

**BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS**

**SWN PRODUCTION COMPANY, LLC,**

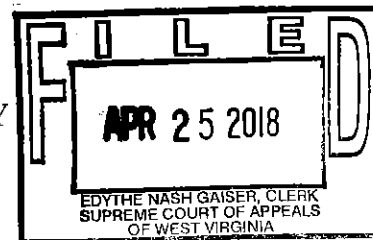
**Petitioner,**

**v.**

**Circuit Court of Marshall County  
Civil Action No. 18-C-8  
Honorable Judge Cramer**

**THE HONORABLE DALE STEAGER,  
West Virginia State Tax Commissioner  
THE HONORABLE CHRISTOPHER J. KESSLER,  
Assessor of Marshall County,  
THE COUNTY COMMISSION OF MARSHALL COUNTY  
Sitting as the Board of Assessment Appeals,**

**Respondents.**



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**RESPONSE OF  
WEST VIRGINIA STATE TAX DEPARTMENT TO  
MOTION TO REFER TO BUSINESS COURT**

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**PATRICK MORRISEY  
ATTORNEY GENERAL**

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**Counsel for Respondent Dale W. Steager,  
State Tax Commissioner**

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COMES NOW the West Virginia State Tax Department, by counsel, L. Wayne Williams, Assistant Attorney General, in order to respond to the *Motion to Refer Case to the Business Court Division* filed by SWN Production on April 5, 2018. SWN Production has filed an identical motion in two other property tax appeals pending in the circuit courts.

SWN Production challenges the valuation of its producing Marcellus Shale oil and gas wells for the 2017 tax year. The case brought by SWN Production presents the same primary legal issues found in the Antero Resources Corporation cases from Doddridge County and Ritchie County which were previously referred to the Business Court by the Supreme Court. The Business Court ruled in favor of Antero Resources Corporation in both cases. The Tax Department has

appealed both cases to the West Virginia Supreme Court of Appeals and the cases are in the briefing stage. See *Dale W. Steager, et al., v. Antero Resources Corporation*, Appeal No. 18-0125 (Doddridge County) and *Dale W. Steager v. Antero Resources Corporation*, Appeal No. 18-0124 (Ritchie County).

However, there is one significant difference between the Antero Resources Corporation cases on appeal to the Supreme Court and the SWN Production case which is the subject of the *Motion to Refer Case to the Business Court Division*. In the Antero Resources Corporation cases, the Tax Department calculated the Average Annual Industry Operating Expenses as required by the legislative rule and utilized a standard deduction of 20% of gross receipts not to exceed \$150,000 per well for the 2016 tax year. For the 2017 TY, the Tax Department employed a standard deduction of 20% of gross receipts not to exceed \$175,000 per well. The Business Court specifically adopted the “compromise value” advocated by Antero Resources Corporation based on an **unlimited** deduction of 20% of gross receipts for both years for ad valorem property tax purposes. More importantly, in the SWN Production cases the Producer is demanding a deduction of 56.4% of gross receipts per well for ad valorem valuation purposes for the 2017 TY.

The State Tax Department agrees that the SWN Production cases should be referred to the Business Court. The Business Court Division is the proper venue to determine whether to apply the legislative rule as advocated by the State Tax Department or whether to further expand the *ad hoc* deduction adopted by the Business Court to be used in valuing producing oil and gas wells for ad valorem tax purposes.

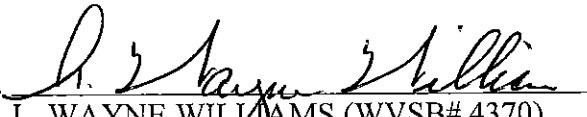
WHEREFORE, the West Virginia State Tax Department does not oppose granting SWN  
Production's *Motion to Refer Case to the Business Court Division*.

Respectfully submitted,

DALE W. STEAGER,  
STATE TAX COMMISSIONER  
OF WEST VIRGINIA,

By counsel,

PATRICK MORRISEY  
ATTORNEY GENERAL

A handwritten signature in dark ink, appearing to read "L. Wayne Williams", is written over a horizontal line.

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**CERTIFICATE OF SERVICE**

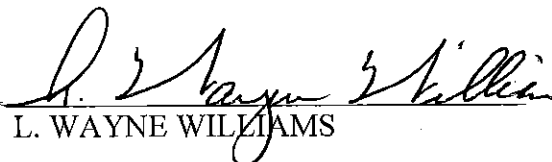
I, L. Wayne Williams, Assistant Attorney General for the State of West Virginia, do hereby certify that a true and exact copy of the foregoing *Response of West Virginia State Tax Department to Motion to Refer to Business Court* was served by depositing the same, postage prepaid in the United States Mail, this 25<sup>th</sup> day of April, 2018, addressed as follows:

Honorable Jeffrey Cramer, Judge  
Tyler County Courthouse  
600 Seventh Street  
Moundsville, WV 26041

Craig A. Griffith  
John J. Meadows  
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Charleston, WV 25326

The Marshall County  
Commission  
P.O. Drawer B  
Moundsville, WV 26041

The Marshall County Assessor  
P.O. Box 554  
Moundsville, WV 26041

  
L. WAYNE WILLIAMS