



# Property Liens

# Who Gets Paid First?

January 13, 2023

# Highlights



- **With tax debts IRS obtains a lien on all property**
- **What about other debts - home or car loan, etc.**
- **IRS is subject to same rules as other credits**
- **IRS does not “jump ahead” of other creditors**
- **IRS “steps into the shoes” of the taxpayer**

# Liens



- A lien is a claim against an asset
- Concept applies in many commercial transactions; lenders in connection with home and auto purchases, etc.
- To have effect the existence of a lien needs to be made public
- IRS initially obtains a “silent lien” - tax assessment / bill / non-payment within 10 days

# Public Notification



- **IRS uses a Notice of Federal Tax Lien - NFTL**
- **Typically filed with agencies where the taxpayer lives: local land records office, town hall, and secretary of state**
- **Filed where borrowers usually search for liens - UCC searches (Uniform Commercial Code)**
- **Steps Into Shoes - basically whatever right a taxpayer has to an asset - current and future assets**

# Example



- Year 1: buy house for \$400k
- Year 1: borrow \$300k from a bank - lien recorded
- You own 100% of the house but lender has a claim against the asset
- Year 2: incur tax debt of \$500k
- Does IRS have a claim in Year 2 for all home equity? No bank has first claim
- Year 3: property sale for \$450k - bank paid \$300k - IRS paid \$150k - your interest in property (limited to IRS debt)

# Example - Continued



- Continuing example - would a buyer be willing to take the property - a sale would pay off the lender in full but not the IRS?
- Think of IRS lien as “blanket” over all assets - the IRS will allow for an asset to be taken out from under the blanket if it receives appropriate compensation
- Taxpayers rights to proceeds - limited to tax debt

# IRS Lien Requests



- **Formal request is required to allow property to be taken out from under the blanket**
- **Taxpayer needs to prove IRS will receive what taxpayer would have received (limited to tax debt)**
- **Process is similar to bank release of property from their lien**

# Refinancing?



- The IRS may allow for their lien to be “subordinated” in a refinancing transaction
- Again provided they obtain benefits of refinancing - cash out (limited to debt) or increased monthly payments if interest rate is being reduced



# Conclusion / Up Next



- **IRS does not use lien as punishment**
- **It is used to secure the IRS claim against assets - so that proceeds do not “walk away”**
- **IRS wants cash - not property**
- **Up next - Payroll Tax Debt**