

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 622

BY SENATOR HALL

[Originating in the Committee on Finance; reported on

March 22, 2017]

1 A BILL to amend and reenact §11-10-12 of the Code of West Virginia, 1931, as amended, relating
2 generally to tax procedures and administration; requiring the Tax Commissioner to issue
3 a certificate of release of lien upon the expiration of ten years from the date a tax, additions
4 to the tax or penalties and interest are due and payable; requiring a notice of lien to include
5 the lien expiration date; providing for additional circumstances when the Tax
6 Commissioner may withdraw tax liens; and providing for additional circumstances when
7 the Tax Commissioner may issue a certificate of release of lien.

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 to read as follows:

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: Provided, That upon the expiration
9 of ten years, the tax commissioner shall issue a certificate of release of the lien.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to require the Tax Commissioner to issue a certificate of release of lien upon the expiration of ten years from the date a tax, additions to the tax, or penalties and interest are due and payable; to require a notice of lien to include the lien expiration date; to provide for additional circumstances when the Tax Commissioner may withdraw tax liens; and to provide for additional circumstances when the Tax Commissioner may issue a certificate of release of lien.

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