

the person giving the notice, this request will be honored by the district director. The acknowledgement by the district director will indicate the date and time of the receipt of the notice.

(4) *Disclosure of adequacy of notice.* The district director for the internal revenue district in which the sale was held or is to be held is authorized to disclose, to any person who has a proper interest, whether an adequate notice of sale was given under paragraph (d)(1) of this section. Any person desiring this information should submit to the district director a written request which clearly describes the property sold or to be sold, identifies the applicable notice of lien, gives the reasons for requesting the information, and states the name and address of the person making the request.

[T.D. 7430, 41 FR 35180, Aug. 20, 1976]

§ 301.7425-4 Discharge of liens; redemption by United States.

(a) *Right to redeem—(1) In general.* In the case of a nonjudicial sale of real property to satisfy a lien prior to the tax lien or a title derived from the enforcement of a tax lien, the district director may redeem the property within the redemption period (as described in paragraph (a)(2) of this section). The right of redemption of the United States exists under section 7425(d) even though the district director has consented to the sale under section 7425(c)(2) and § 301.7425-3(b). For purposes of this section, the term “nonjudicial sale” shall have the same meaning as used in paragraph (a) of § 301.7425-2.

(2) *Redemption period.* For purposes of this section, the redemption period shall be—

(i) The period beginning with the date of the sale (as determined under paragraph (b) of § 301.7425-2) and ending with the 120th day after such date, or

(ii) The period for redemption of real property allowable with respect to other secured creditors, under the local law of the place where the real property is located, whichever expires later. Whichever period is applicable, section 7425 and this section shall govern the amount to be paid and the procedure to be followed.

(3) *Limitations.* In the event a sale does not ultimately discharge the property from the tax lien (whether by reason of local law or the provisions of section 7425(b)), the provisions of this section do not apply because the tax lien will continue to attach to the property after the sale. In a case in which the Internal Revenue Service is not entitled to a notice of sale under section 7425(b) and § 301.7425-3, the United States does not have a right of redemption under section 7425(d). However, in such a case, if a tax lien has attached to the property at the time of sale, the United States has the same right of redemption, if any, which is afforded similar creditors under the local law of the place in which the property is situated.

(b) *Amount to be paid—(1) In general.* In any case in which a district director exercises the right to redeem real property under section 7425(d), the amount to be paid is the sum of the following amounts—

(i) The actual amount paid for the property (as determined under paragraph (b)(2) of this section) being redeemed (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent legally satisfied by reason of the sale);

(ii) Interest on the amount paid (described in paragraph (b)(1)(i) of this section) at the sale by the purchaser of the real property computed at the rate of 6 percent per annum for the period from the date of the sale (as determined under paragraph (b) of § 301.7425-2) to the date of redemption;

(iii) The amount, if any, equal to the excess of (A) the expenses necessarily incurred to maintain such property (as determined under paragraph (b)(3) of this section) by the purchaser (and his successor in interest, if any) over (B) the income from such property realized by the purchaser (and his successor in interest, if any) plus a reasonable rental value of such property (to the extent the property is used by or with the consent of the purchaser or his successor in interest or is rented at less than its reasonable rental value); and

(iv) With respect to a redemption made after December 31, 1976, the

amounts, if any, of a payment made by the purchaser or his successor in interest after the foreclosure sale to a holder of a senior lien (to the extent provided under paragraph (b)(4) of this section).

(2) *Actual amount paid.* (i) The actual amount paid for property by a purchaser, other than holder of the lien being foreclosed, is the amount paid by him at the sale. For purposes of this subdivision, the amount paid by the purchaser at the sale includes deferred payments upon the bid price. The actual amount paid does not include costs and expenses incurred prior to the foreclosure sale by the purchaser except to the extent such expenses are included in the amount bid and paid for the property. For example, the actual amount paid does not normally include the expenses of the purchaser such as title searches, professional fees, or interest on debt incurred to obtain funds to purchase the property.

(ii) In the case of a purchaser who is the holder of the lien being foreclosed, the actual amount paid is the sum of (A) the amount of the obligation secured by such lien to the extent legally satisfied by reason of the sale and (B) any additional amount bid and paid at the sale. For purposes of this section, a purchaser who acquires title as a result of a nonjudicial foreclosure sale is treated as the holder of the lien being foreclosed if a lien (or any interest reserved, created, or conveyed as security for the payment of a debt or fulfillment of other obligation) held by him is partially or fully satisfied by reason of the foreclosure sale. For example, a person whose title is derived from a tax deed issued under local law shall be treated as a purchaser who is the holder of the lien foreclosed in a case where a tax certificate, evidencing a lien on the property arising from the payment of property taxes, ripens into title. The amount paid by a purchaser at the sale includes deferred payments upon any portion of the bid price which is in excess of the amount of the lien being foreclosed. The actual amount paid does not include costs and expenses incurred prior to the foreclosure sale by the purchaser except to the extent such expenses are included in the amount of the lien being foreclosed

which is legally satisfied by reason of the sale or in the amount bid and paid at the sale. Where the lien being foreclosed attaches to other property not subject to the foreclosure sale, the amount legally satisfied by reason of the sale does not include the amount of such lien that attaches to the other property. However, for purposes of the preceding sentence, the amount of the lien that attaches to the other property shall be considered to be equal to the amount by which the value of the other property exceeds the amount of any other senior lien on that property. Where, after the sale, the holder of the lien being foreclosed has the right to the unpaid balance of the amount due him, the amount legally satisfied by reason of the sale does not include the amount of such lien to the extent a deficiency judgment may be obtained therefor. However, for purposes of the preceding sentence, an amount, with respect to which the holder of the lien being foreclosed would otherwise have a right to a deficiency judgment, shall be considered to be legally satisfied by reason of the foreclosure sale to the extent that the holder has waived his right to a deficiency judgment prior to the foreclosure sale. For this purpose, the waiver must be in writing and legally binding upon the foreclosing lienholder as of the time the sale is concluded. If, prior to the foreclosure, payments have been made by the foreclosing lienholder to a holder of a superior lien, the payments are included in the actual amount paid to the extent they give rise to an interest which is legally satisfied by reason of the foreclosure sale.

(3) *Excess expenses incurred by purchaser.* (i) Expenses necessarily incurred in connection with the property after the foreclosure sale and before redemption by the United States are taken into account in determining if there are excess expenses payable under paragraph (b)(1)(iii) of this section. Expenses incurred by the purchaser prior to the foreclosure sale are not considered under this subparagraph. (See paragraph (b)(2)(ii) of this section for circumstances under which such expenses may be included in the amount to be paid.) Expenses necessarily incurred in connection with

the property include, for example, rental agent commissions, repair and maintenance expenses, utilities expenses, legal fees incurred after the foreclosure sale and prior to redemption in defending the title acquired through the foreclosure sale, and a proportionate amount of casualty insurance premiums and ad valorem taxes. Improvements made to the property are not considered as an expense unless the amounts incurred for such improvements are necessarily incurred to maintain the property.

(ii) At any time prior to the expiration of the redemption period applicable under paragraph (a)(2) of this section, the district director may, by certified or registered mail or hand delivery, request a written itemized statement of the amount claimed by the purchaser or his successor in interest to be payable under paragraph (b)(1)(iii) of this section. Unless the purchaser or his successor in interest furnishes the written itemized statement within 15 days after the request is made by the district director, it shall be presumed that no amount is payable for expenses in excess of income and the Internal Revenue Service shall tender only the amount otherwise payable under paragraph (b)(1) of this section. If a purchaser or his or her successor in interest has failed to furnish the written itemized statement within 15 days after the request therefor is made by the district director, or there is a disagreement as to the amount properly payable under paragraph (b)(1)(iii) of this section, or if there were additional excess expenses that were not claimed in the original itemized statement, the purchaser or his or her successor in interest may submit a written itemized statement to the district director within 30 days after the date of redemption. If the purchaser or his or her successor in interest fails to timely submit such a written itemized statement, no amount shall be payable for expenses in excess of income.

(4) *Payments made by purchaser or his successor in interest to a senior lienor.* (i) The amount to be paid upon a redemption by the United States made after December 31, 1976, shall include the amount of a payment made by the pur-

chaser or his successor in interest to a holder of a senior lien to the extent a request for the reimbursement thereof (made in accordance with paragraph (b)(4)(ii) of this section) is approved as provided under paragraph (b)(4)(iii) of this section. This paragraph applies only to a payment made after the foreclosure sale and before the redemption to a holder of a lien that was, immediately prior to the foreclosure sale, superior to the lien foreclosed. A payment of principal or interest to a senior lienor shall be taken into account. Generally, the portion, if any, of a payment which is to be held in escrow for the payment of an expense, such as hazard insurance or real property taxes, is not considered under this paragraph. However, a payment by the escrow agent of a real property tax or special assessment lien, which was senior to the lien foreclosed, shall be considered to be a payment made by the purchaser or his successor in interest for purposes of this paragraph. With respect to real property taxes assessed after the foreclosure sale, see paragraph (b)(3)(i) of this section, relating to excess expenses incurred by the purchaser.

(ii) Before the expiration of the redemption period applicable under paragraph (a)(2) of this section, the district director shall, in any case where a redemption is contemplated, send notice to the purchaser (or his successor in interest of record) by certified or registered mail or hand delivery of his right under this subparagraph to request reimbursement (payable in the event the right to redeem under section 7425(d) is exercised) for a payment made to a senior lienor. No later than 15 days after the notice from the district director is sent, the request for reimbursement shall be mailed or delivered to the office specified in such notice and shall consist of—

(A) A written itemized statement, signed by the claimant, of the amount claimed with respect to a payment made to a senior lienor, together with the supporting evidence requested in the notice from the district director, and

(B) A waiver or other document that will be effective upon redemption by the United States to discharge the

property from, or transfer to the United States, any interest in or lien on the property that may arise under local law with respect to the payment made to a senior lienor.

Upon a showing of reasonable cause, a district director may, in his discretion and at any time before the expiration of the applicable period for redemption, grant an extension for a reasonable period of time to submit, amend, or supplement a request for reimbursement. Unless a request for reimbursement is timely submitted (determined with regard to any extension of time granted), no amount shall be payable to the purchaser or his successor in interest on account of a payment made to a senior lienor if the right to redeem under section 7425(d) is exercised. A waiver or other document submitted pursuant to this subdivision shall be treated as effective only to the extent of the amount included in the redemption price under this paragraph. If the right to redeem is not exercised or a request for reimbursement is withdrawn, the district director shall, by certified or registered mail or hand delivery, return to the purchaser or his successor any waiver or other document submitted pursuant to this subdivision as soon as is practicable.

(iii) A request for reimbursement submitted in accordance with paragraph (b)(4)(ii) of this section shall be considered to be approved for the total amount claimed by the purchaser, and payable in the event the right to redeem is exercised, unless the district director sends notice to the claimant, by certified or registered mail or hand delivery, of the denial of the amount claimed within 30 days after receipt of the request or 15 days before expiration of the applicable period for redemption, whichever is later. The notification of denial shall state the grounds for denial. If such notice of denial is given, the request for reimbursement for a payment made to a senior lienor shall be treated as having been withdrawn by the purchaser or his successor and the Internal Revenue Service shall tender only the amount otherwise payable under paragraph (b)(1) of this section. If a request for reimbursement is treated as having been withdrawn under the preceding sentence, payment for

amounts described in this subparagraph may, in the discretion of the district director, be made after the redemption upon the resolution of the disagreement as to the amount properly payable under paragraph (b)(1)(iv) of this section.

(5) *Examples.* The provisions of paragraph (b)(1)(i) of this section may be illustrated by the following examples:

Example 1. A, a delinquent taxpayer, owns Blackacre located in State X upon which B holds a mortgage. After the mortgage is properly recorded, a notice of tax lien is filed under section 6323(f) which is applicable to Blackacre. Subsequently, A defaults on the mortgage and B forecloses on the mortgage which has an outstanding obligation in the amount of \$1,000. At the foreclosure sale, B bids \$50,000 and obtains title to Blackacre as a result of the sale. At the time of the foreclosure sale, Blackacre has a fair market value of \$75,000. Under the laws of State X, the mortgage obligation is fully satisfied by operation of the foreclosure sale per se and the mortgagee cannot obtain a deficiency judgment. Under paragraph (b)(1)(i) of this section, the district director must pay \$100,000 in order to redeem Blackacre.

Example 2. Assume the same facts as in example 1 except that under the laws of State X, the amount bid is the amount of the obligation legally satisfied as a result of the foreclosure sale, and in the case in which the amount of the obligation exceeds the amount bid, the mortgagee has the right to a judgment for the deficiency computed as the difference between the amount of the obligation and the amount bid. B does not waive, prior to the foreclosure sale, his right to a deficiency judgment. In such a case, the district director must, under paragraph (b)(1)(i) of this section, pay \$50,000 in order to redeem Blackacre, whether or not B seeks a judgment for the deficiency.

Example 3. C, a delinquent taxpayer, owns Greenacre located in State Y upon which D holds a first mortgage and E holds a second mortgage. After the mortgages are properly recorded, a notice of tax lien is filed under section 6323(f) which is applicable to Greenacre. Subsequently, C defaults on both mortgages and E pays \$5,000 to D, which is the portion of D's obligation which is in default. The second mortgage held by E is an outstanding obligation in the amount of \$100,000. Under the laws of State Y, E may treat the amount paid to D as an addition to his second mortgage upon foreclosure by him. E forecloses upon the security interest held by him. At the foreclosure sale, E bids \$50,000 and obtains title to Greenacre subject to D's mortgage as a result of the foreclosure sale. Under the laws of State Y, the mortgage obligation legally satisfied is the

amount bid and E has the right to a judgment for a deficiency in the amount of \$55,000 (\$100,000 plus \$5,000 less \$50,000). In such a case, the district director must, under paragraph (b)(1)(i) of this section, pay \$50,000 in order to redeem Greenacre, whether or not E seeks a judgment for the deficiency.

Example 4. The law of State Z contains a procedure which permits a county to collect a delinquent tax assessment with respect to real property by the means of a "tax sale" of the property. Pursuant to this procedure, a public auction is conducted on January 15, 1970, to collect the delinquent property taxes assessed against Whiteacre, which is owned by F. At the auction, a bid of \$1,000 (representing the tax, costs, and interest due at the time of the auction) is made by G. Subsequently, G pays the amount bid to the county and obtains a tax certificate with respect to Whiteacre. Under this tax sale procedure, the obtaining of the tax certificate does not directly result in the divestment of either F's title or any junior liens on Whiteacre. On January 15, 1973, the period under this tax sale procedure during which F could have redeemed Whiteacre expires. Further, more than 30 days before January 15, 1973, a notice of tax lien affecting Whiteacre is filed under section 6323(f) with respect to F's delinquent Federal income taxes. Under the state tax sale procedure, the amount which would be required to be paid by F to G on January 15, 1973, to redeem Whiteacre is \$1,350 (the \$1,000 amount bid, interest of \$300, and costs of \$50). However, Whiteacre is not redeemed by F under the state procedure and, on January 16, 1973, G obtains a tax deed to Whiteacre. Under the law of State Z, the issuance of the tax deed results in the divestment of F's title and junior liens on Whiteacre. Thus, under § 301.7425-2(b), the date of sale is January 16, 1973, for purposes of section 7425(b). The amount legally satisfied by reason of the sale is the amount G is entitled to receive, immediately prior to the expiration of the period for redemption under the law of State Z, if Whiteacre were redeemed at such time. Thus, the district director must, under paragraph (b)(1)(i) of this section, pay \$1,350 in order to redeem Whiteacre.

(c) *Certificate of redemption*—(1) *In general.* If a district director exercise the right of redemption of the United States described in paragraph (a) of this section, he shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to the redeemed property in the name of the United States. If no such officer has been designated by local law or if the officer designated by local law fails to issue the necessary documents,

the district director is authorized to issue a certificate of redemption for the property redeemed by the United States.

(2) *Filing.* The district director shall, without delay, cause either the documents issued by the local officer or the certificate of redemption executed by the district director to be filed with the local office where certificates of redemption are generally filed. If a certificate of redemption is issued by the district director and if the State in which the real property redeemed by the United States is situated has no office with which certificates of redemption may be filed, the district director shall file the certificate of redemption in the office of the clerk of the United States district court for the judicial district in which the redeemed property is situated.

(3) *Effect of certificate of redemption.* A certificate of redemption executed pursuant to paragraph (c)(1) of this section, shall constitute prima facie evidence of the regularity of the redemption. When a certificate of redemption is recorded, it shall transfer to the United States all the rights, title, and interest in and to the redeemed property acquired by the person, from whom the district director redeemed the property, by virtue of the sale of the property. Therefore, if under local law the purchaser takes title free of liens junior to the lien of the foreclosing lienholder, the United States takes title free of such junior liens upon redemption of the property. If a certificate of redemption has been erroneously prepared and filed because the redemption was not effective, the district director shall issue a document revoking such certificate of redemption and such document shall be conclusively binding upon the United States against a purchaser of the property or a holder of a lien upon the property.

(4) *Application for release of right of redemption.* Upon application of a party with a proper interest in the real property sold in a nonjudicial sale described in section 7425(b) and § 301.7425-2 which real property is subject to the right of redemption of the United States described in this section, the district director may, in his discretion,

release the right of redemption with respect to the property. The application for the release shall be submitted in writing to a district director and shall contain such information as the district director may require. If the district director determines that the right of redemption of the United States is without value, no amount shall be required to be paid with respect to the release of the right of redemption.

[T.D. 7430, 41 FR 35181, Aug. 20, 1976, as amended by T.D. 8596, 60 FR 28720, June 2, 1995]

§ 301.7426-1 Civil actions by persons other than taxpayers.

(a) *Actions permitted*—(1) *Wrongful levy*—(i) *In general*. If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) may bring a civil action against the United States in a district court of the United States based upon such person's claim—

(A) That such person has an interest in, or lien on, such property which is senior to the interest of the United States; and

(B) That such property was wrongfully levied upon.

(ii) *Debt owed by another Federal agency*. Section 7426 and this paragraph (a) apply when a levy is made by the Internal Revenue Service on a debt owed to a taxpayer by another Federal agency. By contrast, section 7426 and this paragraph (a) do not apply if the Internal Revenue Service requests payment from another Federal agency pursuant to a request for setoff.

(2) *Surplus proceeds*. If property has been sold pursuant to levy, any person (other than the person against whom is assessed the tax out of which such levy arose) may bring a civil action against the United States in a district court of the United States based upon such person's claim that he—

(i) Has an interest in or lien on such property junior to that of the United States; and

(ii) Is entitled to the surplus proceeds of such sale.

(3) *Substituted sale proceeds*. Any person who claims to be legally entitled to all or any part of the amount which is

held as a fund from the sale of property pursuant to an agreement described in section 6325(b)(3) may bring a civil action against the United States in a district court of the United States to obtain the relief provided by section 7426(b)(4). It is not necessary that the claimant be a party to the agreement which provides for the substitution of the sale proceeds for the property subject to the lien.

(b) *Adjudication*—(1) *Wrongful levy*. If the court determines that property has been wrongfully levied upon, the court may—

(i) Grant an injunction to prohibit the enforcement of such levy or to prohibit a sale of such property if such sale would irreparably injure rights in the property which are superior to the rights of the United States in such property; or

(ii) Order the return of specific property if the United States is in possession of such property; or

(iii) Grant a judgment for the amount of money levied upon; or

(iv) Grant a judgment for an amount not exceeding the amount received by the United States from the sale of such property (which, in the case of property declared purchased by the United States at a sale, shall be the greater of the minimum amount determined pursuant to section 6335(e) or the amount received by the United States from the resale of such property).

For purposes of this paragraph, a levy is wrongful against a person (other than the taxpayer against whom the assessment giving rise to the levy is made), if (a) the levy is upon property exempt from levy under section 6334, or (b) the levy is upon property in which the taxpayer had no interest at the time the lien arose or thereafter, or (c) the levy is upon property with respect to which such person is a purchaser against whom the lien is invalid under section 6323 or 6324 (a)(2) or (b), or (d) the levy or sale pursuant to levy will or does effectively destroy or otherwise irreparably injure such person's interest in the property which is senior to the Federal tax lien. A levy may be wrongful against a holder of a senior lien upon the taxpayer's property under certain circumstances although