

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

May 21, 2018

The Honorable Ed Gaunch
Room 217W, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

The Honorable Gary G. Howell
Room 213E, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

Dear Chairmen:

This letter-report is in response to your request that the Performance Evaluation and Research Division (PERD) review whether Mr. Chad Harding complied with the cemetery company reporting requirements pursuant to W. Va. Code §35-5B-10 by providing annual independent financial audits to the Tax Commissioner. Our findings are discussed below.

The Tax Division Considers Mr. Harding in Compliance With W. Va. §35-5B-10 for Fiscal Years 2011 through 2015 But the Tax Division Has Not Received Required Documents for FY 2016.

Chad Harding provided the Tax Commissioner with letters of assurance from his independent certified public accountant (CPA) regarding the finances of Mr. Harding's cemetery company for fiscal years 2011 through 2015. Therefore, the Tax Division considers Mr. Harding in compliance with W. Va. §35-5B-10 for FY 2011 through FY 2015. However, the Tax Division does not have a 2016 letter from Mr. Harding's CPA for the cemetery company.

Independent CPA's Letter of Assurance References Code Cite But Does Not Explicitly State 40 Percent of Preneed Sales Were Deposited in Trust Account.

According to the Tax Division, it relies on the CPA's letter of assurance that the cemetery company has complied with W. Va. Code §35-5B-10. In the case of Mr. Harding, his CPA provided a one-page letter for each year. These letters have standard language generally stating in part:

I have audited the Preneed Merchandise Trust Account of [cemetery name], in accordance with West Virginia Code §35-5B-10, for the year ending December 31, 201X. . . . I conducted this audit in accordance with generally accepted auditing standards. Those standards require that I plan and perform the audit to obtain reasonable assurance that the Preneed Merchandise Trust Account, in accordance with West Virginia Code §35-5B-10, is free of material misrepresentation. This audit includes examining, on a test basis, evidence supporting the trust deposits and cancellations. This audit also includes assessing the accounting principles used and significant estimates made by management. I believe that the audit I performed provides a reasonable basis for my opinion.

In my opinion, the Preneed Merchandise Trust Account of [cemetery name] is overfunded \$XX,XXX.XX for the year ended December 31, 201X and is available for withdrawal.

Although the CPA's letters claim to comply with §35-5B-10, they do not clearly or explicitly state that Mr. Harding's cemetery company has complied with the requirement of having *"forty percent of the cash receipts from the sale of preneed property, goods or services which will not be delivered or performed within one hundred twenty days after receipt of the initial payment of account has been deposited in the account within thirty days after the close of the month in which the payment was received."* (W. Va. §35-5B-10(b)). The code cite is requiring a CPA to address one specific responsibility, which is to provide reasonable assurance that 40 percent of cash receipts from the sale of preneed property have been deposited into the preneed trust account at the appropriate time. However, the CPA's opinion focuses on the total funding level of the account and whether there is any material misrepresentation. While these are important financial elements to confirm, it is not clear that reasonable assurance is being expressed that certain deposits were made at the appropriate time and in the appropriate amounts.

Concerning the content of the CPA's letters, the Tax Division stated the following:

Typically the independent certified public accountant's letter of assurance would reference the W. Va. Code cite §35-5B-10, which includes subsection (b) which sets forth the requirement that the certified public accountant is to audit the account and provide assurance that forty percent of the cash receipts from the sale of preneed property, goods or service which will not be delivered or performed within one hundred twenty days after receipt of the initial payment on account has been deposited in the account within thirty days after the close of the month in which the payment was received

The Legislative Auditor is concerned by the broad assurance provided by the CPA without specific detail. Moreover, in reviewing the annual reports provided to the Tax Division by Mr. Harding, some of the years have discrepancies between the total sales of cemetery merchandise and the breakdown of the total sales amounts. For example, the Tax Division requires a breakdown of total sales to include: 1) the amount sold under preneed cemetery contracts for which 40 percent of the funds have been deposited into a trust account, and 2) the amount sold and physically delivered within 120 days. PERD found that some of the reports had inconsistencies in the sales figures. Table 1 shows the discrepancies between total sales and the breakdown. The Legislative Auditor concludes that the reporting process for cemetery companies could be enhanced to provide greater assurance that statutory requirements are being met.

Fiscal Year	Totals Sales Reported	Breakdown of Total Sales	Difference (Total sales minus breakdown)
2015	\$495,806.44	\$495,806.44	\$0.00
2014	\$473,497.71	\$502,806.29	-\$29,308.58
2013	\$508,570.50	\$508,570.50	\$0.00
2012	\$463,569.53	\$451,889.32	\$11,680.21
2011	\$551,707.00	\$553,993.00	-\$2,286.00

Sources: Preneed Cemetery Company Annual Report submitted Mr. Chad Harding to the West Virginia State Tax Department for years 2011-2015.

The Tax Division Is Receptive to Changes to its Administration of Cemetery Company Registration.

The Tax Division suggestions for its administration of W. Va. Code §35-5B-10 include those that address the areas noted during our review including specific assurances that the CPA verified:

- the total receipts deposited in a preneed trust account;
- the total expenses paid from a preneed trust account and the purpose of those expenditures;
- the preneed trust account balance at the time of CPA's review; and
- how the CPA calculates that a preneed trust account was under or over funded

Additionally, the Tax Division suggests the following changes:

- death certificates before preneed cemetery company contract redemption, and

- civil penalties for failure to comply or provide complete information.

The Code of State Rules §110-36-10 gives the Tax Division the authority to examine the records of preneed cemetery companies.¹ The Legislative Auditor recommends that the Tax Division use its authority and establish a procedure to give closer examination of cemetery records on a regular basis. The funds from the registration fee should be sufficient to fund a staff person to review cemetery companies for compliance.²

If there are any further questions that you have in this area, we are always available to assist you.

Sincerely,


John Sylvia

Enclosures

¹ The Tax Division states it does not regularly independently audit, verify, or otherwise confirm information provided by the cemetery companies. According to the Tax Division, since FY 2007 it has conducted three audits, two of which were on the same company.

² Enclosed is Table 2 showing the fund balances for FY 2011 through May 6, 2018.

Table 2 shows the revenues and disbursements of the cemetery company registration fund for FY 2011 through March FY 2018.

Table 2				
Cemetery Company Registration Fund				
Budget Information				
FY 2011 through FY 2018*				
FY	Beginning Cash Balance	Revenue	Disbursements	Ending Cash Balance
2011	\$65,445	\$20,700	\$18,819	\$67,014
2012	\$67,014	\$2,200	\$14,724	\$54,291
2013	\$54,291	\$21,400	\$13,596	\$61,495
2014	\$61,496	\$19,772	\$19,979	\$61,288
2015	\$61,288	\$29,800	\$20,119	\$70,969
2016	\$70,969	\$18,800	\$20,655	\$69,115
2017	\$69,115	\$4,000	\$14,652	\$58,462
2018*	\$58,462	\$17,228	\$7,191	\$68,499
<i>Source: State Auditor's FIMS and OASIS.</i> May not sum due to rounding. Unaudited. From FY 2011 through FY 2017 on average 99 percent of the disbursements paid the payroll costs for a .5 FTE employee. *through May 6, 2018				

The Tax Division provided PERD with Chad Harding's annual registration forms for FY 2011 through FY 2015 and for FY 2017. According to the Tax Division, Mr. Harding paid the registration fee for the years he submitted forms.