07-174-CD
In Re: Tax Sale 128-D02-000-00020

In Re: Tax Sale 128-D02-000-00020
2007-174-CD

Clearfield County Court of Common Pleas
ROA Report
Case: 2007-00174-CD
Current Judge: Fredric Joseph Ammerman

Civil In Re-COUNT

Date		Judge
2/2/2007	New Case Filed.	No Judge
	Filing: Petition to Set Aside Tax Sale and To Set Aside Assessed Taxes Past and Future. Paid by: Gearhart, R. Denning (attorney for Simms, Diana B.) Receipt number: 1917503 Dated: 02/02/2007 Amount: $85.00 (Check) 4CC Atty Gearhart.	No Judge
2/6/2007	Rule Returnable, NOW, this 6th day of Feb., 2007, upon consideration of the attached Petition, a Rule is issued upon Clfd. Co. Tax Claim Bureau. Rule Returnable the 26th day of Feb., 2007, for filing written response. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 4CC Atty. Gearhart	Fredric Joseph Ammerman
2/13/2007	Certificate of Service, filed. Served a certified copy of the Petition to Set Aside Tax Sale Assessed Taxes Past and Future filed in the above captioned matter on Mary Ann Wesdock, filed by s/ R. Denning Gearhart Esq. No CC.	No Judge
2/21/2007	Acceptance of Service, filed. I, Kim C. Kesner Esq., attorney for the Clearfield County Tax Claim Bureau, hereby acknowledge receipt on behalf of my client, Clearfield County Tax Claim Bureau, of a certified copy of the Petition to Set Aside Tax Sale and to Set Aside Assessed Taxes Past and Future which were filed in the above matter, filed by s/ Kim C. Kesner Esq. NO CC.	No Judge
	Affidavit of Mailing, filed. A true and correct copy of the Petition to Set Aside Tax Sale and to Set Aside Assessed Taxes Past and Future filed in the above action to Todd D. Baumgardner and Timothy D. Baumgardner, filed by s/ R. Denning Gearhart Esq. NO CC.	No Judge
2/23/2007	Motion For Extension to File Answer to Petition to Set Aside Tax, filed by s/ Stuart L. Hall, Esquire. 1CC Atty.	No Judge
	Praecipe For Entry of Appearance, filed on behalf of Timothy D. Baumgardner and Todd D. Baumgardner, enter appearance of Stuart L. Hall, Esquire. By s/Stuart L. Hall, Esquire. No CC	No Judge
	Order, NOW, this 23rd day of Feb., 2007, the Motion of Respondents Timothy D. Baumgardner and Todd D. Baumgardner for Extension of Time to File a Written Response is Granted. Respondents shall file their written response to the Petition to Set Aside Tax Sale on or before March 26, 2007. By The Court, /s/ Fredric J. Ammerman, P.J. 4CC Atty. Hall	Fredric Joseph Ammerman
3/26/2007	Answer With New Matter of Timothy D. Baumgardner And Todd D. Baumgardner to Petition to Set Aside Tax Sale, filed by s/ Stuart L. Hall, Esquire. 1CC Atty. Hall	No Judge
3/28/2007	Written Response, filed by s/ Kim C. Kesner, Esquire. 3CC Atty. Kesner	No Judge
4/11/2007	Answer to New Matter of Timothy D. Baumgardner and Todd D. Baumgardner by Diana B. Simms, through her Attorney-in-fact, Mary A. Collier, filed by s/ R. Denning Gearhart Esq. 3CC Atty Gearhart.	No Judge
4/16/2007	Verifications, signed by Timothy D. Baumgardner and Todd D. Baumgardner, filed by Stuart L. Hall, Esquire. No CC	No Judge
6/25/2008	Joint Motion to Dismiss, filed by s/ Kim C. Kenser Esq. and s/ Stuart L. Hall Esq. 3CC Atty Kesner.	No Judge
6/26/2008	Rule Returnable, this 26th day of June, 2008, upon consideration of the Joint Motion to Dismiss, Rule Returnable by written answer only in accordance with Local Rule 206(h) on or before the 17th day of July, 2008. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Kesner	No Judge

Clearfield County Court of Common Pleas
ROA Report
Case: 2007-00174-CD
Current Judge: Fredric Joseph Ammerman

Civil In Re-COUNT

Date		Judge
6/27/2008	Certificate of Service, filed. That on the 27th day of June 2008, served a certified copy of a Joint Motion to Dismiss and Rule Returnable dated June 26, 2008 by first class mail to R. Denning Gearhart Esq. and Stuart Hall Esq, filed by s/ Kim C. Kesner Esq. No CC.	No Judge

7-21-08 ✓ Answer to motion to Dismiss

7-23-08 ✓ Certificate of Service

8-6-08 ✓ Order, dated 8.5.08

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

IN RE: TAX SALE of 27.97%	:	
INTERESTS in 963 ACRES OF COAL	:	No. 2007-174 -CD
MINERALS, OIL & GAS and known	:	
as CLEARFIELD COUNTY	:	
MAP No. 128-D02-000-00020	:	

CASE NUMBER: 2007- -CD

TYPE OF CASE: Civil

TYPE OF PLEADING: PETITION TO SET ASIDE TAX SALE AND TO SET ASIDE ASSESSED TAXES PAST AND FUTURE

FILED ON BEHALF OF: Diana B. Simms, by her Attorney-in-Fact, Mary A. Collier

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
207 E. Market Street
Clearfield, PA 16830
(814) 765-1581

FILED Atty pd. 85.00
01:42/BT
FEB 02 2007 4 cc Atty Gearhart
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

IN RE: TAX SALE OF 27.97% INTEREST in 963 ACRES OF COAL, MINERALS, OIL & GAS and known as CLEARFIELD COUNTY MAP NO. 128-D02-000-00020	:	No. 07- 174 -CD

RULE RETURNABLE

AND NOW THIS 6 day of February, 2007, upon consideration of the attached Petition, a Rule is hereby issued upon CLEARFIELD COUNTY TAX CLAIM BUREAU, to Show Cause why the foregoing Petition should not be granted. Rule Returnable the 26th day of February 2007, for filing written response.

NOTICE

A PETITION OR MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR'S OFFICE
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641

BY THE COURT,

JUDGE

FILED 4cc
03:56 BA Atty Gearhart
FEB 06 2007

William A. Shaw
Prothonotary/Clerk of Courts

FILED

FEB 06 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/6/07

X You are responsible for serving all appropriate parties.

___ The Prothonotary's office has provided service to the following parties:

___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ Defendant(s) Attorney

___ Special instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

IN RE: TAX SALE OF 27.97% INTEREST in 963 ACRES OF COAL, MINERALS, OIL & GAS and known as CLEARFIELD COUNTY MAP NO. 128-D02-000-00020	: No. 07-	-CD

PETITION TO SET ASIDE TAX SALE
AND TO SET ASIDE ASSESSED TAXES PAST AND FUTURE

AND NOW, comes DIANA B. SIMMS, by her Attorney-in-Fact, Mary A. Collier, and through her attorney, R. Denning Gearhart, Esq., sets forth the following:

1. Petitioner is an owner listed in a Clearfield County Tax Claim Bureau Deed wherein 27.97 % interest in 963 Acres coal, mineral, oil and gas, Tax Map #128-D02-000-00020, was purportedly sold to Timothy D. Baumgardner and Todd D. Baumgardner. Said Deed was recorded in Clearfield County at Instrument No. 200220465. A copy of the Deed is attached as Exhibit "A".

2. That the basis for the tax sale was that real estate taxes had been assessed against the coal and mineral (oil and gas) interests of Petitioner and had remained unpaid.

3. That Petitioner received title to the coal and minerals (oil and gas) by virtue of a deed of Alonzo S. Kline, et. al. to Harry Boulton, dated October 2, 1922, and recorded in the office of the Recorder of Deeds of Clearfield county in Deed Book 259, Page 131, in which the oil and gas were sold as separate items in, upon, and under Warrant No. 4229 in Sandy Township to Petitioner's predecessors in title. A copy of said deed is hereto attached as Exhibit "B".

4. That the oil and gas have been assessed as separate items along with coal and other minerals since the interests were transferred under the foregoing deed.

5. That the Supreme Court of Pennsylvania in *Independent Oil and Gas Association of Pennsylvania v. Board of Assessment Appeals of Fayette County,* 814 A.2d 180 (Pa. 2002), determined that no authority has existed for the Clearfield County Tax Claim Bureau to assess taxes against any interest in oil and gas interests, unlike coal and other minerals, under the applicable laws of the Commonwealth of Pennsylvania.

6. That by virtue of the authority of the said case, the assessed taxes against the oil and gas interests are void and that no basis existed for the Clearfield County Tax Claim Bureau to establish a tax lien against the oil and gas interests of Petitioner assessed in Warrant No. 4229.

7. That the Clearfield County Tax Claim Bureau has no authority in law to assess or collect taxes on the oil and gas interests of Petitioner, to establish a lien or a claim on said interest, or to attempt to sell said oil and gas interests at a tax sale.

WHEREFORE, Petitioner requests Your Honorable Court to order the Clearfield County Tax Claim Bureau:

1. To strike all tax liens against the oil and gas interests of Petitioner in Warrant No. 4229.

2. To absolve the oil and gas assessments for any real estate taxes for all prior years, the current year and future years; and

3. To set aside the sale of the property by the Tax Claim Bureau to Timothy D. Baumgardner and Todd D. Baumgardner by Deed dated December 11, 2002, and recorded in Clearfield County at Instrument No. 200220465 on December 23, 2002.

AND they will ever pray.

Respectfully submitted,

R. Denning Gearhart, Esq.
Attorney for Diana B. Simms

COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF :

Before me, the undersigned officer, a Notary Public in and for the above named State and County, personally appeared DIANA B. SIMMS, by her Attorney-in-Fact, MARY E. COLLIER, who being duly sworn according to law deposes and says that the facts set forth in the foregoing Petition are true and correct to the best of her knowledge, information and belief.

Diana B. Simms

DIANA B. SIMMS, by her Attorney-in-Fact
MARY E. COLLIER
by her attorney in fact
Mary E. Collier

Sworn to and subscribed
before me, this 25
day of January, 2007.

Judith A Bash

Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Judith A. Bash, Notary Public
Indiana Boro, Indiana County
My Commission Expires July 26, 2010
Member, Pennsylvania Association of Notaries

Whereas, Objections to the private sale were filed at #02-1603 CD (and others) and, by Order of Court dated October 15, 2002, an auction was held in the Tax Claim Bureau on December 11, 2002. This deed is being conveyed to the above referenced GRANTEES by instruction of the successful bidder.

NOW THIS INDENTURE WITNESSETH, that for and in consideration of the sum of Twenty Six Thousand Dollars, ($26,000.00), the receipt thereof is hereby acknowledged, Grantor does hereby grant and convey unto the said Grantees, their heirs, successors or assigns the following described property to-wit

SANDY TOWNSHIP
MAP #128-D02-000-00020
34.55% INTEREST IN 963 A COAL, MIN, OIL & GAS RTS

BEING the same property offered for sale for delinquent taxes in accordance with the provisions of the Act of Assembly hereinbefore recited, in partial interests under the following names and claim numbers:

DAVID E. BAILEY	98-7475 AND 98-7476
STEPHEN BAILEY	98-7480 AND 98-7485
JAMES C. BOOTH	98-7611 AND 98-7615
MARJORIE BOOTH	98-7616 AND 98-7619
MARK S. BOOTH	98-7626 AND 98-7627
GRACE C. DANNER	98-7851 AND 98-7906
RONALD A. GUENOT & WANDA J. GUENOT	98-8444 AND 98-8445
H. RICHARD HESS	98-8554 AND 98-8552
MARJORIE W. HIBBARD	98-8562 AND 98-8561
NANCY W. MCCLELLAND	98-8943 AND 98-8942
VIRGINIA C. PETERSON	98-9178 AND 98-9179
DIANA B. SIMMS	98-9964 AND 98-9962
JEAN C. VOSBURG ESTATE	98-10166 AND 98-10167
HELEN C. WILDERMUTH	98-10233 AND 98-10232
THORTON R. WILLIAMS	98-10241 AND 98-10239

This deed is executed and acknowledged by MARY ANNE WESDOCK, who was duly appointed Director of the Tax Claim Bureau by Resolution of the County Commissioners of Clearfield County, Pennsylvania, dated August 15, 1989.

IN WITNESS WHEREOF, the Grantor has caused this deed to be executed in its name and its official seal to be affixed hereto the day and year first above written.

TAX CLAIM BUREAU OF CLEARFIELD COUNTY, PENNA.

Witness: Nancy A Lawhead

By Mary Anne Wesdock
Mary Anne Wesdock Director

814-226-6853 Yeager 765-9611

TAX CLAIM BUREAU DEED AFFIDAVIT No. 360368

THIS DEED made the Eleventh day of December in the year of our Lord, 2002,

BETWEEN THE TAX CLAIM BUREAU OF CLEARFIELD COUNTY, PENNSYLVANIA, Trustee, under the provisions of the Act of July 7, 1947, P.L. 1368, and amendments thereto, hereinafter referred to as GRANTOR,

AND

TIMOTHY D BAUMGARDNER,
of PO Box 36, Lanse PA 16849
AND
TODD D BAUMGARDNER,
of RR 1 Box 372D, West Decatur PA 16878

hereinafter referred to as "GRANTEES"...

WHEREAS, the hereinafter described premises was assessed in various partial interests in the following names:

DAVID E. BAILEY	4% INT Coal, Min, Gas & Oil
STEPHEN BAILEY	2% INT Coal, Min, Gas & Oil
JAMES C. BOOTH	.18% INT Coal, Min, Gas & Oil
MARJORIE BOOTH	.18% INT Coal, Min, Gas & Oil
MARK S. BOOTH	.18% INT Coal, Min, Gas & Oil
GRACE C. DANNER	3% INT Coal, Min, Gas & Oil
RONALD A. GUENOT & WANDA J. GUENOT	5.33% INT Coal, Min, Gas & Oil
H. RICHARD HESS	12% INT Coal, Min, Gas & Oil
MARJORIE W. HIBBARD	1% INT Coal, Min, Gas & Oil
NANCY W. MCCLELLAND	1% INT Coal, Min, Gas & Oil
VIRGINIA C. PETERSON	.75% INT Coal, Min, Gas & Oil
DIANA B. SIMMS	.18% INT Coal, Min, Gas & Oil
JEAN C. VOSBURG ESTATE	3% INT Coal, Min, Gas & Oil
HELEN C. WILDERMUTH	.75% INT Coal, Min, Gas & Oil
THORTON R. WILLIAMS	1% INT Coal, Min, Gas & Oil

and taxes were levied on all such interests individually, and said taxes have remained unpaid and are delinquent since 1993 through 2001, and ...

WHEREAS, the delinquent taxes against the said property were returned to the Tax Claim Bureau of Clearfield County, Pennsylvania and the tax lien became absolute; and...

WHEREAS, after proceeding under the provisions of the Act aforesaid, the Tax Claim Bureau did last expose all the said partial interests in said premises to public sale on the Fifteenth day of September 2000; and...

WHEREAS, the various interests in the said premises having remained unsold, a bid, was received for private sale of the total of all partial interests in said premises which were delinquent, as provided for in P.L. 1368 No. 542 Sec. 613., and...

WHEREAS, notification of the acceptance of this bid was sent to the assessed owners, as well as to Sandy Township Supervisors, Dubois Area School District, and Clearfield County Commissioners on September 3, 2002, and notice of the proposed sale was published in the The Courier Express on September 3, 2002 and September 13, 2002 and in the Clearfield County Legal Journal on September 6, 2002 and September 20, 2002, and...

EXhibit "A"

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF CLEARFIELD)

On this 23rd day of December, A. D., 2002, before me, the subscriber personally appeared MARY ANNE WESDOCK, Director of the Tax Claim Bureau of Clearfield County, Pennsylvania, who in due form of law acknowledged the foregoing Indenture to be her act and deed and desired that the same might be recorded as such.

WITNESS my hand and official seal the day and year aforesaid.

Prothonotary (SEAL)

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

My commission expires the first Monday of January, 20 .

I CERTIFY that the precise residence address of the grantee in this indenture is: PO BOX 36
Lanse PA 16849

Mary Anne Wesdock

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER
200220465
RECORDED ON
Dec 23, 2002
11:26:15 AM
Total Pages: 3

RECORDING FEES - RECORDER	$20.50
COUNTY IMPROVEMENT FUND	$2.00
RECORDER IMPROVEMENT FUND	$3.00
JCS/ACCESS TO JUSTICE	$10.00
STATE TRANSFER TAX	$162.86
STATE WRIT TAX	$0.50
SANDY TOWNSHIP	$81.43
DUBOIS AREA SCHOOLS	$81.43
TOTAL	$361.72

CUSTOMER
CLEARFIELD CO TAX CLAIM BUREAU

BK
259

131

DEED) THIS INDENTURE Made the Second day of October A.D. 1922, between
ALONZO S.KLINE ETAL) Alonzo S.Kline and Alice M.Kline, his wife, of the City of Pitts-
TO) burgh, Pennsylvania, William T.DeHaas and Virginia E.DeHaas, his
HARRY BOULTON) wife, and Walter Welch and Minnie B.Welch, his wife, of the Borough of Clearfield, county of Clearfield and State of Pennsylvania, parties of the first part, grantors, and Harry Boulton, Walter Welch, Wailliam T.DeHaas, Roll B.Thompson, Dr. John W. Gordon, of Clearfield, Pennsylvania, J.W.Bailey, A.Newton Cole, Fred M.Shaffer and Ida M.Hess, of DuBois, Pennsylvania, Mary Gordon Schultz of Philadelphia, Pennsylvania, Leslie D.Gordon of Detroit, Michigan, James T. Gordon of Orange, New Jersey, parties of the second part, grantees.

WITNESSETH, that in consideration of the sum of Twenty Three Hundred Dollars($2300.00) in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby quit-claim, remise, release and convey unto the said parties of the second part, grantees, their heirs and assigns, all their right, title and interest in and to all the coal, coal oil, gas, fire clay and other minerals of every kind and aharacter in, unrer and upon the following described five tracts or warrantsof land:

The First Three Thereof, consisting of Warrants Nos. 4226, 4229 and 4235, situated in the Township of Sandy, County of Clearfield and State of Pennsylvania, Beginning at an original chestnut corner (now dead), being the southeast corner of Warrant No.4226; thence north eighty nine and one-fourth degrees West, five hundred sixteen perches to a post; thence north six hundred forty three perches, more or less, to an ironwood(now dead), being the northwest corner of Warrant No.4225; thence east five hundred four perches, more or less, to a post and stones, the northeast corner of Warrant no. 4235; thence south three hundred twenty five perches to an original hemlock, the southeast corner of warrant no.4235; thence East five hundred perches, more or less, to the southwest corner of Warrant no.4234; thence South one hundred sixty six perches, more or less, to land now or formerly David Burkey; thence West twenty one perches, more or less, to apost; thence South one hundred fifty four perches, more or less, to post on line of Warrant no.3597; thence north eighty nine and one fourth degrees west four hundred eighty three perches, more or less, to a chestnut corner and place of beginning. Containing three thousand acres and allowance, more or less.

The Fourth & Fifth Thereof, consisting of the western half of Warrants Nos. 5676 and 5677, situate in Huston Township in said county of Clearfield, Beginning at a post, the Southwest corner of Warrant no.566; thence North along tract line of Warrants nos.5672 and 5673 six hundred forty four perches, more or less, to a post, being the Northwest corner of Warrant No.5676; thence east two hundred sixty one perches, more or less, to a post; thence South six hundred forty four perches to a tract line of Warrant No.5676; thence West by same two hundred sixty one perches, more or less, to a post and place of beginning, and being the Western halves of Warrants nos. 5676 and 5677, and containing one thousand acres and allowances, be the same, more or less.

Being the same premises which Annie T.Arnold, et al, by deed dated December 1, 1914 and recorded in deed Book "207" page 312, conveyed to the said Alonzo S.Kline.

EXHIBIT "B"

TO HAVE AND TO HOLD unto the said grantees, in the following proportions, that is to say: The title to Warrant no.4229 to be held by the said grantees, their heirs and assigns, Walter Welch and William T.DeHaas the undivided 5/33 each; Harry Boulton the undivided 4/33; Mary Gordon Schultz, John W.Gordon, Leslie D.Gordon and James T.Gordon the undivided 4/33; J.W.Bailey, A.Newton Cole, Ida M.Hess, Fred M.Shaffer and Roll B.Thompson the undivided 3/33 each. The remaining part of said premises to be held by the said grantees, their heirs and assigns as follows: Harry Boulton the undivided 4/21; Mary Gordon Schultz, John W.Gordon, Leslie D.Gordon and James T.Gordon the undivided 4/21; J.W.Bailey, A.Newton Cole and Ida M Hess the undivided 3/ 21 each; Walter Welch and William T.DeHaas the undivided 2/21 each; their heirs and assigns forever.

In Witness Whereof the said grantors have hereunto set their hands and seals the day and year aforesaid.

Alonzo S.Kline (seal)

Alice M.Kline (seal)

William T.DeHaas (seal)

Virginia E.DeHaas (seal)

Walter Welch (seal)

Minnie B.Welch (seal)

U.S.Rev.$2.50

State of Pennsylvania)
County of Clearfield)SS

On this 7th day of October, A.D. 1922, before me a Notary Public in and for said county and state came the above named William T.DeHaas and Virginia E_DeHaas, Walter Welch and Minnie B.Welch, and acknowledged the foregoing deed to be their act and deed, and desired the same to be recorded as such.

Witness my hand and Notarial seal the day and year aforesaid.

Jennie E.Bailey (off.seal)

Notary Public

My commission expires at the end of the next session of the Senate.

State of Pennsylvania)
County of Allegheny)SS

On this 14th day of October A.D. 1922, before me, a Notary Public in and for said County and State, came the above named Alonzo S.Kline and Alice M.Kline, and acknowledged the foregoing Deed to be their act and deed, and desired the same to be recorded as such.

Witness my hand and Notarial seal the day and year aforesaid.

Robert S. Golden (off.seal)

Notary Public

My commtssion expires March 7, 1925.

Entered of Record Oct. 23, 1922. 2-30 P.M.
Recorded and Compared by

Recorder.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

IN RE: TAX SALE of 27.97% INTERESTS in 963 ACRES OF COAL MINERALS, OIL & GAS and known as CLEARFIELD COUNTY MAP No. 128-D02-000-00020

PETITION TO SET ASIDE TAX SALE AND TO SET ASIDE ASSESSED TAXES PAST AND FUTURE

William A. Shaw
Prothonotary/Clerk of Courts
FEB 02 2007
FILED

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW

In Re: TAX SALE OF 27.97% INTEREST IN 963 ACRES OF COAL MINERALS, OIL & GAS AND KNOWN AS CLEARFIELD COUNTY MAP NO. 128-D02-000-00020	)))))	No.: 07-174-CD

ORDER

AND NOW, this 23 day of February, 2007, the Motion of Respondents Timothy D. Baumgardner and Todd D. Baumgardner for Extension of Time to File a Written Response is hereby GRANTED. Respondents Timothy D. Baumgardner and Todd D. Baumgardner shall file their written response to the Petition to Set Aside Tax Sale on or before March 26, 2007.

BY THE COURT,

Fredric J. Ammerman, P.J.

cc: R. Denning Gearhart, Esquire
Kim Kesner, Esquire
Stuart L. Hall, Esquire

FILED 4cc
01:00/BY Atty Hall
FEB 23 2007 GK

William A. Shaw
Prothonotary/Clerk of Courts

DATE 2/23/07

X You are responsible for serving all appropriate parties.

___ The Prothonotary's office has provided service to the following parties:

___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

FILED

FEB 23 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW

In Re: TAX SALE OF 27.97% INTEREST IN 963 ACRES OF COAL MINERALS, OIL & GAS AND KNOWN AS CLEARFIELD COUNTY MAP NO. 128-D02-000-00020	)))))	No.: 07-174-CD

ORDER

AND NOW, this _____ day of _____, 2007, the Petition to Set Aside Tax Sale is hereby DENIED.

BY THE COURT,

_____

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW

In Re: TAX SALE OF 27.97% INTEREST IN 963 ACRES OF COAL MINERALS, OIL & GAS AND KNOWN AS CLEARFIELD COUNTY MAP NO. 128-D02-000-00020	)))))	No.: 07-174-CD

NOTICE

To: Mary A. Collier, Attorney in Fact
For Diana B. Simms
c/o R. Denning Gearhart, Esquire
207 East Market Street
Clearfield, PA 16830

You are hereby notified to file a written response to the enclosed New Matter within twenty (20) days from service hereof or a default judgment may be entered against you.

LAW OFFICES OF MILLER & HALL

By _____
Stuart L. Hall, Esquire
Attorney for Timothy D. Baumgardner
and Todd D. Baumgardner
138 East Water Street
Lock Haven, PA 17745
570-748-4802

FILED 1cc Atty Hall
m 11:09 BA
MAR 26 2007
GK

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW

In Re: TAX SALE OF 27.97% INTEREST IN 963 ACRES OF COAL MINERALS, OIL & GAS AND KNOWN AS CLEARFIELD COUNTY MAP NO. 128-D02-000-00020	)))))	No.: 07-174-CD

ORIGINAL

ANSWER WITH NEW MATTER OF TIMOTHY D. BAUMGARDNER AND TODD D. BAUMGARDNER TO PETITION TO SET ASIDE TAX SALE

AND NOW, Timothy D. Baumgardner and Todd D. Baumgardner, through their attorney, Stuart L. Hall, Esquire, file this Answer with New Matter to the Petition to Set Aside Tax Sale and state the following:

1. Admitted in part, denied in part. It is admitted that Diana B. Simms is listed as an individual with a .18 interest in the coal, minerals, gas and oil of the property identified as Clearfield County Tax Map Number 128-D02-000-00020. It is admitted that the Deed was recorded in Clearfield County at Instrument No. 200220465. It is also admitted that a copy of the Deed is attached to the Petition as Exhibit "A." After reasonable investigation, Respondents are without knowledge or information concerning whether Mary A. Collier is the attorney-in-fact for Diana B. Simms and therefore that averment is denied.

2. Admitted. By way of further response, the taxes remained unpaid and were delinquent from 1993 through 2001.

3. Admitted in part, denied in part. It is admitted that by Deed of Alonzo S. Kline, et al., to Harry Bolton, et al., dated October 2, 1929, and recorded in the Office of the Recorder of Deeds of Clearfield County, in Deed Book 259, Page 131, the oil and gas were sold as separate items, in, upon, and under Warrant No. 4229 in Sadie Township. It is admitted that a copy of the Deed is attached to the Petition as Exhibit "B." Through this Deed, the Grantors conveyed all their right, title and interest, "in and to all the coal, coal oil, gas, fire clay and other minerals of every kind and character in, under and upon" five tracts or warrants of land. After reasonable investigation, Answering Defendants are without knowledge or information sufficient to form a belief as to the remaining averments and therefore the averments are denied.

4. Admitted.

5. The Pennsylvania Supreme Court decision in Independent Oil & Gas Association of Pennsylvania v. Board of Assessment Appeals of Fayette County, 814 A.2d 180 (2002) is a written document which speaks for itself.

6. The averments in this paragraph state legal conclusions to which no responses are required. To the extent a response is deemed required, the averments are denied.

7. The averments in this paragraph state legal conclusions to which no responses are required. To the extent a response is deemed required, the averments are denied. By

way of further response, any alleged inability to assess or collect taxes on the oil and gas interests cannot be grounds for setting aside a tax sale.

THEREFORE, Timothy D. Baumgardner and Todd D. Baumgardner respectfully request that this Honorable Court deny Petitioner's Request for Relief.

New Matter

8. Paragraphs One (1) through Seven (7) of this Answer with New Matter are hereby incorporated by reference as if fully set forth.

9. Pursuant to 72 P. S. Section 5860.607(g), after an upset sale, the owner is precluded from bringing this type of action.

10. The Court lacks subject matter jurisdiction over this action due to the fact that Petitioner is precluded by statute from bringing this action.

11. Petitioner failed to file objections or exceptions to the sale as required by the Real Estate Tax Sale law.

12. Petitioner is estopped from contesting the sale of the interest in the property.

13. The tax sale of the property conveyed to the Baumgardners not only gas and oil, but also coal and mineral rights.

14. Petitioners do not argue that coal and mineral rights cannot be taxed nor can there be any question coal and mineral rights can be taxed. Therefore, there is no basis

whatsoever for requesting the Court to set aside the portion of the sale dealing with the Baumgardners purchase of coal and mineral rights to the property.

15. As Petitioners purportedly previously owned a .18 interest in the gas and oil, there is no basis for setting aside the purported interest of any owner other than Petitioners.

16. The holding in Independent Order cannot be applied retroactively.

THEREFORE, Timothy D. Baumgardner and Todd D. Baumgardner respectfully request that this Honorable Court deny the Petition to Set Aside the Tax Sale.

Respectfully submitted,
LAW OFFICES OF MILLER & HALL

By _____
Stuart L. Hall, Esquire
Attorney for Timothy D. Baumgardner
and Todd D. Baumgardner
138 East Water Street
Lock Haven, PA 17745
(570) 748-4802

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW

In Re: TAX SALE OF 27.97% INTEREST IN 963 ACRES OF COAL MINERALS, OIL & GAS AND KNOWN AS CLEARFIELD COUNTY MAP NO. 128-D02-000-00020	)))))	No.: 07-174-CD

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of March, 2007, I served a copy of the foregoing Answer with New Matter upon R. Denning Gearhart, Esquire, 207 East Market Street, Clearfield Pennsylvania 16830 and Kim Kesner, Esquire, 15 North Front Street, P. O. Box 1, Clearfield, Pennsylvania 16830, by United States first class mail, postage prepaid, the original being filed with the Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania.

LAW OFFICES OF MILLER & HALL

By _____
Stuart L. Hall, Esquire
Attorney for Timothy D. Baumgardner
and Todd D. Baumgardner
138 East Water Street
Lock Haven, PA 17745
(570) 748-4802

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: TAX SALE of 27.97% INTERESTS in 963 ACRES OF COAL MINERALS, OIL & GAS and known as CLEARFIELD COUNTY Map No. 128-D02-000-00020

No. 2007-174-CD

Type of Pleading: Written Response

Filed on Behalf of: Clearfield County Tax Claim Bureau

Counsel of Record for this Party:
Kim C. Kesner, Esquire
PA ID # 28307

BELIN, KUBISTA & RYAN
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
814-765-8972
814-765-9893 – facsimile

Other Counsel of Record:

R. Denning Gearhart, Esquire
Attorney & Counselor at Law
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Clearfield, PA 16830
814-765-1581

Stuart L. Hall, Esquire
Miller and Hall
138 East Water Street
Lock Haven, PA 17745
570-748-4802

FILED 3cc
01 3:35 BH Atty Kesner
MAR 28 2007
(GK)
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: TAX SALE of 27.97% INTERESTS in 963 ACRES OF COAL MINERALS, OIL & GAS and known as CLEARFIELD COUNTY Map No. 128-D02-000-00020	:	No. 2007-174-CD

WRITTEN RESPONSE OF CLEARFIELD COUNTY TAX CLAIM BUREAU

TO: The Honorable Frederic J. Ammerman, President Judge

AND NOW COMES, the Clearfield County Tax Claim Bureau ("Bureau") by Kim C. Kesner, Esquire and files this Written Response to this Court's Rule issued on February 6, 2007.

1. The Bureau admits that Exhibit "A" is a true and correct copy of its Deed dated December 11, 2002, to Timothy D. Baumgardner and Todd D. Baumgardner. Otherwise, the document speaks for itself. By way of further answer, the Deed describes the interests conveyed as 34.55% interest in 963 acres of coal, minerals, oil and gas rights.

2. It is admitted that the assessed interests sold were exposed to sale and sold at a public upset tax sale on September 15, 2002, in accordance with the Pennsylvania Real Estate Tax Sale Law for delinquent real estate taxes for tax years 1993 through 2001.

3. The Bureau is without sufficient knowledge or information to form a belief as to the Petitioner's claim and/or color of title. It is admitted that Exhibit "B" is a true and correct copy of the Deed recorded in Clearfield County Deed Book Volume 259, page 131.

4. Admitted.

5. The averments contained in Paragraph 5 of the Petition constitute contentions or conclusions of law to which no response is required.

6. The averments contained in Paragraph 6 of the Petition constitute contentions or conclusions of law to which no response is required. By way of further answer, the assessment as well as the tax sale predate the decision cited which should not be given retroactive effect. Moreover, while the assessment referenced "gas & oil", no value was placed on these interests and the assessment of coal and other minerals was valid, sufficient and effective.

7. The averments contained in Paragraph 7 of the Petition constitute contentions or conclusions of law which no response is required.

WHEREFORE, the Clearfield County Tax Claim Bureau respectfully requests your Honorable Court to dismiss the Petition.

Respectfully submitted,

Kim C. Kesner, Esquire
Solicitor – Clearfield County
BELIN, KUBISTA & RYAN
15 North Front Street
Clearfield, PA 16830

VERIFICATION

I, Mary Anne Wesdock, verify that I am the Director of the Clearfield County Tax Claim Bureau, and as such am authorized and empowered to make this Verification, and that the statements made in this Written Response are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 , relating to unsworn falsification to authorities.

Date: 3-28-2006

Mary Anne Wesdock

Mary Anne Wesdock, Director
Clearfield County Tax Claim Bureau

CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 28th day of March, 2007, I caused to be served a true and correct copy of Written Response of the Clearfield County Tax Bureau to the Court's Rule issued on February 6, 2007, on the following and in the manner indicated below:

By United States Mail, First Class,
Postage Prepaid, Addressed as Follows:

R. Denning Gearhart, Esquire
Attorney & Counselor at Law
207 East Market Street
Clearfield, PA 16830

and

Stuart L. Hall, Esquire
Miller and Hall
138 East Water Street
Lock Haven, PA 17745

Date: 3/28/07

Kim C. Kesner, Esquire

CLEARFIELD COUNTY
COURT HOUSE
CLEARFIELD, PA 16830
KIM C. KESNER, ESQUIRE
SOLICITOR
(814) 765-2641

FILED
MAR 28 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

IN RE: TAX SALE of 27.97%	:	
INTERESTS in 963 ACRES OF COAL	:	No. 2007-174-CD
MINERALS, OIL & GAS and known	:	
as CLEARFIELD COUNTY	:	
MAP No. 128-D02-000-00020	:	

CASE NUMBER: 2007- 174-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: ANSWER TO NEW MATTER OF TIMOTHY D. BAUMGARDNER and TODD D. BAUMGARDNER BY DIANA B. SIMMS, THROUGH HER ATTORNEY-IN-FACT, MARY A. COLLIER

FILED ON BEHALF OF: Diana B. Simms, by her Attorney-in-Fact, Mary A. Collier

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
207 E. Market Street
Clearfield, PA 16830
(814) 765-1581

FILED 3cc Atty
8/10:40 cm Gearhart
APR 11 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

IN RE: TAX SALE OF 27.97%	:	
INTEREST in 963 ACRES OF COAL,	:	
MINERALS, OIL & GAS and known	:	No. 07- 174-CD
as CLEARFIELD COUNTY	:	
MAP NO. 128-D02-000-00020	:	

ANSWER TO NEW MATTER OF TIMOTHY D. BAUMGARDNER AND TODD D. BAUMGARDNER. BY DIANA B. SIMMS, THROUGH HER ATTORNEY-IN-FACT, MARY A. COLLIER

AND NOW, comes DIANA B. SIMMS, by her Attorney-in-Fact, Mary A. Collier, and through her attorney, R. Denning Gearhart, Esq., answers as follows:

8. No answer required.

9. The averments contained constitute contentions or conclusions of law to which no response is required.

10. The averments contained constitute contentions or conclusions of law to which no response is required.

11. The averments contained constitute contentions or conclusions of law to which no response is required.

12. The averments contained constitute contentions or conclusions of law to which no response is required.

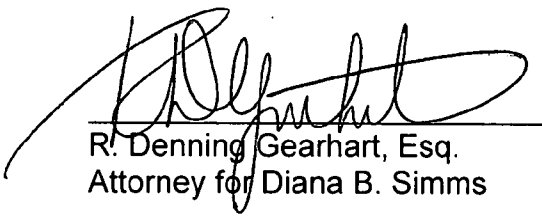
13. The averments contained constitute contentions or conclusions of law to which no response is required.

14. The averments contained constitute contentions or conclusions of law to which no response is required.

15. The averments contained constitute contentions or conclusions of law to which no response is required.

16. The averment contained constitutes contentions or conclusions of law to which no response is required.

Respectfully submitted,



R. Denning Gearhart, Esq.
Attorney for Diana B. Simms

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

IN RE: TAX SALE OF 27.97%	:	
INTERESTS IN 963 ACRES OF COAL,	:	
MINERALS, OIL & GAS, and known,	:	No. 2007-174-CD
as CLEARFIELD COUNTY	:	
MAP NO. 128-D02-000-00020	:	

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of April, 2007, I served a copy of the foregoing Answer to New Matter filed in the above action, on the following:

Stuart L. Hall, Esq.
138 East Water Street
Lock Haven, PA 17745

Kim C. Kesner, Esq.
15 North Front Street
P. O. Box 1
Clearfield, PA 16830

by United States first class mail, postage prepaid, the original being filed with the Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania.

R. Denning Gearhart, Esquire
Attorney for Diana B. Simms, by her
Attorney-in-Fact, Mary A. Collier

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA CIVIL DIVISION No. 2007-174-CD

IN RE: TAX SALE OF 27.97% INTERESTS IN 963 ACRES OF COAL MINERALS, OIL & GAS and known as CLEARFIELD COUNTY MAP No. 128-D02-000-00020

ANSWER TO NEW MATTER

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA

FILED
APR 11 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: TAX SALE of 27.97% INTERESTS in 963 ACRES OF COAL MINERALS, OIL & GAS and known as CLEARFIELD COUNTY Map No. 128-D02-000-00020	:	No. 2007-174-CD

RULE RETURNABLE

AND NOW this 26 day of June, ~~2000~~ 2008, upon consideration of the foregoing Joint Motion to Dismiss issued upon Diane B. Simms, by her attorney in fact, Mary A. Collier why the prayers of the Petition should not be granted. Rule Returnable by written answer only in accordance with Local Rule 206(h) on or before the 17th day of July, 2008.

BY THE COURT,

FILED 3cc
01:00/BA Atty Kesner
JUN 26 2008
(612)

William A. Shaw
Prothonotary/Clerk of Courts

FILED

JUN 26 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6/26/08

X You are responsible for serving all appropriate parties.

____ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: TAX SALE of 27.97% INTERESTS in 963 ACRES OF COAL MINERALS, OIL & GAS and known as CLEARFIELD COUNTY Map No. 128-D02-000-00020

No. 2007-174-CD

Type of Pleading:
JOINT MOTION TO DISMISS

Filed on Behalf of: Clearfield County Tax Claim Bureau

Counsel of Record for this Party:
Kim C. Kesner, Esquire
PA ID # 28307

BELIN, KUBISTA & RYAN LLP
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
814-765-8972
814-765-9893 – facsimile

Other Counsel of Record:

R. Denning Gearhart, Esquire
Attorney & Counselor at Law
207 East Market Street
Clearfield, PA 16830
814-765-1581

Stuart L. Hall, Esquire
Miller and Hall
138 East Water Street
Lock Haven, PA 17745
570-748-4802

FILED 3cc AA Kesner
6/11:05cm
JUN 25 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW

In Re: TAX SALE OF 27.97% INTEREST IN 963 ACRES OF COAL MINERALS, OIL & GAS AND KNOWN AS CLEARFIELD COUNTY MAP NO. 128-D02-000-00020	)))))	No.: 07-174-CD

JOINT MOTION TO DISMISS

To: The Honorable Frederic J. Ammerman, President Judge

AND NOW COMES, the Clearfield County Tax Claim Bureau ("Bureau") by Kim C. Kesner, Esquire, Clearfield County Solicitor and Timothy D. Baumgardner and Todd D. Baumgardner ("Baumgardner") by Stuart L. Hall, Esquire, who jointly file this Motion to Dismiss the pending Petition to Set Aside Tax Sale and in support hereof aver:

1. The pending matter is a Petition to Set Aside the Tax Sale filed on behalf of Dianne B. Simms, by her attorney in fact, Mary A. Collier. Petitioner is represented by R. Denning Gearhart, Esquire.

2. As the caption of this matter confirms, the assessment sold at private tax sale was of a fractional interest of coal, minerals, oil and gas. The actual interest sold was 34.55% as noted on page 2 of the deed attached to the Petition.

3. The Petition seeks to set aside the tax sale only with regard to the oil and gas interests. The valid of the sale as to coal and other minerals is concedes. See Petition, paragraph 5.

4. The sole basis for the relief requested is the Pennsylvania Supreme Court's decision in Independent Oil and Gas Association of Pennsylvania v. Board of Assessment

Appeals of Fayette County, 814 A.2d 180 (PA 2002) which held that Pennsylvania counties lack authority to assess ad valorem taxes on oil and gas interests.

5. However, subsequent to the filing of this Petition, the Pennsylvania Supreme Court held that its decision in Independent Oil may not be applied retroactively. Oz Gas Ltd. vs. Warren County School District, 938 A.2d 274 (PA 2007).

6. As a matter of law, the net effect of Oz is that tax sales based upon a gas and/or oil assessment which were final prior to the decision in Independent Oil are valid.

7. The tax sale in this case occurred on December 11, 2002. Independent Oil was decided by the Pennsylvania Supreme Court on December 19, 2002.

WHEREFORE, Movants respectfully request this Honorable Court to issue a rule to Petitioner to show cause why it's Petition should not be dismissed.

Respectfully submitted,

Kim C. Kesner, Esquire
Solicitor for Clearfield County
BELIN, KUBISTA & RYAN LLP

Stuart L. Hall, Esquire
Attorney for Timothy D. Baumgardner and
Todd D. Baumgardner

VERIFICATION

I, Mary Anne Wesdock, verify that I am the Director of the Clearfield County Tax Claim Bureau, and as such am authorized and empowered to make this Verification, and that the statements made in this Joint Motion to Dismiss are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date: 6-19-2008

Mary Anne Wesdock

Mary Anne Wesdock, Director
Clearfield County Tax Claim Bureau

VERIFICATION

I, Timothy D. Baumgardner, hereby state that the language in the foregoing Joint Motion to Dismiss is that of counsel and not necessarily my own; however, I have read the foregoing document and, to the extent it is based upon information that I have given to counsel, it is true and correct to the best of my knowledge, information, and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsifications to authorities.

Date: June 10, 2008

Timothy D. Baumgardner

VERIFICATION

I, Todd D. Baumgardner, hereby state that the language in the foregoing Joint Motion to Dismiss is that of counsel and not necessarily my own; however, I have read the foregoing document and, to the extent it is based upon information that I have given to counsel, it is true and correct to the best of my knowledge, information, and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsifications to authorities.

Date: June 10, 2007

Todd D. Baumgardner

INDEPENDENT OIL AND GAS ASSOCIATION OF PENNSYLVANIA, George O. Scott, d/b/a Dorso Energy, Lomak Resources Company, Phillips Production Company, Castle Exploration Co., Inc., Douglas Oil Gas, Inc., Oil Gas Management, Inc. and William S. Burkland, Appellants,

v.

BOARD OF ASSESSMENT APPEALS OF FAYETTE COUNTY, Pennsylvania, and County of Fayette, Pennsylvania, Appellees.

Supreme Court of Pennsylvania.

Argued Sept. 10, 2002.

Decided Dec. 19, 2002.

1. **Taxation** ⇐63

Pennsylvania law does not authorize imposition of ad valorem taxes on oil and gas interests. 72 P.S. §§ 5020–201(a), 5020–415, 5453.612, 5453.616.

2. **Taxation** ⇐63

Oil and gas rights are neither "real estate" nor "lands" subject to ad valorem taxation. 72 P.S. § 5020–201(a).

See publication Words and Phrases for other judicial constructions and definitions.

3. **Statutes** ⇐206

Because the legislature is presumed to have intended to avoid mere surplusage, every word, sentence, and provision of a statute must be given effect.

Owners of interests in oil and gas filed action for declaratory judgment and equitable relief, alleging that imposition of ad valorem taxes on interests was unauthorized. After remand reversing dismissal of owners' motion for summary judgment for lack of subject matter jurisdiction, the Court of Common Pleas, Fayette County, No. 1570 of 1998, G.D., Capuzzi, J., denied owners' motion for summary judgment. After granting petition for review, the Commonwealth Court, No. 2560 C.D. 2000, affirmed, 780 A.2d 795. Owners sought allowance of appeal. The Supreme Court, No. 93 WAP 2001, Zappala, J., held that Pennsylvania law does not authorize imposition of ad valorem taxes on oil and gas interests.

Reversed.

Nigro, J., filed concurring opinion in which Saylor, J., joined.

Richard DiSalle, Pittsburgh, for Independent Oil, et al.

John S. Cupp, Uniontown, for Board of Assessment Appeals of Fayette County, et al.

ZAPPALA, C.J., and CAPPY, CASTILLE, NIGRO, NEWMAN, SAYLOR, and EAKIN, JJ.

OPINION

Chief Justice ZAPPALA.

In this case we granted allowance of appeal to determine whether the imposition of real estate, or *ad valorem*, taxes by Appellees on Appellants' oil and gas interests is authorized by Pennsylvania law. Because we conclude that there is no authority for imposing a real estate tax on such interests, we reverse the order of the Commonwealth Court.[1]

1. We also granted allowance of appeal to address the issue of whether oil and gas interests are the proper subjects of real estate taxation since, unlike buildings or fixtures

Appellants own leasehold interests in oil and gas underlying tracts of land located in Fayette County.[2] In June 1998, Appellee, the Board of Assessment Appeals of Fayette County, began to assess Appellants' oil and gas interests for purposes of real estate taxation. Thereafter, the Board began serving Appellants with assessment notices regarding their oil and gas interests and informing them of their right to appeal within 40 days thereof.

On August 14, 1998, Appellants filed an action for declaratory and equitable relief with the common pleas court, alleging, *inter alia*, that the Board's imposition of *ad valorem* taxes on oil and gas interests was illegal, unauthorized by the laws of the Commonwealth and violative of the constitutions of Pennsylvania and the United States. Following the close of discovery, Appellants filed a motion for summary judgment again asserting, *inter alia*, the absence of a Pennsylvania statute specifically or otherwise authorizing the assessment and levying of taxes on oil and gas.[3]

By opinion and order dated December 21, 1999, the common pleas court, *sua sponte*, dismissed Appellants' motion for summary judgment based upon the court's conclusion that it lacked subject matter jurisdiction. Specifically, the court concluded that it lacked jurisdiction because Appellants failed to exhaust the administrative remedies available to them before the Board. On appeal, the Commonwealth Court reversed the order of the trial court and remanded for further proceedings based upon this Court's decision in *Borough of Green Tree v. Board of Property Assessments, Appeals and Review of Allegheny County*, 459 Pa. 268, 328 A.2d 819 (1974). There, we held that a substantial question of constitutionality concerning a taxing body's powers excuses resort to the administrative process and allows one challenging that authority to proceed directly in equity. The Commonwealth Court concluded that Appellants need not exhaust administrative remedies since they were not alleging an over-assessment of taxes on any particular individual, which would generally fall within the Board's exclusive jurisdiction; rather, their suit directly challenged the Board's authority to assess a tax in any case. Thus, as Appellants' challenge alleged a substantial constitutional question, i.e., the authority to impose the tax, the Commonwealth Court held that the trial court erred in dismissing Appellants' action for lack of subject matter jurisdiction.

On remand, the trial court denied Appellants' motion for summary judgment on the merits. Specifically, the court concluded that it is beyond argument that Appellee Fayette County is authorized to levy taxes on real estate and that it has long been settled in this Commonwealth that oil and gas are considered real estate. Further, the court held that the remaining

permanently attached to the land, and unlike coal or stone that are fixed in place, oil and gas are fugacious and move from one tract to another and, therefore, are not quantifiable or identifiable as part of a particular tract of land. Because we conclude that there is no statutory authority to tax oil and gas interests, we need not address this issue.

2. Some of Appellants' interests contain producing oil and gas wells, some contain non-producing gas wells and some contain no wells at all.

3. Appellants also asserted the following reasons why their motion for summary judgment should be granted: 1) the fugacious nature of oil and gas renders the assessment thereof for tax purposes improper; 2) the lack of uniformity of the County's assessments in violation of the Pennsylvania and United States Constitutions; 3) the impropriety of taxing leases in the absence of some indication of the presence of oil and gas; and 4) the need for a County-wide assessment.

"counts" raised in Appellants' motion raised issues relating to the valuation of their interest rather than the constitutional claim of lack of taxing authority. Accordingly, the court found that these matters were not properly within the court's jurisdiction as they would have to be resolved, initially, through the administrative process. The Commonwealth Court affirmed the court's decision on appeal and, thereafter, on December 4, 2001, we granted allowance of appeal.

The thrust of Appellants' argument here, as it was before the trial court and the Commonwealth Court, is that there is no specific legislative authority granting Fayette County the ability to tax Appellants' oil and gas interests as real estate. In this regard, Appellants point out that "[i]n Pennsylvania, the power to tax is statutory and must be derived from [an] enactment of the General Assembly." *Appeal of H.K. Porter Co.*, 421 Pa. 438, 219 A.2d 653, 654 (1966); *School District of Philadelphia v. Frankford Grocery Co.*, 376 Pa. 542, 103 A.2d 738, 741 (1954). Thus, according to Appellants, because there is no statutory authority for Fayette County to tax Appellants' oil and gas interests as real estate, the imposition of such a tax violated Appellants' constitutional rights.[4] We agree.[5]

[1] We begin our analysis by examining the language of the Oil and Gas Act, Act of December 19, 1984, P.L. 1140, *as amended*, 58 P.S. §§ 601.101–601.605, to determine if the authority to impose a real estate tax on oil and gas rights can be found. Generally, the language of the act regulates permits, well operations, underground storage, eminent domain and penalties as they relate to oil and gas; however, the act does not speak to the authority to tax oil and gas rights.

[2] Next, we look to The General County Assessment Law, Act of May 22, 1933, P.L. 853, *as amended*, 72 P.S. §§ 5020–101 to 5020–602, to determine if authority to impose the tax at issue here exists.[6] Section 201 of the Assessment Law, titled "Subjects of taxation enumerated," provides, in relevant part, as follows:

> The following subjects and property shall, as hereinafter provided, be valued and assessed, and subject to taxation for all county, city, borough, town, township, school and poor purposes at the annual rate:
>
> (a) All real estate, to wit: houses, house trailers and mobile homes, buildings permanently attached to land or connected with water, gas, electric or sewage facilities, buildings, lands, lots of ground and ground rents, trailer parks

4. The parties do not dispute that statutory authorization is required before a particular real estate tax may be assessed. The basic disagreement here is over whether such authority does, in fact, exist.

5. Appellants acknowledge that certain cases such as *Rockwell v. Warren County*, 228 Pa. 430, 77 A. 665 (1910), cited by the trial court, establish, to some extent, oil and gas interests as interests in real estate. Appellants, however, point out that the treatment historically given these issues through our case law has evolved in situations concerning conflicting claims of ownership of such interests rather than in an assessment or tax context as is the case here. *See Funk v. Haldeman*, 53 Pa. 229 (1867); *Gill v. Weston*, 110 Pa. 305, 1 A. 917 (1885); *Westmoreland & Cambria Natural Gas Co. v. DeWitt*, 130 Pa. 235, 18 A. 724 (1889); *Blakley v. Marshall*, 174 Pa. 425, 34 A. 564 (1896); *Marshall v. Mellon*, 179 Pa. 371, 36 A. 201 (1897); *Hutchinson v. Kline*, 199 Pa. 564, 49 A. 312, (1901).

6. The General Assessment Law applies to all counties in the Commonwealth except where specifically limited therein. There is no dispute that the General Assessment Law applies to Fayette County.

> and parking lots, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan yards, fisheries, and ferries, wharves, all office type construction of whatever kind, that portion of a steel, lead, aluminum or like melting and continuous casting structures which enclose, provide shelter or protection from the elements for the various machinery, tools, appliances, equipment, materials or products involved in the mill, mine, manufactory or industrial process, and all other real estate not exempt by law from taxation.

72 P.S. § 5020–201(a). Clearly, this provision does not specifically include oil and gas rights. Nevertheless, the trial court and the Commonwealth Court concluded that oil and gas rights were within the purview of Section 201. Specifically, the trial court concluded that oil and gas rights fall within the general meaning of the term "[a]ll real estate." The Commonwealth Court, on the other hand, concluded that oil and gas rights fall within the definition of the term "lands" specifically enumerated in Section 201.

Appellants argue that both the trial court and the Commonwealth Court erred in concluding that Fayette County was authorized to tax their oil and gas rights since Section 201 does not plainly include such terms within its purview. Thus, Appellants argue that because there is no explicit reference to oil and gas interests as proper subjects of assessment and taxation in Section 201, there was no intent by the General Assembly when enacting this section to tax oil and gas interests. Further, Appellants maintain that because the General Assembly explicitly recognized the taxing of coal interests in other sections of The General County Assessment Law and The Fourth to Eighth Class County Assessment Law, Act of May 21, 1943, P.L. 571, *as amended*, 72 P.S. §§ 5453.101–5453.706, it can be concluded that no such corresponding authority exists as to oil and gas interests.

[3] Addressing the trial court's conclusion that oil and gas rights are, generally, "real estate," and therefore included as real estate, Appellants assert that while subparagraph (a) of the provision starts with the phrase "[a]ll real estate," the statute goes on to state "to wit" and then sets forth an inclusive list of terms authorized for taxation. Appellants point out that Black's Law Dictionary defines "to wit" as "that is to say; namely." *Black's Law Dictionary* 1337 (5th ed.1979). They argue that had the General Assembly desired to merely designate "all real estate" as the proper subject of such taxation and allow this term to be determined by general principles of Pennsylvania property law, it could have so provided; however, this is not what the General Assembly did. To the contrary, the General Assembly provided a lengthy list of the specific subjects of taxation to which it was referring. Thus, Appellants note that if the General Assembly intended to subject all real estate to *ad valorem* taxation, the lengthy list enumerated thereafter would be meaningless. However, "[b]ecause the legislature is presumed to have intended to avoid mere surplusage, every word, sentence, and provision of a statute must be given effect." *Unionville–Chadds Ford School District v. Chester County Board of Assessment Appeals*, 692 A.2d 1136, 1143 (Pa. Cmwlth.1997), *aff'd*, 552 Pa. 212, 714 A.2d 397 (1998).

We agree with Appellants that the general term "real estate" set forth in Section 201 is limited by the terms further listed therein. As provided by Section 1903(b) of The Statutory Construction Act, when examining an act of legislation:

> General words shall be construed to take their meanings and be restricted by preceding particular words.

1 Pa.C.S. § 1903(b). This concept is known as the statutory construction doctrine of *ejusdem generis*. As we further discussed in *McClellan v. Health Maintenance Organization of Pennsylvania*, 546 Pa. 463, 686 A.2d 801, 806 (1996):

> Under our statutory construction doctrine *ejusdem generis* ("of the same kind or class"), where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. *Steele v. Statesman Insurance Co.*, 530 Pa. 190, 607 A.2d 742 (1992); *Summit House Condominium v. Commonwealth*, 514 Pa. 221, 523 A.2d 333 (1987).

Here, as the General Assembly saw fit to enumerate the types of "real estate" that are properly the subject of taxation, this Court is not at liberty to expand the items authorized for taxation beyond those subjects. Thus, we agree with Appellants that the trial court improperly concluded that oil and gas rights come within the general term "[a]ll real estate" set forth in Section 201.

Likewise, we conclude that the Commonwealth Court improperly expanded the category of real estate authorized for taxation by concluding that oil and gas rights fall within the term "lands" enumerated in Section 201. Again, referring to the doctrine of *ejusdem generis*, it is clear that all of the subjects of taxation mentioned in Section 201 constitute either land, as in the typical layperson's understanding (i.e., surface rights), or one of various types of physical improvements permanently affixed to such a "lot of ground." Oil and gas rights, by contrast, are quite unlike any of the other objects specifically identified in Section 201. Thus, the dissimilarity between the nature of oil and gas and those items which the General Assembly saw fit to enumerate as the proper subject of taxation militates against the conclusion that such terms are encompassed within the general term "lands" listed therein.

Further, as noted by Appellants, additional support for the conclusion that the General Assembly did not intend to include oil and gas rights as the proper subject of taxation can be gleaned by examining the provisions of the General County Assessment Law beyond Section 201, and provisions of the Fourth to Eighth Class County Assessment Law, which specifically recognize the taxing of coal interests with no concomitant references to oil and gas. Specifically, Section 415 of the General County Assessment Law, 72 P.S. § 5020–415, and Sections 612 and 616 of the Fourth to Eighth Class County Assessment Law, 72 P.S. §§ 5453.612, 5453.616, provide for separate assessments of coal where a life tenant does not have a right to "operate the coal" and for the division of coal assessments bisected by county lines.

Thus, as the General Assembly has explicitly recognized the taxing of coal interests, it is clear, under the doctrine of *inclusio unius est exclusio alterius*, that no such corresponding authority exists as to oil and gas interests. As we noted in our decision in *Ken R. on behalf of C.R. v. Arthur Z.*, 546 Pa. 49, 682 A.2d 1267, 1270 (1996), "[a]pplying the rules of statutory construction, the inclusion of a specific matter in a statute implies the exclusion of other matters."

Based on the forgoing, we agree with Appellants that the General Assembly did not authorize the *ad valorem* taxation of their oil and gas interests as found by the lower courts. As there was no statutory authority for the assessment of Appellants'

interests as such, we reverse the Commonwealth Court's order affirming the trial court's denial of Appellants' motion for summary judgment on this basis.

Justice NIGRO files a concurring opinion in which Justice SAYLOR joins.

NIGRO, Justice, concurring.

I agree with the majority that Appellees' attempted taxation of Appellants' oil and gas interests is without statutory authority and therefore join in the majority's disposition of this matter. However, I disagree with the majority's application of *ejusdem generis* because it renders the phrase "all other real estate" in section 201(a) of the Assessment Law ineffective. Rather, I would simply hold that Appellees lacked the statutory authority to tax Appellants' interests because oil and gas are of a fundamentally different character than real estate.

Justice SAYLOR joins the concurring opinion.

John PECK, Appellee,

v.

DELAWARE COUNTY BOARD OF PRISON INSPECTORS, Appellant.

Supreme Court of Pennsylvania.

Argued May 16, 2002.

Decided Dec. 31, 2002.

Corrections officer who worked at prison through contractor brought negligence action against prison board for injuries to his shoulder sustained when he slipped in a puddle of water and fell while attempting to close a prison door. The Common Pleas Court, Delaware County, No. 97–15878, Proud, J., granted summary judgment in favor of prison board. Corrections officer appealed. The Commonwealth Court, No. 3148 C.D. 1999, 765 A.2d 1190, reversed and remanded. On grant of allocatur, the Supreme Court, No. 3 MAP 2002, Newman, J., held that the prison board was not the statutory employer of corrections officer and did not qualify for immunity under the workers' compensation act.

Affirmed.

Nigro, J., concurred and filed opinion.

Cappy, J., dissented and filed opinion in which Saylor, J., joined.

1. Workers' Compensation ⇐187

A statutory employer is a master who is not a contractual or common-law one, but is made one by the workers' compensation act. (Per Newman, J., with two Justices concurring, and one Justice concurring with separate opinion.) 77 P.S. § 52.

2. Workers' Compensation ⇐187

The purpose of provision in workers' compensation act explaining obligations of a statutory employer is to ensure the payment of compensation benefits by a financially responsible party in the injured worker's chain of employment from subcontractor to general contractor. (Per Newman, J., with two Justices concurring, and one Justice concurring with separate opinion.) 77 P.S. § 462.

3. Workers' Compensation ⇐2161

Provision in workers' compensation act providing for rights enjoyed by the statutory employer confers upon the statutory employer immunity from suit; by plac-

Section 5011 is not designed to alter traditional property notions.

In granting the County the original easement over their property, the fee simple, servient owners here retained the right to use their property in any manner not impairing the easement's open space and agricultural character; the easement is non-exclusive. This right includes the right to grant additional easements in the same land to other persons or entities, provided the first easement holder's interests remain unimpaired. *See Puleo v. Bearoff, et al.*, 376 Pa. 489, 103 A.2d 759, 761 (1954); Restatement (Third) of Property, Servitudes § 4.9 comments c, e (2000).

The County may have the authority to refuse an acquisition of property it owns, but this is not tantamount to the authority to refuse an acquisition of property it does not own. I find no authority giving the County the same status as a fee simple owner when it comes to granting another right-of-way on this property. The County may object if the grant impedes its rights; it may protect what it has, but it may not demand consent when it does not possess the right to do so. Accordingly, I would affirm the Commonwealth Court's ruling the School District is not required to obtain County approval to acquire a right-of-way from a private landowner.

OZ GAS, LTD.

v.

WARREN AREA SCHOOL DISTRICT, Warren County, Triumph Township, Deerfield Township, Forest County, and Forest Area School District.

Appeals of: Forest Area School District (No. 10 Wap 2006); Warren Area School District, Warren County and Deerfield Township (No. 11 WAP 2006); and Triumph Township (No. 12 WAP 2006).

Supreme Court of Pennsylvania.

Argued March 5, 2007.

Decided Dec. 27, 2007.

Background: Taxpayer filed action seeking a refund for the previous three years of ad valorem taxes it paid on its oil and gas interests. The Court of Common Pleas, Warren County, Civil Division, No. A.D. 242 of 2003, Morgan, J., granted taxing authorities' motions for summary judgment. Taxpayer appealed. The Commonwealth Court, No. 1550 C.D. 2004, en banc, Rochelle S. Friedman, J., 886 A.2d 336, reversed. Taxing authorities filed petitions for allowance of appeal.

Holdings: The Supreme Court, Nos. 10, 11, 12 WAP 2006, Castille, J., held that:

(1) Supreme Court's decision that the General County Assessment Law precluded counties from collecting ad valorem taxes on oil and gas reserves that remained underground applied prospectively only, and

(2) taxpayer was not entitled to a refund of ad valorem taxes paid on its oil and gas interests for the three years prior to such decision.

Decision of Commonwealth Court reversed.

1. Courts ⇐100(1)

The three-prong test for determining whether a decisional rule should apply retroactively looks to: (1) whether the decision established a new principle of law; (2) a balancing of the merits by looking at the history of the rule in question, its purpose and effect, and whether retroactive application will further or retard its operation; and (3) an evaluation of the equities involved.

2. Taxation ⇐2589

"Unseated land" is land that is not listed on the tax rolls by a specific owner.

See publication Words and Phrases for other judicial constructions and definitions.

3. Appeal and Error ⇐842(1)
Taxation ⇐2792

Issues of whether Supreme Court's decision in *Independent Oil and Gas Association v. Board of Assessment Appeals of Fayette County*, which held that ad valorem taxes could not be assessed against oil and gas reserves that remained underground, applied retroactively as a jurisprudential matter, and whether section of the Local Tax Collection Law governing refunds of taxes paid where the taxing authority was not legally entitled to the payment applied automatically in light of that decision, involved pure questions of law, and thus Supreme Court's review was plenary. 72 P.S. § 5566b.

4. Courts ⇐100(1)

Supreme Court's decision in *Independent Oil and Gas Association v. Board of Assessment Appeals of Fayette County*, which held that the General County Assessment Law precluded counties from collecting ad valorem taxes on oil and gas reserves that remained underground, applied prospectively only; decision established a new principle of law, applying the decision retroactively would not forward the operation of the decision, and the equities weighed heavily in favor of prospective-only application. 72 P.S. § 5020–201(a).

5. Courts ⇐100(1), 489(1)

The question of the retroactivity versus prospectivity of a U.S. Supreme Court constitutional decision is itself a federal question, and state courts are free to weigh in on such questions either in the first instance, or in the absence of clear guidance from the U.S. Supreme Court.

6. Courts ⇐100(1)

For purposes of determining whether a judicial decision should apply retroactively, the equities in criminal matters, and particularly in cases involving the scope of conduct that may be deemed criminal, differ from the equities to be weighed when a civil statute is at issue.

7. Courts ⇐100(1)

A decision of the Supreme Court invalidating a tax statute takes effect as of the date of the decision and is not to be applied retroactively.

8. Courts ⇐100(1)
Taxation ⇐2773

Taxing authorities were legally entitled to collect ad valorem taxes on oil and gas reserves that remained in the ground, prior to the Supreme Court's decision in *Independent Oil and Gas Association v. Board of Assessment Appeals of Fayette County*, which held that the General County Assessment Law precluded counties from collecting ad valorem taxes on oil and gas reserves that remained in the ground, and thus taxpayer was not entitled, under provision of the Local Tax Collection Law entitling a taxpayer to a refund where the political subdivision was not legally entitled to the taxes, to a refund of ad valorem taxes paid on its oil and gas interests for

the three years prior to such decision. 72 P.S. §§ 5020–201(a), 5566b.

William R. Strong, Esq., Clarion, for Forest Area School District.

Joseph E. Altomare, Esq., Oz Gas, Ltd.

Mark Edwin Mioduszewski, Esq., Knox, McLaughlin, Gornall & Sennett, P.C., for Warren Area School District.

Mark Edwin Mioduszewski, Esq., Warren Area School District, Warren County and Deerfield Township.

Rene Heilman Johnson, Esq., Swanson, Bevevino & Gilford, P.C., Tionesta, for Triumph Township.

BEFORE: CAPPY, C.J., and CASTILLE, SAYLOR, EAKIN, BAER and BALDWIN, JJ.

OPINION

Justice CASTILLE.

This appeal presents questions regarding the effect of this Court's decision in *Independent Oil and Gas Association v. Board of Assessment Appeals of Fayette County*, 572 Pa. 240, 814 A.2d 180 (2002) ("*IOGA*"). *IOGA* held that Section 201(a) of the General County Assessment Law, 72 P.S. § 5020–201(a), precludes counties from collecting taxes on oil and gas reserves that remain in the ground. The specific issues are whether *IOGA* should apply retroactively and whether Section 5566b of the Local Tax Collection Law, 72 P.S. § 5511.1 *et seq.*, governing refunds of taxes paid where the taxing authority was not legally entitled to the payment, applies automatically in light of that decision. The Commonwealth Court addressed only the issue of the automatic application of Section 5566b and held that the language of the statute clearly and unambiguously commands that, if a taxpayer files a written claim for a tax refund within three years of payment of the tax to a political subdivision that was not entitled to collect the tax, the taxpayer is entitled to a refund. For the reasons that follow, we reverse.

From 1999 through 2002, appellee Oz Gas paid *ad valorem* taxes on its oil and gas interests to Warren Area School District, Warren County, Triumph Township, Deerfield Township, Forest County and Forest Area School District ("Taxing Authorities") pursuant to Section 201(a) of the Assessment Law. On December 19, 2002, this Court issued the *IOGA* decision finding that counties are not authorized to tax oil and gas interests. Consequently, on May 13, 2003, Oz Gas filed a complaint in the Court of Common Pleas of Warren County, seeking a refund for the previous three years of taxes it had paid, invoking the refund provision of Section 5566b.[1]

The Taxing Authorities filed motions for summary judgment, arguing that Section 5566b permits the recovery of only those taxes paid during the previous three years

1. Shortly thereafter, on July 9, 2003, the County Commissioners Association of Pennsylvania filed a petition to intervene, which was subsequently withdrawn on September 29, 2003. In addition, on August 11, 2003, Centre, Clinton, Forest and Jefferson Counties petitioned to intervene. On October 10, 2003, the trial court denied the petitions of Centre, Clinton and Jefferson Counties, but granted Forest County's petition. On November 12, 2003, Forest Area School District filed a petition to intervene, which was granted with the consent of all parties. On February 24, 2004, Forest County sought to withdraw as intervenor, which the trial court accepted with the consent of all parties. Thus, the defendants remaining in the trial court were Warren Area School District, Warren County, Triumph County and Deerfield Township as defendants and Forest Area School District as intervenor.

to which the taxing authority had no legal entitlement. Prior to this Court's decision in *IOGA*, the Taxing Authorities argued, they were legally entitled to collect the taxes in dispute. Therefore, the Taxing Authorities contended, Section 5566b did not authorize a refund in this instance. They further argued that *IOGA* announced a new principle of law, and as such, the decision should not be applied retroactively to change the legality of tax assessments made prior to the decision. Oz Gas filed a cross-motion for summary judgment, arguing that *IOGA* should apply retroactively because it was applied retroactively to the plaintiffs in that case and this Court did not expressly state that its application was prospective only. Further, Oz Gas claimed, *IOGA* did not represent such a change in the law that prospective-only application of the decision was warranted.

The trial court granted the Taxing Authorities' motions for summary judgment. The court first considered whether Section 5566b automatically commanded retroactive application of *IOGA*. Section 5556b provides as follows:

> (a) Whenever any person or corporation of this Commonwealth has paid or caused to be paid, or hereafter pays or causes to be paid, into the treasury of any political subdivision, directly or indirectly, voluntarily or under protest, any taxes of any sort, license fees, penalties, fines or any other moneys to which the political subdivision is not legally entitled; then, in such cases, the proper authorities of the political subdivision, upon the filing with them of a written and verified claim for the refund of the payment, are hereby directed to make, out of budget appropriations of public funds, refund of such taxes, license fees, penalties, fines or other moneys to which the political subdivision is not legally entitled. Refunds of said moneys shall not be made, unless a written claim therefor is filed, with the political subdivision involved, within three years of payment thereof.
>
> (b) The right to a refund afforded by this act may not be resorted to in any case in which the taxpayer involved had or has available under any other statute, ordinance or resolution, a specific remedy by way of review, appeal, refund or otherwise, for recovery of moneys paid as aforesaid, unless the claim for refund is for the recovery of moneys paid under a provision of a statute, ordinance or resolution subsequently held, by final judgment of a court of competent jurisdiction, to be unconstitutional, or under an interpretation of such provision subsequently held by such court, to be erroneous.
>
> (c)(1) * * * *
>
> (2) For purposes of this subsection, the term "political subdivision" means a county, city, borough, incorporated town, township, home rule municipality, school district, vocational school district and county institution district.

72 P.S. § 5566b. The court found that the language of the statute did not require retroactive application. The court based its conclusion in this regard on this Court's decision in another case involving the retroactivity of a decision holding a tax invalid, *American Trucking Associations, Inc. v. McNulty*, 528 Pa. 212, 596 A.2d 784 (1991). *McNulty* was before this Court on remand from the U.S. Supreme Court, which had determined in a prior case that certain fees or taxes imposed by Pennsylvania on interstate truckers were unconstitutional as a violation of the Commerce Clause. The matter was remanded to determine whether the High Court's ruling should be applied retroactively. The *McNulty* Court held that the constitutional ruling applied only from the date of the

decision forward because the tax was not unconstitutional until the U.S. Supreme Court so declared.

The trial court noted that Section 5556b contemplates retroactivity, but rejected Oz Gas's argument that the refund provision requires retroactive application of a case decision any time a statute or ordinance is held to be unconstitutional or its existing interpretation is found to be erroneous. The court found that subsection (b) merely provides an avenue of appeal in instances where the right to a refund is not based upon a finding that the tax statute is invalid, stating that subsection (b) plainly means: "a taxpayer is not required to pursue alternate refund remedies if the refund is claimed pursuant to a provision of a tax statute subsequently held by a court to be erroneous." Trial Ct. Op. at 7. Looking to this Court's decision in *McNulty*, the court further noted that, even though the refund statute at issue in that case was worded differently than Section 5556b, the same analysis pertained because both *McNulty* and the matter *sub judice* involve the question of a governmental entity's entitlement to taxes:

> Applying *McNulty* to the instant case, it is clear that this Court's decision cannot be based upon a strict analysis of the statutory wording in a vacuum. Instead, the Court must determine whether or not the [*IOGA*] decision is retroactive or prospective. If, in this Court's determination, the [*IOGA*] decision is retroactive, then Section 5556b(a) would apply and the tax would have been one to which the municipalities were "not legally entitled." However, if this Court determines that the [*IOGA*] decision is not to be applied retroactively but is only prospective, then the municipalities were, at the time of collection, legally entitled to the taxes which they collected from [Oz Gas] for oil, gas and mineral interests and [Oz Gas] has no valid claim for a refund under Section 5556b(a).

Id. at 6.

[1, 2] The court then turned to the retroactivity of *IOGA* independent of Section 5556b. On this question, the court applied the three-prong test for determining retroactivity as a jurisprudential matter, as set forth in *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106–07, 92 S.Ct. 349, 30 L.Ed.2d 296 (1971). The *Chevron* analysis looks to: (1) whether the decision established a new principle of law; (2) a balancing of the merits by looking at the history of the rule in question, its purpose and effect, and whether retroactive application will further or retard its operation; and (3) an evaluation of the equities involved. As to the first factor, the trial court concluded that *IOGA* did announce a new principle of law because this Court "decided an issue of first impression whose resolution was not clearly foreshadowed." Tr. Ct. Op. at 9 (citing *Chevron*, 404 U.S. at 106, 92 S.Ct. 349). The trial courts conclusion that *IOGA* was not foreshadowed was based upon *F.H. Rockwell Co. v. Warren County*, 228 Pa. 430, 77 A. 665 (1910), where this Court held that oil and gas interests underlying unseated lands were taxable as real estate and were actually defined as real estate.[2] The trial court noted that, since *Rockwell*, "local governments have been taxing oil and gas interests for decades," and several cases since *Rockwell* identified oil, gas and minerals as "real estate and taxable." Thus, according to the trial court, the decision in *IOGA* represented a departure from decades of taxa-

2. "Unseated land" is land that is not listed on the tax rolls by a specific owner. In *Rockwell*, the Court held that if one party owns the land and another owns the subsurface oil and gas interest on these unseated lands, both interests are taxable as real estate.

tion of oil and gas interests, upon which taxing authorities had relied. *Id.*

Regarding the second *Chevron* factor, the trial court stated that the purpose of the taxing statute is straightforward—to allow political subdivisions to collect taxes on real estate. The overall effect of *IOGA*, in the courts view, was to grant the plaintiff in that case equitable and declaratory relief which, by its nature, is forward looking. In addition, the court noted that retroactive application would deprive political subdivisions of revenues already disbursed for the needs of the local governments and would, therefore, thwart the purpose of the statute. Finally, in the courts view, the third factor, the equities, weighed heavily in favor of prospective application of *IOGA* because for nearly 100 years property owners had paid *ad valorem* taxes on oil and gas interests, and tax sales had resulted from non-payment of those taxes. Retroactive application of *IOGA* would, in effect, invalidate each of those tax sales, perhaps leading prior owners to seek return of the properties lost to those tax sales. The court also recognized the burden on the Taxing Authorities of having to refund taxes paid for the three years prior to *IOGA*, which could prove financially devastating to small rural governments that have depended on the taxation of oil and gas interests. Thus, the trial court ultimately found that: "based on a careful analysis of the *Chevron* factors, this Court concludes that all three prongs are satisfied and that the [*IOGA*] decision should be applied prospectively only." Tr. Ct. Op. at 12.

Oz Gas appealed to the Commonwealth Court, which reversed in a brief, published *en banc* opinion authored by the Honorable Rochelle S. Friedman. The Honorable Renee Cohn Jubelirer dissented without opinion. The majority determined that the language of Section 5566b is clear and unambiguous and plainly provides for a refund of taxes to which the taxing authority was not legally entitled, a determination that may result from a subsequent decision of a court. *Oz Gas, Ltd. v. Warren Area Sch. Dist.*, 886 A.2d 336 (Pa. Cmwlth.2005).[3] Given its finding that the refund statute alone was dispositive, the Commonwealth Court did not address Oz Gas's alternative argument in favor of retroactivity pursuant to *Chevron*.

This Court granted further review. Appellant Forest Area School District ("Forest") has filed a brief in this Court, and appellants Warren Area School District, Warren County and Deerfield Township (collectively "Warren") have filed a single, joint brief.[4] Regarding the issue of Section 5566b's scope, Forest argues that Sec-

3. The majority's reasoning reads, in its entirety, as follows:

> The language of [Section 5566b] is clear and unambiguous. A taxpayer who files a written claim for a tax refund within three years of payment of a tax is entitled to a tax refund if the political subdivision was not legally entitled to collect the tax. 72 P.S. § 5566b(a). Moreover, the taxpayer may seek the tax refund under the Refund Law where the taxpayer's claim is to recover taxes paid under a statutory interpretation of a taxing provision which a court subsequently held to be erroneous. 72 P.S. § 5566b(b). Here, Oz paid taxes to the taxing authorities from 1999 through 2002 under an interpretation of section 201(a) of the Assessment Law which our supreme court subsequently held was erroneous. [*IOGA*] Thus, Oz has a right to a tax refund for the taxes it paid under section 201(a) of the Assessment Law for the three years prior to the filing of its claim.

Oz Gas, 886 A.2d at 338.

4. Neither Warren County nor Deerfield Township filed petitions for allowance of appeal; nevertheless, they have joined in Warren Area School District's brief. Appellant Triumph Township filed a petition for allowance of appeal but did not file a brief in this appeal.

tion 5566b does not automatically entitle Oz Gas to a refund because the clear intent of the statute is to provide a refund only when the political subdivision is "not legally entitled" to the tax, a term that is not defined in the statute. According to Forest, the Commonwealth Court erred by finding that the requirement that the taxing authority is not legally entitled to the tax pursuant to Section 5566b(a) is met when, consistent with Section 5566b(b), the tax statute is subsequently found to be invalid by a court of competent jurisdiction. This intermingling of the subsections is, Forest claims, contrary to Section 1903(b) of the Statutory Construction Act, 1 Pa.C.S. § 1903(b), which provides that: "General words shall be construed to take their meanings and be restricted by preceding particular words." Forest contends that subsection (b) deals with alternative refund remedies unless the tax provision is held to be invalid, and that there is no indication in the statute that the alternative remedy provision is intended to define the term "not legally entitled" as used in subsection (a).

Forest further argues that the Commonwealth Courts interpretation of Section 5566b is in conflict with *McNulty,* where this Court held that a tax refund statute by itself did not resolve the question of whether a decision like *IOGA*, disapproving a tax, should apply retroactively. Instead, Forest submits, the court must look to judicial precedent to determine the issue of retroactivity as the question of retroactivity in this instance is a judicial question, not a legislative one, which must be resolved by applying the *Chevron Oil* test.

For its part, Warren adds that Section 5566b is a procedural statute establishing a mechanism for a taxpayer to seek a refund of taxes to which the taxing authority was not legally entitled, but it does not confer any self-effectuating, substantive right to a refund. Warren notes (as Forest does) that at common law there was no right to a refund even if taxes were mistakenly paid or wrongly assessed. Section 5566b, therefore, is significant in that it altered the common law by providing a mechanism for refund. Thus, according to Warren, *Oz Gas* is entitled to a refund only of any taxes paid after *IOGA* because, after that decision, the Taxing Authorities were not legally entitled to collect the taxes.

As to the issue of the retroactive effect of *IOGA*, both Forest and Warren argue that the proper means of determining whether a decisional rule should apply retroactively is the three-prong test set forth in *Chevron,* 404 U.S. at 106–07, 92 S.Ct. 349. Forest and Warren both argue that the equities in this instance weigh heavily in favor of prospective application of *IOGA* due to the financial burden of refunding three years worth of presumptively-valid tax assessments.

Oz Gas responds that, contrary to appellants' arguments, the General Assembly's decision to authorize refunds of a tax subsequently held to be invalid or inapplicable supersedes a courts authority to determine that a refund is not available, citing to *First National Bank of Fredericksburg v. Commonwealth,* 520 Pa. 244, 553 A.2d 937 (1989). In enacting Section 5566b, *Oz Gas* argues, the General Assembly revealed its intention that, where a party pays taxes that are subsequently found to be uncollectible, the party is entitled to a refund of the taxes paid for a limited three-year period. Oz Gas contends that Section 5566b would be rendered meaningless if a court finding a tax invalid could give that finding prospective-only application, where it was plainly the legislative intention to provide a mechanism for obtaining a refund of payments made on an invalid tax. Oz Gas counters Forests argument that the language of Section 5566b discussing

taxes subsequently held invalid does not define the phrase "not legally entitled" by insisting that the only reasonable interpretation of Section 5566b would link the two phrases, with the concept of a subsequent holding of invalidity giving meaning to the term not legally entitled.

On the issue of the retroactivity of *IOGA*, *Oz Gas* claims that retroactive application is compelled by the U.S. Supreme Courts decision in *Harper v. Virginia Department of Taxation*, 509 U.S. 86, 113 S.Ct. 2510, 125 L.Ed.2d 74 (1993), where the High Court held that decisions involving interpretations of federal law must be given retroactive effect. Oz Gas argues that this matter involves a federal question, namely the potential disparate treatment of the successful taxpayer in *IOGA* when compared to other taxpayers who paid the same invalid tax but may not be entitled to a refund. Finally, *Oz Gas* urges this Court to adopt the U.S. Supreme Courts holdings in *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 111 S.Ct. 2439, 115 L.Ed.2d 481 (1991) (Opinion Announcing the Judgment of the Court) (judicial decisions should not be subject to selective prospective application), and *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco*, 496 U.S. 18, 110 S.Ct. 2238, 110 L.Ed.2d 17 (1990) (where state penalizes taxpayers for late payment, thus requiring taxpayers to pay disputed taxes prior to obtaining review, state must provide a clear remedy).

[3] The issues are twofold: whether *IOGA* applies retroactively as a jurisprudential matter, and whether 72 P.S. § 5566b applies automatically in light of the retroactive application of *IOGA*. These issues involve pure questions of law; therefore, this Court's review is plenary. *E.g.*, *McGrory v. Commonwealth, Dep't of Transp.*, 591 Pa. 56, 915 A.2d 1155, 1158 (2007); *MCI WorldCom, Inc. v. Pa. Pub. Util. Comm'n*, 577 Pa. 294, 844 A.2d 1239, 1245 n. 3 (2004); *Mosaica Acad. Charter Sch. v. Commonwealth, Dep't of Educ.*, 572 Pa. 191, 813 A.2d 813, 817 (2002).

[4] We turn first to the issue of the retroactivity of this Court's decision in *IOGA*. There is no dispute that, in the wake of *IOGA*, the taxes previously paid by *Oz Gas* in this instance are no longer collectible by the Taxing Authorities. The question is whether *IOGA* also renders those taxes uncollectible retroactively for a three-year look-back period. The trial court found that this Court's determination in *McNulty*, as well as application of the traditional *Chevron* test for retroactivity, controls here. We agree.

McNulty involved a factual scenario similar to that presented here. In *McNulty*, a trucking association challenged Pennsylvania's axle tax and marker fees, which were assessed against common carriers. Ultimately, the U.S. Supreme Court found that such taxes and fees, when charged to carriers engaged in interstate commerce, violated the Commerce Clause of the U.S. Constitution, Article I, Section 8. *Am. Trucking Assns. v. Scheiner*, 483 U.S. 266, 107 S.Ct. 2829, 97 L.Ed.2d 226 (1987). On remand, the *McNulty* Court was charged with determining whether the U.S. Supreme Courts decision entitled the trucking association to a refund of taxes previously paid. While the matter was pending on remand, however, the U.S. Supreme Court granted *certiorari* on the very question presented on remand, *i.e.*, whether *Scheiner* applied retroactively or prospectively, and determined that the decision applied prospectively only. *Am. Trucking Assns. v. Smith*, 496 U.S. 167, 110 S.Ct. 2323, 110 L.Ed.2d 148 (1990) (plurality opinion).

In *Smith*, the four-Justice plurality[5] applied the *Chevron* test and determined that: (1) the decision in *Scheiner* clearly established a new principle of law by declaring the highway taxes unconstitutional pursuant to the Commerce Clause; (2) retroactive application of the *Scheiner* decision would not forward the operation of the decision; and (3) the relevant equities dictated prospective application because the Legislature did not believe the taxes to be unconstitutional, the taxing authorities collected taxes that the authorities reasonably believed were valid, and refunding the taxes could deplete the state treasury. *Id.* at 179–82, 110 S.Ct. 2323.

[5] This Court in *McNulty* realized that, even after the *Smith* decision, the question remained open whether *Scheiner* was to be given "purely prospective application," *i.e.*, whether it was to be limited entirely to future cases, or instead, the benefit of the decision should be made available to the challenger in *McNulty*, which was the litigation in which the constitutional holding was announced. After analyzing the *Smith* plurality's view that *Scheiner* should be applied prospectively only, this Court explained the significance of the *Smith* plurality's view:

> Under a ruling that *Scheiner* is to be applied prospectively, it is as though the taxes collected prior to the date of the *Scheiner* decision were not unconstitutional. This is the very meaning of prospective application; the holding of unconstitutionality applies *from the date of decision*, and not before.

McNulty, 596 A.2d at 787. Ultimately, the *McNulty* Court, embracing the logic employed in the *Smith* plurality, and in a case involving a question of "pure" prospective application, held that the *Scheiner* decision, which struck down a state tax on constitutional grounds, applied prospectively only. This was so because, until the *Scheiner* decision issued, the taxes were deemed valid.[6]

IOGA differs from *Scheiner* in that *IOGA* found that the *ad valorem* taxes on oil and gas reserves, at issue in that case, were improper as a matter of statutory construction, and not on constitutional grounds. A reasoned argument could be made (as it was made by the dissenting opinion in *Smith*) that a taxing statute found to be unconstitutional (as in *Scheiner*) should be deemed unconstitutional from its inception because the constitutional provision the statute violated never changed. By contrast, a colorable argument can be made that an interpretation of language in a taxing statute, because it is not grounded in unchanging constitutional provisions, may be said to be effective from the date of the decision announcing the interpretation.

Had this Court found the taxes assessed pursuant to Section 201(a) of the General

5. Justice O'Connor authored the plurality opinion, which was joined by Chief Justice Rehnquist and Justices White and Kennedy. Justice Scalia concurred in the judgment, reiterating his dissenting position in *Scheiner* that the tax involved was constitutional but agreeing that, once *Scheiner* was announced, the tax could no longer be levied. Justice Stevens dissented, joined by Justices Brennan, Marshall and Blackmun, opining that a statute that is declared unconstitutional does not become unconstitutional as of the date of the decision so finding, but rather was always unconstitutional.

6. The *Smith* plurality made clear that the question of the retroactivity versus prospectivity of a U.S. Supreme Court constitutional decision is itself a federal question. State courts, of course, are free to weigh in on such questions either in the first instance, or in the absence of clear guidance from the High Court. Given that *Smith* was a plurality decision, the *McNulty* Court was obliged to attempt to render a decision that would pass muster in the High Court.

County Assessment Law to be unconstitutional, *McNulty*, which remains good law, would counsel a conclusion that the decision had only prospective application, even though a statute that fails to pass constitutional muster presumably never was constitutional. In *IOGA*, this Court interpreted Section 201(a) and determined that *ad valorem* taxes could not be assessed against oil and gas reserves that remained underground as a matter of statutory construction. If a finding that the same tax was unconstitutional, meaning that the tax was never validly collected, would be subject to prospective-only application, it would defy logic to hold that *IOGA's* holding, based in statutory interpretation, must apply retroactively. This is so because the effect of retroactive application remains the same, regardless of the basis for the invalidation of the tax. Accordingly, pursuant to this Court's teaching in *McNulty*, we hold that the *ad valorem* taxes on underground oil and gas reserves are invalid prospectively, *i.e.*, only from the date of the *IOGA* decision and not before.

We also agree with the trial court that the conclusion that *IOGA* applies prospectively is buttressed by application of the *Chevron* test. The decision in *IOGA* established a new principle of law in that, prior to the decision, these sorts of taxes were deemed collectible pursuant to statute and precedent. For example, this Court's decision in *Rockwell*, 228 Pa. 430, 77 A. 665 (1910), which was cited by the trial court, held that the land and its subsurface minerals, including oil and gas, can be taxed separately as real estate in certain circumstances involving separate ownership of the land and the mineral rights. We recognize that *Rockwell* and cases like it were not directly on point for purposes of the question presented in *IOGA*, and thus, the *IOGA* decision did not require overruling the precedent. Nevertheless, *IOGA* acknowledged that cases such as *Rockwell* "establish, to some extent, oil and gas interests as real estate." *IOGA*, 814 A.2d at 182 n. 5 (collecting cases). *IOGA* then distinguished those decisions by noting that they arose in the context of disputes between landowners and those to whom they sold oil and gas interests, or between life tenants and the holders of a remainder interest, all of which merely touched on the issue of taxation of the oil and gas interests. *Id.* Since none of these cases discussed the precise issue presented in *IOGA*, the question in *IOGA* is properly viewed as an issue of first impression. But the decision, as a practical matter, unsettled expectations and a long-standing governmental reliance interest.

The other two *Chevron* factors likewise counsel a prospective-only holding. Applying *IOGA* retroactively would not forward the operation of the decision because the decision speaks for itself and clearly establishes that the taxes are uncollectible going forward. And, finally, the equities weigh heavily in favor of prospective-only application. Here, as in *Smith*, the Taxing Authorities collected and made use of the taxes at issue with the good faith belief that they were legally entitled to them. Requiring a refunding of the taxes would cause substantial financial hardship to the communities involved. In addition, the Taxpayers receive substantial relief even from prospective-only application as they will not be subject to this tax going forward. Accordingly, pursuant to the *Chevron* test, we conclude that retroactive application of *IOGA* would be inappropriate.

We are aware that, following briefing and argument in this matter, this Court recently decided *Kendrick v. District Attorney of Philadelphia County*, 591 Pa. 157, 916 A.2d 529 (2007), which also addressed retroactivity in the context of statutory interpretation. The issue in *Kendrick*, as framed in a certified question from the Third Circuit Court of Appeals faced with a federal *habeas corpus* attack

upon a final Pennsylvania conviction, was whether this Courts decision in *Commonwealth v. Besch*, 544 Pa. 1, 674 A.2d 655 (1996) should apply retroactively. *Besch* held that the term "enterprise" as used in the Pennsylvania Corrupt Organizations Act ("Pa.C.O.A"), 18 Pa.C.S. § 911 *et seq.*, did not contemplate enterprises that were wholly illegitimate, such as the drug organizations in which Besch and Kendrick were involved. *Kendrick* held that the *Besch* decision of necessity had retroactive application to the effective date of the statute in part because it was the first instance in which this Court had interpreted the relevant portion of the Pa.C.O.A. For that reason, *Kendrick* held, our interpretation of the statute in *Besch* did not create a new rule of law. We reasoned, in part, as follows: "[W]hen we have not yet answered a specific question about the meaning of a statute, our initial interpretation does not announce a new rule of law. Our first pronouncement on the substance of a statutory provision is purely a clarification of existing law." *Kendrick*, 916 A.2d at 538 (quoting *Fiore v. White*, 562 Pa. 634, 757 A.2d 842, 848 (2000)). We determined that the decision in *Besch* was entitled to retroactive application because the question presented "(a) involves an interpretation of a statute; and (b) far from involving a mere procedural matter, is a statute which defines criminal conduct." *Id.* at 539. We have since emphasized that *Besch* involved a "claim [that] implicates actual innocence on the Pa. C.O.A. charge." *Commonwealth v. Williams*, — Pa. ——, ——, 936 A.2d 12, 25 (2007).

Kendrick obviously is distinguishable from the case *sub judice*.[7] The issue here is the retroactive application of a judicial decision construing a taxing statute, not a decision defining the reach of a statute defining criminal conduct. The *McNulty* Court contrasted civil and criminal cases, noting that the retroactivity interests involved in civil cases are distinct from those involved in criminal matters:

> The taxpayers argue that applying *Scheiner* purely prospectively, denying them refunds, would have the effect of discouraging litigants from seeking the overruling of existing precedent. We have noted the force of this argument before. In *Commonwealth v. Geschwendt*, [500 Pa. 120, 454 A.2d 991 (1982)], it was observed that
>
> > There appears to be little support for a rule that would limit changes in state law only to future litigants and deny its benefits to the party in the proceeding in which the change is first announced. The concern with such a position is that it would stifle the initiative which is essential to a progressive, dynamic development of a system of justice.
>
> 500 Pa. at 128, 454 A.2d at 995–96. This observation, however, was directed particularly to the criminal law area, where the appeal is brought by an "individual defendant who is seeking relief for what is perceived by him to be a personal wrong or injustice [whose] concern is not the future of the law but rather its present application to him." *Id.* We distinguished the civil law area, where "the resources are available . . ., particularly in commercial matters, to institute and pursue a matter to establish new law without expectation of benefit in that lawsuit." *Id.* In cases such as this, moreover, there is always an incentive, in the avoidance of liability for payment of taxes or fees in the future, to challenge the validity of a statute.

McNulty, 596 A.2d at 789–90.

[6] The equities in criminal matters then—and particularly in cases involving

7. We note that *Kendrick* did not cite to, or purport to restrict or modify, *McNulty*.

the scope of conduct that may be deemed criminal—differ from the equities to be weighed when a civil statute is at issue. A retroactivity decision in a case like *Kendrick* implicates a fundamental liberty interest which simply is not present in a civil dispute involving a tax statute. This difference in interests is exemplified by the effect of a decision involving retroactivity. *IOGA* does not subject individuals to criminal liability but rather exempts certain taxpayers from paying *ad valorem* taxes. If a tax statute under which political subdivisions have been collecting taxes is declared invalid by this Court, as happened in *IOGA*, the future effect on the political subdivisions is clear, and those entities can budget public moneys to account for any decrease in tax revenue. To apply such a decision retroactively, however, subjects the taxing entities to the potentially devastating repercussion of having to refund taxes paid, budgeted and spent by the entities for the benefit of all, including those who challenged the tax.[8] In contrast, the *Besch* decision exempted certain individuals from the reach of a criminal statute, vindicating a liberty interest. Retroactive application of the decision to others who are deemed actually innocent as a result of the holding has no colorable negative consequences for a political subdivision.

[7] Due to the perhaps-unique effect of holding that a decision regarding a tax statute is retroactive, the approach in *McNulty* (and the *Smith* plurality) is sensible. To avoid the potentially devastating consequences to taxing entities, it is important that taxes collected pursuant to a valid statute remain valid unless and until otherwise determined by this Court. The incentive to challenge still remains for the challenge, if successful, results in relief from the tax going forward. With respect to tax statutes, then, we reaffirm *McNulty* in holding that a decision of this Court invalidating a tax statute takes effect as of the date of the decision and is not to be applied retroactively. Accordingly, *IOGA* does not apply retroactively to invalidate taxes paid by Oz Gas for the three years prior to the issuance of that decision.

[8] Given our conclusion that *IOGA* has prospective application only, the question of whether *Oz Gas* is entitled to a refund of taxes paid for the three years prior to the *IOGA* decision, under Section 5566b, is easily resolved. Section 5566b clearly entitles a taxpayer to a refund only where "the political subdivision is not legally entitled" to the taxes. Pursuant to *McNulty*, the significance of the prospective application of *IOGA* is that the taxes at issue were valid until the date of the decision in *IOGA*, and the Taxing Authorities were legally entitled to collect the taxes prior to that decision. Thus, because the authorities were legally entitled to the taxes paid prior to the *IOGA* decision, no refund is warranted under Section 5566b.

Accordingly, for the foregoing reasons, the decision of the Commonwealth Court is reversed.

Chief Justice CAPPY, Justice SAYLOR, EAKIN and BAER and Justice BALDWIN join the opinion.

8. The trial court stated that Oz Gas claimed to have paid a total of $177,389.28, with interest bringing the total of the refund it sought, exclusive of prejudgment interest, to $206,222.83. The Taxing Authorities asserted that their total exposure from all taxpayers during the relevant three-year period totaled nearly $1.9 million.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

IN RE: TAX SALE of 27.97% INTERESTS in 963 ACRES OF COAL MINERALS, OIL & GAS and known as CLEARFIELD COUNTY MAP No. 128-D02-000-00020	:	No. 2007-174 -CD

CASE NUMBER: 2007- -CD

TYPE OF CASE: Civil

TYPE OF PLEADING: PETITION TO SET ASIDE TAX SALE AND TO SET ASIDE ASSESSED TAXES PAST AND FUTURE

FILED ON BEHALF OF: Diana B. Simms, by her Attorney-in-Fact, Mary A. Collier

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
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FEB 02 2007 4 cc Atty Gearhart
William A. Shaw
Prothonotary/Clerk of Courts

Original upstairs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

IN RE: TAX SALE OF 27.97%	:	
INTEREST in 963 ACRES OF COAL,	:	
MINERALS, OIL & GAS and known	: No. 07- 174	-CD
as CLEARFIELD COUNTY	:	
MAP NO. 128-D02-000-00020	:	

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William A. Shaw Gearhart
Prothonotary/Clerk of Courts
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ANSWER TO MOTION TO DISMISS

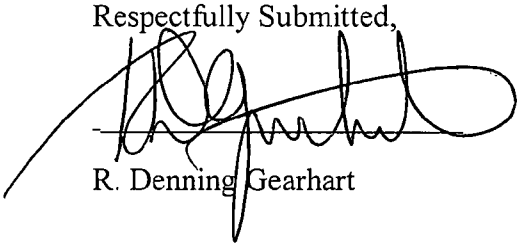
AND NOW COMES Mary Collier, as Attorney-in-fact for Dianne Simms, by and through her attorney, RDG, who answers as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. No answer required in that the Movants' averment is a conclusion and interpretation of Law. To the extent an answer is required, the averment is denied. Oz decreed that IOGA did not apply retroactively so as to require taxing municipalities to refund tax dollars already spent. It does not assert that the taxing municipality can continue with the punitive action of the sale of an owner's property due to the owner's failure to pay taxes it never received and could never constitutionally impose.
6. No answer required in that the Movants' averment is a conclusion and interpretation of Law. To the extent an answer is required, the averment is denied. Consistent with

the U.S. Supreme Court's three-prong test outlined in Chevron, the Pa. Supreme Court relied on the equities of each case. Certainly, the return of a hundred years of taxes already spent would be onerous to the municipality. But the case *sub Juris* does not involve the collection and expenditure of revenues, but the sale of property one week before IOGA. Your Honorable Court's ruling in the companion cases of In Re: Tax Sale of 27.9% Interest in 889 A of Oil & Gas in Sandy Township, Map No. 128-C02-000- 00091-MN, 05-1335-CD Clearfield Co C.P.; In Re: Tax Sale of 27.9% Interest in 889 A of Oil & Gas in Sandy Township, Map No. 128-C02-000- 00019-MN, 05-1336-CD Clearfield Co C.P. (attached).

WHEREFORE, Respondent prays Your Honorable Court to deny the Motion to Dismiss.

Respectfully Submitted,



R. Denning Gearhart

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

In Re: Tax Sale of 27.97% Interest in 990 Acres of Oil and Gas, Map No. 128-C02-000-00090-MN	:	No. 05-1335-CD
In Re: Tax Sale of 27.97% Interest in 990 Acres of Oil and Gas, Map No. 128-C02-000-00019-MN	:	No. 05-1336-CD

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William A. Shaw
Prothonotary/Clerk of Courts

OPINION

At issue in this case is the proposed tax sale of the 27.97% interest in 990 acres of oil and gas, located in Sandy Township, Clearfield County. The consolidated Petitions[1] contest the Clearfield County Tax Bureau's right to sell the interest in a private tax sale based upon the disallowance of taxing oil and gas interests as a separate estate for real estate purposes.

Colleen Bailey, Mark S. Booth, John L. Harris, Katherine Harris, William D. Harris and Ronald A. and Wanda J. Guenot, H. Richard Harris, Virginia C. Peterson, Martha S. Schweifurth, Diana B. Simms and Virginia H. Wilson (hereinafter "Petitioners") are the record and assessed owners of the interest. Their title derives through a deed from Alonzo Kline, et al. to Harry Boulton and others dated October 2, 1922, recorded in Clearfield County Deed Book 259, page 131. The deed conveyed "all their right and interest in and to the coal, coal oil, gas, fire clay and other minerals of every kind and character in, under, and upon ... Warrants 4226, 4229, and 4235...." By sundry deeds and inheritances, 27.97% of the gas and oil became vested in the Petitioners. (Parties' Stipulation of Facts ¶ 2).

The interest has been assessed for real estate tax purposes since 1957. Real estate taxes have been unpaid and delinquent since 1993. The tax claim for unpaid taxes from 1993 became absolute on December 31, 1994, in accordance with 72 P.S. § 5860.311. The assessment was

[1] The cases, No. 05-1335-CD and No. 05-1336-CD, were combined for hearing purposes and will be referred to collectively as the "consolidated Petitions."

offered twice for upset tax sale in 2000 and 2002, but no bids were received. In 2005, the Clearfield County Tax Claim Bureau received a bid to purchase the assessment at a private tax sale. (Parties' Stipulation of Facts).

The principle issue presented is the application of Independent Oil and Gas Association of Pennsylvania v. Board of Assessment Appeals of Fayette County, 572 Pa. 240, 814 A.2d 180 (2002). The Petitioners urge that the Independent Oil decision be applied retroactively. Conversely, the Tax Claim Bureau maintains that the ruling should apply prospectively because the decision announces a new rule of law.

The right of a county tax claim bureau to sell a property for unpaid taxes requires a valid assessment. Humphrey v. Clark, 359 Pa. 250, 58 A.2d 836 (1948). Without a valid assessment, the sale for nonpayment of taxes is void. Nyphen Corporation v. Sechrist, et al., 10 A.2d 822 (Pa.Super. 1948). Accordingly, "the tax claim bureau must have the statutory authority to convey good title to the property in some manner." Commonwealth v. Sprock, 795 A.2d 1100 (Pa.Cmwlth. 2002). Independent Oil clearly holds that there is no statutory authority to tax oil and gas interests as real estate. 814 A.2d at 182. Therefore, the imposition of such a tax violates the owners' constitutional rights. Id.

It is clear to this Court that the Clearfield County Tax Claim Bureau's request to sell the affected oil and gas interests must be denied. Here, the Petitioners remain the record owners of the gas and oil interests. No prior tax sales have been successful. The interests of a third party who purchased at a tax sale are not implicated. The Court believes a private tax sale without the requisite statutory authority is inequitable.

Additionally, the Tax Claim Bureau alleges that the Petitioners' claim is barred because they failed to file an assessment appeal prior to the claims becoming absolute. The Bureau maintains the consolidated Petitions are a collateral attack and their challenge should not be

heard. However, this Court has subject matter jurisdiction to hear the Petitioners' claims. The Independent Oil Court clearly explains the distinction between the requirements of the administrative process and challenging the constitutionality of a taxing authority's power.

> In *Borough of Green Tree v. Board of Property Assessments, Appeals and Review of Allegheny County* (internal citations omitted) we held that a substantial question of constitutionality concerning a taxing body's powers excuses resort to the administrative process and allows one challenging that authority to proceed directly in equity... their suit directly challenged the Board's authority to assess a tax in any case. Thus, as Appellants' challenge alleged a substantial constitutional question, i.e., the authority to impose the tax, the Commonwealth Court held that the trial court erred in dismissing the Appellants' action for lack of subject matter jurisdiction.

Independent Oil, 814 A.2d at 181. Accordingly, as the assessments and the proposed tax sales were made without the necessary authority, the Court believes the Petitioners' requested relief should be granted.

ORDER

NOW, this 10th day of January 2006, after consideration of the consolidated Petitions to Disapprove Private Tax Sale, the Court HEREBY FINDS AS FOLLOWS:

1. All tax liens assessed against the interests of Petitioners in Warrants 4226 and 4235 are hereby STRICKEN.
2. Any claims for real estate taxes assessed against Warrants 4226 and 4235 are hereby RELEASED for all prior years, the current year and future years.
3. The proposed private tax sale for Warrants 4226 and 4235 are hereby CANCELLED.

BY THE COURT,

/s/ Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

IN RE: TAX SALE OF 27.97% INTEREST IN 990 ACRES OF OIL AND GAS MAP NO. 128-C02-000-00090 MN	:	NO 05 - 1335 - C.D.

AND

IN RE: TAX SALE OF 27.97% INTEREST IN 990 ACRES OF OIL AND GAS MAP NO. 128-C02-000-00019 MN NOW MAPPED AS C02-000-00019 MN	:	NO 05 - 1336 - C.D.

BRIEF

Filed on Behalf of:
Petitioners

Counsel of Record for
This Party:

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

IN RE: TAX SALE OF 27.97% INTEREST IN 990 ACRES OF OIL AND GAS MAP NO. 128-C02-000-00090 MN	:	NO 05 - 1335 - C.D.

AND

IN RE: TAX SALE OF 27.97% INTEREST IN 990 ACRES OF OIL AND GAS MAP NO. 128-C02-000-00019 MN NOW MAPPED AS C02-000-00019 MN	:	NO 05 - 1336 - C.D.

BRIEF

The Petitioners, Colleen Bailey, Mark S. Booth, John L. Harris, Katharine Harris, William D. Harris, II, Ronald A. and Wanda J. Guenot, H. Richard Hess, Virginia C. Peterson, Martha S. Schweinfurth, Diana B. Simms, and Virginia H. Wilson, are the owners of a 27.97% interest in oil and gas underlying 990 acres in Warrant 4226 and 990 acres in Warrant 4235 in Sandy Township, Clearfield County, Pennsylvania ("**the Petitioners**").[1] They acquired title to the oil and gas by virtue of a deed from

[1] The factual issues are resolved by separate stipulations filed to each of the above proceedings and the factual background is identical for each proceeding except for the separate tracts involved. As the legal issues are the same for each proceeding, Petitioners are submitting one brief to cover both proceedings.

Alonzo Kline and others to Harry Boulton and others dated October 2, 1922, which was recorded in the Clearfield County Recorder of Deeds Office in Deed Book 259, page 131. In that deed, Kline conveyed "all their right title and interest in and to the coal, coal oil, gas, fire clay and other minerals of every kind and character in, under, and upon . . . Warrants 4226, 4229, and 4235 . . ." By sundry deeds and inheritances, 27.97% of the gas and oil became vested in the present petitioners.

In recognition of the 1922 deed, oil and gas have been assessed by name in Warrants 4226 and 4235 for these Petitioners since 1957. The real estate taxes assessed on the gas and oil were not paid commencing in the year of 1993 and the Clearfield County Tax Claim Bureau ("**the Bureau**") filed a claim against the unpaid taxes in 1994. The relevant framework for the taxation of real estate and its sale for delinquent taxes is found in two acts: (1) the General County Assessment Law, 72 P.S. § 5020.101 *et seq.* ("**GCAL**"); and (2) the Real Estate Tax Sales Law, 72 P.S. § 5860.101 *et seq.* ("**RETSL**"). GCAL enables the county to assess properties and provides the basis for local governments to tax the properties. RETSL establishes the Bureau and provides the procedure to collect delinquent taxes by sale of the properties. The framework in

RETSL involves the establishment of a tax claim and a sales procedure once the claim has become absolute. The procedure for filing a claim is found in § 301-315 of the RETSL, 72 P.S. §§ 5860.301-5860.315. Once the claim is absolute the Bureau holds an upset sale ("**the public tax sale**"). If the property is not sold at the public tax sale, the Bureau can sell the property either by a private sale or a judicial sale. The Bureau has scheduled tax sales for the gas and oil pursuant to § 613 of the RETSL (72 P.S. 5860.613) and proposes to sell Petitioners' interest in the gas and oil in Warrants 4226 and 4235 under that section by a private sale. Petitioners have filed a petition seeking to strike the tax claims against the oil and gas in Warrants 4226 and 4235, absolve the properties of any unpaid taxes, and to dismiss the proceedings for private sales of those properties. The fundamental reason for these requests is that the Pennsylvania Supreme Court in *Independent Oil and Gas Association of Pennsylvania v. Board of Assessment Appeals of Fayette County,* 814 A.2d 180 (Pa. 2002) ("***Independent Oil***") determined that "there is no authority for imposing a real estate tax on such interests [oil and gas in Pennsylvania] . . . ." *Id* at 814 A.2d 180.

ARGUMENT

I

The power to tax in Pennsylvania is vested in the General Assembly and local governments have no inherent power to tax or enforce the collection of tax by sale.

Real estate taxes are creatures of statutes and the power to tax must be derived from state statutes:

> "The thrust of Appellants' argument here, as it was before the trial court and the Commonwealth Court, is that there is no specific legislative authority granting Fayette County the ability to tax Appellants' oil and gas interests as real estate. In this regard, Appellants point out that '[I]n Pennsylvania, the power to tax is statutory and must be derived from [an] enactment of the General Assembly.' *Appeal of H.K. Porter Co.*, 421 Pa. 438, 219 A.2d 653, 654 (1966); *School District of Philadelphia v. Frankford Grocery Co.*, 376 Pa. 542, 103 A.2d 738, 741 (1954). Thus, according to Appellants, because there is no statutory authority for Fayette County to tax Appellants' oil and gas interests as real estate, the imposition of such a tax violated Appellants' constitution rights. We agree."

Independent Oil, *supra* at 814 A.2d 182. A necessary corollary of this conclusion is that none of the local governments: Clearfield County, Sandy Township, or the DuBois School District had the inherent power to tax oil and gas interests:

> "We initiate our inquiry with a restatement of a concept basic and inherent in our form

> of government, a concept established beyond question in the law of this Commonwealth. The power of taxation, in all forms and of whatever nature lies solely in the General Assembly of the Commonwealth acting under the aegis of our Constitution. Absent a grant or a delegation of the power to tax from the General Assembly, no municipality, including Philadelphia, a city of the first class, has *any* power or authority to levy, assess or collect taxes. To determine whether a municipality possesses the power to tax and, if so, the extent of such power, recourse must be had to the acts of the General Assembly."

Mastrangelo v. Buckley, 250 A.2d 447, 452-53 (Pa. 1969).

The effect of this lack of power is that the gas and oil of Petitioners was immune from taxation by the local governments:

> "The elementary premise underlying taxation is that the power to tax is exclusively vested within the legislature. *Commonwealth v. Dauphin County*, 335 Pa. 177, 6 A.2d 870, 871 (1939). 'Property is immune from taxation if the taxing body has not been granted the authority to levy a tax.' *Delaware County*, 626 A.2d at 530."

SEPTA v. Board of Revision of Taxes, 833 A.2d 710, 713 (Pa. 2003). If the Petitioners' interest were immune from taxation, it follows that no delinquent taxes could have existed, nor could a tax claim arise therefrom.

As set forth in *In re Public Sale of Properties*, 841 A.2d 619 (Pa. Cmwlth. 2004), the purpose of the RETSL is merely to

collect taxes. *Id* 814 A.2d at 623. The Bureau is but the agent of the taxing districts in collecting the delinquent taxes. *Id* at 814 A.2d 622. Thus, if the taxing bodies could not impose the taxes, it follows neither they nor their agent could collect the taxes. If the taxing bodies had no power to impose the taxes, the entire procedure to collect taxes by the RETSL collapses. Without a valid tax, *ipso facto*, the Bureau has no power to act under the RETSL with regard to the properties involved.

II

The *Independent Oil* case did not announce a new rule of law and, under the *Fiore* case, the *Independent Oil* case must be applied retroactively.

The Bureau contends the *Independent Oil* case announced a new rule of law and must also be applied prospectively. It is true that where a new rule is announced in a case that ordinarily it is applied prospectively only. However, if the *Independent Oil* case were applied retroactively, the rule would apply to the Petitioners' taxes, claim, and prospective sale which would all be invalidated by its clear ruling.

This issue was answered by the recent Supreme Court case, *Fiore v. White*, 757 A.2d 842 (Pa. 2000). In that case, the United States Supreme Court had certified a question to the

Pennsylvania Supreme Court as to how a case was to be applied: prospectively or retrospectively. The court answered the question in this way:

> "There can be no change to statutory law where there has been no amendment by the legislature and no prior decision of this Court. Only the legislature has the authority to promulgate legislation. Our role is to interpret statutes as enacted by the Assembly. We affect legislation when we affirm, alter, or overrule our prior decisions concerning a statute or when we declare it null and void, as unconstitutional. **Therefore, when we have not yet answered a specific question about the meaning of a statute, our initial interpretation does not announce a new rule of law.** Our first pronouncement on the substance of a statutory provision is purely a clarification of an existing law." (emphasis added)

Id at 848. For that reason, the Court answered the United States Supreme Court that the case would be applied retroactively.

A review of the *Independent Oil* decision makes clear that, under the *Fiore* rule, the case is to be applied retroactively. The statute, the GCAL, had not been amended relevant to the case. See *Independent Oil, supra* at 814 A.2d 182-184. The Supreme Court had never ruled on that particular issue and no decision was being "affirmed, altered, or overruled" by the

case. *Id* at 814 A.2d 182 N. 5. Simply stated, the issue had never come before the Court.

Under the explicit rule of *Fiore*, the Court in *Independent Oil* did not announce a new rule of law. The meaning of a "new rule of law" is somewhat technical. Every case involving a novel issue announces a new rule of law in a sense. It is likely that most counties in Pennsylvania had assumed they had the power and could tax oil and gas interests under the GCAL and were surprised by the Supreme Court's ruling in the *Independent Oil* case. However, their view of the unexpected ruling of the court does not make it a new rule of law. Rather the technical meaning of a "new rule of law" with regard to precedential application as announced by the Supreme Court only applies to those cases where the court has "altered, overruled, or invalidated a statute." In the *Independent Oil* case, the Supreme Court merely determined that the General Assembly did not intend to tax oil and gas when it enacted the GCAL in 1933, *i.e.* it was purely a "clarification of that statute," and consequently the *Independent Oil* case must be applied retroactively. The result is that its holding invalidates the delinquent taxes, the tax claim, and the proposed tax sale.

III

As the *Independent Oil* case is to be applied retroactively, its rule establishes that the local governments did not have the power to subject the oil and gas interests of Petitioners to taxation, and the taxation, tax claim and proposed tax sale are simply invalid. As a result all of these acts were void and can be attacked by the Petitioners in this proceeding - - indeed at any time.

The underlying taxes in this case were imposed without the requisite authority and power. As a result, the entire enforcement powers set forth in the RETSL were exercised without the requisite authority and power. Admittedly, this is a most unusual case. However, the situation is analogous to the attempted enforcement of an invalid judgment:

> "It has also been argued that since there was never a direct appeal from Judge Alessandroni's order of July 11th that that order is legal and is not the subject of attack. This is an incorrect appraisal of the law. **An order which is illegal in its inception does not gain legality or validity because it is not appealed from.** This Court has the power to strike down an illegal act of a lower Court regardless of antecedents." (emphasis added)

Smith v. Gallaher, 185 A.2d 135, 146 (Pa. 1962). As stated in *Dime Savings Bank, FSB v. Greene*, 813 A.2d 893, 895 (Pa.Super. 2002):

> "A void decree can be attacked at any time. *Brokans v. Melnick*, 391 Pa.Super. 21, 569 A.2d 1373, 1376 (1989). Where a judgment is void, the sheriff's sale which follows is a nullity A judgment is void when the court had no jurisdiction over the parties, or the subject matter, **or the court had no power or authority to render the particular judgment**." (emphasis added)

The argument the Bureau advances that because the Petitioners did not attack the assessment, the claim, or the sale in the manner prescribed by the GCAL or the RETSL, the Bureau has acquired the power to sell the Petitioners' oil and gas in Warrants 4229 and 4235 is simply without foundation. The ministerial actions of the County issuing the assessment and the Bureau in filing the claim, conducting the upset sale, and now the proposed private sale must fail in the same fashion as a judicial act of entering a judgment without power. We submit the entire statutory scheme did not, indeed could not, apply since the taxing authorities had no power to tax the oil and gas interests. We submit the integrity of the GCAL and the RETSL is not implicated - simply neither statute applies. As the agent of the taxing bodies, the Bureau had no more power than they did. As a result, their acts are of no legal effect.

CONCLUSION

These taxing bodies and their agent, the Bureau, had no power to tax oil and gas interests from the inception of the GCAL in 1933. The Supreme Court in *Independent Oil* announced that the legislature never intended to tax oil and gas interests when the statute was enacted. The Court also made clear that its construction did not constitute a new rule of law and consequently was to be applied retroactively. As the actions of the taxing bodies and the Bureau were taken without power, they are void and can be attacked at any time. For these reasons, the Petitioners prayer in this case should, indeed, must be granted.

RESPECTFULLY SUBMITTED,

BELIN & KUBISTA

By _____
Carl A. Belin, Jr., Esq.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: TAX SALE OF 27.97%	:	
INTERESTS IN 963 ACRES OF COAL	:	
MINERALS, OIL & GAS and known	:	No. 2007-174-CD
as CLEARFIELD COUNTY	:	
MAP NO. 128-D02-000-00020	:	

CASE NUMBER:	No. 2007-174-CD
TYPE OF CASE:	Civil
TYPE OF PLEADING:	CERTIFICATE OF SERVICE
FILED ON BEHALF OF:	Diana B. Simms, by her Attorney-in-Fact, Mary A. Collier

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I. D. #26540
207 E. Market Street
Clearfield, PA 16830
(814) 765-1581

FILED NO CC
01/10:01/BK
FEB 13 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: TAX SALE OF 27.97%	:	
INTERESTS IN 963 ACRES OF COAL	:	
MINERALS, OIL & GAS and known	:	No. 2007-174-CD
as CLEARFIELD COUNTY	:	
MAP NO. 128-D02-000-00020	:	

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a certified copy of the Petition to Set Aside Tax Sale and to Set Aside Assessed Taxes Past and Future filed in the above captioned matter on Mary Ann Wesdock, at the Tax Claim Bureau, by depositing such documents in the United States Mail postage pre-paid and addressed as follows:

Mary Ann Wesdock
Tax Claim Bureau
Court House
Clearfield, PA 16830

By: _____
R. Denning Gearhart, Esq.
Attorney for Diana B. Simms, by her
Attorney-in-Fact, Mary A. Collier

Dated: February 12, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: TAX SALE of 27.97% INTERESTS in 963 ACRES OF COAL MINERALS, OIL & GAS and known as CLEARFIELD COUNTY MAP No. 128-D02-000-00020	:	No. 2007-174-CD

CASE NUMBER:	No. 07-174CD
TYPE OF CASE:	Civil/Divorce
TYPE OF PLEADING:	ACCEPTANCE OF SERVICE
FILED ON BEHALF OF:	Clearfield County Tax Claim Bureau

COUNSEL OF RECORD FOR THIS PARTY: Kim C. Kesner, Esq.
Supreme Court I.D. # 28307
23 North Second Street
Clearfield, PA 16830

FILED NO CC
01 10:42 BA
FEB 21 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: TAX SALE OF 27.97%	:
INTERESTS IN 963 ACRES OF COAL	:
MINERALS, OIL & GAS and known	: No. 2007-174-CD
as CLEARFIELD COUNTY	:
MAP NO. 128-D02-000-00020	:

ACCEPTANCE OF SERVICE

I, KIM C. KESNER, ESQ., Attorney for the Clearfield County Tax Claim Bureau, hereby acknowledge receipt on behalf of my client, Clearfield County Tax Claim Bureau, of a certified copy of the Petition to Set Aside Tax Sale and to Set Aside Assessed Taxes Past and Future which were filed in the above matter.

Kim C. Kesner, Esq.
Attorney for Clearfield County Tax
Claim Bureau

DATED: 2/20/2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

IN RE: TAX SALE of 27.97%	:	
INTERESTS in 963 ACRES OF COAL	:	No. 2007-174-CD
MINERALS, OIL & GAS and known	:	
as CLEARFIELD COUNTY	:	
MAP No. 128-D02-000-00020	:	

CASE NUMBER: 2007-174-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: AFFIDAVIT OF MAILING

FILED ON BEHALF OF: Diana B. Simms, by her Attorney-in-Fact, Mary A. Collier

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
207 E. Market Street
Clearfield, PA 16830
(814) 765-1581

FILED NO CC
01/10:42 BY
FEB 21 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

IN RE: TAX SALE OF 27.97% INTERESTS IN 963 ACRES OF COAL, MINERALS, OIL & GAS, and known, as CLEARFIELD COUNTY MAP NO. 128-D02-000-00020	:	No. 2007-174-CD

AFFIDAVIT OF MAILING

COMMONWEALTH OF PENNSYLVANIA	:	
	:	SS.
COUNTY OF CLEARFIELD	:	

R. Denning Gearhart, Esquire, the attorney for Plaintiff, being duly sworn according to law, says that he mailed by certified mail, restricted delivery, return receipt requested, a true and correct copy of the Petition to Set Aside Tax Sale and to Set Aside Assessed Taxes Past and Future filed in the above action, to the Todd D. Baumgardner and Timothy D. Baumgardner at their places of residence as evidenced by the signed receipt attached hereto as Exhibit 'A'.

R. Denning Gearhart, Esquire
Attorney for Diana B. Simms, by her
Attorney-in-Fact, Mary A. Collier

Sworn to and Subscribed
before me this 21 day
of February, 2007.

Kathleen A. Ricotta
Notary Public

Commonwealth of Pennsylvania
NOTARIAL SEAL
KATHLEEN A. RICOTTA, Notary Public
Clearfield Boro., County of Clearfield
My Commission Expires June 15, 2009

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Todd D. Baumgardner
RR 1, Box 372 D
West Decatur, PA
16878

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery
12-13-07

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☒ Yes

2. Article Number (Transfer from service label) 7005 0390 0003 7230 2546

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Timothy D. Baumgardner
P.O. Box 26
Lenox, PA 16849

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☒ Addressee

B. Received by (Printed Name) | C. Date of Delivery
Timothy D Baumgardner | 2/16/07

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☒ Yes

2. Article Number (Transfer from service label) 7005 0390 0003 7230 2539

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

EXHIBIT "A"

FILED 1cc Atty
m/ 11:05/01
FEB 23 2007 (GK)
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW

In Re: TAX SALE OF 27.97% INTEREST IN 963 ACRES OF COAL MINERALS, OIL & GAS AND KNOWN AS CLEARFIELD COUNTY MAP NO. 128-D02-000-00020	)))))	No.: 07-174-CD ORIGINAL

MOTION FOR EXTENSION TO FILE ANSWER TO PETITION TO SET ASIDE TAX SALE

AND NOW, comes Respondents, Timothy D. Baumgardner and Todd D. Baumgardner, through their attorney, Stuart L. Hall, Esquire, and make this Motion for Extension of Time. In support thereof, Respondents state the following:

1. Petitioner filed this Petition requesting that the Court set aside a tax sale which occurred on December 11, 2002.

2. At the tax sale, Respondents Timothy D. Baumgardner and Todd D. Baumgardner (hereinafter referred to as "Baumgardners") were the high bidders concerning a 27.97% interest in the coal, minerals and gas and oil rights to 963 acres of property in Clearfield County.

3. On February 20, 2007, at approximately 5:00 P.M., Baumgardners retained Stuart L. Hall, Esquire, to represent them in this matter. Attorney Hall's office is located at 138 East Water Street, Lock Haven, Clinton County, Pennsylvania.

4. A Rule Returnable currently exists directing that the Clearfield County Tax Claim Bureau file a written response on or before February 26, 2007.

5. Baumgardners wish to file a written response to the Petition but their counsel is unable to complete the necessary research and drafting of the Petition prior to the February 26, 2007 deadline.

6. Counsel for Baumgardners has spoken with Petitioner's counsel, R. Denning Gearhart, Esquire. Attorney Gearhart has graciously agreed to allow counsel for the Baumgardners until March 26, 2007 to file his written response.

7. Counsel for the Baumgardners has also spoken with Kim Kesner, Esquire, Solicitor for the Clearfield County Tax Claim Bureau. Attorney Kesner has no objection to allowing counsel for Baumgardners until March 26, 2007 to file a written response to the Petition.

THEREFORE, Stuart L. Hall, Esquire, counsel for Timothy D. Baumgardner and Todd D. Baumgardner respectfully requests that this Honorable Court grant his Motion for an Extension of Time to file a written response to the Petition in this matter.

Respectfully submitted,

LAW OFFICES OF MILLER & HALL

By _____

Stuart L. Hall, Esquire
Attorney for Timothy D. Baumgardner
and Todd D. Baumgardner
138 East Water Street
Lock Haven, PA 17745
(570) 748-4802

VERIFICATION

I, Stuart L. Hall, Esquire, Counsel for Timothy D. Baumgardner and Todd D. Baumgardner, hereby state that the language of the foregoing Motion for Extension of Time to File Answer to Petition to Set Aside Tax Sale is it is true and correct to the best of my knowledge, information, and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsifications to authorities.

LAW OFFICES OF MILLER & HALL

Date: February 22, 2007

By _____

Stuart L. Hall, Esquire
Attorney for Timothy D. Baumgardner
and Todd D. Baumgardner
138 East Water Street
Lock Haven, PA 17745
570-748-4802

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW

In Re: TAX SALE OF 27.97% INTEREST IN 963 ACRES OF COAL MINERALS, OIL & GAS AND KNOWN AS CLEARFIELD COUNTY MAP NO. 128-D02-000-00020	)))))	No.: 07-174-CD

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of February, 2007, I served a copy of the foregoing Motion for Extension to File Answer to Petition to Set Aside Tax Sale upon R. Denning Gearhart, Esquire, 207 East Market Street, Clearfield Pennsylvania 16830 and Kim Kesner, Esquire, 15 North Front Street, P. O. Box 1, Clearfield, Pennsylvania 16830, by United States first class mail, postage prepaid, the original being filed with the Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania.

LAW OFFICES OF MILLER & HALL

By _____

Stuart L. Hall, Esquire
Attorney for Timothy D. Baumgardner
and Todd D. Baumgardner
138 East Water Street
Lock Haven, PA 17745
(570) 748-4802

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW

In Re: TAX SALE OF 27.97% INTEREST IN 963 ACRES OF COAL MINERALS, OIL & GAS AND KNOWN AS CLEARFIELD COUNTY MAP NO. 128-D02-000-00020	)))))	☐ ORIGINAL No.: 07-174-CD

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance in the above-referenced matter on behalf of Timothy D. Baumgardner and Todd D. Baumgardner. Thank you for your cooperation.

Respectfully submitted,

LAW OFFICES OF MILLER & HALL

By _____
Stuart L. Hall, Esquire
Attorney for Timothy D. Baumgardner
and Todd D. Baumgardner
138 East Water Street
Lock Haven, PA 17745
(570) 748-4802

FILED NO CC
m/11:04/Bst
FEB 23 2007 copy to C/A
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW

In Re: TAX SALE OF 27.97% INTEREST IN 963 ACRES OF COAL MINERALS, OIL & GAS AND KNOWN AS CLEARFIELD COUNTY MAP NO. 128-D02-000-00020	)))))	No.: 07-174-CD

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of February, 2007, I served a copy of the foregoing Praecipe for Entry of Appearance upon R. Denning Gearhart, Esquire, 207 East Market Street, Clearfield Pennsylvania 16830 and Kim Kesner, Esquire, 15 North Front Street, P. O. Box 1, Clearfield, Pennsylvania 16830, by United States first class mail, postage prepaid, the original being filed with the Prothonotary of the Court of Common Pleas of Clearfield County, Pennsylvania.

LAW OFFICES OF MILLER & HALL

By _____
Stuart L. Hall, Esquire
Attorney for Timothy D. Baumgardner
and Todd D. Baumgardner
138 East Water Street
Lock Haven, PA 17745
(570) 748-4802

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

In Re: Tax Sale of 27.97% Interest in 963 Acres of Coal Minerals, Oil and Gas and Known as Clearfield County Map No.: 128-Do2-000-00020

_____
(Plaintiff)

_____
(Street Address)

_____
(City, State ZIP)

VS.

_____
(Defendant)

_____
(Street Address)

_____
(City, State ZIP)

CIVIL ACTION

No. 07-174CD

Type of Case: _____

Type of Pleading: Verifications

Filed on Behalf of:

Todd D. Baumgardner and Timothy D. Baumgardner
(Plaintiff/Defendant)

Stuart L. Hall, Esquire
(Filed by)

138 East Water Street
Lock Haven, PA 17745
(Address)

570-748-4802
(Phone)

_____
(Signature)

FILED
m/10:55/cc
APR 16 2007
GK

William A. Shaw
Prothonotary/Clerk of Courts

07-174-CD

ORIGINAL

VERIFICATION

I, Timothy D. Baumgardner, hereby state that the language in the Answer with New Matter filed in this action in response to the Petition to Set Aside Tax Sale is that of counsel and not necessarily my own; however, I have read the foregoing document and, to the extent it is based upon information that I have given to counsel, it is true and correct to the best of my knowledge, information, and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsifications to authorities.

Date: March 31, 2007

Timothy D. Baumgardner

VERIFICATION

I, Todd D. Baumgardner, hereby state that the language in the Answer with New Matter filed in this action in response to the Petition to Set Aside Tax Sale is that of counsel and not necessarily my own; however, I have read the foregoing document and, to the extent it is based upon information that I have given to counsel, it is true and correct to the best of my knowledge, information, and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsifications to authorities.

Date: March 31, 2007

Todd D. Baumgardner

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: TAX SALE OF 27.97%	:	
INTERESTS IN 963 ACRES OF COAL	:	
MINERALS, OIL & GAS and known	:	No. 2007-174-CD
as CLEARFIELD COUNTY	:	
MAP NO. 128-D02-000-00020	:	

CASE NUMBER:	No. 2007-174-CD
TYPE OF CASE:	Civil
TYPE OF PLEADING:	CERTIFICATE OF SERVICE
FILED ON BEHALF OF:	Diana B. Simms, by her Attorney-in-Fact, Mary A. Collier

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I. D. #26540
207 E. Market Street
Clearfield, PA 16830
(814) 765-1581

FILED NO CC
01 11:06 BY
JUL 23 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: TAX SALE OF 27.97%	:	
INTERESTS IN 963 ACRES OF COAL	:	
MINERALS, OIL & GAS and known	:	No. 2007-174-CD
as CLEARFIELD COUNTY	:	
MAP NO. 128-D02-000-00020	:	

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a certified copy of the Answer to Motion to Dismiss filed in the above captioned matter on the following by depositing such documents in the United States Mail postage pre-paid and addressed as follows:

Kim C. Kesner, Esq.
212 South Second Street
Clearfield, PA 16830

By: _____
R. Denning Gearhart, Esq.
Attorney for Diana B. Simms, by her
Attorney-in-Fact, Mary A. Collier

Dated: July 21, 2008

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: TAX SALE OF 27.97% INTERESTS: No. 07-174-CD
in 963 ACRES OF COAL MINERALS, :
OIL & GAS and known as :
CLEARFIELD COUNTY :
Map No. 128-D02-000-00020 :

FILED
AUG 06 2008 @
0/10:00/w
William A. Shaw
Prothonotary/Clerk of Courts
3 CERT TO
KRSNAK

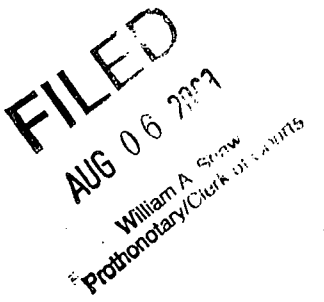
ORDER

AND NOW, this 5th day of August, 2008,

IT IS HEREBY ORDERED AND DECREED that Argument shall be scheduled on the Joint Motion to Dismiss on the 2nd day of September, 2008, in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
@ 10:00 A.M.

BY THE COURT:

Judge



DATE: 8-6-01

X You are responsible for serving all appropriate parties.

____ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: TAX SALE of 27.97% INTERESTS in 963 ACRES OF COAL MINERALS, OIL & GAS and known as CLEARFIELD COUNTY MAP No. 128-D02-000-00020	* * * *	NO. 07-174-CD

ORDER

NOW, this 3rd day of September, 2008, following argument on the Joint Motion to Dismiss filed on behalf of Respondents Clearfield County Tax Claim Bureau and Timothy D. Baumgardner and Todd D. Baumgardner and in consideration of Independent Oil and Gas Association of PA v. Board of Assessment Appeals of Fayette County, 814 A.2d 180 (Pa. 2002) and Oz Gas Ltd. v. Warren County School District, 938 A.2d 274 (Pa. 2007); it is the ORDER of this Court that the Joint Motion be and is hereby GRANTED. The above-captioned matter is hereby dismissed with prejudice.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

FILED ICC
09:29 BA Attys: Gearhart
SEP 04 2008 Kesner
Hall

William A. Shaw
Prothonotary/Clerk of Courts

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SEP 0 4 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/4/08

_____ You are responsible for serving all appropriate parties.

__X__ The Prothonotary's office has provided service to the following parties:

_____ Plainuiff(s) _____ Plaintiff(s) Attorney __X__ Other

_____ Defendant(s) _____ Defendant(s) Attorney Attorneys Gearhart, Kesner, and Hall

_____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: TAX SALE of 27.97% INTERESTS in 963 ACRES OF COAL MINERALS, OIL & GAS and known as CLEARFIELD COUNTY Map No. 128-D02-000-00020

No. 2007-174-CD

Type of Pleading:
CERTIFICATE OF SERVICE

Filed on Behalf of: Clearfield County Tax Claim Bureau

Counsel of Record for this Party:
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FILED NO CC
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JUN 27 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: TAX SALE of 27.97% INTERESTS in 963 ACRES OF COAL MINERALS, OIL & GAS and known as CLEARFIELD COUNTY Map No. 128-D02-000-00020	:	No. 2007-174-CD

CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 27th day of June, 2008, I caused to be served a certified copy of a Joint Motion to Dismiss and Rule Returnable dated June 26, 2008, by United States Mail, First Class, Postage Prepaid to the following:

R. Denning Gearhart, Esquire
207 East Market Street
Clearfield, PA 16830

Stuart Hall, Esquire
138 East Water Street
Lock Haven, PA 17745

Date: 6/27/08

Kim C. Kesner, Esquire
Solicitor for Clearfield County