

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.

[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 furnishing 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]

**§ 301.6325-1 Release of lien or discharge of property.**

(a) *Release of lien—(1) Liability satisfied or unenforceable.* Any district director may issue a certificate of release of a lien imposed with respect to any internal revenue tax, whenever he finds that the entire liability for the tax has been satisfied or has become unenforceable as a matter of law (and not merely uncollectible or unenforceable as a matter of fact). Tax liabilities frequently are unenforceable in fact for the time being, due to the temporary nonpossession by the taxpayer of discoverable property or property rights. In all cases the liability for the payment of the tax continues until satisfaction of the tax in full or until the expiration of the statutory period for collection, including such extension of the period for collection as may be agreed upon in writing by the taxpayer and the district director.

(2) *Bond accepted.* The district director may, in his discretion, issue a certificate of release of any tax lien if he

is furnished and accepts a bond that is conditioned upon the payment of the amount assessed (together with all interest in respect thereof), within the time agreed upon in the bond, but not later than 6 months before the expiration of the statutory period for collection, including any period for collection agreed upon in writing by the district director and the taxpayer. For provisions relating to bonds, see sections 7101 and 7102 and §§ 301.7101-1 and 301.7102-1.

(b) *Discharge of specific property from the lien—(1) Property double the amount of the liability.* (i) The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under chapter 64 of the Code if he determines that the fair market value of that part of the property remaining subject to the lien is at least double the sum of the amount of the unsatisfied liability secured by the lien and of the amount of all other liens upon the property which have priority over the lien. In general, fair market value is that amount which one ready and willing but not compelled to buy would pay to another ready and willing but not compelled to sell the property.

(ii) The following example illustrates a case in which a certificate of discharge may not be given under this subparagraph:

*Example.* The Federal tax liability secured by a lien is \$1,000. The fair market value of all property which after the discharge will continue to be subject to the Federal tax lien is \$10,000. There is a prior mortgage on the property of \$5,000, including interest, and the property is subject to a prior lien of \$100 for real estate taxes. Accordingly, the taxpayer's equity in the property over and above the amount of the mortgage and real estate taxes is \$4,900, or nearly five times the amount required to pay the assessed tax on which the Federal tax lien is based. Nevertheless, a discharge under this subparagraph is not permissible. In the illustration, the sum of the amount of the Federal tax liability (\$1,000) and of the amount of the prior mortgage and the lien for real estate taxes (\$5,000+\$100=\$5,100) is \$6,100. Double this sum is \$12,200, but the fair market value of the remaining property is only \$10,000. Hence, a discharge of the property is not permissible under this subparagraph, since the Code requires that the fair market value of the remaining property be at least double the sum