

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	
Petitioner: PETRON DEVELOPMENT COMPANY, v. Respondent: YUMA COUNTY BOARD OF EQUALIZATION.	
Attorney or Party Without Attorney for the Petitioner: Name: Alan Poe Address: Holland & Hart LLP 8390 E. Crescent Pkwy., Suite 400 Greenwood Village, Colorado 80111 Phone Number: (303) 290-1616 E-mail: apoe@hollandhart.com Attorney Reg. No.: 7641	Docket Number: 41843 & 41844
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on September 21, 2004, Karen E. Hart and Sondra W. Mercier presiding. Petitioner was represented by Alan Poe, Esq. Respondent was represented by Josh Marks, Esq. Petitioner is protesting the fact that the 2003 Notices of Value were issued to Petron Development Company rather than to each individual personal property owner.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**Personal Property: Producing Gas/Primary Equipment
(Yuma County Schedule Nos.: Reference Exhibit A (attached))**

ISSUES:

Petitioner:

Petitioner contends that Petron Development Company, as operator but not the owner of gas wells in Yuma County, was inappropriately issued 2003 Notices of Value for personal property, and that in fact, the notices should have been issued to the individual personal property owners. Petitioner further contends that without proper notification, the individual owners' rights of appeal are not protected.

Respondent:

Respondent contends that Petron Development Company, as operator of the wells, is responsible for taxation issues, including personal property. Historically, the Notices of Value have been issued to the operator rather than to the property owners. The Yuma County Assessor does not have access to information regarding partial ownership interests in personal property located at individual gas wells.

FINDINGS OF FACT:

1. As indicated in Petitioner's Exhibit A, Petron Development Company filed Form DS-658 with the Yuma County Assessor's Office reporting personal property that was under their control, as they believed was required by § 39-5-107 C.R.S. Petron attached a list of the individual owners' names, respective ownership interests, addresses and Social Security Numbers or F.E.I.N.s.

2. Petitioner's witness, Mr. Jim Walker, Secretary-Treasurer of Petron Development Company, testified that Petron is the operator of the gas wells located in Yuma County, but with the exception of being the receiver for Puckett-Warren Oil, Petron does not own any working interest or royalty interest in the wells.

3. Mr. Walker testified that Petron and the working interest owners have an operating agreement that defines the rights and responsibilities of the operator. The operating agreement, presented in detail, includes a provision requiring the operator to report the personal property to the County and to pay the taxes when they are assessed. However, the operating agreement does not make Petron the owner of any of the equipment.

4. Petitioner's witness testified that he supplied the Yuma County Assessor with an alphabetical list of each working interest owner, the name of the property in which they had ownership and the percentage of ownership. An ownership list was attached to the declaration schedule for each property. Mr. Walker testified that he had filed one declaration schedule per well, as he believed was required by the Assessor's Reference Library (A.R.L.).

5. Mr. Walker testified that some owners had small ownership interests in several wells, with a total personal property value of less than \$2,500.00. In Mr. Walker's opinion, the Notices of

Value should have been sent to the partial interest owners so that they would have been properly notified and could have claimed exempt status.

6. Mr. Walker testified that since Petron is the receiver for Puckett-Warren Oil, it was appropriate that the Notices of Value for the wells wholly owned by Puckett-Warren Oil were issued to Petron.

7. Under cross-examination, Mr. Walker testified that Petron Development had paid personal property taxes for equipment on behalf of its working interest owners as required by the operating agreement. However, Mr. Walker noted that under Colorado Revised Statutes, Petron would not have standing to apply for an exemption on behalf of the individual taxpayers.

8. Mr. Walker testified that Petron is responsible for completing Form DS-658 on an annual basis, but that the Form does not require Petron to list the interest owners.

9. In redirect, Mr. Walker testified that he provided the names, addresses and Social Security Numbers or F.E.I.N.s of the owners or partial owners for each property in order to comply with § 39-5-107 and § 39-5-108 C.R.S. Mr. Walker maintained that Petron provided the ownership list to the Yuma County Assessor's Office; therefore, they were required to send the Notices of Value to each individual owner.

10. In response to questions from the Board, Mr. Walker testified that although Petron could pay the taxes assessed to the individual interest owners, Petron would not have standing to determine exempt status for individual owners. However, Mr. Walker did agree that Petron would have standing to protest or request exemption on behalf of the owners if the owners granted such authorization. He did not believe the operating agreements granted Petron that authority and there are no letters of agency.

11. Petitioner's witness, Mr. James R. "Bill" Hyde, Property Tax Specialist III with the Division of Property Taxation (DPT), testified that the Property Tax Administrator's position is that the Notice of Value should be sent to the owner of record in order to protect the owner's rights of appeal. Pursuant to the A.R.L., Volume 5, page 6.6 "taxable property in Colorado is generally assessable only to the owner thereof." Mr. Hyde testified that if he was the Assessor and knew that the working interest owner and the operator were different parties, he would make sure that the owner of record received the Notice of Value.

12. Mr. Hyde further testified that the Property Tax Administrator's position is that § 39-10-106 C.R.S. only applies to real property. However, in cross-examination, Mr. Hyde indicated that § 39-10-106 C.R.S. simply refers to "taxes," and does not specifically distinguish between taxes on real property or taxes on personal property. Mr. Hyde testified that there are three reasons why § 39-10-106 C.R.S. does not apply. First, the title of the statute deals with the collection of fractional interests. Second, the context of the statute deals with the issue of collecting delinquent taxes from the first purchaser, which does not involve personal property. Mr. Hyde indicated that there was no connection between the first purchaser and the personal property at a well, as it is possible to have

personal property at a well with no production. Third, the definitions in subsection (5) only deal with terms commonly used with respect to real property.

13. Mr. Hyde testified that by statute, Form DS-658 could be sent to either the owner or the operator and that the signature required on page 2 could be that of either the owner or the operator. Mr. Hyde further testified that the instructions for Form DS-658 provide no guidance or limitation as to who should be signing the form.

14. In redirect, Mr. Hyde testified that the A.R.L., Volume 2, page 5.2 recommends that assessors require letters of agency from persons who are not the owner of record but are filing a protest on behalf of the property owner. The owner is the only person recognized by law to have standing to file a protest. In cross-examination, Mr. Hyde clarified that a letter of agency is recommended but not mandated. Mr. Hyde further testified that the operator is required to file Form DS-658 but that a separate statute requires the operator to file a personal property report.

15. Respondent's witness, Steven C. Laughlin, a Certified General Appraiser with the Yuma County Assessor's Office, testified that Form DS-658 was mailed to the operator or agent of record of each well, as the operator or agent of record has the information necessary to accurately complete the form. The Notice of Value is based on the information provided on the form. Historically, the Notice has been sent to the operator or agent, who then has the opportunity to review the Notice for errors or to file a protest.

16. Mr. Laughlin testified that, pursuant to the Unit Valuation rule, the Notice of Value should be sent to the agent or operator listed on Form DS-658. He also indicated that the Yuma County Assessor's Office would not have the resources necessary to verify fractional ownership interests.

17. Mr. Laughlin testified that the A.R.L., Volume 5, Chapter 6 provides no indication of how Assessor's should handle fractional interest ownership or allocating taxable value based on ownership interests. Mr. Laughlin believed Petron was acting on behalf of the fractional interest owners because of the signature on Form DS-658. Mr. Laughlin agreed that Petron, as the operator, is not exempt from filing Form DS-658 even if it is neither the owner nor the agent. Mr. Laughlin was not aware of a specific statute that requires the Notice of Value to be sent to the entity that filed Form DS-658. Based on Mr. Hyde's testimony, Mr. Laughlin testified that he had not complied with the DPT policy requiring Notices of Value to be sent to the owners of the personal property. Mr. Laughlin justified sending the Notice of Value to Petron based on the assumption that it is the agent-operator in control and can therefore collect the tax from the owners.

18. In cross-examination, Mr. Laughlin testified that the difficulty in verifying the ownership information provided by Petron is similar to verifying any personal property declaration.

19. Mr. Laughlin agreed that the Notices showing Petron Development Company as owner were issued in error and that without a Notice of Value, the individual interest owners would not have the notice required to claim an exemption if they owned less than \$2,500.00 in personal

property in Yuma County. However, Mr. Laughlin testified that under the Unit Valuation rule, the Notice would list the total property value, not the partial ownership interest value.

20. Mr. Laughlin testified that § 39-10-106 (2) C.R.S. indicates that the Notice of Value should be sent to the unit operator because the equipment is in the operator's control. Mr. Laughlin testified that he believes the statute applies to personal property and that the proportion of the personal property taxes is based on the percentage of the net taxable revenues received. However, he indicated that Yuma County would not notify the royalty owner of personal property tax for property in which they have no interest.

21. Mr. Laughlin testified that the Unit Assessment rule was applied to the fee simple interest as a whole and that the term "fee simple" typically refers to real property rather than to personal property.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that, with the exception of personal property wholly owned by Puckett-Warren Oil, the tax year 2003 Notices of Value were incorrectly issued to Petron Development Company.

2. Pursuant to § 39-5-121 (1.5) C.R.S., "*No later than June 15 in each year, the assessor shall mail to each person who owns taxable personal property a notice setting forth the valuation of such personal property.*" In compliance with § 39-5-107 and § 39-5-108 C.R.S., Petron notified the Yuma County Assessor's office of the owners' names, ownership interests, addresses, and Social Security Numbers or F.E.I.N.s. Once notified of ownership, the Yuma County Assessor was required to send a Notice of Value for each fractional interest to the owner of the personal property. Further, based on testimony from both Mr. Hyde and Mr. Laughlin, appropriate notice to the owner would be required to preserve the right to appeal or apply for exemption pursuant to § 39-5-122 C.R.S.

3. The Board does not believe that § 39-10-106 C.R.S. can be applied to personal property associated with oil and gas wells. This statute appears to only address fractional interests in oil and gas real property.

4. The Board was not convinced that the Unit Assessment rule is applicable, as this appeal specifically deals with partial interest ownership in personal property. The greater testimony would indicate that the Unit Assessment rule more specifically deals with fee simple ownership in real property.

5. While the operating agreements require Petron to pay taxes on behalf of the partial interest owners, the agreements do not exempt the Assessor from properly notifying the owners of record.

ORDER:

The Yuma County Assessor is ordered to issue the 2003 Notices of Value to the partial interest owners of the subject personal property as reported by Petron Development Company.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 18th day of February 2005.

BOARD OF ASSESSMENT APPEALS

Karen E Hart
Karen E. Hart

Sondra W Mercier
Sondra W. Mercier

This decision was put on the record

FEB 18 2005

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

Penny S. Lowenthal
Penny S. Lowenthal



PETRON DEVELOPMENT COMPANY

Yuma County Schedule Nos. and Valuations

<u>SCHEDULE NO.</u>	<u>ASSESSOR'S VALUATION</u>
P900977	\$8,935
P900760	\$2,074
P900847	\$ 866
P900848	\$ 866
P900949	\$ 866
P900950	\$ 866
P900951	\$ 866
P900952	\$ 866
P900953	\$ 866
P900954	\$ 866
P900955	\$ 866
P900956	\$2,127
P900957	\$ 552
P900958	\$2,127
P900959	\$ 866
P900960	\$ 866
P900961	\$ 866
P900962	\$ 866
P900963	\$ 866
P900964	\$ 866
P900965	\$ 866
P900966	\$ 866
P900967	\$ 866
P900968	\$1,813
P900969	\$1,813
P900970	\$1,813
P900971	\$ 866
P900972	\$ 552
P900973	\$ 866
P900974	\$ 866
P900975	\$ 866
P900976	\$ 866
TOTAL	\$41,724

PETRON DEVELOPMENT COMPANY
on behalf of PUCKETT-WARREN OIL COMPANY
Yuma County Schedule Nos. and Valuations

<u>SCHEDULE NO.</u>	<u>ASSESSOR'S VALUATION</u>
P900005	\$8,935
P900007	\$5,913
P900075	\$1,813
P901054	\$ 866
P901055	\$ 866
P900280	\$ 552
P901056	\$ 552
P901057	\$ 866
P901058	\$2,310
P901059	\$2,310
P901060	\$ 866
P901061	\$ 866
P901062	\$ 866
P901063	\$2,127
P901064	\$2,127
P901065	\$ 866
P901066	\$ 552
P901067	\$ 552
P901068	\$ 866
P901069	\$1,813
P901070	\$ 552
P901071	\$ 552
P901072	\$ 866
P901073	\$ 552
P901168	\$8,935
TOTAL	\$47,941