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UNITED STATES TREASURY DEPARTMENT, INTERNAL REVENUE SERVICE—FORMS 668, 669, 669-A, 669-B, 669-C—COMPLETED AND EXECUTED BY AUTHORIZED AGENT OF TREASURY DEPARTMENT—MAY BE RECEIVED FOR FILING BY COUNTY RECORDER—SECTION 317.111 RC.

SYLLABUS:

Forms numbered 668, 669, 669-A, 669-B, and 669-C of the U. S. Treasury Department, Internal Revenue Service, when completed and executed by an authorized agent of the Treasury Department, may be received for filing by a county recorder under the provisions of Section 317.111, Revised Code.

Columbus, Ohio, October 28, 1955

Hon. Samuel L. Devine, Prosecuting Attorney
Franklin County, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion concerning certain forms used by the U. S. Treasury Department, Internal Revenue Service. You ask whether these forms, when properly completed by the filling up of certain blank spaces described below, may be received for filing by a county recorder under the provisions of Section 317.111, Revised Code, which provides as follows:

“No instrument by which the title to real estate or personal property, or any interest therein or lien thereon, is conveyed, created, encumbered, assigned or otherwise disposed of, shall be received for record or filing by the county recorder unless the name of the person who, and governmental agency, if any, which, prepared such instrument appears at the conclusion of such instrument and such name is either printed, typewritten, stamped, or signed in a legible manner. An instrument will be in compliance with this section if it contains a statement in the following form:

‘This instrument was prepared by (name).’

“This section does not apply to any instrument executed prior to the effective date of this section, nor to the following: any decree, order, judgment, or writ of any court; any will or death certificate; any instrument executed or acknowledged outside of this state.”

You have submitted for my examination five blank forms. Each form bears at its top, above all other printed or written matter, a caption. The captions are respectively as follows:

Form 668
REV. JAN.
1955

U. S. TREASURY DEPARTMENT—
INTERNAL REVENUE SERVICE
NOTICE OF FEDERAL TAX LIEN
UNDER INTERNAL REVENUE LAWS

Form 669
REV. JAN.
1955

U. S. TREASURY DEPARTMENT—
INTERNAL REVENUE SERVICE
CERTIFICATE OF RELEASE OF
FEDERAL TAX LIEN
UNDER INTERNAL REVENUE LAWS
(To be used to Release Tax Liens
under Section 6325(a), I.R.C. of 1954)

Form 669-A
REV. JAN.
1955

U. S. TREASURY DEPARTMENT—
INTERNAL REVENUE SERVICE
CERTIFICATE OF DISCHARGE OF
PROPERTY FROM FEDERAL TAX LIEN
(Sec. 6325(b)(1), Internal Revenue Code of 1954)

Form 669-B
Treasury Department
Internal Revenue Service
Rev. Aug. 1939

CERTIFICATE OF DISCHARGE OF PROPERTY
FROM FEDERAL TAX LIENS

Form 669-C
JAN. 1955

U. S. TREASURY DEPARTMENT—
INTERNAL REVENUE SERVICE
CERTIFICATE OF DISCHARGE OF PROPERTY
FROM FEDERAL TAX LIEN
(Sec. 6325(b)(2)(B), Internal Revenue Code of 1954)

Each form provides at its end, below all other printed or written matter, as follows:

“WITNESS my hand at....., on this,
the.....day of....., 19.....

District Director of Internal Revenue By (Signature) Title

The intervening space consists of printed material specified by the Treasury Department, and blank spaces designed to be filled with appropriate information.

In answering the question which you have presented I will assume that you are familiar with my Opinion No. 5806, dated September 30, 1955, and addressed to the Honorable Glenn L. Fortune, and with my Opinion No. 5818, dated October 5, 1955, and addressed to the Honorable George M. Monahan.

The principal question presented by your inquiry arises from the fact that the forms under consideration do not bear a separate statement in the statutory form, namely: "This instrument was prepared by
" Can they be received for filing without such a separate statement?

I believe that that question can best be answered by considering the nature of the instruments involved. They "create" and "dispose of" a "lien" "or any interest" in "real estate or personal property" by serving a notice that the U. S. Treasury Department claims or releases such a lien by virtue of its revenue laws. Such a notice can be executed only by an authorized agent of the Treasury Department, and it involves no voluntary action by the taxpayer. The execution of the notice necessarily involves an approval of the form of, and the factual material set out in, the notice; and those two items constitute its "preparation." As I pointed out in my Opinion No. 5806, *supra*, the person who makes final approval of the preparation of an instrument must be held to have "prepared" it within the meaning of the statute whether or not he has performed all of the actual work which went into it.

So, in the situation which you have presented to me, the person who signs one of the instruments in question as the executing agent for a statutory notice is also the person who has "prepared" that notice within the meaning of Section 317.111, Revised Code. Consequently, it is my opinion that the notice may be received for filing without a separate statement containing the name of the person who prepared the instrument.

Another question is presented by the fact that the instruments in question contain no separate statement at the end thereof that they were prepared by the U. S. Treasury Department, Internal Revenue Service. As I pointed out in my Opinion No. 5818, *supra*, the requirement that the statement of preparation be at the conclusion of the instrument would

probably not be construed as strictly by the courts in this connection as in the case of the execution of a will; and a rule of reason based upon substantial compliance probably would be applied. In the case before me—with each instrument bearing the caption referred to above, and bearing the authorized signature of the District Director of Internal Revenue, designated as such, at its conclusion—there can be no question as to the identity of the governmental agency which “prepared” the instrument in its final form.

In consideration of the above it is therefore my opinion that Forms numbered 668, 669, 669-A, 669-B, and 669-C of the U. S. Treasury Department, Internal Revenue Service, as submitted to me, when completed and executed by an authorized agent of the Treasury Department, may be received for filing by a county recorder under the provisions of Section 317.111, Revised Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General