

# Collection

## Why is the IRS filing a lien? I don't have anything!

By *Patti Logan*

When the IRS files a Notice of Federal Tax Lien, the government is protected should the taxpayer sell their house. I have heard so many times in the career, "I can't sell my house, IRS filed a lien on it!" In fact, a house can be sold, but the taxpayer should request a discharge of federal tax lien.

The most common type of certificate prepared is the Discharge of Federal Tax Lien. The "discharge" of property from a Federal Tax Lien removes certain specifically described realty or personal property from the effect of the lien. The lien continues in full force and effect on all other property or rights to property of the taxpayer. Form 668B is issued when the discharge is granted and the funds received.

Types of discharges are:

- Code Sec. 6325(b)(1) bases the discharge on the fact that property of the taxpayer remaining has a fair market value double the sum of the amount of the federal tax liability secured by the FTL and any encumbrances senior to the lien. To calculate if this type of discharge is applicable, the tax liability is added to any debts owed on the property. The total is then doubled (see Chart 1, below). The taxpayer's remaining property subject to the lien must be greater than the sum of the debts doubled. Assuming the facts in Chart 1, the property remaining subject to the lien must be at least \$77,668.

### Chart 1:

Tax Liability:	\$15,500
Other debts	+ 23,334
	\$38,834
	x 2
	\$77,668

- Code Sec. 6325(b)(2)(A) bases the discharge on partial satisfaction of the liability determined to be not less than the value of the government's



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**Patti Logan, EA**, specializes in taxpayer representation before the Collection Division. As a former Revenue Officer, she brings a unique expertise to the inner workings of the Special Procedures Branch. She can be reached at [patti@thetaxgroup.com](mailto:patti@thetaxgroup.com).

interest in the property. To qualify the taxpayer must be divested of all interest in the property. Assuming the IRS has a lien totaling \$203,000 and with the facts shown in Chart 2, after the IRS receives the \$65,000 in partial satisfaction of the debt, the taxpayer will owe \$138,000.

### Chart 2.

Property selling for: .....	\$215,000
Less senior encumbrances: .....	\$135,000
Less proposed settlement costs: .....	\$15,000
The IRS lien interest equals: .....	\$65,000

- Code Sec. 6325(b)(2)(B) bases the discharge on evidence that the property of the taxpayer has no value to the government. In this case the debts to the senior lien holders are greater than the fair market value of the property.
- Code Sec. 6325(b)(3) bases the discharge on an agreement with the IRS allowing the property to be sold. Per an escrow agreement, sale proceeds are held subject to the claims of the US in the same manner and in the same priority the claims had prior to the sale. For example, if there are two mortgages senior to the IRS tax lien totaling \$50,000 and \$5,000. The government's interest in the property is \$20,000 and there are liens on the property junior to the IRS lien in the amount of \$3,000, \$12,000 and \$2,990. The proceeds from the sale would be dispensed by paying the debts in the following sequence: a) \$50,000; b) \$5,000; c) \$20,000; d) \$3,000; e) \$12,000; f) \$2,990.
- Code Sec. 6325(b)(4) Code Sec. 6325(b)(4) bases the discharge on the third party's right to substitute the value of the property in cash or an acceptable bond to cover the government's interest in the property.
- Code Sec. 6325(c) is a discharge of property subject to an Estate Tax Lien. This type of application for discharge required a Form 4422.

## Requesting a Discharge

In June 2010, IRS released a new form and new instructions for requesting a discharge. Most of the form is self-explanatory. However one problem in the past was the requirement to have two appraisals submitted along with the application. The new instructions establish that one professional appraisal is required plus one of the following additional valuations:

- County valuation of the property (real property)

- Informal valuation of property by a disinterested third party.
- Proposed selling price for property being sold at auction
- Other valuations that have been accepted are disinterested broker comparison and contract for sale.

Other information that should be included with the discharge application:

- Include a Form 8821 (Tax Information Authority) of Form 2848 (Power of attorney) for all parties needing to receive information. This could include the lender, the preparer of the application, the title company escrow agent.
- A copy of the trial closing statement (HUD-1)
- Copies of the FTL if available.
- Copy of the proposed sales contract or purchase agreement.
- Copy of the title report or a list of encumbrances senior to the FTL.
- Escrow agreement if applying under Code Sec. 6325(b)(3).

The application with attachments should be submitted to the Advisory Group Manager. See Publication 4235 for addresses.

## Relocation Allowance

In cases of hardship, a taxpayer may request a relocation allowance when a taxpayer sells their principal residence and a discharge is issued under either 6325(b)(2)(A) or 6325(b)(2)(B). The amount approved will be deducted from the sale proceeds and will not be applied against the tax liability secured by the Federal Tax Lien. This allowance is based upon an inability to pay relocation expenses and is subject to limitations.

To apply for the allowance, the taxpayer should complete and submit Form 12451, Request for Relocation Expense Allowance' with the application for discharge. Per the IRM,<sup>1</sup> supporting documentation may consist of:

- Proposed rental agreement
- Estimates from moving companies
- Truck rental estimates
- Utility hook-ups, *etc.*

The IRS reviewer will make a determination as to whether the taxpayer has sufficient funds available to pay reasonable relocation expenses, information such as financial statements, recent bank statements and last return filed can be used in this determina-

Form <b>14135</b> (June 2010)	Department of the Treasury — Internal Revenue Service <b>Application for Certificate of Discharge of Property from Federal Tax Lien</b>	OMB No. 1545-2174
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Complete the entire application. Enter NA (*not applicable*), when appropriate. Attachments and exhibits should be included as necessary. Additional information may be requested of you or a third party to clarify the details of the transaction(s).

**1. Taxpayer Information** (*Individual or Business named on the notice of lien*):

Name ( <i>Individual</i> First, Middle Initial, Last) or ( <i>Business</i> ) as it appears on lien		Primary Social Security Number <i>(last 4 digits only)</i>
Name Continuation ( <i>Individual</i> First, Middle Initial, Last) or ( <i>Business</i> d/b/a)		Secondary Social Security Number <i>(last 4 digits only)</i>
Address ( <i>Number, Street, P.O. Box</i> )		Employer Identification Number
City	State	ZIP Code
Telephone Number ( <i>with area code</i> )	Fax Number ( <i>with area code</i> )	

**2. Applicant Information:**  Check if also the Taxpayer (*If not the taxpayer, attach copy of lien. See Sec. 10*)

Name ( <i>First, Middle Initial, Last</i> )		Relationship to taxpayer
Address ( <i>Number, Street, P.O. Box</i> )		
City	State	ZIP Code
Telephone Number ( <i>with area code</i> )	Fax Number ( <i>with area code</i> )	

**3. Purchase/Transferee/New Owner**  Check if also the Applicant

Relationship to taxpayer
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**4. Attorney/Representative Information**

**Attached:** Form 8821 or Power of Attorney Form 2848  Yes  No

Name ( <i>First, Middle Initial, Last</i> )		Interest Represented ( <i>e.g. taxpayer, lender, etc.</i> )
Address ( <i>Number, Street, P.O. Box</i> )		
City	State	ZIP Code
Telephone Number ( <i>with area code</i> )	Fax Number ( <i>with area code</i> )	

**5. Lender/Finance Company Information - or** (*Settlement/Escrow Company for applications under Section 6325(b)(3) only*)

Company Name	Contact Name	Contact Phone Number
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tion. Generally, cases in hardship (CNC) status do not require another “hardship” determination.

The relocation allowance is subject to the National Standards for the new residence locale and family size times a factor of 2.5.

## Short Sale

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In a memorandum dated October 4, 2010,<sup>2</sup> IRS issued interim guidance for processing and approving request for certificates of discharge in short sale situations. A short sale is one where the senior lien holder agrees to accept less than the total amount owed in satisfaction of its lien. Short sales have happened much more frequently with the recent real estate slump. As an example, a house may have a mortgage balance of \$500,000 but the house is now only worth \$300,000. The mortgage company may accept the \$300,000 in satisfaction of the note. In this case, federal tax lien is valueless so applications

of discharge filed in short sale situations should be under Code Sec. 6325(b)(2)(B).

Sometimes a senior lien holder may allow payment of certain expenses to be taken out of the settlement costs to facilitate sale of the house. For example, a mortgage company may allow the payment of delinquent homeowner association dues which are junior to a filed federal tax lien. In this case, allowing payment of the HOA dues reduces the amount that the mortgage company receives. It does not carve out a place for the IRS to receive funds as long as there is no fraudulence involved. Because the federal tax lien’s interest is valueless, the IRS cannot make payment of any part of the amount going to the HOA as a condition of the discharge.

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### ENDNOTES

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<sup>1</sup> IRM 5.12.3.14.4.1.

<sup>2</sup> Certificates of Discharge in Short Sale Situations, October 4, 2010, Control Number SBSE-05-1010-054.

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