

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 122

TO: R. F. Martin – Director
FROM: R. B. Billings – Attorney
RE: Priority of Federal Liens on Personal Property

We have received a memorandum under date of April 29, 1954, from Field Representative "A" addressed to the Supervisor of Field Representatives, in which he raises the question of priority of federal liens on personal property of a debtor where the Collector of Internal Revenue has filed the assessment list in the office of the Register of Deeds in the county where certain personal property is located. He specifically discusses in the memorandum the case involving employer "B." It appears from the information contained in the memorandum that the Federal Government or Collector of Internal Revenue has filed assessment lists amounting to more than \$11,000 against employer "B" in the Register of Deeds' office.

It is our understanding that the lien created by the federal statute arises against both personal and real property at the time the assessment list is filed in the office of the Register of Deeds of the county within which the property subject to the lien is situated. In other words, in the present case if the federal assessment list has been recorded in the Register of Deeds' office, and we assume that this is true from Field Representative "A's" information, such action on the part of the Collector of Internal Revenue perfects a lien against all property, real or personal, belonging to the person against whom the assessment was made. This matter has been discussed by the Supreme Court of North Carolina in the case of Surety Corporation v. Sharpe, 236 N. C., page 46, and we quote:

“*** The statutes now embodied in Sections 3670 and 3671 of Title 26 of the United States Code Annotated, which constitute a revision of the Act of Congress of 13 July, 1866, give the United States a lien for taxes due it. Section 3670 provides that if any person liable to pay a tax to the United States neglects or refuses to pay such tax after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights of property, whether real or personal, belonging to such person. Under Section 3671, the lien for Federal taxes arises at the time the assessment list is received by the collector of internal revenue unless another date is specifically fixed by law, and continues until liability for the tax is satisfied or becomes unenforceable by reason of lapse of time.***”

The statutes referred to create a priority of federal tax liens even though unrecorded over the rights of all persons except such as are given protection by the subsequently enacted statute which the court also discussed on the same page of the report referred to. This is quoted as follows:

“***Section 3672 of Title 26 of the United States Code Annotated, which is a re-enactment and extension of an Act of Congress of 4 March, 1913, specifies that the federal tax lien created by Sections 3670 and 3671 shall not be valid as against any mortgages, pledges, purchaser, or judgment creditor until notice thereof has been filed by the collector (1) 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, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or (2) 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, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory. North Carolina has provided by statute that ‘notices of liens for internal revenue taxes payable to the United States . . . may be filed in the office of the register of deeds of the county . . . within which the property subject to such lien is situated.’” G.S. 44-65

This means, in our opinion, that where the assessment list for federal taxes has been recorded in the office of the Register of Deeds in a county where real or personal property is located which is owned by the debtor of the government the government is possessed of a tax lien against all property of such person, whether real or personal, and that the lien arises insofar as a judgment creditor is concerned at the time of the registration of the assessment list in the Register of Deeds’ office and any levy made under an execution issued on a judgment after the filing of the assessment list by the Federal Government in the Register of Deeds’ office as stated hereinbefore would not give a priority superior to the lien of the Federal Government to any judgment creditor who levied under the execution. Therefore, in the present case the question raised by Field Representative “A” with respect to whether the Federal Government has a prior lien on personal property upon a levy by him under execution issued under a judgment docketed by the Commission, it is our opinion that if the federal assessment lists were filed in the proper Register of Deeds’ office against employer “B” prior to the levy by the Field Representative on any personal property owned by employer “B”, the Federal Government would have a prior lien and the fact that we levied upon the personal property would not in any manner change such priority.

Adopted as an official Interpretation by the Commission on May 25, 1954.