

UNIFORM FEDERAL LIEN REGISTRATION ACT (1978)(1982)

Drafted by the

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

and by it

**APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES**

at its

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WITH PREFATORY NOTE AND COMMENTS

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UNIFORM FEDERAL LIEN REGISTRATION ACT

Prefatory Note

This Act is a successor to the Revised Federal Tax Lien Registration Act as revised by the Conference in 1966 and does not make any drafting changes to the previous Act except as required to prescribe the method of perfecting the employer liability lien, provided by the Pension Reform Act, and any other similar liens.

Since most of the policy decisions made in drafting this Act were derived from the Revised Uniform Federal Tax Lien Registration Act as it was revised in 1966, it would appear helpful to include here the Prefatory Note which was included with the earlier Act in 1966.

“Section 6323 of the United States Internal Revenue Code of 1954, as amended by P.L. 89-719, Federal Tax Lien Act of 1966 provides that liens for an unpaid federal tax shall not be valid as against mortgagees, pledges, judgment creditors, purchasers and holders of other security interest until notice of the tax lien has been filed in an office designated by the law of the state in which the property subject to the lien is situated, or, in the absence of a valid state designation, in the federal district court for the place where the property is situated. Under federal law, personal property is deemed situated at the residence of the taxpayer regardless of its physical location.

“Thus the new federal act would invalidate any provision of a state law which required filing of liens for property other than real estate at more than one office or at any state office other than that associated with the residence of the taxpayer. State law requiring filing at the physical location of personal property or at both physical location and residence of the taxpayer is not permissible and if a state law includes such a provision the Internal Revenue Service would, for that state, file liens in the federal district court rather than in a state office.

“The new federal legislation provides for filing of certain types of certificates and notices affecting previously filed liens which some of the existing state legislation does not provide for. The effectiveness of these additional notices as a communication to interested persons depends on their being filed in the same office where the notice of lien is filed. It is necessary, therefore, that state law be broadened to permit filing and indexing of these additional notices.

“In addition to the above reasons for new state legislation, there is another reason for revising existing state laws concerned with federal tax liens. Many of the existing laws are no longer appropriate in the states (all but three in December 1966) which have enacted the Uniform Commercial Code. It is highly desirable that the place for filing and searching for federal tax liens be the same place as that designated by the state law under the Uniform Commercial Code for filing and searching for a security interest in the same property. Unfortunately, complete coordination of federal tax lien filing with the rules for filing under the Uniform Commercial Code cannot be fully achieved by state legislation. The United States Supreme Court has held that the Congressional permission to a state to designate the office for filing of federal tax liens cannot be taken advantage of by the states in such a way as to require the federal tax collector to specify the particular property to which the lien applies. *United States v. Union Central Life*

Insurance Company, 363 U.S. 291 (1961). The Internal Revenue Service has interpreted this decision to preclude a state requirement for filing federal tax liens in conformity with the Uniform Commercial Code because of the Code's differing requirements for various types of property and its requirement for filing in two offices in some cases. Rev. Rule 64-170, 1964-1 Cum. Bull. 499. P.L. 89-719 continues this interpretation.

“Nevertheless, it is possible to go a long way toward bringing federal tax lien filing into conformity with the Uniform Commercial Code and it is highly desirable to do so in order to accommodate to commercial convenience so far as possible within the limitations of federal law. States which departed from the uniformity of the Commercial Code by amendment as to the place of filing may now wish to conform their Commercial Code to the original uniform version at the same time they change the federal tax lien requirements. The Act present here calls for filing on taxpayers who are corporations or partnerships in the office of the Secretary of State and in all other cases in an office in the place where the taxpayer resides. No provision is possible calling for filing of the tax lien at the place where particular kinds of property are physically located. Any attempt to deviate from the proposed place of filing in this Code risks non-compliance with Federal Law. The federal act does permit filing of notices as to real property in an office at the place where the real property is situated. It has no such permission for other kinds of property. Section 1 of the Act contained herein complies with the federal requirement.

“The present Act was prepared in light of Public Law 89-719 of 1966 amending Section 6323 of the Internal Revenue Code of 1954. The Internal Revenue Service has reviewed the Act and believes it meets the requirement of federal law. The Conference recommends that it be adopted and that existing legislation concerning federal tax liens be repealed.”

UNIFORM FEDERAL LIEN REGISTRATION ACT

Section 1. [*Scope.*] This Act applies only to federal tax liens and to other federal liens notices of which under any Act of Congress or any regulation adopted pursuant thereto are required or permitted to be filed in the same manner as notices of federal tax liens.

COMMENT

This Act is a successor to the Revised Federal Tax Lien Registrations Act as revised by the Conference in 1966. The changes made in the previous Act are brought about by the provisions of the Pension Reform Act which prescribes the method of perfecting the employer liability lien to the same as for federal tax liens.

Therefore, the Act has been changed and now applies to the employer liability lien established by Section 4068(a) of the Pension Reform Act as well as a federal tax lien. Other similar liens that may be perfected like a federal tax lien, such as the provisions for collection of federal fines contained in proposed revisions to the federal criminal laws, are within the scope of this Act.

Section 2. [*Place of Filing.*]

(a) Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be filed in accordance with this Act.

(b) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the [_____] of the [_____] in which the real property subject to the liens is situated.

(c) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) if the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this State, as these entities are defined in the

internal revenue laws of the United States, in the office of the Secretary of State;

(2) if the person against whose interest the lien applies is a trust that is not covered by paragraph (1), in the office of the Secretary of State;

(3) if the person against whose interest the lien applies is the estate of a decedent, in the office of the Secretary of State;

(4) in all other cases, in the office of the [] of the [] where the person against whose interest the lien applies resides at the time of filing of the notice of lien.

COMMENT

1. In order to accommodate to commercial convenience so far as possible within the limitations of Section 6323 of the Internal Revenue Code, filing with the Secretary of State is provided for the lien on tangible and intangible personal property of partnerships and corporations (as those terms are defined in Section 7701 of the Internal Revenue Code of 1954 and the implementing regulations) thus including within "partnerships" such entities as joint ventures and within "corporations" such entities as joint stock corporations and business trusts.

Because most purchases and secured transactions involving personal property of natural persons relate to consumer goods or farm personal property, searches for liens against those persons are more likely to be made at the local level. Thus, with few exceptions a search for corporation federal tax liens with the Secretary of State and for natural persons with an officer in the county of residence will normally be in the same office as searches for security interests under the Uniform Commercial Code.

Section 6323 of the Internal Revenue Code "locates" all tangible and intangible personal property at the residence of the taxpayer even though it is physically located elsewhere in the same or in another state. State law cannot vary this requirement. State law does affect the result, however, in that state law determines the "residence" of a taxpayer. See IRC § 6323(f)(2). Filing at the physical location of personal property of a taxpayer who is not a resident of the state of location of the property cannot be required.

2. The coverage of this Act now extends beyond federal tax liens as described in the Comment to Section 1.

3. In some jurisdictions, a question may be raised concerning the propriety of incorporating federal law by reference. In others, the place of filing described in this Act may not correspond to the place of filing under the Uniform Commercial Code. Alteration of this Act in these respects may create the peril that the notices will be filed in the federal district court, thus

eliminating the benefits of this Act.

4. An amendment to the Uniform Federal Lien Registration Act promulgated by the Uniform Law Commissioners in 1982. Two new subparagraphs (2) and (3) were inserted under Section 2(c). The new paragraphs locate the appropriate filing offices for notice of federal liens against personal property held in trusts or estates. The amendment does not change the Act substantively. It had been assumed that federal liens could be filed against personal property held in trusts or estates at least under Section 2(c)(4) (Section 2(c)(2) prior to the 1982 amendment). However, Section 2(c)(4) does not designate a specific office in which notice of federal liens should be filed. New Section 2(c)(2) and (3) explicitly provide for filing in the office of the Secretary of State. The amendment was suggested by the Internal Revenue Service.

Section 3. [*Execution of Notices and Certificates.*] Certification of notices of liens, certificates, or other notices affecting federal liens by the Secretary of the Treasury of the United States or his delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any other lien, entitles them to be filed and no other attestation, certification, or acknowledgement is necessary.

COMMENT

This section addresses only the validity of the filing and not the validity of the lien.

Section 4. [*Duties of Filing Officer.*]

(a) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection (b) is presented to a filing officer who is:

(1) the Secretary of State, he shall cause the notice to be marked, held, and indexed in accordance with the provisions of [Section 9-403(4)] of the Uniform Commercial Code as if the notice were a financing statement within the meaning of that Code; or

(2) any other officer described in Section 2, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and

time of receipt, the title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

(b) If a certificate of release, non-attachment, discharge, or subordination of any lien is presented to the Secretary of State for filing he shall:

(1) cause a certificate of release or non-attachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, but the notice of lien to which the certificate relates may not be removed from the files; and

(2) cause a certificate of discharge or subordination to be marked, held, and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

(c) If a refiled notice of federal lien referred to in subsection (a) or any of the certificates or notices referred to in subsection (b) is presented for filing to any other filing officer specified in Section 2, he shall permanently attach the refiled notice or the certificate to the original notice of lien and enter the refiled notice or the certificate with the date of filing in any alphabetical lien index on the line where the original notice of lien is entered.

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed under this Act [or (reference previous federal tax lien registration act)], naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is [\$_____]. Upon request, the filing officer shall furnish a copy of any notice of federal lien, or notice or certificate affecting a federal lien, for a fee of [\$_____] per page.

COMMENT

1. It is the practice of the Internal Revenue Service to regard a "certificate of discharge" as primarily referable to specific pieces of property, so a certificate of discharge corresponds to a release under Section 9-406 of the Uniform Commercial Code. A "certificate of release" in tax practice is equivalent to a "termination statement" in Section 9-404 of the Uniform Commercial Code in the sense that it is a general statement applicable to all property or types of property referred to in the termination statement.

2. It is expected that the Pension Benefit Guaranty Corporation will adopt the same practices as the Internal Revenue Service or other practices as the circumstances may require.

Section 5. [*Fees.*] The fee for filing and indexing each notice of lien or certificate or notice affecting the lien is:

- (1) for a lien on real estate, [\$_____];
- (2) for a lien on tangible and intangible personal property, [\$_____];
- (3) for a certificate of discharge or subordination, [\$_____];
- (4) for all other notices, including a certificate of release or non-attachment, [\$_____].

The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them.

COMMENT

1. It is understood that the Treasury accepts the obligation to pay non-discriminatory filing fees for filing notice of tax liens but desires those payments to be on a monthly billing basis. For notice of tax lien on real property, the filing fee for a real estate mortgage may serve as a standard; for a filing fee on notice of tax lien on personal property the filing fee for filing a financing statement may serve as a standard. There is now no established practice concerning fees for other notices. The certificate of discharge is comparable to a satisfaction of a real estate mortgage and to release of collateral under Section 9-406 of the Uniform Commercial Code. Those instruments are usually filed by persons other than the Treasury, and a filing fee for filing them should be prescribed.

A different problem is presented by certificates of release or non-attachment. Sometimes those certificates serve the purpose of permitting the public filing official to clear his records, and for that purpose the filing fee perhaps should be low in order to induce filing. Sometimes those

notices are filed for purposes of the taxpayer. Given the volume of notices of tax liens which are filed daily in large filing offices, it may serve the public interest to have filed certificates of release. From the standpoint of the Treasury, those certificates serve no important purpose, and the Treasury may not file them if the fee is large. In adoption of this Act, consideration should be given by the states to providing a substantially smaller fee for filing a certificate of release, so that when a tax case is closed the Treasury will file those releases in a routine manner in order to reduce the storage and administrative problem of the local and state filing officers.

2. It is understood that the Pension Benefit Guaranty Corporation will accept the same obligations as those imposed on the Treasury for federal tax liens.

Section 6. [*Uniformity of Application and Construction.*] This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

Section 7. [*Short Title.*] This Act may be cited as the Uniform Federal Lien Registration Act.

Section 8. [*Repeal.*] The following acts and parts of acts are repealed:

- (1) [existing federal tax lien registration act];
- (2)
- (3)

Section 9. [*Time of Taking Effect.*]

This Act shall take effect _____.