

qualifies for purposes of the provisions of this paragraph (e)(2) if, immediately prior to becoming a new member, either—

(A) It was the common parent of a consolidated group; or

(B) It was not required to join in the filing of a consolidated return.

(iv) *Examples.* The provisions of this paragraph (e)(2) may be illustrated by the following examples:

*Example 1.* Individual A owns 100 percent of the stock of X, a corporation that is not a member of a consolidated group and files separate tax returns on a calendar year basis. On January 31 of year 1, X becomes a member of the Y consolidated group, which also files returns on a calendar year basis. X is a qualified new member as defined in paragraph (e)(2)(iii)(B) of this section because, immediately prior to becoming a new member of the Y consolidated group, X was not required to join in the filing of a consolidated return. As a result of its becoming a new member of Group Y, X's separate return for the short taxable year (January 1 of year 1 through January 31 of year 1) is due September 15 of year 2 (with extensions). See § 1.1502-76(c). Group Y's consolidated return is also due September 15 of year 2 (with extensions). See § 1.1502-76(c). Solely for the purpose of complying with the twelve-month requirement for making an application for a tentative carryback adjustment under section 6411(a), X's taxable year for the separate return year is treated as ending on December 31 of year 1. X's application for a tentative carryback adjustment is therefore due on or before December 31 of year 2.

*Example 2.* Assume the same facts as in *Example 1* except that immediately prior to becoming a new member of Group Y, X was a member of the Z consolidated group. Because X was required to join in the filing of the consolidated return for Group Z, X is not a qualified new member as defined in paragraph (e)(2)(iii) of this section. X's items for the one-month period will be included in the consolidated return for Group Z. Group Z's application for a tentative carryback adjustment, if any, continues to be due within 12 months of the end of its taxable year, which is not affected by X's change in status as a new member of Group Y.

(v) *Effective date.* The provisions of this paragraph (e)(2) apply for applications by new members of consolidated groups for tentative carryback adjustments resulting from net operating losses, net capital losses, or unused business credits arising in separate return years of new members that begin on or after January 1, 2001.

**§ 1.1502-78T [Removed]**

**Par. 3.** Section 1.1502-78T is removed.

Approved: June 13, 2001.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

**Mark A. Weinberger,**

*Assistant Secretary of the Treasury.*

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 301**

[TD 8951]

**RIN 1545-AV00**

**Withdrawal of Notice of Federal Tax Lien in Certain Circumstances**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulation.

**SUMMARY:** This document contains final regulations relating to the withdrawal of notices of federal tax liens in certain circumstances. The final regulations reflect changes made to section 6323 of the Internal Revenue Code of 1986 by the Taxpayer Bill of Rights 2. The final regulations affect all taxpayers seeking withdrawals of notices of federal tax liens.

**EFFECTIVE DATE:** June 22, 2001.

**FOR FURTHER INFORMATION CONTACT:** Kevin B. Connelly, (202) 622-3630 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to the withdrawal of notices of federal tax liens under section 6323 of the Internal Revenue Code (Code). Section 501(a) of the Taxpayer Bill of Rights 2 (TBOR2), Public Law 104-168, 110 Stat. 1452 (1996), amended section 6323 to authorize the Secretary to withdraw a notice of federal tax lien in certain limited circumstances. Section 501(a) also requires the Secretary to notify credit reporting agencies, financial institutions and creditors of the withdrawal upon the written request of the taxpayer. On June 30, 1999, a notice of proposed rulemaking reflecting these changes was published in the **Federal Register** (64 FR 35102). Several parties commented on the notice of proposed rulemaking and a hearing was held on November 30, 1999. The final regulations are adopted with minor changes.

**Explanation of Provisions**

Section 501(a) of TBOR2 amended section 6323 of the Code by authorizing the Secretary to withdraw a notice of federal tax lien under certain conditions and providing that upon written request of the taxpayer the Secretary will notify any credit reporting agency and any financial institution or creditor identified by the taxpayer. These regulations implement section 501(a).

The proposed regulations provided that the district director had the authority to withdraw a notice of federal tax lien if the district director determined that one of the four conditions enumerated in paragraph (b) of the regulations existed. Because of the reorganization of the Internal Revenue Service (IRS), which eliminated the district director position, the final regulations provide that the Commissioner or his delegate (Commissioner) may withdraw a notice of federal tax lien under the proper conditions.

The notice of federal tax lien is withdrawn by filing a notice of withdrawal in the office in which the notice of federal tax lien is filed and providing the taxpayer with a copy of the notice. Following the withdrawal of a notice of federal tax lien, chapter 64 of subtitle F, relating to collection, is applied as if the IRS had never filed a notice of federal tax lien. The withdrawal of a notice of federal tax lien does not affect the underlying tax lien. The withdrawal simply relinquishes any lien priority the IRS had obtained under section 6323 of the Code when the IRS filed the notice being withdrawn.

Paragraph (b) of the regulations provides that the Commissioner has the authority to withdraw a notice of federal tax lien if one of the following conditions exists: (1) The filing of the notice of federal tax lien was premature or otherwise not in accordance with the administrative procedures of the Secretary; (2) the taxpayer has entered into an agreement under section 6159 to satisfy the liability for which the lien was imposed by means of installment payments, unless the agreement by its terms provides that the notice will not be withdrawn; (3) the withdrawal of notice will facilitate collection of the tax liability for which the lien was imposed; or (4) the withdrawal of notice is in the best interests of the taxpayer and the United States.

A new example has been added (*Example 1*) that illustrates when the Commissioner may withdraw a notice of federal tax lien under paragraph (b)(1) because the IRS failed to follow administrative procedures when filing

notice. Each example now refers to just one of the four withdrawal criteria under paragraph (b)(1). In addition, the examples have been renumbered to correspond to the numbers of the criteria in paragraph (b) that the examples illustrate.

One of the commenting parties recommended that the final regulations define the terms "facilitate collection" and "best interests of the taxpayer and the United States," found in paragraphs (b)(3) and (b)(4). The final regulations purposely do not define these terms. Congress intended "to give the IRS discretion to withdraw a notice of lien" in these circumstances. H.R. Rep. No. 506, 104th Cong., 2d Sess. 32 (Mar. 28, 1996). The circumstances under which a lien may be withdrawn are inherently factual. Further refinement of the statutory terms may unnecessarily limit the IRS's ability to withdraw a notice where appropriate.

A commenting party asked the IRS to add a paragraph providing that, if the National Taxpayer Advocate (or his delegate) determines that a taxpayer is suffering or about to suffer a significant hardship, the National Taxpayer Advocate (or his delegate) may, in appropriate cases, issue a taxpayer assistance order (TAO) requiring the Commissioner to withdraw a notice of federal tax lien. This issue, concerning whether the National Taxpayer Advocate (or his delegate) may issue a TAO ordering the withdrawal of a notice, involves an interpretation of section 7811, and the authority granted to the National Taxpayer Advocate, which are not pertinent to this regulation.

The final regulations provide that a person may request the withdrawal of a notice of federal tax lien by writing to the Commissioner. A written request for withdrawal must include: (1) The name, current address, and taxpayer identification number of the person requesting withdrawal of the notice of federal tax lien; (2) a copy of the notice of federal tax lien affecting the property, if available; (3) the grounds upon which the withdrawal of notice of federal tax lien is being requested; (4) a list of the names and addresses of any credit reporting agency and any financial institution or creditor that the taxpayer wishes the Commissioner to notify of the withdrawal of notice of federal tax lien; and (5) a request to disclose information relating to the withdrawal to the persons or entities listed.

The Commissioner must consider each taxpayer's request for withdrawal of notice of federal tax lien and determine whether any of the conditions authorizing withdrawal exist

and whether to issue a withdrawal. The Commissioner also may issue a notice of withdrawal based on information received from a source other than the taxpayer.

If the Commissioner grants a request for the withdrawal of notice of federal tax lien, the taxpayer may supplement the list of credit reporting agencies and financial institutions or creditors provided with the request for withdrawal. If no list was submitted with the request for withdrawal, a list may be submitted after the notice is withdrawn. A request to supplement the list must be sent in writing to the Commissioner. The request must contain: (1) The name, current address, and taxpayer identification number of the person requesting the notification; (2) a copy of the notice of withdrawal; (3) the names and addresses of the persons or entities the taxpayer wishes the IRS to contact; and (4) a request to disclose the withdrawal to the persons or entities listed.

A commenting party suggested that the IRS send notification to credit agencies and financial institutions by certified mail. Certified mail generally is required where there is a statute of limitations dependent on service. This is not the case with respect to notification under section 6323(j)(2).

A commenting party also requested that language be added to the regulations stating that, upon receipt of notification that the IRS has withdrawn a notice of federal tax lien, a credit agency will be immune from any damage claim a taxpayer may have against it for its handling of the notice if the credit agency acts within reasonable time after receiving notice. The statute simply instructs the IRS to notify credit agencies of a notice of withdrawal upon request of the taxpayer. The IRS does not have the statutory authority to shield a credit agency from a taxpayer's claim for damages due to how the credit agency handled the notice.

The regulations will apply on or after June 22, 2001, with respect to withdrawals of any notice of federal tax lien occurring after such date regardless of when the notice was filed.

#### Special Analyses

It has been determined that this final regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the collection of information in the regulations is

exempt pursuant to 5 U.S.C. 601(7)(B), the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

#### Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of Associate Chief Counsel (Procedure and Administration), Collection Bankruptcy & Summons Division, CC:PA:CBS, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

#### Final Amendments to the Regulations

Accordingly, the IRS amends 26 CFR part 301 as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 2.** Section 301.6323(j)-1 is added to read as follows:

#### § 301.6323(j)-1 Withdrawal of notice of federal tax lien in certain circumstances.

(a) *In general.* The Commissioner or his delegate (Commissioner) may withdraw a notice of federal tax lien filed under this section, if the Commissioner determines that any of the conditions in paragraph (b) of this section exist. A notice of federal tax lien is withdrawn by the filing by the Commissioner of a notice of withdrawal in the office in which the notice of federal tax lien is filed. If a notice of withdrawal is filed, chapter 64 of subtitle F, relating to collection, will be applied as if the withdrawn notice had never been filed. A copy of the notice of withdrawal will be provided to the taxpayer. Upon written request by a taxpayer with respect to whom a notice of federal tax lien has been or will be withdrawn, the Commissioner will promptly make reasonable efforts to notify any credit reporting agency and any financial institution or creditor identified by the taxpayer of the withdrawal of such notice. The withdrawal of a notice of federal tax lien

will not affect the underlying federal tax lien.

(b) *Conditions authorizing withdrawal.* The Commissioner may authorize the withdrawal of a notice of federal tax lien upon determining that one of the following conditions exists:

(1) *Premature or not in accordance with administrative procedures.* The filing of the notice of federal tax lien was premature or otherwise not in accordance with the administrative procedures of the Secretary.

(2) *Installment agreement.* The taxpayer has entered into an agreement under section 6159 to satisfy the liability for which the lien was imposed by means of installment payments. Entry into an installment agreement may not, however, be the basis for withdrawal of a notice of lien if the installment agreement specifically provides that a notice of federal tax lien will not be withdrawn.

(3) *Facilitate collection.* The withdrawal of the notice of federal tax lien will facilitate the collection of the tax liability for which the lien was imposed.

(4) *Best interests of the United States and the taxpayer—(i) In general.* The taxpayer or the National Taxpayer Advocate (or his delegate) has consented to the withdrawal of the notice of federal tax lien, and withdrawal of the notice would be in the best interest of the taxpayer, as determined by the taxpayer or the National Taxpayer Advocate (or his delegate), and in the best interest of the United States, as determined by the Commissioner.

(ii) *Best interest of the taxpayer.* When a taxpayer requests the withdrawal of notice of federal tax lien based on the best interests of the United States and the taxpayer, the National Taxpayer Advocate (or his delegate) generally will determine whether the withdrawal of the notice of federal tax lien is in the best interest of the taxpayer. If, however, a taxpayer requests the Commissioner to withdraw a notice and has not specifically requested the National Taxpayer Advocate (or his delegate) to determine the taxpayer's best interest, a finding by the Commissioner that the withdrawal of notice is in the best interest of the taxpayer will be sufficient to support withdrawal. If the Commissioner decides independently of a request by the taxpayer to withdraw a notice of federal tax lien, the taxpayer or the National Taxpayer Advocate (or his delegate) must consent to the withdrawal.

(5) *Examples.* The following examples illustrate the provisions of this paragraph (b):

*Example 1.* A owes \$1,000 in Federal income taxes. The IRS files a notice of federal tax lien to secure A's tax liability. However, the IRS failed to follow procedure provided by the Internal Revenue Manual (but not required by statute) with regard to managerial approval prior to the filing of a notice of federal tax lien. The Commissioner may withdraw the notice of federal tax lien because the filing of the notice was not in accordance with the Secretary's administrative procedures.

*Example 2.* A owes \$1,000 in federal income taxes. A enters into an agreement to pay the outstanding federal income tax liability in installments. The agreement provides that a notice of federal tax lien may be filed if the taxpayer defaults. A timely pays the installments each month and has not defaulted in any way. Eleven months after entering into the installment agreement, the Internal Revenue Service files a notice of federal tax lien. Noting that there has been no default, the taxpayer asks the Internal Revenue Service to withdraw the notice of federal tax lien. In this situation, the Commissioner may withdraw the notice of federal tax lien because the taxpayer has entered into an installment agreement.

*Example 3.* A is an employee of X Corporation. A notice of federal tax lien has been filed to secure an outstanding tax liability against A. A, who has no assets and no other secured creditors, has agreed to pay the balance of tax due through payroll deductions at a rate higher than the Internal Revenue Service could obtain through a wage levy in order to get the notice of federal tax lien withdrawn. X Corporation has agreed to allow A to enter into a payroll deduction agreement. In this situation, the Commissioner may withdraw the notice of federal tax lien to facilitate collection.

*Example 4.* A is owner of a farm machinery dealership against whom a notice of federal tax lien has been filed to secure an outstanding tax liability. A currently is paying the tax liability by an installment agreement. X Corporation has agreed to provide A with 100 tractors to increase A's inventory if the notice of federal tax lien is withdrawn. A asks the Internal Revenue Service to withdraw the notice of federal tax lien. The Commissioner determines that the larger inventory would enable A to generate additional tractor sales. Increased sales would enable A to increase the amount of installment payments and, consequently, reduce the amount of time needed to satisfy the liability. A, who has no other assets or secured creditors, has agreed to modify the installment agreement. The Commissioner may withdraw the notice of federal tax lien because the withdrawal is in the best interest of the taxpayer and the United States.

(c) *Determinations by the Commissioner.* The Commissioner must determine whether any of the conditions authorizing the withdrawal of a notice of federal tax lien exist if a taxpayer submits a request for

withdrawal in accordance with paragraph (d) of this section. The Commissioner may also make this determination independent of a request from the taxpayer based on information received from a source other than the taxpayer. If the Commissioner determines that conditions authorizing the withdrawal are not present, the Commissioner may not authorize the withdrawal. If the Commissioner determines conditions for withdrawal are present, the Commissioner may (but is not required to) authorize the withdrawal.

(d) *Procedures for request for withdrawal—(1) Manner.* A request for the withdrawal of a notice of federal tax lien must be made in writing in accordance with procedures prescribed by the Commissioner.

(2) *Form.* The written request will include the following information and documents—

(i) Name, current address, and taxpayer identification number of the person requesting the withdrawal of notice of federal tax lien;

(ii) A copy of the notice of federal tax lien affecting the taxpayer's property, if available;

(iii) The grounds upon which the withdrawal of notice of federal tax lien is being requested;

(iv) A list of the names and addresses of any credit reporting agency and any financial institution or creditor that the taxpayer wishes the Commissioner to notify of the withdrawal of notice of federal tax lien; and

(v) A request to disclose the withdrawal of notice of federal tax lien to the persons listed in paragraph (d)(2)(iv) of this section.

(e) *Supplemental list of credit agencies, financial institutions, and creditors—(1) In general.* If the Commissioner grants a withdrawal of notice of federal tax lien, the taxpayer may supplement the list in paragraph (d)(2)(iv) of this section. If no list was provided in the request to withdraw the notice of federal tax lien, the list in paragraph (d)(2)(iv) of this section and the request for notification in paragraph (d)(2)(v) of this section may be submitted after the notice is withdrawn.

(2) *Manner.* A request to supplement the list of any credit agencies and any financial institutions or creditors that the taxpayer wishes the Commissioner to notify of the withdrawal of notice of federal tax lien must be made in writing in accordance with procedures prescribed by the Commissioner.

(3) *Form.* The request must include the following information and documents—

(i) Name, current address, and taxpayer identification number of the taxpayer requesting the notification of any credit agency or any financial institution or creditor of the withdrawal of notice of federal tax lien;

(ii) A copy of the notice of withdrawal, if available;

(iii) A supplemental list, identified as such, of the names and addresses of any credit reporting agency and any financial institution or creditor that the taxpayer wishes the Commissioner to notify of the withdrawal of notice of federal tax lien; and

(iv) A request to disclose the withdrawal of notice of federal tax lien to the persons listed in paragraph (e)(3)(iii) of this section.

(f) *Effective date.* This section applies on or after June 22, 2001, with respect to a withdrawal of any notice of federal tax lien.

Approved: June 13, 2001.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

**Mark A. Weinberger,**

*Assistant Secretary of the Treasury.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 100

[CGD05-01-023]

RIN 2115-AE46

#### Special Local Regulations for Marine Events; Nanticoke River, Sharptown, Maryland

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations for the Sharptown Outboard Regatta, a marine event to be held on the waters of the Nanticoke River between Maryland S.R. 313 bridge at Sharptown, Maryland and Nanticoke River Light 43 (LLN-24175). These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Nanticoke River during the event.

**DATES:** This rule is effective from 11 a.m. eastern time on June 23, 2001 until 6 p.m. eastern time on June 24, 2001.

**ADDRESSES:** You may mail comments and related material to Commander (Aoax), Fifth Coast Guard District, 431

Crawford Street, Portsmouth, Virginia 23704-5004, or deliver them to the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-01-023 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** S. L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, telephone number (757) 398-6204.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received the request for special local regulations on May 9, 2001. We were notified of the need for special local regulations with insufficient time to publish a NPRM, allow for comments, and publish a final rule prior to the event on June 23, 2001.

##### Background and Purpose

The North-South Racing Association will sponsor the Sharptown Outboard Regatta on June 23 and June 24, 2001. The event will consist of 50 hydroplanes and runabouts conducting a high speed competitive race on the waters of the Nanticoke River between Maryland S.R. 313 bridge at Sharptown, Maryland and Nanticoke River Light 43 (LLN-24175). A fleet of spectator vessels is anticipated for the event. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

##### Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Nanticoke River. The regulated area will include waters of the Nanticoke River between Maryland S.R. 313 bridge at Sharptown, Maryland and Nanticoke River Light 43 (LLN-24175). The temporary special local regulations will be enforced from 11 a. m. to 6 p.m. eastern time on June

23 and June 24, 2001, and will restrict general navigation in the regulated area during the event. Except for participants in the Sharptown Outboard Regatta and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

##### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Nanticoke River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Nanticoke River during the event.

Although this regulation prevents traffic from transiting a portion of the Nanticoke River during the event, the effect of this regulation will not be significant because of the limited