

Notice of Proposed Rulemaking

Sale of Seized Property

GL-7-96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the sale of seized property. The proposed regulations reflect changes concerning the setting of a minimum price for seized property by the Tax Reform Act of 1986. The proposed regulations affect all sales of seized property.

DATES: Written comments and requests for a public hearing must be received by September 11, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (GL-007-96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:R (GL-007-96), room 5228, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Kevin B. Connelly, (202) 622-3640 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to the sale of seized property under section 6335 of the Internal Revenue Code (Code). The Tax Reform Act of 1986 amended section 6335(e), relating to the manner and conditions of sale, to authorize the Secretary to determine whether it would be in the best interest of the United States to buy seized property at the minimum price set by the Secretary. These proposed regulations reflect this change.

Explanation of provisions

Section 1570 of the Tax Reform Act of 1986 amended section 6335(e) of the Code to require the Secretary to determine before the sale of seized property

whether it would be in the best interest of the United States to purchase such property at the minimum price set by the Secretary. The best interest determination is to be based on criteria prescribed by the Secretary. If, at the sale, one or more persons offer at least the minimum price, the property shall be sold to the highest bidder. If no one offers at least the minimum price and the Secretary has determined that it would be in the best interest of the United States to purchase the property for the minimum price, the property will be declared sold to the United States for the minimum price. If no one offers the minimum price and the Secretary has not determined that it would be in the best interest of the United States to purchase the property for the minimum price, the property shall be released to the owner of the property and the expense of the levy and sale shall be added to the amount of tax for the collection of which the United States made the levy. Any property released shall remain subject to any lien imposed by subchapter C of chapter 64 of subtitle F of the Code.

The proposed regulations reflect the changes made by the Tax Reform Act of 1986. The regulations propose to authorize district directors to make the required determination whether it would be in the best interest of the United States to purchase seized property for the minimum price. In addition, the regulations propose to set forth factors the district director may consider when determining the best interest of the United States. The district director may consider all relevant facts and circumstances including for example: (1) marketability of the property; (2) cost of maintaining the property; (3) cost of repairing or restoring the property; (4) cost of transporting the property; (5) cost of safeguarding the property; (6) cost of potential toxic waste cleanup; and (7) other factors pertinent to the type of property.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility

Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Kevin B. Connelly, Office of Assistant Chief Counsel (General Litigation) CC:EL:GL, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6335-1 is amended as follows:

1. Paragraph (c)(3) is revised.

2. Paragraphs (c)(4) through (c)(9) are redesignated as paragraphs (c)(5) through (c)(10).

3. New paragraph (c)(4) is added.

The additions and revision read as follows:

301.6335-1 Sale of seized property.

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(c) * * *

(3) *Determinations relating to minimum price*—(i) *Minimum price*. Before the sale of property seized by levy, the district director shall determine a minimum price, taking into account the expenses of levy and sale, for which the property shall be sold. The internal revenue officer conducting the sale may either announce the minimum price before the sale begins, or defer announcement of the minimum price until after the receipt of the highest bid, in which case, if the highest bid is greater than the minimum price, no announcement of the minimum price shall be made.

(ii) *Purchase by the United States*. Before the sale of property seized by levy, the district director shall determine whether the purchase of property by the United States at the minimum price would be in the best interest of the United States. In determining whether the purchase of property would be in the best interest of the United States, the district director may consider all relevant facts and circumstances including for example—

- (a) Marketability of the property;
- (b) Cost of maintaining the property;
- (c) Cost of repairing or restoring the property;
- (d) Cost of transporting the property;
- (e) Cost of safeguarding the property;
- (f) Cost of potential toxic waste cleanup; and
- (g) Other factors pertinent to the type of property.

(iii) *Effective date*. This paragraph (c)(3) applies to determinations relating to minimum price made on or after [date final regulations are published in the **Federal Register**].

(4) *Disposition of property at sale*—

(i) *Sale to highest bidder at or above minimum price*. If one or more persons offer to buy the property for at least the amount of the minimum price, the property shall be sold to the highest bidder.

(ii) *Property deemed sold to United States at minimum price*. If no one offers at least the amount of the minimum price for the property and the Secretary has determined that it would be in the best interest of the United States to purchase the property for the minimum price, the property shall be declared to be sold to the United States for the minimum price.

(iii) *Release to owner*. If the property is not declared to be sold under para-

graph (c)(4)(i) or (ii) of this section, the property shall be released to the owner of the property and the expense of the levy and sale shall be added to the amount of tax for the collection of which the United States made the levy. Any property released under this paragraph (c)(4)(iii) shall remain subject to any lien imposed by subchapter C of chapter 64 of subtitle F of the Internal Revenue Code.

(iv) *Effective date*. This paragraph (c)(4) applies to dispositions of property at sale made on or after [date final regulations are published in the **Federal Register**].

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Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on June 12, 1996, 8:45 a.m., and published in the issue of the Federal Register for June 13, 1996, 61 F.R. 30012)