



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTOR SPECIALTY COLLECTION, OFFERS, LIENS &
ADVISORY
DIRECTOR SPECIALTY EXAMINATION ESTATE & GIFT TAX

FROM: Kristen E. Bailey */s/Kristen E. Bailey*
Director, Collection Policy

SUBJECT: Interim Guidance for Responsibility to Process all Requests for
Discharge of the Estate Tax Lien

This memorandum provides Interim Guidance (IG) for Specialty Collection Advisory and Specialty Examination Estate & Gift Tax employees with respect to all applications for requests of discharge of the estate tax lien made after June 2016.

It is anticipated that this or similar guidance will be incorporated into the IRM.

Processing Applications for Discharge

Historically, Examination Estate & Gift and Advisory shared the responsibility for processing applications for discharge of the estate tax lien. Examination Estate & Gift processed applications based on guidance in IRM 4.25.14.2, *Processing of Requests for Discharge of Property Subject to the Estate Tax Lien*, when the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, had not been filed or was under audit.

Advisory processed applications in accordance with IRM 5.5.8, *Estate Tax Liens*, and IRM 5.12.10, *Lien Related Certificates*, when there was a balance due, when an estate tax closing letter had been issued, or when a special election allowing deferral of payment of the tax liability had been made.

In June 2016, the responsibility for working all applications for discharge of the estate tax lien was transferred to Advisory and centralized in the Estate Tax Lien Group.

A new address for sending applications for discharge of the estate tax lien was posted to IRS.gov at <https://www.irs.gov/businesses/small-businesses-self-employed/new-address-to-send-applications-for-discharge-of-the-estate-tax-lien>.

Background

Authority

Upon the death of the decedent, an estate tax lien (IRC § 6324(a)) immediately arises and attaches to all of the property included in the decedent's gross estate, whether or not such property is part of the probate estate. Property included in the gross estate is reported on schedules A through I of the Form 706. The lien is in effect for 10 years from the date of death and cannot be extended.

Unlike other tax liens, no assessment, no notice and no demand for payment are necessary to create the estate tax lien. It attaches at the time of the decedent's death, before the tax is determined, and is security for any estate taxes that may be determined to be due. It is referred to as the "silent lien" and does not have to be recorded to be enforced. The estate tax lien is in addition to the regular federal tax lien under IRC § 6321, which arises upon assessment of the tax.

If an estate wants to sell property subject to the estate tax lien, a request for discharge of the estate tax lien may be filed on Form 4422, *Application for Certificate Discharging Property Subject to Estate Tax Lien*. The Service's authority to issue a certificate of discharge related to the estate tax lien is governed by IRC § 6325(c) Release of lien or discharge of property – Estate or Gift Tax, and Treasury Regulation § 301.6325-1(c), Release of lien or discharge of property, *Estate or gift tax liability fully satisfied or provided for*.

IRC § 6325(c) provides as follows:

“Subject to such regulations as the Secretary may prescribe, the Secretary may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary finds that the liability secured by such lien has been **fully satisfied or provided for**.

While Form 4422 is used to request a discharge of the estate tax lien, Form 792, *United States Certificate Discharging Property Subject to Estate Tax Lien*, is used to discharge particular property from the lien under IRC § 6325(c).

In addition, Treasury Regulation § 301.6325-1(c)(1) specifically provides that, if the appropriate official determines that the tax liability for the estate has been fully satisfied or adequately provided for, he may issue a certificate discharging all or specific property from the lien.

Procedures

Guidance for opening of controls, investigation, response times and processing of discharge requests in IRM 5.12.10, *Lien Related Certificates*, remains applicable and should be followed.

Considerations Regarding Estate Tax Lien Discharge Applications

Pursuant to Treasury Regulation § 301.6325-1(c)(1), the issuance of the certificate of discharge is a matter resting within the discretion of the appropriate IRS official. In many instances, decisions concerning the discharge application can be made from the information provided on the Form 706 (if applicable) and the Form 4422 without the need to coordinate with Examination Estate & Gift. For example, if based on the information provided with the Form 4422 and internal account records you are able to determine that the estate tax liability has been paid, or the estate is not subject to a Form 706 filing requirement, or the value of other property disclosed on the Form 4422 that will remain subject to the estate tax lien is more than ample to protect the government's interest in the payment of the estate tax, coordination with Examination Estate & Gift is not ordinarily necessary. In other instances, you and your manager may decide that it is necessary to coordinate with Examination Estate & Gift; for example, to estimate the amount of the estate tax liability or to determine the status of an examination. You should also coordinate with the Office of Chief Counsel when a deficiency has been proposed and is or may be the subject of litigation before making a decision on the discharge application. In all cases, decisions concerning lien discharge applications should be made as expeditiously as possible while, in your and your manager's judgment, protecting the government's interest in collecting the estate tax liability.

The primary purpose of the estate tax lien discharge is not to evidence payment or satisfaction of the estate tax, but to permit the transfer of property free from the lien in case it is necessary to clear title. The estate tax will be considered fully satisfied only when an investigation has been completed and payment of the tax, including any deficiency that has been determined, has been made. Treasury Regulation § 301.6325-1(c)(1). In many instances, in determining whether to grant an estate tax lien discharge, the issue you will need to consider is whether the estate tax liability is adequately provided for, meaning that the government's interest in collecting the estate tax is secured under IRC § 6325(c) and the accompanying Treasury Regulations. In determining whether an estate tax liability is adequately provided for, you have discretion and should exercise your judgment in making that decision based on the particular circumstances involved and/or in coordinating with Examination Estate & Gift. You may also consider the criteria in IRC § 6325(b) as a guideline in making your decision as the estate tax liability will generally be adequately provided for when one or more of the IRC § 6325(b) criteria set forth below is satisfied. In addition, there may be other circumstances where you and your manager determine that the estate tax liability has been adequately provided for under the particular circumstance involved.

Common Scenarios Involving Estate Tax Lien Discharge Applications

When investigating requests for discharge review the Forms 4422, documents submitted by the estate, internal and external records (such as market comparisons) to estimate or substantiate the tax liability in order to determine how much or if any of the sale proceeds must be held or paid over to the Government in exchange for a certificate of discharge. It may be necessary to request assistance from Examination Estate & Gift using the Specialist Referral System (SRS) to estimate the estate tax liability, to provide input on the effect of any deductions on the tax computation or when sales occur on properties that are claimed under special elections.

If Advisory or Examination Estate & Gift determines that the estate was not required to file an estate tax return, then do not issue a discharge certificate. Instead, issue Letter 1352, *Request for Discharge of Estate Tax Lien*, selecting the applicable paragraph for no estate tax return filing requirement.

If the Form 4422 indicates that the estate tax return will be non-taxable, based upon the estimated gross estate and estimated deductions, then a discharge without an escrow may be appropriate. However, if you have a question regarding the effect of any of the deductions on the tax computation, you should submit an SRS referral to Examination Estate & Gift before making a decision on the application. If a marital or charitable deduction is being claimed, additional documents should be obtained for review including the will and/or trust that authorize those deductions.

If the Form 4422 shows an estimated estate tax greater than the net proceeds from the property being sold, and no estimated payment has been made, then the net proceeds should be paid or escrowed before granting the discharge. For example, if the net proceeds are \$1 million and the estate tax is \$2 million, the escrow or payment would be \$1 million. An SRS referral to Examination Estate & Gift may not be necessary in this situation.

If the Form 4422 shows an estimated estate tax liability, and the estate has filed an extension to file the tax estate tax return (Form 4768) *and* paid the full estimated tax liability, then a discharge without an escrow may be appropriate. For example, if the extension request estimates \$1 million in taxes and the \$1 million was paid with the extension, you may determine that an escrow or additional payment is unnecessary. However, if you have a question regarding the effect of deductions on the estate tax liability computation, you should submit an SRS referral to Examination Estate & Gift before making a decision on the application.

If the Form 706 is filed and the reported tax is paid, then a discharge without an escrow may be appropriate. However, you should submit an SRS referral to Examination Estate & Gift before making a decision on the application. For example, the return reports the property's value as \$1 million, but the property is selling for \$3 million, Examination Estate & Gift could provide an opinion on the appropriate returned value and the impact on the estate tax liability computation or where there are questions regarding the effect of any deduction(s) on the estate tax liability computation.

If a special election is claimed by the estate, or if qualifying property has been or is being sold, then you should submit an SRS referral to Examination Estate & Gift as needed. Coordinate with Campus, if the election is disqualified or there is impact to billing.

IRC § 6325(b) Criteria as Possible Guidelines

In determining whether to grant a discharge under IRC § 6325(c), you may refer to the following criteria in IRC § 6325(b) as a general guideline and use appropriate discretion based upon the facts and circumstances of the case in making your decision on the estate tax lien discharge application. Keep in mind that when making a discharge decision under IRC § 6325(c), you need not refer to IRC § 6325(b) at all and the specific requirements of IRC § 6325(b) are only possible guidelines in determining whether the estate tax liability is adequately provided for under the circumstances. For example, while filing compliance is sometimes required when considering a lien discharge under IRC § 6325(b) (involving an IRC § 6321 lien), a filed return is not required when considering a discharge application under IRC § 6325(c). The issue under IRC § 6325(c) is not whether the return has been filed, but whether in your judgment and discretion the estate tax liability is adequately provided for under the circumstances. Depending upon the circumstances, if the Form 706 has not been filed or a closing letter has not been issued, it may be desirable to coordinate with Examination Estate & Gift, before making your lien discharge decision under IRC § 6325(c). In all cases under IRC § 6325(c), the estate must be divested of its entire interest in the property to be discharged.

- **Property Double the Amount of the Liability, IRC § 6325(b)(1)**

A certificate of discharge may be issued if it is determined that the remaining property of the estate subject to the estate tax lien has a fair market value that is at least double the amount of the unsatisfied liability secured by the estate tax lien **and** the amount of all other liens upon such property which have priority over the estate tax lien. It should frequently be possible to determine the value of the property from Form 4422 and you should refer to the form for that purpose.

For example, if the estimate of the estate tax liability on the Form 4422 is \$500,000 and the fair market value (minus encumbrances) of the remaining property is \$6,000,000, then a lien discharge would ordinarily be appropriate. See IRM 5.12.10.3.1 for additional guidance.

- **Part Payment, IRC § 6325(b)(2)(A)**

A certificate of discharge may be issued for any part of the property subject to the estate tax lien if it is determined by the Service that an adequate amount has been paid in partial satisfaction of the estate tax liability secured by the lien. The amount cannot be less than the value of the Service's interest in the property to be discharged. Consider all facts and circumstances of the case when determining the amount to be paid, including all other liens and encumbrances with priority over the estate tax lien.

Reasonable and necessary expenses, including fees and taxes that are treated as expenses of sale, are also allowed in calculating the amount necessary for discharge of the property from the lien. See IRM 5.12.10.7.4. Payments are applied directly to the account. See IRM 5.12.10.3.2 for additional guidance.

- No Value, IRC § 6325(b)(2)(B)

A certificate of discharge may be issued if it is determined that the interest of the Service in the property subject to the estate tax lien has no value. Consider all facts and circumstances of the case when determining the value of the government's interest in the property, including all other liens and encumbrances with priority over the federal tax lien. See IRM 5.12.10.3.3 for additional guidance.

- Substitution of Proceeds of Sale (Escrow Agreement), IRC § 6325(b)(3)

A certificate of discharge may be issued if property subject to the estate tax lien is sold and the Service determines that the proceeds of sale should be held in escrow as a fund subject to the estate tax lien in the same manner and with the same priority as the estate tax lien had with respect to the discharged property. Whether to require an escrow and the amount of the escrow is a decision within the discretion of the IRS, and should be based on the facts and circumstances of each case. In this situation, escrow agreements are used to evidence that the proceeds of sale remain subject to the estate tax lien. Reasonable and necessary expenses incurred in connection with the sale of the property or administration of the sale proceeds will be paid from the proceeds of the sale before the satisfaction of any claims. See IRM 5.12.10.7.4. You should consult with Counsel to review any proposed escrow agreements that deviate from the form agreement.

Funds are held in escrow until the tax liability can be determined. The IRS has discretion to allow distributions from escrow for allowable expenses of administering the estate before the tax liability is determined. See IRM 5.5.2.6, Administrative Expenses, and related sections regarding necessary and reasonable expenses. Any excess proceeds will be released if it is later determined that the estate tax liability is adequately provided for or after verification that all assessments (tax, interest and penalty) have been made and funds have been properly applied to the account. See IRM 5.12.10.3.4 for additional guidance.

- Right of Substitution of Value, IRC § 6325(b)(4)

An owner has the right under IRC § 6325(b)(4) to receive a certificate of discharge on any property subject to an estate tax lien if the owner deposits an amount equal to the value of the Service's interest in the property, as determined by the Service, or furnishes an acceptable bond in a like amount sufficient to cover the Service's determined interest in the property. See IRM 5.12.10.3.5 for additional guidance.

You may direct any questions regarding these procedures to Marcia J. Smith, Acting Insolvency Program Manager, or a member of your staff may contact Senior Analyst, Cindy Ocmand.

cc: Director, Collection

Director, Specialty Collection Offers, Liens & Advisory

Director, Specialty Examination Estate & Gift Tax

Office of Chief Counsel

National Taxpayer Advocate

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