

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

STATOIL USA ONSHORE PROPERTIES, INC.,

Petitioner,

v.

Civil Action No. 16-AA-_____
The Honorable _____

THE HONORABLE MARK MATKOVICH,
West Virginia State Tax Commissioner,

THE HONORABLE CHRISTOPHER J. KESSLER,
Assessor of Marshall County, and

THE COUNTY COMMISSION OF MARSHALL COUNTY,

Respondents.

COMPLAINT OF STATOIL USA ONSHORE PROPERTIES, INC.

I. INTRODUCTION

Statoil USA Onshore Properties, Inc. ("Statoil") holds non-operating working interests in natural gas wells in Marshall County.

The type of non-operating working interest that Statoil has in Marshall County is a "take-in-kind" interest, under which Statoil receives a portion of the natural gas produced by a well's third-party operator. Statoil then markets and sells this natural gas to its customers. The West Virginia State Tax Department (the "Tax Department") only allows the operator for the wells to file property tax returns with it, and values all economic interests in a particular well based on the operator's returns. For tax year 2015, Statoil provided revenue data to the third party operator of the Marshall County wells in which it had a "take-in-kind" interest. The Tax Department valued Statoil's "take-in-kind" interest in the Marshall County wells based on the returns filed by the operator of these wells.

On February 1, 2016, Statoil filed a protest of its 2015 property taxes as it uncovered evidence that it has erroneously submitted data to the third party operator of the Marshall County wells in which it has a “take-in-kind” interest. It sought relief under the principle of exoneration, which was eventually presented to the Marshall County Commission (the “County Commission”). Statoil presented clear and convincing evidence that it deserved an application of the principle of exoneration and was entitled to tax relief in the amount of \$353,644.28.

Statoil timely petitioned this Court for appeal of the County Commission’s decision. As explained below, the County Commission has abused its discretion by denying the exoneration for Statoil. Statoil presented clear and convincing evidence for allowing an exoneration based on its mistaken reporting for tax year 2015.

II. FACTUAL BACKGROUND

A. Statoil’s Interests.

Statoil holds a non-operating working interest in natural gas wells in Marshall County. (Certified Transcript of May 24, 2016 Hearing before the Marshall County Commission, See Exhibit A (hereinafter “Hr’g Tr.”)).

B. Statoil’s Analysis and Testimony.

Statoil’s employee, Kiran Rizvi, testified before the County Commission on May 24, 2015, and discussed the mistaken reporting to the third party operator of the wells in which Statoil has a “take-in-kind” interest. (See Hr’g Tr., 4:10 – 17:23). Exhibits showing the improper and proper tax payments are attached. (Hr’g Tr., Exhibits).

C. Statoil’s Protest to the Marshall County Commission.

On February 1, 2016, Statoil submitted to the Marshall County Assessor and the Marshall County Commission an Application for Review of Property Assessment with regard to its 2015

tax year payments (*See* Hr'g Tr., Ex. 1), and Statoil appeared on May 24, 2016, by counsel, before the County Commission. (*See* W. Va. Code § 11-3-27). Statoil hired Harris Reporting, LLC to produce a certified transcript of the hearing at which it presented the evidence discussed above. Exhibits introduced at the hearing and provided to the County Commission are appended to the transcript. The original record of the proceeding was attached to Statoil's Petition as Exhibit A. (*See* W. Va. Code § 58-3-4.)

By June 7, 2016 Order, the County Commission denied the request for exoneration for the 2015 tax year. (*See* Ex. B to Statoil's Petition). Statoil received notice of the Order on June 27, 2016 and timely petitions this Court for relief from the County Commission's erroneous determination. (*See* W. Va. Code § 11-3-25).

III. ANALYSIS

When an error occurs in a taxpayer's reporting or record-keeping, the Code of the State of West Virginia provides relief through the process of exoneration. W. Va. Code § 11-3-27.

Exoneration is a process that has been evaluated through the court system, and most-recently the case of State of W. Va. ex rel. Prosecuting Attorney of Kanawha County, W. Va., v. Bayer Corporation, 672 S.E. 2d 282 (2008) provides controlling law with regard to standards for obtaining exoneration on mistaken tax reporting.

In this case, the County Commission has not applied the proper factors for determining exoneration and has erroneously denied the exoneration request made to the County Commission by Statoil, as set forth in Statoil's Exhibits and expert testimony at the hearing before the County Commission on May 24, 2016.

IV. CONCLUSION

WHEREFORE, Statoil USA Onshore Properties, Inc. respectfully requests that the Court:

- (i) Find that the Marshall County Commission erroneously denied Statoil's application for exoneration for certain tax errors made for the 2015 tax year;
- (ii) Order that the actual revenue and tax amounts set forth in the record by Statoil be accepted by the Tax Department and deemed accepted under W. Va. Code § 11-3-27; and
- (iii) Order such other relief as the Court deems appropriate.

STATOIL USA ONSHORE PROPERTIES, INC.,

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