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STATE OF WYOMING	)	IN THE DISTRICT COURT
	) ss.	
COUNTY OF CAMPBELL	)	SIXTH JUDICIAL DISTRICT
KENNETH B. GEER,	)	
	)	
	)	
vs.	)	
	)	CIVIL ACTION NO. 32940
	)	
ANADARKO E & P ONSHORE, LLC, Successor to Lance Oil & Gas Company, Inc., a Delaware corporation,	)	
	)	
	)	
Defendant.	)	

PLAINTIFF'S RESPONSE TO LANCE'S MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S IMPROPER TAX CALCULATION CLAIM

Plaintiff Kenneth B. Geer, as representative of the class certified by this Court, submits this Response to Lance's Motion for Summary Judgment on Plaintiff's Improper Tax Calculation Claim.

What is most notable about Lance's argument is what it omits: an analysis of the statutory language that governs the issue in dispute. The parties are in agreement that there are no disputed issues of fact; and they agree on the basic Wyoming structure for calculating and

paying severance and ad valorem taxes and for calculating royalty payments. The only issue before the Court is the correct interpretation of W.S. 39-14-203(c), an issue which Lance barely discussed, instead putting forth an argument for a royalty deduction method that it contends is "sensible, fair, equal and logical. . ." (*Defendant's Memorandum in Support of Motion for Summary Judgment on Plaintiff's Improper Tax Calculation Claim*, hereafter "Lance Brief," p. 12, and throughout.) But of course, the Court's analysis must focus on the statutory language.

Facts

The only tax calculation issue addressed by Lance in its Motion for Summary Judgment is the "taxable value" issue, which the parties have sometimes referred to as "Issue 2."[1] That issue is not complicated. As Lance has explained, "As operator, Lance pays production taxes on 100% of CBM production and then must deduct royalty owners' share of severance and ad valorem taxes from royalties Lance pays royalty owners." (Lance Brief, p. 10). Plaintiff contends Wyoming law allows Lance to deduct no more than the royalty owner's share of the severance and ad valorem taxes that Lance actually pays. Lance argues that "fairness" allows it to deduct an amount greater than the royalty owner's share of taxes Lance actually pays. The resolution of this issue is a matter of statutory construction.

Discussion

The rules of statutory construction are well-known:

> In interpreting statutes, our primary consideration is to determine the legislature's intent. All statutes must be construed *in pari materia* and, in ascertaining the meaning of a given law, all statutes relating to the same subject or

[1] "Issue 1" is apparently conceded by Lance -- Lance does not reimburse royalty owners for the excess ad valorem taxes deducted from royalty payments.

> having the same general purpose must be considered and construed in harmony. Statutory construction is a question of law, so our standard of review is de novo. We endeavor to interpret statutes in accordance with the legislature's intent. We begin by making an inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection. We construe the statute as a whole, giving effect to every word, clause, and sentence, and we construe all parts of the statute *in pari materia.* When a statute is sufficiently clear and unambiguous, we give effect to the plain and ordinary meaning of the words and do not resort to the rules of statutory construction. Moreover, we must not give a statute a meaning that will nullify its operation if it is susceptible of another interpretation.

In re Guardianship of Lankford, 2013 WY 65, ¶18, 301 P.3d 1092, 1098-99, quoting *Redco Constr. v. Profile Properties, LLC*, 2012 WY 24, ¶ 26, 271 P.3d 408, 415–416. In addition, when interpreting the Wyoming Royalty Payment Act ("WRPA"), the guideline is that it "is a remedial statute and, as such, is to be liberally construed to achieve its remedial purpose." *Cabot Oil & Gas*, 2004 WY 80, ¶11, 93 P.3d at 242. That purpose is "to stop oil producers from retaining other people's money for their own use." *Ferguson v. Coronado Oil Co.*, 884 P.2d 971, 979, (Wyo. 1994), *citing Cities Serv. Oil & Gas Corp. v. State*, 838 P.2d 146, 156 (Wyo. 1992).

The relevant statutory language is worth setting forth:

W.S. 39-14-203. Imposition. (In Title 39, "Taxation and Revenue," Chapter 14, "Mine Product Taxes")

> (c) Taxpayer. The following shall apply:
>
> (i) In the case of ad valorem taxes on crude oil, lease condensate or natural gas produced under lease, the lessor is liable for the payment of ad valorem taxes on crude oil, lease condensate or natural gas production removed only to the extent of the lessor's retained interest under the lease, whether royalty or otherwise, and the lessee or his assignee is liable for all other ad valorem taxes due on production under the lease;
>
> (ii) In the case of severance taxes, any person extracting crude oil, lease condensate or natural gas and any person owning an interest in the crude oil, lease

condensate or natural gas production to the extent of their interest ownership are liable for the payment of the severance taxes together with any penalties and interest;

(iii) Any taxpayer paying severance taxes on any crude oil, lease condensate or natural gas production may deduct the taxes paid from any amounts due or to become due to the interest owners of such production in proportion to the interest ownership.

The plain language of the statute makes it clear that royalty owners are liable for their proportionate share of the ad valorem and severance taxes actually paid. That is why the legislature chose the words, at (c)(i), "lessor is liable for the payment of ad valorem taxes;" at (c)(ii) "for the payment of severance taxes;" and at (c)(iii) "the taxes paid."[2] The royalty owners should be responsible for their share of the taxes paid by Lance, not more.

The rationale for that is explained by the Wyoming Supreme Court in *Ashland Oil Co. v. Jaeger*, 650 P.2d 265 (Wyo. 1982), a case relied upon by Lance (Lance Brief, pp. 10-11). In *Ashland*, Jaeger, the lessor, had a 5% overriding royalty interest in oil and gas production. Ashland, the taxpayer, deducted 5% of the ad valorem and severance taxes it paid from Jaeger's royalty payments. Jaeger sued to recover the amounts deducted, and asking for declaratory judgment directing Ashland to pay their full royalty payment without deducting Jaeger's share of taxes paid. *Id.* at 265. The District Court ruled in favor of Jaeger and Ashland appealed, contending that the law permitted "a deduction for any severance tax paid by them on [Jaeger]'s behalf." *Id.* at 267 (emphasis added). The *Ashland* court cited to the holding in an older Wyoming case which held "'the lessee could properly deduct the proportionate amount of the tax paid by him which was attributable to the royalty.'" *Id.* at 268, quoting *Miller v. Buck Creek Oil*

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[2] This is further supported by the language of the reporting statute, which clearly requires the producer to report "The total amount of state severance, ad valorem and other production taxes." W.S. 30-5-305. *See also,* Dept. of Revenue Rules, Chapter 6, Ad Valorem and Severance Taxes on Mineral Production, § 5(i) ("the incidence of the [ad valorem] tax is on all the interest owners in proportion to their ownership shares. . .") and (ii)("the incidence of the severance tax is upon all interest owners in proportion to their ownership shares. . .").

Co., 38 Wyo. 505, 269 P. 43, 44 (Wyo. 1928)(emphasis added). The *Ashland* Court concluded that the rule "with regard to taxes assessed on the gross products of a mine or well, both the lessee and lessor are responsible for payment in proportion to their ownership shares." *Id.* at 268 (emphasis added).[3] The "taxes assessed" are the taxes actually paid to the taxing entity. The Court's analysis is based entirely on the relative responsibility for taxes paid. The concept that the royalty owner should pay their proportionate share of those taxes assessed and paid is well-established in Wyoming law, and Geer does not dispute this. The law does not allow Lance to deduct an amount greater than the royalty owner's proportionate share of taxes actually paid.

Lance cites to no Wyoming law in support of its theory that it may calculate taxes to deduct from royalties based on some number higher than the taxes it actually pays. Instead, it cites to a 1982 decision of a Texas Comptroller of Public Accounts (Lance Brief, p. 11, Ex. 10), which is far from persuasive authority, particularly in light of the Wyoming Supreme Court's recognition that Wyoming's mineral tax structure is unique. *Cabot Oil & Gas Corp v. Followill*, 2004 WY 80, ¶11, 93 P.3d 238, 242 (Wyo. 2004) ("We agree with *Wold v. Hunt* that the Wyoming legislature has departed from the methodologies employed by other jurisdictions."). Lance also attempts to incorporate inapplicable income tax principles into the discussion of ad valorem and severance taxes (Lance Brief, p. 12, and throughout). MAULE, 503-3rd Tax Management Portfolio, is an income tax guide, and the two cases cited by Lance from that guide are income tax cases. *Case v. Comr,* 50 T.C.M. 1291, 1295 (1985)(issue is whether the petitioner is entitled to certain Federal Income Tax deductions) and *Bordo Prods. Co. v. U.S.*,

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[3] The Court in *Ashland* was interpreting the former W.S. 39-6-304(h), whose language was essentially the same as the language of W.S. 39-14-203(c)(iii): "Any taxpayer paying the taxes imposed by this article on any valuable deposit may deduct the taxes paid from any amounts due or to become due to the interest owners of such valuable deposit in proportion to the interest ownership."

476 F.2d 1312, 1327 (Ct.Cl. 1973)(applying § 166 of the Internal Revenue). Income tax theory has no applicability to the construction of Wyoming ad valorem and severance tax statutes.

Lance suggests that Wyoming courts have ruled in favor of its position regarding deductions for taxes. (Lance Brief, pp. 12-13). What has happened is that at least one court has approved an agreed-upon settlement which included a term that allows a taxpayer (not Lance) to calculate deductions in the way Lance now proposes. The parties are permitted by the WRPA to enter into such an agreement;[4] however, Lance has not done so.

Lance proceeds to present a contorted approach to calculating deductions that is based on a fundamental and incorrect premise – that Lance has the authority to apply the "effective tax rate" to royalty payments. No such authority exists, or is cited by Lance (other than a Texas Comptroller of Public Accounts decision and inapplicable Income Tax principles).[5] Geer challenges Lance's practice of deducting more from royalty payments than the proportionate share of the taxes paid by Lance. There is no legal justification for that practice.

Lance's constitutional argument rests on the same flawed premise. The fact is that the statutory construction Geer proposes results in equal and uniform taxation. Lance pays the taxes, and the royalty owners pay their proportionate shares of the taxes paid. There is no constitutional infirmity in that structure.

Finally, Lance offers a hypothetical in which royalty value is less than taxable value to demonstrate that Geer's approach cannot be right. Lance's Accounting Manager has stated that hypothetical does not occur. *See* Plaintiff's Rule 56.1 Statement of Facts, ¶ 14 (Lance's

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[4] "Unless otherwise expressly provided for by specific language in an executed written agreement. . ." W.S. 30-5-305(a).

[5] The primary reason that Lance does not deduct production costs, such as costs of gathering and separating, from royalty payments, is that the statute prohibits such deductions. W.S. 30-5-304(a)(vi and vii). Lance's approach lets it recover some of those costs that it is statutorily barred from charging to royalty owners.

Accounting Manager, Janis Wallner, agreed that royalty value is always higher than taxable value.)

There are no disputed issues of fact; the issue raised by Lance is resolved by the Court's construction of Wyoming statutes. Those statutes, Wyoming caselaw, as well as the application of common sense and fairness, support the conclusion that Lance may deduct the royalty owners' proportionate share of taxes paid by Lance; not more.

DATED this 22nd day of August, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 2013, the foregoing was served via U.S. Postal Mail to the following:

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