

Office of Chief Counsel
Internal Revenue Service
memorandum

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(Small Business/Self-Employed)

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subject: Notice under section 6335(a) with regard to liquor licenses.

ISSUE

Where the Service seizes a taxpayer's liquor license in the State of Pennsylvania, whether the notice of seizure pursuant I.R.C. § 6335(a) must be given to the taxpayer or to the state licensing board?

CONCLUSION

The Secretary should give the notice of seizure to the taxpayer.

FACTS

Questions have been raised as to whether, when seizing liquor licenses owned by taxpayers in Pennsylvania, notice of seizure under section 6335(a) must be given to the state licensing board rather than the taxpayer. This is a critical issue because section 6335(a) requires that the notice be personally delivered and not just mailed, unless personal delivery is not possible. The current practice is to attempt personal delivery to the taxpayer and not the state board. The matter at hand is whether the state board is the actual possessor of the license so that personal delivery must be made on the state board, rather than the taxpayer, in order to comply with section 6335(a).

LAW AND ANALYSIS

I.R.C. § 6331(a) provides the Service the authority to levy on property of the taxpayer to collect delinquent tax debts. For property to be seized and sold at a tax sale, the Service must give a notice of seizure as provided in section 6335(a). Section 6335(a) states in pertinent part that “[a]s soon as practicable after seizure of property, notice in writing shall be given by the Secretary to the owner of the property (or, in the case of personal property, the possessor thereof), or shall be left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made.” Treas. Reg. § 301.6335-1(a) states in pertinent part that “The written notice shall be delivered to the owner (or, to the possessor in the case of personal property) or left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made.” The Third Circuit has held that a literal reading of § 6335(a) requires the Service to personally serve the person entitled to notice, and failure to do so can invalidate a future sale. Goodwin v. U.S., 935 F.2d 1061 (3rd Cir. 1991).

Under section 6335(a), the general rule is that notice is given to the owner of the property. The parenthetical in this provision provides for an exception: notice should be given to the “possessor” of personal property.

We conclude that the state does not possess the liquor license within the meaning of section 6335(a). Under Pennsylvania law, a liquor license is a personal privilege issued by the state. 47 P.S. § 4-468. “Unlike realty or personalty, a liquor license is a privilege conferred by the state to engage at a particular premises in a profitable regulated commercial activity.” Kabakjian v. U.S., 1998 WL 962124 at *2. Regardless of state law, there is no question that the license is property for purposes of section 6331. 21 West Lancaster Corp. v. Main Line Restaurant, Inc. and U.S., 790 F.2d 354 (3rd Cir. 1986). Thus, the state grants the right, which becomes property owned by the taxpayer that can be seized. The state, however, does not itself possess any property. Black’s Law Dictionary defines an act of possession as “the exercise of physical control over a corporeal thing, movable or immovable, with the intent to own it.” (9th ed. 2009). By its very nature, a liquor license is not tangible property that can be possessed independent of ownership. Consequently, under § 6335(a) the owner of the license, the taxpayer, should be given notice of the seizure.

Please call Andrew Durett at (202) 927-0800 if you have any further questions.