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INTERNAL REVENUE SERVICE
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MEMORANDUM FOR APPEALS-COLLECTION WORKGROUP

FROM: Alan C. Levine *Michael R. Anderson*
Chief, Branch 1 (Collection, Bankruptcy & Summonses)

SUBJECT: Collection Due Process Issues Related to Estate and Gift
Tax Collection

This memorandum responds to your request for advice dated August 21, 2000.
This document may not be used or cited as precedent. I.R.C. § 6110(k)(3).

ISSUES:

1. Does a Collection Due Process ("CDP") notice need to be given to a distributee of a taxable estate or recipient of a gift when the Internal Revenue Service (the "Service") seeks to levy on or seize the distributed or gifted asset based on the general estate or gift tax lien arising under I.R.C. §§ 6324(a) and (b)?
2. Does a CDP notice need to be given to a distributee or donee when the Service seeks to levy or seize property of the distributee or donee subject to the "like lien" as described in I.R.C. §§ 6324(a)(2) and (b)?

CONCLUSIONS:

1. A CDP notice need not be given to a distributee or gift recipient prior to levy upon property received subject to the estate or gift tax lien.
2. A CDP notice should be given to a distributee or donee prior to levy upon property subject to the "like lien".

DISCUSSION:

1. A CDP notice does not need to be given to a distributee of a taxable estate or recipient of a gift when we seek to levy on or seize the distributed or gifted asset subject to the general estate or gift tax lien arising under I.R.C. §§ 6324(a) and (b).

The estate tax lien arises upon the death of the decedent and the gift tax lien arises upon the date of the gift. Each remains attached for 10 years. Section 6324(a)(2) makes certain distributees personally liable for the estate tax, if not paid when due, but only to the extent of the value of the legacy. United States v. Genviva, 16 F.3d

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522 (3d Cir. 1994); United States v. Rotherham, 836 F.2d 359 (7th Cir. 1988). Each donee is personally liable under section 6324(b) for the unpaid gift tax to the extent of the value of the gift. Poiner v. Commissioner, 858 F.2d 917, 919-920 (3d Cir. 1988); La Fortune v. Commissioner, 263 F.2d 186 (10th Cir. 1958). The liability of a donee arises as soon as the donor fails to pay the tax when due and the liability is not contingent upon a determination of a deficiency against the donor. Mississippi Valley Trust et al. v. Commissioner, 147 F.2d 186 (8th Cir. 1945). Consistent with this restriction, the estate tax lien under section 6324(a)(2) attaches to the distributed property in the hands of the named distributees. Rotherham, 836 F.2d at 363-364. Because the relevant portion of section 6324(b) mirrors section 6324(a), the gift tax lien under section 6324(b) also attaches to the gifted property in the hands of the donee. See generally Ripley v. Commissioner, 102 T.C. 654 (1994). Therefore, when an asset of the estate is distributed pursuant to section 6324(a)(2) or a gift is made and the estate or gift tax is not paid when due, the section 6324 lien is attached to the distributed or gifted asset. In addition, if the distributee receives a probate asset as defined in section 2033, and conveys the property to a purchaser or gives a security interest in the property, then the property is subject to the section 6324 lien ^{1/}, unless the estate's executor has been discharged from personal liability pursuant to I.R.C. § 2204. I.R.C. § 6324(a)(3); United States v. Vohland, 675 F.2d 1071, 1075 (9th Cir. 1982); United States v. Estate of Young, 1984-2 USTC ¶ 13,594 (E.D. Pa. 1984); see also Northington v. United States, 1972-2 USTC ¶ 12,862, 30 A.F.T.R.2d 5832 (W.D. Tex. 1972).

According to Temp. Treas. Reg. section 301.6330-1T(b)(2) Q&A-B5, persons who hold property subject to a lien are not entitled to a CDP hearing. This provision is intended to cover all transferees of property subject to a federal tax lien, including those distributees and donees. The regulation takes the position that the only persons entitled to a CDP notice and hearing are taxpayers. See Temp. Treas. Reg. section 301.6330-1T(a)(3) Q&A-A1. This position is based on the legislative history of the IRS Restructuring and Reform Act of 1998, and is consistent with sections 6320 and 6331(a), which Congress contemplated would operate in tandem with section 6330. Distributees and donees are not taxpayers under section 6324. While the statutory provision states that they are personally liable for payment of the tax equal to the value of the distributed or gifted assets, their liability is not a tax liability, but an independent transferee liability. Baptiste v. Commissioner, 29 F.3d 1533, 1541 (11th Cir. 1994). Because this is a nontax liability, the distributee or donee cannot be a "taxpayer" under the CDP regulations. As a result, we conclude that no CDP notice needs to be given to the distributee/donee when the Service seeks to levy or seize distributed or gifted property subject to the estate or gift tax lien. A CDP notice does need to be given the taxpayer, i.e., the estate, however, before the levy on its assets in the hands of the distributee or donee.

^{1/} By negative implication, the lien does not attach to the proceeds. Beatty v. United States, 937 F.2d 288, 292 (6th Cir. 1991).

2. The "like lien" described in section 6324(a)(2) arises upon transfer by the parties listed in section 6324(a)(2) of property described in I.R.C. §§ 2034-2042 ("non-probate property") to a purchaser or security interest holder. Treas. Reg. § 301.6324-1(a)(2)(ii); United States v. Chapel Chase Joint Venture Inc., 753 F. Supp. 179 (D. Md. 1990). A similar "like lien" arises upon transfer of gifted property under section 6324(b) to a purchaser or security interest holder. Upon such transfer, the "like lien" arises and attaches to all property of the transferor, including after-acquired property. The estate tax lien or gift tax lien is divested from the property transferred to the purchaser or security interest holder.

Although the personal liability imposed under section 6324(a)(2) is independent from the estate's tax liability, the Service is entitled to use its levy and seizure procedures to collect the unpaid estate tax. United States v. Rotherham, 836 F.2d 359 (7th Cir. 1988). Likewise, the Service can use its levy power to collect unpaid gift tax from the donee. Ripley v. Commissioner, 102 T.C. 654 (1994). This power includes the ability to enforce a "like lien" against the property of a distributee or donee who has transferred distributed or gifted property. Rotherham, 836 F.2d at 363-364; see Ripley v. Commissioner, 102 T.C. 654 (1994) (facts indicate that the Service was seeking to levy on non-gifted property belonging to the donee, thereby implying the levy was made pursuant to a like lien).

The section 6324(a)(2) and (b) personal liability that arises pursuant to a "like lien" is not a direct "tax" liability, as previously discussed. The levy based upon the "like lien" is distinguishable from a levy on property received subject to the estate or gift tax lien, however. Primarily, the Service may levy any of the transferor's property, including after-acquired property. In this respect, providing CDP rights in the "like lien" scenario is more justifiable. For example, unlike the scenario in which only the specific property subject to the lien is levied, the transferor may be able to propose collection alternatives.

In addition, we think that levies based upon the like lien should be treated consistently with levies based upon transferee assessments under section 6901 and the section 6321 federal tax lien, where the assessed party would be entitled to section 6331 and CDP notices. A transferee assessment under section 6901 is "an additional means by which the Government could enforce the collection of taxes."^{2/}

^{2/} A transferee assessment under section 6901 is not a prerequisite for collecting the estate tax from a transferee pursuant to section 6324(a)(2). United States v. Genviva, 16 F.3d at 524-525; United States v. Russell, 461 F.2d 605 (10th Cir. 1972); United States v. DeGroff, 539 F. Supp. 42 (D. Md. 1981); United States v. Warner, 1985-2 USTC ¶ 13,641, 56 A.F.T.R.2d 6583 (S.D. N.Y. 1985); But cf. United
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United States v. Genviva, 16 F.3d 522 (3d Cir. 1994). This means of collection applies equally to estate and gift taxes. Id.; Ripley v. Commissioner, 102 T.C. 654 (1994). Transferees assessed under section 6901 are entitled to the same procedural protections as the original tax debtor. I.R.C. § 6901(a); Sequoia Property and Equipment Limited Partnership v. United States, 1997-2 USTC ¶ 50,841, 80 A.F.T.R.2d 6059 (E.D. Cal. 1997). As the levy pursuant to a section 6321 lien based upon a section 6901 assessment and the levy based upon the "like lien" under sections 6324(a)(2) and (b) are alternate and interchangeable means of collection of the same transferee liability, it would be consistent to provide the CDP notice in both cases. To provide CDP notice in only one case would be inequitable.

Finally, we note that levies based upon the "like lien" are generally rare anyway. Instead, we usually bring suit to foreclose the like lien or seek a transferee assessment under section 6901. Accordingly, providing CDP rights to persons holding property subject to the "like lien" prior to levy upon such property will not be a great additional burden for the Service.

We conclude, therefore, that transferors of property to a purchaser or security interest holder who have property subject to the "like lien" in sections 6324(a)(2) and (b) are entitled to a CDP notice before such property is levied. In Lesson 5 of your training materials, pertaining to estate and gift tax liens, on page 5-17, the section entitled "Non Probate Heirs and the IRC § 6330 Notice" should be revised to reflect the conclusions reached in this memorandum.

Please feel free to contact Robin Ferguson or Larry Williams, both of whom may be reached at 202-622-3610, if you have any further questions.

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States v. Schneider, 1992-2 USTC ¶ 60,119, 71A A.F.T.R.2d 91-1224 (D. N.D. 1992). Likewise, a transferee assessment under section 6901 is not a prerequisite for collecting gift tax from a transferee pursuant to section 6324(b). Ripley v. Commissioner, 102 T.C. 654 (1994).