

IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA  
STATOIL USA ONSHORE PROPERTIES, INC.

Petitioner,

v.

Wetzel County  
Civil Action No. 16-C-04  
The Honorable Jeffrey D. Cramer

THE HONORABLE MARK MATKOVIC,  
West Virginia State Tax Commissioner,

THE HONORABLE SCOTT LEMLEY,  
Assessor of Wetzel County, and

THE COUNTY COMMISSION OF WETZEL COUNTY,

Respondents.

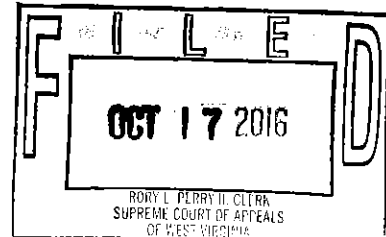
TO THE HONORABLE CHIEF JUSTICE:

**REPLY MEMORANDUM OF WETZEL COUNTY COMMISSION**  
**IN OPPOSITION TO MOTION TO REFER CASE TO THE**  
**BUSINESS COURT BY PETITIONER, STATOIL USA ONSHORE PROPERTIES, INC.**

Now comes the Wetzel County Commission and hereby give notice of its opposition to the "Petitioner's" *Motion to Refer Case to the Business Court* for the reasons set forth below:

1) **THIS CASE IS NOT ELIGIBLE FOR TRANSFER TO THE BUSINESS COURT DIVISION AS IT DOES NOT INVOLVE "CLAIMS OR MATTERS OF SIGNIFICANCE TO THE TRANSACTIONS, OPERATIONS, OR GOVERNANCE BETWEEN BUSINESS ENTITIES" AS REQUIRED BY WEST VIRGINIA TRIAL COURT RULE 29.04(A)(1).**

The parties to this "action" are not two or more business entities. Only the Petitioner is a business entity. The Defendant, Wetzel County Commission, is a government body charged with constitutional and statutory duties by the citizens of Wetzel County, which is a political subdivision of the State. Therefore, the requirement under West Virginia Trial



Court Rule 29.04(a)(1) that the claims or matters of significance involved be "between business entities" is not met. The Rule is specific in its definition of "Business Litigation" and compliance with the Rule should be mandatory.

**2) THERE IS NO COMPLEX TAX ISSUE IN THIS MATTER JUSTIFYING REFERENCE TO THE BUSINESS COURT DIVISION. DESPITE THE ASSERTIONS OF THE CLAIMS SET FORTH BY PETITIONER, THIS IS A SIMPLE ISSUE OF AN APPEAL OF THE DENIAL OF AN EXONERATION BY THE WETZEL COUNTY COMMISSION TO THE CIRCUIT COURT OF WETZEL COUNTY.**

Essentially the issues are twofold:

- a. Did the taxpayer make a clerical error which resulted in an erroneous assessment;
- b. If there was a clerical error which resulted in an erroneous assessment, was the taxpayer negligent in providing information to the Assessor? The issues are simple, straightforward, and involve routine questions of fact and law commonly brought before the Circuit Court of Wetzel County.

The law is set forth succinctly by the West Virginia Supreme Court in State, ex rel. Prosecuting Atty. of Kanawha County v. Bayer Corp., 223 W.Va. 146, 672, S.E.2d 282, 294 (2008). The issue as to whether the taxpayer made the mistake of a clerical error is not complex. It is a simple question of fact. Likewise, the legal question of negligence is one which Circuit Courts deal with on a daily basis. There is nothing novel or complicated in this appeal to warrant removal to the Business Court Division and referral under Rule 29 was not contemplated for this type of case.


**3) THE WETZEL COUNTY COMMISSION, THE CITIZENS OF WETZEL COUNTY, AND ALL THOSE BENEFITING FROM THE TAX REVENUE AT ISSUE ARE ENTITLED TO HAVE THEIR CASE HEARD BEFORE THEIR CONSTITUTIONALLY ELECTED CIRCUIT JUDGE.**

The appeal of the decision of the Wetzel County Commission in this case is to the Circuit Court of Wetzel County and to no other under the Constitution of West Virginia, the provisions of the West Virginia Code, and State, ex rel. Prosecuting Atty. of Kanawha County v. Bayer Corp., 223 W.Va. 146, 672, S.E.2d 282, 294 (2008). This is a matter involving county taxes. It is purely local in nature and should be treated like every other request for exoneration. The mere fact that the taxpayer in this case is a business does not justify transfer of the case to the Business Court Division. Rule 29 of the Trial Court Rules was not designed to allow businesses the privilege of forum and/or judge shopping which is exactly what Petitioners are doing in this case. Further, it was not designed to provide special treatment to business entities over individual non-business taxpayers. In the present case, if Petitioner was merely an individual person, the appeal would be heard before the Circuit Court of Wetzel County and before a duly elected Circuit Judge for that county. Why should a business be treated any differently than an individual non-business taxpayer? Rule 29 was not created to give business taxpayers the opportunity to forum and/or judge shop. That would be contrary to the West Virginia Constitution, the statutes and the holding in State, ex rel. Prosecuting Atty. of Kanawha County v. Bayer Corp., 223 W.Va. 146, 672, S.E.2d 282, 294 (2008).

Wherefore, for all of the foregoing, the Wetzel County Commission opposes the referral of this case to the Business Court Division and prays that the Petitioners motion be dismissed.

Respectfully submitted,

Wetzel County Commission  
By Counsel

By:   
Timothy E. Haught, Prosecuting Attorney  
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On behalf of the Respondent,  
Wetzel County Commission  
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**CERTIFICATE OF SERVICE**

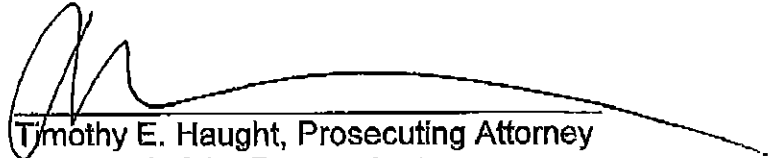
I, Timothy E. Hought, Prosecuting Attorney for Wetzel County, West Virginia, on behalf of the Respondent, Wetzel County Commission, do hereby certify that the **ANSWER OF RESPONDENT, WETZEL COUNTY COMMISSION**, was served as follows on this 18 day of October, 2016, to-wit:

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John J. Meadows  
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The Honorable Jeffrey D. Cramer  
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