



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

April 30, 2013

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MEMORANDUM FOR DIRECTOR, ADVISORY AND INSOLVENCY
DIRECTORS, FIELD COLLECTION AREA OPERATIONS

FROM: Scott D. Reisher /s/ **Scott D. Reisher**
Director, Collection Policy

SUBJECT: Principal Residence Suit Foreclosure Recommendations

The purpose of this memorandum is to issue interim guidance SBSE-05-0413-035 dated April 30, 2013, titled, Principal Residence Suit Foreclosure Recommendations. Please disseminate this information to all affected personnel within your organization.

This memorandum provides interim guidance on policies and procedures for suits to foreclose the tax lien on the taxpayer's principal residence. These procedures will be incorporated into Internal Revenue Manual (IRM) 5.17.4.8, IRM 5.17.12.20.2, and IRM 25.3.2.4.5.

Background

There are two options for enforcing collection against the principal residence of a taxpayer or residence which is owned by the taxpayer but occupied by the taxpayer's spouse, former spouse, or minor child. These two options cannot be used concurrently. One is a proceeding to obtain a court order allowing administrative seizure of a principal residence under Internal Revenue Code (IRC) § 6334(e)(1). The other is a suit to foreclose the federal tax lien against a principal residence under IRC § 7403. The suit to foreclose is the secondary alternative used only when the seizure remedy is not the optimal solution.

The current IRM 5.10.2.19, *Judicial Approval for Principal Residence Seizures*, provides the instructions for obtaining a court order allowing administrative seizure of a principal residence under IRC § 6334(e)(1). While not explicitly stated, the same considerations apply to suits to foreclose the tax lien on a taxpayer's principal residence. Additionally, a

suit to foreclose should only be pursued when there are no reasonable administrative remedies and hardship issues, as described below, are considered.

Procedures

Effective immediately, the following case action requirements apply to all recommendations for a suit to foreclose the lien on real property used as the principal residence by the taxpayer or owned by the taxpayer and used as a principal residence by the taxpayer's spouse, former spouse, or minor children. The following case actions must be taken prior to submitting the suit recommendation to Advisory and with the results of the actions included in the suit recommendation. The revenue officer must:

- 1) Attempt to personally contact the taxpayer and inform them that a suit to foreclose the tax lien on the principal residence is the next planned action (see IRM 5.10.1.7.2);
- 2) Attempt to identify the occupants of the principal residence (see IRM 5.10.2.19(7));
- 3) Attempt to discuss administrative remedies with the taxpayer (see IRM 5.10.1.3.2's discussion of alternative methods of collection and risk analysis). This discussion should include the taxpayer's potential to submit an Offer in Compromise (including an Effective Tax Administrative offer or, an offer with consideration of special circumstances) as an administrative remedy, when appropriate (see IRM 5.8.11);
- 4) Advise the taxpayer about the Taxpayer Advocate Service (TAS), provide Form 911, *Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)*; and explain its provisions; if the taxpayer indicates that the planned foreclosure of the principal residence would create a hardship, the RO will assist the taxpayer with the preparation of Form 911 and should forward the form to the local Taxpayer Advocate Service office if the revenue officer cannot or will not provide the requested relief (see IRM 13.1.7, Taxpayer Advocate Case Processing, for other situations that qualify for Taxpayer Advocate referral and the appropriate procedures to follow);
- 5) Include a summary statement in the case history (see IRM 5.10.2.18(3)).

The body of the suit narrative should contain, along with the information on the taxpayer, information on the occupants of the principal residence including children. Provide the name(s), relationship(s) to the taxpayer, brief history (age, health, etc.), and current mailing address of the occupant(s) if it differs from the address of the property being foreclosed and a summary of the administrative remedies considered. If the information is unavailable explain the circumstances why the information was not able to be obtained.

If you have any questions, please contact me, or a member of your staff may contact Christine Kalcevic, Senior Program Analyst.

cc: Director, Field Collection
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