

WEST VIRGINIA STATE TAX DEPARTMENT

Administrative Notice 2000-19

SUBJECT: State Tax Liens -- Attachment of state tax liens and treatment for recordation purposes.

The purpose of this Administrative Notice is to provide general information regarding the attachment, recording and indexing of state tax liens. State tax liens attach to both real and personal property. West Virginia Code §11-10-12. State tax liens must be filed and docketed with the county commission of the county wherein such real estate or personal property is located to be enforceable against a purchaser, without notice, or lien creditor.

The county clerk has the legal authority and responsibility to index tax liens filed with the county. See West Virginia Code §38-10C-2 and §38-3-5. The Tax Department routinely files tax liens in all 55 counties in the state. The state tax liens are filed with the county in the form of a "Notice of State Tax Lien". These Notices of State Tax Lien have an information section, which list an individual and/or business name.

Notices of State Tax Lien are issued against individuals, partnerships, corporations, limited liability companies and other forms of business organizations. The information section will typically provide sufficient information so as to allow a determination as to what type of organization the tax lien attaches.

Notices of State Tax Lien listing proprietorships and partnerships, i.e. business organizations with no "corporate protection", will generally list the name of the business and the individuals operating such business. Due diligence standards require that these types of state tax liens be indexed under both the name of the business (DBA names, etc.) and under the name or names of any individual proprietor or general partner. The tax liens attach to property owned by both the business and the individual.

Notices of State Tax Lien listing corporations, limited liability companies, professional limited liability companies and limited partnerships, i.e. business organizations with "corporate protection", will generally only list the name of the business. Due diligence standards require that the tax lien be indexed under the corporate name and any DBA names used by the corporation and/or business entity. If for some reason an individual's name appears with a business organization listed above, the individual's name should not be indexed, as it has been listed in error, and the tax lien does not attach to property owned by the individual. In the rare case where an individual name will appear, the individual's name should be accompanied by a "c/o" or some other symbol reflecting that the liability would not attach to the individual and only appears as an aid in identifying the taxpayer.

In cases involving business organizations with "corporate protection" where a tax liability has been established against the business, the Tax Department may proceed against a responsible individual for the outstanding tax liability. In proceeding against an individual, the Tax Department is required to assess the responsible party separately and prepare and file tax liens on each individual assessed. This procedure is separate and distinct from the Notice of State Tax Lien on the business entity. When a Notice of State Tax Lien is filed against an individual for a corporate debt, the Notice will reflect that it is the result of a "responsible person" assessment and should be indexed against the individual.

The general guideline to follow in indexing Notices of State Tax Lien is to index each business name and individual name appearing on the face of the lien. This general guideline will not apply when it can be determined from the face of the lien that the exceptions discussed above apply such as the individual's name being preceded by a "c/o" and/or other symbol reflecting that the business is an organization with "corporate protection".

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