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Tax Regs in Plain English

IRS Restructuring and Reform Act of 1998

3106 - Civil Action for Release of Erroneous Lien

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Section 3106

A. Provision covered: § 3106 -- Civil Actions for Release of Erroneous Lien -- I.R.C. §§ 6325(b)(4), 6503(f), 7426(a)(4).

B. Background: Prior to the Supreme Court's decision in *United States v. Williams*, 115 S.Ct. 1611 (1995) the provisions governing refund suits were generally held to apply only to the taxpayer against whom the tax had been assessed and collected. In *Williams*, the Supreme Court ruled that a person who paid a tax in order to obtain the release of a federal tax lien on her property could bring a suit for refund even if she were not the person against whom the tax was assessed. The court reasoned that an action to recover a tax that has been "erroneously collected" fell squarely within refund suit jurisdiction. Congress believed that non-taxpayers need resolution on other important issues that remain. Accordingly, the provision was enacted to provide relief similar to that provided to third parties who are subject to a wrongful levy on property.

C. Change(s): Section 3106 adds a new I.R.C. § 6325(b)(4) which allows a non-taxpayer owner of property, such as a nominee or transferee, to obtain discharge of property from the effect of a tax lien filed against a taxpayer. The owner must deposit cash or give an acceptable bond under I.R.C. § 7101 sufficient to cover what the Service believes to be the value of the taxpayer's interest in that property. The owner may bring a civil action under new I.R.C. § 7426(a)(4), within 120 days after the discharge certificate is issued, challenging the Service's determination of the value of the taxpayer's interest in the

property. If the district court agrees that the Service's determination of value exceeds the actual value of the taxpayer's interest in the property, it can order a release of the bond or a refund of the cash deposit to the extent that it exceeds the court's determination of value. Interest must be paid on any portion of the cash deposit which is refunded to the owner. If the owner does not bring suit within the 120 day period, the Service may within 60 days after that period, apply the amount deposited or collect on the bond to satisfy the taxpayer's liability and refund any excess, with interest, to the owner. Pursuant to new I.R.C. § 6325(b)(4)(B), the Service must release the bond or refund the cash deposit, with interest, if it determines that the taxpayer's liability can be satisfied from other sources or that the taxpayer's interest in the property is less than it previously determined. Section 3106 also amends I.R.C. § 6503(f) to suspend the period of limitations on collection against the taxpayer for the value of his or her interest in the property from the time the owner becomes entitled to a certificate of discharge to the earlier of the time the Service no longer holds the cash deposit or bond or the date on which the decision in the owner's civil suit against the Service, if any, becomes final.

D. Impact: We expect a very limited impact from this provision which permits co-owners, transferees and nominees to seek discharge of tax lien by payment of a cash deposit or by the posting of a bond.

E. Necessary Actions

1. Actions/Procedures: Revise IRM procedures and review Discharge Forms.
2. Things we CAN do: The Service needs to be prepared to make a determination of a taxpayer's interest in any property on which a third-party may seek a discharge of lien.

F. Other Special Comments: Pen and ink changes to Form 669-B, Certificate of Discharge of Property from Federal Tax Lien, may be used.

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