Michigan Law Review

Volume 51 | Issue 2

1952

TITLE EXAMINATIONS IN MICHIGAN AS AFFECTED BY THE GENERAL FEDERAL TAX LIEN

L. Hart Wright
University of Michigan Law School

TITLE EXAMINATIONS IN MICHIGAN AS AFFECTED BY THE GENERAL FEDERAL TAX LIEN

*L. Hart Wright**

THERE are three federal tax liens which serve to haunt the average title examiner. The first of these is pitched at the wholesale level; it is a shotgun type lien applicable to all federal taxes and is now provided for by section 3670 of the Internal Revenue Code. The second and third are not nearly so sweeping. One is confined to the federal estate tax, being provided for by section 827 of the code, while the other reinforces the federal gift tax and is the product of section 1009 of the code.

The discussion which follows deals only with the first, the most general, of the three liens, and then only insofar as it affects the examination of titles in Michigan. The present inquiry is circumscribed by this geographical limitation only because Michigan stands almost alone in failing to come to an agreement with the federal authorities as to the requirements which should be satisfied before such a lien will be valid as against good faith purchasers. Accordingly, title examiners of this state who encounter this lien face problems which are not shared by practitioners in other states.

The general lien established by section 3670 of the code is a "catch-all" in more than one sense. The magnitude of its function, i. e., to be "on call" with respect to all federal taxes, is matched by the equally broad dispersion of its impact, for it attaches, according to the language of the statute, to "all property and rights to property, whether real or personal, belonging to" the person "liable to pay any tax."[1]

RECORDING AND PRIORITIES PROBLEM

A. *Early Federal Legislation*

The original establishment of this general federal tax lien was not accompanied by a requirement that it be filed or recorded.[2] Since historically the common law rule of caveat emptor preceded statutory recording systems, one should not be surprised that the absence here of a specific provision protecting third parties led the United States

* Associate Professor of Law, University of Michigan.—Ed.

1 I.R.C., §3670.

2 Act of July 13, 1866, c. 184, §9, 14 Stat. L. 107. A revision appeared in Rev. Stat., §3186 (1875). With additional revisions, the lien provisions now appear in 26 U.S.C.A. §3670 et seq.

Supreme Court to conclude back in 1893 that the government's lien was good even as against a good faith purchaser of the tax-lienor's property.[3] This conclusion, obviously disturbing to the title examiner, was followed by a long period during which repeated proposals were made for modification of the law.[4] Finally, in 1913, these constructive suggestions bore fruit; relief legislation for the benefit of third parties was enacted.[5] From the standpoint of the Michigan lawyer, the character of that relief has now gone through two distinct major stages.

B. *The First Stage of Federal Relief Legislation, and the Effect of State Legislation re Filing of Federal Tax Liens*

The first stage of federal relief legislation terminated just before the enactment of the Revenue Act of 1942. By the end of this first stage Congress had provided that the lien in question would not be valid "as against any mortgagee, pledgee, purchaser or judgment creditor until notice thereof has been filed by the collector" in one of two ways.[6] It was first to be filed "in accordance with the law of the State or Territory in which the property was situated, whenever the State or Territory has by law provided for the filing of such liens."[7] Where, however, such filing had not been provided for by local law, the lien was to be filed "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."[8]

Forty-seven state legislatures have now responded to this invitation to enact complementary or enabling legislation.[9] The type of provision cast in the most general terms is illustrated by that of Minnesota.[10]

[3] United States v. Snyder, 149 U.S. 210, 13 S.Ct. 846. And yet, 57 years later a circuit court in Wayne County, Michigan was so bold as to conclude that enforcement of this lien would violate the due process clause of the federal constitution if the provision governing the filing of a notice thereof did not call for a precise description of the land against which the lien was claimed. Hicks v. Carpenter, 50-1 U.S.T.C. ¶9150 (1950).

[4] See the American Bar Association's proposals cited in Clark, "Federal Tax Liens and Their Enforcement," 33 VA. L. REV. 13 at 23 (1947).

[5] Act of March 4, 1913, c. 166, 37 Stat. L. 1016. As subsequently revised, this act now appears in 26 U.S.C.A. §3670 et seq. In United States v. Maniaci, (D.C. Mich. 1939) 36 F. Supp. 293, affd., (6th Cir. 1940) 116 F. (2d) 935, the district court attributed this change in the law to the decision of United States v. Curry, (D.C. Md. 1912) 201 F. 371.

[6] I.R.C., §3672 as last amended by Revenue Act of 1939, §401.

[7] Ibid.

[8] Ibid.

[9] New Hampshire is the only state without such legislation.

[10] Minn. Stat. Ann. (1947) §272.48.

That state, along with five others,[11] provided a simple authorization, without more, for the filing of such notices in the office of the register of deeds of the appropriate county. Of the remaining forty-one states, all but two have enacted the Uniform Federal Tax Lien Registration Act[12] or have passed statutes which substantially correspond to that act.[13] While the acts of these states are more explicit than are those of the group represented by Minnesota, they still, nevertheless, permit the collector to file a notice which descriptively contains nothing more than the name of the taxpayer, his address, and the amount of taxes owing. Originally, Michigan, one of the two states whose legislation has not yet been described, was also content with this.[14] But the legislative session of 1925 proved to be more demanding. It added to the necessary authorization a special condition requiring the notice to include a precise description of any land against which a lien was to be asserted.[15] Only one other state has followed Michigan's lead in this regard.[16]

This added condition was not well received by the office of the Collector of Internal Revenue stationed in Michigan. The dissatisfac-

[11] Iowa Stat. Ann. (1949) §335.11; N.D. Rev. Code (1943) §35-2010; R.I. Gen. Laws (1938) c. 451, §1; Mass. Ann. Laws (1944) c. 36, §24; Me. Rev. Stat. (1944) c. 79, §255.

[12] Alaska Comp. Laws (1949) §48-9-1 et seq.; Ark. Stat. (1947) §51-101 et seq.; Del. Rev. Code (1935) §3355 et seq.; Hawaii Rev. Laws (1945) §12790 et seq.; Idaho Code (1947) §45-201 et seq.; Ind. Stat. Ann. (Burns, 1933) §49-3221 et seq.; Ky. Rev. Stat. (1948) §382.480 et seq.; La. Rev. Stat. (1950) §52:51 et seq.; Md. Code (1939) art. 17, §10 et seq.; Mont. Rev. Code (1947) §84-3901 et seq.; Nev. Comp. Laws (1929) §2123 et seq.; N.M. Stat. Ann. (1941) §63-101 et seq.; 32 N.Y. Consol. Laws (McKinney, 1940) §240 et seq.; Ore. Comp. Laws Ann. (1940) §67-1801 et seq.; Pa. Stat. (Purdon, 1936) tit. 74, §141 et seq.; S.C. Code (1942) §2576; S.D. Code (1939) §39.1601 et seq.; Tenn. Code (Williams, 1934) §8029 et seq.; Utah Code Ann. (1943) §52-6-1 et seq.; Wis. Stat. (1949) §74.76; and Wyo. Comp. Stat. (1945) §55-601 et seq.

[13] (a) States with laws which are practically identical to the uniform act but which laws are not recognized by the Commissioners: Calif. Gov. Code (Deering, 1943) §27330 et seq.; Ga. Code Ann. (1937) §67-2601; Miss. Code Ann. (1942) §893 et seq.; Mo. Rev. Stat. (1949) §14.010 et seq.; N.C. Gen. Stat. (1950) §44-65 et seq.; Ohio Code Ann. (Throckmorton, 1948) §2757-1; Wash. Rem. Rev. Stat. (1933) §11337-1 et seq.

(b) Statutes basically the same as the uniform act but set forth in somewhat different form and language: Fla. Stat. (1949) §28.20; Ill. Ann. Stat. (1934) c. 82, §66 et seq.; Neb. Rev. Stat. (1943) §23-1522 et seq.; Vt. Rev. Stat. (1947) §2787 et seq.; and W.Va. Code (1949) §3916.

(c) Statutes the language of which is unrelated to uniform act but where the effect is much the same: Ariz. Code (1939) §17-807; N.J. Rev. Stat. (1937) §46:16-13; Tex. Civ. Stat. (Vernon, 1948) art. 6644; Va. Code (1950) §55-139.

(d) Statutes less detailed than uniform act but more explicit than was that of Minnesota: Ala. Code (1940) tit. 33, §9 et seq.; Col. Stat. Ann. (1935) c. 101, §62; Kan. Gen. Stat. (1949) §79-2065 et seq.; and Okla. Stat. Ann. (1938) tit. 68, §371 et seq.

[14] Pub. Act No. 104, May 2, 1923.

[15] Pub. Act 13, Mar. 24, 1925, now found in Mich. Stat. Ann. (1950) §7.751.

[16] Conn. Gen. Stat. (1949) §7213.

tion manifested by that office is easily understood, however, when it is realized that literally the Michigan statute prevented that office from adhering to the more convenient practice which the Treasury was entitled to follow, and did follow, in practically every other state—namely, the practice of filing with appropriate county offices *blanket* notices which asserted a lien against all of the real and personal property of a taxpayer, no descriptions of particular property being included. In any event, the local collector was not quick to abandon this latter more convenient practice. In the case, for example, of one Michigan taxpayer, Thomas Maniaci, the collector disregarded the local statutory condition by filing with the Register of Deeds of Kent County one of the so-called blanket notices. Perhaps as a measure of insurance, the collector also filed a blanket notice with the clerk of the United States District Court for the Western District of Michigan. Thereafter Maniaci sold certain real estate to a purchaser who lacked *actual* notice of the asserted tax lien. There remained, of course, the question of *constructive* notice, and this came first before a federal district court sitting in Michigan when the government sought to take advantage of its alleged lien by foreclosing on the property now held by the purchaser.

The district court in question held against the government and for the purchaser.[17] Certain language in the then existing federal statute was seized upon to justify the following conclusions:

> (1) That Congress had not intended to test its constitutional power to force states to accept for filing notices which did not comply with local law;
>
> (2) That Congress had intended that the collector would confine himself to the types of notice which satisfied local requirements—so long, at least, as those requirements were reasonable; and
>
> (3) That the requirement of the Michigan statute, to the effect that notices of federal tax liens, to be filed, must include a description of any land against which a lien was to be asserted, was sufficiently in keeping with our modern traditions with respect to real estate to meet this test of reasonableness.

The court was persuaded to these conclusions because the then existing federal statute did indeed provide that the collector, in order to preserve his lien against third parties, must have filed the notice *"in accordance with"* local law whenever the local jurisdiction had "provided for the filing of such liens."[18]

[17] United States v. Maniaci, (D.C. Mich. 1939) 36 F. Supp. 293.
[18] I.R.C., §3672, as last amended by Revenue Act of 1939, §401.

The ruling, to the effect that the filing in the county office was ineffective, was supplemented, by implication, with the conclusion that the filing of the second or duplicate blanket notice against Maniaci—in the office of the clerk of the federal district court—was also ineffective, apparently for the very good reason that such a filing was authorized by the federal statute *only* when the jurisdiction in which the property was located had failed to provide a *proper* means for filing in county offices—and, as before noted, Michigan had, according to the court's findings, established a suitable means.

With reference then to the first stage of federal relief legislation, the *Maniaci* decision, a case subsequently affirmed per curiam by the Court of Appeals for the Sixth Circuit,[19] was authority for two propositions: that *blanket* notices of federal tax liens did not validate such liens as against third parties with respect to land in Michigan though filed (1) in a county office, or (2) with a federal district court clerk. And these conclusions rested in final analysis on the cumulative effect of the language of the then existing federal statute and of the Michigan statute.

C. *The Second and Last Stage of Relief; Recent Federal Legislation*

At least one of the two foregoing propositions has been placed in jeopardy by events which followed the *Maniaci* decision. In 1942, two years after that decision, the Treasury Department induced Congress to delete from section 3672 the specific statutory language upon which the court had relied in reaching the two conclusions previously noted.[20]

The purpose intended to be served by this amendment was explained by the House Ways and Means Committee in the following language:

> "This section of the bill clarifies section 3672(a) of the code by providing expressly that the notice required to validate a lien for Federal tax against any mortgagee, pledgee, purchaser, or judgment creditor shall be sufficient if filed in the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated,

[19] (6th Cir. 1940) 116 F. (2d) 935 *Accord,* United States v. Detroit, (6th Cir. 1943) 138 F. (2d) 418.

[20] Revenue Act of 1942, §505. The language, to the effect that the lien should not be valid as against third parties until notice thereof was filed "(1) In accordance with the law of the State or Territory . . .," was changed to read that the lien would not be valid against third parties until notice thereof was filed "(1) In the office in which the filing of such notice is authorized by the law of the State or Territory. . . ."

without regard to the other general requirements with respect to recording prescribed by the law of such State or Territory."[21]

The Senate Finance Committee in emphasizing that the new bill authorized "the State or Territory only to designate the local office for the filing,"[22] added that this was "in accordance with the long continued practice of the Treasury Department, which has been questioned in the courts."[23]

The collector stationed in Michigan responded to this amendment by attempting to file a blanket notice against one taxpayer with the Register of Deeds of Wayne County. The offering, however, was refused, and a suit for mandamus followed. The Court of Appeals for the Sixth Circuit, in *Youngblood v. United States*,[24] affirmed the lower court's decision in denying the petition for the writ. Two distinct grounds were expressly asserted for the holding. The court once again expressed the now doubtful view that Congress had not intended to test its constitutional power to force a state to accept for filing notices which did not comply with the niceties of local law.[25] The appellate court asserted further that the district court in which the petition for mandamus had originally been filed did not in any event have jurisdiction to grant such writs in the type of case under consideration.

Any doubt one might have with respect to the first of these determinations should be multiplied manyfold with respect to a further suggestion by the court in the nature of dictum relative to the question of whether the collector in Michigan could now file a blanket notice with the clerks of the local federal district courts in order to validate liens against third parties. It is true that the amendment by Congress in 1942 did not disturb the verbal statement of the rule to the effect that a notice filed with a federal district court clerk was effective only when "the State or Territory has not by law authorized the filing of such notice in an office within the State or territory."[26] But this fact did not justify the implication contained in the decision to the effect that a state had gone far enough, i. e., had *fully* satisfied the *amended* section 3672 and the statutory rights of the collector, if the conditions which the local statute prescribed with reference to the contents of the notice were

[21] H. Rep. No. 2333, 77th Cong., 2d sess., p. 173 (1942).
[22] S. Rep. No. 1631, 77th Cong., 2d sess., p. 248 (1942).
[23] Ibid.
[24] (6th Cir. 1944) 141 F. (2d) 912.
[25] Id. at 914. The court stated: "The amendment contained in the Revenue Act of 1942 evidences no change of attitude on the part of Congress in its recognition of the right of a state to regulate the filing of federal tax lien notices."
[26] I.R.C., §3672.

reasonable.[27] The validity of this dictum depends, of course, upon the proper meaning to be attributed now to the previously quoted statutory words, "such notice." The pre-enactment materials quoted above, particularly the extract from the report of the House Committee, certainly suggest that Congress intended to render legally sufficient for the purposes of section 3672 the so-called blanket notice,[28] and there was nothing whatever to suggest that collectors should confine themselves to notices of a more demanding quality simply because prescribed by local law.

Title examiners must then ask of themselves: what result would the Court of Appeals for the Sixth Circuit reach today in a foreclosure action brought by the government against a good faith purchaser of Michigan land to enforce a lien a blanket notice of which had been filed with the appropriate local federal district court clerk? Would it disregard the seemingly erroneous implication of the *Youngblood* case and hold for the government by relying on what seems to have been the underlying purpose for the change in 1942, i. e., on the meaning which the relevant congressional committees attached to the word "notice"? The prospect of an affirmative resolution of this question is very real for two reasons. First, *any other holding would be tantamount to a declaration that no purpose whatever was intended or served by the amendment in 1942 of the federal act*—a fairly ridiculous supposition to say the least. Second, the implication of the *Youngblood* decision to which objection is made here can be ignored without disturbing the result which it reached. In other words, there is a real difference between saying:

[27] The court stated: "Upon obvious principles of comity, the Congress of the United States has provided for compliance by the Government with state recording laws. The notice of tax lien involved in this controversy does not so comply." (6th Cir. 1944) 141 F. (2d) 912 at 915.

Because it was a matter of foreign law, the question of whether the Michigan act complemented the federal act was treated by both parties in the Youngblood case as a question of fact, the government's affirmative assertion being admitted by the defendant. The government was careful, however, to note that if the state would not permit the filing of notices which were legally sufficient under federal law, then the collector was authorized to validate the lien by filing such legally sufficient notices with the clerk of the federal district court. See Appellee's Brief, Case No. 9594, p. 8.

[28] The test of legal sufficiency with respect to federal tax liens is, of course, a matter to be established by federal law. Congress could even validate the lien against good faith purchasers without any notice whatever. United States v. Snyder, 149 U.S. 210, 13 S.Ct. 846 (1893).

It must also be understood that the legal conclusion, to the effect that Congress did not intend as a matter of power to force local state officials to accept such notices for filing if the latter would thereby violate their trust, has no bearing on the question of whether a given state act *fully* complements the federal acts.

(1) That Congress did not intend to force *state* officers to accept filings which violated their duty under state law; and saying

(2) That Congress intended to restrain a federal official, the collector, from validating a lien by filing blanket notices with the clerk of the federal district court in the instance where the state evidenced objections to that type of notice.

By way of summary, then, while a local register of deeds cannot lawfully file blanket notices, it is the writer's judgment that the future may hold in store a decision to the effect that the collector in Michigan has been entitled since 1942 to validate liens against third parties by filing blanket notices with the clerk of the appropriate federal district court in Michigan. Certainly this prospect is sufficiently great to require cautious title examiners to assume that such will be the case.

D. *Priorities Problem as Affected by Actual Practices of Related Agencies*

This background of statutory and case law does not, of course, solve the title examiner's problem as affected by the general federal tax lien. Account must also be taken of the actual present practices of the three agencies the actions of which contribute, directly and indirectly, to the shape of the abstract which he is called upon to examine. What, then, in this connection, has been the impact of these statutory and case developments upon the practices of the collector, upon the practices of the various registers of deeds, and finally upon the practices of the abstract companies?

In spite of the developments just described, the collector in Detroit continues to offer for filing in the various counties notices asserting blanket liens upon all of a taxpayer's real and personal property—no descriptions of particular property being included.[29] As a matter of insurance, however, the collector has in some cases included descriptions of particular realty, and, more important, has in *every* case filed a duplicate notice with the clerk of the appropriate federal district court.[30]

[29] There are probably several reasons why the collector continues this practice: (1) public relations, i.e., to give as much notice as is conveniently possible; (2) the possibility that actual notice obtained through examination of abstracts would be held sufficient; (3) the possibility that constructive notice would as a matter of federal law be achieved when a register of deeds accepts the filing—even though the acceptance is contrary to local law; and (4) the even more remote possibility that the Youngblood case may at some future date be overruled.

[30] This information was supplied orally to the author by the General Counsel's office of the Collector stationed in Michigan.

The various county registers of deeds have responded in different ways to the collector's attempt to file notices asserting blanket liens. In Washtenaw County, for example, such notices are accepted and filed without reservation. Wayne County, on the other hand, refused for a few years after 1943 to accept such notices for filing. In more recent years, however, such notices have been accepted, but all are stamped "personal property only," before being actually filed.

The abstract companies also follow divergent practices. One company with which the writer is familiar is located in a county where the register of deeds files without reservation all blanket notices offered by the government. The company in question checks the files, in the county offices only, against the name of the last record owner of the property, and reflects the lien in the abstract where the name is common to both the abstract and the files. Another company, one located in Detroit, takes the position that such notices in county offices, being ineffective, should not be reflected in the abstract. I am informed, however, that other companies in that same area reflect the filings even though the register of deeds has stamped the notices "personal property only." In fully assessing the contribution of the abstract companies to the title examiner's problems, one must couple with these divergent practices as to the liens filed in county offices the fact that most abstract companies expressly state in the certificates which accompany their abstracts that only matters of record in county offices have been covered, and that no check has been made of those matters on file with the clerks of the federal district courts.[31]

E. *Conclusions re Proper Functions of Related Agencies*

The foregoing matters, namely, the statutes, the case law, and the practices of the three agencies which contribute to the content of an abstract, lead the author at least to the following three conclusions with reference to the proper practices which should be followed by the three agencies.

(1) A register of deeds should not, as a purely legal proposition, accept for filing a blanket notice asserting a federal lien on all of a taxpayer's real property where such property is not described

[31] The Michigan Title Association's Uniform Certificate includes the following: "This certificate does not include any matters filed in the United States District Court; or matters filed in the office of the County Clerk, Circuit or Probate Courts, where no notice of the same appears in any instrument in the chain of title recorded or filed in the office of the Register of Deeds. Matters referred to in this paragraph will be abstracted and certified to by special request only."

in the notice. Such offerings, wholly apart from the question of whether federal notices are also deficient when not acknowledged and signed by two witnesses,[32] do not satisfy the conditions prerequisite for filing in Michigan. Nevertheless, we shall find as a practical matter that the county officers will actually be contributing to the security of land titles in Michigan if they do continue to accept such notices for filing.

(2) The author fully understands the plight of those abstract companies which feel that their product should reflect everything the register of deeds permits to be filed, including the blanket liens under discussion, for, after all, such companies are not engaged in the practice of law, and perhaps should not, therefore, decide for their customers the question of whether or not a particular filed instrument constitutes true constructive notice. In any event, we shall also find that abstract companies will also be contributing to the security of land titles in Michigan if they will continue to reflect such filed notices.

(3) Unlike the county officers, the clerks of the federal district courts in Michigan should as a matter of law—and do—accept for filing blanket notices of liens offered by the collector, for such filings will very likely serve to validate the lien inasmuch as Michigan does not now have proper enabling legislation, i. e., legislation which permits the filing in county offices of instruments which are legally sufficient under federal law.

F. *Conclusion re Title Examiner's Problem*

In the end, the lawyer, with respect to the lien provided for by section 3670, is likely to be confronted with any one of three typical problems. The first of these involves the situation where the abstract reflects a notice on file in a county office which notice asserts a lien against, and carries an accurate description of, the particular property covered by the abstract. The second concerns the reflection in the abstract of a blanket notice which is on file in the county office and which asserted a lien against all the real and personal property of a person at the time he was listed in the chain of title. The last involves the fear of the lawyer that there may be other blanket liens which have not, for one or more reasons, been reflected in the abstract.

1. *Notices which include a description of the property against which a lien is asserted.* How should the title examiner react to the first of these three problems, namely, to the situation where the abstract

[32] See discussion infra, at p. 193.

reflects that there is on file in the county office a notice of a lien which carries an accurate description of the property covered by the abstract?

It is not wholly clear that even this notice was entitled to be filed in the county office. The offerings of the collector to a county register's office have not usually been witnessed in the manner required by the Michigan statutes with reference at least to all other recorded instruments affecting real estate. While the Attorney General of Michigan ruled in November 1951 that the federal offerings were not subject to this requirement,[33] it should be noted, nevertheless, that the matter has not been settled by court decision. In any event, there are two good reasons why the attorney who examines that abstract should note in his opinion the fact that a tax lien exists on the property. The first of these reasons involves the question of whether the reflection in the abstract of such a filing is, when seen by the attorney in the course of title examination, sufficient *under federal law* with reference to actual notice to put his client as a reasonable man on inquiry.[34] The absence of a definitive answer from the federal courts with reference to this question would perhaps, without more, lead the title examiner to note an exception in his written opinion.[35] But there is an even more persuasive reason for such action; he can be sure, in view of the collector's practice to make duplicate filings, that a like notice is on file with the clerk of the federal district court, and this notice would, according to the view previously expressed herein, serve to validate the lien under the amended federal act if the notice in the county office were ineffective. In this connection, two matters to be discussed later are presently assumed, namely, that the lien has not expired through lapse of time and that the interest of the taxpayer was actually of the type which could be reached by such a lien.

2. *Blanket notices actually reflected in an abstract.* It will be recalled that the second situation which may confront the title examiner

[33] Atty. Gen. Op. No. 1482, Nov. 1, 1951. Certain parts of the opinion are misleading, for reference is made exclusively to the pre-1942 language of the federal act. However, this does not affect, one way or the other, the arguments set forth there with respect to the question under consideration.

[34] It is also conceivable, though not probable, that acceptance by the local register of deeds, though contrary to law, would result in validating the lien, for the matter turns ultimately on federal law. That this conclusion is not likely to be reached stems from the fact that the Youngblood decision held that Congress did not intend to force a register of deeds to violate local law. It is unlikely then that the same court would hold Congress intended to take advantage of a breach of the local officer's duty.

[35] Some courts do hold that a defective filing cannot even be the basis for actual notice. See e.g., Nordman v. Rau, 86 Kan. 19, 119 P. 351 (1911). *Contra,* Prince v. Alford, 173 Ark. 633, 293 S.W. 36 (1927); Parkside Realty Co. v. MacDonald, 166 Cal. 426, 137 P. 21 (1913).

involves the case where the abstract reflects a notice on file in a county office which notice asserted a lien against all of the real and personal property of a person at the time he was listed in the chain of title. While the filing in the county office in this instance was clearly illegal, the title examiner should, nevertheless, applaud the disclosure. For again, in addition to the possibility of actual notice arising out of this disclosure, he can be sure that a like notice is on file with the clerk of the appropriate federal district court, and this notice is, as previously stated, probably effective to validate the lien. The reflection then in the abstract of a filing which did not validate the lien (filing in the county) is an indirect means whereby the title examiner can learn of a different filing which did serve to validate the lien. That indirect means fills a vacuum, for none of the blanket federal liens which have been placed on file in Michigan with clerks of the federal district courts would, absent a duplicate but illegal filing in the county register's office, be picked up by abstract companies in the *normal* course of compiling an abstract. Indeed, as before noted, most abstract companies state in the certificate which accompanies the abstract that the latter is limited to matters on file or on record in county offices.

Before moving on to the third type of problem which may confront the title examiner, note should be made of the problem occasioned by the prevalence, particularly in the more populous counties, of common names. It is quite possible, for example, that the name of the vendor of the particular land in question may be the same as is one of the names on file in the book of liens kept by the register of deeds' office. That vendor, however, on being informed of the consequent exception in the title examiner's opinion, may, in a petition for a certificate of mistaken identity filed with the collector, prove to the latter that he, the vendor—whose name we will assume is John Brown—is not actually the same John Brown against whom the federal lien was filed. A certificate of mistaken identity will then be furnished by the collector and the transaction can be put through without further ado.

3. *Blanket notices which may not be reflected in an abstract.* The third type of problem to which attention should be directed concerns those blanket notices under section 3672 which serve to validate the lien but which may not have been reflected, for one or more reasons, in a given abstract. There are a number of situations in which this may occur; but it should be sufficient here to enumerate the four illus-

trative cases which are deemed most likely to recur with some frequency.

(a) Notices of blanket federal liens which were offered to the Register of Deeds of Wayne County in the period immediately following 1943, and to like offices in one or two other counties which followed the same practice, were not accepted for filing. But notices of these same liens were accepted, and properly so, by the appropriate federal clerk. Since the abstract will not cover matters on file in the latter's offices, the title examiner will not be forewarned of the possible existence of blanket liens filed in the federal clerk's office during the period in question, and as before noted, this latter filing would serve to protect the government against the intervening rights of a good faith purchaser.

(b) A particular abstract company may have decided that it should not reflect blanket notices of liens which are on file, though illegally so, with the county register's office. The failure of the company to check the federal clerk's office will again mean that the title examiner will not have even an indirect means of learning of the possible existence of a lien which has been validated by a proper notice.

(c) The person, assume it is the vendor in the transaction now being negotiated, against whom a valid lien is on file with the federal clerk's office may live in a neighboring county to that in which the property is located. If the notice of the lien was placed on file by the government in the county of his residence, and not in the county where the property in question is located, the notice will not, of course, appear in the abstract whatever may be the practices followed in other cases by the abstract company. But again, the notice in the federal clerk's office, being the only valid notice, *and presumably extending over the entire judicial district,* is there to protect the government against the otherwise bona fide purchaser. A like result will be reached in the closely related instance where the person against whom a lien is on file in the county of his residence moved thereafter from that county into a neighboring county of the same judicial district where the particular land was located.

(d) The abstract company in question may follow the practice of checking a select number of names in the chain of title against the filings in the county register's office, the latter being one of those which, it will be assumed, normally accepts the offerings of the collector. This indirect means of learning of the valid lien on file with the federal clerk may be inadequate, however,

simply because of the unsound character of the formula used by the abstract company in selecting the names which are to be checked against the county register's files. One might at first suppose that the title examiner is not actually concerned with this problem, this supposition resting on the assumption that the abstract company is the one at fault. But it is important in this connection to note that it does not necessarily follow that the abstract company would be liable under such circumstances, for it has done nothing more than fail to uncover a matter which was not entitled to be filed in the county office in the first instance, and, as previously noted, its own certificate serves also to free it from any liability with reference to the notice which was on file in the federal clerk's office. More will be said later with respect to what might be considered a sound formula for selecting those names to be checked.

Where the title examiner's only concern is self protection, he can, of course, accomplish this with reference to all four of the foregoing situations by simply indicating, in one way or another—as abstract companies do in their certificates—that marketability is considered in his opinion only insofar as the same is affected by matters on file or on record with specific county offices, except, of course, for the *traditional* qualifications such as pertain, for example, to the rights of parties in possession. But query: Has such a lawyer adequately served his client? In view of the client's real expectations, namely, a clear title, and of the fact that in 1951 alone over 4000 federal tax liens,[36] many blanket in form, were filed in Michigan, are we not justified in expecting a title examiner to do "something more" than just qualify his opinion by limiting its sweep, except for the traditional qualifications, to matters reflected in the abstract![37]

Assuming then that the title examiner should do something more than simply qualify his opinion by limiting it to matters on file or on record in the county offices, the question arises, what should be the nature of that "something more?"

[36] This figure was furnished to the author by Mr. James Deane, Assistant Collector of Internal Revenue in the Detroit office.

[37] In saying this, the writer is not unmindful of the pressure on examiners to ignore "fly-specks." Nor is he unmindful of the sense of security some attorneys may derive—sometimes falsely—from the fact that until now the government has apparently made no effort to disturb those who have been in possession of the tract in which the particular parties may be interested.

It would seem that every title examiner should at least acquaint himself with the exact practices, both past and present, followed with reference to blanket federal tax liens by his own register of deeds and by the abstract companies located in his county. Perhaps then a given title examiner, on finding that the combined practices of these two related agencies will result in actually making known to him all blanket federal liens which have been offered for filing in his county, will conclude that he has gone far enough, and will then proceed to ignore the problem raised by notices on file in the federal court clerk's office. In short, he decides to disregard the chance that a client of his will be trapped, e.g., by the third of the foregoing illustrative situations, namely, the case where a blanket lien is on file in the federal clerk's office against a lienor whose name appeared in the chain but who lived in a county adjacent to that in which the property was located.

A second title examiner might, on the other hand, decide that the risk is too great, and conclude that the federal court clerk's files should be checked.

And finally, a third title examiner may learn that the practices, past and present, of his local register of deeds and/or of the local abstract companies, will not even acquaint him with all of the notices which the collector tried to file, or did file, in the office of the local register of deeds. That title examiner may also feel that the federal clerk's files should be checked. Such a conclusion would leave the attorney with three alternatives:

(a) He may, in his qualifying clause, specifically advise the client of the possibility that there may be notices of federal tax liens on file with the appropriate federal clerk which are not reflected in the abstract. This would at least serve to focus attention on the precise difficulty.

(b) In addition to the foregoing reference, he may go on to recommend that the client require the vendor to bear the expense for, or to arrange for, the abstract company to check by correspondence the files in the federal clerk's office. The right of the client to make such a demand upon the vendor assumes first, of course, that the executory contract of sale called for the submission of an abstract showing good and marketable title in the vendor; and secondly, that an abstract which ignores the blanket federal tax

liens on file in the federal clerk's office would not satisfy that requirement.[38]

(c) Finally, the title examiner may decide, in lieu of an inquiry by the abstract company, to make his own inquiry of the federal clerk's office.

Should the title examiner choose the third of the foregoing alternatives, he must then ask of himself a question which should also be plaguing abstract companies when the latter are checking the files in the register of deeds' office as well as when making a special search of the federal court clerk's files. Just how extensive should the check be? Which of those names listed in the chain of title should be checked against those names on file?[39] The resolution of this question involves a matter of time; how far back in the chain of title must we go in selecting names to be checked against the clerk's files?

With reference to the period for which the check is to be made, attention has already been called to the fact that blanket liens filed prior to 1942 did not in Michigan, under the then existing federal statute, serve to validate the lien as against third parties regardless of where filed. It would seem, therefore, that the title examiner or the abstract company would be safe in using this date as a starting point in the sense that the check should be made against the files of all those names which have *been in* (as contrasted with entered in) the chain of title since that date.

4. *Life span of the general federal tax lien.* The use of 1942 as a base date in initiating a search for blanket liens can also be supported by a practical approach to the theoretically possible life-span accorded general federal tax liens. The life-span of such liens is also, of course, a matter which attorneys must take into account in deciding whether or not a lien which is reflected in an abstract survives as of the date of the title examination.

In this connection, I. R. C., section 3671 provides with reference to the duration of federal liens that such shall continue "until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time." This latter clause is given a more clear-cut meaning

[38] Cf. Continental Oil Co. v. Mulich, (10th Cir. 1934) 70 F. (2d) 521; Smyth v. Boroff, 156 Mo. App. 18, 135 S.W. 973 (1911).

[39] The formula which is suggested with reference to this question would be of equal value to those abstract companies which check the files in the office of a register of deeds.

by, inter alia, I. R. C., section 276(c). This latter section provides that creditors' processes are available to the government if initiated "(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 the Commissioner and the taxpayer before the expiration of such six year period."

The first of these, the six-year period, offers, of course, a definite guide.[40] The same cannot be said, however, of the second.[41] Nor can it be said of a related exception, namely, the situation where a tax debtor has waived the running of the statute pending the acceptance or rejection by the government of an offer to compromise.[42] Nor is a definite rule of thumb applicable in that situation where the tax debtor has finally resorted to a bankruptcy proceeding, for there the six-year period with respect to balances left unpaid on the termination of such proceedings begins, not from the receipt by the collector of the original assessment list, but from the close of the bankruptcy proceeding.[43] Also to be taken into account are the extension provisions designed for soldiers' and sailors' relief with their concomitant suspension of the running of the statutory period.[44]

It seems fair to say, even from this incomplete list of exceptions, that the title examiner should not in the first instance suppose, without further exploration of the facts, that a blanket lien has a life short of—say, ten or twelve years. This would mean, of course, that if the abstract company will use 1942 as a base date with reference to its search for blanket liens, that the title examiner would not be safe unless he qualified his opinion by taking exception to all of the blanket liens disclosed in such an abstract.

Notices which do include a description of the property covered by the abstract present a somewhat different question. Presumably the abstract company will reflect all such notices regardless of the date of

[40] It should be understood in this connection that the lien and the six year period actually date, not from the filing, but from the time the assessment list was received by the collector. I.R.C., §3670. This feature of the act is considered in In re Victor Brewing Co., (3d Cir. 1944) 146 F. (2d) 831, affd. with respect to other matters, Glass City Bank of Jeanette v. United States, 326 U.S. 265, 66 S.Ct. 108 (1945).

[41] The author is not aware of any rule or standing operating procedure to which the government looks in deciding the outermost limits of such extension agreements.

[42] Bank of Commerce & Trust Co. v. United States, (6th Cir. 1941) 124 F. (2d) 187.

[43] I.R.C., §274.

[44] I.R.C., §3808.

filing. Theoretically, in every such case the title examiner should state as a requirement that the vendor obtain a certificate from the collector releasing the lien. For in addition to the previously mentioned exceptions to the six year rule, there is the added notion that a tax claim once reduced to judgment by the government never expires through lapse of time.[45] And it is theoretically possible that such a judgment does exist against the lienor. As a practical matter, however, one might reasonably think it most unlikely that the government would wait more than ten or twelve years to take advantage of a lien against property of which, as evidenced by the description, it had knowledge at the time the notice was filed, and particularly so in the instance where it has gone to the trouble of getting a judgment against the taxpayer. Certainly it will be the unique case where the government will wait so long. Less cautious attorneys might conclude, therefore, that such a possibility is so remote that a lien which antedates that period will be classed with the "fly-specks" and ignored, particularly where it is for a relatively small amount.

5. *The character of the interests to which the lien may attach.* Now let us assume that the abstract does reflect a blanket lien which has not been outlawed. Before actually taking exception to that lien, the title examiner must answer one other question: would a general federal tax lien actually attach to the particular type of interest which the lienor held in the property covered by the abstract?

Reference has already been made to the fact that the statute states that the lien applies to "all property and rights to property, whether real or personal, belonging to" the person "liable to pay any tax."[46]

That the first of these phrases, "all property," means what it seems to mean, and is, therefore, all inclusive is illustrated by the fact that it has been held that the lien attaches to after acquired property.[47] This same sweeping meaning is also illustrated by the now common case of a husband and wife who had filed a joint income tax return in order to split the husband's income for tax purposes. The word "all" has led the lower federal courts to conclude, in the event inadequate taxes are paid, that the lien attached to the homestead of the husband and

[45] Investment & Securities Co. v. United States, (9th Cir. 1944) 140 F. (2d) 894.
[46] I.R.C., §3670.
[47] Glass City Bank of Jeanette v. United States, 326 U.S. 265, 66 S.Ct. 108 (1945).

wife—property which by local law, at least up to a certain value, had been put out of the reach of ordinary creditors.[48]

It must be remembered, however, in connection with the latter illustration, that the lien attaches only to that property "belonging to" any person "liable to pay any tax." This language, constituting the second of the two key statutory phrases, is, of course, in the nature of a limitation. It has been held, for example, that the lien would not attach to the wife's interest in a homestead where her husband is alone liable for the unpaid tax.[49] One might suppose that an even more important practical consequence of this limitation from the standpoint of Michigan lawyers would be the holdings by two local federal courts to the effect that this lien will not attach in any respect to property held by husband and wife as tenants by the entireties where one spouse was alone liable for the tax, the theory being, of course, that no part of the property belongs to the husband; its ownership resides in the fictional, but single, unity of husband and wife.[50] But even with respect to property held by the entireties, a title examiner must be cautious, for there is always the possibility that the husband and wife filed a joint income tax return and are, therefore, jointly and severally liable for the tax. In such a case, notices of liens are likely to have been directed against both spouses, with the effect that the government may proceed against the property held by entireties.

CONCLUSION

Perhaps the most important lesson to be learned from this study is that the Michigan Legislature is not now in any practical or ultimate sense accomplishing the aim which led it to limit the use of county filing systems to those notices of federal tax liens which included precise descriptions of those tracts against which liens were asserted.

The fact is that cautious title examiners in this state can ill afford to ignore those blanket notices which are on file with the clerk of the appropriate federal district court, since such notices, as previously

[48] United States v. Heffron, (9th Cir. 1947) 158 F. (2d) 657, cert. den. 331 U.S. 831, 67 S.Ct. 1510 (1947); Shambaugh v. Scofield, (5th Cir. 1943) 132 F. (2d) 345.

[49] Jones v. Kemp, (10th Cir. 1944) 144 F. (2d) 478; Paddock v. Siemoneit, 147 Tex. 571, 218 S.W. (2d) 428 (1949).

[50] United States v. Nathanson, (D.C. Mich. 1945) 60 F. Supp. 193; Shaw v. United States, (D.C. Mich. 1939) 94 F. Supp. 245. *Accord,* United States v. Hutcherson, (8th Cir. 1951) 188 F. (2d) 326.

stated, do probably serve to validate liens against lands in this state. Accordingly, the legislature would do well to reconsider the relevant Michigan statute with the view of eliminating the condition pre-requisite to filing which it inserted in 1925. By so doing, the legislature would limit the effectiveness of blanket notices to those tracts which are located within the county in which the notice is filed, for the amendment would serve to terminate the right of the collector to use the federal filing system. This would reduce the burden of cautious title examiners and of those abstract companies which are requested now to make special searches of the federal files. In the end, Michigan would be put back in step with the great majority of other jurisdictions in this country.