

Office of Chief Counsel
Internal Revenue Service
Memorandum

Number: **20092102F**
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CC:SB:
GL-148771-08

date: November 18, 2008

to: _____, Revenue Officer, SBSE Compliance,

from: _____, Associate Area Counsel (Small Business/Self-Employed),

subject: Seizure and Sale of Right to Renew _____ Season Tickets

This responds to your request for an advisory opinion in this matter.

Issue:

Whether the Service can seize and sell the taxpayer's season ticket renewal and personal seat licenses for the _____. [UIL 6321.01-00 Property Subject v. Not Subject to Lien]

Conclusion:

The Service cannot seize and sell the season ticket renewal, because it is not a property or right to property under _____ law. The taxpayer's personal seat licenses are property or right to property under _____ law. Therefore, the Service is entitled to the deposit for the personal seat license if it serves a levy on the _____.

Facts:

The taxpayer owes federal taxes that have not been paid. He has received a CDP levy notice under I.R.C. § 6330, which he defaulted. He is a season ticket holder of the _____. He hold 16 season tickets. Season tickets have two components, the tickets for a particular season and the ability to renew for the subsequent season ("season ticket renewals"). The policy of the _____ is to allow season ticket holders to renew their tickets and receive season tickets for the subsequent season.

In the early 2000's,

_____, the

charged each season ticket holder a deposit per seat as a personal seat license. The cost depended on the quality of the seat. In this case, the taxpayer made a deposit of \$ per seat or \$. If a season ticket holder decides not to renew his season tickets, this charge is refunded. The have a waiting list for season tickets that has thousands of names on it. The waiting list is at least years long. If a season ticket holder cancels, his or her seats are offered to the next person on the waiting list. Anyone who is offered season tickets under this plan is required to pay the personal seat license to receive them. The Service has proposed seizing and selling, under I.R.C. § 6331, the taxpayer's season ticket renewal.

You have discussed the situation with the ' management, and they have indicated that they would oppose a sale, including taking legal action to prevent it. They indicated, however, that if they received a levy, they would pay out the deposit for the personal seat licenses (\$).

Analysis:

When a taxpayer fails to pay a tax liability after notice and demand, a lien arises that attaches to all the taxpayer's property and rights to property. I.R.C. § 6321. Under I.R.C. § 6331, the Service is authorized to seize and sell the taxpayer's property and rights to property subject to a federal tax lien. The issue is whether season ticket renewals are "property or rights to property" under law. If they are, they may be seized and sold.

We found no case law in addressing whether season ticket renewals are property rights under law. In addition, we found no case law addressing the sale of a season ticket renewal in the context of a federal tax seizure and sale. However, the issue has been addressed in other states in the context of Chapter 7 bankruptcy. In these cases, the trustee in bankruptcy has sought to sell the taxpayer's season ticket renewals as "property of the estate." We believe that this is analogous to the issue of whether a season ticket renewal constitutes a "right to property" to which a federal tax lien could attach under I.R.C. § 6321.

Several of the bankruptcy cases have found that the renewal is merely a revocable license and not a property right that can be sold. For example, an Illinois

bankruptcy court has held that the right to renew Chicago Bulls season tickets is nothing more than a revocable license. In re Liebman, 208 B.R. 38 (Bankr. N.D. Ill. 1997). A Colorado bankruptcy court reached the same conclusion under Colorado law with respect to Colorado Avalanche season tickets. In re Gorodess, 47 Collier Bankr.Cas.2d 897 (D. Colo. 2001). The Ninth Circuit has also held that the right to renew Phoenix Suns tickets is a revocable license, which is not a property interest under Arizona law. In re Harrell, 73 F.3d 218 (9th Cir. 1996). It should be noted that in Gorodess and Liebman, the teams had substantial restrictions on the transfer of season ticket renewals by the holders. Harrell did not address this point.

Two other cases addressed the issue, and reached the opposite conclusion. In re I.D. Craig Service Corporation, 138 B.R. 490 (Bankr. W.D. Pa. 1992) involved Pittsburgh Steeler season ticket renewals. In that case, a bankruptcy court held that the trustee could sell season ticket renewal rights to Pittsburgh Steeler football games. In re Platt, 292 B.R. 12 (Bankr. Mass. 2003) involved Boston Red Sox season ticket renewals. In that case, the trustee attempted to sell the debtor's interest in Boston Red Sox season ticket renewals. The Red Sox opposed the sale. The bankruptcy court held that the trustee had not established that the debtor was the owner of the season tickets and denied the sale. In dicta, however, the court stated that had ownership been established, the court would have allowed the trustee to sell the tickets. See also In re Walsh, 1994 WL 249249 (4th Cir. 1994) (An unpublished opinion holding that Charlotte Hornets season ticket renewals are property that can be sold by the trustee where \$10,000 was paid to the team to obtain the right). It should be noted that in Craig, the evidence established that the Steelers ticket policy allowed season ticket holders to transfer season ticket holder status and the attendant right to renew if a \$5 fee was paid. In Platt, the court found that although the Red Sox had a stated policy that did not allow tickets to be transferred, in practice, it had ignored the policy and allowed the transfer of tickets for the previous five years. Walsh did not address this issue, but clearly the payment of the \$10,000 influenced the Court's decision.

Several other cases have addressed the issue of whether a season ticket holder has a "right" to renew season tickets. The context of these cases is that the team, for one reason or another, refused to renew the tickets of a season ticket holder, and the holder filed suit. Generally, these cases have held that there is no "right" to renew season tickets. See Charpentier v. Los Angeles Rams Football Co., 75 Cal.App.4th 301, 89 Cal. Rptr.2d 115 (1999) (affirming dismissal of an implied contract claim against the Rams alleging a right to renewal, while stating in dicta that some renewal right might be subject of implied contract but no fan could reasonably expect right to renew season tickets when team moved halfway across country); Soderholm v. Chicago Natl. League Ball Club, Inc., 225 Ill.App.3d 119, 124, 167 Ill.Dec. 248, 587 N.E.2d 517 (1992), appeal denied 145 Ill.2d 644, 596 N.E.2d 637, 173 Ill.Dec. 13 (1992) (Chicago Cubs season ticket renewal canceled for scalping, no right to renew); Yarde Metals, Inc. v. New England Patriots Ltd. Partnership, 64 Mass.App.Ct. 656, 834 N.E.2d 1233 (Mass.App.Ct.,2005) (New England Patriot season ticket renewal cancelled for rowdy behavior, no right to renew); Kully v. Goldman, 208 Neb. 760, 305 N.W.2d 800 (1981)

If you have any questions concerning this matter, please contact me at (414) 231-2801.

Associate Area Counsel ()
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