

No. 101627 - *Pilgrim's Pride Corporation and Pilgrim's Pride Corporation of West Virginia, Inc., v. Christopher G. Morris, State Tax Commissioner, and Jim B. Wratchford, Assessor of Hardy County*

Benjamin, J., dissenting:

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OF WEST VIRGINIA

I dissent because I believe that the majority does not understand the nature of the modern commercial agricultural enterprise. Through two new syllabus points, each requiring that the taxpayer possess the personal property for which the exemption is sought as well as the subject livestock upon which the exemption is based, the majority fails to understand that today's farm operation takes many shapes, including the vertically integrated poultry production farms of Pilgrim's Pride. The majority opinion appears to wax nostalgic for the days of old when family farms handed down from generation to generation provided the bulk of the agricultural products for food consumption. While those days may have been simpler, perhaps even better, no amount of wishful thinking can ignore the actuality that the modern agricultural operation takes many forms, including that employed by Pilgrim's Pride in the Eastern Panhandle of our State. These large-scale farming operations, which meet the food demands of American consumers, are entitled to the same tax exemptions as are enjoyed by smaller farms.

In order to be eligible for the farming operation exemption in W. Va. Code § 11-3-9(a)(28) (2008), known as the farm exemption, Pilgrim's Pride must show that it (1)

employs personal property exclusively in agriculture; (2) annually produces agricultural products for sale; and (3) uses such personal property to produce these products of agriculture on a farm or farming operation.

It is undisputed that raising chickens, as well as selling the chickens so raised, would satisfy the first two prongs of the farming exemption test in W. Va. Code § 11-3-9(a)(28). The third component, whether the personal property for which the exemption is requested is used to produce these chickens on a farm, is where the majority goes wrong. The majority opinion creates new law through Syllabus Point 3, in which it states that a poultry manufacturer which contracts with independent farms to provide the facilities and labor to raise its chickens to maturity is not entitled to rely upon the farm use exemption because it does not qualify as a producer of agricultural products. If Pilgrim's Pride is not a producer of agricultural products, then who is?

The majority opinion also rejects Pilgrim's Pride's claim to the exemption under W. Va. Code § 11-3-9(a)(21) for the subsistence of livestock. This exemption was sought for most of the land and fixtures used in the poultry processing plant. The exemption was approved by the tax commissioner and the trial court for the hatchery; however, the rest of Pilgrim's Pride's operation did not qualify for the exemptions. The majority states that in order for the petitioner to receive this exemption, it must demonstrate that the personal

property for which the exemption is sought as well as the subject livestock are both in the physical possession of the taxpayer. In the instant case, because Pilgrim's Pride locally outsources the growing phase of its chicken operations to independent contractors who feed and nurture the chicks to maturity, the petitioner is not entitled to exemptions for items used during this process. Again the majority fails to recognize the vertically integrated nature of the petitioner's operation. Pilgrim's Pride controls every aspect of its chicken operations, including hatching the chicks, formulating the feed that is given to the chickens during the grow-out phase, transporting the chicks and grown chickens to and from the hatchery, the production, and the ultimate sale of chicken and its by-products. It possesses the product from every step along the production chain.

For these reasons, I believe that Pilgrim's Pride is entitled to the full use of both of these statutory tax exemptions and respectfully dissent from the majority opinion.