



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTOR, ADVISORY AND INSOLVENCY
DIRECTORS, COLLECTION AREA OPERATIONS

FROM: Michelle C. Alvarado /s/ *Michelle C. Alvarado*
Acting Director, Collection Policy

SUBJECT: Unrecorded Conveyances and Federal Tax Lien Attachment

The purpose of this memorandum is to issue interim guidance on policies and procedures for prioritizing the federal tax lien relative to a change in the Service's position on unrecorded conveyances. These procedures will be incorporated into Internal Revenue Manual (IRM) 5.17.2.7.1 as a new subsection titled *Unrecorded Conveyances*. Please disseminate this information to all affected personnel within your organization.

Background

The *Legal Reference Guide for Revenue Officers, Federal Tax Liens* addresses issues pertaining to how the federal tax lien attaches to property and how it competes with other creditors. A recent court decision has led to a change in the Service's position relative to unrecorded conveyances. The new position is that a federal tax lien does not attach to property once a conveyance divests a taxpayer of their interest in that property, regardless of what state law provides regarding the rights of creditors in unrecorded conveyance situations.

Procedures

- (1) Unrecorded conveyances can interact with the federal tax lien at differing points in time. The interaction could be:
 - a. After the accrual of the tax but before the tax is assessed;
 - b. After the tax is assessed but before a Notice of Federal Tax Lien has been filed; or
 - c. After a Notice of Federal Tax Lien has been filed.

- (2) Though state law may provide rights to creditors on unrecorded conveyances, the Service's position is that where all of the taxpayer's interest in the property was conveyed prior to assessment of the tax the federal tax lien generally will not attach even if the conveyance is recorded after the lien arises. The taxpayer retains no post-conveyance interest. Filicetti v. United States, 2012-1 USTC ¶ 50,214 (D.Idaho 2012).
- (3) In cases involving the determination of priority between a federal tax lien and such an unrecorded conveyance, generally the federal tax lien does not attach and the lien has no priority position. This issue may come up when reviewing applications for *Certificate of Discharge of Property From Federal Tax Lien* resulting in a "no value" discharge. The issue might also come up reviewing applications for *Certificate of Nonattachment of Federal Tax Lien*.

Example: A husband and wife divorce in December 2005.

The court awards the principal residence to the wife with a contingent contractual right for the husband such that, if the wife sells the residence within three years of the final divorce decree, the wife will split the sale proceeds with the husband.

Under applicable state law, a divorce decree is effective to convey title between the divorcing parties at the time the decree is entered by a court.

The husband does not pay his 2005 taxes. The husband's liability is assessed, the statutory lien arises, and subsequently a Notice of Federal Tax Lien is filed in September 2008.

The wife does not sell the property by the end of 2008 but also does not record the divorce decree containing the real property conveyance until 2010.

Even though the real property conveyance was unrecorded at the time the statutory lien arose and remained unrecorded at the time the Notice of Federal Tax Lien was filed, the federal tax lien, at best, would attach to the husband's personal property interest in the contingent contractual right to monetary proceeds until that right expired.

In this example, the contingent right expired in December 2008 and the federal tax lien never attached to a real property interest in the principal residence.

If you have any questions, please contact me, or a member of your staff may contact Christine Kalcevic, Senior Program Analyst.

cc: SB/SE Director, Field Collection
www.irs.gov