

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, see section 9313(c) of Pub. L. 100-203, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99-272, set out as a note under section 1341 of this title.

§ 1368. Lien for liability**(a) Creation of lien**

If any person liable to the corporation under section 1362, 1363, or 1364 of this title neglects or refuses to pay, after demand, the amount of such liability (including interest), there shall be a lien in favor of the corporation in the amount of such liability (including interest) upon all property and rights to property, whether real or personal, belonging to such person, except that such lien may not be in an amount in excess of 30 percent of the collective net worth of all persons described in section 1362(a) of this title¹

(b) Term of lien

The lien imposed by subsection (a) arises on the date of termination of a plan, and continues until the liability imposed under section 1362, 1363, or 1364 of this title is satisfied or becomes unenforceable by reason of lapse of time.

(c) Priority

(1) Except as otherwise provided under this section, the priority of a lien imposed under subsection (a) shall be determined in the same manner as under section 6323 of title 26 (as in effect on April 7, 1986). Such section 6323 shall be applied for purposes of this section by disregarding subsection (g)(4) and by substituting—

(A) “lien imposed by section 4068 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1368]” for “lien imposed by section 6321” each place it appears in subsections (a), (b), (c)(1), (c)(4)(B), (d), (e), and (h)(5);

(B) “the corporation” for “the Secretary” in subsections (a) and (b)(9)(C);

(C) “the payment of the amount on which the section 4068(a) lien is based” for “the collection of any tax under this title” in subsection (b)(3);

(D) “a person whose property is subject to the lien” for “the taxpayer” in subsections (b)(8), (c)(2)(A)(i) (the first place it appears), (c)(2)(A)(ii), (c)(2)(B), (c)(4)(B), and (c)(4)(C) (in the matter preceding clause (i));

(E) “such person” for “the taxpayer” in subsections (c)(2)(A)(i) (the second place it appears) and (c)(4)(C)(ii);

(F) “payment of the loan value of the amount on which the lien is based is made to the corporation” for “satisfaction of a levy pursuant to section 6332(b)” in subsection (b)(9)(C);

(G) “section 4068(a) lien” for “tax lien” each place it appears in subsections (c)(1), (c)(2)(A), (c)(2)(B), (c)(3)(B)(iii), (c)(4)(B), (d), and (h)(5); and

(H) “the date on which the lien is first filed” for “the date of the assessment of the tax” in subsection (g)(3)(A).

(2) In a case under title 11 or in insolvency proceedings, the lien imposed under subsection (a) shall be treated in the same manner as a tax due and owing to the United States for purposes of title 11 or section 3713 of title 31.

(3) For purposes of applying section 6323(a) of title 26 to determine the priority between the lien imposed under subsection (a) and a Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(4) For purposes of this subsection, notice of the lien imposed by subsection (a) shall be filed in the same manner as under section 6323(f) and (g) of title 26.

(d) Civil action; limitation period

(1) In any case where there has been a refusal or neglect to pay the liability imposed under section 1362, 1363, or 1364 of this title, the corporation may bring civil action in a district court of the United States to enforce the lien of the corporation under this section with respect to such liability or to subject any property, of whatever nature, of the liable person, or in which he has any right, title, or interest to the payment of such liability.

(2) The liability imposed by section 1362, 1363, or 1364 of this title may be collected by a proceeding in court if the proceeding is commenced within 6 years after the date upon which the plan was terminated or prior to the expiration of any period for collection agreed upon in writing by the corporation and the liable person before the expiration of such 6-year period. The period of limitations provided under this paragraph shall be suspended for the period the assets of the liable person are in the control or custody of any court of the United States, or of any State, or of the District of Columbia, and for 6 months thereafter, and for any period during which the liable person is outside the United States if such period of absence is for a continuous period of at least 6 months.

(e) Release or subordination

If the corporation determines that release of the lien or subordination of the lien to any other creditor of the liable person would not adversely affect the collection of the liability imposed under section 1362, 1363, or 1364 of this title, or that the amount realizable by the corporation from the property to which the lien attaches will ultimately be increased by such release or subordination, and that the ultimate collection of the liability will be facilitated by such release or subordination, the corporation may issue a certificate of release or subordination of the lien with respect to such property, or any part thereof.

(f) Definitions

For purposes of this section—

(1) The collective net worth of persons subject to liability in connection with a plan termination shall be determined as provided in section 1362(d)(1) of this title.

(2) The term “pre-tax profits” has the meaning provided in section 1362(d)(2) of this title.

¹ So in original. Probably should be followed by a period.

(Pub. L. 93-406, title IV, §4068, Sept. 2, 1974, 88 Stat. 1032; Pub. L. 95-598, title III, §321(c), Nov. 6, 1978, 92 Stat. 2678; Pub. L. 99-272, title XI, §11016(a)(6)(B), (c)(14), Apr. 7, 1986, 100 Stat. 271, 275; Pub. L. 100-203, title IX, §9312(b)(2)(B)(i), (C)(ii), Dec. 22, 1987, 101 Stat. 1330-361, 1330-362; Pub. L. 101-239, title VII, §§7881(f)(3)(B), (10)(C), (12), 7891(a)(1), 7894(g)(4)(A), Dec. 19, 1989, 103 Stat. 2440, 2441, 2445, 2451.)

CODIFICATION

A former subsec. (f) of this section was originally subsec. (e) of section 1362 of this title and was redesignated as subsec. (f) of this section by Pub. L. 100-203, §9312(b)(2)(B)(ii). Subsequently, Pub. L. 100-203, §9312(b)(2)(B)(ii), was amended generally by Pub. L. 101-239, §7881(f)(10)(B), and, as so amended, no longer contains language redesignating subsec. (e) of section 1362 as subsec. (f) of this section. As a result of that amendment, the transfer of subsec. (e) of section 1362 to subsec. (f) of this section was rescinded.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101-239, §7881(f)(12), struck out “to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 1362(a) of this title” after “the amount of such liability” and substituted “in the amount of such liability (including interest) upon all property and rights to property, whether real or personal, belonging to such person, except that such lien may not be in an amount in excess of 30 percent of the collective net worth of all persons described in section 1362(a) of this title” for “to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 1362(a) of this title upon all property and rights to property, whether real or personal, belonging to such person.”

Pub. L. 101-239, §7881(f)(3)(B), struck out at end “The preceding provisions of this subsection shall be applied in a manner consistent with the provisions of section 1364(d) of this title relating to treatment of multiple controlled groups.”

Subsec. (c). Pub. L. 101-239, §7891(a)(1), in pars. (1), (3), and (4), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Subsec. (c)(2). Pub. L. 101-239, §7894(g)(4)(A), substituted “section 3713 of title 31” for “section 3466 of the Revised Statutes (31 U.S.C. 191)”.

Subsec. (f). Pub. L. 101-239, §7881(f)(10)(C), added subsec. (f).

1987—Subsec. (a). Pub. L. 100-203, §9312(b)(2)(B)(i), substituted “to the extent such amount does not exceed 30 percent of the collective net worth of all persons described in section 1362(a) of this title” for “to the extent of an amount equal to the unpaid amount described in section 1362(b)(1)(A)(i) of this title” in two places.

Pub. L. 100-203, §9312(b)(2)(C)(ii), inserted at end “The preceding provisions of this subsection shall be applied in a manner consistent with the provisions of section 1364(d) of this title relating to treatment of multiple controlled groups.”

1986—Pub. L. 99-272, §11016(a)(6)(B)(i), struck out “of employer” after “liability” in section catchline.

Subsec. (a). Pub. L. 99-272, §11016(a)(6)(B)(ii), substituted “person liable” for “employer or employers liable”, “neglects or refuses” for “neglect or refuse”, and “such person” for “such employer or employers” and inserted “to the extent of an amount equal to the unpaid amount described in section 1362(b)(1)(A)(i) of this title” in two places.

Subsec. (c)(1). Pub. L. 99-272, §11016(a)(6)(B)(vi), substituted par. (1) for former par. (1) which read as follows: “Except as otherwise provided under this section, the priority of the lien imposed under subsection (a)

shall be determined in the same manner as under section 6323 of title 26. Such section 6323 shall be applied by substituting ‘lien imposed by section 4068 of the Employee Retirement Income Security Act of 1974’ for ‘lien imposed by section 6321’; ‘corporation’ for ‘Secretary or his delegate’; ‘employer liability lien’ for ‘tax lien’; ‘employer’ for ‘taxpayer’; ‘lien arising under section 4068(a) of the Employee Retirement Income Security Act of 1974’ for ‘assessment of the tax’; and ‘payment of the loan value is made to the corporation’ for ‘satisfaction of a levy pursuant to section 6332(b)’; each place such terms appear.”

Subsec. (d)(1), (2). Pub. L. 99-272, §11016(a)(6)(B)(iii), (iv), substituted “liable person” for “employer” wherever appearing.

Subsec. (e). Pub. L. 99-272, §11016(a)(6)(B)(v), (c)(14), struck out “, with the consent of the board of directors,” after “corporation determines” and substituted “liable person” for “employer or employers”.

1978—Subsec. (c)(2). Pub. L. 95-598 substituted “a case under title 11 or in” and “title 11” for “the case of bankruptcy or” and “the Bankruptcy Act”.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7881(f)(3)(B), (10)(C), (12) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100-203, §§9302-9346, to which such amendment relates, see section 7882 of Pub. L. 101-239, set out as a note under section 401 of Title 26, Internal Revenue Code.

Amendment by section 7891(a)(1) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 7891(f) of Pub. L. 101-239, set out as a note under section 1002 of this title.

Pub. L. 101-239, title VII, §7894(g)(4)(B), Dec. 19, 1989, 103 Stat. 2451, provided that: “The amendment made by subparagraph (A) [amending this section] shall take effect as if originally included in section 3 of Public Law 97-258.”

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable with respect to plan terminations under section 1341 of this title with respect to which notices of intent to terminate are provided under section 1341(a)(2) of this title after Dec. 17, 1987, and plan terminations with respect to which proceedings are instituted by the Pension Benefit Guaranty Corporation under section 1342 of this title after that date, see section 9312(d)(1) of Pub. L. 100-203, as amended, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99-272, set out as a note under section 1341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 1369. Treatment of transactions to evade liability; effect of corporate reorganization

(a) Treatment of transactions to evade liability

If a principal purpose of any person in entering into any transaction is to evade liability to which such person would be subject under this subtitle and the transaction becomes effective within five years before the termination date of the termination on which such liability would be based, then such person and the members of such person’s controlled group (determined as of