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BUSINESS OUTLOOK FOR 1957

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Here is a keen analysis of business in general—and the real estate market in particular. Mr. Loebbecke looks ahead with cautious optimism and presents a fresh view of matters that concern all readers of Title News.

Forecasting the economic picture is, indeed, a hazardous occupation, but most of us are like a moth around a flame, we keep at it until our wings are thoroughly singed. In order to keep the record straight, let me be the first to admit that I do not *know* what the balance of 1957 holds for us. I can only give you my considered opinion of some of the major factors as I see them and the results that, it seems to me, will inevitably follow. Also, in order to be true to the unwritten law of the great army of economic prognosticators, I want to remind you that all bets are off in the event of war.

I think it is a rather academic principle that one of the strongest factors affecting the economy of any nation is the psychological effect on the people of various happenings within the economic scene. You will recall, for example, that in the fall of 1946 we had a rather sharp decline in the stock market. All of the economic factors—employment, business volume, and earnings indicated that the market should go up, not down. The only reason that could be discerned for the drop was the statement by a well known commentator that he believed we would be at war with Russia within 90 days. A more recent example was the drop in the market which occurred the day following Mr. Hoover's meeting with President Eisenhower during which he made a number of comments concerning the possibility of a depression.

In discussing the current economic picture, I would like to have you keep this matter of psychology in mind. At the present time, in the minds of people generally, the big bugaboo is tight money. At every turn you hear this subject being discussed. For this reason no discussion of the business outlook during the coming year can ignore the subject of money, nor of its effect, both actual and psychological, on the economic picture. It is essential, therefore, to examine it in its true light. All of us must recognize that there are beneficial aspects as well as adverse ones in the present money situation and not allow ourselves to become panicky about it.

First, let us consider what it is we are really talking about. In my estimation money is not tight. I am not the first person, or by any means the only one to arrive at this conclusion. I think Representative Hiestand, of the Banking and Currency Committee, states the hard core of the problem as clearly as anyone when he says that the trouble lies not in a shortage of money but in a shortage of goods and services. Now, all of us recognize that credit is an essential part of our economy, but the thing we sometimes forget is that money is a commodity, the same as steel or cotton or grain. Interest rates reflect the price we pay for the use of that commodity. When interest rates are very low we encourage the expanded use of credit because, in essence, our operating costs are low. For many years the federal government used every possible means of creating cheap money. This resulted in vast credit expansion and in inflation. Under the conditions which existed, high taxes were expected to have an ameliorative effect; however, the over-all result was continuing inflation, because taxes are always passed

on to the consumer through higher prices. High prices call for higher wages and thus the spiral goes. Finally, four years ago, with the election of President Eisenhower, our government turned toward a hard money policy. What is happening today is not "tight" money, it is the inevitable result of a "hard" money policy.

You often hear it said that the government tightened up on the money supply. Basically, this does not describe what happened. All that was actually done was to move in the direction of eliminating those things that created artificially low interest rates. By so doing, the savings of our people were allowed to move into a free market where they could begin to command a price competitive with that being paid for other commodities. The results of this began to make themselves felt immediately. Increased interest rates reduced the attractiveness of expanded credit by making borrowing more costly. Those segments of the economy depending on cheap money for their high volume began to find the supply drying up. As the cost of money went up people began to ask themselves whether or not their plans and desires were worth what it would cost to obtain the money to carry them out.

Thus the pinch began to be felt. People started to hold back. A recent survey by the National Industrial Conference Board shows that many companies have put aside their plans for capital expansion for the time being. The federal government, states, counties and cities, that traditionally borrow to provide the services our citizens require, are paying more for the use of our dollars. As a result, industry is finding it more expensive to obtain the funds it needs. Our public utilities are now putting out their bond issues at rates in excess of 5%. Many industries are finding it necessary to turn to equity financnig as a solution to their problems — some by placing additional shares on the market, and others via the route of stock dividends in lieu of cash dividends.

The Middle East situation has had its effect. As 1955 went by, many of us hoped there would be some reduction in the tax burden in 1956 or 1957, thus freeing more funds to flow directly into the economic cycle, either by reinvestment by corporations or through added savings by individuals. It is apparent now that there will be no reduction in taxes in 1957 unless Congress sees fit to materially reduce the amount requested by the President for defense. I am sure you will agree that this is most unlikely.

In short, we have been going through a re-adjustment and the law of supply and demand has begun to take effect. We are finding that because of our high tax burden and the other inflationary factors, we have not created new wealth through productivity fast enough during the past few years to meet the demands of our growing economy.

In discussing the current situation I am not going to make any reference to the farm situation. It has received a great deal of publicity and you are all familiar with what is being done. Suffice to say that the decline in farm income resulted in some decrease in farm implement sales and other related items. On the whole, however, it did not have the effect of creating any real hardship in the economic picture.

The two industries that suffered most during the past year, or at least received the most public attention, were the automotive industry and the home construction industry. The number of cars produced was down sharply in 1956 as against 1955, and there were about 200,000 fewer housing units built than during the preceding year. The decrease in automobile production had its greatest effect in the Detroit area where there was a rather substantial unemployment problem for a few months. In home construction the pinch was felt all across the nation. It is interesting to note, however, that the decrease in value in housing was not commensurate with the decrease in units

because most of the drop was in the very low price brackets.

The stock market, which is a popular barometer of business conditions, suffered to some extent also. While there was some increase in corporate profits and in dividends, the sharp upturn in interest rates became competitive with the yield on stocks. As you are well aware, stocks are purchased either for growth or on a yield basis. On the growth side, the continued high level of business activity had a tendency to support the market, but comparative yields had a depressing effect with the result that the averages retreated considerably from their 1955 highs.

The things I have been discussing constitute but a part of the picture and sound, I am sure, a bit on the gloomy side. However, before deciding that everything is going to pieces, let me point out taht they occurred during the year 1956—a year marked by an all-time high in employment, an all-time high in personal and family incomes, an all-time high in the gross national product, and an all-time high in personal savings. The problem, then, has been one of readjustment, for 1956, on the whole, can only be described as an outstandingly satisfactory one from an economic point of view.

What then can we expect for 1957? The national budget guarantees a continued high level of government spending. Practically all economists and business leaders agree that there will be a further increase in productivity, in family income, in population, in employment, in purchasing power, and in savings. Thus, it would seem impossible, in the absence of war, to have anything but continued prosperity during 1957. Looking at individual situations, however, I believe that the year will generally duplicate the one just closed in that further adjustments will occur.
Again, corporate profits may be up a little bit, but probably not too much, if at all. Dividends should be about the same, although it is possible that demands for working capital may cause some corporations to reduce their cash dividend and replace them with stock dividends. Interest rates will not, in my judgment, go down. In fact, they may get a bit higher. This, and the earnings and dividend pictures will have their effect on the stock market. There seems to be no reason to expect any sustained decline in the market but there will be adjustments as investors weigh the return they can expect to get on their investment dollars. For this reason, I doubt if investors going into the market now can expect a substantial rise during 1957. In fact, the market may well be a bit lower by the end of the year. While I make no pretense of being able to predict the stockmarket, I feel that this is indicative of the unrest and of the re-adjustment in regard to growth and yield factors which is going on.

The automotive industry has spent large sums in preparing its 1957 models. Some manufacturers and dealers feel that their hopes are being realized, while others are somewhat disappointed. A couple of weeks ago I would have said that, in total, automotive production should be in excess of 100,000 units higher than last year. Now I feel that the increase may be something under that figure. In any event, considerable available working capital will be generated for that industry through write-off of the plant expansion and change-over expenditures which were made during the past two years.

The housing industry will, I am sure, continue to feel that it has been placed in a disadvantageous position. Its major problem, however, will be sales because of the down-payment factor. As you know, the average person has only so many dollars available, thus, in selling a home the builder must compete with the manufacturer of automobiles, T.V. sets, and a host of other products in order to sell his home. I believe the housing situation will be somewhat comparable to 1956 in that while there will be a further decrease in the number of units, there will not be a

corresponding decrease in total dollar volume of new homes. The reason for this is that the family income is increasing and more and more people are moving into higher brackets, thus bringing higher priced homes within their reach.

The heavy construction industry, because of decreased plant expansion, might expect to be down somewhat if it were not for government programs that are under way. Most important of these is the National Highway Program. It is estimated that in 1957 the National Highway Program will result in an increase of approximately 20 per cent in the use of construction materials. This will more than offset any decrease I can invision in other segments of the total construction industry. This will be true even if the current rumors that the program is getting a slow start should prove to be correct.

Earlier, I mentioned the economic effect resulting from defense spending which has resulted from the unrest in the Middle East. There is, of course, a further implication in this situation. Not all of the people are in thorough accord with Mr. Dulles and there is considerable discussion concerning our foreign policy. This condition, as a result of the strong pro and con attitudes which are expressed, have a real psychological effect on our people which in turn is reflected in the economic picture.

I started this discussion by asking you to keep the psychological factors in mind. Thus, in tying the whole picture together I want to first indulge in a bit of philosophy. I have given you a rather brief resume of the purely factual economic picture as I see it. To me, however, it seems that one thing is clear. Attractive as it may be to have our dollar sign become larger and larger each year, I think it vital that we slow down the inflationary processes that cause this and stabilize the value of our dollar sufficiently so that we can give to all of the people of our nation a fair share of sound economic progress. This will only come about htiw a sound value for our dollar and the development of ways and means to create greater productivity of both goods and services—for it is only in this way that real wealth is created. Many of us have hoped that some panacea might be found for the old law of supply and demand; some have felt that government could completely control our economy. I think we have ample evidence throughout the years that neither of these is possible. We can't depend on government, for an individual gains most under a free enterprise system where competition and not subservience is the rule of the day. Our federal government does, of course, have a part to play in our economic scheme. We have made some progress in analyzing the factors and the excesses which have resulted in booms and busts in our economic cycle. This has and will continue to be helpful, although we should never expect to create a completely level economy.

Basically, our economy is nothing more than the vehicle by which we produce the needs of our people in the form of food, clothing and shelter. But being human and being free people we are not satisfied with a minimum standard; there is something within us that has always urged us to reach for something better and for something new. Unfortunately, in the complication of daily living, many of us come to believe our destiny to be merely a search for security, or, perhaps, for some socialistic U t o p i a. Actually, however, the motivating force behind most all men and women is one of accomplishment. It is that inward satisfaction of having done something that has never been done before; of attaining a better way of life; of providing more for our children than our parents were able to give us. These are the reasons we, as individuals, have more than the people of any other nation on earth.

Now, what has this discourse on philosophy to do with the matter at hand? Just this. The real degree of success which will be attained in 1957 will depend on how we ap-

proach the varied factors which I have previously outlined. If we indulge in mass hysteria; if we fall prey to the fear of tight money, or some like bugaboo; if we all demand that some type of economic hocus-pocus be created to insure our business being better than it was last year, we will be in for trouble. On the other hand, if we can maintain our common sense we can make real progress during 1957 and beyond. On the whole, business can be good. People can continue to earn more, to spend more and to save more. Some industries will fare extremely well. A great many will be about the same as last year, and some, as I have previously indicated, will suffer in varying degrees. But if we accept the fact that these variances within the economy are part of the game and are the implacable result of the effect of the law of supply and demand and the principle that wealth comes only from true productivity, we will continue to grow and prosper.

COMMON PROBLEMS OF SURVEYOR AND ABSTRACTER

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The author, Mr. Williams is Vice President of the American Congress on Surveying and Mapping. This article deals with some particular problems peculiar to Michigan but which are also applicable in many other states as well. Title men and women will see here an interesting presentation well worth the reading.

Land surveying is generally presumed to be an exact science, taught in colleges as a part of the engineering courses. Both assumptions are fallacious. Land surveying is not a major subject in any college, it is a cross between engineering and law, and we all know the inexactitude of the law. It is constantly-changed, both by the legislature and the courts. Engineering is not an exact science. Take for example, the simple matter of the length of a line between two points several hundred feet apart. If we send three pairs of skilled chainmen out to measure it on three different days, measuring to hundredths, we will get three different results, or even if we send the same party back over the line three times at least one measurement will differ from the others. Why? Difference in temperatures (steel expands and contracts), difference in pull changing the amount of sag in the tape, difference in selection of points to measure from at the intermediate tape lengths, failure to keep exactly on line; all of these will affect the measurement to some degree. Many of these factors can be compensated for and frequently are where the land values warrant the cost, but even then the results will not be exact, they will only be more nearly exact, they can't be exact because a point theoretically has neither length, breadth, or depth and you can't measure from or to something you can't see. Accuracy in measurement is entirely relative.

Written descriptions can be so prepared, however, as to give any degree of exactitude desired by the author. For example I can say: Commencing at the Northwest corner of Section 19, thence east along the north line of said section 245 feet, or 245.03 feet, or 245.035 feet, or 245.0347682 feet or any other extreme I felt foolish enough to use. But even keeping within the bounds of reason the failure to recognize this difference between the written word and actual delineation on the ground is one very, very common cause of disputes over property lines.

Most of our problems originate with the preparation of descriptions by people who either (1) do not recognize the fine differences in meanings of simple words, (2) do not go to the trouble of re-reading a description they have drafted to see whether or not it could be interpreted to mean other than they intend, or (3) do not understand how the land was originally laid out by the Deputy U. S. Surveyors and the practical problems involved in physically locating the land described.

As an example of the first, we have the frequent use of the cardinal directions, north, south, east, and west, which without qualification are ambiguous. Quite commonly we use them as lines parallel with the nearest section or street line, but they can equally well mean true north, that is on a line passing through the starting point and the north pole, or magnetic north, a line passing through the starting point and the magnetic pole.

As an example of the second we have descriptions such as: The east half of Lot 1, Block 2—except the

west five feet thereof. The exception could apply to the east half only, to the entire lot, or to the block. The latter may seem absurd, but consider the case where a street was platted along the west line of block 2 that was only 50 feet wide. It was decided to widen to 60 feet and the owner of block 2 gave 5 feet towards the widening. Later he sold "block 2, except the west 5 feet" and the grantee in turn sold lot 1, at the east end of the block as "Lot 1, block 2, except the west 5 feet" because the person who prepared the conveyance thought that he should keep it consistent with the instrument of acquisition. If it is desired to except the 5 feet from the east half of lot 1, it should be described as the east —— feet of lot 1 or lot 1 except the west —— feet. Another common example of this type of error is on sectional descriptions that read something like this: The northeast quarter and the west half of the SE¼ of Section 1. Do they mean a 240 or a 120 acre parcel? It's like writing what you intend to be a friendly or a routine business letter and have the recipient call you back in a vile temper as soon as he reads it because he reads into it something that you had no intention of saying or inferring.

A reading of the description by a second party or a critical reading of the typed copy will generally eliminate this type of error, but not always. We had a case recently in which there was a decided difference of opinion. The intent was to describe a 10-foot wide strip off the easterly side of a lot located on the south side of a curved street, the side lines of the lot being NW to SE diagonals and roughly parallel, and the south line being substantially an E - W line. I described it as "The easterly 10 feet, measured at right angles, of lot . . . ." If I had left out the phrase, measured at right angles" it would probably have been passed without question but I wanted to be sure of where that 10 feet was to be measured, because 10 feet along the street line and along the south line would not have given a parcel 10 feet in width as was verbally agreed. However, the examining attorney felt that the phrase in question was indefinite and that the line from which the right angle was taken should be mentioned. My position was that this was unnecessary in view of the fact that we were describing the easterly 10 feet of the lot. This is probably an example of the exception that proves the rule.

The third source of difficulties, a lack of understanding of how the land was originally laid out and subsequent legislation and decisions regarding the acceptance of the "monuments" set at that time is a rather broad subject to cover in a short period of time, but I will try to touch on those points with which you may not be familiar but which vitally affect the preparation of descriptions. A little history may not be amiss at this point.

After the Revolutionary War the new Congress found itself deep in debt to the men of the armed services who had made the victory possible. Continental currency was almost valueless and there was widespread dissatisfaction over settlement of the accounts owed. However, the great Northwest Territory had been ceded by England to the new nation and since the economy of the times was largely based on agriculture, it was only natural that it was decided to pay off in land. It was originally proposed in an Act passed by Continental Congress in 1785 to make townships 7 miles square but the Act was amended a week later to make them 6 miles square and that figure has since prevailed. In 1796, Congress passed an Act authorizing the establishment of a General Land Office and creating the office of Surveyor General, whose duty it was to cause the new lands of the west to be surveyed into townships and sections.

The first lands laid out under this system were in Ohio and Indiana. It was not until 1815 that the Surveyor General ordered Benjamin Hough to start from Fort Defiance, Ohio, and run a true meridian north into Michigan along the West line of the land ceded by the Indians at the Treaty of Greenville in 1795 and the Treaty of Detroit in 1807 for a distance of 114 miles. Today, that line passes

through the east part of Jackson, Michigan, and along the east line of Hillsdale, Clinton, Gratiot, Roscommon, Crawford, and Otsego Townships and is known as the Michigan Principal Meridian. In the same year, Alexander Holmes was instructed to run a standard parallel of latitude from a point near Detroit due west to the Indiana Boundary, the principal meridian Hough was going to run. Evidently it was later decided that this line would start at the 78 mile post on the principal meridian. This is a county line all the way across the state, being the line between Wayne and Macomb Counties at its eastern terminus and between Van Buren and Allegan Counties at its western terminus. It was this line that brought about the famous correspondence in which it was stated that the whole area, 6 townships north and south of the base line from the principal meridian to Lake St. Clair, was not worth the cost of surveying. Today this area includes all or parts of Jackson, Ingham, Livingston, Washtenaw, Lewanee, Monroe, Wayne, Oakland and Macomb Counties. Contracts for running out the township boundaries were awarded separately from those for the subdivision of the townships into sections, the former probably to the more experienced surveyors. The procedure on the survey of the township boundaries was to start at the southeast and southwest corners of the township as fixed by the survey of the next township south and measure north on the meridian lines six miles, setting and referencing stakes every half mile. The last one was not referred as it was only temporary, correct only for line. The northeast corner having been set on this line by the survey of the north boundary of the township to the east, a line was run west, about on a parallel of latitude and stakes set every half mile until it intersected the west meridian line. This intersection was the township corner irrespective of the distance either way to the last corners set on the two lines.

The subdivision survey was made somewhat differently. Commencing at the southwest corner of Section 36 a line was run north on the same compass bearing as was used for the east line of the township, a stake set at 40 chains and another at 80 chains (one mile) and then a line was run east parallel with the south line of the township to intersect the east town line, a stake being set at the quarter corner as they went by. Theorectically it should intersect at the stake set for the northeast corner of Section 36 on the boundary survey, but it seldom did, or, if it did happen to, the distance was incorrect. Apparently, there was no limit of accuracy prescribed in these early contracts although we seldom find lines reported more than 81 chains or less than 79 chains long on interior sections. In 1902, 33 feet in a mile was permissible and in 1930 about 8 feet was the limit. The ¼ corner was reset however as they went back to put it on line and half way between the two section corners. At least their notes say that this was done. The same procedure was followed as they moved north a mile, then threw a tie line to the east, went north another mile, threw over another tie line, and so on until they ran the sixth mile north where they intersected the north boundary, set a stake on line and noted the distance from the stake set on the boundary survey. This was the NW corner of Section 1 and no point was set for the N¼ post as there was no necessity for a tie line to the east.

This same procedure was followed for each of the succeeding mile lines, starting at the south end of the township and running north, tieing in to the east every mile except at the north boundary. On the last line, the east line of Section 31, after throwing the tie line east, they produced the same line west to the west boundary. South of Grand River they simply intersected on the west line the same as on the north line, but between 1831 and 1837 the instructions were changed and north of Grand River instead of intersecting the west line, they tied in to the corner previously set, re-set the ¼ post on line but not, of course, for distance, that remained 40 chains from the northeast corner of the section.

That is how it was done according to the book and should have resulted in nice squares, almost, a mile on each side except the north and west tiers and the south and east ¾ of these should be regular. But as I mentioned before, certain tolerances were permitted and certainly greater ones were taken. Why not? The land was cheap and the contracts were starvation cheap, a maximum of $3 per mile, the working conditions were rugged to say the least, and the possibility of the intensive use of the land that we know today could not have been predicted by anyone.

How does all this affect the writing and interpreting of legal descriptions today? Here is a good example. The description of a certain farm near the city commences 16 rods south of the west quarter post and goes east fifty rods and thence south 422 feet, west fifty rods, and north 422 feet to the beginning. North of this is a parcel that commences at the quarter post and goes east 50 rods, south 16 rods, west 50 rods and north 16 rods to the beginning. Apparently there is no conflict between these descriptions but since the angle between the section line and the quarter line is 90° 17' from south to east and since both descriptions have since been platted and this angle being shown in the bearings the examining attorney for the purchaser of the lots in the first description contends that since the boundaries are not perpendicular, the first description overlaps the second by the amount obtained by multiplying the sine of 0° 17' by 825 feet or about 4 feet at the east end of the property. Well, there are 320 rods in a mile and 50 rods is to 320 rods as 4 feet is to 25.6 feet which is about 40 links and well within the allowable error on the original survey. I readily agree that the descriptions are not exact, no description is that uses cardinal directions without qualifying them, but common practice from the start has assumed that section lines and quarter lines are true cardinal lines and in my opinion great weight must be given to this common understanding. Every surveyor and abstractor knows these lines are not parallel and perpendicular even though they appear to be in atlases and plat books but I have yet to find a case that has been carried up to the Supreme Court on this point, so I assume that our practice of turning on these cardinal directions, the light of adjacent descriptions and our knowledge of how the original surveys were made has met with the general approval of the lower courts and the councilors of the legal profession. If it had not, the records would be full of such cases.

The greatest difficulties come when some layman drafts descriptions and fifty years later an attorney tells him that he should have it surveyed for a better description. Then we get descriptions that read somewhat like this: "Commencing in the center of the Fallasburg Road 16 rods northeasterly along same from a point opposite the west edge of the Baptist Church parsonage as it was in 1857 or before the west wing was built thereon"; — or "Commencing in the center of Main Street 100 feet west from a point marked by a hole filled with quick lime";—or "Commencing at oak stake driven along a cedar pile on the south bank of the old channel of the Kalamazoo River" (there are probably a 100 piles or more along the south bank of the channel and one would have to search all of them to find the oak stake);—or "starting from the north end of the west wing wall of the dam on Mill Creek" (which has since been washed out);— or "commencing on the east shore of Murray Lake 40 feet northerly along same from the north side of Andrew's Big Red Cottage, thence northeasterly along the centerline of same as it existed before said filling took place."

With descriptions such as these, it is very necessary to use parole evidence, evidence aliunde and considerable guess work to locate the property. It may have been descriptions like these that prompted one of the members of our profession to write the following letter to his client's attorney:

Dear Sir:

Your letter of the 16th concerning the George Jones survey is at hand. The field work of this job is about two thirds complete, I hope. It is very slow and uncertain going. Where any

descriptions of the boundaries are extant, such descriptions are replete with errors, omissions and absurdities in general. As for evidences of occupancy, these are scanty and contradictory. In general this is a survey by induction, which is a good deal like psychic bidding in bridge, or to use a more apt parallel, like reconstructing the life of prehistoric man from a few broken pieces of pottery, some of which have been planted. It is a most interesting archeological study, but doubtless most annoying to Mr. Ernest Jones, who wishes to pass the title and receive the good and valuable considerations in the immediate future if not sooner. Nevertheless by diligent work and a modicum of divine guidance I hope to have a fairly reliable and true map of the agglomerated, amputated, mutilated, abused and misrepresented lands of Mr. and Mrs. George Jones within the next few weeks and even to have reasons for my faith in its reliability. In the meantime I may only hope for your patience and sympathy.

REPRINTS AVAILABLE—

Extra copies of the popular article, "United States Patents to Public Lands," by Glenn Cox, are now available at 50c each. There are also extra copies left of "Those Troublesome Federal Tax Liens," by Harold Reeve. Both of these have been ordered by hundreds of men and women in and out of our profession. You can place your order now by writing National Headquarters.

NATURE AND SCOPE OF FEDERAL TAX LIENS—THEIR EFFECT ON MORTGAGE FORECLOSURES

By WILLIAM F. MOSNER*

The problems of Federal Liens have been rendered in Title News on numerous occasions. Here is an additional treatment of this complex field with particular emphasis on the effect of federal liens on mortgage foreclosures. To the author, Mr. Mosner, and to the Maryland Law Review, Inc., of the University of Maryland School of Law, we express our thanks for permission to carry this fine article. It was originally carried in the Maryland Law Review, Volume 27, Number 1.

The broad field of federal taxation is so complex that even those lawyers who make tax law their specialty concentrate on only one subdivision of the entire field. This is made necessary by the constant amendments and additions to the tax laws which, together with the technical regulations promulgated by the Treasury Department, form such a body of statutory laws that complete familiarity with all of its facets is virtually impossible. A great number of our attorneys with general practices recognize these facts and will, more often than not, refer most tax problems to the specialists rather than delve into those forbidding grounds themselves. There is, however, one aspect of federal tax law, namely tax liens, that crops up daily in the most routine matters confronting the practicing attorney, and he should have at least a speaking acquaintance with the subject.

It is here proposed to discuss the general nature of tax liens, to speak briefly of their scope, and to point out the effect which tax liens have on mortgage foreclosures and the procedures by which the title coming through such foreclosures can be cleared of the Government's lien.

Assessment and Demand

When any of the various taxes imposed by Federal law is due and unpaid, the Internal Revenue Service is authorized to compute the amount due and assess the taxpayer therefor. A lien against the taxpayer in like amount then comes into being by virtue of the formal assessment which is made by the Secretary of the Treasury. The authority for this assessment is found in Section 6201,[1] and Section 6203[2] provides that the assessment is made legally biding by recording the computed liability of the taxpayer in the office of the Secretary or his delegate. By virtue of tax regulations[3] the proper delegate is the District Director of Internal Revenue for each collection district.

After the tax has thus been assessed and recorded, the District Director, within sixty days, must give notice thereof and make demand on the taxpayer for payment.[4] The authorities appear clear that such a formal demand is essential to a valid lien, for in *Detroit Bank v. United States*,[5] the Supreme Court, by *dictum*, makes the flat statement:

> "Under R.S. 3186 (now Sec. 6321) there is no lien and no notice can be recorded until there has been a demand by the collector and a refusal to pay it by the taxpayer."[6]

The court in *In Re Baltimore Pearl Hominy Co.*,[7] also by *dictum*, held that demand was a necessary prerequisite to a lien. But, in *Macatee, Inc. v. United States*,[8] the Court held that the demand is for the protection of the *taxpayer*, and that, although it must be made before the United

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States can enforce its lien, the demand does not necessarily have to be made *after* the time of assessment on the District Director's books to give the tax lien priority over other creditors. In this case the demand for payment was made *before assessment*, and the Court held that the lien arose at the time the District Director received the assessment list without further demand necessary.[9]

Scope of Tax Lien

Assuming the formal requisites of assessment and demand, the Federal statute specifically estalishes a lien for unpaid taxes in Section 6321 and, says the Supreme Court "[S]tronger language could hardly have been selected to reveal a purpose to assure the collection of taxes."[10]

Section 6321 provides:

> "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that many accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person."

The law is clear that the effect of this lien, once it is established as set out above, cannot be negated by State laws giving priority to special local liens arising after the tax lien has attached. The Federal law is the supreme law of the land, and in deciding priorities the courts have followed the *"first in time, first in right"* theory regardless of State statutes which might allow certain after-acquired liens (mechanics', state taxes, etc.) to relate back and take priority over tax liens already on the books.[11]

It is basic and elemental in any attempt to comprehend the scope of tax liens to realize fully that, from their inception, they are general and perfected liens on all personal and real property belonging to the taxpayer. The ordinary judgment is general and perfected as to realty, but it is no lien whatsoever on personalty until execution and seizure are accomplished. A junior tax lien, therefore, would take precedence over senior judgments as to all personal assets in the hands of the taxpayer at time of assessment; and if the holder of the judgment sought to execute on the personalty he would find it already encumbered with a perfected lien. The *Greenville* case describes the nature of the lien as follows: "After the lien provided by the statute attaches, the [taxpayer's] property has in a sense two owners, the taxpayer and, to the extent of the lien, the United States."[12]

There is no property of the tax-debtor which escapes the all-encompassing reach of the tax lien, and the Fourth Circuit has recently allowed the Government to levy administratively for payment of the tax on such intangible property as a debt due the taxpayer.[13]

In determining the property to which a tax lien attaches and property upon which levy for payment can be made, there is no necessity to be concerned with the various State exemption statutes. It is well settled that the individual States cannot pass laws exempting certain property or assets from creditors, and thereby defeat collection of Federal taxes.[14] The lien attaches, however, only to property owned by the taxpayer, and the courts will look to State law to determine ownership.[15] The tax lien does not, therefore, attach to property held by husband and wife as tenants by the entirety,[16] but after-acquired property does come within the scope of the tax encumbrance.[17]

Time Lien Arises

Although under Section 6303, a demand within sixty days after assessment is essential to make the lien valid, when this is accomplished, the lien itself attaches, not as of the date of demand, but as of the date of original assessment, pursuant to Section 6322:

> "Unless another date is specifically fixed by law, the lien imposed by Section 6321 shall arise at the

time the assessment is made and shall continue until the liability for the amount so assessed is satisfied or becomes unenforceable by reason of lapse of time."[18]

It is apparent here that the gap between time of assessment and time of demand might cause difficulty where other creditors' rights accrue during that period. The problem is mostly academic, however, as mortgagees, purchasers, pledges, and judgment creditors who may acquire their right during this period are protected by Section 6323 which requires a prior recording of tax liens to give them priority over such competing interests. And as to general creditors who extend credit prior to, during, and after the period in question, the tax lien would always take precedence, since general creditors have no lien whatsoever until they pursue their claims to judgment. Some difficulty might be encountered where a statutory state lien attaches and becomes choate during the period between assessment and demand; and, whether the tax lien would then date back to the time of assessment to give it priority under the "first in time, first in right" theory has not been decided by the courts.[19] *MacKenzie v. United States* recognizes the possible inconsistency between Sections 6321 and 6322, but the particular point was not decided.[20]

Following the reasoning of the *Macatee*[21] case which holds the demand is entirely for the protection of the taxpayer, it would appear that the tax lien should take priority from time of assessment regardless of interests intervening prior to demand. These interests have no more knowledge of the demand than of the assessment, and there would be little force to any argument that they were deprived of a substantial right because the demand was not made before their lien attached.

Recording Requirements and Priorities

Under the law discussed above, it would appear that the tax lien approaches omnipotence, and that lenders or buyers who do not check the District Director's assessment lists act at their peril in dealing with parties whose tax status is unknown. Indeed, such was originally the state of the law, and the unrecorded tax lien was held superior to all interests postdating it even though it enjoyed semi-secrecy by being recorded only on the assessment lists in the various District Directors' offices.[22] The jeopardy to other bona fide interests which resulted from such legislation was not allowed to long continue, however, and protection for four high priority classes is now afforded by the public notice required in Section 6323.[23] As a result of this statute, the Internal Revenue Service records its tax liens in every county wherein it believes the taxpayer may have assets; and such recording operates to give notice of the Government's claim in much the same manner as the civil judgment docket gives public notice of these liens. It has been held that under this statute the individual states may decree only the *place* in which the notice of lien must be recorded, but not the *manner* of execution of notices to be filed by the Government.[24]

There is little trouble with recording procedure under Section 6323 so far as realty is concerned since it has fixed situs, and the tax lien must necessarily be filed in the county where the land lies before it will attach thereto as against the parties mentioned in the statute.[25] Where personalty is involved, however, there may be some question as to where the lien should be recorded. The law says the notice should be filed in the county where the property is located, but it does not specify whether this means where located at the time the tax lien is put on record, where located at the time competing interests acquire their lien, or where located at the time priority is asserted. When we are dealing with movable chattels, the persons mentioned in Section 6323 could acquire their rights in a county within the United States where there may be absolutely no record of the tax lien. To require the Government to record in each of these counties would be an

impossible burden not required by the statute; and it seems that the most logical rule follows the general law that the situs of personalty follows the domicile of its owner, and if the tax lien is there recorded it attaches to chattels no matter where they may be located, even if in another state.[26] Where, however, there is personalty which has a distinct situs disconnected from the owner's domicile (such as stock in trade, a seagoing vessel, etc.), it would seem that the notice should be there recorded, regardless of domicile.[27] It will make an interesting case, indeed, when a Californian sells his automobile in Maryland on December second, and the Government then attempts to seize it from the purchaser because of a tax lien filed in the California county of domicile on December first!

Particular notice should also be given to the fact that under the uniform act the tax lien encumbrance is found not in the land, chattel or judgment records, but in a separate Federal Tax Lien Index.

In construing Section 6323, the courts have held its provisions mandatory, and the Government must comply with the recording provisions before another party obtains the status of p u r c h a s e r, mortgagee, pledgee, or judgment creditor, even though such other party may have actual knowledge of the tax liability.[28] But, once the Government has complied with these provisions, the individual states cannot defeat the collection priority by arbitrary legislation declaring certain lienors to be within the protection of Section 6323. For example, a local statute declaring that a state tax assessment, a mechanic's lien, or the like, has the force of a judgment is not controlling. The Supreme Court has declared that definition of the terms used in Section 6323 s h o u l d be uniform throughout the states, and "judgment creditor" in the statute is held to be intended in the usual, conventional sense of a judgment of a court of record, regardless of state legislation.[29] This does not mean, however, that State liens are outlawed by Section 6323 and are always inferior to the federal claim. Section 6323 is intended for the protection of the classes named therein, but it does not purport to give the Government a footstool with which to raise itself above other statutory liens of equal dignity.[30] The priority schedule may be compared to a hypothetical race where a state statutory lien wins (first in time), the federal tax lien is second, and a judgment third. If the federal tax lien is recorded, there is no change in position; but if it is unrecorded then the disqualification of Section 6323 places it third and the judgment takes over second position. Should the federal tax lien win and be recorded, it retains first position; but if it is unrecorded the judgment moves ahead of it although the statutory lien may not. The Government's failure to record can in no wise give an advantage to any but a mortgagee, pledgee, purchaser or judgment creditor, and its priority with state statutory liens is judged always from the date of assessment.

The above example presupposes that the statutory liens are choate, *i.e.,* specific and perfected, as they can otherwise be afforded no priority over the perfected tax lien.[31] An example of an inchoate lien is shown in *United States v. Security Trust and Savings Bank,*[32] where the Court hedl that a Federal tax lien, recorded after an attachment on original process but before judgment was rendered in the case, took precedence, as the attaching creditor did not have a perfected judgment prior to the recording of the tax lien, nor did he have a choate lien before the tax assessment arose. Similarly, he would not have had a choate lien if the assessment were made after the original attachment, as at that time the attaching creditor had not secured judgment and his lien was not, therefore, perfected. This case also holds that the effect of a lien is a Federal question, and a State's classification of a particular lien as specific and perfected is not binding against the United States. A state's classification of a lien as inchoate is held practically conclusive, however.[33] The con-

curring opinion of Justice Jackson in the *Security Trust case*[34] is interesting as it traces the history of Section 6321 and shows that originally it created a secret lien taking precedence even without recordation. The Supreme Court has recently held that a mechanic's lien, filed but not reduced to judgment, remains inchoate to that a tax lien subsequently recorded is entitled to priority.[35]

In dealing with realty, the schedule of priority among recorded encumbrances (including tax liens) can easily be determined by listing them in the chronological order of recordation. When we consider the judgment creditor in relation to his debtor's personalty, however, the problem is more difficult since judgment creditors have no lien on personalty regardless of the date of judgment. The institution of execution proceedings by such a creditor after the recordation of a tax lien would, therefore, find the personalty already subject to a specific encumbrance which must be satisfied before the assets can be applied to the judgment. The only manner in which the tax lien can be defeated by the judgment creditor under these circumstances is by the judgment creditor's reducing the personalty to his constructive possession through issuance and delivery of a *fi fa* to the Sheriff prior to the time the tax lien arises.[36]

Limitations

Having discussed in general the manner in which tax liens arise and the property to which they attach, we now pass to the important aspect of determining during what period the lien is operative. As we have seen, the lien arises upon assessment and demand, but it does not bind forever; and the law provides a period of limitations after which the Government cannot seek to collect its taxes.

Section 6501 provides the general rule that the tax must be assessed within three years after a return is filed or, if payable by stamp, within three years after the tax is due; and without this timely assessment, no court proceedings for the collection of tax can be instituted after the expiration of the three-year period. The exceptions to this general rule are:

1. False return—no limitation on collection.
2. Wilful attempt to evade tax—no limitation on collection.
3. Failure to file return—no limitation on collection.
4. Waiver agreement—limitations tolled by taxpayer's waiver.
5. For other exceptions, see further provisions of Section 6501.

If the assessment has been made within the time prescribed, the lien arises; but, even though it attaches to all of the taxpayer's property, it does not attach with finality, and collection of the tax must be made within the period prescribed in Section 6502 which provides:

> "(a) Length of period.—Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun—
>
> (1) within six years after the assessment of the tax, or
>
> (2) prior to the expiration of any period for collection agreed upon in writing by by the Secretary or his delegate and the taxpayer before the expiration of such six-year period (or, if there is a release of levy under Section 6343 after six-year period, then before such release).
>
> The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

It can be seen from this statute that in the ordinary case of nonpayment of taxes where a return was filed, the Government has nine years in which to initiate collection proceedings—three years under Sec-

tion 6501 to assess, and six years thereafter to collect. In this regard it should be noted that the filing of a tax return does not begin the running of collection limitation, but rather the critical date is the time the assessment is made on the books of the Treasury Department.[37] And in cases where no return whatsoever is filed, the Government must still make its collection within six years after it puts the assessment on the books.[38]

The ambit of Federal tax liens has been shown to be much broader than that of ordinary judgments, but Section 6502 affords them a considerably shorter life-span. In order, however, to continue the lien effective, the Government need only bring suit on the tax debt within the six-year period and have the tax lien reduced to judgment. Collection may then be enforced at any time,[39] and the judgment carries with it all the characteristics of the original lien, extending also to personalty.[40]

The Courts have been most liberal in construing the "proceeding in court" phrase used in Section 6502, and have held that filing a claim for unpaid taxes of the deceased in Probate Court is such a proceeding as will toll limitations.[41] Even filing a tax claim with the administrator of an estate is a "proceeding in court."[42]

Where, however, the assessment is not made within the time designated in Section 6501 and/or collection is not enforced as provided by Section 6502, then the lien expires as it is "unenforceable by reason of lapse of time."[43]

Release and Discharge

We come now to a point which has apparently escaped the attention of many attorneys engaged in clearing titles and foreclosing mortgages—the manner in which property may be released from the cloud of a tax lien.

Considering first the statutory law, we find the provisions for a certificate of release set out in Section 6325. The release may be granted if:

1. The tax is paid or is legally unenforceable.[44]
2. Bond is furnished assuring payment of the tax.
3. Other property of the taxpayer is double the value of both the tax lien and other liens superior to that of the Government.
4. The Government is paid, in part satisfaction of the whole debt, the value of the specific property for which discharge is sought.
5. It is determined that the tax lien has no value as to the specific property for which discharge is sought.

These alternatives are the only direct methods provided by the Internal Revenue Code for the release of the statutory lien created by Section 6321, and their significance is often times overlooked by the holders of superior encumbrances. The latter, such as purchase money mortgagees, are lulled into a sense of invulnerability by state laws which allow them to completely deplete the security when foreclosure is necessary, without regard for or notice to inferior lienholders.

The Maryland law, for instance, gives the purchaser at a foreclosure sale the same title as was held by the mortgagor when the mortgage was recorded[45] and this so effectively disposes of junior encumbrances that the holders thereof do not have to be joined in or notified of the foreclosure action.[46] The purchaser at such sale takes his title free and clear of all junior mortgages and judgments, and to assure himself of clear title it is only necessary that he check the records *prior* to the recording date of the instrument through which his title flows. If there are no senior encumbrances, the liens of those which are junior are wiped out as to the particular p r o p e r t y involved, and there is no necessity that the holders of the inferior liens be joined in the foreclosure proceedings. The law is so well settled in this regard as not to admit of argument, and the theory is basic with those engaged in title work.

When, however, the junior encumbrance is a federal tax lien, the situ-

ation is drastically altered, but to even discuss the point with title attorneys unfamiliar with tax law smacks of unconstitutionality and even approaches heresy. However, it is quite apparent that the foreclosure of a senior mortgage does not authorize the Secretary of the Treasury to issue a certificate of release under Section 6325 — he may only do so under the five conditions set out above. The foreclosing mortgagee could, under the fifth alternative, apply for a discharge as to his particular property by showing that its market value is not equal to the mortgage indebtedness; but, failing this, the normal foreclosure does not affect the tax lien and it remains in full force and effect against the property in the hands of the purchaser.[47]

The cases cited above affirm the theory of law that the individual states cannot, by statute or case law, exempt their citizens from the will of the sovereign. The tax lien is created by federal statute, and once it takes hold it cannot be released, wiped out, or derogated from except as provided by federal law.[48]

Assuming that a foreclosure has gone through without release of the tax lien, what is the status of the purchaser's title? It is, of course, clear of other junior liens by virtue of state law, but the tax lien still attaches for the period discussed under "Limitations."[49] If the Government chose to enforce its lien and force sale of the property, it could do so at any time and take advantage of possible appreciation in value. The new owner could not,ofcourse,apply for a discharge after he purchases at a foreclosure sale, as that has wiped out other encumbrances and he could not show the Secretary, as required by Section 6325 (b) (2) (B) that the tax lien has no value as to his specific property. There is a provision of the Internal Revenue Code, Section 7324, which does allow for such situations and provides a means for the owner to clear his title. The procedure, however, is cumbersome. First, the purchaser must request the Secretary of the Treasury to file an action to clear title and then wait six months for the inevitable refusal. After the Secretary has refused to initiate the suit, the owner must petition the District Court to be allowed to do so in his own name, and if his petition is allowed, the action may then be brought. This is not the end of the purchaser's troubles, however, for if the suit establishes a claim existing in the United States, then the Court must order sale of the property and distribute the proceeds according to the priorities as they may be found. In *Metropolitan Life Ins. Co. v. United States*,[50] the Circuit Court of Appeals held that under this statute it was powerless to decree clear title in the purchaser even if it found that his superior interest in the fair market value of the property, flowing through the mortgagee, would completely wipe out that of the United States. The Court said that in order to eliminate the tax lien it must order a new sale of the property in a proceeding to which the United States had been made a party.

A different result was reached in a district court case in Pennsylvania where the Court felt that, under the provisions of 28 U. S. C. A. Sec. 2410, it could decree clear title to the purchaser without sale where it was clear that the tax lien would not share in the proceeds if the property were resold under the original mortgage.[51] Had the value of the property increased to the point where sale would produce a surplus over the mortgage indebtedness, however, the court would not reach the same result.

In either case, the proposition stands that the purchaser has bought himself a law suit along with his property, and he, no doubt, has few kind words for the heavy armor in which Congress has sheathed the tax lien. But, even though the necessity for collecting t a x e s makes such strong measures necessary, recognition is given to mercantile and commercial problems, and the federal law does provide a relatively simple way for disposing of tax liens before the title to property becomes enclouded and unmerchantable.

Under the provisions of Title 28, U. S. C. A. Section 2410, the United States has consented to be sued, in either state or federal court, by any person desiring to quiet title to his property or to foreclose a mortgage or other lien. The statute applies to both realty and personalty, and provides that a judicial sale under this section has the same effect regarding discharge of the Government's lien as is given to such matters by local law. In comparison to the methods set out in Sections 6325 and 7424 of the Internal Revenue Code, this manner of procedure appears to be the least cumbersome, the least expensive, and the most expedient way to dispose of junior tax liens; and the holder of a lien *inferior* to that of the Government may likewise use this section to initiate foreclosure action.

It must, however, be borne in mind that when the United States consents to be sued, the suit must be in strict accord with the consent given. Section 2410 requires specifically:

1. A complaint describing with particularity the nature of the Government's lien — the mere filing of a mortgage with directions to the clerk to docket a foreclosure action against the mortgagor and the government would not be sufficient.
2. Naming the United States as party-defendant. — Neither the Director of Internal Revenue nor the Secretary of the Treasury is a proper party to the suit.[52]
3. Service of the complaint upon the local United States Attorney with copies mailed to the Attorney General at Washington.
4. An allowance of sixty days for the Government to file its answer—not some lesser time prescribed by state practice.
5. A period of one year from date of sale within which the United States may redeem the property sold.

With these requirements in mind, it would appear necessary that the preliminary steps to foreclosure or execution on judgment include a search of the Federal Tax Lien Index to the last entry and not merely to the date of the mortgage or judgment. Special attention should also be given to judgments against the owner to preclude the possibility that such judgments might result from tax liens and cloud title in the future. If such encumbrances are discovered, then the interested party might apply for discharge under Section 6325 by showing that the proceeds of sale would leave nothing for the Government after satisfaction of the mortgage or judgment. Assuming that such is not the case, or that the interested party wishes to take immediate action and not await a possibly delayed answer regarding the discharge from the Internal Revenue Service, then suit may be filed in either state or federal court. Both the mortgagee and the United States should be made parties defendant, and a concise explanation of the Government's interest will suffice to satisfy the statute. State law probably does not require service of process on the mortgagee, but a copy must be mailed to the Attorney General in Washington, D.C., and service (preferably two copies of the pleadings) made on the local United States Attorney. The ordinary advertisement and notice of sale will probably have to be altered as the Government is allowed sixty days in which to answer the suit, but personal contact with the United States Attorney may result in an agreement to speed up the answer and allow an early sale. The advertisement should also inform prospective purchasers of the one-year redemption period.

When these requirements have been satisfied, there is no further departure from normal procedure, and the sale may progress without fear that a clouded and unmerchantable title might arise at some future date.

Summary

As can be seen from the decisions cited herein, the Courts have agreed with the words of the Supreme Court — "[Stronger language could

hardly have been selected to reveal a purpose to assure the collection of taxes"[53]] — and construed the provisions of the Internal Revenue Code to carry out this avowed purpose.

We should bear in mind, then, that when a tax lien enters into the picture, state statutes and precedents bow out. The effect of the lien, its inception, duration, and release are all matters controlled by federal law, and every competing interest is bound thereby. The most salient features to be remembered are:

1. The tax lien is a general and perfected encumbrance reaching all realty and personalty, including that after-acquiring, of the taxpayer.

2. Even though it is unrecorded, a tax lien takes precedence over junior competing interests except those of mortgagees, pledgees, purchasers and judgment creditors.

3. The tax lien expires six years after assessment, unless there are proceedings in court within that period to preserve the rights of collection.

4. Administrative discharge of a tax lien may be accomplished as spelled out in 26 U. S. C. A. 6325.

5. Judicial discharge of a tax lien may be accomplished by making the United States a party to the court action and following the provisions of 28 U. S. C. A. 2410.

1 The sections referred to herein, unless otherwise idicated, are contained in the Internal Revenue Code of 1954; Title 26, United States Code Annonated (1955 and Supp., 1956).

2 *Ibid.*

3 Fed. Tax Reg. (1956), §301.6201-1.

4 Sec. 6303.

5 317 U. S. 329 (1943).

6 *Ibid*, 335. Parenthetical material added.

7 5 F. 2d 553 (4th Cir., 1925). See also United States v. Ettelson, 159 F. 2d 193 (7th Cir., 1947); In Re Holdsworth, 113 F. Supp. 878 (D. C. N. J., 1953); United States v. Eiland, 223 F 2d 118 (4th Cir., 1955).

8 214 F. 2d 717 (5th Cir., 1954.)

9 It should be noted in regard to Federal estate taxes that there does not have to be assessment and demand before a lien arises. By virtue of Sec. 6324, the lien attaches automatically *at date of decedent's death* upon his gross estate (except the part used for costs of administration and charges against the estate allowed by court) — including property held as *tenants by the entirety*. As held in the Detroit Bank case, *supra*, n. 5, this lien for estate taxes formerly did not have to be recorded to be valid against subsequent purchasers or mortgagees without notice; but in 1942 the Internal Revenue Act was amended [now Sec. 6324(2)] to release the estate tax lien from such parts of the gross estate as are transferred by heirs, legatees, surviving spouse, executors, etc. (to bona fide purchasers) without payment of the estate tax. Under the new law, the tax lien, in addition to property still in the estate, would now attach to all property owned by the *transferor*, and the lien is good for a period of ten years.

10 Glass City Bank v. United States, 326 U. S. 265, 267 (1945).
11 United States v. City of Greenville, 118 F. 2d 963 (4th Cir., 1941).

12 *Ibid*, 965.

13 See United States v. Eiland, *supra*, n. 7, where a petition filed in bankruptcy after the levy was held not to affect the Government's lien rights. The cash surrender value of an insurance policy is likewise subject to the tax lien; United States v. Behrens, 130 F. Supp. 93 (D. C. E. D. N. Y., 1955).

14 Cannon v. Nicholas, 90 F. 2d 934 (10th Cir., 1935); Knox v. Great West Life Assur. Co., 212 F. 2d 784 (6th Cir., 1954).

15 Cannon v. Nicholas, *ibid;* Poe v. Seaborn, 282 U. S. 101 (1930); United States v. Hutcherson, 188 F. 2d 326 (8th Cir., 1951); Jones v. Kemp, 144 F. 2d 478 (10th Cir., 1944).

16 United States v. Hutcherson, *ibid;* Shaw v. United States, 94 F. Supp. 245 (D. C. W. D. Mich., 1939).

17 Glass City Bank v. United States, *supra*, n. 10.

18 See discussion, *infra, circa*, p. 12, concerning limitations as to the meaning of "unenforceable by reason of lapse of time."

19 MacKenzie v. United States, 109 F. 2d 540 (9th Cir., 1940).

[20] See also United States v. New Britain, 347 U. S. 81 (1954) and Filipowicz v. Rothensies, 43 F. Supp. 619 (D. C. E. D. Pa. 1942).

[21] 214 F. 2d 717 (5th Cir., 1954).

[22] United States v. Snyder, 149 U. S. 210 (1893).

[23] Sec. 6323 provides:

(a) Invalidity of Lien Without Notice. — Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) Under state or territorial laws. — In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) 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 or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(3) With clerk of district court for District of Columbia. — In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) Form of notice. — If the notice filed pursuant to subsection (a)(1) is in such form as would be valid if filed with the clerk of the United States District Court pursuant to subsection (a)(2), such notice shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien.

(c) Exception in case of securities.
(1) Exception. — Even though notice of a lien provided in section 6321 has been filed in the manner prescribed in subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

(2) Definition of security. — As used in this subsection, the term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by 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.

(d) Disclosure of amount of outstanding lien. — If a notice of lien has been filed under subsection (a), the Secretary or his delegate is authorized to provide by rules or 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.

Following the original enactment of this law, the State of Maryland adopted the Uniform Federal Tax Lien Registration Act, Md. Code (1951), Art. 17, Secs. 12-18, to comply with subparagraph (a)(1), and it provides in general:

"12. Notices of liens for taxes payable to the United States of America and Certificates discharging such liens shall be filed in the office of the Clerk of the Circuit Court of the county, and the Clerk of the Superior Court of Baltimore City, within which the property subject to such lien is situated.

"13. When a notice of such tax lien is filed, the Clerk of the Circuit Court of the county, and the Clerk of the Superior Court of Baltimore City, shall forthwith enter the same in an alphabetical Federal Tax Lien Index, showing on one line the name and residence of the taxpayer named in such notice, the Collector's serial number of such notice, the date and hour of filing, and the amount of tax with the interest, penalties and costs. He shall file and keep all original notices so filed in numerical order in a file or files, and designated Federal Tax Lien Notices.

"14. When a certificate of discharge of any tax lien issued by the Collector of Internal Revenue or other proper officer, is filed in the office of the Clerk of the Circuit Court of the county, and the Clerk of the Superior Court of Baltimore City, where the original notice of lien is filed, said Clerk of the Circuit Court of the county, and the Clerk of the Superior Court of Baltimore City, shall enter the same with date of filing in said Federal Tax Lien Index on the line where notices of the lien so discharged is entered, and permanently attach the original certificate of discharge to the original notice of lien.

"15. Said Federal Tax Lien Index and file or files for said Federal Tax Lien Notices shall be furnished to the Clerk of the Circuit Court of the county, and the Clerk of the Superior Court of Baltimore City, in the manner now provided by law for the furnishing of books in which deeds are recorded.

"16. Sections 12-18 are passed for the purpose of authorizing the filing of notices of liens in accordance with the provisions of Section 3186 of the Revised Statutes of the United States, as amended by the Act of March 4, 1913, 37 Statutes at Large, page 1016, and any Acts or parts of Act amendatory thereof."

24 Union Planters National Bank v. Godwin, 140 F. Supp. 528 (D. C. E. D. Ark., 1956).

25 Although there are apparently no reported decisions on the point, it is the opinion of the Internal Revenue Service that purchase money mortgages take priority over tax liens, even where the tax lien is of record prior to the purchase money mortgage. There is danger of clouded title in the event foreclosure takes place, however, and the manner in which to prevent this is discussed later herein, *circa*, pp. 12 *et seq.*

26 Grand Prairie State Bank v. United States, 206 F. 2d 217 (5th Cir., 1953); United States v. Spreckels, 50 F. Supp. 789 (D. C. N. D. Cal., 1943); Investment & Securities Co. v. United States, 140 F. 2d 894 (9th Cir., 1944).

27 Gulf Coast Marine Ways v. The J. C. Hardee, 107 F. Supp. 379 (D. C. S. D. Tex., 1952); United States v. The Pomere, 92 F. Supp. 185 (D. C. D. Hawaii, 1950).

28 United States v. Beaver Run Coal Co., 99 F. 2d 610 (3rd Cir., 1938). In revising the Internal Revenue Code into the Act of 1954, the House attempted to make the lien binding upon those with notice even though it was not recorded. See 3 U. S. Code Cong. and Adm. News (1954), p. 4554. The Senate deleted this change, however, (p. 5224), the Conference agreed with the Senate, and the final bill did not change prior law.

29 United States v. Gilbert Associates, 345 U. S. 361 (1953).

30 United States v. Peoples Bank, 197 F. 2d 898 (5th Cir., 1952).

31 United States v. New Britain, 347 U. S. 81 (1954).

32 340 U. S. 47 (1950).

33 See also United States v. Acri, 348 U. S. 211 (1955); U. S. A. v. Eisenger Mill & Lumber Co., 202 Md. 613, 98 A. 2d 81 (1953)

34 *Supra*, n. 32, *conc. op.* 51.

35 United States v. White Bear Brewing Co., Inc., 350 U. S. 1010 (1956), *reh. den.* 351 U. S. 958 (1956); United States v. Colotta, 350 U. S. 808 (1955), rev'g. 79 So. 2d 474 (Miss., 1955).

36 United States v. Levin, 128 F. Supp. 465 (D. C. Md., 1955); United States v. Fisher, 93 F. Supp. 73 (D. C. N. D. Cal., 1948); *cf.* Gilbert Associates, *supra*, n. 29.

37 Davidovitz v. United States, 58 F. 2d 1063 (Ct. Cl. 1932).

38 United States v. Updike, 281 U. S. 489 (1930).

39 United States v. Havner, 101 F. 2d 161 (8th Cir., 1939); In Re Bowen, 58 F. Supp. 286 (D. C. E. D. Pa., 1944); United States v. Caldwell, 74 F. Supp. 144 (D. C. M. D. Tenn., 1947); Investment & Securities Co. v. United States, 140 F. 2d 894 (9th Cir., 1944).

40 Investment & Securities Co. v. United States, *ibid.*; United States v. Ettelson, 67 F. Supp. 257 (D. C. E. D. Wis., 1946), aff'd. 159 F. 2d 193 (7th Cir., 1947); United States v. Caldwell, *ibid.*

41 United States v. Ettelson, *ibid.*

42 United States v. First Nat. Bank, 54 F. Supp. 351 (D. C. N. D. Ohio, 1943).

43 *Cf.* Sec. 6322, discussed *supra*, *circa*, p. 4.

44 See discussion under Limitations, *supra*, *circa*, p. 10.

45 Md. Code (1951), Art. 66, Sec. 7(c).

46 Chilton v. Brooks, 71 Md. 445, 18 A. 868 (1889); Madore v. Thompson, 155 Md. 676, 142 A. 529 (1928).

47 See Oden v. United States, 33 F. 2d 553 (D. C. W. D. La., 1929); Michigan v. United States, 317 U. S. 338 (1943); Metropolitan Life Ins. Co. v. United States, 107 F. 2d 311 (6th Cir., 1939); Integrity Trust Co. v. United States, 3 F. Supp. 577 (D. C. N. J., 1933); United States v. Kensington Shipyard & Drydock Corp., 169 F. 2d (3rd Cir., 1948); Miners Sav. Bank of Pittston. Pa. v. United States, 110 F. Supp. 563 (D. C. M. D. Pa., 1953), and cases collected in 105 A. L. R. 1244; 174 A. L. R. 1373, 1403.

48 Miners Sav. Bank of Pittston, Pa. v. United States, ibid, *570.*

49 *Supra*, *circa*, p. 10.

50 107 F. 2d 311 (6th Cir., 1939).

51 Miners Sav. Bank of Pittston, Pa. v. United States, *supra*, n. 47, 572.

52 Maryland Casualty Co. v. Charleston Lead Works, 24 F. 2d 836 (D. C. E. D. S. C., 1928); Czieslik v. Burnet, 57 F. 2d 715 (D. C. E. D. N. Y., 1932).

53 Glass City Bank v. United States, 326 U. S. 265, 267 (1945).

Coming Events

Date	Meeting	Where To Be Held
May 2 - 4	Pennsylvania Title Association	Haddon Hall Hotel Atlantic City, N. J.
May 9 - 11	California Land Title Association (50th Anniversary)	Biltmore Hotel Santa Barbara, Calif.
May 12 - 14	Iowa Title Association	Savery Hotel Des Moines, Iowa
May 16 - 17	American Right of Way Association	Conrad-Hilton Hotel Chicago, Ilinois
May 23 - 25	Texas Title Association	Shamrock-Hilton Hotel Houston, Texas
June 7 - 8	Central States Regional Conference	Edgewater Beach Hotel Chicago, Illinois
June 7 - 8	New Mexico Title Association	La Fonda Hotel Santa Fe, New Mexico
June 9 - 14	Insurance Commissioners	Haddon Hall Hotel Atlantic City, N. J. (also Chalfonte)
June 12 - 14	Illinois Title Association (50th Anniversary)	Drake Hotel Chicago, Illinois
June 19 - 22	Oregon Land Title Association	Bend, Oregon
June 28-29	Colorado Title Association	Glenwood Springs, Colo.
June 23 - 25	Michigan Title Association	St. Clair Inn St. Clair, Michigan
June 27-28	Idaho Land Title Association	Shore Lodge McCall, Idaho
August 2 - 3	Montana Title Association	Northern Hotel Billings, Montana
Sept. 13 - 14	Washington Land Title Association	Wenatchee, Washington
October 13-17	**American Title Association Annual Convention**	**Hotel John Marshall Richmond, Virginia**
Nov. 10 - 12	Ohio Title Association	Sheraton Mayflower Akron, Ohio

DATES TO REMEMBER:—

OCTOBER 13 - 17, 1957

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