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Broad Standing of "Aggrieved Parties" in West Virginia Property Tax Appeals

In a December of 2023 decision, the Intermediate Court of Appeals West Virginia held that EQT Production Company was an "aggrieved party" with standing to challenge a property tax valuation, even though EQT Production did not own the subject property on the assessment date.[1] The decision reflects the plain reading of the applicable statutory language and precedential caselaw, both of which are discussed below.

The standing issue arose in the context of EQT Production's appeal of the valuation of certain oil and natural gas assets located in Marshall County, West Virginia for tax year 2021.[2] EQT Production purchased the assets from Chevron USA, Inc. pursuant to a transaction that closed on November 30, 2020, with an effective date of July 1, 2020.[3] EQT Production appeared before the Marshall County Commission sitting as a Board of Assessment Appeals in October of 2021, arguing that Chevron had erroneously reported gross receipts from the sale of natural gas liquids on the producer/operator returns that it filed with the West Virginia State Tax Department. The Marshall County Board of Assessment Appeals upheld the valuation, and EQT Production appealed the matter to the Marshall County Circuit Court.

While the matter was pending before the Marshall County Circuit Court, the Tax Commissioner and Marshall County Board of Assessment Appeals argued that the matter should be dismissed based on a lack of subject matter jurisdiction, theorizing that EQT Production lacked standing because it did not own the wells as of the July 1, 2020 assessment date for tax year 2021.[4] The matter was then referred to the Business Court Division by the West Virginia Supreme Court of Appeals. The Business Court Division, after briefing, granted the motion to dismiss. EQT Production appealed the Business Court Division's dismissal to the Intermediate Court of Appeals.

The Business Court Division's decision to dismiss was based on two positions that were ultimately rejected by the Intermediate Court of

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Appeals. First, the Business Court Division held that EQT Production lacked standing because Chevron owned the oil and natural gas assets as of the July 1, 2020 assessment date. Thus, even though it was undisputed that EQT Production owned the assets during the entirety of tax year 2021, and had contracted with Chevron to pay the tax year 2021 property taxes (which were timely paid), the Business Court Division dismissed the appeal. As noted by the Intermediate Court of Appeals, the Business Court Division opined that, in challenging the assessment, EQT Production was, in essence, attempting to amend the producer/operator returns that Chevron had filed and that "[o]nly a taxpayer can challenge the taxes it owes, not a third party, and a third party does not become a party liable to the taxing authorities by virtue of a private contract."[5] Second, the Business Court Division held that W. Va. Code § 11-3-25[6] did not confer standing on EQT Production as an "aggrieved party" and that prior West Virginia Supreme Court caselaw[7] that broadly applied the provisions of § 11-3-25 to convey standing upon a party that did not own property on the assessment date was to be read narrowly and did not apply to EQT Production's appeal.

The Intermediate Court of Appeals found that the Business Court Division had erred on both counts, reversed the order to dismiss, and remanded the matter for further proceedings. Regarding W. Va. Code § 11-3-25, the Intermediate Court found that the statute did not "contain any statutory definitions for the phrase [any person claiming to be aggrieved]." The Court noted that it was undisputed that EQT Production claimed to be an aggrieved party in appealing the property tax assessment and that it had appeared before the Marshall County Board of Assessment Appeals to present its argument. The Intermediate Court cited to prior West Virginia Supreme Court decisions[8] that cautioned "we must remain mindful that the language of a statute is not to be construed in any mystical fashion. In the absence of any specific indication to the contrary, words used in a statute will be given their common, ordinary and accepted meaning." Additionally, the Intermediate Court noted that West Virginia Supreme Court precedent establishes that "[t]he word 'any,' when used in a statute, should be construed to mean any."[9] As such, the Intermediate Court held that "the plain language of § 11-3-25(a) appears to permit EQT to

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'apply for relief to the circuit court' of Marshall County."

The Intermediate Court also held that the Business Court Division's reading of the West Virginia Supreme Court of Appeals' decision in *Tug Valley Recovery Center, Inc. v. Mingo County Commission* was too narrow. In that matter, the Supreme Court held that "[W. Va. Code § 11-3-25] does not say that one may appeal an assessment of their own property, but that Any person who is aggrieved by Any assessment shall have the right to appeal that assessment (if they have appeared and contested the valuation before the [county appeal board])."[10] The Intermediate Court noted that "[a]lthough the *Tug Valley* decision goes on to explain the application of the law to the particular facts of that case, the Supreme Court does not explicitly limit its holding to only those aggrieved persons with the same characteristics as the *Tug Valley* plaintiffs."

Notably, W. Va. Code W. Va. Code § 11-3-25 (which was applicable to appeals filed in circuit court after a hearing was held before a county commission sitting as an appeals board) was repealed in 2022 as part of an overhaul of West Virginia's property tax appeal process.[11] Under the current appeals process, the first level of appeal for property valuation issues may be filed with either the county commission sitting as a board of equalization and review or the West Virginia Office of Tax Appeals.[12] If a taxpayer elects to have a hearing with the board of equalization and review, an appeal of the board's decision must then be filed with the West Virginia Office of Tax Appeals.[13] Going forward, circuit courts will entertain property tax appeals only in limited circumstances[14], and the next level of appeal on a valuation issue following a decision by the West Virginia Office of Tax Appeals will be the Intermediate Court of Appeals.[15]

While the "aggrieved party" language under § 11-3-25 was repealed, the West Virginia Office of Tax Appeals has jurisdiction to hear "[a]ppeals by any party aggrieved by the valuation of real property and personal property tax assessments and classifications or taxability" under § 11-3-1 *et. seq.* of the West Virginia Code.[16] As such, the decisions by the West Virginia Supreme Court of Appeals in *Tug Valley* and the Intermediate Court of Appeals in *EQT Production* that allow "aggrieved parties" to pursue property tax

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appeals continue to have precedence. This language preserves the due process rights of entities or individuals that purchase property after the assessment date to pursue an appeal of the valuation of the property.

Note, however, that similar "aggrieved party" language is not included under the valuation appeal provisions of W. Va. Code § 11-3-23a, or any other code provisions that apply to county level appeal boards. As such – and for a multitude of other reasons – any "aggrieved party" that did not own property on the assessment date would be wise to file its appeal of valuation issues directly with the West Virginia Office of Tax Appeals.

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[1] *EQT Production Company v. Irby*, 2023 WL 8663543 (2023). EQT Production Company was represented in the matter by Carte P. Goodwin, Craig A. Griffith, and Alex J. Zurbuch of Frost Brown Todd LLP. Mr. Griffith is the author of this column.

[2] "'Tax year' or 'property tax year' means the next calendar year after the assessment date." W. Va Code § 11-3-1(f)(3)

[3] EQT Corporation Securities and Exchange Commission Form 10-K for 2020 at 83 (Available at https://www.sec.gov/Archives/edgar/data/33213/000003321316000018/eqt-12312015x10k.htm).

[4] "'Assessment date' means July 1 of the year preceding the tax year." W. Va Code § 11-3-1(f)(1). Thus, for tax year 2021 taxes, the assessment date is July 1, 2020.

[5] Order Granting Respondent's Motion to Dismiss, In the Circuit Court of Marshall County, West Virginia, Business Court Division, Civil Action No. 22-P-6 (November 15, 2022)

[6] West Virginia Code § 11-3-25(a) reads, in part, that "[a]ny person claiming to be aggrieved by any assessment in any land or personal property book of any county who shall have appeared and contested the valuation. . . may. . . apply for relief to the circuit court."

[7] *Tug Valley Recovery Center, Inc. v. Mingo County Commission*, 164 W.Va. 94, 261 S.E.2d 165 (1979)

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[8] *Tug Valley*, 164 W. Va. at 100, 261 S.E.2d at 169. *See also* Syl. Pt. 2, *Fenton Art Glass Co. v. W. Virginia Off. of Ins. Comm'r*, 222 W. Va. 420, 422, 664 S.E.2d 761, 763 (2008); *State v. Cole*, 160 W. Va. 804, 806, 238 S.E.2d 849, 851 (1977).

[9] Citing Syl. Pt. 2, *Thomas v. Firestone Tire and Rubber Co.*, 164 W. Va. 763, 266 S.E.2d 905 (1980).

[10] *Tug Valley*, 164 W. Va. at 101, 261 S.E.2d at 170

[11] *See* "A Giant Leap Forward for West Virginia Property Tax Appeals," Craig A. Griffith, State Tax Notes (July 1, 2021)

[12] W. Va. Code § 11-3-23a(c)(1) and (d)(1)

[13] W. Va. Code § 11-3-24(j)

[14] *See* W. Va. Code §§ 11-3-5 and 11-3-27, which may result in appeals being filed in circuit courts if property is deemed "omitted" from the property tax books or if a "mistake" is discovered. *See also* W. Va. Code § 11-6-12, which requires that appeals of public utility valuations by the Board of Public Works be filed in circuit court.

[15] W. Va. Code § 11-10A-19(a)

[16] W. Va. Code § 11-10A-8(7)

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