

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2960

BY DELEGATES NELSON AND BOGGS

BY REQUEST OF THE TAX AND REVENUE DEPARTMENT

[Introduced March 13, 2017; Referred
to the Committee on Finance.]

1 A BILL to amend and reenact §11-10-12 of the Code of West Virginia, 1931, as amended, relating
 2 generally to tax procedures and administration; and providing additional circumstance
 3 allowing the Tax Commissioner to withdraw tax liens.

Be it enacted by the Legislature of West Virginia:

1 That §11-10-12 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted to read as follows:

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION ACT.

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

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

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

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

14 (d) *Release or subordination.* – The Tax Commissioner, pursuant to rules prescribed by
 15 him or her, may issue his or her certificate of release of any lien created pursuant to this section
 16 when the debt is adequately secured by bond or other security. He or she shall issue his or her
 17 certificate of release when the debt secured has been satisfied. The certificate of release shall be
 18 issued in duplicate. One copy shall be forwarded to the taxpayer, and the other copy shall be

19 forwarded to the clerk of the county commission of the county wherein the lien is recorded. The
20 clerk of the county commission shall record the release without payment of any fee and the
21 recordation is a release and full discharge of the lien. The Tax Commissioner may issue his or
22 her certificate of release of the lien as to all or any part of the property subject to the lien, or may
23 subordinate the lien to any other lien or interest, but only if there is paid to the state an amount
24 not less than the value of the interest of the state in the property, or if the interest of the state in
25 the property has no value.

26 (e) *Foreclosure.* – The Tax Commissioner may enforce any lien created and recorded
27 under this section, against any property subject to the lien by civil action in the circuit court of the
28 county wherein the property is located, in order to subject the property to the payment of the tax
29 secured by the lien. All persons having liens upon or having any interest in the property shall be
30 made parties to the action. The court may appoint a receiver or commissioner who shall ascertain
31 and report all liens, claims and interests in and upon the property, the validity, amount and priority
32 of each. The court shall, after notice to all parties, proceed to adjudicate all matters involved
33 therein, shall determine the validity, amount and priorities of all liens, claims and interests in and
34 upon the property and shall decree a sale of the property by the sheriff or any commissioner to
35 whom the action is referred, and shall decree distribution of the proceeds of the sale according to
36 the findings of the court in respect to the interests of the parties.

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

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

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

45 (3) The Tax Commissioner consents to the sale. The notice shall contain the name of the
46 owner of the property and the social security number or federal employer identification number of
47 the owner.

48 (g) *Withdrawal of lien.* – ~~Upon the determination of the~~ The Tax Commissioner or the Tax
49 Commissioner's designee may withdraw a tax lien upon determining that:

50 (1) The lien was recorded prematurely, inadvertently or otherwise erroneously,

51 (2) The taxpayer voluntarily and through due diligence paid the lien, fulfilled a payment
52 plan agreement, fulfilled the terms of an offer in compromise, timely provided supporting
53 documentation, paid the lien in good faith, or

54 (3) A combination of any of these determinations.

55 a A withdrawal of the lien shall be issued in duplicate. One copy shall be forwarded to the
56 taxpayer, and the other copy shall be forwarded to the clerk of the county commission of the
57 county wherein the lien is recorded. The clerk of the county commission shall record the
58 withdrawal of the lien without payment of any fee.

NOTE: The purpose of this bill is to allow the Tax Commissioner or his designee to withdraw a lien upon certain determinations, thereby possibly allowing a taxpayer to obtain a better credit rating.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.