

INTERNAL REVENUE SERVICE
January 12, 1999

CC:EL:GL:Br1
GL-804005-98
UILC 9999.98-00

Number: **199910041**
Release Date: 3/12/1999

MEMORANDUM FOR SOUTHERN CALIFORNIA DISTRICT COUNSEL

FROM: Alan C. Levine
Chief, Branch 1 (General Litigation)

SUBJECT: Effect of Failure to Revoke under § 6325(f)(2)

We are responding to your October 9, 1998, inquiry. This document is not to be cited as precedent.

ISSUE

What effect does failing to revoke under I.R.C. § 6325(f)(2) have on the government's lien where the lien is a self-releasing lien?

FACTS

The fact pattern that you have described is as follows. The Service did not timely refile its original notice of federal tax lien within the refiling period. The Service later refiled it but did not send the taxpayer a notice of the refiling. Given this fact pattern, you ask the following questions: 1) Since the federal lien is self-releasing after the end of the collection period whether revocation under I.R.C. § 6325(f)(2) is necessary; 2) Does failing to revoke affect only the government's lien priority because it releases the "Notice of Federal Tax Lien," or does it affect the federal tax lien; 3) Would the lack of revocation prevent the government from foreclosing on the taxpayer's interest in real property?

LAW AND ANALYSIS

1. Since the federal lien is self-releasing after the end of the collection period whether revocation under I.R.C. § 6325(f)(2) is necessary?

A "self-releasing lien" is a term of art and should be defined. All federal tax lien notices filed after 12/31/82 are "self-releasing." In addition to serving the function of protecting the government's priority against other creditors of the debtor/taxpayer, a self-releasing

lien serves as a certificate of release after the expiration of the statutory period for collection. The form used by the Service to file a notice of federal tax lien provides, “unless notice of lien is refiled by the date [specified], this notice shall, on the day following such date operate as a certificate of release as defined in I.R.C. § 6325 (a).” In re Cole, 205 B.R. 668, 673 (Bankr. D. Mass. 1997), citing IRS Form 668(Y).

I.R.C. § 6323 addressed the procedures for filing a notice of federal tax lien.^{1/} The filing of the notice does not affect the validity of the tax lien but protects the government’s priority against other creditors of the taxpayer/debtor. Section 6323(g)(3) provides that in order for a filed notice of federal tax lien to remain effective the notice must be refiled within “the required refiling period.” The “required refiling period” is defined as “(A) the one-year period ending 30 days after the expiration of 10 years after the date of the assessment of the tax, and (B) the one-year period ending with the expiration of 10 years after the close of the preceding required refiling period for such notice of lien.” § 6323(g)(3). If the Service does not refile the notice of federal tax lien during the appropriate filing period then the existing notice of federal tax lien will act as a certificate of revocation. Therefore, if the Service desires to have a lien continue on the taxpayer’s property, it must issue a certificate of revocation, under the special conditions described in I.R.C. § 6325(f)(2), to revoke the certificate of release. See I.R.M. 5.12.2.19(3).

2. Does failing to revoke affect only the government’s lien priority because it releases the “Notice of Federal Tax Lien,” or does it affect the federal tax lien?

A self-releasing lien provides for a certificate of release if a notice of federal tax lien is not timely refiled. Therefore, unless a certificate of revocation is issued for a certificate of release the federal tax lien no longer exists. A certificate of revocation is appropriate under the following circumstances in I.R.C. §6325(f)(2), “If the Secretary determines that a certificate of release or nonattachment of a lien imposed by section 6321 was issued erroneously or improvidently, or if a certificate of such lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary may revoke such certificate and reinstate the lien” Section 6325(f)(2) further provides that the reinstated lien is effective on the date the “notice of revocation is mailed to the taxpayer . . . and . . . shall have the same force and effect, until the expiration of the period of limitation on collection after assessment, as a lien imposed by section 6321.” Therefore, the Service can protect the federal tax lien if the collection period has not expired by issuing a certificate of revocation. See § 6325(f)(2).

^{1/}Please note that RRA § 3401, I.R.C. § 6320, effective 1/19/99, requires that the taxpayer be given notice and opportunity for a hearing “not more than 5 business days after the day of the filing of the notice of federal tax lien.” I.R.C. § 6320(a)(2).

3. Would the lack of revocation prevent the government from foreclosing on the taxpayer's interest in real property?

I.R.C. § 6321 provides "If any person liable to pay tax neglects or refuses to pay the same after demand, the amount (including interest, additional amount, addition to tax or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person." The government has the power to foreclose on the taxpayer's interest in property by means of this lien. See, e.g., United States v. O'Day, 1996 U.S. Dist. Lexis 19633 (M.D. Fla. 1996). Therefore, if the lien is released, without a revocation of the release, the government loses its authority to foreclose on the taxpayer's interest in real property.

CONCLUSION

After the expiration of the statutory period of collection, a self-releasing lien operates as a certificate of release. If the Service allows the notice of federal tax lien to expire without refiling the lien, then the lien is released. If the Service does not file a certificate of revocation, the certificate of release will operate to destroy the federal tax lien.

If you have any further questions please call (202)622-3610.

cc: Assistant Regional Counsel (GL), Western