



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR DISTRICT COUNSEL, NORTH FLORIDA DISTRICT
JACKSONVILLE

FROM: Alan C. Levine, Chief, Branch 1 (General Litigation)

SUBJECT: Voiding or Rescinding IRS Tax Sales
Taxpayer:

This responds to your request for advice regarding the above subject. This document is not to be cited as precedent.

ISSUE(S):

1. Can the Internal Revenue Service (Service) adopt a more flexible administrative remedy for taxpayers who fail to file a suit to quiet title within the 180-day redemption period after the Service has conducted a procedurally defective tax sale and for purchasers in the same situation.

CONCLUSION:

The taxpayer must file a suit to quiet title within the 180-day statutory period of redemption. The Service is prohibited from adopting a more flexible administrative remedy for either the taxpayer or a purchaser than that provided by the Internal Revenue Code (Code).

FACTS:

The Service seized and sold property belonging to the taxpayer. The sale was procedurally defective because the Service did not properly serve the purchaser with the notice of sale as required by I.R.C. §6335(a) and (b). After the 180-day redemption period, the Service issued a deed to the purchaser who sued to evict the taxpayer in state court. The taxpayer successfully argued that the sale was defective because he was improperly served as noted above. The state court refused to evict the taxpayer and instead dismissed the suit. The purchaser demanded a return of the purchase price plus costs (e.g., attorney's fees and lost interest).

LAW AND ANALYSIS

Courts have held that the Service must strictly comply with the seizure and sale statutory provisions of the Code, which are for the benefit of the taxpayer, or be faced with a sale that is voidable by the taxpayer. In contrast, there is no statutory protection for the purchaser of real property pursuant to section 6335. Purchasers who have objected in similar situations have not prevailed. Powelson v. United States, 963 F.2d 1156 (9th Cir. 1992); Kulawy v. United States, 917 F.2d 729 (2d Cir. 1990); Reece v. Scoggins, 506 F.2d 967 (5th Cir. 1975).

Your office has suggested that the Service exercise greater flexibility in this area in order to promote settlement with taxpayers and to minimize litigation. Specifically you recommend that taxpayers be given two years to bring a suit to quiet title in the event of a procedurally defective sale. This recommendation of a two-year period must be analyzed in the context of the 180-day redemption period provided in I.R.C. § 6337(b)(1). A brief review of the legislative history of section 6337(b)(1) shows that Congress carefully selected the present 180-day redemption period.

The Internal Revenue Code of 1954 contained section 6337(b)(1) in a form substantially similar to the current provision in the 1986 Code with the exception that property could be redeemed at any time within "1 year after the sale thereof." That time period carried over unchanged from the Internal Revenue Code of 1939 and earlier Revised Statutes. See H.R. Rep. No. 1337, 83rd Cong. 2d Sess., 411 (1954). In 1966, the Federal Tax Lien Act amended section 6337(b)(1) by reducing the time available for redemption to 120 days. The explanation for this change is highly relevant to the present discussion:

While a reasonable period of time for redemption in these cases is desirable, nevertheless, such a long redemption period tends to unnecessarily depress the price which potential purchasers are willing to bid for property at these sales.

H.R. Rep. 1884, 89th Cong., 2d Sess., 18 (1966). The shorter redemption period could be interpreted as beneficial to the taxpayer because a higher price for the property would result in a greater satisfaction of his tax liability. Nevertheless, in 1982, in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Congress increased the 120-day period to 180 days. The provision appeared in Subtitle H entitled Taxpayer Safeguard Amendments. The subtitle also included provisions increasing the value of property exempted from levy and requiring the release of a lien within 30 days. While the legislative history contains no explanation for the change, we believe that the addition of an extra sixty days was considered to be beneficial for a taxpayer because it affords additional time to raise funds needed to redeem real property. It is also clear that the 180-day period for redemption, which is also the period during which the taxpayer has standing to file such a suit, does

not allow for additional flexibility since it provides the basis for a waiver of sovereign immunity.

The taxpayer's ability to recover on his lawsuit depends on whether a taxpayer has standing to bring a suit for failure of the Service to strictly follow the procedures of I.R.C. § 6335. While many courts gloss over the jurisdictional and sovereign immunity waiver requirements because they were met in a particular case, taxpayers must cast their lawsuit as a suit to quiet title in order to invoke the waiver of sovereign immunity pursuant to 28 U.S.C. § 2410. This suit is appropriate where the United States has or claims a mortgage or other lien on real property. Briefly, 28 U.S.C. § 2410 provides for the waiver of sovereign immunity, and a separate basis must be present for the court to have jurisdiction over a case. Jurisdiction is provided by 28 U.S.C. § 1340 which grants to district courts "original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue."

Therefore, it is incumbent upon the Service to determine whether the complaining taxpayer is still within the 180-day redemption period provided by I.R.C. § 6337 when it becomes a party to a quiet title action. Only during that period does the United States have a lien on or an interest in the property that would subject it to the section 2410 waiver provisions. See Dzaira v. United States, 966 F. Supp. 126 (D. Mass. 1997). Millitello v. United States, 970 F. Supp. 1022, 1025 (M. D. Fla. 1997), clearly states the pertinent law:

At the time when Plaintiff commenced this action, the Government no longer had a lien interest in the property at issue. Since the Government had already sold the property prior to the filing of the suit, and no longer claimed any interest in the property, § 2410 does not apply. . . . Finally, § 2410 should not be read to provide a means of disturbing a sale long since final. (Citations omitted.)

Any attempts by the Service administratively to lengthen the period in which a taxpayer could sue to rescind a procedurally defective sale would fail because waiver of sovereign immunity is strictly construed. Koehler v. United States, 153 F.3d 263 (5th Cir. 1998) (sovereign immunity deprives the courts of jurisdiction regardless of the merits of the taxpayer's claims); Kabakjian v. United States, 99-1 U.S.T.C. ¶ 50,150 (E.D. Pa. 1998) (waiver of sovereign immunity strictly construed). Congress also has not provided a remedy to a purchaser who is dissatisfied after purchasing property at a tax sale. A close reading of the statute on sale and redemption suggests that these provisions are for the benefit of the taxpayer since the Service is selling the taxpayer's seized property to satisfy the taxpayer's liability. The sale of property seized by the Government, as noted in Treas. Reg. § 301.6335-1(c)(4)(iii), is accomplished on a "caveat emptor" basis. Property is sold "as is" and "where is" and "without recourse to the United States." Moreover, a purchaser may not seek rescission of the sale for failure of the property to conform

in any way to the representations made. A careful reading of I.R.C. §§ 6335-6339, the sale provisions, reveals no remedy to a disappointed purchaser. ^{1/} In the event the taxpayer redeems the real property after sale, of course, a purchaser is entitled to “the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum” to compensate him for the use of his money as set forth in I.R.C. § 6337(b)(2).

Recent changes to I.R.C. § 7433, by which a taxpayer can sue for intentional, reckless, or negligent actions of revenue officers and employees, does not extend to third parties or purchasers at tax sales. Certainly third parties and tax sale purchasers could have been included, but Congress chose to reserve these provisions exclusively for taxpayers.

In conclusion, the carefully crafted legislative scheme does not permit the Service administratively to provide flexibility to either taxpayers or purchasers after a procedurally defective tax sale other than those avenues discussed above. A taxpayer may void a procedurally defective sale by filing a suit to quiet title within the redemption period. A purchaser has no remedy in the event of a procedurally defective sale.

^{1/} See William T. Plumb, Jr. Federal Liens and Priorities—Agenda for the Next Decade III, 77 Yale L. Journal 1104, 1162 (1968), in which the author suggests that a purchaser might be reimbursed “perhaps on the ground of mutual mistake if the property sold proves not to have been property subject to the lien at all.” But see Woody v. United States, 86-2 U.S.T.C. ¶ 9196 (Cl. Ct. 1986) (Court held that purchaser who claimed to be misled by a notice of sale purporting to sell two tracts when the taxpayer owned only one tract had no recourse because sale notices purported to sell only taxpayer’s interest in property); accord Martin v. United States, 97-1 U.S.T.C. ¶ 50,320 (Fed. Cl. 1996) (Service’s Notice of Encumbrance disclaimer precluded purchaser from asserting claim he was misled).

CASE DEVELOPMENT, HAZARDS, AND OTHER CONSIDERATIONS:

We can identify no other litigating hazards that would change or qualify the conclusions reached in this memorandum.

If you have any further questions, please call the branch at 202-622-3610.

cc: Assistant Regional Counsel (GL) SER