

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: August 11, 1976.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

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Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 7429]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

PART 301—PROCEDURE AND ADMINISTRATION

Priority of Lien; Release of Lien or Discharge of Property

PREAMBLE

On January 4, 1973, a notice of proposed rulemaking to conform the Income Tax Regulations (26 CFR Part 1), the Estate Tax Regulations (26 CFR Part 20), the Gift Tax Regulations (26 CFR Part 25), and the Regulations on Procedure and Administration (26 CFR Part 301) under sections 545, 6323, and 6325 of the Internal Revenue Code of 1954 (relating to priority of lien and release of lien or discharge of property) to changes made by section 236 of the Revenue Act of 1964 (78 Stat. 127), section 17(a) of Public Law 89-493 (80 Stat. 263), and sections 101 and 103 of the Federal Tax Lien Act of 1966 (80 Stat. 1125 and 1133) was published in the FEDERAL REGISTER (38 FR 776).

Section 6323 generally relates to the validity and priority of a Federal tax lien against certain persons. Section 301.6323 (b)-1 (d) of the proposed regulations provided that a previously filed notice of tax lien is not valid against a purchaser who buys (for less than \$250 and not for resale) household goods, personal effects or certain other tangible personal property in a casual sale, provided the purchaser does not have actual notice or knowledge of (A) the existence of a tax lien, or (B) that the sale is one of a series of sales.

No definitive rule was developed in the proposed regulations to determine, under all circumstances, when a purchaser would be considered to have notice or knowledge that the sale was one of a series of sales. However, example (3) of proposed § 301.6323 (b)-1 (d) illustrated a situation where a purchaser would be considered to have such notice. In this example the seller advertised the sale of substantially all his household property. In response to the advertisement the buyer purchased the seller's dining room furniture for \$200. The purchase occurred after a notice of tax lien was filed. The example concluded that because such an advertisement contem-

plated a series of sales to dispose of substantially all the seller's household articles, the purchaser had notice that the sale was one of a series of sales and, consequently, purchased the dining room furniture subject to the tax lien.

After reconsideration, it was concluded that whether a particular purchaser would be considered to have such actual notice or knowledge would depend upon that purchaser's background and experience. Consequently, example (3) of proposed § 301.6323 (b)-1 (d) is not contained in the final regulations.

Section 301.6323 (c)-1 (b) and (d) of the proposed regulations have been revised. Section 301.6323 (c)-1 (b) contained a definition of the term "commercial transactions financing agreement" for purposes of the priority rules of section 6323 (c). In addition to other requirements relating to such agreements, protection of a security interest in "qualified property" against a tax lien is provided only with respect to advances made under such an agreement before the 46th day after the date of tax lien filing or, if earlier, the time when the lender or purchaser has actual notice or knowledge of tax lien filing. Section 6323 (c) (2) (B) provides that "qualified property" under a commercial transactions financing agreement includes only property acquired by the debtor-taxpayer before the 46th day after the date of tax lien filing. Thus, there are two 45-day rules relating to commercial transactions financing agreements, i.e., one relating to the period during which advances must be made by the creditor or purchaser and another relating to the period during which the property or collateral must be acquired by the debtor-taxpayer. The acquisition of notice or knowledge of the tax lien by the creditor shortens one of the periods (the one relating to advances) but not the other (the one relating to the acquisition of the collateral). Proposed § 301.6323 (c)-1 (b) had contained both the 45-day rules. In the interest of clarification, § 301.6323 (c)-1 (b) and (d) have been revised so that the 45-day rule relating to advances appears in § 301.6323 (c)-1 (b) of the final regulations (relating to commercial transactions financing agreement) and the 45-day rule relating to the acquisition of the collateral appears in § 301.6323 (c)-1 (d) of the final regulations (relating to qualified property).

Sections 301.6323 (c)-1 (d) and 301.6323 (d)-1 (a) of the proposed regulations have been revised to reflect a change of position with respect to the acquisition of contract rights.

The proposed regulations provided that contract rights are considered to be "acquired" when, and to the extent

that, a right to payment is earned by performance. This position was taken in proposed § 301.6323 (c)-1 (d), relating to the specific protection provided a security interest in qualified property under a commercial transactions financing agreement, and § 301.6323 (d)-1 (a), relating to the general protection provided with respect to advances made after tax lien filing under an agreement entered into before such filing. However, after considering comments received from the public, the final regulations have been revised to provide that: for purposes of § 301.6323 (c)-1 (b), a contract right is acquired by the taxpayer when the contract is made; for purposes of § 301.6323 (d)-1 (a), a contract right is subject to the lien imposed by section 6321 if the contract has been made by the time of tax lien filing; and that, for purposes of § 301.6323 (h)-1 (a) (relating to the definition of a security interest) a contract right is in existence when the contract is made.

Section 301.6323 (c)-1 (d) of the proposed regulations has also been revised to reflect changes in local law. In the proposed regulations, § 301.6323 (c)-1 (d) provided that an account receivable is acquired by a taxpayer at the time, and to the extent, a right to payment is earned by performance. Because some jurisdictions have adopted a revised definition of an "account", the regulations have been revised to emphasize that the priority of a security interest over a Federal tax lien does not depend upon local law definitions of the various types of property interests comprising commercial financing security.

Section 301.6323 (g)-1 (b) (2) (ii) of the proposed regulations have been revised to extend a transitional date for sending change of address notices to the Internal Revenue Service. Under the proposed regulations, a change of address notice sent to any office of the Service would be effective, provided such notice was received prior to July 1, 1973. Section 301.6323 (g)-1 (b) (2) (ii) of the final regulations provides that such a notice sent to any office of the Service will be effective, provided that it is received prior to the date this Treasury decision is published in the FEDERAL REGISTER.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

On January 4, 1973, a notice of proposed rule making was published in the FEDERAL REGISTER (38 FR 776) in order to conform the Income Tax Regulations, the Estate Tax Regulations, the Gift Tax Regulations and the Regulations on Procedure and Administration (26 CFR Parts 1, 20, 25, and 301) under sections 545, 6323, and 6325 of the Internal Revenue Code of 1954 to section 236 of the Revenue Act of 1964 (78 Stat. 127), section 17(a) of Public Law 89-493 (80 Stat. 263), and sections 101 and 103 of the Federal Tax Lien Act of 1966 (80 Stat. 1125 and 1133). Section 301.6323 (g)-1 of the regulations hereby adopted supersedes §§ 400.1 and 400.1-1 of this chapter, relating to section 101(a) of the Federal Tax Lien Act of 1966, which were

prescribed by T. D. 6932, approved October 13, 1967 (32 FR 14385). Section 301.6325-1 of the regulations hereby adopted supersedes §§ 400.2 and 400.2-1 of this chapter, relating to section 103 (a) of such Act, which were prescribed by T. D. 6944, approved January 17, 1968 (33 FR 732). After taking into consideration all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted, subject to the changes set forth below:

Paragraph 1. Paragraph (b) of § 301.6323(a)-1, as set forth in paragraph 7 of the appendix to the notice of proposed rule making, is revised by deleting the word "security" from the last sentence thereof.

Par. 2. Example (3) of § 301.6323(b)-1 (d) (3), as set forth in paragraph 7 of the appendix to the notice of proposed rule making, is deleted and example (4) of such section is renumbered as example (3).

Par. 3. Paragraph (j) (1) of § 301.6323 (b)-1, as set forth in paragraph 7 of the appendix to the notice of proposed rule making, is revised by deleting the reference to paragraph (i) (2) in the first sentence and by inserting a reference to subparagraph (2) in lieu thereof. The third sentence of such paragraph is revised by striking out the phrase "If a passbook loan is made" and inserting in lieu thereof "Even though an original passbook loan is made". As revised, § 301.6323(b)-1(j) (1) reads as follows:

§ 301.6323(b)-1 *Protection for certain interests even though notice filed.*

(j) *Passbook loans*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323 (f)-1, the lien is not valid against an institution described in section 581 or 591 to the extent of any loan made by the institution which is secured by a savings deposit, share, or other account evidenced by a passbook (as defined in subparagraph 2 of this paragraph) if the institution has been continuously in possession of the passbook from the time the loan is made. This paragraph applies only to a loan made without actual notice or knowledge (as defined in paragraph (a) of § 301.6323 (i)-1) of the existence of the lien. Even though an original passbook loan is made without actual notice or knowledge of the existence of the lien, this paragraph does not apply to any additional loan made after knowledge of the lien is acquired by the institution even if it continues to retain the passbook from the time the original passbook loan is made.

Par. 4. Section 301.6323 (c)-1, as set forth in paragraph 7 of the appendix to the notice of proposed rule making, is amended by revising paragraphs (b), (c) and (d) of such section. As revised, paragraphs (b), (c) and (d) of § 301.6323 (c)-1 read as follows:

§ 301.6323(c)-1 *Protection for commercial transactions financing agreements.*

(b) *Commercial transactions financing agreement.* For purposes of this section, the

term "commercial transactions financing agreement" means a written agreement entered into by a person in the course of his trade or business—

(1) To make loans to the taxpayer (whether or not at the option of the person agreeing to make such loans) to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(2) To purchase commercial financing security, other than inventory, acquired by the taxpayer in the ordinary course of his trade or business.

Such an agreement qualifies as a commercial transactions financing agreement only with respect to loans or purchases made under the agreement before (i) the 46th day after the date of tax lien filing or, (ii) the time when the lender or purchaser has actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)-1) of the tax lien filing, if earlier. For purposes of this paragraph, a loan or purchase is considered to have been made in the course of the lender's or purchaser's trade or business if such person is in the business of financing commercial transactions (such as a bank or commercial factor) or if the agreement is incidental to the conduct of such person's trade or business. For example, if a manufacturer finances the accounts receivable of one of his customers, he is considered to engage in such financing in the course of his trade or business. The extent of the priority of the lender or purchaser over the tax lien is the amount of his disbursements made before the 46th day after the date the notice of tax lien is filed, or made before the date (before such 46th day) on which the lender or purchaser has actual notice or knowledge of the filing of the notice of the tax lien.

(c) *Commercial financing security*—(1) *In general.* The term "commercial financing security" means—

(i) Paper of a kind ordinarily arising in commercial transactions,

(ii) Accounts receivable (as defined in subparagraph (2) of this paragraph),

(iii) Mortgages on real property, and

(iv) Inventory.

For purposes of this subparagraph, the term "paper of a kind ordinarily arising in commercial transactions" in general includes any written document customarily used in commercial transactions. For example, such written documents include paper giving contract rights (as defined in subparagraph (2) of this paragraph), chattel paper, documents of title to personal property, and negotiable instruments or securities. The term "commercial financing security" does not include general intangibles such as patents or copyrights. A mortgage on real estate (including a deed of trust, contract for sale, and similar instrument) may be commercial financing security if the taxpayer has an interest in the mortgage as a mortgagee or assignee. The term "commercial financing security" does not include a mortgage where the taxpayer is the mortgagor of realty owned by him. For purposes of this subparagraph, the term "inventory" includes raw materials and goods in process as well as property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(2) *Definitions.* For purposes of § 301.6323 (d)-1, 301.6323(h)-1 and this section—

(i) A contract right is any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper, and

(ii) An account receivable is any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper.

(d) *Qualified property.* For purposes of paragraph (a) of this section, qualified prop-

erty consists solely of commercial financing security acquired by the taxpayer-debtor before the 46th day after the date of tax lien filing. Commercial financing security acquired before such day may be qualified property even though it is acquired by the taxpayer after the lender received actual notice or knowledge of the filing of the notice of the tax lien. For example, although the receipt of actual notice or knowledge of the filing of the notice of the tax lien has the effect of ending the period within which protected disbursements may be made to the taxpayer, property which is acquired by the taxpayer after the lender receives actual notice or knowledge of such filing and before such 46th day, which otherwise qualifies as commercial financing security, becomes commercial financing security to which the priority of the lender extends for loans made before he received the actual notice or knowledge. An account receivable (as defined in paragraph (c) (2) (ii) of this section) is acquired by a taxpayer at the time, and to the extent, a right to payment is earned by performance. Chattel paper, documents of title, negotiable instruments, securities, and mortgages on real estate are acquired by a taxpayer when he obtains rights in the paper or mortgage. Inventory is acquired by the taxpayer when title passes to him. A contract right (as defined in paragraph (c) (2) (i) of this section) is acquired by a taxpayer when the contract is made. Identifiable proceeds, which arise from the collection or disposition of qualified property by the taxpayer, are considered to be acquired at the time such qualified property is acquired if the secured party has a continuously perfected security interest in the proceeds under local law. The term "proceeds" includes whatever is received when collateral is sold, exchanged, or collected. For purposes of this paragraph, the term "identifiable proceeds" does not include money, checks and the like which have been commingled with other cash proceeds. Property acquired by the taxpayer after the 46th day following tax lien filing, by the expenditure of proceeds, is not qualified property.

Par. 5. Examples (2) and (3) of § 301.6323 (c)-2 (d), as set forth in paragraph 7 of the appendix to the notice of proposed rule making, are revised to provide appropriate cross references to other provisions of section 6323 and the regulations thereunder. As revised, examples (2) and (3) of § 301.6323 (c)-2 (d) read as follows:

§ 301.6323(c)-2 *Protection for real property construction or improvement financing agreements.*

(d) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (2). (1) C is awarded a contract for the demolition of several buildings. On March 3, 1969, C enters into a written agreement with D which provides that D will make cash disbursements to finance the demolition and also provides that repayment of the disbursements is secured by any sums due C under the contract. On April 1, 1969, in accordance with § 301.6323 (f)-1, a notice of lien is filed with respect to C's delinquent tax liability. With actual notice of the tax lien, D makes cash disbursements to C on August 1, September 1, and October 1, 1969. Under local law D's security interest in the proceeds of the contract with respect to the disbursements is entitled to priority over a judgment lien arising on April 1, 1969 (the date of tax lien filing) out of an unsecured obligation.

(ii) Because D's security interest arose by reason of disbursements made pursuant to a written agreement, entered into before tax lien filing, to make cash disbursements to finance a contract to demolish real property, and because D's security interest is valid under local law against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to D's security interest in the proceeds of the demolition contract.

Example (3). Assume the same facts as in example (2) and, in addition, assume that, as further security for the cash disbursements, the March 3, 1969 agreement also provides for a security interest in all of C's demolition equipment. Because the protection of the security interest arising from the disbursements made after tax lien filing under the agreement is limited under section 6323 (c) (3) to the proceeds of the demolition contract and because, under the circumstances, the security interest in the equipment is not otherwise protected under section 6323, the tax lien will have priority over D's security interest in the equipment.

Par. 6. Paragraph (a) of § 301.6323 (d)-1, as set forth in paragraph 7 of the appendix to the notice of proposed rule making, is revised to read as follows:

§ 301.6323(d)-1 45-day period for making disbursements.

(a) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid with respect to a security interest which comes into existence, after tax lien filing, by reason of disbursements made before the 46th day after the date of tax lien filing, or if earlier, before the person making the disbursements has actual notice or knowledge of the tax lien filing, but only if the security interest is—

(1) In property which is subject, at the time of tax lien filing, to the lien imposed by section 6321 and which is covered by the terms of a written agreement entered into before tax lien filing, and

(2) Protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

For purposes of subparagraph (1) of this paragraph, a contract right (as defined in paragraph (c) (2) (i) of § 301.6323 (c)-1) is subject, at the time of tax lien filing, to the lien imposed by section 6321 if the contract has been made by such time. An account receivable (as defined in paragraph (c) (2) (ii) of § 301.6323 (c)-1) is subject, at the time of tax lien filing, to the lien imposed by section 6321 if, and to the extent, a right to payment has been earned by performance at such time. For purposes of subparagraph (2) of this paragraph, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of § 301.6323 (h)-1. For purposes of this section, it is immaterial that the written agreement provides that the disbursements are to be made at the option of the person making the disbursements. See paragraphs (a) and (e) of § 301.6323 (h)-1 for definitions of the terms "security interest" and "tax lien filing", respectively. See paragraph (a) of § 301.6323 (i)-1 for certain circumstances under which a person is deemed to have actual notice or knowledge of a fact.

PAR. 7. Section 301.6323 (f)-1, as set forth in paragraph 7 of the appendix to the notice of proposed rule making, is changed by revising so much of para-

graph (a) as precedes subparagraph (1) to read as follows:

§ 301.6323(f)-1 Place for filing notice; form.

(a) *Place for filing.* The notice of lien referred to in § 301.6323 (a)-1 shall be filed as follows:

Par. 8. Subdivisions (i) and (ii) of § 301.6323 (g)-1 (b) (2), as set forth in paragraph 7 of the appendix to the notice of proposed rule making, are revised to read as follows:

§ 301.6323(g)-1 Refiling of notice of tax lien.

(b) *Place for refiling notice of lien.*

(2) *Notice of change of taxpayer's residence.*—(i) *In general.* Except as provided in subdivision (ii) or (iii) of this subparagraph, for purposes of this section, a notice of change of a taxpayer's residence will be effective only if it (A) is received, in writing, from the taxpayer or his representative by the district director or the service center director having jurisdiction where the original notice of lien was filed, (B) relates to an unpaid tax liability of the taxpayer, and (C) states the taxpayer's name and the address of his new residence. Although it is not necessary that a written notice contain the taxpayer's identifying number authorized by section 6109, it is preferable that it include such number. For purposes of this subdivision, a notice of change of a taxpayer's residence shown on a return or an amended return (including a return of the same tax) will not be effective to notify the Internal Revenue Service.

(ii) *Notice received before August 23, 1976.* For purposes of this section, a notice of a change of a taxpayer's residence will also be effective if it (A) is received, in writing, by any office of the Internal Revenue Service before August 23, 1976, from the taxpayer or his representative, (B) relates to an unpaid tax liability of the taxpayer, and (C) states the taxpayer's name and the address of his new residence.

Par. 9. Paragraph (a) (1) of § 301.6323 (h)-1, as set forth in paragraph 7 of the appendix to the notice of proposed rule making, is revised to read as follows:

§ 301.6323(h)-1 Definitions.

(a) *Security interests.*—(i) *In general.* The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time—

(1) If, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien (as provided in subparagraph (2) of this paragraph) arising out of an unsecured obligation; and

(2) To the extent that, at such time, the holder has parted with money or money's worth (as defined in subparagraph (3) of this paragraph).

For purposes of this subparagraph, a contract right (as defined in paragraph (c) (2) (i) of § 301.6323 (c)-1) is in existence when the contract is made. An account receivable (as defined in paragraph (c) (2) (ii) of § 301.6323 (c)-1) is in existence when, and to the extent, a right to payment is earned by performance. A security interest must be in existence, within the meaning of this para-

graph, at the time as of which its priority against a tax lien is determined. For example, to be afforded priority under the provisions of paragraph (a) of § 301.6323 (a)-1 a security interest must be in existence within the meaning of this paragraph before a notice of lien is filed.

Par. 10. Paragraph (e) of § 301.6323 (h)-1, as set forth in paragraph 7 of the appendix to the notice of proposed rule making, is revised to provide a cross reference. As revised, § 301.6323 (h)-1 (e) reads as follows:

§ 301.6323(h)-1 Definitions.

(e) *Tax lien filing.* The term "tax lien filing" means the filing of notice of the lien imposed by section 6321 in accordance with § 301.6323(f)-1.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954. (68A Stat. 917; 26 U.S.C. 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: August 16, 1976.

CHARLES M. WALKER,
Assistant Secretary
of the Treasury.

In order to conform the Income Tax Regulations, the Estate Tax Regulations, the Gift Tax Regulations and the Regulations on Procedure and Administration (26 CFR Parts 1, 20, 25, and 301) under sections 545, 6323, and 6325 of the Internal Revenue Code of 1954 to section 236 of the Revenue Act of 1964 (78 Stat. 127), section 17(a) of Public Law 89-493 (80 Stat. 263), and sections 101 and 103 of the Federal Tax Lien Act of 1966 (80 Stat. 1125 and 1133), such regulations are amended as set forth hereinafter. Section 301.6323(g)-1 of the regulations hereby adopted supersedes those provisions of §§ 400.1 and 400.1-1 of this chapter relating to section 101(a) of the Federal Tax Lien Act of 1966 which were prescribed by T.D. 6932, approved October 13, 1967 (32 F.R. 14385). Section 301.6325-1 hereby adopted supersedes those provisions of §§ 400.2 and 400.2-1 of this chapter relating to section 103(a) of such Act which were prescribed by T.D. 6944, approved January 17, 1968 (33 F.R. 732).

A. Part 1, Income Tax Regulations, of 26 CFR Chapter I, is amended as follows:

PARAGRAPH 1. Paragraph (1) (1) of § 1.545-2 is amended to read as follows:

§ 1.545-2 Adjustments to taxable income.

(i) *Amount of a lien in favor of the United States.* (1) If notices of lien are filed in the manner provided in section 6323(f), the amount of the liability to the United States outstanding at the close of the taxable year, and secured by such liens which are in effect at that time, shall be allowed as a deduction in computing undistributed personal holding company income. However, the amount

of such deduction which may be allowed for any taxable year shall not exceed the taxable income (as adjusted for purposes of determining the undistributed personal holding company income, but without regard to the deduction under section 545(b)(9)) for such year. The fact that the amount of, or any part of, the outstanding obligation to the United States was deducted for one taxable year does not prevent its deduction for a subsequent taxable year to the extent the obligation is still outstanding at the close of the subsequent taxable year and is secured by a lien, notice of which has been filed.

B. Part 20, Estate Tax Regulations, of 26 CFR Chapter I, is amended as follows:

PAR. 2. Section 20.6323 is amended by revising sections (a) through (e), by adding subsections (f) through (i), and by revising the historical note. These revised and added provisions read as follows:

§ 20.6323 Statutory provisions; validity and priority against certain persons.

Sec. 6323. *Validity and priority against certain persons—(a) Purchases, holders of security interests, mechanics' lienors, and judgment lien creditors.* The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

(b) *Protection for certain interests even though notice filed.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

(1) *Securities.* With respect to a security (as defined in subsection (h)(4))—

(A) As against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

(B) As against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

(2) *Motor vehicles.* With respect to a motor vehicle (as defined in subsection (h)(3)), as against a purchaser of such motor vehicle, if—

(A) At the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

(B) Before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

(3) *Personal property purchased at retail.* With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

(4) *Personal property purchased in casual sale.* With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than \$250, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

(5) *Personal property subject to possessory lien.* With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

(6) *Real property tax and special assessment liens.* With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

(A) A tax of general application levied by any taxing authority based upon the value of such property;

(B) A special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

(C) Charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(7) *Residential property subject to a mechanic's lien for certain repairs and improvements.* With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than \$1,000.

(8) *Attorneys' liens.* With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or contract enforceable against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

(9) *Certain insurance contracts.* With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

(A) Before such organization had actual notice or knowledge of the existence of such lien;

(B) After such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

(C) After satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary or his delegate delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

(10) *Passbook loans.* With respect to a savings deposit, share, or other account, evidenced by a passbook, with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account and if such institution has been continuously in possession of such passbook from the time the loan is made.

(c) *Protection for certain commercial transactions financing agreements, etc.—(1) In general.* To the extent provided in this subsection, even though notice of a lien

imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

(A) Is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting—

(i) A commercial transactions financing agreement,

(ii) A real property construction or improvement financing agreement, or

(iii) An obligatory disbursement agreement, and

(B) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(2) *Commercial transactions financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "commercial transactions financing agreement" means an agreement (entered into by a person in the course of his trade or business)—

(i) To make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(ii) To purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

(C) *Commercial financing security defined.* The term "commercial financing security" means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

(D) *Purchaser treated as acquiring security interest.* A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

(3) *Real property construction or improvement financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "real property construction or improvement financing agreement" means an agreement to make cash disbursements to finance—

(i) The construction or improvement of real property,

(ii) A contract to construct or improve real property, or

(iii) The raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to a real property construction or improvement financing agreement, includes only—

(i) In the case of subparagraph (A)(i), the real property with respect to which the construction or improvement has been or is to be made,

(ii) In the case of subparagraph (A)(ii), the proceeds of the contract described therein, and

(iii) In the case of subparagraph (A)(iii), property subject to the lien imposed by section 6321 at the time of tax lien filing and

the crop or the livestock or other animals referred to in subparagraph (A) (iii).

(4) *Obligatory disbursement agreement.* For purposes of this subsection—

(A) *Definition.* The term "obligatory disbursement agreement" means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

(C) *Special rules for surety agreements.* Where the obligatory disbursement agreement is an agreement insuring the performance of a contract between the taxpayer and another person—

(i) The term "qualified property" shall be treated as also including the proceeds of the contract the performance of which was insured, and

(ii) If the contract the performance of which was insured was a contract to construct or improve real property, to produce goods, or to furnish services, the term "qualified property" shall be treated as also including any tangible personal property used by the taxpayer in the performance of such insured contract.

(d) *45-day period for making disbursements.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 45th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

(1) Is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

(2) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(e) *Priority of interest and expenses.* If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

(1) Any interest or carrying charges upon the obligation secured,

(2) The reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

(3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) The reasonable costs of insuring payment of the obligation secured, and

(6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321,

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

(f) *Place for filing notice; form.*—(1) *Place for filing.* The notice referred to in subsection (a) shall be filed—

(A) *Under State laws.*—(i) *Real property.* In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; and

(ii) *Personal property.* In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; or

(B) *With clerk of district court.* In the office of the clerk of the U.S. district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or

(C) *With recorder of deeds of the District of Columbia.* In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(2) *Situs of property subject to lien.* For purposes of paragraph (1), property shall be deemed to be situated—

(A) *Real property.* In the case of real property, at its physical location; or

(B) *Personal property.* In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

(3) *Form.* The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary or his delegate. Such notice shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

(g) *Refiling of notice.* For purposes of this section—

(1) *General rule.* Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

(2) *Place for filing.* A notice of lien refiled during the required refiling period shall be effective only—

(A) If such notice of lien is refiled in the office in which the prior notice of lien was filed; and

(B) In any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary or his delegate received written information (in the manner prescribed in regulations issued by the Secretary or his delegate) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

(3) *Required refiling period.* In the case of any notice of lien, the term "required refiling period" means—

(A) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(B) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(4) *Transitional rule.* Notwithstanding paragraph (3), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

(h) *Definitions.* For purposes of this section and section 6324—

(1) *Security interest.* The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

(2) *Mechanic's lienor.* The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

(3) *Motor vehicle.* The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

(4) *Security.* The term "security" means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(5) *Tax lien filing.* The term "tax lien filing" means the filing of notice (referred to in subsection (a)) of the lien imposed by section 6321.

(6) *Purchaser.* The term "purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324—

(A) A lease of property,

(B) A written executory contract to purchase or lease property,

(C) An option to purchase or lease property or any interest therein, or

(D) An option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

(i) *Special rules.*—(1) *Actual notice or knowledge.* For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's

attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routine. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(2) *Subrogation.* Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

(3) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed pursuant to subsection (f), the Secretary or his delegate is authorized to provide by regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

[Sec. 6323 as amended by sec. 236 (a) and (c) (1), Rev. Act 1964 (78 Stat. 127); sec. 17(a), Act of July 5, 1966 (Public Law 89-493, 80 Stat. 263); sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

PAR. 3. Section 20.6323-1 is amended to read as follows:

§ 20.6323-1 *Validity and priority against certain persons.*

For regulations concerning the validity of the lien imposed by section 6321 against certain persons, see §§ 301.6323 (a)-1 through 301.6323 (i)-1 of this chapter (Regulations on Procedure and Administration).

PAR. 4. Section 20.6325 is amended by revising subsections (a) through (e), by adding subsections (f) through (h), and by revising the historical note. These revised and added provisions read as follows:

§ 20.6325 *Statutory provisions; release of lien or discharge of property.*

Sec. 6325. *Release of lien or discharge of property.*—(a) *Release of lien.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if—

(1) *Liability satisfied or unenforceable.* The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

(2) *Bond accepted.* There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such regulations.

(b) *Discharge of property.*—(1) *Property double the amount of the liability.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary or his delegate finds that the fair market

value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority over such lien.

(2) *Part payment; interest of United States valueless.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if—

(A) There is paid over to the Secretary or his delegate in partial satisfaction of the liability secured by the lien an amount determined by the Secretary or his delegate, which shall not be less than the value, as determined by the Secretary or his delegate, of the interest of the United States in the part to be so discharged; or

(B) The Secretary or his delegate determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United States in the part to be so discharged, the Secretary or his delegate shall give consideration to the value of such part and to such liens thereon as have priority over the lien of the United States.

(3) *Substitution of proceeds of sale.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if such part of the property is sold and, pursuant to an agreement with the Secretary or his delegate, the proceeds of such sale are to be held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

(c) *Estate or gift tax.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary or his delegate finds that the liability secured by such lien has been fully satisfied or provided for.

(d) *Subordination of lien.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of subordination of any lien imposed by this chapter upon any part of the property subject to such lien if—

(1) There is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States; or

(2) The Secretary or his delegate believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

(e) *Nonattachment of lien.* If the Secretary or his delegate determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 refers to such person, the Secretary or his delegate may issue a certificate that the lien does not attach to the property of such person.

(f) *Effect of certificate.*—(1) *Conclusiveness.* Except as provided in paragraphs (2) and (3), if a certificate is issued pursuant to this section by the Secretary or his delegate

and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed) such certificate shall have the following effect:

(A) In the case of a certificate of release, such certificate shall be conclusive that the lien referred to in such certificate is extinguished;

(B) In the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;

(C) In the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the United States is subordinated is superior to the lien of the United States; and

(D) In the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in such certificate.

(2) *Revocation of certificate of release or nonattachment.* If the Secretary or his delegate determines that a certificate of release or nonattachment of a lien imposed by section 6321 was issued erroneously or improvidently, or if a certificate of release of such lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary or his delegate may revoke such certificate and reinstate the lien—

(A) By mailing notice of such revocation to the person against whom the tax was assessed at his last known address, and

(B) By filing notice of such revocation in the same office in which the notice of lien to which it relates was filed (if such notice of lien had been filed).

Such reinstated lien (1) shall be effective on the date notice of revocation is mailed to the taxpayer in accordance with the provisions of subparagraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of subparagraph (B), and (2) shall have the same force and effect (as of such date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section 6321 (relating to lien for taxes).

(3) *Certificates void under certain conditions.* Notwithstanding any other provision of this subtitle, any lien imposed by this chapter shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires such property after such certificate has been issued.

(g) *Filing of certificates and notices.* If a certificate or notice issued pursuant to this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 is filed, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated.

(h) *Cross reference.* For provisions relating to bonds, see chapter 73 (sec. 7101 and following).

[Sec. 6325 as amended by sec. 77, Technical Amendments Act 1958 (72 Stat. 1662); sec. 103, Federal Tax Lien Act 1966 (80 Stat. 1133)]

C. Part 25, Gift Tax Regulations, of 26 CFR Chapter I is amended as follows:

PAR. 5. Section 25.6323 is amended by revising subsections (a) through (e), by adding subsections (f) through (i), and by revising the historical note. These re-

vised and amended provisions read as follows:

§ 25.6323 Statutory provisions; validity and priority against certain persons.

Sec. 6323. Validity and priority against certain persons.—(a) *Purchases, holders of security interests, mechanic's lienors, and judgment lien creditors.* The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

(b) *Protection for certain interests even though notice filed.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

(1) *Securities.* With respect to a security (as defined in subsection (h) (4))—

(A) As against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

(B) As against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

(2) *Motor vehicles.* With respect to a motor vehicle (as defined in subsection (h) (3)), as against a purchaser of such motor vehicle, if—

(A) At the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

(B) Before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

(3) *Personal property purchased at retail.* With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

(4) *Personal property purchased in casual sale.* With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than \$250, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

(5) *Personal property subject to possessory lien.* With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

(6) *Real property tax and special assessment liens.* With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

(A) A tax of general application levied by any taxing authority based upon the value of such property;

(B) A special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

(C) Charges for utilities or public services furnished to such property by the United

States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(7) *Residential property subject to a mechanic's lien for certain repairs and improvements.* With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than \$1,000.

(8) *Attorneys' liens.* With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or a contract enforceable against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

(9) *Certain insurance contracts.* With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

(A) Before such organization had actual notice or knowledge of the existence of such lien;

(B) After such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

(C) After satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary or his delegate delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

(10) *Passbook loans.* With respect to a savings deposit, share, or other account, evidenced by a passbook, with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account and if such institution has been continuously in possession of such passbook from the time the loan is made.

(c) *Protection for certain commercial transactions financing agreements, etc.*—(1) *In general.* To the extent provided in this subsection, even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

(A) Is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting—

(i) A commercial transactions financing agreement,

(ii) A real property construction or improvement financing agreement, or

(iii) An obligatory disbursement agreement, and

(B) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(2) *Commercial transactions financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "commercial transactions financing agreement" means an agreement (entered into by a person in the course of his trade or business)—

(i) To make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(ii) To purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

(B) *Limitation on qualified property.* The term "qualified property," when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

(C) *Commercial financing security defined.* The term "commercial financing security" means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

(D) *Purchaser treated as acquiring security interest.* A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

(3) *Real property construction or improvement financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "real property construction or improvement financing agreement" means an agreement to make cash disbursements to finance—

(i) The construction or improvement of real property,

(ii) A contract to construct or improve real property, or

(iii) The raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

(B) *Limitation on qualified property.* The term "qualified property," when used with respect to a real property construction or improvement financing agreement, includes only—

(i) In the case of subparagraph (A) (i), the real property with respect to which the construction or improvement has been or is to be made,

(ii) In the case of subparagraph (A) (ii), the proceeds of the contract described therein, and

(iii) In the case of subparagraph (A) (iii), property subject to the lien imposed by section 6321 at the time of tax lien filing and the crop or the livestock or other animals referred to in subparagraph (A) (iii).

(4) *Obligatory disbursement agreement.* For purposes of this subsection—

(A) *Definition.* The term "obligatory disbursement agreement" means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer.

(B) *Limitation on qualified property.* The term "qualified property," when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition

is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

(C) *Special rules for surety agreements.* Where the obligatory disbursement agreement is an agreement insuring the performance of a contract between the taxpayer and another person—

(i) The term "qualified property" shall be treated as also including the proceeds of the contract the performance of which was insured, and

(ii) If the contract the performance of which was insured was a contract to construct or improve real property, to produce goods, or to furnish services, the term "qualified property" shall be treated as also including any tangible personal property used by the taxpayer in the performance of such insured contract.

(d) *Forty-five-day period for making disbursements.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

(1) Is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

(2) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(e) *Priority of interest and expenses.* If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

(1) Any interest or carrying charges upon the obligation secured,

(2) The reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

(3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) The reasonable costs of insuring payment of the obligations secured, and

(6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321,

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

(f) *Place for filing notice; form.*—(1) *Place for filing.* The notice referred to in subsection (a) shall be filed—

(A) *Under State laws.*—(i) *Real property.* In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; and

(ii) *Personal property.* In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; or

(B) *With clerk of district court.* In the office of the clerk of the U.S. district court for the judicial district in which the property subject to the lien is situated, whenever the

State has not by law designated one office which meets the requirements of subparagraph (A); or

(C) *With recorder of deeds of the District of Columbia.* In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(2) *Situs of property subject to lien.* For purposes of paragraph (1), property shall be deemed to be situated—

(A) *Real property.* In the case of real property, at its physical location; or

(B) *Personal property.* In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

(3) *Form.* The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary or his delegate. Such notice shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

(g) *Refiling of notice.* For purposes of this section—

(1) *General rule.* Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

(2) *Place for filing.* A notice of lien refiled during the required refiling period shall be effective only—

(A) If such notice of lien is refiled in the office in which the prior notice of lien was filed; and

(B) In any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary or his delegate received written information (in the manner prescribed in regulations issued by the Secretary or his delegate) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

(3) *Required refiling period.* In the case of any notice of lien, the term "required refiling period" means—

(A) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(B) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(4) *Transitional rule.* Notwithstanding paragraph (3), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

(h) *Definitions.* For purposes of this section and section 6324—

(1) *Security interest.* The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

(2) *Mechanic's lienor.* The term "mechanic's lienor" means any person who under

local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

(3) *Motor vehicle.* The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

(4) *Security.* The term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(5) *Tax lien filing.* The term "tax lien filing" means the filing of notice (referred to in subsection (a)) of the lien imposed by section 6321.

(6) *Purchaser.* The term "purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324—

(A) A lease of property,

(B) A written executory contract to purchase or lease property,

(C) An option to purchase or lease property or any interest therein, or

(D) An option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

(i) *Special rules.*—(1) *Actual notice or knowledge.* For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routine. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(2) *Subrogation.* Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

(3) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed pursuant to subsection (f), the Secretary or his delegate is authorized to provide by regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

[Sec. 6323 as amended by sec. 236 (a) and (c) (1), Rev. Act 1964 (78 Stat. 127); sec. 17 (a), Act of July 5, 1966 (Public Law 89-493, 80 Stat. 263); sec. 101 (a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

PAR. 6. Section 25.6323-1 is amended to read as follows:

§ 25.6323-1 Validity and priority against certain persons.

For regulations concerning the validity of the lien imposed by section 6321 against certain persons, see §§ 301.6323 (a)-1 through 301.6323 (f)-1 of this chapter (Regulations on Procedure and Administration).

D. Part 301, Regulations on Procedure and Administration, of 26 CFR Chapter I is amended as follows:

PAR. 7. Sections 301.6323 and 301.6323-1 are deleted, and immediately following § 301.6322, there are added the following new sections:

§ 301.6323(a) Statutory provisions; validity and priority against certain persons; purchasers, holders of security interests, mechanic's lienors, judgment lien creditors.

Sec. 6323. *Validity and priority against certain persons.*—(a) *Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors.* The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.

[Sec. 6323(a) as amended by sec. 236(c) (1), Rev. Act 1964 (78 Stat. 127); sec. 17(a), Act of July 5, 1966 (Public Law 89-493, 80 Stat. 263); sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(a)-1 Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors.

(a) *Invalidity of lien without notice.* The lien imposed by section 6321 is not valid against any purchaser (as defined in paragraph (f) of § 301.6323(h)-1), holder of a security interest (as defined in paragraph (a) of § 301.6323(h)-1), mechanic's lienor (as defined in paragraph (b) of § 301.6323(h)-1), or judgment lien creditor (as defined in paragraph (g) of § 301.6323(h)-1) until a notice of lien is filed in accordance with § 301.6323(f)-1. Except as provided by section 6323, if a person becomes a purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor after a notice of lien is filed in accordance with § 301.6323 (f)-1, the interest acquired by such person is subject to the lien imposed by section 6321.

(b) *Cross references.* For provisions relating to the protection afforded a security interest arising after tax lien filing, which interest is covered by a commercial transactions financing agreement, real property construction or improvement financing agreement, or an obligatory disbursement agreement, see §§ 301.6323(c)-1, 301.6323(c)-2, and 301.6323 (c)-3, respectively. For provisions relating to the protection afforded to a security interest coming into existence by

virtue of disbursements made before the 46th day after the date of tax lien filing, see § 301.6323(d)-1. For provisions relating to priority afforded to interest and certain other expenses with respect to a lien or security interest having priority over the lien imposed by section 6321, see § 301.6323(e)-1. For provisions relating to certain other interests arising after tax lien filing, see § 301.6323(b)-1.

§ 301.6323(b) Statutory provisions; validity and priority against certain persons; protection for certain interests even though notice filed.

Sec. 6323. *Validity and priority against certain persons.* . . .

(b) *Protection for certain interests even though notice filed.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid—

(1) *Securities.* With respect to a security (as defined in subsection (h) (4))—

(A) As against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

(B) As against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

(2) *Motor vehicles.* With respect to a motor vehicle (as defined in subsection (h) (3)), as against a purchaser of such motor vehicle, if—

(A) At the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

(B) Before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

(3) *Personal property purchased at retail.* With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

(4) *Personal property purchased in casual sale.* With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than \$250, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

(5) *Personal property subject to possessory lien.* With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

(6) *Real property tax and special assessment liens.* With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of—

(A) A tax of general application levied by any taxing authority based upon the value of such property;

(B) A special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the pur-

pose of defraying the cost of any public improvement; or

(C) Charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(7) *Residential property subject to a mechanic's lien for certain repairs and improvements.* With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than \$1,000.

(8) *Attorneys' liens.* With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or a contract enforceable against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

(9) *Certain insurance contracts.* With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time—

(A) Before such organization had actual notice or knowledge of the existence of such lien;

(B) After such organization had such notice or knowledge, with respect to advances required to be made automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

(C) After satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary or his delegate delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

(10) *Passbook loans.* With respect to a savings deposit, share, or other account, evidenced by a passbook, with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account and if such institution has been continuously in possession of such passbook from the time the loan is made.

[Sec. 6323(b) as amended by sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(b)-1 Protection for certain interests even though notice filed.

(a) *Securities.*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid with respect to a security (as defined in paragraph (d) of § 301.6323(h)-1) against—

(i) A purchaser (as defined in paragraph (f) of § 301.6323(h)-1) of the security who at the time of purchase did not have actual notice or knowledge (as defined in paragraph (a) of § 301.6323 (d)-1) of the existence of the lien;

(ii) A holder of a security interest (as defined in paragraph (a) of § 301.6323 (h)-1) in the security who did not have

actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)-1) of the existence of the lien at the time the security interest came into existence or at the time such security interest was acquired from a previous holder for a consideration in money or money's worth; or

(iii) A transferee of an interest protected under subdivision (i) or (ii) of this subparagraph to the same extent the lien is invalid against his transferor.

For purposes of subdivision (iii) of this subparagraph, no person can improve his position with respect to the lien by reacquiring the interest from an intervening purchaser or holder of a security interest against whom the lien is invalid.

(2) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example (1). On May 1, 1969, in accordance with § 301.6323(f)-1, a notice of lien is filed with respect to A's delinquent tax liability. On May 20, 1969, A sells 100 shares of common stock in X corporation to B, who, on the date of the sale, does not have actual notice or knowledge of the existence of the lien. Because B purchased the stock without actual notice or knowledge of the lien, under subdivision (i) of subparagraph (1) of this paragraph, the stock purchased by B is not subject to the lien.

Example (2). Assume the same facts as in example (1) except that on May 30, 1969, B sells the 100 shares of common stock in X corporation to C who on May 5, 1969, had actual notice of the existence of the tax lien against A. Because the X stock when purchased by B was not subject to the lien, under subdivision (iii) of subparagraph (1) of this paragraph, the stock purchased by C is not subject to the lien. C succeeds to B's rights, even though C had actual notice of the lien before B's purchase.

Example (3). On June 1, 1970, in accordance with § 301.6323(f)-1, a notice of lien is filed with respect to D's delinquent tax liability. D owns 20 \$1,000 bonds issued by the Y company. On June 10, 1970, D obtains a loan from M bank for \$5,000 using the Y company bonds as collateral. At the time the loan is made M bank does not have actual notice or knowledge of the existence of the tax lien. Because M bank did not have actual notice or knowledge of the lien when the security interest came into existence, under subdivision (ii) of subparagraph (1) of this paragraph, the tax lien is not valid against M bank to the extent of its security interest.

Example (4). Assume the same facts as in example (3) except that on June 19, 1970, M bank assigns the chose in action and its security interest to N, who had actual notice or knowledge of the existence of the lien on June 1, 1970. Because the security interest was not subject to the lien to the extent of M bank's security interest, the security interest held by N is to the same extent entitled to priority over the tax lien because N succeeds to M bank's rights. See subdivision (iii) of subparagraph (1) of this paragraph.

Example (5). On July 1, 1970, in accordance with § 301.6323(f)-1, a notice of lien is filed with respect to E's delinquent tax liability. E owns ten \$1,000 bonds issued by the Y company. On July 5, 1970, E borrows \$4,000 from F and delivers the bonds to F as collateral for the loan. At the time the loan is made, F has actual knowledge of the existence of the tax lien and, therefore, holds the security interest subject to the lien on the bonds. On July 10, 1970, F sells the security interest to G for \$4,000 and delivers the Y company bonds pledged as collateral. G does

not have actual notice or knowledge of the existence of the lien on July 10, 1970. Because G did not have actual notice or knowledge of the lien at the time he purchased the security interest, under subdivision (ii) of subparagraph (1) of this paragraph, the tax lien is not valid against G to the extent of his security interest.

Example (6). Assume the same facts as in example (5) except that, instead of purchasing the security interest from F on July 10, 1970, G lends \$4,000 to F and takes a security interest in F's security interest in the bonds on that date. Because G became the holder of a security interest in a security interest after notice of lien was filed and does not directly have a security interest in a security, the security interest held by G is not entitled to a priority over the tax lien under the provisions of subparagraph (1) of this paragraph.

(b) *Motor vehicles.*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid against a purchaser (as defined in paragraph (f) of § 301.6323(h)-1) of a motor vehicle (as defined in paragraph (c) of § 301.6323(h)-1) if—

(i) At the time of the purchase, the purchaser did not have actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)-1) of the existence of the lien, and

(ii) Before the purchaser obtains such notice or knowledge, he has acquired actual possession of the motor vehicle and has not thereafter relinquished actual possession to the seller or his agent.

(2) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example (1). A, a delinquent taxpayer against whom a notice of tax lien has been filed in accordance with § 301.6323(f)-1, sells his automobile (which qualifies as a motor vehicle under paragraph (c) of § 301.6323(h)-1) to B, an automobile dealer. B takes actual possession of the automobile and does not thereafter relinquish actual possession to the seller or his agent. Subsequent to his purchase, B learns of the existence of the tax lien against A. Even though notice of lien was filed before the purchase, the lien is not valid against B, because B did not know of the existence of the lien before the purchase and before acquiring actual possession of the vehicle.

Example (2). C is a wholesaler of used automobiles. A notice of lien has been filed with respect to C's delinquent tax liability in accordance with § 301.6323(f)-1. Subsequent to such filing, D, a used automobile dealer, purchases and takes actual possession of 20 automobiles (which qualify as motor vehicles under the provisions of paragraph (c) of § 301.6323(h)-1) from C at an auction and places them on his lot for sale. C does not reacquire possession of any of the automobiles. At the time of his purchase, D does not have actual notice or knowledge of the existence of the lien against C. Even though notice of lien was filed before D's purchase, the lien was not valid against D because D did not know of the existence of the lien before the purchase and before acquiring actual possession of the vehicles.

(3) *Cross reference.* For provisions relating to additional circumstances in which the lien imposed by section 6321 may not be valid against the purchaser of tangible personal property (including

a motor vehicle) purchased at retail, see paragraph (c) of this section.

(c) *Personal property purchased at retail.*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid against a purchaser (as defined in paragraph (f) of § 301.6323(h)-1) of tangible personal property purchased at a retail sale (as defined in subparagraph (2) of this paragraph) unless at the time of purchase the purchaser intends the purchase to (or knows that the purchase will) hinder, evade, or defeat the collection of any tax imposed by the Internal Revenue Code of 1954.

(2) *Definition of retail sale.* For purposes of this paragraph, the term "retail sale" means a sale, made in the ordinary course of the seller's trade or business, of tangible personal property of which the seller is the owner. Such term includes a sale in customary retail quantities by a seller who is going out of business, but does not include a bulk sale or an auction sale in which goods are offered in quantities substantially greater than are customary in the ordinary course of the seller's trade or business or an auction sale of goods the owner of which is not in the business of selling such goods.

(3) *Example.* The application of this paragraph may be illustrated by the following example:

Example. A purchases a refrigerator from the M company, a retail appliance dealer. Prior to such purchase, a notice of lien was filed with respect to M's delinquent tax liability in accordance with § 301.6323(f)-1. At the time of the purchase A knows of the existence of the lien. However, A does not intend the purchase to hinder, evade, or defeat the collection of any internal revenue tax, and A does not have any reason to believe that the purchase will affect the collection of any internal revenue tax. Even though notice of lien was filed before the purchase, the lien is not valid against A because A in good faith purchased the refrigerator at retail in the ordinary course of the M company's business.

(d) *Personal property purchased in casual sale.*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid against a purchaser (as defined in § 301.6323(h)-1(f)) of household goods, personal effects, or other tangible personal property of a type described in § 301.6334-1 (which includes wearing apparel; school books; fuel, provisions, furniture, arms for personal use, livestock, and poultry (whether or not the seller is the head of a family); and books and tools of a trade, business, or profession (whether or not the trade, business, or profession of the seller)), purchased, other than for resale, in a casual sale for less than \$250 (excluding interest and expenses described in § 301.6323(e)-1). For purposes of this paragraph, a casual sale is a sale not made in the ordinary course of the seller's trade or business.

(2) *Limitation.* This paragraph applies only if the purchaser does not have actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)-1)—

- (i) Of the existence of the tax lien, or
(ii) That the sale is one of a series of sales.

For purposes of subdivision (ii) of this subparagraph, a sale is one of a series of sales if the seller plans to dispose of, in separate transactions, substantially all of his household goods, personal effects, and other tangible personal property described in § 301.6334-1.

(3) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example (1). A, an attorney's widow, sells a set of law books for \$200 to B, for B's own use. Prior to the sale a notice of lien was filed with respect to A's delinquent tax liability in accordance with § 301.6323(f)-1. B has no actual notice or knowledge of the tax lien. In addition, B does not know that the sale is one of a series of sales. Because the sale is a casual sale for less than \$250 and involves books of a profession (tangible personal property of a type described in § 301.6334-1, irrespective of the fact that A has never engaged in the legal profession), the tax lien is not valid against B even though a notice of lien was filed prior to the time of B's purchase.

Example (2). Assume the same facts as in example (1) except that B purchases the books for resale in his second-hand bookstore. Because B purchased the books for resale, he purchased the books subject to the lien.

Example (3). In an advertisement appearing in a local newspaper, G indicates that he is offering for sale a lawn mower, a used television set, a desk, a refrigerator, and certain used dining room furniture. In response to the advertisement, H purchases the dining room furniture for \$200. H does not receive any information which would impart notice of a lien, or that the sale is one of a series of sales, beyond the information contained in the advertisement. Prior to the sale a notice of lien was filed with respect to G's delinquent tax liability in accordance with § 301.6323(f)-1. Because H had no actual notice or knowledge that substantially all of G's household goods were being sold, or that the sale is one of a series of sales and because the sale is a casual sale for less than \$250, H does not purchase the dining room furniture subject to the lien. The household goods are of a type described in § 301.6334-1 (a) (2) irrespective of whether G is the head of a family or whether all such household goods offered for sale exceed \$500 in value.

(e) *Personal property subject to possessory liens.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid against a holder of a lien on tangible personal property which under local law secures the reasonable price of the repair or improvement of the property if the property is, and has been, continuously in the possession of the holder of the lien from the time the possessory lien arose. For example, if local law gives an automobile repairman the right to retain possession of an automobile he has repaired as security for payment of the repair bill and the repairman retains continuous possession of the automobile until his lien is satisfied, a tax lien filed in accordance with § 301.6323(f)-1 which has attached to the automobile will not be valid to the extent of the reasonable price of the repairs. It is immaterial that the notice of tax lien

was filed before the repairman undertook his work or that he knew of the lien before undertaking the work.

(f) *Real property tax and special assessment liens—(1) In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid against the holder of another lien upon the real property (regardless of when such other lien arises), if such other lien is entitled under local law to priority over security interests in real property which are prior in time and if such other lien on real property secures payment of—

(i) A tax of general application levied by any taxing authority based upon the value of the property;

(ii) A special assessment imposed directly upon the property by any taxing authority, if the assessment is imposed for the purpose of defraying the cost of any public improvement; or

(iii) Charges for utilities or public services furnished to the property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(2) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example (1). A owns Blackacre in the city of M. A notice of lien affecting Blackacre is filed in accordance with § 301.6323(f)-1. Subsequent to the filing of the notice of lien, the city of M acquires a lien against Blackacre to secure payment of real estate taxes. Such taxes are levied against all property in the city in proportion to the value of the property. Under local law, the holder of a lien for real property taxes is entitled to priority over a security interest in real property even though the security interest is prior in time. Because the real property tax lien held by the city of M secures payment of a tax of general application and is entitled to priority over security interests which are prior in time, the lien held by the city of M is entitled to priority over the Federal tax lien with respect to Blackacre.

Example (2). B owns Whiteacre in N county. A notice of lien affecting Whiteacre is filed in accordance with § 301.6323(f)-1. Subsequent to the filing of the notice of lien, N county constructs a sidewalk, paves the street, and installs water and sewer lines adjacent to Whiteacre. In order to defray the cost of these improvements, N county imposes upon Whiteacre a special assessment which under local law results in a lien upon Whiteacre that is entitled to priority over security interests that are prior in time. Because the special assessment lien is (i) entitled under local law to priority over security interests which are prior in time, and (ii) imposed directly upon real property to defray the cost of a public improvement, the special assessment lien has priority over the Federal tax lien with respect to Whiteacre.

Example (3). C owns Greenacre in town O. A notice of lien affecting Greenacre is filed in accordance with § 301.6323(f)-1. Town O furnishes water and electricity to Greenacre and periodically collects a fee for these services. Subsequent to the filing of the notice of lien, town O supplies water and electricity to Greenacre, and C fails to pay the charges for these services. Under local law, town O acquires a lien to secure charges for the services, and this lien has priority over security interests which are prior in time. Because the lien of town O (1) is for services

furnished to the real property and (ii) has priority over earlier security interests, town O's lien has priority over the Federal tax lien with respect to Greenacre.

(g) *Residential property subject to a mechanic's lien for certain repairs and improvements—(1) In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid against a mechanic's lienor (as defined in § 301.6323(h)-1(b)) who holds a lien for the repair or improvement of a personal residence if—

(i) The residence is occupied by the owner and contains no more than four dwelling units, and

(ii) The contract price on the prime contract with the owner for the repair or improvement (excluding interest and expenses described in § 301.6323(e)-1) is not more than \$1,000.

For purposes of subdivision (ii) of this subparagraph, the amounts of subcontracts under the prime contract with the owner are not to be taken into consideration for purposes of computing the \$1,000 prime contract price. It is immaterial that the notice of tax lien was filed before the contractor undertakes his work or that he knew of the lien before undertaking the work.

(2) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example (1). A owns a building containing four apartments, one of which he occupies as his personal residence. A notice of lien which affects the building is filed in accordance with § 301.6323(f)-1. Thereafter, A enters into a contract with B in the amount of \$800, which includes labor and materials, to repair the roof of the building. B purchases roofing shingles from C for \$300. B completes the work and A fails to pay B the agreed amount. In turn, B fails to pay C for the shingles. Under local law, B and C acquire mechanic's liens on A's building. Because the contract price on the prime contract with A is not more than \$1,000 and under local law B and C acquire mechanic's liens on A's building, the liens of B and C have priority over the Federal tax lien.

Example (2). Assume the same facts as in example (1), except that the amount of the prime contract between A and B is \$1,100. Because the amount of the prime contract with the owner, A, is in excess of \$1,000, the tax lien has priority over the entire amount of each of the mechanic's liens of B and C, even though the amount of the contract between B and C is \$300.

Example (3). Assume the same facts as in example (1), except that A and B do not agree in advance upon the amount due under the prime contract but agree that B will perform the work for the cost of materials and labor plus 10 percent of such cost. When the work is completed, it is determined that the total amount due is \$850. Because the prime contract price is not more than \$1,000 and under local law B and C acquire mechanic's liens on A's residence, the liens of B and C have priority over the Federal tax lien.

(h) *Attorneys' liens—(1) In general.* Even though notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid against an attorney who, under local law, holds a lien upon, or a contract enforceable against, a judgment or other amount

in settlement of a claim or of a cause of action. The priority afforded an attorney's lien under this paragraph shall not exceed the amount of the attorney's reasonable compensation for obtaining the judgment or procuring the settlement. For purposes of this paragraph, reasonable compensation means the amount customarily allowed under local law for an attorney's services for litigating or settling a similar case or administrative claim. However, reasonable compensation shall be determined on the basis of the facts and circumstances of each individual case. It is immaterial that the notice of tax lien is filed before the attorney undertakes his work or that the attorney knows of the tax lien before undertaking his work. This paragraph does not apply to an attorney's lien which may arise from the defense of a claim or cause of action against a taxpayer except to the extent such lien is held upon a judgment or other amount arising from the adjudication or settlement of a counterclaim in favor of the taxpayer. In the case of suits against the taxpayer, see § 301.6325-1(d)(2) for rules relating to the subordination of the tax lien to facilitate tax collection.

(2) *Claim or cause of action against the United States.* Paragraph (h)(1) of this section does not apply to an attorney's lien with respect to—

(i) Any judgment or other fund resulting from the successful litigation or settlement of an administrative claim or cause of action against the United States to the extent that the United States, under any legal or equitable right, offsets its liability under the judgment or settlement against any liability of the taxpayer to the United States; or

(ii) Any amount credited against any liability of the taxpayer in accordance with section 6402.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). A notice of lien is filed against A in accordance with § 301.6323(f)-1. Subsequently, A is struck by an automobile and retains B, an attorney to institute suit on A's behalf against the operator of the automobile. B knows of the tax lien before he begins his work. Under local law, B is entitled to a lien upon any recovery in order to secure payment of his fee. A is awarded damages of \$10,000. B charges a fee of \$3,000 which is the fee customarily allowed under local law in similar cases and which is found to be reasonable under the circumstances of this particular case. Because, under local law, B holds a lien for the amount of his reasonable compensation for obtaining the judgment, B's lien has priority over the Federal tax lien.

Example (2). Assume the same facts as in example (1), except that before suit is instituted A and the owner of the automobile settle out of court for \$7,500. B charges a reasonable and customary fee of \$1,800 for procuring the settlement and under local law holds a lien upon the settlement in order to secure payment of the fee. Because, under local law, B holds a lien for the amount of his reasonable compensation for obtaining the settlement, B has priority over the Federal tax lien.

Example (3). In accordance with § 301.6323(f)-1, a notice of lien in the amount of \$8,000

is filed against C, a contractor. Subsequently C retains D, an attorney, to initiate legal proceedings to recover the amount allegedly due him for construction work he has performed for the United States. C and D enter into an agreement which provides that D will receive a reasonable and customary fee of \$2,500 as compensation for his services. Under local law, the agreement will give rise to a lien which is enforceable by D against any amount recovered in the suit. C is successful in the suit and is awarded \$10,000. D claims \$2,500 of the proceeds as his fee. The United States, however, exercises its right of set-off and applies \$8,000 of the \$10,000 award to satisfy C's tax liability. Because the \$10,000 award resulted from the successful litigation of a cause of action against the United States, B's contract for attorney's fees is not enforceable against the amount recovered to the extent the United States offsets its liability under the judgment against C's tax liability. It is immaterial that D had no notice or knowledge of the tax lien at the time he began work on the case.

(i) *Certain insurance contracts—(1) In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid with respect to a life insurance, endowment, or annuity contract, against an organization which is the insurer under the contract, at any time—

(i) Before the insuring organization has actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)-1) of the existence of the tax lien,

(ii) After the insuring organization has actual notice or knowledge of the lien (as defined in paragraph (a) of § 301.6323(i)-1), with respect to advances (including contractual interest thereon as provided in paragraph (a) of § 301.6323(e)-1) required to be made automatically to maintain the contract in force under an agreement entered into before the insuring organization had such actual notice or knowledge, or

(iii) After the satisfaction of a levy pursuant to section 6332(b), unless and until the district director delivers to the insuring organization a notice (for example, another notice of levy, a letter, etc.), executed after the date of such satisfaction, that the lien exists.

Delivery of the notice described in subdivision (iii) of this subparagraph may be made by any means, including regular mail, and delivery of the notice shall be effective only from the time of actual receipt of the notification by the insuring organization. The provisions of this paragraph are applicable to matured as well as unmatured insurance contracts.

(2) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). On May 1, 1964, the X insurance company issues a life insurance policy to A. On June 1, 1970, a tax assessment is made against A, and on June 2, 1970, a notice of lien with respect to the assessment is filed in accordance with § 301.6323(f)-1. On July 1, 1970, without actual notice or knowledge of the tax lien, the X company makes a "policy loan" to A. Under subparagraph (1)(i) of this paragraph, the loan, including interest (in accordance with the provisions of paragraph (a) of § 301.6323(e)-

1), will have priority over the tax lien because X company did not have actual notice or knowledge of the tax lien at the time the policy loan was made.

Example (2). On May 1, 1964, B enters into a life insurance contract with the Y insurance company. Under one of the provisions of the contract, in the event a premium is not paid, Y is to advance out of the cash loan value of the policy the amount of an unpaid premium in order to maintain the contract in force. The contract also provides for interest on any advances so made. On June 1, 1971, a tax assessment is made against B, and on June 2, 1971, in accordance with section 6323(f)-1, a notice of lien is filed. On July 1, 1971, B fails to pay the premium due on that date, and Y makes an automatic premium loan to keep the policy in force. At the time the automatic premium loan is made, Y had actual knowledge of the tax lien. Under subparagraph (1)(ii) of this paragraph, the lien is not valid against Y with respect to the advance (and the contractual interest thereon), because the advance was required to be made automatically under an agreement entered into before Y had actual notice or knowledge of the tax lien.

Example (3). On May 1, 1964, C enters into a life insurance contract with the Z insurance company. On January 4, 1971, an assessment is made against C for \$5,000 unpaid income taxes, and on January 11, 1971, in accordance with § 301.6323(f)-1, a notice of lien is filed. On January 29, 1971, a notice of levy with respect to C's delinquent tax is served on Z company. The amount which C could have had advanced to him from Z company under the contract on the 90th day after service of the notice of levy on Z company is \$2,000. The Z company pays \$2,000 pursuant to the notice of levy, thereby satisfying the levy upon the contract in accordance with section 6332(b). On February 1, 1973, Z company advances \$500 to C, which is the increment in policy loan value since satisfaction of the levy of January 29, 1971. On February 5, 1973, a new notice of levy for the unpaid balance of the delinquent taxes, executed after the first levy was satisfied, is served upon Z company. Because the new notification was not received by Z company until after the policy loan was made, under paragraph (1)(iii) of this paragraph, the tax lien is not valid against Z company with respect to the policy loan (including interest thereon in accordance with paragraph (a) of § 301.6323(e)-1).

Example (4). On June 1, 1973, a tax assessment is made against D and on June 2, 1973, in accordance with § 301.6323(f)-1, a notice of lien with respect to the assessment is filed. On July 2, 1973, D executes an assignment of his rights, as the insured, under an insurance contract to M bank as security for a loan. M bank holds its security interest subject to the lien because it is not an insurer entitled to protection under section 6323(b)(9) and did not become a holder of the security interest prior to the filing of the notice of lien for purposes of section 6323(a). It is immaterial that a notice of levy had not been served upon the insurer before the assignment to M bank was made.

(j) *Passbook loans—(1) In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid against an institution described in section 581 or 591 to the extent of any loan made by the institution which is secured by a savings deposit, share, or other account evidenced by a passbook (as defined in subparagraph (2) of this para-

graph) if the institution has been continuously in possession of the passbook from the time the loan is made. This paragraph applies only to a loan made without actual notice or knowledge (as defined in paragraph (a) of § 301.6323 (i)-1) of the existence of the lien. Even though an original passbook loan is made without actual notice or knowledge of the existence of the lien, this paragraph does not apply to any additional loan made after knowledge of the lien is acquired by the institution even if it continues to retain the passbook from the time the original passbook loan is made.

(2) *Definition of passbook.* For purposes of this paragraph, the term "passbook" includes—

(i) Any tangible evidence of a savings deposit, share, or other account which, when in the possession of the bank or other savings institution, will prevent a withdrawal from the account to the extent of the loan balance, and

(ii) Any procedure or system, such as an automatic data processing system, the use of which by the bank or other savings institution will prevent a withdrawal from the account to the extent of the loan balance.

(3) *Example.* On June 1, 1970, a tax assessment is made against A and on June 2, 1970, a notice of lien with respect to the assessment is filed in accordance with § 301.6323(f)-1. A owns a savings account at the M bank with a balance of \$1,000. On June 10, 1970, A borrows \$300 from the M bank using the savings account as security therefor. The M bank is continuously in possession of the passbook from the time the loan is made and does not have actual notice or knowledge of the lien at the time of the loan. The tax lien is not valid against M bank with respect to the passbook loan of \$300 and accrued interest and expenses entitled to priority under § 301.6323(e)-1. Upon service of a notice of levy, the M bank must pay over the savings account balance in excess of the amount of its protected interest in the account as determined on the date of levy.

§ 301.6323(c) Statutory provisions; validity and priority against certain persons; protection for certain commercial transactions financing agreements, etc.

Sec. 6323. *Validity and priority against certain persons.* * * *

(c) *Protection for certain commercial transactions financing agreements, etc.*—(1) *In general.* To the extent provided in this subsection, even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which—

(A) Is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting—

(i) A commercial transactions financing agreement,

(ii) A real property construction or improvement financing agreement, or

(iii) An obligatory disbursement agreement, and

(B) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(2) *Commercial transactions financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "commercial

transactions financing agreement" means an agreement (entered into by a person in the course of his trade or business)—

(i) To make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(ii) To purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

(C) *Commercial financing security defined.* The term "commercial financing security" means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

(D) *Purchaser treated as acquiring security interest.* A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

(3) *Real property construction or improvement financing agreement.* For purposes of this subsection—

(A) *Definition.* The term "real property construction or improvement financing agreement" means an agreement to make cash disbursements to finance—

(i) The construction or improvement of real property,

(ii) A contract to construct or improve real property, or

(iii) The raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to a real property construction or improvement financing agreement, includes only—

(i) In the case of subparagraph (A)(i), the real property with respect to which the construction or improvement has been or is to be made,

(ii) In the case of subparagraph (A)(ii), the proceeds of the contract described therein, and

(iii) In the case of subparagraph (A)(iii), property subject to the lien imposed by section 6321 at the time of tax lien filing and the crop or the livestock or other animals referred to in subparagraph (A)(iii).

(4) *Obligatory disbursement agreement.* For purposes of this subsection—

(A) *Definition.* The term "obligatory disbursement agreement" means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer.

(B) *Limitation on qualified property.* The term "qualified property", when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax

lien filing and (to the extent that the acquisition is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

(C) *Special rules for surety agreements.* Where the obligatory disbursement agreement is an agreement insuring the performance of a contract between the taxpayer and another person—

(i) The term "qualified property" shall be treated as also including the proceeds of the contract the performance of which was insured, and

(ii) If the contract the performance of which was insured was a contract to construct or improve real property, to produce goods, or to furnish services, the term "qualified property" shall be treated as also including any tangible personal property used by the taxpayer in the performance of such insured contract.

[Sec. 6323(c) as amended by sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(c)-1 Protection for commercial transactions financing agreements.

(a) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid with respect to a security interest which:

(1) Comes into existence after the tax lien filing,

(2) Is in qualified property covered by the terms of a commercial transactions financing agreement entered into before the tax lien filing, and

(3) Is protected under local law against a judgment lien arising, as of the time of the tax lien filing, out of an unsecured obligation.

See paragraphs (a) and (e) of § 301.6323 (h)-1 for definitions of the terms "security interest" and "tax lien filing," respectively. For purposes of this section, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of § 301.6323(h)-1.

(b) *Commercial transactions financing agreement.* For purposes of this section, the term "commercial transactions financing agreement" means a written agreement entered into by a person in the course of his trade or business—

(1) To make loans to the taxpayer (whether or not at the option of the person agreeing to make such loans) to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(2) To purchase commercial financing security, other than inventory, acquired by the taxpayer in the ordinary course of his trade or business.

Such an agreement qualifies as a commercial transactions financing agreement only with respect to loans or purchases made under the agreement before (i) the 46th day after the date of tax lien filing or, (ii) the time when the lender or purchaser has actual notice or knowledge (as defined in paragraph (a) of § 301.6323(i)-1) of the tax lien filing, if earlier. For purposes of this paragraph, a loan or purchase is considered to have been made in the course of the lender's or purchaser's trade or business if such

person is in the business of financing commercial transactions (such as a bank or commercial factor) or if the agreement is incidental to the conduct of such person's trade or business. For example, if a manufacturer finances the accounts receivable of one of his customers, he is considered to engage in such financing in the course of his trade or business. The extent of the priority of the lender or purchaser over the tax lien is the amount of his disbursements made before the 46th day after the date the notice of tax lien is filed, or made before the day (before such 46th day) on which the lender or purchaser has actual notice or knowledge of the filing of the notice of the tax lien.

(c) *Commercial financing security.* (1) *In general.* The term "commercial financing security" means—

- (i) Paper of a kind ordinarily arising in commercial transactions,
- (ii) Accounts receivable (as defined in subparagraph (2) of this paragraph),
- (iii) Mortgages on real property, and
- (iv) Inventory.

For purposes of this subparagraph, the term "paper of a kind ordinarily arising in commercial transactions" in general includes any written document customarily used in commercial transactions. For example, such written documents include paper giving contract rights (as defined in subparagraph (2) of this paragraph), chattel paper, documents of title to personal property, and negotiable instruments or securities. The term "commercial financing security" does not include general intangibles such as patents or copyrights. A mortgage on real estate (including a deed of trust, contract for sale, and similar instrument) may be commercial financing security if the taxpayer has an interest in the mortgage as a mortgagee or assignee. The term "commercial financing security" does not include a mortgage where the taxpayer is the mortgagor of realty owned by him. For purposes of this subparagraph, the term "inventory" includes raw materials and goods in process as well as property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(2) *Definitions.* For purposes of §§ 301.6323(d)-1, 301.6323(h)-1 and this section—

- (i) A contract right is any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper, and
- (ii) An account receivable is any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper.

(d) *Qualified property.* For purposes of paragraph (a) of this section, qualified property consists solely of commercial financing security acquired by the taxpayer-debtor before the 46th day after the date of tax lien filing: Commercial financing security acquired before such day may be qualified property even though it is acquired by the taxpayer after the lender received actual notice or

knowledge of the filing of the tax lien. For example, although the receipt of actual notice or knowledge of the filing of the notice of the tax lien has the effect of ending the period within which protected disbursements may be made to the taxpayer, property which is acquired by the taxpayer after the lender receives actual notice or knowledge of such filing and before such 46th day, which otherwise qualifies as commercial financing security, becomes commercial financing security to which the priority of the lender extends for loans made before he received the actual notice or knowledge. An account receivable (as defined in paragraph (c) (2) (ii) of this section) is acquired by a taxpayer at the time, and to the extent, a right to payment is earned by performance. Chattel paper, documents of title, negotiable instruments, securities, and mortgages on real estate are acquired by a taxpayer when he obtains rights in the paper or mortgage. Inventory is acquired by the taxpayer when title passes to him. A contract right (as defined in paragraph (c) (2) (i) of this section) is acquired by a taxpayer when the contract is made. Identifiable proceeds, which arise from the collection or disposition of qualified property by the taxpayer, are considered to be acquired at the time such qualified property is acquired if the secured party has a continuously perfected security interest in the proceeds under local law. The term "proceeds" includes whatever is received when collateral is sold, exchanged, or collected. For purposes of this paragraph, the term "identifiable proceeds" does not include money, checks and the like which have been commingled with other cash proceeds. Property acquired by the taxpayer after the 45th day following tax lien filing, by the expenditure of proceeds, is not qualified property.

(e) *Purchaser treated as acquiring security interest.* A person who purchases commercial financing security, other than inventory, pursuant to a commercial transactions financing agreement is treated, for purposes of this section, as having acquired a security interest in the commercial financing security. In the case of a bona fide purchase at a discount, a purchaser of commercial financing security who satisfies the requirements of this section has priority over the tax lien to the full extent of the security.

(f) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). (i) On June 1, 1970, a tax is assessed against M, a tool manufacturer, with respect to his delinquent tax liability. On June 15, 1970, M enters into a written financing agreement with X, a bank. The agreement provides that, in consideration of such sums as X may advance to M, X is to have a security interest in all of M's presently owned and subsequently acquired commercial paper, accounts receivable, and inventory (including inventory in the manufacturing stages and raw materials). On July 6, 1970, notice of the tax lien is filed in accordance with § 301.6323 (f)-1. On August 3, 1970, without actual

notice or knowledge of the tax lien filing, X advances \$10,000 to M. On August 5, 1970, M acquires additional inventory through the purchase of raw materials. On August 20, 1970, M has accounts receivable, arising from the sale of tools, amounting to \$5,000. Under local law, X's security interest arising by reason of the \$10,000 advance on August 3, 1970, has priority, with respect to the raw materials and accounts receivable, over a judgment lien against M arising July 6, 1970 (the date of tax lien filing) out of an unsecured obligation.

(ii) Because the \$10,000 advance was made before the 46th day after the tax lien filing, and the accounts receivable in the amount of \$5,000 and the raw materials were acquired by M before such 46th day, X's \$10,000 security interest in the accounts receivable and the inventory has priority over the tax lien. The priority of X's security interest also extends to the proceeds, received on or after the 46th day after the tax lien filing, from the liquidation of the accounts receivable and inventory held by M on August 20, 1970, if X has a continuously perfected security interest in identifiable proceeds under local law. However, the priority of X's security interest will not extend to other property acquired with such proceeds.

Example (2). Assume the same facts as in example (1) except that on July 15, 1970, X has actual knowledge of the tax lien filing. Because an agreement does not qualify as a commercial transactions financing agreement when a disbursement is made after tax lien filing with actual knowledge of the filing, X's security interest will not have priority over the tax lien with respect to the \$10,000 advance made on August 3, 1970.

Example (3). Assume the same facts as in example (1) except that, instead of additional inventory, on August 5, 1970, M acquires an account receivable as the result of the sale of machinery which M no longer needs in his business. Even though the account receivable was acquired by taxpayer M before the 46th day after tax lien filing, the tax lien will have priority over X's security interest arising in the account receivable pursuant to the earlier written agreement because the account receivable was not acquired by the taxpayer in the ordinary course of his trade or business.

Example (4). Pursuant to a written agreement with the N Manufacturing Company entered into on January 4, 1971, Y, a commercial factor, purchases the accounts receivable arising out of N's regular sales to its customers. On November 1, 1971, in accordance with § 301.6323(f)-1, a notice of lien is filed with respect to N's delinquent tax liability. On December 6, 1971, Y, without actual notice or knowledge of the tax lien filing, purchases all of the accounts receivable resulting from N's November 1971 sales. Y has taken appropriate steps under local law so that the December 6, 1971, purchase is protected against a judgment lien arising November 1, 1971 (the date of tax lien filing) out of an unsecured obligation. Because the purchaser of commercial financing security, other than inventory, is treated as having acquired a security interest in commercial financing security, and because Y otherwise meets the requirements of this section, the tax lien is not valid with respect to Y's December 6, 1971, purchase of N's accounts receivable.

§ 301.6323(c)-2 *Protection for real property construction or improvement financing agreements.*

(a) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid with respect to a security interest which:

(1) Comes into existence after the tax lien filing.

(2) Is in qualified property covered by the terms of a real property construction or improvement financing agreement entered into before the tax lien filing, and

(3) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

For purposes of this section, it is immaterial that the holder of the security interest had actual notice or knowledge of the lien at the time disbursements are made pursuant to such an agreement. See paragraphs (a) and (e) of § 301.6323(h)-1 for general definitions of the terms "security interest" and "tax lien filing." For purposes of this section, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of § 301.6323(h)-1.

(b) *Real property construction or improvement financing agreement.* For purposes of this section, the term "real property construction or improvement financing agreement" means any written agreement to make cash disbursements (whether or not at the option of the party agreeing to make such disbursements):

(1) To finance the construction, improvement, or demolition of real property if the agreement provides for a security interest in the real property with respect to which the construction, improvement, or demolition has been or is to be made;

(2) To finance a contract to construct or improve, or demolish real property if the agreement provides for a security interest in the proceeds of the contract; or

(3) To finance the raising or harvesting of a farm crop or the raising of livestock or other animals if the agreement provides for a security interest in any property subject to the lien imposed by section 6321 at the time of tax lien filing, in the crop raised or harvested, or in the livestock or other animals raised.

For purposes of subparagraphs (1) and (2) of this paragraph, construction or improvement may include demolition. For purposes of any agreement described in subparagraph (3) of this paragraph, the furnishing of goods and services is treated as the disbursement of cash.

(c) *Qualified property.* For purposes of this section, the term "qualified property" includes only—

(1) In the case of an agreement described in paragraph (b)(1) of this section, the real property with respect to which the construction or improvement has been or is to be made;

(2) In the case of an agreement described in paragraph (b)(2) of this section, the proceeds of the contract to construct or improve real property; or

(3) In the case of an agreement described in paragraph (b)(3) of this section, property subject to the lien imposed by section 6321 at the time of tax lien filing, the farm crop raised or harvested, or the livestock or other animals raised.

(d) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). A, in order to finance the construction of a dwelling on a lot owned by him, mortgages the property to B. The mortgage, executed January 4, 1971, includes an agreement that B will make cash disbursements to A as the construction progresses. On February 1, 1971, in accordance with § 301.6323(f)-1, a notice of lien is filed with respect to A's delinquent tax liability. A continues the construction, and B makes cash disbursements on June 10, 1971, and December 10, 1971. Under local law B's security interest arising by virtue of the disbursements is protected against a judgment lien arising February 1, 1971 (the date of tax lien filing) out of an unsecured obligation. Because B is the holder of a security interest coming into existence by reason of cash disbursements made pursuant to a written agreement, entered into before tax lien filing, to make cash disbursements to finance the construction of real property, and because B's security interest is protected, under local law, against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, B's security interest has priority over the tax lien.

Example (2). (1) C is awarded a contract for the demolition of several buildings. On March 3, 1969, C enters into a written agreement with D which provides that D will make cash disbursements to finance the demolition and also provides that repayment of the disbursements is secured by any sums due C under the contract. On April 1, 1969, in accordance with § 301.6323(f)-1, a notice of lien is filed with respect to C's delinquent tax liability. With actual notice of the tax lien, D makes cash disbursements to C on August 1, September 1, and October 1, 1969. Under local law D's security interest in the proceeds of the contract with respect to the disbursements is entitled to priority over a judgment lien arising on April 1, 1969 (the date of tax lien filing) out of an unsecured obligation.

(2) Because D's security interest arose by reason of disbursements made pursuant to a written agreement, entered into before tax lien filing, to make cash disbursements to finance a contract to demolish real property, and because D's security interest is valid under local law against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to D's security interest in the proceeds of the demolition contract.

Example (3). Assume the same facts as in example (2) and, in addition, assume that, as further security for the cash disbursements, the March 3, 1969 agreement also provides for a security interest in all of C's demolition equipment. Because the protection of the security interest arising from the disbursements made after tax lien filing under the agreement is limited under section 6323(c)(3) to the proceeds of the demolition contract and because, under the circumstances, the security interest in the equipment is not otherwise protected under section 6323, the tax lien will have priority over D's security interest in the equipment.

Example (4). (1) On January 2, 1969, F and G enter into a written agreement, whereby F agrees to provide G with cash disbursements, seed, fertilizer, and insecticides as needed by G, in order to finance the raising and harvesting of a crop on a farm owned by G. Under the terms of the agreement F is to have a security interest in the crop, the farm, and all other property then owned or thereafter acquired by G. In accordance with § 301.6323(f)-1, on January 10,

1969, a notice of lien is filed with respect to G's delinquent tax liability. On March 3, 1969, with actual notice of the tax lien, F makes a cash disbursement of \$5,000 to G and furnishes him seed, fertilizer, and insecticides having a value of \$10,000. Under local law F's security interest, coming into existence by reason of the cash disbursement and the furnishing of goods, has priority over a judgment lien arising January 10, 1969 (the date of tax lien filing) out of an unsecured obligation.

(2) Because F's security interest arose by reason of a disbursement (including the furnishing of goods) made under a written agreement which was entered into before tax lien filing and which constitutes an agreement to finance the raising or harvesting of a farm crop, and because F's security interest is valid under local law against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to F's security interest in the crop even though a notice of lien was filed before the security interest arose. Furthermore, because the farm is property subject to the tax lien at the time of tax lien filing, F's security interest with respect to the farm also has priority over the tax lien.

Example (5). Assume the same facts as in example (4) and in addition that on October 1, 1969, G acquires several tractors to which F's security interest attaches under the terms of the agreement. Because the tractors are not property subject to the tax lien at the time of tax lien filing, the tax lien has priority over F's security interest in the tractors.

§ 301.6323(c)-3 Protection for obligatory disbursement agreements.

(a) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid with respect to a security interest which:

(1) Comes into existence after the tax lien filing.

(2) Is in qualified property covered by the terms of an obligatory disbursement agreement entered into before the tax lien filing, and

(3) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

See paragraphs (a) and (e) of § 301.6323(h)-1 for definitions of the terms "security interest" and "tax lien filing." For purposes of this section, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of § 301.6323(h)-1.

(b) *Obligatory disbursement agreement.* For purposes of this section the term "obligatory disbursement agreement" means a written agreement, entered into by a person in the course of his trade or business, to make disbursements. An agreement is treated as an obligatory disbursement agreement only with respect to disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer. The obligation to pay must be conditioned upon an event beyond the control of the obligor. For example, the provisions of this section are applicable where an issuing bank obligates itself to honor drafts or other demands for payment on a letter of credit

and a bank, in good faith, relies upon that letter of credit in making advances. The provisions of this section are also applicable, for example, where a bonding company obligates itself to make payments to indemnify against loss or liability and, under the terms of the bond, makes a payment with respect to a loss. The priority described in this section is not applicable, for example, in the case of an accommodation endorsement by an endorser who assumes his obligation other than in the course of his trade or business.

(c) *Qualified property.* Except as provided under paragraph (d) of this section, the term "qualified property," for purposes of this section, means property subject to the lien imposed by section 6321 at the time of tax lien filing and, to the extent that the acquisition is directly traceable to the obligatory disbursement, property acquired by the taxpayer after tax lien filing.

(d) *Special rule for surety agreements.* Where the obligatory disbursement agreement is an agreement insuring the performance of a contract of the taxpayer and another person, the term "qualified property" shall be treated as also including—

(1) The proceeds of the contract the performance of which was insured, and

(2) If the contract the performance of which was insured is a contract to construct or improve real property, to produce goods, or to furnish services, any tangible personal property used by the taxpayer in the performance of the insured contract.

For example, a surety company which holds a security interest, arising from cash disbursements made after tax lien filing under a payment or performance bond on a real estate construction project, has priority over the tax lien with respect to the proceeds of the construction contract and, in addition, with respect to any tangible personal property used by the taxpayer in the construction project if its security interest in the tangible personal property is protected under local law against a judgment lien arising, as of the time the tax lien was filed, out of an unsecured obligation.

(e) *Examples.* This section may be illustrated by the following examples:

Example (1). (i) On January 2, 1969, H, an appliance dealer, in order to finance the acquisition from O of a large inventory of appliances, enters into a written agreement with Z, a bank. Under the terms of the agreement, in return for a security interest in all of H's inventory, presently owned and subsequently acquired, Z issues an irrevocable letter of credit to allow H to make the purchase. On December 31, 1968 and January 10, 1969, in accordance with § 301.6323(f)-1, separate notices of lien are filed with respect to H's delinquent tax liabilities. On March 31, 1969, Z honors the letter of credit. Under local law, Z's security interest in both existing and after-acquired inventory is protected against a judgment lien arising on or after January 10, 1969, out of an unsecured obligation. Under local law, Z's security interest in the inventory purchased under the letter of credit qualifies as a purchase money

security interest and is valid against persons acquiring security interests in or liens upon such inventory at any time.

(ii) Because Z's security interest in H's inventory did not arise under a written agreement entered into before the filing of notice of the first tax lien on December 31, 1968, that lien is superior to Z's security interest except to the extent of Z's purchase money security interest. Because Z's interest qualifies as a purchase money security interest with respect to the inventory purchased under the letter of credit, the tax liens attach under section 6321 only to the equity acquired by H, and the rights of Z in the inventory so purchased are superior even to the lien filed on December 31, 1968, without regard to this section.

(iii) Because Z's security interest arose by reason of disbursements made under a written agreement which was entered into before the filing of notice of the second tax lien on January 10, 1969, and which constitutes an agreement to make disbursements required to be made by reason of the intervention of the rights of O, a person other than the taxpayer, and because Z's security interest is valid under local law against a judgment lien arising as of the time of such tax lien filing on January 10, 1969, out of an unsecured obligation, the second tax lien is, under this section, not valid with respect to Z's security interest in inventory owned by H on January 10, 1969, as well as any after-acquired inventory directly traceable to Z's disbursements (apart from such greater protection as Z enjoys, with respect to the latter, under its purchase money security interest). No protection against the second tax lien is provided under this section with respect to a security interest in any other inventory acquired by H after January 10, 1969, because such other inventory is neither subject to the tax lien at the time of tax lien filing nor directly traceable to Z's disbursements.

Example (2). On June 1, 1971, K is awarded a contract to construct an office building. At the same time, S, a surety company, agrees in writing to insure the performance of the contract. The agreement provides that in the event S must complete the job as the result of a default by K, S will be entitled to the proceeds of the contract. In addition, the agreement provides that S is to have a security interest in all property belonging to K. On December 1, 1971, prior to the completion of the building, K defaults. On the same date, under § 301.6323(f)-1, a notice of lien is filed with respect to K's delinquent tax liability. S completes the building on June 1, 1972. Under local law S's security interest in the proceeds of the contract and S's security interest in the property of K are entitled to priority over a judgment lien arising December 1, 1971 (the date of tax lien filing) out of an unsecured obligation. Because, for purposes of an obligatory disbursement agreement which is a surety agreement, the security interest may be in the proceeds of the insured contract, S's security interest in the proceeds of the contract has priority over the tax lien even though a notice of lien was filed before S's security interest arose. Furthermore, because the insured contract was a contract to construct real property, S's security interest in any of K's tangible personal property used in the performance of the contract also has priority over the tax lien.

Example (3). (i) On February 2, 1970, L enters into an agreement with M, a contractor, to construct an apartment building on land owned by L. Under a separate agreement, N bank agrees to furnish funds on a short-term basis to L for the payment of amounts due to M during the course of construction. Simultaneously, X, a financial in-

stitution, makes a binding commitment to N bank and L to provide long-term financing for the project after its completion. Under its commitment, X is obligated to pay off the balance of the construction loan held by N bank upon the execution by L of a new promissory note secured by a mortgage deed of trust upon the improved property. On September 4, 1970, in accordance with § 301.6323(f)-1, notice of lien is properly filed with respect to L's delinquent tax liability. On September 8, 1970, X obtains actual notice of the tax lien filing. On September 14, 1970, the documents creating X's security interest are executed and recorded, N bank's lien for its construction loan is released, and X makes the required disbursements to N bank. Under local law, X's security interest is protected against a judgment lien arising on September 4, 1970 (the time of tax lien filing) out of an unsecured obligation.

(ii) Because X's security interest arose by reason of a disbursement made under a written agreement entered into before tax lien filing, which constitutes an agreement to make disbursements required to be made by reason of the intervention of the rights of N bank, a person other than the taxpayer, and because X's security interest is valid under local law against a judgment lien arising as of the time of the tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to X's security interest to the extent of the disbursement to N bank. The obligatory disbursement is protected under section 6323(c)(4) even if X is not subrogated to N bank's rights or X's agreement is not itself a real property construction financing agreement.

§ 301.6323(d) Statutory provisions: validity and priority against certain persons; 45-day period for making disbursements.

SEC. 6323. *Validity and priority against certain persons.*

(d) *45-day period for making disbursements.* Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest—

(1) Is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

(2) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

[Sec. 6323(d) as amended by sec. 236(a) Rev. Act 1964 (78 Stat. 127); sec. 101(a) Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(d)-1 45-day period for making disbursements.

(a) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)-1, the lien is not valid with respect to a security interest which comes into existence, after tax lien filing, by reason of disbursements made before the 46th day after the date of tax lien filing, or if earlier, before the person making the disbursements has actual notice or knowledge of the tax lien filing, but only if the security interest is—

(1) In property which is subject, at the time of tax lien filing, to the lien imposed by section 6321 and which is covered by the terms of a written agreement entered into before tax lien filing, and

(2) Protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

For purposes of subparagraph (1) of this paragraph, a contract right (as defined in paragraph (c)(2)(i) of § 301.6323(c)-1) is subject, at the time of tax lien filing, to the lien imposed by section 6321 if the contract has been made by such time. An account receivable (as defined in paragraph (c)(2)(ii) of § 301.6323(c)-1) is subject, at the time of tax lien filing, to the lien imposed by section 6321 if, and to the extent, a right to payment has been earned by performance at such time. For purposes of subparagraph (2) of this paragraph, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of § 301.6323(h)-1. For purposes of this section, it is immaterial that the written agreement provides that the disbursements are to be made at the option of the person making the disbursements. See paragraphs (a) and (e) of § 301.6323(h)-1 for definitions of the terms "security interest" and "tax lien filing," respectively. See paragraph (a) of § 301.6323(i)-1 for certain circumstances under which a person is deemed to have actual notice of knowledge of a fact.

(b) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). On December 1, 1967, an assessment is made against A with respect to his delinquent tax liability. On January 2, 1968, A enters into a written agreement with B whereby B agrees to lend A \$10,000 in return for a security interest in certain property owned by A. On January 10, 1968, in accordance with § 301.6323(f)-1 notice of the tax lien affecting the property is filed. On February 1, 1968, B, without actual notice or knowledge of the tax lien filing, disburses the loan to A. Under local law, the security interest arising by reason of the disbursement is entitled to priority over a judgment lien arising January 10, 1968 (the date of tax lien filing) out of an unsecured obligation. Because the disbursement was made before the 46th day after tax lien filing, because the disbursement was made pursuant to a written agreement entered into before tax lien filing, and because the resulting security interest is protected under local law against a judgment lien arising as of the date of tax lien filing out of an unsecured obligation, B's \$10,000 security interest has priority over the tax lien.

Example (2). Assume the same facts as in example (1) except that when B disburses the \$10,000 to A on February 10, 1968, B has actual knowledge of the tax lien filing. Because the disbursement was made with actual knowledge of tax lien filing, B's security interest does not have priority over the tax lien even though the disbursement was made before the 46th day after the tax lien filing. Furthermore, B is not protected under § 301.6323(a)-1(a) as a holder of a security interest because he had not parted with money or money's worth prior to the time the notice of tax lien was filed (Jan. 10, 1968)

even though he had made a firm commitment to A before that time.

§ 301.6323(e) Statutory provisions; validity and priority against certain persons; priority of interest and expenses.

Sec. 6323. Validity and priority against certain persons. * * *

(e) *Priority of interest and expenses.* If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to—

(1) Any interest or carrying charges upon the obligation secured,

(2) The reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

(3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) The reasonable costs of insuring payment of the obligation secured, and

(6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321,

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

[Sec. 6323(e) as amended by sec. 236(a) Rev. Act 1964 (78 Stat. 127); sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(e)-1 Priority of interest and expenses.

(a) *In general.* If the lien imposed by section 6321 is not valid as against another lien or security interest, the priority of the other lien or security interest also extends to each of the following items to the extent that under local law the item has the same priority as the lien or security interest to which it relates:

(1) Any interest or carrying charges (including finance, service, and similar charges) upon the obligation secured,

(2) The reasonable charges and expenses of an indenture trustee (including, for example, the trustee under a deed of trust) or agent holding the security interest for the benefit of the holder of the security interest,

(3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) The reasonable costs of insuring payment of the obligation secured (including amounts paid by the holder of the security interest for mortgage insurance, such as that issued by the Federal Housing Administration), and

(6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321.

(b) *Collection expenses.* The reasonable expenses described in paragraph (a)

(3) of this section include expenditures incurred by the protected holder of the lien or security interest to establish the priority of his interest or to collect, by foreclosure or otherwise, the amount due him from the property subject to his lien. Accordingly, the amount of the encumbrance which is protected is increased by the amounts so expended by the holder of the security interest.

(c) *Costs of insuring, preserving, etc.* The reasonable costs of insuring, preserving, or repairing described in paragraph (a)(4) of this section include expenditures by the holder of a security interest for fire and casualty insurance on the property subject to the security interest and amounts paid by the holder of the lien or security interest to repair the property. Such reasonable costs also include the amounts paid by the holder of the lien or security interest in a leasehold to the lessor of the leasehold to preserve the leasehold subject to the lien or security interest. Accordingly, the amount of the lien or security interest which is protected is increased by the amounts so expended by the holder of the lien or security interest.

(d) *Satisfaction of liens.* The amounts described in paragraph (a)(6) of this section include expenditures incurred by the protected holder of a lien or security interest to discharge a statutory lien for State sales taxes on the property subject to his lien or security interest if both his lien or security interest and the sales tax lien have priority over a Federal tax lien. Accordingly, the amount of the lien or security interest is increased by the amounts so expended by the holder of the lien or security interest even though under local law the holder of the lien or security interest is not subrogated to the rights of the holder of the State sales tax lien. However, if the holder of the lien or security interest is subrogated, within the meaning of paragraph (b) of § 301.6323(i)-1, to the rights of the holder of the sales tax lien, he will also be entitled to any additional protection afforded by section 6323(i)(2).

§ 301.6323(f) Statutory provisions; validity and priority against certain persons; place for filing notice; form.

Sec. 6323. Validity and priority against certain persons. * * *

(f) *Place for filing notice; form.*—(1) *Place for filing.* The notice referred to in subsection (a) shall be filed—

(A) *Under State laws.*—(i) *Real property.* In the case of real property, in one office within the State (or the county, or other governmental subdivision) as designated by the laws of such State, in which the property subject to the lien is situated; and

(ii) *Personal property.* In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; or

(B) *With clerk of district court.* In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or

(C) *With recorder of deeds of the District of Columbia.* In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(2) *Situs of property subject to lien.* For purposes of paragraph (1), property shall be deemed to be situated—

(A) *Real property.* In the case of real property, at its physical location; or

(B) *Personal property.* In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

(3) *Form.* The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary or his delegate. Such notice shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

[Sec. 6323(f) as added by sec. 101(a) Federal Tax Lien Act of 1966 (80 Stat. 1125)]

§ 301.6323(f)-1 Place for filing notice; form.

(a) *Place for filing.* The notice of lien referred to in § 301.6323(a)-1 shall be filed as follows:

(1) *Under State laws—(i) Real property.* In the case of real property, notice shall be filed in one office within the State (or the county or other governmental subdivision), as designated by the laws of the State, in which the property subject to the lien is deemed situated under the provisions of paragraph (b)(1) of this section.

(ii) *Personal property.* In the case of personal property, whether tangible or intangible, the notice shall be filed in one office within the State (or the county or other governmental subdivision), as designated by the laws of the State, in which the property subject to the lien is deemed situated under the provisions of paragraph (b)(2) of this section.

(2) *With the clerk of the U.S. district court.* Whenever a State has not by law designated one office which meets the requirements of subparagraph (1)(i) or (1)(ii) of this paragraph, the notice shall be filed in the office of the clerk of the U.S. district court for the judicial district in which the property subject to the lien is deemed situated under the provisions of paragraph (b) of this section. For example, a State has not by law designated one office meeting the requirements of subparagraph (1)(i) of this paragraph if more than one office is designated within the State, county, or other governmental subdivision for filing notices with respect to all real property located in such State, county, or other governmental subdivision. A State has not by law designated one office meeting the requirements of subparagraph (1)(ii) of this paragraph if more than one office is designated in the State, county, or other governmental subdivision for filing notices with respect to all of the personal property of a particular taxpayer.

(3) *With the Recorder of Deeds of the District of Columbia.* If the property subject to the lien imposed by section 6321 is deemed situated, under the provisions of paragraph (b) of this section, in the District of Columbia, the notice shall be filed in the office of the Recorder of Deeds of the District of Columbia.

(b) *Situs of property subject to lien.* For purposes of paragraph (a) of this section, property is deemed situated as follows:

(1) *Real property.* Real property is deemed situated at its physical location.

(2) *Personal property.* Personal property, whether tangible or intangible, is deemed situated at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of subparagraph (2) of this paragraph the residence of a corporation or partnership is deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is not within the United States is deemed to be in the District of Columbia.

(c) *Form.* The notice referred to in § 301.6323(a)-1 shall be filed on Form 668, "Notice of Federal Tax Lien under Internal Revenue Laws". Such notice is valid notwithstanding any other provision of law regarding the form or content of a notice of lien. For example, omission from the notice of lien of a description of the property subject to the lien does not affect the validity thereof even though State law may require that the notice contain a description of the property subject to the lien.

(d) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). The law of State X provides that notices of Federal tax lien affecting personal property are to be filed in the Office of the Recorder of Deeds of the county where the taxpayer resides. The laws of State X also provide that notices of lien affecting real property are to be filed with the recorder of deeds of the county where the real property is located. On June 1, 1970, in accordance with § 301.6323(f)-1, a notice of lien is filed in county M with respect to the delinquent tax liability of A. At the time the notice is filed, A is a resident of county M and owns real property in that county. One year later A moves to county N and one year after that A moves to county O. Because the situs of personal property is deemed to be at the residence of the taxpayer at the time the notice of lien is filed, the notice continues to be effectively filed with respect to A's personal property even though A no longer resides in county M. Furthermore, because the situs of real property is deemed to be at its physical location, the notice of lien also continues to be effectively filed with respect to A's real property.

Example (2). B is a resident of Canada but owns personal property in the United States. On January 4, 1971, in accordance with § 301.6323(f)-1, a notice of lien is filed with the Office of the Recorder of Deeds of 1978. B changes his residence to State Y in the United States. Because the residence of the taxpayer who is not a resident of the United States is deemed to be in the District of Columbia and the situs of personal property is deemed to be at the residence of the taxpayer at the time of filing, the lien con-

tinues to be effectively filed with respect to the personal property of B located in the United States even though B has returned to the United States and taken up residence in State Y and even though B has at no time been in the District of Columbia.

Example (3). The law of State Z in effect before July 1, 1967, provides that notices of lien affecting real property are to be filed in the office of the recorder of deeds of the county in which the real property is located, but that if the real property is registered under the Torrens system of title registration the notice is to be filed with the registrar of titles rather than the recorder of deeds. The law of State Z in effect after June 30, 1967, provides that all notices of lien affecting real property are to be filed with the recorder of deeds of the county in which the real property is located. Accordingly, where the Torrens system is adopted by a county in State Z, there were before July 1, 1967, two offices designated for filing notices of Federal tax lien affecting real property in the county because one office was designated for Torrens real property and another office was designated for non-Torrens real property. Because State Z had not designated one office within the State, county, or other governmental subdivision for filing notices before July 1, 1967, with respect to all real property located in the State, county, or governmental subdivision, before July 1, 1967, the place for filing notices of lien under this section, affecting property located in counties adopting the Torrens system, was with the clerk of the U.S. district court for the judicial district in which the real property is located. However, after June 30, 1967, the place for filing notices of lien under this section, affecting both Torrens and non-Torrens real property in counties adopting the Torrens system is with the recorder of deeds for each such county. Notices of lien filed under this section with the clerk of the U.S. district court before July 1, 1967, remain validly filed whether or not refilled with the recorder of deeds after the change in State law or upon refiling during the required refiling period.

Example (4). The law of State W provides that notices of lien affecting personal property of corporations and partnerships are to be filed in the office of the Secretary of State. Notices of lien affecting personal property of any other person are to be filed in the office of the clerk of court for the county where the person resides. Because the State law designates only one filing office within State W with respect to personal property of any particular taxpayer, notices of lien filed under this section, affecting personal property, shall be filed in the office designated under State law.

§ 301.6323(g) Statutory provisions; validity and priority against certain persons; refiling of notice of tax lien.

Sec. 6323. *Validity and priority against certain persons.* * * *

(g) *Refiling of notice.*—For purposes of this section—

(1) *General rule.*—Unless notice of lien is refilled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

(2) *Place for filing.*—A notice of lien refilled during the required refiling period shall be effective only—

(A) If such notice of lien is refilled in the office in which the prior notice of lien was filed; and

(B) In any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary or his delegate received written information (in

the manner prescribed in regulations issued by the Secretary or his delegate) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

(3) *Required refiling period.*—In the case of any notice of lien, the term "required refiling period" means—

(A) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(B) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(4) *Transitional rule.*—Notwithstanding paragraph (3), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

[Sec. 6323(g) as added by sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(g)—1 Refiling of notice of tax lien.

(a) *In general.*—(1) *Requirement to refile.* In order to continue the effect of a notice of lien, the notice must be refilled in the place described in paragraph (b) of this section during the required refiling period (described in paragraph (c) of this section). In the event that two or more notices of lien are filed with respect to a particular tax assessment, the failure to comply with the provisions of paragraphs (b) (1) (i) and (c) of this section in respect of one of the notices of lien does not affect the effectiveness of the refiling of any other notice of lien. Except for the filing of a notice of lien required by paragraph (b) (1) (ii) of this section (relating to a change of residence) the validity of any refiling of a notice of lien is not affected by the refiling or nonrefiling of any other notice of lien.

(2) *Effect of refiling.* A timely refilled notice of lien is effective as of the date on which the notice of lien to which it relates was effective.

(3) *Effect of failure to refile.* If the district director fails to refile a notice of lien in the manner described in paragraphs (b) and (c) of this section, the notice of lien is not effective, after the expiration of the required refiling period, as against any person without regard to when the interest of the person in the property subject to the lien was acquired. However, the failure of the district director to refile a notice of lien during the required refiling period will not, following the expiration of the refiling period, affect the effectiveness of the notice with respect to:

(i) Property which is the subject matter of a suit, to which the United States is a party, commenced prior to the expiration of the required refiling period, or

(ii) Property which has been levied upon by the United States prior to the expiration of the refiling period.

However, if a suit or levy referred to in the preceding sentence is dismissed or released and the property is subject to the lien at such time, a notice of lien with respect to the property is not effective after the suit or levy is dismissed or re-

leased unless refilled during the required refiling period. Failure to refile a notice of lien does not affect the existence of the lien.

(4) *Filing of new notice.* If a notice of lien is not refilled, and if the lien remains in existence, the Internal Revenue Service may nevertheless file a new notice of lien either on the form prescribed for the filing of a notice of lien or on the form prescribed for refiling a notice of lien. This new filing must meet the requirements of section 6323(f) and § 301.6323(f)-1 and is effective from the date on which such filing is made.

(b) *Place for refiling notice of lien.*—(1) *In general.* A notice of lien refilled during the required refiling period (described in paragraph (c) of this section) shall be effective only—

(i) If the notice of lien is refilled in the office in which the prior notice of lien (including a refilled notice) was filed under the provisions of section 6323; and

(ii) In any case in which 90 days or more prior to the date the refiling of the notice of lien under subdivision (i) is completed, the Internal Revenue Service receives written information (in the manner described in subparagraph (2) of this paragraph) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with section 6323(f) (1) (A) (ii) in the State in which such new residence is located (or, if such new residence is located without the United States, in the District of Columbia).

A notice of lien is considered as refilled in the office in which the prior notice or refilled notice was filed under the provisions of section 6323 if it is refilled in the office which, pursuant to a change in the applicable local law, assumed the functions of the office in which the prior notice or refilled notice was filed. If on or before the 90th day referred to in subdivision (ii) more than one written notice is received concerning a change in the taxpayer's residence, a notice of lien is required by this subdivision to be filed only with respect to the residence shown on the written notice received on the most recent date. Subdivision (ii) is applicable regardless of whether the taxpayer resides at the new residence on the date the refiling of notice of lien under subdivision (i) of this subparagraph is completed.

(2) *Notice of change of taxpayer's residence.*—(i) *In general.* Except as provided in subdivision (ii) or (iii) of this subparagraph, for purposes of this section, a notice of change of a taxpayer's residence will be effective only if it (A) is received, in writing, from the taxpayer or his representative by the district director or the service center director having jurisdiction where the original notice of lien was filed, (B) relates to an unpaid tax liability of the taxpayer, and (C) states the taxpayer's name and the address of his new residence. Although it is not necessary that a written notice contain the taxpayer's identifying number authorized by section 6109, it is preferable that it include such number. For

purposes of this subdivision, a notice of change of a taxpayer's residence shown on a return or an amended return (including a return of the same tax) will not be effective to notify the Internal Revenue Service.

(ii) *Notice received before August 23, 1976.* For purposes of this section, a notice of a change of a taxpayer's residence will also be effective if it (A) is received, in writing, by any office of the Internal Revenue Service before August 23, 1976, from the taxpayer or his representative, (B) relates to an unpaid tax liability of the taxpayer, and (C) states the taxpayer's name and the address of his new residence.

(iii) *By return or amended return.* For purposes of this section, in the case of a notice of lien which relates to an assessment of tax made after December 31, 1966, a notice of change of a taxpayer's residence will also be effective if it is contained in a return or amended return of the same type of tax filed with the Internal Revenue Service by the taxpayer or his representative which on its face indicates that there is a change in the taxpayer's address and correctly states the taxpayer's name, the address of his new residence, and his identifying number required by section 6109.

(iv) *Other rules applicable.* Except as provided in subdivisions (i), (ii), and (iii) of this subparagraph, no communication (either written or oral) to the Internal Revenue Service will be considered effective as notice of a change of a taxpayer's residence under this section, whether or not he Service has actual notice or knowledge of the taxpayer's new residence. For the purpose of determining the date on which a notice of change of a taxpayer's residence is received under this section, the notice shall be treated as received on the date it is actually received by the Internal Revenue Service without reference to the provisions of section 7502.

(3) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). A, a delinquent taxpayer, is a resident of State M and owns real property in State N. In accordance with § 301.6323(f)-1, notices of lien are filed in States M and N. In order to continue the effect of the notice of lien filed in M, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the appropriate office in M but is not required to refile the notice of lien with the appropriate office in N. Similarly, in order to continue the effect of the notice of lien filed in State N, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the appropriate office in N but is not required to refile the notice of lien with the appropriate office in M.

Example (2). B, a delinquent taxpayer, is a resident of State M. In accordance with § 301.6323(f)-1, notice of lien is properly filed in that State. One year before the beginning of the required refiling period, B establishes his residence in State N, and B immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (b) (2) of this section. In order to continue

the effect of the notice of lien filed in M, the Internal Revenue Service must refile, during the required refiling period, notices of lien with (i) the appropriate office in M, and (ii) the appropriate office in N, because B properly notified the Internal Revenue Service of his change in residence to N more than 89 days prior to the date refiling of the notice of lien in M is completed. Even if the Internal Revenue Service had acquired actual notice or knowledge of B's change in residence by other means, if B had not properly notified the Internal Revenue Service of his change in residence, the effect of the notice of lien in State M could have been continued without any refiling in State N.

Example (3). C, a delinquent taxpayer, is a resident of State O. In accordance with § 301.6323(f)-1, notice of lien is properly filed in that State. Four years before the required refiling period, C establishes his residence in State P, and C immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (b)(2) of this section. Three years before the required refiling period, C establishes his residence in State R, and again C immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (2) of this section. In order to continue the effect of the notice of lien filed in O, the Internal Revenue Service must refile, during the required refiling period, notices of lien with (i) the appropriate office in O, and (ii) the appropriate office in R. Refiling in R is required because the notice received by the Service of C's change in residence to R was the most recent notice received more than 89 days prior to the date refiling in O is completed. The notice of lien is not required to be filed in P, even though C properly notified the Internal Revenue Service of his change in residence to P, because such notice is not the most recent one received.

Example (4). Assume the same facts as in example (3), except that C does not notify the Internal Revenue Service of his change in residence to R in accordance with the provisions of paragraph (b)(2) of this section. In order to continue the effect of the notice of lien filed in O, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with (i) the appropriate office in O, and (ii) the appropriate office in P. Refiling in P is required because C properly notified the Internal Revenue Service of his change in residence to P, even though C is not a resident of P on the date refiling of the notice of lien in O is completed. The Internal Revenue Service is not required to file a notice of lien in R because C did not properly notify the Service of his change in residence to R.

Example (5). D, a delinquent taxpayer, is a resident of State M and owns real property in States N and O. In accordance with § 301.6323(f)-1, the Internal Revenue Service files notices of lien in M, N, and O States. Five years and 6 months after the date of the assessment shown on the notice of lien, D establishes his residence in P, and at that time the Internal Revenue Service received from D a notification of his change in residence in accordance with the provisions of paragraph (b)(2) of this section. On a date which is 5 years and 7 months after the date of the assessment shown on the notice of lien, the Internal Revenue Service properly refiles notices of lien in M, N, and O which refilings are sufficient to continue the effect of each of the notice of lien. The Internal Revenue Service is not required to file a notice of lien in P because D did not notify the Internal Revenue Service of his change of

residence to P more than 89 days prior to the date each of the refilings in M, N, and O was completed.

Example (6). Assume the same facts as in example (5) except that the refiling of the notice of lien in O occurs 100 days after D notifies the Internal Revenue Service of his change in residence to P in accordance with the provisions of paragraph (b)(2) of this section. In order to continue the effect of the notice of lien filed in O, in addition to refiling the notice of lien in O, the Internal Revenue Service must also refile, during the required refiling period, a notice of lien in P because D properly notified the Internal Revenue Service of his change of residence to P more than 89 days prior to the date the refiling in O was completed. However, the Internal Revenue Service is not required to refile the notice of lien in P to maintain the effect of the notices of lien in M and N because D did not notify the Internal Revenue Service of his change in residence to P more than 89 days prior to the date the refilings in M and N were completed.

Example (7). E, a delinquent taxpayer, is a resident of State T. Because T has not designated one office in the case of personal property for filing notices of lien in accordance with the provisions of section 6323(f)(1)(A)(ii), the Internal Revenue Service properly files a notice of lien with the clerk of the appropriate United States district court. However, solely as a matter of convenience for those who may have occasion to search for notices of lien, and not as a matter of legal effectiveness, the Internal Revenue Service also files notice of lien with the recorder of deeds of the county in T where E resides. In addition, the Internal Revenue Service sends a copy of the notice of lien to the X life insurance company to give the company actual notice of the notice of lien. In order to continue the effect of the notice of lien, the Internal Revenue Service must refile the notice of lien with the clerk of the appropriate United States district court during the required refiling period. In order to continue the effect of the notice of the lien, it is not necessary to refile the notice of lien with the Recorder of Deeds of the county where E resides, because the refiling of the notice of lien with the recorder of deeds does not constitute a proper filing for the purposes of section 6323(f). In addition, to continue the effect of the notice of lien under this section it is not necessary to send a copy of the notice of lien to the X life insurance company, because the sending of a notice of lien to an insurance company does not constitute a proper filing for the purposes of section 6323(f).

(c) Required refiling period.—(1) In general. For the purpose of this section, except as provided in subparagraph (2) of this paragraph, the term "required refiling period" means—

(i) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(ii) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(2) Tax assessments made before January 1, 1962. If the assessment of the tax is made before January 1, 1962, the first required refiling period shall be the calendar year 1967. Thus, to maintain the effectiveness of any notice of lien on file which relates to a lien which arose before January 1, 1962, the Internal Revenue Service will refile the notice of lien during the calendar year 1967.

(3) Examples. The provisions of this paragraph may be illustrated by the following examples:

Example (1). On March 1, 1963, an assessment of tax is made against B, a delinquent taxpayer, and a lien for the amount of the assessment arises on that date. On July 1, 1963, in accordance with § 301.6323(f)-1, a notice of lien is filed. The notice of lien filed on July 1, 1963, is effective through March 31, 1969. The first required refiling period for the notice of lien begins on April 1, 1968, and ends on March 31, 1969. A refiling of the notice of lien during that period will extend the effectiveness of the notice of lien filed on July 1, 1963, through March 31, 1975. The second required refiling period for the notice of lien begins on April 1, 1974, and ends on March 31, 1975.

Example (2). Assume the same facts as in example (1), except that although the Internal Revenue Service fails to refile a notice of lien during the first required refiling period (April 1, 1968, through March 31, 1969), a notice of lien is filed on June 2, 1971, in accordance with § 301.6323(f)-1. Because of this filing, the notice of lien filed on June 2, 1971, is effective as of June 2, 1971. That notice must be refiled during the 1-year period ending on March 31, 1975. If it is to continue in effect after March 31, 1975.

Example (3). On April 1, 1960, an assessment of tax is made against B, a delinquent taxpayer, and a tax lien for the amount of the assessment arises on that date. On June 1, 1962, in accordance with § 301.6323(f)-1, a notice of lien is filed. Because the assessment of tax was made before January 1, 1962, the notice of lien filed on June 1, 1962, is effective through December 31, 1967. The first required refiling period for the notice of lien is the calendar year 1967. A refiling of the notice of lien during 1967 will extend the effectiveness of the notice of lien filed on June 1, 1962, through December 31, 1973.

§ 301.6323(h) Statutory provisions; validity and priority against certain persons; definitions.

SEC. 6323. Validity and priority against certain persons. * * *

(h) Definitions. For purposes of this section and section 6324—

(1) Security interest. The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

(2) Mechanic's lienor. The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

(3) Motor vehicle. The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

(4) Security. The term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in

registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument or money.

(5) *Tax lien filing.* The term "tax lien filing" means the filing of notice (referred to in subsection (a)) of the lien imposed by section 6321.

(6) *Purchaser.* The term "purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324—

- (A) A lease of property,
- (B) A written executory contract to purchase or lease property,
- (C) An option to purchase or lease property or any interest therein, or
- (D) An option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

[Sec. 6323 (h) as added by sec. 101 (a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(h)-0 Scope of definitions.

Except as otherwise provided by § 301.6323(h)-1, the definitions provided by § 301.6323(h)-1 apply for purposes of §§ 301.6323(a)-1 through 301.6324-1.

§ 301.6323(h)-1 Definitions.

(a) *Security interest.*—(1) *In general.* The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time—

(i) If, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien (as provided in subparagraph (2) of this paragraph) arising out of an unsecured obligation; and

(ii) To the extent that, at such time, the holder has parted with money or money's worth (as defined in subparagraph (3) of this paragraph).

For purposes of this subparagraph, a contract right (as defined in paragraph (c) (2) (i) of § 301.6323(c)-1) is an existence when the contract is made. An account receivable (as defined in paragraph (c) (2) (ii) of § 301.6323(c)-1) is in existence when, and to the extent, a right to payment is earned by performance.

A security interest must be in existence, within the meaning of this paragraph, at the time as of which its priority against a tax lien is determined. For example, to be afforded priority under the provisions of paragraph (a) of § 301.6323(a)-1 a security interest must be in existence within the meaning of this paragraph before a notice of lien is filed.

(2) *Protection against a subsequent judgment lien.* (i) For purposes of this paragraph, a security interest is deemed

to be protected against a subsequent judgment lien on—

(A) The date on which all actions required under local law to establish the priority of a security interest against a judgment lien have been taken, or

(B) If later, the date on which all required actions are deemed effective, under local law, to establish the priority of the security interest against a judgment lien.

For purposes of this subdivision, the dates described in (A) and (B) of this subdivision (i) shall be determined without regard to any rule or principle of local law which permits the relation back of any requisite action to a date earlier than the date on which the action is actually performed. For purposes of this paragraph, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of this section.

(ii) The application of this subparagraph may be illustrated by the following example:

Example. (1) Under the law of State X, a security interest in negotiable instruments, stocks, bonds, or other securities may be perfected, and hence protected against a judgment lien, only by the secured party taking possession of the instruments or securities. However, a security interest in such intangible personal property is considered to be temporarily perfected for a period of 21 days from the time the security interest attaches, to the extent consideration other than past consideration is given under a written security agreement. Under the law of X, a security interest attaches to such collateral when there is an agreement between the creditor and debtor that the interest attaches, the debtor has rights in the property, and consideration is given by the creditor. Under the law of X, in the case of temporary perfection, the security interest in such property is protected during the 21-day period against a judgment lien arising after the security interest attaches, out of an unsecured obligation. Upon expiration of the 21-day period, the holder of the security interest must take possession of the collateral to continue perfection.

(ii) Because the security interest is protected during the 21-day period against a subsequent judgment lien arising out of an unsecured obligation, and because the taking of possession before the conclusion of the period of temporary perfection is not considered, for purposes of subdivision (1) of this subparagraph, to be a requisite action which relates back to the beginning of such period, the requirements of this paragraph are satisfied. However, because taking possession is a condition precedent to continued perfection, possession of the collateral is a requisite action to establish such priority after expiration of the period of temporary perfection. If there is a lapse of perfection for failure to take possession, the determination of when the security interest exists (for purposes of protection against the tax lien) is made without regard to the period of temporary perfection.

(3) *Money or money's worth.* For purposes of this paragraph, the term "money or money's worth" includes money, a security (as defined in paragraph (d) of this section), tangible or intangible property, services, and other consideration reducible to a money value. Money or money's worth also includes any consideration which otherwise would

constitute money or money's worth under the preceding sentence which was parted with before the security interest would otherwise exist if, under local law, past consideration is sufficient to support an agreement giving rise to a security interest. A relinquishing or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights is not a consideration in money or money's worth. Nor is love and affection, promise of marriage, or any other consideration not reducible to a money value a consideration in money or money's worth.

(4) *Holder of a security interest.* For purposes of this paragraph, the holder of a security interest is the person in whose favor there is a security interest. For provisions relating to the treatment of a purchaser of commercial financing security as a holder of a security interest, see § 301.6323(c)-1(e).

(b) *Mechanic's lienor.*—(1) *In general.* The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement (including demolition) of the property. A mechanic's lienor is treated as having a lien on the later of—

(i) The date on which the mechanic's lien first becomes valid under local law against subsequent purchasers of the real property without actual notice, or

(ii) The date on which the mechanic's lienor begins to furnish the services, labor, or materials.

(2) *Examples.* The provisions of this paragraph may be illustrated by the following example:

Example (1). On February 1, 1968, A lets a contract for the construction of an office building on property owned by him. On March 1, 1968, in accordance with § 301.6323(f)-1, a notice of lien for delinquent Federal taxes owed by A is filed. On April 1, 1968, B, a lumber dealer, delivers lumber to A's property. On May 1, 1968, B records a mechanic's lien against the property to secure payment of the price of the lumber. Under local law, B's mechanic's lien is valid against subsequent purchasers of real property without notice from February 1, 1968, which is the date the construction contract was entered into. Because the date on which B's mechanic's lien is valid under local law against subsequent purchasers is February 1, and the date on which B begins to furnish the materials is April 1, the date on which B becomes a mechanic's lienor within the meaning of this paragraph is April 1, the later of these two dates. Under paragraph (a) of § 301.6323(a)-1, B's mechanic's lien will not have priority over the Federal tax lien, even though under local law the mechanic's lien relates back to the date of the contract.

(c) *Motor vehicle.* (1) The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State, the District of Columbia, or a foreign country.

(2) A motor vehicle is "registered for highway use" at the time of a sale if immediately prior to the sale it is so registered under the laws of any State,

the District of Columbia, or a foreign country. Where immediately prior to the sale of a motor vehicle by a dealer, the dealer is permitted under local law to operate it under a dealer's tag, license, or permit issued to him, the motor vehicle is considered to be registered for highway use in the name of the dealer at the time of the sale.

(d) *Security*. The term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(e) *Tax lien filing*. The term "tax lien filing" means the filing of notice of the lien imposed by section 6321 in accordance with § 301.6323(f)-1.

(f) *Purchaser*—(1) *In general*. The term "purchaser" means a person who, for adequate and full consideration in money or money's worth (as defined in subparagraph (3) of this paragraph), acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice.

(2) *Interest in property*. For purposes of this paragraph, each of the following interests is treated as an interest in property, if it is not a lien or security interest:

- (i) A lease of property,
- (ii) A written executory contract to purchase or lease property,
- (iii) An option to purchase or lease property and any interest therein, or
- (iv) An option to renew or extend a lease of property.

(3) *Adequate and full consideration in money or money's worth*. For purposes of this paragraph, the term "adequate and full consideration in money or money's worth" means a consideration in money or money's worth having a reasonable relationship to the true value of the interest in property acquired. See paragraph (a)(3) of this section for definition of the term "money or money's worth." Adequate and full consideration in money or money's worth may include the consideration in a bona fide bargain purchase. The term also includes the consideration in a transaction in which the purchaser has not completed performance of his obligation, such as the consideration in an installment purchase contract, even though the purchaser has not completed the installment payments.

(4) *Examples*. The provisions of this paragraph may be illustrated by the following examples:

Example (1). A enters into a contract for the purchase of a house and lot from B. Under the terms of the contract A makes a down payment and is to pay the balance of the purchase price in 120 monthly installments. After payment of the last installment, A is

to receive a deed to the property. A enters into possession, which under local law protects his interest in the property against subsequent purchasers without actual notice. After A has paid five monthly installments, a notice of lien for Federal taxes is filed against B in accordance with § 301.6323(f)-1. Because the contract is an executory contract to purchase property and is valid under local law against subsequent purchasers without actual notice, A qualifies as a purchaser under this paragraph.

Example (2). C owns a residence which he leases to his son-in-law, D, for a period of 5 years commencing January 1, 1968. The lease provides for payment of \$100 a year, although the fair rental value of the residence is \$2,500 a year. The lease is recorded on December 31, 1967. On March 1, 1968, a notice of tax lien for unpaid Federal taxes of C is filed in accordance with § 301.6323(f)-1. Under local law, D's interest is protected against subsequent purchasers without actual notice. However, because the rental paid by D has no reasonable relationship to the value of the interest in property acquired, D does not qualify as a purchaser under this paragraph.

(g) *Judgment lien creditor*. The term "judgment lien creditor" means a person who has obtained a valid judgment, in a court of record and of competent jurisdiction, for the recovery of specifically designated property or for a certain sum of money. In the case of a judgment for the recovery of a certain sum of money, a judgment lien creditor is a person who has perfected a lien under the judgment on the property involved. A judgment lien is not perfected until the identity of the lienor, the property subject to the lien, and the amount of the lien are established. Accordingly, a judgment lien does not include an attachment or garnishment lien until the lien has ripened into judgment, even though under local law the lien of the judgment relates back to an earlier date. If recording or docketing is necessary under local law before a judgment becomes effective against third parties acquiring liens on real property, a judgment lien under such local law is not perfected with respect to real property until the time of such recordation or docketing. If under local law levy or seizure is necessary before a judgment lien becomes effective against third parties acquiring liens on personal property, then a judgment lien under such local law is not perfected until levy or seizure of the personal property involved. The term "judgment" does not include the determination of a quasi-judicial body or of an individual acting in a quasi-judicial capacity such as the action of State taxing authorities.

§ 301.6323(i) *Statutory provisions; validity and priority against certain persons; special rules.*

Sec. 6323. *Validity and priority against certain persons.* * * *

(1) *Special rules*—(1) *Actual notice or knowledge*. For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's at-

tention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(2) *Subrogation*. Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

(3) *Disclosure of amount of outstanding lien*. If a notice of lien has been filed pursuant to subsection (f), the Secretary or his delegate is authorized to provide by regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

[Sec. 6323(i) as added by sec. 101(a), Federal Tax Lien Act 1966 (80 Stat. 1125)]

§ 301.6323(i)-1 *Special rules.*

(a) *Actual notice or knowledge*. For purposes of subchapter C (section 6321 and following), chapter 64 of the Code, an organization is deemed, in any transaction, to have actual notice or knowledge of any fact from the time the fact is brought to the attention of the individual conducting the transaction, and in any event from the time the fact would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(b) *Subrogation*—(1) *In general*. Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324. Thus, if a tax lien imposed by section 6321 or 6324 is not valid with respect to a particular interest as against the holder of that interest, then the tax lien also is not valid with respect to that interest as against any person who, under local law, is a successor in interest to the holder of that interest.

(2) *Example*. The application of this paragraph may be illustrated by the following example:

Example. On February 1, 1968, an assessment is made and a tax lien arises with respect to A's delinquent tax liability. On February 25, 1968, in accordance with § 301.6323(f)-1, a notice of lien is properly filed. On March 1, 1968, A negotiates a loan from B, the security for which is a second mortgage on property owned by A. The first mortgage on the property is held by C and has priority

over the tax lien. Upon default by A, C begins proceedings to foreclose upon the first mortgage. On September 1, 1963, B pays the amount of principal and interest in default to C in order to protect the second mortgage against the pending foreclosure of C's senior mortgage. Under local law, B is subrogated to C's rights to the extent of the payment to C. Therefore, the tax lien is invalid against B to the extent he became subrogated to C's rights even though the tax lien is valid against B's second mortgage on the property.

(c) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed (see § 301.6323(f)-1), the amount of the outstanding obligation secured by the lien is authorized to be disclosed as a matter of public record on Form 668 "Notice of Federal Tax Lien Under Internal Revenue Laws." The amount of the outstanding obligation secured by the lien remaining unpaid at the time of an inquiry is authorized to be disclosed to any person who has a proper interest in determining this amount. Any person who has a right in the property or intends to obtain a right in the property by purchase or otherwise will, upon presentation by him of satisfactory evidence, be considered to have a proper interest. Any person desiring this information may make his request to the office of the Internal Revenue Service named on the notice of lien with respect to which the request is made. The request should clearly describe the property subject to the lien, identify the applicable lien, and give the reasons for requesting the information.

PAR. 8. Section 301.6325 is amended to read as follows:

§ 301.6325 Statutory provisions; release of lien or discharge of property.

SEC. 6325. *Release of lien or discharge of property.*—(a) *Release of lien.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if—

(1) *Liability satisfied or unenforceable.* The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

(2) *Bond accepted.* There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such regulations.

(b) *Discharge of property.*—(1) *Property double the amount of the liability.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary or his delegate finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority over such lien.

(2) *Part payment; interest of United States valueless.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if—

(A) There is paid over to the Secretary or his delegate in partial satisfaction of the liability secured by the lien an amount determined by the Secretary or his delegate, which shall not be less than the value, as determined by the Secretary or his delegate, of the interest of the United States in the part to be so discharged, or

(B) The Secretary or his delegate determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United States in the part to be so discharged, the Secretary or his delegate shall give consideration to the value of such part and to such liens thereon as have priority over the lien of the United States.

(3) *Substitution of proceeds of sale.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if such part of the property is sold and, pursuant to an agreement with the Secretary or his delegate, the proceeds of such sale are to be held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.

(c) *Estate or gift tax.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary or his delegate finds that the liability secured by such lien has been fully satisfied or provided for.

(d) *Subordination of lien.* Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of subordination of any lien imposed by this chapter upon any part of the property subject to such lien if—

(1) There is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or

(2) The Secretary or his delegate believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

(e) *Nonattachment of lien.* If the Secretary or his delegate determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed under section 6323 refers to such person, the Secretary or his delegate may issue a certificate that the lien does not attach to the property of such person.

(f) *Effect of certificate.*—(1) *Conclusive.* Except as provided in paragraphs (2) and (3), if a certificate is issued pursuant to this section by the Secretary or his delegate and is filed in the same office as the notice of lien to which it relates (if such notice of lien has been filed) such certificate shall have the following effect:

(A) In the case of a certificate of release, such certificate shall be conclusive that the lien referred to in such certificate is extinguished;

(B) In the case of a certificate of discharge, such certificate shall be conclusive that the property covered by such certificate is discharged from the lien;

(C) In the case of a certificate of subordination, such certificate shall be conclusive that the lien or interest to which the lien of the United States is subordinated is superior to the lien of the United States; and

(D) In the case of a certificate of nonattachment, such certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in such certificate.

(2) *Revocation of certificate of release or nonattachment.* If the Secretary or his delegate determines that a certificate of release or nonattachment of a lien imposed by section 6321 was issued erroneously or improvidently, or if a certificate of release of such lien was issued pursuant to a collateral agreement entered into in connection with a compromise under section 7122 which has been breached, and if the period of limitation on collection after assessment has not expired, the Secretary or his delegate may revoke such certificate and reinstate the lien—

(A) By mailing notice of such revocation to the person against whom the tax was assessed at his last known address, and

(B) By filing notice of such revocation in the same office in which the notice of lien to which it relates was filed (if such notice of lien had been filed).

Such reinstated lien (1) shall be effective on the date notice of revocation is mailed to the taxpayer in accordance with the provisions of subparagraph (A), but not earlier than the date on which any required filing of notice of revocation is filed in accordance with the provisions of subparagraph (B), and (2) shall have the same force and effect (as of such date), until the expiration of the period of limitation on collection after assessment, as a lien imposed by section 6321 (relating to lien for taxes).

(3) *Certificates void under certain conditions.* Notwithstanding any other provision of this subtitle, any lien imposed by this chapter shall attach to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires such property after such certificate has been issued.

(g) *Filing of certificates and notices.* If a certificate or notice issued pursuant to this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321 is filed, such certificate or notice shall be effective if filed in the office of the clerk of the United States district court for the judicial district in which such office is situated.

(h) *Cross reference.* For provisions relating to bonds, see chapter 73 (sec. 7101 and following).

[Sec. 6325 as amended by sec. 77, Technical Amendments Act 1958 (72 Stat. 1662); sec. 103(a), Federal Tax Lien Act 1966 (80 Stat. 1133)]

PAR. 9. Section 301.6325-1 is amended by revising the heading, by revising subparagraphs (1)(i), (2), (3), and (4) of paragraph (b), by revising paragraph (d), and by adding new paragraphs (e), (f), and (g). These revised and added provisions read as follows:

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

(b) *Discharge of specific property from the lien*—(1) *Property double the amount of the liability*. (i) The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under chapter 64 of the Code if he determines that the fair market value of that part of the property remaining subject to the lien is at least double the sum of the amount of the unsatisfied liability secured by the lien and of the amount of all other liens upon the property which have priority over the 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 district director may, in his discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under chapter 64 of the Code if there is paid over to him in partial satisfaction of the liability secured by the 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 district director will take into consideration all the facts and circumstances of the case, including the expenses to which the Government has been put in 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 district director may, in his discretion, issue a certificate of discharge of any part of the property subject to the lien if he determines that the interest of the United States in the property to be so discharged has no value.

(iii) *Valuation of interest of United States*. For purposes of this subparagraph, 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 district director 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 district director may, in his discretion, give consideration to the forced sale value of the property in appropriate cases.

(3) *Discharge of property by substitution of proceeds of sale*. A district director may, in his discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under chapter 64 of the Code if such part of the property is sold and, pursuant to a written agreement with the district director, the proceeds of the sale are held,

as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as the lien or claim had with respect to the discharged property. This subparagraph 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 lien or claim of the United States.

(4) *Application for certificate of discharge*. Any person desiring a certificate of discharge under this paragraph shall submit an application in writing to the district director responsible for collection of the tax. The application shall contain such information as the district director may require.

(d) *Subordination of lien*—(1) *By payment of the amount subordinated*. A district director may, in his discretion, issue a certificate of subordination of a lien imposed under chapter 64 of the Code upon any part of the property subject to the lien if there is paid over to the district director an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States. For this purpose, the tax lien may be subordinated to another lien or interest on a dollar-for-dollar basis. For example, if a notice of a Federal tax lien is filed and a delinquent taxpayer secures a mortgage loan on a part of the property subject to the tax lien and pays over the proceeds of the loan to a district director after an application for a certificate of subordination is approved, the district director will issue a certificate of subordination. This certificate will have the effect of subordinating the tax lien to the mortgage.

(2) *To facilitate tax collection*—(i) *In general*. A district director may, in his discretion, issue a certificate of subordination of a lien imposed under chapter 64 of the Code upon any part of the property subject to the lien if the district director believes that the subordination of the lien will ultimately result in an increase in the amount realized by the United States from the property subject to the lien and will facilitate the ultimate collection of the tax liability.

(ii) *Examples*. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). A, a farmer, needs money in order to harvest his crop. A Federal tax lien, notice of which has been filed, is outstanding with respect to A's property. B, a lending institution is willing to make the necessary loan if the loan is secured by a first mortgage on the farm which is prior to the Federal tax lien. Upon examination, the district director believes that ultimately the amount realizable from A's property will be increased and the collection of the tax liability will be facilitated by the availability of cash when the crop is harvested and sold. In this case, the district director may, in his discretion,

subordinate the tax lien on the farm to the mortgage securing the crop harvesting loan.

Example (2). C owns a commercial building which is deteriorating and in unsalable condition. Because of outstanding Federal tax liens, notices of which have been filed, C is unable to finance the repair and rehabilitation of the building. D, a contractor, is willing to do the work if his mechanic's lien on the property is superior to the Federal tax liens. Upon examination, the district director believes that ultimately the amount realizable from C's property will be increased and the collection of the tax liability will be facilitated by arresting deterioration of the property and restoring it to salable condition. In this case, the district director may, in his discretion, subordinate the tax lien on the building to the mechanic's lien.

Example (3). E, a manufacturer of electronic equipment, obtains financing from F, a lending institution, pursuant to a security agreement, with respect to which a financing statement was duly filed under the Uniform Commercial Code on June 1, 1970. On April 15, 1971, F gains actual notice or knowledge that notice of a Federal tax lien had been filed against E on March 31, 1971, and F refuses to make further advances unless its security interest is assured of priority over the Federal tax lien. Upon examination, the district director believes that ultimately the amount realizable from E's property will be increased and the collection of the tax liability will be facilitated if the work in process can be completed and the equipment sold. In this case, the district director may, in his discretion, subordinate the tax lien to F's security interest for the further advances required to complete the work.

Example (4). Suit is brought against G by H, who claims ownership of property the legal title to which is held by G. A Federal tax lien against G, notice of which has previously been filed, will be enforceable against the property if G's title is confirmed. Because section 8323(b)(8) is inapplicable, J, an attorney, is unwilling to defend the case for G unless he is granted a contractual lien on the property, superior to the Federal tax lien. Upon examination, the district director believes that the successful defense of the case by G will increase the amount ultimately realizable from G's property and will facilitate collection of the tax liability. In this case, the district director may, in his discretion, subordinate the tax lien to J's contractual lien on the disputed property to secure J's reasonable fees and expenses.

(3) *Application for certificate of subordination*. Any person desiring a certificate of subordination under this paragraph shall submit an application therefor in writing to the district director responsible for the collection of the tax. The application shall contain such information as the district director may require.

(e) *Nonattachment of lien*. If a district director determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed in accordance with § 301.6323(f)-1 refers to such person, the district director may issue a certificate of nonattachment. Such certificate shall state that the lien, notice of which has been filed, does not attach to the property of such person. Any person desiring a certificate of nonattachment under this paragraph shall submit an application

therefor in writing to the district director responsible for the collection of the tax. The application shall contain such information as the district director may require.

(f) *Effect of certificate*—(1) *Conclusiveness*. Except as provided in subparagraphs (2) and (3) of this paragraph, if a certificate is issued under section 6325 by a district director and the certificate is filed in the same office as the notice of lien to which it relates (if the notice of lien has been filed), the certificate shall have the following effect—

(i) In the case of a certificate of release issued under paragraph (a) of this section, the certificate shall be conclusive that the tax lien referred to in the certificate is extinguished;

(ii) In the case of a certificate of discharge issued under paragraph (b) or (c) of this section, the certificate shall be conclusive that the property covered by the certificate is discharged from the tax lien;

(iii) In the case of a certificate of subordination issued under paragraph (d) of this section, the certificate shall be conclusive that the lien or interest to which the Federal tax lien is subordinated is superior to the tax lien; and

(iv) In the case of a certificate of nonattachment issued under paragraph (e), the certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in the certificate.

(2) *Revocation of certificate of release or nonattachment*—(i) *In general*. If a district director determines that either—

(a) A certificate of release or a certificate of nonattachment of the general tax lien imposed by section 6321 was issued erroneously or improvidently, or

(b) A certificate of release of such lien was issued in connection with a compromise agreement under section 7122 which has been breached,

and if the period of limitation on collection after assessment of the tax liability has not expired, the district director may revoke the certificate and reinstate the tax lien. The provisions of this subparagraph do not apply in the case of the lien imposed by section 6324 relating to estate and gift taxes.

(ii) *Method of revocation and reinstatement*. The revocation and reinstatement described in subdivision (i) of this subparagraph is accomplished by—

(a) Mailing notice of the revocation to the taxpayer at his last known address, and

(b) Filing notice of the revocation of the certificate in the same office in which the notice of lien to which it relates was filed (if the notice of lien has been filed).

(iii) *Effect of reinstatement*—(a) *Effective date*. A tax lien reinstated in accordance with the provisions of this subparagraph is effective on and after the date the notice of revocation is mailed to the taxpayer in accordance with the provisions of subdivision (ii) (a) of this subparagraph, but the reinstated lien is not effective before the filing of

notice of revocation, in accordance with the provisions of subdivision (ii) (b) of this subparagraph, if the filing is required by reason of the fact that a notice of the lien had been filed.

(b) *Treatment of reinstated lien*. As of the effective date of reinstatement, a reinstated lien has the same force and effect as a general tax lien imposed by section 6321 which arises upon assessment of a tax liability. The reinstated lien continues in existence until the expiration of the period of limitation on collection after assessment of the tax liability to which it relates. The reinstatement of the lien does not retroactively reinstate a previously filed notice of lien. The reinstated lien is not valid against any holder of a lien or interest described in § 301.6323(a)-1 until notice of the reinstated lien has been filed in accordance with the provisions of § 301.6323(f)-1 subsequent to or concurrent with the time the reinstated lien became effective.

(iv) *Example*. The provisions of this subparagraph may be illustrated by the following example:

Example. On March 1, 1967, an assessment of an unpaid Federal tax liability is made against A. On March 1, 1968, notice of the Federal tax lien, which arose at the time of assessment, is filed. On April 1, 1968, A executes a bona fide mortgage on property belonging to him to B. On May 1, 1968, a certificate of release of the tax lien is erroneously issued and is filed by A in the same office in which the notice of lien was filed. On June 3, 1968, the lien is reinstated in accordance with the provisions of this subparagraph. On July 1, 1968, A executes a bona fide mortgage on property belonging to him to C. On August 1, 1968, a notice of the lien which was reinstated is properly filed in accordance with the provisions of § 301.6323(f)-1. The mortgages of both B and C will have priority over the rights of the United States with respect to the tax liability in question. Because a reinstated lien continues in existence only until the expiration of the period of limitation on collection after assessment of the tax liability to which the lien relates, in the absence of any extension or suspension of the period of limitation on collection after assessment, the reinstated lien will become unenforceable by reason of lapse of time after February 28, 1973.

(3) *Certificates void under certain conditions*. Notwithstanding any other provisions of subtitle F of the Code, any lien for Federal taxes attaches to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires the property after the certificate has been issued. Thus, if property subject to a Federal tax lien is discharged therefrom and is later reacquired by the delinquent taxpayer at a time when the lien is still in existence, the tax lien attaches to the reacquired property and is enforceable against it as in the case of after-acquired property generally.

(g) *Filing of certificates and notices*. If a certificate or notice described in this section may not be filed in the office designated by State law in which the notice of lien imposed by section 6321

(to which the certificate or notice relates) is filed, the certificate or notice is effective if filed in the office of the clerk of the United States district court for the judicial district in which the State office where the notice of lien is filed is situated.

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SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 7431]

PART 53—FOUNDATION EXCISE TAXES

Application of Taxes to Certain Nonexempt Trusts

By a notice of proposed rule making appearing in the FEDERAL REGISTER for Thursday, March 18, 1971 (36 FR 25015), amendments to the Foundation Excise Tax Regulations (26 CFR Part 53) were proposed in order to provide rules for the application of such taxes to certain non-exempt trusts under section 4947 of the Internal Revenue Code of 1954. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, certain changes were made, and the proposed amendments of the regulations, subject to the changes, are adopted by this document.

Section 4947 generally subjects non-exempt charitable trusts to many of the requirements and restrictions imposed on private foundations in order to prevent taxpayers from avoiding these restrictions by the use of nonexempt trusts instead of private foundations. Thus, many nonexempt charitable trusts are subject to those provisions relating to self-dealing, retention of excess business holdings, and the making of speculative investments or taxable expenditures, but not the current income payout requirement if the trust is a split-interest trust (one in which not all the interests are charitable). However, the stock ownership and speculative investment requirements do not apply to split-interest trusts (a) in cases where charity is the only income beneficiary (and has no remainder interest) and the beneficial interest of charity in the trust is not more than 60 percent of the value of the trust property and also (b) in cases where the only interest of charity in the trust is as a remainderman (and there are no noncharitable remainder interests). In the latter case, the stock ownership and speculative investment requirements become applicable at the time the charitable remainder interest comes into possession.

The final regulations expand upon the proposed regulations by providing additional rules for determining the kinds of trusts that are subject to section 4947, when its provisions become applicable to trusts and the extent to which its provisions make other provisions of the Internal Revenue Code Applicable to trusts.

Adoption of amendments to the regulations. In consideration of the foregoing, the Foundation Excise Tax Regu-

lations (26 CFR Part 53) are amended as follows:

Subpart H is added to 26 CFR Part 53 as follows:

Subpart H—Application to Certain Nonexempt Trusts

- Sec.
53.4947 Statutory provisions; application of taxes to certain nonexempt trusts.
53.4947-1 Application of tax.
53.4947-2 Special rules.

SUBPART H—APPLICATION TO CERTAIN NONEXEMPT TRUSTS

§ 53.4947 Statutory provisions; application of taxes to certain nonexempt trusts.

Sec. 4947. *Application of taxes to certain nonexempt trusts—(a) Application of tax—*

(1) *Charitable trusts.* For purposes of part II of subchapter F of chapter 1 (other than section 508 (a), (b), and (c)) and for purposes of this chapter, a trust which is not exempt from taxation under section 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 (or the corresponding provisions of prior law), shall be treated as an organization described in section 501(c)(3). For purposes of section 509(a)(3)(A), such a trust shall be treated as if organized on the day on which it first becomes subject to this paragraph.

(2) *Split-interest trusts.* In the case of a trust which is not exempt from tax under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, section 507 (relating to termination of private foundation status), section 508(e) (relating to governing instruments) to the extent applicable to a trust described in this paragraph, section 4941 (relating to taxes on self-dealing), section 4943 (relating to taxes on excess business holdings) except as provided in subsection (b)(3), section 4944 (relating to investments which jeopardize charitable purpose) except as provided in subsection (b)(3), and section 4945 (relating to taxes on taxable expenditures) shall apply as if such trust were a private foundation. This paragraph shall not apply with respect to—

(A) Any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170 (f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B).

(B) Any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, if such other amounts are segregated from amounts for which no deduction was allowable, or

(C) Any amounts transferred in trust before May 27, 1969.

(3) *Segregated amounts.* For purposes of paragraph (2)(B), a trust with respect to which amounts are segregated shall separately account for the various income, deduction, and other items properly attributable to each of such segregated amounts.

(b) *Special rules—(1) Regulations.* The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(2) *Limit to segregated amounts.* If any amounts in the trust are segregated within the meaning of subsection (a)(2)(B) of this

section, the value of the net assets for purposes of subsections (c)(2) and (g) of section 507 shall be limited to such segregated amounts.

(3) *Sections 4943 and 4944.* Sections 4943 and 4944 shall not apply to a trust which is described in subsection (a)(2) if—

(A) All the income interest (and none of the remainder interest) of such trust is devoted solely to one or more of the purposes described in section 170(c)(2)(B), and all amounts in such trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 have an aggregate value not more than 60 percent of the aggregate fair market value of all amounts in such trust[s], or

(B) A deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for amounts payable under the terms of such trust to every remainder beneficiary but not to any income beneficiary.

(Sec. 4947, as added by sec. 101(b) Tax Reform Act 1969 (83 Stat. 517).)

§ 53.4947-1 Application of tax.

(a) *In general.* Section 4947 subjects trusts which are not exempt from taxation under section 501(a), all or part of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which have amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 to the same requirements and restrictions as are imposed on private foundations. The basic purpose of section 4947 is to prevent these trusts from being used to avoid the requirements and restrictions applicable to private foundations. For purposes of this section, a trust shall be presumed (in the absence of proof to the contrary) to have amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 if a deduction would have been allowable under one of these sections. Also for purposes of this section and § 53.4947-2, the term "purposes described in section 170(c)(2)(B)" shall be treated as including purposes described in section 170(c)(1).

(b) *Charitable trusts—(1) General rule.* (i) For purposes of this section and § 53.4947-2, a "charitable trust", within the meaning of section 4947(a)(1), is a trust which is not exempt from taxation under section 501(a), all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 (or the corresponding provisions of prior law). A trust is one for which a deduction was allowed under section 642(c), within the meaning of section 4947(a)(1), once a deduction is allowed under section 642(c) to the trust for any amount paid or permanently set aside. (See sections 642(c) and § 1.642-4 for the limitation on such deduction in certain cases.) A charitable trust (as defined in this paragraph) shall be treated as an organization described in section 501(c)(3) and, if it is determined under

section 509 that the trust is a private foundation, then Part II of subchapter F of chapter 1 of the Code (other than section 508 (a), (b) and (c)) and chapter 42 shall apply to the trust. However, the charitable trust is not treated as an organization described in section 501(c)(3) for purposes of exemption from taxation under section 501(a). Thus, the trust is subject to the excise tax on its investment income under section 4940(b) rather than the tax imposed by section 4940(a). For purposes of satisfying the organizational test described in § 1.501(c)(3)-1(b) when a charitable trust seeks an exemption from taxation under section 501(a), a charitable trust (as defined in this paragraph) shall be considered organized on the day it first becomes subject to section 4947(a)(1). However, for purposes of the special and transitional rules in section 4940(c)(4)(B), 4942(f)(4), 4943(c)(4)(A)(i) and (B) and section 101(2)(A), (B), (C), and (D), and (1)(3) of the Tax Reform Act of 1969, a charitable trust (as defined in this paragraph) shall be considered organized on the first day it has amounts in trust for which a deduction was allowed (within the meaning of paragraph (a) of this section) under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522. Thus, under this rule, a trust may be treated as a private foundation in existence on a date governing one of the applicable special and transitional rules even though the trust did not otherwise become subject to the provisions of chapter 42 until a later date.

(ii) The provisions of paragraph (b)(1) of this section may be illustrated by the following examples:

Example (1). On January 30, 1970, X creates an inter vivos trust under which M receives 50 percent and N receives 50 percent of the trust's income for 10 years, and upon the termination of which, at the end of the 10-year period, the corpus is to be distributed to O, M, N and O are all organizations described in section 501(c)(3) and X is allowed a deduction under section 170 for the value of all interests placed in trust. The trustees of the trust do not give notice to the Internal Revenue Service under the provisions of section 508(a), and the trust will therefore not be exempt from taxation under section 501(a). The trust is a charitable trust within the meaning of section 4947(a)(1) from the date of its creation.

Example 2. On March 1, 1971, Y creates a charitable remainder annuity trust described in section 664(d)(1) under which Z, Y's son, receives \$10,000 per year for life, remainder to be held in trust for P, an organization described in section 501(c)(3). Y is allowed a deduction under section 170 for the present value of the remainder interest to P. During Z's lifetime, the trust is a split-interest trust described in section 4947(a)(2) and paragraph (c) of this section. Upon the death of Z, all unexpired interests (consisting of P's remainder interest) will be devoted to section 170(c)(2)(B) purposes. Except as provided in § 53.4947-1(b)(2)(iv) (relating to a reasonable period of settlement) the trust will be treated as a charitable trust within the meaning of section 4947(a)(1) from the date of the death of Z unless the trustees of the trust apply for recognition of

section 501(c)(3) status under the provisions of section 508(a).

(2) *Scope of application of section 4947(a)(1).*—(i) *In general.* Subject to paragraph (b)(2)(ii) through (vii) of this section, section 4947(a)(1) applies to nonexempt trusts in which all unexpired interests are charitable. For purposes of this section, the term "charitable" when used to describe an interest or beneficiary refers to the purposes described in section 170(c)(2)(B). An estate from which the executor or administrator is required to distribute all of the net assets in trust to such beneficiaries will not be considered a charitable trust under section 4947(a)(1) during the period of estate administration or settlement, except as provided in paragraph (b)(2)(ii) of this section. A charitable trust created by will shall be considered a charitable trust under section 4947(a)(1) as of the date of death of the decedent-grantor, except as provided in paragraph (b)(2)(v) of this section (relating to trusts which wind up). For the circumstances under which segregated amounts are treated as charitable trusts, see § 53.4947-1(c)(3)(iii).

(ii) *Estates.* (A) When an estate from which the executor or administrator is required to distribute all of the net assets in trust for charitable beneficiaries, or free of trust to such beneficiaries, is considered terminated for Federal income tax purposes under § 1.641(b)-3(a), then the estate will be treated as a charitable trust under section 4947(a)(1) between the date on which the estate is considered terminated under § 1.641(b)-3(a) and the date final distribution of all of the net assets is made to or for the benefit of the charitable beneficiaries. This (ii) does not affect the determination of the tax liability under subtitle A of the beneficiaries of the estates.

(B) The provisions of this (ii) may be illustrated by the following example:

Example. X bequeaths his entire estate, including 100 percent of the stock of a wholly-owned corporation, to M, an organization described in section 501(c)(3), under a will which gives his executor authority to hold the stock and manage the corporation for a period of up to 10 years for the benefit of M prior to its ultimate disposition. A deduction for the charitable bequest was allowed to X's estate under section 2055. The executor is vested with a full range of powers, including the power of sale. Upon the death of X, his executor distributes X's assets to M except for the stock of the corporation, which he holds for 5 years prior to its disposition. The continued holding of the stock of the corporation by the executor after the expiration of a reasonable time for performance of all the ordinary duties of administration causes the estate to be considered terminated for Federal income tax purposes pursuant to § 1.641(b)-3(a) and thereby subjects it to the provisions of section 4947(a)(1) from the date of such termination to the date of final disposition of the stock of the corporation.

(iii) *Certain split-interest trusts which wind up.* A split-interest trust (as defined in paragraph (c) of this section) in which all of the unexpired interests are charitable remainder interests and in

which the charitable beneficiaries have become entitled to distributions of corpus in trust or free of trust shall continue to be treated as a split-interest trust under section 4947(a)(2) until the date on which final distribution of all the net assets is made. However, if after the expiration of any intervening interests the trust is considered terminated for Federal income tax purposes under § 1.641(b)-3(b), then the trust will be treated as a charitable trust under section 4947(a)(1), rather than a split-interest trust under section 4947(a)(2), between the date on which the trust is considered terminated under § 1.641(b)-3(b) and the date on which such final distribution of all of the net assets is made to or for the benefit of the charitable remainder beneficiaries. This (iii) does not affect the determination of the tax liability under subtitle A of the beneficiaries of the trusts.

(iv) *Split-interest trusts which become charitable trusts.* (A) A split-interest trust (as defined in paragraph (c) of this section) in which all of the unexpired interests are charitable remainder interests and in which some or all of the charitable beneficiaries are not entitled to distributions of corpus within the meaning of paragraph (b)(2)(iii) of this section shall continue to be treated as a split-interest trust under section 4947(a)(2) rather than a charitable trust under section 4947(a)(1) for a reasonable period of settlement after the expiration of the noncharitable interest. Thus, a split-interest trust which under its terms is to continue to hold assets for charitable beneficiaries after the expiration of the noncharitable interest rather than distributing them as in paragraph (b)(2)(iii) of this section is given a reasonable period of settlement before being treated as a charitable trust. For purposes of this paragraph, the term "reasonable period of settlement" means that period reasonably required (or if shorter, actually required) by the trustee to perform the ordinary duties of administration necessary for the settlement of the trust. These duties include, for example, the collection of assets, the payment of debts, taxes, and distributions, and the determination of the rights of the subsequent beneficiaries.

(B) This (iv) may be illustrated by the following example:

Example. On January 15, 1971, A creates a charitable remainder annuity trust described in section 664(d)(1) under which the trustees are required to distribute \$10,000 a year to B, A's wife, for life, remainder to be held in trust for the use of M, an organization described in section 501(c)(3). A is allowed a deduction under section 170 for the amount of the charitable interest, and the trust is, therefore, treated as a split-interest trust under section 4947(a)(2) from the date of its creation. B dies on February 10, 1975. On April 15, 1975, the trustees complete performance of the ordinary duties of administration necessary for the settlement of the trust brought about by the death of B. These duties include, for example, an accounting for and payment to the estate of B of amounts accrued by B while alive during 1975. However, the trustees do not distribute

the corpus to M by April 15, 1975. The trust shall continue to be treated as a split-interest trust under section 4947(a)(2) until April 15, 1975. After April 15, 1975, the trust shall be treated as a charitable trust under section 4947(a)(1).

(v) *Certain revocable and testamentary trusts which wind up.* A revocable trust that becomes irrevocable upon the death of the decedent-grantor, or a trust created by will, from which the trustee is required to distribute all of the net assets in trust for or free of trust to charitable beneficiaries is not considered a charitable trust under section 4947(a)(1) for a reasonable period of settlement (within the meaning of paragraph (b)(2)(iv) of this section) after becoming irrevocable. After that period the trust is considered a charitable trust under section 4947(a)(1).

(vi) *Revocable trusts which become charitable trusts.* A revocable trust that becomes irrevocable upon the death of the decedent-grantor in which all of the unexpired interests are charitable and under the terms of the governing instrument of which the trustee is required to hold some or all of the net assets in trust after becoming irrevocable solely for charitable beneficiaries is not considered a trust under section 4947(a)(1) for a reasonable period of settlement (within the meaning of paragraph (b)(2)(iv) of this section) after becoming irrevocable except that section 4941 may apply if the requirements of § 53.4941(d)-1(b)(3) are not met. After that period, the trust is considered a charitable trust under section 4947(a)(1).

(vii) *Trust devoted to 170(c) purposes.* (A) A trust all of the unexpired interests in which are devoted to section 170(c)(3) or (5) purposes together with section 170(c)(2)(B) purposes shall be considered a charitable trust except that payments under the terms of the governing instrument to an organization described in section 170(c)(3) or (5) shall not be considered a violation of section 4945(d)(5) or any other provisions of chapter 42 and shall be considered qualifying distributions under section 4942.

(B) *Example.* The application of paragraph (b)(2)(vii) of this section may be illustrated by the following example:

Example. On January 30, 1970, H creates an inter vivos trust under the terms of the governing instrument of which M, an organization described in section 170(c)(3), and N, an organization described in section 501(c)(3), are each to receive 50 percent of the income for a period of 10 years. At the end of the 10 year period, the corpus is to be distributed to O, an organization also described in section 501(c)(3). H is allowed a deduction under section 170 for the value of all interests placed in trust. The payments to M do not constitute a violation of section 4945(d)(5) or any other provision of chapter 42 and constitute qualifying distributions under section 4942. However, except as provided in the previous sentence, the trust shall be considered a charitable trust.

(3) *Charitable trusts described in section 509(a)(3).* For purposes of section 509(a)(3)(A), a charitable trust shall be treated as if organized on the day on

which it first becomes subject to section 4947(a)(1). However, for purposes of applying §§ 1.509(a)-4(d)(2)(iv)(a), and 1.509(a)-4(d)(1)(ii) and (iii)(c) the previous relationship between the charitable trust and the section 509(a)(1) or (2) organizations it benefits or supports may be considered. If the charitable trust otherwise meets the requirements of section 509(a)(3), it may obtain recognition of its status as a section 509(a)(3) organization by requesting a ruling from the Internal Revenue Service. For the special rules pertaining to the application of the organizational test to organizations terminating their private foundation status under the 12-month or 60-month termination period provided under section 507(b)(1)(B) by becoming "public" under section 509(a)(3), see the regulations under section 507(b)(1).

(c) *Split-interest trusts*—(1) *General rule*—(i) *Definition*. For purposes of this section and § 53.4947-2, a "split-interest trust", within the meaning of section 4947(a)(2), is a trust which is not exempt from taxation under section 501(a), not all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B), and which has amounts in trust for which a deduction was allowed (within the meaning of paragraph (a) of this section) under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522. A trust is one which has amounts in trust for which a deduction was allowed under section 642(c) within the meaning of section 4947(a)(2) once a deduction is allowed under section 642(c) to the trust for any amount permanently set aside. This (i) also includes any trust which is not treated as a charitable trust by operation of paragraph (b)(2). (ii) or (iv) of this section (relating to split-interest trusts in the process of winding up or during a reasonable period of settlement). Section 4947(a)(1) shall apply to a trust described in this (i) (without regard to section 4947(a)(2)(A), (B), or (C)) from the first date upon which the provisions of paragraph (b)(2)(iii) or (iv) of this section are satisfied. For the circumstances under which a trust all of the unexpired interests in which are devoted to section 170(c)(3) or (5) purposes together with section 170(c)(2)(B) purposes is considered a charitable trust, see § 53.4947-1(b)(2)(vii).

(ii) *Applicability of statutory rules*. A split-interest trust is subject to the provisions of section 507 (except as provided in paragraph (e) of this section), 508(e) (to the extent applicable to a split-interest trust), 4941, 4943 (except as provided in section 4947(b)(3)), 4944 (except as provided in section 4947(b)(3)), and 4945 in the same manner as if such trust were a private foundation.

(iii) *Special rules*. A newly created trust shall, for purposes of section 4947(a)(2), be treated as having amounts in trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 from the date of its creation, even if a deduction was allowed for such amounts

only at a later date. For purposes of this (iii), the date of creation of a charitable remainder trust shall be determined by applying the rules in § 1.664-1(a)(4).

(2) *Exception for amounts payable to income beneficiaries*—(i) Under section 4947(a)(2)(A), paragraph (c)(1)(ii) of this section does not apply to any amounts payable under the terms of a split-interest trust to income beneficiaries unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) with respect to the income interest of any such beneficiary. See § 1.170A-6(c), § 20.2055-2(e)(2), and § 25.2522(c)-3(c)(2) for rules regarding the allowance of these deductions. However, section 4947(a)(2)(A) does not apply when the value of all interests in property transferred in trust are deductible under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522.

(ii) The application of this subparagraph may be illustrated by the following examples:

Example (1). H creates a charitable remainder unitrust (described in section 664(d)(2)) which is required annually to pay W, H's wife, 5 percent of the net fair market value of the trust assets, valued annually, for her life; and to pay the remainder to Y, a section 501(c)(3) organization. A deduction under section 170(f)(2)(A) was allowed with respect to the remainder interest of Y. Under section 4947(a)(2)(A), each annual amount which becomes payable to W during her life is not subject to paragraph (c)(1)(ii) of this section on or after the date upon which it becomes so payable and the payment of each amount to W is not an act of self-dealing under section 4941(d)(1) and does not violate any other provision of chapter 42. However, except as provided in the preceding sentence, the trust is subject to paragraph (c)(1)(ii) of this section in the same manner as any other split-interest trust.

Example (2). H bequeaths the residue of his estate in trust for the benefit of S, his son, and Y, an organization described in section 501(c)(3). A guaranteed annuity interest of \$10,000 is to be paid to S for 20 years. A guaranteed annuity interest of \$5,000 which meets the requirements contained in § 20.2055-2(e)(2)(v)(a) is also to be paid to Y for 20 years. Upon termination of the 20-year term, the corpus is to be distributed to Z, another organization described in section 501(c)(3). The trust is a charitable remainder annuity trust as described in section 664(d)(1) and the regulations thereunder, and a deduction under section 2055(e)(2)(A) was allowed with respect to the remainder interest of Z. A deduction was also allowed under section 2055(e)(2)(B) with respect to the guaranteed annuity interest of Y. The assets in the trust are not segregated under section 4947(a)(2)(B) and paragraph (c)(3) of this section. Under section 4947(a)(2)(A), each payment of \$10,000 to S is not subject to section 4947(a)(2) and paragraph (c)(1)(ii) of this section. The payment of each amount to S is not an act of self-dealing under section 4941(d)(1) and does not violate any other provision of chapter 42. However, except as provided in the preceding sentence, the trust is subject to section 4947(a)(2) and paragraph (c)(1)(ii) of this section in the same manner as any other split-interest trust.

Example (3). H creates a trust under which the trustees are required to pay over an annuity interest of \$20,000 to W, H's wife, for her life. A guaranteed annuity interest of \$10,000 which meets the requirements con-

tained in § 25.2522(c)-3(c)(2)(v) is also to be paid to X, an organization described in section 501(c)(3), for the life of W. Upon the death of W, the corpus of the trust, which consists of office buildings M and N, is to be distributed to S, H's son. H received a deduction under section 2522(c)(2)(B) for the value of X's income interest in the trust. The assets in the trust are not segregated under section 4947(a)(2)(B) and paragraph (c)(3) of this section. Under section 4947(a)(2)(A), each payment of \$20,000 to W is not subject to section 4947(a)(2) and paragraph (c)(1)(ii) of this section. The payment of each amount to W is not an act of self-dealing under section 4941(d)(1) and does not violate any other provision of chapter 42. However, except as provided in the preceding sentence, the trust is subject to paragraph (c)(1)(ii) of this section in the same manner as any other split-interest trust. See example (1) of paragraph (c)(3)(v) of this section for the application of section 4947(a)(2)(B) to a similar trust where the trustees segregate the assets of the trust.

(3) *Exception for certain segregated amounts*—(i) *In general*. Under section 4947(a)(2)(B) paragraph (c)(1)(ii) of this section does not apply to assets held in trust (together with the income and capital gains derived from the assets), which are segregated from other assets held in trust for which a deduction was allowed for an income or remainder interest under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522.

(ii) *Segregation of amounts*. Amounts will generally be considered segregated (within the meaning of section 4947(a)(2)(B)) if:

(A) assets with respect to which no deduction was allowed (for an income or remainder interest) under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522, are separately accounted for under section 4947(a)(3) and paragraph (c)(4) of this section from assets for which such a deduction was allowed for any income or remainder interest and,

(B) by reason of the separate accounting the trust can be treated as two separate trusts, one of which is devoted exclusively to noncharitable income and remainder interests and the other of which is a charitable trust described in section 4947(a)(1) or a split-interest trust described in section 4947(a)(2).

Under these circumstances, only the "trust" which is devoted exclusively to noncharitable income and remainder interests will be considered a segregated amount which, under section 4947(a)(2)(B), is not subject to section 4947(a)(2) and paragraph (c)(1)(ii) of this section.

(iii) *Exclusively charitable amounts*. If, under section 4947(a)(2)(B),

(A) an amount held in trust which is devoted exclusively to noncharitable income and remainder interests is segregated from

(B) an amount held in trust which is devoted exclusively to charitable income and remainder interests,

then for purposes of this section the amount described in paragraph (c)(3)

(iii)(B) of this section will be treated as a charitable trust which is subject to the provisions of section 4947(a)(1).

(iv) *Charitable and noncharitable amounts.* If, under section 4947(a)(2)(B),

(A) an amount held in trust which is devoted exclusively to noncharitable income and remainder interests is segregated from

(B) an amount held in trust which is devoted to both charitable income or remainder interests and noncharitable income or remainder interests,

then for purposes of this section the amount described in paragraph (c)(3)

(iv) (B) of this section will be treated as a split-interest trust which is subject to the provisions of section 4947(a)(2).

(v) *Examples.* The application of paragraph (c)(3) of this section may be illustrated by the following examples:

Example (1). H creates a trust under which the trustees are required to pay over annually 5 percent of the net fair market value of M building, valued annually, to W, H's wife, for life, remainder to S, H's son. The other asset in the trust is N building, with respect to which the trustees are required to pay over annually 5 percent of the net fair market value of the building, valued annually, to X, a section 501(c)(3) organization, for a period of 15 years, remainder to S. Each asset is separately accounted for under section 4947(a)(3) and paragraph (c)(4) of this section. He received a deduction under section 2522 for the value of X's income interest in N building. Under these circumstances, M building is considered segregated (within the meaning of section 4947(a)(2)(B)) from N building and is not subject to section 4947(a)(2). The remainder interest of S in N building is not considered segregated from the income interest of X in N building, since both are interests in the same asset. N building is considered held in a split-interest trust which is subject to section 4947(a)(2) and paragraph (c)(1)(ii) of this section.

Example (2). H transfers \$50,000 in trust to pay \$2,500 per year to Z, a section 501(c)(3) organization, for a term of 20 years, remainder to S, H's son. H is allowed a deduction under section 2522 for the present value of Z's income interest. The income interest of Z in the trust asset cannot be segregated (within the meaning of section 4947(a)(2)(B)) from the remainder interest of S since both are interests in the same asset. Therefore, the entire trust is subject to section 4947(a)(2) and paragraph (c)(1)(ii) of this section.

(4) *Accounting for segregated amounts.*—(i) *General rule.* Under section 4947(a)(2)(B), a trust with respect to which amounts are segregated within the meaning of paragraph (c)(3) of this section must separately account for the various income, deduction, and other items properly attributable to each segregated amount in the books of account and separately account to each of the beneficiaries of the trust.

(ii) *Method.* Separate accounting shall be made—

(A) According to the method regularly employed by the trust, if the method is reasonable, and

(B) In all other cases in a manner which, in the opinion of the Commissioner, is reasonable.

A method of separate accounting will be considered "regularly employed" by a

trust when the method has been consistently followed in prior taxable years or when a trust which has never before maintained segregated amounts initiates a reasonable method of separate accounting for its segregated amounts and consistently follows such method thereafter. The trust shall keep permanent records and other data relating to the segregated amounts as are necessary to enable the district director to determine the correctness of the application of the rules prescribed in paragraph (c)(3) and (4) of this section.

(5) *Amounts transferred in trust before May 27, 1969.*—(i) *General rule.* Under section 4947(a)(2)(C), paragraph (c)(1)(ii) of this section does not apply to any amounts transferred in trust before May 27, 1969. For purposes of this (5), an amount shall be considered to be transferred in trust only when the transfer is one which meets the requirements for the allowance of a deduction under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 (or the corresponding provisions of prior law). Income and capital gains which are derived at any time from amounts transferred in trust before May 27, 1969, shall also be excluded from the application of paragraph (c)(1)(ii) of this section. If an asset which was transferred in trust before May 27, 1969, is sold or exchanged after May 26, 1969, any asset received by the trust upon the sale or exchange shall be treated as an asset which was transferred in trust before May 27, 1969.

(ii) *Requirement for separate accounting for amounts transferred in trust before May 27, 1969.* If:

(A) Amounts are transferred in trust after May 26, 1969, and the trust to which the amounts are transferred also contains

(B) Amounts transferred in trust before May 27, 1969,

the general rule of paragraph (c)(5)(i) of this section applicable to the amounts described in paragraph (c)(5)(ii)(B) of this section will apply only if the amounts described in paragraph (c)(5)(ii)(A) of this section (together with all income and capital gains derived therefrom) are separately accounted for (within the meaning of paragraph (c)(4) of this section) from the amounts described in paragraph (c)(5)(ii)(B) of this section, together with all income and capital gains derived therefrom. For the application of section 508(e) to a trust with respect to which amounts were transferred both before and after May 27, 1969, see section 508(e) and the regulations thereunder.

(iii) *Exception for certain testamentary trusts.* (A) Amounts transferred in trust before May 27, 1969 include amounts transferred in trust after May 26, 1969 when the transfer is made under the terms of a testamentary trust created by the will of a decedent who died before May 27, 1969, (regardless of whether the executors or the testamentary trustees are required to execute testamentary trusts by court order under applicable local law). Amounts transferred in trust before May 27, 1969, also

include amounts transferred to a testamentary trust created by the will of a decedent who died after May 26, 1969 if the will was executed before May 27, 1969 and no dispositive provision of the will was amended (within the meaning of § 20.2055-2(e)(4) and (5)) by the decedent by codicil or otherwise, after May 26, 1969, and the decedent was on May 27, 1969, and at all times thereafter under a mental disability (as defined in § 1.642(c)-2(b)(3)(ii)) to amend the will by codicil or otherwise.

(B) The provisions of this (iii) may be illustrated by the following example:

Example. X executed a will in 1960 which provided for the creation of a testamentary trust which meets the description of a split-interest trust under section 4947(a)(2). X died on April 15, 1969. Under the provisions of his will, the probate court permitted certain property in X's estate to be transferred to the testamentary trust at fixed intervals over a period of two years during the administration of the estate. Section 4947(a)(2) does not apply to any amount described in this example, including the amounts transferred after May 26, 1969, because, for purposes of section 4947(a)(2)(C), each such transfer will be treated as an amount transferred in trust before May 27, 1969, within the meaning of section 4947(a)(2)(C).

(6) *Scope of application of section 4947(a)(2).*—(i) *In general.* Subject to paragraph (c)(6)(ii), (iii), and (iv) of this section, section 4947(a)(2) applies to trusts in which some but not all unexpired interests are charitable. An estate from which the executor or administrator is required to distribute all of the net assets in trust or free of trust to both charitable and noncharitable beneficiaries will not be considered to be a split-interest trust under section 4947(a)(2) during the period of estate administration or settlement, except as provided in paragraph (c)(6)(ii) of this section. A split-interest trust created by will shall be considered a split-interest trust under section 4947(a)(2) as of the date of death of the decedent-grantor, except as provided in paragraph (c)(6)(iv) of this section.

(ii) *Estates.* (A) When an estate from which the executor or administrator is required to distribute all of the net assets in trust or free of trust to both charitable and noncharitable beneficiaries is considered terminated for Federal income tax purposes under § 1.641(b)-3(a), then the estate will be treated as a split-interest trust under section 4947(a)(2) (or a charitable trust under section 4957(a)(1), if applicable) between the date on which the estate is considered terminated under § 1.641(b)-3(a) and the date on which final distribution of the net assets to the last remaining charitable beneficiary is made. This (ii) does not affect the determination of the tax liability under subtitle A of either charitable or noncharitable beneficiaries of the estates.

(B) The provisions of this (ii) may be illustrated by the following example:

Example. X dies on January 15, 1973 and bequeaths \$10,000 to M, an organization described in section 501(c)(3), and the residue of his estate to W, his wife. A deduction for the charitable bequest was allowed to X's

estate under section 2055. Substantially all of X's estate consists of 100 percent of the stock of a wholly owned corporation, certain liquid assets such as marketable stocks and securities and bank accounts, and X's home, automobile, and other personal property. X's will gives his executor a full range of powers, including the power to sell the stock of the wholly owned corporation. After the death of X, his executor continues to manage the wholly owned corporation while attempting to sell the stock of the corporation. During this period, the executor makes no distributions to M. On May 24, 1978, the Internal Revenue Service determines under § 1.641(b)-3(a) that the administration of the estate has been unduly prolonged and the estate is considered terminated as of that date for Federal income tax purposes. X's estate will be treated as a split-interest trust described in section 4947(a)(2) between May 24, 1978 and the date on which the \$10,000 bequest to M is satisfied. X's estate will therefore be subject to the applicable private foundation provisions during that period and, for example, a sale of the house by the estate to any disqualified person (as defined in section 4946) will be an act of self-dealing under section 4941.

(iii) *Revocable trusts which become split-interest trusts.* A revocable trust that becomes irrevocable upon the death of the decedent-grantor under the terms of the governing instrument of which the trustee is required to hold some or all of its net assets in trust after becoming irrevocable for both charitable and non-charitable beneficiaries is not considered a split-interest trust under section 4947(a)(2) for a reasonable period of settlement after becoming irrevocable except that section 4941 may apply if the requirements of § 53.4941(d)-1(b)(3) are not met.

After that period, the trust is considered a split-interest trust under section 4947(a)(2). For purposes of this (iii), the term "reasonable period of settlement" means that period reasonably required (or if shorter, actually required) by the trustee to perform the ordinary duties of administration necessary for the settlement of the trust. These duties include, for example, the collection of assets, the payment of debts, taxes, and distributions, and the determination of rights of the subsequent beneficiaries.

(iv) *Certain revocable and testamentary trusts which wind up.* A revocable trust that becomes irrevocable upon the death of the decedent-grantor, or a trust created by will, from which the trustee is required to distribute all of the net assets in trust or free of trust to both charitable and noncharitable beneficiaries is not considered a split-interest trust under section 4947(a)(2) for a reasonable period of settlement (within the meaning of paragraph (c)(6)(iii) of this section) after becoming irrevocable. After that period, the trust is considered a split-interest trust under section 4947(a)(2) (or a charitable trust under section 4947(a)(1), if applicable).

(d) *Cross references; Governing instrument requirements and charitable deduction limitations.* For the application of section 642(c)(6) (relating to section 170 limitations on charitable deductions of non-exempt private foundation

trusts) to a trust described in section 4947(a)(1), see § 1.642(c)-4. For the denial of a deduction under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for a gift, a bequest, or an amount paid to (and the denial of a deduction under section 642(c) for an amount set aside in) a trust described in section 4947(a)(1) or (2) that fails to meet the applicable governing instrument requirements of section 508(e) by the end of the taxable year of the trust, see section 508(d)(2) and § 1.508-2(b). Since a charitable remainder trust (as defined in section 664) is not exempt under section 501(a), it is subject to section 4947(a)(2), and thus to the governing instrument requirements of section 508(e) to the extent they are applicable.

(e) *Application of section 507(a).*—(1) *General rule.* The provisions of section 507(a) shall not apply to a trust described in section 4947(a)(1) or (2) by reason of any payment to a beneficiary that is directed by the terms of the governing instrument of the trust and is not discretionary with the trustee or, in the case of a discretionary payment, by reason of, or following, the expiration of the last remaining charitable interest in the trust.

(2) *Examples.* The provisions of this (e) may be illustrated by the following examples:

Example (1). H creates a section 4947(a)(1) trust under which the income is to be paid for 15 years to R, a section 501(c)(3) organization. Upon the expiration of 15 years, the trust is to terminate and distribute all of its assets to S, another section 501(c)(3) organization. Distribution of the corpus of the trust to S will not be considered a termination of the trust's private foundation status within the meaning of section 507(a).

Example (2). H creates a trust under which X, a section 501(c)(3) organization, receives \$20,000 per year for a period of 20 years, remainder to S, H's son. H is allowed a deduction under section 2522 for the present value of X's interest.

When the final payment to X has been made at the end of the 20-year period in accordance with the terms of the trust, the provisions of section 4947(a)(2) will cease to apply to the trust because the trust no longer retains any amounts for which the deduction under section 2522 was allowed. However, the final payment to X will not be considered a termination of the trust's private foundation status within the meaning of section 507(a).

Example (3). J creates a charitable remainder annuity trust described in section 664(d)(1) under which S, J's son, receives \$10,000 per year for life, remainder to be distributed outright to P, an organization described in section 501(c)(3). J is allowed a deduction under section 170 for the value of the remainder interest placed in trust for the benefit of P, and the provisions of section 4947(a)(2) apply to the trust. At the death of S, the trust will terminate and all assets will be distributed to P. However, such final distribution to P will not be considered a termination of the trust's private foundation status within the meaning of section 507(a).

§ 53.4947-2 Special rules.

(a) *Limit to segregated amounts.* If any amounts held in trust are segregated within the meaning of § 53.4947-1(c)(3),

the value of the net assets for purposes of section 507(c)(2) and (g) shall be limited to the segregated amounts with respect to which a deduction under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 was allowed. See the regulations under section 507(c)(2) and (g).

(b) *Applicability of sections 4943 and 4944 to split-interest trusts.*—(1) *General rule.* Under section 4947(b)(3), sections 4943 and 4944 do not apply to a split-interest trust described in section 4947(a)(2) if:

(i) all the income interest (and none of the remainder interest) of the trust is devoted solely to one or more of the purposes described in section 170(c)(2)(B) and all amounts in the trust for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 have an aggregate value (at the time for which the deduction was allowed) of not more than 60 percent of the aggregate fair market value of all amounts in the trust (after the payment of estate taxes and all other liabilities), or

(ii) a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2) or 2522 for amounts payable under the terms of the trust to every remainder beneficiary, but not to any income beneficiary.

This (1) shall apply to a trust described in paragraph (b)(1)(ii) of this section only if all amounts payable under the terms of the trust to every remainder beneficiary are to be devoted solely to one or more of the purposes described in section 170(c)(2)(B). After the expiration of all income interests in a trust described in paragraph (b)(1)(ii) of this section, the trust shall become subject to section 4947(a)(1) under § 53.4947-1(b)(2), and section 4947(b)(3) shall no longer apply to the trust. A pooled income fund described in section 642(c)(5) will generally meet the requirements of paragraph (b)(1)(ii) of this section, as will a charitable remainder trust described in section 664(d)(1), if in either case it does not make payments to any income beneficiary described in section 170(c).

(2) *Definitions.* (i) For purposes of section 4947(b)(3)(A), the term "income interest" shall include an interest in property transferred in trust which is in the form of a guaranteed annuity interest or unitrust interest as described in § 1.170A-6(c), § 20.2055-2(e)(2) or § 25.2522(c)-3(c)(2) and the term "remainder interest" shall include an interest which succeeds an "income interest" within the meaning of this (i).

(ii) For purposes of section 4947(b)(3)(B), the term "income beneficiary" shall include a recipient of payments described in section 642(c)(5)(F) from a pooled income fund, payments described in section 664(d)(1)(A) from a charitable remainder annuity trust, or payments described in section 664(d)(2)(A) or (3) from a charitable remainder unitrust. The term "remainder beneficiary" shall include a beneficiary

of a remainder interest described in section 642(c)(5) or 664(d)(1)(C) or (2)(C).

(c) *Effective date.* Except as otherwise provided in §§ 53.4947-1 and 53.4947-2 and the regulations under sections 508 (d) and (e), §§ 53.4947-1 and 53.4947-2 shall take effect on January 1, 1970.

(Secs. 4947 and 7805, Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: August 16, 1976.

CHARLES M. WALKER,
Assistant Secretary
of the Treasury.

[FR Doc.76-24678 Filed 8-20-76; 8:45 am]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Valencia Orange Regulation 540, Amdt. 1]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

PREAMBLE

This regulation increases the quantity of California-Arizona Valencia oranges that may be shipped to fresh market during the weekly regulation period August 13-19, 1976. The quantity that may be shipped is increased due to improved market conditions for California-Arizona Valencia oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 908.

§ 908.840 Valencia Orange Regulation 540.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) and upon the basis of the recommendation and information submitted by the Valencia Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Valencia Orange Regulation 540 (41 FR 34006). The marketing picture now indicates that there is a greater demand for Valencia oranges than existed when the regulation was made effective.

Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of Valencia oranges to fill the current demand thereby making a greater quantity of Valencia oranges available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Valencia oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b)(1)(iii) of § 908.840 (Valencia Orange Regulation 540 (41 FR 34006)) are hereby amended to read as follows:

- "(i) District 1: 292,000 cartons;
- "(ii) District 2: 358,000 cartons."

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Dated: August 18, 1976.

FLOYD F. HEDLAND,
Director, Fruit and Vegetable
Division, Agricultural Mar-
keting Service.

[FR Doc.76-24600 Filed 8-20-76; 8:45 am]

PART 967—CELERY GROWN IN FLORIDA

Handling Regulation

This handling regulation establishes the quantity of Florida celery to be marketed fresh during the 1976-77 season, with the objective of assuring adequate supplies and orderly marketing.

Notice of rule making was published in the FEDERAL REGISTER July 29, 1976 (41 FR 31558) that the Secretary of Agriculture was considering the issuance of a handling regulation designed to promote orderly marketing of celery grown in Florida. The proposal was discussed at a public meeting June 9, 1976, in Orlando, and was unanimously recommended by the Florida Celery Committee. This committee was established under Marketing Agreement No. 149 and Order No. 967, both as amended (7 CFR Part 967). This program regulates the handling of celery grown in Florida and is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). The notice afforded interested persons an opportunity to file written data, views or arguments regarding the proposal with the Hearing Clerk not later than August 12, 1976. None was filed.

The committee recommended a Marketing Quantity of 9,223,520 crates of fresh celery for the 1976-77 season. This recommendation is based on the appraisal of expected supply and prospective market demand for the 1976-77 season.

During the past decade, planted acreage generally has ranged between 10,300 and 12,800 acres each year. Yield has been variable, mainly in response to weather, although unfavorable market conditions may sometimes reduce average output per acre. The 3.9 million hundredweight produced in 1975-76 was 6 percent below the previous season and 2 percent below the 1968-69-72-73 average. The relatively small crop reflected heavy insect-caused losses during the fall, and a moderate decline in total acreage following two years of low prices.

The Marketable Quantity recommended for 1976-77 of 9,223,520 crates is 11 percent more than the 8,326,671 crates in 1975-76. Each producer will have an allotment equal to 100 percent of his historical marketings compared with 90 percent in 1975-76. The recommended large supply will afford the Florida celery industry an opportunity to evaluate market response in a situation when maximum supplies are made available to markets that generally exhibit an inelastic demand. Actual acreage of celery to be planted in Florida and elsewhere for harvest during the 1976-77 season has not been officially estimated. However, the committee projects that 11,000 acres may be planted compared with 10,359 last season and 11,424 in 1974-75. Production may amount to 4.55 million hundredweight for fresh marketing as well as for processing purposes.

With no applicants for new or increased Base Quantities, no reserve was recommended for additional Base Quantities under § 967.37(d)(1).

On the basis of all considerations it is believed that this regulation will tend to effectuate the declared policy of the act.

It is hereby found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) notice was given of the handling regulation set forth in this section through publicity in the production area and by publication of the proposal in the July 29, 1976, FEDERAL REGISTER, (2) as provided in the marketing agreement and order, this regulation applies to celery marketed during the 1976-77 season, (3) compliance with this section will not require any special preparation by handlers which cannot be completed prior to the time actual handling of harvested celery begins, approximately the latter part of October, (4) prompt issuance of this regulation will be beneficial to all interested persons because it should afford producers and handlers maximum time to plan their operations accordingly, and (5) no useful purpose will be served by postponing such issuance.

The regulation is as follows: