

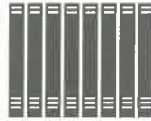
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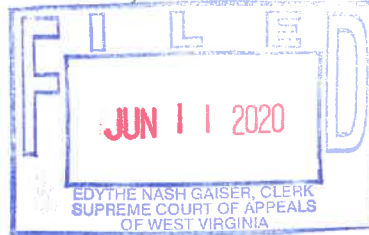
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June 10, 2020



Edythe Nash Gaiser, Clerk of Court
State Capitol Rm E-317
1900 Kanawha Blvd. East
Charleston WV 25305

RE: Koontz v. Invitation Energy, et al (Civil Action No. 19-C-22 - Wetzel County Circuit Court)

Ms. Gaiser,

Please find enclosed Plaintiff's *Response in Opposition to the Motion to Refer the Case to the Business Court Division* that I wish to file in the subject case. Please contact me if you have any questions.

Sincerely,

Daniel J. Guida, Esq.
Attorney at Law

DJG/jap
enc.

cc: Shannon R. Thomas, Esq. (w/enc.)
Cheryl LaNasa, Esq. (w/enc.)
Karen T. McElhinny, Esq. (w/enc.)
Christopher M. Turak, Esq. (w/enc.)
L. Wayne Williams, Esq. (w/enc.)
Hon. Jeffrey Cramer, Judge (w/enc.)

IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA

Mike Koontz, in his official
capacity as Sheriff and *ex officio*
Treasurer of the County of Wetzel,

Plaintiff,

vs.

Civil Action No. 19-C-22 Cr

Invitation Energy, Incorporated,
a West Virginia corporation, and
Standard Oil Company, Inc.,
a West Virginia corporation,

Defendants.

Standard Oil Company, Inc.,
a West Virginia corporation,

Third-Party Plaintiff,

v.

Scott Lemley, Assessor of Wetzel
County, West Virginia,
Dale W. Steagar, West Virginia
State Tax Commissioner, and
Joseph O’Ferrell, individually,

Third-Party Defendants.

**RESPONSE IN OPPOSITION TO THE MOTION
TO REFER THE CASE TO THE BUSINESS COURT DIVISION**

Plaintiff, by and through his counsel, responds to the Defendant Standard Oil Company, Inc.’s motion to refer this case to the Business Court Division (the “Business Court”) as follows:

“[T]he current action does not involve a protest or an appeal filed by the taxpayer as provided in *W.Va. Code* §11-3-24 or *W.Va. Code* §11-3-24(b).”

This statement was made by Standard Oil in an earlier court filing in *this* case.¹ It is an accurate representation since this matter is a collection case relating to Standard Oil's failure to pay personal property taxes on its natural resources property in Wetzel County for tax years 2013, 2014, 2015, 2016, and 2017.²

The same Standard Oil has now moved that this collection dispute — a non-tax appeal case — be referred to the Business Court. However, the Business Court Division does not have jurisdiction over a case unless it is a “complex tax appeal” under *West Virginia Court Rules, Rule 29.04(a)(3)*.

What to do?

Standard Oil attempts to classify the dispute in this case as a “complex tax *matter*” hoping it is close enough to a “complex tax *appeal*” in order to satisfy *West Virginia Court Rules, 29.04(a)(3)*. *Motion for Referral*, pp. 2 and 7. Standard Oil apparently believes that two out of three words ain't bad. But, a “tax *matter*” is not a “tax *appeal*” and Standard Oil's sleight-of-hand does not magically convert this non-appeal dispute into a “tax appeal”.

Accordingly, the request for referral to the Business Court Division should be denied on

¹ See ¶7, *Response in Opposition to Plaintiff's Motion and Memorandum of Law for Defendants to Pay All Taxes Owed as a Prerequisite to Filing an Answer or Response to Second Amended Complaint*. This response is attached hereto as Exhibit A. At the time, Standard Oil was attempting to avoid payment of delinquent taxes to the Wetzel County Sheriff's Office as required by West Virginia Code §11-3-25a(a) (“[a]ll taxes levied and assessed against the property for the year on which a protest or an appeal has been filed by the taxpayer as provided in [11-3-24 or 11-3-24b] shall be paid before they become delinquent”). To this day, Standard Oil has not paid the approximate sum of \$1.4 million dollars, which is the amount of taxes in dispute. Standard Oil's citation to West Virginia Code 11-3-24(b) is incorrect; the correct citation should be to West Virginia Code §11-3-24b relating to the board of assessment appeals.

² Plaintiff's Second Amendment Complaint is attached as Exhibit C to Standard Oil's *Motion for Referral*.

jurisdictional grounds for failure to comply with the “complex tax appeal” requirement of *West Virginia Trial Court Rules, Rule 29.04(a)(3)*.

Further, the subject dispute is not “Business Litigation” since the principal claims do not involve “matters of significance to the transactions, operations, or governance between business entities” as required by *West Virginia Trial Court Rules, Rule 29.04(a)(1)*. Rather, the principal claims involve a dispute between governmental organizations and a business. Also, Standard Oil’s Third-Party Complaint against Invitation Energy does not help it meet this requirement since its declaratory judgment action can hardly be classified as the principal claim in this matter.


Lastly, this matter is not “Business Litigation” since the principal claim involves “administrative disputes with government organizations and regulatory agencies”, which are prohibited from having their cases heard in Business Court pursuant to *West Virginia Trial Court Rules, Rule 29.04(a)(3)*.

Here, the Plaintiff, as Sheriff and *ex officio* Treasurer of the County of Wetzel, the Assessor of Wetzel County, and the West Virginia State Tax Commissioner are *all* administrative agencies, government organizations, and/or regulatory agencies. Plus, this case is not a tax appeal and the principle claims involve whether or not these administrative, regulatory, and/or governmental agencies correctly performed their administrative duties in the assessment, levying, and attempted collection of the personal property taxes which are owed by Standard Oil.³

³ Notably, Standard Oil has failed to address the requirement set forth in *West Virginia Trial Court Rules, Rule 29.04(a)(3)*. See *Motion for Referral*, p. 7.

WHEREFORE for the reasons stated herein, Defendant Standard Oil's motion for referral of this case to Business Court should be denied and this matter should remain before the Circuit Court of Wetzel County.

Respectfully submitted
on behalf of the Plaintiff.

by counsel: 

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EXHIBIT A

IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA

Mike Koontz, in his official
capacity as Sheriff and *ex officio*
Treasurer of the County of Wetzel,

Plaintiff,

v.

Civil Action No. 19-C-22

Standard Oil Company, Inc.,
a West Virginia corporation,

Defendant.

**RESPONSE IN OPPOSITION TO PLAINTIFF'S
MOTION AND MEMORANDUM OF LAW FOR DEFENDANTS
TO PAY ALL TAXES OWED AS A PREREQUISITE TO FILING
AN ANSWER OR RESPONSE TO SECOND AMENDED COMPLAINT**

COMES NOW, the Defendant, Standard Oil Company, Inc., a West Virginia Corporation, (hereinafter "Standard"), by and through its undersigned attorneys and respectfully requests that the Court deny the Motion and Memorandum of Law for Defendants to Pay all Taxes Owed as a Prerequisite to Filing an Answer or Response to Second Amended Complaint ("Motion and Memorandum") filed by Plaintiff and in support thereof states:

Standard avers that Plaintiff has failed to comply with Rule 10(b) of the *West Virginia Rules of Civil Procedure* which requires that all averments to be numbered paragraphs and limited, as far as practicable, to a statement of a single set of circumstances. Furthermore, Standard avers that Plaintiff's Motion and Memorandum as a Prerequisite to Filing an Answer or Response to Second Amended Complaint is predicated on Plaintiff's belief that its Motion to File Second Amended Complaint will be granted. As of the date of this Response in Opposition, Plaintiff's Motion to File Second Amended Complaint has not been granted and therefore Standard is not required to respond to said Motion. Notwithstanding the foregoing, Standard responds as follows:

1. Plaintiff allege that Standard and the Co-Defendants have failed to pay tax liabilities and fees in certain natural resource properties in the approximate amount of \$1.4 million as of August 1, 2019 for the tax years 2013-2017.
2. Plaintiff alleges that Standard has failed to pay tax liabilities and fees in the approximate amount of \$686,000 as of August 1, 2019 for the tax years 2017 and 2018.
3. Insofar as Plaintiff is requesting Standard to pay said alleged deficient taxes and fees, the total requested should be a known amount not an approximate amount.
4. The amounts contained in Plaintiff's Motion and Memorandum for 2013-2017 are not the same as those amounts set forth in Plaintiff's Complaint, Amended Complaint or even Plaintiff's proposed Second Amended Complaint. Furthermore, the amounts relating to the wells identified in Civil Action No. 19-C-22 (which are also identified in the Amended Complaint and Second Amended Complaint herein) are not consistent with those contained in the Motion and Memorandum of Law.
5. Additionally, the date utilized by Plaintiff to determine the alleged amount owed is not consistent throughout the documents.
6. Plaintiff's failure to draft its pleadings with consistency prevents Standard from knowing what amount it is actually alleged that they owe and what amount Plaintiff expects to be paid.
7. Plaintiff cites *W. Va. Code* §11-3-24 which provides that all taxes levied and assessed against the property for the year in which a protest or appeal has been filed as provided for in *W. Va. Code* §11-3-24 or *W. Va. Code* §11-3-24(b) shall be paid before they become delinquent. However, the current action does not involve a protest or an appeal filed by the taxpayer as provided in *W. Va. Code* §11-3-24 or *W. Va. Code* §11-3-24(b).

8. Standard was not afforded an opportunity to initiate a protest or an appeal pursuant to *W. Va. Code* §11-3-24 or *W. Va. Code* §11-3-24(b).
9. Pursuant to *W. Va. Code* §11-3-24, the County Commission acting as the Board of Equalization or Review is required to meet to review the assessor's books and pursuant to *W. Va. Code* §11-3-24(d), no assessment shall be increased without giving the taxpayer notice in writing at least 5 days of the intention to make the increase.
10. Standard did not receive notice as required by *W. Va. Code* §11-3-24(d) despite significant increases during the relevant years.
11. Only after receiving the notice prescribed in *W. Va. Code* §11-3-24(f), may a person appear before the Board of Equalization or Review to object to the proposed increase.
12. A taxpayer who elects to have a hearing before the Board of Equalization or Review, may appeal the Board of Equalization or Review's order as provided for in *W. Va. Code* §11-3-25.
13. Standard did not receive notice as required by *W. Va. Code* §11-3-24(d) and therefore did have an opportunity to file a protest or objection.
14. Furthermore, *W. Va. Code* §11-6K-4(e) provides that:

[o]n or before October 15 of the assessment year, the Tax Commissioner shall complete the preparation of tentative appraisals of all industrial and natural resources property and that notify the affected owner or operator of the amount of the tentative appraisals; Provided That in the case of oil property, natural gas property and managed timberland, the Tax Commissioner shall complete the preparation of the tentative appraisal and notify the affected owner or operator by December 1 of the assessment year, and; provided however that no notification shall be required where the total increase in the aggregate amount of the tentative appraisals to the affected owner or operator does not exceed \$1,000.00 and the total tentative appraisals did not increase by more than 10% from the proper year appraisals." *Emphasis added*
15. *W. Va. Code* §11-6K-4(e)(C)(2) requires that the Tax Commission provide the notice set forth in paragraph 15 above, to the Taxpayer and to the County Assessor.

16. Pursuant to *W. Va. Code* §11-6K-5 and §11-6K-6, after review of the notice set forth above, an informal administrative process is started whereby the taxpayer informally petitions the Tax Commissioner for review of the tentative appraisal. This is a condition precedent to the final appraisal of industrial and natural resources properties being sent to the County Assessor.
17. As Standard was never provided with any of the requisite notices identified above, Standard has not exhausted its administrative or legal remedies and *W. Va. Code* §11-3-25(a) does not apply as asserted by Plaintiff.
18. Plaintiff's assertion that Standard now needs to pay more than two million dollars is unconscionable and unconstitutional.
19. The actions of the Wetzel County Assessor and Tax Commissioner, who failed to provide the statutorily prescribed notices to Standard, which are designed to protect the due process guarantees of every taxpayer, must be addressed by this Court prior to Standard being required to "pay to play" as asserted in Plaintiff's Motion and Memorandum.
20. Plaintiff is suggesting that Standard will be, for the first time, challenging the assessments, in order to avoiding paying the amounts allegedly owed.
21. Standard has grave concerns about Plaintiff's desire to collect money despite Standard not being affording any due process protections and about the disproportionate increase in assessments identified by Plaintiff, which on their face, should shock the conscience of the Court. By way of example, in 2017, one well identified by Plaintiff as Barr #1 WI had a total tax liability of \$190,117.39 and a total tax liability of \$66.78 in 2018 for a total change of \$190,050.61 or 2,845 %.


22. Overall, it is clear that the assessed values of the well revenue attributed to Standard by the Assessor, as compared to the actual revenues which are readily available on public websites, are drastically different.
23. Plaintiff's contention that the entire economic wellbeing of Wetzel County is contingent on Plaintiff collecting the alleged past due tax liabilities and fees from Standard is ridiculous, especially in light of the fact that Plaintiff alleges that the alleged outstanding liability is 6 years old.
24. Standard notes that the 2018 taxes that Plaintiff is asking for in their Motion and Memorandum are not yet delinquent.
25. It is inappropriate for the Plaintiff to disregard due process and then request the Defendant "pay to play" to seek to rectify the unconscionable actions of the Wetzel County Assessor, West Virginia Tax Commissioner and the Wetzel County Sheriff. The Defendant avers the taxes allegedly owed by it exceed the total fair market value of the wells in question by no less than twenty times. The extreme and unconscionable nature requires the Court to review the same carefully.
26. Standard reserves the right to file a supplemental Response in Opposition to Plaintiff's Motion and Memorandum if the Court grants Plaintiff's Motion to File Second Amended Complaint.

WHEREFORE, Defendant, Standard Oil Company, Inc. requests that the Court enter an Order denying Plaintiff's Motion and Memorandum of Law for Defendants to Pay all Taxes Owed as a Prerequisite to Filing an Answer or Response to Second Amended Complaint. Defendant, Standard Oil Company, Inc. further requests its reasonable attorneys' fees in defending the Motion,

and such other relief as the Court may deem just and proper.

Respectfully submitted this 9th day of September 2019.

By:


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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served on counsel for Plaintiff in the manner of service indicated below:

- ☐ By placing a postage prepaid envelope in the United States Mail, addressed to:
- ☐ By placing said document with a third-party express delivery carrier, i.e., Federal Express, for overnight delivery to the following address:
- ☒ By sending the document via facsimile to:

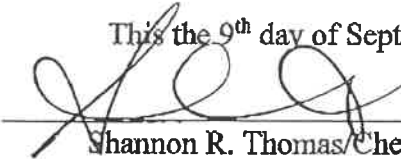
Christopher M. Turak, Esq.
Christian E. Turak, Esq.
(304) 845-9750

Daniel J. Guida, Esq.
(304) 748-1225

- ☐ By sending the document via electronic mail to:

- ☐ By causing the foregoing to be hand delivered to counsel for the Petitioner/Respondent at the following address:

This the 9th day of September 2019.


Shannon R. Thomas/Cheryl E. LaNasa

CERTIFICATE OF SERVICE

I hereby certify that on June 10 2020, I have served a copy of Plaintiff's *RESPONSE IN OPPOSITION TO THE MOTION TO REFER THE CASE TO THE BUSINESS COURT DIVISION* the by mailing a true copy thereof, by regular U.S. first class mail, postage prepaid, to the following:

Cheryl LaNasa, Esq.
P.O. Box 2289
Buckhannon, WV 26201
Counsel for Standard Oil Company, Inc.

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Counsel for Dale W. Steagar, West Virginia Tax Commissioner

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Mannington, WV 26582
Pro Se Third-Party Defendant

A handwritten signature in black ink, appearing to read 'Daniel J. Guida', positioned above a horizontal line.

Daniel J. Guida
Attorney for Plaintiff