



## PARTIAL RELEASE OF PROPERTY FROM STATE TAX LIEN

The State Tax Commissioner has the authority to issue a certificate of release of any state tax lien, created under West Virginia Code §11-10-12(a). The State Tax Commissioner may issue a certificate of release as to **part** of the property subject to the lien. West Virginia §11-10-12(d). This certificate of release of specific property is also referred to as a "partial release." This publication is not a substitute for the law or regulations.

### EFFECT

A partial release removes or discharges certain specific property from the effect of the tax lien, while the lien remains in full force and effect upon all other property or rights to property to which it has attached. A partial release is distinguished from a "release", which completely extinguishes the lien, and a "subordination", which continues the effect of the lien on the property but relegates it to a lower priority against another lien.

### CONDITIONS

This partial release may only be issued under two conditions specified by statute.  
West Virginia Code §11-10-12(d).

- 1) There is paid to the State an amount not less than the value of the interest of the State in such property;
- or
- 2) The interest of the State in such property has no value.

However, any such partial release is discretionary, and the State may impose any other conditions that may facilitate collection of the tax or be in the best interest of the State.

### APPLICATION

The partial release will only be issued upon application giving sufficient information for the State to determine the value of the States interest in the property, the amount to be paid to the State and that conditions for release are satisfied. The Application and all supporting information must be submitted to: Director, Compliance Division; State Tax Division; Post Office Box 229, Charleston, West Virginia 25321-0229. The State will not issue a release or make any commitment to issue a release in the absence of an application.

### DETERMINATION

The State will evaluate the application to determine whether to issue the release and will advise the applicant of its determination. A person requesting a release should allow 15 days for consideration of the application.

### PAYMENT

The State will usually require payment prior to delivering a partial release, if the release is issued because the State is paid any amount. Payment must be made by cash; certified, cashier's or treasurer's check; or money order. Payment by personal check may delay delivery of the release until the bank honors the check. If the interest of the State has no value, the State will generally require payment of a nominal amount, which is 10% of the amount due or \$500, whichever is greater. This minimum payment is not required if the property remaining subject to the lien has a fair market value of at least twice the amount of all liens and encumbrances against the property. The State will not issue a partial release if the amount of the lien(s) is less than \$1,000.

### CONDITIONAL COMMITMENT

The State may issue a conditional commitment to issue a partial release, so that the applicant can proceed with any pending transaction and rely upon the commitment of the State to issue the release upon payment of funds generated by the transaction. The commitment will generally state that the release will be delivered when the State is paid a specified amount and when the taxpayer is divested of any interest in the property. When the transaction is completed and the State receives its payment, the release will be issued in accordance with the commitment letter.

## **VALUATION**

The determination of the value of the interest of the State is based upon several factors including the fair market and forced sale values, other liens having priority over the State tax lien(s), and reasonable expenses of the transaction. The principle of "first-in-time, first-in-right" is used to determine the priority of all liens and the value of the State's interest in the property.

## **ESCROW OF DISPUTED FUNDS**

A dispute may exist among competing lienors concerning the value of their liens or their respective rights and priorities in the property. A partial release may be issued to facilitate a sale of property and, pursuant to agreement of the lienors, the proceeds of sale held in escrow, and subject to all liens and their respective priorities pending the outcome of the dispute.

## **FORECLOSING CREDITORS**

A foreclosing creditor may avail itself of this administrative process rather than joining the State as a party in a judicial proceeding. If the interest of the State in the property has no value and the taxpayer is divested of all interest in the property, a partial release may be issued without payment of even a nominal amount.

## **INSTRUCTIONS FOR APPLICATION FOR CERTIFICATE OF RELEASE OF PROPERTY FROM STATE TAX LIEN**

The "Application for Certificate of Release of Property for State Tax Lien" should be submitted to: Director, Compliance Division, State Tax Division; Post Office Box 229, Charleston, West Virginia 25321. The application may be made on the form provided by the State, or prepared by the applicant, so long as all required information is submitted.

### **The application must contain the following information:**

1. The name, address, and identification number of the taxpayer.
2. The name of the legal owner(s) of the property to be released.
3. The legal description of the property to be released, as contained in the deed to real property, or contract of sale as to personal property.
4. A copy or description of each state tax lien to be released including:
  - Full amount and identification number of taxpayer
  - Amount of each lien
  - Lien date, record date, county, and book and page number
5. All liens or encumbrances, on the property to be released, that have priority over the state tax lien(s), showing
  - Name and address of lienor
  - Amount and balance due
  - Description of lien
  - Place and date recorded
6. The fair market value of the property to be released and evidence thereof.
7. The amount that will be paid to the State.
8. The intended distribution of proceeds of transaction.
9. The date and manner that the taxpayer has been or will be divested of all interest in the property to be released.
10. The location, description and value of other property that will remain subject to the lien(s) to be released.
11. The purpose for which the release is requested.
12. The name, address and telephone number of the applicant, attorney, or representative.

# West Virginia State Tax Department



## APPLICATION FOR PARTIAL RELEASE OF STATE TAX LIEN

To: Director, Compliance Division  
State Tax Division  
Post Office Box 229  
Charleston, West Virginia 25321-0229

RE: Taxpayer \_\_\_\_\_  
TID Number \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1. This request for a Partial Release of State Tax Lien(s) pursuant to West Virginia Code §11-10-12(d) is made by: \_\_\_\_\_
2. The legal owner of the property is: \_\_\_\_\_
3. The property to be released as described in the deed(s) or contract of sale, a copy of which is attached.
4. The state tax lien(s) to be released, with copies attached, are:

Lien Date	Record Date	County	Book/Page	Amount
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5. The property is subject to these lien(s) other than the state tax lien(s) above:

Type	Creditor	Record Date	Amount	Balance Due
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6. The property has a fair market value of \$ \_\_\_\_\_ , as shown by an attached deed, contract of sale, or appraisal; and, if applicable, a forced sale value of \$ \_\_\_\_\_ .
7. The amount of \$ \_\_\_\_\_ will be paid to the State in consideration for this release.
8. The proceeds of sale are intended to be distributed as follows:
9. The date and manner taxpayer divested of interest in property.
10. The taxpayer owns other property in West Virginia as follows:

County	Description	Value
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11. The partial release is requested for the following reasons:

Date: \_\_\_\_\_

Applicant: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_