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Taxation-Federal Tax Liens--Priority of Senior Federal Lien Over Local Tax Lien in Mortgage Foreclosure

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TAXATION—FEDERAL TAX LIENS—PRIORITY OF SENIOR FEDERAL LIEN OVER LOCAL TAX LIEN IN MORTGAGE FORECLOSURE—Plaintiff, a first mortgagee, instituted a foreclosure proceeding joining the mortgagors, a second mortgagee, several judgment creditors, and the United States Government. The Government's lien had been recorded subsequently to the first mortgage but had attached prior to the accrual of various local real estate taxes. Plaintiff's motion for summary judgment, that the premises be sold free of the United States lien but subject to all local real property taxes, was

granted.[1] After reversal on appeal,[2] the court again granted summary judgment and effected the same distribution, this time by directing that all local real property taxes be paid as expenses of sale[3] pursuant to section 1087 of the New York Civil Practice Act.[4] The appellate division modified this judgment so as to give the United States priority over the local tax liens, and affirmed.[5] On appeal to the court of appeals, *held*, reversed, two judges dissenting. State law determines the interest held by the taxpayer, the procedure in lien foreclosure and the method of payment. A federal tax lien is enforceable only against the surplus from a mortgage foreclosure sale in which the mortgagor has an interest. Such a lien does not, therefore, have priority over subsequently accruing local real property taxes which are deemed, under state law, to be expenses of a foreclosure sale. *Buffalo Savings Bank v. Victory*, 11 N.Y.2d 31, 181 N.E.2d 413, 226 N.Y.S.2d 382 (1962), *rev'd per curiam sub nom. United States v. Buffalo Savings Bank*, 371 U.S. 229 (1963).

Section 6321 of the Internal Revenue Code[6] creates a general lien on all property and rights in property of a taxpayer for all unpaid federal taxes for which provision is not otherwise specifically made.[7] The purpose of this section is to immobilize all of the taxpayer's property until his federal taxes are paid or enforcement steps are taken to protect the Government's priority. The lien attaches automatically upon the Commissioner's demand for payment and relates back to the date of assessment, operating, in effect, as a "secret lien" with priority over all subsequent creditors, with or without notice.[8] In recognition of the blatant inequities

1 Buffalo Sav. Bank v. Victory, 17 Misc. 2d 564, 186 N.Y.S.2d 960 (Erie County Ct. 1959).

2 Buffalo Sav. Bank v. Victory, 11 App. Div. 2d 158, 202 N.Y.S.2d 70 (1960).

3 "Where a judgment rendered in an action to foreclose a mortgage upon real property directs a sale of the real property, the officer making the sale must pay out of the proceeds . . . all taxes, assessments and water rates which are liens upon the property sold . . . . [T]hese payments are deemed expenses of sale . . . ." N.Y. CIV. PRAC. ACT § 1087.

4 Buffalo Sav. Bank v. Victory, 26 Misc. 2d 443, 206 N.Y.S.2d 518 (Erie County Ct. 1960).

5 Buffalo Sav. Bank v. Victory, 13 App. Div. 2d 207, 215 N.Y.S.2d 189 (1961).

6 "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount . . . 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." INT. REV. CODE of 1954, § 6321. The tax lien statute is commonly traced to 14 Stat. 107 (1866), but substantially the same statute appeared in 13 Stat. 470-71 (1865).

7 INT. REV. CODE of 1954, § 6324(a), (b), provides for special liens for estate and gift taxes, and § 5004 for taxes on distilled spirits. The special tax liens are not restricted by the provisions of the general tax lien. See Detroit Bank v. United States, 317 U.S. 329 (1943). In addition, there are provisions for priority in case of administration of insolvent debtors' estates outside of bankruptcy, REV. STAT. § 3466 (1875), 31 U.S.C. § 191 (1958), and in bankruptcy, BANKRUPTCY ACT § 64(a), 30 Stat. 563 (1898), as amended, 11 U.S.C § 104(a)(4) (Supp. IV, 1963).

8 INT. REV. CODE of 1954, § 6322. See generally Anderson, *Federal Tax Liens—Their Nature and Priority*, 41 CALIF. L. REV. 241-45 (1953); Felton, *What the Supreme Court Court Says About the Federal Tax Lien*, 37 TAXES 45 (1959); Sarner, *Correlation of Priority and Lien Rights in the Collection of Federal Taxes*, 95 U. PA. L. REV. 739 (1947).

occasioned by the priority automatically accorded the secret lien, Congress, in 1913, provided that the lien should not be effective as against mortgagees, purchasers, and judgment creditors, until notice of the lien had been made a matter of public record.[9] Pledgees were later added to the list of protected classes.[10] Since then Congress has taken no further action toward the adoption of a concise standard of priority, and the duty of formulating standards for determining the priority of federal tax liens has accordingly devolved upon the federal courts,[11] which have unequivocally recognized that federal liens could be subordinated to prior non-federal liens under the doctrine "first in time, first in right."[12] In determining exactly when non-federal liens were perfected for priority purposes, the courts incorporated into section 6321 the "choateness doctrine" which had initially been developed to determine the priority of debts due the United States from an insolvent taxpayer.[13] This doctrine is applicable only to non-federal liens and requires that, for them to be perfected, not only must the lienor be identified and the amount of the lien certain, but the property to which the lien attaches must be specifically ascertained.[14]

The peculiar rules applicable in determining the relative priority of federal tax liens frequently engender a complex situation of circular priority.[15] The circularity arises, for example, when a federal tax lien is subsequent and therefore subordinate to a mortgage, but thereafter a state tax lien is imposed which is given priority over the mortgage by

9 37 Stat. 1016 (1913), as amended, 26 U.S.C. § 6323 (1958). When this legislation was passed, it was noted that the tax lien was so comprehensive that without remedial legislation all persons dealing with title to real estate were faced with the impossible task of ascertaining whether any person who owned the real estate at any time had been delinquent in the payment of his taxes. H.R. REP. No. 1018, 62d Cong., 2d Sess. (1912). This amendment is now embodied in INT. REV. CODE of 1954, § 6323. *Cf.* United States v. Snyder, 149 U.S. 210 (1893).

10 53 Stat. 882-83 (1939), as amended, 26 U.S.C. § 6323 (1958).

11 The question of federal priority is a federal question. See, *e.g.*, Aquilino v. United States, 363 U.S. 509 (1960); United States v. Acri, 348 U.S. 211, 213 (1955); United States v. Security Trust & Sav. Bank, 340 U.S. 47, 49 (1950). The United States may be joined in a foreclosure proceeding when it has a claim on the premises involved, 28 U.S.C. § 2410(a) (1958) (state proceeding); FED. R. CIV. P. 4(d)(4) (federal proceeding). See generally Plumb, *Federal Tax Collection and Lien Problems* (pts. 1-2), 13 TAX L. REV. 247, 281, 459, 529 (1958).

12 *E.g.*, United States v. City of New Britain, 347 U.S. 81, 85 (1954); Rankin v. Scott, 25 U.S. (12 Wheat.) 177 (1827). *Cf.* Kennedy, *The Relative Priority of the Federal Government: The Pernicious Career of the Inchoate and General Lien*, 63 YALE L.J. 905, 925 n.116 (1954).

13 REV. STAT. § 3466 (1875), 31 U.S.C. § 191 (1952). See generally United States v. Texas, 314 U.S. 480 (1941); County of Spokane v. United States, 279 U.S. 80 (1929); Kennedy, *supra* note 12, at 905-18.

14 Until United States v. Security Trust & Sav. Bank, 340 U.S. 47 (1950), when the Supreme Court adopted the choateness test for § 6321, the lower courts had ignored this rule and treated the federal tax lien as having no special priority. Many such cases are collected by Kennedy, *supra* note 12, at 924 n.115.

15 See generally Benson, *Circuity of Lien—A Problem in Priorities*, 19 MINN. L. REV. 139 (1935); Gilmore, *Circular Priority Systems*, 71 YALE L.J. 53 (1961); Plumb, *The Priorities of Federal Taxes over State and Local Taxes*, 12 NAT'L TAX. J. 204, 208 (1959).

state law.[16] The argument that, since a prior mortgage is preferred by federal law, any lien which by state law is senior to the mortgage should also prevail over the federal lien[17] was rejected by the Supreme Court in *United States v. City of New Britain*.[18] In practical effect, under the *New Britain* rule, the federal lien is entitled to satisfaction out of whatever remains after a fund equal to the amount of the prior mortgage is set aside. Thus, if the state should still wish to assert its priority with respect to its junior tax lien, it must do so from this fund, to the detriment of the mortgagee who was prior in time to both Government liens.[19]

The decision in the principal case by the court of appeals is one of a series of recent decisions illustrating attempts by the state legislatures and courts to find an alternative to the dilemma of being forced either to deny state property tax liens priority over prior mortgages, which would seriously impair the tax revenues of state and local governments, or allow the collateral impairment of the property rights of private creditors by the junior federal tax lien through an application of the federal rule for resolving circuity of priority.[20] The per curiam reversal by the Supreme Court, although predictable, makes it apparent that such efforts to confer a priority for state liens over their federal counterparts, however ingenious, will meet a similar fate.

16 Circular priority arises where *A* is prior to *B*, who is prior to *C*, who by state law is given "super priority" over *A*, so that every lien is ahead of one of the others and behind another. A typical example would be where a $5,000 mortgage is prior to the recording of a $6,000 federal tax lien, which is superior to a lien for $4,000 in delinquent property taxes. The state in which the property is sold at foreclosure for $9,000 would prefer the local tax lien over the mortgage, leaving the mortgagee only $1000.

17 See, *e.g.*, Brown v. General Laundry Serv., Inc., 139 Conn. 363, 94 A.2d 10 (1952), *rev'd sub nom.* United States v. City of New Britain, 347 U.S. 81 (1954); Board of Supervisors v. Hart, 26 So. 2d 361 (La. 1946); Ferris v. Chic-Mint Gum Co., 14 Del Ch. 232, 124 Atl. 577 (Ch. 1924).

18 347 U.S. 81 (1954). See generally PLUMB & WRIGHT, FEDERAL TAX LIENS 77-81 (1961).

19 See text accompanying note 38 *infra*. Even after *New Britain*, United States attorneys contended that, because the state precluded the mortgagee and the federal lien precluded the state, the federal lien should be satisfied ahead of both. See, *e.g.*, Exchange Bank & Trust Co. v. Tubbs Mfg. Co., 246 F.2d 141 (5th Cir.), *cert. denied sub nom.* City of Dallas v. Tubbs Mfg. Co., 355 U.S. 868 (1957).

20 An excellent example of the dissension this problem has caused among state courts, and of the casuistry and semantics used in the attempts to subordinate the federal lien, is provided by the divisions in the lower New York courts on the construction and application of § 1087 of the New York Civil Practice Act. See, *e.g.* (federal lien superior), Cooperative Loan & Sav. Soc'y v. McDermott, 14 App. Div. 2d 590, 218 N.Y.S.2d 268 (1961); First Fed. Sav. & Loan Ass'n v. Lewis, 14 App. Div. 2d 150, 218 N.Y.S.2d 857 (1961); Metro Life Ins. Co. v. United States, 9 App. Div. 2d 356, 194 N.Y.S.2d 168 (1959); (state lien superior), Rikoon v. Two Boro Dress Inc., 9 Misc. 2d 591, 171 N.Y.S.2d 19 (Sup. Ct. 1957), *modified mem.*, 8 App. Div. 2d 986, 190 N.Y.S.2d 790, *modified on reargument mem.*, 9 App. Div. 2d 783, 193 N.Y.S.2d 302 (1959), *appeal denied*, 7 N.Y.S.2d 711 (1960); Kronenberg v. Ellenville Nurseries & Greenhouses, Inc., 22 Misc. 2d 247, 196 N.Y.S.2d 106 (Sup. Ct. 1960). *Cf.* Stadelman v. Hornell Woodworking Corp., 172 F. Supp. 156 (W.D.N.Y. 1958). See notes 2, 4, 5 *supra*. Two other lower courts on the authority of the principal case have denied federal priority. West Side Fed. Sav. & Loan Ass'n v. Jandell Contracting Corp., 227 N.Y.S.2d 589 (Sup. Ct. 1962); Dime Sav. Bank v. Reynal Park Lawns, Inc., 35 Misc. 2d 107, 226 N.Y.S. 2d 561 (Sup. Ct. 1962). See note 42 *infra*.

Though cognizant of the futility of directly contravening the Supreme Court's refusal to recognize the almost universal rule under state law which accords real property taxes a priority over all existing liens, the court of appeals attempted to distinguish the *New Britain* rule by four lines of argumentation, each of which has at some time been proffered unsuccessfully by the states.

The first proposition is that, because of its conceded superiority over both the mortgagee's and mortgagor's interests, the state lien, which attaches directly to a specific piece of real property, must be satisfied before a general lien, which attaches only to the mortgagor's interest in the property.[21] This contention is, in effect, an attempt to apply to the general federal lien a choateness test similar to that applied by the federal courts to all non-federal liens. Yet, even before the adoption of the choateness rule for determining the priority of federal liens created under section 6321,[22] it was established that a federal lien is neither invalid nor inferior merely because it attaches to a number of pieces of property rather than to a single piece, and cannot for this reason be subordinated to a junior lien attaching to a specific piece of property.[23] The federal lien attaches directly to the property to the extent of the taxpayer's interest therein, placing the United States not "in the shoes of the mortgagor,"[24] as contended by the court of appeals, but in the position of the owner of a property interest which the state or municipality has no power to impair without congressional consent.[25]

The court's second line of reasoning was grounded upon Congress's partial reliance, in its provision for a federal tax lien, upon concepts and procedures of property law as defined by the states. Under this rationale the federal lien attaches only to the "interest" of the taxpayer as defined by state law, which interest by New York law is automatically reduced upon payment of the annually recurring real property taxes.[26] This contention fails, however, when it is considered that the federal lien attaches

21 11 N.Y.2d 31, 36-37, 181 N.E.2d 413, 415, 226 N.Y.S.2d 382, 385 (1962).

22 See note 14 *supra*.

23 United States v. City of Greenville, 118 F.2d 963, 965 (4th Cir. 1941). See United States v. New Britain, 347 U.S. 81, 84 (1954); *cf.* United States v. Sampsell, 153 F.2d 731 (9th Cir. 1946); Metropolitan Life Ins. Co. v. United States, 107 F.2d 311 (6th Cir. 1939), *cert. denied*, 310 U.S. 630 (1940).

24 The rule of thumb that the tax collector stands in the shoes of the mortgagor is applicable only in measuring the quantum of property the lien attaches to, not in determining priority between competing lienors. See generally, Anderson, *supra* note 8, at 251.

25 See, *e.g.*, United States v. County of Allegheny, 322 U.S. 174 (1944); Michigan v. United States, 317 U.S. 338 (1943); United States v. Snyder, 149 U.S. 210 (1893). As of the date the lien attaches, the property has, in effect, two owners, the United States and the taxpayer. United States v. City of Greenville, 118 F.2d 963, 964-65 (4th Cir. 1941). Federal taxes, unenforced for many years, upon enforcement exclude intervening local liens. *E.g.*, United States v. City of New York, 233 F.2d 307 (2d Cir. 1956); Cobb v. United States, 172 F.2d 277 (D.C. Cir. 1949); *cf.* Van Brocklin v. Tennessee, 117 U.S. 151 (1886) (tax accruing during period held by United States not collectible from former owner on ademption).

26 11 N.Y.2d 31, 36, 181 N.E.2d 413, 415, 226 N.Y.S.2d 382, 385 (1962).

to the taxpayer's interest as of the date of assessment and can in no way be affected thereafter by any state tax which subsequently becomes secured by a choate lien.[27] By analogous reasoning the court further argued that the payment of local taxes, an expense of sale, is a part of the foreclosure procedure which must necessarily be complied with in order to compute the net proceeds from which even a first lienor can be satisfied.[28] The satisfaction of a federal lien, however, is not capable of being analogized to the lien of a private creditor, for only the latter is subject to the unlimited power of the state to accord first priority to a subsequent state lien, whether or not labeled as "expenses of sale."[29] This argument is characteristic of attempts by the states to utilize procedural devices to achieve indirectly what the Supreme Court has said cannot be done directly. It has been held that a state's characterization of its lien as choate[30] or as that of a judgment creditor[31] will be ignored by the federal courts. Likewise, state laws providing for the relation back of liens for subsequently arising taxes have proved ineffective as a means of avoiding federal priority.[32] In a situation suggesting a problem expressly left unanswered by *United States v. City of New Britain*,[33] and closely analogous to that of the principal case, a lien for local property taxes accruing after the assessment of a federal tax and paid by a mortgagee pursuant to a mortgage covenant has been denied the priority accorded to the mortgage.[34] These decisions, together with others evidencing an increasingly stringent application of the choateness test,[35] indicate that in the future the federal

27 INT. REV. CODE of 1954, § 6322. See United States v. Bess, 357 U.S. 51, 55-57 (1958); see also notes 23, 24 *supra*. *Cf.* Morgan v. Moynahan, 86 F. Supp. 522 (S.D. Tex. 1949); Bigley v. Jones, 64 F. Supp. 389 (W.D. Okla. 1946) (a state can prevent a federal lien from attaching in certain instances by redefining a taxpayer's interest in property).

28 "The United States is not interested in whether the State receives its taxes and water rents prior to mortgagors and judgment creditors. That is a matter of state law. But *as to any funds in excess of the amount necessary to pay the mortgage and judgment creditors*, Congress intended to assert the federal lien. There is nothing in the language of § 3672 [now 6323] to show that Congress intended antecedent federal tax liens to rank behind any but the specific category of interests set out therein, and the legislative history lends support to this impression." United States v. City of New Britain, 347 U.S. 81, 88 (1954). (Emphasis added.) When placed in context, the authority cited by the court of appeals in the principal case seems questionable.

29 *Cf.* United States v. City of Greenville, 118 F.2d 963 (4th Cir. 1941).

30 See, *e.g.*, United States v. Liverpool & London & Globe Ins. Co., 348 U.S. 215 (1955); United States v. Acri, 348 U.S. 211 (1955); United States v. Security Trust & Sav. Bank, 340 U.S. 47, 49 (1950); Illinois v. Campbell, 329 U.S. 362, 371 (1946).

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

32 See, *e.g.*, United States v. Bond, 279 F.2d 837 (4th Cir.), *cert. denied*, 364 U.S. 895 (1960); United States v. Reese, 131 F.2d 466 (7th Cir. 1942); United States v. South Carolina, 227 S.C. 187, 87 S.E.2d 577 (1955).

33 347 U.S. 81, 87 n.12 (1954).

34 United States v. Bond, 279 F.2d 837 (4th Cir.), *cert. denied*, 364 U.S. 895 (1960); United States v. Christensen, 269 F.2d 624 (9th Cir. 1959). *But see* Chicago Fed. Sav. & Loan Ass'n v. Cacciatore, 25 Ill. 2d 535, 185 N.E.2d 670 (1962).

35 See, *e.g.*, United States v. R. F. Ball Constr. Co., 355 U.S. 587 (1958), *reversing* 239 F.2d 384 (5th Cir. 1956) (contractual security); United States v. White Bear Brewing Co., 350 U.S. 1010 (1956), *reversing* 222 F.2d 359 (7th Cir. 1955) (mechanic's lien); United States v. Acri, 348 U.S. 211 (1955) (attachment liens); United States v. Goldstein, 256 F.2d 581

courts will similarly look past form to the substance of state devices which attempt to utilize the dependence of federal law upon state procedural and property concepts to impinge upon the priority of the federal lien.

As its third argument, the court of appeals distinguished the principal case, in which the dispute arose between the mortgagee and the "creditors of the mortgagor" from a contest between the United States and the local government.[36] This, however, is in effect merely an attempt to avoid the circuity dilemma which the federal courts would have solved by setting aside a fund equal to the amount of the prior mortgage. It is doubtful that the Supreme Court would sanction a different practice merely because the second of the two parties claiming satisfaction from this fund, the mortgagee, contests federal priority rather than the other party, the state.

The last and most effective argument relies upon the paradoxical result which flows from the Supreme Court's construction of section 6321 in its application to the real property of the delinquent taxpayer.[37] The congressional policy behind the enactment of what is now section 6323,[38] to protect creditors with perfected claims from the "secret federal tax lien," is substantially impaired by reason of the fact that their interests are subjected to the unpredictable contingency that the mortgagor may not pay subsequently accruing state or local real property taxes. In many instances this result will probably have as equally serious a repercussion on financial transactions as the "secret lien" which Congress expressly abolished. The suggestion that this inequity is due to the state's insistence upon a "super priority" for its property tax liens fails to consider the unfeasibility of what is seemingly the state's only alternative; for, though the federal lien is general and can be enforced against all property of the taxpayer, including after-acquired property,[39] the real property tax lien is specific and enforceable only against the property upon which is was assessed.[40] The state, therefore, must either demand payment of its land taxes as a first lien, or allow its taxes to be uncollected whenever a foreclosure sale yields insufficient proceeds to satisfy prior lienors.[41] Yet, the virtually complete dependence of all local governmental units on real property taxes and assessments[42] has left the state legislatures no reasonable alter-

(2d Cir.) (per curiam), *cert. denied*, 358 U.S. 830 (1958) (attorney's lien); United States v. Morrison, 247 F.2d 285 (5th Cir. 1957) (statutory vendor's lien); Styles v. Eastern Tractor Mfg. Co., 154 F. Supp. 393 (S.D.N.Y. 1957) (warehouseman's lien).

36 11 N.Y.2d 31, 36, 181 N.E.2d 413, 414, 226 N.Y.S.2d 382, 385 (1962).

37 11 N.Y.2d 31, 42, 181 N.E.2d 413, 418, 226 N.Y.S.2d 382, 390 (1962).

38 See text accompanying notes 7 & 10 *supra*.

39 *E.g.*, Glass City Bank v. United States, 326 U.S. 265 (1945).

40 Although in theory it is possible to enforce real property taxes through liens on other property, real and personal, in which the "owner" has an interest, the prevailing complex division of "ownership" in real property through the device of future interests indicates that this is at least administratively impracticable.

41 *Cf.* Southern Ohio Sav. Bank & Trust Co. v. Bolce, 165 Ohio St. 201, 135 N.E.2d 382 (1956) (a vigorous protest to section 6321).

42 In 1953 the total of all local unit property tax collections ranged from 74 (New York) to 97 (Indiana) percent of total local tax collections. U.S. BUREAU OF THE CENSUS,

native. Arguments based on federal supremacy, uniformity, or the "greater good," when viewed against this background, fail to justify either the *New Britain* rule, or, what achieves the same result, the one-sided application of the choateness doctrine.

The conclusion reached by the court of appeals,[43] that, if there is to be any derogation from the preference provided the New York state lien, it should be accomplished explicitly by a statute passed by the representatives of the states in the national Congress, and not by the courts, though incorrect when referring to state liens, seems to be the conclusion established as to the federal lien by the Supreme Court's reversal of the principal case. Several proposals for remedial legislation typifying possible solutions to this priority dilemma have been advanced. The American Bar Association has proposed an amendment which would prefer real property taxes and assessments over federal liens on the theory that since the property itself enjoys the benefit of local services it should bear its corresponding share of the cost.[44] An alternative proposal similar in result would be to retain the "first in time, first in right" principle, but apply to state liens the same standards of choateness as are applied to federal liens.[45] A third proposed solution would group all assets available to federal and state liens under present priorities into a common fund, and divide this amount between both on a pro rata basis.[46] Upon closer examination, any one of these of similar proposed solutions may provide a satisfactory answer to the presently existing tax lien dilemma.

It is inevitable that in our federal system problems such as the competition for priority between the tax liens of the respective governments should arise. Where there is an admitted supremacy in the federal government, these conflicts will only be compounded if evaded by the state courts through incongruous and sophistic reasoning. The court of appeals would have been better advised had it noted that all the arguments which will inevitably result in the Supreme Court's upholding the superiority of the section 6321 lien—supremacy, uniformity, and the most good for the greatest number—argue equally well for redress if sought through the proper channels.

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State and Local Government Revenue in 1953, STATE AND LOCAL GOVERNMENT SPECIAL STUDIES No. 37, at 10-13 (1954). Property tax revenue in the largest city of each of eight selected states ranges from 33 percent of total revenue collections in Philadelphia, Pennsylvania, to 73.4 percent in Newark, New Jersey. New York City's revenue collection is 44.1 percent from property taxes. U.S. BUREAU OF THE CENSUS, COMPENDIUM OF CITY FINANCES IN 1956, at 27 (1957). *But cf.* Newcomer, *The Decline of the General Property Tax*, 6 NAT'L TAX J. 38 (1953).

43 11 N.Y.2d 31, 43, 181 N.E.2d 413, 419, 226 N.Y.S.2d 382, 391 (1962).

44 AMERICAN BAR ASS'N, FINAL REPORT OF THE COMMITTEE ON FEDERAL LIENS 8-10 (1959); see, *e.g.*, H.R. 4952, 4953, 88th Cong., 1st Sess. (1963); see generally Plumb, *Federal Tax Liens: Proposed Revision of the Law*, 45 A.B.A.J. 351 (1959).

45 See Plumb, *supra* note 15, at 214.

46 *Ibid.*