#28 AMEND IRC § 7403 TO PROVIDE TAXPAYER PROTECTIONS BEFORE THE IRS RECOMMENDS THE FILING OF A LIEN FORECLOSURE SUIT ON A PRINCIPAL RESIDENCE

Present Law

IRC § 7403 authorizes the Department of Justice (DOJ) to file a civil action in a district court of the United States against a taxpayer to enforce a tax lien and foreclose on a taxpayer's property, including on a taxpayer's principal residence. IRC § 7403(c) directs the court to "[f]inally determine the merits of all claims to and liens upon the property." The court can order the sale of the residence and the distribution of the sale proceeds in accordance with the court's findings regarding the claimants' interests.

Reasons for Change

The IRS has two options, which cannot be used concurrently, to collect against the principal residence of a taxpayer or a residence that is owned by the taxpayer but occupied by the taxpayer's spouse, former spouse, or minor child. One option is to obtain a court order allowing administrative seizure of a principal residence under IRC § 6334(e)(1). Administrative seizures are subject to specified statutory taxpayer protections. The other option is a suit to foreclose the federal tax lien against a principal residence under IRC § 7403. Under the lien foreclosure route, the IRS requests that the DOJ file suit under IRC § 7403 to enforce the tax lien and sell the taxpayer's principal residence at a judicial sale to satisfy the tax debt in whole or in part. In this circumstance, the statutory protections applicable to administrative seizures do not apply.[109]

To protect taxpayers from inappropriate referrals to the DOJ requesting foreclosure of a tax lien on a principal residence, the IRS has written procedures into its Internal Revenue Manual (IRM) that apply to lien foreclosure suit referrals. The IRM prescribes certain initial steps IRS employees must take, such as attempting to identify the occupants of a residence and advising the taxpayer about Taxpayer Advocate Service assistance options, and sets forth an internal approval process prior to referring a lien enforcement case to the DOJ. However, the IRM is simply a set of instructions to IRS staff. Taxpayers generally may not rely on IRM violations as a basis for challenging IRS actions in court, and the IRS may modify or rescind IRM provisions at any time.

The seizure of a taxpayer's principal residence may have a devastating impact on the taxpayer and his or her family. Taxpayer protections before foreclosure referrals are made should be clear, and taxpayers should be entitled to cite violations of the protections as a basis for challenging IRS actions. For these reasons, the National Taxpayer Advocate believes the protections should be codified for lien foreclosure suit referrals to the same extent as administrative seizures and should not be left for the IRS to determine through IRM procedures.

109 Depending on the facts of a case, one route may be preferable for the government than the other. For example, the IRS will generally request that the Department of Justice file a lien foreclosure suit when issues arise relating to title, nominees, or the collection statute.

Recommendation

Amend IRC § 7403 to codify current IRM administrative protections and specifically preclude IRS employees from requesting that the DOJ file a civil action in district court seeking to foreclose the tax lien against a taxpayer's principal residence, except where the employee has received executive-level written approval after determining whether (1) the taxpayer's other property or rights to property, if sold, would be insufficient to pay the amount due, including the expenses of the proceedings, and (2) the foreclosure and sale of the residence will not create an economic hardship due to the financial condition of the taxpayer.[110]

110 H.R. 1828, 114th Cong. § 16 (2015); S. 949, 114th Cong. § 16 (2015); and S. 2215, 113th Cong. § 8 (2014) contain language that is generally consistent with these recommendations.