

§ 301.6324-1 Special liens for estate and gift taxes; personal liability of transferees and others.

(a) *Estate tax.* (1) A lien for estate tax attaches at the date of the decedent's death to every part of the gross estate, whether or not the property comes into possession of the duly qualified executor or administrator. The lien attaches to the extent of the tax shown to be due by the return and of any deficiency in tax found to be due upon review and audit. If the estate tax is not paid when due, then the spouse, transferee, trustee (except the trustee of an employee's trust which meets the requirements of section 401(a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, shall be personally liable for the tax to the extent of the value, at the time of the decedent's death, of the property.

(2) Unless the tax is paid in full or becomes unenforceable by reason of lapse of time, and except as otherwise provided in paragraph (c) of this section, the lien upon the entire property constituting the gross estate continues for a period of 10 years after the decedent's death, except that the lien shall be divested with respect to—

(i) The portion of the gross estate used for the payment of charges against the estate and expenses of its administration allowed by any court having jurisdiction thereof;

(ii) Property included in the gross estate under sections 2034 to 2042, inclusive, which is transferred by (or transferred by the transferee of) the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary to a purchaser or holder of a security interest. In such case a like lien attaches to all the property of the spouse, transferee, trustee, surviving tenant, person in possession, beneficiary, or transferee of any such person, except the part which is transferred to a purchaser or a holder of a security interest. See section 6323(h) (1) and (6) and the regulations thereunder,

respectively, for the definitions of "security interest" and "purchaser";

(iii) The portion of the gross estate (or any interest therein) which has been transferred to a purchaser or holder of a security interest if payment is made of the full amount of tax determined by the district director pursuant to a request of the fiduciary (executor, in the case of the estate of a decedent dying before January 1, 1971) for discharge from personal liability as authorized by section 2204 (relating to discharge of fiduciary from personal liability) but there is substituted a like lien upon the consideration received from the purchaser or holder of a security interest; and

(iv) Property as to which the district director has issued a certificate releasing a lien under section 6325(a) and the regulations thereunder.

(b) *Lien for gift tax.* Except as provided in paragraph (c) of this section, a lien attaches upon all gifts made during the period for which the return was filed (see § 25.6019-1 of this chapter) for the amount of tax imposed upon the gifts made during such period. The lien extends for a period of 10 years from the time the gifts are made, unless the tax is sooner paid in full or becomes unenforceable by reason of lapse of time. If the tax is not paid when due, the donee of any gift becomes personally liable for the tax to the extent of the value of his gift. Any part of the property comprised in the gift transferred by the donee (or by a transferee of the donee) to a purchaser or holder of a security interest is divested of the lien, but a like lien, to the extent of the value of the gift, attaches to all the property (including after-acquired property) of the donee (or the transferee) except any part transferred to a purchaser or holder of a security interest. See section 6323(h) (1) and (6) and the regulations thereunder, respectively, for the definitions of "security interest" and "purchaser."

(c) *Exceptions.* (1) A lien described in either paragraph (a) or paragraph (b) of this section is not valid against a mechanic's lienor (as defined in section 6323(h) (2) and the regulations thereunder) and, subject to the conditions set forth under section 6323(b) (relating to protection for certain interests even

though notice filed), is not valid with respect to any lien or interest described in section 6323(b) and the regulations thereunder.

(2) If a lien described in either paragraph (a) or paragraph (b) of this section is not valid against a lien or security interest (as defined in section 6323(h) (1) and the regulations thereunder), the priority of the lien or security interest extends to any item described in section 6323(e) (relating to priority of interest and expenses) to the extent that, under local law, the item has the same priority as the lien or security interest to which it relates.

(d) *Application of lien imposed by section 6321.* The general lien under section 6321 and the special lien under subsection (a) or (b) of section 6324 for the estate or gift tax are not exclusive of each other, but are cumulative. Each lien will arise when the conditions precedent to the creation of such lien are met and will continue in accordance with the provisions applicable to the particular lien. Thus, the special lien may exist without the general lien being in force, or the general lien may exist without the special lien being in force, or the general lien and the special lien may exist simultaneously, depending upon the facts and pertinent statutory provisions applicable to the respective liens.

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§ 301.6324A-1 Election of and agreement to special lien for estate tax deferred under section 6166 or 6166A.

(a) *Election of lien.* If payment of a portion of the estate tax is deferred under section 6166 or 6166A (as in effect prior to its repeal by Economic Recovery Tax Act of 1981), an executor of a decedent's estate who seeks to be discharged from personal liability may elect a lien in favor of the United States in lieu of the bonds required by sections 2204 and 6165. This election is made by applying to the Internal Revenue Service office where the estate tax return is filed at any time prior to payment of the full amount of estate tax and interest due. The application is to be a notice of election requesting the special lien provided by section 6324A and is to be accompanied by the

agreement described in paragraph (b) (1) of this section.

(b) *Agreement to lien—(1) In general.* A lien under this section will not arise unless all parties having any interest in all property designated in the notice of election as property to which the lien is to attach sign an agreement in which they consent to the creation of the lien. (Property so designated need not be property included in the decedent's estate.) The agreement is to be attached to the notice in which the lien under section 6324A is elected. It must be in a form that is binding on all parties having any interest on the property and must contain the following:

(i) The decedent's name and taxpayer identification number as they appear on the estate tax return;

(ii) The amount of the lien;

(iii) The fair market value of the property to be subject to the lien as of the date of the decedent's death and the date of the election under this section;

(iv) The amount, as of the date of the decedent's death and the date of the election, of all encumbrances on the property, including mortgages and any lien under section 6324B;

(v) A clear description of the property which is to be subject to the lien, and in the case of property other than land, a statement of its estimated remaining useful life; and

(vi) Designation of an agent (including the agent's address) for the beneficiaries of the estate and the consenting parties to the lien for all dealings with the Internal Revenue Service on matters arising under section 6166 or 6166A (as in effect prior to its repeal by Economic Recovery Tax Act of 1981), or under section 6324A.

(2) *Persons having an interest in designated property.* An interest in property is any interest which as of the date of the election can be asserted under applicable local law so as to affect the disposition of any property designated in the agreement required under this section. Any person in being at the date of the election who has any such interest in the property, whether present or future, or vested or contingent, must enter into the agreement.