



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 29, 1995

The Honorable John Vance
Dallas County District Attorney
411 Elm Street
Dallas, Texas 75202

Letter Opinion No. 95-091

Re: Filing of federal tax liens and related
questions (RQ-812)

Dear Mr. Vance:

You ask four questions about the filing of federal tax liens. Your first question is: "Is filing 'notice' of a federal tax lien by the IRS sufficient to perfect the lien or does an 'actual lien' itself have to be filed?"

Section 6321 of the federal Internal Revenue Code (the "code"), title 26 of the United States Code, provides that if a person liable to pay any tax fails or refuses to pay, the amount together with interest, penalties, costs, etc. "shall be a lien in favor of the United States upon all property and rights to property, whether real or personal belonging to such person." Section 6323(a) provides that "[t]he lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until *notice* thereof which meets the requirements of subsection (f) has been filed by the Secretary."¹ (Emphasis added.) See also 26 U.S.C. § 6323(f) (where "notice" is filed depends on state recordation laws), (h)(5) ("[T]he term 'tax lien filing' means the filing of notice (referred to in subsection (a) of the lien imposed by section 6321)."² We assume, from the discussion in the brief you submitted with your request, that by the word "perfect" in your question, you mean to make "valid as against" purchasers and other persons described in section 6323(a) quoted above. Section 6323, in our opinion, makes it clear that it is the filing of "notice" of the federal tax lien in the proper office which makes the lien "valid as against" such persons.³

Your second question is: "Does a federal tax lien, or notice of lien, have to be certified to be filed?" Chapter 14 of the Property Code deals specifically with federal lien

¹Section 7701(11) provides that "Secretary" as used in the code means "the Secretary of the Treasury or his delegate." See discussion *infra* (response to second question).

²See also, e.g., Prop. Code § 14.002(a) ("Notices of liens . . . must be filed in accordance with this chapter."). Chapter 14 of the state Property Code deals specifically with registration of federal liens.

³But see *infra* note 5 (additional federal provisions to effect that filing requirements are not met unless lien instruments are indexed in such manner that reasonable inspection will disclose their existence).

registration. Section 14.003, cited in your brief, provides the answer to your question. Section 14.003 reads in part: "Certification of notices of liens . . . by the secretary of the treasury of the United States or his delegate . . . entitles them to be filed *and no other attestation, certification, or acknowledgment is necessary.*"⁴ (Emphasis added.) See also 26 U.S.C. §§ 6323(a) (lien not valid until notice "has been filed by the Secretary"), 7701(11) ("Secretary" as used in code means "the Secretary of the Treasury or his delegate"), (12) ("[d]elegate" means officer, employee, or agency of Treasury Department authorized to perform function in question).

Your third question is: "Where is the notice of lien to be recorded and how is it . . . indexed?" Section 6323(f)(1)(A)(i) of the Internal Revenue Code provides that notices of liens against real property are to be filed "in one office within the State (or the county, or other governmental subdivision) as designated by the laws of such State, in which the property subject to the lien is situated." Property Code section 14.002 provides that notices of liens on real property are to be filed in the office of the county clerk of the county where the property is located. Regarding liens against personal property, subsection (f)(1)(A)(ii) of section 6323 provides in relevant part that notices of such liens are to be filed in the office designated by state law of the governmental subdivision in which the property subject to the lien is situated. Subsection (f)(2)(B) provides that the situs of real property shall be deemed to be at the residence of the taxpayer at the time the lien is filed. Property Code section 14.002 provides that notices of federal liens on personal property shall be filed in the office of the county clerk in the county where the person against whose interest the lien applies resides at the time it is filed, except that for corporations and partnerships, as such are defined in the internal revenue laws, the notice shall be filed in the office of the Texas Secretary of State. Since federal tax liens apply to all property of the taxpayer, *see id.* § 6321, the notices should be filed in both locations, where the locations for filing liens against personal and real property are different.

As to indexing notices of federal tax liens when they are filed, chapter 14, Property Code, provides that if the filing officer is the secretary of state, he or she shall "cause the notice to be marked, held, or placed on microtext and indexed in accordance with the provisions of Section 9.403(d) of the Uniform Commercial Code as if the notice were a financing statement within the meaning of that code." Prop. Code § 14.004(a)(1). Any other filing officer must endorse on the notice his identification and the date and time of receipt and file it in the real property records and on request of the filing party in the personal property files "or enter it in an alphabetical index for real or personal property, as appropriate," showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the certifying official or entity, and the amount

⁴Compare the general provisions in Property Code section 12.001 (instrument concerning real or personal property may be recorded if acknowledged, sworn to, or proved according to law; instrument concerning real property may not be recorded unless signed, acknowledged, or sworn to before witnesses, or acknowledged or sworn to before and certified by officer authorized to take acknowledgments or oaths).

appearing on the notice. *Id.* § 14.004(a)(2). See also Local Gov't Code §§ 193.003 (county clerk to maintain alphabetical index to instruments relating to real property), .005 (county clerk to maintain alphabetical index of instruments relating to personal property), .008 (for microfilm records, county clerk may divide instruments into seven classes, including "Official Public Records of Real Property" and "Official Public Records of Personal Property and Chattels," or may consolidate the seven classes into single class, "Official Public Records"), .009 (instruments recorded on microfilm must be alphabetically indexed and cross-indexed to official public record under names of parties in instrument; index entries for real and personal property instruments must show names of parties, description of nature of instrument, date of filing, description of property, and location of microfilm image of instrument), 204.006 (index to microfilm record must show same information as required for record not on microfilm).⁵

Finally, you ask: "How may a notice of lien be released or revoked?" You indicate that this question is prompted by a taxpayer against whom a notice of lien had been filed having submitted for filing his own document, styled "Notice of Revocation for Notice of Federal Tax Lien," and asked that the federal lien be removed. Section 6325 of the Internal Revenue Code provides for the "Secretary" filing a release of lien. As indicated above, "Secretary" as used in the code means the Secretary of the Treasury or his or her delegate. We find no provision permitting the person against whom a lien has been filed to release the lien.

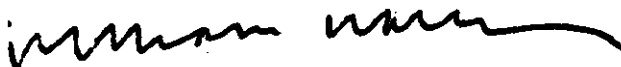
S U M M A R Y

Filing of "notice" of a federal tax lien in the proper office by the United States Secretary of the Treasury or his or her delegate makes the lien valid against purchasers and other persons described in Internal Revenue Code section 6323. Certification of a notice of lien by the Secretary of the Treasury or his or her delegate entitles it to be filed and no other attestation, certification, or acknowledgment is necessary. Notices of federal tax liens other than ones against corporations and partnerships are to be filed against real property in

⁵Federal law, 26 U.S.C. § 6323(f)(4), essentially provides that filing requirements are not met unless the notices are recorded and indexed in such a manner that a reasonable inspection will disclose the lien's existence if, under the law of the state where the real property is located, a deed is not valid against a subsequent purchaser without actual notice unless recorded and indexed in such manner *and* there is maintained "an adequate system for the public indexing of Federal tax liens" at the filing office. Property Code section 13.001 makes unrecorded conveyances of real property or interests therein void against subsequent purchasers without actual notice if they paid a valuable consideration (but binding on purchasers who did not pay valuable consideration or who had actual notice). Chapter 14 of the Property Code in conjunction with the other provisions discussed above does, we think, at least provide for an "adequate system" for indexing federal tax liens. Whether an adequate system is in fact "maintained" at a particular filing office is, of course, a fact question.

the office of the county clerk of the county where real property of the person against whose interest the lien applies is situated. Notices of such liens against personal property are to be filed in the office of the county clerk of the county where the person against whose interest the lien applies resides at the time it is filed. The United States Secretary of the Treasury or his or her delegate may file a release of a federal tax lien. There is no provision for the release of a lien by the person against whom a lien has been filed.

Yours very truly,

A handwritten signature in black ink, appearing to read 'William Walker', with a long horizontal flourish extending to the right.

William Walker
Assistant Attorney General
Opinion Committee