

SB 441

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013



ENROLLED

Senate Bill No. 441

**(BY SENATORS PREZIOSO, FACEMIRE, STOLLINGS, PLYMALE
AND McCABE)**

[PASSED APRIL 13, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

FILED
2013 APR 30 PM 4:55
SENATE

FILED

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Senate Bill No. 441

OFFICE OF THE CLERK OF THE SENATE

(BY SENATORS PREZIOSO, FACEMIRE, STOLLINGS, PLYMALE AND MCCABE)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §11-10-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §38-10C-2 of said code, all relating to the withdrawal of state tax liens recorded prematurely, inadvertently or erroneously.

Be it enacted by the Legislature of West Virginia:

That §11-10-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §38-10C-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

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

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

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

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

21 **(d) *Release or subordination.*** – The Tax Commissioner,
22 pursuant to rules prescribed by him or her, may issue his or
23 her certificate of release of any lien created pursuant to this
24 section when the debt is adequately secured by bond or other
25 security. He or she shall issue his or her certificate of release
26 when the debt secured has been satisfied. The certificate of
27 release shall be issued in duplicate. One copy shall be
28 forwarded to the taxpayer, and the other copy shall be
29 forwarded to the clerk of the county commission of the
30 county wherein the lien is recorded. The clerk of the county
31 commission shall record the release without payment of any
32 fee and the recordation is a release and full discharge of the
33 lien. The Tax Commissioner may issue his or her certificate
34 of release of the lien as to all or any part of the property
35 subject to the lien, or may subordinate the lien to any other
36 lien or interest, but only if there is paid to the state an amount
37 not less than the value of the interest of the state in the
38 property, or if the interest of the state in the property has no
39 value.

40 **(e) *Foreclosure.*** – The Tax Commissioner may enforce
41 any lien created and recorded under this section, against any
42 property subject to the lien by civil action in the circuit court
43 of the county wherein the property is located, in order to
44 subject the property to the payment of the tax secured by the
45 lien. All persons having liens upon or having any interest in
46 the property shall be made parties to the action. The court
47 may appoint a receiver or commissioner who shall ascertain
48 and report all liens, claims and interests in and upon the
49 property, the validity, amount and priority of each. The court
50 shall, after notice to all parties, proceed to adjudicate all
51 matters involved therein, shall determine the validity, amount
52 and priorities of all liens, claims and interests in and upon the
53 property and shall decree a sale of the property by the sheriff
54 or any commissioner to whom the action is referred, and shall
55 decree distribution of the proceeds of the sale according to
56 the findings of the court in respect to the interests of the
57 parties.

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

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

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

70 (3) The Tax Commissioner consents to the sale. The
71 notice shall contain the name of the owner of the property

72 and the social security number or federal employer
73 identification number of the owner.

74 (g) *Withdrawal of lien.* – Upon the determination of the
75 Tax Commissioner or the Tax Commissioner's designee that
76 the lien was recorded prematurely, inadvertently or otherwise
77 erroneously, a withdrawal of the lien shall be issued in
78 duplicate. One copy shall be forwarded to the taxpayer, and
79 the other copy shall be forwarded to the clerk of the county
80 commission of the county wherein the lien is recorded. The
81 clerk of the county commission shall record the withdrawal
82 of lien without payment of any fee.

CHAPTER 38. LIENS.

ARTICLE 10C. STATE AND LOCAL TAX LIENS.

§38-10C-2. Notices of liens of state, political subdivisions and municipalities to be filed; indexes; withdrawal release.

1 It is the duty of the Tax Commissioner, or the proper
2 officers of the political subdivisions of the state for its
3 subdivisions and of the proper officers of the municipalities
4 for the municipalities, having liens, to file a notice of the
5 liens in the office of the clerk of the county commission of
6 the county in which the property of the taxpayer against
7 whom the lien is claimed, is situated, stating in the notice what
8 amount of money is owing to the State of West Virginia, the
9 political subdivision or the municipality, on account of the
10 lien from the taxpayer owing the money; and the clerk of the
11 county commission of the county shall, upon the filing of
12 notice, index the lien in the judgment or tax lien docket in his
13 or her office as a tax lien against the taxpayer in favor of the
14 State of West Virginia, the political subdivision or the
15 municipality. Upon the determination of the Tax
16 Commissioner or the Tax Commissioner's designee that the

17 lien was recorded prematurely, inadvertently or otherwise
18 erroneously, a withdrawal of the lien shall be issued in
19 duplicate. One copy shall be forwarded to the taxpayer, and
20 the other copy shall be forwarded to the clerk of the county
21 commission of the county wherein the lien is recorded. The
22 clerk of the county commission shall record the withdrawal
23 of lien without payment of any fee. Upon the satisfaction of
24 the lien, a release of the lien for recordation shall be signed
25 and delivered to the taxpayer by the proper officer. The
26 signature of the Tax Commissioner or the Tax
27 Commissioner's designee on the notice and on the release or
28 withdrawal may be either a properly acknowledged manual
29 signature or a facsimile signature authenticated pursuant to
30 the filing of an affidavit and a manual signature with the
31 Secretary of State in the manner specified in section two,
32 article fourteen, chapter six of this code. The facsimile
33 signature has the same legal effect as the manual signature.

34 All acts or parts of acts inconsistent or in conflict
35 herewith are hereby repealed.

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

Rocky Feliciano
.....
Member ~~Chairman~~ Senate Committee

Danny Wells
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph M. Minard
.....
Clerk of the Senate

Gregory S. S.
.....
Clerk of the House of Delegates

Jeffrey K.
.....
President of the Senate

H. B.
.....
Speaker of the House of Delegates

SECRETARY OF STATE

2013 APR 30 PM 4:56

FILED

The within *is approved* this the *30th*
Day of *April*, 2013.

Earl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

APR 26 2013

Time 10:30 am