

# WEST VIRGINIA CODE: §11-10-13

## §11-10-13. Levy and distraint.

(a) Authority of Tax Commissioner. -- If any tax administered under this article is shown to be due on a return, it is required to be paid at the time a return is filed and if any portion of such tax is not so paid, or if an assessment of tax is made by the Tax Commissioner and notice thereof is given as required by this article and such assessment has become final and is not subject to administrative or judicial review, then, if any person liable to pay any tax administered under this article neglects or refuses to pay the same within fifteen days after notice and demand, it shall be lawful for the Tax Commissioner (or his delegate) to collect such tax (and such further sum as is sufficient to cover the expense of the levy) by levy upon all property and rights to property belonging to such person or on which there is a lien provided in this article, or any article administered under this article, for payment of the tax. If the Tax Commissioner makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be given by the Tax Commissioner (or his delegate) and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the fifteen-day period provided in this section.

(b) "Levy" defined. -- The term "levy" as used in this section includes the power of distraint and seizure by any means. Except as otherwise provided in this section, a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Tax Commissioner, or his delegate, may levy upon property or rights to property, he may seize and sell such property or rights to property, whether such property be real or personal, tangible or intangible.

(c) Successive seizures. -- Whenever any property or a right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the State of West Virginia for which levy is made, the Tax Commissioner may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him together with all expenses, is fully paid.

(d) Distress warrant. -- The Tax Commissioner may issue a distress warrant to the sheriff of any county of this state, or to any officer or employee of the state Tax Department, commanding him to levy upon and sell any such property or rights to property subject to levy in accordance with the provisions of this article. A distress warrant shall be executed within sixty days from the date the warrant was issued. The sheriff shall return the warrant and any money collected to the Tax Commissioner within sixty-five days from the date the warrant was issued. The provisions of articles four, five and six, chapter thirty-eight of this code shall not apply to the issuance or execution of any distress warrant issued under this subsection.

(e) Requirement of notice before levy.

(1) In general. -- Levy may be made under subsection (a) upon the salary or wages or other property or rights to property of any person with respect to any unpaid tax only after the Tax Commissioner has notified such person in writing of his intention to make such levy.

(2) Ten-day requirement. -- The notice required under paragraph (1) shall be given in person, or left at the dwelling or usual place of business of such person, or sent by certified mail to such person's last known address, no less than ten days prior to the day of levy: Provided, That no notice need be given if the Tax Commissioner has made a finding under the last sentence of subsection (a) that collection of the tax is in jeopardy.

(3) Continuing levy on salary and wages. -- The effect of a levy on salary or wages payable to or received by a taxpayer shall be continuous from the date such levy is first made until the liability out of which such levy arose is satisfied or becomes unenforceable by reason of lapse of time, at which time the Tax Commissioner shall promptly release such levy and notify the person upon whom such levy was made that such levy has been released.