



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

August 1, 2001

OFFICE OF
CHIEF COUNSEL

Number: **200135030**
Release Date: 8/31/2001

CC:PA:CBS:BO1
GL-138407-01
UIL: 51.07.06-01
9999.98-00

MEMORANDUM FOR ASSOCIATE AREA COUNSEL-BOSTON

FROM: Alan C. Levine
Chief, Branch 1 Collection, Bankruptcy & Summonses
CC:PA:CBS:BO1

SUBJECT: Filing Notices of Federal Tax Lien

The Chief Counsel Advice responds to your Email dated July 24, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUE

Whether the Internal Revenue Service ("Service") should continue to file Notices of Federal Tax Lien ("NFTL") with the clerk of the United States District Court for Massachusetts ("District Court")?

CONCLUSION

The Service should continue its practice of filing NFTLs encumbering personal property with the clerk of the District Court. Recent amendments to the Massachusetts state law have not designated one office for filing federal tax liens within the state for personal property. See I.R.C. § 6323(f)(1)(B).

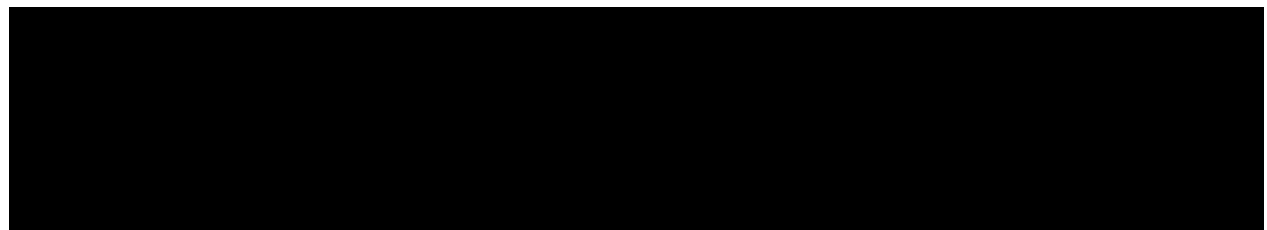
LAW AND ANALYSIS

I.R.C. § 6323(f)(1)(A)(ii) provides that, in the case of personal property, a NFTL shall be filed in the one office within the state as designated by state law. Recognizing that some states had not designated one office for filing liens, Congress provided in section § 6323(f)(1)(B) that the Service must file its NFTL in the clerk's office of the District Court for the judicial district in which the property is situated.

In Rev. Rul. 84-148, 1984-2 C.B. 303, the Service responded to a change in Massachusetts law creating one office for the filing NFTLs on personal property, namely Mass. Ann. Law, ch. 255, § 39B. Rejecting the prior practice of filing a NFTL with the clerk of the District Court to encumber personal property, Rev. Rul. 84-148 held that "[n]otices of federal tax liens with respect to personal property in Massachusetts shall

be filed in the office of the State Secretary, or in the case of persons other than estates, trusts, and corporations and partnerships having a principal executive office in Massachusetts, in the office of the clerk of the city or town where the person against whose interest the lien applies resides at the time of filing of the notice of the lien.” 1/

The Massachusetts legislature, however, subsequently repealed section 39B, effective December 21, 1983. In response, the Service promulgated Rev. Rul 85-89, 1985-2 C.B. 326, revoking Rev. Rul. 84-148. In Rev. Rul. 85-89, the Service stated that due to the repeal of section 39B, it would continue to file NFTLs with respect to personal property only in the clerk’s office of the District Court, and “[i]f state law is again amended to comply with section 6323(f), such liens will be filed only in the one office designated by state law.” Thus, in the present case, unless an amendment to Massachusetts law designates one office for the filing of a NFTL encumbering personal property, Rev. Rul. 85-89 is still effective and the Service should file NFTLs encumbering personal property with the clerk of the District Court.



Specifically, section 9-501(a)(2) provides that a creditor can perfect his security interest by filing at the office of the state secretary. 2/

In our opinion, section 9-501 does not designate one office for the filing of a NFTL. The filing of a financing statement to perfect a state security interest or agricultural lien is not germane to determining whether state law has specifically designated one office for the filing of a NFTL. G.C.M. 39408, dated September 9, 1985, explains that NFTLs were filed with the clerk of the District Court because there was “no Massachusetts statutory provision prescribing where federal tax liens on personal property should be filed.” In other words, in 1985, the Service’s position was that the Commercial Code of Massachusetts was irrelevant for determining whether one office had been designated within the state for the filing of a NFTL encumbering personal property. Today, the Commercial Code of Massachusetts is equally irrelevant for resolving whether state law has designated one office for the filing of a NFTL. In short, that Massachusetts has adopted provisions of the Uniform Commercial Code for filing financing statements to

1/ Mass. Ann. Laws ch. 36, § 24 designates one office for filing a NFTL on any real property.

2/ Previously, Mass. Ann. Law ch. 106, § 9-401, provided, in part, that a creditor could perfect his security interest only by filing at both the office of the state secretary and the town clerk’s office.

perfect a security interests does not mean that state law designates one office for the filing of a NFTL on personal property. 3/ To meet the one office rule of section 6323(f), state law must address the NFTL, not a commercial security interest. See Mass. Ann. Law ch. 36, § 24 (designating one office for the filing of a NFTL on real property). Accordingly, Rev.Rul. 85-89 still applies, and NFTLs encumbering personal property should be filed with the clerk of the District Court.

Please call us if you have further questions.

3/ In a memorandum dated May 16, 2001, to Kevin Brown, Division Counsel (SBSE), CBS similarly opined that revisions to the Uniform Commercial Code, including § 9-501, will not affect the location for filing a NFTL.