

Internal Revenue Service, Treasury

§ 301.6323(h)-1

arose before January 1, 1962, the Internal Revenue Service will refile the notice of lien during the calendar year 1967.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. On March 1, 1963, an assessment of tax is made against B, a delinquent taxpayer, and a lien for the amount of the assessment arises on that date. On July 1, 1963, in accordance with §301.6323(f)-1, a notice of lien is filed. The notice of lien filed on July 1, 1963, is effective through March 31, 1969. The first required refiling period for the notice of lien begins on April 1, 1968, and ends on March 31, 1969. A refiling of the notice of lien during that period will extend the effectiveness of the notice of lien filed on July 1, 1963, through March 31, 1975. The second required refiling period for the notice of lien begins on April 1, 1974, and ends of March 31, 1975.

Example 2. Assume the same facts as in example 1, except that although the Internal Revenue Service fails to refile a notice of lien during the first required refiling period (April 1, 1963, through March 31, 1969), a notice of lien is filed on June 2, 1971, in accordance with §301.6323(f)-1. Because of this filing, the notice of lien filed on June 2, 1971, is effective as of June 2, 1971. That notice must be refilled during the 1-year period ending on March 31, 1975, if it is to continue in effect after March 31, 1975.

Example 3. On April 1, 1960, an assessment of tax is made against B, a delinquent taxpayer, and a tax lien for the amount of the assessment arises on that date. On June 1, 1962, in accordance with §301.6323(f)-1, a notice of lien is filed. Because the assessment of tax was made before January 1, 1962, the notice of lien filed on June 1, 1962, is effective through December 31, 1967. The first required refiling period for the notice of lien is the calendar year 1967. A refiling of the notice of lien during 1967 will extend the effectiveness of the notice of lien filed on June 1, 1962, through December 31, 1973.

[T.D. 7429, 41 FR 35509, Aug. 23, 1976]

§ 301.6323(h)-0 Scope of definitions.

Except as otherwise provided by §301.6323(h)-1 the definitions provided by §301.6323(h)-1 apply for purposes of §§ 301.6323(a)-1 through 301.6324-1.

[T.D. 7429, 41 FR 35509, Aug. 23, 1976]

§ 301.6323(h)-1 Definitions.

(a) *Security interest*—(1) *In general.* The term “security interest” means any interest in property acquired by

contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time—

(i) If, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien (as provided in subparagraph (2) of this paragraph (a)) arising out of an unsecured obligation; and

(ii) To the extent that, at such time, the holder has parted with money or money's worth (as defined in subparagraph (3) of this paragraph (a)).

For purposes of this subparagraph, a contract right (as defined in paragraph (c)(2)(i) of §301.6323(c)-1) is in existence when the contract is made. An account receivable (as defined in paragraph (c)(2)(ii) of §301.6323(c)-1) is in existence when, and to the extent, a right to payment is earned by performance.

A security interest must be in existence, within the meaning of this paragraph, at the time as of which its priority against a tax lien is determined. For example, to be afforded priority under the provisions of paragraph (a) of §301.6323(a)-1 a security interest must be in existence within the meaning of this paragraph before a notice of lien is filed.

(2) *Protection against a subsequent judgment lien.* (i) For purposes of this paragraph, a security interest is deemed to be protected against a subsequent judgment lien on—

(A) The date on which all actions required under local law to establish the priority of a security interest against a judgment lien have been taken, or

(B) If later, the date on which all required actions are deemed effective, under local law, to establish the priority of the security interest against a judgment lien.

For purposes of this subdivision, the dates described in (A) and (B) of this subdivision (i) shall be determined without regard to any rule or principle of local law which permits the relation back of any requisite action to a date earlier than the date on which the action is actually performed. For purposes of this paragraph, a judgment lien is a lien held by a judgment lien

creditor as defined in paragraph (g) of this section.

(ii) The application of this subparagraph may be illustrated by the following example:

Example. (i) Under the law of State X, a security interest in negotiable instruments, stocks, bonds, or other securities may be perfected, and hence protected against a judgment lien, only by the secured party taking possession of the instruments or securities. However, a security interest in such intangible personal property is considered to be temporarily perfected for a period of 21 days from the time the security interest attaches, to the extent consideration other than past consideration is given under a written security agreement. Under the law of X, a security interest attaches to such collateral when there is an agreement between the creditor and debtor that the interest attaches, the debtor has rights in the property, and consideration is given by the creditor. Under the law of X, in the case of temporary perfection, the security interest in such property is protected during the 21-day period against a judgment lien arising, after the security interest attaches, out of an unsecured obligation. Upon expiration of the 21-day period, the holder of the security interest must take possession of the collateral to continue perfection.

(ii) Because the security interest is protected during the 21-day period against a subsequent judgment lien arising out of an unsecured obligation, and because the taking of possession before the conclusion of the period of temporary perfection is not considered, for purposes of subdivision (i) of this subparagraph, to be a requisite action which relates back to the beginning of such period, the requirements of this paragraph are satisfied. However, because taking possession is a condition precedent to continued perfection, possession of the collateral is a requisite action to establish such priority after expiration of the period of temporary perfection. If there is a lapse of perfection for failure to take possession, the determination of when the security interest exists (for purposes of protection against the tax lien) is made without regard to the period of temporary perfection.

(3) *Money or money's worth.* For purposes of this paragraph, the term "money or money's worth" includes money, a security (as defined in paragraph (d) of this section), tangible or intangible property, services, and other consideration reducible to a money value. Money or money's worth also includes any consideration which otherwise would constitute money or money's worth under the preceding sen-

tence which was parted with before the security interest would otherwise exist if, under local law, past consideration is sufficient to support an agreement giving rise to a security interest. A relinquishing or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights is not a consideration in money or money's worth. Nor is love and affection, promise of marriage, or any other consideration not reducible to a money value a consideration in money or money's worth.

(4) *Holder of a security interest.* For purposes of this paragraph, the holder of a security interest is the person in whose favor there is a security interest. For provisions relating to the treatment of a purchaser of commercial financing security as a holder of a security interest, see § 301.6323(c)-1(e).

(b) *Mechanic's lienor*—(1) *In general.* The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement (including demolition) of the property. A mechanic's lienor is treated as having a lien on the later of—

(i) The date on which the mechanic's lien first becomes valid under local law against subsequent purchasers of the real property without actual notice, or

(ii) The date on which the mechanic's lienor begins to furnish the services, labor, or materials.

(2) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. On February 1, 1968, A lets a contract for the construction of an office building on property owned by him. On March 1, 1968, in accordance with § 301.6323(f)-1, a notice of lien for delinquent Federal taxes owed by A is filed. On April 1, 1968, B, a lumber dealer, delivers lumber to A's property. On May 1, 1968, B records a mechanic's lien against the property to secure payment of the price of the lumber. Under local law, B's mechanic's lien is valid against subsequent purchasers of real property without notice from February 1, 1968, which is the date the construction contract was entered into. Because the date on which B's mechanic's lien is valid under local law against subsequent purchasers is February 1, and the date on

which B begins to furnish the materials is April 1, the date on which B becomes a mechanic's lienor within the meaning of this paragraph is April 1, the later of these two dates. Under paragraph (a) of § 301.6323(a)-1, B's mechanic's lien will not have priority over the Federal tax lien, even though under local law the mechanic's lien relates back to the date of the contract.

(c) *Motor vehicle.* (1) The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State, the District of Columbia, or a foreign country.

(2) A motor vehicle is "registered for highway use" at the time of a sale if immediately prior to the sale it is so registered under the laws of any State, the District of Columbia, or a foreign country. Where immediately prior to the sale of a motor vehicle by a dealer, the dealer is permitted under local law to operate it under a dealer's tag, license, or permit issued to him, the motor vehicle is considered to be registered for highway use in the name of the dealer at the time of the sale.

(d) *Security.* The term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(e) *Tax lien filing.* The term "tax lien filing" means the filing of notice of the lien imposed by section 6321 in accordance with § 301.6323(f)-1.

(f) *Purchaser*—(1) *In general.* The term "purchaser" means a person who, for adequate and full consideration in money or money's worth (as defined in subparagraph (3) of this paragraph (f)), acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice.

(2) *Interest in property.* For purposes of this paragraph, each of the following interest is treated as an interest in property, if it is not a lien or security interest:

- (i) A lease of property,
- (ii) A written executory contract to purchase or lease property,
- (iii) An option to purchase or lease property and any interest therein, or
- (iv) An option to renew or extend a lease of property.

(3) *Adequate and full consideration in money or money's worth.* For purposes of this paragraph, the term "adequate and full consideration in money or money's worth" means a consideration in money or money's worth having a reasonable relationship to the true value of the interest in property acquired. See paragraph (a)(3) of this section for definition of the term "money or money's worth." Adequate and full consideration in money or money's worth may include the consideration in a bona fide bargain purchase. The term also includes the consideration in a transaction in which the purchaser has not completed performance of his obligation, such as the consideration in an installment purchase contract, even though the purchaser has not completed the installment payments.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. A enters into a contract for the purchase of a house and lot from B. Under the terms of the contract A makes a down payment and is to pay the balance of the purchase price in 120 monthly installments. After payment of the last installment, A is to receive a deed to the property. A enters into possession, which under local law protects his interest in the property against subsequent purchasers without actual notice. After A has paid five monthly installments, a notice of lien for Federal taxes is filed against B in accordance with § 301.6323(f)-1. Because the contract is an executory contract to purchase property and is valid under local law against subsequent purchasers without actual notice, A qualifies as a purchaser under this paragraph.

Example 2. C owns a residence which he leases to his son-in-law, D, for a period of 5 years commencing January 1, 1968. The lease provides for payment of \$100 a year, although the fair rental value of the residence is \$2,500 a year. The lease is recorded on December 31, 1967. On March 1, 1968, a notice of tax lien for unpaid Federal taxes of C is filed in accordance with § 301.6323(f)-1. Under local law, D's interest is protected against subsequent purchasers without actual notice. However, because the rental paid by D has no reasonable relationship to the value of the interest in

§ 301.6323(i)-1

property acquired, D does not qualify as a purchaser under this paragraph.

(g) *Judgment lien creditor.* The term “judgment lien creditor” means a person who has obtained a valid judgment, in a court of record and of competent jurisdiction, for the recovery of specifically designated property or for a certain sum of money. In the case of a judgment for the recovery of a certain sum of money, a judgment lien creditor is a person who has perfected a lien under the judgment on the property involved. A judgment lien is not perfected until the identity of the lienor, the property subject to the lien, and the amount of the lien are established. Accordingly, a judgment lien does not include an attachment or garnishment lien until the lien has ripened into judgment, even though under local law the lien of the judgment relates back to an earlier date. If recording or docketing is necessary under local law before a judgment becomes effective against third parties acquiring liens on real property, a judgment lien under such local law is not perfected with respect to real property until the time of such recordation or docketing. If under local law levy or seizure is necessary before a judgment lien becomes effective against third parties acquiring liens on personal property, then a judgment lien under such local law is not perfected until levy or seizure of the personal property involved. The term “judgment” does not include the determination of a quasi-judicial body or of an individual acting in a quasi-judicial capacity such as the action of State taxing authorities.

[T.D. 7429, 41 FR 35511, Aug. 23, 1976]

§ 301.6323(i)-1 Special rules.

(a) *Actual notice or knowledge.* For purposes of subchapter C (section 6321 and following), chapter 64 of the Code, an organization is deemed, in any transaction, to have actual notice or knowledge of any fact from the time the fact is brought to the attention of the individual conducting the transaction, and in any event from the time the fact would have been brought to the individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if

it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(b) *Subrogation*—(1) *In general.* Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324. Thus, if a tax lien imposed by section 6321 or 6324 is not valid with respect to a particular interest as against the holder of that interest, then the tax lien also is not valid with respect to that interest as against any person who, under local law, is a successor in interest to the holder of that interest.

(2) *Example.* The application of this paragraph may be illustrated by the following example:

Example. On February 1, 1968, an assessment is made and a tax lien arises with respect to A’s delinquent tax liability. On February 25, 1968, in accordance with § 301.6323(f)-1, a notice of lien is properly filed. On March 1, 1968, A negotiates a loan from B, the security for which is a second mortgage on property owned by A. The first mortgage on the property is held by C and has priority over the tax lien. Upon default by A, C begins proceedings to foreclose upon the first mortgage. On September 1, 1968, B pays the amount of principal and interest in default to C in order to protect the second mortgage against the pending foreclosure of C’s senior mortgage. Under local law, B is subrogated to C’s rights to the extent of the payment to C. Therefore, the tax lien is invalid against B to the extent he became subrogated to C’s rights even though the tax lien is valid against B’s second mortgage on the property.

(c) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed (see § 301.6323(f)-1), the amount of the outstanding obligation secured by the lien is authorized to be disclosed as a matter of public record on Form 668 “Notice of Federal Tax Lien Under Internal Revenue Laws.” The amount of