



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

OFFICE OF
CHIEF COUNSEL

June 25, 2003

GL-105261-03

Number: **200330041**
Release Date: 7/25/2003

UILC: 6331.00-00

MEMORANDUM FOR ASSOCIATE AREA COUNSEL, SACRAMENTO
CC:SB:7:SAC:2

FROM: Walter Ryan
Assistant to the Branch Chief
Collection, Bankruptcy & Summonses CC:PA:CBS:BO1

SUBJECT: Request for Advice Concerning Non-Taxpayer Specific
Successive Non-Judicial Foreclosures

This responds to your request for formal advice dated April 7, 2003, in connection with a question posed by Technical Support.

ISSUE

After a senior lienor gives notice to the Internal Revenue Service ("Service") and sells taxpayer's property under I.R.C. § 7425(d), will the Service's right of redemption within the 120-day redemption period 1/ be extinguished by another senior lienor foreclosing on the same property.

CONCLUSION

If given proper notice of a sale of real property by a senior lienholder in accordance with I.R.C. § 7425(c)(1), the Service has a right of redemption concerning the property. The fact that another senior lienor forecloses on the same property within the 120-day redemption period does not affect the Service's right to redeem the property as a result of the first sale.

FACTS

1/ I.R.C. § 7425(d)(1) states that the redemption period is either 120 days or the applicable time period under local law, whichever is longer. For purposes of this memorandum, we assume that the 120-day period applies.

In the request for advice, we are asked to determine the status of the Service's right of redemption in the situation similar to the one described below.

A piece of real property is encumbered by two deeds of trust and a federal tax lien. The federal tax lien is junior to both deeds of trust. On January 1, the second deed holder forecloses its lien on the property and holds a foreclosure sale. For purposes of this advice, assume that the deed holder gives proper notice of the sale to the Service in accordance with I.R.C. § 7425(c)(1). ^{2/} Subsequently, on February 1, within the Service's statutory period for exercising redemption from the January 1 sale, the holder of the first deed gives the Service proper notice and forecloses its lien on the same property and holds a foreclosure sale. ^{3/}

LAW AND ANALYSIS

I.R.C. § 7425(b)(2) provides, in pertinent part, that if appropriate notice of a foreclosure sale is given to the Service, the sale shall have the same effect with respect to the discharge of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated. For purposes of this advice, we assume that under the local law of the jurisdiction where the real property is located, a lien held by the United States on real property would be extinguished at the time of an initial foreclosure sale of the property by a senior creditor.

When the holder of the second deed of trust forecloses on its lien on January 1 and subsequently holds a foreclosure sale, the Service's lien would be extinguished at the time of the sale. Accordingly, the Service would possess its right to redeem the property pursuant to I.R.C. § 7425(d)(1). Under section 7425(d)(1), the Service, generally, has 120 days from the date of a foreclosure sale during which it may redeem property sold as a result of a non-judicial sale. As such, in the fact pattern discussed above, the Service would have 120 days from January 1 in which to redeem the property. The fact that the first deed of trust is foreclosed on February 1 does not affect the United States' right of redemption as it relates to the January 1 foreclosure. Thus, the United States, in accordance with the procedures set forth in section 7425, can redeem the property within the 120-day period from the January 1 sale.

^{2/} If the Service is not given proper notice of the foreclosure sale, then under I.R.C. § 7425(b)(1), the United States' lien on the property would be undisturbed, and the question raised in this memorandum would not arise.

^{3/} For purposes of this advice, we assume both foreclosure sales are non-judicial.

Note that the Service would not possess another right of redemption pursuant to a subsequent foreclosure sale by the holder of the first deed of trust on February 1. Section 7425(d)(1) provides only one right of redemption, i.e., the Service redeems from the sale that extinguished the federal tax lien. In this hypothetical, the January 1 sale extinguished the federal tax lien.

Please call the attorney assigned this case at questions.

if you have any further