

adopting these rules as final regulations in the **Federal Register**.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[REG-141998-06]

**RIN 1545-BG13**

#### Withdrawal of Regulations Under Old Section 6323(b)(10)

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations related to the validity and priority of the Federal tax lien against certain persons under section 6323 of the Internal Revenue Code (the Code). The proposed regulations update the corresponding Treasury Regulations in various respects. The proposed regulations reflect the adjustment within section 6323(b) of certain dollar amounts as well as the amendment of section 6323(b)(10) by the IRS Restructuring and Reform Act of 1998 (RRA 1998). In addition, the proposed regulations amend the existing regulations under section 6323(c), (g), and (h) to reflect that a notice of Federal tax lien (NFTL) is not treated as meeting the filing requirements until it is both filed and indexed in the office designated by the state (in the case of real property located in a state where a deed is not valid against a purchaser until the filing of such deed has been entered and recorded in the public index); the lien will be extinguished if an NFTL contains a certificate of release and the NFTL is not timely refiled; and current law provides the IRS with a 10-year period to collect an assessed tax. The proposed regulations also make changes to the existing regulations under section 6323(f) to clarify the IRS's authority to file NFTLs electronically. Finally, the proposed regulations make incidental changes throughout the existing regulations under section 6323 to make the dates in the examples more contemporaneous with the present and to remove language deemed no longer necessary.

**DATES:** Written or electronic comments and requests for a public hearing must be received by *June 16, 2008*.

**ADDRESSES:** Send submissions to CC:PA:LPD:PR (REG-141998-06), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-141998-06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS-141998-06).

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Debra A. Kohn at (202) 622-7985; concerning submissions of comments and the hearing, Regina Johnson at (202) 622-7180 (not toll-free numbers).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6323 of the Code. If any person liable for tax neglects or refuses to pay after demand, the amount of that tax is a lien in favor of the United States against all property and rights to property of such person under section 6321. Section 6323 provides that a Federal tax lien is only valid against certain persons if an NFTL is filed and addresses generally the validity and priority of the Federal tax lien against such persons. Section 6323(b) and (c) addresses the protection of certain interests even though an NFTL has been filed. Section 6323(f) prescribes the place for filing and the form of an NFTL. Section 6323(g) addresses the refile of an NFTL. Section 6323(h) contains definitions of certain terms used throughout section 6323.

Since 1976, there have been numerous amendments to section 6323 that are not reflected in the existing regulations. Section 6323(b)(10) has been amended by RRA 1998. In addition, several subsections of section 6323(b) have been amended to increase the dollar amounts these sections reference. Also, section 6323(f)(4) was amended by the Revenue Act of 1978 to provide that an NFTL does not meet the filing requirements with respect to real property until the filing is entered and recorded in a public index maintained by the state if the laws of the state provide that a deed is not valid against a purchaser unless it is recorded in a public index. Moreover, section 6502, the statute that governs the period the

IRS has to take collection action (referenced in various places throughout § 301.6323(g)-1(c)), was amended by the Revenue Act of 1990 to change the period from six years to 10 years.

There have also been several changes to IRS practice that are not reflected in the existing regulations. Section 301.6323(f)-1(d)(2) of the existing regulations provides that an NFTL may be filed electronically if the state in which it is being filed permits electronic filing. Whether a state "permits" electronic filing of NFTLs has been subject to varying interpretations, thus casting doubt on the validity of NFTLs filed electronically in jurisdictions that do not specifically provide for electronic filing. However, the requirements for proper filing of liens are a matter of Federal, not state, law. *United States v. Union Cent. Life Ins. Co.*, 368 U.S. 291, 82 S. Ct. 349, 7 L. Ed. 2d 294 (1961). Thus, the IRS already possesses the authority to dictate the form and content of its NFTLs. The proposed regulations remove the "permits" language so that they correctly reflect the IRS's authority to file NFTLs electronically.

Section 301.6323(g)-1(a)(3) and (4) of the existing regulations states that the IRS may refile an NFTL once the filing period has elapsed and that failure to refile within the specified period does not affect the existence of the lien. The existing regulations also provide that failure to refile during the specified period does not affect the NFTL with respect to property that is the subject matter of a suit or that was levied upon prior to the expiration of the required refiling period. These provisions concerning the effect of a failure to refile are, to some extent, inconsistent with current IRS practice. Most filed NFTLs now contain a certificate of release that automatically releases the lien as of the date the NFTL prescribes, which is the date at the end of the required refiling period. Therefore, if the IRS does not refile an NFTL within the specified period, the certificate of release contained in the NFTL extinguishes the lien. The proposed regulations update the regulations under section 6323 to reflect these changes in IRS practice.

The Code currently provides a 10-year period for instituting a proceeding in court or serving a levy to collect an assessed tax liability, while § 301.6323(g)-1(c) of the existing regulations references the 6-year period that existed until 1990. The proposed regulations update § 301.6323(g)-1(c) to reflect this change in the law.

The proposed regulations also update the regulations under section 6323(h) to reflect changes made by the Uniform

Commercial Code (UCC). Section 9–312(a) of the UCC, as adopted by most states in 2001, now provides that a security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

The proposed regulations also make various incidental changes throughout the § 301.6323 regulations.

## Explanation of Provisions

### I. Adjustment of Dollar Amounts

Under section 6323(b) of the Code, a Federal tax lien is not valid against certain interests even though an NFTL has been filed.

Section 6323(b)(4) includes, as one such interest, certain tangible personal property purchased in a casual sale. In 1976, the purchase price of such property was required to be less than \$250. The limit of \$250 is reflected in § 301.6323(b)–1(d)(1) and in examples 1 and 3 contained in § 301.6323(b)–1(d)(3). This limit has been raised in the most recent amendment to section 6323(b)(4) to \$1,000. The statutory limit is indexed annually for inflation. After indexing, the amount for 2008 is \$1,320.

Section 6323(b)(7) protects a mechanic's lienor with respect to residential property subject to the mechanic's lien. In 1976, the protection extended to such property was limited to an amount not more than \$1,000. The limit of \$1,000 is reflected in § 301.6323(b)–1(g)(1) and in the examples contained in § 301.6323(b)–1(g)(2). This amount was raised to \$5,000 in the most recent amendment to section 6323(b)(7). The statutory limit is indexed annually for inflation. After indexing, the amount for 2008 is \$6,600. The proposed regulations update § 301.6323(b)–1(d) and (g) to make the dollar limits consistent with those applicable under the current version of section 6323(b)(4) and (7).

Section 301.6323(b)–1(d)(3), *Example 3*, references a \$500 limit on household goods exempt from levy, citing Treas. Reg. § 301.6334–1(a)(2). Section 301.6334–1(a)(2) is the regulation under I.R.C. § 6334(a)(2). The amount reflected in section 6334(a)(2) as set forth in the most recent version of the Code is \$6,250. The amounts in both section 6334(a)(2) and the corresponding regulation are indexed annually for inflation. After indexing, the applicable amount for 2008 is \$7,900. Accordingly, § 301.6323(b)–1(d)(3), *Example 3*, is amended to make the reference to the limit on household goods exempt from levy consistent with the amounts applicable in section 6334(a)(2) and § 301.6334–1(a)(2).

### II. Removal of Protection for Passbook Loans

Section 6323(b)(10) currently protects from a Federal tax lien certain institutions holding deposit-secured loans, to the extent of any loan made without actual notice or knowledge of the Federal tax lien. Prior to the enactment of RRA 1998, section 6323(b)(10) was entitled “passbook loans” and protected from a Federal tax lien an institution granting a loan without actual notice or knowledge of the Federal tax lien, if the loan was secured by an account evidenced by a passbook and if the lending institution was continuously in possession of the passbook from the time the loan was made. Section 301.6323(b)–1(j) reflects this language and, in addition, includes both a definition of “passbook” and an example of the provision's operation.

The amendment of section 6323(b)(10) renders the language in the regulations pertaining to passbook accounts obsolete. Because leaving § 301.6323(b)–1(j) in place is misleading and unnecessary in light of the amendment of section 6323(b)(10), the proposed regulations remove § 301.6323(b)–1(j).

### III. Clarification of Language Authorizing IRS To File NFTLs Electronically

Section 301.6323(f)–1(d)(2) sets forth a definition of a Form 668, the form that, when filed, serves as an NFTL. This section includes NFTLs filed by electronic or magnetic media “if a state in which [an NFTL] is filed permits a notice of Federal tax lien to be filed by the use of an electronic or magnetic medium.”

Most local recording offices now have the technological capability to accept electronically-filed NFTLs. The proposed regulations amend § 301.6323(f)–1(d)(2) to provide that a Form 668 may be filed either in paper form or electronically. In addition, the proposed regulations specifically define transmission by fax and e-mail as electronic, as opposed to paper, filings. The regulations as amended reflect the IRS's authority to file NFTLs electronically in all situations and allow the IRS to work with local jurisdictions to receive electronically-filed NFTLs if they have the capacity to do so without obtaining permission from the state.

### IV. Revision of Language on Late Refiling of NFTLs

Section 301.6323(g)–1(a) sets forth general principles pertaining to refileing NFTLs. Section 301.6323(g)–1(a)(1) provides in part that if two or more

NFTLs are filed with respect to a particular tax assessment, the failure to refile during the specified period in respect to one of the notices does not affect the effectiveness of the refileing of any other NFTL. Section 301.6323(g)–1(a)(3) states in part that the failure to refile an NFTL during the required filing period does not affect the effectiveness of the notice with respect to property that is the subject matter of a suit or that has been levied upon prior to the expiration of the filing period. Section 301.6323(g)–1(a)(4), as well as several of the examples in § 301.6323(g)–1(b)(3) and (c)(3), suggest that a lien may continue to exist when an NFTL is not refiled. These provisions are, to some extent, inconsistent with current IRS practice. Most NFTLs now contain a certificate of release that automatically becomes effective on the date prescribed in the NFTL, which is the date the required refileing period ends. Therefore, if an NFTL that contains a certificate of release is not timely refiled in each jurisdiction where it was originally filed, the lien self-releases and is extinguished in all jurisdictions. See I.R.C. § 6325(f)(1)(A). The extinguishment of the lien invalidates NFTLs filed in other jurisdictions and requires the IRS to file certificates of revocation, as well as new NFTLs, in each jurisdiction where NFTLs were previously filed.

The proposed regulations amend these provisions to provide that, with respect to an NFTL that includes a certificate of release, failure to timely refile the NFTL in any jurisdiction where it was originally filed extinguishes the lien, and that when an NFTL is filed in more than one jurisdiction, certificates of revocation as well as new NFTLs must be filed in all the jurisdictions for the lien to be reinstated.

### V. Revision of References to 6-Year Collection Period

Section 6502 generally affords a 10-year period for instituting a proceeding in court or serving a levy to collect a properly assessed tax. The period section 6502 allowed for taking these collection actions was, until 1990, six years. The existing regulations under section 6323(g) do not reflect this change. Instead, subsections (b) and (c) of § 301.6323(g)–1, which addresses refileing of NFTLs, imply that the applicable period for collection is six years. *Example 5* of § 301.6323(g)–1(b)(3) references the 6-year period. In addition, several references to a 6-year collection period occur in § 301.6323(g)–1(c)(1), and additional references to the 6-year period occur in

*Example 1* in § 301.6323(g)–1(c)(3). The proposed regulations update § 301.6323(g)–1(c) to reflect this change in the law.

#### VI. Incidental Updates

Various references and dates contained in the regulations under section 6323 have been rendered obsolete since 1976. The proposed regulations update various provisions throughout the § 301.6323 regulations to make dates more contemporaneous with the present and remove language deemed no longer necessary. In addition, the proposed regulations remove all references to Internal Revenue Service district directors, as these positions were eliminated by the Internal Revenue Service reorganization implemented pursuant to RRA 1998.

#### Proposed Effective Date

These regulations are proposed to generally apply with respect to any NFTL filed on or after the date that these regulations are published as final regulations in the **Federal Register**.

#### Special Analyses

It has been determined that this notice of proposed rulemaking 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 these regulations do not impose collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and

place for the public hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of these regulations is Debra A. Kohn of the Office of the Associate Chief Counsel (Procedure and Administration).

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

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

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended 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(b)–1 is amended as follows:

1. Paragraph (d)(1) is revised.
2. Paragraphs (d)(3) *Example 1* and *Example 3* are revised.
3. Paragraphs (g)(1), and (g)(2) *Example 1* through *Example 3* are revised.
4. Paragraphs (i)(1)(iii) and (j) are revised.

The revisions read as follows:

#### § 301.6323(b)–1 Protection for certain interests even though notice filed.

(d) *Personal property purchased in casual sale*—(1) *In general.* Even though a notice of lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a purchaser (as defined in § 301.6323(h)–1(f)) of household goods, personal effects, or other tangible personal property of a type described in § 301.6334–1 (which includes wearing apparel, school books, fuel, provisions, furniture, arms for personal use, livestock, and poultry (whether or not the seller is the head of a family); and books and tools of a trade, business, or profession (whether or not the trade, business, or profession of the seller)), purchased, other than for resale, in a casual sale for less than \$1,320, effective for 2008 and adjusted each year based on the rate of inflation (excluding interest and expenses described in § 301.6323(e)–1).

(3) \* \* \*

*Example 1.* A, an attorney's widow, sells a set of law books for \$200 to B, for B's own

use. Prior to the sale a notice of lien was filed with respect to A's delinquent tax liability in accordance with § 301.6323(f)–1. B has no actual notice or knowledge of the tax lien. In addition, B does not know that the sale is one of a series of sales. Because the sale is a casual sale for less than \$1,320 and involves books of a profession (tangible personal property of a type described in § 301.6334–1, irrespective of the fact that A has never engaged in the legal profession), the tax lien is not valid against B even though a notice of lien was filed prior to the time of B's purchase.

\* \* \* \* \*

*Example 3.* In an advertisement appearing in a local newspaper, G indicates that he is offering for sale a lawn mower, a used television set, a desk, a refrigerator, and certain used dining room furniture. In response to the advertisement, H purchases the dining room furniture for \$200. H does not receive any information which would impart notice of a lien, or that the sale is one of a series of sales, beyond the information contained in the advertisement. Prior to the sale a notice of lien was filed with respect to G's delinquent tax liability in accordance with § 301.6323(f)–1. Because H had no actual notice or knowledge that substantially all of G's household goods were being sold or that the sale is one of a series of sales, and because the sale is a casual sale for less than \$1,320, H does not purchase the dining room furniture subject to the lien. The household goods are of a type described in § 301.6334–1(a)(2) irrespective of whether G is the head of a family or whether all such household goods offered for sale exceed \$7,900 in value.

\* \* \* \* \*

(g) *Residential property subject to a mechanic's lien for certain repairs and improvements*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a mechanic's lienor (as defined in § 301.6323(h)–1(b)) who holds a lien for the repair or improvement of a personal residence if—

(i) The residence is occupied by the owner and contains no more than four dwelling units; and

(ii) The contract price on the prime contract with the owner for the repair or improvement (excluding interest and expenses described in § 301.6323(e)–1) is not more than \$6,600, effective for 2008 and adjusted each year based on the rate of inflation.

(iii) For purposes of paragraph (g)(1)(ii) of this section, the amounts of subcontracts under the prime contract with the owner are not to be taken into consideration for purposes of computing the \$6,600 prime contract price. It is immaterial that the notice of tax lien was filed before the contractor undertakes his work or that he knew of the lien before undertaking his work.

(2) \* \* \*

*Example 1.* A owns a building containing four apartments, one of which he occupies as his personal residence. A notice of lien which affects the building is filed in accordance with § 301.6323(f)–1. Thereafter, A enters into a contract with B in the amount of \$800, which includes labor and materials, to repair the roof of the building. B purchases roofing shingles from C for \$300. B completes the work and A fails to pay B the agreed amount. In turn, B fails to pay C for the shingles. Under local law, B and C acquire mechanic's liens on A's building. Because the contract price on the prime contract with A is not more than \$6,600 and under local law B and C acquire mechanic's liens on A's building, the liens of B and C have priority over the Federal tax lien.

*Example 2.* Assume the same facts as in *Example 1*, except that the amount of the prime contract between A and B is \$7,100. Because the amount of the prime contract with the owner, A, is in excess of \$6,600, the tax lien has priority over the entire amount of each of the mechanic's liens of B and C, even though the amount of the contract between B and C is \$300.

*Example 3.* Assume the same facts as in *Example 1*, except that A and B do not agree in advance upon the amount due under the prime contract but agree that B will perform the work for the cost of materials and labor plus 10 percent of such cost. When the work is completed, it is determined that the total amount due is \$850. Because the prime contract price is not more than \$6,600 and under local law B and C acquire mechanic's liens on A's residence, the liens of B and C have priority over the Federal tax lien.

\* \* \* \* \*

(i) \* \* \* (1) \* \* \*

(iii) After the satisfaction of a levy pursuant to section 6332(b), unless and until the Internal Revenue Service delivers to the insuring organization a notice (for example, another notice of levy, a letter, etc.) executed after the date of such satisfaction, that the lien exists.

\* \* \* \* \*

(j) *Effective/applicability date.* This section applies to any notice of Federal tax lien filed on or after the date these regulations are published as final regulations in the **Federal Register**.

**Par. 3.** Section 301.6323(c)–2 is amended as follows:

1. Paragraph (d), *Example 1* through *Example 5*, is revised.

2. Paragraph (e) is added.

The revisions and addition read as follows:

**§ 301.6323(c)–2 Protection for real property construction or improvement financing agreements.**

\* \* \* \* \*

(d) \* \* \*

*Example 1.* A, in order to finance the construction of a dwelling on a lot owned by him, mortgages the property to B. The mortgage, executed January 4, 2006, includes an agreement that B will make cash

disbursements to A as the construction progresses. On February 1, 2006, in accordance with § 301.6323(f)–1, a notice of lien is filed and recorded in the public index with respect to A's delinquent tax liability. A continues the construction, and B makes cash disbursements on June 15, 2006, and December 15, 2006. Under local law B's security interest arising by virtue of the disbursements is protected against a judgment lien arising February 1, 2006 (the date of tax lien filing) out of an unsecured obligation. Because B is the holder of a security interest coming into existence by reason of cash disbursements made pursuant to a written agreement, entered into before tax lien filing, to make cash disbursements to finance the construction of real property, and because B's security interest is protected, under local law, against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, B's security interest has priority over the tax lien.

*Example 2.* (i) C is awarded a contract for the demolition of several buildings. On March 3, 2004, C enters into a written agreement with D which provides that D will make cash disbursements to finance the demolition and also provides that repayment of the disbursements is secured by any sums due C under the contract. On April 1, 2004, in accordance with § 301.6323(f)–1, a notice of lien is filed with respect to C's delinquent tax liability. With actual notice of the tax lien, D makes cash disbursements to C on August 13, September 13, and October 13, 2004. Under local law D's security interest in the proceeds of the contract with respect to the disbursements is entitled to priority over a judgment lien arising on April 1, 2004 (the date of tax lien filing) out of an unsecured obligation.

(ii) Because D's security interest arose by reason of disbursements made pursuant to a written agreement, entered into before tax lien filing, to make cash disbursements to finance a contract to demolish real property, and because D's security interest is valid under local law against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to D's security interest in the proceeds of the demolition contract.

*Example 3.* Assume the same facts as in *Example 2* and, in addition, assume that, as further security for the cash disbursements, the March 3, 2004, agreement also provides for a security interest in all of C's demolition equipment. Because the protection of the security interest arising from the disbursements made after tax lien filing under the agreement is limited under section 6323(c)(3) to the proceeds of the demolition contract and because, under the circumstances, the security interest in the equipment is not otherwise protected under section 6323, the tax lien will have priority over D's security interest in the equipment.

*Example 4.* (i) On January 3, 2006, F and G enter into a written agreement, whereby F agrees to provide G with cash disbursements, seed, fertilizer, and insecticides as needed by G, in order to finance the raising and harvesting of a crop on a farm owned by G. Under the terms of the agreement F is to have a security interest in the crop, the farm, and

all other property then owned or thereafter acquired by G. In accordance with § 301.6323(f)–1, on January 10, 2006, a notice of lien is filed and recorded in the public index with respect to G's delinquent tax liability. On March 3, 2006, with actual notice of the tax lien, F makes a cash disbursement of \$5,000 to G and furnishes him seed, fertilizer, and insecticides having a value of \$10,000. Under local law F's security interest, coming into existence by reason of the cash disbursement and the furnishing of goods, has priority over a judgment lien arising January 10, 2006 (the date of tax lien filing and recording in the public index) out of an unsecured obligation.

(ii) Because F's security interest arose by reason of a disbursement (including the furnishing of goods) made under a written agreement which was entered into before tax lien filing and which constitutes an agreement to finance the raising or harvesting of a farm crop, and because F's security interest is valid under local law against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to F's security interest in the crop even though a notice of lien was filed before the security interest arose. Furthermore, because the farm is property subject to the tax lien at the time of tax lien filing, F's security interest with respect to the farm also has priority over the tax lien.

*Example 5.* Assume the same facts as in *Example 4* and in addition that on October 2, 2006, G acquires several tractors to which F's security interest attaches under the terms of the agreement. Because the tractors are not property subject to the tax lien at the time of tax lien filing, the tax lien has priority over F's security interest in the tractors.

(e) *Effective/applicability date.* This section applies with respect to any notice of Federal tax lien filed on or after the date these regulations are published as final regulations in the **Federal Register**.

**Par. 4.** Section 301.6323(f)–1 is amended as follows:

1. Paragraph (d)(2) is revised.

2. Paragraph (f) is added.

The revision and addition read as follows:

**§ 301.6323(f)–1 Place for filing notice; form.**

\* \* \* \* \*

(d) \* \* \*

(2) *Form 668 defined.* The term *Form 668* means either a paper form or a form transmitted electronically, including a form transmitted by facsimile (fax) or electronic mail (e-mail). A Form 668 must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose regardless of the method used to file the notice of Federal tax lien.

\* \* \* \* \*

(f) *Effective/applicability date.* This section applies with respect to any notice of Federal tax lien filed on or

after the date these regulations are published as final regulations in the **Federal Register**.

**Par 5.** Section 301.6323(g)–1 is amended as follows:

1. Paragraphs (a)(1), (a)(4), (b)(3) *Example 1*, (b)(3) *Example 5*, and (c)(1) are revised.

2. Paragraphs (a)(3), (a)(3)(i), and (a)(3)(ii) are redesignated as paragraphs (a)(3)(i), (a)(3)(i)(A), and (a)(3)(i)(B), respectively.

3. The undesignated text following newly-designated paragraph (a)(3)(i)(B) is designated as paragraph (a)(3)(ii).

4. Newly-designated paragraph (a)(3)(i) introductory text is revised.

5. Newly-designated paragraph (a)(3)(i)(A) is revised.

6. Newly-designated paragraph (a)(3)(ii) is revised.

7. Paragraph (c)(2) is removed.

8. Paragraph (c)(3) is redesignated as paragraph (c)(2) and revised.

9. Paragraph (d) is added.

The revisions and addition read as follows:

**§ 301.6323(g)–1 Refiling of notice of tax lien.**

(a) *In general*—(1) *Requirement to refile*. In order to continue the effect of a notice of lien, the notice must be refiled in the place described in paragraph (b) of this section during the required filing period (described in paragraph (c) of this section). If two or more notices of lien are filed with respect to a particular tax assessment, and each notice of lien contains a certificate of release that releases the lien when the required refiling period ends, the failure to comply with the provisions of paragraphs (b)(1)(i) and (c) of this section in respect to one of the notices of lien releases the lien and renders ineffective the refiling of any other notice of lien.

\* \* \* \* \*

(3) *Effect of failure to refile*. (i) If the Internal Revenue Service fails to refile a notice of lien in the manner described in paragraphs (b) and (c) of this section, the notice of lien is not effective, after the expiration of the required filing period, as against any person without regard to when the interest of the person in the property subject to the lien was acquired. If a notice of lien contains a certificate of release that releases the lien at the end of the required refiling period and the notice of lien is not refiled during this period, the lien is extinguished and the notice of lien is ineffective with respect to—

(A) Property which is the subject matter of a suit, to which the United States is a party, commenced prior to

the expiration of the required filing period; and

\* \* \* \* \*

(ii) However, if a notice of lien does not contain a certificate of release that releases the lien at the end of the required refiling period, the failure to refile during the required refiling period will not affect the existence of the lien nor the effectiveness of the notice with respect to property which is the subject matter of a suit commenced prior to the expiration of the required refiling period, or property which has been levied upon prior to the expiration of such period.

(4) *Filing of new notice*. If a notice of lien is not refiled, and the notice of lien contains a certificate of release that automatically releases the lien when the required refiling period ends, the lien is released as of that date and is no longer in existence. The Internal Revenue Service must revoke the release before it can file a new notice of lien. This new filing must meet the requirements of section 6323(f) and § 301.6323(f)–1 and is effective from the date on which such filing is made.

(b) \* \* \*

(3) *Examples*. The following examples illustrate the provisions of this section:

*Example 1.* A, a delinquent taxpayer, is a resident of State M and owns real property in State N. In accordance with § 301–6323–f(1), notices of lien are filed in States M and N. The notices of lien contain certificates of release that release the lien at the end of the required refiling period. In order to continue the effect of the notice of lien filed in either M or N, the IRS must refile, during the required refiling period, the notice of lien with the appropriate office in M as well as with the appropriate office in N.

\* \* \* \* \*

*Example 5.* D, a delinquent taxpayer, is a resident of State M and owns real property in States N and O. In accordance with § 301.6323(f)–1, the Internal Revenue Service files notices of lien in M, N, and O States. Nine years and 6 months after the date of the assessment shown on the notice of lien, D establishes his residence in P, and at that time the Internal Revenue Service receives from D a notification of his change in residence in accordance with the provisions of paragraph (b)(2) of this section. On a date which is 9 years and 7 months after the date of the assessment shown on the notice of lien, the IRS properly refiles notices of lien in M, N, and O which refilings are sufficient to continue the effect of each of the notices of lien. The Internal Revenue Service is not required to file a notice of lien in P because D did not notify the Internal Revenue Service of his change of residence to P more than 89 days prior to the date each of the refilings in M, N, and O was completed.

\* \* \* \* \*

(c) *Required filing period*—(1) *In general*. For the purpose of this section,

except as provided in paragraph (c)(2) of this section, the term *required filing period* means—

(i) The 1-year period ending 30 days after the expiration of 10 years after the date of the assessment of the tax; and

(ii) The 1-year period ending with the expiration of 10 years after the close of the preceding required refiling period for such notice of lien.

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

*Example 1.* On March 10, 1998, an assessment of tax is made against B, a delinquent taxpayer, and a lien for the amount of the assessment arises on that date. On July 10, 1998, in accordance with § 301.6323(f)–1, a notice of lien is filed. The notice of lien filed on July 10, 1998, is effective through April 9, 2008. The first required refiling period for the notice of lien begins on April 10, 2007, and ends on April 9, 2008. A refiling of the notice of lien during that period will extend the effectiveness of the notice of lien filed on July 10, 1998, through April 9, 2018. The second required refiling period for the notice of lien begins on April 10, 2017, and ends on April 9, 2018.

*Example 2.* Assume the same facts as in *Example 1*, except that the Internal Revenue Service fails to refile a notice of lien during the first required refiling period (April 10, 2007, through April 9, 2008). A notice of lien is filed on June 9, 2009, in accordance with § 301.6323(f)–1. This notice is ineffective if the original notice contained a certificate of release, as the certificate of release would have had the effect of extinguishing the lien as of April 10, 2008. The Internal Revenue Service could revoke the release and file a new notice of lien, which would be effective as of the date it was filed.

(d) *Effective/applicability date*. This section applies with respect to any notice of Federal tax lien filed on or after the date these regulations are published as final regulations in the **Federal Register**.

**Par. 6.** Section 301.6323(h)–1 is amended as follows:

1. Paragraphs (a)(2)(ii) and (a)(3) are revised.

2. A new paragraph (h) is added.

The revisions and addition read as follows:

**§ 301.6323(h)–1 Definitions.**

(a) \* \* \*

(2) \* \* \*

(ii) The following example illustrates the application of paragraph (a)(2):

*Example.* (i) Under the law of State X, a security interest in certificated securities, negotiable documents, or instruments may be perfected, and hence protected against a judgment lien, by filing or by the secured party taking possession of the collateral. However, a security interest in such intangible personal property is considered to be temporarily perfected for a period of 20 days from the time the security interest

attaches, to the extent that it arises for new value given under an authenticated security agreement. Under the law of X, a security interest attaches to such collateral when there is an agreement between the creditor and debtor that the interest attaches, the debtor has rights in the property, and consideration is given by the creditor. Under the law of X, in the case of temporary perfection, the security interest in such property is protected during the 20-day period against a judgment lien arising, after the security interest attaches, out of an unsecured obligation. Upon expiration of the 20-day period, the holder of the security interest must perfect its security interest under local law.

(ii) Because the security interest is perfected during the 20-day period against a subsequent judgment lien arising out of an unsecured obligation, and because filing or the taking of possession before the conclusion of the period of temporary perfection is not considered, for purposes of paragraph (a)(2)(i) of this section, to be a requisite action which relates back to the beginning of such period, the requirements of this paragraph are satisfied. Because filing or taking possession is a condition precedent to continued perfection, filing or taking possession of the collateral is a requisite action to establish such priority after expiration of the period of temporary perfection. If there is a lapse of perfection for failure to take possession, the determination of when the security interest exists (for purposes of protection against the tax lien) is made without regard to the period of temporary perfection.

(3) *Money or money's worth.* For purposes of this paragraph, the term *money or money's worth* includes money, a security (as defined in paragraph (d) of this section), tangible or intangible property, services, and other consideration reducible to a money value. Money or money's worth also includes any consideration which otherwise would constitute money or money's worth under the preceding sentence which was parted with before the security interest would otherwise exist if, under local law, past consideration is sufficient to support an agreement giving rise to a security interest. A firm commitment to part with money, a security, tangible or intangible property, services, or other consideration reducible to a money value does not, in itself, constitute a consideration in money or money's worth. A relinquishing or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights is not a consideration in money or money's worth. Nor is love and affection, promise of marriage, or any other consideration not reducible to a money value a consideration in money or money's worth.

\* \* \* \* \*

(h) *Effective/applicability date.* This section applies as of the date these regulations are published as final regulations in the **Federal Register**.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E8-8082 Filed 4-16-08; 8:45 am]

**BILLING CODE 4830-01-P**

## CENTRAL INTELLIGENCE AGENCY

### 32 CFR Part 1900

#### Freedom of Information Act; Implementation

**AGENCY:** Central Intelligence Agency.

**ACTION:** Proposed rule.

**SUMMARY:** Consistent with the Freedom of Information Act (FOIA), as amended by the "Openness Promotes Effectiveness in our National Government Act of 2007," and Executive Order 13392, the Central Intelligence Agency (CIA) has undertaken and completed a review of its public FOIA regulations that govern certain aspects of its processing of FOIA requests. As a result of this review, the Agency proposes to revise its FOIA regulations to more clearly reflect the current CIA organizational structure, record system configuration, and FOIA policies and practices and to eliminate ambiguous, redundant and obsolete regulatory provisions. As required by the FOIA, the Agency is providing an opportunity for interested persons to submit comments on these proposed regulations.

**DATES:** Submit comments on or before May 19, 2008.

**ADDRESSES:** Submit comments in writing to the Director of Information Management Services, Central Intelligence Agency, Washington, DC 20505, or by fax to 703-613-3007.

**FOR FURTHER INFORMATION CONTACT:** Joseph W. Lambert, Director of Information Management Services, Central Intelligence Agency, Washington, DC 20505 or by telephone, 703-613-1352.

**SUPPLEMENTARY INFORMATION:** Consistent with the FOIA, as amended by the "Openness Promotes Effectiveness in our National Government Act of 2007," and Executive Order 13392, the CIA has undertaken and completed a review of its public FOIA regulations that govern certain aspects of its processing of FOIA requests. As a result of this review, the Agency proposes to revise its FOIA regulations to more clearly reflect the current CIA organizational structure,

record system configuration, and FOIA policies and practices and to eliminate ambiguous, redundant and obsolete regulatory provisions. These proposed regulatory changes are intended to enhance the administration and operations of the Agency's FOIA program by increasing the transparency and clarity of the regulations governing the Agency's FOIA program. The proposed regulations would establish the positions and responsibilities of the Agency's Chief FOIA Officer, the FOIA Public Liaison and the FOIA Requester Service Center in the Agency's public FOIA regulations. Following the promulgation of Executive Order 13392, the Director of the Central Intelligence Agency designated a senior official to serve as the CIA's Chief FOIA Officer with Agency-wide responsibility for efficient and appropriate compliance with the FOIA. In addition, the Agency created a FOIA Requester Service Center and designated FOIA Public Liaisons to enhance the operation of the Agency's FOIA program and the Agency's responsiveness to FOIA requesters and the public. Consistent with both Executive Order 13392 and the "Openness Promotes Effectiveness in our National Government Act of 2007," the proposed regulations incorporate into the CIA's public FOIA regulations the important functions the Agency's Chief FOIA Officer, the FOIA Public Liaison and the FOIA Requester Service Center have been performing for the past several years. By formally recognizing the key roles these entities play in the Agency's FOIA processes, the proposed regulations promote the administration of a citizen-centered FOIA program and provide the public with important information about the assistance these entities can offer to FOIA requesters and the public.

The proposed regulations would eliminate current regulatory provisions that have had the potential to cause confusion and ambiguity and would more clearly reflect the Agency's current FOIA policies and practices.

The proposed regulations would clarify and confirm the Agency's current FOIA practices of processing FOIA requests and appeals on a "first in, first out" basis using two or more processing queues based on the amount of work or time or both involved and of moving a FOIA request to the front of the processing queue when the Agency has granted that requester's request for expedited processing.

The proposed regulations would eliminate current regulatory provisions that have had the potential to cause confusion and ambiguity regarding how a requester may appeal a denial of a fee