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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

REG-159444-04

RIN 1545-BE35

Release of Lien or Discharge of Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations related to release of lien and discharge of property under sections 6325, 6503, and 7426 of the Internal Revenue Code (Code). The proposed regulations update existing regulations and contain procedures for processing a request made by a property owner for discharge of a Federal tax lien from his property, under section 6325(b)(4). The proposed regulations also clarify the impact of these procedures on sections 6503(f)(2) and 7426(a)(4) and (b)(5). The proposed regulations reflect the enactment of sections 6325(b)(4), 6503(f)(2), and 7426(a)(4) by the IRS Restructuring and Reform Act of 1998.

DATES: Written or electronic comments and requests for a public hearing must be received by April 11, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-159444-04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday

between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-159444 -04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, 20224. Alternatively, taxpayers may submit comments electronically to the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs) or via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS-REG-159444-04).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Debra A. Kohn, (202) 622-7985; concerning submissions of comments and the hearing, Richard A. Hurst, Publications and Regulations Specialist, at [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov) or (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### **Background**

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) under sections 6325, 6503, and 7426 of the Code. Section 6325(b)(4) was enacted by section 3106(a) of the IRS Restructuring and Reform Act of 1998 (RRA 1998), Pub. L. No. 105-206 (112 Stat. 685). Section 6503(f)(2) was enacted by section 3106(b)(3) of RRA 1998. Sections 7426(a)(4) and (b)(5) were enacted by section 3106(b)(1) of RRA 1998. These provisions of RRA 1998 provide a statutory mechanism for a person other than the person against whom the underlying tax was assessed, upon furnishing a deposit or bond, to obtain a discharge of the Federal tax lien from property owned by him, and for the IRS or the courts to determine the disposition of the deposit or bond amount.

The provisions added by RRA 1998 were enacted in response to United States v. Williams, 514 U.S. 527 (1995). In Williams, the Supreme Court held that a third party who paid another person's tax liability under protest had standing to bring a civil suit for refund pursuant to 28 U.S.C. 1346(a)(1), which waives the Government's sovereign immunity with respect to refund suits for Federal taxes alleged to have been erroneously or illegally assessed or collected. The Government argued in Williams that section 1346(a)(1) was intended to afford a remedy only to the person against whom a tax is assessed, and not a third party in this situation. In rejecting this argument, the Supreme Court reasoned that the plaintiff in Williams, who was not the taxpayer and who needed a discharge of the Federal tax lien in order to sell her property, had no effective remedy other than to pay the tax giving rise to the lien and to institute a refund suit. Sections 6325(b)(4), 6503(f)(2), and 7426(a)(4) and (b)(5) afford such a remedy to an owner of the property in this situation if the owner is not the person whose unsatisfied liability gave rise to the lien (a third-party owner). In light of the addition these provisions to the Code, the continuing applicability of Williams is extremely limited, as the IRS has noted in other published guidance. See Rev. Rul. 2005-50, 2005-30 I.R.B. 124 (2005).

The current Code of Federal Regulations contains both temporary and final regulations under sections 6325, 6503, and 7426. Neither the temporary regulations nor the final regulations reflect the amendments to the Code made by RRA 1998. These proposed regulations, if adopted as final, would constitute permanent regulations that would incorporate the amendments made by RRA

1998 by replacing the existing temporary regulations and updating the existing final regulations under sections 6325, 6503, and 7426. In particular, these proposed regulations contain procedures for processing a request for a certificate of discharge of a Federal tax lien under section 6325(b)(4). In addition, these proposed regulations clarify the impact of these procedures on the collection limitations period tolling provisions of section 6503(f)(2) and on the judicial remedy provisions of sections 7426(a)(4) and (b)(5).

The proposed regulations also incorporate, with updates, the language of the existing temporary regulations relating to release of lien under section 6325(a), while withdrawing the existing temporary regulations. Changes to the language of the existing temporary regulations have been made to account for the IRS's acceptance of additional forms of payment since the temporary regulations became effective in 1983. Although section 7805(e)(2) provides that temporary regulations expire after three years, this provision applies only to temporary regulations issued after November 20, 1988. Since the temporary regulations relevant here were issued prior to that date, they are not subject to the three-year statutory limit. The proposed regulations provide that the existing temporary regulations under section 6325(a) are removed as of the date the proposed regulations become effective as final regulations.

The existing permanent and temporary regulations do not account for the current organizational structure of the IRS. The existing permanent regulations under sections 6325 and 6503(f) employ the title "district director," in numerous instances, in indicating the highest official of a local office of the IRS. That title

was used under an organizational structure of the IRS that no longer exists. In order to account for the IRS's current organizational structure and to allow for future reorganizations of the IRS, the proposed regulations remove the title "district director" throughout §§301.6325-1 and 301.6503(f)-1, and replace that title with the term "appropriate official." Section 301.6325-1(h) and Section 301.6503(f)-1(c) of the proposed regulations state that as used throughout section 301.6325-1 and section 301.6503(f)-1, respectively, the term "appropriate official" means the official or office identified in the relevant IRS Publication, or if such official is not so identified, the Secretary or his delegate. In this context, the relevant publication is either IRS Publication 1450, "Instructions on How to Request a Certificate of Release of Federal Tax Lien," or IRS Publication 783, "Instructions on How to Apply for a Certificate of Discharge of Property from Federal Tax Lien."

## **Explanation of Provisions**

### **I. In General**

Under section 6325(a), the Secretary shall issue a certificate of release of a Federal tax lien within 30 days of finding that the liability for the underlying tax either has been fully satisfied or has become legally unenforceable, or if an appropriate bond has been furnished to and accepted by the Secretary.

Under section 6325(b)(4)(A), the Secretary shall issue a certificate of discharge of property from a Federal tax lien if the owner of the property requests the issuance of a certificate of discharge and either deposits an amount of money "equal to the value of the interest of the United States (as determined by the

Secretary) in the property” or furnishes an acceptable bond in a like amount.

Section 6325(b)(4)(D) renders section 6325(b)(4)(A) inapplicable “if the owner of the property is the person whose unsatisfied liability gave rise to the lien.” This means that if undivided interests in the property at issue are owned by both the taxpayer and another person, neither the taxpayer nor the other person may obtain a discharge of the property from the Federal tax lien under section 6325(b)(4).

Under section 6325(b)(4)(B), the Secretary shall refund the amount deposited, with interest, or release the bond furnished, “to the extent that the Secretary determines that” either: (i) the unsatisfied liability giving rise to the lien “can be satisfied from a source other than such property”; or (ii) the value of the interest of the United States in the property “is less than the Secretary’s prior determination of such value.” Section 7426(a)(4) allows a person who has obtained a certificate of discharge under section 6325(b)(4) to bring a civil action in Federal district court against the United States “for a determination of whether the value of the interest of the United States (if any) in such property is less than the value determined by the Secretary.” This action must be filed within 120 days after the date the certificate of discharge is issued. Section 7426(a)(4) states that “[n]o other action may be brought by such person for such a determination.” Section 7426(b)(5) provides that if the Federal district court determines that the Secretary’s determination of the value of the interest of the United States in the property under section 6325(b)(4) exceeds the value of such interest, the court shall grant a judgment ordering a refund of the deposit amount,

or a release of the bond , to the extent that the amount furnished exceeds the value determined by the court.

Section 6325(b)(4)(C) states that if no action is filed under section 7426(a)(4) within the specified 120-day period, the Secretary shall, within 60 days after the expiration of that period: (i) apply the deposit, or collect on the bond, to the extent necessary to satisfy the liability secured by the lien; and (ii) refund, with interest, any portion of the deposit not used to satisfy such liability.

Section 6503(f)(2) suspends the running of the period provided in section 6502 for collecting an assessed tax liability from the time a person becomes entitled to a certificate of discharge under section 6325(b)(4) until 30 days after: (A) the earliest date on which the Secretary no longer holds any amount as a deposit or bond provided under section 6325(b)(4) because the deposit or bond either has been used to satisfy the unpaid tax liability or has been refunded or released; or (B) the date a judgment secured under section 7426(b)(5) becomes final. Suspension of the running of the collection limitations period under section 6503(f)(2) applies only with respect to the amount of the assessment equal to the value of the interest of the United States in the subject property, plus interest, penalties, and certain other additions to tax.

## II. Release of Lien

Section 6325(a) provides that the Secretary shall issue a certificate of release of lien within 30 days of the satisfaction of certain conditions. Section 301.6325-1(a)(1) and (2) of the existing permanent regulations state that the Secretary “may” issue a certificate of release if such conditions are met. These

proposed regulations change the word “may” to “shall” in the appropriate instances, and incorporate the 30-day requirement contained in the existing temporary regulations, consistent with section 6325(a).

Much of the remainder of the language of §401.6325-1(a) of the temporary regulations is essentially the same as the language of §301.6325-1(a) of the existing permanent regulations. Therefore, the remaining language need not be incorporated into these proposed regulations. The language of §401.6325-1(b), dealing with notices of Federal tax lien that also contain certificates of release that become effective as of a prescribed date, survives as an addition to §301.6325-1(a). The language of §401.6325-1(c), defining the phrase satisfaction of the tax liability for purposes of section 6325(a)(1), also survives as an addition to §301.6325-1(a). The language of §401.6325-1(d), defining the phrase proof of full payment for purposes of §401.6325-1(a), survives as part of a new subsection of the permanent regulations addressing payment via credit and debit cards and electronic funds transfers, consistent with 26 CFR §§31.6302-1(h)(8) and 301.6311-2(a). The language of §401.6325-1(e), dealing with Federal tax liens listing multiple tax liabilities, and the language of §401.6325-1(f), dealing with the requirements of a valid request for a certificate of release, is incorporated into the permanent regulations.

### III. Discharge of Property under Section 6325(b)(4)

#### A. Issuance of the certificate of discharge

Section 6325(b)(4)(A) requires the Secretary to issue a certificate of discharge of a third-party owner’s property from a Federal tax lien if the



third-party owner meets certain requirements. The proposed regulations state that a certificate of discharge must be issued under section 6325(b)(4) if the third-party owner submits a proper request and either deposits an appropriate amount or furnishes an acceptable bond.

#### 1. Request of third-party owner

Section 301.6325-1(b)(4) provides that a person seeking a certificate of discharge under section 6325(b) must submit an application in writing to the local IRS official responsible for collection of the tax at issue, and that the application must contain such information as the official may require. Section 301.6325-1(b)(4) as currently written applies to only certificates of discharge under section 6325(b)(1) through (3). The proposed regulations extend the applicability of the language of §301.6325-1(b)(4) (redesignated as §301.6325-1(b)(5)) to a request for a certificate of discharge under section 6325(b)(4) and indicate that the request should be submitted to the appropriate IRS official or office.

New §301.6325-1(b)(5) of the proposed regulations states that a request for a certificate of discharge made by a third-party owner will be viewed as a request under section 6325(b)(4), and not as a request made under section 6325(b)(2), unless the third-party owner expressly states otherwise in writing. Similarly, any amount the IRS receives from a third-party owner following a discharge request will be viewed as a deposit made under section 6325(b)(4)(A), rather than as a payment under section 6325(b)(2), unless the third-party owner in writing expressly states otherwise, and expressly waives the right to file a civil suit in Federal district court for a refund of the amount received in writing.

The waiver provisions included in the proposed regulations generally protect the third-party owner in that a certificate of discharge granted under section 6325(b)(4), unlike one granted under section 6325(b)(2), affords a third-party owner the right to pursue a civil action under section 7426(a)(4) regarding the IRS's determination of the value of its lien. Amounts paid under section 6325(b)(2) do not constitute deposits and are immediately credited to the taxpayer's account once paid by the taxpayer or another person.

2. Value of the interest of the United States (as determined by the Secretary) in the property

Section 6325(b)(4)(A) and (D) requires the Secretary to issue a certificate of discharge of a third-party owner's property from a Federal tax lien if the third-party owner either deposits with the Secretary an amount "equal to the value of the interest of the United States (as determined by the Secretary)" or furnishes a bond acceptable to the IRS in a like amount. The proposed regulations provide that the deposit should be made or the bond should be furnished to the appropriate IRS official or office.

Section 301.6325-1(b)(2)(iii) indicates that in determining the value of the interest of the United States under section 6325(b)(2), the appropriate official "shall give consideration to the value of the property and the amount of all liens and encumbrances thereon having priority over the Federal tax lien. In determining the value of the property, the [appropriate official] may, in his discretion, give consideration to the forced sale value of the property in appropriate cases."

The proposed regulations state that this language applies to the determination of the value of the United States' interest in a third-party owner's property under section 6325(b)(4) and provide that the appropriate official shall make the determination.

**B. Processing the deposit**

Section 6325(b)(4)(B) states that the Secretary shall refund the amount deposited, with interest at the overpayment rate determined under section 6621, and shall release the bond, to the extent that the Secretary determines that either: (i) the unsatisfied tax liability giving rise to the lien can be satisfied from a source other than the third-party owner's property; or (ii) the value of the United States' interest in the property is less than the Secretary's prior determination of such value.

The proposed regulations specify that any request for a refund of deposit or release of bond under section 6325(b)(4)(B) must be made in writing and must contain the information required by the appropriate IRS Publication. The proposed regulations also clarify that the phrase "unsatisfied liability giving rise to the lien" contained in section 6325(b)(4)(B)(i) refers to the entire tax liability listed on the notice of Federal tax lien, not just the portion of the liability equal to the value of the United States' interest in the third-party owner's property. The proposed regulations, in addition, indicate that the Secretary is afforded discretion as to whether he should make a determination, and if he does so, in determining whether a deposit should be refunded or a bond released under section 6325(b)(4)(B).

As discussed in part IV of this preamble, a third-party owner wishing to file a civil suit for disposition of his deposit or bond is required by section 7426(a)(4) to do so within 120 days of issuance of the certificate of discharge. Consistent with this limitation period for filing suit, the proposed regulations allow the same 120-day period for the IRS to make any administrative determination regarding refund of deposit or release of bond under section 6325(b)(4)(B). During that 120-day period, the third-party owner may request a refund of deposit or release of bond administratively under section 6325(b)(4)(B), file a civil suit in district court under section 7426(a)(4), or both.

#### IV. Civil Action by Person Other Than Taxpayer for Substitution of Value

Section 7426(a)(4) provides that a person to whom a certificate of discharge has been issued under section 6325(b)(4) with respect to any property may, within 120 days after the day the certificate is issued, bring a civil action in Federal district court for “a determination of whether the value of the interest of the United States (if any) in such property is less than the value determined by the Secretary.”

##### A. Allowable basis for judicial determination

The existing permanent regulations under section 7426 do not address the cause of action afforded by section 7426(a)(4). The proposed regulations clarify that the only allowable basis for a judicial determination under section 7426(a)(4) is that the value of the interest of the United States in the third-party owner’s property is less than the value as determined by the Secretary under section 6325(b)(4)(A)(i). This follows from the express language of section 7426(a)(2)

and is the case despite the fact that an additional basis for reevaluation of the Secretary's original determination – that the tax liability underlying the lien can be satisfied from another source – is provided under section 6325(b)(4)(B)(i).

B. Exclusivity of remedy

The proposed regulations emphasize that section 7426(a)(4) provides the only judicial remedy available to a third-party owner whose property is subject to a Federal tax lien to obtain a refund of the deposit or bond provided in exchange for a discharge of the lien from the property.

Section 7426(a)(4) explicitly provides that “No other action may be brought by such person [to whom a certificate of discharge is issued under section 6325(b)(4)] for such a determination.” Additionally, by the terms of section 7426(a)(4), a third-party owner must obtain a certificate of discharge under section 6325(b)(4) (and not under section 6325(b)(2)) to have standing to pursue the remedy offered by section 7426(a)(4).

C. No tolling of 120-day period

The proposed regulations state that an administrative request for refund of deposit or release of bond made under section 6325(b)(4)(B) does not affect the running of the 120-day period for bringing a civil suit under section 7426(a)(4). The statutory scheme makes the standing of a third-party owner to bring suit under section 7426(a)(4) independent of, rather than related to, events that might occur under section 6325(b)(4)(B). Thus, an administrative request for refund of deposit or release of bond under section 6325(b)(4)(B) is not a prerequisite to filing an action under section 7426(a)(4), and the 120-day period of section

7426(a)(4) will not be tolled by an administrative request for refund of deposit or release of bond made under section 6325(b)(4)(B).

D. Court's authority to issue judgment

The proposed regulations under section 7426 address section 7426(b)(5), which authorizes a Federal district court to decide whether the Secretary's determination of the value of the United States' interest in a third-party owner's property exceeds the actual value of its interest, and, if so, to grant a judgment ordering refund of all or part of the third-party owner's deposit accordingly.

V. Secretary's Use of Deposit or Bond if Judicial Action Not Filed

Section 6325(b)(4)(C) instructs the Secretary how to process the third-party owner's deposit or bond if the third-party owner does not institute suit under section 7426(a)(4) within the statutorily prescribed 120-day period. Under section 6325(b)(4)(C), the Secretary has 60 days after expiration of the 120-day period to: (i) apply the amount deposited (or collect on the bond furnished) "to the extent necessary to satisfy the unsatisfied liability secured by the lien"; and (ii) refund, with interest at the overpayment rate, any portion of the amount deposited "which is not used to satisfy such liability." Thus, the statute affords the Secretary a total of 180 days after issuing the certificate of discharge to complete processing of the third-party owner's deposit or bond.

The proposed regulations specify that the IRS may take these actions even after 180 days have passed. Prohibiting the IRS from either applying or refunding the deposit once the 180-day period has elapsed would prevent the IRS from ever relinquishing a deposit thereafter, in effect requiring IRS personnel

to retain amounts deposited despite, in many cases, being aware that the amounts should be applied to outstanding tax liabilities or returned to third-party owners.

However, because section 6325(b)(4)(C) reflects Congress's intent that the deposit or bond be processed within 60 days after expiration of the 120-day period for bringing suit (or 180 days after the date a certificate of discharge is issued under section 6325(b)(4)(A)), the proposed regulations state that the deposit or bond will be deemed to have been processed as of the 60<sup>th</sup> day after expiration of the 120-day period for purposes of applying payments to the taxpayer's account. This means that if the IRS has not either applied or refunded any part of the deposit within the 180-day period, the IRS will be prohibited from charging the taxpayer interest and penalties on an outstanding liability to which the deposit should have been applied under section 6325(b)(4)(C)(i). On the other hand, the IRS will pay the third-party owner interest at the overpayment rate on any refund that should have been paid under section 6325(b)(4)(C)(ii) within the 60-day period until the refund is actually paid.

#### VI. Suspension of Running of Period of Limitation

Section 6503(f)(2) states that in the case of any assessment for which a lien was made on any property, the running of the period for collecting the assessed tax liability, under section 6502, shall be suspended from the date any person becomes entitled to a certificate of discharge with respect to the property under section 6325(b)(4) until the date which is 30 days after the earlier of: (A) the earliest date on which the Secretary no longer holds any amount as a deposit

or bond provided under section 6325(b)(4) with respect to the property, because the deposit or bond either has been used to satisfy the unpaid tax or has been refunded; or (B) the date that a judgment secured under section 7426(b)(5) becomes final. Suspension of the running of the collection limitations period under section 6503(f)(2) applies only with respect to the amount of the assessment equal to the value of the interest of the United States in the subject property, plus interest, penalties and certain other additions to tax.

The proposed regulations under section 6503 address the suspension of the running of the period for collecting a tax liability provided by section 6503(f)(2).

Section 6325(b)(4)(A) provides that the Secretary shall issue a certificate of discharge when the third-party owner makes a request and deposits an appropriate amount or furnishes an acceptable bond. The proposed regulations state that the suspension of the running of the collection statute of limitations begins on the date a deposit or bond in the amount determined by the Secretary is received by the appropriate official under section 6325(b)(4)(A), as that is the date the third-party owner becomes entitled to a certificate of discharge under that provision.

Assuming that no judgment is obtained under section 7426(b)(5), section 6503(f)(2)(A) ties the end of the period for suspension of the running of the collection statute to the ultimate disposition of the third-party owner's deposit or bond, which is addressed by section 6325(b)(4)(B) and (C). The proposed regulations state that the suspension ends 30 days after the date the appropriate



official no longer holds the deposit or bond by reason of taking actions prescribed under section 6325(b)(4)(B) and (C).

Because section 6325(b)(4)(C) contemplates that the deposit or bond will be processed within 60 days after the expiration of 120 days after the date the Secretary issues the certificate of discharge, as discussed in the previous section, the regulations state that the deposit or bond is deemed processed no later than that date for purposes of section 6503(f)(2)(A). This means that if the deposit or bond is not processed within the 180-day period, the running of the collection statute ceases to be suspended as of 90 days (60 days + the 30 days afforded by section 6503(f)(2)) after the 120-day period ends. Thus, the period for collection resumes running under section 6503(f)(2)(A) 31 days after the 180 days have passed.

Section 6503(f)(2)(B) ties the end of the suspension period to the finality of a judgment obtained under section 7426(b)(5). The proposed regulations state that if a judgment is obtained under section 7426(b)(5), the suspension of the running of the collection statute ends 30 days after all appeals of that judgment, if any, have been exhausted.

### **Proposed Effective Date**

These regulations are proposed to apply to any release of lien or discharge of property that is requested after the date that these regulations are published as final regulations in the **Federal Register**.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and Requests for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal author of these regulations is Debra A. Kohn of the Office of the Associate Chief Counsel (Procedure and Administration). However, other

personnel from the IRS and Treasury Department participated in their development.

### **List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

#### **PART 301--PROCEDURE AND ADMINISTRATION**

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 301.6325-1 is amended as follows:

1. Paragraphs (a) and (b)(1)(i), (b)(2)(i), and (b)(2)(ii) are revised.
2. Paragraph (b)(2)(iii) is redesignated as paragraph (b)(6) and revised.
3. Paragraph (b)(4) is redesignated as paragraph (b)(5) and revised.
4. A new paragraph (b)(4) is added.
5. Paragraphs (c)(1) and (c)(2) are amended by removing the language “district director” and adding the language “appropriate official” in its place, wherever it appears.
6. The first sentence of paragraph (d)(1) is amended by removing the language “A district director” and adding the language “The appropriate official” in its place, by removing the word “Code” and adding the language “Internal Revenue Code” in its place, and by removing the language “the district director”

and adding the language “the appropriate official” in its place. The third sentence is amended by removing the language “a district director” and adding the language “the appropriate official” in its place, and removing the language “the district director” and adding “the appropriate official” in its place.

7. Paragraph (d)(2)(i) is amended by removing the language “A district director” and adding the language “The appropriate official” in its place, by removing the word “Code” and adding the language “Internal Revenue Code” in its place, and by removing the language “the district director” and adding the language “the appropriate official” in its place.

8. Paragraph (d)(2)(ii), Examples 1 through 4, are amended by removing the language “district director” and adding the language “appropriate official” in its place, wherever it appears.

9. Paragraphs (d)(3) and (d)(4) are amended by removing the language “district director” and adding the language “appropriate official” in its place, wherever it appears.

10. The first sentence of paragraph (e) is amended by removing the language “a district director” and adding the language “the appropriate official” in its place, and by removing the language “the district director” and adding the language “the appropriate official” in its place. The third and fourth sentences are amended by removing the language “district director” and adding the language “appropriate official” in its place.

11. Paragraphs (f)(1) and (f)(2)(i) are amended by removing the language “a district director” and adding the language “the appropriate official” in its place,

paragraph (f)(2)(i)(b) is amended by removing the language “the district director” and adding the language “the appropriate official” in its place, and paragraph (f)(3) is amended by removing the word “Code” and adding the language “Internal Revenue Code” in its place.

12. Paragraphs (h), (i), and (j) are added.

The revisions and additions read as follows:

§301.6325-1 Release of lien or discharge of property.

(a) Release of lien--(1) Liability satisfied or unenforceable. The appropriate official shall issue a certificate of release for a filed notice of Federal tax lien, no later than 30 days after the date on which he finds that the entire tax liability listed in such notice of Federal tax lien either has been fully satisfied (as defined in paragraph (a)(4) of this section) or has become legally unenforceable. In all cases, the liability for the payment of the tax continues until satisfaction of the tax in full or until the expiration of the statutory period for collection, including such extension of the period for collection as is agreed to.

(2) Bond accepted. The appropriate official shall issue a certificate of release of any tax lien if he is furnished and accepts a bond that is conditioned upon the payment of the amount assessed (together with all interest in respect thereof), within the time agreed upon in the bond, but not later than 6 months before the expiration of the statutory period for collection, including any agreed upon extensions. For provisions relating to bonds, see sections 7101 and 7102 and §§301.7101-1 and 301.7102-1.

(3) Certificate of release for a lien which has become legally unenforceable. The appropriate official shall have the authority to file a notice of Federal tax lien which also contains a certificate of release pertaining to those liens which become legally unenforceable. Such release will become effective as a release as of a date prescribed in the document containing the notice of Federal tax lien and certificate of release.

(4) Satisfaction of tax liability. For purposes of paragraph (a)(1) of this section, satisfaction of the tax liability occurs when--

(i) The appropriate official determines that the entire tax liability listed in a notice of Federal tax lien has been fully satisfied. Such determination will be made as soon as practicable after tender of payment; or

(ii) The taxpayer provides the appropriate official with proof of full payment (as defined in paragraph (a)(5) of this section) with respect to the entire tax liability listed in a notice of Federal tax lien together with the information and documents set forth in paragraph (a)(7) of this section. See paragraph (a)(6) of this section if more than one tax liability is listed in a notice of Federal tax lien.

(5) Proof of full payment. As used in paragraph (a)(4)(ii) of this section, the term proof of full payment means--

(i) An internal revenue cashier's receipt reflecting full payment of the tax liability in question;

(ii) A canceled check in an amount sufficient to satisfy the tax liability for which the release is being sought;

(iii) A record, made in accordance with procedures prescribed by the Commissioner, of proper payment of the tax liability by credit or debit card or by electronic funds transfer; or

(iv) Any other manner of proof acceptable to the appropriate official.

(6) Notice of a Federal tax lien which lists multiple liabilities. When a notice of Federal tax lien lists multiple tax liabilities, the appropriate official shall issue a certificate of release when all of the tax liabilities listed in the notice of Federal tax lien have been fully satisfied or have become legally unenforceable. In addition, if the taxpayer requests that a certificate of release be issued with respect to one or more tax liabilities listed in the notice of Federal tax lien and such liability has been fully satisfied or has become legally unenforceable, the appropriate official shall issue a certificate of release. For example, if a notice of Federal tax lien lists two separate liabilities and one of the liabilities is satisfied, the taxpayer may request the issuance of a certificate of release with respect to the satisfied tax liability and the appropriate official shall issue a release.

(7) Taxpayer requests. A request for a certificate of release with respect to a notice of Federal tax lien shall be submitted in writing to the appropriate official. The request shall contain the information required in the appropriate IRS Publication.

(b) Discharge of specific property from the lien--(1) Property double the amount of the liability. (i) The appropriate official may, in his discretion, issue a certificate of discharge of any part of the property subject to a Federal tax lien imposed under chapter 64 of the Internal Revenue Code if he determines that the

fair market value of that part of the property remaining subject to the Federal tax lien is at least double the sum of the amount of the unsatisfied liability secured by the Federal tax lien and of the amount of all other liens upon the property which have priority over the Federal tax lien. In general, fair market value is that amount which one ready and willing but not compelled to buy would pay to another ready and willing but not compelled to sell the property.

\* \* \* \* \*

(2) Part payment; interest of United States valueless--(i) Part payment.

The appropriate official may, in his discretion, issue a certificate of discharge of any part of the property subject to a Federal tax lien imposed under chapter 64 of the Internal Revenue Code if there is paid over to him in partial satisfaction of the liability secured by the Federal tax lien an amount determined by him to be not less than the value of the interest of the United States in the property to be so discharged. In determining the amount to be paid, the appropriate official will take into consideration all the facts and circumstances of the case, including the expenses to which the Government has been put into the matter. In no case shall the amount to be paid be less than the value of the interest of the United States in the property with respect to which the certificate of discharge is to be issued.

(ii) Interest of the United States valueless. The appropriate official may, in his discretion, issue a certificate of discharge of any part of the property subject to the Federal tax lien if he determines that the interest of the United States in the property to be so discharged has no value.



(3) Discharge of property by substitution of proceeds of sale. The appropriate official may, in his discretion, issue a certificate of discharge of any part of the property subject to a Federal tax lien imposed under chapter 64 of the Internal Revenue Code if such part of the property is sold and, pursuant to a written agreement with the appropriate official, the proceeds of the sale are held, as a fund subject to the Federal tax liens and claims of the United States, in the same manner and with the same priority as the Federal tax liens or claims had with respect to the discharged property. This paragraph does not apply unless the sale divests the taxpayer of all right, title, and interest in the property sought to be discharged. Any reasonable and necessary expenses incurred in connection with the sale of the property and the administration of the sale proceeds shall be paid by the applicant or from the proceeds of the sale before satisfaction of any Federal tax liens or claims of the United States.

(4) Right of substitution of value--(i) Issuance of certificate of discharge to property owner who is not the taxpayer. If an owner of property subject to a Federal tax lien imposed under chapter 64 of the Internal Revenue Code submits an application for a certificate of discharge pursuant to paragraph (b)(5) of this section, the appropriate official shall issue a certificate of discharge of such property after the owner either deposits with the appropriate official an amount equal to the value of the interest of the United States in the property, as determined by the appropriate official pursuant to paragraph (b)(6) of this section, or furnishes an acceptable bond in a like amount. This paragraph does not apply if any owner of the property is the person whose unsatisfied liability gave rise to

the Federal tax lien. Thus, if the property is owned by both the taxpayer and another person, neither the taxpayer nor the other person may obtain a certificate of discharge of the property under this paragraph.

(ii) Refund of deposit and release of bond. The appropriate official may, in his discretion, determine that either the entire unsatisfied tax liability listed on the notice of Federal tax lien can be satisfied from a source other than the property sought to be discharged, or the value of the interest in the United States is less than the prior determination of such value. The appropriate official shall refund the amount deposited with interest at the overpayment rate determined under section 6621 or release the bond furnished to the extent that he makes this determination.

(iii) Refund request. If a property owner desires an administrative refund of his deposit or release of the bond, the owner shall file a request in writing with the appropriate official. The request shall contain such information as the appropriate IRS Publication may require. The request must be filed within 120 days after the date the certificate of discharge is issued. A refund request made under this paragraph neither is required nor is effective to extend the period for filing an action in court under section 7426(a)(4).

(iv) Internal Revenue Service's use of deposit if court action not filed. If no action is filed under section 7426(a)(4) for refund of the deposit or release of the bond within the 120-day period specified therein, the appropriate official shall, within 60 days after the expiration of the 120-day period, apply the amount deposited or collect on such bond to the extent necessary to satisfy the liability

listed on the notice of Federal tax lien, and shall refund, with interest at the overpayment rate determined under section 6621, any portion of the amount deposited that is not used to satisfy the liability. If the appropriate official has not completed the application of the deposit to the unsatisfied liability before the end of the 60-day period, the deposit will be deemed to have been applied to the unsatisfied liability as of the 60<sup>th</sup> day.

(5) Application for certificate of discharge. Any person desiring a certificate of discharge under this paragraph (b) shall submit an application in writing to the appropriate official. The application shall contain the information required by the appropriate IRS Publication. For purposes of this paragraph (b), any application for certificate of discharge made by a property owner who is not the taxpayer, and any amount submitted pursuant to the application, will be treated as an application for discharge and a deposit under section 6325(b)(4) unless the owner of the property submits a statement, in writing, that the application is being submitted under another paragraph of section 6325 and not under section 6325(b)(4), and the owner in writing waives the rights afforded under paragraph (b)(4), including the right to seek judicial review.

(6) Valuation of interest of United States. For purposes of paragraphs (b)(2) and (b)(4) of this section, in determining the value of the interest of the United States in the property, or any part thereof, with respect to which the certificate of discharge is to be issued, the appropriate official shall give consideration to the value of the property and the amount of all liens and encumbrances thereon having priority over the Federal tax lien. In determining

the value of the property, the appropriate official may, in his discretion, give consideration to the forced sale value of the property in appropriate cases.

\* \* \* \* \*

(h) As used in this section, the term appropriate official means either the official or office identified in the relevant IRS Publication or, if such official or office is not so identified, the Secretary or his delegate.

(i) Temporary regulations removed. The provisions of §401.6325-1 of this chapter are removed on the date these regulations are published as final regulations in the **Federal Register**.

(j) Effective date. This section applies to any release of lien or discharge of property that is requested after these regulations are published as final regulations in the **Federal Register**.

Par. 3. Section 301.6503(f)-1 is amended as follows:

1. The section heading is revised.
2. The undesignated paragraph is designated as paragraph (a) and a paragraph heading is added.
3. In newly designated paragraph (a), the language “a district director” is removed and the language “the appropriate official” is added in its place, the language “the district director” is removed and the language “the appropriate official” is added in its place, and in the Example the language “district director” is removed and the language “appropriate official” is added in its place, wherever it appears.
4. Paragraphs (b), (c), and (d) are added.

The revisions and additions read as follows:

§301.6503(f)-1 Suspension of running of period of limitation; wrongful seizure of property of third-party owner and discharge of wrongful lien for substitution of value.

(a) Wrongful seizure. \* \* \*

(b) Discharge of wrongful lien for substitution of value. If a person other than the taxpayer submits a request in writing for a certificate of discharge for a filed Federal tax lien under section 6325(b)(4), the running of the period of limitations on collection after assessment under section 6502 for any liability listed in such notice of Federal tax lien shall be suspended for a period equal to the period beginning on the date the appropriate official receives a deposit or bond in the amount specified in §301.6325-1(b)(4)(i) and ending on the date that is 30 days after the earlier of--

(1) The date the appropriate official no longer holds, or is deemed to no longer hold, within the meaning of paragraph (b)(4)(iv) of this section, any amount as a deposit or bond by reason of taking such actions as prescribed in sections 6325(b)(4)(B) and (C); or

(2) The date the judgment secured under section 7426(b)(5) becomes final.

(c) As used in this section, the term appropriate official means either the official or office identified in the relevant IRS Publication or, if such official or office is not so identified, the Secretary or his delegate.

(d) Effective date. This section applies to any request for a certificate of discharge made after these regulations are published as final regulations in the **Federal Register**.

Par. 4. In §301.7426-1, paragraphs (a)(4), (b)(5), and (d) are added.

§301.7426-1 Civil actions by persons other than taxpayers.

(a) \* \* \*

(4) Substitution of value. A person who obtains a certificate of discharge under section 6325(b)(4) with respect to any property may, within 120 days after the day on which the certificate is issued, bring a civil action against the United States in a district court of the United States for a determination of whether the value of the interest of the United States (if any) in such property is less than the value determined by the appropriate official. A civil action under this provision shall be the exclusive judicial remedy for a person other than the taxpayer who obtains a certificate of discharge for a filed notice of Federal tax lien.

(b) \* \* \*

(5) Substitution of value. If the court determines that the determination by the appropriate official of the value of the interest of the United States in the property exceeds the actual value of such interest, the court may grant a judgment ordering a refund of the amount deposited, or a release of the bond, to the extent that the aggregate of those amounts exceeds the value as determined by the court.

\* \* \* \* \*

(d) Paragraphs (a)(4) and (b)(5) of this section apply to any request for a certificate of discharge made after these regulations are published as final regulations in the **Federal Register**.

Mark E. Matthews,  
Deputy Commissioner for Services and Enforcement.