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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993



# ENROLLED

*Com. Sub. Chn*  
HOUSE BILL No. *2088*

(By Delegate *Burk* )



Passed *April 8* 1993

In Effect *Ninety Days From* Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 2088**  
(By DELEGATE BURK)

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[Passed April 8, 1993; in effect ninety days from passage.]

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AN ACT to amend and reenact section twelve, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section sixteen of said article, all relating to tax liens; providing for a ten year limitation on enforcement; requiring the notice of lien to include the date the tax, addition to tax, penalties and interest are due and payable or the date the tax return is filed; eliminating the exception to the statute of limitations on collections where there has been a false or fraudulent return filed or no return filed; and requiring the tax commissioner to record extensions by agreement.

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

That section twelve, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section sixteen of said article be amended and reenacted, all to read as follows:

**ARTICLE 10. PROCEDURE AND ADMINISTRATION.**

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

- 1 (a) *General.* — Any tax, additions to tax, penalties or
- 2 interest due and payable under this article or any of the

3 other articles of this chapter to which this article is  
4 applicable shall be a debt due this state. It shall be a  
5 personal obligation of the taxpayer and shall be a lien  
6 upon the real and personal property of the taxpayer.

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

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

22 (d) *Release or subordination.* — The tax commissioner,  
23 pursuant to rules or regulations prescribed by him, may  
24 issue his certificate of release of any lien created  
25 pursuant to this section when the debt is adequately  
26 secured by bond or other security. He shall issue his  
27 certificate of release when the debt secured has been  
28 satisfied. The certificate of release shall be issued in  
29 duplicate. One copy shall be forwarded to the taxpayer,  
30 and the other copy shall be forwarded to the clerk of  
31 the county commission of the county wherein the lien is  
32 recorded. The clerk of the county commission shall  
33 record the release without payment of any fee and such  
34 recordation shall constitute a release and full discharge  
35 of the lien. The tax commissioner may issue his  
36 certificate of release of any such lien as to all or any part  
37 of the property subject to the lien, or may subordinate  
38 such lien to any other lien or interest, but only if there  
39 is paid to the state an amount not less than the value  
40 of the interest of the state in such property, or if the  
41 interest of the state in such property has no value.

42 (e) *Foreclosure.* — The tax commissioner may enforce

43 any lien created and recorded under this section, against  
 44 any property subject to such lien by civil action in the  
 45 circuit court of the county wherein such property is  
 46 located, in order to subject such property to the payment  
 47 of the tax secured by such lien. All persons having liens  
 48 upon or having any interest in the property shall be  
 49 made parties to such action. The court may appoint a  
 50 receiver or commissioner who shall ascertain and report  
 51 all liens, claims and interests in and upon the property,  
 52 the validity, amount and priority of each. The court  
 53 shall, after notice to all parties, proceed to adjudicate  
 54 all matters involved therein, shall determine the  
 55 validity, amount and priorities of all liens, claims and  
 56 interests in and upon the property and shall decree a  
 57 sale of such property by the sheriff or any commissioner  
 58 to whom the action is referred, and shall decree  
 59 distribution of the proceeds of such sale according to the  
 60 findings of the court in respect to the interests of the  
 61 parties.

62 (f) *Discharge of lien.* — A sale of property against  
 63 which the state has a lien under this section, made  
 64 pursuant to an instrument creating a lien on such  
 65 property, or made pursuant to a statutory lien on such  
 66 property, or made pursuant to a judicial order to enforce  
 67 any judgment in any civil action, shall be made subject  
 68 to and without disturbing the state tax lien if the state  
 69 tax lien was recorded more than thirty days before such  
 70 sale, unless:

71 (1) The tax commissioner is made a party to such civil  
 72 action, or

73 (2) The tax commissioner is given notice of such sale  
 74 in writing not less than fifteen days prior to sale, or

75 (3) The tax commissioner consents to such sale. Such  
 76 notice shall contain the name of the owner of the  
 77 property and the social security number or federal  
 78 employer identification number of the owner.

#### §11-10-16. Limitations on collection.

1 (a) *Where assessment is issued.* — Every proceeding  
 2 instituted by the tax commissioner for the collection of

3 the amount found to be due under an assessment which  
4 has become final of any tax, additions to tax, penalties  
5 or interest imposed by this article or any of the other  
6 articles of this chapter to which this article is applica-  
7 ble, irrespective of whether such proceeding shall be  
8 instituted in a court or by utilization of other methods  
9 provided by law for the collection of such tax, additions  
10 to tax, penalty or interest, shall be brought or com-  
11 menced within ten years after the date on which such  
12 assessment has become final.

13 (b) *Where assessment is not issued.* — Every proceed-  
14 ing instituted by the tax commissioner for the collection  
15 of the amount determined to be due by methods  
16 provided by law other than the issuance of an assess-  
17 ment, of any tax, additions to tax, penalties or interest  
18 imposed by this article or any of the other articles of  
19 this chapter to which this article is applicable, irrespec-  
20 tive of whether such proceeding shall be instituted in a  
21 court or by utilization of other methods provided by law  
22 for the collection of such tax, additions to tax, penalties  
23 or interest, shall be brought or commenced within ten  
24 years after the date on which the taxpayer filed the  
25 annual return required to be filed by any of the articles  
26 of this chapter and, if no annual return is required, such  
27 ten-year period shall begin on the day after the latest  
28 periodical return required to be filed in any year is filed.

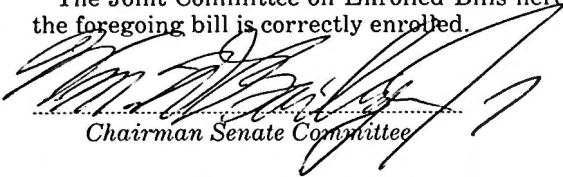
29 (c) *Exception as to inheritance tax liens.* — This section  
30 shall not apply to, or in any manner affect, the  
31 inheritance tax liens created by sections nine and  
32 eighteen, article eleven of this chapter.

33 (d) *Extension of time for institutions of collection*  
34 *proceedings by agreement.* — The tax commissioner and  
35 the taxpayer may enter into written agreement to  
36 extend the period within which the tax commissioner  
37 may institute proceedings for the collection of the  
38 amount found to be due under an assessment which has  
39 become final, or the amount determined to be due by  
40 methods provided by law other than the issuance of the  
41 assessment, of any tax, additions to tax, penalties or  
42 interest imposed by this article or any of the other  
43 articles of this chapter to which this article is applica-

44 ble. Such period shall not exceed two years. The period  
45 so agreed upon may be extended for additional periods  
46 not in excess of two years each by subsequent agree-  
47 ments in writing made before the expiration of the  
48 period previously agreed upon.

49 An extension of a tax lien, including an extension  
50 agreed to in writing by the taxpayer and the tax  
51 commissioner, beyond ten years is not effective under  
52 the provisions of this section unless the extension is  
53 docketed by the tax commissioner in the office of the  
54 county commission as is required under the provisions  
55 of article ten-c, chapter thirty-eight of this code for  
56 docketing tax liens.

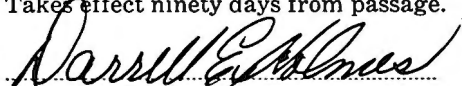
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

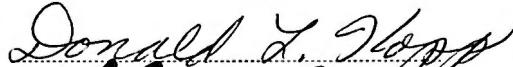
  
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Chairman Senate Committee

  
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Chairman House Committee

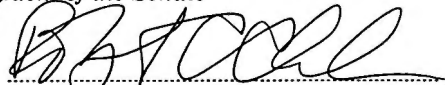
Originating in the House.

Takes effect ninety days from passage.

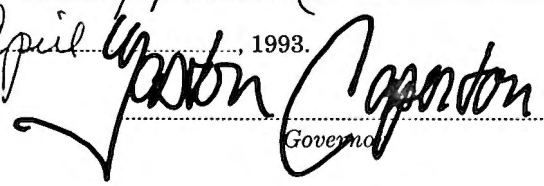
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker of the House of Delegates

The within is approved this the 26<sup>th</sup>  
day of April, 1993.

  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/20/93

Time 10:30 am