

CHAPTER XX

FEDERAL TAX LIENS

STANDARD 20.1

GENERAL TAX LIEN

STANDARD: IF ANY PERSON LIABLE TO PAY ANY FEDERAL TAX FAILS TO PAY THE TAX AFTER DEMAND IS MADE, THE AMOUNT OF THE TAX, TOGETHER WITH INTEREST, PENALTIES, AND COSTS, IS A LIEN IN FAVOR OF THE UNITED STATES UPON ALL PROPERTY AND RIGHTS TO PROPERTY BELONGING TO THE PERSON. THE LIEN:

- (A) ARISES WITHOUT NOTICE AS OF THE TIME THE TAX ASSESSMENT IS MADE (UNLESS ANOTHER DATE IS SPECIFIED BY LAW);
- (B) CONTINUES UNTIL THE AMOUNT DUE IS SATISFIED OR BECOMES UNENFORCEABLE BECAUSE OF LAPSE OF TIME; AND
- (C) IS VALID AGAINST ALL PERSONS EXCEPT THOSE PROTECTED UNDER 26 USC 6323.

Authorities: 26 USC 6321, 6322 and 6323.

Comment: The Internal Revenue Service prepares a certificate of assessment after it determines a tax is delinquent and sends the taxpayer a notice of delinquency, demanding payment within 10 days.

The lien attaches to all property and rights to property of the taxpayer. The lien is valid not only as against the taxpayer, but also against any person who later acquires an interest in the taxpayer's property, except a party protected by 26 USC 6323. See, Standards 20.4 and 20.5.

STANDARD 20.2

SCOPE OF GENERAL TAX LIEN

STANDARD: A GENERAL TAX LIEN FOR ANY FEDERAL TAX ATTACHES TO ALL THE PROPERTY AND RIGHTS TO PROPERTY, INCLUDING AFTER-ACQUIRED PROPERTY, OF ANY PERSON LIABLE FOR PAYMENT OF THE TAX. THE SCOPE OF THE TAX LIEN IS NOT LIMITED BY EXEMPTIONS IN A STATE'S CONSTITUTION OR STATUTES.

Problem A: On January 3, 2004, a federal tax was assessed against Donald Brown. On that date title to Blackacre was vested in Donald Brown and Mary Brown, husband and wife, as tenants by the entireties. Did the Browns then hold Blackacre free of the federal tax lien which arose at the time of the assessment?

Answer: No.

Problem B: Same facts as in Problem A, except that on June 1, 2005 Donald Brown died. Did Mary Brown then hold Blackacre free of the tax lien?

Answer: Yes.

Problem C: Donald Brown and Thomas Palmer were the owners of Blackacre "as joint tenants and not as tenants in common" on January 3, 1999 on which date a federal tax was assessed against Brown. On January 17, 1999 a notice of federal tax lien was recorded and indexed in the office of the register of deeds for the county in which Blackacre was located. Did Brown then hold his interest in Blackacre free of the federal tax lien?

Answer: No. Because the delinquent taxpayer's interest in Blackacre can be reached by his creditors, the tax lien attached thereto. Because notice of the lien had been recorded and indexed, a grantee of Brown would take subject to the lien. Upon foreclosure of the lien, the purchaser at the foreclosure sale would acquire an undivided one-half interest in Blackacre.

If Brown and Palmer had held Blackacre as “joint tenants with right of survivorship,” as “joint tenants and to the survivor,” “and to the survivor,” or “or to the survivor,” or some variant, as described in Standard 6.3, the federal tax lien would have attached to Brown’s interest in Blackacre and upon Palmer’s death, Brown surviving, would have attached to the full fee title to Blackacre. If Brown had died, Palmer surviving, Palmer would take the full fee title, unaffected by the lien. It should be noted, however, that it is possible that a federal estate tax lien arising with respect to the estate of Brown might then attach to Blackacre. See, Standards 20.8, 20.12 and 20.13.

Problem D: Donald Brown and Thomas Palmer were the owners of Blackacre “as joint tenants and not as tenants in common.” On January 3, 1999, Brown died. On January 17, 1999, a delinquent federal income tax was assessed against Brown. Did Palmer then hold title to Blackacre free of the federal tax lien which arose at the time of the assessment?

Answer: Yes. When the tax was assessed, the tax lien did not attach to Blackacre because the delinquent taxpayer no longer held any property right in Blackacre. His interest had been extinguished and the surviving joint tenant had become the sole owner. It should be noted, however, that it is possible that a federal estate tax lien arising against the estate of Brown might then have attached to Blackacre. See, Standards 20.8, 20.12 and 20.13.

Problem E: On January 3, 1999, a federal tax was assessed against Donald Brown. On January 17, 1999, Brown acquired title to Blackacre. Did Brown then hold Blackacre free of the federal tax lien which arose at the time of assessment?

Answer: No. The tax lien attached to Blackacre immediately upon acquisition by Brown. See, Comment A.

Problem F: On January 3, 1999, a notice of federal tax lien against Donald Brown was recorded and indexed in the office of the register of deeds for the county in which Blackacre was located. On January 17, 1999, Brown acquired title to Blackacre by purchase and simultaneously with the purchase executed a purchase money mortgage secured by Blackacre. The mortgage was recorded. Did the mortgage have priority over the tax lien?

Answer: Yes. Although notice of the tax lien was recorded and indexed before Brown acquired title to Blackacre and before the mortgage was given, the tax lien is subordinate to the recorded purchase money mortgage. Because the deed to Brown and his purchase money mortgage were simultaneous, Brown is regarded as having acquired Blackacre subject to his mortgage.

A contrary result might be reached had the purchase money mortgage not been recorded. In *Allan v Diamond T Motor Car Co*, 291 F2d 115 (CA 10, 1961), an unrecorded purchase money mortgage was held to be subordinate to a later filed notice of federal tax lien.

A mortgage is a purchase money mortgage if the proceeds of the mortgage are applied on the purchase price regardless of whether the vendor is the mortgagee.

Problem G: The United States sought to enforce a federal tax lien against Donald Brown by levy on Blackacre. Brown established that Blackacre was his homestead and claimed that, therefore, he was entitled to the homestead exemption provided for in the Michigan Constitution of 1963, Art X, Sec. 3 and in MCL 600.6023. May the United States sell Blackacre without regard to the homestead exemption?

Answer: Yes. The right to enforce a federal tax lien is not limited or impaired by exemptions in a state's constitution or statutes.

Authorities: Generally: 26 USC 6321, 6323(f)(4), 6634(a) and (c).

Problem A: *United States v Craft*, 535 US 274 (2002); *Hatchett v United States*, 330 F3d 875 (CA 6, 2003).

Problems B and D: *Irvine v Helvering*, 99 F2d 265 (CA 8, 1938), reversing 36 BTA 653 (1937); *Tooley v Commissioner*, 121 F2d 350 (CA 9, 1941).

Problem C: *Midgley v Walker*, 101 Mich 583, 60 NW 296 (1894); *Finch v Haynes*, 144 Mich 352, 107 NW 910 (1906); *Murphy v Mich Trust Co*, 221 Mich 243, 190 NW 698 (1922); *Smith v Smith*, 290 Mich 143, 287 NW 411 (1939); *Benson v Burke*, 42-2 USTC 9621 (Kan, 1942); *United States v Beggerly*, 51-1 USTC 9304 (SD Cal, 1951); *United States v Brandenburg*, 106 F Supp 82 (SD Cal, 1952); *Edward v United States*, 215 F Supp 382 (Kan, 1963).

Problem E: *Glass City Bank v United States*, 326 US 265, 66 S Ct 108, 90 L Ed 56 (1945); *United States v Caldwell*, 74 F Supp 114 (MC Tenn, 1947); *Bensinger v Davidson*, 147 F Supp 240 (SD Cal, 1956).

Problem F: Rev Rul 68-57, 1968-1 Cum Bul 553. *United States v New Orleans & Ohio R Co*, 12 Wall 362, 20 L Ed 434 (1871); *Fec-teau v Fries*, 253 Mich 51, 234 NW 113 (1931); *Troyer v Mundy*, 60 F2d 818 (CA 8, 1932).

Problem G: *Shambuagh v Scofield*, 132 F 2d 345 (CA 5, 1942); *United States v Heffron*, 158 F 2d 657 (CA 9, 1947); *United States v Mitchell*, 403 US 190, 91 S Ct 1963; 29 L Ed 2d 406 (1971).

Comment A: “All property and rights to property” includes property acquired in any manner after a tax lien arose. A federal tax lien against only one spouse will attach to the interest of that spouse in after-acquired property held as a tenancy by the entireties.

Comment B: Effective November 6, 1978, 26 USC 6323(f)(4) provides that the filing requirements for a notice of a general tax lien are not satisfied, “unless the fact of filing of such deed has been entered and recorded in a public index at the place of filing in such a manner that a reasonable inspection of the index will reveal the existence of the deed, and there is maintained [at the applicable office...] an adequate system for the public indexing of federal tax liens...” Hence, all references in this chapter to “filing for record and indexing” mean the filing and indexing of the tax lien at the appropriate State, county or local office, which with respect to real property will be the office of the register of deeds for the county in which the real property is located.

Note: See, Standard 20.6.

STANDARD 20.3

DURATION OF GENERAL TAX LIEN

STANDARD: A GENERAL TAX LIEN CONTINUES UNTIL LIABILITY FOR THE AMOUNT DUE IS SATISFIED OR BECOMES UNENFORCEABLE BECAUSE OF LAPSE OF TIME. ENFORCEMENT OF THE LIEN IS ORDINARILY BARRED 10 YEARS AFTER THE DATE OF ASSESSMENT. A JUDGMENT FOR THE AMOUNT DUE EXTENDS THE LIEN FOR THE LIFE OF THE JUDGMENT.

Authorities: 26 USC 6322 and 6502(a).

Comment A: This Standard is limited to the duration of a lien for taxes created by 26 USC 6321 and does not address the validity or priority of the lien against other interests described in 26 USC 6323. See, Standard 20.4.

Comment B: Failure to assess the tax within three years after the last day prescribed for filing a tax return, or the day actually filed if filed later, generally bars assessment and enforcement. 26 USC 6501(a). The period within which an assessment may be made may differ under various circumstances. See, for example, 26 USC 6501(c)(4); 6501(e)(1); 6501(c)(1), (2) and (3); 7508(a)(1)(A), (G) and (H); 6503(a)(1); and 6872.

Comment C: Any proceedings for collection of taxes must commence within 10 years after assessment or within any period specified in a written agreement with the taxpayer. 26 USC 6502(a). The 10-year limitation period is suspended during various periods (and certain specified intervals thereafter). Some of these periods are:

- (A) while assets are in the custody of any court, 26 USC 6503(b);
- (B) while a taxpayer is outside of the United States for a continuous period of at least six months, 26 USC 6503(c);
- (C) during a period of wrongful seizure, 26 USC 6503(g);

- (D) during a period in which the Secretary is prohibited from collecting by reason of a case under Title 11 of the U. S. Code and for six months after such period, 26 USC 6503(h);
- (E) when necessary to prevent undue hardship while a taxpayer is in military service, 50 USC App 573; and
- (F) in some cases, while a taxpayer is serving in the armed forces of the United States or in support of the United States, 26 USC 7508(a)(1).

STANDARD 20.4

VALIDITY OF GENERAL TAX LIEN AGAINST PROTECTED PERSON

STANDARD: A GENERAL TAX LIEN IS NOT VALID AGAINST ANY PERSON WHO BECOMES A PURCHASER, HOLDER OF A SECURITY INTEREST OR A MECHANIC'S LIENOR AS THOSE TERMS ARE DEFINED IN 26 USC 6323(h), OR A JUDGMENT LIEN CREDITOR UNLESS THE NOTICE OF TAX LIEN HAS BEEN RECORDED AND INDEXED AS PROVIDED IN 26 USC 6323.

Problem A: On January 10, 1997, Donald Brown mortgaged Blackacre to Alfred Leonard and received the full amount of the mortgage loan. The mortgage was recorded the same day. On March 21, 1997, a notice of a federal tax lien against Brown was recorded and indexed in the office of the register of deeds for the county in which Blackacre is located. Does the mortgage lien have priority over the tax lien?

Answer: Yes.

Problem B: Same facts as in Problem A, except that before the mortgage was executed, Leonard knew that a tax had been assessed against Brown. Does the mortgage lien have priority over the tax lien?

Answer: Yes. A mortgagee qualifies for the protection of 26 USC 6323(a), (h) and (i) if the mortgage is executed and recorded before the notice of tax lien is recorded and indexed, even though the mortgagee has actual knowledge of the assessment. It is not necessary that the mortgagee be without notice in the sense required to obtain priority over an earlier unrecorded mortgage.

If, however, the mortgage was made pursuant to a scheme of the mortgagor and mortgagee to evade collection of the tax, the mortgage would not have priority over the tax lien.

Problem C: On January 10, 1997, Donald Brown mortgaged Blackacre to Alfred Leonard. The mortgage was not recorded until March 28, 1997. On March 21, 1997, a notice of federal tax lien against Brown was re-

corded and indexed in the office of the register of deeds for the county in which Blackacre is located. Does the mortgage lien have priority over the tax lien?

Answer: No. To have priority over the tax lien, the mortgage must be “protected under local law against a subsequent judgment lien arising out of an unsecured obligation.” 26 USC 6323(h). As to recorded purchase money mortgages, see Standard 20.2, Problem F.

Problem D: On January 10, 1997, Donald Brown mortgaged Blackacre to Alfred Leonard. The mortgage was recorded the same day and secured all amounts up to \$25,000 for which the mortgagor was or might become liable to the mortgagee. The mortgagee was not obligated to advance any specific amount. The mortgagee did advance \$15,000 on January 10, 1997, and an additional \$5,000 on March 28, 1997. On March 21, 1997, a notice of federal tax lien against Brown was recorded and indexed in the office of the register of deeds for the county in which Blackacre is located. Does the mortgage’s priority as to the initial advance extend to the \$5,000 advanced after the notice of federal tax lien was recorded and indexed?

Answer: No. The relative priority of the mortgage lien is fixed as to each advance made, as of the time it is made. The principle of relation back to the date of the original mortgage is inapplicable for the purpose of establishing priority of later advances over an intervening tax lien of which notice has been recorded and indexed. The principle does not apply, however, to a situation where the mortgagee is obligated by contract to make additional advances to be secured by the mortgage. See, Standard 20.5.

Problem E: On July 1, 1992, Thomas Drew sold Blackacre to Paul Ingram on a land contract which called for a total payment of \$10,000. Ingram entered into actual possession of Blackacre, made the required monthly payments to Drew, but did not record the land contract. On January 10, 1997, a notice of federal tax lien against Drew was recorded and indexed in the office of the register of deeds for the county in which Blackacre is located. Ingram continued to make the monthly payments directly to Drew until October 5, 1997, at which time he paid Drew the balance owing on the contract and received a deed from Drew. Did Ingram acquire title to Blackacre free of the tax lien?

Answer: Yes. Possession by a land contract vendee constitutes notice to a subsequent purchaser, brings the vendee within the definition of a purchaser under 26 USC 6323(h)(6), and protects the vendee as to all monies paid on the land contract. If Ingram had not been in possession, recording of the land contract before the recording and indexing of the notice of tax lien would have had the same effect.

Problem F: On July 1, 1996, Thomas Drew sold Blackacre to Donald Brown on a land contract which called for a total payment of \$10,000. Brown recorded the contract on the same day. On January 10, 1997, when \$9,500 remained due on the contract, a federal tax was assessed against Brown. On January 19, 1997, a notice of federal tax lien against Brown was recorded and indexed in the office of the register of deeds for the county in which Blackacre is located. On February 5, 1997, Brown surrendered the contract and quit-claimed Blackacre to Drew, who released Brown from liability on the contract. Did Drew then hold Blackacre free of the federal tax lien against Brown?

Answer: No. The lien against Brown attached to his vendee's interest. Brown's later conveyance to the vendor did not affect the rights of the United States.

Authorities: Generally: 26 USC 6323.

Problem A: *United States v Beaver Run Coal Co*, 99 F2d 610 (CA 3, 1938); *Potter v United States*, 111 F Supp 585 (RI, 1953); *Runyan Machine & Boiler Works, Inc v Oil Screw "Captain Pete,"* 56-1 USTC 9179 (ND Fla, 1955).

Problem B: *United States v Beaver Run Coal Co*, 99 F2d 610 (CA 3, 1938); *Smith v United States*, 113 F Supp 702 (HI, 1953); *Hart v United States*, 207 F2d 813 (CA 8m 1953); *Runyan Machine & Boiler Works, Inc v Oil Screw "Captain Pete,"* 56-1 USTC 9179 (ND Fla, 1955); *United States v Leary*, 58-1 USTC 9263 (Conn, 1958).

Problem C: *In re F MacKinnon Mfg Co*, 24 F2d 156 (CA 7, 1928); *Underwood v United States*, 118 F2d 760 (CA 5, 1941), affirming 37 F Supp 824 (ED Tex, 1939); *Edmundson v Scofield*, 92 F Supp 91 (SD Tex, 1950); *Plains Motors, Inc v Clark*, 52-2 USTC 9441 (WY, 1952); *Mason City & Clear Lake R Co v Imperial Seed Co*, 152 F Supp 145 (ND Iowa, 1957); *Leipert v RC Williams & Co*, 161 F Supp 355 (SD NY, 1957); *Allan v Diamond T Motor Car Co*, 291 F2d 115 (CA 10, 1961); *Gauvey v United States*, 291 F2d 42 (CA 8, 1961).

Problem D: Rev Rul 56-41, 1956-1 Cum Bul 562. *United States v Security Trust & Savings Bank*, 340 US 47, 71 S Ct 111, 95 L Ed 53 (1950); *United States v Ringler*, 166 F Supp 544 (ND Ohio, 1958); *United States v Christensen*, 269 F2d 624 (CA 9, 1959); *Ladue v Detroit & Milwaukee R Co*, 13 Mich 380 (1865).

Problem E: 26 USC 6323(h). *Engle v Tinker National Bank*, 269 F Supp 199 (ED NY, 1967).

Problem F: *Bensinger v Davidson*, 147 F Supp 240 (SD Cal, 1956); *United States v Morrison*, 247 F2d 285 (CA 5, 1957).

Comment A: If a mortgagee or other lienor has priority over a federal tax lien under the rule stated in this Standard, 26 USC 6323(e) extends the priority to the extent permitted by local law as to the following: interest or carrying charges; reasonable expenses incurred in collecting or enforcing the obligation; reasonable attorney fees; reasonable insurance and repair costs; and other charges permitted thereunder.

Comment B: The term “mechanic’s lienor,” as defined in 26 USC 6323(h)(2) means any person who under local law has a lien on real property and includes a “lien claimant” under MCL 570.1105(2).

Comment C: The term “judgment lien creditor” is defined in Treasury Regulation §301.6323(h)-1 as a person who has: (i) obtained a valid judgment, in a court of record of competent jurisdiction, for the recovery of specifically designated property or for a certain sum of money, and (ii) perfected a lien under the judgment on the property involved. Under the regulation, a judgment lien is not perfected until the requirements of local law are complied with, including recording. Also, the term “judgment” does not include the determination of a quasi-judicial body or of a person acting in a quasi-judicial capacity, such as the action of State-taxing authorities.

Note: As to the validity of a general tax lien against “super priorities,” see Standard 20.5. As to the continued effectiveness of a notice of tax lien, see Standard 20.7.

STANDARD 20.5

INTEREST SUPERIOR TO FEDERAL TAX LIEN PREVIOUSLY RECORDED AND INDEXED – “SUPERPRIORITY”

STANDARD: A GENERAL TAX LIEN, EVEN THOUGH NOTICE OF THE LIEN HAS BEEN RECORDED AND INDEXED, IS NOT VALID WITH RESPECT TO CERTAIN QUALIFIED REAL PROPERTY INTERESTS SPECIFIED IN 26 USC 6323 (b) AND (c), INCLUDING REAL PROPERTY TAXES AND SPECIAL ASSESSMENTS, COMMERCIAL TRANSACTIONS, FINANCING AGREEMENTS, OBLIGATORY DISBURSEMENT AGREEMENTS, REAL PROPERTY CONSTRUCTION OR IMPROVEMENT FINANCING AGREEMENTS AND MECHANICS' LIENS.

Problem A: Donald Brown owned Blackacre on November 15, 1989 when a notice of federal tax lien against him was recorded and indexed in the office of the register of deeds for the county in which Blackacre was located. Brown failed to pay the real property taxes levied on Blackacre in 1990. John Doe purchased Blackacre at the 1993 tax sale for the delinquent 1990 taxes, obtained a tax deed to Blackacre in 1994, and then perfected his tax title. Did Doe acquire title free of the federal tax lien?

Answer: Yes. The 1990 real property tax, being a tax of general application levied by a taxing authority based upon the value of real property, is superior to the federal tax lien, because the real property tax is entitled under local law to priority over security interests in property which are prior in time.

Problem B: Donald Brown owned and occupied a residence on Blackacre. On January 3, 1999, a notice of a federal tax lien against Brown was recorded and indexed in the office of the register of deeds for the county in which Blackacre was located. On May 11, 1999, Brown hired John Doe to make repairs to the residence at a contract price of \$4,500. Doe made the repairs and Brown failed to pay him. Doe then recorded a construction lien against Blackacre. Was Doe's construction lien superior to the federal tax lien?

Answer: Yes. A construction lien is superior to a federal tax lien previously recorded and indexed if (1) the mechanic's lien is for repairs or improvements of a personal residence (containing not more than four dwelling units), (2) the owner occupies the residence or a unit of the residence, and (3) the contract price with the owner does not exceed \$5,000.

Authorities: Generally: 26 USC 6323(b), (c) and (d).

Problem A: 26 USC 6323(b)(6)(A). MCL 211.72. *Robbins v Barron*, 32 Mich 36 (1875).

Problem B: 26 USC 6323(b)(7).

STANDARD 20.6

RECORDING AND INDEXING NOTICE OF GENERAL TAX LIEN

STANDARD: A NOTICE OF GENERAL TAX LIEN IS VALID AGAINST A PERSON ENTITLED TO THE PROTECTION OF 26 USC 6323(a):

- (A) AS TO REAL PROPERTY, IF RECORDED AND ENTERED IN A PUBLIC INDEX IN THE OFFICE OF THE REGISTER OF DEEDS FOR THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED;
- (B) AS TO PERSONAL PROPERTY OF AN INDIVIDUAL RESIDENT OF MICHIGAN, IF FILED WITH THE OFFICE OF THE REGISTER OF DEEDS FOR THE COUNTY IN WHICH THE INDIVIDUAL RESIDES;
- (C) AS TO PERSONAL PROPERTY OF A CORPORATION OR PARTNERSHIP, THE PRINCIPAL EXECUTIVE OFFICE OF WHICH IS IN MICHIGAN, IF FILED WITH THE OFFICE OF THE MICHIGAN SECRETARY OF STATE;
- (D) AS TO PERSONAL PROPERTY OF A CORPORATION OR PARTNERSHIP, THE PRINCIPAL EXECUTIVE OFFICE OF WHICH IS NOT IN MICHIGAN, IF FILED IN ACCORDANCE WITH THE LAW IN EFFECT IN THE STATE IN WHICH THE OFFICE IS LOCATED; AND
- (E) AS TO PERSONAL PROPERTY OF ANY TAXPAYER WHOSE RESIDENCE IS OUTSIDE THE UNITED STATES, IF FILED IN ACCORDANCE WITH THE LAW OF THE DISTRICT OF COLUMBIA.

Problem A: Donald Brown owned Blackacre. On May 25, 1999, a notice of federal tax lien was recorded and indexed against Brown in the office of the register of deeds for the county in which Blackacre was located. On July 13, 1999 Brown deeded Blackacre to Alfred Leonard. Did

Leonard acquire Blackacre free of the federal tax lien?

Answer: No. The lien became valid against any purchaser upon recording and indexing in the office of the register of deeds in the county where the real property was located.

Problem B: Same facts as in Problem A, except that the register of deeds after receiving the tax lien failed to record and index it. Leonard, searched the records of the register of deeds, found no reference to the notice of federal tax lien, and purchased Blackacre. Did Leonard acquire title free of the federal tax lien?

Answer: Yes. 26 USC 6323(f)(4) requires that the notice of lien be recorded and indexed with the office of the register of deeds in the county where the real property is located.

Problem C: Jordan Corporation, incorporated and having its principal executive office in Indiana, owned Blackacre, which is located in Wayne County, Michigan. On February 1, 1999, a notice of a federal tax lien against Jordan Corporation was filed and recorded in Indiana, in accordance with Indiana law. On May 2, 1999, Jordan Corporation deeded Blackacre to Paul Ingram. Did Ingram acquire Blackacre free of the federal tax lien?

Answer: Yes.

Problem D: Donald Brown, a resident of Oakland County, Michigan, held a mortgage on Blackacre, which is located in Wayne County, Michigan. On February 1, 1999, a notice of a federal tax lien against Brown was recorded and indexed in the office of the Oakland County register of deeds. On May 4, 1999, Brown assigned the mortgage to Paul Ingram. Did Ingram acquire the mortgage free of the federal tax lien?

Answer: No. Upon recording and indexing, the federal tax lien attached to Brown's mortgagee's interest. A notice of federal tax lien attaches to a mortgagee's interest and other personal property (including after-acquired property) of an individual resident of Michigan if the notice is recorded and indexed in the county in which the individual resides at the time the notice is recorded.

Problem E: Same facts as in Problem D, except that Brown moved to Kent County, Michigan, on May 2, 1999. Did Ingram acquire the mortgage free of the federal tax lien?

Answer: No. The lien attached before Brown moved from Oakland County. See, Comment.

Problem F: Green Company, a Michigan partnership, having its principal executive office in Macomb County, Michigan held a mortgage on Whiteacre located in Saginaw County, Michigan. On April 10, 1999, a notice of federal tax lien against Green Company was filed in the office of the Michigan Secretary of State. On May 4, 1999, Green Company assigned the mortgage to Paul Ingram. Did Ingram acquire the mortgage free of the federal tax lien?

Answer: No. Filing of a notice of federal tax lien in the office of the Michigan Secretary of State is valid against the personal property (including after-acquired property) of a corporation or partnership having its principal executive office in Michigan.

Problem G: Jordan Corporation, incorporated and having its principal executive office in Indiana, held a mortgage on Whiteacre, which is located in Saginaw County, Michigan. On April 16, 1999, a notice of federal tax lien against Jordan Corporation was filed in Indiana in accordance with Indiana law. On June 4, 1999, Jordan Corporation assigned the mortgage to Paul Ingram, a Michigan resident. Did Ingram acquire the mortgage free of the federal tax lien?

Answer: No. The lien attached before the assignment.

Problem H: Donald Brown, a resident of Windsor, Ontario, held a mortgage on Blackacre, located in Wayne County, Michigan. On April 10, 1999, a notice of a federal tax lien against Brown was recorded with the register of deeds for Wayne County. On June 4, 1999, Brown assigned the mortgage to Paul Ingram, a resident of Wayne County. Did Ingram acquire the mortgage free of the federal tax lien?

Answer: Yes. In order to be valid against personal property, a notice of tax lien must be filed in the place of residence of the individual taxpayer. Because Brown resides outside of the United States, he is deemed to reside in the District of Columbia for federal tax lien purposes.

Authorities: 26 USC 6323(f); MCL 211.661 *et seq.*

Comment: Verification that an assignor's interest in an assigned mortgage is free of a federal tax lien requires: (1) determination of the place of residence or principal executive office of the assignor for the past 10 years and 30 days; and (2) search of the records of each such place for the appropriate period. If the assignor is not the original mortgagee, a similar determination and search would be required as to each intervening holder of the mortgage.

If the residence of any holder of the mortgage was at any time outside the United States, a search for such period in the District of Columbia would be required.

STANDARD 20.7

EFFECT OF FILING AND REFILING NOTICE OF GENERAL TAX LIEN FOR RECORD AND INDEXING

STANDARD: A NOTICE OF A GENERAL TAX LIEN WHEN FILED FOR RECORD AND INDEXED, REMAINS VALID AGAINST PARTIES PROTECTED UNDER 26 USC 6323(a) FOR A PERIOD OF 10 YEARS AND 30 DAYS AFTER THE ASSESSMENT DATE.

IF A NOTICE IS REFILED FOR RECORD AND INDEXED DURING THE “REQUIRED REFILING PERIOD” (THE ONE-YEAR PERIOD ENDING 30 DAYS AFTER THE EXPIRATION OF 10 YEARS AFTER THE DATE OF ASSESSMENT), THE NOTICE REMAINS VALID FOR AN ADDITIONAL PERIOD OF 10 YEARS AFTER THE END OF THE “REQUIRED RE- FILING PERIOD” AND MAY BE EXTENDED BY REFILING FOR RECORD AND INDEXING.

IF A NOTICE IS REFILED FOR RECORD AND INDEXED AFTER THE EXPIRATION OF THE “REQUIRED REFILING PERIOD,” NOTICE IS VALID AS OF THE TIME OF RE- FILING FOR RECORD AND INDEXING, BUT PROSPECTIVELY ONLY, FOR A PERIOD OF 10 YEARS AFTER THE END OF THE PRECEDING “REQUIRED REFILING PERIOD” AND MAY BE EXTENDED BY REFILING FOR RECORD AND IN- DEXING.

Problem A: Donald Brown owned Blackacre. On March 1, 1994 a federal tax was assessed against Brown. On July 1, 1997, a notice of the federal tax lien against Brown was filed for record and indexed in the office of the register of deeds for the county in which Blackacre was located. On April 15, 2004, Brown deeded Blackacre to Paul Ingram. The notice had not been refiled for record or indexed. Did Ingram acquire Blackacre free of the federal tax lien?

Answer: Yes.

Problem B: Donald Brown owned Blackacre. On March 1, 1993, a federal tax was assessed against Brown. On July 1, 1993, a notice of the federal tax lien against Brown was filed for record and indexed in the office of the register of deeds for the county in which Blackacre was located. Notice of the lien was refiled for record and indexed on April 15, 2002. On November 18, 2004 Brown deeded Blackacre to Paul Ingram. Did Ingram acquire Blackacre free of the federal tax lien?

Answer: No. The initial “required refiling period” began April 1, 2002 and continued through March 31, 2003. Thus, April 15, 2002 was within the “required refiling period.” Because refiling for record and indexing continued the validity of the notice for 10 years after the end of the “required refiling period” (not after the date of refiling for record and indexing), the refiling for record and indexing on April 15, 2002 continued the validity of the notice through March 31, 2013.

Problem C: Donald Brown owned Blackacre and Whiteacre. On March 1, 1993 a federal tax lien was assessed against Brown. On July 1, 1993, a notice of federal tax lien against Brown was filed for record and indexed in the office of the register of deeds for the county in which both Blackacre and Whiteacre were located. On April 15, 2003, Brown deeded Blackacre to Paul Ingram. A notice of the lien was refiled for record and indexed on June 2, 2005. On June 15, 2005, Brown deeded Whiteacre to Ingram. Did Ingram acquire either Blackacre or Whiteacre free of the federal tax lien?

Answer: Yes, as to Blackacre. At the time Blackacre was deeded, more than 10 years and 30 days had elapsed after the date of the assessment. Because the notice of the federal tax lien was not refiled for record and indexed during the “required refiling period,” the notice was not valid until refiled for record and indexed on June 2, 2005. The refiling of the notice for record and indexing after expiration of the initial “required refiling period” is valid prospectively only and did not affect the conveyance of Blackacre made after the notice ceased to be valid and before the notice was refiled for record and indexing.

No, as to Whiteacre. The refiling for record and indexing of the notice of the federal tax lien on June 2, 2005, before the conveyance of Whiteacre, revived the validity of the notice of the lien as of that date. The notice is effective through March 31, 2013. The refiling

for record and indexing caused the notice to remain valid until the expiration of 10 years after the end of the preceding “required refiling period.” Because the assessment was March 1, 1993, the end of the first “required refiling period” was March 31, 2003. The refiling for record and indexing continued the validity of the notice for 10 years after March 31, 2003.

Authorities: 26 USC 6323(g) and 6502(a).

Comment A: To be valid as a refiling, a notice of federal tax lien must be refiled for record and indexed in the office in which the prior notice of lien was filed or recorded and, in certain instances in which notice of a change of residence has been given to the United States, must also be refiled for record and indexed in the new state of residence. A notice of lien may be kept valid indefinitely by repeated refilings for record and indexing.

Comment B: Section 11317 of the Revenue Reconciliation Act of 1990, which became effective on November 5, 1990, amended the period for collection of a tax levy or proceeding in court from six years to 10 years, 26 USC 6502(a), and the “required refiling period” to “the one-year period ending 30 days after the expiration of 10 years after the date of assessment of the tax,” 26 USC 6323(g). The Internal Revenue Service takes the position that a notice of federal tax lien recorded before November 5, 1990 which reflects the prior six-year collection period had to be rerecorded by the “required refiling period” stated in the notice. A notice refiled for record and indexed after November 5, 1990 will reflect the 10-year collection period under 26 USC 6502(a), as amended.

STANDARD 20.8

SCOPE AND RELATIVE PRIORITY OF ESTATE TAX LIEN

STANDARD: UPON DEATH AND WITHOUT NOTICE, A FEDERAL ESTATE TAX LIEN IN THE AMOUNT ULTIMATELY DETERMINED TO BE DUE AGAINST THE GROSS ESTATE OF A DECEDENT, ARISES AND ATTACHES TO THE GROSS ESTATE FOR 10 YEARS AND IS SUPERIOR TO ALL LIENS WHICH ARISE LATER, EXCEPT AS PROVIDED IN 26 USC 6324(c). THE LIEN, HOWEVER, IS SUBJECT TO DIVESTMENT IN THE MANNER PROVIDED UNDER 26 USC 6323(h)(1) AND (6) AND DOES NOT APPLY TO ANY PROPERTY OF THE ESTATE SUBJECT TO THE SPECIAL LIENS PROVIDED FOR IN 26 USC 6324A AND 6324B.

Problem A: John Doe owned Blackacre subject to a mortgage. Doe died December 2, 1995, leaving an estate liable for payment of federal estate tax. The mortgage was foreclosed in 1996. The mortgagee paid real property taxes for 1994, 1995 and 1996, current insurance premiums and the statutory attorney fees for the foreclosure. The mortgage provided that the lien secured repayment of the amounts paid by the mortgagee. Does the lien for the mortgage indebtedness, increased by the amounts paid, have priority over the federal estate tax lien?

Answer: Yes. The federal estate tax lien attached to Blackacre upon John Doe's death, but the previously existing mortgage had priority over the tax lien and the priority extends to the expenditures.

Problem B: John Doe owned Blackacre at the time of his death. His will, naming a personal representative with power of sale, was admitted to probate and the personal representative qualified. The inventory and appraisal filed in the estate disclosed a total probate estate in an amount less than the applicable estate tax exemption. The personal representative deeded Blackacre to Richard Roe, pursuant to the power of sale. May it be presumed that Roe acquired title to Blackacre free of a federal estate tax lien?

Answer: No, because the gross estate of a decedent for federal estate tax purposes includes certain property interests in addition to the decedent's probate estate. If Doe owned any such property interests at the time of his death, their value, in addition to the value of Doe's probate estate, could result in a gross federal estate tax estate in excess of the estate tax exemption.

Problem C: John Doe died February 1, 2005. His estate included Blackacre and was subject to federal estate tax. County and city real property taxes accruing after February 1, 2005 were not paid. Do the liens of the unpaid real property taxes have priority over the estate tax lien?

Answer: Yes.

Problem D: John Doe died testate December 1, 1996. His estate included Blackacre and was subject to federal estate tax. Frank Ernest obtained a judgment against Doe's devisees on February 14, 1997. On March 11, 1997, Blackacre was levied on pursuant to the judgment, sold to Ernest at a sale on execution levy and the redemption period expired. Did Ernest acquire title to Blackacre free of the estate tax lien?

Answer: No. Upon Doe's death, the estate tax lien attached to Blackacre without notice and had priority over the interest of the judgment creditor.

Problem E: Tom Swift died November 15, 1996. His estate included Blackacre and was subject to federal estate tax. On December 24, 1996, the personal representative of Swift's estate mortgaged Blackacre to Frank Ernest. None of the mortgage proceeds were used to pay charges against the estate or expenses of administration. The mortgage was foreclosed and the redemption period expired. Did the purchaser at the foreclosure sale acquire title to Blackacre free of the estate tax lien?

Answer: No. Upon Swift's death, the estate tax lien attached to Blackacre without notice and had priority over the interest of the mortgagee.

Authorities: Generally: 26 USC 2031 through 2044, 6323, 6324(a) and (c).

Problem A: 26 USC 6323(e).

Problem C: 26 USC 6323(b) and 6324(c). *Robbins v Barron*, 32 Mich 36 (1875).

Problem D: *United States v McGuire*, 42 F Supp 337 (NJ, 1941).

Problem E: *United States v Security-First National Bank of Los Angeles*, 30 F Supp 113 (SD Cal, 1939).

Comment A: Some types of property interests, as defined by federal law, which may be included in the gross estate of a decedent, but not in the probate estate, are:

- (A) insurance on the life of the decedent with respect to which the decedent possessed any incident of ownership;
- (B) property owned jointly or by the entirety;
- (C) property subject to a power of appointment;
- (D) property which the decedent conveyed during his or her lifetime, but in which certain incidents of ownership were retained;
- (E) property conveyed by the decedent in contemplation of death; and
- (F) transfers taking effect at death.

Comment B: A federal estate tax lien attaches upon death and without notice. A general tax lien for the same estate tax arises at the time the assessment is made. See, Standard 20.1. Each lien has separate characteristics as to scope, relative priority and enforcement, and the United States may enforce either lien. *United States v Cleavenger*, 325 F Supp 871 (ND Ind, 1971), appeal dismissed, 483 F2d 1406 (CA 7, 1973).

Comment C: Real property may be divested of a federal estate tax lien as provided in 26 USC 6324(a)(1) and (2). See, Standards 20.9 and 20.10.

STANDARD 20.9

DIVESTING PROPERTY OF ESTATE TAX LIEN UPON CONVEYANCE BY SURVIVING TENANT

STANDARD: ONE WHO TAKES TITLE AS A PURCHASER FROM OR IS GRANTED A SECURITY INTEREST BY AN OWNER WHO HELD TITLE TO REAL PROPERTY AS A SURVIVING JOINT TENANT OR TENANT BY THE ENTIRETIES, TAKES FREE OF ANY FEDERAL ESTATE TAX LIEN AGAINST THE ESTATE OF THE DECEASED TENANT UNLESS A PRIOR NOTICE OF A GENERAL TAX LIEN HAS BEEN RECORDED AND INDEXED.

Problem A: Samuel Long and Dorothy Long owned Blackacre as tenants by the entireties. Samuel Long died in 1998 leaving an estate subject to federal estate tax. In 1999 and before the recording and indexing of a notice of federal estate tax lien, Dorothy Long, as survivor, deeded Blackacre to Paul Ingram, a purchaser for an adequate and full consideration in money or money's worth. A certified copy of the death certificate of Samuel Long was attached to the deed. Did Ingram acquire title to Blackacre free of the federal estate tax lien against the estate of Samuel Long?

Answer: Yes.

Problem B: Samuel Long and Maurice Dean owned Blackacre as joint tenants. Samuel Long died in 1998 leaving an estate subject to federal estate tax. Dean deeded Blackacre to Sidney Carr for a nominal consideration. Carr deeded Blackacre to Paul Ingram, a purchaser for an adequate and full consideration in money or money's worth. No notice of a federal estate tax lien against Long's estate was recorded or indexed. Did Ingram acquire title to Blackacre free of the federal estate tax lien?

Answer: Yes. Blackacre was not divested of the lien upon conveyance to Carr, who was not a purchaser as defined in 26 USC 6323(h)(6), but Blackacre was divested when the later conveyance was made to Ingram, who was a protected purchaser.

Authorities: 26 USC 6323(h)(1), (6) and 6324(a)(2).

- Comment A:** Before the Federal Tax Lien Act of 1966, property conveyed by a surviving tenant was divested of an estate tax lien only if the purchaser, mortgagee or pledgee was “bona fide.” Internal Revenue Service rulings indicated that the “bona fides” were not affected by a purchaser’s knowledge that the seller became the sole owner upon the death of a tenant by the entireties or joint tenant. Rev Rul 56-144; 56-1 Cum Bul 563. Under the Federal Tax Lien Act of 1966, actual knowledge by a purchaser or holder of a security interest of the existence of an estate tax lien, or of facts which would make the existence of such a lien probable, does not deprive the purchaser or holder of a security interest of protected status if the other requisites of 26 USC 6323(h)(1) or (6) are satisfied.
- Comment B:** 26 USC 6324(a)(2) also provides for divesting property of an estate tax lien upon transfer by various persons other than surviving tenants.
- Comment C:** A purchaser or holder of a security interest, meeting the requirements of 26 USC 6323(h)(1) and (6) and 6324(a)(2), is also be protected against the special estate tax liens described in Standards 20.12 and 20.13, unless a prior notice of a general tax lien has been recorded and indexed.

STANDARD 20.10

DIVESTING REAL PROPERTY OF ESTATE TAX LIEN THROUGH SALE OR MORTGAGE BY DECEDENT'S PERSONAL REPRESENTATIVE

STANDARD: REAL PROPERTY INCLUDED IN A DECEDENT'S PROBATE ESTATE WHICH IS DEEDED OR MORTGAGED BY A PERSONAL REPRESENTATIVE IS DIVESTED OF A FEDERAL ESTATE TAX LIEN IF THE PROCEEDS OF THE SALE OR MORTGAGE ARE USED FOR THE PAYMENT OF THE CHARGES AGAINST THE ESTATE AND EXPENSES OF ITS ADMINISTRATION THAT ARE ALLOWED BY THE PROBATE COURT AND IF NO NOTICE OF THE FEDERAL ESTATE TAX LIEN HAS BEEN RECORDED OR INDEXED.

Problem A: John Doe owned various parcels of real property, including Blackacre. Doe died January 10, 1999. The probate court ordered the sale of Blackacre for the purpose of paying allowed charges and expenses and the sale was confirmed. The personal representative of Doe's estate deeded Blackacre to Richard Roe. A notice of federal estate tax lien against Doe's estate was recorded and indexed after execution of the deed. All proceeds of the sale were used for the payment of the charges and expenses. Did Roe acquire title to Blackacre free of the federal estate tax lien?

Answer: Yes.

Problem B: The estate of John Doe, deceased, included Blackacre and was subject to federal estate tax. The personal representative of Doe's estate mortgaged Blackacre to Security Trust Bank to secure a loan. The loan proceeds were used to pay funeral expenses and medical bills which were allowed by the probate court, and also charges and expenses which were not allowed. The mortgage was foreclosed and the redemption period expired. Did the purchaser at the foreclosure sale acquire title to Blackacre free of the federal estate tax lien?

Answer: No. Because the loan proceeds were used, in part, to pay charges and expenses which were not allowed by the probate court, Blackacre was not fully divested of the federal estate tax lien.

Authorities: 26 USC 6324(a)(1). *United States v Security First National Bank of Los Angeles*, 30 F Supp 113 (SD Cal 1939); *United States v McGuire*, 42 F Supp 337 (NJ 1941); *Northington v United States*, 475 F2d 720 (CA 5, 1973); *Kleine v United States*, 539 F2d 427 (CA 5, 1976).

STANDARD 20.11

DURATION OF ESTATE TAX LIEN

STANDARD: A FEDERAL ESTATE TAX LIEN ON THE GROSS ESTATE OF A DECEDENT CONTINUES IN FORCE FOR A PERIOD OF 10 YEARS AFTER THE DATE OF DEATH UNLESS THE ESTATE TAX IS SOONER PAID IN FULL OR BECOMES UNENFORCEABLE BY REASON OF LAPSE OF TIME.

Problem: John Doe, owner of Blackacre, died on January 10, 1984. His estate was subject to federal estate tax. The estate was closed in 1985 and Blackacre was assigned to Richard Poe. On January 20, 1994, was Poe's title to Blackacre free of the federal estate tax lien?

Answer: Yes. The estate tax lien had expired, but see comment B below.

Authority: 26 USC 6324(a)(1).

Comment A: The periods of limitation within which a tax may be assessed (26 USC 6501) and enforced (26 USC 6502) apply to an estate tax. See, Standard 20.3, Comments B and C.

Comment B: Upon the expiration of 10 years after the date of death, the estate tax lien ceases to exist. If a right to assess or enforce the tax continues, a general tax lien may attach. *United States v Cleavenger*, 325 F Supp 871 (ND Ind. 1971), appeal dismissed, 483 F2d 1406 (CA 7, 1973). See, Standards 20.1 through 20.10.

STANDARD 20.12

SPECIAL LIEN FOR ESTATE TAX DEFERRED UNDER 26 USC 6166

STANDARD: A SPECIAL TAX LIEN (“SECTION 6166 LIEN”) ATTACHES TO ALL PROPERTY DESIGNATED IN AN AGREEMENT EXECUTED AND FILED IN COMPLIANCE WITH 26 USC 6324A PURSUANT TO AN ELECTION TO EXTEND THE TIME FOR PAYMENT OF THE ESTATE TAX UNDER 26 USC 6166. THE LIEN:

- (A) IS IN LIEU OF THE FEDERAL ESTATE TAX LIEN UNDER 26 USC 6324 (SEE 26 USC 6324A(d)(4));**
- (B) ARISES AT THE EARLIER OF THE DATE THE PERSONAL REPRESENTATIVE IS DISCHARGED FROM LIABILITY UNDER 26 USC 2204 OR NOTICE OF THE LIEN IS RECORDED IN ACCORDANCE WITH 26 USC 6323(f);**
- (C) CONTINUES UNTIL THE LIABILITY FOR THE DEFERRED AMOUNT IS SATISFIED OR BECOMES UNENFORCEABLE BY REASON OF LAPSE OF TIME;**
- (D) IS NOT VALID AGAINST ANY PARTIES PROTECTED BY 26 USC 6323(a) UNTIL NOTICE HAS BEEN RECORDED AND INDEXED; AND**
- (E) IS NOT VALID WITH RESPECT TO CERTAIN REAL PROPERTY INTERESTS SPECIFIED IN 26 USC 6324(d)(3) EVEN IF NOTICE OF THE LIEN HAS BEEN RECORDED AND INDEXED. IF THE INTERNAL REVENUE SERVICE FILES A NOTICE (AS PROVIDED FOR IN 26 USC 6323(f)) THAT PAYMENT OF THE DEFERRED AMOUNT OF ESTATE TAX HAS BEEN ACCELERATED UNDER 26 USC 6166(g), THEN THE SECTION 6166 LIEN TAKES PRIORITY OVER LATER RECORDED MECHANIC’S LIENS AND REAL PROPERTY CONSTRUCTION OR IMPROVEMENT FINANCING STATEMENTS,**

BUT NOT OVER REAL PROPERTY TAXES AND SPECIAL ASSESSMENTS.

Authorities: 26 USC 6166 and 6324A.

Comment: An estate tax return is due nine months after the decedent's death. 26 USC 2204(a). Except in certain situations, payment of the estate tax is required to be made with the return. The Secretary of the Treasury may extend the time for payment for a reasonable period not to exceed 10 years. 26 USC 6161.

The fiduciary may elect to extend the installment payment privilege to 15 years for that portion of the estate tax attributable to an interest in a farm or other closely held business, if the value of the business interest is more than 35% of the adjusted gross estate. If the fiduciary has elected to defer payments of estate tax attributable to a farm or other closely held business, under the 15-year payout rule, the special lien described in this Standard applies. 26 USC 6166.

Note: See, Standards 20.5, 20.6 and 20.8.

STANDARD 20.13

SCOPE AND PRIORITY OF SPECIAL LIEN FOR ADDITIONAL ESTATE TAX ATTRIBUTABLE TO VALUE OF REAL PROPERTY USED IN OPERATION OF FARM OR OTHER QUALIFYING BUSINESS

STANDARD: A SPECIAL ESTATE TAX LIEN ATTACHES TO AN INTEREST IN REAL PROPERTY WITHIN THE MEANING OF 26 USC 2032A(b) IF AN ELECTION IS FILED UNDER 26 USC 2032A TO VALUE THE INTEREST FOR FEDERAL ESTATE TAX PURPOSES BASED ON ITS ACTUAL USE. THE LIEN:

- (A) IS IN LIEU OF THE FEDERAL ESTATE TAX LIEN UNDER 26 USC 6324;
- (B) ARISES AT THE TIME AN ELECTION IS FILED UNDER 26 USC 2032A;
- (C) CONTINUES UNTIL THE LIABILITY FOR TAX UNDER 26 USC 2032A(c) IS SATISFIED OR HAS BECOME UNENFORCEABLE BY REASON OF LAPSE OF TIME, OR UNTIL IT IS ESTABLISHED TO THE SATISFACTION OF THE SECRETARY OF THE TREASURY THAT NO FURTHER TAX LIABILITY MAY ARISE UNDER THIS SECTION;
- (D) IS NOT VALID AGAINST ANY PARTIES PROTECTED BY 26 USC 6323(a) UNTIL NOTICE HAS BEEN RECORDED AND INDEXED; AND
- (E) TAKES PRIORITY OVER A LIEN WHICH IS LATER RECORDED IN THE SAME MANNER AS A LIEN UNDER SECTION 26 USC 6166.

Authorities: 26 USC 6166, 6324, 6324A, 6324B and 2032A.

Comment: 26 USC 6324B permits the application of the special lien described in this Standard to all qualified farm or other qualified real property with respect to which a special use valuation election has been made.

The lien arises as a result of an election under 26 USC 2032(A)(d) to value real property based on its actual use which must be made not later than the due date (including extensions) for filing the estate tax return. In addition, the fiduciary must file a written agreement signed by each person who has an interest (whether or not in possession) in any real property for which actual use valuation is elected. Each such person must also consent to the recapture of the estate tax benefit if the real property is conveyed for, or converted, to non-qualifying uses. The agreement must be filed with the estate tax return.

Note: See, Standards 20.6, 20.8 and 20.12.

STANDARD 20.14

SCOPE AND PRIORITY OF GIFT TAX LIEN

STANDARD: REAL PROPERTY CONVEYED BY GIFT BECOMES IMMEDIATELY SUBJECT TO A LIEN FOR THE GIFT TAX DUE FROM THE DONOR IN RESPECT TO ALL GIFTS MADE BY THE DONOR DURING THE CALENDAR YEAR IN WHICH THE GIFT WAS MADE. THE LIEN HAS PRIORITY OVER ALL LIENS WHICH ARISE LATER, EXCEPT AS PROVIDED IN 26 USC 6324(c).

Problem A: Mary Doe received Swampacre by gift in March, 1990. The value of Swampacre was such that no gift tax was due. In November of 1990 the same donor made a gift of Blackacre to Richard Roe. The combined value of the gifts was such that a gift tax was due. No gift tax return was filed by the donor and no gift tax was paid. On January 1, 1999 did Doe own Swampacre free of the gift tax lien?

Answer: No.

Problem B: Mary Doe received Blackacre by gift in 1990. The value of Blackacre was sufficient to create a federal gift tax liability. The gift tax was never paid. In 1993, Doe conveyed Blackacre as a gift to Richard Roe. In 1994 did Roe hold Blackacre free of the gift tax lien?

Answer: No. The gift tax lien on Blackacre which arose from the 1990 gift continued to be effective even after Blackacre was later conveyed by gift.

Note: See Standard 20.16 regarding the duration of a gift tax lien.

Authorities: 26 USC 2501, 2502, 2503, 2504 and 6324(b). Treas Reg §301.6324-1 (1972). *Baur v Commissioner*, 145 F2d 338 (CA 3, 1944); *Winton v Reynolds*, 57 F Supp 565 (Minn, 1944).

Comment: In addition to a federal gift tax lien, a general tax lien for the same gift arises at the time the assessment is made. See, Standard 20.1. Each lien has separate characteristics as to scope, priority and en-

forcement, and the United States may enforce either lien.

Note: See Standard 20.15 regarding conveyances and encumbrances that may divest a gift tax lien.

STANDARD 20.15

VALIDITY OF GIFT TAX LIEN AGAINST PROTECTED PERSON

STANDARD: A GIFT TAX LIEN IS NOT VALID AGAINST ANY PERSON WHO BECOMES A PURCHASER, HOLDER OF A SECURITY INTEREST, A MECHANIC'S LIENOR AS THOSE TERMS ARE DEFINED IN 26 USC 6323(h) OR A JUDGMENT LIEN CREDITOR, UNLESS THE NOTICE OF THE TAX LIEN HAS BEEN RECORDED AND INDEXED AS PROVIDED IN 26 USC 6323.

Problem A: Mary Doe acquired Blackacre in 2005 for a consideration of “love and affection.” The value of Blackacre was sufficient to create a federal gift tax liability which was not discharged. In 2006, Doe deeded Blackacre to Paul Ingram and the deed was recorded. Ingram paid an adequate and full consideration in money or money's worth. No notice of the federal gift tax lien against Doe or Ingram was recorded. Did Ingram take free of the gift tax lien?

Answer: Yes. Ingram was a purchaser who took free of the gift tax lien. 26 USC 6324(b) provides for a gift tax lien and its divestment upon transfer to a purchaser or holder of a security interest, as those terms are defined in 26 USC 6323(h). Upon divestment, the lien attaches to all real property, including after-acquired property of Doe to the extent of the value of Blackacre.

Problem B: Same facts as in Problem A, except that in 2006 Doe mortgaged Blackacre to Ingram to secure payment of a loan from Ingram. The mortgage was recorded. Does Ingram's mortgage have priority over the gift tax lien?

Answer: Yes.

Authorities: 26 USC 6323(h) and 6324(b).

Comment: In addition to a federal gift tax lien, a general tax lien for the same gift arises at the time the assessment is made. See, Standard 20.1. Each lien has separate characteristics as to scope, relative priority and enforcement, and the United States may enforce either lien.

STANDARD 20.16

DURATION OF GIFT TAX LIEN

STANDARD: A GIFT TAX LIEN CONTINUES UNTIL THE TAX IS SATISFIED, OR BECOMES UNENFORCEABLE BY REASON OF LAPSE OF TIME. THE LIEN EXPIRES 10 YEARS AFTER THE DATE THE LAST GIFT WAS MADE DURING THE CALENDAR YEAR FOR WHICH A GIFT TAX RETURN WAS REQUIRED.

Problem: On November 23, 1995, John Smith gave Blackacre to Mary Doe. The value of Blackacre, plus that of other gifts made by Smith, the last of which was made on December 15, 1995, in the period covered by the same gift tax return created a gift tax liability. The tax was not paid nor had it become unenforceable by reason of lapse of time. On December 16, 2005, does Doe hold Blackacre free of the gift tax lien?

Answer: Yes. More than 10 years elapsed since the date of the last gift made in 1995.

Authorities: 26 USC 6324(b). *Baur v Commissioner*, 145 F2d 338 (CA 3, 1944).

Comment: A gift tax lien ceases to exist before the expiration of 10 years after the date the gift or gifts were made if the lien “becomes unenforceable by reason of lapse of time.” 26 USC 6324(b). Although the limitations on the time within which a tax may be assessed (26 USC 6501) and enforced (26 USC 6502) apply to a gift tax, it is difficult to establish in any particular case that a statutory period of time has run because the period of limitations may be tolled under various circumstances. See, Standard 20.3, Comments B and C. The specific gift tax lien ceases to exist upon the expiration of 10 years after the date the gift or gifts were made. If a right to assess or enforce the tax remains, there is a general tax lien against the affected real property. See, Standards 20.1 through 20.7.

STANDARD 20.17

RELEASE, DISCHARGE, SUBORDINATION AND NONATTACHMENT OF FEDERAL TAX LIEN

STANDARD: A CERTIFICATE ISSUED BY THE UNITED STATES WHICH PURPORTS TO:

- (A) RELEASE A FEDERAL TAX LIEN;**
- (B) DISCHARGE ANY SPECIFIC PROPERTY FROM A FEDERAL TAX LIEN;**
- (C) SUBORDINATE A FEDERAL TAX LIEN TO ANOTHER INTEREST; OR**
- (D) STATE THAT A SPECIFIC FEDERAL TAX LIEN DOES NOT ATTACH TO THE PROPERTY OF A SPECIFIED PERSON IS CONCLUSIVE, SUBJECT TO THE FOLLOWING:**
 - (1) THE CERTIFICATE MUST BE RECORDED IN THE SAME OFFICE AS THE NOTICE OF FEDERAL TAX LIEN TO WHICH IT RELATES;**
 - (2) A CERTIFICATE OF RELEASE OR NON-ATTACHMENT IS SUBJECT TO REVOCATION ON CONDITIONS SPECIFIED IN 26 USC 6325(f)(2), BUT THE REVOCATION IS EFFECTIVE ONLY AFTER NOTICE OF THE REVOCATION HAS BEEN RECORDED IN THE SAME OFFICE IN WHICH THE RELATED NOTICE OF LIEN WAS RECORDED; AND**
 - (3) A DISCHARGE OF SPECIFIC PROPERTY FROM A LIEN IS NOT VALID IF THE PERSON LIABLE FOR THE TAX REACQUIRES THE PROPERTY AFTER THE CERTIFICATE HAS BEEN ISSUED.**

Problem: Donald Brown was the owner of Blackacre. On January 17, 2006, a federal tax was assessed against Brown. On February 15, 2006, a notice of the federal tax lien against Brown was recorded in the office

of the register of deeds for the county in which Blackacre is located. On March 15, 2006, a certificate of release of the lien against Brown was recorded in the same register of deeds office. No revocation of the certificate was recorded. On March 31, 2006, Brown conveyed Blackacre to Paul Ingram, who was a purchaser entitled to the protection of 26 USC 6323(a). Did Ingram acquire Blackacre free of the federal tax lien?

Answer: Yes. Ingram was entitled to rely on the conclusiveness of the certificate recorded on March 15, 2000, because no revocation had been recorded before the conveyance of title. Had a revocation been recorded at any time, the lien would have been reinstated immediately but would have been effective prospectively only. Consequently, the recording of a release does not relieve a purchaser from the necessity of examining the title for a recorded revocation.

Authorities: 26 USC 6325(a), (b), (d), (e) and (f). Treas Reg §400.2-1(b), as to discharges based on substitution of proceeds of sale.

Comment: 26 USC 6323(f) requires the indexing of recorded notices of liens, but this section does not refer to indexing of certificates of release. In practice, however, releases and revocations of liens are recorded and indexed at the place of recording of the original lien. The Committee expresses no opinion as to whether there is a federal statutory requirement for the indexing of recorded releases and revocations. The Michigan Uniform Federal Lien Registration Act, MCL 211.661 *et seq.*, requires the indexing of revocations, releases and reattachments. MCL 211.665.

STANDARD 20.18

LEVY, DISTRAINT AND SALE OF REAL PROPERTY SUBJECT TO FEDERAL TAX LIEN

STANDARD: REAL PROPERTY TO WHICH A FEDERAL TAX LIEN ATTACHES IS SUBJECT TO LEVY, DISTRAINT AND SALE BY THE UNITED STATES. THE PURCHASER ACQUIRES THE TITLE OF THE TAXPAYER AT THE TIME THE LIEN ATTACHED, PROVIDED:

- (A) THERE WAS NO REDEMPTION FROM THE SALE;
- (B) A PROPER DEED WAS ISSUED BY THE UNITED STATES; AND
- (C) THERE WAS SUBSTANTIAL COMPLIANCE WITH THE APPLICABLE STATUTORY PROCEDURE.

Problem: Donald Brown owned Blackacre, subject to a recorded mortgage. On January 3, 2006, a federal tax was assessed against Brown. On February 1, 2006, a notice of federal tax lien against Brown was recorded in the county in which Blackacre is located. Later, the United States levied upon, seized and on March 22, 2006, sold Blackacre to Kevin Smith and recorded a certificate of sale. On April 13, 2006, Brown granted a second mortgage on Blackacre. No redemption occurred within 180 days after the sale. On October 1, 2006, the United States deeded Blackacre to Smith, who recorded the deed. There was substantial compliance with all applicable statutory procedures. Did Smith acquire title to Blackacre subject only to the first mortgage?

Answer: Yes. The first mortgage was recorded before the recording of the general tax lien. Smith acquired the title that Brown held at the time the tax lien attached. Accordingly, Smith's title was free of the second mortgage. If the second mortgage had been recorded after the assessment but before the recording of the notice of the federal tax lien, Smith's title would have been subject to the second mortgage.

Authorities: 26 USC 6331 through 6344.

Comment: This Standard applies to all federal tax liens, including general, estate and gift tax liens.

