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MEMORANDUM

To: Dennis Kelly

From: Tom Morris

Re: Response to Request for Legal Opinion-Purchase, Quit Claim Deed

It is my understanding that we have been asked to answer five different questions concerning a land transaction for Holiday Island. Below contains my opinion on each of the five issues.

Issue A: "A property owner, thru their realtor, wants to quit claim a deed to the district for \$7,500."

Response: After reviewing Resolution NO. 2013-R3 and the Real Estate contract between Holiday Island and Mark Hanson, we have determined that this is not a transaction for the purchase of land but rather the sale of land by Holiday Island. It is our understanding that the lot in this transaction was quit claimed back to Holiday Island at some point in the past, and now a buyer wants to purchase the lot from Holiday Island for \$7,500. As such this transaction would represent a \$7,500 gain for Holiday Island.

Issue B: "What is the district's obligation regarding the tax status on such property if it is sold at a profit?"

Response: Under 26 U.S.C.A §115 (2) governments of a possession of the United States do not pay taxes on any gross income they receive. Gross income simply put is any monetary gain one receives after cost. Since Holiday Island received this property

via quit claim deed, then this property was acquired at no cost to the district. So the sale of this property would represent a \$7,500 profit and would normally be considered \$7,500 of gross income for the District. However, since Holiday Island is considered a government they would pay no taxes on any profit realized from this sale.

Issue C: As a non-profit entity what potential litigation does Holiday Island open themselves up to if they engage in future sales generating a profit back to the district?

Response: Arkansas Code Annotated §14-92-223 allows an SID to sell property that the SID owns if the Board of Commissioners deems it best. As such, Holiday Island would encounter no more potential litigation than a normal private seller would if they were to engage in the sale of property. In this particular transaction the possibility for litigation is somewhat minimal since there was no marketing of this property or any owner financing of this lot.

Issue D: In addition to obtaining title insurance what other obligations would the District need to encounter in order to complete this transaction.

Response: After reviewing the Real Estate contract Holiday Island's obligations are as follows:

1. Pay one half  $\frac{1}{2}$  of the closing fee charged by the closing title company.
2. An owner's policy of title insurance in the amount of the purchase price (\$7,500).

No other obligations exist, that require Holiday Islands performance. However, the Board of Commissioners could require additional terms for a sale of property, as stated in Arkansas Code Annotated §14-92-223, if they deem the term necessary.

Also please note that the closing date for the contract which we have in our possession states a closing date of July 2, 2013. This date has already passed and subsequently the contract as it stands currently is void.

Issue 5: Any other thoughts or opinions you may have that will assist the Board in dealing with this transaction.

No additional thoughts come to mind.

## MEMORANDUM

To: Dennis Kelly  
From: Tom Morris  
Re: Holiday Island Land Buying Issue

### Question Presented

May Holiday Island Board of Commissioners buy land and then sell it at a profit, further if a profit is made on a sale must Holiday Island pay taxes on the gain.

### Brief Answer

Holiday Island may buy land under ACA §14-92-223 and they are exempt from paying taxes on any gain which may be realized from that sale.

### Discussion

The Holiday Island Suburban Improvement District may acquire and sell land if they wish. Arkansas Code Annotated §14-92-223 states as follows:

“Any land that may be acquired by any improvement district organized under this subchapter may be sold by the board of commissioners for the price and on the terms it deems best”

This statute is clear that if the Suburban improvement district acquires land it may sell it as it pleases. It is also clear that this land may be sold at a profit if the board of commissioners deems it best. This is evidenced by the phrase that land “may be sold...

for the price” the board of commissioners deems it best. [Insert cite]. If the board of commissioners deems it best to sell the land at a profit then such a sale would be acceptable under Arkansas Code Annotated §14-92-223.

Further, if this land is sold at a gain and some profit is realized no taxes are owed from the District for that sale. United States Code Annotated 26 U.S.C.A §115 states as follows:

“Gross income does not include—

- (1) Income derived from any public utility or the exercise of any essential government function and accruing to a State or any political subdivision thereof, or the District of Columbia; or
- (2) Income accruing to the government of any possession of the United States, or any political subdivision thereof”

Under the United States tax code taxable income is generally considered to be gross income. Gross income is simply all income minus the costs. However, in light of 26 U.S.C.A §115 (2) any “government of any possession of the United States” does not have to pay taxes on any realized gross income. While Holiday Island is a suburban improvement district, they are for all intents and purposes a government of the United States. As such Holiday Island would not have to pay taxes on any profit realized from the sale of land.