

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2005-009

May 19, 2005

<p>Change in Pre-Review Requirements for Suit Letters Requesting Judicial Approval of Subject: Principal Residence Seizures</p>	<p>Upon incorporation Cancel Date: into CCDM</p>
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Purpose

The purpose of this Notice is to advise that suit letters requesting judicial approval of a principal residence seizure will no longer be pre-reviewed in Branch 1, Collection, Bankruptcy & Summonses.

Discussion

This Notice supersedes Chief Counsel Notice CC-2002-033, which eliminated the requirement for pre-review of letters authorizing the Department of Justice to file lien foreclosure suits on principal residences, but maintained the requirement for pre-review of letters authorizing the Department of Justice to file suits to obtain judicial approval of principal residence seizures, pursuant to I.R.C. § 6334(e)(1).

On March 7, 2005, final regulations were published which revise current Treas. Reg. § 301.6334-1. These regulations provide guidance regarding the procedures for section 6334(e)(1) proceedings. Additional guidance for preparing section 6334(e)(1) suit letters is found in CCDM 34.6.2.5. A pattern section 6334(e)(1) suit letter is also attached to this Notice.

With the publication of final regulations, we have determined that routine pre-review of section 6334(e)(1) suit letters is no longer necessary. Accordingly, as of the date of this Notice, pre-review will no longer be required for such letters. The CCDM will be updated to eliminate the pre-review requirement.

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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
OFFICE OF CHIEF COUNSEL
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CC:SB:
SBSEAttorneyname

CASE CLASSIFICATION: STANDARD

Honorable Eileen J. O'Connor
Assistant Attorney General
Department of Justice
Tax Division
P.O. Box 55
Ben Franklin Station
Washington, D.C. 20044

Attn: Name, Chief, Civil Trial Section, X Region

Taxpayers: Taxpayer name, address and SSN
Your ref: new

[Note that final Treasury Regulation 301.6334-1, addressing the procedures for the section 6334(e)(1) proceeding, was published on March 7, 2005. Please cite to this regulation, rather than to the proposed regulation.]

Dear Ms. O'Connor:

In accordance with the provisions of sections 7401 and 7402(a) of the Internal Revenue Code^{1/}, you are hereby authorized and requested to file such action against John Doe (the "taxpayer"), and any other parties, which in your judgment, will be necessary to effect collection, in whole or in part, of the outstanding Federal tax assessments against the taxpayer. We recommend that you request the United States District Court for the X District of Y, to approve a levy upon and seizure of the principal residence of the taxpayer under the authority of section 6334(e)(1).

^{1/} Section references are to the Internal Revenue Code unless otherwise noted.

After consideration of the facts and law recited herein, we conclude that an administrative levy and seizure is preferable to a suit to foreclose the federal tax lien, because [the taxpayer holds an undisputed interest in the property; there are none of the complications with respect to title which might dictate that a suit to foreclose would be a better alternative; we are hopeful that when faced with the prospect of seizure, the taxpayers may be more amenable to cooperate in finding an appropriate collection alternative].

JURISDICTION AND VENUE

Jurisdiction is proper in the United States District Court. 28 U.S.C. § 1340 and 26 U.S.C. § 6334(e)(1)(B). Venue is proper in the X District of State Y. The taxpayers reside at the address of the real property, which is the subject of this action, in the X District of State Y, and the liability for the taxes accrued there. 28 U.S.C. §§ 1391(b) and 1396.

STATUTE OF LIMITATIONS ON COLLECTION

The assessments against the taxpayers are for [type of] tax liabilities for the X tax years. The earliest statute of limitations on collection will expire on Y date, which is 10 years after the assessment of the taxpayer's Z tax liability at issue. I.R.C. § 6502(a)(1). **[Explain any tolling of the CSED which may also apply—e.g., I.R.C. § 6330(e)(1)].** **[If the earliest CSED will expire within one year, consider whether a suit to foreclose the federal tax lien and reduce to judgment would be more appropriate].**

FACTS

[Provide amount of total tax liability, including penalties and interest, calculated to the most recent date possible. The amount of the levy must exceed \$5,000. See I.R.C. § 6334(a)(13)(A). Summarize facts set forth in the Civil Suit Recommendation (Form 4477), which should be enclosed, along with the attached exhibits].

[Provide background information on the taxpayers, including age, jobs, health problems, etc., if known. Discuss other occupants of the subject residence, and their relation to taxpayers, particularly noting if there are any minor children. Address whether there are any family members residing on the property entitled to a "notice letter". See Treas. Reg. § 301.6334-1(d)(3). Provide the history of the unpaid tax liability—e.g., taxpayers have failed to file returns. Discuss taxpayers' current compliance with filing requirements, etc.].

[Provide a description of the subject property, including its legal description. Discuss its fair market value and forced sale valuation. Describe all encumbrances against the property]. [Note that, while other lienholders should be described, there should be no reference made to these claimants being joined as parties to this proceeding. This is a distinction from a lien foreclosure action].

[Discuss the collection history up until the date of this suit recommendation. In particular, verify that collection due process (CDP) rights were provided in accordance with I.R.C. § 6330. If any notices of federal tax liens were filed with respect to these liabilities, discuss the section 6320 CDP rights. Provide specific dates for when CDP notices were given, and the results—i.e., whether or not taxpayers requested CDP hearings; any CDP determinations. Discuss all attempts to take collection action prior to this suit recommendation, including other levies or seizures, all attempts to contact taxpayers, any attempts at collection alternatives, availability of any other assets from which to satisfy the liabilities, etc. The letter should demonstrate that all collection avenues, other than seizure of the principal residence, have been exhausted. Every attempt has been made to secure cooperation from the taxpayers. There are no other viable collection sources available to satisfy the outstanding tax liabilities].

[Discuss any other relevant background factors].

[The letter should indicate that the Area Director for the appropriate Area has approved this action].

ANALYSIS

I. Section 6334(e)(1) Proceeding--Background and Applicability

The judicial approval requirements are effective for principal residence seizures made on or after the date of enactment of the IRS Restructuring and Reform Act of 1998 (RRA 98), July 22, 1998. Section 6334(a)(13)(B) provides, generally, that the principal residence of a taxpayer (within the meaning of section 121), is exempt from levy except as provided in section 6334(e).

Section 6334(e)(1) provides (in relevant part) as follows:

(e) LEVY ALLOWED ON PRINCIPAL RESIDENCES AND CERTAIN BUSINESS ASSETS IN CERTAIN CIRCUMSTANCES.--

(1) PRINCIPAL RESIDENCES.--

(A) APPROVAL REQUIRED.-A principal residence shall not be exempt from levy if a judge or magistrate of a district court of the United States approves (in writing) the levy of such residence.

(B) JURISDICTION.-The district courts of the United States shall have exclusive jurisdiction to approve a levy under subparagraph (A).

Thus, a court order is required prior to administrative seizure of certain principal residences.

Section 6334(e)(1) does not describe the type of judicial proceeding contemplated. However, the legislative history discussing section 3401 of RRA 98, Due Process in IRS Collection Actions, states that there will be a judicial hearing after notice. The Conference Report for RRA 98, discussing section 3401, provides:

No seizure of a dwelling that is the principal residence of the taxpayer or the taxpayer's spouse, former spouse or minor child would be allowed without prior judicial approval. Notice of the judicial hearing must be provided to the taxpayer and family members residing in the property. At the judicial hearing, the Secretary would be required to demonstrate (1) that the requirements of any applicable law or administrative procedures relevant to the levy have been met, (2) that the liability is owed, and (3) that no reasonable alternative for the collection of the taxpayer's debt exists.

Internal Revenue Service Restructuring and Reform Act of 1998, Conference Report to Accompany H.R. 2676, H.R. Conf. Rep. No. 105-599, 105th Cong., 2d Sess., at 267.

Consistent with the language of section 6334(e)(1) and this legislative history, the regulations require judicial approval prior to seizure of the principal residence of the taxpayer, taxpayer's spouse, former spouse, or minor child. Treas. Reg. § 301.6334-1(d).

II. Elements for Seizure of a Principal Residence

When the Government seeks approval from the district court for the seizure of a principal residence, the Government must demonstrate that the underlying liability has not been satisfied, the requirements of any applicable law or administrative procedure relevant to the levy have been met, and no reasonable alternative for collection of the taxpayer's debt exists. See Treas. Reg. § 301.6334-1(d)(1); In re Lawrence, 2004 U.S. Dist. LEXIS 22228 (D. Az. 2004). **[Discuss how the facts previously set forth establish that each of these elements has been met].**

A. Underlying liability has not been satisfied

[Note that the taxpayer is not permitted to challenge the merits underlying the tax liability in this proceeding. Treas. Reg. § 301.6334-1(d)(2); In re Lawrence, supra. Confirm that the assessments are valid and the liabilities remain unsatisfied].

B. The requirements of any applicable law or administrative procedure relevant to the levy have been met

[Address the Service's compliance with IRC sections 6303, 6330, 6331(d), 6331(j), RRA 98 section 3421, and any other laws or administrative procedures relevant to

the proposed seizure. Specify that the section 6303 notice and demand for payment was sent to the taxpayer's last known address on X date and that the section 6330 notice was sent on X date by certified mail to the taxpayer's last known address].

C. No reasonable alternative for collection of the taxpayers debt exists

[Address the Service's exhaustion of collection efforts from all other assets, consideration of offers in compromise or installment agreements, all attempts to cooperate with the taxpayer to find alternatives to the seizure, etc.].

RECOMMENDATION

For the reasons specified above, we recommend that you file a request for court approval for the notice of levy and the seizure of the taxpayer's principal residence. Please send us copies of any pleadings you may file with the Court in this matter and otherwise keep us informed as to the status of this case. If you have any questions, please do not hesitate to contact SB/SE Attorney at [phone number].

Sincerely,

Name
Associate Area Counsel
(Small Business/Self-Employed)

By: _____
Name
SB/SE Attorney