

Double the Trouble: Tax Sales of Duplicate Mineral Assessments in West Virginia

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Anyone dealing with land and title issues in West Virginia quickly learns the importance of real property assessments. The relative ease in which an interest in land, including mineral rights, can be lost in a tax sale means that landmen and title practitioners who fail to examine a property's tax assessment history do so at their peril. Those histories are found in the volumes of "landbooks" maintained by each county assessor's office. A relatively common and beguiling problem arises when the title examiner discovers that a property has been double assessed. Such duplicate assessments are rarely obvious, as assessed interests are often described by brief and vague notations and sometimes assessed in the name of a long-gone predecessor in title.

Recently, in *Haynes v. Antero Resources Corporation*,¹ *Hill v. Lone Pine Operating Company*² and *L&D Investments Inc. v. Mike Ross, Inc.*³, the Supreme Court of Appeals of West Virginia considered the validity of several tax deeds that stemmed from the duplicate assessment of certain oil and gas interests created by the Harrison County Assessor's Office. In each of the cases, the court reaffirmed its long-standing precedent that holds that in the case of two assessments of the same land under the same claim of title, the state can only require one payment of taxes under either assessment. The cases highlight the potential consequences of duplicate tax assessments of severed mineral interests in West Virginia and the need to have interests properly assessed. The *Haynes*, *Lone Pine* and *L&D Investment* decisions should be maintained in any title practitioner's toolkit for analyzing interests conveyed by a tax sale and determining the likelihood of a successful challenge to set aside a tax deed.

Historical Background

In West Virginia, landowners have a duty to have their land entered on the landbooks for taxation.⁴ While each landowner is responsible for having his land entered on the landbooks, the county assessor's office is responsible for generating the actual assessment and including it in the landbooks.⁵ An interest in land from a particular source should only be entered on the landbooks and taxed under one assessment, but there are instances when the county assessor's office, for one reason or another, issues duplicate assessments on the same interest.

Over the course of the last century, the Supreme Court of Appeals of West Virginia has consistently held that when the same interest in land is being assessed under duplicate assessments and taxes are being paid under one of the assessments and the other becomes delinquent, the tax sale of a delinquent assessment is void. In *State v. Low*, 46 W. Va. 451 (1899), the court found that "where there is privity of title, one payment is sufficient and full satisfaction . . . [p]ayment of the taxes by the owner or by any one entitled to make it, is an absolute defeat and termination of any statutory power to sell."⁶ Nearly 10 years later, in *State v. Allen*, 65 W. Va. 335 (1909), the court held that in the "case of two assessments of the same land, under the same claim of title, for any year, one payment of taxes,

¹ *Haynes v. Antero Res. Corp.*, 2016 W. Va. LEXIS 803 (Oct. 28, 2016) (memorandum decision).

² *Hill v. Lone Pine Operating Co.*, 2016 W. Va. LEXIS 903 (Nov. 18, 2016) (memorandum decision).

³ *L&D Invs., Inc. v. Mike Ross, Inc.*, 818 S.E.2d 872 (W.Va. 2018).

⁴ W. Va. Code. §11A-3-37.

⁵ W. Va. Code §11-4-4.

⁶ *State v. Low*, 46 W. Va. 451, 458-59 (1899).

under either assessment, is all the State can require.”⁷ The *Allen* court ruled that a tax sale of a duplicate assessment was void because the taxes were paid under one of the assessments.⁸

Haynes, Lone Pine and L&D Investments

Haynes v. Antero Resources Corporation, Hill v. Lone Pine Operating Company and L&D Investments Inc. v. Mike Ross, Inc. stem from duplicate production-based assessments created by the Harrison County Assessor’s Office pursuant to a 1988 letter it received from the State Tax Department. Prior to 1988, the practice of the Harrison County Assessor’s Office was to enter the assessments for interests in the oil and gas in place on the landbook records and the assessments for the production-based assessments on the personal property books.⁹ In 1988, the Assessor received a letter from the State Tax Department directing it to convert all production-based assessment records from the personal property books to the corresponding real estate entry in the landbooks.¹⁰ If the accounts could not be matched, the Assessor was directed to enter the personal property record as a separate assessment on the landbooks.¹¹ Due to the discrepancy between the descriptions in the landbooks and personal property books, several duplicate assessments were generated as a result of the 1988 letter leading to the ensuing litigation.

i) Haynes v. Antero Resources Corporation

In *Haynes*, the property at issue was a 1/80 interest in the oil and gas underlying approximately 200 acres owned by Presley Rush Southern. Southern’s three children, including the respondent, inherited the 1/80 oil and gas interest, subject to the widow’s dower interest.¹² From 1960 through 1987, Southern’s 1/80 interest was assessed under one tax ticket, in the name of the widow, as “1/80th Int. 213.35 As. O&G”.¹³ The widow continuously paid the taxes assessed in her name from 1960 through 1987.¹⁴ In 1988, three additional property tax assessments were issued against each of the children concerning the same 1/80 interest inherited from their father.¹⁵ The assessment was for an interest described as “Int. 226 As. Leased O&G”.¹⁶ The widow continued to pay the taxes on the 1/80 interest under the assessment charged to her from 1988 through 2004, but the respondent failed to pay the taxes due under the additional tax ticket that was in his name.¹⁷ In 1994, the respondent’s 1/240 interest was sold to the petitioner’s father (Haynes) at tax sale.¹⁸

The court of appeals agreed with the circuit court that the assessment charged against the widow and the additional assessments against the children were double assessments of the same land under the same claim of title because the assessments covered the same 1/80 interest that was inherited from Southern.¹⁹ Although payments were not made under the additional assessment, “the State could require only one payment for the subject mineral estate”.²⁰ Since the widow continuously made payments on the entire 1/80 interest, the court held that the respondent’s taxes were never delinquent, and therefore the tax sale was void as a matter of law.²¹

⁷ Syl. Pt. 2., *State v. Allen*, 65 W. Va. 335 (1909).

⁸ *Id.* at 339.

⁹ See *L&D Invs., Inc. v. Mike Ross, Inc.*, 818 S.E.2d 872, 875 (W.Va. 2018).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Haynes*, 2016 W. Va. LEXIS at 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 3-4.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 8.

²⁰ *Id.* at 9.

²¹ *Id.*

ii) *Hill v. Lone Pine Operating Company*

In *Lone Pine*, the property at issue was the oil and gas interest in approximately 364 acres that were part of a larger parent-tract of 1,300 acres. The 1,300 acres had been leased and was producing since 1899.²² In 1988, the Harrison County Assessor's Office erroneously created several duplicate production-based assessments for an "Interest in 1300 AS Lease Oil & Gas" because the assessor could not match the 1,300-acre lease with a real property assessment.²³ William L. Mitchell, who owned an interest in the 364-acre tract and was being assessed for an interest in the oil and gas in the same, was one of the parties subject to a double, production-based assessment. Mitchell continued to pay taxes on the original assessment for his interest in the oil and gas in place in the 364-acre tract, but failed to pay taxes on the duplicate production-based assessments for the 1,300 acres.²⁴ In 1994, Mitchell's interest under the double assessment was sold at tax sale to David and Suellen Hill, the petitioners in the case.²⁵ In 2010, Mitchell, who was unaware of the 1994 tax deed, quitclaimed all of his interest in the oil and gas underlying the 1,300 acres to Lone Pine, the respondent.²⁶

The Supreme Court of Appeals ruled in favor of Lone Pine, upholding the circuit court's order. The court of appeals agreed with the circuit court that there was no dispute that Mitchell consistently paid the original tax on the oil and gas in place for the 364 acres for years. Because Mitchell never allowed the original taxes assessed to him to become delinquent, the court found that the deputy commissioner of delinquent and forfeited lands of Harrison County did not have the authority to sell his interest.²⁷ Since Mitchell and Lone Pine continuously paid taxes on the original assessment, he could not be affected by the duplicate assessment.²⁸

iii) *L&D Investments Inc. v. Mike Ross, Inc.*

The fact pattern in *L&D Investments* is nearly identical to the fact pattern in *Haynes* and *Lone Pine*, but "the scenario is reversed".²⁹ In *L&D Investments*, 80 percent of the interest in the oil and gas in place underlying a 1,041 acre mineral tract was being assessed under one "master assessment" in the name of Charles Lee Andrews, a predecessor.³⁰ Like in *Haynes*, the eighty-percent interest in the oil and gas was owned by several parties but was being assessed under one tax ticket. As with the other cases, in 1988 the Harrison County Assessor's Office generated several production-based assessments that were charged to several predecessors.³¹ The "master assessment" remained on the landbooks after 1988 and was paid each year through 1999.³² In 2000, the taxes under the master assessment became delinquent, but the taxes under the production-based continued to be paid.³³ In 2003, a tax deed conveying the interest under the master assessment was issued to the respondent, Mike Ross, Inc. L&D Investments, Inc., the petitioner, obtained its interest by deeds from one of the owners whose interest was sold at the tax sale in 2013.³⁴

²² *Hill v. Lone Pine Operating Co.*, 2016 W. Va. LEXIS 903, 2 (Nov. 18, 2016)

²³ *Id.*

²⁴ *Id.* at 3.

²⁵ *Id.*

²⁶ *Id.* at 5

²⁷ *Id.* at 11-12.

²⁸ *Id.* at 12.

²⁹ *L&D Invs., Inc. v. Mike Ross, Inc.*, 818 S.E.2d 872, 880 (W.Va. 2018).

³⁰ *Id.* at 876.

³¹ *Id.*

³² *Id.* at 877.

³³ *Id.*

³⁴ *Id.*

The court ruled that although the 1988 assessments were production-based assessments, they were real property assessments of the parties' undivided interests in the 1,041 acre mineral tract.³⁵ Because the interests covered by the production based assessments were also covered by the master assessment, they were double assessments. Since the L&D Investments and its predecessors continuously paid taxes on the production-based assessments, and such assessments purported to be the full real property assessments of the predecessors' interest in the oil and gas, the court held that that the State could only require payment under either of the assessments and found the tax deed conveying the interest in the master tax sale to be void.³⁶

In its opinion in *L&D Investments*, the court was compelled to point out the critical distinction between the facts in the case with the facts in *Lone Pine* and *Haynes*. In *Lone Pine* and *Haynes*, the petitioners in those cases could only claim ownership of the oil and gas through the purchase of the tax lien that resulted from the non-payment of the duplicate assessment.³⁷ However, in *L&D Investments*, the petitioner claimed title to the oil and gas through a series of wills, deeds and other instruments, not the mere purchase of a lien at tax sale.³⁸ The court recognized that the "forfeiture of lands is a harsh, even dreadful remedy, and courts learn from it and never apply it except where the law clearly warrants," and noted that such was not warranted in this case.³⁹

Conclusion

The cases of *Haynes*, *Lone Pine* and *L&D Investments* highlight the importance of carefully scrutinizing tax sales and landbook records before obtaining an interest from or making royalty payments to the tax sale purchaser. Historic landbook records should be carefully reviewed to ensure that the delinquent interest sold by the tax deed is not subject to a duplicate assessment. If the interest sold by the tax deed is subject to multiple assessments, and payment has been made under one of the assessments, the tax deed is likely void as a matter of law, as reflected in the above cases. However, because there may be facts and circumstances that are not of public record that could influence the validity of the tax sale, a court order through an action to quiet title should be obtained to eliminate the risk of any adverse claims.

³⁵ *Id.* at 881.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* citing *State v. Cheney*, 45 W. Va. 478, 480 (1898).