

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)	
FREMONT COUNTY FROM A)	
PRODUCTION AUDIT ASSESSMENT)	
DECISION BY THE DEPARTMENT)	Docket No. 2000-203
OF REVENUE (NOVC 2000-704,)	
Louisiana Land & Exploration Company)	
1994-1997 Production Years))	

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

APPEARANCES

Norman E. Young, Fremont County and Prosecuting Attorney (at time of hearing and submission of proposed findings of fact and conclusions of law, appointed District Court Judge, 9th Judicial District in February 2003), for the Board of County Commissioners for the County of Fremont (County), Petitioner.

Karl D. Anderson, Senior Assistant Attorney General, for the Wyoming Department of Revenue (Department), Respondent.

Lawrence J. Wolfe and Walter F. Eggers, III, Holland & Hart LLP, for The Louisiana Land and Exploration Company (LL&E), Intervenor.

DIGEST

This appeal arises from a notice of valuation change issued by the Department to Fremont County following an audit of LL&E's gas production in Fremont County. On appeal, the County challenges the Department's application of the proportionate profits valuation methodology. The County contends that the Department should have included production taxes and royalties as direct costs of production in the proportionate profits method used to value LL&E's gas production in Fremont County processed through the Lost Cabin Plant for 1995 through 1997.

The State Board of Equalization (Board), consisting of Edmund J. Schmidt, Chairman, Roberta A. Coates, Vice Chairman (now Chairman), and Sylvia L. Hackl, Member, with Gayle R. Stewart acting as hearing officer, held a contested case hearing in this matter on January 15 and 16, 2002. Prior to the issuance of this decision, Ms. Hackl and Mr. Schmidt resigned; and Alan B. Minier, Vice Chairman, was appointed to the Board. Vice Chairman Minier has reviewed the file, exhibits, transcript and proposed findings of fact and conclusions of law filed by the parties.

JURISDICTION

The Board shall "review final decisions of the department upon application of any interested person adversely affected, including boards of county commissioners of the purposes of this subsection, under the contested case procedures of the Wyoming Administrative Procedure Act." *Wyo. Stat. § 39-11-102.1(c)*. The Board is mandated to "[d]ecide all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the rules, regulations, orders and instructions prescribed by the department." *Wyo. Stat. §39-11-102.1(c)(iv)*. The rules of practice and procedure for appeals before the Board involving tax matters contemplate appeals from final administrative decisions of the Department. *Rules, Wyoming State Board of Equalization, Chapter 2, § 3*.

DISCUSSION

This is an appeal by the County of the Department's certification of changes in taxable value for LL&E's gas production in Fremont County. The changes certified to the County result from an audit and subsequent Department review of additional information provided by LL&E. The parties have stipulated that this appeal is limited to the proportionate profits valuation of LL&E's gas processed at the Lost Cabin Plant for production years 1995, 1996 and 1997. [Stipulated Updated Summary of Uncontroverted Facts, ¶ 5].

Fremont County's sole contention is that royalties and production taxes should have been included as direct costs in calculating the direct cost ratio of the proportionate profits method used to determine the taxable value of LL&E's natural gas production processed through the Lost Cabin Plant. Fremont County asserts our decision in *In the Matter of the Appeal of Amoco Production Company from a Decision of the Department of Revenue*, Board Docket No. 96-216 (June 29, 2001, decision on reconsideration September 24, 2001) is controlling.

The Department admits it did not include production taxes and royalties as direct costs of production in calculating the taxable value of LL&E's gas processed through the Lost Cabin Plant for production years 1995 through 1997 and concedes that the Board's decision in *Amoco*, Board Docket No. 96-216, is controlling.

LL&E argues the Board: (1) does not have jurisdiction to entertain an appeal by a board of county commissioners; (2) should reverse its *Amoco* decision in whole or in part; (3) should not apply the *Amoco* decision to LL&E's gas production because of factual differences between LL&E's production and Amoco's production; and (4) should rule that interest should not be assessed for the period of time prior to the issuance of the *Amoco* decision.

The Board finds and concludes, for the reasons set forth below, that the County has the right to appeal the post audit notice of valuation change and that the Department erred in not including production taxes and royalties as direct costs of production in calculating the taxable value of LL&E's gas processed through the Lost Cabin Plant for production years 1995 through 1997.

FINDINGS OF FACT

1. In the 1980s two wells were drilled nearly one mile deeper than other wells into the Madison formation in Fremont County. **[Trans. Vol I, pp. 123-125]**. The gas produced by these wells contained a high concentration of hydrogen sulfide which had to be removed for the gas to be marketable. **[Trans. Vol. I, pp. 123-125]**. Since no processing facility was available to process the sour gas, the wells were shut in. **[Trans. Vol I, pp. 124-125]**.

2. In 1990, LL&E became the operator and began to develop plans with the working interest owners to build a plant to process the gas from these two wells. **[Trans. Vol. I, p. 126]**.

3. In 1993, the working interest owners agreed to construct and operate the Lost Cabin Gas Plant (Plant) to process the gas from these two wells. Construction of the Plant began in 1994 and was completed in March 1995 at a cost of eighty-six million dollars. **[Trans. Vol. I, pp. 129-130]**.

4. The Plant removes hydrogen sulfide gas, ammonia, water and other contaminants from the gas stream leaving marketable residue gas. The Plant converts the hydrogen sulfide to molten sulfur. **[Trans. Vol. I, pp. 142-148, LL&E Exhibit 300]**.

5. During the years at issue in this appeal, 1995 through 1997, the Department selected the comparable value method for valuation of LL&E's gas production. **[Trans. Vol. I, pp. 54, 71]**.

6. LL&E requested permission to use the proportionate profits method to value its gas production processed through the Plant and the Department consented. **[Trans. Vol. I, pp. 54, 71, 88]**.

7. LL&E reported the value of its 1995 through 1997 production processed through the Plant using the proportionate profits valuation method. **[Trans. Vol. I, pp. 73, 87-**

88]. LL&E did not include production taxes and royalties as direct costs of production in the direct cost ratio when reporting and paying ad valorem taxes for production years 1995 through 1997. **[Stipulated Updated Summary of Uncontroverted Facts, ¶ 6; Trans. Vol 2, pp. 224, 226].**

8. The proportionate profits methodology set forth in Wyoming Statute Section 39-2-208(d)(iv) [recodified as *Wyo. Stat. § 39-14-203(b)(vi)(D)*] was used to value LL&E's gas production processed through the Lost Cabin gas processing facility. **[Stipulated Updated Summary of Uncontroverted Facts, ¶ 3].**

9. Using the proportionate profits method, taxable value is calculated as follows:

Taxable Value = (Total Sales Revenue - (exempt and nonexempt royalties and production taxes) X Direct Cost Ratio) + (nonexempt royalties and production taxes).

The Direct Cost Ratio is calculated by dividing the direct costs of production by the direct costs of production, processing and transportation.

Wyo. Stat. § 39-2-208(d)(iv). **[Trans. Vol I, pp. 55-56].**

10. The Wyoming Department of Audit conducted two separate audits of LL&E's natural gas production in Fremont County. The first audit covered LL&E's 1994 and 1995 production. The second audit covered LL&E's 1996 and 1997 production. **[Stipulated Updated Summary of Uncontroverted Facts, ¶ 2].**

11. As a result of the audits, the Department issued revised assessment letters to LL&E and Notices of Valuation Change 99-602 and 99-603 to the County. LL&E did not appeal the Department's assessment letter based on the 1996 and 1997 audit. LL&E did appeal the Department's assessment letter based on the 1994 and 1995 audit. LL&E's appeals were assigned Board Docket Nos. 99-139 and 2000-01. Fremont County appealed the Department's 1994-1995 and 1996-1997 Notices of Valuation Change. Fremont County's appeals were assigned Board Docket Nos. 99-182 and 99-183. LL&E and Fremont County each filed motions to intervene in the other party's appeals which were granted by the Board. By stipulation of the parties, the Docket Nos. 99-139, 99-183 and 2000-01 were consolidated. They were subsequently dismissed at the request of the parties. The remaining appeal, Docket No. 99-182, was also dismissed at the request of the parties. **[Board Files; Trans. Vol I, pp. 31-32, 69, 73-74].**

12. While the appeals were pending, the parties resolved a number of the issues raised by the audit. As a result, the Department issued revised assessment letters to LL&E and Notice of Valuation Change 2000-704 to the County which superceded the prior revised assessment letters and Notices of Valuation Change 99-602 and 99-603.

[Stipulated Updated Summary of Uncontroverted Facts, ¶ 2; Joint Exhibits 700-703; Trans. Vol. I, p. 69].

13. Prior to the Board's decision in *In the Matter of the Appeal of Amoco Production Company from a Decision of the Department of Revenue*, Board Docket No. 96-216 (June 29, 2001, decision on reconsideration September 24, 2001) the Department did not require production taxes and royalties to be included in the calculation of the direct cost ratio. **[Trans. Vol I, pp. 61-62, 73].**

14. The Department did not include production taxes and royalties as direct costs of production in calculating the changes in LL&E's taxable value reflected in Notice of Valuation Change 2000-704. **[Trans. Vol I, p. 74].**

15. Notice of Valuation Change 2000-704 was issued to the County on November 16, 2000. **[Joint Exhibit 700].**

16. The County appealed Notice of Valuation Change 2000-704 to the Board by Notice of Appeal filed on December 15, 2000. **[Stipulated Updated Summary of Uncontroverted Facts, ¶ 1; Joint Exhibit 704; Board Record].**

17. The County presented calculations demonstrating the effect of including production taxes and royalties as direct costs of production. The County demonstrated that the taxable value of LL&E's production processed through the Plant increased when those costs were included as direct costs of production. **[Trans. Vol I, pp. 188-192; Exhibit 101-106].**

18. LL&E presented calculations of the taxable value using the netback method, including a deduction for return on investment. Using that method, LL&E's taxable value would have been less than zero in 1995 and 1996, and less than the value calculated using the proportionate profits method in 1997. **[Trans. Vol. II, pp. 244-246; Exhibit 301].**

CONCLUSIONS OF LAW

19. The County's notice of appeal was timely filed within thirty days of the Department's issuance of Notice of Valuation Change 2000-704. *Rules, Wyoming State Board of Equalization, Chapter 2, § 5(a).*

20. The Wyoming Supreme Court recently addressed the question of when a county may appeal a decision of the Department to the Board.

It is only after the time for an audit has expired, or an audit is complete and the DOR has assessed on the basis of the audit (Wyo. Stat. Ann. § 39-14-208(b)(v)(E)) that there is

nothing more to be accomplished. Only then has the DOR made a final decision that a county may appeal.

Sublette County v. Exxon Mobil Corp., 2002 WY 151, 36, 55 P.3d 714 (Wyo.2002).

21. Notice of Valuation Change 2000-704, issued by the Department as the result of two audits of LL&E's production, is a final decision of the Department which the County has a right to appeal. LL&E's argument that Wyoming Statute Section 39-14-209(b)(v) [recodified as *Wyo. Stat. § 39-2-214(g)*] negates the County's right to appeal is without merit. The Board has subject matter jurisdiction to hear the appeal of the County.

22. The Department's valuation established for state assessed property is presumed valid, accurate, and correct, a presumption which survives until overturned by credible evidence. In the absence of evidence to the contrary, it is presumed that the officials charged with establishing value, be it a county assessor or a Department appraiser, exercise honest judgment in accordance with the applicable statutes, rules, regulations, and other directives, which presumption survives until overturned by credible evidence. *Chicago Burlington & Quincy Railroad Co. v. Bruch*, 400 P.2d 494, 498-499 (Wyo. 1965).

23. A party challenging an assessment has the initial burden to present credible evidence to overcome the presumption. A mere difference of opinion as to value is not sufficient. *Teton Valley Ranch v. State Board of Equalization*, 735 P.2d 107 (Wyo. 1987); *Hillard v. Big Horn Coal Company*, 549 P. 293 (Wyo. 1976); *Weaver v. State Board of Equalization*, 511 P.2d 97 (Wyo. 1973); *CF&I Steel Corporation v. State Board of Equalization*, 492 P.2d 529 (Wyo. 1972); *Chicago Burlington & Quincy Railroad v. Bruch*, 400 P.2d 494 (Wyo. 1965); *J. Ray McDermott & Co. v. Hudson*, 370 P.2d 363 (Wyo. 1962) and *Certain-Teed Products Corporation v. Comily*, 87 P.2d 21 (Wyo. 1939).

24. All taxable property shall be annually valued at its fair market value. *Wyo. Stat. § 39-2-102*.

25. Oil and gas shall be annually valued at fair cash market value. *Wyo. Stat. § 39-2-208(a)*.

26. In this case, LL&E and the Department agreed to the use of the proportionate profits method to value LL&E's production processed through the Plant. *Wyo. Stat. § 39-2-208(e)*. Therefore, the issue before us is whether or not the Department correctly applied the proportionate profits method to determine LL&E's taxable value.

27. Using the proportionate profits method, fair cash market value is calculated as follows:

(A)The total amount received from the sale of the minerals minus exempt royalties, nonexempt royalties and production taxes times the quotient of the direct cost of producing the minerals divided by the direct cost of producing, processing and transporting the minerals; plus

(B)Nonexempt royalties and production taxes.

Wyo. Stat. § 39-2-208(d)(iv).

28. We have previously considered the issue raised by the County in this appeal. In *In the Matter of the Appeal of Amoco Production Company from a Decision of the Department of Revenue*, Board Docket No. 96-216 (June 29, 2001) we held that production taxes and royalties must be included as direct costs of production in the direct cost ratio of the proportionate profits calculation.

29. As we explained in our decision on reconsideration:

88.The major issue in this matter is whether royalties and production taxes should be included as a direct cost of producing in calculating the direct cost ratio. Support for the conclusion that those components must be included comes from a review of Wyoming Statute § 39-2-208. We find this statute to be unambiguous. In interpreting a statute we follow the same guidelines as a court.

We read the text of the statute and pay attention to its internal structure and the functional relationship between the parts and the whole. We make the determination as to meaning, that is, whether the statute's meaning is subject to varying interpretations. If we determine that the meaning is not subject to varying interpretations, that may end the exercise, although we may resort to extrinsic aids to interpretation, such as legislative history if available and rules of construction, to confirm the determination. On the other hand, if we determine the meaning is subject to varying interpretations, we must resort to available extrinsic aids.

General Chemical v. Unemployment Ins. Comm'n, 902 P.2d 716, 718 (Wyo. 1995).

89.In determining whether royalties and production taxes are to be included as direct production costs in calculating the direct cost ratio, we consider the omission of certain words intentional on the part of the legislature, and we may not add omitted words. *Parker v. Artery*, 889 P.2d 520 (Wyo. 1995); *Fullmer v. Wyoming Employment Security Comm'n.*, 858 P.2d 1122 (Wyo. 1993). Particularly, when the language appears in one section of a statute but not another, we will not read the omitted

language into the section where it is absent. *Matter of Voss' Adoption*, 550 P.2d 481 (Wyo. 1976). Wyoming Statute §39-2-208(d)(iv) is clear and unambiguous. It does not require statutory interpretation to understand that royalties and production taxes are not specifically excluded as a direct cost. The legislative intent is clear. Considering that inclusion of royalties and production costs in the direct cost formula reaches the closest calculation to what are actual costs, the clear reading of the statute is the most realistic result and there is no need to resort to legislative intent.

90. The legislature specifically excluded royalties and production taxes from the definition of direct costs to be used for purposes of the direct cost ratio used in valuing coal under the proportionate profits methodology. *Wyo. Stat. § 39-2-209(d)(iv)*. Likewise, the legislature specifically excluded royalties and production taxes as direct costs to be used in the formula calculation for valuation of bentonite. *Wyo. Stat. § 39-2-211(d)(i)(c)*. By excluding these costs in the other mineral valuation statutes, the legislature clearly evidenced its understanding that royalties and production taxes are direct costs of production. Because the legislature did not exclude royalties and production taxes from the direct cost of production of oil and gas, we conclude they must be included.

In the Matter of the Appeal of Amoco Production Company from a Decision of the Department of Revenue, Board Docket No. 96-216 (Decision on reconsideration September 24, 2001).

30. We conclude the County has met its burden to present credible evidence to overcome the presumption of the correctness of the Department's valuation. The valuation did not include production taxes and royalties as direct costs of production as required by our decision in *Amoco*.

31. LL&E asks us to reverse our decision in *Amoco* based on the decision of the Wyoming Supreme Court in *Powder River Coal Co. v. Wyo. State Board of Equalization*, 2002 WY 5, 38 P.3d 423 (Wyo.2002). In that case the Court held that federal lease bonus payments were not to be included as direct costs of mining in the in the proportionate profits calculation for coal. Applying the doctrine of *ejusdem generis*, the Court concluded the federal lease bonus payments were not direct mining costs. *Id.* at ¶ 19.

32. Unlike the situation in *Powder River Coal Co.* where there was no statutory reference to federal lease bonus payments, the legislature has recognized production taxes and royalties are direct costs of production. *Wyo. Stat. §§ 39-2-209(d)(iv); 39-2-211(d)(i)(c)*. Therefore, it is not necessary to resort to an intrinsic aid, *ejusdem generis*, to resolve an issue of statutory construction. 2A Norman J. Singer, *Statutes and Statutory Construction* § 47.22 (6th ed., 2000 Revision) We conclude the Court's reasoning of *Powder River Coal, Id.*, is not applicable here.

33. LL&E next asks us to reverse our decision relying on our discussion in *Amoco* of the “bizarre processing cost problem produced by the ratio” in that case. *Amoco*, decision on reconsideration at ¶ 99. LL&E correctly points out that the use of the netback method would have resulted in a negative valuation for the first two years of LL&E’s production rather than the deduction of more than twice the actual processing costs seen in *Amoco*. [Trans. Vol. II, p. 275]. However, LL&E requested and the Department agreed to the use of the proportionate profits method to determine LL&E’s taxable value. The fact that a lower valuation may have been calculated using another method is not relevant to the issue raised by the County. It only shows that what the legislature intended by its passage of the proportionate profits methodology occurred in this case. [Trans. Vo. I, p. 85-86].

34. LL&E next argues that royalties should be treated differently than production taxes based on the Court’s discussion of whether a federal lease bonus payment is a federal royalty. *Powder River Coal Co.*, 2002 WY 5 ¶¶ 11-17. In determining what meaning the legislature intended by the use of the term royalty, the Court concluded:

We assume the legislature was well aware of the accepted legal definition and usage of the term royalty and cannot conclude it intended anything other than the well accepted meaning of the term royalty when it provided for federal royalties to be deducted as exempt royalties for the sales value of coal mined within the this state.

Powder River Coal Co., 2002 WY 5 ¶ 17.

35. We will also assume the legislature knew the definition of the term royalty when it chose to exclude royalties as direct costs of production for coal and bentonite but not for oil and gas. *Wyo. Stat.* §§ 39-2-209(d)(iv); 39-2-211(d)(i)(c); 39-2-208(d)(iv). They must be included as direct costs of production in valuing oil and gas.

36. The Department must include production taxes and royalties as direct costs of production in the direct cost ratio of the proportionate profits method in valuing LL&E’s gas production in Fremont County processed through the Lost Cabin Plant for 1995 through 1997.

37. Finally, LL&E urges us to conclude that no interest is due from LL&E prior to the issuance of our decision in *Amoco*. Prior to the issuance of our initial decision in *Amoco* on June 29, 2001, LL&E had reasonable cause to believe the no additional taxes were due based on the failure to include royalties and production taxes as direct costs of production in the proportionate profits calculation. Therefore, no interest or penalty should accrue prior to June 29, 2001. Interest is due from June 29, 2001, until the tax is paid.

ORDER

IT IS THEREFORE HEREBY ORDERED:

A. The Louisiana Land and Exploration Company motion to dismiss the appeal of Fremont County is **denied**.

B. The Department of Revenue's determination of taxable value certified to Fremont County for The Louisiana Land and Exploration Company gas production processed through it's Lost Cabin gas processing facility during production years 1995 through 1997 is **reversed and remanded**. The Department of Revenue shall recalculate and reassess the production processed through the Lost Cabin gas processing facility for 1995, 1996 and 1997 using a direct cost ratio for the proportionate profits calculation which includes royalties and production taxes as direct costs of production.

C. Interest and penalties shall be recalculated in accordance with this decision.

Pursuant to *Wyoming Statute Section 16-3-114* and *Rule 12, Wyoming Rules of Appellate Procedure*, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.

Dated this ____ day of April, 2003.

STATE BOARD OF EQUALIZATION

—

Roberta A. Coates, Chairman

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Alan B. Minier, Vice Chairman

ATTEST:

Wendy J. Soto, Executive Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of April, 2003, I served the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW DECISION AND ORDER** by placing a

true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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