

WEST VIRGINIA LEGISLATURE
2017 FIRST EXTRAORDINARY SESSION

Introduced

Senate Bill 1009

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

[BY REQUEST OF THE EXECUTIVE]

[Introduced May 24, 2017]

1 A BILL to amend and reenact §11-10-12 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §38-10C-2 of said code, all relating generally to tax procedures and
3 administration; requiring a notice of lien to include the lien expiration date; providing for
4 additional circumstances in which the Tax Commissioner may withdraw tax liens;
5 providing for the release, withdrawal or termination of lien under certain circumstances;
6 and deleting inoperative language.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 11. TAXATION.

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION ACT.

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

1 (a) *General.* — Any tax, additions to tax, penalties or interest due and payable under this
2 article or any of the other articles of this chapter to which this article is applicable is a debt due
3 this state. It is a personal obligation of the taxpayer and is a lien upon the real and personal
4 property of the taxpayer.

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

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

14 (d) *Release or subordination.* — The Tax Commissioner, pursuant to rules prescribed by
15 him or her, may issue his or her certificate of release of any lien created pursuant to this section
16 when the debt is adequately secured by bond or other security. He or she shall issue his or her
17 certificate of release when the debt secured has been satisfied. The certificate of release shall be
18 issued in duplicate. One copy shall be forwarded to the taxpayer and the other copy shall be
19 forwarded to the clerk of the county commission of the county wherein the lien is recorded. The
20 clerk of the county commission shall record the release without payment of any fee and the
21 recordation is a release and full discharge of the lien. The Tax Commissioner may issue his or
22 her certificate of release of the lien as to all or any part of the property subject to the lien, or may
23 subordinate the lien to any other lien or interest, but only if there is paid to the state an amount
24 not less than the value of the interest of the state in the property, or if the interest of the state in
25 the property has no value.

26 (e) *Foreclosure.* — The Tax Commissioner may enforce any lien created and recorded
27 under this section, against any property subject to the lien by civil action in the circuit court of the
28 county wherein the property is located, in order to subject the property to the payment of the tax
29 secured by the lien. All persons having liens upon or having any interest in the property shall be
30 made parties to the action. The court may appoint a receiver or commissioner who shall ascertain
31 and report all liens, claims and interests in and upon the property, the validity, amount and priority
32 of each. The court shall, after notice to all parties, proceed to adjudicate all matters involved
33 therein, shall determine the validity, amount and priorities of all liens, claims and interests in and
34 upon the property and shall decree a sale of the property by the sheriff or any commissioner to
35 whom the action is referred, and shall decree distribution of the proceeds of the sale according to
36 the findings of the court in respect to the interests of the parties.

37 (f) *Discharge of lien.* — A sale of property against which the state has a lien under this
38 section, made pursuant to an instrument creating a lien on the property or made pursuant to a
39 statutory lien on the property, or made pursuant to a judicial order to enforce any judgment in any

40 civil action, shall be made subject to and without disturbing the state tax lien if the state tax lien
41 was recorded more than thirty days before the sale, unless:

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

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

45 (3) The Tax Commissioner consents to the sale. The notice shall contain the name of the
46 owner of the property and the Social Security number or federal employer identification number
47 of the owner.

48 (g) *Withdrawal of lien.* — ~~Upon the determination of the~~

49 (1) The Tax Commissioner or the Tax Commissioner's designee that may withdraw a tax
50 lien upon making one or more of the following determinations:

51 (A) The lien was recorded prematurely, inadvertently or otherwise erroneously; or

52 (B) The taxpayer voluntarily and through due diligence paid the lien, fulfilled a payment
53 plan agreement, fulfilled the terms of an offer in compromise, timely provided supporting
54 documentation or paid the lien in good faith.

55 (2) A withdrawal of the lien shall be issued in duplicate. One copy shall be forwarded to
56 the taxpayer and the other copy shall be forwarded to the clerk of the county commission of the
57 county wherein the lien is recorded. The clerk of the county commission shall record the
58 withdrawal of lien without payment of any fee.

59 (h) Release of lien. — Subject to such rules as the Tax Commissioner may prescribe,
60 pursuant to article three, chapter twenty-nine-a of this code, the Tax Commissioner shall issue a
61 certificate of release of any lien imposed with respect to any tax or fee administered under this
62 article not later than sixty days after the day on which the Tax Commissioner finds that the liability
63 for the amount assessed, together with all interest and additions to tax in respect thereof, has
64 been fully satisfied: *Provided*, That subject to such rules as the Tax Commissioner may prescribe
65 pursuant to article three, chapter twenty-nine-a of this code, the Tax Commissioner shall

66 withdraw, release or otherwise terminate any lien imposed with respect to any tax or fee
67 administered under this article, upon the determining that the lien is unenforceable, or in
68 accordance with such other criteria as the Tax Commissioner may prescribe pursuant to rule.

CHAPTER 38. LIENS.

ARTICLE 10C. STATE AND LOCAL TAX LIENS.

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

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

19 affidavit and a manual signature with the Secretary of State in the manner specified in section
20 two, article fourteen, chapter six of this code. The facsimile signature has the same legal effect
21 as the manual signature.

22 ~~All acts or parts of acts inconsistent or in conflict herewith are hereby repealed.~~

NOTE: The purpose of this bill is to require a notice of lien to include the lien expiration date, providing for additional circumstances in which the Tax Commissioner may withdraw tax liens; and providing for the release, withdrawal and termination of lien under certain circumstances.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.