



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

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR HOUSTON DISTRICT COUNSEL
Attn: C. Reeves

FROM: Michael R. Arner, Senior Technician Reviewer, Collection,
Bankruptcy, and Summonses CC:PA:CBS:Br1

SUBJECT: RRA Section 3106; I.R.C. § 6325(b)(4), Williams case

This responds to your EMAIL request for assistance on the above referenced matter.

ISSUE

Whether a person who is not personally liable for a tax but who is challenging a lien on such person's property can bring a refund suit pursuant to United States v. Williams, 514 U.S. 527 (1995), in light of the Restructuring and Reform Act of 1998 ("RRA 98") § 3106 amendment to I.R.C. § § 6325 and 7426 giving persons not liable for the tax a new administrative and judicial remedy to contest the validity of tax liens on their property?

CONCLUSION

In cases filed after July 22, 1998, (the effective date of RRA 98) section 7426(a)(4) is the exclusive remedy.

FACTS

The typical facts would be that a Notice of Federal Tax Lien ("NFTL") encumbers property in which a person not liable for the tax has an interest, and, in order to sell the property, such person pays the Government the amount listed in the NFTL.

DISCUSSION

In Williams, the Service filed NFTLs against a husband for his separate liabilities after he had transferred real property to his wife in exchange for her assuming certain of his liabilities. Thereafter, the wife attempted to sell the property, and the Service filed

additional NFTLs, including a lien in the wife's name as nominee. Having discovered the tax liens one week before closing, and being threatened with suit from the purchaser if the sale did not go through on schedule, the wife authorized disbursement of the sale proceeds to the Service, under protest, in order to obtain a discharge of the tax lien and accomplish the sale. The wife then requested a refund, alleging that she took the property free of the tax lien against her husband as purchaser. The Service denied her claim on the ground that as a non-taxpayer she could not obtain a refund.

The Court held that the wife could make an administrative claim for refund under the Internal Revenue Code and could sue for a refund under 28 U.S.C. § 1346(a), rejecting the Service's position that these provisions could only apply to the taxpayer against whom the tax is assessed. The Court held that section 1346 does not limit a federal court's jurisdiction to cases where only the taxpayer is claiming a refund. The Court noted that the Government's position would leave people in the wife's position without a meaningful remedy, since the wife could not bring a wrongful levy action in the absence of a levy, a quiet title action would not permit her to quickly sell the property, and the Government was not under any obligation to enter into a lien substitution agreement section 6325(b)(3), i.e., relief under section 6325(b)(3) is discretionary.

After the Williams decision, RRA 98 added sections 6325(b)(4)(A) and 7426(a)(4). Section 6325(b)(4)(A) provides that an owner of property who is not the taxpayer may request a certificate of discharge of the federal tax lien on that property, and the Internal Revenue Service ("Service") shall issue such certificate if such owner takes one of the following payment options. The first option is such owner deposits with the Service an amount equal to the value of Government's interest in the property. I.R.C. § 6325(b)(4)(A)(i). The second option is such owner furnishes to the Service a bond in like amount. I.R.C. § 6325 (b)(4)(A)(ii).

Section 6325(b)(4)(B) provides that the Service shall refund the deposit with interest or release the bond if the tax liability can be satisfied from a different source or the value of the Service's lien interest is less than the amount previously determined.

Section 7426(a)(4) provides that if a certificate of discharge is issued to such person under section 6325(b)(4), that person may, within 120 days after the day on which such certificate is issued, bring a civil action in federal district court for a determination of the value on the Government's interest in the property.

The legislative history does not discuss whether a Williams suit could be filed after the enactment of sections 6325(b)(4)(B) and 7426(a)(4). The legislative history, however, does state that pursuant to the amendments the Service "would have no discretion to refuse to issue a certificate of discharge if this procedure is followed, thus curing the defects in this remedy that the Supreme Court found in Williams." S. Rep. No. 105-174, at 54 (1998).

In prior litigation, the Office of Chief Counsel has advised the Department of Justice that in cases instituted after July 22, 1998, (the effective date of RRA 98) the Government will take the position that third parties may no longer maintain a Williams suit for refund. In these circumstances, section 7426(a)(4) is the exclusive judicial remedy. The rationale for this position is that section 6325(c)(4) fixes the defect that Williams found with the discretionary certificate of discharge, i.e., the issuance of a certificate of discharge is now mandatory. Also, section 7426(a)(4) expressly provides that “[n]o other action may be brought by such person for such a determination.” This would preclude a Williams refund action.

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