West Virginia State Tax Department

TSD-318
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Taxation of Homeowners' Associations and Common Interest Communities

The purpose of this is to clarify (1) How the common elements of a planned or common interest community are to be taxed, and (2) How the West Virginia consumers sales and service tax applies to fees paid to a homeowners' association.

I. ALLOCATION OF PROPERTY TAXES ON COMMON ELEMENTS OF COMMON INTEREST COMMUNITIES

With respect to property taxes, the Uniform Common Interest Ownership Act ("UCIOA"), W. Va. Code §36B-1-105, provides that:

In a condominium or planned community:

If there is any unit owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights.

A "unit owner" is an owner of a physical portion of the common interest community, whether the units be houses, apartments, or condominiums. The "declarant" is the developer who created the common interest community. Thus, until a unit of the condominium or planned community is sold, the property is taxed as a whole; the "declarant," that is, the developer, is responsible for taxes on the property. As soon as one unit of the condominium or planned community is sold, the units making up the condominium or planned community must be taxed and assessed separately, and the common elements may not be taxed and assessed separately.

The statute does not say that the common elements are not to be taxed; it merely states that they are not to be taxed separately. The definition of "common interest community" in the UCIOA presumes that the common areas will be taxed:

"Common interest community" means real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration.

This definition presupposes that the owners of units in a common interest community are obligated to pay real estate taxes for real estate other than their own units. The question then becomes, how are these taxes to be paid, if the common elements may not be taxed or assessed separately?

The answer to this question should be specified in the declaration, that is, the document or legal instrument that creates the common interest community. According to §36B-2-107:

(a) The declaration must allocate to each unit:

(i) In a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association.

(ii) In a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association and a portion of the votes in the association; and

(iii) In a planned community, a fraction or percentage of the common expenses of the association and a portion of the votes in the association.

(b) The declaration must state the formulas used to establish allocations of interests. …

The assessor will appraise the value of the common elements, and the appropriate fraction or percentage, as set forth in the declaration, will then be allocated to each individual unit owner as that owner's share of the tax liability on the common elements.

In the case of limited common elements, that is, common elements that benefit at least one, but not all, members of the community, the value of those elements is allocated among those that share the benefit, rather than to all. Again, the declaration should specify the limited common elements, if any, and allocate them properly. See, W. Va. Code §36B-2-108.

Code §36B-1-204 provides that the same rule applies to common interest communities that were in existence before West Virginia adopted the UCIOA. As with any special property tax treatment, it is incumbent on the taxpayer to provide the assessor with sufficient data to properly tax and assess the property. Otherwise, the value of the common elements should be allocated equally among the unit owners of the common interest community.

EXAMPLE 1: Assume a common interest community, created under the UCIOA, consisting of ten units, each having an appraised value of $250,000. The golf course and lake comprising the common elements of the common interest community have a value of $5 million. Assume that the allocation percentage in the declaration is 10% for each unit. Ten percent of the appraised value of the common elements would then be added to the appraised value of the individual units, raising their appraised value to $750,000 each. The assessment for ad valorem tax purposes would then be based on that appraised value, thus ensuring that the value of the common elements would not elude taxation.

EXAMPLE 2: Assume that, in the common interest community in Example 1, five of the ten units have lakefront access. In the declaration, the lakefront access is considered a "limited common element," and, accordingly, is allocated to only the five units with access. The additional value would then be added to the appraisal of those five units only.

EXAMPLE 3: Assume the same common interest community as in Example 1, except that it is a preexisting common interest community, that it, it predates the adoption of the UCIOA in West Virginia. Therefore, it has no recorded declaration setting forth an allocation formula. Barring any other evidence, the value of the common elements should be allocated equally among all unit owners. The final result will be the same as in Example 1.

II. SALES TAX ON CERTAIN HOMEOWNERS' ASSOCIATION FEES

If members of a homeowners' association are billed a monthly maintenance fee by the association for taxable services provided by the association, such as security, road maintenance, pest control, fire protection, and housekeeping, consumers sales and service tax must be charged on the monthly fee at the time of billing. If charges for both taxable and nontaxable services are included in the maintenance fee, then a breakdown of the amounts attributable to taxable and nontaxable services must be maintained by the association. Failure to do so will result in the entire maintenance fee being treated as taxable upon audit.

The association may issue an exemption certificate to any third party provider of these services and assert a purchase for resale exemption.

Below are examples of taxable and nontaxable services commonly provided by homeowners' associations or similar organizations:

TAXABLE SERVICES

Road Maintenance

Pest Control

Parking Lot Maintenance

Housekeeping

Snow Removal

Television Cable Charges (for internal distribution)

Security

Telephone Lines (for internal distribution)

Fire Protection

NONTAXABLE SERVICES

Bona-fide Association Dues (see the definition below)

Trash & Refuse Collection (if provided by a company regulated by the Public Service Commission)

Water & Sewer (if provided by a company regulated by the Public Service Commission)

BONA-FIDE HOMEOWNERS' ASSOCIATION DUES

"Bona-Fide Dues" means those amounts paid by members which entitle them to continued membership in a corporation, organization or association. "Bona-Fide Dues" does not include any amounts paid for tangible personal property or specific services rendered to members by a corporation, organization or association.

You may call a Taxpayer Service Representative between 8:00 a.m. and 5:00 p.m. on business days at:

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