

INTERNAL REVENUE SERVICE

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MEMORANDUM FOR ARKANSAS-OKLAHOMA DISTRICT COUNSEL

FROM: Alan C. Levine  
Chief, Branch 1 (General Litigation)

SUBJECT: Title Examination of Real Property Sold at Tax Sales

This responds to your memorandum dated October 26, 1998. You request our assistance as to whether the Internal Revenue Service is authorized to disclose a copy of Record 21-Record of Seizure and Sale of Real Estate (Part 1-Spf copy) and/or copies of the underlying sale and seizure documentation to prospective tax sale purchasers or title insurers which establish that the Service has complied with required seizure and sale procedures. This document is not to be cited as precedent.

ISSUES: 1. Whether the government may provide tax sale purchasers, or title examiners associated with the purchasers, a copy of Record 21-Record of Seizure and Sale of Real Estate (Part 1-Spf copy).

2. Whether the government may provide tax sale purchasers, or title examiners associated with the purchasers, copies of the underlying sale and seizure documentation, such as Form 2433-Notice of Seizure and Form 2434- Notice of Sale.

3. If the answers to questions 1 and 2 are negative, whether it would be appropriate to modify the Record-21-Record of Seizure and Sale of Real Estate (Part 2-Public Copy) or the currently used quitclaim deed form to satisfy the title examiners' concerns.

CONCLUSION: Under I.R.C. § 6103(k)(6), to the extent that the disclosure of Record 21-Record of Seizure and Sale of Real Estate (Part 1-Spf copy) or copies of the underlying sale and seizure documentation is necessary to effectuate the sale of property, the Service is authorized to disclose this information to the tax sale purchaser or title examiners associated with the sale, provided that such disclosure is made on a case-by-case basis.

LAW & ANALYSIS: We first address the question of whether the Service may provide tax sale purchasers, or title examiners associated with the purchasers, a copy of Record 21-Record of Seizure and Sale of Real Estate (Part 1-Spf copy).

Section 6103 of the Internal Revenue Code prohibits the Service from disclosing “returns” or “return information,” as those terms are defined in I.R.C. § 6103(b)(1) and (b)(2), unless disclosure is authorized under a specific provision of Title 26. In a prior memorandum, this office concluded that return or return information that was related to the seizure of property but was not made a matter of public record in the course of the Service’s tax administration activities, could be disclosed to the purchaser and title insurer under the authority of I.R.C. § 6103(k)(6) and implementing regulations to the extent such disclosure is necessary to effectuate the sale of the property by the Service. We noted that Treas. Reg. § 301.6103(k)-1(b)(6) authorizes disclosure of return information by the Service when necessary to accomplish the seizure or sale of assets to satisfy any liability. We also noted that section 11.9.1 of IRM 1.3, Disclosure of Official Information Handbook, contains the same conclusion. Furthermore, we previously opined that the necessity for the disclosure of tax information for these purposes must be made on a case-by-case basis in order to evaluate the propriety of such disclosure.

Thus, based on the aforementioned, we conclude that, with respect to your first question, the Service is authorized to disclose a copy of Record 21-Record of Seizure and Sale of Real Estate (Part 1-Spf copy) to title purchasers or title examiners associated with the purchasers provided that such disclosure is necessary to effectuate the sale of the property by the IRS and that each disclosure has been individually evaluated for its propriety. In this context, we note that the release of blocks 14 and 15 from Part 1 of Record 21 would normally be the only disclosures necessary to verify the legality of a seizure and sale for purposes of having title insurance issued for the property.

Similarly, the above analysis is applicable to your second question, whether the Service may provide tax sale purchasers, or title examiners associated with the purchasers, copies of the underlying sale and seizure documentation, such as Form 2433-Notice of Seizure and Form 2434-Notice of Sale. Under I.R.C. § 6103(k)(6) and the implementing regulations, to the extent that the disclosure of copies of the underlying sale and seizure documentation is necessary to effectuate the sale of a property, the Service is authorized to disclose this information to the purchaser or title examiners. Further, as stated above, disclosure of tax information for these purposes must be made on a case-by-case basis in order to evaluate the necessity for such disclosure.

Additionally, a secondary argument exists which authorizes the disclosure of underlying sale and seizure documentation which is already part of the public record. Section 6335(b), Notice of Sale, provides for notification to be published, after seizure of the property, in some newspaper which specifies “the property to be sold, and the time, place, manner and conditions of the sale thereof.” It is our position that information which is properly made public as part of the Service’s tax administration activities, such as a filed notice of federal tax lien or information contained in a section 6335(b) newspaper notification, is no longer confidential and may be disclosed without regard to the limitations in I.R.C. § 6103. Thus, documentation such as Form 2434-Notice of Sale which contains information already publicized by a section 6335(b) newspaper notification, may be disclosed without regard to section 6103. See Rowley v. U.S., 76 F.3d 796 (6th Cir. 1996).

Finally, since the answers to the above two questions are in the affirmative, we do not address the third question of whether it would be appropriate to modify the Record-21-Record of Seizure and Sale of Real Estate (Part 2-Public Copy) or the currently used quitclaim deed form to satisfy the title examiners’ concerns.

If you have any further questions, please call 202-622-3610.