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TAX MEMORANDUM

TO: CPAs, Clients & Associates

FROM: David L. Silverman, Esq.
Shirlee Aminoff, Esq.

DATE: April 2, 2010

RE: Removing Federal Tax Liens

The filing of a federal tax lien can adversely affect the taxpayer's ability to secure credit, dispose of property and conduct business. Ultimately, the property may be levied upon by the IRS and sold to satisfy the underlying tax liability. Fortunately, in many cases the filing of a tax lien is not a fait accomplis. For example, at times IRS will voluntarily withdraw a notice of tax lien:

¶ If the notice was filed prematurely or not filed in accordance with IRS procedures;

¶ If the taxpayer has agreed to pay the tax in installments, and the agreement does not provide otherwise;

¶ If withdrawal of the notice will facilitate collection of the tax; or

¶ If the withdrawal is in the "best interest" of the taxpayer (i.e., will facilitate IRS collection).

Upon written request by the taxpayer whose lien has been withdrawn, the IRS must make reasonable efforts to notify credit reporting agencies and any financial institutions or creditor whose name is supplied by the taxpayers.

Failing voluntarily release, the IRS must release the lien:

¶ Within 30 days after the tax is fully paid or becomes legally unenforceable, (e.g., expiration of the period of collection). [However, the IRS is not required to release a tax lien even if the underlying tax debt is discharged in bankruptcy and personal liability is extinguished, since the taxpayer's property remains liable for the debt secured by the lien which is legally enforceable in rem.]

¶ Upon the furnishing by the taxpayer of a surety bond securing payment of the assessment.

Even where a tax lien is not released, specific property subject thereto may be discharged. Thus, the IRS can issue a certificate of discharge (Form 669):

¶ If property which remains subject to the lien is at least double the sum of (i) the unsatisfied liability secured by the lien and (ii) the total of all prior liens on the property;

¶ If the IRS is paid an amount which is at least equal to the value of the IRS interest in the property to be discharged; or

¶ If the property to be discharged is sold under an agreement whereby sale proceeds are held as a fund subject to IRS liens and claims. If administrative efforts fail, or in some circumstances irrespective of whether administrative remedies have been sought, judicial action may be taken to release a tax lien or to quiet title:

¶ Sec. 7432 authorizes suit against the U.S. in federal district court if the IRS improperly fails to release a tax lien. The action must be brought within 2 years after the lien was filed. At least 30 days prior to commencing such action, an administrative claim must be made to the IRS detailing the grounds and setting forth damages.

¶ A quiet title action may be brought in state court under 28 USC §2410 to challenge a procedural defect in a tax lien, or to determine whether a lien attaches to specific property. However, independent grounds for federal jurisdiction, such as diversity of citizenship, must exist.