



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
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MEMORANDUM FOR DELAWARE-MARYLAND DISTRICT COUNSEL

FROM: Joseph W. Clark
Acting Branch Chief, Branch 2 (General Litigation)

SUBJECT: Estate of

This memorandum responds to your July 29, 1999, request for pre-review of your memorandum to the Delaware-Maryland District Director concerning the above referenced case.

We agree that if the ex-wife was properly in the chain of title, the Service's § 6321 tax liens attached to the property in the hands of the children, and the Service has the right to collect from the proceeds of the property. Neither taxpayer's ex-wife or children were purchasers protected under § 6323(a), as § 6323(h)(6) defines a purchaser as someone who paid adequate and full consideration. We also agree that the Service should attempt to determine whether or how the ex-wife stepped into the chain of title, and the status of probate proceedings.

Because the Service does not yet know how the ex-wife came to have title in the property, it is not clear that the taxpayer's children would be liable under 31 U.S.C. § 3713(b) for the transfer of this property. Accordingly, we recommend that the first full paragraph on page 6 be changed to read:

The prior personal representatives, [taxpayer's children], whose appointment was in effect when the Service's proof of claim and amended proof of claim were filed, on August 21, 1991 and August 13, 1993, respectively, in the decedent's estate proceeding could be liable as fiduciaries of the estate if, as representatives of the decedent's estate, they made transfers of property of the decedent's estate.

We also recommend that the forth paragraph on page 6 be changed to read:

Based upon the forgoing, the Service is entitled to priority and the personal representatives may be liable pursuant to 31 U.S.C. § 3713(b). Again, we ask your office to review how [the ex-wife] came into the chain of title of the real property. If as representatives of the estate [taxpayer's children]

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transferred the property to [ex-wife] in contravention of 31 U.S.C. § 3713(a), they would be liable under 31 U.S.C. § 3713(b) to the extent of the value of the property. We also ask your office to determine whether other claims against the decedent's estate were given preference over the Service's claims. A separate assessment under I.R.C. § 6901 would be necessary to administratively collect any 31 U.S.C. § 3713(b) liability. Under I.R.C. § 6901(c)(3), the statute of limitations on assessment of 31 U.S.C. § 3713(b) liability must be made no later than one year after the liability arises or no later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later.

If you have any further questions, please call the attorney assigned to this matter at (202) 622-3620.