

§ 400.2-1

26 CFR Ch. I (4-1-10 Edition)

(ii) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(2) *Tax assessments made before January 1, 1962.* If the assessment of the tax is made before January 1, 1962, the first required refiling period shall be the calendar year 1967. Thus, to maintain the effectiveness of any notice of lien on file which relates to a lien which arose before January 1, 1962, the Internal Revenue Service will refile the notice of lien during the calendar year 1967. The second required refiling period for any such notice of lien is the calendar year 1973.

(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, a notice of lien is properly filed. The notice of lien filed on July 1, 1963, is effective up to and including 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, up to and including March 31, 1975. The second required refiling period for the notice of lien begins on April 1, 1974, and ends on March 31, 1975.

Example 2. Assume the same facts as in example 1, except that the Internal Revenue Service fails to refile a notice of lien during the first required refiling period (Apr. 1, 1968, through Mar. 31, 1969). However, a notice of lien which meets the requirements of section 6323(f) is filed on June 2, 1971. Because of this filing, the notice of lien filed on June 2, 1971, is effective as of June 2, 1971. That notice must itself be refiled during the 1-year period ending on March 31, 1975, if it is to continue in effect after March 31, 1975. As in example 1, the second required refiling period for the notice of lien begins on April 1, 1974, and ends on 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, a notice of lien is properly filed. Because the assessment of tax was made before January 1, 1962, the notice of lien filed on June 1, 1962, is effective up to and including 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, up to and

including December 31, 1973. The second required refiling period for the notice of lien is the calendar year 1973.

[T.D. 6932, 32 FR 14835, Oct. 18, 1967]

§ 400.2-1 Discharge of property by substitution of proceeds of sale; subordination of lien.

(a) *Scope.* This section provides rules under the provisions in section 6325(b)(3) which relate to the discharge of property from a tax lien by substitution therefor of a lien on the proceeds of the sale of the property, and in section 6325(d) which relate to the subordination of a tax lien. Section 6325 was amended by section 103(a) of the Federal Tax Lien Act of 1966 (80 Stat. 1133), effective after November 2, 1966.

(b) *Discharge of property by substitution of proceeds of sale.* Pursuant to section 6325(b)(3), a district director may, in his discretion, issue a certificate of discharge of any part of the property subject to any lien imposed under chapter 64 of the Code if part of the property is sold and, pursuant to a written agreement with the district director, the proceeds of the sale are held, as a fund subject to the lien of the United States, in the same manner and with the same priority as the liens and claims had with respect to the discharged property. In order for the provisions of this paragraph to apply, the sale must divest the taxpayer of all right, title, and interest in the property sought to be discharged. Any person desiring a certificate of discharge under this paragraph shall submit an application in writing to the district director responsible for the collection of the tax. The application shall contain such information as the district director may require. Any reasonable and necessary expenses incurred in connection with the sale of the property and the administration of the sale proceeds shall be paid by the applicant or from the proceeds of the sale before satisfaction of any claims and liens.

(c) *Subordination of lien—(1) By payment of the amount of subordination.* Pursuant to section 6325(d)(1), a district director may, in his discretion, issue a certificate of subordination of any lien imposed under chapter 64 of the Code upon any part of the property subject to the lien if there is paid over

to the district director an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States. Under this provision, the tax lien may be subordinated to another lien or interest on a dollar-for-dollar basis. For example, if a notice of a Federal tax lien is filed and a delinquent taxpayer secures a mortgage on a part of the property subject to the tax lien and pays over the amount of the principal of the debt secured by the mortgage to a district director after an application for a certificate of subordination is approved, the district director will issue a certificate of subordination. This certificate will have the effect of subordinating the tax lien to the mortgage.

(2) *To facilitate tax collection*—(i) *In general.* Pursuant to section 6325(d)(2), a district director may, in his discretion, issue a certificate of subordination of any lien imposed under chapter 64 of the Code upon any part of the property subject to the lien if the district director believes that the subordination of the lien will ultimately result in an increase in the amount realizable by the United States from the property subject to the lien and will facilitate the ultimate collection of the tax liability.

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

Example. A, a farmer, needs money in order to harvest his crop. However, a Federal tax lien, notice of which has been filed, is outstanding with respect to A's property. B, a lending institution is willing to make the necessary loan if the loan is secured by a first mortgage on the farm which is prior to the Federal tax lien. Upon examination, the district director believes that ultimately the amount realizable from A's property will be increased and the collection of the tax liability will be facilitated by the availability of cash when the crop is harvested and sold. In this case, the district director may, in his discretion, subordinate the tax lien on the farm to the mortgage securing the crop harvesting loan.

(3) *Application for certificate of subordination.* Any person desiring a certificate of subordination under this paragraph shall submit an application in writing to the district director responsible for the collection of the tax. The application shall contain such informa-

tion as the district director may require.

[T.D. 6944, 33 FR 732, Jan. 20, 1968]

§ 400.4-1 Notice required with respect to a nonjudicial sale.

(a) *Scope and application of this section*—(1) *In general.* Section 109 of the Federal Tax Lien Act of 1966 (80 Stat. 1141) amended the Internal Revenue Code of 1954 by adding a new section 7425, relating to the discharge of liens. A tax lien of the United States, or a title derived from the enforcement of a tax lien of the United States, may be discharged or divested under local law only in the manner prescribed in section 2410 of title 28 of the United States Code or section 7425 of the Internal Revenue Code. Section 7425(a) contains provisions relating to the discharge of a lien or a title derived from the enforcement of a lien in the judicial proceedings described in subsection (a) of section 2410 of title 28 of the United States Code. These judicial proceedings are plenary in nature and proceed on formal pleadings. Section 7425(b) contains provisions relating to the discharge of a lien or a title derived from the enforcement of a lien in the event of a nonjudicial sale with respect to the property involved. Section 7425(c) contains special rules relating to the notice of sale requirements contained in section 7425(b). Paragraph (b) of this section of the regulations contains rules with respect to the nonjudicial sales described in section 7425(b). Paragraph (c) of this section of the regulations contains rules with respect to the notice of sale provisions of section 7425(c)(1). Paragraph (d) of this section of the regulations contains rules relating to the consent to sale provisions of section 7425(c)(2). Paragraph (e) of this section of the regulations contains rules relating to the sale of perishable goods provisions of section 7425(c)(3). Paragraph (f) of this section of the regulations contains the requirements with respect to the contents of a notice of sale.

(2) *Effective date of this section.* The provisions of section 7425, as added by the Federal Tax Lien Act of 1966, are effective with respect to sales occurring after November 2, 1966. The notice of sale provisions of section 7425(c) (1)