

IN THE CIRCUIT COURT OF BROOKE COUNTY, WEST VIRGINIA

STATOIL USA ONSHORE PROPERTIES, INC.,

Petitioner,

v.

**Civil Action No. 16-AA-2
The Honorable Judge Mazzone**

**THE HONORABLE MARK MATKOVICH,
West Virginia State Tax Commissioner,**

**THE HONORABLE THOMAS A. OUGHTON,
Assessor of Brooke County, and**

THE COUNTY COMMISSION OF BROOKE COUNTY,

Respondents.

AMENDED COMPLAINT OF STATOIL USA ONSHORE PROPERTIES, INC.

FILED
2016 SEP 28 P 4:
BROOKE CIRCUIT COURT
BROOKE COUNTY

I. INTRODUCTION

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

The type of non-operating working interest that Statoil has in Brooke 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 Brooke County wells in which it had a "take-in-kind" interest. The Tax Department valued Statoil's "take-in-kind" interest in the Brooke 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 had erroneously submitted data to the third party operator of the Brooke 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 Brooke 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 \$1,845,823.77.

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 Brooke County. (Certified Transcript of July 11, 2016 Hearing before the Brooke County Commission, See Exhibit A to Complaint as filed (hereinafter "Hr'g Tr.")).

B. Statoil's Analysis and Testimony.

Statoil's employee, Kiran Rizvi, testified before the County Commission on July 11, 2016, 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., 13:1 – 49:3). Exhibits showing the improper and proper tax payments are attached. (Hr'g Tr., Exhibits).

C. Statoil's Protest to the Brooke County Commission.

On February 1, 2016, Statoil submitted to the Brooke County Assessor and the Brooke 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 July 11, 2016, by counsel, before the County Commission. (*See* W. Va. Code § 11-3-27). Statoil hired Streski 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 Complaint as Exhibit A. (*See* W. Va. Code § 58-3-4.)

By August 11, 2016 Order, the County Commission denied the request for exoneration for the 2015 tax year. (*See* Ex. B to Statoil's Complaint as filed). Statoil received notice of the Order on August 18, 2016 and timely petitions this Court for relief from the County Commission's erroneous determination. (*See* W. Va. Code § 11-3-25).

III. ANALYSIS AND CAUSES OF ACTION

1. 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.

2. 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.

3. 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 July 11, 2016.

IV. UNJUST ENRICHMENT AND DUE PROCESS

4. In addition to its claims for relief, as set forth by the facts and argument above, for tax year 2015, Statoil paid \$1,845,823.77 more to the Brooke County Commission than was owed in taxes.

5. Such payment has benefitted the County of Brooke and its citizens.

6. Brooke County has been unjustly enriched by \$1,845,823.77 and should be ordered to disgorge this sum to Statoil.

7. Further, W. Va. Code § 11-3-27(a) is unconstitutional on its face or in its application, or both, and violates the Due Process guaranteed by the Constitutions of the United States and the State of West Virginia.

V. CONCLUSION

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

(i) Find that the Brooke 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;

(iii) Order that Brooke County disgorge the \$1,845,823.77 by which it was unjustly enriched by Statoil;

(iv) Order that W. Va. Code § 11-3-27(a) is unconstitutional on its face or in its application, or both, and violates the Due Process guaranteed by the Constitution of the United States and the State of West Virginia.

(v) Order such other relief as the Court deems appropriate.

STATOIL USA ONSHORE PROPERTIES, INC.,

By Counsel

A handwritten signature in dark ink, appearing to read "John J. Meadows", is written over a horizontal line.

Craig A. Griffith (WVSB No. 8549)

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FILED
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BROOKE COUNTY

CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2016, I served a copy of the "AMENDED COMPLAINT OF STATOIL USA ONSHORE PROPERTIES, INC." upon all counsel of record by depositing a true copy thereof in the United States mail, postage prepaid, in envelopes addressed as follows:

Thomas A. Oughton,
Assessor of Brooke County
Brooke County Courthouse
200 Courthouse Square
Wellsburg, WV 26070

The County Commission of Brooke County
840 Charles Street
Wellsburg, WV 26070

Mark Matkovich, Tax Commissioner
1001 Lee Street East
Charleston, West Virginia 25301


John J. Meadows, Esq.