

INTERNAL REVENUE SERVICE

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MEMORANDUM FOR DISTRICT COUNSEL, NORTH CENTRAL DISTRICT
CC:MSR:NCE:STP

FROM: Alan C. Levine
Chief, Branch 1 (General Litigation) CC:EL:GL

SUBJECT: North Dakota Federal Tax Lien Filing

This is in response to your memorandum of July 15, 1998. You have been asked whether the State of Minnesota can charge extra for the filing of a Notice of Federal Tax Lien Form that is not considered "standard." in size. An additional question raised is whether a release fee can be charged to the Service where no release of lien is filed. This document is not intended to be cited as precedent.

LEGEND:

State	North Dakota
Taxpayer	Unknown
Years	Unknown
Assessment	Unknown

ISSUE(S):

1. Whether North Dakota is entitled to charge the Service an additional fee for the filing of the Notice of Federal Tax Lien Form since it has been classified as a "nonstandard" form due to its size.
2. Whether North Dakota can charge for a release form when the Service files a Notice of Federal Tax Lien.

CONCLUSION:

The State of North Dakota may be entitled to charge an additional filing fee for the Notice of Federal Tax Lien since it is not in conformity with the regular size forms.

FACTS:

The State of North Dakota is currently charging the Service \$20.00 to file a Notice of Federal Tax Lien pursuant to section 41-00-42.5 of the North Dakota Century Code (N.D.C.C.) which includes a \$5.00 filing fee for the lien, a \$5.00 filing fee for any possible release and \$5.00 for each since they are being classified as nonstandard forms.

LAW AND ANALYSIS:

North Dakota is not unique in charging an additional fee to record documents that are nonstandard in size. Several other states have similar provisions in their recording statutes for forms that the UCC may require. See for example, Louisiana (L.A. R.S. 52:52 (1998)), Mississippi (Miss. Code Ann. § 75-9-409 (1997)), New Mexico (N.M. Stat. Ann. § 14-8-12 (1998)), Wyoming (Wyo. Stat. § 34.1-9-402)), South Dakota (S.D. Codified Laws § 44-7-8 (1998)) and New York (NY CLS U.C.C. Appx § 143 .5 (1998)). Since the expense of maintaining records for several different size forms will be more, we do not think it unreasonable to charge a different fee particularly when the state uses a similar practice for Uniform Commercial Code (U.C.C.) forms. The Internal Revenue Service (Service) has encountered disputes with states in the past over the amounts charged for filing Notices of Federal Tax Lien. In Wisconsin, following the passage of the Revised Uniform Federal Tax Lien Registration Act in 1966, the Secretary of State requested that the Service change the size (8" by 10") and contents of the notice of lien to conform to the requirements for Financing Statements (5" x 8") under the UCC. The Service took the position that pursuant to I.R.C. § 6323(f)(3) it was not required to alter the existing federal forms on a nationwide basis to conform to the convenience of the various states. Any other interpretation would require the Service to stock a multiplicity of forms to conform with state requirements. As a result, the size and form of the Notice of Federal Tax Lien was not changed.

In a memorandum dated December 9, 1975, the General Litigation Division rendered advice to the Assistant Regional Counsel in St. Paul. (File CC:GL-466-75) concerning what action the Service should take, if any, with respect to a South Dakota law which provided that the Service would be charged an additional fee for filing Notices of Federal Tax Lien and related certificates with the Office of the Secretary of State since these documents were considered to be nonstandard forms. The Attorney General for the State had taken the position that the nonstandard size must be determined by reference to forms promulgated by the Secretary of State for filing financing statements and related documents. The Service had long taken the position that although it would pay reasonable and nondiscriminatory recording fees for filing Notices of Federal Tax Lien, fees that were in excess of those charged for filing similar documents for private persons would be opposed. Since South Dakota law

provided that the same additional fee would be charged for filing and indexing a financing statement that is presented on a nonstandard form, the fee was not discriminatory and the Service was in no position to argue whether the fee was excessive since extra work is required to file forms which are larger than 5" x 8." However, since the Service was charged more for filing a certificate of release, discharge or nonattachment than private parties were charged for recording a release of collateral or a termination statement, the position was taken that these fees were discriminatory and, although the financial burden was shouldered more by the state's taxpayers than by the Service, an attempt should be made to have the state reconsider its fee schedule.

I.R.C. § 6323(f)(3) provides that the form and content of the Notice of Federal Tax Lien shall be prescribed by the Secretary or his delegate. States cannot require that this lien notice be in any particular form or contain any particular items before it is recordable. If a state does attempt to designate that the Notice of Federal Tax Lien be in a particular form or that it contain certain items such as, for example, a description of the real property, then the Service has the option of filing with the clerk of the United States District Court in that state. United States v. Union Central Life Insurance Co., 368 U.S. 291 (1961). In our view, it can be persuasively argued that section 6323(f)(3) refers to the "form and content" of the Notice and not necessarily its size. Rather than pursuing this matter further orally, however, we suggest that you write to the Attorney General of North Dakota and attempt to obtain a written legal opinion as to exactly what it meant by a "nonstandard" form and what authority there is to pre-charge for a release. If you are unsuccessful in convincing the State to alter its position, you will have to give consideration to recommending that the Service file with the district court. The Service, in the past, has published an announcement that if it considers the state law invalid, it will file its Notices with the district court. See Rev. Rul. 64-252, 1964-2 Cum. Bul. 497 which was modified by Rev. Rul. 66-63, 1966-1 C.B. 287 and superseded by Rev. Rul. 77-61, 1977-1 C.B. 388. This will have to be done at the National level. Also, this is not intended to indicate that we agree with such a course of action but it should be considered at least.

As to the prepayment of a release fee, a somewhat similar situation arose in Oklahoma and was the subject of a letter dated September 27, 1967, from the Service to officials in that state (File CC:CL-3513). The Revised Uniform Federal Tax Lien Registration Act as adopted in Oklahoma set forth a fee of \$4.00 for filing each Notice of Federal Tax Lien. This fee was to be paid at the time the Notice was filed and included all subsequent filing of all other certificates or Notices affecting the federal tax lien. The Service contacted the State and indicated its objection to such fees on the basis that they were discriminatory against federal tax liens in that significantly lesser amounts are charged for similar documents under state law. Nevertheless, the Service opted against filing with the district court and instead suggested that an effort be made to amend the Act so as to provide non-discriminatory fees.

In the event that you are unable to resolve this matter with North Dakota, it is our suggestion that you contact your regional General Legal Services function for the purpose of recouping the additional filing fees that the Service has paid. If that office is unable to bring things to a close and is in doubt as to how to proceed, then they should contact General Legal Services here in the National Office for their views.

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If you have any further questions, please call us at (202) 622-3610.