

(ii) *Other rules applicable.* Except as provided in paragraph (b)(2)(i) of this section, no communication (either written or oral) to the Bureau will be considered effective as notice of a change of a taxpayer's residence under this section, whether or not the Bureau has actual notice or knowledge of the taxpayer's new 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 Bureau without reference to the provisions of 26 U.S.C. 7502.

(c) *Required refiling period.* For the purpose of this section, the term "required refiling period" means:

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

(2) 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.

(26 U.S.C. 6323)

§ 70.150 Release of lien or discharge of property.

(a) *Release of lien.* An appropriate ATF officer is charged with releasing liens or discharging property from liens. The appropriate ATF officer must issue a certificate of release of a lien imposed with respect to any tax imposed by a provision of 26 U.S.C. enforced and administered by the Bureau, not later than 30 days after the day on which either:

(1) The appropriate ATF officer 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 appropriate ATF officer.

(2) The appropriate ATF officer is furnished and accepts a bond that is conditioned upon the payment of the amount assessed (together with all interest in respect thereof and any expenses to which the Government has been put in the matter), 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 appropriate ATF officer and the taxpayer. For provisions relating to bonds, see 26 U.S.C. 7101 and 7102 and §§ 70.281 and 70.282 of this part.

(b) *Discharge of specific property from the lien—(1) Property double the amount of the liability.* The appropriate ATF officer may, in that officer's discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under 26 U.S.C. 64 if the Bureau 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.

(2) *Part payment; interest of United States valueless—(i) Part payment.* The appropriate ATF officer may, in that officer's discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under 26 U.S.C. 64 if there is paid over to the Bureau in partial satisfaction of the liability secured by the lien an amount determined by the Bureau 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 appropriate ATF officer 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 appropriate ATF officer may, in that official's discretion, issue a certificate of discharge of any part of the property subject to the lien if the Bureau 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 paragraph (b)(2), 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 appropriate ATF officer 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 appropriate ATF officer may, in that official's discretion, give consideration to the forced sale value of the property in appropriate cases.

(3) *Discharge of property by substitution of proceeds of sale.* The appropriate ATF officer may, in that officer's discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under 26 U.S.C. 64 if such part of the property is sold and, pursuant to a written agreement with the appropriate ATF officer, 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 appropriate ATF officer. The application shall contain such information as the appropriate ATF officer may require.

(c) *Subordination of lien—(1) By payment of the amount subordinated.* The appropriate ATF officer may, in that officer's discretion, issue a certificate of subordination of a lien imposed under 26 U.S.C. 64 upon any part of the property subject to the lien if there is paid over to the appropriate ATF officer an amount equal to the amount of the lien or interest 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 the appropriate ATF officer after an application for a certificate of subordination is approved, the appropriate ATF officer 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.* The appropriate ATF officer may, in that officer's discretion, issue a certificate of subordination of a lien imposed under 26 U.S.C. 64 upon any part of the property subject to the lien if the appropriate ATF officer 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 lien and will facilitate the ultimate collection of the tax liability.

(3) *Application for certificate of subordination.* Any person desiring a certificate of subordination under this paragraph shall submit an application therefor in writing to the appropriate ATF officer. The application shall contain such information as the appropriate ATF officer may require.

(d) *Nonattachment of lien.* If the appropriate ATF officer 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 § 70.148 of this part refers to such person, the appropriate ATF officer 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 appropriate ATF officer. The application shall contain such information as the appropriate ATF officer may require.

(e) *Effect of certificate*—(1) *Conclusiveness*. Except as provided in paragraphs (e) (2) and (3) of this section, if a certificate is issued under 26 U.S.C. 6325 by the appropriate ATF officer 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) 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 (c) 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 (d) 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 the appropriate ATF officer determines that either:

(A) A certificate of release or a certificate of nonattachment of the general tax lien imposed by 26 U.S.C. 6321 was issued erroneously or inadvertently, or

(B) A certificate of release of such lien was issued in connection with a compromise agreement under 26 U.S.C. 7122 which has been breached, and if the period of limitation on collection after assessment of the tax liability has not expired, the appropriate ATF officer

may revoke the certificate and reinstate the tax lien.

(ii) *Method of revocation and reinstatement*. The revocation and reinstatement described in paragraph (e)(2)(i) of this section is accomplished by:

(A) Mailing notice of the revocation to the taxpayer at the taxpayer's 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 paragraph (e)(2) is effective on and after the date the notice of revocation is mailed to the taxpayer in accordance with the provisions of paragraph (e)(2)(ii)(A) of this section, but the reinstated lien is not effective before the filing of notice of revocation, in accordance with the provisions of paragraph (e)(2)(ii)(B) of this section, 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 26 U.S.C. 6321 which arises upon assessment of a tax liability. The reinstated lien continues in existence until the liability is satisfied or 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 § 70.145 of this part until notice of the reinstated lien has been filed in accordance with the provisions of § 70.148 of this part subsequent to or concurrent with the time the reinstated lien became effective.

(3) *Certificates void under certain conditions*. Notwithstanding any other provisions of 26 U.S.C. subtitle F, 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

§ 70.151

27 CFR Ch. I (4-1-03 Edition)

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.

(f) *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 26 U.S.C. 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.

(26 U.S.C. 6325)

[T.D. ATF-301, 55 FR 47616, Nov. 14, 1990, as amended by T.D. ATF-450, 66 FR 29025, May 29, 2001]

§ 70.151 Administrative appeal of the erroneous filing of notice of Federal tax lien.

(a) *In general.* Any person may appeal to the officer who filed the Federal tax lien 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 tax liability that led to the imposition of a lien.

(b) *Certificate of Release.* If the officer who filed the lien determines that the filing of the notice of any lien was erroneous that officer 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.

(c) *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 title 11 of the United States Code (the Bankruptcy Code); or

(3) 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.

(d) *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 officer who filed the Federal tax lien shall issue a certificate of release with respect to such liabilities.

(e) *Procedures for appeal—(1) Manner.* An appeal of the filing of notice of Federal tax lien shall be made in writing to the officer who filed the lien.

(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 the tax liability in question was satisfied prior to the filing, proof of full payment as defined in paragraph (f) of this section must be provided.

(B) If the ground upon which the filing of notice is being appealed is that the tax liability that gave rise to the lien was assessed in violation of title 11 of the United States Code (the Bankruptcy Code), the appealing party must provide the identity of the court, the district in which the bankruptcy petition was filed, a docket number and the date of filing of the bankruptcy petition.

(3) *Time.* An administrative appeal of the erroneous filing of notice of Federal tax lien shall be made within 1