

1 **Senate Bill No. 441**

2 (By Senators Prezioso, Facemire, Stollings, Plymale and McCabe)

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4 [Introduced March 5, 2013; referred to the Committee on the
5 Judiciary.]
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10 A BILL 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 shall

1 ~~be~~ is a debt due this state. It ~~shall be~~ is a personal obligation
2 of the taxpayer and ~~shall be~~ is a lien upon the real and personal
3 property of the taxpayer.

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

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

17 (d) *Release or subordination.* - The Tax Commissioner, pursuant
18 to rules ~~or regulations~~ prescribed by him or her, may issue his or
19 her certificate of release of any lien created pursuant to this
20 section when the debt is adequately secured by bond or other
21 security. He or she shall issue his or her certificate of release
22 when the debt secured has been satisfied. The certificate of
23 release shall be issued in duplicate. One copy shall be forwarded
24 to the taxpayer, and the other copy shall be forwarded to the clerk

1 of the county commission of the county wherein the lien is
2 recorded. The clerk of the county commission shall record the
3 release without payment of any fee and ~~such~~ the recordation shall
4 ~~constitute~~ is a release and full discharge of the lien. The Tax
5 Commissioner may issue his or her certificate of release of ~~any~~
6 ~~such~~ the lien as to all or any part of the property subject to the
7 lien, or may subordinate ~~such~~ the lien to any other lien or
8 interest, but only if there is paid to the state an amount not less
9 than the value of the interest of the state in ~~such~~ the property,
10 or if the interest of the state in ~~such~~ the property has no value.

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

1 commissioner to whom the action is referred, and shall decree
2 distribution of the proceeds of ~~such~~ the sale according to the
3 findings of the court in respect to the interests of the parties.

4 (f) *Discharge of lien.* - A sale of property against which the
5 state has a lien under this section, made pursuant to an instrument
6 creating a lien on ~~such~~ the property, or made pursuant to a
7 statutory lien on ~~such~~ the property, or made pursuant to a judicial
8 order to enforce any judgment in any civil action, shall be made
9 subject to and without disturbing the state tax lien if the state
10 tax lien was recorded more than thirty days before ~~such~~ the sale,
11 unless:

12 (1) The Tax Commissioner is made a party to ~~such~~ the civil
13 action; ~~or~~

14 (2) The Tax Commissioner is given notice of ~~such~~ the sale in
15 writing not less than fifteen days prior to sale; or

16 (3) The Tax Commissioner consents to ~~such~~ the sale. ~~Such~~ The
17 notice shall contain the name of the owner of the property and the
18 social security number or federal employer identification number of
19 the owner.

20 (g) Withdrawal of lien. - Upon the determination of the Tax
21 Commissioner or the Tax Commissioner's designee that the lien was
22 recorded prematurely, inadvertently or otherwise erroneously, a
23 withdrawal of the lien for recordation shall be signed and
24 delivered to the taxpayer by the proper officer.

1 **CHAPTER 38. LIENS.**

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

3 **§38-10C-2. Notices of liens of state, political subdivisions and**
4 **municipalities to be filed; indexes; withdrawal**
5 **release.**

6 It is the duty of the Tax Commissioner, or the proper officers
7 of the political subdivisions of the state for its subdivisions and
8 of the proper officers of the municipalities for the
9 municipalities, having liens, to file a notice ~~thereof~~ of the liens
10 in the office of the clerk of the county commission of the county
11 in which the property of the taxpayer against whom the lien is
12 claimed, is situate, stating in the notice what amount of money is
13 owing to the State of West Virginia, the political subdivision
14 ~~thereof~~ or the municipality, ~~therein~~ on account of the lien from
15 the taxpayer owing the ~~same~~ money; and the clerk of the county
16 commission of the county shall, upon the filing of notice, index
17 the ~~same~~ lien in the judgment or tax lien docket in his or her
18 office as a tax lien against the taxpayer in favor of the State of
19 West Virginia, the political subdivision ~~thereof~~ or the
20 municipality. ~~therein~~ Upon the determination of the Tax
21 Commissioner or the Tax Commissioner's designee that the lien was
22 recorded prematurely, inadvertently or otherwise erroneously, a
23 withdrawal of the lien for recordation shall be signed and

1 delivered to the taxpayer by the proper officer. Upon the
2 satisfaction of the lien, a release ~~thereof~~ of the lien for
3 recordation shall be signed and delivered to the taxpayer by the
4 proper officer. The signature of the Tax Commissioner or the Tax
5 Commissioner's designee on the notice and on the release or
6 withdrawal may be either a properly acknowledged manual signature
7 or a facsimile signature authenticated pursuant to the filing of an
8 affidavit and a manual signature with the Secretary of State in the
9 manner specified in section two, article fourteen, chapter six of
10 this code. The facsimile signature ~~shall have~~ has the same legal
11 effect as the manual signature.

12 All acts or parts of acts inconsistent or in conflict herewith
13 are hereby repealed.

(NOTE: The purpose of this bill is to provide a means for the withdrawal of tax liens that have been filed prematurely, inadvertently or erroneously.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added)