

1 **ENROLLED**

2 **Senate Bill No. 441**

3 (BY SENATORS PREZIOSO, FACEMIRE, STOLLINGS, PLYMALE AND MCCABE)

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5 [Passed April 13, 2013; in effect ninety days from passage.]
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10 AN ACT to amend and reenact §11-10-12 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §38-10C-2 of said
12 code, all relating to the withdrawal of state tax liens
13 recorded prematurely, inadvertently or erroneously.

14 *Be it enacted by the Legislature of West Virginia:*

15 That §11-10-12 of the Code of West Virginia, 1931, as amended,
16 be amended and reenacted; and that §38-10C-2 of said code be
17 amended and reenacted, all to read as follows:

18 **CHAPTER 11. TAXATION.**

19 **ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.**

20 **§11-10-12. Liens, release; subordination; foreclosure; withdrawal.**

21 (a) *General.* - Any tax, additions to tax, penalties or
22 interest due and payable under this article or any of the other
23 articles of this chapter to which this article is applicable is a
24 debt due this state. It is a personal obligation of the taxpayer
25 and is a lien upon the real and personal property of the taxpayer.

1 (b) *Duration of lien.* - The lien created by this section
2 continues until the liability for the tax, additions to tax,
3 penalties and interest is satisfied or upon the expiration of ten
4 years from the date the tax, additions to tax, penalties and
5 interest are due and payable under section eight of this article or
6 the date the tax return is filed, whichever is later.

7 (c) *Recordation.* - The lien created by this section is subject
8 to the restrictions and conditions embodied in article ten-c,
9 chapter thirty-eight of this code and any amendment made or which
10 may hereafter be made thereto: *Provided,* That the notice of lien
11 shall indicate the date the tax, additions to tax, penalties and
12 interest are due and payable under section eight of this article or
13 the date the tax return was filed.

14 (d) *Release or subordination.* - The Tax Commissioner, pursuant
15 to rules prescribed by him or her, may issue his or her certificate
16 of release of any lien created pursuant to this section when the
17 debt is adequately secured by bond or other security. He or she
18 shall issue his or her certificate of release when the debt secured
19 has been satisfied. The certificate of release shall be issued in
20 duplicate. One copy shall be forwarded to the taxpayer, and the
21 other copy shall be forwarded to the clerk of the county commission
22 of the county wherein the lien is recorded. The clerk of the
23 county commission shall record the release without payment of any
24 fee and the recordation is a release and full discharge of the
25 lien. The Tax Commissioner may issue his or her certificate of
26 release of the lien as to all or any part of the property subject

1 to the lien, or may subordinate the lien to any other lien or
2 interest, but only if there is paid to the state an amount not less
3 than the value of the interest of the state in the property, or if
4 the interest of the state in the property has no value.

5 (e) *Foreclosure.* - The Tax Commissioner may enforce any lien
6 created and recorded under this section, against any property
7 subject to the lien by civil action in the circuit court of the
8 county wherein the property is located, in order to subject the
9 property to the payment of the tax secured by the lien. All
10 persons having liens upon or having any interest in the property
11 shall be made parties to the action. The court may appoint a
12 receiver or commissioner who shall ascertain and report all liens,
13 claims and interests in and upon the property, the validity, amount
14 and priority of each. The court shall, after notice to all
15 parties, proceed to adjudicate all matters involved therein, shall
16 determine the validity, amount and priorities of all liens, claims
17 and interests in and upon the property and shall decree a sale of
18 the property by the sheriff or any commissioner to whom the action
19 is referred, and shall decree distribution of the proceeds of the
20 sale according to the findings of the court in respect to the
21 interests of the parties.

22 (f) *Discharge of lien.* - A sale of property against which the
23 state has a lien under this section, made pursuant to an instrument
24 creating a lien on the property, or made pursuant to a statutory
25 lien on the property, or made pursuant to a judicial order to
26 enforce any judgment in any civil action, shall be made subject to

1 and without disturbing the state tax lien if the state tax lien was
2 recorded more than thirty days before the sale, unless:

3 (1) The Tax Commissioner is made a party to the civil action;

4 (2) The Tax Commissioner is given notice of the sale in
5 writing not less than fifteen days prior to sale; or

6 (3) The Tax Commissioner consents to the sale. The notice
7 shall contain the name of the owner of the property and the social
8 security number or federal employer identification number of the
9 owner.

10 (g) Withdrawal of lien. - Upon the determination of the Tax
11 Commissioner or the Tax Commissioner's designee that the lien was
12 recorded prematurely, inadvertently or otherwise erroneously, a
13 withdrawal of the lien shall be issued in duplicate. One copy
14 shall be forwarded to the taxpayer, and the other copy shall be
15 forwarded to the clerk of the county commission of the county
16 wherein the lien is recorded. The clerk of the county commission
17 shall record the withdrawal of lien without payment of any fee.

18 **CHAPTER 38. LIENS.**

19 **ARTICLE 10C. STATE AND LOCAL TAX LIENS.**

20 **§38-10C-2. Notices of liens of state, political subdivisions and**
21 **municipalities to be filed; indexes; withdrawal**
22 **release.**

23 It is the duty of the Tax Commissioner, or the proper officers
24 of the political subdivisions of the state for its subdivisions and
25 of the proper officers of the municipalities for the

1 municipalities, having liens, to file a notice of the liens in the
2 office of the clerk of the county commission of the county in which
3 the property of the taxpayer against whom the lien is claimed, is
4 situate, stating in the notice what amount of money is owing to the
5 State of West Virginia, the political subdivision or the
6 municipality, on account of the lien from the taxpayer owing the
7 money; and the clerk of the county commission of the county shall,
8 upon the filing of notice, index the lien in the judgment or tax
9 lien docket in his or her office as a tax lien against the taxpayer
10 in favor of the State of West Virginia, the political subdivision
11 or the municipality. Upon the determination of the Tax
12 Commissioner or the Tax Commissioner's designee that the lien was
13 recorded prematurely, inadvertently or otherwise erroneously, a
14 withdrawal of the lien shall be issued in duplicate. One copy
15 shall be forwarded to the taxpayer, and the other copy shall be
16 forwarded to the clerk of the county commission of the county
17 wherein the lien is recorded. The clerk of the county commission
18 shall record the withdrawal of lien without payment of any fee.
19 Upon the satisfaction of the lien, a release of the lien for
20 recordation shall be signed and delivered to the taxpayer by the
21 proper officer. The signature of the Tax Commissioner or the Tax
22 Commissioner's designee on the notice and on the release or
23 withdrawal may be either a properly acknowledged manual signature
24 or a facsimile signature authenticated pursuant to the filing of an
25 affidavit and a manual signature with the Secretary of State in the
26 manner specified in section two, article fourteen, chapter six of

1 this code. The facsimile signature has the same legal effect as
2 the manual signature.

3 All acts or parts of acts inconsistent or in conflict herewith
4 are hereby repealed.