PacificCPE

COURSE

34455A

Tax Liens, Levies, and the Taxpayer Advocate

Enforced IRS collection can have serious consequences for clients, but there are tools to fight back. This course examines IRS liens and levies, including Fresh Start program rules and how to pursue wrongful collection claims. It also introduces the Taxpayer Advocate Service—an often-overlooked resource that can intervene when clients face significant hardship or systemic IRS problems. Practitioners who regularly deal with collection matters will find practical guidance here for protecting clients when enforcement actions escalate.

CREDIT HOURS 2 | FIELD OF STUDY TAXES | EXAM QUESTIONS 10

Start Course ↓

Final Exam Copy ↓

LEARNING ASSIGNMENTS AND OBJECTIVES

Assignment

- Study the full course materials included here.
- Complete the review questions after each chapter.
- Answer 10 final exam questions.
- Final exam is scored immediately, 70% or better passes.
- Certificate of completion is available in your account.
- Failed exams can be retaken free of charge.

Course Objectives

- Recall the detrimental effects that a federal tax lien can have on a taxpayer.
- Recall the purpose of the Taxpayer Advocate System (TAS).

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Chapter 1: IRS ENFORCED COLLECTION: LIENS AND LEVIES

Chapter Objective

After completing this chapter, you should be able to:

- Recall the detrimental effects that a federal tax lien can have on a taxpayer.

If you don't deal with the IRS using any of the options discussed in Chapter 1 of course 34454B, "When You Owe the IRS," you're likely to face IRS enforced collection measures. These are the IRS's awesome lien and levy powers.

The average IRS levy (seizure) brings in about $1,600, mostly from bank accounts or wages. And, just because it happens to you once is no reason to believe it won't happen again—and again—until the debt is paid in full.

FEDERAL TAX LIENS

Whenever you owe taxes to the U.S. Treasury and don't pay after the IRS sends you notice and a demand to pay, a claim against you by the federal government arises by law. (I.R.C. § 6321.) This claim is called a "tax lien." The existence of the government's claim is not public information—at least initially—and so it's sometimes called a "secret" or "statutory" or an "automatic" lien.

The tax lien theoretically attaches to just about everything you own or have a right in. If you owe interest and penalties on the tax, which is often the case, the lien covers these additions too. Thankfully, there are exceptions to this general rule that are covered later in this chapter.

States might also have tax lien rights; those aren't covered in this course.

For more information, see IRS Publication 594, The IRS Collection Process, which describes tax lien procedures in detail.

Notice of Federal Tax Lien

If the IRS sends you a valid tax bill and you don't pay it, you might receive a written demand to pay. This paper is called a "CP-501 notice," referring to the IRS number on the right-hand corner. If you don't pay within 30 days and owe at least $10,000, the IRS may file a notice in the public records showing your tax debt. Usually the IRS takes

much longer to file a lien notice, and in fact, it might never do it. This paper is officially called a “Notice of Federal Tax Lien.” In a recent year, the IRS filed over 400,000 notices in the county or state public records offices where the IRS believes debtors might live, work, or own real estate. Most filed tax liens are for amounts over $25,000. In the few states without county recording systems, the IRS sends the Notice of Federal Tax Lien to the secretary of state’s office. The IRS pays the state or county fee for recording the tax lien and adds it to your bill.

The IRS does not check first to see if you actually own anything before recording the lien notice. It has no reason to. Even if you don’t own property now, you might later and the IRS gets first dibs on the proceeds from its sale or financing.

Example

Joyce owes the IRS and lives in Orange County with her Aunt Mildred. The IRS records a Notice of Federal Tax Lien at the county recorder’s office, even though Joyce owns no real estate. Aunt Mildred dies and leaves her home to Joyce. The IRS’s lien now attaches to the house. Joyce won’t be able to sell the house with a clear title without first paying off the IRS. And Joyce won’t erase the lien by transferring the title to Kayleen, her best friend. Kayleen takes the property subject to the tax lien.

During the COVID-19 pandemic, the IRS suspended filing new Notices of Federal Tax Lien. However, by the time you’re reading this course, normal operations will have resumed.

Effect of a Recorded Notice of Federal Tax Lien

Just as a recorded mortgage tells anyone who searches the public records that you owe on your home, a Notice of Federal Tax Lien shows the world that you owe the IRS.

A recorded tax lien scares off buyers and potential creditors or lenders, making it difficult for you to refinance or get loans.

Neutralizing a Recorded Federal Tax Lien

Keep in mind that the automatic, secret, or statutory tax lien and a recorded Notice of Federal Tax Lien are two distinct things.

You can’t escape a valid automatic tax lien without (a) paying the tax, interest, and penalties owed; (b) eliminating it in bankruptcy; (c) reducing and paying it through an Offer in Compromise; or (d) having the time limit for collections run. An automatic tax

lien won't appear in any public record, such as a county recorder's office. Hence, it's sometimes called a "silent" or "secret" tax lien.

A recorded Notice of Federal Tax Lien tells the world your secret. The best way to get rid of it is to get an IRS Certificate of Release of Federal Tax Lien. The IRS will issue a Certificate of Release if you fully pay the tax owed, discharge it in bankruptcy, or pay it through an Offer in Compromise or if the time limit for IRS collections has run out.

The IRS will not reduce the original amount shown on a tax lien as you make payments. So, if the lien starts out at $100,000 and you pay it down to $1,000, the lien will show as $100,000 until the last penny is paid. Only then will the IRS issue the Certificate of Release.

When the tax is paid in full, eliminated, or reduced and paid through an Offer in Compromise or bankruptcy or the time for collections has lapsed, the IRS must issue the Certificate of Release (Form 668Z) within 30 days. Once you get the Certificate of Release, you should record it (if the IRS doesn't) and pay the recording fee in the counties where the IRS filed the lien.

IRS "Fresh Start" Tax Lien Rules

In 2012, the IRS put into place a "Fresh Start" initiative that included major changes in the lien process. These now permanent changes reduced tax lien filings by tens of thousands each year. The highlights include:

- The IRS will not file tax liens if the amount owed is less than $10,000.
- The IRS will grant lien withdrawals if the balance owed is less than $25,000 and a direct debit installment payment plan is in effect.
- Small business debtors can get up to 24 months to pay installments on debts of $25,000 or less more easily than in the past.

Tip

You can appeal a tax lien filing. IRS tax lien filings can be contested in the IRS Independent Office of Appeals. For details, see the discussion in "Dealing With the IRS Levy Process," below, and Chapter 1 of course 34453B on appealing IRS decisions.

If the IRS Records a Tax Lien

Legally, the IRS must notify you in writing and give you a chance to pay or try to prevent the lien from being recorded before sending the notice to the public records

offices. But if you've moved or the notice is lost in the mail, you might never get the warning and only learn of it when you apply for credit or a loan—and are turned down.

The IRS does not always file tax lien notices. It's hit or miss.

You can appeal an IRS tax lien notice filing to the IRS Independent Office of Appeals under the Collection Appeals Program (CAP).

First request a telephone conference with the manager of the IRS unit filing the lien. If the manager turns you down, fax or mail a completed Form 9423, Collection Appeal Request, to the collection office. (A copy with instructions is at the IRS website, www.irs.gov.) File your appeal within three business days after your conference with the manager or the IRS may resume collection.

The appeal request is usually decided within five business days. The appeals officer looks at whether the collectors followed correct procedures and considers the facts and circumstances of your case. You may not challenge in CAP the existence or amount of your tax liability. The officer should telephone you, so list your work, home, and cell phone numbers in your letter. Most taxpayers lose. You can't proceed to court if you don't agree with the decision in your CAP case.

For more information about the Collection Appeals Program, refer to IRS Publication 1660, Collection Appeal Rights.

Avoiding or Eliminating a Tax Lien

A recorded tax lien might effectively prevent you from selling or refinancing real estate. It won't, however, affect your right to sell personal property, such as a motor vehicle, boat, or furnishings.

As discussed in Chapter 1 of course 34454B, the best way to deal with a tax lien is to avoid one in the first place.

You should respond to an IRS letter threatening a lien filing by contacting the IRS at the telephone number on the letter, or calling 800-829-1040, or if all else fails, the Taxpayer Advocate Service at 877-777-4778. Be ready to convince the IRS that you fall into the category "Will filing notice impair collection of the tax liability?" Point out that a tax lien will kill your chance of getting a mortgage loan, for example.

If you tried but failed to convince the IRS to forgo recording a tax lien, here are your options after the lien notice has been filed:

- **Appeal the lien filing.** The IRS has five business days after filing the lien to provide written notice to the taxpayer. This must include notice of the right to request a Collection Due Process (CDP) hearing with the Independent Office

of Appeals within 30 days from the sixth day after the lien filing. To obtain such a CDP hearing, you must file IRS Form 12153, Request for a Collection Due Process or Equivalent Hearing. You must indicate on the form why the IRS should withdraw the lien (for example, you're unable to pay in full and would like to enter into an installment agreement or Offer in Compromise, the taxes were discharged in bankruptcy, you're not liable for the tax, you claim innocent spouse relief, or other reasons). Timely filing prohibits the IRS from levying on your assets until the appeal is finally determined. However, the 10-year collection period is suspended during this time. The appeals officer will conduct an informal conference by phone, letter, or in person and issue a determination letter. If you don't agree with the determination, you may appeal to the U.S. Tax Court within 30 days (see Chapter 2 of course 34453B). If you fail to timely request your CDP hearing, you can request an Equivalent Hearing up to one year from the day of the lien filing. An Equivalent Hearing is the same as a CDP hearing, except you can't appeal to the Tax Court and it doesn't prohibit the IRS from levying on your assets or suspend the 10-year collection period. You can request an Equivalent Hearing at the same time you request a CDP hearing on the same Form 12153. If you win the CDP or Equivalent Hearing appeal, the lien will be withdrawn. (I.R.C. § 6320.) For more information about Collection Due Process appeals, refer to IRS Publication 1660, Collection Appeal Rights.

- **Pay in full.** If you don't have the funds, can you borrow from friends or relatives? It is better to owe just about anyone other than the IRS. The IRS must record a release within 30 days of full payment, but often the agency doesn't follow through. Call the IRS Centralized Lien Operation at 800-913-6050 to verify the release was filed, and if it wasn't, call the Taxpayer Advocate Service at 877-777-4778.
- **Request a Certificate of Discharge.** Let's say the IRS has filed a Notice of Federal Tax Lien which legally attaches to your property, usually real estate. You want to sell the property but you won't receive enough money from the sale to fully pay the tax lien. This doesn't prevent the sale. You can deliver a clear title if you get the IRS to discharge the lien in writing. If the IRS agrees, the buyers can take the property clear of the Federal Tax Lien. But, all the proceeds of the sale must go to the IRS. Your tax debt bill is reduced and the lien will remain on your record. Submit IRS Form 14135 and all required documentation.
- **Request a Subordination of Federal Tax Lien.** What if you want to refinance your mortgage but there is a Federal Tax Lien filed? Request that

the IRS subordinate its lien to the refinanced loan. If approved, your refinanced loan takes a priority position over the IRS lien. You'll need to fill out IRS Form 14134 and submit all required documentation. If you receive any amount over the refinanced amount, it will be taken by the IRS to apply to your tax bill.

- **Request Withdrawal of Notice of Federal Tax Lien.** Under a (very) few circumstances, the IRS will withdraw a Notice of Federal Tax Lien. This removes the reference of the Notice of Federal Tax Lien from your records.

Caution!

Bankruptcy doesn't wipe out a recorded tax lien. If your tax debts qualify for a discharge under any chapter of bankruptcy, the lien will remain, although your personal liability is wiped out. If you owned any real estate going into bankruptcy, it is still subject to the tax lien. The IRS could seize that property after your bankruptcy is over. Or, the more likely scenario is that the IRS would allow you to pay over the value of the property rather than seizing it. And, in some cases, the IRS never tries to enforce the lien after bankruptcy—it's hit or miss. (See a bankruptcy attorney for an analysis of your situation or call the IRS Centralized Insolvency Operation at 800-973-0424.)

When the IRS Files a Tax Lien in Error

The IRS occasionally files a tax lien notice in the public records when you don't owe anything. For example, you paid the bill but the IRS did not properly credit your account. Under the Taxpayer Bill of Rights you're entitled to a Certificate of Release stating that the lien was filed in error. Contact the IRS lien center at 800-913-6050 as soon as possible.

Getting a Tax Lien Released

The IRS must issue a formal Certificate of Release of Federal Tax Lien within 30 days after either of the following:

- The taxes are fully paid, discharged in bankruptcy, or satisfied through an Offer in Compromise.
- The lien becomes unenforceable because the statute of limitations for collections has run—usually 10 years after the tax was first assessed (I.R.C. § 6325(a)). See the prior section regarding liens filed in error. The lien eventually will become uncollectible after the 10-year statute of limitations on

collection runs. However, a tax lien on real estate “secured property” never expires.

If 30 days pass and no release has yet been issued (not uncommon), file Form 12277, Application for Withdrawal, or write or call the IRS Centralized Lien Operation, P.O. Box 145595, Stop 8420G, Cincinnati, Ohio 45250-5595; 800-913-6050. Give the date of your request and your name, Social Security number, employer identification number, address, and telephone number with the best time to reach you, and tell why the lien should be released (such as the taxes were paid, the lien was filed in error, or the statute of limitations has run). Enclose a copy of the tax lien you want released. If you paid the tax, also enclose a copy of an IRS written acknowledgment of payment, an IRS transcript showing payment, or a canceled check.

For emergencies (such as a mortgage loan closing held up by the tax lien), call the Taxpayer Advocate Service at 877-777-4778. If there is a balance due and you need quick action, be prepared to pay with a certified check, cashier’s check, or money order. Usually, the IRS will agree to accept payment out of the proceeds of the real estate escrow.

GETTING A TAX LIEN WITHDRAWN

An IRS Withdrawal of Notice of Federal Tax Lien is a little different from a Certificate of Release of Federal Tax Lien. A Withdrawal only removes the effect of the tax lien on certain property whereas the Certificate of Release extinguishes the tax lien altogether. So you might get a tax lien withdrawn by the IRS on request even though the tax liability hasn’t been satisfied in full. On application, the IRS will withdraw a lien in the following circumstances:

- The lien was filed prematurely or the IRS didn’t follow proper procedures
- You entered into an installment agreement to satisfy the tax liability and the agreement didn’t provide for a lien to be filed
- Withdrawal of the lien will facilitate the collection of the tax liability, or
- With the consent of the Taxpayer Advocate Service, the withdrawal of such notice will be in the best interest of the taxpayer and the U.S. government.