

filing of notice of revocation, in accordance with the provisions of subdivision (ii)(b) of this subparagraph, if the filing is required by reason of the fact that a notice of the lien had been filed.

(b) *Treatment of reinstated lien.* As of the effective date of reinstatement, a reinstated lien has the same force and effect as a general tax lien imposed by section 6321 which arises upon assessment of a tax liability. The reinstated lien continues in existence until the expiration of the period of limitation on collection after assessment of the tax liability to which it relates. The reinstatement of the lien does not retroactively reinstate a previously filed notice of lien. The reinstated lien is not valid against any holder of a lien or interest described in §301.6323(a)-1 until notice of the reinstated lien has been filed in accordance with the provisions of §301.6323(f)-1 subsequent to or concurrent with the time the reinstated lien became effective.

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

Example. On March 1, 1967, an assessment of an unpaid Federal tax liability is made against A. On March 1, 1968, notice of the Federal tax lien, which arose at the time of assessment, is filed. On April 1, 1968, A executes a bona fide mortgage on property belonging to him to B. On May 1, 1968, a certificate of release of the tax lien is erroneously issued and is filed by A in the same office in which the notice of lien was filed. On June 3, 1968, the lien is reinstated in accordance with the provisions of this subparagraph. On July 1, 1968, A executes a bona fide mortgage on property belonging to him to C. On August 1, 1968, a notice of the lien which was reinstated is properly filed in accordance with the provisions of §301.6323(f)-1. The mortgages of both B and C will have priority over the rights of the United States with respect to the tax liability in question. Because a reinstated lien continues in existence only until the expiration of the period of limitation on collection after assessment of the tax liability to which the lien relates, in the absence of any extension or suspension of the period of limitation on collection after assessment, the reinstated lien will become unenforceable by reason of lapse of time after February 28, 1973.

(3) *Certificates void under certain conditions.* Notwithstanding any other provisions of subtitle F of the Internal

Revenue Code, any lien for Federal taxes attaches to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires the property after the certificate has been issued. Thus, if property subject to a Federal tax lien is discharged therefrom and is later reacquired by the delinquent taxpayer at a time when the lien is still in existence, the tax lien attaches to the reacquired property and is enforceable against it as in the case of after-acquired property generally.

(g) *Filing of certificates and notices.* If a certificate or notice described in this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 (to which the certificate or notice relates) is filed, the certificate or notice is effective if filed in the office of the clerk of the United States district court for the judicial district in which the State office where the notice of lien is filed is situated.

(h) As used in this section, the term *appropriate official* means either the official or office identified in the relevant IRS Publication or, if such official or office is not so identified, the Secretary or his delegate.

(i) *Effective/applicability date.* This section applies to any release of lien or discharge of property that is requested after January 31, 2008.

(Secs. 6324B (90 Stat. 1861, 26 U.S.C. 6324B) and 7805 (68A Stat. 917, 26 U.S.C. 7805))

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7429, 41 FR 35512, Aug. 23, 1976; T.D. 7847, 47 FR 50857, Nov. 10, 1982; T.D. 8939, 66 FR 2821, Jan. 12, 2001; 73 FR 5742, T.D. 9378, Jan. 31, 2008; T.D. 9378, 73 FR 9672, Feb. 22, 2008]

§301.6326-1 Administrative appeal of the erroneous filing of notice of federal tax lien.

(a) *In general.* Any person may appeal to the district director of the district in which a notice of federal tax lien was filed on the property or rights to property of such person for a release of lien alleging an error in the filing of notice of lien. Such appeal may be used only for the purpose of correcting the erroneous filing of a notice of lien, not to challenge the underlying deficiency that led to the imposition of a lien. If

the district director determines that the Internal Revenue Service has erroneously filed the notice of any federal tax lien, the district director shall expeditiously, and, to the extent practicable, within 14 days after such determination, issue a certificate of release of lien. The certificate of release of such lien shall include a statement that the filing of notice of lien was erroneous.

(b) *Appeal alleging an error in the filing of notice of lien.* For purposes of paragraph (a) of this section, an appeal of the filing of notice of federal tax lien must be based on any one of the following allegations:

(1) The tax liability that gave rise to the lien, plus any interest and additions to tax associated with said liability, was satisfied prior to the filing of notice of lien;

(2) The tax liability that gave rise to the lien was assessed in violation of the deficiency procedures set forth in section 6213 of the Internal Revenue Code;

(3) The tax liability that gave rise to the lien was assessed in violation of title 11 of the United States Code (the Bankruptcy Code); or

(4) The statutory period for collection of the tax liability that gave rise to the lien expired prior to the filing of notice of federal tax lien.

(c) *Notice of federal tax lien that lists multiple liabilities.* When a notice of federal tax lien lists multiple liabilities, a person may appeal the filing of notice of lien with respect to one or more of the liabilities listed in the notice, if the notice was erroneously filed with respect to such liabilities. If a notice of federal tax lien was erroneously filed with respect to one or more liabilities listed in the notice, the district director shall issue a certificate of release with respect to such liabilities. For example, if a notice of federal tax lien lists tax liabilities for years 1980, 1981 and 1982, and the entire liabilities for 1981 and 1982 were paid prior to the filing of notice of lien, the taxpayer may appeal the filing of notice of lien with respect to the 1981 and 1982 liabilities and the district director must issue a certificate of release with respect to the 1981 and 1982 liabilities.

(d) *Procedures for appeal—(1) Manner.* An appeal of the filing of notice of fed-

eral tax lien shall be made in writing to the district director (marked for the attention of the Chief, Special Procedures Function) of the district in which the notice of federal tax lien was filed.

(2) *Form.* The appeal shall include the following information and documents:

(i) Name, current address, and taxpayer identification number of the person appealing the filing of notice of federal tax lien;

(ii) A copy of the notice of federal tax lien affecting the property, if available; and

(iii) The grounds upon which the filing of notice of federal tax lien is being appealed.

(A) If the ground upon which the filing of notice is being appealed is that the tax liability in question was satisfied prior to the filing, proof of full payment as defined in paragraph (e) of this section must be provided.

(B) If the ground upon which the filing of notice is being appealed is that the tax liability that gave rise to lien was assessed in violation of the deficiency procedures set forth in section 6213 of the Internal Revenue Code, the appealing party must explain how the assessment was erroneous.

(C) If the ground upon which the filing of notice is being appealed is that the tax liability that gave rise to the lien was assessed in violation of title 11 of the United States Code (the Bankruptcy Code), the appealing party must provide the following:

(1) The identity of the court and the district in which the bankruptcy petition was filed; and

(2) The docket number and the date of filing of the bankruptcy petition.

(3) *Time.* An administrative appeal of the erroneous filing of notice of federal tax lien shall be made within 1 year after the taxpayer becomes aware of the erroneously filed tax lien.

(e) *Proof of full payment.* As used in paragraph (d)(2)(iii) of this section, the term “proof of full payment” means:

(1) An internal revenue cashier’s receipt reflecting full payment of the tax liability in question prior to the date the federal tax lien issue was filed;

(2) A canceled check to the Internal Revenue Service in an amount which was sufficient to satisfy the tax liability for which release is being sought; or

(3) Any other manner of proof acceptable to the district director.

(f) *Exclusive remedy.* The appeal established by section 6326 of the Internal Revenue Code and by this section shall be the exclusive administrative remedy with respect to the erroneous filing of a notice of federal tax lien.

(g) *Effective date.* The provisions of this section are effective July 7, 1989.

[T.D. 8250, 54 FR 19569, May 8, 1989. Redesignated at 56 FR 19948, May 1, 1991]

Seizure of Property for Collection of Taxes

§ 301.6330-1 Notice and opportunity for hearing prior to levy.

(a) *Notification*—(1) *In general.* Except as specified in paragraph (a)(2) of this section, the Commissioner, or his or her delegate (the Commissioner), will prescribe procedures to provide persons upon whose property or rights to property the IRS intends to levy (hereinafter referred to as the taxpayer) on or after January 19, 1999, notice of that intention and to give them the right to, and the opportunity for, a pre-levy Collection Due Process (CDP) hearing with the Internal Revenue Service (IRS) Office of Appeals (Appeals). This pre-levy Collection Due Process Hearing Notice (CDP Notice) must be given in person, left at the dwelling or usual place of business of the taxpayer, or sent by certified or registered mail, return receipt requested, to the taxpayer's last known address. For further guidance regarding the definition of last known address, see § 301.6212-2.

(2) *Exceptions*—(i) *state tax refunds.* Section 6330(f) does not require the Commissioner to provide the taxpayer with notification of the taxpayer's right to a CDP hearing prior to issuing a levy to collect state tax refunds owing to the taxpayer. However, the Commissioner will prescribe procedures to give the taxpayer notice of the right to, and the opportunity for, a CDP hearing with Appeals with respect to any such levy issued on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a levy on a state tax refund is referred to as a post-levy CDP Notice.

(ii) *Jeopardy.* Section 6330(f) does not require the Commissioner to provide the taxpayer with notification of the taxpayer's right to a CDP hearing prior to a levy when there has been a determination that collection of the tax is in jeopardy. However, the Commissioner will prescribe procedures to provide notice of the right to, and the opportunity for, a CDP hearing with Appeals to the taxpayer with respect to any such levy issued on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a jeopardy levy also is referred to as post-levy CDP Notice.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q-A1. Who is the person to be notified under section 6330?

A-A1. Under section 6330(a)(1), a pre-levy or post-levy CDP Notice is required to be given only to the person whose property or right to property is intended to be levied upon, or, in the case of a levy made on a state tax refund or a jeopardy levy, the person whose property or right to property was levied upon. The person described in section 6330(a)(1) is the same person described in section 6331(a)—i.e., the person liable to pay the tax due after notice and demand who refuses or neglects to pay (referred to here as the taxpayer). A pre-levy or post-levy CDP Notice therefore will be given only to the taxpayer.

Q-A2. Will the IRS give notification to a known nominee of, a person holding property of, or a person who holds property subject to a lien with respect to, the taxpayer of the IRS' intention to issue a levy?

A-A2. No. Such a person is not the person described in section 6331(a)(1), but such persons have other remedies. See A-B5 of paragraph (b)(2) of this section.

Q-A3. Will the IRS give notification for each tax and tax period it intends to include or has included in a levy issued on or after January 19, 1999?

A-A3. Yes. The notification of an intent to levy or of the issuance of a jeopardy or state tax refund levy will specify each tax and tax period that will be or was included in the levy.