

Tax Sales!

A Brief and Inciteful update following the *L&D Investments* Case

NIKOLAS E. TYSIAK, ESQ.
BABST CALLAND
PITTSBURGH, PA

Procedural Changes – Effective as of 2022

- 1) Used to have a 2-tiered process for the sale of delinquent taxes: Sheriff's sale happened first; if that failed, the State Auditor's office had a subsequent opportunity to sell
- 2) New Statute completely removed the Sheriff's sale portion of the code; now all tax sales are conducted by the West Virginia State Auditor's office, through Deputy Commissioner's of Delinquent and Non-Entered Lands
- 3) Primary effect was to drastically shorten the time frame for conducting and finalizing a tax deed and remove the payment of interest on tax sale purchases.
- 4) According to our contacts in the Legislature, the motivation was to eliminate (or at least reduce) bad-faith, out-of-state tax purchasers

Procedural Changes – Effective as of 2022 - TIMELINE

Example of 2022 Taxes:

April 1, 2023 – 2022 taxes become delinquent

October 31, 2023 – Sheriff's office certifies list of delinquent taxes to Auditor.

March 1 – August 1, 2024 – Auditor certifies list of lands to be sold

Within 90 days of the certification – Auditor's office conducts an auction

Within 14 days of Auction – Auditor may approve sales

Within 120 days of Approval – purchaser provides information to be included in Notices to Redeem

A deed may be issued no less than 45 days after Notices to Redeem are issued

Likely Date of Procedural Completion –

Between November 30, 2024 and April 30, 2025

L&D Investments Inc. v. Mike Ross Inc., 241 W. Va. 46 (2018)

- 1) 1000 acres in Harrison County, WV
- 2) Oil and Gas Severed by 1903 deed reservation, held by Charles Lee Andrews, in trust for Mary Catherine Andrews
- 3) Title to oil and gas descends into Mary Catherine Andrews' Heirship
- 4) Oil and Gas estate assessed in name of "Charles Lee Andrews" from time of severance until 2000 ("Master Assessment")
- 5) Over time, gas production assessments are created by Assessor based on information from State Tax Department
- 6) What happens to the people that were paying the "gas production assessments" when the Master Assessment was sold for delinquent taxes and subsequently conveyed?

Orville Young, LLC v. Bonacci, 246 W. Va. 26 (2021)

- 1) 162 acres in Marshall County, WV
- 2) Oil and Gas was NEVER severed in title from the surface estate
- 3) Lease executed in 1919, remains in production for some time after
- 4) Separate oil and gas assessment created in connection with production from the 1919 lease, remains on the landbooks
- 5) “Surface Assessment” has never been delinquent
- 6) Production assessment sold for delinquent taxes multiple times, finally to Orville Young
- 7) What rights did the tax deed to Orville Young convey?

Heavner v. Hess, 2022 WL 4355106 (W. Va., September 20, 2022)

- 1) Ramona Belgen owns Lot 71 of subdivision via an unbroken chain of title with no tax delinquencies
- 2) Lot 72 has been subject to multiple tax deeds, most recently to Mr. Heavner in 2012
- 3) In actuality, Lot 72 never existed - the assessment appears to have been created inadvertently and covers the exact same land as Lot 71
- 4) In acquiring the tax deed for Lot 72, Heavner did not cause notice of the right to redeem to be served on Ramona Belgen
- 5) Heavner claims ownership of the land associated with Lot 72 based on payment of taxes for 10 years based on W. Va. Code 11A-3-70.

W. Va. Code 11A-3-70

- In view of the desirability of stable land titles and to encourage landowners to cause their lands to be assessed and pay the taxes thereon, it is the purpose and intent of the Legislature to release all of the state's title and claim and the authority and control of the auditor to any real estate on which all taxes have been paid for ten consecutive years and release all taxes prior to such ten-year period. If, heretofore or hereafter, all taxes due on any parcel of land for ten consecutive years have been fully paid, all title to any such land acquired by the state prior to said ten-year period or all real property tax liens which subject the lands to the authority and control of the auditor prior to said ten-year period shall be and is hereby released to the person who would be the owner thereof but for the title of the state or the real property tax liens which subject the lands to the authority and control of the auditor so released and all unpaid taxes prior to said ten-year period are declared to be fully paid.
- Nothing contained in this section shall affect or be held or construed to affect in any way the right or title of a person claiming to any land by transfer as provided in section three, article XIII of the constitution of the state of West Virginia prior to the repeal of said constitutional provision in the year one thousand nine hundred ninety-two.
- It is the intention of the Legislature that this section shall be both retroactive and prospective.

Collingwood Appalachian Mineral III, LLC v. Erlewine, 2023 WL 4013373, --- W. Va. --- (June 15, 2023)

- 1) 135 acres in Wetzel County, WV
- 2) Stiles owns all surface and $\frac{1}{4}$ unsevered oil and gas, acquired from Dunham in 1968. The two interests are nonetheless assessed separately
- 3) Dunham held surface and $\frac{1}{2}$ oil and gas at time of conveyance, the surface and $\frac{1}{4}$ oil and gas acquired from the Rogers, with the remaining $\frac{1}{4}$ oil and gas from Palmer
- 4) In the 1968 deed, Dunham indicated he was conveying “the same land” as acquired from the Rogers on September 8, 1945
- 5) Following 1968 deed, Dunham continues to be assessed for $\frac{1}{4}$ oil and gas interest.
- 6) In 1991, Stiles’ two separate assessments (135 acres surface and $\frac{1}{4}$ 135 acres oil and gas) are sold to two separate parties – Erlewine gets the surface, Waco Oil and Gas Co. Inc. and Trio Petroleum Corp. get the $\frac{1}{4}$ oil and gas
- 7) Question 1 – what rights, if any, did Dunham retain under the 1968 deed?
- 8) Question 2 – what effect, if any, does the fact that the interests of Stiles were unsevered have on the tax sales/tax deeds?

Deed Interpretation Problems - Erlewine

- 1) No language of reservation, but Supreme Court found a reservation existed – “words of limitation” W. Va. Code 36-1-11
- 2) No reference to cases that contradict this interpretation (examples):
 - G&W Auto Center Inc. v. Yoursco, 167 W. Va. 648 (1981) – words of limitation limiting a fee conveyance must expressly except out something; question of reservation/exception or not must be resolved in favor of grantee
 - Gastar Exploration Inc. v. Rine, 239 W. Va. 792 (2017) – when construing the intent of parties to deeds, a court may review extrinsic evidence to give the instrument a practical construction, including a review of subsequent taxation and leasing history

Northeast Natural Energy LLC v. LT Realty Unlimited LLC, 250 W. Va. 500 (I.C.A. 2024)

- 1) George Tennant owns several interests associated with a 118-acre tract: 2/8 oil and gas, 3/8 surface, and 3/8 Sewickley Coal (described as 136 acres)
- 2) George died with all this in 1938
- 3) From 1938-1941, George's interests are part of 2 assessments – a “surface” assessment, and a Sewickley Coal assessment. There was no separate oil and gas assessment.
- 4) In 1940, George's lands were sold pursuant to a partition action, with Velma Chisler acquiring the 118-acre surface interest **HOWEVER** – coal, oil and gas were all excepted and reserved.'
- 5) The reserved coal, oil and gas interests were subsequently conveyed to Hazel Tennant, widow of George, in 1942.
- 6) Following a series of deeds and leases, the oil and gas interest vested in Hazel was conveyed/leased to Northeast
- 7) Pursuant to several tax deeds, LT Realty acquired the Sewickley coal assessment
- 8) LT Realty filed suit, claiming ownership of the oil and gas pursuant to the Sewickley coal tax deeds/conveyances

Northeast Natural Energy LLC v. LT Realty Unlimited LLC, 250 W. Va. 500 (I.C.A. 2024)

Simply put, pursuant to its “Sewickley Coal” chain of title, LT Realty claimed ownership of the oil and gas rights that had been conveyed/leased by the successors of George Tennant to Northeast

The circuit court concluded that the oil and gas rights of George Tennant had forfeited to the state in 1947, consequently validating LT Realty’s claims. The ICA disagreed, however – pointing out that a severance in title does not *de facto* require or necessitate a severance in assessment. Citing *Kiser v. McLean*, 67 W. Va. 294 (1910), the ICA found that it will be presumed that a mineral interest remains severed with the surface if it is never separately assessed.

Reiterating a common theme, the ICA went on to say that “as long as someone paid the property taxes for the oil and gas interest, there could be no forfeiture.” It also concluded that LT Realty had an affirmative burden to overcome the presumption that the oil and gas remained assessed with the surface AND of proving forfeiture. The ICA paid particular attention to the fact that the taxable value of the surface from before and after the severance of the oil and gas from the surface in title (the deed to Chisler) did not change. They found this to be satisfactory evidence that the surface assessment continued to include the oil and gas rights.

Venable Royalty Ltd. v. EQT Production Company, 250 W. Va. 764 (I.C.A. 2024)

- 1) McGary acquires 201 acres in Wetzel County, conveys the land to Carpenter in 1907, excepting and reserving 1/16 of the oil and 1/2 the royalty of gas produced from the premises. All the lawsuit parties agreed that this created a 1/2 NPRI in oil and gas.
- 2) McGary was separately assessed for his royalty interest, Carpenter and his successors paid taxes on the surface and the executive rights with 1/2 royalty under a single assessment.
- 3) The McGary assessment became delinquent in 1962, was sold for delinquency in 1965 to J. H. Riggerbach.
- 4) In 2021, Venable and related parties filed suit to quiet title to the oil and gas. Venable was the successor to J. H. Riggerbach. AMP and EQT argued that the NPRI was non-taxable as real estate, and should never have been sold at tax sale. The trial court agreed, and the appeal ensued.

Venable Royalty Ltd. v. EQT Production Company, 250 W. Va. 764 (I.C.A. 2024)

The ICA agreed that there was no clear law or authority in West Virginia regarding the taxability of NPRIs as real property.

The ICA surveyed various views regarding the nature of NPRIs, attempting to determine if NPRIs should be considered as real property or personal property for taxation purposes. The ICA concluded that NPRIs must be considered as real estate, because if NPRIs are personal property then ownership of NPRIs run up against the Rule Against Perpetuities.

Consequently, the ICA concluded that NPRIs should be considered interests in real estate in West Virginia. Otherwise, various aspects of NPRI ownership would become problematic, including estate administration, issues regarding the Rule Against Perpetuities, and inconsistency and confusion surrounding tax assessments.

The ICA therefore determine that NPRIs were assessable as real estate, and reversed the trial court decision.

Winged Foot Minerals LLC v. SWN Production Company LLC, 2026 WL 685161 (W. Va. I.C.A. March 3, 2026)

- 1) Joseph Nolte Sr. owns 363 acres with all the underlying oil and gas. Upon his death in 1920, the surface of the 363 acres is divided among several of his heirs, who also share fractional rights to oil and gas under the entire 363-acre tract.
- 2) By 1920, one of the heirs, Joseph Nolte Jr., acquired 227 acres of surface while still owning a fractional $\frac{1}{4}$ interest in the oil and gas under 363 acres. The remaining $\frac{3}{4}$ interest in oil and gas is held by the other heirs. The 227-acre surface owner held a “fee” assessment, there were no separate assessments for the fractional oil and gas rights as to the $\frac{3}{4}$ oil and gas interest owners.
- 3) In 1933, Nolte Jr. had the 227 acre assessment and became assessed for “Royalty Oil,” but the Royalty Oil assessment was deemed incorrect in 1937.
- 4) In 1946, a new assessment for the “Joseph Nolte Heirs” was created, described as only “Roy.”
- 5) After Nolte Jr. died in 1972, his 227 acre tract was conveyed to Robinson Chance. The “Roy” assessment was marked as “sold to state” in the land books, but was redeemed in 1974. The Roy assessment was transferred to Robinson Chance beginning in 1974.
- 6) Chance conveyed the 227 acres to Watkins and Turcato in 1982, with no reservation of mineral rights. The “Roy” assessment remained assessed to Chance, and was sold by tax sale in 1991 for delinquent 1990 taxes. James Prendergast received a tax deed for the Roy assessment in 1993.
- 7) Winged Foot and the other successors to Prendergast alleged that the Roy assessment created in 1946, and all the subsequent transfers of the same, including the 1993 tax deed, transferred the $\frac{3}{4}$ oil and gas interest. The trial court disagreed, finding the underlying assessment from 1946 void and that the subsequent 1993 tax deed was also void.
- 8) The ICA agreed with the trial courts reasoning, stating that the “Roy” assessment was duplicative – the oil and gas rights purportedly covered by the 1946 tax assessment were already covered under the fee assessment in the name of Nolte Jr. and the successors to the surface estate. The ICA again paid particular attention to the fact that the assessed value of the Nolte Jr. fee assessment did not go down when the Roy assessment was created.
- 9) The ICA further held that the Roy assessment, by description, could not cover the $\frac{3}{4}$ oil and gas interest, because a royalty interest is entirely separate from an assessment for oil and gas rights “in place” or in fee.
- 10) The ICA affirmed the trial court on all counts, effectively voiding the tax deed and the claims of the successors to Prendergast. Title was effectively deemed as held by the heirs of Joseph Nolte Sr., and covered by the surface tax assessment.

Conclusions?

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QUESTIONS?

Nik Tysiak

ntysiak@babstcalland.com

O: 412-253-8813

C: 412-559-3113