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The Secured Creditor in South Carolina Versus the New Federal Tax Lien

THE SECURED CREDITOR IN SOUTH CAROLINA VERSUS THE NEW FEDERAL TAX LIEN

I. Introduction

On November 11, 1966 the Federal Tax Lien Act of 1966[1] became effective. This Act, the culmination of a project begun over ten years ago, is part of an attempt to conform the lien provisions of the Internal Revenue Code to the concepts that have been developed by the Uniform Commercial Code which has now been passed in forty-nine of the fifty states.

This paper is not intended to cover thoroughly all aspects of the new Tax Lien Act. The Act is only discussed as it will affect secured lenders in South Carolina under Article 9 of the Uniform Commercial Code. While passing reference is made to various other matters, they should not be construed as having been fully discussed insofar as they relate to the new Tax Lien Act. An excellent and detailed discussion of the complete Act can be found in Plumb and Wright's treatise *Federal Tax Liens* which was published under the auspices of the Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association.[2]

II. Persons Protected

The federal tax lien arises at the time the tax is assessed.[3] Under prior law this was a secret lien upon all property belonging to the taxpayer and all property subsequently acquired by him. Former section 6323(a) of the Internal Revenue Code protected mortgagees, pledgees and purchasers against unfiled federal tax liens, but the above named parties were not defined under this prior act.

The new Act protects purchasers, holders of a security interest, mechanic's lienors and judgment lien creditors against the unfiled tax lien.[4] The Act gives definitions of all the above classes.[5] A security interest as defined in the Act conforms with the definition as found in the Uniform Commercial Code.[6]

1. Act of Nov. 2, 1966, Pub. L. No. 89-719, 80 Stat. 1125. All statutory references herein (unless otherwise noted) are to the Internal Revenue Code as amended.
2. W. Plumb & L. Wright, Federal Tax Liens (2d ed. 1967).
3. Int. Rev. Code of 1954, § 6321.
4. *Id.* § 6323(a).
5. *Id.* § 6323(h).
6. S.C. Code Ann. § 10.1-201(37) (1966).

As defined in the Tax Lien Act, it must meet two requirements: (a) the property must be in existence and the interest must be protected under local law against a subsequent lien arising out of an unsecured obligation, and (b) the holder is only protected to the extent that he has parted with money or money's worth. One possible problem that might arise in this area is the question of when property, such as crops, might be deemed to come into existence. The mechanic's lienor is defined as anyone who under local law[7] has a lien on real property. A purchaser is defined as one who for an adequate and full consideration in money or money's worth acquires an interest in property which is valid under local law against subsequent purchasers without actual notice. This is a change from prior law under which the federal courts had said that the question of who are purchasers is not to be determined by state law but should be determined by the federal courts.[8]

III. Superpriorities

The old tax lien section gave superpriority to the purchasers of motor vehicles and securities even though the tax lien had already been filed before the interests arose. The Act[9] retains these two superpriorities[10] and also adds others. The following are most pertinent to our discussion.

A. *Retail Purchasers*[11]

In order to remove the possibility that the federal government would follow its lien on goods a taxpayer has sold in the ordinary course of his trade or business, such as a sale out of inventory of a retailer, the Act gives this type purchaser of tangible personal property a superpriority. Since this section is silent as to the outcome if the purchaser has actual notice, it must be assumed that it would not give priority to the tax lien. But this section does state that the purchaser will not be afforded superpriority status if he knows his purchase will hinder, evade or defeat the collection of any tax under this title. Under

7. *Id.* § 10.1-201(33).

8. Enochs v. Smith, 359 F.2d 924 (5th Cir. 1966).

9. Int. Rev. Code of 1954, § 6323(c), (d).

10. It should be noted that this section only mentions a purchaser of a motor vehicle. For the problems as to searching the filing records when a lender takes a security interest in a motor vehicle, *see* p. 713 *infra*.

11. Int. Rev. Code of 1954, § 6323(b)(3).

this language it would seem that the question of whether actual notice would defeat the superpriority status would be a factual one to be resolved in individual cases.

B. *Casual Sales*[12]

A superpriority is afforded here to the purchaser of such items as household goods or personal effects in an amount not exceeding $250. There are two requirements that must be met under this section, the first being that the purchaser has no knowledge or actual notice and the second, that the sale is not one of a series.

C. *Personal Property Subject to Possessory Lien*[13]

This section gives a superpriority status to one who has repaired or improved tangible personal property if such person is afforded a lien under local law. This section requires that the holder of the lien must have been continuously in possession of the property from the time such lien arose. Mention is made of this lien securing the reasonable price of the repair of improvement. It is possible that the reasonableness of the repair may be questioned by the Commissioner in an attempt to knock down a superpriority under this section.

D. *Small Repairs and Improvements on Real Property*[14]

A superpriority is given here to the repairman who has made repairs to a personal residence containing not more than four dwelling units, which is occupied by the owner, provided the contract price on the contract with the owner is less than $1,000. Under this section it is not clear whether the lien would be good for up to a $1,000 if the contract were for an amount in excess of this limit. Furthermore, since the Act refers to a contract with the owner, we must assume that if the contract were with someone such as a lessee, this superpriority status would not be afforded.

E. *Insurance Contracts*[15]

This section gives a superpriority to life insurance companies which make loans on life insurance contracts provided they do

12. *Id.* § 6323(b)(4).
13. *Id.* § 6323(b)(5).
14. *Id.* § 6323(b)(7).
15. *Id.* § 6323(b)(9).

not have actual notice at the time of the loan. However, if the loan or advance is made pursuant to the contract in order to keep it in force the fact of actual notice will not defeat the superpriority status.

F. *Passbook Loans*[16]

This section affords a superpriority status to any institution which makes a loan secured by a savings account passbook. The institution making such loan cannot have actual notice or knowledge at the time of the loan and furthermore it must have been in continuous possession of the passbook from the time the loan is made.

IV. Priority Over the Filed Tax Lien

Perhaps one of the most important provisions of the Act is the one which gives priority for certain commercial transaction financing agreements.[17] This section gives priority to three types of written agreements, even though notice of a federal tax lien has already been filed.[18] To obtain this priority, the agreement must be protected under local law against a judgment lien arising as of the time of tax lien filing, out of an unsecured obligation.[19]

The first agreement of this nature which is given priority is the commercial transaction financing statement covering accounts receivable, inventory, real estate mortgages and paper of a kind ordinarily arising in commercial transactions.[20] In the House Committee Report, this last category is further defined as including contract rights, chattel paper, documents and instruments.[21]

These commercial transactions financing agreements must be entered into by a person in the course of his trade or business. Thus, a protected lender or purchaser would include a person in the business of financing commercial transactions such as a bank or commercial factor. It would also include one who entered into the agreement incident to the conduct of his trade or busi-

16. *Id.* § 6323(b)(10).
17. *Id.* § 6323(c).
18. *Id.* § 6323(c)(1)(A).
19. *Id.* § 6323(c)(1)(B).
20. *Id.* § 6323(c)(2).
21. H.R. Rep. No. 1884, 89th Cong., 2d Sess. 42 (1966). *See* S.C. Code Ann. §§ 10.9-105, 106 (1966).

ness.[22] Agreements of the above nature will come within the term "commercial transaction financing agreements" only if they are made before the forty-sixth day after the date of tax lien filing or before the lender or purchaser had actual knowledge of such tax lien filing.[23] This is a departure from the prior law which would have required the lender or purchaser of the security interest to check the filing records each time before he made a loan. Under the new provision, the lender or purchaser will only be required to check for tax liens every forty-five days, and all loans or purchases made during this intervening time period will have priority over the federal tax lien. Before relying on the forty-five day grace period and refraining from searches in the intervening period, the lender or factor should consider whether his future advances under a filed financing statement are protected against intervening judgment liens. The text writers are in controversy on this matter, and if the intervening judgment lien is given priority, the condition precedent against intervening federal tax liens may not be satisfied.[24]

The term "qualified property," when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the forty-sixth day after the date of filing.[25] The House Committee Report defining qualified property under the new act states:

> Under this subparagraph (B), property subject to a protected security interest is limited to commercial financing security in existence at the time of the tax lien filing or acquired within 45 days thereafter. Thus, a lender or purchaser has priority with respect to any commercial financing security acquired by the taxpayer during the 45 day period even though he earlier had actual notice or knowledge of the filing of the notice of the tax lien which precluded him from increasing the amount of his priority by reason of further disbursements.[26]

22. H.R. REP. No. 1884, 89th Cong., 2d Sess. 42 (1966).

23. INT. REV. CODE OF 1954, § 6323(c)(2)(A)(ii).

24. *Compare* 2 G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY § 35.6 (1965) *with* Coogan, *Article 9 of the Uniform Commercial Code: Priorities Among Secured Creditors and the "Floating" Lien*, 72 HARV. L. REV. 838, 872 (1959); Coogan and Gordon, *The Effect of the Uniform Commercial Code Upon Receivables Financing—Some Answers and Some Unsolved Problems*, 76 HARV. L. REV. 1529, 1549 (1963); Coogan, *Intangibles as Collateral under the Uniform Commercial Code*, 77 HARV. L. REV. 997, 1019 (1964).

25. INT. REV. CODE OF 1954, § 6323(c)(2)(B).

26. H.R. REP. No. 1884, 89th Cong., 2d Sess. 42 (1966).

This cures one of the most serious deficiencies of the former law, that being that a lender could not safely make future advances under an existing financing agreement without once again searching for a federal tax lien. On the basis of the above, when "commercial financing security" is used the protection is not confined to property owned by the borrower when the tax lien was filed, but may also cover property acquired by him forty-five days after the lien is filed. This latter forty-five day period is not cut short by earlier knowledge of the lien.[27]

Some interesting questions may possibly arise concerning the problem of exactly when property is acquired. Suppose the borrower assigns to the lender expected proceeds of an executory contract which is still not performed after the forty-five day period has expired. Under earlier decisions such expected proceeds were regarded as after acquired property, and a security interest in them was regarded as inchoate as against the intervening federal tax lien.[28] The House Committee Report[29] refers to contract rights as defined in the Uniform Commercial Code in giving further explanation to the definition of a commercial financing security. This would seem to suggest that the expected proceeds of an existing executory contract will now be considered as property already acquired, since contract rights by definition are rights not yet earned by performance.[30]

The second type of agreement which is given priority over earlier filed tax liens is the real property construction or improvement financing agreement.[31] This article will only deal with the part of that section which gives priority to an agreement to make cash disbursements to finance the raising or harvesting of a farm crop or the raising of livestock or other animals.[32] When dealing with farm crops, the Act makes provisions for the furnishing of goods and services to be treated as the disbursement of cash.[33] It should be noted that under this section the lender does not have the forty-five day limitation imposed on him.

The third type agreement given priority against earlier filed tax liens is the obligatory disbursement agreement.[34] This is an

27. Plumb, *The New Federal Tax Lien Law,* 22 BUS. LAW. 271, 277 (1967).
28. Randall v. Colby, 190 F. Supp. 319, 341 (N.D. Iowa 1961).
29. H.R. REP. No. 1884, 89th Cong., 2d Sess. 42 (1966).
30. S.C. CODE ANN. § 10.9-106 (1966).
31. INT. REV. CODE OF 1954, § 6323(c)(3).
32. *Id.* § 6323(c)(3)(a)(iii).
33. *Id.* § 6323(c)(3)(a)(iii).
34. *Id.* § 6323(c)(4).

agreement under which a person is obliged to make disbursements because of reliance by a party other than the taxpayer. An example of this would be an irrevocable letter of credit under which the bank or issuing party must honor a demand for payment by a third party who has sold to the taxpayer in reliance on the letter of credit. It should be noted that here again there is no time limit in which to make the disbursements after the filing of the tax lien. The priority also extends, if the agreement so provides, to any other property obtained by the taxpayer if it can be directly traced back to the disbursements made to the taxpayer.[35] One further requirement in reference to this priority is that the agreement must be entered into by a person in the ordinary course of his trade or business.[36] As to sureties who must make loans to finance the completion of contracts, their priority is extended not only to the proceeds of the contract entered into with the delinquent taxpayer, but also to any tangible personal property used by the taxpayer to perform the contract. This priority, with respect to the tangible personal property used in the performance of the contract, is only available to the surety if such interest is protected under local law against a judgment lien arising out of an unsecured obligation at the same time the tax lien was filed.[37]

The Tax Lien Act's forty-five day leeway provision,[38] which somewhat overlaps the previous section, appears to be of broader applicability. Under this section, protection is given to the holder of a security interest for any disbursement made within forty-five days after the federal tax lien has been filed.

V. The New Subordination Provision

At this point it is appropriate to make brief mention of the possibility of subordination of the tax lien by consent. While it is true that the lender may safely lend for forty-five days without checking the records or until he receives actual notice, he may still, at times, run into further problems. Suppose the borrower is a farmer who has just planted crops in which the secured party has taken a security interest with provisions for future advances. Suppose further, that after forty-five days the lender, prior to making an advance, discovers that a federal tax lien

35. *Id.* § 6323(c)(4)(B).
36. *Id.* § 6323(c)(4)(A).
37. H.R. Rep. No. 1884, 89th Cong., 2d Sess. 42 (1966).
38. Int. Rev. Code of 1954, § 6323(d).

has been filed against all the crops of this farmer. Under a provision[39] in the Act, the district director may subordinate his lien to that of the lender if he believes the chance of ultimate collection of the tax will be enhanced by use of the loan proceeds for other purposes, as in our example, the harvesting of the crops. The Secretary of the Treasury or his delegate is expected to utilize the authority granted in this new section in cases similar to those in which an ordinary prudent businessman would subordinate his rights to secure similar benefits.[40]

VI. Other Priorities

In a further attempt to do away with the "choateness" doctrine as developed under prior law the Act allows a priority to the following:

> 1. any interest or carrying charges upon the obligation secured,
>
> 2. the reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,
>
> 3. the reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,
>
> 4. the reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,
>
> 5. the reasonable costs of insuring payment of the obligation secured, and
>
> 6. amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321. . . .[41]

39. Int. Rev. Code of 1954, § 6325(d) states:
Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of subordination of any lien imposed by this chapter upon any part of the property subject to such lien if—(1) there is paid over to the Secretary or his delegate an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States, or (2) the Secretary or his delegate believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination.

40. H.R. Rep. No. 1884, 89th Cong., 2d Sess. 54 (1966).

41. Int. Rev. Code of 1954, § 6323(e).

VII. Filing Provisions

The filing provisions of the Act provide that a tax lien on personal property (tangible or intangible) is to be filed in one office within the state (or the county, or other governmental subdivision) as designated by the laws of such state, in which property subject to the lien is situated.[42] If the state has not by law designated one office for filing then the lien is to be filed in the office of the clerk of the United States District Court for the judicial district in which the lien is situated. For purposes of this section, the residence of a corporation or partnership is the place in which its executive offices are located. A taxpayer's residence is said to be the place in which he resides at the time the lien is filed.[43]

South Carolina has enacted the Uniform Federal Tax Lien Registration Act.[44] Under this act, federal tax liens are to be filed in the office of the register of mesne conveyances of the county within which the property subject to such lien is situated (or clerk of court in those counties in which the office of registration of mesne conveyances has been abolished).

In the case of a security interest in commercial equipment which is to be filed in the Secretary of State's office,[45] one would have to search in two offices in order to be sure that there were no liens on record. In order to cure this problem, it would seem that the Uniform Tax Lien Registration Act should be amended. A recent approach taken by New York would seem to make it possible to search for the tax lien at the place the security interest is filed. The approach taken by New York,[46] in an attempt to coordinate federal tax lien filing with the filing of security interests under the Uniform Commercial Code, prvoides that federal tax liens on personal property (all types) are to be filed in the office of the Secretary of State if the taxpayer is a partnership or corporation. In all other cases the filing is to be in the office of the clerk of the county where the owner is a resident. An act of this nature will keep the search limited to one office in most cases. However, it would still be necessary under this statute for one to search the county records for a tax lien in the unlikely event the borrower was an individual and the

42. *Id.* § 6323(f)(1)(A)(ii).
43. *Id.* § 6323(f)(2).
44. S.C. Code Ann. § 65-2721 to -2727 (1962).
45. *Id.* § 10.9-401(1)(c) (1966).
46. Law of June 14, 1966, ch. 608, § 240(2) N.Y. Laws 1363 (1966).

interest taken was one that was required to be filed in the Secretary of State's office. Anyone taking a security interest in such items as airplanes, railroad rolling stock, or ships should always make a check of the files in the appropriate office provided by federal law as a precautionary measure.

The provisions of the New York Act, previously mentioned, are basically the same as those found in the Revised Uniform Federal Tax Lien Registration Act drafted by the National Conference of Commissioners on Uniform State Laws. The revised act, prepared in the light of the Federal Tax Lien Act, would solve the problems in this area insofar as they could be solved without conflicting with federal law. It is strongly recommended that the current Tax Lien Registration Act[47] be repealed and the revised act enacted in its place.

Another problem in this same area is that of searching for federal tax liens on motor vehicles. The lender who takes a security interest in a motor vehicle is not afforded the same priority as a purchaser.[48] Therefore, regardless of the fact that his security interest is to be filed on the certificate of title under state law, he should still search the county records where the borrower resides for tax liens.[49]

VIII. Refiling Provisions for Tax Lien

The basic life span of the federal tax lien is six years,[50] but this period may be extended by the consent of the taxpayer or his absence from the country. Before the Act, a third party searching for a lien was at a loss as to how far beyond the six year period he should search. Under the Act, unless the Internal Revenue Service refiles the lien within the one year period ending thirty days after the expiration of the six year period which commences with the date of assessment, the original filing and any rights thereunder will be nullified.

IX. The Actual Notice Provisions

The term "actual notice" or knowledge is used throughout the Act. The definition of this term in the Act[51] is the same as

47. S.C. Code Ann. § 65-2721 to -2727 (1962).
48. Int. Rev. Code of 1954, § 6323(b)(2).
49. Plumb & Wright, *supra* note 2, at 71.
50. Int. Rev. Code of 1954, §§ 6323(g)(3), 6502(a)(1).
51. *Id.* § 6323(i)(1).

that in the Uniform Commercial Code.[52] A section in the Act which will be of particular comfort to lending institutions having a number of departments or branches, provides that an organization is deemed to have actual notice or knowledge of a fact only when it has been brought to the attention of the individual conducting the particular transaction, or when it would have been brought to his attention if the organization had exercised due diligence.[53] Whenever actual notice or knowledge is material in determining the priority of conflicting liens, the Internal Revenue Service will now have the burden of proving the actual knowledge or notice.[54]

X. CIRCULAR PRIORITY AND CHOATENESS—DO THEY STILL EXIST?

The passage of the Federal Tax Lien Act will probably make its greatest impact in the area of circular priority problems and the doctrine of choateness. The circular priority problem arises when the mortgagee or, now, the holder of a security interest in property, attempts to assert his interest against the insolvent taxpayer who also has claims against him by the federal government and the state government which hold real property tax liens, which under statute are usually superior to the mortgagee's interest, whose interest is superior to the real property tax liens. Anyone who has pondered the relative merits of Clemson (which has beaten Duke), Duke (which has beaten South Carolina) and South Carolina (which has beaten Clemson) can well understand the dilemma that will result between the collision of federal and state priorities.[55]

This problem has now been solved by the Act. A superpriority is now given to real property tax and special assessment liens[56] thereby eliminating the major part of the circular priority problem. One authority in this field has the following thoughts on this problem:

> Although the major problem area has been eliminated, mortgagees can still suffer the effects of circular priority in other circumstances. Landlord's liens, attachments and certain state and local tax liens are still deemed subordinate to a later federal tax lien under the "choateness" doctrine,

52. S.C. CODE ANN. § 10.1-201(27) (1966).
53. Plumb, *The New Federal Tax Lien Law*, 22 BUS. LAW. 271, 273 (1967).
54. H.R. REP. No. 1884, 89th Cong., 2d Sess. 12 (1966).
55. Plumb, *The New Federal Tax Lien Law*, 13 PRAC. LAW. 64, 75 (March 1967).

> yet they may in certain circumstances be superior to a mortgage which antedates the federal tax lien. In addition, a mechanic's lien, although its former position is now much improved, may still enjoy a more limited priority under federal law than under state law, and the mortgagee may be the man in the middle.[57]

It would seem that the holding of the *Scovil*[58] case would not be changed by the Act. In this case, arising under the South Carolina landlord's lien, the United States Supreme Court held the landlord's lien to be inchoate and therefore afforded the federal tax lien priority. The court said the lien was inchoate because of a provision in the lien act which provided for the tenant to post a bond and free the property.

The fact that the Act now gives a priority to the interest and expenses on a lien that is superior to the tax lien would seem to be a reversal of the Supreme Court's view that such expenses of a mortgagee were not "choate" until they were actually incurred.[59] The circular priority problem might still arise in relation to liens arising under operation of law. Under the Uniform Commercial Code, liens for the repair or improvement of goods such as the lien of garagemen and mechanics[60] are given priority over any perfected security interest. Assuming, under the authority of *Scovil*, that such liens would be held inchoate, thereby giving the federal tax lien priority over them, we would again be faced with the circular priority problem.

Under the "choateness doctrine" in the prior law, the after acquired property provisions of the Uniform Commercial Code were sitting ducks. It is hoped that the forty-five day provisions of the new act will eliminate this problem and holdings such as the one in *In Re Hudon and Son, Incorporated.*[61] In this case a federal tax lien was filed after the filing of the Uniform Commercial Code's "floating lien" on the taxpayer's property, but before orders to build and accounts receivable on such orders were owned by the taxpayer. The court held that since the orders and receivables were not in existence before the federal tax lien was assessed and filed, the security interests therein were inchoate and therefore were subordinate to the federal tax

56. INT. REV. CODE OF 1954, § 6323(b)(6).
57. Plumb, *The New Federal Tax Lien Law*, 22 BUS. LAW. 271, 281 (1967).
58. United States v. Scovil, 348 U.S. 218 (1955).
59. United States v. Pioneer American Ins. Co., 374 U.S. 84 (1963).
60. S.C. CODE ANN. § 45-550 (1962).
61. 65-2 U.S. Tax Cas. ¶ 9517 (D. Mass. 1964).

liens. This problem might still exist under the Act in that it indicates that a security interest is not in existence until the property is in existence.[62] Since neither the security interest nor the tax lien can attach until the property comes into existence it would seem the security interest should be preferred since it was first in time.

The Act does give priority to a mechanic's lienor[63] but defines such person as one who under local law has a lien on real property (or on the proceeds of a contract relating to real property).[64] Therefore liens given priority under the Uniform Commercial Code would escape the circular priority problem insofar as they related to real property. This result would only be reached insofar as the particular mechanic's lienor began his work or the furnishing of materials before the tax lien was filed.

Neither the prior lien section nor the revised one make any mention of a purchase money mortgage. The House Committee Report expressly indicates that the new bill is not intended to affect the purchase money mortgage concept.[65] Therefore the South Carolina case of *United States v. Anders Construction Company*[66] would be unaffected. Under the authority of this case a federal tax lien would be subordinate to the interest of the holder of a purchase money mortgage, even though the purchase money mortgage was filed subsequent to the filing of the federal tax lien.

XI. THE FEDERAL TAX LIEN VERSUS THE TRUSTEE IN BANKRUPTCY

A problem not previously discussed is the effect of the federal tax lien against the trustee in bankruptcy. The question to be resolved is whether the trustee, by virtue of the rights vested in him under 70(c) of the Bankruptcy Act,[67] can be considered, for the purpose of section 6323 of the Internal Revenue Code, a judgement lien creditor as to whom unfiled federal tax liens are invalid. A recent Supreme Court case[68] resolved this problem in favor of the trustee. This case was decided under the prior law which used the term "judgment creditor." The present act makes reference to a judgment lien creditor. The holding in the *Speers*

62. INT. REV. CODE OF 1954, § 6323(h)(1).
63. *Id.* § 6323(a).
64. *Id.* § 6323(h)(2).
65. H.R. REP. No. 1884, 89th Cong., 2d Sess. 4 (1966).
66. 111 F. Supp. 700 (W.D.S.C. 1953).
67. 11 U.S.C. § 110(e) (1964).
68. United States v. Speers, 382 U.S. 266 (1965).

case would seem to be further strengthened under the new act in that the Bankruptcy Act in 70(c) gives the trustee all the rights, remedies and powers of a creditor then holding a lien. Therefore the current law would seem to be that if the federal tax lien is not filed prior to the bankruptcy of the taxpayer it would fail against the trustee in bankruptcy.

XII. CONCLUSION

While some have referred to the Federal Tax Lien Act of 1966 as the "Lenders Victory in Defeat," it is obvious that some headway in this field has been made. From a mere reading of the new act it is obvious that it was intended to give more protection to the secured lender in accordance with the principles followed in the Uniform Commercial Code. It will be years before all the sections of this new act will have been judicially construed, but the secured lender may rest assured that in the meantime his position has been greatly improved. The forthcoming regulations on the new act should clear up much of the uncertainty in this area.