WEST VIRGINIA CODE CHAPTER 11a ARTICLE 2

WV Legislature

§11A-2-1. Duty of sheriff to enforce payment of delinquent taxes.

Whenever any taxes become delinquent, it shall be the duty of the sheriff to take immediate steps to enforce payment by use of the methods prescribed in sections two, three and seven of this article.

WV Legislature

§11A-2-2. Collection by civil action; fees and costs not required of sheriff.

(a) Taxes are hereby declared to be debts owing by the taxpayer, for which he or she shall be personally liable. After delinquency, the sheriff may enforce this liability by appropriate action in any court of competent jurisdiction. No such action may be brought after five years from the time the action accrued.

(b) In any such action, the sheriff may prosecute the same without paying fees or costs, and without providing bond or security, as may otherwise be required of civil litigants by the provisions of this code, and shall have all services and process, including the services of witnesses, without paying therefor: Provided, That the sheriff shall maintain for each action for the recovery of delinquent taxes records sufficient to demonstrate the total fees and costs paid and that would have been paid but for the authority provided herein to seek recovery without such payment: Provided, however, That where the sheriff recovers delinquent taxes in or as the result of such action, whether by way of settlement or judgment, such fees and costs as above required to be recorded shall be recoverable from the opposite party and, upon receipt of any recovery, the sheriff shall pay from the amount recovered such fees or costs to the officer who otherwise would have been entitled thereto but for the provisions of this section: Provided further, That the fees and costs shall be paid prior to payment to the various taxing units of the balance of the recovered taxes: And provided further, That the payment to the various taxing units shall be prorated on the basis of the total amount of taxes due them.

(c) The county commission may hire an attorney to prosecute any such action for the collection of such delinquent taxes or to defend the county's interest in any proceeding before any United States Bankruptcy Court: Provided, That any attorney so hired shall be reimbursed for actual expenses directly incurred in the course of the representation: Provided, however, That in any engagement of any attorney so hired under this section, the county commission shall enter into a written representation agreement with the attorney so engaged, which written representation agreement shall include, in the case of an hourly fee agreement, a cumulative cap of any hourly fees charged on a per-case basis or, in the case of a contingency fee agreement, a percentage cap of any money or things of value recovered in the representation. Any attorney fees or other costs associated with the collection of taxes, not heretofore provided for in subsection (b) of this section, shall be paid from the taxes so collected prior to the distribution to the various taxing units.

WV Legislature

§11A-2-3. Distraint.

The sheriff may, as soon as taxes become delinquent, distrain any goods or chattels in the county belonging to the person or to the estate in land assessed with the taxes. If such goods or chattels are about to be removed from the county, the sheriff may distrain even before delinquency. Whenever rent payable by a tenant is a share of the crop, such share only, whether severed or not, shall be liable to distress for taxes assessed against the landlord.

WV Legislature

§11A-2-4. Abatement of distress.

Whenever by mistake taxes are assessed wholly to one person or estate on a tract or lot of land, part of which has become the freehold of another, by a title recorded before July first of the assessment year, the goods and chattels of the party or estate so assessed shall not be liable to distraint for more than a due proportion of such taxes.

WV Legislature

§11A-2-5. Distraint of encumbered property.

No trust deed, mortgage or sale of goods and chattels shall prevent their being distrained for all taxes assessed against the grantor or former owner thereof, while such goods and chattels remain in his possession; nor shall such deed, mortgage or sale prevent their being distrained for taxes assessed on such goods and chattels, no matter in whose possession they may be found.

WV Legislature

§11A-2-6. Distraint where land lies in more than one county.

Where taxes are assessed on land lying partly in one county and partly in another, the sheriff of the county in which the taxes are so assessed may distrain goods or chattels on that part of the land lying in the other county.

WV Legislature

§11A-2-7. Summary procedure for collection out of money due from or property held by another.

Whenever there is any person who is now indebted to, or who, as tenant, lessee or otherwise, will for any rent, issue, delay rentals, gas well rentals, or royalties of any kind, in the future become indebted to, or who has in his possession property belonging to, any delinquent taxpayer, the sheriff may make written application to such person demanding payment of the taxes out of such money as is now or may become due, or out of the property. No person so applied to shall make any payment or deliver any of the property to the delinquent taxpayer until the taxes are paid. From the time of the making of such application the taxes shall constitute a lien on any such money now or to become due from the person applied to and on such property held by him The sheriff shall endorse upon the application the time and the place application was made and shall file it for record with the clerk of the county court.

Upon the failure of any person to comply with the application, the sheriff may serve such person with a notice in writing to appear and answer for his failure before a court of competent jurisdiction. The notice shall designate the court before which he is to appear, and shall state the time for such appearance, which time shall not be less than ten days after service of the notice, the name of the delinquent taxpayer and the amount of the delinquency.

The sheriff shall endorse the time and place of service on the original of such notice, and shall file it with the court designated therein. If the person served does not appear, judgment shall be entered against him in favor of the sheriff for the amount of taxes due, with costs of the proceeding. If he does appear, the court, upon proof that he was a person to whom application might properly be made, shall render judgment against him for the amount of taxes due, with costs of the proceeding, which judgment shall be payable only out of the money which is now or is to become due to the delinquent taxpayer or out of property held for him Appeals and writs of error shall lie as in other cases.

Payment of the taxes, in whole or in part, by the person applied to, whether made upon application only or made toward satisfaction of a judgment against him shall entitle him to a credit on any obligation he may owe the delinquent taxpayer, or to a charge against any property held for the taxpayer, and to a first lien on any such property, for the amount paid, unless he was by an express contract bound to pay the taxes.

WV Legislature

§11A-2-8. Remedies against vendee in possession without deed.

Any purchaser in possession of land, whether or not he has obtained a deed therefor, shall be personally liable for the taxes assessed against the land after he obtained possession, unless the vendor has expressly contracted to pay the taxes himself The sheriff may collect from the purchaser by any of the methods provided for in this article.

WV Legislature

§11A-2-9. Remedies of sheriff paying over taxes not collected.

If the sheriff has paid into the treasury of the state, or of any county or municipality, taxes due from any person before they were collected by him he may in order to reimburse himself collect from such person by any of the methods provided for in this article, but he shall not be subrogated to the state's lien for such taxes.

WV Legislature

§11A-2-10. Sale of tax liens on real estate.

In addition to the methods for the collection of taxes provided for in this article, tax liens on real estate may be sold for the taxes assessed thereon in the manner prescribed in article three of this chapter.

WV Legislature

§11A-2-10a. Notice of delinquency.

On or after April first of each year, the sheriff may prepare and publish a notice stating in effect that the taxes assessed for the previous year have become delinquent, and that unless paid by April thirtieth will be included for publication in the forthcoming delinquent lists, which notice, if published, shall be published as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

WV Legislature

§11A-2-11. Delinquent lists; oath.

The sheriff, after ascertaining which of the taxes assessed in his or her county are delinquent, shall, on or before May 1 next succeeding the year for which the taxes were assessed, prepare the following delinquent lists, arranged by districts and alphabetically by name of the person charged, and showing in respect to each the amount of taxes remaining delinquent on April thirtieth: (1) A list of property in the landbook improperly entered or not ascertainable; (2) a list of other delinquent real estate; and (3) a list of all other delinquent taxes: Provided, That the list shall conclude with a notice, substantially as follows: "Any person holding a West Virginia business registration certificate under the authority of article twelve, chapter eleven of this code who does not pay all delinquent personal property taxes shall have his or her license to do business in this state suspended until the delinquency is cured."

The sheriff on returning each list shall, at the foot thereof, subscribe an oath, which shall be subscribed before and certified by some person duly authorized to administer oaths, in form or effect as follows:

I, ..., sheriff (or deputy sheriff or collector) of the County of ....., do swear that the foregoing list is, to the best of my knowledge and belief, complete and accurate, and that I have received none of the taxes listed therein.

Except for the oath, the Auditor shall prescribe the form of the delinquent lists.

WV Legislature

§11A-2-12. Penalty for inclusion of taxes paid in delinquent lists.

If a sheriff shall include in one of the delinquent lists any taxes which have been collected by him he shall forfeit to the person named in the list, if the return was by design, ten times the amount of the taxes so collected, or if the return was by mistake, twice the amount.

WV Legislature

§11A-2-13. Publication and posting of delinquent tax lists.

A copy of each of the delinquent lists shall be posted at the front door of the courthouse of the county at least two weeks before the session of the county commission at which they are to be presented for examination. At the same time a copy of each list shall be published as a Class I-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Only the aggregate amount of the taxes owed by each person need be published. To cover the costs of preparing, publishing and posting the delinquent lists, a charge of $20 shall be added to the taxes and interest already due on each item listed.

Any person whose taxes were delinquent on May first may have his name removed from the delinquent lists prior to the time the same is delivered to the newspapers for publication by paying to the sheriff the full amount of the taxes and costs owed by such person at the date of such redemption. The sheriff shall collect a charge of only $3 if redemption is made before the list is delivered for publication. Costs collected by the sheriff hereunder which are not expended for publication shall be paid into the general county fund.

WV Legislature

§11A-2-14. Correction of delinquent lists by county commission; certification to Auditor; recordation.

The sheriff shall on or before May 15 of each year present the delinquent lists to the county commission for examination. The county commission having become satisfied that the lists are correct, or having corrected them if erroneous, shall direct the clerk of the county commission to certify a copy of each list, pertaining to real property, to the Auditor not later than June 1 of each year. The original lists shall be preserved by the clerk in his or her office, and the list of delinquent real estate shall be recorded in a permanent book to be kept by him or her for that purpose.

WV Legislature

§11A-2-15. Examination of lists by Auditor; credit to sheriff.

It shall be the duty of the Auditor to examine each list pertaining to real property, and if he has reason to believe that it is erroneous, he shall return it to the county court for correction, stating his reasons why it should be corrected as to any person or subject listed therein. The Auditor shall credit the sheriff with all state taxes mentioned in each list.

WV Legislature

§11A-2-16. Effect of irregularity as to delinquent lists on later tax enforcement procedure.

No irregularity, error or mistake in respect to anything required by this article to be done concerning the delinquent lists shall invalidate any tax title based upon later tax enforcement procedure. Nor shall any person be allowed to enjoin or otherwise question the validity of any subsequent step in the tax enforcement procedure by reason of such irregularity, error or mistake, unless he shows that he was actually prejudiced thereby.

WV Legislature

§11A-2-17. Presumption of payment based on omission from delinquent lists.

Whenever a tax is charged to any person or assessed against any property and the name of the person charged or the property assessed does not appear in the proper delinquent list, it shall be presumed, in the absence of evidence to the contrary, that the tax so charged or assessed was paid before the time when such list was required to be made.

WV Legislature

§11A-2-18. Redemption before sale; record; lien.

[Repealed.]

WV Legislature

§11A-2-19. Exception.

Notwithstanding the provisions of sections four, ten-a, eleven, thirteen and fourteen of this article, the provisions of this article as of January 1, 1961, shall govern delinquency and methods of enforcing payment of taxes levied upon assessed values as of January 1, 1961, or prior years.

WV Legislature