



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JUL 12 2000

MEMORANDUM FOR CHERYL HARSKOWITCH
DIRECTOR, TAXPAYER ACCOUNT OPERATIONS
C:TA:TAO

FROM:

Carol A. Campbell *CAC*
Technical Advisor to the Counsel to the National Taxpayer
Advocate
CC:NTA

SUBJECT: [REDACTED]

By memorandum dated April 14, 2000, we were requested to review a legal opinion issued by District Counsel, Houston and concurred in by the Assistant Regional Counsel (General Litigation), for the Mid-States Region. The memorandum asks that we review the case of the parties named above and address issues related to the relief available to purchasers from an IRS tax sale who subsequently incur costs/damages when a deed of sale is voided by a state court. The questions raised in the memorandum appear to have been answered in the legal advice previously provided. The memorandum, however, does not express any disagreement or difficulty with the opinions provided by the district or regional counsel, raise new arguments, or provide any reason why additional review is warranted or necessary in this case other than the fact that it is a Senate Finance Committee case.

As was pointed out by both district and regional counsel, tax sale purchasers take property as is, where is, and without recourse against the United States. None of the provisions regarding seizure and sale of property establishes any duty on the part of the Service to a tax sale purchaser. The procedures and protections in section 6331 et seq. of the Internal Revenue Code are directed at the taxpayer. A buyer at a tax sale purchases at his/her own risk. A deed issued to a purchaser will

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convey all the right, title, and interest the taxpayer had in the property at the time the lien of the United States attached, but such deed will act as a conveyance only to the extent that the sale proceedings have been in accordance with the law. See I.R.C. § 6339(b)(2).

In this case, the [REDACTED] purchased property at a tax sale and were issued a certificate of sale upon full payment of the purchase price. During the redemption period, the taxpayers asserted that they attempted to redeem the property from the purchasers, but were unable to make contact with the purchasers. The facts as to whether the taxpayers attempted a timely redemption of the property through the Service are not especially clear based on the information that has been supplied to this office. It is clear that the Service issued a quitclaim deed to the purchaser's believing that the redemption period had expired. The deed that the Service issued to the purchasers conveys the taxpayer's interest only if there has been strict compliance with the statutory requirements for sale. See generally Stevens v. Baas, 96-1 U.S.T.C. ¶ 50,238 (U.S.D.C. N.D. Ohio, 1995).

This deed, however, was determined to be void and was annulled by a Texas state court. The court apparently concluded that the Service failed to comply with the provisions of I.R.C. § 6337 and that the taxpayers had properly redeemed the property in question. (The court order attached to the April 14, 2000, memorandum does not provide an opinion in support of the order). The costs and attorneys' fees associated with this litigation were assessed against the [REDACTED] and the [REDACTED] seek to recover these amounts from the Service, alleging that the Service erred in issuing the deed of sale, prior to the expiration of the redemption period.

Assuming the [REDACTED] are correct in their assertion that the Service issued the deed of sale prematurely, there is no legal basis to provide recompense to the [REDACTED] based upon the Service's error. If the Service in fact erred and failed to adhere to the 180 day redemption requirements of section 6337, the deed does not convey any interest to the purchasers. This type of computational error does not provide the purchasers with any cause of action against the Service. Not only do the regulations provide that property is offered for sale "without recourse against the United States," it is a fundamental principle of property law that quitclaim deeds do not provide any warranties or covenants with respect to the validity of title for any property interest conveyed. See Treas. Reg. § 301.6335-1(c)(5)(iii). Although the Service has an obligation to deal fairly and responsibly with purchasers, any

unknown defects in the deed issued to the purchasers are assumed by the purchasers. The purchasers also had a responsibility to compute the 180 day period. Sole reliance on the Service's computation on these facts is unwarranted.¹

We concur with the conclusion of district and regional counsel that as a legal matter, the purchasers do not have a claim against the Service and therefore, there is no legal basis for an award of damages in this matter. If you have questions, please advise.

¹ Notwithstanding the possibility of a computational error by the Service, the risks associated with litigation of this issue were assumed by the purchasers. The [REDACTED] were not novices to this process. The [REDACTED] purchased property at a tax sale previously, were aware that the taxpayers had 180 days to redeem this property, and it appears were also aware that the taxpayers expressed interest in redeeming this property (and may have intentionally avoided the taxpayers so that the taxpayers could not redeem the property), thus, they should have been on notice when taxpayers filed suit that there was some question about the validity of their title.