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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 2794

(By Delegates Staton and Fleischauer)



Passed March 14, 1998

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 2794

(BY DELEGATES STATON AND FLEISCHAUER)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact section seventeen, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty one, as amended, relating to estate tax liens, and clarifying that certain estate tax liens are divested and reattach upon transfer of certain property.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 11. ESTATE TAXES.

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

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

8 (b) *Liability of transferees and others; divestment and*

9 *reattachment of lien.* — If the tax imposed by this article
10 is not paid when due, then the spouse, transferee, trustee
11 (except the trustee of an employees' trust which meets the
12 requirements of Section 401(a) of the Internal Revenue
13 Code of 1986, as amended), surviving tenant, person in
14 possession of the property by reason of the exercise,
15 nonexercise, or release of a power of appointment, or
16 beneficiary, who receives, or possesses on the date of the
17 decedent's death, property included in the gross estate for
18 federal estate tax purposes, to the extent of the value at the
19 time of the decedent's death of the property, shall be
20 personally liable for the tax. Any part of the property
21 transferred by (or transferred by a transferee of) the
22 spouse, transferee, trustee, surviving tenant, person in
23 possession, or beneficiary, to a purchaser or holder of a
24 security interest shall be divested of the lien provided in
25 subsection (a) of this section. However, a like lien shall
26 attach to all the property not so transferred of such spouse,
27 transferee, trustee, surviving tenant, person in possession,
28 or beneficiary, or transferee of any person.

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

45 (d) *Other Exceptions.* —

46 (1) The part of the property of the decedent as may at
47 the time be subject to the lien provided for in subsection
48 (a) of this section shall be divested of such lien to the

49 extent used for payment of charges against the estate or
50 expenses of its administration allowed by the county
51 commission or court having jurisdiction thereof.

52 (2) The part of the personal property of the decedent
53 as may at the time be subject to the lien provided for in
54 subsection (a) of this section shall be divested of the lien
55 upon the conveyance or transfer of the property to a bona
56 fide purchaser or holder of a security interest for an
57 adequate and full consideration in money or money's
58 worth. The liens shall then attach to the consideration
59 received for the property from the purchaser or holder of
60 a security interest.

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

69 (f) *Certificate of discharge.* — Subject to such
70 regulations as the tax commissioner may prescribe, the tax
71 commissioner may issue a certificate of discharge of any
72 or all of the property subject to the lien imposed by this
73 section if the tax commissioner finds that the liability
74 secured by the lien has been fully satisfied or provided
75 for.

76 (g) *Effect of certificate.* —

77 (1) *Conclusiveness.* — Except as provided in
78 subdivisions (2) and (3) of this subsection, if a certificate
79 is issued pursuant to subsection (f) of this section by the
80 tax commissioner and is filed in the same office as the
81 notice of lien to which it relates (if such notice of lien has
82 been filed), the certificate shall have the following effect:

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

86 (B) In the case of a certificate of discharge, the

87 certificate shall be conclusive that the property covered by
88 the certificate is discharged from the lien; and

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

93 (2) *Revocation of certification of release or*
94 *nonattachment.* — If the tax commissioner determines
95 that a certificate of release or nonattachment of a lien
96 imposed by this section was issued erroneously or
97 improvidently, or if a certificate of release of the lien was
98 issued pursuant to a collateral agreement entered into in
99 connection with a compromise under section five-q, article
100 ten of this chapter, which has been breached, and if the
101 period of limitation on collection after assessment has not
102 expired, the tax commissioner may revoke the certificate
103 and reinstate the lien:

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

108 (B) By filing notice of the revocation in the same
109 office in which notice of lien to which it relates was filed
110 (if the notice of lien had been filed).

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

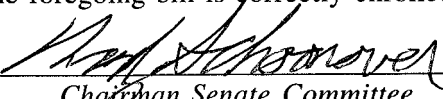
121 (3) *Certificates void under certain conditions.* —
122 Notwithstanding any other provision of this article, any
123 lien imposed by this section shall attach to any property
124 with respect to which a certificate of discharge has been

125 issued if the person liable for payment of the tax
126 reacquires the property after the certificate has been
127 issued.

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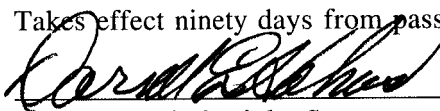
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

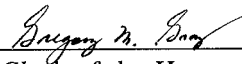

Chairman Senate Committee

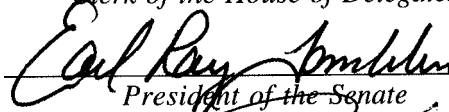

Chairman House Committee

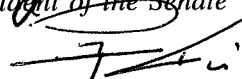
Originating in the House.

Takes effect ninety days from passage.

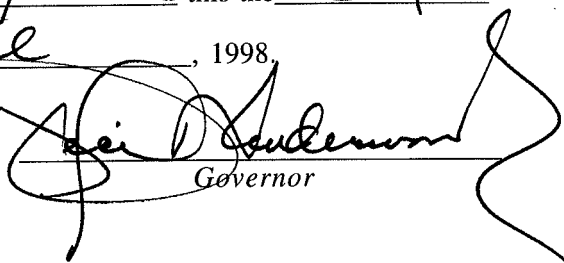

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 6th
day of April, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/98

Time 10:15 am