

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>OXY USA INC,</p> <p>v.</p> <p>Respondent:</p> <p>MESA COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 65702</p>
<p>ORDER</p>	

THIS MATTER came before the Board of Assessment Appeals on June 22, 2018 on Petitioner’s Motion for Order Granting Refund Petition, Diane M. DeVries and Sondra W. Mercier presiding. Petitioner was represented by Alan Poe, Esq. Respondent was represented by Nina Atencio, Esq.

Background

This appeal involves the 2012 valuation of the subject property which consists of producing oil and gas leaseholds and lands operated by Petitioner in Mesa County, Colorado. Petitioner had previously appealed the valuation of the subject property for 2011 and 2012 tax years in Board of Assessment Appeals’ (“BAA” or “the Board”) Docket No.: 61916, *OXY USA Inc. v. Mesa County Board of Commissioners*. The BAA held a four-day hearing on the issue of correct valuation of the subject property for both tax years 2011 and 2012 on November 20-22, 2013 and January 8, 2014. In considering the 2011 and 2012 valuation of the subject, the Board heard testimonies from five witnesses and admitted over 80 exhibits into the evidence.

The nature of the issues presented and, therefore, the evidence and testimony presented at the hearing for both tax years 2011 and 2012 were substantially the same. Namely, Petitioner argued that for tax years 2011 and 2012, Petitioner inadvertently failed to report certain deductible costs of gathering and processing the oil and gas produced from the leaseholds and lands. As a result, Petitioner overpaid in taxes because the costs deducted from the gross lease revenues on the Netback Expense Reporting Forms (“NERFs”) were too low, and the reported selling prices at the wellhead were too high.

On August 14, 2014, the Board issued an Order granting Petitioner's petition for abatement/refund of taxes with respect to tax year 2011. In granting the petition, the Board found that Petitioner's evidence was most credible and persuasive. As relevant here, the Board found that Petitioner's evidence was most persuasive with respect to amounts that should be deducted from the gross revenue in order to reach net taxable revenue; that Petitioner's evidence in terms of Petitioner's costs from the original NERF's and costs paid for Enterprise's services was most credible; and that Petitioner's evidence was most credible in terms of the amount of the allowed deduction for services provided by CVGG.

As to tax year 2012, the Board dismissed Petitioner's appeal without prejudice finding that it was filed prematurely. The Board noted that Petitioner could re-file for abatement/refund despite the dismissal as the statutory deadline for filing abatement for 2012 tax year had not yet expired at the time. Subsequently, Petitioner had timely re-filed a petition for abatement/refund on December 29, 2014 for tax year 2012. This re-filed petition for abatement/refund of 2012 taxes is currently at issue in this appeal before the Board.

Respondent appealed the Board's decision with respect to tax year 2011 to the Court of Appeals. Petitioner, in turn, cross-appealed the Board's dismissal of 2012 tax year appeal. The Court found for Respondent and reversed the Board's decision as to the 2011 tax year. Further, the Court dismissed Petitioner's cross-appeal on the ground that it was moot because Petitioner had already re-filed its abatement/refund petition in the current appeal. In response to Petitioner's argument that dismissal of the cross-appeal would result in an inefficient use of judicial resources because the Board already conducted a four-day hearing at which it heard substantial evidence and arguments regarding tax year 2012, the Court said that the Board "may take notice of the evidence that was presented in the prior proceeding [Docket No.: 61916] when deciding the currently pending petition for the 2012," so that "no judicial resources will be wasted." *OXY USA Inc. v. Mesa County Board of Commissioners*, 14 CA 1941, p.13 (December 10, 2015)(not published).

Petitioner appealed the Court of Appeals' decision with respect to the 2011 tax year valuation of the subject to the Supreme Court. The Supreme Court reversed the Court of Appeals' ruling on tax year 2011 and reinstated this Board's Order accepting Petitioner's requested actual value and granting Petitioner's refund petition for tax year 2011. *OXY USA Inc. v. Mesa County Board of Commissioners*, 2017 CO 104, ¶¶ 3, 36 (November 13, 2017).

Parties' Arguments

Petitioner argues that the Board should grant Petitioner's petition for abatement or refund for tax year 2012 that Petitioner filed on December 29, 2014 because the evidence presented at the four-day hearing in Docket 61916 establishes that the refund should be granted. Petitioner contends that the parties had already presented extensive evidence with respect to the actual value of the oil and gas leaseholds and lands operated by Petitioner for both tax years 2011 and 2012 in the hearing. According to Petitioner, the nature of the evidence for both tax years was substantially the same. Petitioner points out that after considering the testimony of five witnesses, more than eighty exhibits, and the parties' extensive written arguments, the Board held that Petitioner's income and expense evidence was accurate, most credible, and most persuasive. In addition, Petitioner notes that the

parties filed extensive written closing arguments after the hearing. Moreover, Petitioner emphasizes that the Court of Appeals held that the Board could take judicial notice of the evidence presented in Docket No.: 61915 when considering Petitioner's appeal for 2012 tax year.

Respondent argues that the Board had no jurisdiction to hear the merits of Petitioner's 2012 appeal during the four-day hearing in Docket 61916 because Petitioner's abatement/refund petition was filed prematurely. According to Respondent, because the Board lacked subject matter jurisdiction to hear the merits of Petitioner's 2012 appeal, the Board has no authority to issue a ruling on 2012 taxes without a new hearing. Respondent cited various case law in support of the argument that lack of jurisdiction deprives the court of all authority to act and that a judgment rendered without jurisdiction is void.

The Board's Findings

The Board finds that although Respondent accurately recites Colorado law stating that a judgment entered without jurisdiction is void, Respondent's application of this legal principle to the facts of this case is misplaced. The Board's judgment on the 2012 valuation of the subject would have been, indeed, void, if the Board were to enter a judgment on the 2012 valuation on Petitioner's petition in Docket 61916 which was filed prematurely. The Board has not done so, but dismissed Petitioner's 2012 petition filed in Docket 61916 and instructed Petitioner to re-file, which Petitioner had done, in the Docket No.: 65702 presently before the Board. There is no disagreement between the parties that Petitioner's abatement/refund petition filed in Docket No.: 65702 was filed timely and is now appropriately before the Board having jurisdiction to hear its merits.

Respondent presented no legal support for the argument that the Board is precluded from considering the evidence pertaining to the 2012 valuation of the subject property that was presented before the Board during the four-day hearing in 2013 and 2014 in this matter. To the contrary, the Court of Appeals, when addressing the merits of Respondent's appeal, has unequivocally stated that this Board may take judicial notice of the evidence presented in Docket No.: 61916 when deciding Petitioner's appeal for 2012.

The Board takes notice of all of the evidence previously presented by the parties in relation to the 2012 valuation of the subject property during the four-day hearing in Docket 61916. The Board takes notice of all of the exhibits presented at the hearing and of the testimonies of the witnesses that testified with respect to the 2012 tax year valuation of the subject. In addition, the Board takes judicial notice of the closing arguments filed by the parties following the hearing.

Having taken judicial notice of the evidence and testimony presented in Docket 61916, the Board finds that Petitioner's evidence with respect to 2012 valuation of the subject was the most credible and persuasive. The Board is persuaded that Petitioner accurately reported its income and expense data for tax year 2012. Further, the Board finds that Petitioner accurately reported its total gross revenue for tax year 2012 and its evidence as to the amounts that should be deducted from the total gross revenue was accurate and persuasive.

ORDER:

Respondent is ordered to cause a refund/abatement to Petitioner, based on a 2012 actual value of the subject property of \$64,510,461.

The Mesa County Assessor is directed to change his/her records accordingly.

Respondent's Motion for Interim Order is denied as moot.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions. Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 31st day of July, 2018.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Diane M. DeVries

Sondra W. Mercier

Sondra W. Mercier

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.



Milla Lishchuk

Milla Lishchuk