

Notice of Proposed Rulemaking

Withdrawal of Notice of Federal Tax Lien in Certain Circumstances

REG-101519-97

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

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

DATES: Written comments and requests for a public hearing must be received by September 27, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-101519-97), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered to: CC:DOM:CORP:R (REG-101519-97), room 5228, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_reglist.html.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, (202) 622-3640 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed 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. These proposed regulations reflect the amendments made by Section 501(a) of TBOR2.

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 proposed regulations implement section 501(a).

The proposed regulations provide that a district director, the director of a service center or the Assistant Commissioner (International)(the relevant person being referred to as "the director") may withdraw a notice of federal tax lien if the director determines that one of the conditions enumerated in paragraph (b) of the regulations exists. 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.

The proposed regulations provide that the director 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 would be in the best interest of the taxpayer, as determined by the National Taxpayer Advocate, and in the best interest of the United States, as determined by the director.

The fourth ground for withdrawal (i.e., withdrawal based on the best interests of the parties) requires that the withdrawal be in the best interests of both the United States and the taxpayer. Therefore, two distinct determinations must be made before a director may withdraw a notice of federal tax lien based on the best interests of the parties. Under the proposed regulations the director alone will determine whether the withdrawal of a notice of federal tax lien is in the United States' best interest. The National Taxpayer Advocate generally will determine whether the withdrawal of a notice is in the taxpayer's best interest; however, if a taxpayer requests the director to withdraw a notice and has not requested the National Taxpayer Advocate to determine the taxpayer's best interest, a finding by the director that the withdrawal is in the taxpayer's, as well as the United States', best interest will be sufficient to support the withdrawal of notice. The director is not authorized to determine that the withdrawal of a notice is not in the taxpayer's best interest. Only the National Taxpayer Advocate is authorized to make that determination.

The proposed regulations provide that a person may request the withdrawal of a notice of federal tax lien by writing to the director (marked for the attention of the Chief, Special Procedures Function) of the district in which the notice is filed. 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 director 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 director must consider each taxpayer's request for withdrawal of notice of federal tax lien and determine whether any of the conditions authorizing withdrawal exists and whether to issue a withdrawal. The director also may issue a notice of withdrawal based on information received from a source other than the taxpayer.

If the director grants a 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 to withdraw, a list may be submitted after the notice is withdrawn. A request to supplement the list must be sent in writing to the director (marked for the attention of the Chief, Special Procedures Function) of the district in which the notice of federal tax lien is filed. 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.

The regulations as proposed will be effective when the final regulations are published in the **Federal Register** 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 notice of proposed rulemaking is not a significant regulatory action as defined in EO 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 infor-

mation in the regulation 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 notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight (8) copies) to the IRS. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_reglist.html. All comments will be available for public inspection and copying. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation) CC:EL:GL, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, the IRS proposes to amend 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.* A district director, the Assistant Commissioner (International), or the director of a service center (collectively the director) may withdraw a notice of federal tax lien filed under this section, if the director determines that any of the conditions in paragraph (b) of this section exist. A notice of federal tax lien is withdrawn by the director filing 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 director 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 director 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. If, however, the agreement specifically provides that a notice of federal tax lien will not be withdrawn, the director may not grant a request for withdrawal of that notice of federal tax lien under this paragraph (b)(2).

(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 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 National Taxpayer Advocate, and the United States, as determined by the director.

(ii) *Best interest of the taxpayer.* The National Taxpayer Advocate generally will determine whether the withdrawal of a notice of federal tax lien is in the best interest of the taxpayer. If, however, a taxpayer requests the director to withdraw a notice and has not specifically requested the National Taxpayer Advocate to determine the taxpayer's best interest, a finding by the director that the withdrawal of notice is in the best interest of the taxpayer will be sufficient to support withdrawal.

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

Example 1. 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 director may withdraw the notice of federal tax lien to facilitate collection.

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 director may withdraw the notice of federal tax lien because the taxpayer has entered into an installment agreement that does not prohibit the withdrawal of the notice.

Example 3. A is the 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 that prohibits the withdrawal of the notice of federal tax lien. 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 director determines that the withdrawal of the notice of federal tax lien is

in the best interest of the United States because it would enable A to generate additional tractor sales, and increased sales would enable A to increase the amount of his installment payments as well as reduce the amount of time needed to satisfy the liability. A, who has no other assets or secured creditors, has agreed to modify his installment agreement. If the National Taxpayer Advocate (or the director in lieu of the National Taxpayer Advocate) determines that the withdrawal is in the best interests of the taxpayer, the director may withdraw the notice of federal tax lien because withdrawal is in the best interest of the taxpayer and the United States. Alternatively, the director may withdraw the notice of federal tax lien to facilitate collection.

(c) *Determinations by the director.* The director 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 director also may make this determination based on information received from a source other than the taxpayer. If the director determines that conditions authorizing the withdrawal are not present, the director may not authorize the withdrawal. If the director determines conditions for withdrawal are present, the director may (but is not required to) authorize the withdrawal. If the basis for the withdrawal is the best interests of the taxpayer and the Internal Revenue Service, the taxpayer or the National Taxpayer Advocate must consent to 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 to the director (marked for the attention of the Chief, Special Procedures Function) of the district in which the notice of federal tax lien is filed.

(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 tax-

payer wishes the director 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 director 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 director to notify of the withdrawal of notice of federal tax lien must be sent in writing to the director (marked for the attention of the Chief, Special Procedures Function) of the district in which the notice of federal tax lien is filed.

(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 director 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 the date final regulations are published in the Federal Register with respect to a withdrawal of any notice of federal tax lien.

Michael P. Dolan,
Deputy Commissioner of
Internal Revenue.