

Senate Bill No. 441

(By Senators Prezioso, Facemire, Stollings,
Plymale and McCabe)

[Introduced March 5, 2013;
referred to the Committee on the Judiciary.]

A BILL 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 ~~shall~~
4 ~~be~~ is a debt due this state. It ~~shall be~~ is a personal obligation
5 of the taxpayer and ~~shall be~~ is a lien upon the real and
6 personal property of the taxpayer.

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

14 (c) *Recordation.* – The lien created by this section ~~shall~~
15 ~~be~~ is subject to the restrictions and conditions embodied in
16 article ten-c, chapter thirty-eight of this code and any
17 amendment made or which may hereafter be made thereto:

18 *Provided*, That the notice of lien shall indicate the date the
19 tax, additions to tax, penalties and interest are due and
20 payable under section eight of this article or the date the tax
21 return was filed.

22 (d) *Release or subordination.* – The Tax Commissioner,
23 pursuant to rules ~~or regulations~~ prescribed by him or her, may
24 issue his or her certificate of release of any lien created
25 pursuant to this section when the debt is adequately secured
26 by bond or other security. He or she shall issue his or her
27 certificate of release when the debt secured has been
28 satisfied. The certificate of release shall be issued in
29 duplicate. One copy shall be forwarded to the taxpayer, and
30 the other copy shall be forwarded to the clerk of the county
31 commission of the county wherein the lien is recorded. The
32 clerk of the county commission shall record the release
33 without payment of any fee and ~~such~~ the recordation ~~shall~~
34 ~~constitute~~ is a release and full discharge of the lien. The Tax
35 Commissioner may issue his or her certificate of release of
36 ~~any such~~ the lien as to all or any part of the property subject

37 to the lien, or may subordinate ~~such~~ the lien to any other lien
38 or interest, but only if there is paid to the state an amount not
39 less than the value of the interest of the state in ~~such~~ the
40 property, or if the interest of the state in ~~such~~ the property has
41 no value.

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

56 a sale of ~~such~~ the property by the sheriff or any commissioner
57 to whom the action is referred, and shall decree distribution
58 of the proceeds of ~~such~~ the sale according to the findings of
59 the court in respect to the interests of the parties.

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

68 (1) The Tax Commissioner is made a party to ~~such~~ the
69 civil action; ~~or~~

70 (2) The Tax Commissioner is given notice of ~~such~~ the
71 sale in writing not less than fifteen days prior to sale; or

72 (3) The Tax Commissioner consents to ~~such~~ the sale.
73 ~~Such~~ The notice shall contain the name of the owner of the
74 property and the social security number or federal employer
75 identification number of the owner.

76 (g) Withdrawal of lien. – Upon the determination of the
77 Tax Commissioner or the Tax Commissioner's designee that
78 the lien was recorded prematurely, inadvertently or otherwise
79 erroneously, a withdrawal of the lien for recordation shall be
80 signed and delivered to the taxpayer by the proper officer.

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 ~~thereof~~ of
5 the liens in the office of the clerk of the county commission
6 of the county in which the property of the taxpayer against
7 whom the lien is claimed, is situate, stating in the notice what
8 amount of money is owing to the State of West Virginia, the
9 political subdivision ~~thereof~~ or the municipality, ~~therein~~ on

10 account of the lien from the taxpayer owing the ~~same~~ money;
11 and the clerk of the county commission of the county shall,
12 upon the filing of notice, index the ~~same~~ lien in the judgment
13 or tax lien docket in his or her office as a tax lien against the
14 taxpayer in favor of the State of West Virginia, the political
15 subdivision ~~thereof~~ or the municipality. ~~therein~~ Upon the
16 determination of the Tax Commissioner or the Tax
17 Commissioner's designee that the lien was recorded
18 prematurely, inadvertently or otherwise erroneously, a
19 withdrawal of the lien for recordation shall be signed and
20 delivered to the taxpayer by the proper officer. Upon the
21 satisfaction of the lien, a release ~~thereof~~ of the lien for
22 recordation shall be signed and delivered to the taxpayer by
23 the proper officer. The signature of the Tax Commissioner
24 or the Tax Commissioner's designee on the notice and on the
25 release or withdrawal may be either a properly acknowledged
26 manual signature or a facsimile signature authenticated
27 pursuant to the filing of an affidavit and a manual signature
28 with the Secretary of State in the manner specified in section

29 two, article fourteen, chapter six of this code. The facsimile
30 signature ~~shall have~~ has the same legal effect as the manual
31 signature.

32 All acts or parts of acts inconsistent or in conflict
33 herewith are hereby repealed.

(NOTE: The purpose of this bill is to provide a means for the withdrawal of tax liens that have been filed prematurely, inadvertently or erroneously.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)