BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF **SOLVAY CHEMICALS, INC.** FROM A DECISION BY THE DEPARTMENT OF REVENUE (Mineral Prod. Audit- Production Years 2010-2012)	)))))	Docket No. **2016-28**

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

APPEARANCES

Walter F. Eggers, III, Holland & Hart LLP, appeared on behalf of Solvay Chemicals, Inc. (Solvay).

Karl D. Anderson and Lisa Jerde Spillman, Senior Assistant Attorneys General, Wyoming Attorney General's Office, appeared on behalf of the Wyoming Department of Revenue (Department).

DIGEST

Trona ore producer Solvay appealed the Department's audit assessment, which increased the taxable value of a portion of Solvay's 2010-2012 trona production. Although the Department agreed Solvay could deduct its costs to package a small percentage of its production, the Department rejected Solvay's manner of calculating the deduction. Solvay countered that its calculation of the deduction was not inconsistent with statute, and that the Department should not reject Solvay's historic calculation method without providing advance notice or first offering regulatory guidance.

After a contested case hearing before the Wyoming State Board of Equalization (State Board),[1] the State Board struggled with the parties' uncontested application of the

[1] At the time of the hearing, the State Board was comprised of Chairman Martin L. Hardsocg, Vice Chairman E. Jayne Mockler, and Board Member Robin Sessions Cooley. Ms. Cooley was succeeded by Board Member Dave Gruver, who has since resigned and been succeeded by Board Member David Delicath. Mr. Delicath reviewed the record, including the transcript of proceedings, and participated in this decision.

underlying valuation method and considered *sua sponte* whether Solvay was even entitled to a deduction given the valuation methodology applied. At the State Board's request, the parties submitted additional briefing on the application of the trona valuation statutes. The State Board holds the Department incorrectly permitted an additional deduction for packaging and, consequently, **reverses** and **remands** the audit assessment to the Department for corrective action.

ISSUES

As originally filed, Solvay framed the issues on appeal as:

a. Whether the Department of Revenue (DOR) and Department of Audit (DOA) improperly assessed Solvay's 2010-2012 "bagged product" production; and

b. Did Solvay know, or should it reasonably have known that the DOR and DOA would change its position on the valuation of "bagged product," such that DOR's imposition of interest was valid?

(Pet'r Solvay Chemicals, Inc.'s Issues of Fact & Law & Index 1). Solvay also formally requested the State Board "require the Department to formally notify taxpayers of any changes to the Department's interpretation and application of Wyoming's tax statutes and rules." (Solvay Reply Br. 19).

The Department initially framed the issues as:

A) Did the Department treat the bagged sales of soda ash sales (sic) in valuation of their trona production in accordance with the law?

B) Did the Department correctly assess Solvay's trona production for 2010 through 2012?

C) Did the Department correctly assess Solvay interest based upon the underpayment of severance taxes?

(Dep't's Issues of Fact & Law & Ex. Index 1).

Notably, the parties did not dispute the application of the underlying valuation methodology for trona. The only dispute was the calculation of the bagging deduction for less than 1.5% of Solvay's total processed soda ash.[2]

The State Board ordered the parties to brief additional Board questions concerning basic application of the trona tax valuation statute, Wyoming Statutes section 39-14-303(b) (2009):

> 1. Are relevant parts of Wyoming Statutes sections 39-14-301 and 303 (2009-2012) ambiguous and, if so, in what respect?
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> 2. Do the provisions in Wyoming Statute section 39-14-303(b) (2009-2012) identify multiple valuation methods, or a single valuation method? If you argue that subsection (b) prescribes one valuation method, please explain and reconcile the remaining subsection (b) provisions in support of your interpretation. If you argue that subsection (b) offers more than one valuation method, please identify and explain application of those methods and how those differ from, or relate to, paragraph (b)(ii).

(Order for Suppl. Briefing (March 22, 2017)). That is, the State Board inquired whether the Department correctly applied the "industry factor" methodology to Solvay's packaged trona production. *See* Wyo. Stat. Ann. § 39-14-303(b)(ii) (2009), *infra* ¶ 21.

In its supplemental briefing, the Department asserted for the first time that, although it allowed Solvay an additional processing deduction for bagging costs, it possibly misinterpreted Wyoming Statutes section 39-14-303(b) (2009) and incorrectly permitted Solvay a deduction beyond the industry factor deduction of 67.5%. (Dep't Suppl. Br. 3-8). In its supplemental brief, the Department requested an alternative remedy—remand for revaluation without any deduction for additional processing. *Id.*

Solvay understandably countered that the Department's submission of an alternative valuation analysis so late in the process was inappropriate, asserting "the Department is not permitted to fundamentally change its final decision during the course of the appeal." (Solvay Resp. to Wyo. Dep't of Revenue's Suppl. Br. & Req. for Oral Arg. 8). Solvay added, "Wyoming administrative law, as well as Constitutional Due Process standards, require that an administrative appeal be limited to the matter notice[d] for appeal." *Id.* at 9, *citing* Wyo. Stat. Ann. § 16-3-107(a) & (b).

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[2] *See* Solvay Open. Br. 6-7; Dep't Resp. Br. 3; Solvay Resp. to Wyo. Dep't Supp. Br. and Req. for Oral Argument 5-8; Tr. at 144, 167, 175, 179, 181, 187.

Accordingly, we must also decide: 1) whether the Department may change its valuation after an appeal of its final administrative decision has been filed and is pending; and 2) if not, must the State Board accept the parties' underlying statutory applications and limit its statutory jurisdiction and scope of review to the parties' identified disputes, or may the State Board question underlying valuation methodologies upon which disputed applications are premised?

JURISDICTION

An aggrieved taxpayer may appeal to the State Board within thirty days of the Department's final decision. Rules, Wyo. State Bd. of Equalization, ch. 2 § 5(e) (2006). Solvay appealed the Department's April 11, 2016, audit assessment on May 6, 2016. (Pet'r's Notice of Appeal (May 6, 2016)). The State Board has jurisdiction to decide Solvay's timely appeal. *See* Wyo. Stat. Ann. § 39-11-102.1(c) (2015) (State Board shall review final decisions of the Department upon application of those adversely affected.).

FINDINGS OF FACT[3]

1. Solvay produces trona ore (trona) from its underground mine in Sweetwater County. Solvay excavates and moves the trona from great depths to the surface, then processes the mineral in its processing plant. Solvay processes the trona into soda ash, as well as sodium bicarbonate and sodium sulfite. (Tr. 33, 36; Solvay Ex. 100, at 007).

2. Solvay sells approximately 2.86 million tons of soda ash per year, along with other components processed from the trona. (Tr. 38, 40; Solvay Ex. 100, at 006-007).

3. Solvay sells and delivers soda ash to customers in bulk deliveries by rail or truck, or in packaged quantities of between 50 to 2,000 pounds. Solvay loads the packaged soda ash onto pallets, also transporting those by truck or rail. (Tr. 34-35, 44-46; Solvay Ex. 100, at 018). Regardless of how Solvay delivers soda ash to its customers, the soda ash is physically the same. (Tr. 43, 50-51, 68-69, 80, 89, 171, 173-74). Solvay's packaged soda ash sales comprised less than 1.5% of its total soda ash production during the years at issue. (Tr. 45; Ex. 100, at 018). Because Solvay incurred additional costs to package and deliver packaged soda ash, it charged its customers more for bagged soda ash than for soda ash delivered in bulk. (Tr. 50, 71-72).

[3] The parties offered evidence describing in some detail Solvay's mining and processing operations, and the Department of Audit's audit process and the Department of Revenue's review of that work. We summarize only the evidence necessary to evaluate the parties' respective positions as they pertain to the disputed deduction.

4. Solvay reported its trona production value for severance and production tax purposes pursuant to Wyoming Statutes section 39-14-303(b)(ii) (2009), applying the statutory 32.5% "industry factor"[4] within the valuation formula.[5] (Tr. 10-11, 19-66, 82); Wyo. Stat. Ann. § 39-14-303(b)(ii) (2009), *infra* ¶ 21; *See also* ¶¶ 37-47. For its packaged soda ash sales, Solvay also deducted its costs to package the soda ash, which both Solvay and the Department term "processing" under Wyoming Statutes section 39-14-301(a)(vii) (2009), *infra* ¶ 22. (Tr. 53-54, 60, 81, 187).

5. To calculate its packaging deduction, Solvay subtracted the bulk sale price from the packaged soda ash sale price. Thus, Solvay reported the same value per unit for soda ash whether it was sold in bulk or packaged, under the theory that the difference in price was attributable solely to the packaging component. (Tr. 49-51, 151-52).[6] Solvay's calculation of the packaging deduction for tax purposes replicated its packaging deduction reported for federal royalty purposes under Mineral Management Service (now Office of Natural Resources Revenue's) guidelines. (Tr. 53-55, 57-62, 189; Solvay Exs. 103-104).

6. The Department of Audit (DOA) conducted a mineral tax audit of Solvay's 2010 through 2012 trona production, requesting customer contracts, invoices, and other information. The DOA requested specific information on Solvay's costs incurred to package soda ash. (Tr. 47, 62-63, 104-05; DOR Exs. 501, 507, at 0029). The DOA had learned another Wyoming trona producer reported actual packaging expenses as a deduction, which prompted the DOA to request packaging information from Solvay. (Tr. 118, 135, 159). The Department was not familiar with soda ash packaging deduction practices and first raised the question during the Solvay audit. (Tr. 135, 178-79, 182-83). To achieve uniform valuation of Wyoming trona production, the Department concluded it would require actual expenses in support of such deductions. (Tr. 159-60).

7. Solvay supplied the DOA with what appeared to be its actual packaging expenses. (Tr. 63, 73, 92; Dep't Ex. 507). From the information submitted, the DOA calculated that Solvay incurred an expense of $114.61 per ton to package the soda ash, an amount less than the deduction Solvay reported in valuing its packaged soda ash. (Tr. 63-65, 106-10; Ex. 507). Following consultation with the Department, the DOA issued findings rejecting

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[4] Discussed at length in paragraphs 21-23, 38-47, the "industry factor" was and is a statutory-based fraction (and valuation method), the inverse of which establishes an industry-wide deduction from contract prices for valuing trona production for mineral tax purposes. *See* Wyo. Stat. Ann. § 39-14-303(b)(ii) (2009), *supra* ¶ 21.

[5] Other than calculation of the bagging deduction as a processing expense, the parties minimally addressed how Solvay reported taxable value of its trona production.

[6] Solvay claimed the packaging deduction separately from the 32.5% industry factor deduction of 67.5% pursuant to Wyoming Statutes section 39-14-303(b)(ii) (2009), *infra* ¶ 21.

Solvay's packaging deduction and revaluing Solvay's packaged soda ash with the lower deduction of $114.61 per ton. (Tr. 106-13, 115-17, 123-24; Dep't Exs. 504, 507).

8. Solvay objected to the DOA's reliance on the accounting document, arguing it was an estimated allocation of expenses and did not truly reflect the entire or actual packaging cost, which Solvay did not maintain. (Tr. 63-65, 73, 76, 91-92, 95-97, 108; Dep't Ex. 507). Linda Kott, Solvay's Excise Tax Account and Controller, explained "I don't think it's a thorough representation of all the costs associated with the Solvay bagging process for soda ash." (Tr. 63-66). Solvay insisted the value of the packaged soda ash did not differ from the value of soda ash sold in bulk and that the deductible cost of packaging was properly calculated by subtracting the bulk sales from the packaged sales on a unit basis to identify the deductible cost of packaging. (Tr. 59-61, 63-65, 73, 76, 91-92, 116, 120-21, 123-24, 170, 187-89).

9. The DOA rejected Solvay's reported valuation for packaged soda ash and, for Solvay's packaged soda ash, allowed a reduced deduction of $114.61 per ton; Solvay's taxable value increased by the difference between the deduction reported and the applied rate of $114.61/ton. (Tr. 151-54; Dep't Ex. 504). Adopting the DOA's audit determination, the Department increased the taxable value of Solvay's 2010-2012 trona production by $613,082. (Dep't Ex. 500, at 0004; Tr. 162-63). The Department also assessed Solvay an additional $24,524 in severance taxes, plus interest of $13,160. *Id.* Solvay disputes approximately $22,220 of the severance tax assessment, exclusive of interest. (Solvay's Opening Br. 4).

10. The Department offered several arguments in support of its decision to revalue Solvay's packaged soda ash for tax purposes. The Department concluded Solvay's claimed deduction did not reflect the soda ash's enhanced value from the packaging—that the reported deduction incorrectly removed part of the revenue along with deductible expenses. (Tr. 154, 167-71, 177). The Department ultimately required Solvay to deduct actual packaging expenses, rather than a representative estimate.

11. Solvay responded that in the absence of departmental guidance, it reasonably valued its packaged soda ash using the same calculated deduction it used for federal royalty purposes. (Tr. 96, 119-20; Solvay Opening Br. 8, 11; Solvay Reply Br. 12-13). Solvay further contends the deduction represented the deductible ***value*** of packaging, as opposed to merely the ***expense***, consistent with Wyoming Statutes section 39-14-303(b)(iv) (2009). (Solvay Reply Br. 8-12).

12. Because the parties agreed that the industry factor methodology and the established 67.5% deduction applied to Solvay's packaged soda ash, and agreed further that Solvay's

bagging costs were separately deductible, neither addressed the overall application of Wyoming Statutes section 39-14-303(b) (2009). *Infra* ¶ 21. The State Board directed the parties to brief two additional questions to clarify application of the subsection 303(b) valuation provisions:

> 1. Are relevant parts of Wyoming Statutes sections 39-14-301 and 303 (2009-2012) ambiguous and, if so, in what respect?
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> 2. Do the provisions in Wyoming Statute section 39-14-303(b) (2009-2012) identify multiple valuation methods, or a single valuation method? If you argue that subparagraph (b) prescribes one valuation method, please explain and reconcile the remaining subparagraph (b) provisions in support of your interpretation. If you argue that subparagraph (b) offers more than one valuation method, please identify and explain application of those methods and how those differ from, or relate to, subparagraph (b)(ii).

(Order for Suppl. Briefing (March 22, 2017)).

13. In response, the Department offered an alternative resolution of the dispute: "a more reasoned (and legally accurate) approach is to consider any and all incurred bagging expenses to be encompassed within the scope of the 32.5% industry factor found at Wyo. Stat. Ann. § 39-14-303(b)(ii)." (Dep't Suppl. Br. 6-7). The Department asserted "the Board should remand the matter back to the Department for it to recalculate the assessment without separately deducting the bagging costs." (Dep't Suppl. Br. 7).

14. Citing the Department's initial determination that Solvay was entitled to deduct packaging expenses as "processing," Solvay asserts that "the Department is not permitted to fundamentally change its final decision during the course of the appeal." (Solvay Resp. to Dep't Suppl. Br. 8).

CONCLUSIONS OF LAW

A. State Board's review function: applicable presumptions and burdens of proof

15. "Any taxpayer who feels aggrieved by the valuation and taxes levied by this article may appeal to the [state] board." Wyo. Stat. Ann. § 39-14-309(b)(iii) (2009). The role of the State Board in such matters is to adjudicate the dispute between the parties.

> It is only by either approving the determination of the Department, or by disapproving the determination and remanding the matter to the Department,

> that the issues brought before the Board for review can be resolved successfully without invading the statutory prerogatives of the Department. The statutory mandate to the Board is not to maximize revenue or to punish nettlesome taxpayers, but to assure the equality of taxation and fairly adjudicate disputes brought before it.

Amoco Prod. Co. v. Wyo. State Bd. of Equalization, 12 P.3d 668, 674 (Wyo. 2000).

16. As the adjudicating body, the State Board "[d]ecide[s] all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the rules, regulations, orders and instructions prescribed by the department[.]" Wyo. Stat. Ann. § 39-11-102.1(c)(iv) (2015).

17. "[T]he burden of proof with respect to tax valuation is on the party asserting an improper valuation." *Williams Prod. RMT Co. v. State Dep't of Revenue*, 2005 WY 28, ¶ 7, 107 P.3d 179, 183 (Wyo. 2005). More specifically, the State Board Rules provide:

> Except as specifically provided by law or in this section, the Petitioner shall have the burden of going forward and the ultimate burden of persuasion, which burden shall be met by a preponderance of the evidence. If Petitioner provides sufficient evidence to suggest the Department determination is incorrect, the burden shifts to the Department to defend its action.

Rules, Wyo. State Bd. of Equalization, ch. 2 § 20 (2006).

18. A preponderance of the evidence is " 'proof which leads the trier of fact to find that the existence of the contested fact is more probable than its non-existence.' " *Kenyon v. State, ex rel., Wyo. Workers' Safety & Comp. Div.*, 2011 WY 14, ¶ 22, 247 P.3d 845, 851 (Wyo. 2011) (quoting *Judd v. State, ex rel., Wyo. Workers' Safety & Comp. Div.*, 2010 WY 85, ¶ 31, 233 P.3d 956, 968 (Wyo. 2010)).

19. An administrative agency's statutory interpretation is entitled to weight when the Legislature has, over a long period of time, failed to change the statute. Such failure is an indication of legislative acquiescence to the agency's interpretation. *Seherr-Thoss v. Teton Cty. Bd. of Cty. Comm'rs*, 2014 WY 82, ¶ 14 n. 2, 329 P.3d 936, 943-44 n.2 (Wyo. 2014) (citing *Public Serv. Comm'n v. Formal Complain of WWZ Co.*, 641 P.2d 183, 186 (Wyo. 1982)) Similarly, when interpreting an ambiguous statute, the State Board "will give some deference to an interpretation by the agency charged with execution of the statute unless its interpretation is clearly erroneous." *Campbell Cty. Sch. Dist. v. Catchpole*, 6 P.3d 1275,

1285 (Wyo. 2000). Still, the State Board is not bound by the Department's interpretation. *Id.*; Wyo. Stat. Ann. § 39-11-102.1(c)(iv) (2015), *supra* ¶ 16.

B. Applicable statutory and regulatory provisions, and other guidelines

20. Among taxed mineral production in Wyoming, "[t]here is levied a severance tax on the value of the gross product for the privilege of severing or extracting trona[.]" Wyo. Stat. Ann. § 39-14-303(a)(i) (2009).

21. For the production years in question (2010-2012), Wyoming statutes defined the "basis of tax (valuation)" for trona as follows:

> (b) Basis of tax (valuation). The following shall apply:
>
> (i) Trona shall be valued for taxation as provided in this section;
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> (ii) The department shall calculate the value of trona ore for severance and ad valorem tax purposes by using the individual producer's fair market value of soda ash f.o.b. plant multiplied by the industry factor divided by the individual producer's trona to soda ash ratio less exempt royalties. The industry factor shall be thirty-two and five-tenths percent (32.5%);
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> (iii) The value of the gross product shall be the fair market value of the product at the mouth of the mine where produced, after the mining or production process is completed;
>
> (iv) Except as otherwise provided, the mining or production process is deemed completed when the mineral product reaches the mouth of the mine. In no event shall the value of the mineral product include any processing functions or operations regardless of where the processing is performed;
>
> (v) Except as otherwise provided, if the product as defined in paragraph (iv) of this subsection is sold at the mouth of the mine, the fair market value shall be deemed to be the price established by bona fide arms-length sale.

Wyo. Stat. Ann. § 39-14-303(b) (2009). Referring to paragraph (b)(ii) above, not until 1989 did the State use the sales value of soda ash, processed from trona, to derive the taxable value of trona production. *See infra* ¶¶ 38-39.

22. The parties dispute the manner of calculating a packaging deduction which both initially agreed is a deductible "processing" function. The Legislature defined "processing" as:

> crushing, sizing, milling, washing, drying, refining, upgrading, beneficiation, sampling, testing, treating, heating, separating, tailings or reject material

> disposal, compressing, storing, loading for shipment, transportation from the mouth of the mine to the loadout, transportation to market to the extent included in the price and provided by the producer, processing plant site and post-mouth of mine reclamation, maintenance of facilities and equipment relating to any of the functions stated in this paragraph, and any other function after severance that changes the physical or chemical characteristics or enhances the marketability of the mineral[.]

Wyo. Stat. Ann. § 39-14-301(a)(vii) (2009).

23. The Department Rules governing the taxable value of trona between 2010 and 2012 duplicated, in part, Wyoming Statutes section 39-14-303(b) (2009). *Compare* Rules, Wyo. Dep't of Revenue, ch. 6 § 9a. (2006) *with* Wyo. Stat. Ann. § 39-14-303(b) (2009). Although Wyoming statutes identified a set industry factor of 32.5% in 2003, *see infra* ¶¶ 45-47, the Department prescribed by rule a formula for recalculation of the industry factor, defining direct mining costs and total costs applied in the calculation process:

> (d.) The trona cost ratio shall be a combination of the two ratios, the direct cost ratio and the asset ratio. The direct cost ratio shall be direct mining costs per ton for all producers divided by total direct costs per ton for all producers. The asset ratio shall be mining depreciation for all producers divided by mining and processing depreciation for all producers. These ratios will be combined based on the direct cost ratio. The direct cost ratio will be multiplied by itself and added to the product of (one minus direct cost ratio) times the asset ratio to determine the trona cost ratio.
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> (e.) Direct mining costs shall include mining labor (including mine foremen and supervisory personnel whose primary responsibility is the extraction of trona), supplies used for mining; mining equipment depreciation and related real and personal property taxes; fuel; power and other utilities used for mining; taxable royalties; maintenance of mining equipment; trona transportation from the point of severance to the mouth of the mine; ad valorem gross products and severance taxes; and any other direct costs incurred prior to the mouth of the mine which are specifically attributable to the mining operations. Direct mining costs shall be divided by the total tons of trona mined to arrive at direct mining costs per ton.
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> (f.) Total direct costs per ton shall include direct mining costs per ton described in paragraph (e) of this section plus direct processing costs per ton. Direct processing costs shall include processing labor (including plant

> foremen and supervisory personnel whose primary responsibility is processing trona into soda ash), supplies used for processing trona into soda ash; processing plant and equipment depreciation and related real and personal property taxes; fuel, power and other utilities used for processing trona into soda ash; maintenance of soda ash processing plant and equipment; trona and\or soda ash transportation from the mouth of the mine to the point of shipment; and any other direct costs incurred which are specifically attributable to the mining, processing or transportation of trona and\or soda ash up to and including the point of shipment to market. Direct processing costs shall be divided by the total tons of trona processed into soda ash to arrive at direct processing costs per ton.

Rules, Wyo. Dep't of Revenue, ch. 6 § 9a. (d.)-(f.) (2006).[7] As we will explain, while the periodic recalculation of an industry factor (the inverse of which is the processing deduction) is not at issue, that process and the activities and associated costs included to calculate the industry factor are relevant to resolution of this case. *See infra* ¶¶ 58-59.

C. Analysis

24. The parties initially agreed on several key points: 1) Wyoming Statutes section 39-14-303(b)(ii) (2009) applied to Solvay's trona production (soda ash) and, therefore, Solvay received a 67.5% deduction; and 2) Solvay's packaging of less than 1.5% of its processed soda ash warranted an additional "processing" deduction. (Tr. 144, 167); *see supra* n. 2. The parties initially disputed only the manner of calculating the deduction.

25. In response to the State Board's supplemental briefing order, the Department maintained that subsection 303(b) is unambiguous, but recognized the applicable valuation method (paragraph 303(b)(ii)) may apply such that no additional deduction for processing should be permitted. *See* Issues, *supra* at pp. 2-3. In its supplemental brief, the Department alternatively requested a remand to revalue Solvay's bagged product without allowance of an additional bagging deduction. (Dep't Suppl. Br. 6-8). Solvay objected. (Solvay Resp. to Dep't Suppl. Br. 2, 8-9).

26. Solvay's objection to the Department's request for remand to revalue under a different statutory analysis is well-taken. " 'Procedural due process principles require reasonable notice and a meaningful opportunity to be heard before government action may substantially affect a significant property interest.' " *Amoco Prod. Co. v. Wyo. State Bd.*

[7] The Department removed the industry factor calculation instructions and other provisions addressing recalculation of a trona valuation industry factor in 2014. Rules, Wyo. Dep't of Revenue, ch. 6 (2014).

of Equalization, 7 P.3d 900, 905 (Wyo. 2000) (quoting *Pfeil v. Amax Coal W., Inc.*, 908 P.2d 956, 961 (Wyo. 1995)).

27. The State Board agrees the Department could not, after the hearing, supplant, negate or materially modify the audit assessment with an alternative decision to be applied in the present appeal. Upon appeal of the Department's audit assessment to the State Board, the State Board's appellate jurisdiction arose from, and is limited to, a review of that properly appealed final decision. *See* Wyo. Stat. Ann. §§ 39-11-102.1(c) (2015), 39-14-309(b) (2015). The audit assessment, along with the Department's evidence and legal argument, remains the decision for review. The Department's supplemental brief, reflecting an abrupt decisional shift, could not become or alter the Department's appealed decision. The Department would have been required to withdraw its audit assessment and issue a revised assessment, or otherwise obtain Solvay's consent to such a change.

28. In any event, the Department did not withdraw its audit assessment, nor did Solvay withdraw its appeal of the audit assessment. Therefore, notwithstanding the Department's abrupt request for an alternative assessment outcome, the State Board's jurisdiction, function, and duty with respect to the audit assessment remain unchanged.

29. Regardless, it was the State Board that prompted a closer examination of how the industry factor valuation methodology applied, in particular whether paragraph (b)(ii) was subject to paragraph (b)(iv). Through supplemental briefing, the parties had an opportunity to explain how paragraphs (b)(ii) and (b)(iv) functioned, together or independently. The parties thereafter had notice and a reasonable opportunity to address purely legal questions regarding their initial agreed application of the industry factor method, Wyoming Statutes section 39-14-303(b) (2009), *supra* ¶ 21, and its function within the overall valuation of trona.[8] Moreover, the State Board's queries could not have been too surprising given recent State Board decisions addressing the taxable valuation of trona production, including application of the trona valuation provisions at play in this case. *Infra* ¶ 61.

30. The question was then whether the State Board was bound by the Department's and Solvay's uncontested application of a valuation methodology? As an independent quasi-judicial body that "[d]ecide[s] all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the rules, regulations, orders and instructions prescribed by the department[,]" the answer is no. Wyo. Stat. Ann. § 39-11-102.1(c)(iv) (2015). Proper adjudication of tax disputes necessarily requires that the State Board have the flexibility to

[8] The State Board also issued a Notice of Intent to Take Notice of Legislative Facts on July 19, 2017, allowing the parties an opportunity to address identified legislative materials relevant to interpretative questions.

examine uncontested statutory or regulatory interpretations subsumed within a given tax dispute, especially when those interpretations directly impact the overall resolution of an appeal.

31. Were it otherwise, the State Board would be required to accept predicate statutory or regulatory assertions, notwithstanding administrative or interpretive errors or their effect on resolution of the ultimate questions to be settled. Although the State Board, as an independent "quasi-judicial" tax tribunal that reviews tax disputes, may not usurp the Department's valuation function, it must examine disputes from the ground up to ensure departmental compliance with law. *See Amoco Prod. Co. v. Wyo. State Bd. of Equalization*, 12 P.3d 668 (Wyo. 2000) (The State Board's proper role as an independent, quasi-judicial reviewer of disputes between Department and taxpayers does not include performance of the Department's tax administration function).

32. Accordingly, we must first resolve whether the Department and Solvay correctly presumed Solvay was entitled to a separate processing deduction for its packaging expenditures pursuant to the valuation method applied, Wyoming Statutes section 39-14-303(b) (2009), *supra* ¶ 21. The principles of statutory interpretation are well-defined.

> In interpreting statutes, our primary consideration is to determine the legislature's intent. All statutes must be construed *in pari materia* and, in ascertaining the meaning of a given law, all statutes relating to the same subject or having the same general purpose must be considered and construed in harmony. Statutory construction is a question of law, so our standard of review is de novo. We endeavor to interpret statutes in accordance with the legislature's intent. We begin by making an inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection. We construe the statute as a whole, giving effect to every word, clause, and sentence, and we construe all parts of the statute *in pari materia.* When a statute is sufficiently clear and unambiguous, we give effect to the plain and ordinary meaning of the words and do not resort to the rules of statutory construction. Moreover, we must not give a statute a meaning that will nullify its operation if it is susceptible of another interpretation.
>
> Moreover, we will not enlarge, stretch, expand, or extend a statute to matters that do not fall within its express provisions.
>
> Only if we determine the language of a statute is ambiguous will we proceed to the next step, which involves applying general principles of statutory construction to the language of the statute in order to construe any ambiguous language to accurately reflect the intent of the legislature. If this Court determines that the language of the statute is not ambiguous, there is no room for further construction. We will apply the language of the statute using its ordinary and obvious meaning.

> Whether a statute is ambiguous is a question of law. A statute is unambiguous if reasonable persons are able to agree as to its meaning with consistency and predictability, while a statute is ambiguous if it is vague or uncertain and subject to varying interpretations.

Travelocity.com LP v. Wyo. Dep't of Revenue, 2014 WY 43, ¶ 20, 329 P.3d 131, 139 (Wyo. 2014) (quoting *Redco Const. v. Profile Props., LLC*, 2012 WY 24, ¶ 26, 271 P.3d 408, 415-16 (Wyo. 2012).

i. Are the trona tax valuation statutes ambiguous?

33. The parties contend the trona valuation provisions are unambiguous.[9] "[A] statute is ambiguous not only if it is vague or uncertain and subject to varying interpretations, but also if it irreconcilably conflicts with another statute or section of the same statute *in pari materia*." *Mountain Cement Co. v. S. of Laramie Water & Sewer Dist.*, 2011 WY 81, ¶ 40, 255 P.3d 881, 897 (Wyo. 2011). An ambiguity may arise when reading sections of a statute together. *See Stewart Title Guar. Co. v. Tilden*, 2005 WY 53, ¶ 17, 110 P.3d 865, 872 (Wyo. 2005) (Since not all types of insurance coverage are limited to payment of a loss, the court stated "when reading the statute as a whole, an ambiguity is created.").

34. Upon careful examination of Wyoming Statutes sections 39-14-301(a)(vii) and 39-14-303(b) (2009), the functional interplay between paragraph (b)(ii) and the balance of subsection (b) is unclear. *Supra* ¶¶ 21-22. Because Solvay processed its trona into soda ash, the parties agree paragraph (b)(ii) directed the Department to calculate Solvay's taxable value by applying a 32.5% industry factor to value the soda ash production, f.o.b. plant, among other adjustments. Wyo. Stat. Ann. § 39-14-303(b)(ii) (2009), *supra* ¶ 21. The question then was whether other subsection (b) provisions, in particular paragraph (b)(iv), applied to the valuation of Solvay's production under paragraph (b)(ii)?

35. Both interpretations are conceivable. Assuming the Department and Solvay's initial interpretation was correct, we would necessarily interpret paragraph (b)(iv) as qualifying or supplementing the paragraph (b)(ii) "industry factor" valuation method. In the alternative interpretation, paragraph (b)(iv) stands as a separate valuation directive, not applicable for trona valued in accordance with paragraph (b)(ii).

[9] Following supplemental briefing and oral arguments to address the State Board's post hearing questions, the Department conceded that in light of its alternative reading of the statutory methodology applied, the provisions were possibly ambiguous. (Tr. Suppl. Arg. 27-28 (June 28, 2017)).

36. Given these possible interpretations, the State Board concludes Wyoming Statutes section 39-14-303(b) (2009), when considered in light of other pertinent 2009 trona valuation provisions, is ambiguous.[10]

37. When venturing beyond the plain meaning of statutory language, "any additional construction can be resorted to only if the wording is ambiguous or unclear to the point of demonstrating obscurity with respect to the legislative purpose or mandate." *Allied-Signal, Inc. v. Wyo. State Bd. of Equalization*, 813 P.2d 214, 219 (Wyo. 1991). In applying rules of statutory construction, the Wyoming Supreme Court explained:

> [I]n ascertaining the legislative intent in enacting a statute * * * the court * * * must look to the mischief the act was intended to cure, the historical setting surrounding its enactment, the public policy of the state, the conditions of the law and all other prior and contemporaneous facts and circumstances that would enable the court intelligently to determine the intention of the lawmaking body.

Parker Land & Cattle Co. v. Wyo. Game & Fish Comm'n, 845 P.2d 1040, 1044 (Wyo. 1993) (quoting *Carter v. Thompson Realty Co.*, 58 Wyo. 279, 291, 131 P.2d 297, 299 (Wyo. 1942)). Further, "where the legislature, by subsequent amendment or legislation in the same act or on the same subject, enacts language which clarifies previously ambiguous language, the subsequent language gives meaning to the previously ambiguous expression." *Moncrief v. Wyo. State Bd. of Equalization*, 856 P.2d 440, 444-45 (Wyo. 1993).

ii. History of the trona tax valuation statutes and regulations

38. In 1985, Wyoming valued solid minerals at the mine or mining claim after production of the mineral was complete. The "point of valuation" was generally identified as the point where any mineral product was removed from the "pit, shaft, mine or well, and prior to any benefication [beneficiation] or further processing [was] placed in storage prior to transportation to market[.]" Wyo. Stat. Ann. § 39-2-202(b) (Michie 1977, 1985). For minerals sold at the statutory point of valuation, arms-length sales prices established the

[10] This Board held that Wyoming Statutes section 39-14-303(b)(ii) (2010), identical to the statutes applicable in the present case, was clear and unambiguous. *In re Matter of FMC Wyo. Corp.*, Docket No. 2011-30, ¶ 56, 2013 WL 2467819 (Wyo. St. Bd. of Equalization, March 19, 2013). This Board drew an identical conclusion in *In re Matter of FMC Wyo. Corp.*, Docket Nos. 2012-52, 2012-53, ¶ 38, 2014 WL 5426152 (Wyo. St. Bd. of Equalization, June 23, 2014). Inasmuch as the parties in that case and the present case reasonably disagree on how to reconcile the five paragraph valuation provisions under subsection (b), in particular (b)(ii) and (b)(iv), the State Board's conclusion was incorrect and subsection (b) was and is ambiguous. The State Board will apply rules of statutory construction to resolve that ambiguity.

product's taxable value. The Department was to apply recognized appraisal techniques for production sold away from the point of value, or used without sale. Wyo. Stat. Ann. § 39-2-202(c), (d) (Michie 1977, 1985).

39. The Legislature in 1989 enacted a separate process to determine the taxable valuation of most trona production. 1989 Wyo. Sess. Laws 284-85. Specifically, the taxable valuation of trona would thereafter depend upon a newly conceived "industry factor" component applied to value trona's main byproduct, soda ash:

> (a) Based upon the information received or procured pursuant to W.S. 39-2-201(b) or (c) **and except as provided in subparagraph (g) of this section**, the board shall annually value the gross product for the preceding calendar year, in appropriate unit measures of all mines and mining claims from which valuable deposits are produced . . . .
>
> . . . .
>
> (g) The department shall calculate the value of trona ore for severance and ad valorem tax purposes by using the individual producer's fair cash market value of soda ash f.o.b. plant multiplied by the industry factor divided by the individual producer's trona to soda ash ratio less exempt royalties. The industry factor shall be calculated by the department using a combination of the reported production for the two (2) previous calendar years by dividing the composite trona value per ton of soda ash by the composite soda ash sales price.

Wyo. Stat. Ann. § 39-2-202(a), (g) (Michie 1977, 1989 Cumulative Suppl.) (emphasis added); *see* 1989 Wyo. Sess. Laws 284-85.

40. In simple terms, the industry factor was, and remains, an industry-wide, cost-driven ratio applied to account for processing/transportation expenses incurred after the point of valuation.[11] Every trona producer (all of which likely processed their trona ore into soda ash), received a deduction inverse to the industry factor (example: factor of 30% generates a deduction of 70%). By rule, the Department gathered industry information to calculate the industry factor ratio, recalculating the industry factor every two years.[12] Rules, Wyo. Dep't of Revenue, ch. 6 § 9a (1995).

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[11] Whether the industry factor captures only processing, and the scope of those activities, is a key point of contention. Solvay argues "The industry factor supported by the FMC representative and other industry members was intended to apply to and determine the value of the soda ash before additional processing such as packaging. As such, the packaging costs must be deducted under Wyo. Stat. § 39-14-303(b)(iv)." (Solvay Resp. to State Board's Notice of Intent to Take Notice of Legislative Facts 6).

[12] Wyoming's predominant intent to value and tax mineral production on a production cost basis predates the valuation statutes discussed. *See e.g.* Wyo. Stat. Ann. § 39-224(b) (Michie 1957, 1975 Cumulative

41. The industry factor applied as a ratio of production costs to total costs; again, the inverse representing the percentage deduction for processing and transportation expenses—expenses incurred after completion of the production process, i.e. the point of valuation. *Supra* ¶¶ 20-22. As a ratio deduction applied against the producer's sales revenue, the deduction was not a dollar-for-dollar deduction for actual costs incurred, but a proxy deduction percentage representing industry wide costs incurred. *Id.*

42. The Legislature enacted a similar method of deducting postproduction costs to value other minerals. In the "proportionate profits" valuation method applied to certain oil, gas and coal production, the "direct cost ratio" operates similarly to the industry factor for trona. Although conceptually similar, the direct cost ratio was not, and is not, calculated as an industry-wide ratio, but on an individual producer basis. *See* enactment of the "proportionate profits" valuation method for valuing coal, Wyo. Stat. Ann. § 39-2-209(d) (Michie 1977, 1990), and oil/natural gas, Wyo. Stat. Ann. § § 39-2-208(d)(iv) (Michie 1977, 1990); (Tr. 142-45).[13]

43. Through application of either the direct cost ratio (for oil, gas or coal) or the industry factor (for trona processed into soda ash), the Legislature sought to tax the mineral's value immediately at the cessation of production activities by crediting against sales revenue the cost of production activities and excluding revenue generated through the incurrence of post-production processing or transportation expenses.[14] Pivotal in applying either was and is the concept of a "point of valuation," the physical location at which the production process ends and post-production begins. *See Williams Prod. RMT Cop. v. State Dep't of Revenue*, 2005 WY 28, ¶¶ 9-10, 107 P.3d 179, 183-84 (Wyo. 2005) (explaining significance of point of valuation in Wyoming's taxation of mineral production).

Suppl.) ("The mining or production process is deemed completed when the mine product is removed from the pit, shaft, mine or well, and prior to any additional benefication [sic] or further processing is placed in bins, tanks, tipples, silos, stock-piles or other storage prior to transportation to market[.]"). Correspondingly, the State Tax Commission, as the Department's governing body in 1989, required that appraisal techniques account for value generated through post-production processing and transportation expenses, and that such value be deducted from the revenue when determining taxable value. *See* Rules, State Tax Commission, ch. XXI § 10 (1989). This approach remains fundamental to Wyoming's taxation of minerals, including trona. *See* Wyo. Stat. Ann. § 39-14-303(b)(iv) (2015) ("In no event shall the value of the mineral product include any processing functions or operations regardless of where the processing is performed[.]"); *see also infra* ¶¶ 52-53.

[13] The proportionate profits valuation methodology currently applies to coal under Wyoming Statutes section 39-14-103(b)(vii)(A) (2015), and oil/natural gas under Wyoming statutes section 39-14-203(b)(vi)(D) (2015).

[14] For discussions of the proportionate profits method, *see Powder River Coal Co. v. Wyo. State Bd. of Equalization*, 2002 WY 5, ¶¶ 7-10, 38 P.3d 423, 426-27 (Wyo. 2002) (describing proportionate profits method's function and purpose); *Wyodak Res. Dev. Corp. v. Wyo. Dep't of Revenue*, 2017 WY 6, ¶¶ 19-22, 387 P.3d 725, 731 (Wyo. 2017) (same).

44. In 1998, the Legislature recodified the entire Wyoming tax code. 1998 Wyo. Sess. Laws 30-313. The Legislature recodified the trona tax imposition and valuation statute under Wyoming Statutes subsection 39-14-303(b) (1998), retaining the industry factor, along with several universal mineral valuation guidelines. *Compare* Wyo. Stat. Ann. § 39-14-303(b) (1998) *with* Wyo. Stat. Ann. §§ 39-14-103 (1998) (coal); 39-14-203(b) (1998) (oil and gas); 39-14-403(b) (1998) (bentonite); 39-14-503(b) (1998) (uranium); and 39-14-603(b) (1998) (sand and gravel); *see also infra* ¶ 53. Significantly, the Legislature specified that in undertaking the recodification, it intended *no substantive change* to prior law. 1998 Wyo. Sess. Laws 312. In a belt and double suspenders approach the Legislature enumerated nearly all items which might conceivably be affected, introducing the list of items not affected, with the phrase "including, but not limited to." The non-exhaustive list of items not affected included the imposition of taxes and tax rates. *Id.*

45. In 2003, the Legislature amended the manner of establishing the industry factor that had existed since 1989. 2003 Wyo. Sess. Laws 42. Rather than recalculate the industry factor each year, the Legislature set the industry factor at 32.5%, effectively establishing a permanent processing and transportation deduction of 67.5%. *Id.*; *see* Wyo. Stat. Ann. § 39-14-303(b)(ii) (2003), *supra* ¶ 21.

46. The 2003 legislative change originated with the Wyoming Legislature's 2002 Interim Joint Minerals, Business, and Economic Development Committee (Interim Committee). At the Interim Committee's July 2002 meeting, representatives of the trona industry, including FMC, General Chemical, and Solvay, presented written materials in support of a statutory amendment to permanently set the industry factor. *See* Minutes, Jt. Minerals, Bus. & Econ. Dev. Interim Comm. & App. Y, (July 11-12, 2002), http://legisweb.state.wy.us/2002/interim/min/minutes/min0711.htm. The trona industry proposed the Wyoming Legislature set the industry factor at 32.5%, a weighted average of the industry factor applied between 1990 and 2002. *Id.* The industry's proposal to the Interim Committee relied upon industry processing costs defined by the State. *Id.*

47. The Department supported the trona industry's proposal, explaining the factor had slowly increased as producers mined deeper (referred to as "factor creep"). *Id.* The Department agreed with the trona industry that making the industry factor permanent would ease administrative burdens. *Id.* The Interim Committee sponsored the proposed bill that became House Bill No. 6 in the 2003 legislative session and, thereafter, became law. 2003 Wyo. Sess. Laws 42; (*See also* Sachse Test., Tr. 142-45).

48. Finally, in 2012 the Legislature authorized the Department and trona producers to agree upon different valuation methods under limited circumstances:

> When the taxpayer and department jointly agree that the application of the methods listed in paragraphs (i) through (v) of this subparagraph does not produce a representative fair market value for the product, a mutually acceptable alternative method may be applied.

2012 Wyo. Sess. Laws 50; Wyo. Stat. Ann. § 39-14-303(b)(vi) (2013).[15] Of significance to the present case, the language refers to valuation "**methods** listed in paragraphs (i) through (v) of this subparagraph[.]" *Id.* (emphasis added).

iii. Is Solvay entitled to a separate packaging expense deduction?

49. We are presented with two potential applications of Wyoming Statutes section 39-14-303(b) (2009): 1) as establishing a single integrated valuation methodology in which paragraph (b)(ii) establishes a 67.5% deduction for trona processed into soda ash, but possibly allows additional "processing" deductions pursuant to paragraph (b)(iv); or 2) as identifying three distinct valuation methodologies, each dependent upon the trona production scenario, in which case paragraph (b)(iv) does not allow additional processing deductions when (b)(ii) applies. Wyo. Stat. Ann. § 39-14-303(b) (2009), *supra* ¶ 21. Solvay's entitlement to an additional packaging deduction, the parties' foregone conclusion at the commencement of this dispute, hangs in the balance.

50. It is fundamental that "in ascertaining the meaning of a given law, all statutes relating to the same subject or having the same general purpose must be considered and construed in harmony." *State, ex rel., Wyo. Dep't of Revenue v. Hanover Compression, LP*, ¶ 8, 196 P.3d 781, 784 (quoting *BP Am. Prod. Co. v. Wyo. Dep't of Revenue*, 2005 WY 60, ¶ 12, 112 P.3d 596, 604 (Wyo. 2005)). "We are guided by the full text of the statute, paying attention to its internal structure and the functional relation between the parts and the whole." *Rodriguez v. Casey*, 2002 WY 11, ¶ 10, 50 P.3d 323, 326-27 (Wyo. 2002). "[W]hen we are confronted with two possible but conflicting conclusions, we will choose the one most logically designed to cure the mischief or inequity that the legislature was attempting to accomplish." *Hede v. Gilstrap*, 2005 WY 24, ¶ 6, 107 P.3d 158, 162-63 (Wyo. 2005) (quoting *In re Collicott*, 2001 WY 35, ¶ 9, 20 P.3d 1077, 1080 (Wyo. 2001)).

[15] The 2011 trona valuation dispute between the Department and producer FMC Wyoming Corporation likely prompted the Legislature to authorize mutually agreeable methodologies in 2013. In *In re Matter FMC Wyo. Corp.*, 2013 WL 2467819, Docket No. 2011-30 (March 19, 2013), the State Board heard an appeal in which FMC argued the Department was required to continue use of a previously agreed upon valuation method. The Department argued it lacked authority to enter a mutually agreed valuation methodology in the absence of specific statutory language, and prevailed. *Id.* The Legislature thereafter passed statutory language expressly permitting the Department and taxpayers to mutually agree upon a valuation method, an authority the Department already possessed when valuing other minerals. *See* e.g. Wyo. Stat. Ann. §§ 39-14-103(b)(x) (2011) (coal); 39-14-203(b)(vi) (2011) (oil and gas).

51. Between the two possible statutory interpretations, one permits greater adherence to the language adopted by the Legislature and achieves the more logical, less problematic outcome as a whole. That is, subsection (b) enumerates three separate valuation directives, each triggered upon a different trona production scenario:

> A) paragraph (b)(ii) establishes an "industry factor"-driven valuation method applicable to trona processed into soda ash;
>
> B) paragraph (b)(iv) applies to value trona if sold as trona, rather than soda ash, in which case the industry factor is inapplicable and each expense is either deductible or not deductible depending upon its purpose and relation to the point of valuation (i.e. classification as production, processing or transportation expense); and
>
> C) paragraph (b)(v) applies to trona ore sold at the point of valuation, in which case the arm's length price establishes the fair market value for tax purposes.

Wyo. Stat. Ann. § 39-14-303(b) (2009), *supra* ¶ 21. Regardless of the method applied, paragraph (b)(iii) merely restates the historical point of valuation: "the mouth of the mine where [mineral] produced, after the mining or production process is completed[.]" *Id., supra* ¶ 21. Importantly, paragraph (b)(iii) becomes operative only when manually determining and applying the point of valuation under paragraphs (b)(iv) or (b)(v). Under (b)(ii), the point of valuation was previously applied as part of the industry factor's computation. *Id.*

52. To hold otherwise—that subsection 303(b) establishes a single valuation methodology such that paragraph (b)(iv) qualifies (b)(ii)—we must necessarily infer the Legislature intended the industry factor deduction of 67.5% under (b)(ii) might exclude various deductions, leaving it to the Department and taxpayers to identify those deductions that are not included as part of the 67.5%. Paragraph (b)(ii), however, discounts that inference by mandating a substantial and inclusive deduction. Not a single word in paragraph (b)(ii) invites the inference that additional deductions apply. "[W]e will not enlarge, stretch, expand, or extend a statute to matters that do not fall within its express provisions." *Hanover Compression,* ¶ 8, 196 P.3d at 784 (quoting *BP Am. Prod. Co. v. Wyo. Dep't of Revenue*, 2005 WY 60, ¶ 15, 112 P.3d 596, 604 (Wyo. 2005)). The State Board does not "decide what should be said in a statute, we do not supply omissions, and we do not 'fix' what appear to be defects[.]" *Mountain Cement Co.*, ¶ 55, 255 P.3d at 902.

53. Also telling, paragraph (b)(iv) is not needed to apply (b)(ii) as a valuation method. From a historical perspective, paragraph (b)(iv) is nothing more than a restatement of

several core valuation principles: produced minerals shall be valued for tax purposes after the production process is complete, i.e. at the point of valuation, and accordingly, taxable value may not include post-production value enhancements, i.e. processing or transportation. *See* history on recodification of tax code, *supra* ¶ 44; *infra* ¶¶ 54-56.

54. Recall that at the time of the 1998 recodification, tax statutes for all other minerals included this universal guideline. The 1998 recodification created separate sections within chapter 14 for each mineral, repeating in many instances the same phraseology in each. In the statute at hand the Legislature as a matter of course included the language of (b)(iv). *Supra* ¶ 44; *see also* Wyo. Stat. Ann. §§ 39-14-103(b)(iii) (1999) (coal), 39-14-303(b)(iv) (1999) (trona), 39-14-403(b)(vi) (1999) (bentonite), 39-14-503(b)(ii) (1999) (uranium), 39-14-603(b)(vii) (1999) (sand and gravel), 39-14-703(b)(ii) (1999) (other valuable deposits); 1998 Wyo. Sess. Laws 84-186.[16]

55. Also critical is the legislative declaration that no substantive changes were intended by the 1998 recodification. 1998 Wyo. Sess. Laws 312; *supra* ¶ 44. The (b)(iv) language upon which Solvay heavily relies to claim an additional packaging deduction was not in the law governing trona valuation (when processed into soda ash) prior to that recodification.[17] To read its insertion as a modification of (b)(ii), thereby adding unknown deductible costs to the industry factor, ignores the clear legislative directive in the 1998 recodification. *Id.* We see nothing in the statutory language or legislative history requiring that (b)(iv) plays a greater functional role than described in this and the preceding two paragraphs. *See supra* ¶¶ 53-54.

56. We further recognize the Legislature enacted the industry factor approach to simplify and streamline the process for valuing trona. *Supra* ¶¶ 38-43, 45-47. To ascribe to paragraph (b)(iv) the purpose of amending (b)(ii) undermines the adoption of an all-encompassing industry factor as a proxy for all trona converted to soda ash in order to

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[16] The Legislature did not include this specific provision for taxation of oil and gas. Instead it achieved the desired effect through detailed point of valuation and methodology language. *See* Wyo. Stat. Ann. § 39-14-203(b) (1998). The variety of natural gas/oil production types (sour, sweet, conventional, coal bed methane, helium, CO2 flooding, etc.) and engineering process variations, along with frequent litigation, may have prompted this more detailed approach.

[17] Moreover, consistent with the State Board's construction, the (b)(iv) language prior to 1998 could have applied to trona production that was *not processed* into soda ash. *See e.g.* Wyo. Stat. Ann. § 39-2-202(a), (b) (1997); *see also supra* ¶ 39. In that instance, the introductory language in subsection (a) of the 1997 statute, "and except as provided in subsection (g) and except as otherwise provided, . . ." allowed that trona not processed in to soda ash under subsection (g) would be valued in accordance with the remainder of the statute, including the fundamental subsection (b) principles that post production activities do not enhance taxable value. *Id.* As such, and consistent with the State Board's interpretation of the present trona valuation statutes, determining the point of valuation and distinguishing between production and postproduction costs would have been required for trona not processed into soda ash.

avoid litigation over actual production costs. We therefore disfavor interpretations that undermine that intended simplicity. *Gilstrap*, ¶ 6, 107 P.3d at 162-63, *supra* ¶ 50.

57. Accordingly, because Solvay processed its trona into soda ash, paragraphs (b)(iv) and (b)(v) were inapplicable—no additional deduction under (b)(iv) applied. Nor was (b)(iii) of functional importance for trona valued pursuant to paragraph (b)(ii)—the point of valuation and resulting direct cost ratio calculation were subsumed within the industry factor, which accounted for the division between production and postproduction expenses on an industry-wide basis.

58. This interpretation enjoys further support from the Legislature's 2012 enactment of paragraph (b)(vi). 2012 Wyo. Sess. Laws 50, *supra* ¶ 48; *see* Wyo. Stat. Ann. § 39-14-303(b)(vi) (2013). In that amendment, the Legislature referred to "**methods** listed in paragraphs (i) through (v) of this subsection[,]" and authorized the Department and taxpayers to mutually agree upon an alternative valuation method. *Id.* (Emphasis added). "The legislature is presumed to act in a thoughtful and rational manner with full knowledge of existing law[.]" *Redco Const.*, ¶ 37, 271 P.3d at 418. While not conclusive, the Legislature's subsequent amendment and wording of paragraph (b)(vi) helps resolve questions about how the valuation paragraphs interact: the paragraphs within subsection (b) set forth independent valuation *methods*, not a single method. *See Moncrief*, 856 P.2d at 444-45 (enactment of subsequent language may reflect legislative intent with respect to ambiguous statutory provisions).

59. Contrary to the parties' position that the industry factor included only those expenses incurred through processing of the trona into soda ash (Sachse Test., Tr. 144-45; Solvay Resp. to State Bd. Notice of Intent to Take Notice of Legislative Facts 3-6), the statutory definition of processing and Department's rules are far more inclusive. *See* Wyo. Stat. Ann. § 39-14-301(a)(vii) (2009), *supra* ¶ 22 ("any other function after severance that changes the physical or chemical characteristics or enhances the marketability of the mineral;"); Rules, Wyo. Dep't of Revenue, ch. 6 § 9a. (d.)-(f.) (2006), *supra* ¶ 23. Per the Department's industry factor recalculation instructions, the industry factor and resulting deduction ratio captured all production, processing, and transportation costs incurred "from the mouth of the mine **to the point of shipment**; and any other direct costs incurred which are specifically attributable to the mining, processing or transportation of trona and/or soda ash **up to and including the point of shipment to market**[.]" Rules, Wyo. Dep't of Revenue, ch. 6 § 9a. (d.)-(f.) (2006) (emphasis added), *supra* ¶ 23. Further, a broadly inclusive industry factor is consistent with the scope of the direct cost ratio under proportionate profits, which includes all direct processing and transportation expenses as a fraction of total direct expenses. *Supra* ¶¶ 42-43.

60. During the 2002 Interim Committee hearing and presentation by the trona industry which spurred that legislative change, *supra* ¶¶ 46-47, the trona industry asked the Legislature to amend the industry factor to make it permanent at 32.5%, a calculation premised on state-defined "processing" costs. The definition of "processing" then, as now, included "any other function that . . . enhances the marketability of the mineral[.]" Wyo. Stat. Ann. § 39-14-301(a)(vii) (2009), *supra* ¶ 22. With industry and agency support, the Interim Committee sponsored the resulting House Bill 6 that became law in 2003. 2003 Wyo. Sess. Laws 42, *see supra* ¶¶ 45-47. Neither the materials before that Committee nor the language in statute reflected a limited application of "processing" or an intent to exclude certain deductions from the industry factor. Neither the Department nor Solvay offer compelling authority to the contrary. Indeed, from the Department's perspective, entitlement to an additional deduction is merely implied. (Tr. 144-45).

61. Finally, the ultimate conclusion in this case is consistent with our decisions in *In re FMC Wyo. Corp.*, ¶¶ 57-62, 2013 WL 2467819, Wyo. State Bd. of Equalization Docket No. 2011-30, (March 19, 2013) and *In re FMC Wyo. Corp.*, ¶¶ 39-43, 2014 WL 5426152 (Wyo. State Bd. of Equalization Docket Nos. 2012-52, 2012-53, (June 23, 2014). In those appeals, as here, the State Board rejected the taxpayer's argument that, in addition to the industry factor deduction of 67.5%, the taxpayer was entitled to a separate deduction for other costs. FMC did not appeal those rulings to the district court; nor has the Legislature amended paragraphs (b)(ii) or (b)(iv) in response to those rulings.

D. Conclusion

62. The parties' initial presumption that Solvay was due a separate deduction for packaging of soda ash, in addition to the deduction allowed under Wyoming Statutes section 39-14-303(b)(ii) (2009), was contrary to law. Solvay was entitled only to the deduction set forth under paragraph (b)(ii). Paragraph (b)(iv) afforded no additional deductions.

63. Consequently, the parties' interpretational dispute over how to calculate an additional processing deduction, including the resulting audit assessment and imposition of interest, is moot in light of our determination that the Department and Solvay initially misinterpreted the underlying valuation methodology. We also decline to address Solvay's additional objection that the Department failed to give Solvay notice of interpretational changes following a claimed acquiescence and acceptance of reported deductions. *See* Issues Section, p. 2.

ORDER

IT IS HEREBY ORDERED the Department of Revenue's audit assessment, to the extent the Department allowed a separate processing deduction for the packaging of Solvay's soda ash, is **reversed** and **remanded** to the Department for reassessment in accordance with this Decision and Order.

DATED this 10th day of October, 2017.

STATE BOARD OF EQUALIZATION

Martin L. Hardsocg, Chairman

E. Jayne Mockler, Vice-Chairman

David L. Delicath, Member

ATTEST:

Nadia Broome, Executive Assistant

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 2017, I served the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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