WEST VIRGINIA CODE: §11-10-12

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

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

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

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

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

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

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respect to the interests of the parties.

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

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

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

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

(g) Withdrawal of lien. —

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

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

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

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

(h) Release of lien. — Subject to such rules as the Tax Commissioner may prescribe, pursuant to article three, chapter twenty-nine-a of this code, the Tax Commissioner shall issue a certificate of release of any lien imposed with respect to any tax or fee administered under this article not later than sixty days after the day on which the Tax Commissioner finds that the liability for the amount assessed, together with all interest and additions to tax in respect thereof, has been fully satisfied: Provided, That subject to such rules as the Tax Commissioner may prescribe pursuant to article three, chapter twenty-nine-a of this code, the Tax Commissioner shall withdraw, release or otherwise terminate any lien imposed with respect to any tax or fee administered under this article, upon the determining that the lien is unenforceable, or in accordance with such other criteria as the Tax Commissioner may prescribe pursuant to rule.

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