

HUNTING FOR TAX LIENS

A Shot in the Dark

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Highlighted in our last issue of The Eagle 9® Newsletter, was the Circuit Court's recent opinion regarding the IRS' obligation to file their liens in accordance with Revised Article 9's strict debtor name requirements. To briefly re-cap: the Sixth Circuit reversed a previous decision and held that while the IRS must "identify" the taxpayer and file within the state in which the property is situated, the Form 668 notice remains valid regardless of state law provisions. The court ruled that the exact legal name standards of RA9 were simply too burdensome to impart on our federal government and would conflict with the existing tax lien statute's goal of facilitating collection.

In light of this knowledge, searchers everywhere should be re-visiting their procedures for hunting tax liens. Debtor name aside, the very first piece of this puzzle goes to location. It is a common misconception that federal tax liens are filed at the Secretary of State (or central equivalent) while state tax liens are filed at the local recorder's office. Were all states as beautifully centralized as the great state of Louisiana, we'd be in luck. However, most jurisdictions have separate indexes at the states, recording offices and courts in which their tax liens are housed. The trick is knowing which index to search.

Take Massachusetts, for example. MA houses their state tax liens at the Secretary of Commonwealth's office only, while all federal liens can be found at the Boston District Court. The state of Vermont files no tax liens centrally; all are located at the town (or city) filing offices. New Hampshire chooses to index some state and federal liens at the Secretary of State, while other state and federal liens are found at the county *and* town (city) level.

We must also consider our debtor entity type. Tax liens for businesses are often filed in an index separately from liens against individuals. In Oklahoma, we nab our federal business entity liens at the Oklahoma county clerk's office—liens against the individual can be found in the county in which he or she resides. To further confuse the searcher, OK state tax liens on businesses are housed at the filing office in the county of the property...which may or may not be Oklahoma County.

Nervous yet? There's more...Tax liens against personal property are not necessarily recorded alongside real property liens. South Dakota's personal property liens are located at the state, while liens related to real estate are found at the county. Texas maintains personal property federal liens on businesses at the state, and personal property state liens on businesses at the county.

And now, enlightened by the Circuit Court's decision in the Spearing Tool case, selecting the correct index is still not enough. Searching the exact name could potentially keep one from discovering an effective tax lien. The "reasonably prudent searcher" standard has once again taken center stage. Now, the diligent searcher must consider the IRS' tendency to abbreviate debtor's name as well as add verbiage to the end of debtor's name—as is their common practice.

Though courts, governmental agencies, and other service companies may not be protecting the searcher, First American has developed products that do. Consider insurance on your larger deals through a tax lien endorsement tied to your Eagle 9® policy or a Combined Search Policy that not only insures the results of a tax lien search, but UCC, judgment and bankruptcy searches as well.