

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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to: Associate Area Counsel
New Orleans

from: ALAN C. LEVINE, Chief, Branch 1
Collection, Bankruptcy & Summons

subject: **Recording of Notice of Claim of Lien with National Vessel Documentation Center**

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUES

1. To properly file a Notice of Federal Tax Lien ("NFTL") on a ship, must a Notice of Claim ("NOC") be filed with National Vessel Documentation Center ("NVDC"), an agency of the United States Coast Guard?

2. If the Internal Revenue Service ("Service") filed a NOC with NVDC under its new procedures, would it raise disclosure issues under I.R.C. § 6103?

CONCLUSIONS

1. There is no requirement that the Service file a NOC with the NVDC to preserve its federal tax lien. A NFTL must be filed as provided for in I.R.C. § 6323(f), and nothing in section 6323(f) suggests that the NVDC is the proper place to file a NFTL.

2. Filing a NOC with NVDC would raise disclosure issues, because the Service would be providing return information to third parties.

FACTS

The Service has filed its NFTL in the taxpayer's county as required under section 6323(f). The revenue officer assigned to the case questions whether a NOC must be

filed with the NVDC. IRM 5.12.1.20.2 requires that a NOC be filed with the NVDC when the Service files a NFLT with a state or county.

The Coast Guard has not created a particular form for filing a NOC. The Code of Federal Regulations, however, does impose a variety of requirements for filing a NOC. Long established requirements, contained in 46 CFR part 67.253, require that a NOC be signed by or on behalf of each claimant and recite the following: (a) the name and address of each claimant, (b) the nature of the lien claimed, (c) the date on which the lien was established and (d) the amount of the lien claimed. Recent amendments to 46 CFR. § 31343, effective January 1, 2003, impose additional requirements that include providing notice to third parties of a NOC filing:

(b)(1) The Secretary shall record a [NOC] ... if, when the notice is presented to the Secretary for recording the person having the claim files with the notice a declaration stating the following:

- (A) The information in the notice is true and correct to the best of the knowledge, information, and belief of the individual who signed it.
- (B) A copy of the notice, as presented for recordation, has been sent to each of the following:
 - (i) The owner of the vessel.
 - (ii) Each person that recorded under subsection (a) of 46 USC § 31343, an unexpired notice of claim of an undischarged lien on the vessel.
 - (iii) The mortgagee of each mortgage filed or recorded under § 31321 of this title that is an undischarged mortgage on the vessel.

LAW AND ANALYSIS

NFTL

A NFLT is not a NOC. A NFLT arises under the Internal Revenue Code and the accompanying regulations. In contrast, a NOC arises under 46 CFR §§ 67.250, et. seq., and addresses the priority of maritime liens, not tax liens. The question is whether the NOC requirements add additional recording burdens on the Service. We conclude that the only requirements for filing a NFLT are contained in IRC section 6323(a) and (f), and the corresponding regulations.

Section 6323(a) provides that the lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or a judgment lien creditor until a notice has been properly filed under section 6323(f). Section 6323(f)

provides special rules for filing a NFTL in different places. Nothing in section 6323(f) requires that the Service file a NOC with the NVDC. Nor can other federal laws or regulations impose requirements for the filing of a NFTL. In section 6323(f)(5), Congress pronounced that the requirements for filing a NFTL exist only under the Internal Revenue Code:

NATIONAL FILING SYSTEMS. ---- The filing of a notice of lien shall be governed solely by this title and shall not be subject to any other Federal law establishing a place or places for the filing of liens or encumbrances under a national filing system.

Accordingly, in this situation, the Service properly filed its NFTL under section 6323(f). The NOC filing requirements for maritime liens are irrelevant as to filing requirements for federal tax liens.

It is not clear why IRM 5.12.1.20.2 requires that a NOC be filed with NVDC when the Service files a NFTL with a state or county. The IRM states that filing a NOC assures that a vessel cannot be transferred out from under a NFTL. After the Service meets the filing requirements under section 6323(f), however, the NFTL encumbers a ship. The NOC does not provide further protection to the NFTL; instead, the filing of the NFTL pursuant to section 6323(f) protects the Service from a subsequent purchaser's interest. We will advise the Service that this IRM section needs to be corrected.

Section 6103

Before the amendments to 46 CFR. § 31343, effective January 1, 2003, the Service could have filed a NOC as a business practice without any concern of violating section 6103. The recent amendments requiring notice of filing to third parties, however, raises disclosure issues under section 6103.

Section 6103 sets forth the general rule that tax returns and return information shall be confidential and shall not be disclosed unless such disclosure is specifically authorized under the Internal Revenue Code. Church of Scientology v. Internal Revenue Service, 484 U.S. 9 (1987). The exception to the general rule against disclosure which pertains to the collection of a taxpayer's unpaid tax debts is section 6103(k)(6). In particular, section 6103(k)(6) provides, in pertinent part:

An internal revenue officer or employee . . . may, in connection with his official duties relating to any . . . collection activity . . . disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to . . . the amount to be collected or with respect to the enforcement of any other provision of this title. Such disclosures shall be made only in such situations and under such conditions as the Secretary may prescribe by regulation.

Treasury Regulations promulgated under section 6103(k)(6) provide, in pertinent part:

(a)(1) [A]n internal revenue employee . . . , in connection with official duties relating to any . . . collection activity . . . may disclose return information, of any taxpayer, to the extent necessary to obtain information relating to such official duties or to accomplish properly any activity connected with such official duties, including . . .

(vi) . . . to apply the provisions of the Internal Revenue Code relating to establishment of liens against such assets, or levy, seizure, or sale on or of the assets to satisfy any such liability[.]

(2) Disclosure of return information for the purpose of obtaining information to carry out properly the official duties described by this paragraph, or any activity connected with the official duties, is authorized only if the internal revenue . . . employee reasonably believes, under the facts and circumstances, at the time of a disclosure . . . the activity connected with the official duties cannot occur properly without the disclosure.

Treas. Reg. 301.6103(k)(6)-1T.

Because we take a cautious approach to prevent disclosure problems, we recommend that the Service not file NOCs under the new NVDC regulations that require notice to third parties. This notice to third parties does not fall under any of the above disclosure exceptions. Specifically, when the Service files a NOC, it is not obtaining information for an official purpose. Nor does a NOC fall under the exception for filing a lien, making a levy or seizure, or conducting a sale.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

Continuing to file NOCs raises the specter of disclosure violations. Given that the Service files its federal tax liens under section 6323(f) and that filing a NOC provides no additional benefit, we will recommend to the Service that the filing of NOCs be discontinued.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-3610 if you have any further questions.

cc: Cheryl Sherwood, Director, Filing and Payment Compliance S:C:CP:FP