



OFFICE OF
CHIEF COUNSEL

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

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MEMORANDUM FOR REGIONAL COUNSEL, NORTHEAST REGION CC:NER
ATTN: DIANE R. MIRABITO

FROM: Alan C. Levine
Chief, Branch1 (General Litigation) CC:EL:GL

SUBJECT: Request for Advice on Electronic Lien Filing, Pennsylvania

This is in response to your memorandum dated November 3, 1998. You requested that we review the draft letter with attachments from the District Director, Pennsylvania District, regarding a request for support from the Commonwealth of Pennsylvania (Commonwealth or Pennsylvania) for a change in current state law to allow for the electronic filing of federal liens. Our views are provided below with respect to the positions stated in your memorandum.

In your memorandum, you requested our review of the draft letter from District Director, Pennsylvania District (D/D), to the Governor of the Commonwealth of Pennsylvania. We believe the draft letter sufficiently summarizes the benefits of electronic lien filing (ELF) and the need for a change in state law; and therefore, is acceptable in its current form.

In your memorandum, you propose to advise the D/D that the October 22, 1997, Wisconsin version (described below) of the Draft Proposal of the Uniform Federal Lien Registration Act be used in any conferences with the Commonwealth. However, we recommend the D/D use the Uniform Federal Lien Registration Act (1978) with 1982 amendments as a model. Approximately three-fifths of the states have enacted a form of this statute; consequently, we believe that the model language based on this Act will be of the greatest assistance for your purposes. We conducted research to insure that the places of filing set forth in our proposed language are consistent with the courts' and this office's interpretation of the one office rule under I.R.C. § 6323(f). Alternatively, the proposed language for the Pennsylvania Legislative Initiative dated August 29, 1996, could also be used as a model. The proposed language is based on the Uniform Federal Lien Registration

Act as adopted by Pennsylvania in 74 P.S. §§ 157-1 to 157-8; and therefore, closely reflects current Pennsylvania law.

The October 22, 1997, version of the Draft Proposal of the Uniform Federal Lien Registration Act which you refer to in your memorandum is the draft proposal for the State of Wisconsin, and is based on Wisconsin law. 1/ If you foresee an ELF environment which reflects the Wisconsin scenario, then the Wisconsin draft proposal may be a good model. Before your proposed meeting with representatives of the Governor's staff, we suggest you review the October 22, 1997 document, entitled Overview of the ELF Environment, as it introduces some of the various filing scenarios that you may want to discuss.

Your memorandum states that the September 9, 1997, Model Memorandum of Understanding (MOU) with the State of Minnesota should be used as a model. We recommend this version of the MOU not be used because of recent updates to the MOU. Accordingly, we have enclosed more recent versions of the two Minnesota MOUs, of which one is for the secretary of state's office and the other for the county recorder's office. These updated versions include changes recommended by General Legal Services (GLS) in a memorandum dated March 19, 1998.

However, in a memorandum dated August 27, 1998, Disclosure Litigation (DL) found problems with the Minnesota MOUs. DL concluded that the disclosure of the tax lien information to the secretary of state's office to perform an edit check prior to filing in the proper county would not be authorized by section I.R.C. § 6103(k)(6). 2/ DL suggests two possible solutions. One is that state law, in accordance with section I.R.C. § 6323(f), provide for filing with the centralized state office; or two, that the centralized state office receive the tax lien information as an "agent" of the county. Regardless, if Pennsylvania contemplates a scenario in which the tax lien information is transmitted directly to the county recorders, then the disclosure issue is not created. 3/

Furthermore, please keep in mind that the two MOU models are based on information developed and provided by the North Central District Office of the

1/ The Wisconsin proposal envisions a centralized database where federal tax lien information is stored, and further, employs the concept of remote service units for filing federal tax liens.

2/ DL's answer on the disclosure question would be the same whether the secretary of state's office performs an edit check or merely allows the information to pass through its office, so long as it may have access to the information as it is passing through.

3/ The National Office prefers that the use of an intermediary for filing electronic liens be avoided in order to avoid the disclosure issue.

Internal Revenue Service located at St. Paul, Minnesota, and the Office of the Secretary of State of the State of Minnesota; accordingly, the MOUs should be used only as guidance. ^{4/} Therefore, these models will almost certainly have to be modified to conform with the filing scenario that the Commonwealth of Pennsylvania decides to implement.

In sum, we recommend that you use the proposed language for the Uniform Federal Lien Registration Act (1978) with 1982 amendments. We also recommend that you use the updated MOUs reflecting GLS's recommendations, although be aware that they are still works in progress. Finally, we strongly recommend that your first meeting with the Commonwealth representatives focus on the type of filing scenario that the Commonwealth is willing to implement, because the final language of Pennsylvania's Uniform Federal Lien Registration Act and MOUs are dependent on the selected scenario.

Please keep our office informed of your progress, and if you have any further questions, please call 202-622-3610.

Attachments (5)

Uniform Federal Lien Registration Act (1978) with 1982 amendments.
Pennsylvania Legislative Initiative, dated August 29, 1996.
Overview of the ELF Environment, dated October 22, 1997.
MOU for Secretary of State with March 19, 1998 GLS changes.
MOU for County Recorder with March 19, 1998 GLS changes.

^{4/} The MOUs must also be submitted to the Director of the Systems, Standards and Evaluations Office for review to ensure that they are consistent with the Treasury Security Manual and IRS security policies and practices.