6-33/400.00 Internal Revenue Service Taxes

An IRS tax lien is the government's legal claim against your property when you neglect or fail to pay a tax debt. The lien protects the government's interest in all your property, including real estate, personal property and financial assets. A federal tax lien exists after the IRS:

- Assesses the taxpayer's liability
- Sends the taxpayer a bill that explains how much is owed (Notice and Demand for Payment); and
- The taxpayer neglect or refuse to fully pay the debt

A lien is not a levy. A lien secures the government's interest in your property when you don't pay your tax debt. A levy actually takes the property to pay the tax debt. If you don't pay or make arrangements to settle your tax debt, the IRS can levy, seize and sell any type of real or personal property that you own or have an interest in.

• 6-33/400.10 Internal Revenue Tax Lien

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, 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, belonging to such person. (26 USC 6321) A United States Internal Revenue lien arises "at the time the assessment is made" and shall continue until the liability for the amount is satisfied or becomes unenforceable. (26 USC 6322) (see also CCP 2100, 2101)

• 6-33/400.20 Priority over Attachment Liens

An unsecured creditor never has priority over an internal revenue lien if he is not a "judgment creditor." (26 USC 6323; United States v. Acri, 348 US 211; United States v. Security Trust & Savings Bank, 340 US 47)

• 6-33/400.30 Priority as Against Execution Liens

A judgment creditor has priority over internal revenue taxes as to property on which the judgment creditor has obtained a lien before the government has filed its notice of tax lien. (26 USC 6323) Thus, as to personal property, the judgment creditor is not entitled to any priority unless an execution levy has been made before the government has recorded its lien. (Miller v. Bank of America 166 F 2d 415) As to real property the judgment creditor has priority only if an execution levy or abstract of judgment is recorded before the federal lien is recorded. (United States v. Spreckels, 50 F. Supp. 789)

• 6-33/410.00 Procedure After Notice of Tax Lien

Upon receipt of notice of tax lien from the Internal Revenue Service, immediately notify the creditor's attorney

by form letter "Internal Revenue Tax -Notice to Creditor" and enclose a copy of the notice, if available. The Office Supervisor or designee shall release property held under attachment or execution to the Internal Revenue Service, or to the debtor if it so directs, under any of the following conditions:

1. Upon receipt of release from the creditor's attorney.
2. Upon failure of the creditor to pay further deposits to cover expenses after demand under CCP 488.050 or 685.100.
3. Upon receipt from the Internal Revenue Service of its Final Notice and Demand, in the absence of an objection received from the creditor's attorney in reply to Sheriff's notice to creditor; provided, of course, that the tax lien has apparent priority. However, always allow the creditor's attorney at least 10 days' time after the mailing of the Sheriff's notice within which to dispute any tax priority.

• • 6-33/410.10 Priority Disputes

If there is a dispute as to priorities, notify the Internal Revenue District Director that we hold the property under attachment or execution, giving the date of levy, general description of the property held, name and address of creditor's attorney, and a copy of the writ, if available. Forward a copy of this letter to the creditor's attorney. If the property is not released under as provided above, or sold under execution as authorized below, hold the property until the Internal Revenue Service gives a written release.

When a notice of execution sale has been posted before receiving an Internal Revenue notice of lien, the Internal Revenue Service has agreed that the sale may proceed if the judgment creditor so directs. The costs of such sale, including the costs of the levy, keeper's fees, notices, and conducting of the sale, shall be deducted from the proceeds of the sale, unless otherwise instructed in writing by the Internal Revenue Service prior to the date of sale. The balance of the proceeds shall be held until a final determination as to priorities. Should the judgment creditor be the successful bidder, he must pay cash the same as any other bidder as to any amount in excess of the Sheriff's costs.

No other execution sale shall be conducted after receiving an Internal Revenue notice unless the creditor desires to make a cash bid in an amount sufficient to pay off the tax lien in full or unless specifically authorized by the Internal Revenue Service.

• 6-33/420.00 Warrant for Collection

Upon receipt of an Internal Revenue levy or notice of tax lien on moneys collected as a result of a levy for the State of California, Employment Development Department, immediately notify the Employment Development Department, giving them the information as to the amounts, date of assessment and date of recording of the lien. Send a copy of the notice to the Employment Development Department. Do not pay the money out.

Upon receipt of the Internal Revenue's Final Notice and Demand, immediately notify the Employment Development Department, but retain all property until a release is received.

State of California County Tax Collectors' Reference Manual

Franchise Tax Board – Personal Income Tax Collections Information