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**From:** [REDACTED]

**Sent:** Monday, March 25, 2019 1:04:18 PM

**To:** [REDACTED]

**Cc:** [REDACTED]

**Bcc:**

**Subject:** purchase money mortgage -

You asked whether a cross-collateralization clause in a deed of trust that states

prevents a security interest from being classified as a purchase money mortgage. A cross-collateralization clause, sometimes referred to as a dragnet clause, is a “provision wherein the mortgage secures not only a specifically described obligation but also all other obligations between the mortgagor and the holder, whether then existing or later contracted.” 59 C.J.S. Mortgages § 217.

I.R.C. § 6323 sets out the validity and priority of the federal tax lien against certain persons. The Federal Tax Lien Act of 1966 does not address the validity or priority of purchase money mortgages or security interests in relation to a federal tax lien. However, in Revenue Ruling 68-57, the Service adopted the position that “a purchase money security interest or mortgage valid under local law is protected even though it may arise after a notice of Federal tax lien has been filed.”

We are unaware of a position that the inclusion of a cross-collateralization clause in a deed of trust would ‘poison’ an otherwise valid purchase money mortgage such that it would not be recognized as a purchase money security interest. However, the extent of the purchase money security interest would be limited to the amount of the purchase money and associated interest. The purchase money protection would not extend to any antecedent debt, after-acquired property, or future advances. See I.R.C. § 6323(c-d).

[REDACTED]

You also mentioned that lien subordination had been requested by the Lender. Under section 6325(d), a lien may be subordinated to another interest if: a) an amount equal to the amount of the lien or interest to which the certificate subordinates the tax

lien is paid; or b) the Service believes that subordination will ultimately result in an increase in the amount realized by the government from the property. From the information conveyed [REDACTED]

[REDACTED] Section 6323(i)(2) provides that if local law allows a subsequent lien holder to be subrogated to the rights of a lien holder with priority over a FTL with respect to its newly created lien or interest, the subsequent lien holder shall be subrogated to such rights under federal law. Therefore, when a FTL is not valid with respect to a particular interest as against the holder of that interest, then the tax lien also is not valid with respect to that interest as against any person who, under local law, is a successor in interest to the holder of that interest. Treas. Reg. § 301.6323(i)-1(b).

Please let me know if you have any questions or would like to discuss this case further.