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From: [REDACTED]

Sent: Tuesday, July 27, 2021 4:59:50 PM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: RE: Request for Informal Advice re: State Court Receivership Private Sale, Public Auction; Effect on Liens

Good afternoon.

Following up on the earlier email, in our view, what the receiver proposes is not workable. In some situations, expenses can be paid prior to payment to the Service. The Treasury Regulations provide, in part:

Any reasonable and necessary expenses incurred in connection with the sale of the property and the administration of the sale proceeds shall be paid by the applicant or from the proceeds of the sale before satisfaction of any Federal tax liens or claims of the United States.

Treas. Reg. 301.6325-1(b)(3). The IRM provides similarly. IRM 5.12.10.3.4. The IRM also addresses what are allowable expenses. See IRM 5.12.10.7.4 below. However, the receiver fee here falls outside what we believe would be an allowable expense. I contacted the NO lien analyst, and his response is attached. He indicated that the amount of the fee didn't seem reasonable.

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

5.12.10.7.4
(09-30-2015)

Allowable expenses

(1) Certain expenses may be treated as reasonable and necessary expenses for the financial transaction and should be considered in calculating the amount of the government's interest. These expenses, which do not have to be present, may include, but are not limited to, the following items:

- Fees related to the application process, such as title report and appraisal
- Fees inherent to the transaction, such as realtor commission or loan origination fee
- Costs associated with the administration of the proceeds
- Recordation fees
- Costs related to the property transfer including *ad valorem* taxes, "document stamp fees", "transfer stamps," and "transfer fees," if their assessment and collection is required on sales in the jurisdiction where the

sale occurs

Exception: See IRM 5.12.10.7.4.1 below regarding transfer taxes assessed at closing.

(2) Allowance of the expenses listed in (1) is prohibited if any of the following conditions are present:

- Monies were or will be paid to the taxpayer,
- The fees are not mandated by state, county or other local jurisdictional law,
- The fees are not applied to all sales of the same type, or
- The fees are excessive or unusual.

(3) Attorney fees are allowable expenses if they are incurred as part of the subject transaction or application process and they are reasonable in amount. Attorney fees are not allowable for representation unrelated to the subject transaction (e.g., litigation against third party, representation on other tax matters). The amount of attorney fees is generally considered reasonable if it does not exceed the limitations established under IRC § 7430(c)(1)(B)(iii).

Note: The IRS publishes an inflation-adjusted rate cap on an annual basis. Per Rev. Proc. 2014-61, the attorney fee limitation for fees incurred in calendar year 2015 is \$200 per hour.

(4) In certain sale situations, the buyer and seller may agree to a slightly higher selling price in exchange for the seller paying additional closing costs.

Normally, this is done to facilitate the loan process of the buyer but may also be used to enhance the marketability of the property. These seller (i.e., taxpayer) paid costs may be allowable as an expense if, among other factors, they:

- were specifically negotiated in the sales contract,
- are reasonable given the selling price and the amount of other normal expenses allowed,
- are in accordance with local laws and standards, and
- do not significantly impact the equitable interest of the government or the amount that might otherwise be realized from the transaction.

(5) If expenses are incurred (sometimes called "staging" expenses by realtors) and it is demonstrated that they either hastened the sale or increased the amount received at sale, then allow the expenses. In particular, if prevailing economic conditions are poor, and "staging" assists in selling a property, providing a taxpayer with an avenue to make payment on their taxes, allow these expenses so long as the expense is reasonable and ordinary in the state where the property was, or is being, sold.

(6) Fees for auctioneering services are allowable if they are reasonable and necessary for the sale of the property. If a realtor employs the services of an auctioneer (or similar vendor) to facilitate a sale, the sum total of the realtor and auctioneer fees should not exceed the amount generally allowable for the realtor's commission alone.

(7) The determined interest of the United States necessary for issuance of a discharge or subordination should not be reduced in order to allow payment to an interest that is junior to the federal tax lien.