



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR DIRECTOR, OFFICE OF SPECIAL PROCEDURES
Attn: Michael L. Sollitto

FROM: Alan C. Levine
Chief, Branch 1 (General Litigation)

SUBJECT: Electronic Lien Filing (ELF)

This advice is in response to your memorandum dated October 25, 1999, concerning the above subject. This document is advisory only and is not to be relied upon or otherwise cited as precedent.

LEGEND:

City: N/A
Taxpayer: N/A
SSN: N/A
Years: N/A
Assessment Amount: N/A

ISSUE:

Whether section 11-461 of the Arizona Revised Statutes is sufficient to permit electronic filing of notices of federal tax lien within the meaning of Treas. Reg. § 301.6323(f)-1(d)(2). 1/

1/ Treas. Reg. § 301.6323(f)-1(d)(2) provides, in full, as follows:

Form 668 defined. The term "Form 668" generally means a paper form. However, if a state in which a notice referred to in § 301.6323(a)-1 is filed permits a notice of Federal tax lien to be filed by the use of an electronic or magnetic medium, the term "Form 668" includes a Form 668 filed by the use of any electronic or magnetic medium permitted by that state. A Form 668 must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose regardless of the method used to file the notice of Federal tax lien.

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CONCLUSION:

Section 11-461 of the Arizona Revised Statutes is not sufficient to permit electronic filing of notices of federal tax lien within the meaning of Treas. Reg. § 301.6323(f)-1(d)(2).

FACTS:

In a memorandum dated October 25, 1999, you stated that the State of Arizona changed its legislation to include language that will allow the county recorders to accept electronic transmissions of the notices of federal tax lien. ^{2/} You requested that our office review the language to determine if it is sufficient to allow Collection to proceed with plans to record tax liens with Maricopa County via electronic filing. We do not believe the language is sufficient to permit electronic filing of notices of federal tax lien within the meaning of Treas. Reg. § 301.6323(f)-1(d)(2). Accordingly, we suggest that additional legislation specifically authorizing such filings be sought.

LAW AND ANALYSIS:

The amended language of section 11-461, in relevant part, reads as follows:

11-461. Recording instruments; keeping records; identification;
location

. . .

C. The recorder may accept a digitized image of a recordable instrument for recording if it is submitted by a title insurer or by a title insurance agent as defined in section 20-1562, by a state chartered or federally chartered bank insured by the federal deposit insurance corporation, by an agency, branch or instrumentality of the federal government or by a governmental entity and the instrument from which the digitized image is taken conforms to all applicable laws relating to the recording of paper instruments.

The amended language above provides that a digitized image may be accepted for recording if "the instrument from which the digitized image is taken conforms to all applicable laws relating to the recording of paper instruments." Section 11-469 of

^{2/} Actually, in your memorandum you stated that the State of Colorado changed its legislation, however, the attached legislation you provided was for the State of Arizona.

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the Arizona Revised Statutes provides that “[a]n instrument shall be considered recorded from the time it is accepted for record, as provided by § § 11-461 and 11-480. In turn, section 11-480 provides that an instrument may be rejected for recordation if specific form and content requirements are not met. Although, section 11-480 uses the phrase “may be rejected”, we find the amended language of section 11-461(C) troublesome because, when read together with section 11-480, it is inconsistent with Treas. Reg. 301.6323(f)-1(d)(1) which provides that a notice of federal tax lien (NFTL) “is valid notwithstanding any other provision of law regarding the form or content of a notice of lien.” We recommend that section 11-461(C) be revised accordingly.

The Uniform Federal Lien Registration Act (Act) as adopted by Arizona is found in sections 33-1031 to 33-1035 of the Arizona Revised Statutes. The Arizona Act, which expressly authorizes the county recorders and the Secretary of State to file and record notices of federal tax lien and related certificates, may need to be revised to permit electronic lien filing. For instance, section 33-1034(C) requires that a NFTL and related certificates contain the information required by section 11-480. However, as previously discussed, this requirement is inconsistent with Treas. Reg. 301.6323(f)-1(d)(1).

We made changes to the Uniform Federal Lien Registration Act (1978) with 1982 amendments in order to make it a stand alone statutory authorization for electronic tax lien filings. We believe that the model language based on this Act will be of the greatest assistance for your purposes. However, before you proceed with ELF enabling legislation, we suggest you review the October 22, 1997, document, entitled Overview of the ELF Environment, as it introduces some of the various filing scenarios that you may want to consider.

If you have any further questions, please contact General Litigation, Branch 1 at (202) 622-3610.

Attachments (2)

Uniform Federal Lien Registration Act (1978) with 1982 amendments
Overview of the ELF Environment, dated October 22, 1997.

cc: Assistant Regional Counsel (GL), Western Region