

REDACTED DECISION – DK#’S 24-1067

**BY: MICHAEL E. BEVERS, ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON MARCH 28, 2025
ISSUED ON SEPTEMBER 5, 2025**

FINAL DECISION

On February 28, 2024, Respondent Matthew R. Irby, the State Tax Commissioner (hereafter “Tax Commissioner” or “Respondent”), issued Property Tax Ruling 24-38, which upheld the decision by the Assessor of Preston County, West Virginia (“Assessor”), that certain tangible personal property owned by the Petitioner XXXX (“Petitioner” or “XXXX”) was ineligible for special valuation as property directly used in a high-technology business for Tax Year 2024. The Assessor had denied the Petitioner’s request for special salvage value tax treatment and certified the question of that treatment to the Tax Commissioner.

The Petitioner timely filed a Petition for Appeal with the Office of Tax Appeals on February 29, 2024, and filed an Amended Petition for Appeal on March 29, 2024. The Office of Tax Appeals held an Evidentiary Hearing in Charleston, West Virginia, on October 21 and 22, 2024. Heather G. Harlan and Mary G. Williams represented the Petitioner, and Seth E. Harper, Assistant Attorney General, represented the Tax Commissioner. The matter became ripe for decision on March 28, 2025, when the post-hearing brief filing period ended, and the hearing record closed.

The following Findings of Fact are based on a review of the record created, which includes the evidentiary hearing transcript, exhibits, and the Parties’ briefs and arguments.

FINDINGS OF FACT

1. XXXX is a corporation operating in Hazelton and Tunnelton, both located in Preston County, West Virginia. Joint Exhibit (“JX-”) 1 at p. 00005; Evidentiary Hearing Transcript (“Transcript”) at p. 7, line 5 to p. 9, line 21.

2. The Petitioner's businesses are located in Grant District, Preston County, Map XX, Parcel XX, and Reno District, Preston County, Map XX, Parcel XX. Petitioner's Exhibit ("PX-") 2 at p. 00077.

3. The Parties do not dispute that the Assessor valued certain tangible personal property at XXXX's Hazelton location, which includes seven computers and 18 assorted items for use in XXXX's modular data centers, at \$XX, and assessed it based on that value. PX-2 at pp. 00065, 00158; Transcript at p. 109, line 4 to p. 110, line 10.

4. The Parties do not dispute that the Assessor valued tangible personal property at XXXX's Tunnelton location, which includes two computers and 11 assorted items for use in XXXX's modular data centers, at \$XX and assessed it based on that value. PX-2 at pp. 00071, 00164; Transcript at p. 109, line 10 to p. 110, line 10.

5. It is undisputed that XXXX is the sole owner of the assessed personal property and that no third party owns any personal property that was assessed to XXXX. Transcript at p. 110, lines 15-23.

6. It is also undisputed that XXXX requested special valuation only for the personal property it considered to be its high-technology assets, excluding all other personal property, such as transformers, office furniture and supplies, billing supplies, janitorial supplies, and marketing items, from its request for special valuation. PX-2 at pp. 00065, 00071, 00158, 00164; Transcript at p. 109, line 21 to p. 110, line 5.

7. Cryptocurrency is a digital or virtual currency not issued by a government or central bank. Instead, it is created by developers, traded over the internet, and can be freely held and transferred. *See* Transcript at pp. 19-21, 23.

8. Users can also generate new cryptocurrency tokens or coins through a process commonly called mining. Transcript at p. 39, line 15 to p. 40, line 10.

9. Cryptocurrency mining is the process by which people verify that transactions made by cryptocurrency users are valid, create blocks of these transactions that publicly record them, and generate new tokens or coins. Transcript at p. 39, line 15 to p. 40, line 10.

10. Cryptocurrency's value is stored on a blockchain, which acts like a bank's ledger by recording all transactions and data transfers. Transcript at pp. 16, 18, 20, 22.

11. When a block is created, validated, and added to the blockchain, it is immutable, meaning it cannot be changed, revised, updated, or hacked. Transcript at p. 16, lines 10-11; p. 20, lines 17-18; p. 22, lines 5-6; p. 52, line 16; p. 62, lines 1-5; p. 118, lines 19-21; p. 140, line 23; p. 145, lines 5-7.

12. Bitcoin, which was created in 2009, was the first cryptocurrency. Transcript at p. 146, lines 20-21.

13. XXXX manages and maintains modular data centers and provides data processing and hosting services, including maintaining computers owned by third-party customers. Transcript at pp. 102-105.

14. XXXX's data processing centers house and operate high-powered Application-Specific Integrated Circuit ("ASIC") computers, some of which XXXX owns, while most are owned by third parties and hosted and maintained by XXXX. PX 2 at pp. 00052, 00055, 00071; Transcript at p. 22, lines 12-14.

15. ASIC computers are sometimes called miners because gold is mined, and bitcoin is created using the computational power of ASIC computers, which effectively mine new bitcoin units or tokens. Transcript at p. 39, lines 15-23.

16. Miners compete to solve complex mathematical puzzles, and the first miner to solve the puzzle receives new bitcoin tokens as a reward, along with transaction fees for the transactions in that block. Transcript at pp. 19, 23, 64, 65, 68, 136.

17. The ASIC computers offer the computing power required to run and maintain the bitcoin blockchain network and to ensure its security. Transcript at p. 22, lines 12-14.

18. XXXX earns revenue by operating data processing centers, offering hosting services for which it charges hosting fees, and earning fractional bitcoin rewards whenever one of its ASIC computers mines bitcoin. Transcript at pp. 102-106.

19. XXXX's customers are businesses that use XXXX's network and pay user fees to conduct transactions; they pay XXXX for processing their financial data and hosting their ASIC computers. Transcript at pp. 52-54; p. 106, line 6; pp. 187-188.

20. XXXX owns about 20% of the ASIC computers at its facilities. Transcript at p. 72, lines 8-14 and p. 106, line 23.

21. XXXX processes data for the global bitcoin blockchain network and offers cybersecurity services; its operation involves both data processing and network management. Transcript at p. 62, lines 1-15.

22. XXXX processes financial transaction data created by others, but it does not create data itself. Transcript at p. 108, lines 1-10, 16-18; pp. 186-187.

23. At the time of the Hearing in October 2024, XXXX was the only meaningful blockchain data center company in the State of West Virginia. Transcript at p. 26.

DISCUSSION

This appeal seeks to overturn the Tax Commissioner's Property Tax Ruling 24-38, which upheld the Assessor's decision that certain tangible personal property owned by XXXX was ineligible for special valuation as property directly used in a high-technology business for Tax Year 2024. The Assessor told XXXX that she did not feel that XXXX qualified for salvage value, citing only "WV State Code." XXXX argues that it operates a high-technology business as defined in West Virginia Code Chapter 11, Article 15, subdivision 9h(b)(2), and that its modular data centers and ASIC

computers qualify for special valuation as property directly used in a high-technology business. The Tax Commissioner, on the other hand, argues that XXXX cannot obtain the relief it seeks because it filed its Commercial Business Property return late — an argument first raised in his post-hearing brief — and did not submit enough documentation for the Assessor to determine that it was eligible for special valuation of property used in a high-technology business.

Having reviewed the exhibits and evidentiary hearing transcript, the briefs and arguments of the parties, all other matters of record, and the applicable authorities, this Tribunal finds that XXXX has met its burden of proving that the Assessor’s decision, as upheld by the Tax Commissioner, was erroneous.

The statutes that govern this matter are unambiguous, and neither Party argues that any governing statute is ambiguous. Hence, this Tribunal will give force and effect to every word and give the words their plain and ordinary meaning.¹

I. STATUTORY FRAMEWORK

The West Virginia Constitution, Article X, Section 1, states that taxation must be equal and uniform across the state, and all real and personal property should be taxed in proportion to their value as directed by law. W. Va. Const. art. X, § 1. To that end, in 2009, the Legislature established a specific method for valuing certain high-technology property in West Virginia Code Chapter 11, Article 6J, known as the “High-Technology Business Property Valuation Act.” West Virginia Code Chapter 11, Article 6J, Section 3 provides:

¹ E.g., Syl. Pt. 4, *Antero Resources Corporation v. Steager*, 244 W. Va. 81, 851 S.E.2d 527 (2020); *Jackson v. Belcher*, 232 W. Va. 513, 753 S.E.2d 11 (2013); Syl. Pt. 2 *Fountain Place Cinema 8, LLC v. Morris*, 227 W. Va. 249, 707 S.E.2d 859 (2011); *State ex rel. Prosecuting Attorney of Kanawha County v. Bayer Corporation*, 223 W. Va. 146, 157, 672 S.E.2d 282, 293 (2008); Syl. Pt. 3, *Bluestone Paving, Inc., v. Tax Commissioner of the State of West Virginia*, 214 W. Va. 684, 591 S.E.2d 242 (2003); Syl. Pt. 2, *State v. Elder*, 152 W. Va. 571, 165 S.E.2d 108 (1968).

Notwithstanding any other provision of this code to the contrary, the value of servers directly used in a high-technology business or in an internet advertising business, as defined in section nine-h, article fifteen of this chapter, and the value of tangible personal property directly used in a high-technology business or in an internet advertising business, as defined in said section, for the purpose of ad valorem property taxation under this chapter and under article X of the constitution of this state, shall be its salvage value.

W. Va. Code Ann. § 11-6J-3 (West 2009). West Virginia Code Chapter 11, Article 6J, Section 2 provides, “[f]or the purposes of this article: . . . ‘[s]alvage value’ means five percent of original cost[.]” W. Va. Code Ann. § 11-6J-2 (West 2009).

West Virginia Code Chapter 11, Article 15, Section 9h provides sales tax exemptions for various high-technology services and specific computer hardware and software resulting from technological advancements in computers and the internet. W. Va. Code Ann. § 11-15-9h(a) (West 2009). These tax-exempt transactions include sales of electronic data processing services and tangible personal property for direct use in a high-technology or internet advertising business. West Virginia Code Chapter 11, Article 15, Section 9h defines “high-technology business” and “high-technology business services” as:

(2) “High-technology business” means and is limited to businesses primarily engaged in the following activities: Computer hardware design and development; computer software design, development, customization and upgrade; computer systems design and development; website design and development; network design and development; design and development of new manufactured products which incorporate computer hardware and software; *electronic data processing*; *network management*, maintenance, engineering, administration and security services; website management, maintenance, engineering, administration and security services and computer systems management, maintenance, engineering, administration and security services. High-technology business as defined herein is intended to include businesses which engage in the activities enumerated in this definition as their primary business activity, and not as a secondary or incidental activity and not as an activity in support of or incidental to business activity not specifically enumerated in this definition.

(3) “High-technology business services” means and is limited to computer hardware design and development; computer software design, development, customization and upgrade; computer systems design and development; website design and development; network design and development; *electronic data processing*; *computer systems management*; computer systems maintenance; computer systems engineering; computer systems administration and computer systems security services.

. . . .

(5) “Network” means a group of two or more computer systems linked together.

(6) “Server” means a computer or device on a network that manages network resources.

W. Va. Code Ann. §§ 11-15-9h(b)(2), (b)(3), (b)(5), and (b)(6) (West 2009) (emphasis added).

This tribunal will consider the Parties’ arguments with these legal standards in mind.

II. ANALYSIS

The primary questions before this tribunal are whether XXXX operates a high-technology business as defined in the West Virginia Code and whether its tangible personal property in Preston County is eligible for special valuation as property directly used in a high-technology business. The answer to each question is yes. The secondary questions before this tribunal are whether XXXX cannot obtain the special valuation it seeks because it filed its property tax return late, and whether the Assessor’s finding that XXXX did not submit enough information for the Assessor to determine whether it was eligible for special valuation precludes this tribunal from considering information the Assessor did not consider. The answer to each of these questions is no.

Courts nationwide have explained what bitcoin is and how it works.² And in this case, through testimony and post-hearing briefs, both Parties have clearly and thoroughly described bitcoin, blockchain technology, and cryptocurrency mining. What this tribunal hopes a reader will take from this decision is that bitcoin is a type of cryptocurrency, a kind of digital coin that can be used to pay for goods and services directly or exchanged for traditional currencies, and that bitcoin users can

² See, e.g., *United States v. Freeman*, 2025 WL 2115998 *1 (1st Cir. July 29, 2025); *Grayscale Investments, LLC v. Securities and Exchange Commission*, 82 F.4th 1239, 1243 (D.C. Cir. 2023); *Bielski v. Coinbase, Inc.*, 87 F.4th 1003, 1007 (9th Cir. 2023) (defining cryptocurrency); *United States v. Gratkowski*, 964 F.3d 307, 309 (5th Cir. 2020); *United States v. Costanzo*, 956 F.3d 1088, 1091 (D.C. Cir. 2020).

create new coins through a process called “mining,” which requires substantial computational power to solve cryptographic puzzles.

Bitcoin is a digital currency that has no physical coins, banknotes, or government backing. One bitcoin was worth less than a penny in 2009 and about \$30,000.00 by July 2023.³ Bitcoin is stored in a software program called a “wallet.” When bitcoin is transferred from one wallet to another, the transaction is recorded on a public, cryptographic ledger known as the blockchain, which is maintained by a decentralized network. Unlike electronic bank transfers, which can be canceled or reversed, bitcoin cannot be clawed back after it has been sent.

Cryptocurrency mining, often called “crypto mining,” is the process of validating transactions and adding them to the blockchain using complex computational algorithms. This process involves solving cryptographic puzzles, also known as proof-of-work problems. Since Bitcoin was created in 2009, crypto mining has advanced considerably, leading to the advent of specialized hardware such as Application-Specific Integrated Circuit (“ASIC”) computers.

XXXX operates and hosts high-powered ASIC computers, housed in modular data centers. These ASIC computers provide the necessary computing power to operate and secure the blockchain network. XXXX owns about 20% of the ASIC computers at its facilities.

We now turn to the Parties’ arguments.

II-A. XXXX OPERATES A HIGH-TECHNOLOGY BUSINESS AS THAT TERM IS DEFINED IN WEST VIRGINIA CODE CHAPTER 11, ARTICLE 15, SUBDIVISION 9h(b)(2).

XXXX argues first that it operates a high-technology business as that term is defined in West Virginia Code Chapter 11, Article 15, subdivision 9h(b)(2). XXXX’s argument is persuasive. Neither

³ *Grayscale Investments, LLC v. Securities and Exchange Commission*, 82 F.4th 1239, 1243 (D.C. Cir. 2023), citing John Edwards, *Bitcoin’s Price History*, INVESTOPEDIA.COM (2023), <https://perma.cc/98H5-T9MV>.

Party argues that West Virginia Code Chapter 11, Article 15, Section 9h is ambiguous. The statute is clear, and it provides that a business that engages in electronic data processing or network management, maintenance, administration, or security services falls within the definition of a high-technology business. W. Va. Code Ann. § 11-15-9h(b)(2) (West 2009).

XXXX, the CEO and co-founder of XXXX, provided detailed, credible testimony about the company's history in West Virginia, how cryptocurrency and crypto mining work, what ASIC computers do, what XXXX does, its revenue sources, and its classification as a high-technology business. He clearly explained how XXXX offers electronic data processing, network management, maintenance, engineering, administration, and security services. He also confirmed that all items XXXX claimed as high-tech assets are essential for system operation, network functioning, and computations, and that XXXX did not request salvage value for anything not directly involved in those processes.

E. Ryan Mink, CPA and XXXX's expert witness, has been with Suttle & Stalnaker since 2008. He testified that XXXX engages in data processing because miners process transactions and maintain the network. He explained how the company manages its local networks within its modular data centers — ensuring internet connectivity, powering the ASIC computers, maintaining cooling, and overseeing logistical factors. Mr. Mink stated that XXXX processes data for all digital currency transfers, which is at the core of its business, and that is all that the ASIC miners do.

Mr. XXXX explained how XXXX's business activities fit within the definition of high-technology business, going one by one in the order listed in the statute. He testified that XXXX:

- does not design or develop computer hardware;
- does not design, develop, customize, or upgrade computer software;
- does not design or develop computer systems;
- does not design or develop websites for others;

- *designs and develops networks;*
- does not design or develop new manufactured products that incorporate computer hardware and software;
- *provides electronic data processing services;*
- *provides network management, maintenance, engineering, administration, and security services;*
- does not provide website management, maintenance, engineering, administration, and security services; and
- *provides computer systems management, maintenance, engineering, administration, and security services.*

Transcript at pp. 77-84.

Mr. XXXX acknowledged that XXXX does not perform several of the activities listed in the statute, but he explained unequivocally that it designs and develops networks; provides electronic data processing services; provides network management, maintenance, engineering, administration, and security services; and provides computer systems management, maintenance, engineering, administration, and security services. He testified, in pertinent part:

[XXXX] exists only for the purpose of computing the data for the global blockchain network that provides its cybersecurity and provides its immutable transaction ledger, making those transactions possible, each ten-minute window. And in that regard, we're serving two functions, the data processing aspect of our business and the network management aspect of our business. And those are the only two functions of our business, our only reason for existing. We don't have any other purpose in life.

Transcript at p. 62, lines 1-6. The Tax Commissioner provided no expert witness report or testimony.

The terms bitcoin, cryptocurrency, crypto mining, blockchain, and ASIC computer do not appear in West Virginia Code Chapter 11, Article 15, Section 9h. These terms might not be widely understood by the general public, but they are familiar to and used by members of the high-tech industry. Mr. XXXX clearly explained all of these terms within the context of how XXXX provides electronic data processing and network management services, and he explained how XXXX's high-tech equipment qualifies for salvage value treatment.

First, this tribunal finds that XXXX provides electronic data processing. Mr. XXXX testified that XXXX's business is "only purely data processing." Electronic data processing is the only purpose of the ASIC computers. XXXX performs electronic data processing by handling data related to individuals' financial transactions using the blockchain network to buy or sell bitcoin. Once processed, these transactions are added to a queue of pending transactions, then further processed and added to the blockchain. When specifically asked whether and how XXXX's activities qualify as electronic data processing, Mr. Mink testified, "[s]o, the miners do all the processing to confirm all the data in the block and validate it. And then it moves to the next one, and then the next one validates it. That is all these [miners] do is process the transaction." Transcript at p. 148, lines 18-21.

XXXX's ASIC computers continually process data by providing access to and electronically managing the worldwide transactions of those buying and selling bitcoin on its blockchain network. Processing this data electronically on such a network is one of XXXX's main activities. With each new transaction, the blockchain record updates. Lastly, the ASIC computers have no other purpose than to process as many transactions as possible and keep the blockchain network running.

Second, this tribunal finds that XXXX provides network management services. Mr. XXXX and Mr. Mink each testified that XXXX manages both its local network and the global bitcoin blockchain network. Mr. XXXX explained how XXXX manages its local network at each of its modular data centers. Its local network includes the ASIC computers, the modular data centers that house them, and the internet that links the computer systems. These components enable the data center to participate in data computation and transmission to the blockchain network. The blockchain network sends information to the ASIC computers through the internet, which send information back to the blockchain network, constantly exchanging data every second of every day. This process could not occur without the integrated system of equipment. Mr. Mink testified that XXXX maintains its local network by ensuring the internet is operational, providing power to the ASIC computers, keeping them cool, and overseeing various logistical aspects.

XXXX's local network qualifies as a "network" under West Virginia Code Chapter 11, Article 6J, Section 2, and West Virginia Code Chapter 11, Article 15, Section 9h. It includes a system of computers exchanging information through the internet and modular data centers communicating with each other and with other computers worldwide. XXXX's activities qualify as "network management" because it operates its ASIC computers and modular data centers, and it oversees and maintains the ASIC computers to keep them running.

XXXX also aids in managing the global bitcoin blockchain network by overseeing and maintaining decentralized servers and by operating the ASIC computers connected to others worldwide. Every ten minutes, a new block is created, and its history is recorded on a ledger such that "[e]very miner confirms holistically, globally, the ledger that was created in that last ten-minute cycle." Transcript at p. 54 at 9-10. Once the block is generated, the financial ledger is communicated through the internet and shared by all ASIC computers around the world. When a new block is created, it is validated, confirmed, and revalidated before the next block is added to the chain. Due to this ongoing process by the ASIC computers globally, the blockchain network remains secure, preventing fictitious or incorrect transactions from being processed.

The global blockchain network is clearly a network, functioning as a system of specialized computers and servers that communicate worldwide whenever a financial transaction is submitted. XXXX manages this network by operating, hosting, and maintaining ASIC computers that process these transactions. The blockchain network serves approximately "half a billion people around the world" who buy and sell bitcoin. Transaction at p. 53, lines 1-5. If all ASIC computers worldwide were shut down, the blockchain network would stop operating.

To keep the blockchain network running, ASIC miners worldwide operate nonstop. As Mr. Mink testified, "XXXX is a piece of the pie, but every piece counts to maintain the security and operation of the network." Transcript at p. 146, lines 15-16. Although XXXX is a small part of the global blockchain

network, it is a vital component because its primary purpose is to ensure the operation of ASIC computers that power the worldwide blockchain network.

Because XXXX provides electronic data processing and network management services, this tribunal finds that XXXX fits within the definition of “high-technology business” in West Virginia Code Chapter 11, Article 15, Section 9h.

II-B. XXXX’S MODULAR DATA CENTERS AND ASIC COMPUTERS ARE DIRECTLY
USED IN A HIGH-TECHNOLOGY BUSINESS.

XXXX argues next that its modular data centers and ASIC computers are eligible for special valuation as property directly used in a high-technology business. This tribunal agrees.

The West Virginia Supreme Court of Appeals has recognized that occasionally, “the language used by the Legislature may be plain but it may have neglected to define a certain word or words used therein,” and “[i]n the absence of any definition of the intended meaning of words or terms used in a legislative enactment, they will, in the interpretation of the act, be given their common, ordinary and accepted meaning in the connection in which they are used.” *Antero Resources Corp. v. Steager*, 244 W. Va. 81, 89, 851 S.E.2d 527, 535 (2020).

“Direct use” is not defined in West Virginia Code Chapter 11, Article 15, Section 9h. But it is defined in West Virginia Code Chapter 11, Article 15, Section 2, which provides that any word used in Article 15 means what Section 2 says it means unless Article 15 provides a different meaning or the context clearly indicates otherwise. West Virginia Code Chapter 11, Article 15, subdivision 2(b)(4) provides that “directly used or consumed” in certain commercial activities or operations means “used or consumed in those activities or operations which constitute an integral and essential part of the activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the activities.” West Virginia Code Ann. § 11-15-2(b)(4) (West 2008).

In holding that, when the language of a statute is clear and unambiguous, the plain meaning should be accepted without applying interpretation rules, the West Virginia Supreme Court of Appeals analyzed West Virginia Code Chapter 11, Article 15, subdivision 2(b)(4) within the context of natural resource production activities. The Court reiterated that “[i]n the absence of any definition of the intended meaning of words or terms used in a legislative enactment, they will, in the interpretation of the act, be given their common, ordinary and accepted meaning in the connection in which they are used.” *Antero Resources Corp. v. Steager*, 244 W. Va. 81, 89, 851 S.E.2d 527, 535 (2020) (quoting *State ex rel. Prosecuting Attorney of Kanawha County v. Bayer Corp.*, 223 W. Va. 146, 157, 672 S.E.2d 282, 293 (2008), citing Syl. Pt. 1, *Miners in Gen Group v. Hix*, 123 W. Va. 637, 17 S.E.2d 810 (1941), overruled on other grounds by *Lee-Norse Co. v. Rutledge*, 170 W. Va. 162, 291 S.E.2d 477 (1982).

The *Antero* Court held that, based on the commonly accepted meaning of “essential,” portable toilets, sewage systems, related water systems, and septic cleaning charges were an “integral and essential part of Antero’s production activity, and as such, these items were directly used in the production process. It is difficult to imagine how the drilling operations could proceed without such facilities. Therefore, we conclude that these items qualify for the Direct Use Exemption.” *Antero*, supra, 244 W. Va. at 89, 851 S.E.2d at 535.

Here, this tribunal cannot imagine how XXXX’s electronic data processing and network management business could operate without its modular data centers and ASIC computers. The ASIC computers are constantly processing data and enabling access to worldwide bitcoin transactions on the blockchain network. Their sole purpose is to process as many transactions as possible and keep the bitcoin blockchain network running.

Both Mr. XXXX and Mr. Mink convincingly testified that processing electronic data and managing local and global networks are the core of XXXX’s business. Its modular data centers and ASIC

computers are integral and essential to its high-tech operations. For that reason, XXXX's modular data centers and ASIC computers qualify for a special salvage valuation.

Because XXXX's modular data centers and ASIC computers "integral and essential" to its high-technology business, this tribunal finds that the modular data centers and ASIC computers are eligible for special valuation as property directly used in a high-technology business as "direct use" is defined in West Virginia Code Chapter 11, Article 15, subdivision 2(b)(4).

II-C. THE LATE FILING OF XXXX'S TAX RETURN DOES NOT DEFEAT ITS CLAIM.

The Tax Commissioner first argues that XXXX cannot obtain the relief it seeks because it filed its Commercial Business Property return late, an argument he presented for the first time in his post-hearing brief. To support this argument, the Tax Commissioner relies on West Virginia Code Chapter 11, Article 6J, Section 5. But this tribunal is not persuaded.

West Virginia Code Chapter 11, Article 6J, Section 5 states, "[a]t any time after the property is returned for taxation, but prior to January 1 of the assessment year, any taxpayer may apply to the county assessor for information regarding whether any particular item or items of property constitute property directly used in a high-technology business or an internet advertising business under this article which should be subject to valuation in accordance with this article." W. Va. Code Ann. § 11-6J-5 (West 2009). But the statute does *not* provide that a taxpayer cannot qualify for salvage value unless it requests such treatment before January 1.

The controlling statute does not specify any penalty for filing a late return, nor is there evidence in this record that the Assessor or the Tax Commissioner mentioned any such penalty to XXXX. Additionally, as XXXX pointed out in its Reply Brief, the Commercial Business Property

Returns completed and sent to the Assessor by XXXX state, “FILING LATE OR FAILURE TO FILE MAY RESULT IN A PENALTY OF \$25 TO \$100.” *See* PX-2 at pp. 104, 108.⁴

Agencies are empowered to perform administrative and executive functions and often interpret their statutes and regulations to address individual cases. But no agency is authorized to alter or rewrite statutes under the guise of interpretation. Syl. Pt. 5, *Steager v. Consol Energy, Inc.*, 242 W. Va. 209, 832 S.E.2d 135 (2019). The Office of Tax Appeals lacks the authority to rewrite West Virginia law. For example, we are not authorized to award monetary damages or craft equitable remedies if following the law as written would lead to a harsh outcome.

The Office of Tax Appeals has limited jurisdiction. We must adhere to statutes and regulations as written. That is why we cannot create an equitable remedy based on the Tax Commissioner’s argument that XXXX cannot obtain relief because it filed its tax return late. *See, e.g.*, Syl. Pt. 4, *McDaniel v. West Virginia Division of Labor*, 214 W. Va. 719, 591 S.E.2d 277 (2003) (citing Syl. Pt. 3, *Mountaineer Disposal Service, Inc. v. Dyer*, 156 W. Va. 766, 197 S.E.2d 111 (1973)) (holding that administrative agencies and their officers are creatures of statute and delegates of the Legislature, and any authority they claim must be conferred by statute, either expressly or impliedly).

Here, the governing statute does not specify a penalty for filing a Commercial Business Property Tax return late. The only penalty supported by this record for late filing is a monetary fine of up to \$100.00. This record does *not* support denying the special valuation.

Since neither the Assessor’s denial of the special valuation nor the Tax Commissioner’s Property Tax Ruling was based on XXXX’s failure to file its return on time, and since there is no

⁴ Nothing in the record explains the origin of a monetary penalty for failure to file or late filing of a commercial personal property return, and this tribunal has found no statutory or regulatory authority for imposing such a penalty.

statutory penalty for late filing, this tribunal concludes that the late filing does not negate XXXX's claim.

II-D. XXXX HAS PROVIDED ENOUGH DOCUMENTATION FOR THIS TRIBUNAL TO FIND THAT IT QUALIFIES FOR SPECIAL VALUATION OF PROPERTY DIRECTLY USED IN A HIGH-TECHNOLOGY BUSINESS.

The Tax Commissioner acknowledges that “XXXX may well indeed be a business whose primary business involves tangible personal property used in a high-technology business,” but asserts that XXXX did not prove to the Preston County Assessor that it was entitled to special valuation of its personal property. Response Brief at p. 20. The Tax Commissioner argues that in Property Tax Ruling 24-38:

[t]he issue was not one of direct use or how integral the equipment is for such items as office furniture or billing supplies. It is not a question of what equipment qualifies as much as the issues are did the Petitioner provide enough documentation to qualify for the exemption and is Petitioner engaged in a high-technology [business] under the laws of the State of West Virginia.

Response Brief at pp. 14-15. This argument is not compelling.

Hearings before this tribunal are conducted *de novo*. West Virginia Code Chapter 11, Article 10A, Subsection 10(b) provides, “[a] hearing before the office of tax appeals shall be heard *de novo* and conducted pursuant to the provisions of the contested case procedure set forth in [the West Virginia Administrative Procedures Act] to the extent not inconsistent with the provisions of [West Virginia Code Chapter 11, Article 10A].” W. Va. Code Ann. § 11-10A-10(b) (West 2021). West Virginia Code of State Rules Title 121, Series 1, Section 2.6 explains, “[d]e novo” means the office of tax appeals will decide questions of fact and law based on the evidence and legal arguments presented in the proceedings before it.” W. Va. Code R. § 121-1-2.6 (2023).

“Trial *de novo*” is a well-known term defined as “[a] new trial on the entire case — that is, on both questions of fact and issues of law — conducted as if no trial had occurred previously.” *Black’s Law Dictionary* 1737 (10th ed. 2014). In a case involving mining rights to land in Preston

County, the Supreme Court of Appeals addressed the definition of “de novo” in the context of administrative appeals. *West Virginia Division of Environmental Protection v. Kingwood Coal Company*, 200 W. Va. 734, 490 S.E.2d 823 (1997). The *Kingwood Coal* Court considered the standard of review for an oversight board (the Surface Mine Board) in an appeal from a decision by an executive agency (the Department of Environmental Protection), and concluded that the Surface Mine Board correctly held a “de novo hearing.” *Kingwood Coal, supra*, 200 W. Va. at 745, 490 S.E.2d at 834. The Court held that “‘de novo’ means ‘[a]new; afresh; a second time,’” citing *Frymier–Halloran v. Paige*, 193 W. Va. 687, 693, 458 S.E.2d 780, 786 (1995) (quoting *Black’s Law Dictionary* 435 (6th ed. 1990)). The Court also emphasized that the comprehensive nature of “de novo” allowed the Surface Mine Board to act independently without any presumption that the decision below was correct.

This tribunal finds that the same principles apply here. The Parties appeared before this tribunal for a *de novo* hearing that lasted one and a half days. Before January 1, 2025, neither the Assessor nor the Tax Commissioner had the benefit of exhaustive testimony explaining why XXXX qualifies for a special valuation of property used in a high-technology business. However, this tribunal had that benefit.

Whether XXXX successfully proved that it qualifies for special salvage value to the Preston County Assessor or the Tax Commissioner is immaterial. XXXX presented sufficient documentary and testimonial evidence for this tribunal to find that XXXX’s business activities include providing electronic data processing and network management services, qualifying it as a “high-technology business” under West Virginia Code Chapter 11, Article 15, Section 9h. Moreover, its modular data centers and ASIC computers are integral and essential to its operations, making them eligible for a special valuation as property used directly in a high-technology business, as defined by “direct use” in West Virginia Code Chapter 11, Article 15, subdivision 2(b)(4).

Accordingly, XXXX has met its burden to prove that Property Tax Ruling 24-38 was erroneous.

The following Conclusions of Law support the decision rendered.

CONCLUSIONS OF LAW

1. The West Virginia Office of Tax Appeals holds original and exclusive jurisdiction to hear appeals by any party aggrieved by determinations of property classifications, determinations of property taxability, or by valuation of real and personal property tax assessments. W. Va. Code Ann. § 11-10A-8(7) (West 2021).

2. In an appeal before the Office of Tax Appeals, the petitioner bears the burden of proving that any property appraisal, classification determination, or taxability determination is incorrect, unlawful, void, or otherwise invalid. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2021); W. Va. Code St. R. §§ 121-1-37.5 and 51.12.1 (2023).

3. For appeals of property tax assessments, taxability, and classifications under West Virginia Code Chapter 11 Article 3, the taxpayer must prove its case by a preponderance of the evidence. W. Va. Code Ann. §§ 11-3-24(k), 11-3-24a(e), and 11-10A-10(h) (West 2021).

4. If the evidence supports both sides equally, the party that bears the burden of proof has not met its burden. *Adkins v. Smith*, 142 W. Va. 772, 98 S.E.2d 712 (1957).

5. Hearings before the West Virginia Office of Tax Appeals are heard *de novo*. W. Va. Code Ann. § 11-3-25b (West 2021).

6. “Trial de novo” is defined as “[a] new trial on the entire case — that is, on both questions of fact and issues of law — conducted as if there had been no trial in the first instance.” *Black’s Law Dictionary* 1737 (10th ed. 2014).

7. “De novo” means anew; afresh; a second time, which means that in an appeal from a decision by an executive agency, an oversight board is authorized to act independently without any

presumption of correctness attaching to the decision below. *West Virginia Division of Environmental Protection v. Kingwood Coal Company*, 200 W. Va. 734, 745, 490 S.E.2d 823, 834 (1997).

8. Agencies are authorized to perform administrative and executive functions, often needing to interpret their statutory and regulatory authority to fit the specifics of a given case, but no agency may change or rewrite statutes under the guise of interpretation. Syl. Pt. 5, *Steager v. Consol Energy, Inc.*, 242 W. Va. 209, 832 S.E.2d 135 (2019).

9. The Office of Tax Appeals has limited jurisdiction; it is not a court of equity and cannot create equitable remedies. See, Syl. Pt. 4, *McDaniel v. West Virginia Division of Labor*, 214 W. Va. 719, 591 S.E.2d 277 (2003) (citing Syl. Pt. 3, *Mountaineer Disposal Service, Inc. v. Dyer*, 156 W. Va. 766, 197 S.E.2d 111 (1973)); accord, Syl. Pt. 3, *Appalachian Regional Health Care, Inc. v. W. Va. Human Rights Commission*, 180 W. Va. 303, 376 S.E.2d 317 (1988).

10. If the language of a statute or regulation is unambiguous, its plain meaning must be accepted without resorting to the rules of statutory interpretation. Syl. Pt. 2, *State v. Elder*, 152 W. Va. 571, 165 S.E.2d 108 (1968); see also, *State v. Scruggs*, 242 W. Va. 499, 502, 836 S.E.2d 466, 469 (2019).

11. Properly promulgated legislative rules that have undergone legislative rulemaking carry the force and effect of law, regardless of the extent to which the executive branch participated in their drafting. See, *Appalachian Power Company v. State Tax Department of West Virginia*, 195 W. Va. 573, 466 S.E.2d 424 (1995).

12. Taxation shall be equal and uniform throughout the state, and all property shall be taxed in proportion to its value to be ascertained as directed by law. W. Va. Const. art. X, § 1.

13. Under the West Virginia Constitution, all property must be taxed unless the Legislature has exempted it from taxation. Syl. Pt. 1, *In re Hillcrest Memorial Gardens, Inc.*, 146 W. Va. 337, 119 S.E.2d 753 (1961) (quoting Syl. Pt. 1, *Reynolds Memorial Hospital et al. v. County Court of Marshall County*, 78 W. Va. 685, 90 S.E. 238 (1916)).

14. An assessing officer's valuation of property for taxation purposes is presumed to be correct. *E.g.*, Syl. Pt. 1, *Berkeley County Council v. Government Properties Income Trust LLC*, 247 W. Va. 395, 880 S.E.2d 487 (2022); Syl. Pt. 1, *Musick v. University Park at Evansdale, LLC*, 241 W. Va. 194, 820 S.E.2d 901 (2018); *In re Tax Assessment of Foster Foundation's Woodlands Retirement Community*, 223 W. Va. 14, 25, 672 S.E.2d 150, 161 (2008); Syl. Pt. 7, *In re Tax Assessments Against Pocahontas Land Co.*, 172 W. Va. 53, 303 S.E.2d 691 (1983).

15. High-technology businesses include businesses that primarily engage in, among other activities, electronic data processing and network management, maintenance, engineering, administration, and security services. W. Va. Code Ann. § 11-15-9h(b)(2) (West 2009).

16. XXXX engages in electronic data processing and network management, so it is a high-technology business as defined in West Virginia Code Chapter 11, Article 15, Section 9h.

17. "Directly used or consumed" in the activities of manufacturing, transportation, transmission, communication, or the production of natural resources means used or consumed in those activities or operations which constitute an integral and essential part of the activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the activities. West Virginia Code Ann. § 11-15-2(b)(4) (West 2008).

18. XXXX's modular data centers and ASIC computers are directly used as defined in West Virginia Code Chapter 11, Article 15, subdivision 2(b)(4) and *Antero Resources Corp. v. Steager*, 244 W. Va. 81, 89, 851 S.E.2d 527, 535 (2020) (citations omitted).

19. XXXX's modular data centers and ASIC computers are tangible personal property that qualify for special valuation as property directly used in a high technology business for Tax Year 2024.

20. XXXX has met its burden of proving that the determinations by the Assessor and the Tax Commissioner were erroneous.

DISPOSITION

Based on the testimony, the exhibits, the hearing transcript, the arguments and briefs of the parties, and all other matters of record, it is the **FINAL DECISION** of the West Virginia Office of Tax Appeals that the underlying classification determination and values assessed by the Preston County Assessor, as upheld by the Tax Commissioner, are hereby deemed to be INCORRECT, and are **REVERSED**.

The assessed values of XXXX's modular data centers and ASIC computers, as previously found by the Preston County Assessor, are set aside, and the Assessor is **ORDERED** to modify the assessed values of that tangible personal property based on special salvage value treatment of 5% of its original cost. Five percent of \$XX, which was the Assessor's valuation of the tangible personal property at the Hazelton location, is \$Y. Five percent of \$XX, which was the Assessor's valuation of the tangible personal property at the Tunnelton location, is \$Y.

WEST VIRGINIA OFFICE OF TAX APPEALS

Michael E. Bevers
Administrative Law Judge

Date