.**

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I. INTRODUCTION

The Tax Department has outlined the procedural background and underlying facts of this case in its *Response to Petition For Appeal*. The Tax Department will not rehash those arguments as directed by the Court's scheduling order in this matter. The Tax Department reserves the right to argue the points raised in the *Response to Petition For Appeal* before the Court as necessary. The Tax Department received Pilgrim's Pride's *Supplemental Brief* on May 23, 2011 and files this brief in response.

II. ARGUMENT

A. PILGRIM'S PRIDE CORPORATION DOES NOT QUALIFY FOR THE FARM OR FARM OPERATION EXEMPTION

Is a commercial food processing plant a farm or farming operation? Is a corporation operating a farm if the corporation subcontracts the growing of livestock to unrelated, third-parties? If a third-party raises a corporation's livestock on a farm he owns, is the corporation engaged in the business of farming? What is a farm or farming operation? Those are the central questions presented to the Court. The application of the tax exemption is really pretty simple once you decide what is a farm or farming operation.

A.1. Pilgrim's Pride Does Not Use the Industrial Personal Property On a Farm Or Farming Operation

Primarily, Pilgrim's Pride claims that its industrial personal property should be exempt from taxation and relies on the exemption from *ad valorem* property tax as property used on a farm or farming operation. The language of the exemption must be analyzed by the Court.

- (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, 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 Taxpayer argues that it must meet three elements in order to qualify for the exemption.

Pilgrim's Pride meets the first two elements at issue but fails the third element.

First, the personal property must be employed exclusively in agriculture. Second, the personal property must produce products of agriculture for sale. *See Supplemental Brief* at PP. 1 & 2. Pilgrim's Pride is correct with respect to the first two elements of the exemption before the Court. The simplest definition of agriculture is the growing of crops and livestock. *See West Virginia Code* § 11-5-3. Clearly, raising chickens would fall within the general rubric of agriculture by anybody's definition of the term. Second, the Taxpayer does sell agricultural products. Pilgrim's Pride Corporation referenced the sales figures from its Annual Report for the 2009 fiscal year in the *Petition For Appeal* at P.8.¹ The Taxpayer cited percentages and did not cite specific sales figures from the annual report in the *Petition For Appeal*; it appears that Pilgrim's Pride generated net annual sales of \$ 7.1 billion of agricultural products for the 2009 fiscal year. *See Pilgrim's Pride Annual Report (Form 10-K)* at P. 14 (September 26,2009). Clearly, agricultural products are sold.

However, Pilgrim's Pride misstates the third element required in order to claim the exemption at issue. The Taxpayer argues for the third element that : "Pilgrim's Pride must : ... (3) produce these products of agriculture on a farm or farming operation." *See Supplemental Brief* at P2 &3. The language of the exemption is critical. The exemption clearly states that the **personal property** must be used on a farm or farming operation not that agricultural products are produced on a farm or farming operation. Involving a corporation 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,

¹ During the discovery phase of this case, Pilgrim's Pride provided a copy of the Annual Report to the Tax Department. It does not appear that the Annual Report was submitted to the Circuit Court in the Joint Stipulations. The Tax Department does not object to the Court taking judicial notice of Annual Report since it is a public document, is readily available, and may shed light upon the issues presented in this case.

the industrial personal property must be used on a farm or farming operation. Pilgrim's Pride fails the third element required.

Based upon the sheer value of the personal property at issue, Pilgrim's Pride does not use the vast majority of its industrial personal property on a farm or farming operation. For example, the true and actual value of the industrial personal property located at the Fresh Processing Plant– the slaughterhouse– is \$ 21,050,958. *See Circuit Court Order* at Finding 14; reflecting Joint Stipulation 14. The Fresh Processing Plant is located at 129 Potomac Avenue, Moorefield, West Virginia, 26836. *See Circuit Court Order* at Finding 37; reflecting Joint Stipulation 37. A slaughterhouse located in downtown Moorefield is not a farm or farming operation; it is a commercial food processing plant. Similarly, the true and actual value of the industrial personal property located at the Protein Conversion Plant is valued at \$ 2,009,302. *See Circuit Court Order* at Finding 14; reflecting Joint Stipulation 14. The Protein Conversion Plant is also located at 129 Potomac Avenue, Moorefield, West Virginia, 26836. *See Circuit Court Order* at Finding 41; reflecting Joint Stipulation 41. A plant located in the middle of downtown Moorefield which converts the dregs and the leftover carcass parts for sale as commodity products is not a farm or farming operation. The industrial personal property is not used on a farm or farming operation as required by the exemption.

In addition, Pilgrim's Pride utilized approximately 61 unrelated, third-party growers to provide the labor and facilities used in the grow out process. *See Circuit Court Order* at Finding 25,26 & 27; reflecting Joint Stipulations 25,26 & 27. Pilgrim's Pride does not own the real property on which the family farms are located. *See Circuit Court Order* at Finding 20; reflecting Joint Stipulation 20. By design, Pilgrim's Pride subcontracts the growing of its chickens to the family farmers in Hardy County. The major components of industrial personal property in dispute are

located at the Fresh Processing Plant and the Protein Conversion Plant in Moorefield not on the family farms in the surrounding country side. Since the industrial personal property at issue is not used on a farm or farming operation, Pilgrim's Pride does not qualify for the exemption set forth in W. Va. Code § 11-3-9(a)(28).

Furthermore, Pilgrim's Pride argues that the terms "farm" and "farming operation" cannot be synonymous. The Taxpayer argues that the term "farming operation" should focus on what happens not where it happens. *See Supplemental Brief* at P. 11.

Any analysis of a farm operation must include what happened, where it happened and who did it. Pilgrim's Pride wants to claim the exemption by riding piggyback on the 61 unrelated, third-party growers. The Taxpayer concedes that the term "farm operation" is not defined. *See Supplemental Brief* at P. 11. The Tax Department concedes that the family farmers are conducting "farming operations" for purposes of the exemption. The family farmers do the hard work of providing the physical labor to grow the chickens to maturity on the farms which Pilgrim's Pride **does not** own. The industrial personal property located at the Fresh Processing Plant and Protein Conversion Plant is simply not used on the farming operation of the 61 unrelated, third-party growers as required by the exemption. Pilgrim's Pride's use of the industrial personal property is solely to transform chickens produced by unrelated, third-parties into saleable products. The Taxpayer has cited no authority for its piggyback theory of exemption.

Instead, Pilgrim's Pride argues that the Court should focus on the use of its own property to produce the productions of agriculture. *See Supplemental Brief* at P. 11. As the Tax Department argued below, the Legislature did not enact a blanket exemption for property used in agriculture. Nor did the Legislature choose to exempt personal property used by the owners of livestock. The

Legislature has expressly limited the exemption to personal property used on a farm or farming operation.

A.2. Pilgrim's Pride Does Not Meet The
Principal Activity Requirement of WV Code § 11-1A-10(b)
Imposed on Corporations

The Circuit Court noted that the West Virginia Legislature has expressly imposed a statutory restriction for *ad valorem* property tax purposes which precludes Pilgrim's Pride Corporation 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; reflecting Joint Stipulations 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 whether Pilgrim's Pride's principal activity is the business of farming.

In the *Supplemental Brief*, Pilgrim's Pride Corporation argues that W. Va. Code § 11-1A-10(b) should be viewed as an "irrelevant statute". The Taxpayer argues that its existence as a corporation is irrelevant for the *ad valorem* case before the Court based upon a statutory title.

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: . . .

Supplemental Brief at P. 12.

Pilgrim's Pride argues that its very existence as a corporation is irrelevant. *See Supplemental Brief* at P. 12, Paragraph 2. The Taxpayer argues that W. Va. Code § 11-1A-10(b) should be limited to solely modifying Paragraph 10(a) and is "irrelevant" to whether Pilgrim's Pride qualifies for the Farm Operation Exemption in W. Va. Code § 11-3-9(a)(28). *See Supplemental Brief* at P. 12. The rules of statutory construction are clear. The Legislature has specifically stated that titles to code sections are little more than catchwords and do not carry legal weight. *See* W. Va. Code § 2-2-10(z).

Furthermore, Paragraph 10(a) does not create a special valuation rule, it merely reiterates the general principals of the definition of "value" as set forth in W. Va. Code § 11-1A-3(i). Farm property shall be valued for *ad valorem* tax purposes as being used for farming purposes and not as being used in some other endeavor. Section 11-1A-10(a) does not create a special valuation rule; it merely reiterates the standard definition of value in Article 1A as applied to farm lands and farm personal property. Section 11-1A-10(a) reflects the Legislative direction that real property and personal property used on farms should be valued at its actual use as opposed to other uses.

Assuming arguendo, that Section 11-10A-1(a) does create a special valuation rule for valuing farm property, Section 11-10A-10(b) is still applicable to Pilgrim's Pride and the farm or farm use exemption. W. Va. Code § 11-10A-10(b) specifically addresses **farming** which lies at the heart of

the exemption claimed by Pilgrim's Pride Corporation. The Taxpayer's argument rests on the claim that it operates a "farm" for "farming purposes" since it utilizes third-parties' land to produce chickens. Pilgrim's Pride argues in the *Supplemental Brief* in that its activities occur on a farm or farming operation. See *Supplemental Brief* at P. 9. The Taxpayer argues its case based upon the definition "farm" in W. Va. Code § 11-1A-3(f) and the use of land for "farming purposes" found in W. Va. Code § 11-1A-3(g). See *Supplemental Brief* at P. 10.

In the *Petition For Appeal* to the Supreme Court, the Taxpayer argued: "Pilgrim's Pride, a corporation, is engaged in the business of farming." See *Petition For Appeal* at P. 7, Paragraph 2. The Taxpayer cited the principal business activity requirement of W. Va. Code § 11-1A-10(b) without challenge. See *Petition For Appeal* at P. 7, Paragraph 1. Furthermore, in discussing the farm operation exemption in the *Petition For Appeal*, Pilgrim's Pride seems to concede the principal activity requirement for corporations:

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.

Petition For Appeal at P. 7, Paragraph 1 & 2 (Emphasis in *Petition For Appeal*).

The Taxpayer should not be allowed to base its argument on the portions of Article 1A that are helpful and simply dismiss the portions of Article 1A that it cannot meet as an "irrelevant statute." Contrary to the *Supplemental Brief*, the requirement that a corporation's principal activity must be the business of farming before it can be engaged in farming does apply.

The Tax Department correctly applied W. Va. Code § 11-1A-10(b). If Pilgrim's Pride Corporation's principal business activity is not the business of farming, then the corporation is not engaged in farming. Pilgrim's Pride Corporation cannot claim the exemption for personal property used on a farm or farming operation if it is not engaged in farming.

A.3. The Tax Department Correctly Applied
The Heartwood Forest Fund Decision

Pilgrim's Pride argues that the Supreme Court should reverse the Circuit Court decision based upon the recent decision in *Morris v. Heartwood Forest Fund Limited Partnership*, ____ W. Va. ____, ____ S.E.2d ____, 2010 WL 4708996 (W. Va. Nov. 2010). See *Supplemental Brief* at P. 5 & 6. The Taxpayer argues:

This Court found that the cross-reference to the property tax portion of the Code was intended to “determine[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.)

Supplemental Brief at P. 6.

The Tax Department is not attempting to use the business franchise tax to redefine the world of *adm* property taxation.

The Tax Department examined the definition of “doing business” found in W. Va. Code § 11-23-3(b)(8) in order to determine whether Pilgrim's Pride's principal business activity is the usiness of farming. The Tax Department is not arguing that Section 11-23-3(b)(8) should be utilized to redefine the terms on which Pilgrim's Pride relies. For example, the term “farm” is defined by W. Va. Code § 11-1A-3(f) and the term “farming purposes” is defined by W. Va. Code § 11-1A-3(g). The Taxpayer also relies on the definition of the terms “agriculture”, “products of agriculture,”

and “producer” as defined by in W. Va. Code § 11-5-3 by the Legislature for *ad valorem* tax purposes. The definitions must be applied as written. Regardless of how these terms are defined, Pilgrim’s Pride Corporation is not engaged in farming unless its principal business activity is the business of farming.

The processing of the agricultural products by the “producer” of those products is defined as “farming” under W. Va. Code § 11-23-3(b)(8). However, the term “producer” is limited for *ad valorem* tax purposes to the person actually engaged in agriculture. *See* W. Va. Code § 11-5-3. Pilgrim’s Pride subcontracts the entire “grow out” portion of the business to the 61 family farmers in Hardy County. *See* Stipulation 26 & 27. By design, unrelated, third-party growers actually raise the chickens to maturity. Pilgrim’s Pride cannot be the producer of the mature chickens which will be slaughtered at the Fresh Processing Plant since they were grown out by unrelated, third-parties. Therefore, the industrial personal property located at 129 Potomac Avenue in Moorefield is not used in farming and does not qualify for the farm or farm use exemption.

In the alternative, Pilgrim’s Pride argues that an examination of the producer requirement found under the business franchise tax should not be applied to an *ad valorem* tax case. *See Supplemental Brief* at PP. 4-6. *Assuming arguendo* that Pilgrim’s Pride is correct, the case is even simpler to resolve. Does Pilgrim’s Pride utilize the industrial personal property at the Fresh Processing Plant or the Protein Conversion Plant in Moorefield on a farm or farming operation ? The answer is simply no. Therefore, Pilgrim’s Pride does not meet the statutory requirements for the exemption.

**B. THE HATCHERY AND GROW OUT FACILITIES
ARE EXEMPT AS PROPERTY USED**

FOR THE SUBSISTENCE OF LIVESTOCK

The second exemption from *ad valorem* property tax before the Court relates to the subsistence of livestock on hand. 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).

Only property on hand used for the subsistence of livestock on hand qualifies for the second exemption before the Court.

Pilgrim's Pride argues that the subsistence of livestock on hand should be interpreted as

meaning in present possession or readily available. *See Supplemental Brief* at PP. 15 & 16. Consequently, Pilgrim's Pride argues that the personal property located at the Feed Mill and the Live Haul Operation should be exempt.

The Feed Mill provides chicken feed for more than four million chickens in Hardy County. The Taxpayer's argument fails in light of the number of chickens that are located with the unrelated, third-party growers utilized by Pilgrim's Pride. 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. Approximately, 79.3 % of Pilgrim's Pride chickens were located with the 61 family farmers in Hardy County. When seventy-nine percent of the livestock is located with contract farmers, then the livestock is not on hand for the purposes of the property tax exemption.

The Feed Mill Live Haul Operation transports the 79.3% of chicken to the 61 family farmers to grow to maturity and to the Fresh Processing Plant for slaughter. The Feed Mill Live Haul Operation is not used for the subsistence of livestock on hand. The Circuit Court's analysis regarding the use of the Feed Mill Live Haul Operation is correct and should be affirmed by the Court.

III. CONCLUSION

The Circuit Court of Berkeley 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

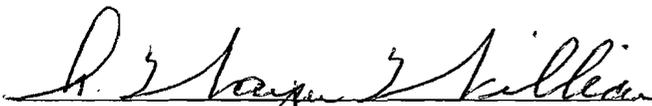
on a farm or farming operation as set forth in W. Va. Code § 11-3-9(a)(28). In addition, the Circuit Court correctly concluded that only the Hatchery and the Grow Out Facility would qualify as personal property used for the subsistence of livestock pursuant to W. Va. Code § 11-3-9(a)(21). The Supreme Court should refuse the Petition For Appeal and affirm the decision of the Circuit Court of Berkeley County.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, L. Wayne Williams, Assistant Attorney General for the State of West Virginia, do hereby certify that a true and exact copy of the foregoing *Tax Department's Response To Supplemental Brief Of Pilgrim's Pride Corporation and Pilgrim's Pride Corporation Of West Virginia, Inc.* was served by United States Mail to all counsel, postage prepaid, this 21st day of June 2011, addressed as follows:

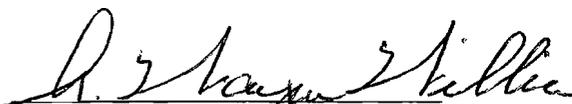
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