DA 23-0280

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 10

BLUEBIRD ENERGY LLC,

Petitioner and Appellant,

v.

STATE OF MONTANA,
DEPARTMENT OF REVENUE,

Respondent and Appellee.

APPEAL FROM: District Court of the Sixteenth Judicial District,
In and For the County of Rosebud, Cause No. DV- 2022-34
Honorable Nickolas C. Murnion, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Scotti Gray, Gray Law Firm, PC, Billings, Montana

For Appellee:

Teresa G. Whitney, Senior Tax Counsel, Montana Department of Revenue, Helena, Montana

---

Submitted on Briefs: November 1, 2023

Decided: January 23, 2024

Filed:

Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Bluebird Energy, LLC ("Bluebird") appeals an order from the Sixteenth Judicial District, Rosebud County, denying its motion for summary judgment and granting the Montana Department of Revenue's ("Department") motion for summary judgment. The District Court held that Bluebird's oil production does not qualify for the New Well Tax Incentive rate and that ARMs 42.25.1814 and 42.25.1816 are consistent with and necessary to effectuate the purposes of the Oil and Gas Production Tax statutes. We affirm.

¶2 We address the following issues:

1. *Is the 18-month period of reduced taxes on horizontally completed wells continuous once it is triggered or is it based on actual production?*

2. *Are ARMs 42.25.1814 and 42.25.1816 consistent with the Oil and Gas Production Tax statutes?*

FACTUAL AND PROCEDURAL BACKGROUND

¶3 Apache Corporation & Subsidiaries ("Apache") owned three horizontally completed oil wells in Rosebud County that were subsequently sold to Bluebird in July 2021. The wells are identified as follows:

a. Spider Monkey 1H–API No. 25-087-21744 located in Rosebud County;

b. Golden Monkey 1H–API No. 25-087-21746 located in Rosebud County; and

c. Flying Monkey 1H–API No. 25-087-21748 located in Rosebud County.

¶4 Apache produced oil from Spider Monkey from October of 2018 to December of 2018 and for the month of July 2019. It produced oil from Golden Monkey during October and November of 2019 and from Flying Monkey during November and December 2019.

Section 15-36-304(5)(d)(j), MCA, referred to as the New Well Tax Incentive, provides that the first 18 months of qualifying production for an oil or gas well is to be taxed at a reduced rate of 0.5%. Qualifying production is the first 12 months of production of oil or natural gas or the first 18 months of production from a horizontally completed well drilled after December 31, 1998, or from a well that has not produced oil or gas in over five years. Section 15-36-303(21)(a), MCA. Apache received the reduced tax rate on oil production for the three wells and shut in the wells until they were later sold to Bluebird. After Bluebird acquired the wells, they installed permanent production facilities costing approximately $500,000 per well. Bluebird then began producing oil from each well, with production starting in October 2021 for Flying Monkey, in November 2021 for Golden Monkey, and in December 2021 for Spider Monkey. The three wells have produced oil every subsequent month into the present.

¶5 Bluebird submitted New Well applications for all three wells to the Department on December 2, 2021. Bluebird filed taxes for the wells according to the New Well Incentive tax rates in the fourth quarter for 2021. The Department determined the wells did not qualify for the New Well Tax Incentive rate and adjusted the amounts based on the regular tax rate, resulting in Bluebird owing additional taxes. Bluebird requested informal review of the Department's decision on March 23, 2022. On April 22, 2022, the Department affirmed its adjustments to Bluebird's fourth quarter oil and gas production tax return. Bluebird then filed an appeal with the Department's Office of Dispute Resolution on May 16, 2022. The Office of Dispute Resolution dismissed the appeal on June 8, 2022,

because Bluebird decided to proceed directly to the Montana Tax Appeal Board. However, the appeal before the Board was dismissed because the parties decided to pursue the matter in District Court.

¶6 The parties filed a Joint Petition for Interlocutory Adjudication in the Sixteenth Judicial District Court, Rosebud County, to determine whether ARMs 42.25.1814 and 42.25.1816 conflict with the Montana Oil and Natural Gas Production Tax Act found at § 15-36-301, et. seq., MCA, and whether the application of those ARMs interferes with Bluebird's legal rights. Both parties submitted motions for summary judgment and the court granted summary judgment in favor of the Department. The District Court found the plain language of the statutes supported a contiguous period of 18 months once qualifying production had begun and further found ARMs 42.25.1814 and 42.25.1816 were consistent with and reasonably necessary to fulfill the purposes of the Oil and Gas Production statutes, particularly §§ 15-36-303(21), 15-36-304(5)(d)(i) and 15-36-304(6)(b)(i), MCA.

STANDARD OF REVIEW

¶7 We review a grant of summary judgment de novo under the same M.R. Civ. P. 56 standard a district court applies. *Lohmeier v. State*, 2008 MT 307, ¶ 12, 346 Mont. 23, 192 P.3d 1137. Interpretation of a statute is a question of law that is reviewed for correctness. *Clark Fork Coal. v. Tubbs*, 2016 MT 229, ¶ 18, 384 Mont. 503, 380 P.3d 771. "Whether an administrative regulation impermissibly conflicts with a statute is a question of law to be decided by the court." *Gold Creek Cellular of Mont. L.P. v. State*, ¶ 9, 2013 MT 273,

372 Mont. 71, 310 P.3d 533. "We review a district court's conclusions of law to determine if they are correct." *Gold Creek*, ¶ 9.

DISCUSSION

¶8 *1. Is the 18-month period of reduced taxes on horizontally completed wells continuous once it is triggered or is it based on actual production?*

¶9 Taxes on oil and gas are based upon the value of production in Montana. Section 15-36-304(5), MCA. Section 15-36-304(6)(b)(i), MCA, provides:

> The reduced tax rates under subsection (5)(d)(i) on oil production from a horizontally recompleted well for the first 18 months of production begin following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally completed well to the department by the board.

Section 15-36-304(6)(b)(i), MCA. The reduced tax rates for horizontally completed wells apply for "the first 18 months of qualifying production." Section 15-36-304(2)(c), MCA. Qualifying production is defined as ". . . the first 18 months of production of oil or natural gas from a horizontally completed well drilled after December 31, 1998, or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production." Section 15-36-303(21)(a), MCA.

¶10 We begin with some general principles of statutory interpretation, particularly with respect to statutes granting tax exemptions or deductions. When approaching interpretation of a statute, the role of the judge is to "ascertain and declare what is in terms or in substances contained therein, not to insert what has been omitted or to omit what has been inserted." Section 1-2-101, MCA. The interpretation should seek to implement the purpose the legislature sought to achieve by the law. *Clark Fork Coal.,* ¶ 20. "If the intent

of the Legislature can be determined from the plain meaning of the words used in the statute, the plain meaning controls and the Court need go no further nor apply any other means of interpretation." *Clark Fork Coal.*, ¶ 20. Statutes should not be considered in a vacuum and must be construed as a whole to give effect to the purpose of the statute and avoid an absurd result. *Mont. Dep't of Revenue v. Priceline.com, Inc.,* 2015 MT 241, ¶ 28, 380 Mont. 352, 354 P.3d 631. "Words and phrases used in a statute are to be construed according to the context in which they are found, and according to their normal usage, unless they have acquired some peculiar or technical meaning." Section 1-2-106, MCA. When a statute granting a tax exemption or deduction is capable of multiple interpretations and the legislative intent cannot be determined, the court "resolves the doubt in favor of the taxing power." *Exxon Mobil v. Mont. Dep't of Revenue*, 2019 MT 156, ¶ 20, 396 Mont. 298, 444 P.3d 407. Lastly, Bluebird has the burden of proving it is entitled to a reduced tax rate. *Robinson v. Mont. Dep't of Revenue*, 2012 MT 145, ¶ 12, 365 Mont. 336, 281 P.3d 218.

¶11 We agree with the District Court that the plain meaning of the statutes governing the New Well Tax Incentive supports the tax incentive running for 18 contiguous months once qualifying production begins, rather than starting and stopping according to production. Section 15-36-304(6)(b)(i), MCA, provides that the start of the 18 month period for the reduced tax rate under subsection (5)(d)(i) begins the last day of the month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally completed well. The triggering event that starts the incentive

period is the pumping or flowing of oil when the well has been certified to the Department and has engaged in qualifying production, defined as "the *first* 18 months of production of oil or natural gas from a horizontally completed well drilled after December 31, 1998. . . ." Section 15-36-303(21)(a), MCA (emphasis added). As the District Court reasoned, the use of the word "first" before the 18-month incentive period indicates a distinct period with a clear beginning and ending date. The period is triggered by the event of oil flowing or being pumped, creating a clear beginning to the incentive period. The start of the period being the last day of the month before the month of the triggering event further indicates the intent that this incentive period is a distinct period and does not start and stop according to production.

¶12 Indeed, the definition of "qualifying production" contained at § 15-36-303(21)(a), MCA, provides that when production has been interrupted the "qualifying" production begins only after nonproduction for at least 5 years. Section 15-36-303(21)(a), MCA, provides:

> "Qualifying production" means the first 12 months of production of oil or natural gas from a well drilled after December 31, 1998, or the first 18 months of production of oil or natural gas from a horizontally completed well drilled after December 31, 1998, or *from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production.* (emphasis supplied).

Thus, the legislature considered how cessation of oil production was to be addressed and specifically defined "qualifying production" as occurring only after a 5-year period of nonproduction. Bluebird's argument that qualifying production starts and stops for a shorter period than 5 years is inconsistent with the statutory scheme.

¶13 Although production has its common meaning, it must be understood in the overall context of the statutes, not in isolation. Bluebird argues the references to production means that the incentive must be tied only to actual production of oil rather than a specific time period. Bluebird is correct that the plain meaning of "production" is oil or gas extracted from the ground for commercial purposes, but they ignore the statutory context in which the term production appears. As stated above, statutes governing the New Well Tax Incentive provide a clear beginning to the period with the triggering event of qualifying production. Section 15-36-304(6)(b)(i), MCA. Qualifying production is what triggers the start of the incentive period, but continuous production is not required for the incentive period to keep running. The multiple references to the *first* 18 months of production, as well as language indicating a distinct time period, make it clear that qualifying production starts the incentive period and that uninterrupted production is not required for the incentive period to continue running. In fact, once qualifying production has taken place the incentive period can only start again after 5 years of nonproduction. As Bluebird acknowledges, typically when qualifying production begins it tends to run uninterpreted so that the company can recoup its investment as soon as possible and not let its wells sit idle. The plain language of the statutes when read together clearly supports the Department's interpretation that the incentive period runs for 18 contiguous months once qualifying production has started and been certified. Bluebird argues Apache's oil production amounted to testing of the wells and that Bluebird put in permanent equipment and engaged in long-term production. However, Apache did actually produce oil from the wells and

applied for and was granted the reduced tax rate. Apache clearly engaged in qualifying production, applied for the tax incentive, and therefore started the incentive period in October 2018 for Spider Monkey, October 2019 for Golden Monkey, and November 2019 for Flying Monkey. Therefore, the incentive periods expired in March 2020 for Spider Monkey, March 2021 for Golden Monkey, and April 2021 for Flying Monkey—all before Bluebird had started its production on the wells in late 2021. The plain language of the statutes does not support Bluebird's suggested approach that the incentive applies only to months of actual production. If the legislature intended for the incentive to start and stop along with production rather than run continuously, they would have been clear and specific about such an application.

¶14 Although we find the plain language of the statutes clear and do not need to consider the legislative history, we nonetheless find the legislative history further supports the Department's interpretation of the statutes *State v. Heath*, 2004 MT 126, ¶ 33, 321 Mont. 280, 90 P.3d 426 (the court only needs to consider legislative history when the plain meaning of the statute is ambiguous). A review of previous bills related to tax holidays for oil and gas wells, in addition to bills that created the current New Well Tax Incentive, shows the legislature's intent that the tax holidays be limited periods of time with distinct beginning and ending dates.

¶15 House Bill 776 was passed in 1987 and granted oil and gas wells an exemption from severance taxes for the first 2 years of production. HB 776, 1987 Mont. Laws 1-13. It provided that "[a]ll new production from a well during the 24 months immediately

following the date of notification to the department of revenue . . . is exempt from all of the severance tax imposed by 15-36-101." HB 776 at 9-10. This precursor to the current New Well Tax Incentive clearly stated that the tax holiday was for the 24 months *immediately* after notice to the department; and did not stop and start depending on when production was occurring. Another precursor, Senate Bill 18, was passed in 1993 and provided an exemption period from taxation for "the first 18 months of production" for horizontally completed wells. SB 18, 1993 Mont. Laws 1-54. Senate Bill 18 stated in its title that it was "exempting from net proceeds taxation for a period of 18 months the production of oil from horizontally completed wells." SB 18 at 1. The language a "period of 18 months" clearly indicates the tax holiday was for a distinct time period.

¶16 Senate Bill 412 and Senate Bill 338, passed by the Legislature in 1995, overhauled the oil and gas statutory scheme and created the basis for the current New Well Tax Incentive. Senate Bill 338 was titled "[a]n act exempting from the state severance tax for 24 months oil or natural gas proceeds from a well drilled after March 31, 1995. . . ." SB 338, 1995 Mont. Laws 1-8. This bill would later become Section 15-36-304(4)(b)(ii) and was amended in 1999 to change the period from 24 months to 18 months. Section 15-36-304(4)(b)(ii) (amd. Sec. 3, 4, 17(3), Ch. 554, L. 1999). During testimony in the House Taxation Committee on SB 338, a representative of the Northern Montana Oil and Gas Association responded to a legislator's question about including a sunset, saying there is a sunset for each individual operator because the tax break is only valid for two years. *Hearing on SB 338 Before the H. of Rep. Comm. On Taxation*, 54th Leg. (Mont. 1995).

Additionally, the fiscal note for SB 338 interpreted the tax holiday as being a contiguous two years and calculated the impact for fiscal years 1996 and 1997. *Fiscal Note for SB 338*, 54th Leg (Mont. 1995). The legislative history demonstrates the legislature's intent that the reduced tax rate period runs contiguously for a set period of time rather than starting and stopping with production.

¶17 Further, the Department's interpretation does not thwart the legislative purpose of incentivizing new oil and gas development in Montana. The parties agree the purpose of the reduced tax rate was to incentivize oil and gas production on wells that were previously not producing. Bluebird asserts interpreting the statute so that the incentive period is contiguous thwarts this purpose. Bluebird, however, fails to provide any further reasoning beyond pointing to the fact that Bluebird will not receive the tax benefit on wells that are already producing. As Bluebird acknowledges, its situation is unique because most oil and gas producers will begin production and produce continuously. Bluebird maintains the Department's interpretation would only frustrate the purpose of the statutes if it resulted in significantly less companies developing new wells or reviving old wells. Bluebird has presented no evidence that this has been the case since the Department has interpreted the statute in this manner. Bluebird's policy argument that tying the incentive to non-contiguous production would better incentivize production is an argument best suited for the legislature, not this Court. *Satterlee v. Lumberman's Mut. Cas. Co.*, 2009 MT 368, ¶ 34, 353 Mont. 265, 222 P.3d 566 ("Our role is not to second guess the prudence of a legislative decision. As such, we cannot strike down § 39-71-710, MCA, as a violation of

substantive due process simply because we may not agree with the legislature's policy decision").

¶18 *2. Are ARMs 42.25.1814 and 42.25.1816 consistent with the Oil and Gas Production Tax statutes?*

¶19 Next, we turn to whether the Department's relevant administrative rules are consistent with and reasonably necessary to carry out the purpose of the Oil and Gas Production Tax statutes. Regulations are valid and effective when they are "consistent and not in conflict with the statute" and "reasonably necessary to effectuate the purpose of the statute." Section 2-4-305(6), MCA. "Whether an administrative regulation impermissibly conflicts with a statute is a question of law to be decided by the court." *Gold Creek Cellular*, ¶ 9. Administrative regulations are invalid if they "'engraft additional and contradictory requirements on the statute'" or "'if they engraft additional, noncontradictory requirements on the statute which were not envisioned by the legislature.'" *Clark Fork Coal.*, ¶ 25 (quoting *Board of Barbers v. Big Sky College*, 192 Mont. 159, 161, 626 P.2d 1269, 1270 (1981)). The same principles governing the interpretation of statutes are applied to construing administrative rules. *State v. Inashola*, 1998 MT 184, ¶ 11, 289 Mont. 399, 961 P.2d 745.

¶20 The relevant administrative rules provide:

> 42.25.1814 INCENTIVE PERIOD (1) Incentive periods for new wells, vertical or horizontal, begin following the last day of the calendar month immediately preceding the month in which production begins. This incentive period only begins once, and is dependent upon the first production from the well, regardless of whether the oil and gas begin production on different dates. Therefore, if a well began producing oil on March 1, 2000, and gas began flowing from the same well on August 1, 2000, the incentive period begins on March 1, 2000, only.

> 42.25.1816 DETERMINING QUALIFYING PRODUCTION
> (1) Qualifying production time period begins immediately after the last day of the month preceding the month when production first started. The qualifying production time period continues for 12 or 18 contiguous months, 12 for vertical production or 18 for horizontally completed wells. (a) Example – A vertical oil or natural gas well first produces May 2010. The well will have a reduced tax rate as illustrated in 15-36-304, MCA for the months May 1, 2010, to April 30, 2011.
> (2) The tax incentive applies to the total gross value of all oil or natural gas sold in the 12- or 18-month period. If the sales occur after the 12- or 18-month period nonqualifying production tax rates as described in 15-36-304, MCA apply.

¶21 ARMs 42.25.1814 and 42.25.1816 do not impose additional or contradictory requirements on the statutes. As discussed above, the New Well Tax Incentive statutes' plain language gives a limited period for the tax incentive to run, beginning with qualifying production. The ARMs do not require that a well produce continuously for 18 months, only that once the incentive period begins that period does not stop depending on production. The ARMs' language that the months are "contiguous" does not improperly insert additional requirements into the statutes but simply clarifies what the plain meaning of the statutes is.

¶22 Further, the Department's long-standing interpretation is entitled to respectful consideration. ARM 42.25.1814 was adopted in 2000, and ARM 42.25.1816 was adopted in 2010. During the public hearing for ARM 42.25.1816, Lee Baerlocher, Bureau Chief, testified that it was a "clarification of an existing practice" and codified how the Department had interpreted the tax incentive for "20 or 30 years." Formal Transcription of Administrative Rule Hearing, Oil and Gas Taxes MAR Notice No. 42-2-844 (Sept. 20, 2010). Longstanding and consistent interpretation of a statute by an agency that has

produced reasonable reliance on that interpretation by the public is entitled to respectful consideration by the court. *Mont. Power Co. v. Mont. PSC*, 2001 MT 102, ¶ 24, 305 Mont. 260, 26 P.3d 91. In *Montana Power Company,* we concluded the Commission's construction of the Act had not been subject to long and continuous interpretation and therefore it was not entitled to deference. *Mont. Power Co.*, ¶ 27. That is not the case here, where the Department has consistently applied its interpretation to the statutes for over 20 years.

¶23 Additionally, the District Court was correct in finding the legislature's silence after the Department's many years of implementing the regulations without objection supports a conclusion that the Department's interpretation does not contradict the statutes. "Where the Legislature acquiesces in long-standing agency interpretation of a statute and takes no action to inform that interpretation, the court will presume that the Department has properly interpreted the law." *Lohmeier*, ¶ 28 (quoting *Baitis v. Dep't of Revenue*, 2004 MT 17, ¶ 24, 319 Mont. 292, 83 P.3d 1278). In *Lohmeier*, the Legislature enacted a basin closure law in 1993 that exempted municipal use but failed to define what constituted "municipal use." The Department of Natural Resources applied a case-by-case interpretation of the term for many years. *Lohmeier*, ¶¶ 27-28. We concluded the Legislature's failure to define the term and its acquiescence in the agency's prior interpretation of the term supported the finding that the agency interpreted the term used in the statute correctly. *Lohmeier*, ¶¶ 28-29. Bluebird asserts this case is distinguishable from *Lohmeier* in that the Department's interpretation has never been challenged in litigation, whereas the basin

closure laws were litigated. However, there is no requirement in our caselaw that the definition of a term must first be litigated to conclude that the Legislature's inaction in the face of consistent interpretation is evidence of correct interpretation. See *Baitis*, ¶ 24 (finding Legislature had acquiesced in interpretation of statute for over forty years when there was no prior litigation).

¶24 ARM 42.25.1814 was adopted in 2000 and ARM 42.25.1816 was adopted in 2010, and have been consistently applied for 24 and 14 years, respectively. *In the matter of the proposed Adoption of New Rule 1; Amendment of Arm 42.25.1801, 42.25.1803, 42.25.1804, 42.25.1806, 42.25.1807, 42.25.1808, 42.25.1809, 42.25.1810, and 42.25.1813 relating to oil and gas taxes*, Department of Revenue (Mont. 2000); *In the matter of the adoption of New Rules I through V and amendment of ARM 42.25.1801 relating to oil and gas taxes*, Department of Revenue (Mont. 2010). The legislature has amended Section 15-36-304, MCA, numerous times since these regulations have been enacted and has not sought to correct the Department's interpretation. Section 15-36-304, MCA (amd. Sec. 2, Ch. 421, L. 2001; amd. Sec. 5, Ch. 522, L. 2003; amd. Sec. 2, Ch. 592, L. 2005, amd. Sec. 3, Ch. 603, L. 2005; amd. Sec. 1, Ch. 286, L. 2007; amd. Sec. 2, Ch. 33, L. 2009; amd. Sec. 8, Ch. 19, L. 2011; § 2, Ch. 29, L. 2015, etc.). Further, for both regulations, the sponsors of the legislation were provided notice of the proposed new rules and no comments or objections were received. Montana Department of Revenue Letter to Rep. Clark, Rep. Bishop, and Rep. Rehbein (Sept. 8, 1999); Montana Department of Revenue

Letter to Sen. Roush (July 29, 2010). This provides strong evidence the Department's regulations correctly interpreted the statutes as intended by the legislature.

CONCLUSION

¶25 We conclude the plain language of the statutes supports the Department's interpretation that once qualifying production begins, the tax incentive runs contiguously for 18 months regardless of whether production is continuous. We also conclude that ARMs 42.25.1814 and 42.25.1816 are consistent with and reasonably necessary to effectuate the purpose of §§ 15-36-303 and 304, MCA. Bluebird has failed to show it was entitled to the reduced tax rate.

¶26 Affirmed.

/S/ LAURIE McKINNON

We Concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR