ID: CCA_2012030808222325

Office:

UILC: 6325.03-00, 6402.01-00

Number: **201214028**
Release Date: 4/6/2012

From:
Sent: Thursday, March 08, 2012 8:22:39 AM
To:
Cc:
Subject: RE: FORM 12451 & LIEN DISCHARGE:

I am sending this e-mail to memorialize our discussion of earlier this week. Your question involved whether the Service might have to return a portion of the proceeds that it received from the sale of a taxpayer's property in exchange for a discharge of such property from the federal tax lien ("FTL"). The bank with a mortgage interest superior to the FTL miscalculated its payoff amount by $, which it sought from the taxpayer post-sale. The taxpayer alleges that he settled with the bank by splitting the difference. He claims to have paid the bank $, which he now seeks from the Service. He alleges that the Service has a windfall of this amount (and likely of the full $), because, had the bank properly calculated its payoff amount, the Service would have ceded its interest in the full, properly-calculated, mortgage interest. A further wrinkle is that the Service allowed the taxpayer a relocation expense of $ based on a submitted Form 12451, meaning that the Service ceded its FTL to the taxpayer in $ of the sale proceeds. The $ allowance did not, however, reduce the taxpayer's liability. Moreover, you have explained that the calculation of the relocation allowance was not based on the value of the bank's interest that primed the FTL.

As we discussed, the relocation allowance is a red herring. The issue here is whether the bank might have a claim against the Service because the bank's interest in the sale proceeds should have primed the Service's interest to the extent of the full mortgage payoff amount. The fact that the Service allowed the taxpayer to retain $ of whatever proceeds remained after the bank's interest was satisfied is not relevant to the analysis.

In the final analysis, it is the bank that might have a claim against the Service, not the taxpayer. Moreover, even to the extent that the taxpayer is attempting to "step into the shoes of the bank," the Service would not have agreed to return $ without a full and binding settlement of all claims that the bank might posses stemming out of the sale. Accordingly, there is no mechanism by which the Service may deal solely with the taxpayer with respect to a potential claim of the bank that may or may not be finally resolved.

Additionally, the taxpayer currently has significant outstanding liabilities to the Service. Any money that the Service might ultimately be held to owe the taxpayer likely would be setoff against such liabilities and not refunded to the taxpayer. *See* I.R.C. sec. 6402(a).

Feel free to give me a call if you want to further discuss.

Regards,