

Chapter 20

Multi-State Review of Tax Sales and Tax Deeds: The Effect of Tax Deeds on Oil and Gas Leases and Easements in Kentucky, New York, Ohio, Pennsylvania and West Virginia

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§ 20.01. Introduction.

In 1990, Russell L. Schetroma wrote a chapter and introduction to six separately authored appendices of summaries on tax titles and tax sales laws for the states of Illinois, Indiana, New York, Michigan, Pennsylvania and West Virginia for the 11th Annual Institute of the Eastern Mineral Law Foundation, now known as the Energy & Mineral Law Foundation. The title of the chapter was “Real Estate Tax Sales and Mineral Titles: The Effects of Tax Sales Under the Laws of Selected Eastern States Upon Oil, Gas, Mineral and Related Real Property Interests.”¹

In 2014, the planning committee for the 35th Annual Institute of the Energy & Mineral Law Foundation selected this topic to revisit due to the passage of time and statutory amendments in several jurisdictions. The five contiguous eastern states selected for reviewing the laws and procedures of tax sales and tax deeds were West Virginia, Pennsylvania, Ohio, New York and Kentucky. Again, lawyers familiar with the laws of these jurisdictions were selected to author sections to review tax sales and tax deeds procedures and the effect of tax deeds on oil and gas leases and easements.

Although the selected jurisdictions’ laws on tax sales and tax deeds have been amended since 1990, uncertainty remains in many areas of tax

¹ Russell L. Schetroma, “Real Estate Tax Sales and Mineral Titles: The Effects of Tax Sale Under the Law of Selected Eastern States Upon Oil, Gas, Mineral and Related Real Property Interests,” 11 *E. Min. L. Inst.*, Ch. 5 at p. 3 (1990).

sales and tax deeds requiring the mineral title examiner to continue to exercise thorough judgment in identifying legitimate and potential adverse claims which pose a threat to marketability and production plans. The words of Mr. Schetroma are as applicable today as they were in 1990, including his comment that tax sales “represent an area of real property law in which uncertainty and confusion have been the historic rule rather than the exception.”² This uncertainty includes the lack of case law in some jurisdictions on whether, and to what extent, and when, tax deeds divest oil and gas leases and easements. The answer varies by jurisdiction, as does the certainty of such answer.

As in 1990, the attached sections are limited to a compilation of the laws, procedures, and at times the impact, of tax sales and tax deeds on oil and gas leases and easements in the selected jurisdictions; however, they are not a comparative analysis. Again, a reasonable analysis of a tax title includes considering the propriety of the assessment and levy; special considerations to the parties or procedures involved in each jurisdiction; satisfying due process standards with notice to interested parties; and whether the sale is final.³ Each of the authors addresses these considerations unique to his jurisdiction, such as whether oil and gas in place may be separately assessed, assessed as a producing economic unit, or not assessed at all for *ad valorem* purposes.

In 1990, Mr. Schetroma encouraged practitioners to move toward reasonable and commonly accepted standards for evaluating tax sales while pointing out that the most careful approach is impracticable.⁴ He is right, and this is an admirable goal. However, it appears that evaluating the marketability of certain tax sales and tax deeds affecting mineral titles and interests will remain challenging, especially with the increasing economic growth of extracting from shale and parties willing and able to litigate to benefit from such industry growth. Certain transactions will always require a risk, cost and benefit analysis by producers, which at times may still include considering a careful approach by practitioners on the marketability of tax titles in the chain of title.

2 *Id.*

3 *Id.* at p. 6.

4 *Id.* at pp. 16, 17.

Awareness of potential issues and current procedures and laws will help producers and other affected parties evaluate legitimate and potential claims attributed to tax sales and tax deeds affecting mineral interests in the chain of title. It is hoped that the compilation of materials in the sections will provide such awareness for transactions and operations in the states of West Virginia, Pennsylvania, Ohio, New York and Kentucky.

§ 20.02. Kentucky.

Kentucky Tax Titles⁵
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⁵ This chapter does not cover any separate tax-collection issues that may arise in Title IX, Chapter 91, of the Kentucky Revised Statutes dealing with Finance and Revenue of Cities of the First Class Collection – Tax Sales.

⁶ I wish to express my sincerest appreciation and thanks to Grace E. Hurney, a rising third year law student at West Virginia University School of Law, and summer associate in the Charleston office of Step toe & Johnson PLLC in 2014. Grace spent a tremendous amount of time organizing and writing this material, and I am eternally grateful.