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FEDERAL TAX LIENS AND RELEASE

GENERAL APPLICATION OF THE LAW

The IRS has stepped up its audit efforts. As such, it is issuing federal tax liens where taxpayers ignore the requests for information. This letter will outline the release of a federal lien once it is filed.

The encumbrance of a federal tax lien on a taxpayer's land and other assets may be terminated in various ways:

- A. It is *released* as soon as the tax liability is paid or becomes legally unenforceable.
- B. It *may be released in full* in exchange for an acceptable surety bond.
- C. It *may be discharged in part* if ample security remains after the partial discharge of if the underlying liability is reduced by part payment.
- D. It can be subordinated to the interest of a competing lienor.

When a lien is released or discharged in full or in part, the IRS issues a certificate of release that you may record with the Clerk of the Court in the county where the taxpayer owns land and/or has other assets.

The IRS must issue a certificate of release of any lien no later than 30 days after: (1) the tax liability (plus interest) is fully paid or becomes legally unenforceable, for instance, through expiration of the statutory period for collection; or (2) IRS is offered and accepts the bond of an authorized surety company conditioned upon payment of the amount

assessed (together with interest, etc.) on a date not later than six months before expiration of the statutory collection period.

Terminology is very important here. *Release* means that a tax lien ends completely while *discharge* means only that certain property is freed from a lien. **A release of lien does not mean that the underlying tax liability is extinguished.** Thus, your credit report may continue to be impacted.

Taxpayers should take the initiative to make sure that a lien is released where there is a danger that the lien may impede the taxpayer's business. The IRS cannot always be counted on to release a lien rapidly.

A lien is not released until a certificate of release is issued (U.S. v. Waite, Inc., f/k/a C.F. Waite Inc., (1979, DC PA) 480 F Supp 1235).

If the period of time on collection of a tax has expired, the IRS will, on request, promptly issue a certificate of release of the lien (H Rept, PL 89-719, 11/2/66, p. 48).

To release a lien, the IRS must issue a certificate of release that sufficiently identifies the underlying tax obligation and lien as well as any (original or refiled) notices of federal tax lien filed with respect to the lien so that a person searching title to the property could discover whether a lien currently existed.

However, the IRS is not required to record all certificates of release. Rather, the IRS must either deliver a certificate of release to (1) the recording office in which the corresponding notice of federal tax lien has been filed, or (2) the taxpayer, who may

then proceed, as necessary, to file the certificate of release. If the IRS never filed a notice of federal tax lien, then delivery of a certificate of release to the taxpayer is sufficient (*Griswold, E. Frank III v. U.S.*, (1995, CA11) 59 F3d 1571, affg in part & revg in part (1994, DC FL) 73 AFTR 2d 94-1379, 94-1 USTC ¶50213, reh den (1994, DC FL) 73 AFTR 2d 94-1936, 94-1 USTC ¶50214).

DIVORCE AND TAX LIENS

The situation of tax liens and divorced parties sometimes causes problems for one member of a couple merely because of the marriage, not because of any economic connection. Suppose that the IRS has placed a lien on a parcel of real property that a former wife owns in order to collect a tax liability owed by the ex-husband, what steps can be taken to have the lien removed? Resolution of the lien in this special situation usually involves obtaining a certificate of discharge.

To obtain a certificate of discharge, the former wife will need to make a cash deposit or furnish a bond sufficient to protect the lien interest of the government. A certificate of discharge will enable the former wife to sell the property free and clear of the federal tax lien. After obtaining the certificate of discharge, the former wife can bring a lawsuit against

the IRS, and if it is determined in that lawsuit that the government does not have a lien interest or has a lesser lien interest than the amount initially determined, the former wife will be entitled to a refund of all or part of the amount deposited plus interest, or the release of all or part of the bond.

The lawsuit against the IRS must be brought in a U.S. district court within 120 days after the day on which the certificate is issued. No extension of the 120 day deadline for reasonable cause or for any other reason is available.

Alternatively, if time is not of the essence (for example, if you have no immediate plans to sell the property), instead of seeking expedited review through the certificate of discharge procedure (which, as discussed above, entails a deposit or bond) you can bring an action to quiet title against the government.

Dealing with the IRS in the area of tax liens is typically a very technical process. In the event, you receive a tax lien you are greatly encouraged to contact us. Even better, please contact us when you first receive IRS correspondence. Do not wait for a tax lien to be filed

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Referrals are greatly appreciated.



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