



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

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR ASSOCIATE AREA COUNSEL SEATTLE/ANCHORAGE
Attn:SPBAKER

FROM: Alan C. Levine
Chief, Branch 1, Collection, Bankruptcy & Summonses

SUBJECT: Settlement Authority of Department of Justice

This responds to your request for our views on the interpretation of I.R.C. § 7506(b) in regard to the settlement authority of the Department of Justice. In accordance with I.R.C. § 6110(k)(3), it should not be cited as precedent.

ISSUE

May the Department of Justice agree to a settlement requiring the area director to transfer redeemed real property to the taxpayer by deed?

CONCLUSION

The Department of Justice has the authority to agree to a settlement requiring the area director to sign a deed transferring redeemed real property back to the taxpayer. Section 7506(b), which gives the area director the discretion to sell redeemed property, does not preclude such a settlement. ^{1/}

BACKGROUND

A taxpayer's commercial creditor purportedly fraudulently foreclosed on the taxpayer's real property and purchased it at the foreclosure sale. The Internal Revenue Service ("Service") subsequently redeemed the property under I.R.C. § 7425(d). The taxpayer has filed a quiet title action, naming the commercial creditor and the United States as defendants. The Department of Justice is considering a settlement that would require the area director to transfer the real property by deed back to the taxpayer.

DISCUSSION

^{1/} Section 7506(b) states, "The Secretary may, at public sale, and upon not less than 20 days notice, sell and dispose of any real estate owned or held by the United States as aforesaid." (Emphasis added.)

Pursuant to 28 U.S.C. § 516 (2000), the Attorney General has exclusive authority and plenary power to control the conduct of litigation in which the United States is involved, unless Congress specifically authorizes an agency to proceed without the supervision of the Attorney General. E.g., FTC v. Guignon, 390 F.2d 323 (8th Cir. 1968). The Attorney General's discretionary authority includes the power to enter into settlements. United States v. Hercules Inc., 961 F.2d 796 (8th Cir. 1992), citing Swift & Co. v. United States, 276 U.S. 311, 332 (1928). Limitations on the discretionary authority of the Attorney General require a clear and unambiguous expression by Congress. E.g., United States v. International Union of Operating Engineers, 638 F.2d 1161, 1162 (9th Cir. 1979), cert. denied, 444 U.S. 1077 (1980).

In the present action, there is no clear and unambiguous limitation on the settlement authority of the Department of Justice, and it would be a mistake to assume that section 7506(b) limits that settlement authority. When Congress drafted section 7506(b), it used the term "may" to describe an area director's power to sell redeemed property. The use of the term "may" generally means that discretion exists to perform an act, and should not be confused with the term "shall." United States v. Rodgers, 461 U.S. 677, 707-08 (1982). In the present matter, since section 7506(b) provides that the Service may sell the property, the United States is not obligated to dispose of redeemed property by sale in all situations. Accordingly, the Department of Justice, on behalf of the United States, has the discretion to dispose of the property pursuant to a settlement.

Please call if you have any further questions.