

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

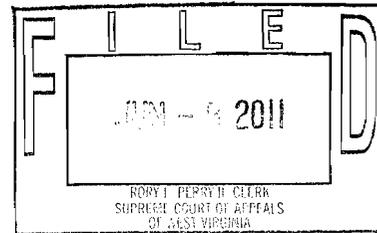
No. 11-0590

CENTURY ALUMINUM OF WEST VIRGINIA, INC.,
a Delaware Corporation,

Petitioner,

v.

JACKSON COUNTY COMMISSION,
sitting as a Board of Review and Equalization and
JOE PITTS, DONALD G. STEPHENS and
TOMMY NUTTER in their capacity as members
of the Jackson County Commission sitting as
a Board of Review and Equalization,
and **CRAIG A. GRIFFITH, State**
Tax Commissioner,



Respondents.

APPEAL FROM
THE CIRCUIT COURT OF JACKSON COUNTY
JACKSON COUNTY, WEST VIRGINIA

THE HONORABLE THOMAS C. EVANS, III

PETITIONER'S REPLY TO TAX DEPARTMENT'S RESPONSE

CENTURY ALUMINUM OF
WEST VIRGINIA, INC.,
a Delaware Corporation,

Petitioner,

By Counsel

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June 7, 2011

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I. PETITIONER PRESENTED ONLY ONE APPRAISAL OF THE PLANT AT THE HEARING BELOW

In its Response, filed on April 18, 2011, the Tax Department asserts that Petitioner proffered two separate fair market value appraisals of its Ravenswood Aluminum Plant (the "Plant"). The Tax Department suggests that the Court needs to sort out which of these two appraisals is correct. See: Tax Department Response at p. 1. The Tax Department is in error. Petitioner presented only one fair market value appraisal of the Plant at the hearing below. That appraisal was prepared by International Appraisal Company ("IAC") and is included in the record below as Petitioner's Exhibit 6 (the "IAC Appraisal"). The IAC Appraisal valued the Plant as of the July 1, 2009, at \$16,000,000. The valuation methodology underlying the IAC Appraisal was addressed in the hearing before the Jackson County Board of Review and the Appraisal was discussed extensively in Century's Petition for Appeal.

For tax year 2010, Petitioner also filed an Industrial Property Tax Return (the "Return") with the Tax Department. The Tax Department asserts that the Return should also be considered a fair market value appraisal of the Plant utilizing the cost approach to valuation. See: Tax Department Response at p. 15. A copy of the Return is in the record as Petitioner's Ex. 3. Portions of the Return, without the detailed schedules submitted therewith, are also included with the Tax Department's appraisal of the Plant. See: State's Ex. 1.

On the Return, Petitioner showed the current book value ("Owner's Value") of its Machinery and Equipment ("M&E") at \$50,860,998. For tax year 2010, the Tax Department appraised Petitioner's M&E at \$34,971,956. The Tax Department is apparently asserting that because its appraisal valued Petitioner's M&E at less than Petitioner's book value of the same assets, Petitioner should be precluded from having the Plant appraised and arguing for a lower fair market value for its assets.

II. PETITIONER'S PROPERTY TAX RETURN WAS NOT AN APPRAISAL OF THE PLANT

While the Tax Department asserts that the Return should be viewed as a fair market value appraisal, an inspection of the Return and its supporting schedules make it clear that the values of various assets shown thereon are the depreciated and undepreciated book values of Petitioner's assets, as reflected in Petitioner's general ledger, the relevant portions of which were attached to the Return. A copy of the Return is attached to this Reply as Attachment A. The acquisition cost and Owner's Value of assets shown on the Return, which were derived directly from Petitioner's July 1, 2009 book values on its general ledger, are highlighted on Attachment A. The Return shows that the asset values in the general ledger and the values that appear on the Return are the same values.

In addition, a schedule further detailing the reconciliation of Petitioner's general ledger values with the July 1, 2009 book values shown on the Return is attached to this Reply as Attachment B. This schedule details how the general ledger asset values and accumulated depreciation were combined to produce the values shown on the Return. It is important to note that the Industrial Property Tax Return form published by the State Tax Department does not contain directions instructing taxpayers how to compute the Owner's Value of assets shown in the Return. Nevertheless, Petitioner used its best efforts to report accurate cost and book values for its property on the Return, to assist the Tax Department in its annual appraisal.

The Return was never intended to be a substitute for an actual fair market value appraisal of the Plant by a third-party independent appraiser, and the Tax Department should have known this fact prior to the hearing below. After the Tax Department had completed its 2010 Appraisal of the Plant and before the hearing below, Petitioner met with the Director of the Property Tax Division and the Tax Department's Appraiser to request that the Tax Department consider further reductions in their appraisal. See: Tr. at p. 173. It was clear, based on that meeting, on the Return itself and the supporting schedules filed therewith, that the Owner's Value of Machinery and Equipment was Petitioner's book value of these assets (See: Petitioner's Exhibit 3) and not an appraised value which took into account the economic and functional obsolescence inherent in a closed plant of the age of the Ravenswood smelter. Upon rejection of Petitioner's request for further reduction in the Tax Department appraisal, Petitioner protested the appraisal to the Jackson County Commission. At the hearing below, the IAC Appraisal was the only appraisal introduced in support of the fair market of the assets at the Plant.

III. DISCUSSION

In its response, the Tax Department points out that Circuit Court's Order and its finding of facts affirmed the Tax Department's appraisal, based in part on the fact that the values produced were less than the Owner's Value shown on the Return. See: Circuit Court Order at p. 4 and p. 19. This fact has nothing to do with the issue of whether or not the Tax Department prepared its appraisal of the Plant by the methods required by W. Va. Code § 11-3-1, the applicable Industrial Property Valuation Regulations and Administrative Notice 2010-13.

The myth that the Return constituted a fair market value appraisal of the Plant had its origins long after the hearing. This issue was first raised in the "Proposed Order" submitted

to the Circuit Court on September 15, 2010, by the Tax Department. It was in the Proposed Order that the Tax Department asserted that the Owner's Value of property listed by taxpayer in its Industrial Property Return should be viewed as a valid appraisal of the Plant and, by implication, that taxpayer should be precluded from challenging any appraisal value below the values shown on the Return. The Proposed Order asserted that the Tax Department's appraisal should be accepted as long as the values shown therein were less than or equal to the values shown on the Return. The Proposed Order was adopted virtually unchanged by the Circuit Court of Jackson County, which rather than analyzing the evidence presented to the Board of Review, simply adopted the Tax Department's order as its own, with very minor stylistic changes. See: Order of Jackson County Circuit Court, November 17, 2010, at p. 19.

There is no support in the West Virginia Code, in the applicable regulations, in the Return or its instructions, or in prior decisions of this Court for the Tax Department's assertion that Petitioner should be denied relief in this case because it showed the book value of its assets in the Owner's Value column of the Return. Petitioner did its best on the Return to provide the Tax Department with information relevant to its appraisal of the Plant by the methods set forth in the Administrative Notice 2010-13. Petitioner never held this Return out as an appraisal and met with the Tax Department prior to the hearing to seek additional reductions in the Tax Department's appraisal value of its assets. There is no rule of law that stands for the proposition that a taxpayer cannot challenge an appraisal that is lower than the book value of its assets. West Virginia Code § 11-3-24, authorizes taxpayers who object to the Tax Department's appraisal of their property to seek relief before the Board of Review and Equalization. That is what Petitioner did in this case. In *Killen v. Logan County Commission*, 170 W.Va. 602, 295 S.E.2d 689 (1982), the Court stated:

An objection to any assessment may be sustained wholly upon presentation of competent evidence such as that equivalent to the testimony of qualified appraisers, that the property has been under or over valued by the Tax Commissioner and wrongly assessed by the Assessor.

Id. at Syl. Pt. 8.

The IAC Appraisal that Petitioner presented at the hearing before the County Commission is precisely the type of evidence this Court requires to challenge a Tax Department appraisal. Petitioner has never maintained that the Owner's Values shown on the Return equal the fair market value of the assets at its closed Ravenswood Plant. Petitioner had the Plant independently appraised and presented that IAC Appraisal report at the hearing below as evidencing the fair market value of the facility by an independent third-party licensed appraiser familiar with the appraisal of large industrial aluminum facilities in this country and worldwide. The Tax Department's assertion that its appraisal was valid, simply because it was less than the book value numbers shown on the Return is without basis.

IV. CONCLUSION

For the reasons stated above, Petitioner respectfully requests that the Court ignore these assertions as set forth in Petitioner's response.

Respectfully submitted,
CENTURY ALUMINUM OF
WEST VIRGINIA, INC.

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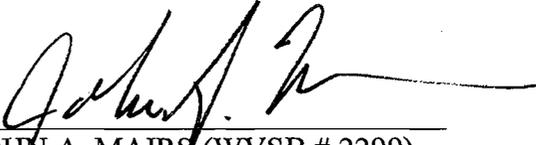
CERTIFICATE OF SERVICE

I, John A. Mairs, counsel for Petitioner, Century Aluminum of West Virginia, Inc., do hereby certify that a true copy of the foregoing *Petitioner's Reply to Tax Department's Response* was duly served upon:

Eric J. Holmes
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*Counsel to The County Commission of Jackson County,
sitting as a Board of Review and Equalization,
Joe Pitts, Donald G. Stephens and Tommy Nutter in
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by depositing said copy in the United States mail with first-class postage prepaid on this 7th day of June, 2011.



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EXHIBITS

ON

FILE IN THE

CLERK'S OFFICE