



Joe Manchin III  
Governor

STATE OF WEST VIRGINIA  
Department of Revenue  
State Tax Department  
Christopher G. Morris  
State Tax Commissioner

February 27, 2009  
CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

The Honorable Angie Banks  
Assessor of Jefferson County  
104 East Washington Street  
Charles Town, WV 25414

RE: Property Tax Ruling 09-54  
Legal Log No. 09-061

Dear Ms. Banks:

Pursuant to the provisions of West Virginia Code §11-3-24a, you requested instructions from this Office concerning whether certain property owned by the Crystal Lake Homeowners Association and located in Jefferson County is subject to ad valorem property taxation.

Enclosed is our ruling. You are advised that under West Virginia Code §11-3-24a, this ruling is binding unless either you or the taxpayer, or both, apply to the Circuit Court of Jefferson County for review of the ruling within thirty (30) days after February, 2009 adjournment of the Jefferson County Commission sitting as the Board of Equalization and Review. See W. Va. Code §§11-3-24a and 11-3-25.

Very truly yours,

Christopher G. Morris  
State Tax Commissioner

Braun A. Hamstead  
Hamstead & Associates, LC  
1802 W. King Street  
Martinsburg, West Virginia 25401



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PROPERTY TAX RULING 09-54  
ISSUED PURSUANT TO WEST VIRGINIA CODE §11-3-24a

February 27, 2009

TAXPAYER: CRYSTAL LAKE HOMEOWNERS ASSOCIATION

ASSESSOR: ANGIE BANKS  
JEFFERSON COUNTY

SUBJECT: WHETHER COMMON AREAS OF PROPERTY IN A PLANNED  
COMMUNITY IS EXEMPT FROM AD VALOREM TAXATION  
LEGAL LOG 09-061

West Virginia Code §11-3-24a outlines procedures to be followed where the taxpayer and the county assessor disagree on the proper classification or taxability of property for ad valorem tax purposes. Under provisions of this section, the county assessor may, and if the taxpayer requests, the county assessor shall certify the question to the State Tax Commissioner for a ruling. The State Tax Commissioner has until February 28<sup>th</sup> of the assessment year to render a decision. This decision may be appealed to the Circuit Court of Jefferson County within thirty (30) days after the adjournment of the Jefferson County Commission sitting as the Board of Equalization and Review.

### STATEMENT OF FACTS

On February 23, 2009, this Office received from the Assessor of Jefferson County (Assessor) a request for a ruling on whether certain real property owned by the Crystal Lake Homeowners Association (Taxpayer) and located in Jefferson County is exempt from ad valorem taxation.

In a letter to the Assessor dated August 29, 2008, the Taxpayer provided the following information,

...Crystal Lake Property Owners Association, Inc., ... is a Home Owners Association and the owner of property identified on Tax Map 2, Parcel 89, described as 14.17 acres, Valley View, Map 2, Parcel 90, described as 4.15 acres, Valley View, Potomac River, and Map 2, Parcel 88, described as 1.8 acres, Valley View Community Building.

The Homeowners Association respectfully wishes to protest the assessment on this real estate which is exempt of the levy and assessment for the tax year 2009 and further seeks reimbursement of prior assessments which have been paid.

This real estate is exempt from ad valorem taxation because it is a planned community within the definition of West Virginia Code §36b-1-103(23). The real estate constitutes common elements expressly exempt under the provisions of West Virginia Code §36b-1-105(2).

## ISSUE

**Whether common areas of property in a planned community may be exempt from ad valorem taxation.**

## DISCUSSION

West Virginia Constitution Article X, Section 1 in part provides the following:

§1. Subject to the exceptions in this section contained, taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. ...but property used for educational, literary, scientific, religious, or charitable purposes ...may by law be exempted from taxation...

The foregoing does not of itself exempt any property from taxation; it merely authorizes the legislature to provide exemption in certain situations. In *re Hillcrest Memorial Gardens*, 146 W. Va. 337, 119 S.E.2d 753 (1961). Additionally, according to the Constitution, it is the use of the property, not the status of the property owner, which determines exemption. Therefore, the Taxpayer's Section 501(c)(3) status may not be relevant to the issue.

Taxation of all property, both real and personal, is the general rule fixed by constitutional mandate, while exemption from taxation constitutes the exception. *id.* The constitutional and statutory provisions exempting property from taxation are strictly construed. *id.* If any doubt arises as to exemption, that doubt must be decided against the person who claims the exemption. *State v. McDowell Lodge No. 112 A.F. & A.M.*, 96 W. Va. 611, 123 S.E. 561 (1924); *Central Realty Co. v. Martin*, 126 W. Va. 915, 30 S.E.2d 720 (1944). This is because all exemptions evade the operation of the general principle that taxation laws should be equal and uniform, so as to place the public burdens, as nearly as may be, upon all property and citizens alike. In *re Hillcrest Memorial Gardens*, 146 W. Va. 337, 119 S.E.2d 753 (1961); *State v. Kittle*, 87 W. Va. 526, 105 S.E. 775 (1921).

West Virginia Code §11-3-9 sets forth the exemptions from property taxes:

- §11-3-9. Property exempt from taxation.
- (a) All property, real and personal, described in this subsection, and to the extent limited by this section, is exempt from taxation:
- (1) Property belonging to the United States, other than property permitted by the United States to be taxed under state law;
- (2) Property belonging exclusively to the state;

(3) Property belonging exclusively to any county, district, city, village or town in this state and used for public purposes;

(4) Property located in this state belonging to any city, town, village, county or any other political subdivision of another state and used for public purposes;

(5) Property used exclusively for divine worship;

(6) Personages and the household goods and furniture pertaining thereto;

(7) Mortgages, bonds and other evidence of indebtedness in the hands of bona fide owners and holders hereafter issued and sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings used exclusively for divine worship or for the purpose of paying indebtedness thereon;

(8) Cemeteries;

(9) Property belonging to, or held in trust for, colleges, seminaries, academies and free schools, if used for educational, literary or scientific purposes, including books, apparatus, annuities and furniture;

(10) Property belonging to, or held in trust for, colleges or universities located in West Virginia, or any public or private nonprofit foundation or corporation which receives contributions exclusively for such college or university, if the property or dividends, interest, rents or royalties derived therefrom are used or devoted to educational purposes of such college or university;

(11) Public and family libraries;

(12) Property used for charitable purposes and not held or leased out for profit;

(13) Property used for the public purposes of distributing electricity, water or natural gas or providing sewer service by a duly chartered nonprofit corporation when such property is not held, leased out or used for profit;

(14) Property used for area economic development purposes by nonprofit corporations when the property is not leased out for profit;

(15) All real estate not exceeding one acre in extent, and the buildings on the real estate, used exclusively by any college or university society as a literary hall, or as a dormitory or clubroom, if not used with a view to profit, including, but not limited to, property owned by a fraternity or sorority organization affiliated with a university or college or property owned by a nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization affiliated with a university or college, when the property is used as residential accommodations or as a dormitory for members of the organization;

(16) All property belonging to benevolent associations not conducted for private profit;

(17) Property belonging to any public institution for the education of the deaf, dumb or blind or any hospital not held or leased out for profit;

(18) Houses of refuge and mental health facility or orphanage;

(19) Homes for children or for the aged, friendless or infirm not conducted for private profit;

- (20) Fire engines and implements for extinguishing fires, and property used exclusively for the safekeeping thereof, and for the meeting of fire companies;
- (21) All property on hand to be used in the subsistence of livestock on hand at the commencement of the assessment year;
- (22) Household goods to the value of two hundred dollars, whether or not held or used for profit;
- (23) Bank deposits and money;
- (24) Household goods, which for purposes of this section means only personal property and household goods commonly found within the house and items used to care for the house and its surrounding property, when not held or used for profit;
- (25) Personal effects, which for purposes of this section means only articles and items of personal property commonly worn on or about the human body or carried by a person and normally thought to be associated with the person when not held or used for profit;
- (26) Dead victuals laid away for family use;
- (27) All property belonging to the state, any county, district, city, village, town or other political subdivision or any state college or university which is subject to a lease purchase agreement and which provides that, during the term of the lease purchase agreement, title to the leased property rests in the lessee so long as lessee is not in default or shall not have terminated the lease as to the property;
- (28) Personal property, including vehicles that qualify for a farm use exemption certificate pursuant to section two, article three, chapter seventeen-a of this code and livestock, employed exclusively in agriculture, as defined in article ten, section one of the West Virginia Constitution. Provided, That this exemption only applies in the case of such personal property used on a farm or farming operation that annually produces for sale agricultural products, as defined in rules of the Tax Commissioner, and
- (29) Any other property or security exempted by any other provision of law.
- (b) Notwithstanding the provisions of subsection (a) of this section, no property is exempt from taxation which has been purchased or procured for the purpose of evading taxation whether temporarily holding the same over the first day of the assessment year or otherwise.
- (c) Real property which is exempt from taxation by subsection (a) of this section shall be entered upon the assessor's books, together with the true and actual value thereof, but no taxes may be levied upon the property or extended upon the assessor's books.
- (d) Notwithstanding any other provisions of this section, this section does not exempt from taxation any property owned by, or held in trust for, educational, literary, scientific, religious or other charitable corporations or organizations, including any public or private nonprofit foundation or corporation existing for the support of any college or university located in West Virginia, unless such property, or the dividends, interest, rents or royalties derived therefrom, is used primarily and immediately for the purposes of the corporations or organizations.
- (e) The Tax Commissioner shall, by issuance of rules, provide each assessor with guidelines to ensure uniform assessment practices statewide to effect the intent of this section.

(f) Inasmuch as there is litigation pending regarding application of this section to property held by fraternal societies and sororities, amendments to this section enacted in the year one thousand nine hundred ninety-eight shall apply to all cases and controversies pending on the date of such enactment.

(g) The amendment to subdivision (27), subsection (a) of this section, passed during the two thousand five regular session of the Legislature, shall apply to all applicable lease purchase agreements in existence upon the effective date of the amendment.

The taxpayer does not assert any of the foregoing exemptions.

The Taxpayer does, however, assert that the property in question is exempted by W. Va. Code §36B-1-105:

§36B-1-105. Separate titles and taxation.  
(a) In a cooperative, unless the declaration provides that a unit owner's interest in a unit and its allocated interests is real estate for all purposes, that interest is personal property. (That interest is subject to the provisions of all homestead exemptions from taxation provided by law, even if it is personal property.)  
(b) In a condominium or planned community:

(1) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

(2) 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.

(c) Any portion of the common elements for which the declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

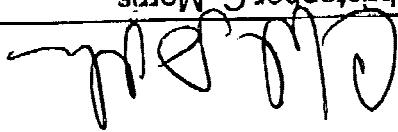
(d) If there is no unit owner other than a declarant, the real estate comprising the common interest community may be taxed and assessed in any manner provided by law.

We find no merit in the assertion that this section exempts any property from ad valorem taxation. Because the Taxpayer has not shown that this property qualifies for any of the exemptions set forth in W. Va. Code §11-3-9, the property is subject to ad valorem taxation as determined by the Assessor. If any doubt arises as to exemption, that doubt must be decided against the person who claims the exemption. State v. McDowell Lodge No. 112 A.F. & A.M., 96 W. Va. 611, 123 S.E. 561 (1924); Central Realty Co. v. Martin, 126 W. Va. 915, 30 S.E.2d 720 (1944).

## **RULING BY THE TAX COMMISSIONER**

Based upon the facts and information provided and a review of the applicable law and rules, I hereby rule that the property located in Jefferson County and owned by the Crystal Lake Homeowners Association, is not eligible for exemption from ad valorem property taxation.

Given under my hand this 27<sup>th</sup> day of February, 2009.



Christopher G. Morris  
State Tax Commissioner