

PARTS 306-399 [RESERVED]

PART 400—TEMPORARY REGULATIONS UNDER THE FEDERAL TAX LIEN ACT OF 1966

Sec.

400.1-1 Refiling of notice of tax lien.

400.2-1 Discharge of property by substitution of proceeds of sale; subordination of lien.

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AUTHORITY: Sec. 7805, Internal Revenue Code of 1954; 68A Stat. 917; 26 U.S.C. 7805, unless otherwise noted.

§ 400.1-1 Refiling of notice of tax lien.

(a) *Scope.* This section provides rules with respect to the provisions contained in section 6323(g), relating to the refiling of a notice of lien arising under section 6321. In general, section 6323(g) contains new rules requiring the Internal Revenue Service to refile a notice of lien during the 1-year period ending 30 days after the expiration of the normal 6-year statutory period for collection of an assessed tax liability, and each succeeding period of 6 years, in order to maintain the effectiveness of a notice of lien. These provisions in section 6323 were added by section 101(a) of the Federal Tax Lien Act of 1966 (80 Stat. 1125), effective after November 2, 1966.

(b) *Requirement to refile.* In order to continue the effect of a notice of lien, the notice must be refiled in the place described in paragraph (c) of this section during the required refiling period (described in paragraph (d) of this section). In the event that two or more notices of lien are filed with respect to a particular tax assessment, the failure to comply with the provisions of paragraphs (c)(1)(i) and (d) of this section in respect of one of the notices of lien does not affect the effectiveness of the refiling of the other notice or notices of lien. Thus, except for the filing of a notice of lien required by paragraph (c)(1)(ii) of this section relating to a change of residence, the validity of any refiling of a notice of lien is not affected by the refiling or non-refiling of any other notice of lien. The effectiveness of a timely refiled notice of lien

relates back to the date on which the notice of lien was effective before the refiling. If the district director fails to refile a notice of lien in the manner described in paragraphs (c) and (d) of this section, the notice of lien is not effective, after the expiration of the required refiling period, as against any person without regard to when the interest of the person in the property subject to the lien was acquired. However, the failure of the district director to refile a notice of lien during the required refiling period will not affect the effectiveness of the notice with respect to (1) property which is the subject matter of a suit, to which the United States is a party, commenced prior to the expiration of the required refiling period, or (2) property which has been levied upon by the United States prior to the expiration of the required refiling period. Failure to refile a notice of lien does not affect the existence of the lien. If a notice of lien is not refiled, and if the lien is still in existence, the Internal Revenue Service may nevertheless file a new notice of lien either on the form prescribed for the filing of a notice of lien or on the form prescribed for refiling a notice of lien. This new filing must meet the requirements of section 6323(f) and is effective from the date on which such filing is made. Upon written request of any person who has a proper interest, any district director may issue a certificate of release of lien if notice of the lien has not been refiled within the required refiling period and the entire liability for the tax has been satisfied or has become unenforceable as a matter of law. Such request should be sent to the district director for the internal revenue district shown on the notice of lien. For provisions relating to certificates of release of lien, see section 6325.

(c) *Place for refiling notice of lien—*(1) *In general.* A notice of lien refiled during the required refiling period (described in paragraph (d) of this section) shall be effective only—

(i) If the notice of lien is refiled in the office in which the prior notice of lien (including a refiled notice) was filed under the provisions of section 6323; and

(ii) In any case in which 90 days or more prior to the date the refiling of

the notice of lien under subdivision (i) of this subparagraph is completed, the Internal Revenue Service receives written information (in the manner described in subparagraph (2) of this paragraph (b)) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with section 6323f(1)(A)(ii) in the State in which such new residence is located (or, if such new residence is located without the United States, in the District of Columbia). If on or before such 90th day more than one written notice is received concerning a change in the taxpayer's residence, a notice of lien is required by this subdivision to be filed only with respect to the residence shown on the written notice received on the most recent date. This subdivision is applicable regardless of whether the taxpayer resides at the new residence on the date the refiling of notice of lien under subdivision (i) of this subparagraph is completed.

(2) *Notice of change of taxpayer's residence*—(i) *In general.* Except as provided in subdivision (ii) of this subparagraph, for purposes of this section, a notice of change of a taxpayer's residence will be effective only if it is received, in writing, by the Internal Revenue Service from the taxpayer or his representative, relates to an unpaid tax liability of the taxpayer, and states the taxpayer's name and address of his new residence. Although it is not necessary that a written notice contain the taxpayer's identifying number authorized by section 6109, it is preferable that it include such number. For purposes of this subdivision, a notice of change of a taxpayer's residence shown on a return or an amended return (including a return of the same tax) will not be effective to notify the Internal Revenue Service.

(ii) *By return or amended return.* For purposes of this section, in the case of a notice of lien which relates to an assessment of tax made after December 31, 1966, a notice of change of a taxpayer's residence will also be effective if it is contained in a return or amended return of the same type of tax filed with the Internal Revenue Service by the taxpayer which on its face indicates that there is a change in the taxpayer's address and correctly states

the taxpayer's name, address of his new residence, and his identifying number required by section 6109.

(iii) *Other rules applicable.* Other than the means specified in subdivisions (i) and (ii) of this subparagraph, no communication (either written or oral) to the Internal Revenue Service will be considered effective as notice of a change of a taxpayer's residence under this section, whether or not the Service has actual notice of the taxpayer's residence. For the purpose of determining the date on which a notice of change of a taxpayer's residence is received under this section, the notice shall be treated as received on the date it is actually received by the Internal Revenue Service without reference to the provisions of section 7502.

(3) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. A, a delinquent taxpayer, is a resident of M State and owns real property in N State. Notices of lien are properly filed in M and N States. In order to continue the effect of the notice of lien filed in M State, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the appropriate office in M State but is not required to refile the notice of lien with the appropriate office in N State. Similarly, in order to continue the effect of the notice of lien filed in N State, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the appropriate office in N State but is not required to refile the notice of lien with the appropriate office in M State.

Example 2. B, a delinquent taxpayer, is a resident of M State. Notice of lien is properly filed in that State. One year before the required refiling period, B establishes his residence in N State, and B immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (c)(2) of this section. In order to continue the effect of the notice of lien filed in M State, the Internal Revenue Service must refile, during the required refiling period, notices of lien with (i) the appropriate office in M State, and (ii) the appropriate office in N State because B properly notified the Internal Revenue Service of his change in residence to N State more than 89 days prior to the date refiling of the notice of lien in M State is completed. If B did not notify the Internal Revenue Service of his change in residence to N State in accordance with the provisions of paragraph (c)(2) of this section, the Internal Revenue Service would not be required to file a notice of lien

in N State, even if the Internal Revenue Service had actual notice of B's change in residence to N State. In this latter case, in order to continue the effect of the notice of lien filed in M State, the Internal Revenue Service must refile, during the required refiling period, the notice of lien only with the appropriate office in M State.

Example 3. C, a delinquent taxpayer, is a resident of O State. Notice of lien is properly filed in that State. Four years before the required refiling period, C establishes his residence in P State, and C immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (c)(2) of this section. Three years before the required refiling period, C establishes his residence in R State, and again C immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (c)(2) of this section. In order to continue the effect of the notice of lien filed in O State, the Internal Revenue Service must refile, during the required refiling period, notices of lien with (i) the appropriate office in O State, and (ii) the appropriate office in R State since the notice received by the Service of C's change in residence to R State was the most recent notice received more than 89 days prior to the date refiling in O State is completed. The notice of lien is not required to be filed in P State, even though C properly notified the Internal Revenue Service of his change in residence to P State, because such notice is not the most recent one received.

Example 4. Assume the same facts as in example 3, except that C does not notify the Internal Revenue Service of his change in residence to R State in accordance with the provisions of paragraph (c)(2) of this section. In order to continue the effect of the notice of lien filed in O State, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with (i) the appropriate office in O State, and (ii) the appropriate office in P State because C properly notified the Internal Revenue Service of his change in residence to P State, even though C is not a resident of P State on the date refiling of the notice of lien in O State is completed. The Internal Revenue Service is not required to file a notice of lien in R State because C did not properly notify the Service of his change in residence to R State.

Example 5. D, a delinquent taxpayer, is a resident of M State and owns real property in N and O States. The Internal Revenue Service properly files notices of lien in M, N, and O States. Five years and 6 months after the date of the assessment shown on the notice of lien, D establishes his residence in P State, and at that time the Internal Revenue Service received from D a notification of his change in residence in accordance with the provisions of paragraph (c)(2) of this section.

On a date which is 5 years and 7 months after the date of the assessment shown on the notice of lien, the Internal Revenue Service properly refiles notices of lien in M, N, and O States which refilings continue the effect of each of the notices of lien. The Internal Revenue Service is not required to file a notice of lien in P State because D did not notify the Internal Revenue Service of his change of residence to P State more than 89 days prior to the date each of the refilings in M, N, and O States was completed.

Example 6. Assume the same facts as in example 5 except that the refiling of the notice of lien in O State occurs 100 days after D notifies the Internal Revenue Service of his change in residence to P State in accordance with the provisions of paragraph (c)(2) of this section. In order to continue the effect of the notice of lien filed in O State, in addition to refiling the notice of lien in O State, the Internal Revenue Service must also file, during the required refiling period, a notice of lien in P State because D properly notified the Internal Revenue Service of his change of residence to P State more than 89 days prior to the date the refiling in O State was completed. However, in order to maintain the effect of the refilings in M and N States, the Internal Revenue Service is not required to file, during the required refiling period, the notice of lien in P State since D did not notify the Internal Revenue Service of his change in residence to P State more than 89 days prior to the date the refilings in M and N States were completed.

Example 7. E, a delinquent taxpayer, is a resident of T State. Because T State has not designated one office in the case of personal property for filing notices of lien in accordance with the provisions of section 6323(f)(1)(A)(ii), the Internal Revenue Service properly files a notice of lien with the clerk of the appropriate United States district court. However, solely as a matter of convenience for those who may have occasion to search for notices of lien, and not as a matter of legal effectiveness, the Internal Revenue Service also files notice of lien with the recorder of deeds of the county in T State where E resides. In addition, the Internal Revenue Service sent a copy of the notice of lien to the X Life Insurance Company to give the Company actual notice of the notice of lien. In order to continue the effect of the notice of lien, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the clerk of the appropriate U.S. district court. It is not necessary in order to continue the effect of the notice of the lien to refile the notice of lien with the recorder of deeds of the county where E resides because the refiling of the notice of lien with the recorder of deeds does not constitute a proper filing for the purposes of section 6323(f). In addition, it is not necessary to continue the effect of the notice

of lien under this section to send a copy of the notice of lien to the X Life Insurance Company because the sending of a notice of lien to an insurance company does not constitute a filing for the purposes of section 6323 and, thus, a refiling with an insurance company is not required under this section.

(d) *Required refiling period*—(1) *In general.* For the purpose of this section, except as provided in subparagraph (2) of this paragraph (d), the term “required refiling period” means—

(i) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(ii) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(2) *Tax assessments made before January 1, 1962.* If the assessment of the tax is made before January 1, 1962, the first required refiling period shall be the calendar year 1967. Thus, to maintain the effectiveness of any notice of lien on file which relates to a lien which arose before January 1, 1962, the Internal Revenue Service will refile the notice of lien during the calendar year 1967. The second required refiling period for any such notice of lien is the calendar year 1973.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. On March 1, 1963, an assessment of tax is made against B, a delinquent taxpayer, and a lien for the amount of the assessment arises on that date. On July 1, 1963, a notice of lien is properly filed. The notice of lien filed on July 1, 1963, is effective up to and including March 31, 1969. The first required refiling period for the notice of lien begins on April 1, 1968, and ends on March 31, 1969. A refiling of the notice of lien during that period will extend the effectiveness of the notice of lien filed on July 1, 1963, up to and including March 31, 1975. The second required refiling period for the notice of lien begins on April 1, 1974, and ends on March 31, 1975.

Example 2. Assume the same facts as in example 1, except that the Internal Revenue Service fails to refile a notice of lien during the first required refiling period (Apr. 1, 1968, through Mar. 31, 1969). However, a notice of lien which meets the requirements of section 6323(f) is filed on June 2, 1971. Because of this filing, the notice of lien filed on June 2, 1971, is effective as of June 2, 1971. That notice must itself be refiled during the 1-year period ending on March 31, 1975, if it is to con-

tinue in effect after March 31, 1975. As in example 1, the second required refiling period for the notice of lien begins on April 1, 1974, and ends on March 31, 1975.

Example 3. On April 1, 1960, an assessment of tax is made against B, a delinquent taxpayer, and a tax lien for the amount of the assessment arises on that date. On June 1, 1962, a notice of lien is properly filed. Because the assessment of tax was made before January 1, 1962, the notice of lien filed on June 1, 1962, is effective up to and including December 31, 1967. The first required refiling period for the notice of lien is the calendar year 1967. A refiling of the notice of lien during 1967 will extend the effectiveness of the notice of lien filed on June 1, 1962, up to and including December 31, 1973. The second required refiling period for the notice of lien is the calendar year 1973.

[T.D. 6932, 32 FR 14835, Oct. 18, 1967]

§ 400.2-1 Discharge of property by substitution of proceeds of sale; subordination of lien.

(a) *Scope.* This section provides rules under the provisions in section 6325(b)(3) which relate to the discharge of property from a tax lien by substitution therefor of a lien on the proceeds of the sale of the property, and in section 6325(d) which relate to the subordination of a tax lien. Section 6325 was amended by section 103(a) of the Federal Tax Lien Act of 1966 (80 Stat. 1133), effective after November 2, 1966.

(b) *Discharge of property by substitution of proceeds of sale.* Pursuant to section 6325(b)(3), a district director may, in his discretion, issue a certificate of discharge of any part of the property subject to any lien imposed under chapter 64 of the Code if part of the property is sold and, pursuant to a written agreement with the district director, the proceeds of the sale are held, as a fund subject to the lien of the United States, in the same manner and with the same priority as the liens and claims had with respect to the discharged property. In order for the provisions of this paragraph to apply, the sale must divest the taxpayer of all right, title, and interest in the property sought to be discharged. Any person desiring a certificate of discharge under this paragraph shall submit an application in writing to the district director responsible for the collection of the tax. The application shall contain such information as the district