

director may require. Any reasonable and necessary expenses incurred in connection with the sale of the property and the administration of the sale proceeds shall be paid by the applicant or from the proceeds of the sale before satisfaction of any claims and liens.

(c) *Subordination of lien*—(1) *By payment of the amount of subordination.* Pursuant to section 6325(d)(1), a district director may, in his discretion, issue a certificate of subordination of any lien imposed under chapter 64 of the Code upon any part of the property subject to the lien if there is paid over to the district director an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States. Under this provision, the tax lien may be subordinated to another lien or interest on a dollar-for-dollar basis. For example, if a notice of a Federal tax lien is filed and a delinquent taxpayer secures a mortgage on a part of the property subject to the tax lien and pays over the amount of the principal of the debt secured by the mortgage to a district director after an application for a certificate of subordination is approved, the district director will issue a certificate of subordination. This certificate will have the effect of subordinating the tax lien to the mortgage.

(2) *To facilitate tax collection*—(i) *In general.* Pursuant to section 6325(d)(2), a district director may, in his discretion, issue a certificate of subordination of any lien imposed under chapter 64 of the Code upon any part of the property subject to the lien if the district director believes that the subordination of the lien will ultimately result in an increase in the amount realizable by the United States from the property subject to the lien and will facilitate the ultimate collection of the tax liability.

(ii) *Example.* The provisions of this subparagraph may be illustrated by the following example:

Example. A, a farmer, needs money in order to harvest his crop. However, a Federal tax lien, notice of which has been filed, is outstanding with respect to A's property. B, a lending institution is willing to make the necessary loan if the loan is secured by a first mortgage on the farm which is prior to the Federal tax lien. Upon examination, the district director believes that ultimately the

amount realizable from A's property will be increased and the collection of the tax liability will be facilitated by the availability of cash when the crop is harvested and sold. In this case, the district director may, in his discretion, subordinate the tax lien on the farm to the mortgage securing the crop harvesting loan.

(3) *Application for certificate of subordination.* Any person desiring a certificate of subordination under this paragraph shall submit an application in writing to the district director responsible for the collection of the tax. The application shall contain such information as the district director may require.

[T.D. 6944, 33 FR 732, Jan. 20, 1968]

§ 400.4-1 Notice required with respect to a nonjudicial sale.

(a) *Scope and application of this section*—(1) *In general.* Section 109 of the Federal Tax Lien Act of 1966 (80 Stat. 1141) amended the Internal Revenue Code of 1954 by adding a new section 7425, relating to the discharge of liens. A tax lien of the United States, or a title derived from the enforcement of a tax lien of the United States, may be discharged or divested under local law only in the manner prescribed in section 2410 of title 28 of the United States Code or section 7425 of the Internal Revenue Code. Section 7425(a) contains provisions relating to the discharge of a lien or a title derived from the enforcement of a lien in the judicial proceedings described in subsection (a) of section 2410 of title 28 of the United States Code. These judicial proceedings are plenary in nature and proceed on formal pleadings. Section 7425(b) contains provisions relating to the discharge of a lien or a title derived from the enforcement of a lien in the event of a nonjudicial sale with respect to the property involved. Section 7425(c) contains special rules relating to the notice of sale requirements contained in section 7425(b). Paragraph (b) of this section of the regulations contains rules with respect to the nonjudicial sales described in section 7425(b). Paragraph (c) of this section of the regulations contains rules with respect to the notice of sale provisions of section 7425(c)(1). Paragraph (d) of this section

of the regulations contains rules relating to the consent to sale provisions of section 7425(c)(2). Paragraph (e) of this section of the regulations contains rules relating to the sale of perishable goods provisions of section 7425(c)(3). Paragraph (f) of this section of the regulations contains the requirements with respect to the contents of a notice of sale.

(2) *Effective date of this section.* The provisions of section 7425, as added by the Federal Tax Lien Act of 1966, are effective with respect to sales occurring after November 2, 1966. The notice of sale provisions of section 7425(c) (1) or (3) do not apply to sales occurring after November 2, 1966, if the seller of the property performed an act before November 3, 1966, which act at the time of performance was required and effective under local law with respect to the sale. An example of such an act is publication of a notice of the sale in a local newspaper before November 3, 1966, if local law requires such publication before a sale and the publication is effective under local law. Accordingly, in such a case, it is not necessary to notify the Internal Revenue Service pursuant to the provisions of section 7425(c) (1) or (3). With respect to a notice of sale required under section 7425(c) (1) or (3)—

(i) Any notice of sale given to an office of the Internal Revenue Service or the Treasury Department during the period November 3, 1966, through December 21, 1966, shall be considered as adequate;

(ii) Any notice of sale given during the period December 22, 1966, through January 31, 1968, which complies with provisions of either

(a) Revenue Procedure 67-25, 1967-20 I.R.B. 42 (based on Technical Information Release 873, dated December 22, 1966), or

(b) This section

shall be considered as adequate; and

(iii) Any notice of sale given after January 31, 1968, which complies with the provisions of this section shall be considered as adequate.

(b) *Nonjudicial sale*—(1) *In general.* Section 7425(b) contains provisions with respect to the effect on the interest of the United States in property in which the United States has or claims

a lien, or a title derived from the enforcement of a lien, when a sale is made pursuant to—

(i) An instrument creating a lien on the property sold,

(ii) A confession of judgment on the obligation secured by an instrument creating a lien on the property sold, or

(iii) A statutory lien on the property sold.

For purposes of this section, such a sale is referred to as a “nonjudicial sale.” The term “nonjudicial sale” includes, but is not limited to, the divestment of the taxpayer’s title to property which occurs by operation of law, as well as those which result from a public or private sale. Under section 7425(b)(1), if a notice of lien is filed in accordance with section 6323(f) or (g), or the title derived from the enforcement of a lien is recorded as provided by local law, more than 30 days before the date of sale, and the appropriate district director is not given notice of the sale (in the manner prescribed in paragraph (c) of this section), the sale shall be made subject to and without disturbing the lien or title of the United States. Under section 7425(b)(2)(C), in any case in which notice of the sale is given to the district director not less than 25 days prior to the date of sale (in the manner prescribed in section 7425(c)(1)), the sale shall have the same effect with respect to the discharge or divestment of the lien or title as may be provided by local law with respect to other junior liens. A nonjudicial sale pursuant to a lien which is junior to a tax lien does not divest the tax lien, even though notice of the nonjudicial sale is given to the appropriate district director. However, under the provisions of section 6325(b), § 301.6325-1 of this chapter (Regulations on Procedure and Administration), and § 400.2-1, a district director may discharge the property from a tax lien, including a tax lien which is senior to another lien upon the property. In the case of a nonjudicial sale subject to the provisions of section 7425(b), in order to compute any period of time determined with reference to the date of sale, the date of sale shall be determined in accordance with the following rules:

(iv) In 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 the property are divested or the title to the property is transferred.

(v) In the case of divestment of junior liens on property resulting directly from a private sale, the date of sale is deemed to be the date title to the property is transferred, regardless of the date junior liens on the property are divested under local law, and

(vi) In the case of divestment of junior liens on property not resulting directly from a public or private sale, the date of sale is deemed to be the date on which junior liens on the property are divested under local law.

For provisions relating to the right of redemption of the United States, see section 7425(d) and § 400.5-1.

(2) *Examples.* The provisions of subparagraph (1) of this paragraph (b), may be illustrated by the following examples:

Example 1. Under the law of M State upon entry of judgment, the judgment creditor obtains a statutory lien upon the real property of the judgment debtor, and certain procedures are provided by which the judgment creditor may execute by public sale upon such real property. These procedures provide, among other things, for notification by personal service or registered or certified mail to other lien creditors, if any, and publication of a notice of the sale in a local newspaper. After the expiration of a prescribed period of time after such notification and publication, the sheriff of the county where the real property is located may sell the property at public sale. After payment of the amount bid at the public sale, the sheriff issues to the purchaser a deed to the real property, and the interests of junior lienors in the property are divested. For purposes of this section, such an execution sale is a nonjudicial sale described in section 7425(b) since the sale is made pursuant to a statutory lien on the property sold. The date of sale, for purposes of computing a period of time determined with reference to the date of sale, is the date on which the public sale is held, since junior liens on the real property are divested directly as a result of the public sale. This result obtains even though the junior liens are legally divested on a later date when the sheriff issues the deed.

Example 2. Under the law of N State, mortgages on real property may contain a power

of sale which authorizes the mortgagee, upon breach by the mortgagor of one of the conditions of the mortgage, to have the mortgaged property sold at public sale. This public sale must be preceded by notice by advertisement in a local newspaper, and the time, place, description of the property, and other terms of the sale must be specified. The purchaser at such a public sale obtains a title to the real property which is not subject to a right of redemption by the mortgagor and which divests the interests of the junior lienors in the property. For purposes of this section, a sale pursuant to such a power of sale is a nonjudicial sale described in section 7425(b) since the sale is made pursuant to the mortgage instrument which created a lien on the property sold. The date of the sale, for purposes of computing a period of time determined with reference to the date of sale, is the date of the public sale since junior liens on the property are divested directly as a result of the public sale.

Example 3. Under the law of O State, upon breach by a mortgagor of real property of one of the conditions of the mortgage, the mortgagee may foreclose the mortgage by securing possession of the property by one of several procedures provided by statute. These procedures are generally referred to as "strict foreclosure." In order for a foreclosure to be effective under these procedures, a certificate attesting the fact of entry must be recorded with the proper registrar of deeds within 30 days after the mortgagee enters the property. During the 1-year period following the date on which the certificate of entry is recorded, the mortgagor or a junior lienor may redeem the property by paying the mortgagee the amount of the mortgage obligation. If, during such 1-year period the property is not redeemed and the mortgagee's possession is continued, the interests of the mortgagor and the junior lienors in the property are divested. For purposes of this section, such a foreclosure procedure is a nonjudicial sale described in section 7425(b) since it results in the divestment of the mortgagor's interest in the property by operation of law pursuant to the mortgage which created a lien on the property. In addition, since there is no public or private sale which directly results in the divestment of junior liens on the property, the date of sale, for purposes of computing a period of time determined with reference to the date of sale, is the date on which the 1-year period following the recording of the certificate of entry expires.

Example 4. The law of P State 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. First, a notice of a public auction with respect to the tax assessment on the real property is published in a local

newspaper. At the public auction, the purchaser, upon payment of the delinquent taxes and interest, obtains from the county tax collector a tax certificate with respect to the real property. Since the obtaining of this tax certificate does not directly result in the divestment of either the owner's title or junior liens with respect to the property, the public auction is not a nonjudicial sale described in section 7425(b). At any time before a tax deed with respect to the property is issued by the clerk of the county court, the owner or any holder of a lien or other interest with respect to the property may obtain the tax certificate by paying the holder of the tax certificate the amount of the taxes, interest, and costs. After a date which is two years after the date on which the tax assessment became delinquent, the holder of the tax certificate may request the clerk of the county court to have the property advertised for sale. After advertisement of the sale, the clerk of the county court conducts a public sale of the real property and the purchaser obtains a tax deed. The interests of all junior lienors in the property are divested and the property is not subject to a right of redemption under the law of P State. For purposes of this section, this public sale is considered to be a nonjudicial sale described in section 7425(b) since the sale is made pursuant to a statutory lien on the property sold. The date of the sale, for purposes of computing a period of time determined with reference to the date of sale, is the date on which the public sale is held at which the purchaser obtains a tax deed as this sale directly results in the divestment of junior liens on the property.

(c) *Notice of sale requirements*—(1) *In general.* Except in the case of the sale of perishable goods described in paragraph (e) of this section, a notice (as described in paragraph (f) of this section) of a nonjudicial sale shall be given, in writing by registered or certified mail or by personal service, not less than 25 days prior to the date of sale (determined under the provisions of paragraph (b)(1) (iv), (v), and (vi) of this section), to the district director (marked for the attention of the chief, special procedures section) for the internal revenue district in which the sale is to be conducted. Thus, under this section, a notice of sale is not effective if it is given to a district director other than the district director for the internal revenue district in which the sale is to be conducted. The provisions of sections 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance

of acts where last day falls on Saturday, Sunday, or legal holiday) apply in the case of notices required to be made under this section.

(2) *Postponement of scheduled sale*—(i) *Where notice of sale is given.* In the event that notice of a sale is given in accordance with subparagraph (1) of this paragraph (c), with respect to a scheduled sale which is postponed to a later time or date, the seller of the property is required to give notice of the postponement to the district director in the same manner as is required under local law with respect to other secured creditors. For example, assume that in M State local law requires that in the event of a postponement of a scheduled foreclosure sale of real property, an oral announcement of the postponement at the place and time of the scheduled sale constitutes sufficient notice to secured creditors of the postponement. Accordingly, if at the place and time of a scheduled sale in M State an oral announcement of the postponement is made, the Internal Revenue Service is considered to have notice of the postponement for the purpose of this subparagraph.

(ii) *Where notice of sale is not given.* In the event that—

(a) Notice of a nonjudicial sale would not be required under subparagraph (1) of this paragraph (c), if the sale were held on the originally scheduled date,

(b) Because of a postponement of the scheduled sale, more than 30 days elapse between the originally scheduled date of the sale and the date of the sale, and

(c) A notice of lien with respect to the property to be sold is filed more than 30 days before the date of the sale, notice of the sale is required to be given to the district director in accordance with the provisions of subparagraph (1) of this paragraph (c). In any case in which notice of sale is required to be given with respect to a scheduled sale, and notice of the sale is not given, any postponement of the scheduled sale does not affect the rights of the United States under section 7425(b).

(iii) *Examples.* The provisions of subdivision (ii) of this subparagraph may be illustrated by the following examples:

Example 1. A nonjudicial sale of Blackacre, belonging to A, a delinquent taxpayer, is scheduled for December 2, 1968. As no notice of lien is filed applicable to Blackacre more than 30 days before December 2, 1968, no notice of sale is given to the district director. On December 2, 1968, the sale of Blackacre is postponed until January 15, 1969. A notice of lien with respect to Blackacre is properly filed on January 2, 1969. The sale of Blackacre is held on January 15, 1969. Even though more than 30 days elapsed between the originally scheduled date of the sale (Dec. 2, 1968) and the date of the sale (Jan. 15, 1969), no notice of sale is required to be given to the district director since the notice of lien was not filed more than 30 days before the date of the sale.

Example 2. Assume the same facts as in example 1 except that the notice of lien is properly filed on November 29, 1968. Since more than 30 days elapsed between the originally scheduled date of the sale and the date of the sale, and the notice of lien is filed (on Nov. 29, 1968) more than 30 days before the date of the sale (Jan. 15, 1969), notice of the sale, in accordance with the provisions of subparagraph (1) of this paragraph, is required to be given to the district director.

Example 3. A nonjudicial sale of Whiteacre, belonging to B, a delinquent taxpayer, is scheduled for December 2, 1968. A notice of lien applicable to Whiteacre is filed on November 12, 1968. As the notice of lien was not filed more than 30 days before December 2, 1968, no notice of sale is given to the district director. On December 2, 1968, the sale of Whiteacre is postponed until December 20, 1968. The sale of Whiteacre is held on December 20, 1968. Even though more than 30 days elapsed between the date notice of lien was filed (Nov. 12, 1968) and the date of the sale (Dec. 20, 1968), no notice of sale is required to be given to the district director since not more than 30 days elapsed between the date of the originally scheduled sale (Dec. 2, 1968) and the date the sale was actually held (Dec. 20, 1968).

(d) *Consent to sale—(1) In general.* Notwithstanding the notice of sale provisions of paragraph (c) of this section, a nonjudicial sale of property shall discharge or divest the property of the lien or title of the United States if the district director for the internal revenue district in which the sale occurs consents to the sale of the property free of the lien or title. Pursuant to section 7425(c)(2), where adequate protection is afforded the lien or title of the United States, a district director may, in his discretion, consent with respect to the sale of property in appropriate cases. Such consent shall be ef-

fective only if given in writing and shall be subject to such limitations and conditions as the district director may require. However, a district director may not consent to a sale of property under this section after the date of sale, as determined under paragraph (b)(1) (iv), (v), and (vi) of this section. For provisions relating to the authority of the district director to discharge property subject to a tax lien in the case where the proceeds of the sale are held as a fund subject to the liens and claims of the United States, see section 6325(b)(3) and § 400.2-1.

(2) *Application for consent.* Any person desiring a district director's consent to sell property free of a tax lien or a title derived from the enforcement of a tax lien of the United States in the property shall submit to the district director for the internal revenue district in which the sale is to occur a written application in triplicate, declaring it is made under penalties of perjury, requesting that such consent be given. The application shall contain the information required in the case of a notice of sale, as set forth in paragraph (f)(1) of this section, and, in addition, shall contain a statement of the reasons why the consent is desired.

(e) *Sale of perishable goods—(1) In general.* A notice (as described in paragraph (f) of this section) of a nonjudicial sale of perishable goods (as defined in subparagraph (2) of this paragraph (e)) shall be given in writing, by registered or certified mail or delivered by personal service, at any time before the sale to the district director (marked for the attention of the chief, special procedures section) for the internal revenue district in which the sale is to be conducted. If a notice of a nonjudicial sale is timely given in the manner described in this paragraph, the nonjudicial sale shall discharge or divest the tax lien, or a title derived from the enforcement of a tax lien, of the United States in the property. The provisions of sections 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where last day falls on Saturday, Sunday, or legal holiday) apply in the case of notices required to be made under this paragraph. For example, where the sale of perishable

goods is scheduled for 1 p.m. on November 1, 1968, and the notice is mailed by certified mail to the district director at 10 a.m. on November 1, 1968, the notice shall be considered as timely given for purposes of this paragraph. The seller of the perishable goods shall hold the proceeds (exclusive of costs) of the sale as a fund, for not less than 30 days after the date of the sale, subject to the liens and claims of the United States, in the same manner and with the same priority as the liens and claims of the United States had with respect to the property sold. If the seller fails to hold the proceeds of the sale in accordance with the provisions of this paragraph, the seller shall be personally liable to the United States for an amount equal to the value of the interest of the United States in the fund. However, even if the proceeds of the sale are not so held by the seller, but all the other provisions of this paragraph are satisfied, the buyer of the property at the sale takes the property free of the liens and claims of the United States. In the event of a postponement of the scheduled sale of perishable goods, the seller is not required to notify the district director of the postponement. For provisions relating to the authority of the district director to discharge property subject to a tax lien in the case where the proceeds of the sale are held as a fund subject to the liens and claims of the United States, see section 6325(b)(3) and § 400.2-1.

(2) *Definition of perishable goods.* For the purpose of this paragraph, the term "perishable goods" means any personal property which, in the reasonable view of the person selling the property, is liable to perish or become greatly reduced in price or value by keeping, or cannot be kept without great expense.

(f) *Content of notice of sale—(1) In general.* With respect to a notice of sale described in paragraph (c) or (e) of this section, the notice will be considered adequate if it contains the information described in subdivisions (i), (ii), (iii), and (iv) of this subparagraph.

(i) The name and address of the person submitting the notice of sale.

(ii) A copy of each Notice of Federal Tax Lien (Form 668) affecting the property to be sold, or the following infor-

mation as shown on each such Notice of Federal Tax Lien:

(a) The internal revenue district named thereon,

(b) The name and address of the taxpayer, and

(c) The date and place of filing of the notice.

(iii) With respect to the property to be sold, the following information:

(a) A detailed description, including location, of the property affected by the notice (in the case of real property, the street address, city, and State and the legal description contained in the title or deed to the property and, if available, a copy of the abstract of title);

(b) The date, time, place, and terms of the proposed sale of the property; and

(c) In the case of a sale of perishable property described in paragraph (e) of this section, a statement of the reasons why the property is believed to be perishable.

(iv) The approximate amount of the principal obligation, including interest, secured by the lien sought to be enforced and a description of the other expenses (such as legal expenses, selling costs, etc.) which may be charged against the sale proceeds.

(2) *Inadequate notice.* Except as otherwise provided in this subparagraph, a notice of sale described in paragraph (c) of this section which does not contain the information described in subparagraph (1) of this paragraph (f), will not be considered adequate by a district director. If a district director determines that the notice is inadequate, he will give written notification of the items of information which are inadequate to the person who submitted the notice. In such event a notice complying with the provisions of this section (including the requirement that the notice be given 25 days prior to the sale in the case of a notice described in paragraph (c) of this section) must be given. However, in accordance with the provisions of paragraph (d)(1) of this section, in such a case the district director may, in his discretion, consent to the sale of the property free of the lien or title of the United States even though notice of the sale is not given 25 days prior to the sale. In any case in

which the person who submitted a timely notice does not receive, more than 5 days prior to the date of the sale, written notification from the district director that the notice is inadequate, the notice shall be considered adequate for the purposes of this section.

(3) *Acknowledgment of notice.* If a notice of sale described in paragraph (c) or (e) of this section is submitted in duplicate to the district director with a written request that receipt of the notice be acknowledged and returned to the person giving the notice, this request will be honored by the district director. The acknowledgment 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 is authorized to disclose, to any person who has a proper interest, whether an adequate notice of sale was given under subparagraph (1) of this paragraph (f). Any person desiring this information should submit to the district director a written request which clearly describes the property 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. 6944, 33 FR 734, Jan. 20, 1968; 33 FR 916, Jan. 25, 1968]

§ 400.5-1 Redemption by United States.

(a) *Scope.* The purpose of this section is to prescribe rules with respect to the provisions contained in section 7425(d), relating to redemption of real property by the United States. Section 109 of the Federal Tax Lien Act of 1966 (80 Stat. 1141) amended the Internal Revenue Code of 1954 by adding a new section 7425, relating to the discharge of tax liens, effective after November 2, 1966.

(b) *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, the district director may redeem the property within the redemption period (as described in subparagraph (2) of this paragraph (b)). 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 paragraph (d) of § 400.4-1. For purposes of this section, the term “nonjudicial sale” shall have the same meaning as when used in paragraph (b)(1) of § 400.4-1.

(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)(1)(iv), (v), and (vi) of § 400.4-1) 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 local law of the place where the real property is located,

whichever is longer.

(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 since 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 § 400.4-1, 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 to any secured creditor under the local law of the place in which the property is situated.

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

(i) The actual amount paid for the property 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 subdivision (i) of this subparagraph) 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 paragraphs (b)(1)(iv), (v),