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From

Sent: Fri 6/12/2015 6:38 PM

To:

CC:

Subject: IRC 7425(c) Notice by UPS or FedEx ok? - GL-107155-15

You requested our views on whether notices of non-judicial sale may be delivered under section 7425(c) by private delivery services such as FedEx and UPS in lieu of United States certified and registered mail. In your case, the notice of sale was delivered by UPS 2nd Day Air to the building mailroom for the address listed in Publication 4235 on October 17, 2014 for a non-judicial sale held on December 9, 2014. Subsequently, Advisory received an application for a release of the right of redemption. Based on prior Counsel advice, Advisory has taken the position that the release should not be granted. Advisory concludes that the right of redemption didn't arise and the property was sold subject to the NFTLs because the notice of non-judicial sale wasn't delivered in the required manner. You requested our views on whether this conclusion reflects our current position. For the reasons stated below, we conclude that the UPS delivery did not satisfy section 7425(c) in this case.

Under section 7425(c), notice of sale must be given, per regulations prescribed by the Service, in writing, by registered or certified mail or by personal service, not less than 25 days prior to sale. We have always interpreted "registered or certified mail" as referring to the registered or certified mail services provided by the United States Postal Service (USPS), and not to refer to any alternative mailing services. Treas. Reg. § 301.7425-3 (a)(1) provides that "[t]he provisions of sections 7502 (relating to timely mailing treated as timely filing) . . . apply in the case of notices required to be made under this paragraph." Section 7502(f) allows the Service to define, within certain parameters, "designated delivery services" that serve as equivalents to United States mail service. It also provides that the Service "may provide a rule similar to the rule of paragraph (1) [related to regular mail] with respect to any service provided by a designated delivery service which is substantially equivalent to United States registered or certified mail." I.R.C. § 7502(f)(3). In addition, Treas. Reg. § 301.7502-1(c)(3) provides that "the Commissioner may, in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), prescribe procedures and additional rules to designate a service of a PDS for purposes of the postmark rule of section 7502(a)."

Section 7502 does not apply here with regard to defining registered and certified mail for purposes of section 7425(c). The Service has never provided rules pursuant to

section 7502(f)(3). The applicable revenue procedure regarding designation of delivery services specifically states that the designation rules in the revenue procedure apply only with respect to regular mail, not for purposes of § 7502(f)(3), related to delivery services to be deemed equivalent to United States registered or certified mail. Rev. Proc. 97-19, section 3.02. Furthermore, the Service has not to date designated any services as equivalent to United States registered and certified mail. See Notice 2015-38 (May 26, 2015). As such, even if section 7502 could be construed to expand the definition of “registered and certified mail” for purposes of section 7425, no private delivery services are currently treated under section 7502 as equivalent to registered or certified mail.

In addition, we considered whether delivery by private delivery services satisfies the requirement of delivery by personal service. Neither the Code nor the regulations specifically indicate whether delivery by private delivery services satisfies the requirement of delivery by personal service. In fact, “by personal service” is not defined in the Code or in the regulations. Nor is it currently addressed in the Internal Revenue Manual. Publication 786, Instructions for Preparing a Notice of Nonjudicial Sale of Property and Application for Consent to Sale repeats the Code. In our view, “personal service” means delivery by the submitter of the notice, not a third party. The Code section anticipates that any third-party delivery must be by USPS certified or registered mail.

In your case, the UPS delivery did not satisfy the personal service or the registered/certified mail requirement.

If you would like to discuss this further, please contact me.