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SUPREME COURT OF APPEALS

OF WEST VIRGINIA

Benjamin, Justice, concurring:

While I agree with the result reached in this case, I write separately because I believe the majority unnecessarily embraces principles of equity in a case easily decided by the application of statutory law.

Based upon the rules of statutory interpretation of the law applicable to this case, a reversal of the circuit court's order is compelled. This Court has repeatedly said that the term "shall", as used by the Legislature, makes the statutory requirement mandatory rather than directory. *See*, Syl. Pt. 1, *Nelson v. West Virginia Public Employees Ins. Bd.*, 171 W. Va. 445, 300 S.E.2d 86 (1992) ("It is well established that the word 'shall,' in the absence of language in the statute showing a contrary intent on the part of the Legislature, should be afforded a mandatory connotation."). *Accord State ex rel. Stump v. Johnson*, 217 W. Va. 733, 619 S.E.2d 246, 255 (2005). *See also State ex rel. Brooks v. Zakaib*, 214 W. Va. 253, 264-65, 588 S.E.2d 418, 429-30 (2003) ("Ordinarily, the word 'shall' has a mandatory, directory connotation." (citations omitted)); *State v. Allen*, 208 W. Va. 144, 153, 539 S.E.2d 87, 96 (1999) ("Generally, 'shall' commands a mandatory connotation and denotes that the described behavior is directory, rather than discretionary." (citations omitted)). Here, the applicable statutory language is clear and without ambiguity in expressing legislative intent

and it should be given full force and effect. Resort to principles of equity is unnecessary.

W. Va. Code § 11-10-14 (d) (1) (2002)¹ unequivocally defeats the contentions of respondents in this case. A statute may not, under the guise of interpretation, be modified, revised, amended, distorted, remodeled or rewritten to achieve some other resort; and while it may be unfortunate to this taxpayer that the Legislature did not foresee the situation now before us, this Court should not rewrite the statute so as to provide the relief sought by respondent.

For the reasons stated above, I concur in the result reached by the majority in this case. I do so, however, not because equity compels it, but rather because the rule of law compels it.

¹ W. Va. Code § 11-10-24 (d) (1) (2002) provides, in pertinent part, “[t]hat after the thirty first day of December, two thousand two, the taxpayer *shall* file the petition with the office of tax appeals in accordance with the provisions of section nine, article ten-a of this chapter.” (Emphasis added). Amendments made to W. Va. Code § 11-10-24 in 2003 did not alter this portion of the statute.