

Dated: June 17, 2022
The following is ORDERED:



A handwritten signature in black ink, appearing to read "M. Ruthie Hagan".

M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

In re:
Vanessa Catherine Stephenson
Debtor

Case No. 21-22684-H
Chapter 13

**MEMORANDUM OPINION AND ORDER REGARDING
DEBTOR'S OBJECTION TO CLAIM NO. 9 OF DEPARTMENT OF TREASURY –
INTERNAL REVENUE SERVICE**

This matter comes before the Court on Vanessa Catherine Stephenson's ("Debtor") Objection to Claim #9 filed by the Department of Treasury - Internal Revenue Service ("IRS") (the "Claim Objection") (DE 23), along with the IRS's Response (DE 37) and Supplemental Responses of the IRS (DE 53 and 60). On February 2, 2022, the Court held an initial hearing on

the Claim Objection. The Court held another hearing on April 27, 2022 to consider argument on the Claim Objection after additional briefing, at which time the Court took the matter under advisement. The Court has jurisdiction of this matter pursuant to 28 U.S.C § 1334, and this is a core proceeding under 28 U.S.C. § 157. Pursuant to FED. R. CIV. P. 52, made applicable to this matter by FED. R. BANKR. P. 7052, and considering the pleadings, exhibits introduced, arguments of counsel, witness testimony and the entire record herein, the Court makes the following findings of fact and conclusions of law.

In a case of first impression, the Court considers whether a Notice of Federal Tax Lien is valid and attaches to personal property of a taxpayer when the notice of lien is filed in the county of residence a taxpayer holds out as her home address, but never in fact resided at the address at the time the tax lien was filed. The IRS asserts a secured claim on Ms. Stephenson's personal property based on its tax lien. Ms. Stephenson disputes that the claim should be treated as a secured claim because the notice of the tax lien was not properly filed in her county of residence as required by 26 U.S.C. § 6323(f).

FACTUAL BACKGROUND

Ms. Stephenson filed a petition for relief under Chapter 13 of the United States Bankruptcy Code on August 17, 2021. On September 15, 2021, the IRS filed a proof of claim in the amount of \$22,936.75, representing taxes, penalties and interest owed for tax debts for the 2014¹, 2015 and 2020 tax periods. *See* Amended Claim 9-3.² For the 2015 tax period, the IRS asserts a tax

¹ The IRS preliminarily determined that Ms. Stephenson was entitled to equitable relief of her 2014 tax debt as an innocent spouse. However, that determination is subject to her ex-husband's pending appeal, and therefore before finalizing the determination, the IRS has requested to hold the question of the 2014 tax debt in abeyance until the IRS has completed review of the appeal.

² The breakdown of Claim 9-3 is as follows:

debt of \$4,957.85 with interest to date of \$1,787.04 totaling \$6,744.89, and asserts \$4,473.00 of that amount is a secured claim secured by a lien filed in Benton County, Tennessee against Ms. Stephenson's personal property. [DE 53, Ex. 1; Amended Claim 9-3] Debtor's confirmed plan treats the IRS's entire claim in the amount of \$22,936.75 as a general unsecured claim. [DE 42] Debtor's Objection to the claim [DE 23] asserts that the IRS's secured claim in the amount of \$4,473.00 is unsecured because the Notice of Federal Tax Lien failed to attach to any real or personal property identified in her 2021 bankruptcy petition.

During the February 2, 2022 hearing, Ms. Stephenson testified that she frequently moved around from 2016 - 2018 and used 102 Kathy Avenue, Camden, Benton County, Tennessee, her mother's home address, for employment purposes and on her 2017 tax return. *See* Feb. 2, 2022 Hearing Tr. [DE 57 at 33-35] In 2016, Ms. Stephenson lived and worked in Longmont, Colorado and used her mother's address on her W-2. *Id.* at 38. She further testified and explained that she continued to use her mother's address on her W-2s during 2017 and 2018 as she "mov[ed] from one state to another and [she didn't] have an address, [she] always put [her] mother's [address] down." *Id.* Those frequent moves included living in Huntington, Tennessee in 2017 and borrowing an RV with her husband³ in December of 2017 and traveling and living in Fort Mills, South Carolina, then Keeling, Virginia, and finally Semora, North Carolina until June 2018 when she accepted a teaching position in the Germantown, Tennessee Municipal School District. *Id.* at 26-

2020	\$1,656.48 (unsecured priority claim)
2014-15	\$16,807.27 (unsecured claim)
2015	\$4,473.00 (secured claim)

³ Ms. Stephenson is no longer married, or is estranged from the husband noted here.

27. Upon accepting the teaching position in June 2018, she moved to Tennessee and began renting a home located in Shelby County, Tennessee, where she continues to reside. *Id.* at 27-28.

Prior to Ms. Stephenson filing her bankruptcy petition in 2021, a tax lien relating to Ms. Stephenson's 2015 tax debt arose on June 6, 2016, the date of assessment. [DE 60 at 4] In 2017, Ms. Stephenson jointly filed her tax return with her husband using the 102 Kathy Avenue, Camden, Benton County, Tennessee address. *Id.* at 2. On or about April 6, 2017, and without Ms. Stephenson's knowledge, her mother, Valerie Joanna Stevens ("Ms. Stevens"), executed a quitclaim deed conveying her interest in the home located at 102 Kathy Avenue to Ms. Stephenson and her brother which was subject to a life estate Ms. Stevens expressly retained in the property. [DE 23, ¶ 14 and Ex. 2] Purportedly wanting nothing to do with the real property, Ms. Stephenson testified that she later quitclaimed her remaining interest in the real property to her brother in 2019.⁴ [DE 57 at 31-32]

After failed attempts to collect the 2015 tax debt, the IRS filed a Notice of Federal Tax Lien in Benton County, Tennessee on August 21, 2018. [DE 60 at 2] Ms. Stephenson maintains she never lived at 102 Kathy Avenue, never spent money on the home, nor did she pay real estate taxes or insurance. [DE 57 at 29] She also testified that the while she has visited her mother and stayed there, the longest she ever stayed at 102 Kathy Avenue was a week. *Id.* at 27-28. Ms. Stephenson testified during the February 2, 2022 hearing that she began living in Shelby County, Tennessee in June of 2018 and still resides in Shelby County today. *Id.* at 27. To date, the IRS has not filed a tax lien in Shelby County, Tennessee. [DE 23 at 4]

⁴ This property is not property of the estate, and the Court will not opine on whether any lien attached to the real property located at 102 Kathy Avenue, Camden, Tennessee. *See* 11 U.S.C. § 541; 28 U.S.C. § 1334(e).

DISCUSSION

The crux of the parties' dispute lies on the materiality of whether Ms. Stephenson in fact resided at 102 Kathy Avenue, Camden, Benton County, Tennessee on August 21, 2018, the date the IRS filed the Notice of Federal Tax Lien. Ms. Stephenson maintains she never physically resided at 102 Kathy Avenue in Camden, Tennessee. *See* Feb. 2, 2022 Hearing Tr. [DE 57 at 29] The IRS points out that Ms. Stephenson "frequently and repeatedly identified a Benton County address . . . on her federal tax forms and identified [102 Kathy Avenue, Camden, Tennessee] as her home address." [DE 60 at 1]

The IRS imposes a lien for unpaid taxes on a delinquent taxpayer's property if the taxpayer fails to pay taxes. A federal tax lien arises under 26 U.S.C. § 6321:

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, 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 to property, whether real or personal, belonging to such person.

26 U.S.C. § 6321. "The tax lien attaches to the taxpayer's property upon the filing of a notice of lien. 26 U.S.C. § 6323(a)." *In re Eschenbach*, 267 B.R. 921, 923 (Bankr. N.D. Tex. 2001).

The IRS's filing requirement for recordation of the lien at issue in this case is set forth in 26 U.S.C. § 6323(f), which provides in pertinent part:

(f) Place for filing notice; form –

(1) **Place for filing.** – The notice [of a tax lien imposed by section 6321] shall be filed –

(A) **Under State laws.** . . .

(ii) **Personal Property.** – In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated, except that State law merely

conforming to or reenacting Federal law establishing a national filing system does not constitute a second office for filing as designated by the laws of such State

* * *

(2) **Situs of property subject to lien.** – For purpose of paragraph[] (1) . . . property shall be deemed to be situated . . .

(B) **Personal Property.** – In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

26 U.S.C. § 6323(f)(1)(A)(ii) and (f)(2)(B). “For a taxpayer's personal property, the Internal Revenue Code deems the property situated at the *residence* of the taxpayer at the time the notice of lien is filed.” *In re Eschenbach*, 267 B.R. at 923 (emphasis added); 26 U.S.C. § 6323(f)(2)(B). Therefore, determining whether the Notice of Federal Tax Lien was effective and attached to Ms. Stephenson’s personal property requires this Court to make a factual finding as to whether Ms. Stephenson *resided* in Benton County, where the lien was recorded, on August 21, 2018.

Ms. Stephenson’s Place of Residence on August 21, 2018

“[T]he residence of a delinquent taxpayer is a question of fact to be determined by various criteria: Among them are the taxpayer's physical presence as an inhabitant and not a mere transient, . . . ; the permanence of that presence . . . ; the reason for [her] presence . . . ; and the existence of other residences.” *Corwin Consultants, Inc. v. Interpublic Group of Cos., Inc.*, 512 F.2d 605, 610 (2d Cir. 1975); *see also Taylor v. Quantum Chem. Corp. (In re Carousel Int’l Corp.)*, 219 B.R. 807 (C.D. Ill. 1997) (citing *Corwin Consultants*, 512 F.2d at 608). “In general, for this statute, where a taxpayer resides is where [she] dwells for a significant amount of time and where creditors would be most likely to look for [her].” *In re Saunders*, 240 B.R. 636, 641 (S.D. Fla. 1999), *aff’d sub nom. Saunders v. Tolz*, 275 F.3d 51 (11th Cir. 2001) (citing *Corwin*, 512 F.2d at 610); 26 U.S.C. § 6323(f)(2)(B).

In *Corwin Consultants*, the court noted that the drafters of the Federal Tax Lien Act of 1966 (Pub. L. No. 89-719) added § 6323(f)(2)(B) “to clarify ‘existing law by providing specific rules with respect to the place of filing a notice of a Federal tax lien. . . .’ 3 U.S. Code Cong. & Admin. News, 89th Cong., 2d Sess. 1966, at p. 3732 (S. Rep. No. 1708).” *Corwin Consultants*, 512 F.2d at 608. The court also highlighted the situation in which the drafters’ goal of ease of filing did not contemplate that in the case of a “taxpayer without an ascertainable residence, the Government can never properly file its notice of tax lien . . . , and [the court hoped] that Congress [would] see fit to eliminate the possibility of such a result in the future.” *Corwin Consultants*, 512 F.2d at 611.

The IRS contends it is entitled to treat the Kathy Avenue address as Ms. Stephenson’s residence because she held out 102 Kathy Avenue as her home address on her tax returns and her W-2s. [DE 60 at 5] The Court finds no binding legal support that the IRS was entitled to use the address Ms. Stephenson held out as her home address as the place Ms. Stephenson resided when it was not in fact the address where she physically resided.⁵ Some courts have declined the “last known residence” interpretation because doing so would “read . . . additional language into the

⁵ Some courts deem the address on a taxpayer’s returns to be the place of residence where there is evidence the taxpayer has previously physically resided at the address provided on the taxpayer’s tax return, or when there is evidence the taxpayer physically resides at the home address. *Fusaro v. C.I.R.*, No. 13282-01 L, 2003 WL 23018836 at *5 (U.S. Tax Court Dec. 29, 2003) (taxpayer resided at residence at which he shared the majority of expenses and used the address on his driver’s license); *Taylor v. Quantum Chem. Corp. (In re Carousel Int’l Corp.)*, 219 B.R. 807, 809 (C.D. Ill. Nov. 5, 1997) (residency of the taxpayer for lien purposes was the address used as a family residence where the taxpayers “maintained year round with utilities, cable, telephone and yard and pool maintenance services and a twice weekly maid service”); *In re Eschenbach*, 267 B.R. 921, 922–23 (Bankr. N.D. Tex. 2001) (facts were undisputed that the debtors lived in the county the IRS filed the notice of federal tax lien). That is not the case before this Court.

statute.” *Saunders v. United States (In re Saunders)*, 240 B.R. 636, 642 (S.D. Fla. 1999), *aff’d sub nom. Saunders v. Tolz*, 275 F.3d 51 (11th Cir. 2001). *But see Corwin Consultants, Inc. v. Interpublic Group of Cos., Inc.*, 512 F.2d 605, 611 (2d Cir.1975) (concurring opinion) (“[T]he interpretation of ‘residence’ as meaning ‘last known residence’ is in accord with other provisions of the Code, *see, e.g.*, 26 U.S.C. §§ 6212 & 6303.”); *see also* 26 U.S.C. § 6212 (requiring notice of deficiencies mailed to the taxpayer’s “last known address”). Under 26 U.S.C. §6323(f), however, the notice of federal tax lien must be filed in the county of the taxpayer's *residence*. *In re Saunders*, 240 B.R. at 642 (Following the interpretation that for purposes of 26 U.S.C. § 6323(f), a taxpayer resides at the home address listed on the taxpayer’s federal tax return because that is the place where creditors are more likely to find the taxpayer aligns with the legislative purpose of the statute, but it ignores the plain language of the statute requiring that the taxpayer resides at the address).

In this case, Ms. Stephenson testified she lived and dwelled in Shelby County, Tennessee beginning in June of 2018 and still resides in Shelby County today. Therefore, Stephenson resided in Shelby County, Tennessee - not Benton County - on August 21, 2018. The Court recognizes that Ms. Stephenson did hold out the 102 Kathy Avenue, Camden, Tennessee address as her address on her W-2s and tax returns to receive mail. However, she never physically resided there. Furthermore, the Court heard no testimony that Ms. Stephenson even stayed in Benton County, Tennessee for any extended period of time. For purposes of § 6323(f), Ms. Stephenson’s residence was located in Shelby County, Tennessee on August 21, 2018.

Notice of the Federal Tax Lien Was Not Effective and Therefore Invalid

Having found that Ms. Stephenson did not reside in Benton County on August 21, 2018, the Court also finds that the Notice of the Federal Tax Lien filed in Benton County was not

effective. The Court is faced with the situation *Corwin Consultants* warned of and one for which Congress has yet to eliminate – a situation where there was no ascertainable address for the Government to properly file the Notice of Federal Tax lien against Ms. Stephenson’s personal property.

A federal tax lien is *created* in favor of the IRS upon the assessment against the taxpayer even without recording a Notice of Federal Tax Lien. *McGinley v. United States*, 942 F. Supp. 1239, 1243 (D. Neb. 1996) (citing *United States v. McDermott*, 507 U.S. 447, 448, (1993)) (“upon assessment by the government ‘the law created a lien in favor of the United States on all real and personal property belonging to the [taxpayers], 26 U.S.C. §§ 6321 and 6322, including after-acquired property’”); *Choate v. Tubbs*, No. 01-1288-T-AN, 2004 WL 2109985 *2 (W.D. Tenn., Aug. 9, 2004). However, under federal and Tennessee law, the lien does not *attach* to personal property and gain secured status until it is properly filed in the office of the register of deeds of the county where the taxpayer *resides*. 26 U.S.C. § 6323(f)(2)(B); TENN. CODE ANN. § 66-21-201 (place for filing a federal tax lien is “in the office of the register of deeds of the county within which the property subject to such lien is situated”); *see also United States v. Jones*, 260 B.R. 415, 420 (E.D. Mich. 2000) (explaining “the procedure for real and/or personal property [and] [o]nce filed, the tax lien is perfected as a matter of law.”) (citations omitted). As explained, personal property is deemed situated “at the residence of the taxpayer at the time the notice of lien is filed.” 26 U.S.C. § 6323(f)(2)(B). Therefore, for the notice to be effective and for the lien to attach to Ms. Stephenson’s personal property, thereby resulting in a secured claim, the Court is also required to find that the notice was properly filed. The facts do not support such a conclusion.

CONCLUSION

The IRS recorded the Notice of Federal Tax Lien for Ms. Stephenson's federal tax debt against her personal property on August 21, 2018, in Benton County. Although a federal tax lien *arose* in favor of the IRS as to her personal property on the date of assessment, the tax lien did not *attach* to her personal property. As set forth above, the IRS claim for tax year 2015 is not secured because Benton County was not the proper place of filing. Considering the evidentiary factors before the Court, the proper place for filing the Notice of Federal Tax Lien on August 21, 2018, was Shelby County. Therefore as Ms. Stephenson asserts, the 2015 claim is not a secured claim but instead a general unsecured claim and the IRS's 2015 claim should be treated as a general unsecured claim as provided in the confirmed plan.

For the reasons stated in this Memorandum Opinion, Ms. Stephenson's Objection to Claim No. 9 is hereby **SUSTAINED**. The Bankruptcy Court Clerk shall serve a copy of this Memorandum Opinion and Order to the parties listed below.

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