



# STATE OF WEST VIRGINIA

## Department of Revenue State Tax Department

Earl Ray Tomblin  
Governor

Mark W. Matkovich  
State Tax Commissioner

July 12, 2016

Nance Briscoe  
Eastern Panhandle Organization of Homeowners' Associations  
P.O. Box 911  
Charles Town, WV 25414

**RE: COMMON AREAS OF PROPERTY OF HOMEOWNERS' ASSOCIATION SOLD FOR  
DELINQUENT TAXES  
Legal Log No. 16-145ds**

Dear Ms. Briscoe:

This is in response to your correspondence of May 9, 2016 wherein you requested guidance concerning the status of property consisting of common areas of a homeowners association sold for delinquent taxes. In your letter, you stated that

[The Apple Knolls Homeowners Association] discovered their storm water management common area had been sold at auction for delinquent tax in 2009. Apple Knolls has been financially maintaining what they believed to have been their SWM property of +13 acres at an average cost of \$8,000/year supported with required HOA assessments from their members. Over the course of the sold years they have spent roughly \$56,000.

The owner of the SWM is not a homeowner in Apple Knolls HOA but a private citizen ... who pays no assessment to the HOA. We have no idea if an auction sale for delinquent taxes includes the rights that run with the land and/or the requirements of the HOA's governing documents. HOAs are required to maintain insurance for their common area, including SWM. We have no idea exactly how to recover HOA SWM when mistakenly sold at a delinquent tax auction. ...

...In our opinion the Berkeley County tax assessor must step up to the plate. It is unfortunate that is not the case – it is unjust and does not correct the problem. Therefore, we alert you as you've requested.

HOAs are continually trapped with having to retain legal counsel which is always extremely expensive. It is our desire that as attorney for the state tax department you would right this wrong and tackle the issue, not just for Apple Knolls, but all HOAs in West Virginia that surface with these tax auction sale surprises.

EPOHOA dug deep to locate WV code or any ordinance that protects SWM and/or flood plains from being sold out from under the HOA. We cannot locate anything; we can only find county requirements for builders of subdivisions who must provide water run off areas, storm water management and/or flood plains parcels.

In our previous correspondence, December 2015 (Legal Log No. 15-309ds), it was requested that you inform the State Tax Department's Legal Division of instances where any assessor appeared to be improperly assessing common areas of common interest communities or homeowners' associations. In order to rectify the situation that you brought

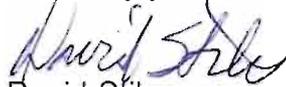
to our attention then, the Property Tax Division sent a reminder to all county assessors of the current laws. We have since been informed by the Berkeley County Assessor of changes made in his office's procedures to correct the problem in his county. We are not aware of any other county where such a problem has arisen.

It appears, on the basis of the facts you have provided, that the HOA in question neglected either to pay taxes that had been assessed to it, or to contest the taxability of the property at the time it was assessed. The West Virginia Code provides for notice to a taxpayer when taxes are due. Likewise, the Code provides for notice to the taxpayer of a tax delinquency, of an impending tax sale, and, of the taxpayer's right to redeem property after it has been sold for delinquent taxes. There is no evidence that the taxpayer did not receive the appropriate statutory notice at each step of the procedure.

There may be legal precedents for setting aside a sale of land for delinquent taxes erroneously assessed, but it is not within the Tax Commissioner's scope of authority to advocate for a taxpayer in property disputes. The proper venue for such disputes is the circuit court of the county wherein the property is located. Your client may need to engage private counsel in order to determine what its legal options are.

The conclusions and findings here set forth are based upon application of the statutory and regulatory provisions of West Virginia tax law and upon the facts presented in your e-mail correspondence of June 21, 2016. Should the facts or the law change in any material respect, or should it appear that a material factual omission, misrepresentation or mistake has occurred, or that a mistake of law has occurred, the conclusions and findings set forth herein may no longer apply.

Sincerely yours,



David Stiles  
Staff attorney

In future correspondence, please note that the address of the State Tax Department is:

1001 Lee Street East,  
Charleston, WV 25301

The inside address on your letter is actually the address of the West Virginia Office of Tax Appeals, which is a State agency independent from the State Tax Department. Sending mail to that address will delay its receipt by the State Tax Department.