

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4221

**FISCAL
NOTE**

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[Introduced January 19, 2018; Referred
to the Committee on Government Organization then
Finance.]

1 A BILL to amend and reenact §11-10-12 of the Code of West Virginia, 1931, as amended, relating
 2 to requiring the Tax Commissioner to maintain a centralized computerized information
 3 system that allows the public access to information about tax liens recorded by the
 4 commissioner.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA 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 §11-10-8 of this
 8 code 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 §38-10C-1 *et seq.* of this code and any amendment made or which may
 11 hereafter be made thereto: *Provided*, That the notice of lien shall indicate the date the tax,
 12 additions to tax, penalties and interest are due and payable under §11-10-8 of this code or the
 13 date the tax return was filed and the lien expiration date. A copy of the notice of lien shall be
 14 maintained by the Tax Commissioner and made available for public inspection.

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~~ triplicate. One copy shall be forwarded to the taxpayer and the other a copy

20 shall be forwarded to the clerk of the county commission of the county wherein the lien is recorded
21 and one copy shall be maintained by the Tax Commissioner and made available for public
22 inspection. The clerk of the county commission shall record the release without payment of any
23 fee and the recordation is a release and full discharge of the lien. The Tax Commissioner may
24 issue his or her certificate of release of the lien as to all or any part of the property subject to the
25 lien, or may subordinate the lien to any other lien or interest, but only if there is paid to the state
26 an amount not less than the value of the interest of the state in the property, or if the interest of
27 the state in the property has no value.

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

39 (f) *Discharge of lien.* — A sale of property against which the state has a lien under this
40 section, made pursuant to an instrument creating a lien on the property or made pursuant to a
41 statutory lien on the property, or made pursuant to a judicial order to enforce any judgment in any
42 civil action, shall be made subject to and without disturbing the state tax lien if the state tax lien
43 was recorded more than thirty days before the sale, unless:

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

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

46 prior to sale; or

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

50 (g) *Withdrawal of lien.* —

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

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

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

57 (2) A withdrawal of the lien shall be issued in ~~duplicate~~ triplicate. One copy shall be
58 forwarded to the taxpayer, ~~and the other~~ copy shall be forwarded to the clerk of the county
59 commission of the county wherein the lien is recorded and one copy shall be maintained by the
60 Tax Commissioner and made available for public inspection. The clerk of the county commission
61 shall record the withdrawal of lien without payment of any fee.

62 (h) *Release of lien.* — Subject to such rules as the Tax Commissioner may prescribe,
63 pursuant to §29-A-3-1 *et seq.* of this code, the Tax Commissioner shall issue a certificate of
64 release of any lien imposed with respect to any tax or fee administered under this article not later
65 than sixty days after the day on which the Tax Commissioner finds that the liability for the amount
66 assessed, together with all interest and additions to tax in respect thereof, has been fully satisfied:
67 *Provided,* That subject to such rules as the Tax Commissioner may prescribe pursuant to §29A-
68 3-1 *et seq.* of this code, the Tax Commissioner shall withdraw, release or otherwise terminate any
69 lien imposed with respect to any tax or fee administered under this article, upon the determining
70 that the lien is unenforceable, or in accordance with such other criteria as the Tax Commissioner
71 may prescribe pursuant to rule. A copy of each release shall be maintained by the Tax

72 Commissioner and made available for public inspection.

73 (i) Tax liens that have been recorded are public records. The Tax Commissioner shall
74 make them available to the public. The Tax Commissioner shall maintain a centralized
75 computerized information system that contains a copy of all liens recorded by the commissioner.
76 The system shall be designed to disclose the existence of all liens it has filed in any jurisdiction
77 against a taxpayer. The commissioner shall also include in the system information detailing the
78 release, subordination, foreclosure, discharge, withdrawal and termination, as applicable, of liens
79 that the Tax Commissioner has recorded. The public shall be provided access to the system
80 through the Internet and at the office of the Tax Commissioner.

NOTE: The purpose of this bill is to require the Tax Commissioner to maintain a centralized computerized information system that allows the public access to information about tax liens recorded by the commissioner.

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