Federal Tax Lien ENFORCEMENT

A federal tax lien gives the government rights to a taxpayer's property when the taxpayer fails to pay a tax debt. The government can enforce a federal tax lien through seizure or sale of a taxpayer's property to pay the tax debt. The Internal Revenue Code (Title 26 of the United States Code) provides for two lien enforcement mechanisms: administrative levy and judicial foreclosure. The government decides to pursue either administrative levy or judicial foreclosure based on limitations on each in the Internal Revenue Code.

Federal Tax Lien
26 U.S.C. § 6321[1]

1 WHO holds the lien?

The government holds the lien against property of the delinquent taxpayer.

2 WHAT property does the lien attach to?

The lien attaches to all property and rights to property, whether real or personal, belonging to the taxpayer, including property acquired after the lien arises.

3 WHEN does the lien arise?

The lien automatically arises when the taxpayer fails to pay a tax liability after the Internal Revenue Service (IRS) assesses the liability and gives the taxpayer notice and demand for payment.

Federal Tax Lien Enforcement

Administrative Levy 26 U.S.C. § 6331[2]		Judicial Foreclosure 26 U.S.C. § 7403
IRS	**WHO** brings the action?	Department of Justice Tax Division, upon referral from the IRS[3]
Taxpayer's interest in the property[4]	**WHAT** can be seized?	The property itself, not merely the taxpayer's interest[5]
(1) Collection Appeals Program (CAP) hearing; (2) Collection Due Process (CDP) hearing, with appeal to U.S. Tax Court; or (3) equivalent hearing[6] The IRS must release the levy if it determines that the seizure creates an economic hardship to the taxpayer.[7]	**WHAT** review is available for taxpayers?	A federal court adjudicates and determines all rights to the property. The court cannot reject the foreclosure of a taxpayer's property to protect the interests of the taxpayer.[8]
No notice to third parties is required before seizure. After seizure, third parties can seek administrative review or file a lawsuit for return of property or proceeds from its sale.[9]	**WHAT** protections are available for third parties with interests in the seized property?	All parties with potential interest in the property must be notified, included in suit, and allowed to defend their rights before property is foreclosed. Third parties must be compensated from the sales proceeds for their interest in the property. A court has limited equitable discretion to reject foreclosure of a taxpayer's property to protect third party interests.[10]

[1] 26 U.S.C. §§ 6324, 6324A, and 6324B also provide for federal tax liens upon nonpayment of certain estate and gift taxes. Such liens for unpaid estate and gift taxes are also enforced through administrative levy or judicial foreclosure.

[2] "Levy" refers to the IRS seizure of a taxpayer's property. 26 U.S.C. § 6331(b). The IRS can sell a taxpayer's property after seizure under 26 U.S.C. § 6335.

[3] 26 U.S.C. § 7401.

[4] Certain property, such as child support payments, is exempt from an administrative levy. Other property, such as principal residences, have additional procedural requirements to levy. 26 U.S.C. § 6334.

[5] United States v. Rodgers, 461 U.S. 677, 693 (1983).

[6] A CAP hearing is available before or after notice by the IRS of either the lien or intent to levy, but the decision cannot be judicially appealed to the Tax Court. Internal Revenue Manual 8.24.1. A taxpayer has a statutory right to a CDP hearing but must request it within a certain time after notice. 26 U.S.C. §§ 6320(a)(3)(B), 6330(a)(3)(B). A CDP hearing's determination can be appealed to the Tax Court. 26 U.S.C. § 6330(d). If a taxpayer does not make a timely request for a CDP hearing, the taxpayer has one year from notice to request an equivalent hearing, the determination of which cannot be appealed to the Tax Court. 26 C.F.R. §§ 301.6320-1(i)(1), 301.6330-1(i)(1).

[7] 26 U.S.C. § 6343(a)(1)(D). 26 C.F.R. § 301.6343-1(b)(4) defines economic hardship as being unable to pay reasonable basic living expenses.

[8] United States v. Rodgers, 461 U.S. 677, 709 (1983).

[9] 26 U.S.C. §§ 6343(b), 7426; 26 C.F.R. §§ 301.6320-1(a)(2), 301.6330-1(a)(3).

[10] The court will consider such factors as the following: (1) "the extent to which the Government's financial interests would be prejudiced if it were relegated to a forced sale of the partial interest actually liable for the delinquent taxes"; (2) "whether the third party with a non-liable separate interest in the property would, in the normal course of events . . ., have a legally recognized expectation that that separate property would not be subject to forced sale by the delinquent taxpayer or his or her creditors"; (3) "the likely prejudice to the third party, both in personal dislocation costs and . . . practical undercompensation"; and (4) "the relative character and value of the non-liable and liable interests held in the property." United States v. Rodgers, 461 U.S. 677, 710–11 (1983).

Information as of December 5, 2023, prepared by Justin C. Chung, Legislative Attorney and Jamie L. Hutchinson, Visual Information Specialist.

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