

§ 1367. Recovery of liability for plan termination

The corporation is authorized to make arrangements with contributing sponsors and members of their controlled groups who are or may become liable under section 1362, 1363, or 1364 of this title for payment of their liability, including arrangements for deferred payment of amounts of liability to the corporation accruing as of the termination date on such terms and for such periods as the corporation deems equitable and appropriate.

(Pub. L. 93-406, title IV, §4067, Sept. 2, 1974, 88 Stat. 1032; Pub. L. 99-272, title XI, §11016(a)(6)(A), Apr. 7, 1986, 100 Stat. 271; Pub. L. 100-203, title IX, §9313(b)(6), Dec. 22, 1987, 101 Stat. 1330-366; Pub. L. 101-239, title VII, §7893(g)(3), Dec. 19, 1989, 103 Stat. 2448.)

AMENDMENTS

1989—Pub. L. 101-239 amended directory language of Pub. L. 99-272, §11016(a)(6)(A)(ii), see 1986 Amendment note below.

1987—Pub. L. 100-203 inserted “or may become” after “who are”.

1986—Pub. L. 99-272, §11016(a)(6)(A)(i), (iii), substituted “of liability” for “of employer liability” in section catchline and inserted “of amounts of liability to the corporation accruing as of the termination date” in text.

Pub. L. 99-272, §11016(a)(6)(A)(ii), as amended by Pub. L. 101-239, substituted “contributing sponsors and members of their controlled groups” for “employers”.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective as if included in the provision of the Single-Employer Pension Plan Amendments Act of 1986, Pub. L. 99-272, title XI, to which such amendment relates, see section 7893(h) of Pub. L. 101-239, set out as a note under section 1002 of this title.

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 pro-

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