

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:SB:LPLafferty
GL-120254-15

date:

to: Alan Gilds
Analyst, Collection Policy
(Small Business/Self-Employed)

from: Lisa Lafferty
Attorney, Division Counsel
(Small Business/Self-Employed)

subject: Notice of Sale Requirements

This memorandum provides an analysis of the issues raised in your April 1, 2015 email to Division Counsel, Small Business/Self-Employed. You sought our advice regarding the statutorily required content of the Notice of Sale and the published notice. This inquiry stems from a discussion held by the Director, Headquarters Collection, the Director, Field Collection, and the Director, Collection Policy concerning the ongoing disagreement with TIGTA over the content required by IRC § 6335.

Issues

1. Whether IRC § 6335 requires the minimum bid to be listed on the Notice of Sale or the notice required by the statute to be published.
2. What, if any, litigation risks exist if the minimum bid is not listed on either the Notice of Sale or the published notice.
3. Whether IRC § 6335 requires the Notice of Sale and the published notice to be identical.

Conclusions

1. The minimum bid is not required to be listed on the Notice of Sale or the published notice.
2. [REDACTED]
3. The Notice of Sale and published notice are not required to be identical.

Discussion

1. Minimum bid is not required to be in Notice of Sale or published notice.

The IRS must give the owner of seized property a notice of sale as soon as is

practical after the seizure is made.¹ The IRS must also cause notice of the sale to be published in a newspaper that is generally circulated or published in the county in which the seizure was made.² If no newspaper is published or generally circulated in the county, the notice must be posted at the post office closest to the place the seizure was made and at least two other public places.³

IRC § 6335(b) sets out the content required to be included in the Notice of Sale and the published notice. The Notice of Sale and published notice are required to “specify the property to be sold, and the time, place, manner and conditions of the sale” of the seized property.⁴ The manner and conditions of the sale are addressed by IRC § 6335(e). IRC § 6335(e)(1)(A) requires the IRS to determine the minimum bid below which the property will not be sold. IRC § 6335(e)(2) mandates that the Secretary prescribe by regulation the “manner and other conditions of the sale” of seized property. More specifically, IRC § 6335(e)(2)(C) requires the regulations prescribed by the Secretary to address whether the announcement of the minimum bid may be delayed until receipt of the highest bid. The legislative history of this provision reveals that Congress was concerned that announcing the minimum bid before the sale might depress the bidding.⁵ Accordingly, Treasury Regulation § 301.6335-1(c)(3) provides that the announcement of the minimum bid may be made before the sale or deferred until after receipt of the highest bid, and that in the case of deferral, if the highest bid exceeds the minimum bid then no announcement of the minimum bid shall be made.

a. Published Notice

The minimum bid is not required to be included in the published notice. IRC § 6335 left to the Secretary the determination of whether the minimum bid must be announced before the sale. Treasury Regulation § 301.6335-1(c)(3) establishes that an announcement before the sale is not required. Requiring the minimum bid to be included in the notice which is published before the sale would render the statute ineffective to the extent it affords the Service discretion to determine whether the announcement of the minimum bid can be deferred. There would be no reason for the regulation to allow deferral of the announcement of the minimum bid if it were required to be included in the published notice. It is our opinion that the unavoidable conclusion to be drawn from the statute and the regulation is that the minimum bid is not a condition of the sale required to be included in the published notice.

b. Notice of Sale

The minimum bid is not required to be included in the Notice of Sale. IRC § 6335 provides one requirement for content that is applicable to both the Notice

¹ IRC § 6335(b).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ S. REP. NO. 83-1622, pt. 10 at 26 (1954).

statute. The statute directs that the manner and conditions of the sale be prescribed by regulation. Requiring the minimum bid to be included in the published notice would seriously hamper the effectiveness of the regulation.

[REDACTED]

b. Notice of Sale

[REDACTED]

3. The Notice of Sale is not required to be identical to the published notice.

The Notice of Sale and the published notice do not have to be identical. Both the Notice of Sale and the published notice must be the same in all material respects and contain the content required by IRC § 6335. Immaterial differences with respect to words or phrases will not render the Notice of Sale or the published notice in violation of IRC § 6335.

Your email included an example where differences existed in the language describing payment terms. So long as the language describing the payment terms is equivalent such that the meaning is not changed, variations in words or phrases do not violate IRC § 6335. You also specifically asked about including the minimum bid in the Notice of Sale, but not the published notice and vice-versa. Because the minimum bid is not required to be listed on either the Notice of Sale or the published notice for the reasons explained above, including the minimum bid in one notice, but not the other, does not violate IRC § 6335.

[REDACTED]

In our opinion the minimum bid does not have to be included in the notices required by IRC § 6335. [REDACTED]

[REDACTED] Finally, although the Notice of Sale and the published notice do not have to be identical, they must be the same in all material respects. Please call Lisa Lafferty at (240) 613-6363 if you have further questions.

DEBORAH C. STANLEY
Assistant Division Counsel (GL)
(Small Business/Self-Employed)

By: _____
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