

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.

[T.D. 7238, 37 FR 28740, Dec. 29, 1972]

**§ 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.

Included among such persons are owners of remainder and executory interests, the holders of general or special powers of appointment, beneficiaries of a gift over in default of exercise of any such power, co-tenants, joint tenants, and holders of other undivided interests when the decedent held a joint or undivided interest in the property, and trustees of trusts holding any interest in the property. An heir who has the power under local law to caveat (challenge) a will and thereby affect disposition of the property is not, however, considered to be a person with an interest in property under section 6324A solely by reason of that right. Likewise, creditors of an estate are not such persons solely by reason of their status as creditors.

(3) *Consent on behalf of interested party.* If any person required to enter into the agreement provided for by this paragraph either desires that an agent act for him or her or cannot legally bind himself or herself due to infancy or other incompetency, a representative authorized under local law to bind the interested party in an agreement of this nature is permitted to sign the agreement on his or her behalf.

(4) *Duties of agent designated in agreement.* The Internal Revenue Service will contact the agent designated in the agreement under paragraph (b)(1) on all matters relating to continued qualification of the estate under section 6166 or 6166A (as in effect prior to its repeal by Economic Recovery Tax Act of 1981) and on all matters relating to the special lien arising under section 6324A. It is the duty of the agent as attorney-in-fact for the parties with interests in the property subject to the lien under section 6324A to furnish the Service with any requested information and to notify the Service of any event giving rise to acceleration of the deferred amount of tax.

(c) *Partial substitution of bond for lien.* If the amount of unpaid estate tax plus interest exceeds the value (determined for purposes of section 6324A(b)(2)) of property listed in the agreement under paragraph (b) of this section, the Internal Revenue Service may condition the release from personal liability upon the executor's submitting an agreement listing additional property or fur-

nishing an acceptable bond in the amount of such excess.

(d) *Relation of sections 6324A and 2204.* The lien under section 6324A is deemed to be a bond under section 2204 for purposes of determining an executor's release from personal liability. If an election has been made under section 6324A, the executor may not substitute a bond pursuant to section 2204 in lieu of that lien. If a bond has been supplied under section 2204, however, the executor may, by filing a proper notice of election and agreement, substitute a lien under section 6324A for any part or all of such bond.

(e) *Relation of sections 6324A and 6324.* If there is a lien under this section on any property with respect to an estate, that lien is in lieu of the lien provided by section 6324 on such property with respect to the same estate.

(f) *Section 6324A lien to be in lieu of bond under section 6165.* The lien under section 6324A is in lieu of any bond otherwise required under section 6165 with respect to tax to be paid in installments under section 6166 or section 6166A (as in effect prior to its repeal by Economic Recovery Tax Act of 1981).

(g) *Special rule for estates for which elections under section 6324A are made on or before August 30, 1980.* If a lien is elected under section 6324A on or before August 30, 1980, the original election may be revoked. To revoke an election, the executor must file a notice of revocation containing the decedent's name, date of death, and taxpayer identification number with the Internal Revenue Service office where the original estate tax return for the decedent was filed. The notice must be filed on or before January 31, 1981 (or if earlier, the date on which the period of limitation for assessment expires).

(Approved by the Office of Management and Budget under control number 1545-0754)

(Secs. 2032A and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1856, 68A Stat. 917; 26 U.S.C. 2032A, 7805); secs. 6324A(a) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1808, 68A Stat. 917; 26 U.S.C. 6324A(a), 7805))

[T.D. 7710, 45 FR 50747, July 31, 1980, as amended by T.D. 7941, 49 FR 4469, Feb. 7, 1984]