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## THE FEDERAL TAX LIEN INDEX IN PENNSYLVANIA

Most attorneys are requested at some time or another to certify the title of real estate and, as part of the assignment, to search the records themselves or to supervise the search conducted by subordinates. Probably the most esoteric phase of such searching is that concerning the general lien which the Federal Government exerts to enforce the payment of federal taxes. This discussion is directed to the requirement and effect of filing notice of such liens, called federal tax liens. It is important to remember that the lien here discussed does not exhaust the subject of federal liens imposed to enforce taxation but is limited to the general lien.<sup>1</sup>

The Internal Revenue Code of 1939, 53 Stat. 448, 26 U. S. C. § 3670 provides as follows:

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, be longing to such person."

What are the requirements and effects of filing notice of this lien upon real estate situate in Pennsylvania?

The rule from earliest times has been that the federal tax lien attaches to all real and personal property without notice of any kind. However, certain exceptions have become recognized and were enacted into the Internal Revenue Code of 1939, 53 Stat. 449, as amended June 29, 1939, 53 Stat. 882, 26 U. S. C. § 3672, the pertinent portion of which provides:

"Validity against mortgagees, pledgees, purchasers, and judgment creditors.

(a) Invalidity of lien without notice. Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) Under State or Territorial laws. In accordance with the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; . . ."

In *Maryland Casualty Co. v. Charleston Lead Works et al.*,<sup>2</sup> the court held that the statutory lien arising under 26 U. S. C. § 3670 attaches spontaneously. "No action is required by the collector to effect the lien. No action by the collector is referred to except such as relates to giving such notice as will be effective against mortgagees, purchasers and judgment creditors."

<sup>1</sup> Board of Supervisors of La. State University et al. v. Hart, et al. 210 La. 78, 26 So.2d 361, 174 A. L. R. 1366 (1946).

<sup>2</sup> 24 F.2d 836 (1928).

Inasmuch as the bulk of searches are in reference to the rights of mortgagees, pledgees, purchasers, or judgment creditors, section 3672 is a very important and helpful piece of legislation. Notice that a conditional immunity is given, but otherwise the original rule remains in full force and effect. The condition of the immunity being that notice of lien is not filed in accord with the laws of the state in which the property is located if such state has enacted pertinent legislation, the Pennsylvania statutes must be consulted.

The Act of May 1, 1929, P. L. 1215, 74 P. S. 141 et seq. entitled, "Uniform Federal Tax Lien Registration Act" was passed by the Pennsylvania Legislature for the express purpose of providing a method of registration of federal tax lien notices in pursuance of the provisions of 26 U. S. C. § 3672.

Section one of the act provides:

"Notices of liens for taxes payable to the United States of America, and certificates discharging such liens, shall be filed by the collector of internal revenue in the office of the prothonotary of the county or counties in this State within which the property subject to such lien is situated."

This section fulfills the requirement of authorized procedure necessary to make operative the first provision of 26 U. S. C. § 3672. Before a federal tax lien becomes operative against a purchaser, mortgagee, pledgee, or judgment creditor, notice of such lien must be filed in the office of the prothonotary of the county or counties in which the land to which the lien attaches is located.

How does the prothonotary file such notices of lien, and where will the searcher discover such notices?

The second section of the act provides:

"When a notice of such tax lien is filed, the prothonotary shall forthwith enter the same in an alphabetical Federal Tax Lien Index, showing on one line the name and the residence of the taxpayer named in such notice, the collector's serial number of such notice, the date and hour of filing, and the amount of tax, with the interest, penalties and costs. He shall file and keep all original notices so filed, in numerical order, in a file or files, and designated Federal tax lien notices."

The writer recognizes that it is customary in some counties to index notices of federal tax liens in the judgment index; however, there seems to be no express authority for so doing to the exclusion of the procedure prescribed in the Act of 1929, *supra*.

Section three of the act provides that when a certificate of discharge of lien issued by a competent official is filed in the office of the prothonotary where notice of such lien is on record, the prothonotary shall so note in the index and

attach such certificate to the original notice of such lien. In view of the law concerning the duration of federal liens,<sup>3</sup> notice of a federal lien can be safely ignored only in case such certificate of discharge is entered with such notice.

In all other cases the searcher should examine the details of the lien before concluding that it is inoperative as to his subject matter.

The requirement of filing has been tested in Pennsylvania only as between mortgagee and the Federal Government. Where both claimed proceeds from the sale of property in bankruptcy proceedings, the Circuit Court of Appeals held that because notice of the federal tax lien had not been filed in the office of the prothonotary for the county in which the property sold was located, the federal tax lien was not enforceable against the mortgagee; and hence, the claim for taxes was secondary to the interest of the mortgagee without notice.<sup>4</sup> In *United States v. Beaver Run Coal Co.*<sup>5</sup> the Circuit Court of Appeals held in favor of the mortgagee against the Federal Government's claim where the mortgage had been executed and recorded two and one-half years prior to the filing of notice of the federal tax lien pursuant to the Act of 1929, *supra*.

Thus it is seen that the law provides only a conditional immunity from the general lien for federal taxes to the interests of mortgagees, pledgees, purchasers, and judgment creditors of land in Pennsylvania, which condition is satisfied and immunity nullified by the filing of notice of federal tax lien in the office of the prothonotary for the county or counties in which such real estate is situated prior to the recordation of such mortgage or notice of other transaction within the class to which immunity extends.

Lyle F. Hilton

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<sup>3</sup> 53 Stat. 449, 26 U. S. C. § 3671.

<sup>4</sup> *Miners Sav. Bank of Pittston, Pa. v. Joyce, et al.*, 97 F.2d 973 (C. C. A. 3rd 1938).

<sup>5</sup> 99 F.2d 610 (C. C. A. 3rd 1938).