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PRECAUTIONS OF THE TITLE EXAMINER IN RELATION TO
FEDERAL TAX LIENS

The federal tax liens with which we are concerned in this investigation are those imposed under the following sections of the Internal Revenue Code: the general tax lien imposed by section 3670 et seq; the gift tax lien found in section 1009; and the estate tax lien imposed by section 827.

The tax liens will be discussed separately. The precautions which should be taken by a title examiner in regard to each tax lien will be enumerated in the section of the article where the lien is discussed.

General Tax Lien

It is provided by section 3670 of the Internal Revenue Code that the amount of any tax owing to the federal government, together with any interest or costs that may accrue, shall be a lien in favor of the United States upon all the property and rights to property, whether real or personal, belonging to the taxpayer. This lien arises at the time when the assessment list is received by the collector and continues until it is satisfied or until it becomes unenforceable by reason of lapse of time.¹ However, such lien will not be valid against any mortgagor, pledgee, purchaser or judgment creditor, until notice has been filed by the collector in the place authorized for such filing when the state has provided such place of authorization or in the office of the clerk of the district court where no provision is made by the state or territory.²

Wyoming has adopted the Uniform Federal Tax Lien Registration Act. This Act provides that notices for liens for taxes payable to the United States shall be filed in the office of the county clerk, and ex-officio register of deeds of the counties in this state within which the property subject to such lien is situated.³

At one time federal tax liens could be enforced against land in the hands of a subsequent bona fide purchaser from the delinquent taxpayer without notice.⁴ The courts pointed out the injustice of such a procedure, however, and a change was strongly advocated.⁵ The proposed change was adopted by Congress, and the purpose and policy of the law as it stands today is said to be to permit transfer of property without lien in favor of the United States, unless the United States has perfected that lien by filing notice in the approved manner.⁶ The federal tax lien can only be per-

1. Internal Revenue Code, sec. 3671.

2. Internal Revenue Code, secs. 3672 (a) 1 and 2.

3. Wyo. Comp. Stat. 1945, sec. 55-601.

4. United States v. Curry, 201 F. 371 (D.C. Md. 1912).

5. Ibid.

6. Sport-Craft v. Lasker, 32 N.Y. Supp. (2d) 360 (1941).

7. United States v. Beaver Run Coal Co., 99 F. (2d) 610 (3d Cir. 1938).

8. Schmitz v. Stockman, 151 Kan. 891, 101 P. (2d) 962 (1940).

fectured by filing notice as authorized.⁷ Actual notice of delinquent taxes by a purchaser or mortgagor will not alone give the tax lien priority.⁸

Although, for some time the wording of the statute left some doubt as to whether or not the lien attached to after-acquired property, it is now generally held that the lien does so attach.⁹ This fact can be of importance to a title examiner. Of further importance are the following facts. The tax lien is valid even against the homestead rights of the delinquent.¹⁰ However, it cannot serve to divest the delinquent's wife of her homestead rights.¹¹ A tax lien properly filed against a partnership attaches not only to the partnership property but also to the property individually owned by the partners.¹² The partnership lien does not attach to real property of an individual partner if it is held by him and his wife as tenants by the entireties.¹³

The lien imposed by this section is to continue in existence for six years if not paid prior to that time. However, the six year period may be extended by agreement between the tax commissioner and the delinquent taxpayer. Parties dealing with the delinquent taxpayer's property must take notice of the possibility of extension beyond the six year period.¹⁴

If the title examination is from the original county records, the examiner should, in the light of the last mentioned fact, investigate the federal tax lien index for any tax liens against all holders of record, which have not been released by a certificate of release. This strict examination might be relaxed in accordance with common sense. Notice should also be taken of any lien against a partnership to which a holder of record has belonged. If the examiner's client is purchasing the homestead of a grantor whose husband or wife had been a delinquent taxpayer against whom there was a perfected lien, the examiner could pass such real estate to the extent of the exemption.¹⁵

If, on the other hand, the examination is from an abstract, the examiner's duty can be satisfied by a careful examination of the abstract and the certificates attached thereto. If the certification does not cover the above named requirements, a new abstract should be secured or additional certification required to completely protect the client.

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9. *Glass City Bank of Jeanette, Pa. v. United States*, 326 U.S. 265, 66 S.Ct. 108, 90 L. Ed. 56 (1945); see also, *Citizen's National Trust and Savings Bank v. United States*, 135 F.(2d) 527 (9th Cir. 1943).
 10. *Staley v. Vaughn*, 50 S.W.(2d) 907 (1932).
 11. *Bigley v. Jones*, 64 F.Supp. 389 (D.C. Okl. 1946). Wife under Oklahoma statute is granted an indivisible and vested right in homestead property.
 12. *Underwood v. United States*, 37 F.Supp. 824 (D.C. Tex. 1939), aff'd 118 F.(2d) 760 (5th Cir. 1941). Texas partners are jointly and severally liable by statute.
 13. *Wallace v. Mestichell*, 63 Montg. 8 (Pa. Com. Pl. 1947); See also *Peters v. Dona*, 49 Wyo. 306, 54 P.(2d) 817 (1936).
 14. *Equitable Life Assurance Society of United States v. Moore*, 29 F. Supp. 179, (D.C. Ill. 1939).
 15. See notes 10 and 11, supra.

If a tax lien does encumber the property, the examiner should advise the client to seek a certificate of release under the provisions of section 3673 of the Internal Revenue Code. Such a lien can only be lifted as there provided.¹⁶

Gift Tax Lien

The provision for the gift tax lien is found in section 1009 of the Internal Revenue Code. It imposes a lien for unpaid gift taxes up to the value of the gift upon all gifts made during the year, for ten years from the time the gifts are made.¹⁷ Property comprising the gift is relieved of the lien if sold to a bona fide purchaser for adequate and full consideration in money or money's worth. If the gift property is sold to a bona fide purchaser for adequate and full consideration, the lien to the extent of the value of the gift attaches to all the property of the donee, except any part sold to a bona fide purchaser for full consideration in money or money's worth.¹⁸ The donee of a gift may be held liable for unpaid taxes on collateral gifts by the same donor to other donees in same calendar year.¹⁹ No provision is made for recording gift tax liens.

A title examiner will be primarily interested in what constitutes a bona fide purchaser, first, of the gift property in the hands of the donee and second, of property of the donee's to which a lien has attached because of the sale of the gift property to a bona fide purchaser.

No cases have been found on either of these questions. Many cases dealing with the subject of a bona fide purchaser generally say that a bona fide purchaser must be without notice of facts that would place him on inquiry, if that inquiry if pursued properly would give him notice of an adverse claim.²⁰

From this general statement it would seem logical to assume that record notice of gratuitous transfer to the purchaser's grantor would be sufficient to put the purchaser on inquiry notice. Whether or not revenue stamps, which must be attached to deeds by 26 U. S. C. A. 3482, are notice to the purchaser of the value previously given for the land has never been determined. It is possible that the absence of any such stamps would place a purchaser upon inquiry notice that a given transaction had occurred and thus that a lien might be present upon the property.

It is obvious that if the original donee makes a gift to a third person

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16. Metropolitan Life Insurance Co. v. United States, 107 F.(2d) 311, (6th Cir. 1939); cert. denied 310 U.S. 630, 60 S. Ct. 978, 84 L. Ed. 1400 (1940).
 17. Internal Revenue Code, sec. 1009.
 18. See note 17, supra.
 19. Winton v. Reynolds, 57 F. Supp. 565 (D.C. Minn. 1944); appeal dismissed 148 F.(2d) 528.
 20. Davis v. Kliendienst, 64 Ariz. 251, 169 P.(2d) 78, 82 (1946); Larkins v. Howard, 252 Ala. 9, 39 So.(2d) 224, 7 A.L.R.(2d) 541 (1949).

of the gift property, the lien arising from the original transaction remains on the property.

In the situation where a sale of the gift property has already been made to a bona fide purchaser we become concerned with the lien which attaches to all the property of the donee, except that sold to a bona fide purchaser. Only some sort of actual notice of the gift transaction between the grantor and his or her donor could take the purchaser of the donee's own property out of the bona fide purchaser class. Perhaps also, actual notice of the sale of the gift property to a bona fide purchaser would also be necessary. It would be a question of fact whether or not the purchaser had such notice. There would be no record notice in this situation.

When a deed reciting a nominal consideration and bearing no revenue stamps shows up in the abstract or records to the client's grantor, the title examiner should warn the client that a gift tax lien may be enforced against the property. To be completely safe an examiner in his title opinion should ask the client if he personally knows of any gift transaction in which his grantor participated. If the client has such knowledge or if a deed of gift to the grantor is found, inquiries should be made to the Commissioner of Internal Revenue and a certificate of release sought if a lien exists.²¹

Estate Tax Lien

The lien for estate taxes provides that, unless sooner paid in full, such tax will be a lien on the gross estate of the decedent for ten years.²² The lien will be divested from such part of the gross estate as is allowed by the court to be used for expenses of administration and charges against the estate. If the tax imposed is not paid when due then the "spouse, transferee, surviving tenant, person in possession of the property by virtue of the exercise, non-exercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate of the decedent under section 811 (b), (c), (d), (e), (f), or (g) to the extent of the value at the time of the decedent's death, of such property shall be personally liable for such tax."²³ If any part of the property is sold to a bona fide purchaser for an adequate and full consideration it is divested of such lien. However, in this case a like lien attaches to all the property of the spouse, etc., (those above named) except any part sold to a bona fide purchaser.²⁴ Again no provision is made for recording the estate tax lien.

The statute was amended to read as above set out in 1942. No cases have been found construing the new provisions so one must speculate as

21. Internal Revenue Code, sec. 1009.

22. Internal Revenue Code, sec. 827 (a).

23. Internal Revenue Code, sec. 827 (b).

24. Ibid.

to how it will be construed. It should be noted that prior to the 1942 amendment bona fide purchasers were not protected by this section.²⁵ This would seem to indicate that it is the desire of the Congress to facilitate the transfer of the estate property, by protecting bona fide purchasers.

The test for determining whether or not a person is a bona fide purchaser would seem to be the same as that used in relation to gift tax liens.

If a title examiner has before him an abstract of title in which there appear entries indicating that the land has passed through an administration of an estate within the preceding ten years, he should pay particular heed to the following questions for the reasons hereafter given: What is the amount of the gross estate of the decedent? Has a federal estate tax been assessed against the estate, and if it has, is there a certificate of release included in the abstract?

No federal estate tax return need be filed unless the gross estate is in excess of \$60,000.00.²⁶ It may happen, however, that the gross estate is appraised at much below its actual value or again it may be that certain property such as insurance or property held by the decedent and his wife as tenants by the entirety is not included in the administration inventory and appraisal. If this is the case, the government at a later date may require a correction to be made which would result in a lien being imposed on the gross estate property. A purchaser who relied on the appraisal of the property found in the estate proceedings and had no actual notice of an unreasonable undervaluation or omission of property from the gross estate would probably be protected. It would be unreasonable to require an individual investigation of the value and extent of the decedent's gross estate. If there were actual notice of the facts previously set out, however, or a bad faith transaction, the lien on the property to be purchased would not be divested.

Perhaps any property which appears to have been held by husband and wife as tenants by the entirety within the 12 preceding years²⁷ should be viewed with suspicion. Here again, however, a purchaser should be protected if he did not have knowledge of sufficient facts to place him on inquiry notice. This would also be true in the case of a purchaser from the spouse of her individual property where a lien has attached to it by virtue of the sale of the gross estate property to a bona fide purchaser.

An examiner, to be completely safe, should take the following pre-

25. *Smythe v. United States*, 169 F.(2d) 49 (1st Cir. 1948); *Detroit Bank v. United States*, 317 U.S. 329, 63 S. Ct. 297; 87 L. Ed. 304 (1943).

26. Internal Revenue Code, sec. 821(a) (1), and 935(c).

27. The period of 12 years is placed here in light of the presumption that gifts or tenancies by the entirety are not in contemplation of death if made 2 years before the death of the decedent. This period and the 10 year statute of limitations on the lien would have to be considered.

cautions. He should require a certificate of release if a federal estate tax has been assessed but no certificate of payment or release has been noted in the administration proceedings. He should call it to the attention of his client that if he knows of any unreasonable underevaluation of estate property or omission of property which should be included in the gross estate that a lien may remain on the property to encumber it. If the client knows of such facts, a certificate of release should be required.²⁸ A court order ordering the sale of a certain piece of estate property to meet costs of administration would also allow an attorney to pass the particular property as free from the lien.²⁹

Practically, a title examiner is always faced with the problem of how much he should bring to a client's attention. Many technical objections are passed as a matter of calculated risk. It is submitted, however, that the risk should be calculated, not unknown. It is hoped that this article clarifies the risks which arise due to federal tax liens. The use of suggested requirements must be left to the discretion of the examining attorney in light of the particular circumstances.

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RECORD TITLE TO WATER AND DITCH RIGHTS

"In many districts where the value of land is entirely dependent upon an adequate supply of water for irrigation purposes, heed is given to the matter of a good record title to the land with often no record title whatever to the water right."¹ In Wyoming, those valuable water rights have been made appurtenant to the land by the case of *Frank v. Hicks*² and by statute.³ An appurtenance passes with the land, so it is commonly assumed that a check of the record title to the land will automatically suffice as a check of the record title to the water right as well. That such an assumption is not true, and that not all water rights are appurtenant to the land, will be shown in this article. The purpose of this note is to urge heed of Patton's warning, "Examiners of titles in these localities should insist upon a good record title to both land and water right."⁴ From the standpoint of comparative values, such a check of the water right title is more important than that of the land itself. As the Wyoming Supreme Court

28. Internal Revenue Code, sec. 827(a).

29. *Ibid.*

1. Patton on Titles, sec. 176.

2. 4 Wyo. 502, 35 Pac. 475 (1894).

3. Wyo. Comp. Stat. 1945, sec. 71-401.

4. Patton on Titles, note 1 *supra*.