

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ORYX ENERGY,

Plaintiff–Appellee,

v

DEPARTMENT OF TREASURY,

Defendant–Appellant.

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UNPUBLISHED

July 23, 1996

No. 181915

LC No. 93-015077-CM

Before: Murphy, P.J., and O’Connell and M.J. Matuzak,\* JJ.

PER CURIAM.

Defendant appeals as of right from a Court of Claims order granting partial summary disposition in favor of plaintiff pursuant to MCR 2.116(C)(10). We affirm.

Defendant argues that producers of natural gas are not entitled to deduct production costs from the Michigan Severance Tax Base; specifically, defendant argues that plaintiff is not entitled to deduct lease use gas used in the line heater and separator. It is defendant’s policy, however, to allow plaintiff to deduct lease use gas used in the compressor and dehydrator as they are considered to be “market” costs. An arbitrary distinction is one “without reference to principles, circumstances, or significance.” *In re Kurzyniec Estate*, 207 Mich App 531, 537; 526 NW2d 191 (1994). The severance tax act does not distinguish between production costs and market costs. MCL 205.303; MSA 7.353. As used in the statute, production refers to “productions from the earth” as opposed to the “manufacture” of goods. See *Black’s Law Dictionary*, p 1209 (6th ed 1990).

Moreover, the plain meaning of MCL 205.303; MSA 7.353 supports the interpretation that the term “production” as used in the statute refers to natural gas, oil and other “productions of the earth.” The statute provides that value of the gas is to be determined at the point where the production was severed. Since the gas has no determinable value at the point of severance, defendant uses its market value after purification. Therefore, to determine value at the point of severance, defendant should

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\* Circuit judge, sitting on the Court of Appeals by assignment.

subtract all costs necessary to make the gas salable, including the costs of purification. Thus, plaintiff should be taxed on the value of all gas at the point of severance (market value of all the gas minus all purification costs after severance). Accordingly, plaintiff should not be taxed on the gas it severs but uses in the purification process.

Affirmed.

/s/ William B. Murphy

/s/ Peter D. O'Connell

/s/ Michael J. Matuzak