Montana Land Title Association

November 6, 2015
Federal and Montana Tax Liens
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Thank you very much!
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A federal tax lien automatically arises, by operation of law, after a “person” assessed a tax liability, neglects or fails to pay the tax, following 1) proper notice and 2) demand for payment.
How The IRS Uses Tax Liens

Like It Is Wielding the Hammer of the Gods
Federal Income Tax Liens Automatically Arise:

“If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount . . . shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.”

26 U.S.C.A. § 6321
Points to Cover Concerning Federal Tax Liens

- When is a federal tax lien effective?
- Who does the federal tax lien apply to?
- How long does the federal tax lien last?
- What property is encumbered?
- What is a Notice of Federal Tax Lien (NFTL)?
- How to get rid of federal tax lien?
Federal Income Tax Lien When Effective:

The tax lien attaches and is effective from the **date of assessment** against the tax debtor. As a result, if a taxpayer neglects or refuses to pay a tax debt, then the date on which the lien is considered to have attached is the date of the tax assessment. (I.R.M. 5.17.2.2 (3-27-2012))
Federal tax liens (FTL) “arise at the time the assessment is made and shall continue until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time.”

IRC § 6322
When is Federal Income Tax Assessment Made?

- Mechanical act: recordation of liability on the books of the IRS. Reg. 301.6203-1.
When is Federal Income Tax Assessment Made?

- Determine assessment by:
  - Taxpayer’s transcripts
  - Certificate of assessment
  - The NFTL (Form 668(Y))
Federal Income Tax Lien
Who Does it Effect?

“Any person liable to pay a tax . . . .”

Includes:
- Humans
- Corporations
- Anyone or anything that pays a tax
Federal Tax Lien Duration

Once a tax lien has attached it remains in effect until it is either

1) satisfied or
2) the liability is no longer enforceable due to lapse of time.

Generally a lien lasts for ten (10) years after an assessment has been made by the IRS. In certain circumstances the lien may extend beyond the initial ten (10) year period. I.R.C. § 6322.
Suspension of 10-Year SOL

- Some grounds for suspension of SOL: offer in compromise, IRS litigation, bankruptcy.
Federal Tax Lien
What Property is Encumbered?

- A federal tax lien attaches “in favor of the United States upon all property and rights to property, whether real or personal,” belonging to the tax debtor. I.R.C. § 6321.
Under I.R.C. § 6323(a), “The lien imposed by Section 6321 shall not be valid against any purchaser, holder of security interest, mechanic’s lien, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary.”
The act of filing the NFTL is not required to encumber the taxpayer’s property. However, filing of the NFTL is required to perfect the lien against third parties.
Notice of Federal Tax Lien Longstanding Effect:

- If NFTL was properly filed, then the federal tax lien remains on the property until the lien expires, is released, or the property has been discharged from the lien. Once a NFTL is properly filed, all property, including property acquired after the NFTL is filed, is encumbered by the federal tax lien, until paid or removed.

_In re Eschenbach, 267 B.R. 921, 923 (Bankr. N.D. Tex. 2001)._
Notice of Federal Tax Lien Filing is Not Required:

- IRS does not have to file NFTL
- Secret Lien—but not valid against certain purchasers, encumbrancers.
Real Property:

- File where designated by “by the laws of such State, in which the property subject to the lien is situated.” § 6232(f)(1)(a).
- In Montana: File in County of the real property’s physical location.
71-3-204. Federal liens -- place of filing.
(1) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the clerk and recorder of the county or counties in which the real property subject to the liens is situated.
Personal Property: File NFTL where the property is situated. § 6323(f).

Personal Property is “situated” “at the residence of the taxpayer at the time the notice of lien is filed.” § 6323(f).

For corporate TP: residence is “the place at which the principal executive office of the business is located.” § 6323(f)(3).
In Montana: Where NFTL is filed for personal property.

- Individual: Office of the Clerk and Recorder of the residence of the taxpayer at the time of filing the lien.
- Corporation or partnership: Where the “principal executive office” is located in Montana, file with Montana Secretary of State.

§ 71-3-204, MCA.
Release of Federal Tax Liens: Payment

- Within 30 days after tax has been paid or liability has become legally unenforceable, IRS is supposed to release lien. § 6325(a)
Self releasing liens: NFTL Form 668(Y) contains self releasing language. See attached form.
NFTL Form 668(Y)

<table>
<thead>
<tr>
<th>Kind of Tax (a)</th>
<th>Tax Period Ending (b)</th>
<th>Identifying Number (c)</th>
<th>Date of Assessment (d)</th>
<th>Last Day for Filing (e)</th>
<th>Unpaid Balance of Assessment (f)</th>
</tr>
</thead>
<tbody>
<tr>
<td>941</td>
<td>12/31/2001</td>
<td>81-0361339</td>
<td>03/18/2002</td>
<td>04/17/2012</td>
<td>38076.30</td>
</tr>
</tbody>
</table>

Place of Filing: 
Clark and Recorder
Richland County
Sidney, MT 59270

This notice was prepared and signed at: DENVER, CO, on this, the 65th day of June, 2002.

Signature:
SANDRA WELCH
REVENUE OFFICER
(406) 247-7476

NOTE: Certificate or order authorized by law to take, receive, or take receipts for payment is not essential to the validity of Notice of Federal Tax Lien (Rev. Rd. 71-440, 1971 - 2 CG 409). For: Part 1 - Kept by Recording Office Form 668(Y)(e) (Rev. 10-00) CAT. NO. 000298
IRS can release a NFTL if a bond is put up. § 6325(a)(2)
If someone refuses to accept a self-cancelling lien, TP may request a “release certificate”. IRS Form 668(Z).

Lien releases are handled out of IRS offices in Cincinnati, OH.
IRS can release a NFTL if remaining property subject to NFTL is at least double the value of the liability. § 6325(b)(1)
IRS can release a NFTL if proceeds of the property sale, "which shall not be less than the value", are paid to IRS. § 6325(b)(2)
Release of Federal Tax Lien: Substitution Agreement

- Substitution agreements: TP can sell for higher price and FTL attaches to sale proceeds. § 6325(b)(3).
The IRS can subordinate its tax lien under certain circumstances:
- Sale price will be higher if IRS subordinates.
- Government will remain adequately secured.
- The amount of lien is fully paid.
Certificate of Nonattachment of Federal Tax Lien

- For common names—John Doe
- TP can request a Certificate of Nonattachment of Federal Tax Lien, which covers cases where a third party has a similar name as shown on the Notice of Federal Tax Lien.

§6325(e)
The IRS can withdraw NFTL under certain circumstances (usually extraordinary circumstances):

- Procedural errors.
- Installment Agreement.
- To facilitate collection of the tax.
Not addressed in this outline, but IRS has the right to foreclose after following procedures.
A properly filed notice of tax lien will continue to encumber exempt and non-exempt property.

11 USC §522(c)(2)(B)
Corollary: If the NFTL is not properly filed prior to bankruptcy, the “not properly filed” NFTL cannot encumber the exempt property post-bankruptcy. The IRS cannot file after the fact.

The “protected status afforded to exempt property applies even if a debt is nondischargeable,” because the protection applies to all bankruptcy cases, “Unless the case is dismissed.” In re Miller, 501 B.R. 266, 276 (Bankr. E.D. Pa. 2013); 1 U.S.C. § 522(c).
Liens for unpaid real property taxes. Section 15-16-403 states: “Every tax due upon real property is a lien against the property assessed, and every tax due upon improvements upon real estate assessed to other than the owner of the real estate is a lien upon the land and improvements, which several liens attach as of January 1 in each year.”
Real property taxes are treated as senior lien even though there is, according to the Attorney General, no express provision.

Following the tax sale process, the tax deed “conveys to the grantee absolute title to the property”, with some limited exceptions. Senior liens are generally wiped out in a tax deed sale.

§ 15-18-214, MCA.
Montana Real Property Tax Lien When Effective?

- Attaches as of the lien date—January 1 of each year. §§ 15-16-402, 403, MCA.
Tax due upon personal property acts as a lien upon the personal property. The tax on personal property is also a lien upon real property of the owner of personal property. §§ 15-16-402, 403, MCA.
Is this a “secret lien”? 

Montana Personal Property Tax Lien
Montana Income Tax Lien

How Arises:

Montana Department of Revenue files a Warrant for Distraint for unpaid income tax.

“If any tax imposed by this chapter or any portion of such tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.”

Mont. Code Ann. § 15-30-2630
Montana Income Tax Lien
Effect of Warrant for Distraint

“There is a lien against all real and personal property of the delinquent taxpayer located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, the Department is a judgment lien creditor, and the Department may collect delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced, except that the Department may enforce the judgment lien at any time within 10 years of its creation or the effective date, whichever is later.” § 15-1-701(2), MCA.
Montana Income Tax Lien: Warrant for Distraint

- Filed with the Clerk of Court.
- Is a lien against real and personal property in the county where filed.
- Resulting lien is treated in the same manner as a docketed judgment.
- Not valid against purchasers, security interests, lienholders prior to the filing of the warrant for distraint.

§ 15-1-701, MCA.
“The priority date of the tax lien created by the filing of the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.”

§ 15-1-701, MCA.
Montana Income Tax Lien: Release of Warrant for Distrain

The Montana Department of Revenue releases Warrant for Distrain:
- Upon payment in full.
- Warrant is unenforceable.
- To facilitate tax collection.

§ 15-1-708, MCA.
Other Governmental Liens

- Medicaid liens
- Any others?