5 Ways to Address a Federal Tax Lien

By Karen Tenenbaum, Esq., LL.M. (Tax), CPA of Tenenbaum Law, P.C.

Federal tax liens are one of the many tools the IRS uses to collect taxes owed. A lien is the government's legal claim against the property of a taxpayer who fails to pay a tax debt. It attaches to all types of property, including real estate, personal and business property, and financial accounts. Addressing a federal tax lien promptly is crucial since it can affect a taxpayer's ability to sell assets and obtain financing. Below are some of the options available:

1. Avoid the lien. If a taxpayer cannot resolve an outstanding tax matter, a Collection Appeals Proceeding (CAP) should be commenced before the lien is filed. With a CAP, enforcement is stayed until the appeal is resolved.

2. Lien Release. A release is available if (1) the taxpayer pays the tax debt in full, including all penalties and accrued interest; (2) the lien is no longer enforceable because the Statute of Limitations on collection has expired; or (3) the IRS accepts an Offer in Compromise which the taxpayer pays in full.

3. Lien Withdrawal. A withdrawal may be granted where (1) the IRS filed the lien in error; (2) the taxpayer has personal income tax liabilities of $25,000 or less and qualifies for the Fresh Start Program; or (3) the taxpayer requests withdrawal after paying taxes in full.

4. Lien Discharge. This option removes the lien from a specific property. This is the most common option used when selling a property that is encumbered by an IRS lien. A discharge is only granted if it is in the best interest of the IRS. Generally, this means that the United States will receive the value of the United States' interest in the property. A valueless interest, such as a property with liens senior to the IRS such that the IRS lien is essentially worthless, can also be discharged. Lastly, when the value of property remaining attached by the lien is at least double the liability of the Federal Tax lien plus other encumbrances senior to the lien, the IRS can discharge the lien.

5. Lien Subordination. Obtaining subordination does not remove the lien but does allow other creditors to move ahead of the IRS to make it easier to get a loan or mortgage. For example, a taxpayer may want to refinance a mortgage but the bank won't allow it because the tax lien would have priority over the new loan. Subordinating the lien would allow the bank to have priority. The IRS will only permit subordination if it is in the best interest of the IRS, so generally, the taxpayer would have to show that the money saved by refinancing would be paid the IRS. It's always best to address tax debts before the IRS takes collection action. Once a lien has attached to the taxpayer's property, there are options as discussed in this article but resolving the problem becomes more complicated and the taxes will likely still need to be paid. Acting quickly can avoid unnecessary expenses for your clients.

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SCBA Nominating Committee Soliciting Expressions of Interest From Members

The Nominating Committee of the Suffolk County Bar Association is soliciting recommendations and expressions of interest from members interested in holding a Director position, a three year term ending 2026. One Directorship will be accorded to the new Dean of the Academy this year. Résumés may be sent to the SCBA in an envelope marked "confidential" addressed to the Nominating Committee. Current members of the Nominating Committee are: **Lynn Poster-Zimmerman; Jennifer A. Mendelsohn; Sean Campbell; Hon. Caren Loguercio; Hon. Derrick J. Robinson; Arthur E. Shulman; Daniel J. Tambasco; Sheryl L. Randazzo; Cynthia Vargas.** The Nominating Committee will hold an organizational meeting at the Bar Center in late December or early January 2023.

~LaCova