

**IN THE CIRCUIT COURT OF BARBOUR COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION**

**DENEX PETROLEUM CORPORATION, INC.,**

**Petitioner,**

**Civil Action No. 16-AA-1  
McDowell County**

**vs).**

**The Honorable DALE STEAGER, WV State Tax Commissioner;  
The Honorable JOHN M CUTRIGHT, Assessor of Barbour County;  
and the COUNTY COMMISSION OF BARBOUR COUNTY, sitting  
as the Barbour County Board of Review and Equalization,**

**Respondents.**

RECEIVED  
2018 JAN 17 PM 3:10  
CIRCUIT CLERK  
BARBOUR COUNTY

**ORDER CALLING FOR CLARIFICATION**

The above-captioned case was referred to the Business Court Division on October 11, 2017. During the initial status conference, parties, represented by counsel, informed the Court that they did not wish to schedule a hearing or submit further briefs for the Court's consideration.

The Court is in receipt of the Complaint and Answers by all parties; the Appeal Brief of Petitioner Denex Petroleum Corporation; Respondents The County Commission of Barbour County, Sitting as the Barbour County Board of Review and Equalization's Response to the Petitioner's Brief; Respondents Mark Matkovich, West Virginia State Tax Commissioner and John Cutright, Assessor of Barbour County's Response to the Petitioner's Brief; and the Reply Brief of Petitioner Denex Petroleum Corporation.

In reviewing this appeal for adjudication, the Court finds need for clarification in one topic of argument. Petitioner argues that the

State Tax Commissioner does not appear to be following its own regulation and is actually allowing only (30%) percent of the "working interest" revenue, or net revenue after deduction of royalties, not thirty (30%) percent of the well's "gross receipts". (See *Administrative Notice* 2016-08 and *Natural Resource Valuation Variables* for 2016 Tax Year attached as Petitioner's Exhibit Nos. 3 and 2, to the Complaint in this Action).

Upon review of Exhibit 2, titled the Industry Operating Expense Survey and Results, it appears the State Tax Department calculated the "% Working Interest Expense for Typical Producing Wells" at 30%. However, pursuant to W. Va. Code R. §110-1J-3.8, the Industry Operating Expense is to be estimated from gross receipts *before* any subtraction of any royalties or expenses.<sup>1</sup> Petitioner argues this demonstrates that the Tax Commissioner does not appear to be following its own regulation. However, in Exhibit 3, titled the Administrative Notice 2016-08, the State Tax Department correctly informs that the "Direct ordinary operating expenses will be estimated to be 30% of the gross receipts..."

Accordingly, the Court hereby inquires whether the Petitioner is asserting that *its own* wells were valued with an operating expense based on working interest in error instead of the operating expense based on the percentage of gross receipts.

The parties are directed to each submit a brief addressing whether the value of the wells at issue were set taking into account the direct ordinary operating expenses, based upon 30% of the gross receipts, or whether the values were calculated based on a percentage of *working interest* expenses. Such memoranda shall be submitted by February 1, 2018. Thereafter the Court will rule upon the filings, or set a hearing if deemed necessary.

All original proposed orders and copies of memoranda shall be sent directly to the Judge via Carol.Miller@courtsww.gov with a courtesy copy to both Business.Court@courtsww.gov and

---

<sup>1</sup> "Working interest" means the fractional interest in oil and/or natural gas production subject to development and operating expenses and owned by the leaseholder and/ or operator. W. Va. Code R. 110-1J-3

Claire.Watson@courtsww.gov. Copies of the proposed orders and the original memoranda shall be filed with the Clerk of the Circuit Court. The Court directs the Circuit Clerk to enter the foregoing and forward an attested copy to all counsel of record.

ENTER this 17 day of January 2018.

  
CHRISTOPHER C. WILKES, JUDGE  
BUSINESS COURT DIVISION

A TRUE COPY  
ATTEST: GERALD M. FOGG  
BARBOUR COUNTY CIRCUIT CLERK

  
By: \_\_\_\_\_

DEPUTY CLERK

***Document(s) served***

Order calling for clarification entered January 17, 2018

***Person(s) served / Method of Service***

*Presiding Judge – Business Court Division*  
The Hon. Christopher C. Wilkes  
Berkeley County Judicial Center  
380 W. South St., Suite 4100  
Martinsburg, WV 25401

Edythe Gaiser, Clerk  
West Virginia Supreme Court of Appeals  
State Capitol Room E-317  
1900 Kanawha Blvd. East  
Charleston, WV 25305

Carol A. Miller, Executive Director  
Business Court Division  
Berkeley County Judicial Center  
380 W. South St., Suite 2100  
Martinsburg, WV 25401

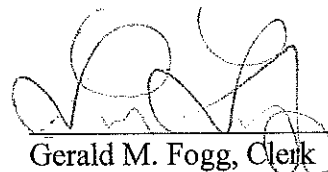
***First Class US Mail***

*Counsel for Petitioner*  
W. T. Weber III, Esq.  
Weber & Weber  
Attorneys at Law  
P.O. Box 270  
Weston, WV 26452

*Counsel for Respondent Mark Matkovich*  
Katherine A. Schultz, Esq.  
Senior Deputy Attorney General  
Cassandra L. Means, Esq.  
Assistant Attorney General  
West Virginia Attorney General's Office  
Bldg. 1, Room W-435  
1900 Kanawha Blvd., East  
Charleston, WV 25305

*Counsel for Respondent Barbour County  
Assessor and Respondent Barbour County  
Commission*  
Stephen C. Sluss, Esq.  
Attorney at Law  
421 Midland Trail  
Hurricane, WV 25526

January 18, 2018

  
Gerald M. Fogg, Clerk