



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

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR ASSOCIATE AREA COUNSEL (SB/SE) AREA 2
ATTN: JEANNE GRAMLING

FROM: Alan C. Levine
Chief, Branch 1 Collection, Bankruptcy & Summonses

SUBJECT: Foreclosure of Federal Tax Liens - Sale of Property by Property
Appraisal and Liquidation Specialists

This Chief Counsel Advice responds to your memorandum dated February 7, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

You requested our views on whether it is legally permissible for a Property Appraisal and Liquidation Specialist (PALS), rather than the United States Marshals Service (U.S. Marshal), to conduct a lien foreclosure sale. We understand that the Service believes that the local PALS is better equipped to sell property where the federal tax lien has been foreclosed.

ISSUE

Whether the PALS can sell real property in a lien foreclosure action, either upon the court's order or after appointment by the U.S. Marshal.

CONCLUSION

There is no legal impediment to the PALS' conducting foreclosure sales. However, the determination of whether it is advisable for the PALS or the U.S. Marshal to conduct the sale will be made by the Department of Justice, which has responsibility for litigating lien foreclosure actions.

DISCUSSION

Section 7403 of the Internal Revenue Code (the Code) provides that the district court, after determining the merits of the various claims on the property, "may decree a sale of such property, by the proper officer of the court." I.R.C. § 7403 (c). We have found no case law under section 7403 addressing who would be a "proper officer of the court." However, the provisions for conducting lien foreclosure sales are found at 28 U.S.C. § 2001 *et seq.* Section 2001 provides:

Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs.

28 U.S.C. § 2001(a) (emphasis added). 1/ Section 2003 sets forth procedures for situations in which the U.S. Marshal cannot complete the sale or execute the deed after the sale because of death, removal from office, or the expiration of the term of his commission. This provision offers the only indication 2/ that the U.S. Marshal is the only party permitted to conduct judicial sales: because any hypothetical party appointed by the court to conduct a sale might become unable to complete the sale, the reference only to the U.S. Marshal might suggest that sales can be conducted only by the U.S. Marshal. However, whatever inference might be drawn by the failure to refer to any party who might conduct sales other than the U.S. Marshal notwithstanding, we note that there is no statutory provision 3/ or case law which states that only the U.S. Marshal is authorized to conduct sales under section 2001.

To the contrary, as noted above, section 2001(a) vests in the district courts the discretion to set the terms and conditions of judicial sales. In addition, case law, though not addressing the specific question of who can conduct sales, has held that courts have broad discretion regarding the manner of sale. See, e.g., Revere Copper & Brass, Inc. v. Adirance Machine Works, Inc., 68 F.2d 708 (2d Cir. 708 1934) (under 28 U.S.C. §§ 847, 848, the predecessor to 28 U.S.C. § 2001, the method of conducting a judicial sale rests within the discretion of the district court); United States v. Hunwarden 39 F. Supp. 2d 1157 (N.D. Iowa 1999) (in a tax lien foreclosure action, the district court has broad discretion in setting the terms and conditions of the sale under 28 U.S.C. § 2001).

1/ Personal property sold under court order is sold in the same manner as real property under section 2001, unless the court orders otherwise. 28 U.S.C. § 2004.

2/ While this may be the only provision which suggests that the U.S. Marshal is the proper party to conduct sales, we note that the U.S. Marshal has typically conducted judicial sales. See United States v. Peters, 10 Cl. Ct. 602 (1986) (the hallmark of a judicial sale is that it is ordered by a court and carried out by someone appointed by the court, generally a U.S. Marshal). Historically, the U.S. Marshal has always conducted sales in connection with foreclosed federal tax liens.

3/ Not only is there nothing in 28 U.S.C. § 2001 et seq. that specifically precludes a party other than the U.S. Marshal from selling property, there is similarly nothing contained in the statutory provisions regarding the Marshals Service, 28 U.S.C. § 561 et seq.

We believe that, as a general matter, a district court can properly provide in the foreclosure order that the property be sold by the Service, 4/ rather than the U.S. Marshal. One caveat would be whether there is any local district court rule which would prohibit the court from doing so. We did not find anything in the local rules for the District Court for the Western District of North Carolina that would preclude the court from directing the Service to sell the property. We do not know the extent to which other courts in your area may have local rules which would bar the Service from selling property in foreclosure actions. 5/

Although we believe that there may be no legal impediment to a district court directing the Service to sell the property, ultimately, in a lien foreclosure action litigated by the Department of Justice, the Department of Justice determines the manner of disposing of the property which will be in the best interests of the United States. At best, the Service could make its services available to the Department of Justice. 

Finally, from informal contacts with SB/SE Headquarters, we believe that SB/SE is amenable to the PALSs conducting foreclosure sales. If this remains the case, it would be advisable that the Internal Revenue Manual be revised to reflect that the Service may request that the Department of Justice ask the court to include in the foreclosure order a provision that the Service will sell the property. In addition, the procedures for such sales should be set forth in the Manual.

If you have any questions or comments regarding the foregoing, please contact Branch 1 at (202) 622-3610.

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4/ Legally, the property could be sold by a PALS or a revenue officer. Section 3443 of the Restructuring and Reform Act of 1998 (RRA) bars revenue officers from participating in sales under I.R.C. § 6335. A foreclosure sale is not a sale under section 6335. Therefore, revenue officer participation would not be barred by the RRA. However, as an administrative matter, there appears to be a presumption that the PALSs will be conducting all sales—sales under section 6335, as well as sales of perishable goods and acquired property. We have no reason to believe that SB/SE would treat foreclosure sales differently.

5/ Solely by way of example, we note that a local rule for the District Court for the Eastern District of California discusses in considerable detail the role of the U.S. Marshal. See Local Rule A-570.

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privilege. If disclosure becomes necessary, please contact this office for our views.

cc: SB/SE, Compliance Policy, Attn: Karen Douglas
Division Counsel, SB/SE