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IN THE WEST VIRGINIA SUPREME COURT OF APPEALS
Appeal Nos. 21-0521 and 21-0517

MARK MUSICK, ASSESSOR OF MONONGALIA COUNTY,

Respondent Below, Petitioner,

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v.

BETA THETA PI FRATERNITY OF W.V.U., INC.,

Petitioner Below, Respondent.

AND

MATTHEW R. IRBY, WEST VIRGINIA
STATE TAX COMMISSIONER,

Respondent Below, Petitioner,

v.

BETA THETA PI FRATERNITY OF W.V.U., INC.,

Petitioner Below, Respondent.

PETITIONERS' APPEAL BRIEF

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I. ASSIGNMENTS OF ERROR

1. The circuit court erred in its application by (1) determining that Beta Theta Pi, Inc. was a housing corporation holding property on behalf of an affiliated local fraternity at West Virginia University; (2) determining that the BTP Housing Corp. need not house members of a local fraternity charter of Beta Theta Pi; (3) determining that the taxpayer's use of the property with a view for profit complied with the statutory requirement for exemption; and (4) failing to apply the statute as found in W. Va. Code §11-3-9(a)(15).
2. The circuit court erred by failing to correctly apply the clear and unambiguous statutory requirements of W. Va. Code § 11-3-9(a)(15) and strictly construe the exemption against Beta Theta Pi, Inc.

II. STATEMENT OF THE CASE

Beta Theta Pi of W.V.U., Inc., (hereinafter referred to as "BTP Housing Corp") is a housing corporation that owns the real property at issue in this case in Monongalia County at 224 Belmar Avenue, Morgantown, West Virginia. Joint Appendix at 168 (hereinafter referred to as "JA"). The BTP Housing Corp. sought to claim an exemption from *ad valorem* property taxation pursuant to W. Va. Code § 11—3-9(a)(15). JA. 14. On or about December 13, 2019, Mark Musick, in his official capacity as Assessor of Monongalia County, West Virginia, submitted certified questions to the West Virginia Tax Commissioner. JA. 41.

On February 21, 2020, the Tax Commissioner issued Property Taxability Ruling 20-36 (hereinafter referred to as "Taxability Ruling") which determined that Beta Theta Pi's property was taxable and did not qualify for an exemption. JA. 000014-20. The Tax Commissioner made this determination based upon several important facts. First, the local fraternity of Beta Theta Pi

(hereinafter referred to as “local fraternity”) did not have an active local charter during the relevant taxation year. JA.19. The local fraternity is not expected to be permitted to seek a reinstatement of the charter until 2024. JA. 5. No local fraternity of Beta Theta Pi is currently “recognized” by West Virginia University and Beta Theta Pi’s nation organization does not actively recognize a local fraternity at West Virginia University. JA. 5. Additionally, the BTP Housing Corp. is not housing members of the now defunct local fraternity of Beta Theta Pi. JA. 5. Rather, the BTP Housing Corp. has been leasing the property to members of other fraternal organizations, namely Sigma Pi Epsilon, Pi Kappa Alpha, and Alpha Omnia. JA. 5.

The Tax Commissioner ruled that the BTP Housing Corp. was not eligible to qualify for an exemption from *ad valorem* property taxation. JA. 14-20. The BTP Housing Corp. appealed the Taxability Ruling to the Circuit Court of Monongalia County, West Virginia. JA. 57. In its Decision, the circuit court determined that the BTP Housing Corp. did qualify for an exemption from *ad valorem* property taxation under W. Va. Code §11-3-9(a)(15). JA. 166-174. The circuit court held that the BTP Housing Corp. was not being used for profit because it housed members of other fraternal organizations at West Virginia University. JA. 166-174. The decision also provided that the BTP Housing Corp. was not leasing for profit because the property had never been rented out to the public. JA. 166-174. The court relied on a two-prong test for a charitable organization rather than the test presented specifically for housing corporations seeking exemption from *ad valorem* taxation. JA. 166-174. The decision of the circuit court overturned the Taxability Ruling. On June 30, 2021, the State Tax Department and the Assessor both timely appealed the Circuit Court’s decision to the West Virginia Supreme Court of Appeals under a consolidated appeal.

III. SUMMARY OF ARGUMENT

The primary issue on appeal before this court is: Can a housing corporation not holding property on behalf of an affiliated fraternity qualify for an exemption from *ad valorem* taxation? W. Va. Code §11-3-9(a)(15) provides that, in order to qualify for an exemption from property taxation, a housing corporation must: (1) hold the property on behalf of a fraternity or sorority affiliated with a university or college; (2) the property must be used as residential accommodations or as a dormitory for members of the organization; (3) the housing corporation may not rent the property for profit. The housing corporation fails all three elements necessary to qualify for an exemption from *ad valorem* taxation.

First, the BTP Housing Corp. is not holding the property on behalf of a fraternity affiliated with West Virginia University. The local fraternity charter was revoked in 2014 and is not expected to be reinstated before Fall of 2024. Additionally, neither West Virginia University nor the national Beta Theta Pi organization recognized a local fraternity chapter at West Virginia University. Because there is no local Beta Theta Pi fraternity affiliated with West Virginia University, the BTP Housing Corp. cannot be holding the property on behalf of a fraternity affiliated with West Virginia University.

Additionally, the BTP Housing Corp. is not housing members of the organization as required by the statute. Rather, it is housing members of other fraternal organization. The plain and unambiguous language of the statute requires that the BTP Housing Corp. house members of the affiliated fraternity on whose behalf the housing corporation is holding the property. In order to meet this requirement, the BTP Housing Corp. would have to be housing members of an affiliated Beta Theta Pi local fraternity. However, because there exists no affiliated local fraternity,

there are no members for the BTP Housing Corp. to house. Therefore, the BTP Housing Corp. is unable to meet the requirement of the statute.

Finally, because the BTP Housing Corp. cannot house members of an affiliated local fraternity on whose behalf it holds the property, it is necessarily being used for profit as it is housing other fraternal organizations. The circuit court applied the statute incorrectly and failed to strictly construe the requirements of the statute against the housing corporation seeking the exemption. The circuit court added commas to the statute and did not apply the statute verbatim leading the circuit court to erroneously hold that the BTP Housing Corp. qualifies for an exemption from *ad valorem* taxation. To the extent that there is *any* doubt regarding whether or not the BTP Housing Corp. is exempt from *ad valorem* taxation, that doubt must be resolved against the housing corporation.

The Taxability Ruling properly denied the BTP Housing Corp. an exemption from *ad valorem* property taxation and the circuit court decision should be reversed since the ruling is erroneous.

IV. STATEMENT REGARDING ORAL ARGUMENT

In the appeal before this Court, the Tax Commissioner respectfully requests a Rule 20 Oral Argument, pursuant to the *Revised Rules of Appellate Procedure*. The issue in this case involves issues of fundamental public importance regarding the scope of exemptions from *ad valorem* property taxation detailed in W. Va. Code § 11-3-9(a)(15). Furthermore, a memorandum decision is not appropriate because the Tax Commissioner seeks the reversal of the circuit court decision. *See* Rev. R.A.P. 21(d).

V. STANDARD OF REVIEW

The standard of review on appeal is well-settled. Legal questions before the Supreme Court of Appeals of West Virginia are subject to *de novo* review. See Syl. Pt. 1, *In re Tax Assessment Against Am. Bituminous Power Partners, L.P.*, 208 W. Va. 250, 539 S.E.2d 757 (2000). This Court has established the scope of appellate court review for a circuit court decision:

In reviewing challenges to the findings and conclusions of the circuit court, we apply a two-prong deferential standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly erroneous standard. Questions of law are subject to a *de novo* review.

Appalachian Emergency Med. Serv., Inc., v. State Tax Comm'r, 218 W. Va. 550 at 553, 625 S.E.2d 312, 315 (2005) (quoting Syl. Pt. 2 in *Walker v. W. Va. Ethics Comm'n*, 201 W.Va. 108, 492 S.E.2d 167 (1997)). More specifically, review given to taxation questions that require statutory and regulatory interpretation is *de novo*. Syl. Pt. 1, *Appalachian Power Co. v. State Tax Dep't*, 195 W. Va. 573, 466 S.E.2d 424 (1995) (holding that “[i]nterpreting a statute or an administrative rule or regulation presents a purely legal question subject to *de novo* review.”). Under West Virginia law, exemptions from tax are strictly construed against the taxpayer. See, e.g., Syl. Pt. 1, *RGIS Inventory Specialists v. Palmer*, 209 W. Va. 152, 544 S.E. 2d 79 (2001) (Consumers Sales Tax); Syl. Pt. 4, *Shawnee Bank, Inc. v. Paige*, 200 W.Va. 20 488 S.E.2d 20 (1997) (Business and Occupation Tax); Syl. Pt. 5, *CB & T Operations Co. v. W. Va. Tax Comm'r*, 211 W. Va. 198, 564 S.E. 2d 408 (2001); and *Wooddell v. Dailey* 160 W. Va. 65, 230 S.E. 2d 466, 469 (1976).

VI. ARGUMENT

A. The circuit court erred by failing to correctly apply the clear and unambiguous statutory requirements of W. Va. Code § 11-3-9(a)(15) for claiming an exemption from *ad valorem* property taxation.

Generally, barring an expressed legislative exemption, it is the policy of the State that all property contributes to the “expenses of the government” in the form of taxation. *Matkovich v. University Healthcare Foundation, Inc.*, 238 W. Va. 345, 348, 795 S.E.2d 67, 70 (2016) (quoting W. Va. Const. art. X, § 1); *see also State v. McDowell Lodge, No. 112, A.F. & A.M.*, 96 W. Va. 611, 613, 123 S.E. 561, 562-63 (1924). The West Virginia Constitution does not provide exemptions to taxation, rather it provides authorization for legislative exemptions. *State v. Kittle*, 87 W. Va. 526, 533 105 S.E. 775, 777 (1921). In order for a property to be exempt from an *ad valorem* taxation, it must fall within a specific legislative exemption. *Matkovich*, 238 W.Va. at 349, 795 S.E.2d at 71. Whether a property falls within a legislative exemption from taxation depends on its use. *United Hosp. Ctr., Inc. v. Romano*, 233 W. Va. 313, 317-18, 758 S.E.2d 240, 244-45 (1928). To warrant an exemption, the use must be “primary and immediate, not secondary or remote.” *Id.* at Syl. Pt. 1 (internal quotation and citation omitted).

Of the specific exemptions authorized by the legislature, West Virginia Code §11-3-9(a)(15) provides, in pertinent part:

All real estate not exceeding one acre in extent, and the buildings on the real estate, used exclusively by any college or university society as a literary hall, or as a dormitory or clubroom, if not used with a view to profit, including, but not limited to, property owned by a fraternity or sorority organization affiliated with a university or college or property owned by a nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization affiliated with a university or college, when the property is used as residential accommodations or as a dormitory for members of the organization [.]

W. Va. Code § 11-3-9(a)(15) (emphases added). This exemption provides two specific exemptions from property tax. The first exemption applies when a sorority or fraternity affiliated with a college

or university owns residential accommodations that house members of the organization. This exemption does not apply because there is no local Beta Theta Pi fraternity at West Virginia University. Its charter was revoked in 2014. JA. 000091. Rather Beta Theta Pi of W.V.U., Inc. is a housing corporation that houses members of other fraternal organizations and West Virginia University students. JA. 000091-92.

The only appropriate exemption in question before this Court pertains to Beta Theta Pi of W.V.U., Inc. as a housing corporation. The issue before this Court is whether the BTP Housing Corp., is entitled to an exemption which allows it to avoid payment of *ad valorem* property taxation for the residential property located in Monongalia County at 224 Belmar Avenue, Morgantown, West Virginia. JA. 00008 (“Assignments of Error”). Disposition of the issue depends entirely on three distinct elements, each expressly specified by state, as follows:

- 1) Property is owned by a nonprofit housing corporation or similar entity on behalf of a fraternity or sorority that is affiliated with a university or college,
- 2) Property is used as residential accommodations or as a dormitory for members of the organization; and
- 3) The buildings on the real estate, used exclusively by any college or university as a literary hall, or as a dormitory or clubroom, if not used with a view to profit.¹

¹ In his Decision, the Tax Commissioner identified three criteria required to be entitled to an exemption from an *ad valorem* taxation. The Tax Commissioner stated that “(1) The Property must be owned by a fraternity organization affiliated with the University; (2) The property must be used as residential accommodations or as a dormitory; (3) That use must be by members of the organization.” JA. 000018. The Petitioner agrees that these elements reflect the first exemption of W. Va. Code § 11-3-9(a)(15), however, the decision of the Tax Commissioner was intentionally broad. More specifically, at issue before this Court is the second exemption found in the code which was misstated and incorrectly applied by the circuit court. As fully described above, the property in question is not owned by a fraternal organization affiliated with the university, rather it is owned by the BTP Housing Corp. JA. 000167.

The elements outlined in W. Va. Code 11-3-9(a)(15) are clear and unambiguous and require no additional interpretation. The circuit court improperly ignored the language of the statute. West Virginia law provides that the “primary object in construing a statute is to ascertain and give effect to the intent of the legislature.” *Smith v. State Workmen’s Comp. Comm’r*, 159 W. Va. 108, 219 S.E.2d 361 (1975). As this Court indicated, “plain statutory language does not need to be construed.” *Tribeca Lending Corp. v. McCormick*, 231 W. Va. 455, 460, 745 S.E.2d 493, 498 (2013). In other words, “[w]here the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation.” *Id.* (quoting Syl. Pt. 2, *State v. Elder*, 152 W. Va. 571, 165 S.E.2d 108 (1968)). The Court has long held that a “cardinal rule of statutory construction is that significance and effect must, if possible, be given to every section, clause, word or part of the statute.” Syl. Pt. 3, *Meadows v. Wal-Mart Stores, Inc.*, 207 W. Va. 203, 530 S.E.2d 676 (1999). A statutory provision that is clear, unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but “will be given full force and effect.” Syl. Pt. 2, *State v. Epperly*, 135 W. Va. 877, 65 S.E.2d 488 (1951).

In the Decision, the circuit court applied the wrong statute completely in relying on the elements found in the statute for exemption from *ad valorem* taxation for charitable organizations. JA. 000172. The circuit court erroneously applied the statute for charitable organizations by holding that the word “charitable” could be replaced by “fraternal” in the analysis of the statute. *Id.* However, the statute that applies is W. Va. Code § 11-3-9(a)(15) which specifically contemplates exemptions from *ad valorem* property taxations for housing corporations alleging they are holding property on behalf of an affiliated university organization. The record shows no evidence that the BTP Housing Corp. has attempted to seek a charitable organization exemption or that it serves a charitable purpose.

W. Va. Code §11-3-9(a)(15) is clear, unambiguous and plainly expresses the intent of the Legislature. Through a simple and plain reading of W. Va. Code §11-3-9(a)(15), it is clear that the BTP Housing Corp. is not able to meet each and every requirement clearly articulated and collectively necessary to successfully claim an exemption from *ad valorem* taxation. As further detailed below, the BTP Housing Corp. is not holding its property on behalf of a fraternity affiliated with West Virginia University. Additionally, the property was not being used exclusively to house members of the uncharted local Beta Theta Pi fraternity, rather it was housing other fraternity members not associated with the unaffiliated Beta Theta Pi fraternity. Finally, because there are no members of a local Beta Theta Pi fraternity, the BTP Housing Corp. is simply leasing the property to members of other fraternal organizations necessarily for profit. As a result, the circuit court erroneously misapplied the plain and unambiguous language of the exemption.

- i. The circuit court erred because BTP Housing Corp. failed to satisfy the first element of W. Va. Code § 11-3-9(a)(15) in that it does not hold the property on behalf of a local fraternity that is affiliated with West Virginia University.**

As fully stated above, property to be subject to a claim of exemption from *ad valorem* taxation must be owned by a nonprofit housing corporation or similar entity *on behalf of* a fraternity or sorority that is *affiliated* with a university or college in accordance with W. Va. Code § 11-3-9(a)(15). Since there is undisputedly no local fraternity chapter of Beta Theta Pi at West Virginia University, the BTP Housing Corp. cannot meet the requirements for claiming an *ad valorem* property taxation exemption. *See* JA. 000168. In order for the BTP Housing Corp. to be exempt from taxation, the fraternity on whose behalf it owns the property must be affiliated with West Virginia University. The statutory language requires that the BTP Housing Corp. provide a residence for members of the fraternity on whose behalf it is holding the property. The local

fraternity must be affiliated with West Virginia University. This requirement is clearly not met, thus the exemption sought fails.

While the term “affiliated” has not yet been defined by West Virginia code and no specific definitions have been contemplated within West Virginia Code § 11-3-9(a)(15) or related sections, persuasive authority provides a framework of what it means to be “affiliated.” The term “affiliate” has been defined as “to adopt or accept as a member, subordinate, or branch; to become closely connected; an organization associated with another as a subordinate, subsidiary or member.” *Affiliate*, American Heritage College Dictionary (3d ed.1997). The BTP Housing Corp. was not holding the property on behalf of a local fraternity chapter of Beta Theta Pi that was affiliated with West Virginia during the relevant tax year. The local fraternity continues to be unrecognized by West Virginia University and unchartered by the Beta Theta Pi national organization. JA. 000168.

During the tax year relevant to the issue before this Court, the former local fraternity charter designations at West Virginia University had been revoked. On or about 2014, the local fraternity charter designation was revoked indefinitely and was not expected to be re-established before Fall of 2024. *Id.* The fact that no local fraternity chapter exists that is affiliated with West Virginia University is further evidenced as the local fraternity of Beta Theta Pi is publicly listed as “not recognized” by the West Virginia University Center for Fraternal Values and Leadership². Additionally, in its national Chapter Listings, Beta Theta Pi’s national corporation does not recognize any active chapter at West Virginia University³. *See also* JA. 000019.

² *Chapter Statuses &Semester Scorecard*, - WVU CENTER FOR FRATERNAL VALUES AND LEADERSHIP, <https://greeklife.wvu.edu/chapter-statuses> (last updated Aug. 23, 2021).

³ *Chapter Listing*, MY BETA, <https://my.beta.org/ors/chapterslisting.aspx> (last visited Nov. 13, 2021)

Furthermore, while the BTP Housing Corp. is listed as a real estate holding company by the Internal Revenue Service, there is still no current local fraternity charter designation of Beta Theta Pi at West Virginia University. JA. 000168. A simple review with the Secretary of State reveals “Beta Theta Pi House of West Virginia University, Inc.,” which is the housing corporation, as the only legal entity in existence in the state of West Virginia under that name. JA. 000168. The house owned by the BTP Housing Corp. is classified as a § 501(c)(2) entity with the Internal Revenue Service, which are created for the exclusive purpose of holding title to real property. JA. 000019. There is no active local chapter designation listed with the Secretary of State as a legal entity in the State of West Virginia. JA. 000127.

Most important to the analysis of whether the housing corporation is using its property on behalf of a local fraternity for which it owns the property and whether the local fraternity is affiliated with West Virginia University is that the BTP Housing Corp. expressly admitted that there is no local fraternity chapter designation at West Virginia University. JA. 000168. As explained in *Brief in Support of Petitioner* filed by the BTP Housing Corp. at the circuit court level:

The local fraternal organization at West Virginia University had a charter from the national fraternity Beta Theta Pi, but that charter was revoked due to certain student activities which the national organization did not condone, although alumni of the fraternity are seeking to recharter the local chapter.

JA. 000091.

Through a plain reading of each word of the first element of W. Va. Code §11-3-9(a)(15), in order for the BTP Housing Corp. to qualify for an exemption from an *ad valorem* property taxation, the property in question must be owned by a nonprofit housing corporation on behalf of a fraternity or sorority that is affiliated with a college or university. It is clear that the BTP Housing Corp. is not using its property on behalf of its local fraternity. The local fraternity had no active

local charter designation during the relevant tax year and has not had an active local charter designation since 2014. JA. 000168. Furthermore, a local fraternity charter designation is not expected to be considered until 2024 at the earliest. JA 000015. West Virginia University indicates that no local charter designation is recognized and Beta Theta Pi's national organization does not recognize any local chapter designation at West Virginia University. Because there existed no local chapter designation during the relevant tax year, the BTP Housing Corp. could not have been holding property on behalf of a fraternity or sorority affiliated with West Virginia. Therefore, the BTP Housing Corp. fails to meet the first necessary condition clearly set out in W. Va. Code §11-3-9(a)(15). As such, the BTP Housing Corp. cannot qualify for a property tax exemption to an *ad valorem* taxation and the decision of the circuit court must be reversed.

ii. The circuit court erred in determining that W. Va. Code §11-3-9(a)(15) does not require the BTP Housing Corp. to house members of a local fraternity chapter of Beta Theta Pi.

While the Tax Department believes that the analysis can stop at the first element of W. Va. Code §11-3-9(a)(15) because the BTP Housing Corp. cannot meet the statutory requirement of holding the property on behalf of an organization affiliated with West Virginia University and therefore cannot claim an exemption to an *ad valorem* taxation, the BTP Housing Corp. is also unable to meet the other statutory requirements found in the statute. The second, clearly established requirement found in W. Va. Code §11-3-9(a)(15) is that the property be “used as residential accommodations or as a dormitory for *members of the organization.*” W. Va. Code §11-3-9(a)(15) (emphasis added). Plainly stated, the statute requires that in order to qualify for the exemption the BTP Housing Corp. must house members of its local fraternity chapter which must be affiliated with West Virginia University. Beta Theta Pi does not have a local fraternity chapter that is affiliated with West Virginia University which means there are no members for the BTP Housing

Corp. to house.

The circuit court incorrectly determined that the phrase “members of the organization” did not mean members of a local fraternity chapter of Beta Theta Pi, but rather included any alleged members of a fraternal organization at West Virginia University. JA. 000169. In its analysis of the statute, the circuit court completely ignored the article “the” which denotes a specific intent rather than a general reference.

As previously stated, the cardinal rule of statutory construct is that “significance and effect must, if possible, be given to every section, clause, word or part of the statute.” Sl. Pt.4, *Young v. Apogee Coal Co.*, 232 W. Va. 554, 753 S.E.2d 53 (2013) (internal quotations and citation omitted). It is also a well-established rule of statutory construction that “the Legislature is presumed to intend that every word used in a statute has a specific purpose and meaning.” *Id.* at 561, 753 S.E.2d at 59 (internal quotation omitted) (quoting *State ex rel. Johnson v. Robinson*, 162 W. Va. 579, 582, 251 S.E.2d 505, 508 (1979)). Courts are “not free to read into the language what is not there, but rather should apply the statute as written.” *Id.* (quoting *State ex rel. Frazier v. Meadows*, 193 W. Va. 20, 24, 454 S.E.2d 65, 69 (1994)). This Court has continuously noted that “statutory interpretation is ‘a holistic endeavor . . . and, at a minimum, must account for a statute’s full text, language as well as punctuation, *structure* and subject matter.’” *W. Va. Health Care Coast Review Auth. v. Boone Mem’l Hosp.*, 196 W. Va 326, 338, 472 S.E.2d 411, 423 (1996) (citation omitted).

Plain legislative application rules require the Court to apply equal meaning to each and every word in a statute. In this case, the circuit court failed to apply equal meaning to each word of the requirement set out in W. Va. Code §11-3-9(a)(15). The circuit court stated that the property in question was “clearly being used by fraternal organizations affiliated with WVU and used by members of the organization renting the facility.” JA. 000171. The circuit court continued by

stating, “[t]he property is not being rented out to the public at large, and it is and always has been used by fraternity members.” *Id.* However, the circuit court did not properly apply the standard rules of statutory interpretation in coming to such a conclusion.

Contrary to the circuit court’s ruling, the statute requires that the property be used as residential accommodations or as a dormitory *for members of the organization*. See W. Va. Code § 11-3-9(a)(15). The plain and clear intention of the Legislature was for the exemption to apply only when members of the affiliated local fraternal chapter are being provided housing by BTP Housing Corp. The Legislature clearly did not intend for “the organization” to encompass any organization or the specific identifier “the” would not have been included in the statute. In this case, because it is undisputed that there was no affiliated active local fraternity chapter of Beta Theta Pi, there were no Beta Theta Pi fraternity members to house. JA. 000168. Because there were no members of the local fraternity, the BTP Housing Corp. cannot meet the second mandatory requirement of W. Va. Code § 11-3-9(a)(15).

Furthermore, the circuit court relies on the allegation that the property owned by the BTP Housing Corp. has since housed other members of fraternal organizations. JA. 000171. The record reflects that the property allegedly housed members of Sigma Pi Epsilon, Pi Kappa Alpha, and Alpha Omnia. JA. 000091-92. However, housing fraternity members, or indeed any other person, on whose behalf the housing corporation does **not** hold the property does not meet the requirements of the exemption from *ad valorem* taxation. Additionally, the BTP Housing Corp. has presented no evidence that any of the alleged organizations mentioned above were fraternal organizations recognized by West Virginia University⁴. While the Tax Department argues that the analysis need

⁴ The record does not provide any evidence that the local fraternity members provided housing by the BTP Housing Corp. belonged to fraternities recognized by West Virginia University during the relevant taxation year. The Chapter Statuses & Semester Scorecard provides a list of all

not address this error because W. Va. Code §11-3-9(a)(15) requires the property be used to provide residential accommodations for members of the organization, on behalf of which BTP Housing Corp. holds such property, i.e., members of a local fraternity of Beta Theta Pi – which is not occurring⁵.

The evidence is clear that the circuit court failed to correctly apply the standard rules of statutory construction and application by erroneously ignoring the statutory requirements. Plainly stated, the statute does not provide a broad exemption for the provision of housing for fraternity members with no connection to the BTP Housing Corp. other than that of a landlord and tenant relationship. Contrary to the circuit court’s ruling, it is clear that the Legislature intended for the BTP Housing Corp. seeking the property exemption from *ad valorem* taxation to house members of the local affiliated fraternity. Because Beta Theta Pi does not have a local fraternity chapter designation, the request for a property taxation exemption must be denied. The legislative intent was never to allow alleged members of other fraternal organizations to satisfy the requirement of housing “members of the organization.” As such, the BTP Housing Corp. again fails to meet the second element required to qualify for an exemption from *ad valorem* taxation and the circuit court’s decision should be reversed.

recognized and unrecognized fraternal organizations at West Virginia University. Currently, West Virginia University shows that none of the three fraternal organizations mentioned are recognized by West Virginia University. *See Chapter Statuses & Semester Scorecard*, WVU CENTER FOR FRATERNAL VALUES AND LEADERSHIP, <https://greeklife.wvu.edu/chapter-statuses> (last updated Aug. 23, 2021).

⁵ Because no members of a recognized local charter designation exists, any students housed on the property owned by the BTP Housing Corp. must be for profit. The circuit erred in determining that members of any organization housed on the property would suffice to meet the narrow and explicit requirements of W. Va. Code §11-3-9(a)(15). In the absence of members, the BTP Housing Corp. is simply renting out the property to students of West Virginia University for profit and cannot satisfy the requirements of successfully claiming an exemption to an *ad valorem* property taxation.

iii. The circuit court did not properly apply the elements of W. Va. Code § 11-3-9(a)(15) because the court did not apply the statute as written and added additional commas and words not present in the original statute.

In its decision, the circuit court did not apply the language found in W. Va. Code § 11-3-9(a)(15) verbatim. Rather, the circuit inserted commas into the statute that are not in the statute itself. As previously stated, the Court has recognized that each word of a statute must be given effect and a statute must be construed in accordance with the import of its language. *See Wooddell v. Dailey*, cited *supra*, at 68, 469; *see also* Syl. Pt. 6, *Davis Mem'l Hosp. v. State Tax Comm'r*, 222 W.Va. 677, 671 S.E.2d 682 (2008).

The circuit court Order provides the following interpretation of W. Va. Code §11-3-9(a)(15), in pertinent part:

(15) All real estate not exceeding one acre in extent, and the buildings **thereon [sic]**, used exclusively by any college or university society as a literary hall, or as a dormitory or clubroom, if not used with a view to profit, including, but not limited to **[sic]** property owned by a fraternity or sorority organization affiliated with a university or college, **[sic]** or property owned by a nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization affiliated with a university or college, when the property is used as residential accommodations, **[sic]** or as a dormitory for members of the organization.⁶

⁶ The original language of W. Va. Code § 11-3-9(a)(15) is as follows: All property, real and personal, described in this subsection, and to the extent limited by this section, is exempt from taxation:...(15) All real estate not exceeding one acre in extent, and the buildings on the real estate, used exclusively by any college or university society as a literary hall, or as a dormitory or clubroom, if not used with a view to profit, including, but not limited to, property owned by a fraternity or sorority organization affiliated with a university or college or property owned by a nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization affiliated with a university or college, when the property is used as residential accommodations or as a dormitory for members of the organization [.]

JA. 000170. The addition of two commas in lines five and eight not present in the statute changes the meaning of each clause intended by the Legislature. Most importantly of the errors made by the circuit court, a comma was inserted in the final element of the statute. The original requirement indicates that an exemption to an *ad valorem* taxation requires the property to be used as “residential accommodations or as a dormitory for members of the organization[.]” W. Va. Code § 11-3-9(a)(15). However, the version incorrectly reviewed and adopted by the circuit court stated that the property was to be used as “residential accommodations, or as a dormitory for members of the organization.” JA. 000170. The addition of the comma could incorrectly allow any property used as residential accommodations to qualify for an exemption from an *ad valorem* taxation.

Similarly, the same misstatements of language were contained in the information the BTP Housing Corp. submitted to the Tax Department. JA. 000018. The Taxability Ruling addressed the inaccuracy of the statutory language submitted by the BTP Housing Corp. by noting:

We note that Taxpayer’s counsel incorrectly quoted the statute in his letter of January 20, 2020, inserting a comma before the final clause of the provision, thereby making an otherwise restrictive modifier appear to be non-restrictive. While an inadvertent comma might seem trivial, in this case it changes the meaning of the statute in a way that makes it appear that use of the property need not be by members of the organization, as long as it is for residential accommodations. Misplacement of the comma alters the statute’s requirement that the property be used as residential accommodations or as a dormitory *for members of the organization* that owns the property. The misplaced comma makes it easier to argue that the exemption is available if the property is used as either residential accommodations or as a dormitory for members of the organization.

Id. (footnote omitted)(emphasis in original). The Taxability Ruling correctly identifies a significant flaw in the argument made by the BTP Housing Corp. as the correct statutory language was not relied on by the BTP Housing Corp. *Id.* Not only did the decision of the circuit court fail to correct the misstatement by the BTP Housing Corp. of W. Va. Code § 11-3-9(a)(15), the court perpetuated the errors in its own application of the statute. Such an error was used by the circuit

court to substantially change the plain meaning of W. Va. Code § 11-3-9(a)(15) and impacts the accuracy of the statutory application the circuit court undertook in making its decision. The circuit courts reliance on an incorrectly quoted statutory provision altered its application of the statute. The additional commas significantly alter the meaning on an incorrectly quoted statutory provision of W. Va. Code §11-3-9(a)(15). As stated in the analysis of the Taxability Ruling, the additional comma could allow the statute to be read to allow any property used to provide accommodations to West Virginia University students to qualify for an exemption to an *ad valorem* property taxation. Because the circuit court failed to correct the errors submitted by the BTP Housing Corp. and used the same errors in its application of W. Va. Code § 11-3-9(a)(15), the circuit court erred in its ruling. As a result, the decision of the circuit court must be reversed to reflect the meaning intended by the Legislature.

B. The circuit court failed to apply a strict construction of W. Va. Code §11-3-9(a)(15) against the BTP Housing Corp. as the party seeking an exemption from *ad valorem* property taxation.

As previously stated, it is the expressed policy of the State of West Virginia that all property contributes to the “expenses of the government.” *Matkovich*, 238 W. Va. at 348, 795 S.E.2d at 70. Taxation of property, both real and personal, is the general rule provided by constitutional mandate. *See* Syl. Pt. 1, *In re Hillcrest Memorial Gardens, Inc.*, 146 W. Va. 337, 119 S.E.2d 753 (1961). In order to successfully claim an exemption from an *ad valorem* property taxation, the property must fall within an exemption specified by the Legislature. *Id.* at 349, 795 S.E.2d at 71. To warrant an exemption, the use of the property must be “primary and immediate, not secondary or remote.” *Id.* at Syl. Pt. 1 (internal quotations and citations omitted).

This Court has specifically addressed the narrow construction of exemptions to *ad valorem* property taxations by indicating that “[c]onstitutional and statutory provisions exempting property

from taxation are strictly construed.” Syl. Pt. 2, *In re Hillcrest Memorial Gardens, Inc.*, 146 W. Va. 337, 119 S.E.2d 753. The Court continues by instructing that it is “encumbent [sic] upon a person who claims his property is exempt from taxation to show that such property clearly falls within the terms of the exemption.” *Id.* If the person claiming a property exemption does not fall within the terms of the exemption or “if any doubt arises as to the exemption, that doubt must be resolved against the one claiming it.” *Id.*

The BTP Housing Corp. does not fall within the terms of the narrow exemption set forth in W. Va. Code §11-3-9(a)(15). It is undisputed that the BTP Housing Corp. does not have a recognized local charter which is affiliated with West Virginia University. Additionally, because no recognized local fraternity charter exists for Beta Theta Pi, there exist no members of the organization and the BTP Housing Corp. cannot maintain that it is housing members of the organization on whose behalf it serves as a non-profit housing corporation. The BTP Housing Corp. has failed to show that it falls squarely within the exemption in order to successfully claim an exemption to an *ad valorem* property taxation. Strict construction of statutory exemptions from taxation provides an additional basis for reversal. There is no support in W. Va. Code § 11-3-9(a)(15) to allow a housing corporation to obtain an exemption from *ad valorem* property taxation if it houses members from another fraternity or fraternities on whose behalf it does not own the property. As such, the decision of the circuit court must be reversed.

VI. CONCLUSION

For the foregoing reasons, the decision of the circuit court does not comply with the statutory requirements found in W. Va. Code § 11-3-9(a)(15). Therefore, this Petitioner, the State

Tax Commissioner, respectfully requests that this Honorable Court reverse the decision of the circuit court and deny the *ad valorem* property taxation exemption sought.

Respectfully submitted,

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IN THE WEST VIRGINIA SUPREME COURT OF APPEALS
Appeal Nos. 21-0521 and 21-0517

MARK MUSICK, ASSESSOR OF MONONGALIA COUNTY,

Respondent Below, Petitioner,

v.

BETA THETA PI FRATERNITY OF W.V.U., INC.,

Petitioner Below, Respondent.

AND

MATTHEW R. IRBY, WEST VIRGINIA
STATE TAX COMMISSIONER,

Respondent Below, Petitioner,

v.

BETA THETA PI FRATERNITY OF W.V.U., INC.,

Petitioner Below, Respondent.

CERTIFICATE OF SERVICE

I, Lauren D. Mahaney, Assistant Attorney General for the State of West Virginia, do hereby certify that a true and exact copy of the foregoing "Petitioner's Appeal Brief" was served by depositing the same, postage prepaid in the United States Mail, this 15th day of November, 2021, addressed as follows:

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