

Office of Chief Counsel
Internal Revenue Service
memorandum

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to: Bruce K. Meneely, Associate Area Counsel
(Small Business/Self-Employed)

from: David L. Fish, Senior Technical Reviewer
(Disclosure and Privacy Law) CC:PA:DPL:1

subject: **Disclosure of the Dates of Notice of Seizure and Sale**

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUES

1. Whether I.R.C. § 6103(k)(6) authorizes the post-sale disclosure of the dates of the notices of seizure and sale to the purchaser of the real property.
2. Whether I.R.C. §§ 6335(a)-(b) and 6340 authorize the post-sale disclosure of the dates of the notices of seizure and sale to the purchaser of the real property.

CONCLUSIONS

1. No. I.R.C. § 6103(k)(6) only permits such disclosures prior to the sale.
2. No. I.R.C. §§ 6335(a)-(b) and 6340 do not authorize the post-sale disclosure of the dates of notices of seizures and sale.

FACTS

Under I.R.C. § 6335 the Internal Revenue Service ("Service") is required to provide notices of seizure and sale to the owner of property. I.R.C. § 6340 requires the Service to maintain records of all sales of property under I.R.C. § 6335 including the "tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, and the date of the deed or certificate of sale of personal property." Whenever real property is sold, the Service will prepare Record 21, Record of Seizure

and Sale of Real Estate. Record 21 is a two page form. This form contains information relating to the property and its sale including the Notice of Seizure and Notice of Sale dates, minimum bid price, sale proceeds, and a description of the property. Both pages are identical with the exception that several items from the second page ("part two") are excised from public inspection. Only part two of Record 21 is available for public inspection. The first page ("part one") is retained by the Service for record keeping purposes pursuant to I.R.C. § 6340.

Under the facts you presented, the original purchaser from the Service seeks to obtain the dates of the notices of seizure and sale in order to complete a subsequent sale of the property. The Service is not in any way involved in this sale.

LAW AND ANALYSIS

Issue 1

I.R.C. § 6103(a) establishes the general rule that returns and return information are confidential and can only be disclosed to the extent the disclosure is specifically authorized in I.R.C. § 6103 or by another section of the Internal Revenue Code. See, e.g., United States v. Bachelier, 611 F.2d 443, 447 (3rd Cir. 1979) ("we must be ever mindful that when Congress enacts a statute [6103] designed to limit government intrusion into the private affairs of its citizens, the statutory provisions must be followed scrupulously.") Accordingly, the return information recorded on Record 21 cannot be disclosed unless some provision of the Code authorizes the disclosure of such information.

Under I.R.C. § 6103(k)(6), an internal revenue officer or employee may, in connection with his official duties relating to any audit, collection activity, or civil or criminal tax investigation or any other offense under the internal revenue laws, disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or the amount to be collected or with respect to the enforcement of any other provision of this title. This section authorizes disclosures of return information to the extent necessary in connection with an IRS officer or employee's official duties relating to collection activities "with respect to the correct determination of tax, liability for tax, or amount to be collected." Specifically, disclosure of return information to third parties is authorized:

To establish or verify the financial status or condition and location of the taxpayer against whom collection activity is or may be directed, to locate assets in which the taxpayer has an interest, to ascertain the amount of any liability [under the internal revenue laws] to be collected, or otherwise to apply the provisions of the Code relating to establishment of liens against such assets, or levy on, or seizure, or sale of, the assets to satisfy any such liability. Treas. Reg. § 301.6103(k)(6)-1T(a)(vi).

Additionally, this regulation states that such disclosures can only be made “if . . . the information is not otherwise reasonably available, or if the activity connected with the official duties cannot occur properly without the disclosure.” Treas. Reg. § 301.6103(k)(6)-1T(a)(2).

Under certain circumstances I.R.C. § 6103(k)(6) authorizes disclosure of certain nonpublic information from Record 21 necessary to effectuate the sale of real property. Section 11.3.11.9.1 of the Internal Revenue Manual (“IRM”) provides that part one of Record 21, which includes several items excised from part two, is available for inspection:

by a purchaser, abstractor, or title insurer only if required to accomplish the sale of seized property, pursuant to Code section 6103(k)(6)

Note: Normally, only blocks 14 and 15 [Notice of Seizure and Notice of Sale dates] would meet this criteria as the purchaser or title insurer may need to verify the legality (sale procedural compliance) of a seizure and sale so that title insurance may be issued. The determination of whether to release these non-public portions of the Record 21 must be made on a case-by-case basis, weighing the particular items of information sought, the need of the requester for such information, and whether the disclosure of the information is necessary in order to carry out the activities described in Treas. Reg. 301.6103(k)(6)-1(b).

Accordingly, prior to the sale, the Service may be permitted to release the Notice of Seizure and Notice of Sale dates to the purchaser. However, I.R.C. § 6103(k)(6) does not authorize the post-sale disclosure of the dates of the notices of seizure and sale to the purchaser of real property.

Issue 2

The statutory requirements for a notice of seizure are set forth in I.R.C. § 6335. I.R.C. § 6335(a) provides that a written notice of seizure shall be given to the owner of the property seized and shall specify, inter alia, the sum demanded. I.R.C. § 6335(b) specifically requires the publication of a notice of the sale of seized property in a newspaper published or generally circulated within the county wherein such seizure is to be made. Furthermore, I.R.C. § 6335(b) provides that the “notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale.” Treasury Reg. § 301.6335-1(b) also provides that the notice “shall expressly state that only the right, title, and interest of the delinquent taxpayer in and to such property is to be offered for sale.”

The failure of the Service to strictly comply with the procedures outlined by I.R.C. § 6335 are grounds for voiding a sale. Goodwin v. United States, 935 F.2d 1061, 1065 (9th Cir. 1991) (holding that the seizure of real property by the Service was invalid

because the government did not give the owner of the property notice required by I.R.C. § 6335 prior to the sale). However, Goodwin does not provide any guidance or authority for the post sale disclosure of the dates of the notices of seizure and sale to the purchaser of the property. Moreover, I.R.C. § 6335 is silent as to post-sale disclosures of such dates. Accordingly, I.R.C. §§ 6335(a) and (b) do not provide any authority for the release of post-sale disclosure of the dates of notices of seizures and sale.

I.R.C. § 6340(a) requires that the Service keep a record of all the sales of real property and the redemptions of such property and requires that specific items of information be contained therein. In Novotny v. I.R.S., 1994 WL 722686, at *2 (D.Colo. Sept. 8, 1994) the court held I.R.C. § 6340(a) “merely provides that a record of all sales of real property must be kept.” I.R.C. § 6340(a) is merely statutory authority for the Service’s creation and retention of Record 21. Consequently, there is no authority in I.R.C. § 6340(a) or the regulations thereunder that specifically authorizes the release of the post-sale disclosure of the dates of notice of seizures and sale.

Furthermore, I.R.C. § 6340(c) provides that “the taxpayer with respect to whose liability the sale was conducted or who redeemed the property shall be furnished (1) the record under subsection (a) (other than the names of the purchasers); (2) the amount from such sale applied to the taxpayer's liability; and (3) the remaining balance of such liability.” Given the fact that I.R.C. § 6340(c) specifically authorizes disclosure of a portion of Record 21 to the taxpayer, it would be truly anomalous to conclude that I.R.C. § 6340(a) authorizes disclosure to the public of the entire Record 21.

At this time, we comprehensively reviewed the statute, regulations, T.D. file, and caselaw regarding I.R.C. § 6340(a), and did not find any intent that this section be a publicity statute authorizing disclosure of return information. We believe the theory for public disclosure of information from Record 21 is that such information was previously made public as part of the sale. Information that was not made public as part of the sale is return information that remains confidential return information protected by I.R.C. § 6103(a).

If you have any questions please call (202) 622-8543.