

section 6324A is in lieu of any bond otherwise required under section 6165 with respect to tax to be paid in installments under section 6166 or section 6166A (as in effect prior to its repeal by Economic Recovery Tax Act of 1981).

(g) *Special rule for estates for which elections under section 6324A are made on or before August 30, 1980.* If a lien is elected under section 6324A on or before August 30, 1980, the original election may be revoked. To revoke an election, the executor must file a notice of revocation containing the decedent's name, date of death, and taxpayer identification number with the Internal Revenue Service office where the original estate tax return for the decedent was filed. The notice must be filed on or before January 31, 1981 (or if earlier, the date on which the period of limitation for assessment expires).

(Approved by the Office of Management and Budget under control number 1545-0754)

(Secs. 2032A and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1856, 68A Stat. 917; 26 U.S.C. 2032A, 7805); secs. 6324A(a) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1808, 68A Stat. 917; 26 U.S.C. 6324A(a), 7805))

[T.D. 7710, 45 FR 50747, July 31, 1980, as amended by T.D. 7941, 49 FR 4469, Feb. 7, 1984]

§ 301.6325-1 Release of lien or discharge of property.

(a) *Release of lien—(1) Liability satisfied or unenforceable.* Any district director may issue a certificate of release of a lien imposed with respect to any internal revenue tax, whenever he finds that the entire liability for the tax has been satisfied or has become unenforceable as a matter of law (and not merely uncollectible or unenforceable as a matter of fact). Tax liabilities frequently are unenforceable in fact for the time being, due to the temporary nonpossession by the taxpayer of discoverable property or property rights. In all cases the liability for the payment of the tax continues until satisfaction of the tax in full or until the expiration of the statutory period for collection, including such extension of the period for collection as may be agreed upon in writing by the taxpayer and the district director.

(2) *Bond accepted.* The district director may, in his discretion, issue a certificate of release of any tax lien if he

is furnished and accepts a bond that is conditioned upon the payment of the amount assessed (together with all interest in respect thereof), within the time agreed upon in the bond, but not later than 6 months before the expiration of the statutory period for collection, including any period for collection agreed upon in writing by the district director and the taxpayer. For provisions relating to bonds, see sections 7101 and 7102 and §§ 301.7101-1 and 301.7102-1.

(b) *Discharge of specific property from the lien—(1) Property double the amount of the liability.* (i) The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under chapter 64 of the Code if he determines that the fair market value of that part of the property remaining subject to the lien is at least double the sum of the amount of the unsatisfied liability secured by the lien and of the amount of all other liens upon the property which have priority over the lien. In general, fair market value is that amount which one ready and willing but not compelled to buy would pay to another ready and willing but not compelled to sell the property.

(ii) The following example illustrates a case in which a certificate of discharge may not be given under this subparagraph:

Example. The Federal tax liability secured by a lien is \$1,000. The fair market value of all property which after the discharge will continue to be subject to the Federal tax lien is \$10,000. There is a prior mortgage on the property of \$5,000, including interest, and the property is subject to a prior lien of \$100 for real estate taxes. Accordingly, the taxpayer's equity in the property over and above the amount of the mortgage and real estate taxes is \$4,900, or nearly five times the amount required to pay the assessed tax on which the Federal tax lien is based. Nevertheless, a discharge under this subparagraph is not permissible. In the illustration, the sum of the amount of the Federal tax liability (\$1,000) and of the amount of the prior mortgage and the lien for real estate taxes (\$5,000+\$100=\$5,100) is \$6,100. Double this sum is \$12,200, but the fair market value of the remaining property is only \$10,000. Hence, a discharge of the property is not permissible under this subparagraph, since the Code requires that the fair market value of the remaining property be at least double the sum

of two amounts, one amount being the outstanding Federal tax liability and the other amount being all prior liens upon such property. In order that the discharge may be issued, it would be necessary that the remaining property be worth not less than \$12,200.

(2) *Part payment; interest of United States valueless*—(i) *Part payment*. The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under chapter 64 of the Code if there is paid over to him in partial satisfaction of the liability secured by the lien an amount determined by him to be not less than the value of the interest of the United States in the property to be so discharged. In determining the amount to be paid, the district director will take into consideration all the facts and circumstances of the case, including the expenses to which the Government has been put in the matter. In no case shall the amount to be paid be less than the value of the interest of the United States in the property with respect to which the certificate of discharge is to be issued.

(ii) *Interest of the United States valueless*. The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to the lien if he determines that the interest of the United States in the property to be so discharged has no value.

(iii) *Valuation of interest of United States*. For purposes of this subparagraph, in determining the value of the interest of the United States in the property, or any part thereof, with respect to which the certificate of discharge is to be issued, the district director shall give consideration to the value of the property and the amount of all liens and encumbrances thereon having priority over the Federal tax lien. In determining the value of the property, the district director may, in his discretion, give consideration to the forced sale value of the property in appropriate cases.

(3) *Discharge of property by substitution of proceeds of sale*. A district director may, in his discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under chapter 64 of the Code if such part of the property is sold and, pursu-

ant to a written agreement with the district director, the proceeds of the sale are held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as the lien or claim had with respect to the discharged property. This subparagraph does not apply unless the sale divests the taxpayer of all right, title, and interest in the property sought to be discharged. Any reasonable and necessary expenses incurred in connection with the sale of the property and the administration of the sale proceeds shall be paid by the applicant or from the proceeds of the sale before satisfaction of any lien or claim of the United States.

(4) *Application for certificate of discharge*. Any person desiring a certificate of discharge under this paragraph shall submit an application in writing to the district director responsible for collection of the tax. The application shall contain such information as the district director may require.

(c) *Estate or gift tax liability fully satisfied or provided for*—(1) *Certificate of discharge*. If the district director determines that the tax liability for estate or gift tax has been fully satisfied, he may issue a certificate of discharge of any or all property from the lien imposed thereon. If the district director determines that the tax liability for estate or gift tax has been adequately provided for, he may issue a certificate discharging particular items of property from the lien. If a lien has arisen under section 6324B (relating to special lien for additional estate tax attributable to farm, etc., valuation) and the district director determines that the liability for additional estate tax has been fully secured in accordance with § 20.6324B-1(c) of this chapter, the district director may issue a certificate of discharge of the real property from the section 6324B lien. The issuance of such a certificate is a matter resting within the discretion of the district director, and a certificate will be issued only in case there is actual need therefor. The primary purpose of such discharge is not to evidence payment or satisfaction of the tax, but to permit the transfer of property free from the lien in case it is necessary to clear title.

The tax will be considered fully satisfied only when investigation has been completed and payment of the tax, including any deficiency determined, has been made.

(2) *Application for certificate of discharge.* An application for a certificate of discharge of property from the lien for estate or gift tax should be filed with the district director responsible for the collection of the tax. It should be made in writing under penalties of perjury and should explain the circumstances that require the discharge, and should fully describe the particular items for which the discharge is desired. Where realty is involved each parcel sought to be discharged from the lien should be described on a separate page and each such description submitted in duplicate. In the case of an estate tax lien, the application should show the applicant's relationship to the estate, such as executor, heir, devisee, legatee, beneficiary, transferee, or purchaser. If the estate or gift tax return has not been filed, a statement under penalties of perjury may be required showing (i) the value of the property to be discharged, (ii) the basis for such valuation, (iii) in the case of the estate tax, the approximate value of the gross estate and the approximate value of the total real property included in the gross estate, (iv) in the case of the gift tax, the total amount of gifts made during the calendar year and the prior calendar years subsequent to the enactment of the Revenue Act of 1932 and the approximate value of all real estate subject to the gift tax lien, and (v) if the property is to be sold or otherwise transferred, the name and address of the purchaser or transferee and the consideration, if any, paid or to be paid by him.

(3) For provisions relating to transfer certificates in the case of nonresident estates, see § 20.6325-1 of this chapter (Estate Tax Regulations).

(d) *Subordination of lien*—(1) *By payment of the amount subordinated.* A district director may, in his discretion, issue a certificate of subordination of a lien imposed under chapter 64 of the Code upon any part of the property subject to the lien if there is paid over to the district director an amount equal to the amount of the lien or in-

terest to which the certificate subordinates the lien of the United States. For this purpose, the tax lien may be subordinated to another lien or interest on a dollar-for-dollar basis. For example, if a notice of a Federal tax lien is filed and a delinquent taxpayer secures a mortgage loan on a part of the property subject to the tax lien and pays over the proceeds of the loan to a district director after an application for a certificate of subordination is approved, the district director will issue a certificate of subordination. This certificate will have the effect of subordinating the tax lien to the mortgage.

(2) *To facilitate tax collection*—(i) *In general.* A district director may, in his discretion, issue a certificate of subordination of a lien imposed under chapter 64 of the Code upon any part of the property subject to the lien if the district director believes that the subordination of the lien will ultimately result in an increase in the amount realized by the United States from the property subject to the lien and will facilitate the ultimate collection of the tax liability.

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

Example 1. A, a farmer needs money in order to harvest his crop. A Federal tax lien, notice of which has been filed, is outstanding with respect to A's property. B, a lending institution is willing to make the necessary loan if the loan is secured by a first mortgage on the farm which is prior to the Federal tax lien. Upon examination, the district director believes that ultimately the amount realizable from A's property will be increased and the collection of the tax liability will be facilitated by the availability of cash when the crop is harvested and sold. In this case, the district director may, in his discretion, subordinate the tax lien on the farm to the mortgage securing the crop harvesting loan.

Example 2. C owns a commercial building which is deteriorating and in unsalable condition. Because of outstanding Federal tax liens, notices of which have been filed, C is unable to finance the repair and rehabilitation of the building. D, a contractor, is willing to do the work if his mechanic's lien on the property is superior to the Federal tax liens. Upon examination, the district director believes that ultimately the amount realizable from C's property will be increased and the collection of the tax liability will be facilitated by arresting deterioration of the

property and restoring it to salable condition. In this case, the district director may, in his discretion, subordinate the tax lien on the building to the mechanic's lien.

Example 3. E, a manufacturer of electronic equipment, obtains financing from F, a lending institution, pursuant to a security agreement, with respect to which a financing statement was duly filed under the Uniform Commercial Code on June 1, 1970. On April 15, 1971, F gains actual notice or knowledge that notice of a Federal tax lien had been filed against E on March 31, 1971, and F refuses to make further advances unless its security interest is assured of priority over the Federal tax lien. Upon examination, the district director believes that ultimately the amount realizable from E's property will be increased and the collection of the tax liability will be facilitated if the work in process can be completed and the equipment sold. In this case, the district director may, in his discretion, subordinate the tax lien to F's security interest for the further advances required to complete the work.

Example 4. Suit is brought against G by H, who claims ownership of property the legal title to which is held by G. A Federal tax lien against G, notice of which has previously been filed, will be enforceable against the property if G's title is confirmed. Because section 6323(b)(8) is inapplicable, J, an attorney, is unwilling to defend the case for G unless he is granted a contractual lien on the property, superior to the Federal tax lien. Upon examination, the district director believes that the successful defense of the case by G will increase the amount ultimately realizable from G's property and will facilitate collection of the tax liability. In this case, the district director may, in his discretion, subordinate the tax lien to J's contractual lien on the disputed property to secure J's reasonable fees and expenses.

(3) *Subordination of section 6324B lien.* The district director may issue a certificate of subordination with respect to a lien imposed by section 6324B if the district director determines that the interests of the United States will be adequately secured after such subordination. For example, A, a qualified heir of qualified real property, needs to borrow money for farming purposes. If the current fair market value of the real property is \$150,000, the amount of the claim to which the special lien is to be subordinated is \$40,000, the potential liability for additional tax (as defined in section 2032A(c)) is less than \$55,000, and there are no other facts to indicate that the interest of the United States will not be adequately secured, the district director may issue a certificate of

subordination. The result would be the same if the loan were for bona fide purposes other than farming.

(4) *Application for certificate of subordination.* Any person desiring a certificate of subordination under this paragraph shall submit an application therefor in writing to the district director responsible for the collection of the tax. The application shall contain such information as the district director may require.

(e) *Nonattachment of lien.* If a district director determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed in accordance with § 301.6323(f)-1 refers to such person, the district director may issue a certificate of nonattachment. Such certificate shall state that the lien, notice of which has been filed, does not attach to the property of such person. Any person desiring a certificate of nonattachment under this paragraph shall submit an application therefor in writing to the district director responsible for the collection of the tax. The application shall contain such information as the district director may require.

(f) *Effect of certificate—(1) Conclusiveness.* Except as provided in subparagraphs (2) and (3) of this paragraph, if a certificate is issued under section 6325 by a district director and the certificate is filed in the same office as the notice of lien to which it relates (if the notice of lien has been filed), the certificate shall have the following effect—

(i) In the case of a certificate of release issued under paragraph (a) of this section, the certificate shall be conclusive that the tax lien referred to in the certificate is extinguished;

(ii) In the case of a certificate of discharge issued under paragraph (b) or (c) of this section, the certificate shall be conclusive that the property covered by the certificate is discharged from the tax lien;

(iii) In the case of a certificate of subordination issued under paragraph (d) of this section, the certificate shall be conclusive that the lien or interest to which the Federal tax lien is subordinated is superior to the tax lien; and

(iv) In the case of a certificate of nonattachment issued under paragraph (e) of this section, the certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in the certificate.

(2) *Revocation of certificate of release or nonattachment*—(i) *In general.* If a district director determines that either—

(a) A certificate of release or a certificate of nonattachment of the general tax lien imposed by section 6321 was issued erroneously or improvidently, or

(b) A certificate of release of such lien was issued in connection with a compromise agreement under section 7122 which has been breached, and if the period of limitation on collection after assessment of the tax liability has not expired, the district director may revoke the certificate and reinstate the tax lien. The provisions of this subparagraph do not apply in the case of the lien imposed by section 6324 relating to estate and gift taxes.

(ii) *Method of revocation and reinstatement.* The revocation and reinstatement described in subdivision (i) of this subparagraph is accompanied by—

(a) Mailing notice of the revocation to the taxpayer at his last known address (see § 301.6212-2 for further guidance regarding the definition of last known address); and

(b) Filing notice of the revocation of the certificate in the same office in which the notice of lien to which it relates was filed (if the notice of lien has been filed).

(iii) *Effect of reinstatement*—(a) *Effective date.* A tax lien reinstated in accordance with the provisions of this subparagraph is effective on and after the date the notice of revocation is mailed to the taxpayer in accordance with the provisions of subdivision (ii)(a) of this subparagraph, but the reinstated lien is not effective before the filing of notice of revocation, in accordance with the provisions of subdivision (ii)(b) of this subparagraph, if the filing is required by reason of the fact that a notice of the lien had been filed.

(b) *Treatment of reinstated lien.* As of the effective date of reinstatement, a reinstated lien has the same force and

effect as a general tax lien imposed by section 6321 which arises upon assessment of a tax liability. The reinstated lien continues in existence until the expiration of the period of limitation on collection after assessment of the tax liability to which it relates. The reinstatement of the lien does not retroactively reinstate a previously filed notice of lien. The reinstated lien is not valid against any holder of a lien or interest described in § 301.6323(a)-1 until notice of the reinstated lien has been filed in accordance with the provisions of § 301.6323(f)-1 subsequent to or concurrent with the time the reinstated lien became effective.

(iv) *Example.* The provisions of this subparagraph may be illustrated by the following example:

Example. On March 1, 1967, an assessment of an unpaid Federal tax liability is made against A. On March 1, 1968, notice of the Federal tax lien, which arose at the time of assessment, is filed. On April 1, 1968, A executes a bona fide mortgage on property belonging to him to B. On May 1, 1968, a certificate of release of the tax lien is erroneously issued and is filed by A in the same office in which the notice of lien was filed. On June 3, 1968, the lien is reinstated in accordance with the provisions of this subparagraph. On July 1, 1968, A executes a bona fide mortgage on property belonging to him to C. On August 1, 1968, a notice of the lien which was reinstated is properly filed in accordance with the provisions of § 301.6323(f)-1. The mortgages of both B and C will have priority over the rights of the United States with respect to the tax liability in question. Because a reinstated lien continues in existence only until the expiration of the period of limitation on collection after assessment of the tax liability to which the lien relates, in the absence of any extension or suspension of the period of limitation on collection after assessment, the reinstated lien will become unenforceable by reason of lapse of time after February 28, 1973.

(3) *Certificates void under certain conditions.* Notwithstanding any other provisions of subtitle F of the Code, any lien for Federal taxes attaches to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires the property after the certificate has been issued. Thus, if property subject to a Federal tax lien is discharged therefrom and is later reacquired by the delinquent taxpayer at a time when

the lien is still in existence, the tax lien attaches to the reacquired property and is enforceable against it as in the case of after-acquired property generally.

(g) *Filing of certificates and notices.* If a certificate or notice described in this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 (to which the certificate or notice relates) is filed, the certificate or notice is effective if filed in the office of the clerk of the United States district court for the judicial district in which the State office where the notice of lien is filed is situated.

(Secs. 6324B (90 Stat. 1861, 26 U.S.C. 6324B) and 7805 (68A Stat. 917, 26 U.S.C. 7805))

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7429, 41 FR 35512, Aug. 23, 1976; T.D. 7847, 47 FR 50857, Nov. 10, 1982; T.D. 8939, 66 FR 2821, Jan. 12, 2001]

§ 301.6326-1 Administrative appeal of the erroneous filing of notice of federal tax lien.

(a) *In general.* Any person may appeal to the district director of the district in which a notice of federal tax lien was filed on the property or rights to property of such person for a release of lien alleging an error in the filing of notice of lien. Such appeal may be used only for the purpose of correcting the erroneous filing of a notice of lien, not to challenge the underlying deficiency that led to the imposition of a lien. If the district director determines that the Internal Revenue Service has erroneously filed the notice of any federal tax lien, the district director shall expeditiously, and, to the extent practicable, within 14 days after such determination, issue a certificate of release of lien. The certificate of release of such lien shall include a statement that the filing of notice of lien was erroneous.

(b) *Appeal alleging an error in the filing of notice of lien.* For purposes of paragraph (a) of this section, an appeal of the filing of notice of federal tax lien must be based on any one of the following allegations:

(1) The tax liability that gave rise to the lien, plus any interest and additions to tax associated with said liability,

was satisfied prior to the filing of notice of lien;

(2) The tax liability that gave rise to the lien was assessed in violation of the deficiency procedures set forth in section 6213 of the Internal Revenue Code;

(3) The tax liability that gave rise to the lien was assessed in violation of title 11 of the United States Code (the Bankruptcy Code); or

(4) The statutory period for collection of the tax liability that gave rise to the lien expired prior to the filing of notice of federal tax lien.

(c) *Notice of federal tax lien that lists multiple liabilities.* When a notice of federal tax lien lists multiple liabilities, a person may appeal the filing of notice of lien with respect to one or more of the liabilities listed in the notice, if the notice was erroneously filed with respect to such liabilities. If a notice of federal tax lien was erroneously filed with respect to one or more liabilities listed in the notice, the district director shall issue a certificate of release with respect to such liabilities. For example, if a notice of federal tax lien lists tax liabilities for years 1980, 1981 and 1982, and the entire liabilities for 1981 and 1982 were paid prior to the filing of notice of lien, the taxpayer may appeal the filing of notice of lien with respect to the 1981 and 1982 liabilities and the district director must issue a certificate of release with respect to the 1981 and 1982 liabilities.

(d) *Procedures for appeal—(1) Manner.* An appeal of the filing of notice of federal tax lien shall be made in writing to the district director (marked for the attention of the Chief, Special Procedures Function) of the district in which the notice of federal tax lien was filed.

(2) *Form.* The appeal shall include the following information and documents:

(i) Name, current address, and taxpayer identification number of the person appealing the filing of notice of federal tax lien;

(ii) A copy of the notice of federal tax lien affecting the property, if available; and

(iii) The grounds upon which the filing of notice of federal tax lien is being appealed.

(A) If the ground upon which the filing of notice is being appealed is that