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

**PFIZER INC. AND SUBSIDIARIES.**

Petitioner Below, Petitioner,

v.

**MATHEW R. IRBY, STATE TAX  
COMMISSIONER OF WEST VIRGINIA,**

Respondent Below, Respondent.

ON APPEAL FROM THE INTERMEDIATE COURT OF APPEALS  
(CIVIL ACTION NO. 22-ICA-285)

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**OPENING BRIEF OF PETITIONER,  
Petitioner, Pfizer Inc. and Subsidiaries**

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## TABLE OF CONTENTS

I. ASSIGNMENTS OF ERROR.....	1
III. SUMMARY OF ARGUMENT .....	2
IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION.....	3
V. ARGUMENT .....	3
A. The INTERMEDIATE COURT OF APPEALS’ judgment is reviewed.....	3
B. The Intermediate Court Of Appeals improperly dismissed the appeal on the basis that the petitioner was required to file an appeal bond when the petitioner did not have a tax liability.....	3
VI. CONCLUSION.....	9

# TABLE OF AUTHORITIES

## Cases

<i>Blankenship v. City of Charleston</i> , 223 W.Va. 822, 679 S.E.2d 654 (2009).....	3
<i>Frantz v. Palmer</i> , 211 W.Va. 188, 193, 564 S.E.2d 398, 403 (2001).....	7, 8
<i>Hudkins v. State Consol. Public Retirement Board</i> . 220 W. Va. 275, 646 S.E.2d 711, 716 (2007).....	8, 9
State ex. rel McGraw v. Scott Runyan Pontiac-Buick, Inc., 194 W. Va. 770, 461 S.E.2d 516 14 Syl. Pts. 1 & 2 .....	3
<i>Wisconsin Department of Revenue v. Moebius Printing Company</i> , 89 Wis.2d 610, 279 N.W.2d 213 (1979).....	9

## Statutes

W. Va. Code §11-10A-19(d) .....	3
W. Va. Code § 11-10A-19(e).....	7, 8
W. Va. Code § 11-24-6.....	5
W. Va. Code § 11-24-6(b)(6).....	1, 5
W. Va. Code §11-24-6(d) .....	4, 5
W. Va. Code § 11-24-13f.....	5
W. Va. Code § 11-24-13f(a)(5).....	5

## Other Authorities

H.D. 4305, 75th Leg. Reg. Sess. (W.Va. 2002).....	7
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## Constitutional Provisions

West Virginia Constitution. W.Va. Const. Art. III, §§ 10, 17 .....	8
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## **I. ASSIGNMENTS OF ERROR**

The Intermediate Court of Appeals was clearly wrong in granting the State's Motion to Dismiss for failure to post an appeal bond when the State Tax Department agreed that Pfizer Inc. and Subsidiaries (Taxpayer) had a net operating loss sufficient to offset the tax due had a net operating loss sufficient to offset the tax due meaning there was no cash due.

## **II. STATEMENT OF THE CASE**

In an assessment directed to Pfizer Inc., dated May 22, 2019, the Auditing Division of the West Virginia Department of Tax and Revenue (hereinafter, "the Auditing Division") asserted that the Taxpayer owed business franchise and corporate income taxes in the amount of \$896,129.00, together with interest thereon of \$191,214.76 and additions of \$224,032.25, for a total assessed liability of \$1,311,376.01.

The assessment covered the period from January 1, 2015, through December 31, 2017, and resulted from an audit of the Taxpayer's records. More precisely, the assessment was primarily based on the auditor's position that the Taxpayer failed to increase its West Virginia taxable income for a net foreign loss according to West Virginia Code § 11-24-6(b)(6).

The Taxpayer timely filed a Petition for Reassessment on July 26, 2019, challenging the May 22, 2019 assessment.

After filing the Petition for Reassessment, the Respondent agreed to waive the additions. Further, other issues that were contested were settled, and as evidenced by Respondent on record, the proposed tax assessments were reduced to \$166,846.00 for 2015, \$245,651.00 for 2016, and \$17,146.00 for 2017 (Appendix Page 118).

The Honorable A.M. Pollack, Chief Administrative Law Judge of the Office of Hearings and Appeals (OTA), convened a hearing on the taxpayer's Petition on December 14, 2021. At the hearing, the Auditing Division, through its counsel, introduced four (4) exhibits into the record and presented the testimony of one witness. Petitioner, through its counsel, submitted ten (10) exhibits into the record and presented the testimony of three witnesses.<sup>1</sup>

In the Administrative Decision, issued on November 1, 2022, the OTA sustained the Respondent's assessments for each year in question.

The Petitioner filed an appeal of the decision of the OTA to the Intermediate Court of Appeals on December 1, 2022.

The Petitioner perfected its appeal on March 2, 2023.

On March 10, 2023, the Respondent moved to dismiss the Appeal for failure to post an appeal bond.

On April 27, 2023, the Intermediate Court of Appeals granted the Motion to Dismiss.

### **III. SUMMARY OF ARGUMENT**

The Intermediate Court of Appeals improperly dismissed the appeal on the basis that the Petitioner was required to file an appeal bond when the Petitioner did not have a tax liability.

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<sup>1</sup> It should be noted that the Parties agreed, based upon judicial economy, to only discuss the 2015 assessment; however, the issues and fact patterns are the same for tax years 2016 and 2017.

#### **IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

The Petitioner believes this case is suitable for Rule 20 argument because it involves issues of first impression and fundamental public importance. The Intermediate Court of Appeals improperly interpreted West Va. Code §11-10A-19(d) requiring a Petitioner to file an appeal bond when the Petitioner, as a result of a net operation loss, did have any tax or revenue plus additions to tax, penalties, and interest due based upon the administrative decision of the OTA.

#### **V. ARGUMENT**

##### **A. THE INTERMEDIATE COURT OF APPEALS' JUDGMENT IS REVIEWED**

The Honorable Court should review the Intermediate Court decision to dismiss the case de novo. See Syl. Pt. 2, *State ex. rel McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 461 S.E.2d 516 14 Syl. Pts. 1 & 2, *Blankenship v. City of Charleston*, 223 W.Va. 822, 679 S.E.2d 654 (2009).

##### **B. THE INTERMEDIATE COURT OF APPEALS IMPROPERLY DISMISSED THE APPEAL ON THE BASIS THAT THE PETITIONER WAS REQUIRED TO FILE AN APPEAL BOND WHEN THE PETITIONER DID NOT HAVE A TAX LIABILITY.**

The Petitioner filed its Petition for Reassessment based on four issues.

1. West Virginia's corporate tax statutes impose a tax on a corporation's West Virginia taxable income. To determine West Virginia taxable income, West Virginia statutes start with "federal taxable income," as the Internal Revenue Code defines that term, and then make "adjustments" that can either decrease or increase federal taxable income.

At issue here regards an adjustment that the West Virginia Department of Taxation and Revenue imposed in each of tax years 2015, 2016, and 2017, which increased Pfizer's federal taxable income by approximately \$3.9 Billion, \$4.9 Billion, and \$3.8 Billion, respectively. In particular, the West Virginia statute requires increasing federal taxable income for net foreign source losses included in federal taxable income. Pfizer did not have net

operating losses from foreign sources in the years at issue and thus did not include any such losses in federal taxable income.

The State Tax Department must follow West Virginia law. West Virginia law does not empower the State Tax Department to create a hypothetical foreign source loss where no real foreign source loss exists.

2. The auditor adjusted to reduce the 2015, 2016, and 2017 sales denominator by \$5.7 Billion, \$11.7 Billion, and \$1.9 Billion, respectively. The adjustments were described as “Foreign Sourced Income Adjustment,” and no other explanation was provided. No authority was cited supporting these multi-billion dollar apportionment factor adjustments.

3. The West Virginia Corporation Net Income Tax is a direct income tax imposed on domestic and foreign corporations engaged in business in West Virginia or deriving income from property, activity, or other sources in the State. For multistate corporations, certain income items are allocated or apportioned to West Virginia according to State law. Royalty income that is part of business income is apportioned.

In its audit, West Virginia improperly excluded billions of dollars of royalties from Pfizer’s sales factor, apparently arguing that Pfizer could not readily attribute the royalty income to any specific “income-producing activity” of Pfizer.

Pfizer has significant royalty income, which is attributable to its grant of manufacturing and distribution licenses for Pfizer’s innovative medicines in international markets. These licenses are a cornerstone of Pfizer’s essential business activity as a research-based, global pharmaceutical company. Consequently, the royalty income can readily be attributed to specific income-producing activity, and West Virginia should not have excluded it from the sales factor computation.

4. The Auditing Division erred as a matter of law in concluding that the taxpayer was not entitled to apply its net operating loss carryover from prior years to the 2015, 2016, and 2017 audit years as provided in W. Va. Code §11-24-6(d). The Auditing Division also erred in determining that Taxpayer had taxable income in 2015, 2016, and 2017 rather than generating NOLs in each year.

Before the evidentiary hearing, the Respondent agreed to waive the additions. Further, other issues that were contested were settled as evidenced by Respondent on record; the proposed

tax assessments were reduced to \$166,846.00 for 2015, \$245,651.00 for 2016, and \$17,146.00 for 2017 (Appendix Page 118). This included the fact that the Petitioner is entitled to apply its net operating loss carryover from prior years to the 2015, 2016, and 2017 audit years as provided in W. Va. Code §11-24-6(d).

The Petitioner is appealing an Order affirming an assessment based on the following:

- A. West Virginia Code § 11-24-13f mandates, absent an affirmative election, that corporations report their West Virginia Taxable Income using Water's-edge reporting.
- B. West Virginia Code § 11-24-6 provides the modifications and adjustments to Federal Taxable Income to determine the appropriate West Virginia Taxable Income.
- C. The Auditor was wrong to determine that Pfizer had a foreign source loss that would be subject to adjustment under West Virginia Code § 11-24-6(b)(6). West Virginia has already increased Pfizer's West Virginia taxable income by \$3,980,110,088, \$12,339,124,067 and \$4,053,174,033 for the tax years 2015, 2016 and 2017, respectively, by including the non-U.S. sourced Subpart F income of its unitary controlled foreign corporations under the Water's edge requirements in West Virginia Code § 11-24-13f(a)(5).

As outlined in the supporting schedule that was attached to the Petitioner's Prehearing Schedule (Appendix Page 404), the Petitioner had a West Virginia NOL of \$74,725,569 as of December 31, 2014. The Petitioner had the right under W. Va. Code §11-24-6(d) to offset any West Virginia taxable income for tax years 2015, 2016, and 2017. Pursuant to the Respondents Prehearing Statement:

**“This issue is not a "denial" of net operating losses. The result of the adjustments made by Respondent (both those adjustments identified in sub issues 1-3, as well as additional adjustments that do not appear to be contested by Petitioner) during the audit simply changed Petitioner's taxable income and therefore negated any net operating loss. This is not really a "separate" issue. Once the other issues are resolved, then any available net operating loss will be calculated and if any is available, it would be applied.**

**Also, the amounts at issue for each "sub issue" have not been calculated by Respondent. Upon the resolution of those issues, it would be necessary to revisit the calculations for each issue to determine their exact amounts.” (Appendix Page 419)**

Therefore, The State Tax Department acknowledges the existence of the Net Operating Loss and that they would adjust any additional liability by application of the NOL.

Per the West Virginia State Tax Department work papers (Exhibit 1 ), West Virginia income for 2015 was \$ 2,299,877.

The West Virginia taxable income would be reduced to 0 after deducting the carry forward net operating loss. This would leave a carryover for 2016 of \$ 72,425,692 (\$74,725,569 - \$ 2,299,877)

Per the West Virginia State Tax Department work papers ( Exhibit 1), the amount of West Virginia taxable income for 2016 was \$ 8,687,044.

The West Virginia taxable income would be reduced to 0 after deducting the carry forward net operating loss. This would leave a carryover for 2017 of \$ 63,738,648 (\$72,425,692 - \$8,687,044)

Per the West Virginia State Tax Department work papers (Exhibit 1), the amount of West Virginia taxable income for 2017 was \$1,415,840.

The West Virginia taxable income would be reduced to 0 after deducting the carry forward net operating loss. This would leave a carryover for 2018 of \$62,322,808 (\$63,738,648 - \$1,415,840)

Therefore, there is no West Virginia tax due based on the NOL deductions that were agreed to by the State Tax Department.

In construing the predecessor to West Virginia Code § 11-10A-19(e),<sup>2</sup> the Supreme Court of Appeals of West Virginia has held that, in order not to violate the Constitution's open courts provision, the ultimate discretionary authority on the critical issue of a bond or substitute, must be vested in the courts. *Frantz v. Palmer*, 211 W.Va. 188, 193, 564 S.E.2d 398, 403 (2001). There, the Court stated that in considering an application for waiver of the appeal bond requirement, the lower court shall consider evidence of the taxpayer's ability to pay the tax assessment and other relevant factors that the Tax Commissioner or Taxpayer wish to address with regard to the issue of adequate assets or other substitute indemnification. *Id.* at 195, 405. A fair reading of this decision indicates that, provided all other requirements to perfect an appeal were met, this Circuit Court has the authority to, after considering the evidence of the Petitioner's ability to pay the tax assessment and other relevant factors presented by the parties, set the terms of the appeal bond or substitute therefor.

In this case, there is not an outstanding tax obligation because the use of the NOL would have offset any tax owed. Therefore, it is unnecessary to obtain a bond and file it with the Clerk of the Court.

The Commissioner continues its quest to quash the voice and rights of the Petitioner to present the merits of its case by moving to dismiss this action based on the inability or delay of the Taxpayer to post bond., even in a case like this where a bond is not required to ensure payment of a tax liability when such liability does not exist. Such an inequitable result flies in the face of the open court's provision set forth in Article III, Section 17 of the West Virginia Constitution

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<sup>2</sup> West Virginia Code § 11-10A-19(e) was added as part of the creation of the Office of Tax Appeals and provides provisions for appeal similar to those previously provided for appealing decisions of the Commissioner (in Section 11-10-10(d)) but with the addition of the opportunity to make application to the circuit court *for certification that the assets of the taxpayer are adequate to secure performance*. See H.D. 4305, 75th Leg. Reg. Sess. (W.Va. 2002).

preventing an impoverished legal entity from having its day in court. The Commissioner's arguments are without merit and only encourage the violation of Taxpayers' constitutional rights.

The Commissioner argued that the Petition should be dismissed in violation of the Petitioner's constitutionally granted rights to due process and access to the courts. However, it is not the Commissioner, but rather this Court, that "hold[s] the keys to the courthouse" and has the power to grant this small, family-owned business its opportunity to contest its tax assessment on the merits. *Frantz*, 211 W.Va. at 193, 564 S.E.2d at 403.

The dismissal deprived the Petitioner of its property without a meaningful opportunity to contest the taking of such property by presenting the merits of its case before an independent tribunal. Such a result is constitutionally impermissible by violating due process of law and the open court's provision of the West Virginia Constitution. W.Va. Const. Art. III, §§ 10, 17. Consequently, the Petitioner asks that this Honorable Court exercise its authority to keep the doors of the courthouse open by ruling that a bond is not required in the matter because there is no tax liability and a bond is not required by W.Va. Code § 11-10A-19(e), allowing the Petitioner the opportunity to, at the very least, present its case on the merits.

The West Virginia Supreme Court of Appeals has also recognized the doctrine of Equitable Estoppel against governmental agencies *Hudkins v. State Consol. Public Retirement Board*. 220 W. Va. 275, 646 S.E.2d 711, 716 (2007).

See also *Wisconsin Department of Revenue v. Moebius Printing Company*, 89 Wis.2d 610, 279 N.W.2d 213 (1979) (taxpayer was entitled to claim the benefit of estoppel based upon tax representative's incorrect advice).

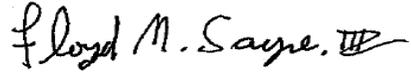
The general rule governing the doctrine of equitable estoppel is that to constitute equitable estoppel, there must exist a false representation or concealment of material facts; it must have been made with knowledge, actual or constructive, of the facts; the party to whom it was made must have been without the knowledge or the means of understanding of the fundamental facts; it must have been made with the intention that it should be acted on; and the party to whom it was made must have relied on or acted on it to his prejudice. *Hudkins v. State Consol. Public Retirement Board*. 220 W. Va. 275, 646 S.E.2d 711 (2007).

Further, the actions of the Respondent satisfy the requirements under *Hudkins* in that "circumstances make it highly inequitable or oppressive not to estop the government" and "the government's conduct works a serious injury, and the imposition of estoppel will not harm the public's interest." It is inequitable for the Tax Commissioner to concede that the Petitioner had sufficient Net Operating Loss to offset any tax liability and then dismiss the Appeal for failing to file an appeal bond to cover any outstanding tax obligation.

## VI. CONCLUSION

The Intermediate Court improperly dismissed the appeal on the basis that the petitioner was required to file an appeal bond when the petitioner did not have a tax liability.

Respectfully submitted,



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<b>YEAR</b>	<b>CORPORATE NET INCOME</b>		<b>TOTAL</b>
<b>2015</b>	<b>\$</b>	<b>149,492</b>	<b>\$ 149,492</b>
<b>2016</b>	<b>\$</b>	<b>564,658</b>	<b>\$ 564,658</b>
<b>2017</b>	<b>\$</b>	<b>92,030</b>	<b>\$ 92,030</b>
<b>TOTAL</b>	<b>\$</b>	<b>806,179</b>	<b>\$ 806,179</b>

2015					
	AUDITED REGULAR	TOTAL AUDITED	REPORTED REGULAR	TOTAL REPORTED	ADDITIONAL TAX DUE
<b>1. Federal Taxable Income</b>	<b>4,628,204,406</b>	<b>4,628,204,406</b>	<b>4,628,204,406</b>	<b>4,628,204,406</b>	
80/20 Entities	0	0	0	0	
Subsection 3 Entities	0	0	0	0	
Subsection 4 Entities	0	0	0	0	
Subpart F Entities	7,279,373,457	7,279,373,457	0	0	
Subsection 6	(3,294,502,187)	(3,294,502,187)	0	0	
US Territories	(4,761,182)	(4,761,182)	0	0	
Total FTI	8,608,314,494	8,608,314,494	4,628,204,406	4,628,204,406	
<b>3. Total increasing adjustments</b>	<b>4,398,058,110</b>	<b>4,398,058,110</b>	<b>532,295,051</b>	<b>532,295,051</b>	
4i. Allowance for obligations/investments	0	0	0	0	
<b>5. Total decreasing adjustments</b>	<b>9,542,702,672</b>	<b>9,542,702,672</b>	<b>11,092,806,679</b>	<b>11,092,806,679</b>	
<b>6. Adj. taxable income-add lines 1 &amp; 3, subtract line 5</b>	<b>3,463,669,932</b>	<b>3,463,669,932</b>	<b>(5,932,307,222)</b>	<b>(5,932,307,222)</b>	
<b>7. Total nonbusiness income allocated everywhere.</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	
<b>8. Total non-unitary business income</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	
<b>9. Income subject to apportionment</b>	<b>3,463,669,932</b>	<b>3,463,669,932</b>	<b>(5,932,307,222)</b>	<b>(5,932,307,222)</b>	
<b>10. Group income subject to apportionment for each member</b>	<b>3,463,669,932</b>	<b>3,463,669,932</b>	<b>(5,932,307,222)</b>	<b>(5,932,307,222)</b>	
<b>11. WV apportionment factor</b>	<b>0.000664</b>	<b>0.000664</b>	<b>0.000872</b>	<b>0.000872</b>	
<b>12. WV apportioned income</b>	<b>2,299,877</b>	<b>2,299,877</b>	<b>(5,172,972)</b>	<b>(5,172,972)</b>	
<b>13. Nonbusiness income allocated to WV</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	
<b>14. Non-unitary business income apportioned to West Virginia</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	
<b>15. WV taxable income</b>	<b>2,299,877</b>	<b>2,299,877</b>	<b>(5,172,972)</b>	<b>(5,172,972)</b>	
<b>16. WV net operating loss carryforward</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	
<b>17. WV net taxable income</b>	<b>2,299,877</b>	<b>2,299,877</b>	<b>(5,172,972)</b>	<b>(5,172,972)</b>	
<b>Tax Rate</b>		<b>0.0650</b>		<b>0.0650</b>	
<b>Tax Amount</b>		<b>149,492</b>		<b>0</b>	
<b>Tax Credit</b>		<b>0</b>		<b>0</b>	
<b>Adjusted Corporate Income Tax</b>		<b>149,492</b>		<b>0</b>	
<b>Prior Year Carryforward</b>		<b>0</b>		<b>0</b>	
<b>Amount to be Credit to Next Year</b>		<b>0</b>		<b>0</b>	
<b>Tax Paid</b>		<b>0</b>		<b>0</b>	
<b>Corporate Income Tax</b>		<b>149,492</b>		<b>0</b>	
<b>Additional Corporate Income Tax Due</b>					<b>149,492</b>

2016	AUDITED REGULAR	TOTAL AUDITED	REPORTED REGULAR	TOTAL REPORTED	ADDITIONAL TAX DUE
15. Capital	0	0	0	0	
16. Multiplier for obligations/ investments allowance (line 7 schedule B-1, CNF-120	0	0	0	0	
17. Obligations/investment allowance	0	0	0	0	
18. Adjusted Capital	0	0	0	0	
19. Group adjusted capital	0	0	0	0	
20. Apportionment Factor (Sched. B, UB-4 APT)	0.000758		0.000000		
21. Taxable capital	0	0	0	0	
Tax Rate		FALSE		FALSE	
Tax Due		0		0	
Tax Credit		0		0	
Adjusted Franchise Tax		0		0	
Prior Year Carryforward		0		0	
Amount to be Credit to Next Year		0		0	
Tax Paid		0		0	
Franchise Tax Due		0		0	
Additional Franchise Tax Due					0
				<b>TOTAL REPORTED</b>	
1. Federal Taxable Income	10,187,200,261	10,187,200,261	10,187,200,261	10,187,200,261	
80/20 Entities	0	0	0	0	
Subsection 3 Entities	0	0	0	0	
Subsection 4 Entities	0	0	0	0	
Subpart F Entities	14,580,473,759	14,580,473,759	0	0	
Subsection 6	(2,241,399,843)	(2,241,399,843)	0	0	
US Territories	50,151	50,151	0	0	
Total FTI	22,526,324,328	22,526,324,328	10,187,200,261	10,187,200,261	
3. Total increasing adjustments	5,690,008,375	5,690,008,375	704,193,394	704,193,394	
4i. Allowance for obligations/investments	0	0	0	0	
5. Total decreasing adjustments	16,755,852,522	16,755,852,522	18,844,594,167	18,844,594,167	
6. Adj. taxable income-add lines 1 & 3, subtract line 5	11,460,480,181	11,460,480,181	(7,953,200,512)	(7,953,200,512)	
7. Total nonbusiness income allocated everywhere.	0	0	0	0	
8. Total non-unitary business income	0	0	0	0	
9. Income subject to apportionment	11,460,480,181	11,460,480,181	(7,953,200,512)	(7,953,200,512)	
10. Group income subject to apportionment for each member	11,460,480,181	11,460,480,181	(7,953,200,512)	(7,953,200,512)	
11. WV apportionment factor	0.000758		0.001358		
12. WV apportioned income	8,687,044	8,687,044	(10,824,306)	(10,824,306)	
13. Nonbusiness income allocated to WV	0	0	0	0	
14. Non-unitary business income apportioned to West Virginia	0	0	0	0	
15. WV taxable income	8,687,044	8,687,044	(10,824,306)	(10,824,306)	
16. WV net operating loss carryforward	0	0	0	0	
17. WV net taxable income	8,687,044	8,687,044	(10,824,306)	(10,824,306)	
Tax Rate		0.0650		0.0650	
Tax Amount		564,658		0	
Tax Credit		0		0	
Adjusted Corporate Income Tax		564,658		0	
Prior Year Carryforward		0		0	
Amount to be Credit to Next Year		0		0	
Tax Paid		0		0	
Corporate Income Tax		564,658		0	
Additional Corporate Income Tax Due					564,658

2017		AUDITED REGULAR	TOTAL AUDITED	REPORTED REGULAR	TOTAL REPORTED	ADDITIONAL TAX DUE
15. Capital		0	0	0	0	
16. Multiplier for obligations/ investments allowance (line 7 schedule B-1, CNF-120		0	0	0	0	
17. Obligations/investment allowance		0	0	0	0	
18. Adjusted Capital		0	0	0	0	
19. Group adjusted capital		0	0	0	0	
20. Apportionment Factor (Sched. B, UB-4 APT)		0.000489		0.000000		
21. Taxable capital		0	0	0	0	
Tax Rate			FALSE		FALSE	
Tax Due			0		0	
Tax Credit			0		0	
Adjusted Franchise Tax			0		0	
Prior Year Carryforward			0		0	
Amount to be Credit to Next Year			0		0	
Tax Paid			0		0	
Franchise Tax Due			0		0	
Additional Franchise Tax Due						0
					TOTAL REPORTED	
1. Federal Taxable Income		15,291,807	15,291,807	15,291,807	15,291,807	
80/20 Entities		0	0	0	0	
Subsection 3 Entities		0	0	0	0	
Subsection 4 Entities		0	0	0	0	
Subpart F Entities		4,297,899,218	4,297,899,218	0	0	
Subsection 6		(244,907,614)	(244,907,614)	0	0	
US Territories		182,429	182,429	0	0	
Total FTI		4,068,465,840	4,068,465,840	15,291,807	15,291,807	
3. Total increasing adjustments		4,566,571,788	4,566,571,788	735,698,426	735,698,426	
4i. Allowance for obligations/investments		0	0	0	0	
5. Total decreasing adjustments		5,739,659,875	5,739,659,875	6,279,091,815	6,279,091,815	
6. Adj. taxable income-add lines 1 & 3, subtract line 5		2,895,377,753	2,895,377,753	(5,528,101,582)	(5,528,101,582)	
7. Total nonbusiness income allocated everywhere.		0	0	0	0	
8. Total non-unitary business income		0	0	0	0	
9. Income subject to apportionment		2,895,377,753	2,895,377,753	(5,528,101,582)	(5,528,101,582)	
10. Group income subject to apportionment for each member		2,895,377,753	2,895,377,753	(5,528,101,582)	(5,528,101,582)	
11. WV apportionment factor		0.000489		0.000887		
12. WV apportioned income		1,415,840	1,415,840	(4,903,426)	(4,903,426)	
13. Nonbusiness income allocated to WV		0	0	0	0	
14. Non-unitary business income apportioned to West Virginia		0	0	0	0	
15. WV taxable income		1,415,840	1,415,840	(4,903,426)	(4,903,426)	
16. WV net operating loss carryforward		0	0	0	0	
17. WV net taxable income		1,415,840	1,415,840	(4,903,426)	(4,903,426)	
Tax Rate			0.0650		0.0650	
Tax Amount			92,030		0	
Tax Credit			0		0	
Adjusted Corporate Income Tax			92,030		0	
Prior Year Carryforward			0		0	
Amount to be Credit to Next Year			0		0	
Tax Paid			0		0	
Corporate Income Tax			92,030		0	
Additional Corporate Income Tax Due						92,030

Explanation of Adjustments

2015	reported apportionment	0.000872					
	audited apportionment	0.000664					
	change in apportionment	-0.000208					
	Income Tax Rate for this year	0.065					
	<b>Details of Apportionment Change:</b>	<b>reported</b>	<b>change</b>	<b>final amount</b>	<b>%</b>		
	<u>WV Property</u> : No changes.	\$ 3,527,717	\$ -	\$ 3,527,717			
	<u>EW Property</u> : This increase represents the property factor of the Subpart F entities	\$ 18,453,008,205	\$ 3,106,838,052	\$ 21,559,846,257	0.000164		
	<u>WV Payroll</u> : No changes.	\$ 4,975,471	\$ -	\$ 4,975,471			
	<u>EW Payroll</u> : This increase represents the payroll factors of the Subpart F entities.	\$ 5,042,872,266	\$ 253,257,632	\$ 5,296,129,898	0.000939		
	<u>WV Sales</u> : No changes.	\$ 36,465,095	\$ -	\$ 36,465,095			
	<u>EW Sales</u> : This increase represents the sales factors of the Subpart F entities.	\$ 31,590,701,180	\$ 15,415,224,615	\$ 47,005,925,795	0.000776		
					0.000776	0.002655	0.000664
	<b>Description</b>	<b>Adjustment</b>	<b>Tax Effect</b>				
	Schedule B, Line 1. Taxpayer failed to report Sub F income as part of the WV Water's Edge Filing Group.	\$ 3,984,871,270	\$ 171,987				
	Reported Income subject to apportionment of x (new apportionment) x tax rate=	\$ (5,932,307,222)	\$ (256,038)				
	Taxpayer failed to report correct Taxable Income from sources o/s the US	\$ 1,550,104,007	\$ 66,902				
	Taxpayer failed to report taxable income for US Territories.	\$ (4,761,182)	\$ (205)				
	Taxpayer failed to report correct NOL from sources o/s the US	\$ 3,865,763,059	\$ 166,846				
	<b>Total Additional Tax Due on Regular Entities</b>	<b>2015</b>	<b>\$ 149,492</b>				

Explanation of Adjustments

2016	reported apportionment	0.001358					
	audited apportionment	0.000758					
	change in apportionment	-0.000600					
	Income Tax Rate for this year	0.065					
	<b>Details of Apportionment Change:</b>	<b>reported</b>	<b>change</b>	<b>final amount</b>	<b>%</b>		
	<b>WV Property: No changes.</b>	\$ 3,150,643	\$ -	\$ 3,150,643			
	<b>EW Property: This increase represents the property factor of the Subpart F entities</b>	\$ 20,346,452,843	\$ 9,699,511,856	\$ 30,045,964,699	0.000105		
	<b>WV Payroll: No changes.</b>	\$ 4,896,175	\$ -	\$ 4,896,175			
	<b>EW Payroll: This increase represents the payroll factors of the Subpart F entities.</b>	\$ 5,393,376,710	\$ 561,782,787	\$ 5,955,159,497	0.000822		
	<b>WV Sales: No changes.</b>	\$ 74,427,374	\$ -	\$ 74,427,374			
	<b>EW Sales: This increase represents the sales factors of the Subpart F entities.</b>	\$ 34,068,664,401	\$ 36,685,863,174	\$ 70,754,527,575	0.001052		
					0.001052	0.003031	0.000758
	<b>Description</b>	<b>Adjustment</b>	<b>Tax Effect</b>				
	Schedule B, Line 1. Taxpayer failed to report Sub F income as part of the WV Water's Edge Filing Group.	\$ 12,339,073,916	\$ 607,946				
	Reported Income subject to apportionment of x (new apportionment) x tax rate=	\$ (7,953,200,512)	\$ (391,854)				
	Taxpayer failed to report correct Taxable Income from sources o/s the US	\$ 2,088,741,645	\$ 102,912				
	Taxpayer failed to report taxable income for US Territories.	\$ 50,151	\$ 2				
	Taxpayer failed to report correct NOL from sources o/s the US	\$ 4,985,814,981	\$ 245,651				
	<b>Total Additional Tax Due on Regular Entities</b>	<b>2016</b>	<b>\$ 564,658</b>				

Explanation of Adjustments

2017	reported apportionment	0.000887					
	audited apportionment	0.000489					
	change in apportionment	-0.000398					
	Income Tax Rate for this year	0.065					
	<b>Details of Apportionment Change:</b>	<b>reported</b>	<b>change</b>	<b>final amount</b>	<b>%</b>		
	<b>WV Property: No changes.</b>	\$ 2,569,030	\$ -	\$ 2,569,030			
	<b>EW Property: This increase represents the property factor of the Subpart F entities</b>	\$ 21,205,903,696	\$ 15,892,139,420	\$ 37,098,043,116	0.000069		
	<b>WV Payroll: No changes.</b>	\$ 5,334,360	\$ -	\$ 5,334,360			
	<b>EW Payroll: This increase represents the payroll factors of the Subpart F entities.</b>	\$ 5,606,009,468	\$ 1,425,901,613	\$ 7,031,911,081	0.000759		
	<b>WV Sales: No changes.</b>	\$ 41,285,232	\$ -	\$ 41,285,232			
	<b>EW Sales: This increase represents the sales factors of the Subpart F entities.</b>	\$ 33,386,448,283	\$ 39,995,748,532	\$ 73,382,196,815	0.000563		
					0.000563	0.001953	0.000489
	<b>Description</b>	<b>Adjustment</b>	<b>Tax Effect</b>				
	Schedule B, Line 1. Taxpayer failed to report Sub F income as part of the WV Water's Edge Filing Group.	\$ 4,052,991,604	\$ 128,824				
	Reported Income subject to apportionment of x (new apportionment) x tax rate=	\$ (5,528,101,582)	\$ (175,711)				
	Taxpayer failed to report correct Taxable Income from sources o/s the US	\$ 3,830,873,362	\$ 121,764				
	Taxpayer failed to report taxable income for US Territories.	\$ 182,429	\$ 6				
	Taxpayer failed to report correct NOL from sources o/s the US	\$ 539,431,940	\$ 17,146				
	<b>Total Additional Tax Due on Regular Entities</b>	<b>2017</b>	<b>\$ 92,030</b>				