

Nos. 33378, 33880 and 33881 Bayer Material Science, LLC and Bayer CropScience,
USA, LP v. State Tax Comm'r. et al..

Benjamin, J., dissenting:

FILED
January 9, 2009
released at 3:00 p.m.
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

For the reasons set forth in my dissenting opinion in *In re: Tax Assessment of Foster Foundation's Woodlands Retirement*, No. 33891, I respectfully also dissent in this case. I believe that the proper burden of proof for a taxpayer in a case such as this is that the taxpayer meet a "preponderancy of the evidence" burden. I therefore dissent to the majority opinion.