

Part I

Section 6323.—Validity and Priority Against Certain Persons

26 CFR 301.6323(a)-1: Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors

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ISSUE

When a notice of federal tax lien has not been filed, does actual knowledge of a statutory tax lien affect the lien priority of a purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor?

FACTS

Prior to becoming a purchaser, security interest holder, mechanic's lienor, or judgment lien creditor, a third party has actual knowledge of a statutory tax lien, with respect to which no notice of federal tax lien has been filed.

LAW AND ANALYSIS

Section 6323(a) of the Internal Revenue Code provides that the statutory tax lien imposed by I.R.C. § 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof has been filed. Section 6323(a) is silent as to the effect of actual knowledge of a statutory tax lien upon this priority when a notice of federal tax lien has not been filed.

In United States v. Beaver Run Coal Co., 99 F.2d 610 (3d Cir. 1938), the issue was whether a mortgage lien had priority over the Government's statutory tax lien as to particular property in the taxpayer's possession. The court held that the mortgagee was protected against the statutory tax lien even though the mortgagee had actual knowledge of a possible tax liability because a notice of federal tax lien was not filed.

In enacting the Federal Tax Lien Act of 1966, Congress had the opportunity to overrule Beaver Run Coal Co., or to otherwise indicate that actual knowledge of a statutory tax lien is relevant for purposes of section 6323(a), but did not do so. See TKB International, Inc. v. United States, 995 F.2d 1460, 1466 n. 4 (9th Cir. 1993) (noting that Congress in 1954 declined to limit the protections of section 6323(a) to parties without notice or knowledge of the statutory tax lien). Cf. I.R.C. § 6323(b) (actual notice or knowledge of existence of statutory tax lien relevant for certain superpriority provisions).

HOLDING

For purposes of I.R.C. § 6323(a), a purchaser, holder of a security interest, mechanic's lienor or judgment lien creditor is protected against a statutory tax lien for which a notice of federal tax lien has not been filed notwithstanding actual knowledge of the statutory tax lien.

DRAFTING INFORMATION

The principal author of this revenue ruling is Robin Ferguson of the Office of the Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy & Summonses Division). For further information regarding this revenue ruling contact Branch 1 of the Collection, Bankruptcy & Summonses Division at (202) 622-3610 (not a toll-free call).