



OFFICE OF
CHIEF COUNSEL

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

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MEMORANDUM FOR MARTIN B. KAYE, AREA COUNSEL SB/SE: Area 5
Denver
Attn: John Weeda

FROM: Alan C. Levine, Chief, Branch 1
(Collection, Bankruptcy, and Summonses)

SUBJECT: Colorado Public Trustee's Association

This Chief Counsel Advice responds to your memorandum dated May 18, 2001. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUE:

When a public trustee forecloses a lien and sells property in Colorado, when is the date of the nonjudicial sale for purposes of calculating the time period in which the United States can redeem property pursuant to I.R.C. § 7425(d)?

CONCLUSION :

The date of sale for purposes of I.R.C. § 7425(d) is the date of the public sale as provided in Treas. Reg. § 301.7425-2(b)(1).

FACTS:

The Colorado Public Trustees Association (CPTA) retained legal counsel to review their existing manual with respect to the handling of federal tax liens in the nonjudicial foreclosure sale process. One of the issues they have considered is the definition of date of sale in nonjudicial foreclosure sales handled by the public trustees. They have concluded that the date of sale for purposes of I.R.C. § 7425 is the date when junior liens are divested under Colorado law as provided in Treas. Reg. § 301.7425-2(b)(3). The attorneys for CPTA have contacted your office with respect to the views of the Internal Revenue Service (Service) regarding this and other issues. Your office has communicated your disagreement with the

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conclusions reached, explaining that subsection (b)(3) is the incorrect subsection; the correct subsection for determining the date of sale is section 301.7425-2(b)(1).

LAW & ANALYSIS:

In Colorado, property is sold at nonjudicial public foreclosure sales by means of a public trustee system. ^{1/} After the sale, Colorado provides for redemption of property by the owner and lien holders. Colorado grants to the owner an exclusive period of 75 days after a foreclosure sale of property to redeem his or her interest. Col. Rev. Stat. § 38-38-302(1) (1994). If no redemption occurs, Col. Rev. Stat. § 38-38-303(1)(1994) provides that:

the lienor having the senior lien ... may redeem within ten days after the expiration of the redemption period ... and each subsequent lienor in succession shall have and be allowed a five-day period.

The date of sale determines the period during which the Internal Revenue Service (Service) can redeem the property. The crucial issue is the determination of the date of sale for purposes of the running of the period of limitations on the federal redemption statute at I.R.C. § 7425(d).

Treas. Reg. § 301.7425-2 provides the method for determining the date of sale. The Colorado statutory provisions regarding redemptions fit within the provisions of Treas. Reg. § 301.7425-2(b)(1), which reads, in pertinent part, as follows:

[i]n the case of divestment of junior liens on property resulting directly from a public sale, the date of sale is deemed to be the date the public sale is held, regardless of the date under local law on which junior liens on property are divested or the title to the property is transferred (Emphasis supplied).

Section 301.7425-2(b)(3) addresses "divestment of junior liens not resulting directly from a public or private sale" and does not apply to public trustee sales, which divest junior liens by public sales. ("Divestment of junior liens on property resulting directly from a private sale" is treated under section 301.7425-2(b)(2) and is also not relevant to public trustee sales.)

^{1/} The Colorado legislature created the office of public trustee by Col. Rev. Stat. § 38-37-101 (1994) in lieu of the more familiar private trustee system to perform legal functions with regard to deeds of trust such as administering foreclosures and redemptions, and releasing deeds of trust.

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Our office and the Tax Division of the Department of Justice have previously considered Colorado public trustee's sales and have concluded that Treas. Reg. § 301.7425-2(b)(1) applies, so the date of sale under section 7425(d) is the date of the public trustee's sale. All of the subsection (b)(1) requirements have been met: the public trustee conducts a public sale that divests junior liens. Indeed, the public trustee's sale is almost identical to example 3 in section 301.7425-2(c):

[T]he purchaser at the public sale obtains a title which is defeasible by the exercise of a right of redemption in the mortgagor. The purchaser's title divests the interest of junior lienors in the property as of the time of public sale. The interests of junior lienors in the property revive if the mortgagor exercises his right of redemption. The date of sale, for purposes of computing a period of time determined with reference to the date of sale, is the date of the public sale because junior liens on the property are divested directly as a result of the public sale although such junior liens may be revived by subsequent redemption by the mortgagor.

Like example 3, Colorado by statute provides that the interests of the junior liens revive if the mortgagor exercises his right of redemption. See Col. Rev. Stat. § 38-38-304(1). Because Colorado law follows example 3, we reach the same conclusion as that contained in example 3, the date of sale under section 7425(d) is the date of the public sale.

It is not clear why the CPTA incorrectly believes that the date of sale should be calculated under section 301.7425-(b)(3), which only applies to situations in which a foreclosure sale, either public or private, does not divest junior liens from the property. It may be that the Government's earlier litigating position led to this confusion. Specifically, in an unreported case, United Bank of Denver v. United States, (D. Colo., No. 82-F-623, Feb. 18, 1983), the Government erroneously argued that the date of sale was not the date of the public trustee's sale. The district court rejected the Government's position, holding that the date of sale for section 7425 purposes is the date of the public trustee's sale. As previously mentioned, the Government no longer espouses that view, instead recognizing that the date of sale under section 7425(d) is the date of the public trustee's sale and agreeing with the conclusion, if not the analysis, of the district court's opinion. ^{2/} See also Title Insurance Co. of Minnesota v. I.R.S., 963 F.2d 297 (10th Cir. 1992)

^{2/} The district court found that Treas. Reg. § 301.7425-2(b)(3) was invalid. The Government does not agree with that analysis because (b)(3) was the wrong subsection. Subsection (b)(1) is the correct subsection. The Government did not appeal the case, because the district court reached the correct result, albeit for the wrong reason.

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(Date of sale for purposes of section 7425 is the date of the Public Trustee's sale)(dictum).

In summary, a plain wording interpretation of section 301.7425-2(b)(1) and the accompanying example 3 leads to the conclusion that the date of sale under section 7425(d) is the date of the Colorado public trustee's sale.

If you have any questions, please call the branch.