

ID: CCA-07131157-15

[Third Party Communication:

UILC: 6335.00-00, 6335.05-00

Date of Communication: Month DD, YYYY]

Number: **201535018**

Release Date: 8/28/2015

From:

Sent: Monday, July 13, 2015 11:57 AM

To:

Cc:

Bcc:

Subject: Exemption from documentary transfer tax

You asked whether the IRS is exempt from paying a county documentary transfer tax upon the sale of seized real property and, if so, what it should include in a documentary transfer tax declaration on the deed to indicate that it is exempt. We conclude that the IRS is exempt and could include the following statement on the deed: "The Internal Revenue Service, as an agency of the United States government, is exempt from the county documentary transfer tax."

The real property in question was seized in California and purchased at an IRS tax sale. The IRS issued the purchaser a deed after the taxpayer failed to redeem the property within 180 days. The purchaser attempted to record the deed with the county recorder's office, but the office refused to do so because the deed did not contain required information about a documentary transfer tax that must be paid by the seller under local law.

In California, any county may impose a tax on each deed that conveys land within the county. Cal. Rev. & Tax. § 11911. The tax must be paid by the issuer of the deed. Cal. Rev. & Tax. § 11912. (Liability for the tax is not shared between the parties to the transaction.) Recordation of the deed is subject to payment of the tax, the amount of which must appear in a declaration attached to the deed. Cal. Rev. & Tax. § 11933. If no tax is due, the declaration (or a separate signed statement) must include the reason why.

The documentary transfer tax cannot be imposed on the deed. The IRS issued the deed. It would therefore have to pay the transfer tax. A tax is prohibited by the Supremacy Clause of the United States Constitution when the incidence of the tax falls squarely on the federal government. *See United States v. New Mexico*, 455 U.S. 720, 730-31 (1982); *United States v. Mississippi*, 421 U.S. 599 (1975); *McCulloch v. Maryland*, 17 U.S. 316 (1819). Similar taxes have been held not to apply to deeds in which the United States is a party. *See United States v. Dougherty*, 199 F. Supp. 48 (M.D. Pa. 1961), *aff'd* 311 F.2d 627 (3rd Cir. 1962). The transfer tax thus can't be imposed upon the deed in this case; the deed is exempt.

So if the buyer, wanting to record the deed, wants the IRS to indicate its exemption from the transfer tax on a transfer tax declaration, the IRS can do so. In *Steshnko v. Gayrard*, 2015 WL 1503651 at *7 (N.D. Cal. Apr. 1, 2015), a seller put the following on statement on the declaration: “exempt from Documentary Transfer Tax [because] this conveyance is to secure a debt.” Here, if it chooses to do so, the IRS could use something similar to either of the following statements: “No tax is due because the Internal Revenue Service, as an agency of the United States government, is exempt from the county documentary transfer tax under the Supremacy Clause of the United States Constitution” or “The Internal Revenue Service, as an agency of the United States government, is exempt from the county documentary transfer tax.”

Let me know if you have any questions.