in paragraph (2), the trustee'' for ''The trustee'', and added par. (2).

1984—Subsec. (a)(1). Pub. L. 98–353, § 459(1), inserted ''such'' after ''obtained''.

Subsec. (a)(2). Pub. L. 98–353, § 459(2), substituted ''; or'' for ''; and''.

Subsec. (a)(3). Pub. L. 98–353, § 459(3), inserted '', other than fixtures,'' after ''property'', and ''and has perfected such transfer'' after ''purchaser'' the second place it appeared.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–183, § 5, June 19, 1998, 112 Stat. 518, provided that: ''This Act [amending this section and sections 546, 548, 707, and 1325 of this title and enacting provisions set out as notes under this section and section 101 of this title] and the amendments made by this Act shall apply to any case brought under an applicable provision of title 11, United States Code, that is pending or commenced on or after the date of enactment of this Act [June 19, 1998].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

CONSTRUCTION OF 1998 AMENDMENT

Pub. L. 105–183, § 6, June 19, 1998, 112 Stat. 519, provided that: ''Nothing in the amendments made by this Act [amending this section and sections 546, 548, 707, and 1325 of this title] is intended to limit the applicability of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2002bb [2000bb] et seq.).''

§ 545. Statutory liens

The trustee may avoid the fixing of a statutory lien on property of the debtor to the extent that such lien—

(1) first becomes effective against the debtor—

(A) when a case under this title concerning the debtor is commenced;

(B) when an insolvency proceeding other than under this title concerning the debtor is commenced;

(C) when a custodian is appointed or authorized to take or takes possession;

(D) when the debtor becomes insolvent;

(E) when the debtor's financial condition fails to meet a specified standard; or

(F) at the time of an execution against property of the debtor levied at the instance of an entity other than the holder of such statutory lien;

(2) is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser that purchases such property at the time of the commencement of the case, whether or not such a purchaser exists, except in any case in which a purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986, or in any other similar provision of State or local law;

(3) is for rent; or

(4) is a lien of distress for rent.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2597; Pub. L. 98–353, title III, § 460, July 10, 1984, 98 Stat. 377; Pub. L. 109–8, title VII, § 711, Apr. 20, 2005, 119 Stat. 127.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 545 of the House amendment modifies similar provisions contained in the House bill and Senate amendment to make clear that a statutory lien may be avoided under section 545 only to the extent the lien violates the perfection standards of section 545. Thus a Federal tax lien is invalid under section 545(2) with respect to property specified in sections 6323(b) and (c) of the Internal Revenue Code of 1954 [title 26]. As a result of this modification, section 545(b) of the Senate amendment is deleted as unnecessary.

Statutory liens: The House amendment retains the provision of section 545(2) of the House bill giving the trustee in a bankruptcy case the same power which a bona fide purchaser has to take over certain kinds of personal property despite the existence of a tax lien covering that property. The amendment thus retains present law, and deletes section 545(b) of the Senate amendment which would have no longer allowed the trustee to step into the shoes of a bona fide purchaser for this purpose.

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This section permits the trustee to avoid the fixing of certain statutory liens. It is derived from subsections 67b and 67c of present law [section 107(b) and (c) of former title 11]. Liens that first become effective on the bankruptcy or insolvency of the debtor are voidable by the trustee. Liens that are not perfected or enforceable on the date of the petition against a bona fide purchaser are voidable. If a transferee is able to perfect under section 546(a) and that perfection relates back to an earlier date, then in spite of the filing of the bankruptcy petition, the trustee would not be able to defeat the lien, because the lien would be perfected and enforceable against a bona fide purchaser that purchased the property on the date of the filing of the petition. Finally, a lien for rent or of distress for rent is voidable, whether the lien is a statutory lien or a common law lien of distress for rent. See proposed 11 U.S.C. 101(37); Bankruptcy Act § 67(c)(1)(C). The trustee may avoid a lien under this section even if the lien has been enforced by sale before the commencement of the case. To that extent, Bankruptcy Act § 67c(5) is not followed.

Subsection (b) limits the trustee's power to avoid tax liens under Federal, state, or local law. For example, under § 6323 of the Internal Revenue Code [Title 26]. Once public notice of a tax lien has been filed, the Government is generally entitled to priority over subsequent lienholders. However, certain purchasers who acquire an interest in certain specific kinds of personal property will take free of an existing filed tax lien attaching to such property. Among the specific kinds of personal property which a purchaser can acquire free of an existing tax lien (unless the buyer knows of the existence of the lien) are stocks and securities, motor vehicles, inventory, and certain household goods. Under the present Bankruptcy Act (§ 67(c)(1)) [section 107(c)(1) of former title 11], the trustee may be viewed as a bona fide purchaser, so that he can take over any such designated items free of tax liens even if the tax authority has perfected its lien. However, the reasons for enabling a bona fide purchaser to take these kinds of assets free of an unfiled tax lien, that is, to encourage free movement of these assets in general commerce, do not apply to a trustee in a title 11 case, who is not in the same position as an ordinary bona fide purchaser as to such property. The bill accordingly adds a new subsection (b) to sec. 545 providing, in effect, that a trustee in bankruptcy does not have the right under this section to take otherwise specially treated items of personal property free of a tax lien filed before the filing of the petition.

REFERENCES IN TEXT

Section 6323 of the Internal Revenue Code of 1986, referred to in par. (2), is classified to section 6323 of Title 26, Internal Revenue Code.

AMENDMENTS

2005—Par. (2). Pub. L. 109–8 inserted before semicolon at end ", except in any case in which a purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986, or in any other similar provision of State or local law".

1984—Par. (1)(A). Pub. L. 98–353, § 460(1), struck out "is" after "is".

Par. (1)(C). Pub. L. 98–353, § 460(2), substituted "appointed or authorized to take" for "apponted".

Par. (2). Pub. L. 98–353, § 460(3), substituted "at the time of the commencement of the case" for "on the date of the filing of the petition" in two places.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

§ 546. Limitations on avoiding powers

(a) An action or proceeding under section 544, 545, 547, 548, or 553 of this title may not be commenced after the earlier of—

(1) the later of—

(A) 2 years after the entry of the order for relief; or

(B) 1 year after the appointment or election of the first trustee under section 702, 1104, 1163, 1202, or 1302 of this title if such appointment or such election occurs before the expiration of the period specified in subparagraph (A); or

(2) the time the case is closed or dismissed.

(b)(1) The rights and powers of a trustee under sections 544, 545, and 549 of this title are subject to any generally applicable law that—

(A) permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection; or

(B) provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation.

(2) If—

(A) a law described in paragraph (1) requires seizure of such property or commencement of an action to accomplish such perfection, or maintenance or continuation of perfection of an interest in property; and

(B) such property has not been seized or such an action has not been commenced before the date of the filing of the petition;

such interest in such property shall be perfected, or perfection of such interest shall be maintained or continued, by giving notice within the time fixed by such law for such seizure or such commencement.

(c)(1) Except as provided in subsection (d) of this section and in section 507(c), and subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods—

(A) not later than 45 days after the date of receipt of such goods by the debtor; or

(B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

(2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 503(b)(9).

(d) In the case of a seller who is a producer of grain sold to a grain storage facility, owned or operated by the debtor, in the ordinary course of such seller's business (as such terms are defined in section 557 of this title) or in the case of a United States fisherman who has caught fish sold to a fish processing facility owned or operated by the debtor in the ordinary course of such fisherman's business, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 of this title are subject to any statutory or common law right of such producer or fisherman to reclaim such grain or fish if the debtor has received such grain or fish while insolvent, but—

(1) such producer or fisherman may not reclaim any grain or fish unless such producer or fisherman demands, in writing, reclamation of such grain or fish before ten days after receipt thereof by the debtor; and

(2) the court may deny reclamation to such a producer or fisherman with a right of reclamation that has made such a demand only if the court secures such claim by a lien.

(e) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, made by or to (or for the benefit of) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, or that is a transfer made by or to (or for the benefit of) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, in connection with a securities contract, as defined in section 741(7), commodity contract, as defined in section 761(4), or forward contract, that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

(f) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer made by or to (or for the benefit of) a repo participant or financial participant, in connection with a repurchase agreement and that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

(g) Notwithstanding sections 544, 545, 547, 548(a)(1)(B) and 548(b) of this title, the trustee may not avoid a transfer, made by or to (or for the benefit of) a swap participant or financial participant, under or in connection with any swap agreement and that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

(h) Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553, if the court determines on a motion by the trustee made not later than 120 days after the date of the order for relief in a case under chapter 11 of this title and after notice and a hearing, that a return is in the best interests of the estate, the debtor, with the consent of a creditor and subject to the prior rights of holders of security interests in such goods or the proceeds of such goods, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the purchase price of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.

(i)(1) Notwithstanding paragraphs (2) and (3) of section 545, the trustee may not avoid a warehouseman's lien for storage, transportation, or other costs incidental to the storage and handling of goods.

(2) The prohibition under paragraph (1) shall be applied in a manner consistent with any State statute applicable to such lien that is similar to section 7–209 of the Uniform Commercial Code, as in effect on the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, or any successor to such section 7–209.

(j) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) the trustee may not avoid a transfer made by or to (or for the benefit of) a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) and except to the extent that the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2597; Pub. L. 97–222, § 4, July 27, 1982, 96 Stat. 236; Pub. L. 98–353, title III, §§ 351, 393, 461, July 10, 1984, 98 Stat. 358, 365, 377; Pub. L. 99–554, title II, §§ 257(d), 283(*l*), Oct. 27, 1986, 100 Stat. 3114, 3117; Pub. L. 101–311, title I, § 103, title II, § 203, June 25, 1990, 104 Stat. 268, 269; Pub. L. 103–394, title II, §§ 204(b), 209, 216, 222(a), title V, § 501(b)(4), Oct. 22, 1994, 108 Stat. 4122, 4125, 4126, 4129, 4142; Pub. L. 105–183, § 3(c), June 19, 1998, 112 Stat. 518; Pub. L. 109–8, title IV, § 406, title IX, § 907(e), (*o*)(2), (3), title XII, § 1227(a), Apr. 20, 2005, 119 Stat. 105, 177, 182, 199; Pub. L. 109–390, § 5(b), Dec. 12, 2006, 120 Stat. 2697.)

Historical and Revision Notes

Legislative Statements

Section 546(a) of the House amendment is derived from section 546(c) of the Senate amendment. Section 546(c) of the House amendment is derived from section 546(b) of the Senate amendment. It applies to receipt of goods on credit as well as by cash sales. The section clarifies that a demand for reclamation must be made in writing anytime before 10 days after receipt of the goods by the debtor. The section also permits the court to grant the reclaiming creditor a lien or an administrative expense in lieu of turning over the property.

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The trustee's rights and powers under certain of the avoiding powers are limited by section 546. First, if an interest holder against whom the trustee would have rights still has, under applicable nonbankruptcy law, and as of the date of the petition, the opportunity to perfect his lien against an intervening interest holder, then he may perfect his interest against the trustee. If applicable law requires seizure for perfection, then perfection is by notice to the trustee instead. The rights granted to a creditor under this subsection prevail over the trustee only if the transferee has perfected the transfer in accordance with applicable law, and that perfection relates back to a date that is before the commencement of the case.

The phrase ''generally applicable law'' relates to those provisions of applicable law that apply both in bankruptcy cases and outside of bankruptcy cases. For example, many State laws, under the Uniform Commercial Code, permit perfection of a purchase-money security interest to relate back to defeat an earlier levy by another creditor if the former was perfected within ten days of delivery of the property. U.C.C. § 9–301(2). Such perfection would then be able to defeat an intervening hypothetical judicial lien creditor on the date of the filing of the petition. The purpose of the subsection is to protect, in spite of the surprise intervention of a bankruptcy petition, those whom State law protects by allowing them to perfect their liens or interests as of an effective date that is earlier than the date of perfection. It is not designed to give the States an opportunity to enact disguised priorities in the form of liens that apply only in bankruptcy cases.

Subsection (b) [enacted as (c)] specifies that the trustee's rights and powers under the strong arm clause, the successor to creditors provision, the preference section, and the postpetition transaction section are all subject to any statutory or common-law right of a seller, in the ordinary course of business, of goods to the debtor to reclaim the goods if the debtor received the goods on credit while insolvent. The seller must demand reclamation within ten days after receipt of the goods by the debtor. As under nonbankruptcy law, the right is subject to any superior rights of secured creditors. The purpose of the provision is to recognize, in part, the validity of section 2–702 of the Uniform Commercial Code, which has generated much litigation, confusion, and divergent decisions in different circuits. The right is subject, however, to the power of the court to deny reclamation and protect the seller by granting him a priority as an administrative expense for his claim arising out of the sale of the goods.

Subsection (c) [enacted as (a)] adds a statute of limitations to the use by the trustee of the avoiding powers. The limitation is two years after his appointment, or the time the case is closed or dismissed, whichever occurs later.

References in Text

The date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, referred to in subsec. (i)(2), is the date of enactment of Pub. L. 109–8, which was approved Apr. 20 2005.

Amendments

2006—Subsec. (e). Pub. L. 109–390, § 5(b)(1), inserted ''(or for the benefit of)'' before ''a commodity broker'' and ''or that is a transfer made by or to (or for the benefit of) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, in connection with a securities contract, as defined in section 741(7),

commodity contract, as defined in section 761(4), or forward contract,'' after ''securities clearing agency,''.

Subsec. (f). Pub. L. 109–390, § 5(b)(2), struck out ''that is a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title,'' after ''avoid a transfer'' and inserted ''(or for the benefit of)'' before ''a repo participant''.

Subsec. (g). Pub. L. 109–390, § 5(b)(3), inserted ''(or for the benefit of)'' before ''a swap participant''.

Subsec. (j). Pub. L. 109–390, § 5(b)(4), inserted ''(or for the benefit of)'' before ''a master netting agreement participant''.

2005—Subsec. (c). Pub. L. 109–8, § 1227(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) consisted of pars. (1) and (2) relating to reclamation of goods sold to an insolvent debtor.

Subsec. (e). Pub. L. 109–8, § 907(*o*)(3), inserted ''financial participant,'' after ''financial institution,''.

Subsec. (f). Pub. L. 109–8, § 907(*o*)(2), inserted ''or financial participant'' after ''repo participant''.

Subsec. (g). Pub. L. 109–8, § 907(e)(1), struck out ''under a swap agreement'' after ''avoid a transfer'', substituted ''under or in connection with any swap agreement'' for ''in connection with a swap agreement'', and inserted ''or financial participant'' after ''swap participant''.

Pub. L. 109–8, § 406(1), redesignated subsec. (g) relating to return of goods as (h).

Subsec. (h). Pub. L. 109–8, § 406(2), inserted ''and subject to the prior rights of holders of security interests in such goods or the proceeds of such goods'' after ''consent of a creditor''.

Pub. L. 109–8, § 406(1), redesignated subsec. (g) relating to return of goods as (h).

Subsec. (i). Pub. L. 109–8, § 406(3), added subsec. (i).

Subsec. (j). Pub. L. 109–8, § 907(e)(2), added subsec. (j).

1998—Subsecs. (e) to (g). Pub. L. 105–183 substituted ''548(a)(1)(B)'' for ''548(a)(2)'' and ''548(a)(1)(A)'' for ''548(a)(1)''.

1994—Subsec. (a)(1). Pub. L. 103–394, § 216, amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''two years after the appointment of a trustee under section 702, 1104, 1163, 1302, or 1202 of this title; or''.

Subsec. (b). Pub. L. 103–394, § 204(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The rights and powers of a trustee under sections 544, 545, and 549 of this title are subject to any generally applicable law that permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of such perfection. If such law requires seizure of such property or commencement of an action to accomplish such perfection, and such property has not been seized or such action has not been commenced before the date of the filing of the petition, such interest in such property shall be perfected by notice within the time fixed by such law for such seizure or commencement.''

Subsec. (c)(1). Pub. L. 103–394, § 209, amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''such a seller may not reclaim any such goods unless such seller demands in writing reclamation of such goods before ten days after receipt of such goods by the debtor; and''.

Subsec. (e). Pub. L. 103–394, § 501(b)(4)(A), substituted ''section 101, 741, or 761'' for ''section 101(34), 741(5), or 761(15)'' and ''section 101 or 741'' for ''section 101(35) or 741(8)''.

Subsec. (f). Pub. L. 103–394, § 501(b)(4)(B), substituted ''section 741 or 761'' for ''section 741(5) or 761(15)'' and ''section 741'' for ''section 741(8)''.

Subsec. (g). Pub. L. 103–394, § 222(a), added subsec. (g) relating to return of goods.

1990—Subsec. (e). Pub. L. 101–311, § 203, inserted reference to sections 101(34) and 101(35) of this title.

Subsec. (g). Pub. L. 101–311, § 103, added subsec. (g) relating to trustee's authority to avoid transfer involving swap agreement.

1986—Subsec. (a)(1). Pub. L. 99–554, § 257(d), inserted reference to section 1202 of this title.

Subsec. (e). Pub. L. 99–554, § 283(*l*), inserted a comma after ''stockbroker''.

1984—Subsec. (a)(1). Pub. L. 98–353, § 461(a), substituted ''; or'' for ''; and''.

Subsec. (b). Pub. L. 98–353, § 461(b), substituted ''a trustee under sections 544, 545, and'' for ''the trustee under sections 544, 545, or''.

Subsec. (c). Pub. L. 98–353, §§ 351(1), 461(c)(1)–(4), substituted ''Except as provided in subsection (d) of this section, the'' for ''The'', substituted ''a trustee'' for ''the trustee'', struck out ''right'' before ''or common-law'', inserted ''of goods that has sold goods to the debtor'' after ''seller'', and struck out ''of goods to the debtor'' after ''business,''.

Subsec. (c)(2). Pub. L. 98–353, § 461(c)(5)(A), inserted ''the'' after ''if'' in provisions preceding subpar. (A).

Subsec. (c)(2)(A). Pub. L. 98–353, § 461(c)(5)(B), substituted ''a claim of a kind specified in section 503(b) of this title'' for ''an administrative expense''.

Subsec. (d). Pub. L. 98–353, § 351(3), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98–353, §§ 351(2), 461(d), redesignated former subsec. (d) as (e) and inserted ''financial institution'' after ''stockbroker''.

Subsec. (f). Pub. L. 98–353, § 393, added subsec. (f).

1982—Subsec. (d). Pub. L. 97–222 added subsec. (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–390 not applicable to any cases commenced under this title or to appointments made under any Federal or State law, before Dec. 12, 2006, see section 7 of Pub. L. 109–390, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–183 applicable to any case brought under an applicable provision of this title that is pending or commenced on or after June 19, 1998, see section 5 of Pub. L. 105–183, set out as a note under section 544 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 257 of Pub. L. 99–554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 283 of Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98–353, set out as a note under section 101 of this title.

§ 547. Preferences

(a) In this section—

(1) ''inventory'' means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw