

Pension Benefit Guaranty Corporation

75-76

October 14, 1975

REFERENCE:

[\*1] 4068(c)(4) Lien for Employer Liability. Filing of Notice of Lien

OPINION:

This is in response to your inquiry concerning the place of filing of employer liability liens under the Employee Retirement Income Security Act of 1974 (ERISA).

Your inquiry raised the question as to whether notice of employer liability liens should be filed in the appropriate U.S. District Court since local laws do not presently designate the office for filing such liens. Your inquiry suggested further that the Uniform Federal Tax Lien Registration Act might have to be amended to make specific reference to the filing of notice of employer liability liens.

IRC sections 6323(f) and (g) provide that notice of federal tax liens shall be filed in the office designed by local law or with the clerk of the U.S. District Court in the absence of such a designation. Section 4068(c) (4) of ERISA provides that notice of an employer liability lien "shall be filed in the same manner as under section 6323(f) and (g) of the Internal Revenue Code of 1954." (Emphasis supplied).

In our opinion it was the intention of Congress that notice of employer liability liens should be filed in the same place that notice of federal [\*2] tax liens is required to be filed. Thus, where local law designates an office for the filing of notice of federal tax liens, notice of employer liability liens will be filed by us in such office.

However, we recognize certain technical problems in the application of local statutes relating to federal tax liens to the filing of notice of PBGC liens. For example, we note from the copy of the \* \* \* law that you sent to us that no acknowledgement is required where the notice is certified by the Secretary of the Treasury or his delegate. PBGC would want to use a similar procedure. Thus, for the sake of clarity, we feel that it is desirable that local laws be amended to refer to PBGC's employer liability lien and to make other conforming changes. Also, such amendments should help to resolve any uncertainty that may now exist as evidenced by the question raised in your correspondence to us.

In this connection we take the liberty of suggesting the following sample changes with respect to the Minnesota law:

1. Add after the words "taxes payable to the United States", wherever they appear, the words "or employer liability to the Pension Benefit Guaranty Corporation".
2. Add after [\*3] the words "federal tax lien" and "tax lien", wherever they appear, the words "or employer liability lien".
3. Add after the word "taxpayer" in § 272.481 (b) (2), the words "or employer, as the case may be".
4. Add after the words "secretary of the treasury of the United States or his delegate" in § 272.482, the words "or Executive Director of the Pension Benefit Guaranty Corporation or his delegate, as the case may be".
5. Add after the words "tax liens" in § 272.482, the words "or employer liability liens".
6. Add after the words "district director" in § 272.483 (a) (2), the words", where applicable,".
7. Add after the words, "district directors of internal revenue" in § 272.484, the words "and the Pension Benefit Guaranty Corporation".

In addition, we advise you that, as a protective measure, for the time being we also intend to file notice of employer liability liens with the appropriate U.S. District Court.

Finally, we would very much appreciate your keeping us informed as to any action that the Commissioners on Uniform State Laws may take in this area. If you have any questions, please contact

Henry Rose  
General Counsel