

# WEST VIRGINIA CODE: §11-11-17

## §11-11-17. Special lien for estate tax.

(a) Lien created. -- Unless the tax imposed by section three of this article is sooner paid in full, or becomes unenforceable by reason of lapse of time, it shall be a lien for ten years after the death of the decedent upon all property, real or personal, of the decedent located in this state, except as provided in subsection (b), (c) or (d) of this section.

(b) Liability of transferees and others; divestment and reattachment of lien. -- If the tax imposed by this article is not paid when due, then the spouse, transferee, trustee (except the trustee of an employees' trust which meets the requirements of Section 401(a) of the Internal Revenue Code of 1986, as amended), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or possesses on the date of the decedent's death, property included in the gross estate for federal estate tax purposes, to the extent of the value at the time of the decedent's death of the property, shall be personally liable for the tax. Any part of the property transferred by (or transferred by a transferee of) the spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, to a purchaser or holder of a security interest shall be divested of the lien provided in subsection (a) of this section. However, a like lien shall attach to all the property not so transferred of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, or transferee of any person.

(c) Continuance after discharge of fiduciary; divestment and reattachment of lien. -- The provisions of section twenty of this article eleven (relating to discharge of fiduciary from personal liability) shall not operate as a release of any part of the gross estate from the lien provided in subsection (a) of this section for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a purchaser or a holder of a security interest, in which case the part (or the interest) so transferred shall be divested of the lien provided in subsection (a) of this section or to any claim or demand for any such deficiency. However, a like lien shall attach to the consideration received from the purchaser or holder of a security interest, by the heirs, legatees, devisees, or distributees.

(d) Other exceptions. --

(1) The part of the property of the decedent as may at the time be subject to the lien provided for in subsection (a) of this section shall be divested of such lien to the extent used for payment of charges against the estate or expenses of its administration allowed by the county commission or court having jurisdiction thereof.

(2) The part of the personal property of the decedent as may at the time be subject to the lien provided for in subsection (a) of this section shall be divested of the lien upon the

conveyance or transfer of the property to a bona fide purchaser or holder of a security interest for an adequate and full consideration in money or money's worth. The liens shall then attach to the consideration received for the property from the purchaser or holder of a security interest.

(e) Release of lien. -- Subject to such regulations as the Tax Commissioner may prescribe, the Tax Commissioner shall issue a certificate of release of any lien arising under this section not later than thirty days after the day on which the Tax Commissioner finds that the liability for the amount assessed, together with all interest and applicable penalties and additions to tax in respect thereof, has been fully satisfied or has become legally unenforceable.

(f) Certificate of discharge. -- Subject to such regulations as the Tax Commissioner may prescribe, the Tax Commissioner may issue a certificate of discharge of any or all of the property subject to the lien imposed by this section if the Tax Commissioner finds that the liability secured by the lien has been fully satisfied or provided for.

(g) Effect of certificate. --

(1) Conclusiveness. -- Except as provided in subdivisions (2) and (3) of this subsection, if a certificate is issued pursuant to subsection (f) of this section by the Tax Commissioner and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed), the certificate shall have the following effect:

(A) In the case of a certificate of release, the certificate shall be conclusive that the lien referred to in the certificate is extinguished;

(B) In the case of a certificate of discharge, the certificate shall be conclusive that the property covered by the certificate is discharged from the lien; and

(C) In the case of a certificate of nonattachment, the certificate shall be conclusive that the lien of the State of West Virginia does not attach to the property of the person referred to in the certificate.

(2) Revocation of certification of release or nonattachment. -- If the Tax Commissioner determines that a certificate of release or nonattachment of a lien imposed by this section was issued erroneously or improvidently, or if a certificate of release of the lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section five-q, article ten of this chapter, which has been breached, and if the period of limitation on collection after assessment has not expired, the Tax Commissioner may revoke the certificate and reinstate the lien:

(A) By mailing written notice, by certified mail, return receipt requested, of the revocation to the person against whom the tax was assessed at his or her last known address; and

(B) By filing notice of the revocation in the same office in which notice of lien to which it

relates was filed (if the notice of lien had been filed).

Such reinstated lien: (i) Shall be effective on the date the notice of revocation is mailed to the taxpayer in accordance with the provisions of the foregoing paragraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of the foregoing paragraph (B); and (ii) shall have the same force and effect (as of the date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section eleven, article ten of this chapter (relating to lien for taxes).

(3) Certificates void under certain conditions. -- Notwithstanding any other provision of this article, any lien imposed by this section shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for payment of the tax reacquires the property after the certificate has been issued.